

AFFIDAVIT

County of Travis

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IAD CONTROL # 06-571

On March 16, 2007, in the offices of the Internal Affairs Division, I was ordered to submit this memo by Detective Cara Body, representing Cathy J. Ellison, Acting Chief of Police. I submit this memo as a condition of continued employment, with the understanding that:

1. I am responsible for complying with Departmental policies, which require that I cooperate with the investigation and provide full and accurate information regarding the incident under investigation, and;
2. This compelled statement cannot be used against me in any subsequent criminal proceeding, except if I make false statements under oath to the investigator (perjury or aggravated perjury), and;
3. This compelled statement can be used by the City of Austin for any lawful purpose, and is not limited to use in the investigative and disciplinary processes.

Boyd: Today is March 16, 2007. The time is about 10:07 a.m. We are located in Internal Affairs Interview Room Number 2, at 1106 Clayton Lane, Suite 500E in Austin, Texas, Room Number 3, actually. Present in the room is Corporal Tom O'Connor, representing Corp. O'Connor is Tony Conners, C-O-N-N-E-R-S; Susan Hutson, with the Police Monitor; and myself, Detective Cara Boyd and Detective Ken Murphy, both with APD Internal Affairs. And Tom, if you'll just verify those people are actually in the room?

O'Connor: Yes, they are.

Boyd: Okay. The interview is regarding Internal Affairs Case number 06-635. And if you would, just say and spell your first and last name, for the record.

O'Connor: Thomas O'Connor, T-H-O-M-A-S O-apostrophe-C-O-N-N-O-R, 2654.

Boyd: Okay. And you're aware we're recording the interview?

O'Connor: Yes.

Boyd: When were you commissioned with APD?

O'Connor: July 8th, 1994.

Boyd: And what is your current duty assignment?

O'Connor: Corporal, Central West, Baker 100s.

Boyd: Okay. And was that your assignment on the date of this incident?

O'Connor: Yes, it was.

Boyd: Okay. And that incident was November 23rd, 2006.

O'Connor: Correct.

Boyd: Okay. And it's regarding a traffic stop that you made on South Mopac, at about 11 in the morning.

O'Connor: 1:10 in the afternoon.

Boyd: Oh, was it?

O'Connor: Yes.

Boyd: Okay. I thought on the videotape, it started-- oh, you're right. Okay. Good. Um, so we'll just go over that incident. What lane were you in on Mopac when you first saw this vehicle that you stopped?

O'Connor: The inside lane.

Boyd: The inside lane?

O'Connor: The inside one, I don't know if you'd call it number one. The furthest inside.

Boyd: The furthest left lane?

O'Connor: Correct.

Boyd: And where was the vehicle?

O'Connor: Behind me.

Boyd: Behind you?

O'Connor: Uh-huh [yes].

Boyd: Okay. And how fast were you going, and was he going, if you recall?

O'Connor: 72 to 76. I was going to a call in David, coming from IDA. And I was pacing the car in front of me. I wasn't going to stop him unless the-- I was going to make a backup. If that guy Code 4'd, I was going to stop the vehicle. I was pacing that car at 76, and this car behind me, the one that I initially-- eventually ended up stopping, but I wasn't watching him the whole time. I was watching the vehicle in front of me. That vehicle exited at Fifth Street, before it crossed the river. That's when the call I was going to was Code 4. They sent me another call in David, and I moved over. And then I was going 70 when this car passed me.

Boyd: Okay. All right. Um, did you preempt from the call to make the stop?

O'Connor: The hang-up, yes.

Boyd: Okay, and that was the hang-up that you said was, had been holding for like two hours?

O'Connor: Right.

Boyd: Okay. Um, so you were in the left lane, pacing a vehicle in front of you, so you might have been going about 76.

O'Connor: Mm-hmm [yes].

Boyd: He was behind you. And I noticed in your report, or on the video, you said he was two car lengths behind you?

O'Connor: Yes.

Boyd: But he was keeping up with you...

O'Connor: Right.

Boyd: ...basically.

O'Connor: Mm-hmm [yes].

Boyd: Okay. Um, and at one point, you had mentioned that it was tailgating. Was he tailgating you? Or, I mean, two car lengths...

O'Connor: Oh, yes. I consider two car lengths at 72, 76 miles an hour to be very close.

Boyd: Okay.

O'Connor: I don't think that would fall within 2-second rule.

Boyd: Mm-hmm [yes]. I just was wanting to be clear if it ever changed from two car lengths, if he actually got right up on you.

O'Connor: Well, uh, I wasn't watching him so much when I was pacing the other car, and going to the other call...

Boyd: Mm-hmm [yes].

O'Connor: ...until the other car turned off and we went across the bridge. And then yeah had-- then I was taking a little notice, and which is why I moved over to the...the inside lane, or the...the next lane.

Boyd: Okay. So you moved over to...

O'Connor: One lane, to my...

Boyd: ...the middle lane...

O'Connor: ...to my right.

Boyd: And...

O'Connor: Well, right after the exit ramp, there at Sixth Street, there's only two lanes.

Boyd: Mm-hmm [yes].

O'Connor: And then once we got on the Town Lake bridge, it goes to three. I don't remember exactly why I moved over. I think I moved over, and there's only the two lanes. So I moved over to the right lane, which once you cross around the, when you start across at Town Lake, then it becomes three, you have, plus the on-ramp is four.

Boyd: Mm-hmm [yes].

O'Connor: And I think now there's five. What used to be an exit ramp is now a lane all the way down to Barton Skyway, and I think it was in town. I don't remember...

Boyd: Okay.

O'Connor: We were in-- I...I moved over the second-lane from the inside. He passed me, still on the inside lane.

Boyd: Okay. And you were going 70 when he passed you.

O'Connor: Correct.

Boyd: Um, were there a lot of other vehicles on the roadway, that you remember? I know this was...

O'Connor: It was...

Boyd: ...Thanksgiving Day.

O'Connor: Yeah. It was pretty-- there was a lot of traffic out.

Boyd: Mm-hmm [yes].

O'Connor: And you can see on the video, there's a lot of cars going by.

Boyd: Okay. And were they, was everybody kind of all traveling at the same speed, or was it just you two traveling 70 miles an hour?

O'Connor: Well, I was going faster than the car that I-- there was a car in that right lane, when I passed that car, that's when I moved over, and that's when he passed me.

Boyd: Okay. Um, and so when he passed you, that's when you got in behind him and initiated the stop?

O'Connor: Right. When I moved over, I saw in the mirror that the...that the vehicle didn't have a front license plate. When he passed me, I saw there was no rear license plate on it. I don't remember if I moved back in behind him or if he changed lanes, but after he passed me, I saw there was no license plates on the car. He's passing me. I'm going...I'm going 5 over the speed limit.

Boyd: Mm-hmm [yes].

O'Connor: I either moved in back behind him, or he moved over, and then uh, I don't remember...

Boyd: Okay.

O'Connor: ...which...which lane it started in.

Boyd: Okay. Okay, and then after he pulled over on the shoulder of Mopac, um, and you walked up and made the approach, I know on the video, you-- he asked why you stopped him, and you told him he was 5 over, and for the license plates. Um, did the other occupants say anything to you while you were talking to Mr. Snelling?

O'Connor: I don't know if they were talk-- well, yeah. They were talking to me, and they were arguing about stopping for 5 over the speed limit, and I was more keying in on what he was saying. But yeah, everybody in the vehicle was talking, and...

Boyd: Okay. Can you explain why it seemed like you were kind of hurrying through this stop, instead of um, taking your time and talking to him or the passengers about you know, when they're griping about 5 miles over?

O'Connor: It was a busy day. I was trying to clear calls. I'd been in IDA before this. I'm going down to David. I went there to back somebody up, as soon as he Code 4'd they dispatched me to another call. It was Thanksgiving, but it was...it was very busy.

Boyd: Mm-hmm [yes].
O'Connor: There hadn't been anybody available in Baker. I'm trying to get back to my sector and clear up calls.

Boyd: Mm-hmm [yes]. Okay. Um, so that's not your typical way of approaching a traffic stop? What you're saying, on this day, you were more in a hurry, because you had other calls and it was a busy day.

O'Connor: In that situation, yes. I am.
Boyd: Okay.
O'Connor: I was trying to get this done, go on to my next call. Or, go to the call, this hang-up and whatever else they're holding. David had a, they'd had a shooting, and IDA had a hostage situation or something. So I knew there were calls holding. And we'd been going back and forth to either of those sectors, so I knew that my call I was supposed to be going to was holding, and there may be other calls. And like I said, at Baker, we were holding calls.

Boyd: Okay. This is just out of curiosity, being a police officer myself, would this be something, I mean was this like a...a stop that you had to make, or could this have been a case of discretion of, "Well, we're so busy today,"
...

O'Connor: The car didn't have any license plates on it.
Boyd: Mm-hmm [yes].
O'Connor: That, to me, was, uh, very suspicious. For a vehicle with no license plates to pass a police car, that seemed strange to me. When I stopped it, uh, I did see a license plate laying on the back deck or what have you, on the back seats. But it wasn't even propped up like people do, with buyer's tag, and propped up where you can see it in the window. It wasn't attached to the window. It was laying on the back, and this was a fairly new car. I think it was a 2006 or a 2007...

Boyd: Mm-hmm [yes].
O'Connor: ...no license plates on it, following a police car, and when the police car moves over, it passed me.
Boyd: Okay.
O'Connor: I thought that was a higher priority than a...than a hang-up call.

Boyd: Okay. Well, that's what I wanted to know. I wanted to know what was in your mind, you know.
O'Connor: It made me suspicious that it possibly was a stolen car. Like I said, no plates on the front, you know, maybe a dealer tag. It passes me, no plate on the back, no dealer tag on the window, which, you know, there again, that's common with the people, with the dealer tag on the window, rather than on the back. I didn't see anything, until I stopped the car. I could see a plate laying in there, but-- and that's what I told him. "This may be the plate, I don't know."
Boyd: Mm-hmm [yes].
O'Connor: I thought it was possibly a stolen car.

Boyd: And do you know afterwards, did...did it come back to that car? Was that the right plate? Did you ever find...?

O'Connor: Yeah, because I wrote them tickets, and I put that plate on...on-- I, I'm sure it did confirm. I guess I did run it, on the car. I don't remember it coming out on the radio. I don't, she never did give me 28 return, that, uh, I can recall.

Boyd: Mm-hmm [yes]. Yeah.

O'Connor: But I guess she sent it to me. I...I think it did come back to the car, because I listed it on the report.

Boyd: Okay. Okay, and then once you made the approach and he asked you why you stopped him and you told him, and then you asked for his license and insurance, and he was kind of questioning the reason for the stop, um, then you...you seemed to just go right to getting him out of the vehicle. And I wanted to ask you, do you think that that was the safest thing to do, to get him out of a vehicle on Mopac, at this point?

O'Connor: If he would have complied with me and gone into the shoulder, yes. I'm standing out there. How safe, I don't think it was safe for me.

Boyd: Mm-hmm [yes]. Well, that's what I mean to-- if it wasn't safe, even for you standing out there, why would you get someone out of a vehicle?

O'Connor: Because he was not giving me any...any identification. I don't know why he...he-- when I asked him the third or fourth time, but the lady that I found out later is his mother says, "Darryl, give him your driver's license," he says, "No." So then I don't know if he's wanted, so my thinking was to get him out of the car, separated from the people, see if he'll give me his name. If not, go get what they say his name is, and try and verify it. Rather than him sitting in the car and give me a name, and then they have-- I'm trying to separate them so that I can verify who he is. He's not giving me a driver's license. I'm trying to verify who he is. I don't want to do that in front of these other people, because then they, whatever name he tells me, they hear him.

Boyd: Okay. So when you opened the door to continue telling him to get out, you pulled your taser out. And is that common for you to pull it out so quickly?

O'Connor: Well, I can't remember ever pulling it out on a traffic stop before.

Boyd: Okay. Were you intending to tase him in the car if he didn't get out? I mean, what was your reason for pulling your taser out?

O'Connor: Because he was argumentative, and I thought I might have a problem.

Boyd: Okay. Did you feel a threat from him?

O'Connor: I was concerned that apparently he had a driver's license and was refusing to give it to me. That's on there. I knew I didn't have a backup. I knew there was no officer available in David. There was no officer available in Baker. And when I made the traffic stop and David asked for

a 75, I knew there wasn't anybody else coming, because nobody else had came up. I don't know if she was checking for anybody, but I knew that I didn't have a backup coming.

Boyd: Okay. Um, now when he's, you know, saying you know, "Whoa! Whoa! Whoa! What..." you know, and you're like, "No, not that. You're going to give me your license and insurance," um, I just want to know if you thought there might have been a better way. That instead of just going immediately to opening the door and pulling out your taser, that maybe there was, could have been a way to de-escalate, through your training, or experience.

O'Connor: Well, I could have stood there and talked to him longer.

Boyd: Mm-hmm [yes].

O'Connor: I was concerned. There's no plates on this car. Possibly, the car is stolen, and he didn't want to give me an ID. Now I'm concerned that possibly, he has warrants.

Boyd: Mm-hmm [yes].

O'Connor: So.

Boyd: Well, did, would an option be to just disengage and back away from the car? I mean, if you're that concerned that it's stolen, or that he's maybe a threat to you, to disengage and call for backup and get more units there before you pull this person out of the car on Mopac.

O'Connor: I didn't say I didn't want a 75. She'd asked for a 75. I hadn't heard anybody come. I don't know if somebody's coming or not.

Boyd: Okay.

O'Connor: Could I have come back and sat in my car and told them, I'm just going to wait for my unit, I guess.

Boyd: Okay. Um. So again, I don't know if I've asked you this yet. When you...when you had your taser out, was it really more of a threat to him, to make sure he got out of the car? Do you know what I mean? Like, what was your taser out for?

O'Connor: In case I needed it.

Boyd: Okay. But again, you know, you pulled it out, "Get out of the car!" was it to kind of threaten him, "You'd better get out. We're done arguing"?

O'Connor: No.

Boyd: Just in case you needed it.

O'Connor: Right.

Boyd: Okay. Um, would you have tased him in the car if he didn't get out?

O'Connor: No.

Boyd: Okay. What would you have done if he didn't get out?

O'Connor: Well, then I would have had to ask, I guess, "Did you find me a 75? I need somebody over here. I've got a non-compliant driver."

Boyd: Okay. Um, and then once he got out of the car, he's still trying to figure out why you're talking to him the way you're talking to him, and um, and you're telling him at the same time, to move to the back of the vehicle...

O'Connor: Right.

Boyd: ...and you pushed the door closed...

O'Connor: Because I'm standing very close to the white line. This is not where I want to talk. I told him, "Move to the back of the car," which then we got the protection from my car, we're going to be on the grass or shoulder. Later on in the stop, somebody did pull up behind us and stop, there on the shoulder. I mean, I...I didn't want to be standing there.

Boyd: Okay.

O'Connor: I didn't want him standing there.

Boyd: Okay. Uh, so why did you use the taser on him?

O'Connor: Because I ^{went on about} want to shut the door, and he said it hit him, and he pushed it back. I...I saw the door come back towards me. I thought he'd pushed the door back towards me. The door is, does shut, and he reaches his right arm up towards me. I don't know what he's going to do, so I tased him. I felt threatened.

Boyd: Okay.

O'Connor: I'm backed up almost to the white line. You can see all the traffic going by in that lane, and the other lanes. I mean, traffic was going by very close to me.

Boyd: Okay. Yeah, that is true. That's evident on the video. Um, but I was wondering, you know, after you tased him, you...you stood there on the edge of the roadway for a long time, until your backup arrived to handcuff him.

O'Connor: I don't want to get there and handcuffing him, because I can't-- that...that trunk on that car is very high. If I were get down and handcuff him, I can't see the two people on...

Boyd: Well, I'm not saying that you should have handcuffed him. I'm like, if you were concerned about being on the edge of the roadway in the first place, to where you had to tase him, but then after you tased him, you just stood on the edge of the roadway, just waiting for your backup...

O'Connor: I'm standing by the front of my car. Yeah. I could have got on the other side of the car, I guess, but I don't-- well, I guess the prongs would reach this far. I don't know.

Boyd: Okay.

O'Connor: I've got, at least next to my car I wasn't standing on the white line anymore.

Boyd: Okay. Um, do you think it was a necessary use of force when...

O'Connor: Yes.

Boyd: ...you tased him?

O'Connor: Yes, I do.

Boyd: Um, is there anything else that you could have done in this situation, instead of tasing him?

O'Connor: I guess I could have stood there and kept talking to him.

Boyd: Okay. And why didn't you? Just why didn't you leave him in the car and keep talking to him, explaining, "This is why I stopped you," you know.

O'Connor: I've explained to him why I stopped him. He was no longer asking why. He was questioning it. He apparently understood why I stopped him. He just thought-- apparently he didn't think I could stop him for that.

Boyd: Okay. Is that common? Have you stopped people for 5 over?

O'Connor: Yes, I have.

Boyd: Often? Okay. How often, uh, did you tase people when you were on Sixth Street?

O'Connor: I've never tased anyone on Sixth Street. I didn't have a taser then.

Boyd: Okay.

O'Connor: I left Sixth Street in 2001.

Boyd: Okay. Um, have you tased people as a Corporal on this patrol shift?

O'Connor: I'm pretty sure that's the first time I've ever used it.

Boyd: Hmmm. Okay. Um, when-- after...after he was taken into custody and put into the back of the car, then you went back up to the vehicle, and I think Corp. Israel was up there. And um, the mother was asking you, "Are you taking him to jail?" And you seemed to just talk over here, demanding the insurance. And then you could hear her say, "See, this is how he's been." Um, at that point, can you kind of tell me what was in your mind, or why you didn't again, slow down, take your time and explain why you're taking him to jail, um, you know, instead, just demanding the insurance, talking over them.

O'Connor: Well, I'm trying to get the insurance. I wrote him several tickets, trying to see if his insurance-- whether he was going to receive a citation of insurance or not. So trying to verify whose car this is. I don't know if that's in his 28, return or not.

Boyd: Mm-hmm [yes]. Okay. But what I'm trying to get across, Tom, I mean, is that the best approach when you're talking to someone? I mean, I'm trying to see if you're seeing if there was any other way to get cooperation from people.

O'Connor: Sure. Everybody could handle it different.

Boyd: Okay. And you watched your video. I mean, how would you describe your demeanor?

O'Connor: Very direct.

Boyd: Okay. And how would you expect, how would you respond to someone being that way with you?

O'Connor: The majority of the people that I stop, when I ask them for driver's license and insurance, they present it.

Boyd: Mm-hmm [yes].

O'Connor: I mean, there's...there's no, why not present the insurance, then ask your question.

Boyd: Right. Okay. So that would be your expectation, that no matter what you're, even if your demeanor is very direct, you would just expect that person to cooperate.

O'Connor: The majority of the people that I stop on a traffic, do cooperate right and present that.

Boyd: Okay.

O'Connor: And...

Boyd: And that's the type of demeanor you...

O'Connor: I'll talk to them.

Boyd: ...approach with each time, very direct and short, if you will?

O'Connor: I don't know.

Boyd: You don't know if that's, I mean, on...on your other traffic stops, you're not sure if that's how you approach?

O'Connor: I don't know. I don't watch my tape after each one. I...I don't know, Cara.

Boyd: Okay. Um, on your use of force form, you marked, "Empty-hand active aggression", based on Mr. Snelling part, and I was trying to see that in the video. Can you describe what he did to make you mark "Empty-hand active aggression?"

O'Connor: Verbally, I believe. I considered his actions to be verbally aggressive.

Boyd: Okay. I think there is, on the form [looking at form], "Verbal resistance aggression," right. Why did you mark that? Well, you did mark that, but what...what's the "empty-hand active aggression"?

O'Connor: ~~When he reached his hand up towards me, right before I tased him.~~

Boyd: Okay. What did Sgt. Lerner talk to you about during your counseling, after he reviewed your video? Do you remember that?

O'Connor: In his office?

Boyd: Mm-hmm [yes].

O'Connor: My demeanor.

Boyd: Okay. And I noticed he sent a memo over to us that you kind of acknowledged some uh, I think "mistakes" is the word he used. Um, so just go over that with me, I mean, what you're seeing on this stop that, I guess you could have done differently next time you're in this situation, or what...what you acknowledged about it.

O'Connor: Well, he said that, yeah-- I could have taken longer, talked to him longer. He thought I was abrupt.

Boyd: Okay. And...

O'Connor: He had some, uh, questions about my position where I stood.

Boyd: Mm-hmm [yes]. And did you agree with him on those things?
O'Connor: I don't agree about not facing the driver. I agree that, yeah, I could have talked to him longer. Maybe I did come across as abrupt. It's 1:10 in the afternoon, and I have [REDACTED] so I hadn't eaten. And that is a problem when you get [REDACTED] is you're, it makes you kind of edgy.

Boyd: Okay.
O'Connor: So that may have played into it.

Boyd: Okay. That's good. I mean, I just want you to be able to explain yourself and articulate.

Murphy: From the video, and I have only seen it once, so bear with me. Was there room to approach the vehicle from the passenger's side, and effect the traffic stop?
O'Connor: Yes.
Murphy: Have...have you used that technique before?
O'Connor: I use that at night a lot. Uh, Sgt. Larner brought that up, and my thing was, then, I'm talking across the passenger, and I can see that there's two other people in there. And I have done with passengers in there, like on I-35. Doing it on I-35, I had a truck stop, and he stopped on the line.

Murphy: Mm-hmm [yes].
O'Connor: So I had to park over, I wouldn't have walked up in the lane, so I walked up, but I don't want to talk across a passenger.

Murphy: Would you suggest that approach to your troops on a busy roadway, if they have room to approach from the passenger's side of the vehicle to do so...
O'Connor: Yes. It's...
Murphy: So they're not in...?
O'Connor: ...obviously, it's a lot safer. And at night...
Murphy: Sure.
O'Connor: ...the same thing. They don't ever see you come up. Particularly, if they're looking in their mirror, well, if you approach up there, so you can come up it that way, if they are waiting for you at the left, or something, you can see it.

Murphy: Right.
O'Connor: I know DPS has used it for years.

Murphy: Yeah. Any reason...any reason this time, why you chose to approach from the other side, instead of the passenger's side?
O'Connor: Because both passengers were on that side.
Murphy: Uh-huh [yes].
O'Connor: For the same reason, I don't want to have to talk across them. I will, like I said, with that-- I had a truck stop on the Interstate, uh, near 290 that just, the shoulder's very narrow and he was too close to the line, so I went up and. But like I said, I don't like to talk across a passenger. If it's loud, like

it was on this time, as it was on I-35, you have to lean into the vehicle sometimes, and...and then-- it is safer, uh, I'd agree.

Murphy: Describe again for me, if you will, Corporal, why the use of force and why tasing this person was necessary. In your mind, what was going through your mind at that time?

O'Connor: I thought he'd pushed the door back towards me. He says the door hit him when it was being shut. And then he started to reach up with his arm. I didn't-- I...I thought he was going to push me.

Murphy: How close were you to him?

O'Connor: Two or three feet.

Murphy: What were you trying to get him to do at point in time?

O'Connor: Move to the back of the vehicle, over to the grass shoulder, and I...I told him that. I told him to get out of the vehicle and move to the back. I told him after I tased him, "Move to the back of the vehicle."

Murphy: And was he moving?

O'Connor: No. He was, leaned up against the-- or, he took a couple, he steps out, well, he stepped out towards me. But at first, when he first steps out, he's, uh, got his back towards the vehicle, or almost touching the vehicle.

Boyd: He stepped out from behind the door, basically, is what you're saying?

O'Connor: Right. And that's when I went to shut the door.

Murphy: What do you consider the definition of empty-hand act of aggression?

O'Connor: Coming towards, with empty hand, a push, a hit.

Murphy: An attempted hit?

O'Connor: Yes.

Boyd: Do you have something?

Murphy: I'm good for now.

Boyd: Okay. It's 10:33. We're going to stop the tape for just a minute.

O'Connor: Okay.

[Break]

Boyd: Okay. The time is 10:39 and we're back on tape. Um, to clarify, I mean we can see it in the video, but the door did hit him when you pushed it closed, correct?

O'Connor: I...I don't know that. He said it did.

Boyd: Okay.

O'Connor: Uh, we watched it several times. It looks to me like it, from when I push it, it shuts. I don't see it ever...I don't see it hitting him. He does move. He twists to his left, forward to his left.

Boyd: We're going to...

O'Connor: Yeah, I put it all the way back...

Boyd: He rewound it. You might want to, once it goes in, Ken, can you fast-forward it just a little bit, because it takes, there's a lot of-- it's the very first thing on the tape, but there's a lot of blank tape before it. And Tom, I...I just wanted to clarify that. Um, I'm not saying that it was your intention to hit him with the door, but we just want to clear up that the door actually did hit him so that he reacted to that. [Videotape plays]

O'Connor: I mean, he, and he didn't take the exit there [watching tape]

Boyd: Mm-hmm [yes].

O'Connor: And that can cause him-- why would you stop on the highway when we passed an exit?

Boyd: Well, and you know you can get on your P.A. and...

O'Connor: We're already past it now. What am I going to tell him now? The next on is at, uh, Southwest Parkway? [Videotape still playing]

Murphy: Is that the tag back left?

Boyd: Mm-hmm [yes].

O'Connor: And it's, like I said, it's not standing up. It was, it's laying down there. When I'm pulling up, I told her I think this is the plate. [Video still playing]. At that time he says, no. [Video still playing]

Boyd: Okay. Um, so it looks like when the door closed, and probably just hit him on the right arm, you know, he-- would you agree that that's, he was like, "Whoa! What are you doing?"

O'Connor: Yeah. I don't know what it was doing. But he told me later that the door hit him. I told my sergeant that. I put it in the report, that that's what he said he was doing.

Boyd: Okay.

O'Connor: I reviewed the tape at the jail before I wrote my report, just from that little, tiny screen, and I...I couldn't really tell.

Boyd: Okay.

O'Connor: I reviewed it later, numerous times, with my sergeant, but...

Boyd: But was it...

O'Connor: ...I don't remember the door hitting...

Boyd: ...your intention to hit him with the door...

O'Connor: No.

Boyd: ...when you pushed it closed. Okay.

O'Connor: I was trying to close the door to keep him out of the...

Boyd: Okay. And when he raised his arm up, you know, you're in a position where you took it as an aggressive act.

O'Connor: Right. I took...I took him, even when the door apparently hit him, as an aggressive act. I didn't know that the door had hit him. I see him stepping towards me, and then he comes up with his arm again, that was, I think two or three seconds. I mean it all flowed together at the time, and I thought he was coming towards me, aggressively.

Boyd: Okay. Um, what we do now, just for an official response on record, is I'm going to read to you the allegations and then you can just give me your official response to it. "It is alleged that on that day, you may have used more force than necessary during the stop, which resulted in his arrest." What's your response to that?

O'Connor: From the way I perceived it at the time, I don't believe I did.

Boyd: Okay.

O'Connor: I thought he was aggressively coming towards me.

Boyd: Okay. Um, and then it's also alleged that your use of force encounter may have been avoidable in light of, you know, established policies and procedures, and your training.

O'Connor: Nothing more specific?

Boyd: Um, basically, with your experience, do you think this use of force encounter could have been avoided?

O'Connor: Anything is possible. Looking back on, in light of it, yes, maybe, now. Looking back after I watched the tape over and over, maybe I could have taken more time. Like I said, it was a busy day. I saw it as a very simple thing, a very simple traffic violation that could have been taken very, care of very quickly, had he presented his driver's license and insurance. We could have both been on our way.

Boyd: Okay. Well, along those lines, if you encountered this again exactly the same, how would you do things differently?

O'Connor: Well, I'm definitely going to talk longer next time, and let the calls hold.

Boyd: Okay. Um, is there anything else that I haven't asked you, that you want to comment on or clarify, something that you want to add that would help?

O'Connor: Well, besides what I have said, you know, the car didn't have plates on, I was concerned about this car, not having plates, passing a marked police car. Concerned when he refused to give me his driver's license. It made me wonder if he was wanted or something, had warrants I didn't know, You know, there's BOLOs issued every day, regarding people ^{and arrests} in cars. I don't know what had come out that day. I don't know if that's why I keyed on the car. I don't know.

Boyd: Well, let me say this, then, Tom. Since you have been able to look at it, and you've seen, you know, maybe you were too abrupt, does it make sense now why he was reacting the way he was? That you know, instead of just handing it over, he's like, "Whoa!" You know. It seemed like you were just kind of, "Just give it to me! Give it to me!" and he never had a chance to say...

O'Connor: I'd...I'd explained to him. I don't see what presenting the drivers license and insurance has anything to do with the stop. Like I said, I continued to talk to him. I will continue to talk to someone. I mean, some people, by the time you're issuing the citation, they're still arguing it.

Boyd: Mm-hmm [yes].

O'Connor: And typically, what I say is, "We're not going to argue it. You're going to receive a citation, and court is where you dispute. We're not going to dispute it on the side of the road."

Boyd: Right.

O'Connor: I don't-- if you've been stopped by a police officer for whatever reason, state law says you're required to present your driver's license and insurance.

Boyd: Mm-hmm [yes].

O'Connor: I mean, it doesn't say, "Until you're satisfied that they stopped you for a valid reason." So he could argue with me all he wanted to, but he should have presented his driver's license and insurance, is my...just, I believe.

Boyd: Okay. Um, and just in...in our General Orders, we have a, it's under Code of Conduct that, you know, we are required or expected to treat all people, um, with patience, um, even when they're argumentative. Um, and I think it even says, "In the face of extreme provocation, we're supposed to maintain a patient demeanor," and I mean, do you think, in this case, that you violated that General Order?

O'Connor: What's the level of patience? I...I don't know. I may have been a little agitated, like I said, [REDACTED] eating lunch. I don't know.

Boyd: Okay. Do you carry things with you to combat that?

O'Connor: Yeah. Now, I carry granola bars.

Boyd: Okay. But on that day you didn't have anything?

O'Connor: Well, I carry-- I mean, I have [REDACTED] and I have [REDACTED]

Boyd: Okay. Uh, did you have it that day?

O'Connor: Yes.

Boyd: But you...

O'Connor: I was going from call to call to call.

Boyd: Yeah.

O'Connor: I hoped that some time after one of those calls, I'd get to stop and eat. I mean I didn't think it was appropriate in the middle of that. And I didn't realize until I was watching the tape with my sergeant, that maybe that's what it was.

Boyd: Mm-hmm [yes].

O'Connor: But there again, I wouldn't have walked back to my car to take a [REDACTED]

Boyd: Mm-hmm [yes]. Okay. Do you anything else [directing at Det. Murphy].

Murphy: Okay. Let me ask you something. If you, as a, basically a first-line supervisor, not even as a corporal, if you had one of your troops in a similar situation, and you viewed a similar stop, okay, would you be concerned also, with their...their approach in maybe not using enough

patience, uh, to explain to this...this driver why...why you were stopping him, or giving him a little bit more of an explanation? Even though you already did explain to him why, some people we have to explain a little bit more. As a supervisor, would you be concerned if you saw one of your troops act similarly to what you did on that day?

O'Connor: After today, yes. Or after this incident, yeah. Because I can tell you this is what's going to happen, or could happen. My belief before was use-- the person can argue with you all they want to, but if they give you their driver's license and insurance, you can write the citation, you can let them cool off while you're back in your car. Some people stay outside the car, and write it, whatever. When you go back up, some people continue to argue it. There are people that leave that it still hasn't been resolved with them. And that, it's again, it's my belief is, "This is not the place to dispute it." You tell them why you stopped them, you tell them you're going to issue them a citation, a warning, or whatever. You try and explain it, you can watch my tapes. I always ask them, "If you have any more questions." And like I said, some people still leave mad, but they realize they can talk to me all they want to. I've told them why I've stopped them. I've told them what action I'm going to take. Disputing is not going to change it. That'll happen in court. Some people are just not going to be satisfied, but...

Murphy: Mm-hmm [yes]. Have you had other people before on other stops, initially refuse to give you their driver's license, and required a little more explanation?

O'Connor: Well, usually when they don't-- I can't recall something exactly or similar to this, usually when they don't, it's been my experience that they have warrants or their license is suspended or there's some reason why people are telling me they don't have any ID. I get them out, I handcuff them, pat them down, "This your wallet?" "Yes." I open the wallet, and there's a driver's license in there. They've got warrants or their license is suspended, typically, 99.9 percent of the time.

Murphy: So in that 99.9 percent of the time that...that they don't give you an ID or say they don't have one, they're still kind of argumentative, or are they just saying, "No, I don't have an ID," or "No, I'm not going to give you one," or do you spend a little more time talking to them?

O'Connor: Well, some of the times, they don't...they don't have a driver's license, or they don't have it, they don't have a license or an ID, don't have any kind of picture ID, I have them get out of the car and I handcuff them until I find out who they are.

Murphy: So that's your procedure every time somebody says, "No, I'm not giving you my driver's license," or they don't have an ID?

O'Connor: Right. And in this case...

Murphy: You get them out and handcuff them?

O'Connor: ...there again, that's why I'm trying to get him to the back of the car.

Murphy: Mm-hmm [yes].

O'Connor: I don't know if for whatever reason, that he doesn't want the people in the car to know who he is, or whatever, I get him in the back. Sometimes that will de-escalate. Now he doesn't have to put up the front. He can come out and tell me, "Hey. That's my girlfriend. I don't want her to know my real name," whatever. It gives him a chance. If he doesn't want to ID himself still, then I can go up and talk to the passengers; "Do you know-- who is this person out of the car?" "That's my brother." "What's his name?" "I don't know." Or, they'll tell you his name. Or they'll tell you a name that he told you to tell them. There again, if the driver gives me one name and they give me another, I know something's up again. I mean it's just, you separate them. I try and identify the driver. If he won't, I try and get the passengers to identify him, find out who the car's registered to.

Murphy: So was that ~~your~~ intent when you asked him to get out of the car?

O'Connor: Yes. ~~That's~~

Murphy: And was that going through your mind when you said, "Either give me your driver's license and insurance, or get out of the car?"

O'Connor: Right. All I'm doing is trying to identify him. And I took it from the passenger, which apparently was his mother, that he had one, because she says, "Give him your driver's license, Darryl," or I guess, she says the first thing to him, "Give him your driver's license," and he says, "No." So at that point, I'm believing, "Well, at least he maybe has one, but he's refusing to give it to me." It made me wonder why. Is he wanted? Is he suspended? I don't know what.

Murphy: Have you attended any training in verbal judo? They have a class. It's called Verbal Judo. Or have you attended any of that training?

O'Connor: I went to one, something like that. I don't remember what it was called, but they show a tape on there, the one from Maine, where the guy is just yelling and screaming, and tears the ticket up. I don't know. It was a class. Some doctor came and presented it. I don't know if it's, I don't know if it's called Verbal Judo, but it was something along those lines.

Murphy: Similar to that?

O'Connor: Mm-hmm [yes].

Boyd: Okay.

Murphy: Training...?

O'Connor: Yeah. And I went through this training, The Use of Force, the Court of Public Opinion, or something. It's got a thing in there about a similar situation, where a guy's uncooperative like that and is tased. This is the case.

Murphy: Is that the most recent class, taught by Todd Bircher?

O'Connor: Mm-hmm [yes]. Yeah.

Murphy: This year?

O'Connor: Right. It started out for supervisors and now it's been made available for everybody.

Boyd: Okay. Well, we'll-- do you want me to keep this for the case jacket?
O'Connor: Yeah, I do.
Boyd: Okay.
O'Connor: Have you all been to this?
Boyd: Yeah.
Murphy: Yes.
Boyd: We went to the inaugural one, I guess.
O'Connor: I thought I was the one that went to the inaugural. There's a thing in here...
Boyd: Well, they've...
O'Connor: ...one of the slides so...
Boyd: ...presented it to Internal Affairs first, I guess.
O'Connor: 244, and then that's somewhere along in here, where that comes out.

Boyd: Okay. And I actually have-- well...
Male: Yes.
Boyd: ...if...
Male: Go ahead. That's a copy.

Boyd: Yeah. Let me keep this, because I think ours was different. Because they revamped it after we sat through it...
O'Connor: I went right before or right after this. I think it was right after ^{this incident(?) 200} a suicide. I ²⁶⁵⁷ went in November, I think.

Boyd: Okay. All right. Um, the last thing I need to tell you is that we'll transcribe this tape and when it comes back, you'll be asked to come back in and review it and sign it, and make any corrections that need to be made, and then that will be your formal statement for the case jacket.
O'Connor: All right.

Boyd: Okay. If you have any additional information or comments at that time, we can get them on the record, as well. Um...

Murphy: And I have one more thing. Just very quick. I'm sorry. You had said that you'd be concerned if you saw one of your troops, uh, in a similar situation and they acted the same way. What would you advise to them be?
O'Connor: Slow down. Yep, I...I could have stayed there longer and talked to that guy, could have asked him more times. I could have asked another officer-- I know there was nobody available in David. When I made the traffic stop, I heard Dispatch ask for a unit to come back me up. Nobody responded. I knew there was nobody in David. I knew there was nobody in IDA. I knew there was nobody in Baker. Hopefully, she was checking for the surrounding. I could again have told her, "I need a 75," or, "Who is my 75?" Checked on if they're coming. I was trying to clear up, uh, considered possibly-- like I said, I was concerned because there weren't, the plates weren't on the car. He passed me. Uh, I was concerned. He wouldn't give me an ID. But I want to get on my other calls. I wanted to



clear the calls. Customer service to him may have suffered for what customer service I was trying to do for the rest of the city. But I have told people that before, "You need to slow down. You take one call, you take the one call and handle it. And if it takes you what seems like a long time..."

Murphy: Would there be any...
O'Connor: ...that's better than coming up here."

Murphy: Yeah. Would there be any other advice, or that's pretty much it, just slow down a little bit?

O'Connor: Yeah. Well, and you can see when Derrick comes up, he goes up there, you know. I don't know where he'd been to before, what calls he'd been on, but when he comes up, he, yeah, he does. They like talking to him more than they like talking to me. So another officer come up, could have done the same thing. I could have let them go up and talk to them, a tag team, whatever. I don't know.

Murphy: Okay.

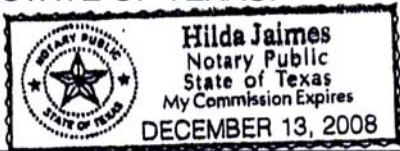
Boyd: Okay.
Murphy: Thank you.

Boyd: Okay. The time is 10:57. The interview is concluded.

Thomas O'Con 2654
Corporal Tom O'Connor

SUBSCRIBED AND SWORN TO BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS THE 29 DAY OF March, 2007.

Hilda Jaimes NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.



COMMISSION EXPIRES.

06-635 TO

I have been offered a copy of my statement

Accepted Refused
Thomas O'Con 2654 3-28-07
Signature Date
Hilda Jaimes 3-29-07
IA Staff Member Signature Date