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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

24 to tell me anything. You don't have to do anything that I ask you to do
25 or anything like that, 'cause we are not gonna make you, and refusal to
26 talk to us has no bearing or effect on your employment status, so is
27 that clear?

28

29 A: I understand that.

30

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

32

33 A: Correct.

34

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

37

38 A: Yes, sir.

39

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

41

42 A: Justin (Lee) Berry.

43

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

45

46 A:

47

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

50

51 A: 6134.

52

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

54

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

56

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

58

59 A: Yes, sir.

60

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

62

63 A: No, sir.

64

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

66

67 A: Criminal Justice major in college.

68

69 Q: Oh, okay, so you, you went to school, and then you got this job?

70

71 A: Yes, sir.

72

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

74

75 A: South Bureau Henry 600s.

76

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

80

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

87

88 Q: Okay.

89

90 A: Um, I switched over to David radio, we plugged in, and I was on their
91 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

115 on scene, and I saw that there's a, uh, Travis County Deputy, fully
116 uniformed, speaking with the female outside on the sidewalk. I, um,
117 turned my car off, and I approached the female, and to relieve the
118 Travis County Officer, as this was our jurisdiction. It was in the City
119 Limits of Austin, Texas. Um, I went ahead, and I talked to - asked her,
120 "Okay, what's going on today?" Um, there was a little confusion at first
121 as to whether there was still someone inside. She said, "Oh, there's
122 people fighting." So (unintelligible), "They fighting each other right
123 now?" and she goes, "No, just fighting with me." I then asked her, "Uh,
124 did you - did he hit you?" She said, "Yes, he hit me." Um, so then I was
125 like, "All right, well, well talk to me. What happened?" She stated that
126 her and her boyfriend had been arguing since Wednesday,
127 Wednesday night. She stated that she should have called the police,
128 but she didn't, and she said for the last two days, they haven't said -
129 people - they hadn't talked at all. No words, nothing... they hadn't
130 talked at all for the last two days, which I thought that was kind of odd.
131 That's really - I remember going through my mind - that's really a
132 heated argument not to talk to somebody that you care about for two
133 days. Um, so I get to talking to her some more, she said that they got
134 into an argument, and it just escalated tonight. Um, she said she
135 (unintelligible) come outside, and she then stated that he's inside the
136 residence. Um, usually on family violence cases, if there's someone
137 still inside, I always like to ask if there's weapons involved, so I asked

138 her, you know, "Are there any - any weapons inside?" and she said,
139 "Yes, there's a - my ex-husband had a gun, um, it's still inside, but the
140 clip's buried in the garage somewhere, and I thought (unintelligible),
141 "Well, we don't know that," and she says, "Well, I understand," um,
142 then at that time, Officer (Carter) wanted to go ahead and go inside.
143 "All right, let's go secure him real fast," and (unintelligible), "Well, let's
144 hold up on that, 'cause, you know, you got this - we know there's a
145 weapon inside. Um, he's still inside. We know where he's at. It's not
146 like he's gonna go anywhere without us knowing about it," and I
147 wanted to continue to get the story from her first. Um, so we then -
148 myself and Officer (Carter) and the Travis County officer get into - kind
149 of come up with a plan of, of action, you know. Are we gonna go in
150 right away or are we gonna wait? What are we gonna do, so we begun
151 discussing our, our options of what we were gonna do. Um, it was
152 determined that since there was a gun inside, um, and that, you know,
153 there was a crime that had been committed, family violence, that we
154 would try to, you know, just knock on the door and see if he would
155 come out. Uh, but I told everyone there that if he didn't come to the
156 door, we're not gonna go in, 'cause Officer (Carter) had, um, uh, the
157 keys to go inside, and I was like, "Well, let's just wait, if he doesn't
158 come to come to the door. We're not in a hurry, let's, we'll just wait." So
159 all three of us go, um, approach the residence. Officer (Carter) goes up
160 to the porch in between the wall and the front door. I go along the

161 sidewalk, um, in eyesight of, of Officer (Carter), right here in the corner,

162 so Officer (Carter) and I are...

163

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

165

166 Q1: Usually we get one without (unintelligible).

167

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

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

170

171 A1: We have one.

172

173 Q: Oh, okay.

174

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

176

177 Q: Okay.

178

179 A: So we approached, walked to the residence. Officer (Carter) takes

180 position here. I take position here, 'cause there's a window here, and

181 there's also an upstairs. It's a two-story residence, and Deputy goes

182 back here where the fence is at, where he can watch the backyard.

183

184 Q: Okay.

185

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

191

192 Q: Okay.

193

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

199

200 Q: Mm-hm.

201

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

205

206 Q: Mm-hm.

207

208 A: Um, I told him, since I knew there was a gun inside, I told him, "Just
209 come out slowly with your hands in the air. I just want to talk to you."
210 Just keeping sight of the guy, just in a real calm - calm - calm voice,
211 um, at which time I heard this some - something he had said, I couldn't
212 make it out, "(unintelligible) talk to you" in a very aggressive tone. That
213 thing put me on edge, 'cause he now knows we're there, and he just
214 demonstrates to me well... he's not real happy with us, with that tone
215 of voice and with that language. I then at that time, um, requested a
216 supervisor to come to our scene over the air, um, and I told everyone
217 that was there to just hold what we got, 'cause I'm thinking right now
218 we got a possibly barricaded subject who possibly has access to a
219 gun, so...

220

221 Q: Mm-hm.

222

223 A: ...I didn't want anyone just rushing in. We, we didn't really have a hurry.
224 We knew he was in there.

225

226 Q: Mm-hm.

227

228 A: We had a per- a perimeter with his observable exits from. Um, I then
229 went over the air, and then 680 popped up and said that he was the

230 supervisor en route. I then informed him that 680 - I told him that we
231 had, um, the crime of assault with injury - family violence. The subject
232 has barricaded himself inside and possibly has a rifle. Um, for some
233 reason I never did - I was thinking it was a rifle, because she kept
234 saying, "The clip - the clip," and for me, when I hear clip, I associate
235 that with an assault-type rifle, so...

236

237 Q: Okay.

238

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

241

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

243

244 A: No, she just said, gun with a clip, and for me, you know, I'll go - in my
245 mind, I'm thinking assault rifle, 'cause when I hear clip, I'm thinking, oh,
246 you know, clip." I wasn't thinking about the magazine, you know, I was
247 thinking about the clip which you put in an assault rifle. So I informed
248 what we got, and he said, "Okay." I then at the time requested more
249 units to set he perimeter, so I start calling out a perimeter. I request
250 one unit, um, just one for our location in case he runs at the back door,
251 and we'll (unintelligible), well, while I'm getting that out, I hear
252 movement by the front door, so I tell, uh, dispatch, "Stand by, hold the

253 air." Dispatch then goes, uh, um, "Hold, hold the air?" and I was like,
254 "Yeah, 10-4, hold the air," at which time I heard immediate, um, "Y'all
255 better get out the way." At which time, I knew the suspect was coming
256 out forcefully. In my mind, I - I - I kinda got a little scared. I'm thinking
257 that's not good. That, that's dangerous talk when someone says, "Y'all
258 better get out the way." (Carter)'s still right here. Me and (Carter) both
259 looked at each other, and I can see like a look of fear on his face, and I
260 - I know I'm scared. (Carter) quickly runs past the front door. The
261 Travis County Deputy comes from - well he was out back here - runs
262 behind me. (Carter) runs back. As soon as (Carter) cleared the door, I
263 see an arm come out, then a silver pistol.

264

265 Q: Mm-hm.

266

267 A: We then all began telling him, "Drop the weapon. Drop the weapon.
268 Drop the weapon." The suspect then... come... what appeared to
269 me... then went back inside. I lost view of him, so I assumed he went
270 back inside, because I couldn't see him anymore, 'cause he had a rear
271 motion. I then come, and I take cover behind a vehicle. I don't - I'm not
272 sure which vehicle it was. I just remember seeing red, um, so I kept
273 thinking, "Get behind the engine block. Get behind the engine block,"
274 so I run, take cover behind the engine block. Suspect comes back
275 outside again. Real quickly, I'm, I mean, real fast, and this is concrete

276 pillar right here, real fast, someone come running out, and he turns the
277 body towards us, uh, with the gun still in his hand. Um, we keep giving
278 him commands, "Drop the weapon. Drop the weapon," um, at which
279 time to my left I heard, um, a gun go off, um, which I knew was the
280 Deputy's cause, prior to, to, uh, us making contact the Deputy, uh, "Do
281 I need to get my long gun." Being a two-story residence. I said, "Yes,
282 go get your long gun," 'cause I didn't have one, and he did, so I sent
283 him to the back, so after I heard the shot fired...

284

285 Q: Now where do you think the Deputy was at that time?

286

287 A: I knew he was to my left. I - I don't know exactly where. I - I know I was
288 right around here somewhere, and I just remember him being just to
289 the left of me, 'cause that's where the, the gun came from. Um, after
290 the shot was fired, I saw the suspect come into my line of view right
291 here, still, still standing, which I still felt threatened 'cause we still
292 couldn't see his hands, still giving him commands. You know, I was still
293 scared, because he had just put a gun - pointed it towards us, and I
294 can't see his hands. I think he - you know - is still armed, 'cause these
295 officers are still giving commands. I know I'm still afraid, so I then fire a
296 shot at him, at which time, the suspect falls to the ground. I had lost
297 sight of view. 'Cause I could - out of my sight of view, anyways, I couldn't
298 see him, um, 'cause I guess the way he fell down, I couldn't see. There

299 was something blocking my view. I sh- I observed the Deputy out of
300 the corner of my eye start, start pieing around the corner, and he's still
301 giving commands, "Show me your hands. Show me your hands." I'm
302 giving commands, doing the same. I marry up with the Deputy. Officer
303 (Carter) stays back over here somewhere, and we go in to secure
304 hand, and as we're coming up, still giving commands, "Let me see your
305 hands. Let me see your hands," uh, the subject's lying on his back. I
306 see two markings on the, uh, right side of his chest, um, that appear to
307 be bullet wounds and blood coming out. Um, I'm looking for a gun. I
308 can't see a gun. I go to secure the subject. Uh, I tell Deputy to cover
309 me. I secure my weapon to go to secure the subject. As I'm grabbing
310 him, he's not moving at all. Um, he's not posing a threat. He's, he's
311 laying there. I hear air coming out of his mouth, so I then, so I started
312 talking to him, "Hey man. I got EMS coming." I get on the air, um,
313 request EMS, request EMS. Oh, I forgot something. When the subject
314 first came out, he's pointing a gun. I got on the air, and yelled 10-32,
315 10-32, which is a code we use for, for gun...

316

317 Q: Mm-hm.

318

319 A: ...like everyone else, um, so I, I didn't mean to get off my timeline
320 there.

321

322 Q: That's all right.

323

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

343

344 Q: Mm-hm.

345
346 A: And now I'm beginning CPR, at which time I start doing CPR, giving
347 breaths, and compressions, at which time we had some backup
348 officers arrive. We told them (unintelligible) that the house needed to
349 be cleared, and I let them take care of that aspect. Another officer
350 came back to relieve me by doing chest compressions while I
351 continued to, to give breaths until we, finally EMS arrived on the scene
352 and...

353
354 Q: Mm-kay. Well, let me digest that for a minute. I'll be right back.

355
356 Q1: (Unintelligible) short hand. You okay, Justin?

357
358 A: Yes, ma'am.

359
360 Q: Sorry about that. Excuse me, um, and you know, not, not meaning to
361 rehash, but just to, to go over to - in case we - we - we miss anything,
362 or even if you would want to add something that may have been left
363 out or something like that. Um, let's go back to, uh, to the time when
364 you're knocking on the door, okay, um, and, and you - you told me that
365 the Deputy announced that the guy had been - that he saw a light go
366 on in the back?

367

368 A: Yes, sir.

369

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

371

372 A: Yes, sir.

373

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

376

377 A: (Carter) was right here.

378

379 Q: Okay.

380

381 A: I was right here.

382

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

384

385 A: At which time?

386

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

388

389 A: No, 'cause the Deputy was here, and, uh, in the back. (Unintelligible) in
390 the back, and that's when he informed me, "There's a guy peeking out

391 the window," and I forgot to mention, when, when the Deputy went
392 back to get his long gun, I took his position over here to secure the
393 back door... when Travis County came back, at which time, you could
394 clearly see the (unintelligible) straight line for the - the - the rear door of
395 the house, and as well as there's a - like a upper window to the
396 house... I watched'em both (unintelligible), um, and the light was on.
397 Um, when the Deputy came back, I took my position back over here
398 and let the Deputy take his position over here, but I did, um, forget to
399 mention something earlier. When we were devising our plan of
400 (unintelligible), you know, how we - were we gonna enter - what were
401 we gonna do, I remember the Deputy telling me that the subject was
402 currently under investigation for child molestation, which that
403 information along with the knowledge of he and his girlfriend hadn't
404 talked - spoke in two days, there's a gun in there, and he's committed a
405 crime. I remember that further elevating, you know, my concern for the
406 situation, which I didn't want to go in the house, and it was at that point
407 I said, "Well, doesn't come to the door. We're not going in."

408

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

410

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

412

413 Q: And so basically, um, who was it that was knocking on the door?

414

415 A: Officer (Carter) was.

416

417 Q: Okay, and who was making the announcement?

418

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

425

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

429

430 A: Yes, sir.

431

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

433

434 A: Yes, sir. It's really actually when I heard the, the subject, yell, you
435 know, "Fuck you." Really - that's when I - I - all right, this isn't good.
436 Um, the guy knows were here, and he's not coming out, so I'm thinking

437 barricaded subject. Um, that's when I requested a supervisor out
438 (unintelligible).

439

440 Q: Mm-hm.

441

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

445

446 Q: Mm-hm.

447

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

451

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

453

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

459

460 Q: Mm-hm.

461

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

467

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

469

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

471

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

473

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

477

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

480

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

482

483 Q: Mm-hm.

484

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

486

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

488

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

490

491 Q: Okay.

492

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

496

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

498

499 A: Everything happened real fast, 'cause (Carter) clears it, the arm comes
500 out and moves towards where we were at, and it just goes back inside.
501 That's what I observed.

502

503 Q: Okay.

504

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

508
509 Q: What is - uh - did you hear anything the guy might have been saying,
510 or?

511
512 A: No, I - I - I don't remember if - I mean - my mind was re- all I was
513 thinking was I need to get to a better location than right here, and I was
514 engine block, engine block (unintelligible).

515
516 Q: About where were you at when you saw the gun, uh, or the arm being
517 withdrawn back into the house?

518
519 A: Or act- I - I - I kept my position - I - I hold my position right here in case
520 he came out, and I'm (unintelligible) wall and the porch right here.

521
522 Q: And were any of you saying anything at that time?

523
524 A: Uh, "Drop the weapon. Drop the weapon," we're, I mean, we're all
525 yelling it.

526

527 Q: And so his, uh, his arm withdraws back into the house. What did you
528 do then?

529

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

532

533 Q: (Unintelligible).

534

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

536

537 Q: Okay.

538

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

540

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

542

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

548

549 Q: About where was he at when he did that?

550

551 A: I mean - this is very narrow, and it's not very wide.

552

553 Q: Mm-hm.

554

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

556

557 Q: Mm-hm.

558

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

562

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

564

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

567

568 Q: Mm-hm.

569

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

571

572 Q: And as he turned toward you, how were his arms and hands?

573

574 A: I'd say - it's very quick - but his arms were moving towards us, like,
575 actually it happened very quickly, but I just remember his body turning
576 towards our... where we were at, um.

577

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

580

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

583

584 Q: Okay.

585

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

587

588 Q: And where did you see that?

589

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

591

592 Q: Okay.

593

594 A: When he was coming out - see - I mean it was very quick. I mean, it
595 was very quick, and when he came out, you know, we still yelling "Drop

596 the weapon," you know, he came out real fast, and I saw the shimmer,
597 'cause the porch light was on

598
599 Q: And just explaining it to you - I'm gonna sound pretty silly sometimes
600 when I ask you questions, but it's because I'm required to ask them in
601 a way that doesn't presuppose I expect a certain answer.

602
603 A: Right.

604
605 Q: I'm allowed to follow up on specifics that you say, but you know, I can't
606 ask you a question like, "Was the gun still in his hand?"

607
608 A: Right.

609
610 Q: 'Cause that tells you the answer, right, so.

611
612 A: I understand.

613
614 Q: So that's why I ask it in that way - you know - where did you see that...

615
616 A: Right.

617

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

620

621 A: Not - uh- I understand.

622

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

624

625 A: Yes, sir.

626

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

629

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

632

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

634

635 A: I can't say exactly.

636

637 Q: Do you have...

638

639 A: Above waist level.

640

641 Q: Okay. Um, what was - what was this telling you at the time? What -
642 what did you - what did you conclude from these observations?

643
644 A: I took this as he was trying – acquire a target on us - to shoot us. Um,
645 uh, yeah, since he already pointed at, you know, (Carter) when he
646 came out, and he kinda turned in the direction as (Carter) as jumped
647 out, you know, I took that to mean he was coming out to shoot us,
648 especially when he says, "Y'all better get out the way," because you
649 know, he indicated to us he's coming out. You know, so why would he
650 tell us to get out the way, unless he was intending on doing something
651 harmful to us, so.

652
653 Q: And what - what hap- you know, so he's starting to turn towards you.
654 His arm is, as you say, raised, um, you still see this shiny object
655 probably in his hand. What did ha- what is it that happened next?

656
657 A: What happened next is, is I moved my gun towards the subject as he's
658 coming out said to him, "Drop the weapon." Um, moments afterwards I
659 hear, you know, guns at the left of me go off. After that, I saw the
660 subject came back in my line of view, still standing, and said to him,
661 "Drop the weapon. Drop the weapon."

662
663 Q: Were you able to still see the subject at the time the shot went off?

664

665 A: The first shot, no sir. It wasn't until the - you know - after he fired the
666 first shot, the subject came back - I'm thinking he's going to retreat, you
667 know, move backwards, you know, to get out of the way, because he
668 was still standing.

669

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

673

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

677

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

679

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

682

683 Q: Mm-hm.

684

685 A: As he moves towards us, I see him, now I don't see him anymore. I'm
686 hearing commands, "Drop the weapon," from, you know, all of us that

687 are there. I hear a shot from my left. Subject then immediately came
688 back to my view, still standing. That's when I fired my shot while still
689 telling him to drop the weapon. The subject dropped to the ground,
690 falls out of my view again.

691
692 Q: Okay - just so - just because I'm - I gotta - I gotta make sure I'm clear
693 in my mind. What was it that blocked your view of the guy?

694
695 A: A stone pillar.

696
697 Q: Okay. So did he come out past it and then went back behind the brick
698 (unintelligible).

699
700 A: That was my - my line of view was real limited to, to this area. I didn't
701 have, you know, much view behind that wall, pillar right there, just
702 'cause of the angle which I was at.

703
704 Q: And he had gone back behind the stone pillar when you heard the
705 shot?

706
707 A: Correct. He was out of my view when I heard the shot, and then, uh,
708 immediately after the shot, he came back in, into my view.

709

710 Q: And what did you see when he came back in?

711

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

715

716 Q: Were you able to see his hands?

717

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

722

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

724

725 A: Uh, there was so much noise going on. I mean, I got - I'm telling myself
726 - you know - I'm, I'm telling myself my game plan. What am I going to
727 do next? Where do I need to be at? So I'm talking to myself trying to -
728 you know - I did - everyone's yelling drop the - or at least a lot of - you
729 know - well it's chaos is the best way to describe it. It's just very weird.

730

731 Q: And so - you know - you had seen him, and just a recap - he came out
732 with the shiny object in his hand, and you had seen earlier with the -
733 you know it's definitely a gun - at least in, in your mind.

734

735 A: Mm-hm.

736

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

740

741 A: Correct.

742

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

745

746 A: A matter of seconds.

747

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

749

750 A: At which point?

751

752 Q: When he came - started moving back?

753

754 A: Right. When he came back, he was – a second or two - it wasn't very
755 long, like, it was like a second or two. It wasn't very long. He then
756 comes back, and now he's out again.

757
758 Q: Okay, and then he came - when - when you heard the shot while he
759 was behind the pillar, he came back into view - um, can you describe
760 his actions or movements?

761
762 A: Very quickly - talking - I'm talking like microseconds here. This is how
763 fast everything happened, so to - to describe it in details is difficult,
764 because it - he came in my view. I saw him. He stood up. I'm being his
765 full threat. I made the decision to shoot for my safety as well as Officer
766 (Carter)'s and the Travis County Deputy (unintelligible).

767
768 Q: So, um, how many times did you shoot?

769
770 A: One time.

771
772 Q: Mm-kay, now let me ask you this, um, this is kind of a, an
773 administrative question. You know, you're - you're gun is a Glock .22?

774
775 A: Correct.

776

777 Q: Um, and, uh, how do you normally load the magazine? How many
778 rounds do you keep in a magazine?

779

780 A: Fifteen in all our magazines...

781

782 Q: Mm-hm.

783

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

785

786 Q: You don't - you don't top off?

787

788 A: Correct.

789

790 Q: Right, okay.

791

792 A: Fifteen all around.

793

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

797

798 A: Yeah.

799

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

802

803 Q1: Yeah.

804

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

806

807 A: Okay.

808

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

811

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

813

814 Q: Okay. Is that all?

815

816 A: I mean, I'm still nervous, 'cause I can't see him now. I don't know if he's
817 been hit, if he's - I don't know what's going on, so we just kept telling
818 him, "Show us your hands. Show us your hands." I'm not seeing
819 anything. I see the Deputy starting to pie out, so I married up with him,
820 and we both pie out together still saying, "Show us your hands. Show
821 us your hands," and, uh, that's when we see the suspect laying back
822 like this. We can see his hands with nothing in it, so - but we at that

823 time - we still don't know if the gun's on the side of him, 'cause we can't
824 see on the other side of him. We don't know if it's under him, so we
825 both approached with our guns fixated on him, and otherwise he's not
826 moving at all. You know, his eyes started kinda rolling back a little bit. I
827 told the Deputy, "Cover me. I'm just gonna look," and I grabbed both
828 the suspect's hands, and he wasn't moving at all. There was no
829 fighting, no struggle, uh, no resistance... at this time that told me...

830

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

832

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

835

836 Q: Sure.

837

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

846 it. I remember telling everyone, "Don't touch it. Just leave it right there.

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

848

849 Q: And then, and that's when you started the CPR and, and, uh air
850 (unintelligible).

851

852 A: (Unintelligible). Yes, sir.

853

854 Q: Okay. Um, let me ask you this, did you have any interaction with
855 anybody afterwards, uh, in terms of talking about the incident or...

856

857 A: No, after the... once, we had enough units came up, uh, I walked, uh,
858 by myself over to the driveway and I waited there until the supervisors
859 came to the scene, and then did what was told - I was told to do.

860

861 Q: Did - were you aware of, or, or did you see any bystanders or
862 passersby or anything like that that might have witnessed the incident?

863

864 A: I just heard the girlfriend screaming over there (unintelligible). She was
865 screaming very loud, you know. I was...

866

867 Q: Mm-kay.

868

892 Q: You're gonna do that no matter what...

893

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

897

898 Q: Mm-hm.

899

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

902

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

905

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

911

912 Q: Now, now this guy's name was (Roger James), and his girlfriend was
913 (Kimberly Satterwhite), uh, sometimes known, uh, going by (Kimberly

914 Satterwhite York). You're - had you ever dealt with either of these two
915 individuals prev- previously?

916

917 A: Not to my knowledge. (Unintelligible).

918

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

922

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

925

926 Q: Okay.

927

928 Q1: Did he respond to you any after, like after he had been shot when you
929 said you were telling him EMS was on the way?

930

931 A: I - breathing - I - I heard air, but I wasn't sure that - it - it's hard for me
932 to tell - um, you know, it - it was just hard for me to tell if he was trying
933 to communicate or if it was just a reaction of what happened, um, but I
934 - I - you know - kept saying, "Hey, what's your name, man?" You know,
935 I was talking, you know, I was like, "Hey," just letting him know EMS
936 was on the way, just trying to - you know - let him know, in a real calm

937 voice that EMS was on the way. Um, it's hard - I - I didn't hear any
938 words. I heard air.

939

940 Q1: (Unintelligible).

941

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

943

944 Q1: Okay.

945

946 A: Aside from that.

947

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

952 Sometimes we can just get the answer back from (Tom), so - uh - you
953 know - we'll - we'll try to keep it as - as unintrusive as possible.

954

955 A: Okay.

956

957 Q: Um, in the meantime, uh, just so you know, everything goes to the
958 Internal Affairs Division, but we actually have nothing to do with them.
959 Everything that we do goes in, nothing they do comes out.

960

961 A: Okay.

962

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

964

965 A: Okay.

966

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

968

969 A: No.

970

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

972

973 A: Okay.

974

975 Q1: (Unintelligible).

976

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

979

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

982 Signed _____