INTERVIEW WITH JUSTIN BERRY

Q=Det. Doug Havens
Q1=Det. Renee Fox
A=Justin Berry
A1=Tom Stribling

Q: Just in case, let's set it out here so that it's clear, and we're in the conference mode (unintelligible) and the voices can be heard. Um, okay, Justin, just so you know, I'm Doug Havens. Okay, this is, uh, Renee Fox, and we work for the Special Investigation Unit, and we are charged with, uh, investigation any time an, an officer of the department's involved in a shooting incident. Um, specifically we are criminal investigators, though, and all the rights that you have in terms of criminal investigation apply to you right now without penalty when you're dealing with us, okay, so that's a kind of complicated or long-winded way of saying that you don't have to talk to me. You don't have
to tell me anything. You don't have to do anything that I ask you to do or anything like that, 'cause we are not gonna make you, and refusal to talk to us has no bearing or effect on your employment status, so is that clear?

A: I understand that.

Q: Um, and we have your attorney, Tom Stribling with us.

A: Correct.

Q: Okay, and are you willing to talk to us today on a voluntary basis about what happened last night?

A: Yes, sir.

Q: Okay, um, first of all, what is your full name?

A: Justin (Lee) Berry.

Q: Okay, and what's your birth date?

A:
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Q: Okay, and how long, uh, well what's your employee number - we better get that.

A: 6134.

Q: Okay, and about how long have you been with the department?

A: January 3rd will be two years from my commission date.

Q: Okay, and you were in the training academy prior to that?

A: Yes, sir.

Q: Um, did you have any, uh, law enforcement experience prior to that?

A: No, sir.

Q: Okay. What did you do before you became a cop?

A: Criminal Justice major in college.

Q: Oh, okay, so you, you went to school, and then you got this job?
A: Yes, sir.

Q: Okay, cool. Um, where, where are you assigned right now?

A: South Bureau Henry 600s.

Q: Okay, and if you could, just go back to last night to before the event, and tell me what it is that first made you aware that something was going on and that you needed to go there.

A: I was, um, sitting down, um, about to - to eat dinner for the night, um, I was with, uh, Officer (Carter), and we were at, uh, Denny's at Oltorf and 35, um, just sat down, um, just getting ready to clear in just a few minutes, and the other guys got done with their seven, and, um, we got assigned a call, and we were told to respond to David for a Domestic Disturbance hot shot call.

Q: Okay.

A: Um, I switched over to David radio, we plugged in, and I was on their channel, which then they briefed me of the incident what was, listening
92 to call text, and, um, I responded with, um, with emergency lights and
93 emergency sirens operating.
94
95 Q: What information were you provided by radio and by computer?
96
97 A: Uh, initially the call stated that there was a female who locked herself
98 into a bathroom and was whispering to the 9-1-1 call taker stating that
99 she was having a problem with her boyfriend. Um, call text then
100 updated stating that the subject kicked in the bathroom door and that it
101 was now physical. There was a physical altercation between the two,
102 um, so I responded to the scene. Uh, while I was en route, I went over
103 the air and requested that dispatch run involvement on the residence. I
104 asked for PD-12, which is, you know, a term that we use for check
105 involvement. Um, dispatch returned, um, momentarily. I don't
106 remember exactly what he said, but it wasn't anything that stood out as
107 far as fa- family violence goes, which is kinda what I was keying in on
108 was there any prior family violence cases. Um, so I still continued on to
109 the scene. Um, when I was - I believe off on Manchaca, I was on
110 Manchaca, the dispatch updated stating that there's a Travis County
111 unit that was on scene with the complainant. As I get on scene, I
112 turned off my sirens, and I was two blocks away, just to not give away
113 our position for, you know, safety of whoever's on scene, and when I
114 got closer, I turned my lights off, to, you know, light concealment. I get
on scene, and I saw that there's a, uh, Travis County Deputy, fully uniformed, speaking with the female outside on the sidewalk. I, um, turned my car off, and I approached the female, and to relieve the Travis County Officer, as this was our jurisdiction. It was in the City Limits of Austin, Texas. Um, I went ahead, and I talked to - asked her, "Okay, what's going on today?" Um, there was a little confusion at first as to whether there was still someone inside. She said, "Oh, there's people fighting." So (unintelligible), "They fighting each other right now?" and she goes, "No, just fighting with me." I then asked her, "Uh, did you - did he hit you?" She said, "Yes, he hit me." Um, so then I was like, "All right, well, well talk to me. What happened?" She stated that her and her boyfriend had been arguing since Wednesday, Wednesday night. She stated that she should have called the police, but she didn't, and she said for the last two days, they haven't said - people - they hadn't talked at all. No words, nothing... they hadn't talked at all for the last two days, which I thought that was kind of odd. That's really - I remember going through my mind - that's really a heated argument not to talk to somebody that you care about for two days. Um, so I get to talking to her some more, she said that they got into an argument, and it just escalated tonight. Um, she said she (unintelligible) come outside, and she then stated that he's inside the residence. Um, usually on family violence cases, if there's someone still inside, I always like to ask if there's weapons involved, so I asked
her, you know, "Are there any - any weapons inside?" and she said, "Yes, there's a - my ex-husband had a gun, um, it's still inside, but the clip's buried in the garage somewhere, and I thought (unintelligible), "Well, we don't know that," and she says, "Well, I understand," um, then at that time, Officer (Carter) wanted to go ahead and go inside. "All right, let's go secure him real fast," and (unintelligible), "Well, let's hold up on that, 'cause, you know, you got this - we know there's a weapon inside. Um, he's still inside. We know where he's at. It's not like he's gonna go anywhere without us knowing about it," and I wanted to continue to get the story from her first. Um, so we then - myself and Officer (Carter) and the Travis County officer get into - kind of come up with a plan of, of action, you know. Are we gonna go in right away or are we gonna wait? What are we gonna do, so we begun discussing our, our options of what we were gonna do. Um, it was determined that since there was a gun inside, um, and that, you know, there was a crime that had been committed, family violence, that we would try to, you know, just knock on the door and see if he would come out. Uh, but I told everyone there that if he didn't come to the door, we're not gonna go in, 'cause Officer (Carter) had, um, uh, the keys to go inside, and I was like, "Well, let's just wait, if he doesn't come to come to the door. We're not in a hurry, let's, we'll just wait." So all three of us go, um, approach the residence. Officer (Carter) goes up to the porch in between the wall and the front door. I go along the
sidewalk, um, in eyesight of, of Officer (Carter), right here in the corner, so Officer (Carter) and I are...

Q: Do you have a sheet of white paper maybe?

Q1: Usually we get one without (unintelligible).

Q: Yeah, just a sheet - a blank sheet of, like, copy paper or something.

You, you can do a quick sketch if you want.

A1: We have one.

Q: Oh, okay.

A: I will attest that this is an accurate layout of what was there.

Q: Okay.

A: So we approached, walked to the residence. Officer (Carter) takes position here. I take position here, 'cause there's a window here, and there's also an upstairs. It's a two-story residence, and Deputy goes back here where the fence is at, where he can watch the backyard.
Okay.

There's a door right here and window on the second floor right here, and you can see that though the fence right here. I knock on the door one time. Just waited to see if we hear anything. Nothing. Knock again a second time. Waited, (unintelligible), at which time I announced, "Austin Police Department" in a loud voice. Um...

Okay.

Momentarily afterward - at some point in time after that shortly afterwards, the deputy stated, "A light just turned on back here. There's a guy peeking out the back window," and I said, "Okay, I think well go ahead and watch him," and you know, in case he tries to run out the back yard, just...

Mm-hm.

...you know. He's, "Okay, I'm watching it." We then, knocked again... myself and Officer (Carter) both begin speaking, um, staying on him, asking him, you know, "Just come outside. We just want to talk to you."

Mm-hm.
Um, I told him, since I knew there was a gun inside, I told him, "Just come out slowly with your hands in the air. I just want to talk to you."

Just keeping sight of the guy, just in a real calm - calm - calm voice, um, at which time I heard this some - something he had said, I couldn't make it out, "(unintelligible) talk to you" in a very aggressive tone. That thing put me on edge, 'cause he now knows we're there, and he just demonstrates to me well... he's not real happy with us, with that tone of voice and with that language. I then at that time, um, requested a supervisor to come to our scene over the air, um, and I told everyone that was there to just hold what we got, 'cause I'm thinking right now we got a possibly barricaded subject who possibly has access to a gun, so...

Mm-hm.

...I didn't want anyone just rushing in. We, we didn't really have a hurry.

We knew he was in there.

Mm-hm.

We had a per- a perimeter with his observable exits from. Um, I then went over the air, and then 680 popped up and said that he was the
supervisor en route. I then informed him that 680 - I told him that we had, um, the crime of assault with injury - family violence. The subject has barricaded himself inside and possibly has a rifle. Um, for some reason I never did - I was thinking it was a rifle, because she kept saying, "The clip - the clip," and for me, when I hear clip, I associate that with an assault-type rifle, so...

Q: Okay.

A: ...I go to worst case scenario, and I think, "Okay, he's got possibly an assault rifle in there." Um...

Q: Had she actually described the gun do you know?

A: No, she just said, gun with a clip, and for me, you know, I'll go - in my mind, I'm thinking assault rifle, 'cause when I hear clip, I'm thinking, oh, you know, clip." I wasn't thinking about the magazine, you know, I was thinking about the clip which you put in an assault rifle. So I informed what we got, and he said, "Okay." I then at the time requested more units to set he perimeter, so I start calling out a perimeter. I request one unit, um, just one for our location in case he runs at the back door, and we'll (unintelligible), well, while I'm getting that out, I hear movement by the front door, so I tell, uh, dispatch, "Stand by, hold the
"Yeah, 10-4, hold the air," at which time I heard immediate, um, "Y'all better get out the way." At which time, I knew the suspect was coming out forcefully. In my mind, I - I - I kinda got a little scared. I'm thinking that's not good. That, that's dangerous talk when someone says, "Y'all better get out the way." (Carter)'s still right here. Me and (Carter) both looked at each other, and I can see like a look of fear on his face, and I - I know I'm scared. (Carter) quickly runs past the front door. The Travis County Deputy comes from - well he was out back here - runs behind me. (Carter) runs back. As soon as (Carter) cleared the door, I see an arm come out, then a silver pistol.

Q: Mm-hm.

A: We then all began telling him, "Drop the weapon. Drop the weapon. Drop the weapon." The suspect then... come... what appeared to me... then went back inside. I lost view of him, so I assumed he went back inside, because I couldn't see him anymore, 'cause he had a rear motion. I then come, and I take cover behind a vehicle. I don't - I'm not sure which vehicle it was. I just remember seeing red, um, so I kept thinking, "Get behind the engine block. Get behind the engine block," so I run, take cover behind the engine block. Suspect comes back outside again. Real quickly, I'm, I mean, real fast, and this is concrete
pillar right here, real fast, someone come running out, and he turns the body towards us, uh, with the gun still in his hand. Um, we keep giving him commands, "Drop the weapon. Drop the weapon," um, at which time to my left I heard, um, a gun go off, um, which I knew was the Deputy's cause, prior to, to, uh, us making contact the Deputy, uh, "Do I need to get my long gun." Being a two-story residence I said, "Yes, go get your long gun," 'cause I didn't have one, and he did, so I sent him to the back, so after I heard the shot fired...

Q: Now where do you think the Deputy was at that time?
A: I knew he was to my left. I - I don't know exactly where. I - I know I was right around here somewhere, and I just remember him being just to the left of me, 'cause that's where the, the gun came from. Um, after the shot was fired, I saw the suspect come into my line of view right here, still, still standing, which I still felt threatened 'cause we still couldn't see his hands, still giving him commands. You know, I was still scared, because he had just put a gun - pointed it towards us, and I can't see his hands. I think he - you know - is still armed, 'cause these officers are still giving commands. I know I'm still afraid, so I then fire a shot at him, at which time, the suspect falls to the ground. I had lost sight of view. 'Cau- I could - out of my sight of view, anyways, I couldn't see him, um, 'cause I guess the way he fell down, I couldn't see. There
was something blocking my view. I sh- I observed the Deputy out of
the corner of my eye start, start pieing around the corner, and he's still
giving commands, "Show me your hands. Show me your hands." I'm
giving commands, doing the same. I marry up with the Deputy. Officer
(Carter) stays back over here somewhere, and we go in to secure
hand, and as we're coming up, still giving commands, "Let me see your
hands. Let me see your hands," uh, the subject's lying on his back. I
see two markings on the, uh, right side of his chest, um, that appear to
be bullet wounds and blood coming out. Um, I'm looking for a gun. I
can't see a gun. I go to secure the subject. Uh, I tell Deputy to cover
me. I secure my weapon to go to secure the subject. As I'm grabbing
him, he's not moving at all. Um, he's not posing a threat. He's, he's
laying there. I hear air coming out of his mouth, so I then, so I started
talking to him, "Hey man. I got EMS coming." I get on the air, um,
request EMS, request EMS. Oh, I forgot something. When the subject
first came out, he's pointing a gun. I got on the air, and yelled 10-32,
10-32, which is a code we use for, for gun...

Q: Mm-hm.

A: ...like everyone else, um, so I, I didn't mean to get off my timeline
there.
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Q: That's all right.

A: Um, so as me and the Deputy's over here securing him, I grab him. We start looking for the gun. I'm, I'm moving the suspect around, looking under him, around him, and then I then, I see a shiny object shine right over here where there's a, there's a little green plant right over here, and, uh, a white column, and that's where I, I saw the gun that he originally displayed when he came out of the house with the gun in his hand. Um, at this time I requested EMS, and I requested a crisis team, um, "cause I could hear the girlfriend screaming in the back, "What happened? What happened?" I knew she needed someone to, to help her out, so I, I (unintelligible) crisis. We then began to, to devise a plan of what to do next, 'cause we still had this house that is not secured yet. We're exposed to... it's still a danger, but we can't leave 'til we got the documented suspect here. I requested more units to hurry up to clear the house. Um, Deputy - I checked vitals, too, first a pulse and breathing. He wasn't breathing. He had no pulse. Um, Deputy's like, "Does anyone have a, a CPR mask?" Well, I keep a personal one in my vehicle. I said, "I do." Cover him, and go get it, so I run back to my car and grab my CPR mask. I return back, check his vitals again. Still no pulse, still no breathing. I update dispatch with what I've got.

Q: Mm-hm.
And now I'm beginning CPR, at which time I start doing CPR, giving
breaths, and compressions, at which time we had some backup
officers arrive. We told them (unintelligible) that the house needed to
be cleared, and I let them take care of that aspect. Another officer
came back to relieve me by doing chest compressions while I
continued to, to give breaths until we, finally EMS arrived on the scene
and...

Mm-kay. Well, let me digest that for a minute. I'll be right back.

(Unintelligible) short hand. You okay, Justin?

Yes, ma'am.

Sorry about that. Excuse me, um, and you know, not, not meaning to
rehash, but just to, to go over to - in case we - we - we miss anything,
or even if you would want to add something that may have been left
out or something like that. Um, let's go back to, uh, to the time when
you're knocking on the door, okay, um, and, and you - you told me that
the Deputy announced that the guy had been - that he saw a light go
on in the back?
368  A: Yes, sir.

370  Q: Okay, and that the guy had looked out that window?

372  A: Yes, sir.

374  Q: Okay, and then did - did you or any - or - or - I guess (Carter) was up here with you?

377  A: (Carter) was right here.

379  Q: Okay.

381  A: I was right here.

383  Q: Did you or (Carter) see the guy up front at all?

385  A: At which time?

387  Q: Um, after the Deputy had seen him.

389  A: No, 'cause the Deputy was here, and, uh, in the back. (Unintelligible) in the back, and that's when he informed me, "There's a guy peeking out
the window," and I forgot to mention, when, when the Deputy went
back to get his long gun, I took his position over here to secure the
back door... when Travis County came back, at which time, you could
clearly see the (unintelligible) straight line for the - the - the rear door of
the house, and as well as there's a - like a upper window to the
house... I watched'em both (unintelligible), um, and the light was on.
Um, when the Deputy came back, I took my position back over here
and let the Deputy take his position over here, but I did, um, forget to
mention something earlier. When we were devising our plan of
(unintelligible), you know, how we - were we gonna enter - what were
we gonna do, I remember the Deputy telling me that the subject was
currently under investigation for child molestation, which that
information along with the knowledge of he and his girlfriend hadn't
talked - spoke in two days, there's a gun in there, and he's committed a
crime. I remember that further elevating, you know, my concern for the
situation, which I didn't want to go in the house, and it was at that point
I said, "Well, doesn't come to the door. We're not going in."

Q: Did the Deputy tell you how he came to know that?

A: No, sir. I - I didn't - no, sir.

Q: And so basically, um, who was it that was knocking on the door?
A: Officer (Carter) was.

Q: Okay, and who was making the announcement?

A: I made the announcement the second time, but the first time we knocked, we didn't announce, 'cause we were listening for movement in the house, see if there's anyone coming at all. We knocked (unintelligible) again, and (unintelligible) announced, "Austin Police Department, um, we need to talk to you," and then me and (Carter) went back and forth saying, trying to get the guy to come out.

Q: Okay, and, um, did - you - you mentioned either hearing or seeing something that, that indicated to you that something was about to happen.

A: Yes, sir.

Q: Can we go over - over that again real - real quickly?

A: Yes, sir. It's really actually when I heard the, the subject, yell, you know, "Fuck you." Really - that's when I - I - all right, this isn't good.

Um, the guy knows we're here, and he's not coming out, so I'm thinking
barricaded subject. Um, that's when I requested a supervisor out (unintelligible).

Q: Mm-hm.

A: Wh- while we're doing all of that, I'm getting information, and I'm trying to set up the perimeter, all of the sudden I loudly hear, "Y'all better get out of the way."

Q: Mm-hm.

A: I think at that moment, I knew he's about to come out real forcefully, and he's - from the tone in his voice to - to the sound determination - that he was coming out very quickly.

Q: And what did you do when you heard that?

A: I looked right at (Carter), and I, uh, I got scared, 'cause (Carter) was in a bad position. He had his back against the wall, 'cause this is actually more narrower than this. It isn't that wide, it was pretty narrow, and all I could think of is, I had to let (Carter) get out to get across what we call the fatal funnel, the front door...
Q: Mm-hm.

A: ...or take a long run to the garage still leaving him exposed to the front door. I knew (Carter) was not in a good position at all, so I looked at him, and I'm thinking, run, but I can't get it out of my mouth, and (Carter) just runs and jumps. As soon as he jumps and clears the ledge, I see the guy's hand come out with the silver gun in it.

Q: Okay is - is all - how much of him did you see at that point?

A: I saw from his probably the upper arm to the end of the, the pistol.

Q: Did you see whether it was a right or left hand?

A: I want to say it was his left hand, um, I'm 90 percent sure it was his left hand (unintelligible), 'cause I never seen the backside of his hand come out (unintelligible).

Q: And, uh, when - when you saw it in his hand, can you describe that as you remember it?

A: It was solid, uh, like chrome or silver, it was a shiny, metallic object.
Mm-hm.

And it looked like a, a handgun, pistol, (unintelligible).

About how far away do you think you were at that time?

Oh, man, I was right there, maybe less than five feet.

Okay.

(Unintelligible), but I was behind the wall. He couldn't see me, but I, I saw his arm, and I, I was scared... scared for Carter... he aimed it right towards(Carter)'s back. We were never (unintelligible).

Okay, did, did you see him actually tracking (Carter) with the gun, or?

Everything happened real fast, 'cause (Carter) clears it, the arm comes out and moves towards where we were at, and it just goes back inside.

That's what I observed.

Okay.
A: At which time that's when I ran to take cover back over here, so my, my range of view was, was limited, but it has - there was movement in the arm towards our location.

Q: What is - uh - did you hear anything the guy might have been saying, or?

A: No, I - I - I don't remember if - I mean - my mind was re- all I was thinking was I need to get to a better location than right here, and I was engine block, engine block (unintelligible).

Q: About where were you at when you saw the gun, uh, or the arm being withdrawn back into the house?

A: Or act- I - I - I kept my position - I - I hold my position right here in case he came out, and I'm (unintelligible) wall and the porch right here.

Q: And were any of you saying anything at that time?

A: Uh, "Drop the weapon. Drop the weapon," we're, I mean, we're all yelling it.
Q: And so his, uh, his arm withdraws back into the house. What did you do then?

A: I then, believing he went back inside, I ran over here to get (unintelligible) cover...

Q: (Unintelligible).

A: ...better cover and better view of the situation.

Q: Okay.

A: And we all, we all came over here.

Q: Okay and then what did you see the guy do next?

A: Next, we're all yelling, "Drop the weapon. Drop the weapon." I still don't see him, but we're still telling him, "Drop the weapon. Drop the weapon." Suspect then comes out very quickly and turns his body towards, you know, where we were at, you know, with the gun in his hand.

Q: About where was he at when he did that?
A: I mean - this is very narrow, and it's not very wide.

Q: Mm-hm.

A: (Unintelligible) here, and there's like a brick...

Q: Mm-hm.

A: ...um, pillar, and he went straight for that, and I mean it - it's - you know, seconds. Real fast, and as he was coming out, he's turning towards us.

Q: Were you still saying anything to him at all?

A: "Drop the weapon. Drop the weapon," and it's continuous now. I just remember keep saying it over and over throughout the whole incident.

Q: Mm-hm.

A: Even, you know, while we were shooting.

Q: And as he turned toward you, how were his arms and hands?
A: I'd say - it's very quick - but his arms were moving towards us, like, actually it happened very quickly, but I just remember his body turning towards our... where we were at, um.

Q: Did you see the - the - what you thought - you - you know, you said a gun, a silver gun. Did you see that same thing still?

A: The same kind of reflection, which I take as being the gun, because it was...

Q: Okay.

A: The exact same shape as the gun he had originally.

Q: And where did you see that?

A: Um, on his person, like in his hand.

Q: Okay.

A: When he was coming out - see - I mean it was very quick. I mean, it was very quick, and when he came out, you know, we still yelling "Drop
the weapon," you know, he came out real fast, and I saw the shimmer, 'cause the porch light was on

Q: And just explaining it to you - I'm gonna sound pretty silly sometimes when I ask you questions, but it's because I'm required to ask them in a way that doesn't presuppose I expect a certain answer.

A: Right.

Q: I'm allowed to follow up on specifics that you say, but you know, I can't ask you a question like, "Was the gun still in his hand?"

A: Right.

Q: 'Cause that tells you the answer, right, so.

A: I understand.

Q: So that's why I ask it in that way - you know - where did you see that...

A: Right.
Q: ...that thing, um, and, and this is just so, uh, you know, you don't think that I'm just an idiot that failed school or something.

A: Not - uh- I understand.

Q: Um, so you - you still saw this object in his hand.

A: Yes, sir.

Q: Um, could you describe whether he had the object, you know, how, how was his orientation of his arm relative to his body?

A: It was raised up towards us, and just seen him come out and turn toward us with his arm raised up.

Q: Mm-kay, um, about how high or what level do you think?

A: I can't say exactly.

Q: Do you have...

A: Above waist level.
Q: Okay. Um, what was - what was this telling you at the time? What -
what did you - what did you conclude from these observations?

A: I took this as he was trying – acquire a target on us - to shoot us. Um,
uh, yeah, since he already pointed at, you know, (Carter) when he
came out, and he kinda turned in the direction as (Carter) as jumped
out, you know, I took that to mean he was coming out to shoot us,
especially when he says, "Y’all better get out the way," because you
know, he indicated to us he’s coming out. You know, so why would he
tell us to get out the way, unless he was intending on doing something
harmful to us, so.

Q: And what - what hap- you know, so he’s starting to turn towards you.

A: His arm is, as you say, raised, um, you still see this shiny object
probably in his hand. What did ha- what is it that happened next?

Q: What happened next is, is I moved my gun towards the subject as he’s
coming out said to him, "Drop the weapon." Um, moments afterwards I
hear, you know, guns at the left of me go off. After that, I saw the
subject came back in my line of view, still standing, and said to him,
"Drop the weapon. Drop the weapon."

Q: Were you able to still see the subject at the time the shot went off?
The first shot, no sir. It wasn't until the - you know - after he fired the first shot, the subject came back - I'm thinking he's going to retreat, you know, move backwards, you know, to get out of the way, because he was still standing.

Uh, this is just to clarify, okay, because you're, you're telling me that he saw the guy turning towards you. How - at what point did he go out of your view?

Uh, so he was real clear when he came out and turned towards us that he ran towards the pillars. I mean, it happened very quickly once - well - very quickly, and I - I can't...

So he came out and then he moved back towards the pillar, or?

Right, 'cause when he first came out, he comes, turns towards us, runs to the pillar.

Mm-hm.

As he moves towards us, I see him, now I don't see him anymore. I'm hearing commands, "Drop the weapon," from, you know, all of us that
are there. I hear a shot from my left. Subject then immediately came
back to my view, still standing. That's when I fired my shot while still
telling him to drop the weapon. The subject dropped to the ground,
falls out of my view again.

Q: Okay - just so - just because I'm - I gotta - I gotta make sure I'm clear
in my mind. What was it that blocked your view of the guy?

A: A stone pillar.

Q: Okay. So did he come out past it and then went back behind the brick
(unintelligible).

A: That was my - my line of view was real limited to, to this area. I didn't
have, you know, much view behind that wall, pillar right there, just
'cause of the angle which I was at.

Q: And he had gone back behind the stone pillar when you heard the
shot?

A: Correct. He was out of my view when I heard the shot, and then, uh,
immediately after the shot, he came back in, into my view.
Q: And what did you see when he came back in?

A: Uh, came back in, I saw his body moving towards where I - you know - towards my line of view - you know - I'm - you know - still moving his arm. He's still standing, and he pointed the gun at us.

Q: Were you able to see his hands?

A: No, 'cause we kept telling him, "Show us your hands." You know, "Drop the weapon." I couldn't see anything. He was still up. He's still up (unintelligible). You know, I, I don't know if he was targeting on them. You know, I'm just, you know, I'm just afraid for all of us. I mean he's...

Q: Okay, did you at any time hear him saying anything through all of this?

A: Uh, there was so much noise going on. I mean, I got - I'm telling myself - you know - I'm, I'm telling myself my game plan. What am I going to do next? Where do I need to be at? So I'm talking to myself trying to - you know - I did - everyone's yelling drop the - or at least a lot of - you know - well it's chaos is the best way to describe it. It's just very weird.
And so - you know - you had seen him, and just a recap - he came out with the shiny object in his hand, and you had seen earlier with the - you know it's definitely a gun - at least in, in your mind.

Mm-hm.

And then, uh, he goes out, comes back out of your view. You hear the sho- he had the - the - the object at that time when he was in your view.

Correct.

And, and understanding that this all happens very rapidly, so he's, uh, was he...

A matter of seconds.

Um, he was not out of your view for very long, though, right?

At which point?

When he came - started moving back?
Right. When he came back, he was – a second or two - it wasn't very long, like, it was like a second or two. It wasn't very long. He then comes back, and now he's out again.

Okay, and then he came - when - when you heard the shot while he was behind the pillar, he came back into view - um, can you describe his actions or movements?

Very quickly - talking - I'm talking like microseconds here. This is how fast everything happened, so to - to describe it in details is difficult, because it - he came in my view. I saw him. He stood up. I'm being his full threat. I made the decision to shoot for my safety as well as Officer (Carter)'s and the Travis County Deputy (unintelligible).

So, um, how many times did you shoot?

One time.

Mm-kay, now let me ask you this, um, this is kind of a, an administrative question. You know, you're - you're gun is a Glock .22?

Correct.
Um, and, uh, how do you normally load the magazine? How many rounds do you keep in a magazine?

Fifteen in all our magazines...

...with one in chamber, so that leaves fourteen in (unintelligible).

You don't - you don't top off?

Correct.

Right, okay.

Fifteen all around.

Um, and - and you know, obviously that question was something I was specifically instructed to ask, because of, um, (Greg Karim) counts the rounds, basically.

Yeah.
800 Q: So it makes a difference to us, you know, uh, because some people do
top off the magazine after they chamber.

803 Q1: Yeah.

805 Q: Okay, so, um, so that way, uh, we have everything counted.

807 A: Okay.

809 Q: Uh, so - so you fired the one shot. Describe the suspect's actions after
that.

812 A: He fell immediately to the ground out of my view.

814 Q: Okay. Is that all?

816 A: I mean, I'm still nervous, 'cause I can't see him now. I don't know if he's
been hit, if he's - I don't know what's going on, so we just kept telling
him, "Show us your hands. Show us your hands." I'm not seeing
anything. I see the Deputy starting to pie out, so I married up with him,
and we both pie out together still saying, "Show us your hands. Show
us your hands," and, uh, that's when we see the suspect laying back
like this. We can see his hands with nothing in it, so - but we at that
time - we still don't know if the gun's on the side of him, 'cause we can't
see on the other side of him. We don't know if it's under him, so we
both approached with our guns fixated on him, and otherwise he's not
moving at all. You know, his eyes started kinda rolling back a little bit. I
told the Deputy, "Cover me. I'm just gonna look," and I grabbed both
the suspect's hands, and he wasn't moving at all. There was no
fighting, no struggle, uh, no resistance... at this time that told me...

Q: Did you do anything to secure him anyway, or?

A: No, Officer (Carter) was gonna handcuff him, but I felt from where - I
saw his wounds were at, and I could hear air coming out of his chest.

Q: Sure.

A: A little common sense was telling me it probably hit his lung, you know,
just the way the air was - air doesn't actually come out like that, um,
and as soon as I helped him down, and we started turning him over
looking for the gun, and that's when I saw the gun over here. It's - you
know - in this little area right here away from, from where he's at, so, at
which time we - we still don't known whether he was, you know, still
mobile, or you know, what was going on, so we had one person
standing here to watch the gun. We're gonna secure that - don't touch
it. I remember telling everyone, "Don't touch it. Just leave it right there.

We'll just hold him right here, and called for EMS.

And then, and that's when you started the CPR and, and, uh air

(unintelligible).

(Unintelligible). Yes, sir.

Okay. Um, let me ask you this, did you have any interaction with

anybody afterwards, uh, in terms of talking about the incident or...

No, after the... once, we had enough units came up, uh, I walked, uh,

by myself over to the driveway and I waited there until the supervisors
came to the scene, and then did what was told - I was told to do.

Did - were you aware of, or, or did you see any bystanders or

passersby or anything like that that might have witnessed the incident?

I just heard the girlfriend screaming over there (unintelligible). She was

screaming very loud, you know. I was...

Mm-kay.
You're gonna do that no matter what...

Was the gun loaded? Was - 'cause I remember when I was doing CPR on him, I saw he had his driver's license in his pocket at the time, which...

Mm-hm.

...kind of raised some suspicions (unintelligible). I don't know it's all hindsight after that.

Mm-hm. Okay, had you - you'd never in - um - or had you ever been to that address before?

No. I knew (unintelligible) there was a few blocks down that neighborhood, so that's how I knew how to get here, 'cause I remember the (unintelligible), "Oh, my buddy lives a few blocks down from there, and I was looking on the map. (Unintelligible) is right here, so I - I kind of knew how to get there.

Now, now this guy's name was (Roger James), and his girlfriend was (Kimberly Satterwhite), uh, sometimes known, uh, going by (Kimberly
Satterwhite York). You're - had you ever dealt with either of these two individuals prev- previously?

Not to my knowledge. (Unintelligible).

And when - when - when you saw his face, and, and were able to see him up close, did you recognize him at all as someone you had dealt with in the past?

Not really - my mind was more focused on getting him talking to - uh - I wasn't thinking about if I've ever met the guy before.

Okay.

Did he respond to you any after, like after he had been shot when you said you were telling him EMS was on the way?

I - breathing - I - I heard air, but I wasn't sure that - it - it's hard for me to tell - um, you know, it - it was just hard for me to tell if he was trying to communicate or if it was just a reaction of what happened, um, but I - I - you know - kept saying, "Hey, what's your name, man?" You know, I was talking, you know, I was like, "Hey," just letting him know EMS was on the way, just trying to - you know - let him know, in a real calm
voice that EMS was on the way. Um, it's hard - I - I didn't hear any words. I heard air.

Q1: (Unintelligible).

A: Yeah, I heard air, and I saw no- um, no eye movement, none but...

Q1: Okay.

A: Aside from that.

Q: Mm-kay. Well that's pretty much it, then. Um, you know, I can guarantee you that - that we'll probably, uh, have another question or two pop up. We'll probably send those to (Tom), and - uh - uh - you know - sometimes we would ask to talk to you again directly.

A: Okay.

Q: Um, in the meantime, uh, just so you know, everything goes to the Internal Affairs Division, but we actually have nothing to do with them.

A: Everything that we do goes in, nothing they do comes out.
A: Okay.

Q: So, you know, that's, that's the way it is. I can't control that.

A: Okay.

Q: Um, is there anything else we can do for you today or...

A: No.

Q: Mm-kay, uh, pretty much, I think that's it (unintelligible).

A: Okay.

Q1: (Unintelligible).

Q: That concludes the interview with Officer Justin Berry. Time is approximately 12:21 pm, date is 12-28-2009.

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

Signed