Officer Guzman: The right one.

Jackson: His right hand, can you see where his left hand is?

Officer Guzman: He was, he had, he had her, he had her held with, with the left. He wasn't letting her go.

Jackson: Okay.

Officer Guzman: And while he was hitting her with the right.

Jackson: And what's he holding down, I mean, is he grabbing her shirt, jacket –

Officer Guzman: I don't remember.

Jackson: – pants?

Officer Guzman: Just around her body.

Jackson: Around her body. Okay. Um, how many times did you see him strike her?

Officer Guzman: A lot of times. Um, five or six times.

Jackson: Okay. Um, how forceful were the blows?

Officer Guzman: They were hard. He was, he was hitting her like this.

Jackson: **** real good?

Officer Guzman: Yeah.

Jackson: Okay. Um, once you, you see this what's your initial thought? When you see him striking her on the head, what's your initial thought?'

Officer Guzman: He's, he's, he's hurting her, he, he's, he's gonna kill her, you know.
Jackson: Okay.

Officer Guzman: Um-I, at first I thought he was raping her but then I, I saw that they all had, had clothes on.

Jackson: And, let me stop you there. You said you think. What made you think initially that he was raping her?

Officer Guzman: Because he was on top of her and she was underneath him and they were in the corner.

Jackson: Okay and when you say on top of her –

Officer Guzman: His whole body was over her.

Jackson: Was he laying on top of her, was he on his knees?

Officer Guzman: Uh, he was crouching over her and she was underneath him.

Jackson: So he was crouching over her, so **** his knees were not in contact with the ground.

Officer Guzman: Right, but I’m **** from what I recall, yeah.

Jackson: Okay. Um, left hand, left hand somewhere on, on her

Officer Guzman: On her and the right one he was striking her.

Jackson: Okay. Um, you stated before that you, you transitioned, you started to transition to your taser.

Officer Guzman: I was thinking about it.

Jackson: **** thinking about transition.
Officer Guzman: Because he was hitting her with it and at that time I didn't see a weapon on him.

Jackson: Now, when you say transition—

Officer Guzman: Yes.

Jackson: — based upon all training, if you, if you, if you're talking, when you use the word transition, means you already have something in your hand and you transition to another.

Officer Guzman: Right.

Jackson: Something else. So did you, when you say did you mean to say you were transitioning or you just thought about grabbing your taser first?

Officer Guzman: I had my gun pointed at him.

Jackson: So your gun was out.

Officer Guzman: Yes, at that time I, my gun was out.

Jackson: Okay-okay.

Officer Guzman: And then at that time I was thinking of transitioning to my, my less lethal.

Jackson: Okay.

Officer Guzman: 'Cause he was hitting her with, on the head.

Jackson: Okay and at that time you didn't see any weapon.

Officer Guzman: At that time I didn't.

Jackson: Okay. So you thought about transitioning to your less lethal.

Officer Guzman: Right.
Jackson: Then what, what happened?

Officer Guzman: Then about a second later I see an object in his right hand, the same hand that he's hitting her with and, and it took me about a second or so to realize that's a gun and he's hitting her with the butt of a gun on her head.

Jackson: How could you tell that it was a gun?

Officer Guzman: Because I saw the gun. It was, I, I, I saw, I saw the gun in his hand and he was hitting her with it and then, um, and then he stopped and then the muzzle went to her head and at that time –

Jackson: Okay, but let me, I'm gonna back you up. When you saw the weapon how'd you know it was a gun?

Officer Guzman: Because it was an object in his hand that wasn't his hand.

Jackson: Okay. Um, what color was it?

Officer Guzman: It was black.

Jackson: Did you see the barrel or muzzle of the weapon initially?

Officer Guzman: Not until he put it to, to her head

Officer Guzman: But he was striking her — with, with the back of it which I believe was the, the butt.

Jackson: Okay. So you mentioned **** you realized something that, something was in his hand.

Officer Guzman: And it clicked that it was a gun.

Jackson: Okay. Um, did you have your flashlight out?

Officer Guzman: No.
Jackson: Okay. Was your, was the spotlight of the patrol vehicle heading towards that direction?

Officer Guzman: The general direction. I don't know if it was on him or not.

Jackson: Okay.

Officer Guzman: It was in the general—

Jackson: In the general direction. Pointing somewhere towards that at an angle.

Officer Guzman: Yes.

Jackson: Okay, not facing forward out toward San Pablo Avenue.

Officer Guzman: Correct.

Jackson: Okay. Um, what happened next?

Officer Guzman: Then, uh, then he stops and then he, I see the muzzle, um, go to her head and then I thought he was gonna kill her. I, I didn't want him to, to shoot her.

Jackson: Okay and at that point how, what were the positions of the body of the female and the male?

Officer Guzman: She was still underneath him and he was still over her.

Jackson: Describe her as on, on the ground. Was she, uh, facing the ground?

Officer Guzman: She was on her right side facing, facing me and he was over her about—

Jackson: I want you to think about what you just did. You turned she on on the right side facing you, you turned, you turned towards your, your, you, you, you turned your right shoulder towards that inward which, which wouldn't indicate she turned towards you unless her head was actually the other way towards the building.
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Officer Guzman: No, her, her head was facing me.

Jackson: Okay.

Officer Guzman: Face, she was facing me and he was over her.

Jackson: Could she have been on her left side turned over and looking back at an angle or she could have been on her right turning back looking—

Officer Guzman: She was trying—

Jackson: —over.

Officer Guzman: She was trying, she was trying to escape uh, but I you know. I, I remember seeing her face.

Jackson: Okay.

Officer Guzman: And I remember him being on top of her.

Jackson: And, and, and when you say on top was he straddling her or, or how **** as best you can—

Officer Guzman: Right.

Jackson: —describe that.

Officer Guzman: She was on the, she was on the ground, he was on top of her, he was holding her and the, the, his right hand was hitting her head—

Jackson: Mm hmm.

Officer Guzman: —and then he stopped and then the gun got pointed to her head.

Jackson: Okay, when you, when you're saying he was on top of her, was he standing up over her?
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Officer Guzman: **** he was kind of laying on her.

Jackson:     Okay.

Officer Guzman: Laying on her and she was on the ground.

Jackson:     So he was laying on her?

Officer Guzman: Yeah.

Jackson:     Okay.

Officer Guzman: But **** 'cause I can't ****.

Jackson:     Now I'm tryin to illicit as much of it as I can

Officer Guzman:     Um -that's Okay

Jackson:     'Cause we gotta kinda paint this, this picture **** –

Officer Guzman:     Sure.

Jackson:     ****, so **** like now you're, you're, you're, you're, you're belief is that he was kind of laying on top of her?

Officer Guzman:     Right.

Jackson:     Was, was, when you say laying now I'm I'm, when you say laying to a guy that's 58 years old I'm laying, I'm laying down. Was he laying on top of her like that or could he have been like straddling could he have been something I'm gonna, not on my knees, squatted down like this ****?

Officer Guzman:     No, his, his whole portion was, was on her and was touching her and, and the best I can describe it is that his body was on top of her.

Jackson:     Okay.
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Officer Guzman: Um, you know, he wasn't laying on the, on the, on the floor and like just sleeping, but he was on top of her and he was striking her over the head as she was trying to escape.

Jackson: Okay. All right. Um, and as you see this, uh, you say something to him.

Officer Guzman: Yes, I gave him a commands. I tell him to stop. I, you know, I told him police. I had my, my gun out, um, and he looked at me and he ignored me and he continued hitting her with it.

Jackson: Okay, Um, so he initially paused, he pauses.

Officer Guzman: Yes.

Jackson: When he hears you. You
Officer Guzman: He sees me.

Jackson: He sees you.

Officer Guzman: We make eye we make contact.

Jackson: Did you hear him say anything?

Officer Guzman: No. No. She was yelling and screaming but he doesn't say anything.

Jackson: Okay. Um, what's he wearing?

Officer Guzman: Uh, puffy black jacket, blue jeans, he's baldhead, black male, light skinned. That's all I remember.

Jackson: Okay and is his chest and face towards you or is he kind of at an angle looking at you?

Officer Guzman: When he paused, he, he just paused for like a quick second, looked at me and con, and, and, and went back to his position, the same position that he was.
Jackson: The reason I'm asking is you said you, you, you, you shot center of mass.

Officer Guzman: Yes.

Jackson: So center of mass, you see chest.

Officer Guzman: Sure.

Jackson: Is that what you see?

Officer Guzman: I, right.

Jackson: You see torso.

Officer Guzman: Right.

Jackson: Okay. Um, how many more blows in, in estimation, do you think that the female victim sustained at, after the pause?

Officer Guzman: After the pause? Maybe two or three.

Jackson: Okay. Was it, was it the, did she sustain two or three then you realized what he struck her with is—

Officer Guzman: No, he, she, he was, he was hitting her more before I yelled police, stop, then he, he stops, he looks at me and hits her a couple more times and then that's when he put the gun to, to the, to her head and then that's when I knew I had to shoot him.

Jackson: Okay, but when, when he, when he **** the pause did you realize he was striking her with a, an object or did you still think it was just his hand?

Officer Guzman: Um, yeah, yeah, I, I thought that he was, I didn't know that it was a gun at that time when, when he paused, um, and then once he struck her a couple more times I saw that the, that he had something in his, in his hand and then after about a second or so I realized that, shit, that's a gun so I took a few more steps, I took like two steps back and then that's when I saw the gun drop and that's when I shot, I fired.
Jackson: Okay. How many feet would you put yourself away from them? Initially. before you took the two steps back.

Officer Guzman: I would, I believe I was pretty close. Um, he was maybe 10, 10 to 15.

Jackson: Okay, going back and looking at this, this diagram, okay, this picture. Um, this being the ****the patrol car over here where would you put yourself?

Officer Guzman: I think this was the corner, right?

Jackson: This is the corner where everything transpires.

Officer Guzman: My patrol car was probably right here, right where the shadow is, be about right here and then, and then I went around this way here.

Jackson: Okay.

Officer Guzman: And from about right here to right here, so I would say 10 to 15 feet.

Jackson: Okay.

Officer Guzman: Somewhere around there.

Jackson: All right. Um, then that's the initial. Then you realized that you see the barrel of a gun –

Officer Guzman: Took just two steps back.

Jackson: – two steps back.

Officer Guzman: Because I, I realized I'm not in cover.

Jackson: Okay.

Officer Guzman: And, um, he coulda just pointed the gun at me and shot me where I was at.
Jackson: Mm hmm.

Officer Guzman: So I took two steps back and then right after I took the two steps back he puts the gun ***—

Jackson: I'm gonna jam you a little bit cause you took two steps back, did, did you go to cover?

Officer Guzman: Nope, I didn't.

Jackson: You still no cover. You didn't have any cover, right?

Officer Guzman: No.

Jackson: Okay. Um, you fire.

Officer Guzman: Yes.

Jackson: How many rounds did you fire?

Officer Guzman: Three or four.

Jackson: Okay. Um, you believe that you struck him based upon the, the body, his body reaction.

Officer Guzman: Yes.

Jackson: From, from the firing of your weapon.

Officer Guzman: Yes.

Jackson: But you're not sure where you struck him.

Officer Guzman: That's correct.

Jackson: Okay. At the time you fired was there any other officer there?
Officer Guzman: I thought I was by myself.

Jackson: Okay.

Officer Guzman: Um, I know I saw an officer going through the parking lot into the, the Chevron gas station but I didn't see him, so when I got out of the car and I heard what's going on and then I, uh, I gave the commands I thought I, I was by myself. Um, when I shot, I thought I shot by myself.

Jackson: Okay. Um, so three or four rounds you fired?

Officer Guzman: Correct.

Jackson: Uh, after you fired those three or four rounds what happens next?

Officer Guzman: So the suspect goes against the wall. Um, he drops the gun. Um, an off, at that time an officer comes and I, I believe it was Alvarez who came and then grabbed the victim and pulled her to safety. I told Alvarez that he, he has a gun. I didn't see where the gun landed, um, and, and then he says, "Oh, I see it, it's over there." He tells me to cuff him. Um, let me back up. I told dispatch that, that the Code 3 AMR start, you know, officer-involved shooting and then, um, and then he tells me to go ahead and, and cuff him.

Jackson: Okay.

Officer Guzman: So I glove up 'cause I see, I see blood on the ground, I see the suspect. He sees me. I tell, I ordered him, I said, I tell him, "Don't get the gun or you're gonna get shot" and he, I, he said, "I'm hurt, I can't, I can't move anyways," um, and then I put away, I holster up and I go and I handcuff him.

Jackson: Okay. Now I'm gonna take you back a little bit here.

Officer Guzman: Okay.

Jackson: Not far back, just a little bit.

Officer Guzman: Okay.
Jackson: You say after you shot he goes to the wall.

Officer Guzman: Right, 'cause they're, they're already leaning against the wall in the corner.

Jackson: **** his body is to the wall.

Officer Guzman: I believe like his back, he, he back **** or side.

Jackson: Okay. So he **** goes rearward **** his back or his side****corner at the end.

Officer Guzman: Yes.

Jackson: Um, does he then fall forward or does he kinda slide down the wall, what happens?

Officer Guzman: Um, I don't remember how he, he, uh, I, I just remember him going to the wall and then going to the ground.

Jackson: **** go to his knees first, do you recall?

Officer Guzman: I don't recall that.

Jackson: Okay. Um, when, uh, when, when he is down –

Officer Guzman: Okay.

Jackson: – is his head pointing towards you or is it pointing more towards, I'm gonna say towards you cause you would have been this way somewhere

Officer Guzman: Mmm hmm.

Jackson: – is his head facing you?

Officer Guzman: It's facing north.

Jackson: Oh it's facing north.
Officer Guzman: Yeah, his, his, his head is facing north, his arms are also facing north and I see that he doesn't have a gun anymore **** shot him.

Jackson: Okay. Is he on his stomach or on his back?

Officer Guzman: On his back.

Jackson: Okay. Uh, and the female is where at this point?

Officer Guzman: At that point someone grabbed her and pulled her to the, to safety.

Jackson: Okay. Now, do you recall Chi being there Chi being there at all?

Officer Guzman: I don't.

Jackson: Okay. When you, did you ever yell out gun?

Officer Guzman: No, I didn't have, I didn't have enough time. I mean, it was, it happened so fast.

Jackson: Okay. Um, uh, let's see here. Um, okay, so after you put your, after you holstered your weapon after you fired three or four rounds, um, you tell the suspect not to move.

Officer Guzman: Yes.

Jackson: Is he **** he responds that he –

Officer Guzman: Yes.

Jackson: — couldn't move.

Officer Guzman: Yes, he does.

Jackson: Uh, **** back of his hands or arms outstretched some kind of way –

Officer Guzman: Right and then I see blood on his hand.
Jackson: Okay.

Officer Guzman: And he tells me that, so I knew he was shot and he tells me he can't move.

Jackson: Okay. Um, Did did you do anything else after, I mean after you holster up and –

Officer Guzman: Handcuff him.

Jackson: – you handcuff him.

Officer Guzman: Right. I searched him, I quickly searched him.

Jackson: Okay.

Officer Guzman: Um, and then at that time my supervisor came on scene, um, and then other officers started coming on scene and, uh, my supervisor told me to, uh, just stay with him.

Jackson: Okay. All right

Strang: Hey Mario do you remember when you said you were first, when you first got there, you were driving up Potrero, um, you saw another patrol car pull into Chevron.

Officer Guzman: I did.

Jackson: Which direction were they going or traveling?

Officer Guzman: I, I remember them traveling westbound on Potrero and then I don't know where they went after that.

Strang: So you don't know if they pulled in front of Chevron, beyond Chevron or they kept going.

Officer Guzman: I just knew there was a unit there –

Strang: There was another one.
Officer Guzman: - but when I got out I felt like I was by myself. I didn't see anyone around, I didn't see Chia, I didn't see Bailey.

Strang: Did you hear anybody else say that they were 97 or that they were at the scene?

Officer Guzman: I, at that point I wasn't really focusing on the radio traffic. I mean, I had a female screaming and I stopped.

Strang: What made you stop behind the Chevron?

Officer Guzman: Because I know that dispatch said it was to the rear of Chevron.

Strang: Okay.

Officer Guzman: And when I pulled up I didn't see anyone there.

Strang: Yeah.

Officer Guzman: So I wanted to get out and I wanted to search for, for a victim –

Strang: Okay.

Officer Guzman: – and then when, right when I got out I heard, I hear yelling and screaming so I go around my patrol car and I see them in the corner. He's over her and he's hitting her.

Strang: Okay.

Officer Guzman: You know.

Strang: Do you ever remember seeing Bailey there?

Officer Guzman: I don't remember seeing Bailey until after the whole incident transpired.

Strang: All right and you don't know, you pulled into the parking lot, do you remember if your spotlight was on?
Officer Guzman: I'm pretty sure it was turned on because I was looking for the, the suspects.

Strang: But when you rounded, you went around the back of the Chevron, you made that right turn right before you stopped you don't remember which direction you were looking or--

Officer Guzman: No, I, I had my spotlight on when, when, um, I turned it off and on, you know, I --

Strang: Mm hmm.

Officer Guzman: -- so I don't know when I stopped was it on, was it off, I think it was on.

Strang: Okay.

Officer Guzman: But I was, I was looking for the victim.

Jackson: Let me ask you this question.

Officer Guzman: Yes.

Jackson: You put yourself, you went 97.

Officer Guzman: Yes.

Jackson: You went 97 at the church down on Potrero Avenue though, correct?

Officer Guzman: Yes.

Jackson: 'Cause you thought that was the, the location.

Officer Guzman: Right, but I normally put myself 97 a few, right before I get to the location, so I didn't go 97 right when I got to the church. I went 97 when I hit Potrero because it was just a block away --

Jackson: Okay.
Officer Guzman: — which I, I always do.

Jackson: Okay. Uh, so 97, you drove down to church.

Officer Guzman: Yeah.

Jackson: You came back up.

Officer Guzman: Yeah, yes.

Jackson: All right and as you were coming back up is when you saw the other patrol car?

Officer Guzman: Yes.

Jackson: And you saw it, you, you—

Officer Guzman: Coming from, coming from northbound San Pablo making a left turn.

Jackson: On to Potrero.

Officer Guzman: Right.

Jackson: And at the time you saw it were you still on the left side of the underpass?

Officer Guzman: Um, I think I had just gone over—

Jackson: Just passed the **** intersection there—

Officer Guzman: Yeah ****.

Jackson: Okay. Um, and you're realizing, and this is just, you realize that you went to the wrong location so you were trying to rush around-

Officer Guzman: To make.
Jackson: — to get back around, so that's why you really don't pay attention to where the other patrol car goes.

Officer Guzman: That is correct.

Jackson: Okay. Just say it, that ****.

Officer Guzman: ****.

Jackson: Um, you believe that you had, you know you have your overheads going at this time.

Officer Guzman: Yes, I do have.

Jackson: Okay, uh, and you believe that you have your spotlight **** on.

Officer Guzman: Yes.

Jackson: Uh, okay and do you recall ever seeing a female, um, further up in the Chevron parking lot maybe closer towards the sidewalk...San Pablo ****?

Strang: Closer to San Pablo Ave.

Officer Guzman: No.

Jackson: Okay.

Officer Guzman: No.

Jackson: Um, all right. Marte, can you think of anything else?

Strang: Um, well, you, you don't remember who helps the female?

Officer Guzman: I believe it was Rogelio.

Strang: You thought it was Rog though?
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Officer Guzman: Yeah, I think it was Rog. Yeah, I, I, I don't remember Bailey at all there so I don't think it was him that grabbed her, but somebody grabbed her and pulled her out of, out of, away from him.

Strang: Okay and, um, after, uh, after the shooting and he didn't have the gun anymore –

Officer Guzman: Right.

Strang: — when was the next time you saw it, I mean, as you approach do you see where the gun was lying or –

Officer Guzman: No. Once, once, the only time I saw the gun after was when Rog went and physically grabbed it and took it.

Strang: So you saw where he grabbed it from.

Officer Guzman: Yeah, that it **** –

Strang: Where was it laying?

Officer Guzman: In the, right next to him, maybe a foot or two from his hand.

Strang: His right side or his left side?

Officer Guzman: Uh, it was by the wall so it would be suspect's right hand.

Strang: Okay.

Officer Guzman: Right hand, uh, right side and, uh, and he took it and I don't know what happened to it.

Jackson: Right side or left?

Officer Guzman: Of the sus –

Jackson: Envision
Officer Guzman: It was to the right.

Jackson: Okay.

Officer Guzman: If he had his head facing me.

Jackson: Facing north.

Officer Guzman: Right.

Jackson: So I, I wanna say if I'm, if I'm the suspect laying down and your there and I'm over here, correct, **** this way and the wall is an L shape alcove and you say the guns toward the wall my hand, this—

Strang: Is he on his back?

Jackson: 'Cause you put him on you told me he was on his back.

Officer Guzman: Right.

Jackson: So if his gun is to his towards the wall—

Officer Guzman: Left side, it would be his left side. Yes.

Jackson: Okay.

Officer Guzman: Yes, sir.

Jackson: Okay. When, when you shot, why did you shoot?

Officer Guzman: Why? Because I believed he was gonna kill her.

Jackson: Okay.

Officer Guzman: Okay. I was afraid that he was, he was gonna shoot her.
Jackson: All right. So your, your clear intention was to stop a threat—

Officer Guzman: Right.

Jackson: that you realistically perceived—

Officer Guzman: Yes.

Jackson: as getting ready to kill—

Officer Guzman: Her.

Jackson: her.

Officer Guzman: Right, yes and he had plenty of opportunities to throw away the gun and he didn't.

Jackson: Okay.

Officer Guzman: You know, um, I, and I believed he was gonna kill her.

Jackson: Okay. All right.

Officer Guzman: I didn't want him to kill her in front of me.

Jackson: Anything, Marte?

Strang: No.

Hoffmann: Were the headlights on your car activated?

Officer Guzman: Yes.

Hoffmann: And did that help illuminate the area as well?

Officer Guzman: Yes.
Hoffmann: That's it.

Jackson: Okay. Uh, I have no further questions.

Strang : This is the end of, the end of the interview with Officer Guzman.
Officer Thepaysone 1

Detective Strang:  This is Detective Strang with El Cerrito Police Department. It is December 28, 2012 at approximately 0026 hours. This will be an interview with Officer Thepaysone. That's T-H-E-P-K-A-Y-S-O-N-E. Also in the present in the interview is;

Daryl Jackson:  Daryl Jackson, Contra Costa DA's office.

Robert McFarlane:  Robert McFarlane, investigator with Rains Lucia Stern.

Jackson:  Okay, your first name was?

Officer Thepaysone: Bailey.

Jackson:  Bailey? Um, and Bailey as I stated before this, uh, is being recorded. Um, and we're here to talk about, um, the officer-involved shooting that occurred on the corner of San Pablo and Potrero Avenue, uh, on the northern, I guess the northwest side of the Chevron, uh, Gas Station. You were workin' tonight?

Officer Thepaysone: Yes, I was.

Jackson:  Um, what's your normal shift?

Officer Thepaysone: I work, uh, Tuesday through Thursdays, every other Monday, from 6:00 p.m. to 6:00 a.m.

Jackson:  Okay. Uh, how were you dressed this evening?

Officer Thepaysone: Uh, uh, in full patrol uniform, my BDUs with my badge, patch, duty belt.

Jackson:  You have patches on both shoulders?

Officer Thepaysone: Correct.

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Jackson: Okay, and your badge is affixed to your left chest plate?

Officer Thepkaysone: Correct.

Jackson: All right. What's your, uh, issued weapon?

Officer Thepkaysone: It's a Sig Sauer, 40 caliber.

Jackson: And the magazine capacity?

Officer Thepkaysone: Uh, 12 in the magazine, 1 in the chamber.

Jackson: Okay. Uh, you, you, were you riding a bicycle, driving a patrol car, motorcycle?

Officer Thepkaysone: I was drivin' a patrol car, Patrol Car No. 10.

Jackson: Okay, is it, uh, black and white?

Officer Thepkaysone: Black and white.

Jackson: Uh, let's see, uh, lights on, on the hood or?

Officer Thepkaysone: No, it's a slick top.

Jackson: Slick top?

Officer Thepkaysone: Mm hmm.

Jackson: Okay. And how long you been a employee of the El Cerrito Police Department?

Officer Thepkaysone: Uh, over six years.

Jackson: Okay, any prior law enforcement experience?

Officer Thepkaysone: No.
Jackson: Any military experience?

Officer Thekpaysone: No.

Jackson: Okay. Uh, and you started your shift, uh, at 6:00 –

Officer Thekpaysone: Today was, I offshifted I started at 3:00 today.

Jackson: Started at 3:00 today?

Officer Thekpaysone: Yeah.

Jackson: Okay. Uh, let's see, let's jump into apro, I believe it was approximately 1815 hours or thereabouts, about 1800 hours, can you, uh, give us, give us the, uh, synopsis of what, what you heard and then what transpired after?

Detective Strang: Um, can, can I actually intervene here. You also were riding with someone tonight, correct?

Officer Thekpaysone: Correct. Um, I had, uh, Reserve Officer Lee as the front passenger riding with me doubled up in the car.

Jackson: Lee is his last name?

Officer Thekpaysone: Yeah, Reserve Officer Lee.

Jackson: Okay.

Officer Thekpaysone: Um, we were on our way to do vacation home checks, security checks, um, we were traveling northbound on San Pablo Avenue towards Hill Street, uh, when a call came out. Um, we were a cover unit at the time and, uh, they routed us to a call about a female screaming, um, in the area of, uh, Potrero and South 56.

Jackson: Okay. And we, I, I don't have a map so when you say San Pablo and Hill, in which direction were you traveling?
Officer Thepkaysone: I was traveling northbound which is approximately two or three blocks from their location.

Jackson: Okay.

Officer Thepkaysone: Or so.

Jackson: Okay. So you were dispatched as a cover unit?

Officer Thepkaysone: Correct.

Jackson: Okay, uh, what happened next?

Officer Thepkaysone: Um, I made a right on Hill Street and began travelin' I got on Kearney towards Potrero. As I was travelin', uh, or, or on Potrero, uh, a second dispatch broadcast that there was a second call from a second RP advising that a, he heard a female scream from, for help behind Chevron, somewhere in the area behind Chevron.

Jackson: Okay.

Officer Thepkaysone: Um, at that time I drove westbound on Potrero towards the Chevron Gas Station. Uh, and behind Potrero, um, was the driveway, uh, parking lot area behind the Chevron Gas Station.

Jackson: And that's where Angie's Bar used to be.

Officer Thepkaysone: Correct.

Jackson: Okay.

Officer Thepkaysone: Okay. Um, I made a right turn. As I was travelin', um, westbound I see a lighted patrol car comin' towards me, which I believe was Officer Guzman because we both got dispatched to the call and the original call was from that area South 56 Potrero Avenue.

Jackson: Okay.
Officer Thepjaysone: I made a right turn onto the driveway, began traveling northbound. Um, as I drive northbound to, to the, the, the parking lot I made a right turn and I began traveling eastbound towards the Chevron gas station.

Jackson: Okay.

Officer Thepjaysone: My windows were down at the time. I didn't hear anything, see anything. Um, as we began travelin' eastbound, I see a female walkin' in the Chevron gas station in a northbound direction who looks directly towards my patrol vehicle.

Jackson: Okay.

Officer Thepjaysone: Um, I slowly begin to drive towards her, not knowin' what's goin' on or who was callin' for help because that's who I thought was callin' for help or, didn't know what the call was about so I slowly began travelin' in that direction. As we began goin' towards, uh, the gas station, I began pullin' into the gas station, the female continued walkin' and then she looks at my patrol car and she says do hear that? And, um, I stopped for a moment and I believe that's when Officer Lee got out of my car to try to hear what was goin' on, I don't know exactly, but he got out, um, and then I heard a faint scream comin', well, someone screamin' for help and then the lady who was walkin' pointed in a north direction onto San Pablo Avenue.

Jackson: Okay.

Officer Thepjaysone: Um, so I was tryin' to fig, figure out what was goin' on, where the screaming was coming from. Um, I slowly began to manu, maneuver my vehicle facing north, and then, um, I started hearing like commands like guys' voices, um, I couldn't hear what was being said, but then I made the full U-turn I see in front of me Officer Guzman and Officer Lee had their firearms drawn, which they were probably like, you know, 20 feet away from me or so.

Jackson: Okay.
Officer Thepaysone: Put my car in park. I then began to exit the vehicle I see, uh, I see and I hear the shots fire, I heard approximately three shots. At the time I run out, unholster my weapon, I'm broadcasting information to other units that we got shots fired. Um, as I round the corner to where they're at, like I said, probably 20 feet, 20 feet or so in front of me. As I get there I see a subject laying down and I immediately see a firearm, um, which I recognize as a revolver approximately a feet away from there, the subject –

Jackson:  Okay.

Officer Thepaysone: – um, then I re, retract real quick make the U-turn I see Officer Guzman and Officer Lee pointing their firearms in a southern direction behind a wall. I cannot see what they were pointing at or anything like that. My view was obstructed by the, the Chevron building.

Jackson:  Okay.

Officer Thepaysone: Um, so, like I said, I ran over there and as I came around the corner I see a, a black male subject on the ground, I see a female to the left cradled like in a fetal position to the left, like, you know, couple feet away and I see a firearm, a revolver next to the male and the male is on the ground. Um, I broadcast the information and get us AMR, get us two additional AMR units, um, shots fired, um, got us more units, um, and then, uh, I hear commands but I'm not really hearin' what's bein' said. At the time I heard the subject say somethin' like I can't move or somethin' like that.

Jackson:  Okay.

Officer Thepaysone: Um, Officer Alvarez is the next officer arrived on scene a couple seconds later. I don't know how long, but pretty quick, and, um, he comes around. As he comes around, um, I believe he tells Officer Lee to checked on the female, and the female, 'cause officer Lee was, on the, the most left and then the female is like right there. So she comes out. He makes sure she is okay, uh, I, I guess to make she doesn't have any me, need any medical attention or anything like that. Um, Officer Elder arrives on scene, um, start, next officer. He is the one that recovers the firearm.

Jackson:  Okay.
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Officer Thepkaysone: And then while were just lockin' down the situation and then, um, Sergeant Caputo arrives on scene, Sergeant Caputo and Officer, uh, Guzman handcuffs the subject.

Jackson: Okay. Now, let's, let's go back to some of it. You said you were coming northbound through the parking lot.

Officer Thepkaysone: Correct.

Jackson: Which parking lot?

Officer Thepkaysone: Northbound through – there is a Little Angie's and there's that drive-through in there, so that parking lot that goes right behind the Chevron and it connects to the Chevron as you go in more, and then you go north and west.

Strang: So you kinda drove all the way around the Chevron?

Officer Thepkaysone: Um, like this, yeah.

Jackson: ****

Officer Thepkaysone: To the front.

Jackson: ****

Officer Thepkaysone: Yes.

Jackson: I'm gonna have you draw for me **** artist, um, ****, uh, try your best to give me an illustration of a.

Officer Thepkaysone: Of the building?

Jackson: Yeah, how you came in –

Officer Thepkaysone: Okay.
Jackson: — the patrol car and ****.

Officer Thepkaysone: Okay. Um, okay so here's ****, driveway.

Jackson: Okay. Okay. So what you drew for us **** intersection of Potrero and this would be San Pablo Avenue, uh, here.

Officer Thepkaysone: Okay. Yeah.

Jackson: So when you came down, you came, uh, westbound on Potrero Avenue?

Officer Thepkaysone: Correct.

Jackson: And turned into the rear, uh, just, uh, the other side, just the west side of, uh, the old bar.

Officer Thepkaysone: Mm hmm.

Jackson: That's now closed, and you drove around past this alcove –

Officer Thepkaysone: Yeah.

Jackson: — here.

Officer Thepkaysone: Correct.

Jackson: And when you drove past initially you saw nothing going on here.

Officer Thepkaysone: Like I said, I was, as I was drivin' here, I saw the female walkin', so I began to slowly drive up towards that, the lady walkin'.

Jackson: Okay.
Officer Thepkaysone: Um, at that time, and I, like I said I didn't hear no screamin' or anything at that moment. I drove - once everything cleared, when, when, when I was, uh, when she was like pointing down that way, that's when I like made my U-turn over here.

Jackson: Okay. And when you made your U-turn where'd you go?

Officer Thepkaysone: When I, when I made my U-turn, I stopped right here.

Jackson: Okay.

Officer Thepkaysone: And then I saw Officer Guzman's car like about right here.

Strang: At what point did she get out of the car?

Officer Thepkaysone: Um, as I was comin' over here, the female was pointing over here. Officer Chi got out like around here.

Jackson: Mm hmm.

Officer Thepkaysone: Right before I made the U-turn.

Jackson: Okay.

Officer Thepkaysone: 'Cause the female was pointing down this way, and there is a empty parking lot here also.

Jackson: Yeah.

Officer Thepkaysone: So that's, you know.

Strang: And by the time you turned around and facing westbound –

Officer Thepkaysone: Yeah.

Strang: You saw Mario or Officer Guzman's car parked here?
Officer Thepkaysone: I saw both subjects out the car with their guns pointed already.

Strang: Okay. Where was, um, Officer Chi standing?

Officer Thepkaysone: Uh, when I made my U-turn?

Strang: Yeah. When you fir, when you saw him back there.

Officer Thepkaysone: Um, Chi was standing right here around this area, and Guzman was standing around this area. Chi was standing closest to, towards me –

Strang: Okay.

Officer Thepkaysone: – and then, um, Guzman was standing to the right of him.

Jackson: Okay. But you didn't witness, you, you hadn't heard any gunshots at this point?

Officer Thepkaysone: As I made my U-turn?

Jackson: Yeah.

Officer Thepkaysone: Uh, as I made my U-turn, no. I didn't hear the gunshots.

Jackson: And when did you hear the gunshots?

Officer Thepkaysone: As I made my U-turn, I saw the, the guns pointing. I put my car in park –

Jackson: Yeah.

Officer Thepkaysone: – and then I heard the, the gunshots and I jumped out saying shots fired.

Jackson: So from what your recollection, no one was standing on the passeng, uh, driver's side fender area of the vehicle at all? Two officers were on, out here

Officer Thepkaysone: From what I recall.
Strang: Okay. How close do you think she was to the patrol car?

Officer Thepkaysone: Mario's car?

Strang: Yeah.

Officer Thepkaysone: I don't recall exactly how close he was to the car.

Strang: You remember how many shots you heard?

Officer Thepkaysone: I heard around three.

Strang: Okay. Hmm, and then on this diagram could you put kinda where you saw the suspect when you rounded the corner and where the, uh, the, the female was and then where the gun um***

Officer Thepkaysone: Um, the subject was right here. Um, the gun was right about here and the female was right here.

Jackson: Okay. Was he layin' on his face, chest, side when you walked around there?

Officer Thepkaysone: I couldn't recall. I just remember his head was towards us. That's it.

Jackson: Okay. And the female, uh, that pointed towards north, uh, do your recall where she went or what she was wearing or anything?

Officer Thepkaysone: I can't recall. I just remember she was, uh, probably a 35-year-old black female and she, no one conta, I couldn't, she was no longer on scene.

Strang: You never seen her before?

Officer Thepkaysone: Never seen her before. Nope.

Strang: Do you remember anybody else being out here—
Officer Thepkaysone: ****

Strang: How many other people around?

Officer Thepkaysone: When I came out I was kinda focused on her. I saw a couple cars, but I didn't, uh, when we tried to go back there it, it was like gone. Like people were gone and stuff like that.

Jackson: All right. So let's, let's, let's just go back a little bit and just make sure I, we have a good understanding then. After being dispatched, uh, come down here, then down Potrero Avenue, pass and then this, uh, ****, uh, what's the name of the bar again, its now closed?

Officer Thepkaysone: Angie's.

Jackson: Angie's.

Officer Thepkaysone: Correct.

Jackson: You passed by Angie's, turn into, you turn right into the, uh, parking lot which then makes you, uh, vehicle go in a northbound direction.

Officer Thepkaysone: Correct.

Jackson: Uh, you continue on. You have to turn right?

Officer Thepkaysone: Mm hmm.

Jackson: Uh, because there was a vacant lot there. It's, it's non-concreted. It's just dirt, uh, if I remember correctly. You drove past, um, the, uh, the, the, the eventual, the eventual spot that the officers ended up in.

Officer Thepkaysone: Mm hmm.

Jackson: Female point, uh, points north.
Officer Thepkaysone: Mm hmm.

Jackson: Uh, asks you did you hear that or somethin' like that, right?

Officer Thepkaysone: Did I hear what?

Jackson: Did the female say something to you when she pointed?

Officer Thepkaysone: Somethin' to the fact like did you hear that or somethin' like that.

Jackson: Okay.

Officer Thepkaysone: Yeah.

Jackson: So a female says did you hear that. Um, you then made the U-turn, uh, when did Lee get out of the car?

Officer Thepkaysone: Be, before I made the U-turn I believe 'cause when I made the U-turn **** they were already down here.

Jackson: Okay. So when did Lee get out of the vehicle?

Officer Thepkaysone: As I'm slowly drivin' up, I kinda stopped to try to listen to what's goin' on.

Jackson: Okay.

Officer Thepkaysone: And that's when he gets out the car. Um, I'm already like lookin' at the female, interacting with the female, so I don't know exactly the point he got out.

Jackson: Okay.

Officer Thepkaysone: I was kinda focusing on the female tryin' to figure out what's goin' on, tryin' to figure out what's, where the scream is comin' from, what is goin' on.
Strang: Did he say why he got out?

Officer Thepaysone: No.

Strang: No

Jackson: Okay. Then when you did make the U-turn, you're back facing a westbound direction with the vehicle?

Officer Thepaysone: Correct.

Jackson: You ex, you start to exit your vehicle, um, and you start walking. Uh, here you see Lee and Guzman standing with their weapons—

Officer Thepaysone: Negative

Jackson: Okay.

Officer Thepaysone: I made the U-turn.

Jackson: Okay.

Officer Thepaysone: As I'm makin' my U-turn and I'm putting car in park, I already see them—

Jackson: Okay.

Officer Thepaysone: with their guns drawn.

Jackson: Okay.

Officer Thepaysone: Um, as I'm gonna get out of my car, and that's when I'm like hearin' the shots fired, and I'm gonna jump out of my car fast and puttin' it out and shots fired, shots fired and I run up to them.
Jackson: Okay.

Strang: Officer Lee is closest to you?

Officer Thepaysone: Mm hmm.

Strang: Officer Guzman is farther away?

Officer Thepaysone: Yep.

Strang: They're both somewhat south of Mario's patrol car, Officer Guzman's patrol car?

Officer Thepaysone: Yeah. Correct.

Strang: When you round the corner the suspect is layin' on the ground. You don't know exactly what position.

Officer Thepaysone: Yeah.

Strang: The gun is just to his right?

Officer Thepaysone: Um, yeah, to his right.

Strang: Which would be to -

Officer Thepaysone: To my -

Strang: the east?

Officer Thepaysone: Yeah.

Strang: And then the victim is also to his right, and she's against the wall in a fetal position?
Officer Thepksone: Yeah. With her back, her back's towards the gun.

Strang: Okay/

Officer Thepksone: She's facing us. She is in the fetal position.

Jackson: She's, she's on her knees?

Officer Thepksone: Yeah. Like kinda like, like this huh?

Jackson: Balled, balled up ****

Officer Thepksone: Yeah. Yeah. Balled up.

Strang: And you said, did the suspect say somethin' to ya?

Officer Thepksone: He didn't say nothin' to me. I can, I'm broadcasting information out —

Strang: Yeah.

Officer Thepksone: — and I can hear commands bein' given, but I remember him say somethin' to the fact like I can't move, but I can't recall 100 percent, but that's what I think he said.

Strang: Okay. Do you remember what, hearin' what either officers said or was that before you got out of the car?

Officer Thepksone: I, I couldn't remember. Um, and like I said before even when we got out of the car, I heard commands bein' given but I couldn't hear what was being said.

Strang: Yeah.

Officer Thepksone: But I, like, you know, based on training I know it was like that shouting, you know, like that, I can hear like someone's just there are commands bein' given.

Jackson: Were your windows down?
Officer Thepkaysone: Yeah. I was tryin' to figure out where the screaming was comin' from so my windows were down.

Strang: So **** when, when we got to the scene your car was over here.

Officer Thepkaysone: Yeah because, uh, we were told to – right when, after everything we were told to close off the scene and we didn't have enough cars or anything, so I had to like block off all so no one would keep comin' into the gas station –

Strang: So you just blocked off this driveway?

Officer Thepkaysone: – so I blocked it off.

Strang: Okay. Hmm.

Officer Thepkaysone: The only car we left on scene was Mario's car.

Strang: Okay.

Officer Thepkaysone: We have to use every car to block off the scene that we had.

Strang: And then who was the next officer to arrive?

Officer Thepkaysone: Uh, Rogelio, Officer Alvarez.

Strang: And then?

Officer Thepkaysone: Elder.

Strang: Elder.

Officer Thepkaysone: And then the sergeant.

Strang: And you said, um, Officer Elder was the one that went and picked up the gun?
Officer Thepkeysone: Correct.

Strang: Do you know what he did with it, where he put it?

Officer Thepkeysone: Uh, I didn't know at the time.

Strang: Mm hmm.

Officer Thepkeysone: I just knew he recovered the gun.

Strang: Mm hmm.

Officer Thepkeysone: But then before he left he advised Sergeant Caputo that he put it in the, the passenger seat of, um, the patrol car to secure it.

Strang: And what did the gun look like?

Officer Thepkeysone: More like a revolver, um, it was a black revolver with a brown handle from what I recall.

Strang: How long?

Officer Thepkeysone: Um, it was, uh, I don't recall exactly but the barrel was probably like 2 inches or so, 3 inches. That's all I remember.

Jackson: Okay. All right. Um, give us, uh, we're gonna pause at, uh, 0046 hours.
Officer Thepkeysone 2

Detective Strang: This is Detective Strang, it’s December 28, 2012 approximately 0052 hours. This will be a continuation of the interview with Officer Thepkeysone.

Jackson: Okay, um, Bailey we, is there anything else that we failed to ask you that you think is relevant to this investigation, at all?

Officer Thepkeysone: Not that I can think of.

Jackson: Okay, uh, you think you’ve, are there there any lingering doubts or thoughts in your mind?

Officer Thepkeysone: Um, I mean, the only thing I, else I did at the scene after was just interview a witness, that’s it.

Jackson: What, what witness did you interview?

Officer Thepkeysone: Um, one witness that, uh, I interviewed, um, um, who was at the gas pump, um, he, I don’t have his name off the top of my head –

Jackson: Okay.

Officer Thepkeysone: - but I talked to him, um, he was a male getting gas and he, uh, he said that he saw, uh, a male, Chev clerk from Chevron, went up to the northeast portion of the corner and said, he heard a female screaming, so this individual, uh, that I talked to said that he heard the screams, a female scream for help, got in his car and drove around the area but did not see or hear, did not see anything, couldn’t find where it was coming from.

Strang: Okay.

Jackson: Okay.

Jackson: Marte, you have anything else?
Strang: No I don't.

McFarlane: Nothing from me.

Jackson: Okay, uh, the time is, let's go by your watch I mean your phone.

Strang: It's 0054 hours, this will be the conclusion of the interview.
Officer Lee

Detective Strang: This is Detective Strang. It's December 28th, 2012, approximately 0103 hours. This will be an interview with, uh, reserve, Reserve Officer Lee. Also present in the interview is?

Jackson: Darrel Jackson, District Attorney's Office.

Hoffmann: Peter Hoffmann, Rains Lucia Stern, counsel for Officer Lee.

Jackson: All right. Chi, um, how long you been an El Cerrito reserve officer?

Officer Lee: Almost a year.

Jackson: Almost a year? Any prior law enforcement experience?

Officer Lee: Uh, yeah, just com, completed my contract with, uh, Department of Defense in Travis Air Force Base as their, uh, civilian police officer.

Jackson: Okay. How long did you have in that program?

Officer Lee: Uh, one year.

Jackson: Okay. Uh, prior to that, any military ex, experience at all?

Officer Lee: No military experience.

Jackson: Okay. Uh, any specialized training other than, uh, the training you went through at Travis Air Force Base?

Officer Lee: Uh, no. I als, well, actually I also, uh, went to the police academy.

Jackson: Okay.
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Officer Lee:  — in 2010 in Napa Valley College.

Jackson:  Okay, full police academy?

Officer Lee:  Yes, sir.

Jackson:  Okay. Um, what's your, now as a reserve, you, you, do you have a certain day or certain shifts that you normally ride?

Officer Lee:  Uh, there is no restriction on any time that I can come in and ride, but normally my normal days coming in is Tuesday and Thursday night.

Jackson:  Okay.

Officer Lee:  Working the graveyard.

Jackson:  Graveyard Tuesday, Thursday night?

Officer Lee:  Yes.

Jackson:  Okay. Uh, what'd you have to eat before you came to work today?

Officer Lee:  Uh, around 4, 4:00, I ate some rice and also I had some cereal.

Jackson:  Okay. Um, how much sleep did you get during the course of the day?

Officer Lee:  I slept around, I had 11 hours of sleep.

Jackson:  Eleven hours?

Officer Lee:  Yes.

Jackson:  Oh, great. All right. Uh, what's your normal attire when you come into work?
Officer Lee: I **** to wear full uniform and the BDUs with the El Cerrito Police patches on my shoulder, a badge on, uh, you know, on, on my uniform and with my duty, um, yeah, with my duty gears.

Jackson: Okay. Describe your duty belt for us.

Officer Lee: Okay. Duty gears consist with, uh, radio, uh, three handcuffs. I, I carry three sets of handcuffs, um, two magazines, a service weapon, which is a Sig 226, 40 caliber –

Jackson: Okay.

Officer Lee: – and a, uh, pepper spray and also a asp baton, and I carry 37 rounds on me.

Jackson: Okay. What's your magazine capacity?

Officer Lee: Uh, 12 on each, and on my service weapon there are 13 rounds on it.

Jackson: Okay. So one live in the chamber and, and 12 in the mag?

Officer Lee: Yes, sir.

Jackson: Okay. Uh, uh, this evening, what type of vehicle were you, uh, in, operating?

Officer Lee: I was in a fully marked vehicle. It's, uh, in, uh, El Cerrito Car 10.

Jackson: Okay. It was a black and white, slick top?

Officer Lee: It's a black and white, a slick top.

Jackson: Okay. Um, were you riding with someone this evening?

Officer Lee: Yes, sir.

Jackson: Who were you riding with?
Officer Lee: I was riding with Officer Thepkaysone.

Jackson: Okay. And you've ridden with, uh, Officer, uh, Thepkaysone before?

Officer Lee: Yes.

Jackson: Okay. Uh, um, let's, let's start right prior to this initial call. Where were you guys enroute to?

Officer Lee: We were gonna go to, uh, Barrett Street to conduct a vacation home check, –

Jackson: Okay.

Officer Lee: – and, uh, when we were approaching, or we were going northbound on San Pablo Avenue, and, uh, the call came out right when we got to Cutting Boulevard, and the calls came out initially was a suspicious, uh, circumstances, –

Jackson: Mm hmm.

Officer Lee: – and, uh, uh, a subject, well, uh, a male and a female in the back parkin' lot, uh, servin' Gas Station 60, 600 block of, uh, Potrero, –

Jackson: Okay.

Officer Lee: – uh, which is, uh, on South 56, the cross street of South 56 and Potrero Avenue.

Jackson: Okay. Um, what, describe for us your, your direction of travel when you got the call.

Officer Lee: When we got the call, we were northbound San Pablo Avenue, and once the call came out, we make a right, went eastbound on Cutting Boulevard.

Jackson: Okay.
Officer Lee: And then after we, uh, acknowledged to dispatch, uh, with the call, and then, um, we took Lexington –

Jackson: Okay.

Officer Lee: – from, from Cutting Boulevard, and then from Lexington, we got on, uh, we got on Blake, Blake Street. We made a right on Blake, heading westbound –

Jackson: Okay.

Officer Lee: – and then when we get to Kearney Street, we made a left, going back on northbound on Kearney Street and then when we get to Potrero Street, we made a right, uh, head down westbound on Potrero and just went straight down.

Jackson: Okay. Um, take us from there. You were going, you were goin’ westbound Potrero, what happened next?

Officer Lee: As we got on Potrero, um, I ‘member, um, when we start turning the corner, got onto Lexington Street, –

Jackson: Mm hmm.

Officer Lee: – uh, on the radio, I can hear, uh, Officer Guzman got on scene already and then, um, when we got to Potrero Street, we drove to the back parkin’ lot, into a back parkin’ lot of Chevron gas station –

Jackson: Okay.

Officer Lee: – and then we drove through the gas station. We did not hear anything, and then as we got into the gas station, I heard a female screaming really loudly, really desperate, and then in the same time, Officer Thepkaysone stopped the vehicle. That was when I got out of the vehicle and then go to the, uh, source of the, where, where the screaming’s coming from, which is in the back parkin’ lot of Chevron gas station. It was really dark area, and as I got out, as I was running through the area, –
Jackson: Mm hmm.

Officer Lee: -- there was a bystander, was a, um, black female --

Jackson: Hmm.

Officer Lee: -- stating that they are right there, pointing to the direction of the back parkin' lot of Chevron gas station. So as I ran over there, I still can hear female screaming and then I didn't see, I didn't see who it is --

Jackson: Mm hmm.

Officer Lee: -- or, uh, at the time because it's kinda blocking my view, and as I was approaching, I saw Officer Guzman with his, uh, fire arm out already on his hand and with a flashlight, and in the same time, so I drew my service weapon, --

Jackson: Okay.

Officer Lee: -- and I took my flashlight out and then as I got closer, I saw the female and also the, the male suspect, and Officer Guzman said he got a gun really loud, like he, he was screamin' on top of his lung. So said he got a gun, and then he was giving him a command, and the officer was giving him a command as well. I told him, I told him, um, I was giving him some sort of command like do not move, and, um, the same time, um, I heard, uh, one shot of a gunshot and then I was looking at the suspect. Um, he was straddling the victim, --

Jackson: Okay.

Officer Lee: -- um, and then from my vantage point from what I see is I saw his right hand was absent. I, I, I couldn't see his right hand.

Jackson: Okay.

Officer Lee: And in the same time, simultaneously, the shot came out so I fired two shots and then after that he, he was getting up, he was getting up after I fired the first shot, and then I saw him getting up after I fired the first shot, so I fired a second shot.
Jackson: Okay.

Officer Lee: After I fired a second round, then, um, he was still manipulating something, and but then he stopped ready he, and then, um, he rolled over to his back and then I can see his left hand was tryin' to go into the pocket, and that's when I heard Officer Guzman said, tell him don't reach for anything. I also told him just keep the hands out, don't, don't reach for anything, and then, uh, the suspect said I'm gonna stop, I'm gonna stop now, and then the victim got up. As the victim got up, we told the victim stay down and then Officer Thepkaysone came and also get between me, well, he, he was right next to me on my right side.

Jackson: Okay.

Officer Lee: He told me to help the vict, take the victim to the side, so I took the victim to the side. I checked on her. She was crying. She was screaming. She was really scared obviously and then, um, and I just check on her, make sure she's, she didn't get hit with a bullet, –

Jackson: Mm hmm.

Officer Lee: – uh, because I don't know where the first shot came out from.

Jackson: Uh huh.

Officer Lee: And she was, she, I, she was, she had a lotta blood on her –

Jackson: Okay.

Officer Lee: – and a check on her. I palpate on the area where the blood is and then, um, she stated at that, she wasn't struck by any of the bullet, and I confirmed that, uh, but then I can see there was a deep gash on top of her head –

Jackson: Okay.

Officer Lee: – and that, that was it and then oh, in the same time, when, uh, I took the victim to the side, –
Jackson: Mm hmm.

Officer Lee: I heard, um, Officer Thepkaysone was on the radio, letting dispatcher know that shots fired and then also called for AMR, uh, Code 3 AMR to respond and then that's, that was it.

Jackson: Okay. Now, uh, I'm gonna take you back, and what I'm gonna do is give you this. Please draw a diagram for me. Uh, you said you guys were drivin' westbound down Potrero.

Officer Lee: Mm hmm.

Jackson: So, uh, uh, make your diagram of the intersection of San Pablo Avenue/Potrero, put Chevron where it's, where it's located and then the access point that you drove, you guys drove into, uh, over on, from Chevron.

Officer Lee: Okay.

Jackson: Okay?

Officer Lee: So I think we went westbound on San Pablo Avenue.

Jackson: Okay.

Officer Lee: On the back, right here, there's a small opening area where there's a driveway to come through to the back parkin' lot.

Jackson: Okay.

Officer Lee: We come through here, we pull, we drove past it. There is a, uh, dumpster over here on the side, —

Jackson: Mm hmm.

Officer Lee: — and there is building over here, and then we drove through the back parkin' lot, we came out, probably we were, we were parallel with the building, facing eastbound, —
Jackson: Okay.

Officer Lee: — then we heard the, uh, uh, female screaming, and that's when Officer Thepkaysone stopped the vehicle over here, and then I got out and then there was a female bystander over here, saying that they were over there. She was pointing toward this direction, and then I was, as I walked out this way, coming over here, I, I can't see, the suspect and the victim was right over here near the area, near this area, and then as I come over here, I look —

Jackson: Mm hmm.

Officer Lee: — west. I saw Officer Guzman facing east with his flashlight and firearm out already.

Jackson: Okay. How can I do this? Uh, I wish we could produce a, a better, uh, photograph, uh, for you, but let me see if this helps re, to refresh your recollection of the, of the structure. When you come off of Potrero Avenue and make that right turn into the parking lot, are you aware of Angie's Bar? Have you been familiar, uh, you've only been on a year and I can't remember when it closed down, but it's the building directly on —

Officer Lee: Yes.

Jackson: —****.

Officer Lee: Mm hmm.

Jackson: Okay. So when you come through that parking lot and you start to make this right around the corner of the building, this portion of the, uh, building kind of juts out 'cause it's an alcove, uh, right? So lookin' at this diagram, if with that little bit of information, should there be some changes made to your diagram?

Officer Lee: Well, there's a backdrop over here from this wall.

Jackson: Mm Okay.
Officer Lee: I mean there is, there is in the section of a brick wall over here, uh, --

Jackson: Mm hmm.

Officer Lee: -- another structure of a building.

Jackson: Okay. We're comin' around to the right, when you make the right, which would take you goin' back towards San Pablo Avenue, is there any, uh, do you recall there bein' any, uh, uh, points which you cannot see?

Officer Lee: The dumpster well, the, the angle where the suspect and the victim is --

Jackson: Mm hmm.

Officer Lee: -- is in the area that's kinda block off from the dumpster, and I cannot clearly see the area.

Jackson: Yeah.

Jackson: It's kinda small.

Officer Lee: Yes, sir.

Jackson: You know what? That's right. Um, pause that for one second. We're, we're gonna pause while I try and pull up -- we're back on. Uh, well, what I've done is utilizing my iPad to pull up the intersection of San Pablo Avenue and Potrero to get a better visual of the Chevron gas station. So Chi, uh, walk us through the direction you guys drove in the night you were called if you got off, exited the vehicle at.

Officer Lee: Okay. Okay, we came out going westbound on Potrero Avenue.

Jackson: Okay.

Officer Lee: We made a right to this, um, driveway --
Jackson: Okay.

Officer Lee: — to go into the park, back parkin' lot of the Chevron gas station.

Jackson: Okay.

Officer Lee: And we drove around it, and then as we come almost parallel to the building, which is, this is the **** area of the gas station, —

Jackson: Okay.

Officer Lee: — that's when we heard the scream, I heard the screaming, and in the same time, Officer Thepkaysone stopped the vehicle over here –

Jackson: Okay.

Officer Lee: — and then I hop out. There was a female bystander standing over here, stating that they're over there, and she was pointing finger toward this direction.

Jackson: Okay.

Officer Lee: And then as I got out the vehicle, urn, Officer, I closed the door, and Officer Thepkaysone pull up and, uh, I, I don't know, uh, well, I didn't track where he went. I got out and then I, I can hear the screaming was ongoing and then I walk toward this area. As I walk around here, I look eastbound, I looked, I look –

Jackson: West.

Officer Lee: —west.

Jackson: Mm hmm.

Officer Lee: I can see Officer Guzman was standing right in this corner, facing east.

Jackson: Okay.
Officer Lee: And, um, I did not see anyone as I come to his corner, but my, my, first thing I saw is, I saw is Officer Guzman has a flashlight and also his service weapon drawn already, pointing east.

Jackson: Okay.

Officer Lee: So as I got to here, my service weapon's out and also my flashlight's out, knowin' that this area is really dark.

Jackson: Okay.

Officer Lee: And then as I come over here, I slowed, uh, well, I peel off, I come out. I can see the suspect and also the victim is down on the ground. The victim and the suspect was down on the ground. The suspect was straddlin' on top of her, and, um, she, they both were down on the ground and their head is toward north.

Jackson: Okay. Had you heard a gunshot prior to you getting to this location?

Officer Lee: No. As I came over there, I had my service weapon out and I was, um, and I can hear Officer Guzman was giving command --

Jackson: Okay.

Officer Lee: -- to the suspect and at the same time as I came out, I saw both of them were were on the ground, I meant the suspect and also the victim, and I also gave command to, to the suspect. Told him to, um, um, get on the ground and then as I was giving him that command I heard a gunshot, and after I heard the gunshot, I didn't know which direction it was coming from.

Jackson: Okay.

Officer Lee: But then the female was screaming still and I saw the suspect, one of his hand it's not pleasant and it looks like, it looks like it not present and it looks like his right arm is pointing toward Officer Guzman's direction underneath.
Jackson: Okay.

Officer Lee: And I fired one shot. I saw the suspect continuing getting up. It looks like he's getting up.

Jackson: Okay.

Officer Lee: So I fire another shot and then after that he stopped and then he rolled on his back. As he rolled on his back his left hand was manipulating something. I saw he was manipulating something and we continued to give him the command.

Jackson: Okay.

Officer Lee: Told him to just, you know, don't reach for anything.

Jackson: And as you're giving him the commands, as you and uh, Guzman are giving commands, where is Mario, Mario Guzman at the time?

Officer Lee: He was, he the whole time he stayed on his corner. He was standing on this corner. Um, and then uh, I was focusing on the suspect because I, I hadn't seen he stopped. He, he was still manipulating something.

Jackson: How far would you estimate Mario from you at the time the first shot was fired? Not knowing where it came from. At the time the first shot was fired, how far would you put Mario from you? Just an estimate?

Officer Lee: 20 to 30 feet.

Jackson: Okay. So your recollection is you're standing –

Officer Lee: Right.

Jackson: – right about here. You don't cut the pie but you kind of round it out.

Officer Lee: Yeah.
Jackson: And Mario is standing over here pointing in this direction?

Officer Lee: Mmn mmn.

Jackson: Uh, and then as you come out uh, a number of feet, you're pointing the direction, it's like an L shape.

Officer Lee: So it's like a 90 ****, both me and, me and Mario to the suspect is like a 90, 90 degree, just like the layout of this area.

Jackson: Where was Mario's car?

Officer Lee: Mario's car was on Potrero. He parked on eastbound Potrero and South 56.

Jackson: Okay. All right, uh.

Strang: Prior, prior to you actually rounding the corner and seeing the suspect and maybe when you first saw the suspect, you had say that Mario had told you something ****.

Officer Lee: Mario said he got a gun.

Strang: Okay. Did he say it once? Twice?

Officer Lee: I remember he said it, I remember said it once.

Strang: Okay. That was prior to you hearing a shot?

Officer Lee: Yes.

Strang: Okay.

Jackson: What did you see when you rounded that corner? You saw the, you, you saw Mario ****, which would be to your immediate left.
Officer Lee: Mmm, mm, to my immediate right. He was um, he was right there in that direction.

Jackson: Well as you come here, Mario wouldn't be on your right, he'd be to the left, because you're walking back down this direction, right?

Officer Lee: Yeah.

Jackson: So he wouldn't be on your right.

Officer Lee: He, he's, he's over here on –

Jackson: Yeah, he's –

Officer Lee: I'm coming this way.

Jackson: Yeah, but, yeah, **** that's not what I mean, but your attention was, is pointed, you were looking at this corner.

Officer Lee: Mm. I'm looking at this corner, I'm facing south.

Jackson: Yeah.

Officer Lee: And Mario's facing east.

Jackson: Okay. Are you able to see the suspect's hands at all?

Officer Lee: I did not initially, and right when he, when Officer Guzman said he had a gun and I drew down on him already –

Jackson: Mm. mm.

Officer Lee: – and then as I was giving the command it was really dark and I, that's why I had my flashlight out, and I saw he was, he was in this, in this position, and then once the shot came out and I saw one of his arm, I can see one of his arms, it's not there. It looks like he's, he's underneath pointing something toward east, I mean toward west.
Jackson: Okay.

Officer Lee: Which is, you know, the direction of Officer Guzman.

Jackson: Mm hmm.

Officer Lee: And as the shot came out so I, I thought either he's trying to ft-, he's trying to, he fired a shot to Officer Guzman or he fired a shot to the victim or me because ****.

Strang: He's still straddling the victim?

Officer Lee: Yeah. One of his hands is still on the ground.

Jackson: So then one of his hands is on the ground on top of the victim.

Officer Lee: Yes, his left hand.

Jackson: Which one is, his hand on the ground or on top of the victim?

Officer Lee: His left hand was down like this. I don't know if it's on the victim —

Jackson: Okay.

Officer Lee: — or, or, or what because it happened really quick.

Jackson: Okay. Um, but you never saw a gun, correct?

Officer Lee: I did not see a gun.

Jackson: Um —

Officer Lee: The information I got about, uh, I acknowledged about the gun is when Guzman, it seems like Officer Guzman was trying to communicate with me he got a gun.
Jackson: Okay. And when you initially got to that corner you saw the, you saw the, the male suspect one hand down already, either on top of the victim or on the ground. Left hand down or was he standing up?

Officer Lee: He was, he was on the ground.

Jackson: He was on the ground.

Officer Lee: He was straddling on top of the victim.

Jackson: When you say straddling, describe that for us.

Officer Lee: The victim's right between his, his, uh, he was like this. He was like this in this position. I don't know if his whole hand was on it, but then I know when I, when I cut the corner as I was getting ready to command a shot came out, and I can see from my flashlight, with my flashlight I can see one, he, he's really down like a few feet above, I don't know, less than 2 feet above the victim.

Jackson: Okay.

Officer Lee: And then his hand is absent one, you know, his right hand was absent.

Hoffmann: Okay. Now, just to describe what he just performed in front of us, the suspect had, he was on his knees straddling with the, the female victim in between his two knees and then one hand, his left hand down by the victim.

Officer Lee: Yes.

Hoffmann: Okay. And the right hand you can't see.

Officer Lee: Yes, correct.

Jackson: Okay.
Strang: And there was just like a foot or two of space between his body and the victim's body?

Officer Lee: Yes.

Strang: His upper body?

Officer Lee: Yes.

Strang: You can see his left hand but you can't see his right.

Officer Lee: No.

Jackson: Okay. And you're not sure what command, uh, Guzman gives the guy before, before you hear the shot?

Officer Lee: He said something like, um, after he said he got a gun and he's like just, he said something like don't move, don't move, show me your hands, something, something of that nature. I can't, I, like it happened so fast I can't recall I know he was giving him command. He was giving the suspect command and at the same time I was, I was giving him command just get down on the ground, don't, get down on the ground, and less than -- the whole thing unfold, as I cut the corner, got out of the vehicle and come cut the corner and I saw Officer Guzman to the shooting is less than, I'd say less than 40 seconds.

Jackson: Okay. Um,

Strang: But in, in your mind when the suspect's straddling the victim, you can see one hand but you can't see the other, Officer Guzman's told you he has a gun and you hear a shot ring out, what was the first thing you thought?

Officer Lee: I thought he was either shooting at Officer Guzman or the victim or me.

Strang: Okay.

Jackson: Did you see a weapon pointed towards you?