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Personnel Investigation Case 2005-043

Mandel: This is Sergeant Sean Mandel. Today is August 17, 2005. It's approximately 1:25 p.m. In my office is Officer Ken Hardy, his attorney Rich Radabaugh, Sgt. Grimes and myself. I'm going to be asking questions of Officer Hardy in regard to Internal Affairs investigation 05-043. Let the tape reflect that Officer Hardy, prior to the tape being turned on was presented a copy of the Garrity Advisement. He read and understood the Garrity Advisement and said he would answer the questions that are asked of him today. Mr. Richard Radabaugh was present for that and signed the Garrity Advisement as a witness and I'm going to begin the questioning.

Officer Hardy, what was your assignment prior to being temporarily assigned to DLS?

Hardy: I was on the Gang Task Force at Sand Creek.

Mandel: How did you get selected to be involved with the Gangnet Task Force?

Hardy: I think Sgt. Jensen was in charge of that and we had to submit names to the lieutenant or somebody and they selected officers that they wanted to participate. It was voluntary.

Mandel: So you volunteered and were selected to participate in that?

Hardy: Yes.

Mandel: And do you recall working as a task force member on the second of July of this year?

Hardy: Yes.

Mandel: Why don't you tell me about your assignment or your mission that night?

Hardy: My assignment that night, we had a lot of gang shootings and weapons and stuff with a lot of gang activity. We had a lot of homicides recently in the Sand Creek area and throughout the City. I was assigned with Officer Jackson Andrews as a Baker car and we were to go to La Jazz Affair and some of the local clubs and conduct gang FIRs and check on people that had traffic violations.

Mandel: Did you guys have a line up before going out onto the street that night?

Hardy: Yes.

Mandel: What was told to you during the briefing?

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Hardy: I didn't write anything down but we talked about who we're looking for. We talked about some gang activity that we needed to be ready to be responsive and respond to wherever somebody called for help.

Mandel: Was that line up conducted by Sgt. Jensen?

Hardy: Yes I think so.

Mandel: Do you recall if Sgt. Jensen ever mentioned to you that there was an emphasis being placed on making arrests, rather than giving verbal warnings as members of the Citywide Gangnet Task Force?

Hardy: I believe he said that you know our, our responsibility was to make arrests not just verbal warnings and collect information on gang members.

Mandel: Do you recall what shift you worked that night, what time your shift began?

Hardy: That was almost a month ago. I want to say I normally came in at 5:00. I think I had to report at 5 or 8, somewhere around there and we got off at 3, yeah I think we got off normally at 3.

Mandel: Why don't you tell me a little bit about the shift and the activities that you and Officer Andrews conducted that night, if you can include everything that you remember, traffic stops, community contacts, FIRs, case reports or anything like that?

Hardy: I don't have my log sheet so that was almost a month ago. It's kind of hard.

Mandel: Anything that you can remember, it doesn't have to be...

Hardy: I know we did some earlier that day, Jackson and I did a stop of some guy over near Pikes Peak and it was actually some kind of gang party that was going on for some gang member that had been killed near Hancock and Pikes Peak by the 7-11 over there by the park, so we were sitting up there I think for a while that day and I think we got our car and we went, we got out kind of late so we went out to see what we can, you know, observe cause the clubs were about to let out and then we did a, I don't know how many traffic stops we did that night but we were going to the La Jazz Affair and we saw this one particular car with no license plate on the front so Jackson did a u-turn and we got behind it and we stopped it.

Mandel: And this was a traffic stop near Fountain and Donovan, correct?

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Hardy: Yes.

Mandel: Why don't you tell me about that stop?

Hardy: Well we were going eastbound on Fountain at Circle and Jackson and I both saw this car with a license plate, no license plate on the front, I don't know if it was stuck in the window or if he just didn't have one but didn't have a plate and as we drove past the car they looked at us and I says, you know, they looking at us so, we made a u-turn. Jackson, he was driving, he activated the lights. The car pulled over immediately. We ran the plate. You know we're going on a traffic stop and we finally got out of the car, Jackson contacted the driver and I walked up on the passenger side. So I was watching the two passengers. There was a front passenger and a rear passenger and from there Jackson asked for identification from the driver. I think he said he didn't have any. I asked the front passenger and the rear passenger for identification and both of them said they didn't have any so I pulled out an FIR and I wrote down their information on an FIR and the guy in the back told me his name was something else. The guy in the front gave me his name but he gave me a birth date that was like a year off and I remember because I wrote it down so we went back to the car. We ran them in NCIC with the MDC and nothing came back except for the driver. So the two guys didn't have anything and it was like they don't exist so okay, so I started getting um, we've go to watch these guys because these guys are, I mean they were all dressed down. They had hats to the side and they were leaning in the car which was to me, you know, it was kind of like they were using gang tactics. They were acting like gangsters. So I watched them. After we came back to the car, you know, Jackson had the driver step out and the other two guys were still in the car so I watched them. Jackson secured the driver. Told him he had warrants for his arrest. He placed him in the car and he asked the driver something back there if he could search the car or something and the driver said sure and the other two guys are still in the car so I was watching them when Jackson came back up. He says the driver gave consent to search so you can search. I said okay, why don't you watch these two guys and I will do a search. So the car was parked facing west. The two guys stepped out of the car. Jackson, I patted down the big guy, which is called Dead Mike or Big Mike, whatever his name, he's like 260 maybe 265, I don't know. That guy, both of them got out of the car. I don't know if Jack pat the other guy down. I didn't. So, he asked him to have a seat on the curb. And I think they did and I started to search...

Mandel: Let me stop you real quick. To this point other than them possibly giving you a fictitious name and you kind of got that going in your head that these guys aren't who they say they are or at least their date of births or something wrong.

Hardy: Yes.

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Mandel: Any other problems besides maybe the way they're dressed or their attitude but have they given you any indication that they were going to act up towards you?

Hardy: Well, Big Mike was kind of like you know (inaudible). He didn't really was not uncooperative but you could tell they both you know they had attitudes. The guy in the back seat, Delvikio, he was a little nervous, I mean his hands you could look at him he had all the tell tale signs of saying you know shoot, they just wouldn't, he was just jumpy which made me very on edge and I was like well there's something that ain't right here so I started my search. I did the driver's compartment first. The driver's seat area and when I looked over at the door I saw the panel removed and I saw a clear plastic baggie with some marijuana in it. So I removed that and I was like okay we got marijuana and Jackson was still standing over there with those two guys.

Mandel: Do you recall the amount of marijuana?

Hardy: I don't know, I don't know what I did, well I gave it to somebody because somebody else charged him. I don't know if I did or somebody else but it was a...

Mandel: A misdemeanor amount?

Hardy: Yeah. So I collected that and then I was still searching the front seat and I found a big pocket knife that was under the arm rest stuck between the seat and I'm like okay I got a weapon so found that knife. I secured all that stuff. Jackson's still over there. I went back. Started searching the back behind the driver and I'm looking. I got my flashlight out too because it was dark. I have a long flashlight so I'm looking and I looked under the seat, looked under the seat, didn't find anything. I looked under the head rest. I was looking. They had little compartments that had been pulled out by the ashtray so I looked in there, didn't find anything else on the driver's side front or rear after the marijuana and the knife. After I started searching the right rear passenger's seat, Jackson's still standing between these two guys and he was just trying to get information from them. I stuck my hand down in the back seat and I felt something. I was wearing gloves and I pulled it out. It was a credit card, a Colorado driver's license or ID card and I shine my flashlight on it and it had this guy's face of the guy that told me his name was Odom or something.

Mandel: I think Demarcus Odom.

Hardy: Yeah. So he, I stopped my search at that time and I removed those items and I went to, I had my back to Jackson and these two guys. Jack was kind of in the middle like where Sgt. Grimes is and I stopped what I was doing. I turn around and I indicated to Jackson, I said this guy isn't who he says he is, put your hands behind your back you're under arrest and immediately the guy put his

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hands back, I had my flashlight still in my hand and when he put his hands back like that I grabbed him and as soon as I touched his hand, he spun on me. I grabbed his shirt and I was immediately trying to take him down to the ground because this big chubby dude, Dead Mike was right there, I mean he's a huge dude. My intention was I struck him on the shoulder blade back here because that's where I wanted to take him down.

Mandel: And you struck him with?

Hardy: My flashlight. So I still had my flashlight in my hand. I didn't wind up and do some of this stuff but the whole time this guy, I couldn't see when he took his hands away I was still holding his shirt and he was actively when I told him you're under arrest, stop resisting, his hands were going near the front, you know I hadn't patted him down so I didn't know, I already found one weapon, some drugs, so I didn't know if he had anything so what I did was I was still holding his shirt, I struck him one time on the shoulder blade and I'm holding onto him and telling him stop resisting you're under arrest and then as I'm holding onto him, his head was coming back and he's still trying to run and I was like oh no you're not, you're not going to fucking run from me and I grabbed his shirt and then when I found out that he was actually bleeding when I took him down to the ground, after I had a hold of him, I took him down to the ground and I saw his head and he was bleeding and I called for medical and called for cover and asked for Code 1.

Mandel: Let's back up a little bit. When you go to first place him under arrest you have him put his hands behind his back, Mr. Faulkner correct?

Hardy: Right. Yeah.

Mandel: And then you describe you have the flashlight in one hand and you go to grab his hands.

Hardy: Right hand.

Mandel: Right hand and you grab his hands with your left?

Hardy: Yes, like that.

Mandel: Now when you say he spun did you take it that he was spinning as a threat or was he attempting to flee at that point? What was your reaction to his physical...

Hardy: I didn't know what his intention was but my intention was to arrest him and get him to the ground because again the chubby guy was still standing over there. I didn't want to get Jackson or myself in a situation where we had to fight

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these two guys plus there's still one guy in the back of the car. My intention was to take this guy down to the ground by striking him with blows to his shoulder blade which I learned as a PR-24 instructor and hopefully he went down. I didn't expect this guy to just you know react that quick and my weapons were still exposed to him so I only had one hand, I had my flashlight in this hand and I was trying to take him to the ground as fast as possible.

Mandel: So you struck him the one time, as soon as he made a move and you can't classify whether he was making a move towards you or away from you is that what I understand?

Hardy: It was, when I grabbed his hand he was spinning towards me.

Mandel: Towards you.

Hardy: And his one hand had already slipped out so I didn't see, he had on baggy clothes, his hands were up here so I couldn't see his hands. It was dark and it was on a corner and I didn't have a choice but try to grab him and take him down to the ground.

Mandel: So you never lost control, I mean, obviously you lost some control of him but physical contact with him.

Hardy: I lost control of his hands. I lost control of both of his hands when he broke away and all I had was a piece of his shirt and I had my flashlight still in this hand.

Mandel: And your first strike as an attempt to hit him in the shoulder?

Hardy: All my strikes were an attempt to hit him in the shoulder.

Mandel: Do you recall if that first strike hit him in the shoulder or the head?

Hardy: I believe it hit him in the shoulder.

Mandel: You believe it hit him in the shoulder.

Hardy: Yes.

Mandel: And what was his reaction to that first strike?

Hardy: He was still pulling away so he didn't like just you know go oh you got me, no I said hey, you know, stop resisting and when I struck him the first time he was still actively pulling away.

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Mandel: And you believe that the first strike was in the shoulder?

Hardy: Yes.

Mandel: And then he continued to physically either resist or flee from you?

Hardy: Yes.

Mandel: What was your next move after that?

Hardy: After I struck him?

Mandel: Um, hum.

Hardy: Well I struck him again and I was aiming for his shoulder blade and he was you know while I'm holding he's leaning his head back and I don't think my flashlight hit him on the top of the head, it hit him on the side cause I didn't, I didn't get a chance to do any wind up or anything, it was really close. When I got out of the car and approached this guy, I just went straight to him and told him what I had and Jack didn't have time to react.

Mandel: So you delivered a second strike correct?

Hardy: Yes.

Mandel: As he's physically maneuvering. Do you recall where that second strike landed?

Hardy: My target area was his right shoulder blade because that's how, I had my flashlight in this hand and if I didn't have my flashlight I still would have struck him with my forearm on the shoulder blade because that was my intention but when he started what he did you know I didn't think it happened so fast, I've got my PR-24 or my gun and my TASER exposed, I didn't have, my intention was to get him on the ground as fast as possible so.

Mandel: So you don't recall where that second strike landed?

Hardy: Well after he got on the ground I saw he was bleeding so it must have hit him on the side of the head.

Mandel: And your intent for the second strike was to gain control of him is that correct?

Hardy: My intent was still to take him down to the ground so I still hit him. I was aiming for his shoulder blade.

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Mandel: I have a chart here. Would you consider your flashlight as an impact weapon?

Hardy: Yes.

Mandel: Similar to your baton?

Hardy: Under extreme circumstances yes.

Mandel: And that's the way you were using it that night to control Mr. Faulkner?

Hardy: Yes.

Mandel: Let the tape reflect that I'm going to show Officer Hardy a Monadnock Baton Chart and Officer Hardy if you could just point to the area where you were attempting to strike Mr. Faulkner.

Hardy: Right up here would be the shoulder blade area 17, which is a green target area.

Mandel: And why don't you explain what the green target area as you know it.

Hardy: A green target area is a legal striking position where you could strike a person with a PR-24 or in this case an impact weapon so it's a safe area that is not considered a deadly area using force on a person.

Mandel: All right. Thank you. And we've gone over two flashlight strikes to Mr. Faulkner. The first one you believe landed on the shoulder area, in the green area, the second area you were aiming for the shoulder area which is also the green area but you may have hit him in the head, which is a red area correct, unintentionally struck him in the head.

Hardy: According to the chart, the red area is the head and that was not my intentional area that I was striking. I was striking for his shoulder blade.

Mandel: The same area where you landed the first strike.

Hardy: Yes.

Mandel: How many times did you actually strike Mr. Faulkner and we've covered the first two, how many other times?

Hardy: I think I only struck him about three times because it all happened so quick and I was really close to him so it was boom, boom, boom and that was it

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so it wasn't again a wind up from here or anything like that it was just when I went to him and I tried to get him down to the ground, that was my intention and he just he put his hands back and he broke away, I didn't know what his intentions were but my intentions were still to arrest him even after I told him I grabbed his shirt he, he was still actively you know and I'm still holding on hitting him in the shoulder blade, my intention if he got hit in the head it wasn't my spot, my target area. I was aiming again for his shoulder blade and of course his head turned, you know, there's an opportunity for him to turn, it's not like he's just standing here going hit me, hit me, cause he was actively resisting.

Mandel: So they were successive strikes, there wasn't a break, say the first strike, boom, wait and see what he does and then a couple of more strikes.

Hardy: I don't know it happened so quick cause I was still holding him so I only had one hand and his hands were free so.

Mandel: Do you feel that the level of force you used at that point to control Mr. Faulkner was appropriate?

Hardy: Yes, under the circumstances that were astringent and according to the Use of Force policy sometimes I didn't know if this guy had a weapon or not. I had not pat him down. I found one weapon, found some drugs and I personally had not pat him down. Again, I was going to take him into custody and take him down and then I was going to conduct my pat down so I didn't know what was under his shirt.

Mandel: At what point did you stop or de-escalate that level of force?

Hardy: When he stopped resisting and I told him to go to the ground. He went to the ground and by this time he was facing east on Fountain and then once he went down, I had my hand on his back, I was going don't move, put your hands back here and Jackson took out his cuffs and handcuffed him and then I saw the blood, he's a really dark skinned fellow too and I saw blood coming from his head so I called for medical and more units and Code 1.

Mandel: Do you normally consider someone who's attempting to flee, and I'm not saying this is exactly what Mr. Faulkner did but someone who's just attempting to flee, not necessarily resisting arrest or making any threats toward you in an aggressive manner, do you normally, do you consider that a threat if someone's just attempting to run from you?

Hardy: I don't understand your question.

Mandel: Say you've got somebody you're trying to arrest.

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Hardy: Yes.

Mandel: And they just take off running, they don't physically do anything to you, they don't you know get aggressive towards you in any manner, they just take off running, flee, try to escape do you take that as a threat towards you?

Hardy: No.

Mandel: So Mr. Faulkner was doing something on top of that.

Hardy: Yes.

Mandel: Than just running.

Hardy: When he made that spin, you know, towards me, he broke his hands loose, that left a lot of opportunity for you know for him to grab one of my weapons and I had not pat him down again so I didn't know if he had a weapon.

Mandel: Are you familiar, we'll just kind of go over some of the policies that kind of pertain to this incident, are you familiar with policy 710.3 relating to the Use of the Baton? And I have a copy of that that we could look at.

Hardy: 710, I've got one too. Which paragraph again?

Mandel: .3.

Hardy: .30 or is it...

Mandel: Yeah, .30.

Hardy: (Reads the following from General Order 710)

.30 Use of Baton

Only the Monadnock PR-24 or an equivalent which has been approved by the Chief of Police or his/her designee may be carried. Only those personnel who have been trained and are currently certified by the Colorado Springs Police Department may carry and use the PR-24 or its equivalent. Training and certification standards are listed in G.O. 1737, PR-24 Baton Training.

Batons shall be used only when necessary and after other reasonable efforts to control a violent person have failed.

Mandel: OK. Let's stop there and address that. What other responsible efforts did you do to control Mr. Faulkner prior to striking him with the flashlight and we've already discussed that you consider the flashlight similar to the baton as

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an impact weapon and you used it because you had it in your hand and it was available to you is that correct?

Hardy: No, I used the flashlight because I didn't have any other weapons in my hands at that time and the furtive movement that Mr. Faulkner made. When I told him, it was dark out so my flashlight was being used to light up the area anyway.

Mandel: Right.

Hardy: Mr. Faulkner was told to put his hands behind his back and when I contacted his hands my intention again was to take him to the ground and he spun. He pulled his hands out and I'm behind him, he's, he's a little buffy guy but my intention was to take him to the ground and cuff him as fast as possible because the other big guy was in the front of the car and Jackson was dealing with him.

Mandel: OK. Let's get back to that sentence. "The baton shall be used only when necessary and after other reasonable efforts to control a violent person have failed." Before you struck Mr. Faulkner with the flashlight, describe the reasonable efforts that you did to try to control him.

Hardy: OK. Under GO 705 Use of Force Continuum, I was using Soft Hand Control techniques when I grabbed his hand to attempt to place cuffs on him. I never even got my cuffs out and it also says when a subject fails to respond to verbal directions, which I gave him, verbal commands to stop resisting, don't do this, I told him to place his hands behind his back he was under arrest, he did not comply until I actually got my hands on him. He failed to respond to my verbal directions and he resisted in a defensive manner that was to me, by spinning and pulling his hands out.

Mandel: OK. Going further down in the same General Order –

A person shall be struck with a baton only when it is absolutely necessary for the officer's safety.

Did you feel that it was necessary in this situation for your officer safety?

Hardy: Not only my safety but Officer Andrews' safety as well because Dead Mike was over 260 pounds and we already had one guy in a car and it was dark, there was people coming up from different places watching us and yes, it was necessary at that point in time.

Mandel: And this one we've already covered but I want to go over it again so we get it clarified and get it clear on the tape.

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A baton shall not be intentionally used to strike a person above the shoulders unless need for use of deadly force is indicated.

And you've already told me at least once or twice that you're aiming point was the green target area.

Hardy: Yes.

Mandel: On the shoulders and if, well, we know, Mr. Faulkner was stuck in the head at least twice.

Hardy: Yes.

Mandel: If that was the case that was unintentional. You were still aiming for the green area on the shoulders?

Hardy: Yes I was.

Mandel: OK. Let's look at a second General Order and this one is 765 and it's Force, Detention and Arrest, Resisting Arrest.

Hardy: 765.

Mandel: If you want to just read paragraph .04 the headline is Policy.

Hardy: (Reads from General Order 765.04)

When encountering resistance to, or interference with, legitimate law-enforcement efforts, officers may use that reasonable and appropriate physical force which is necessary to effect an arrest, prevent an escape, or defend themselves from the use of, or imminent use of physical force by others. The nature and degree of force used by officers must be in direct response to the actual or imminent use of force being used against them, and must cease after the offender has been rendered incapable of further resistance. Use of physical force should also comply with the Use of Force Continuum using the Situational Force Model shown in General Order 705

which I just read one particular paragraph .20 Use of Force Continuum.

Mandel: And we talked about this earlier. Do you feel that you de-escalated or stopped or slowed down the use of force at the appropriate time during the arrest of Mr. Faulkner?

Hardy: Yes. Once Mr. Faulkner was not resisting any more and I had control of him, I had him to the ground, I did not strike him any further. I did not rough handle him or anything. He was placed in the handcuffs and medical attention and additional units were called.

Mandel: And the physical force you used, mostly the strikes with the flashlight...

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Hardy: Yes.

Mandel: ...you felt it was necessary to effect that arrest or prevent him from escaping?

Hardy: I felt it was necessary at that time because of my safety and Officer Andrews' safety and the big 260 pound guy that was sitting down on the ground for me to detain and arrest Mr. Faulkner. I had probable cause for arrest, yes.

Mandel: OK. Let's look at one more, Officer Hardy. It's 705 and that's the Use of Force Continuum.

Hardy: Yes.

Mandel: There's certain circumstances in this policy and I just want to go through these with you to see if they apply. It's under .60, Special Circumstances.

Hardy: .60 Special Circumstances, yes.

Mandel: It says –

Some circumstances may cause the officer to escalate very rapidly through the continuum:

Let's go through these circumstances to see if they apply to the arrest of Faulkner and we'll just go through these real quickly and see if they applied in your mind during the arrest of Faulkner.

Hardy: Yes.

Mandel: (Reads from General Order 705.60)

Imminent Danger: The officer responding to a call, having reason to believe that the subject may be armed, must be prepared to immediately escalate to the appropriate level of force.

Now you say found a knife during this search of the vehicle.

Hardy: Yes.

Mandel: You also indicated that you had not yet, you yourself, had not done a pat down search of Mr. Faulkner or I believe it's Armondo Spriggs, who's the other individual.

Hardy: I did Mr. Spriggs. I didn't do Faulkner.

Mandel: So you patted down Mr. Spriggs.

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Hardy: Yes.

Mandel: And you were fairly certain that he didn't, wasn't armed.

Hardy: Well I wasn't, he's a heavy dude. He was wearing some real baggy shorts so he still could have had something between his leg but when I patted him he, I didn't find anything.

Mandel: Were you comfortable with your pat down search of him?

Hardy: No.

Mandel: So it was a real fast pat down search?

Hardy: Yes and he was being watched and his hands were out. Jackson was watching him and my imminent danger - I had already found one weapon in that car and didn't know who else was carrying a weapon. I already found some marijuana in that car so I didn't know if any of these other guys still had more weapons on them.

Mandel: And you also didn't know their true identity so you didn't know if they had any armed and dangerous tags along with their names or anything like that.

Hardy: I've never met these guys before, don't know them from anybody and they both gave me false information so I had, I had some feelings when I ran them that they weren't who they say they were because the computer came back and says they don't exist so.

Mandel: Second bullet under that .60 is -

Special Knowledge: The officer knows that the person to be contacted is under the influence of alcohol/drugs, suffering from diminished mental capacity, possesses a special skill, has assumed a defensive position through body language or anything that may make the person a greater threat.

Hardy: The heavy set guy was, I mean he's huge. He goes by Dead Mike so Jackson was watching two guys when I found this ID card. Mr. whatever, Owen Delvikio I had special knowledge that they had both given me false information. Why? I did not know and again when I found his ID, if I hadn't found his ID, they were going about their own business but I did have some knowledge and it kind of made me a little observant because he was kind of moving around too.

Mandel: Did you smell any alcohol on these guys during the contact?

Hardy: When I got them, when I first contacted them on the passenger side, I didn't really smell any alcohol but I did smell some marijuana.

Mandel: And you did find the marijuana in the car?

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Hardy: Yes.

Mandel: (Continues reading from General Order) -

Injury/Exhaustion:

Were you overly exhausted, obviously the strikes came before the struggle when you hadn't been on a foot pursuit, and that's kind of what this pertains to but I want to get your feeling on the way you felt physically that night. Did you feel fine? It was a normal shift. Got the proper rest the night before, things like that.

Hardy: Well I had plenty of sleep because when I was working that particular shift I'd sleep until late at night because I know that working at night requires your alertness so I had plenty of sleep. After that little struggle with Mr. Odom or whatever his name was, Faulkner, it was a little, I'm in shape and he was in shape too, he was a little buff guy so.

Mandel: The next bullet is -

Proximity of the Officer's Firearm: The officer must use appropriate force to protect his or her weapon and other police equipment that may be used as a weapon.

Does that apply?

Hardy: Yes.

Mandel: And you've kind of gone over that that during the struggle you were protecting your weapon and keeping...

Hardy: Well during the struggle I had one hand on the back of this guy's shirt and he had both hands free. I could not see the front of his shirt. I didn't know what he had on it. I hadn't patted him down so he could have easily had a weapon there. He could have, his hands were free...

(Tape ends. End of Side A)

(Side B of tape)

Mandel: We're on side two and it's about 1:57 and we were going over the Special Circumstances and Officer Hardy I'll go over Multiple Subjects again.

(Reads from General Order) -

Multiple Subjects: When an officer faces multiple subjects, a greater amount of force will be needed to protect the officer and to control the subjects.

Does this apply?

Hardy: Yes.

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Mandel: And you've already indicated that there was a large sized individual, Armondo Spriggs who was out there and there was another person, the driver.

Hardy: Yes.

Mandel: I believe Cory Mitchell possibly was his name and he was in the back of the cruiser. OK. Why don't you describe the flashlight that you used and that you normally carry?

Hardy: Well because of my small stinger light on the back of the stick, I have to carry my large one and it's the long one and it's pretty long.

Mandel: Is it the stream light?

Hardy: No it's a regular Mag Lite.

Mandel: Mag Lite?

Hardy: Yeah.

Mandel: Is it the issued Mag Lite?

Hardy: Yeah I think it's the long one. We're given the long one, it's a long issued Mag Lite so I have a holder that I keep it in. It's actually on this side so.

Mandel: And it's the one that takes what four D batteries? The big, big...

Hardy: Yes. Yes.

Mandel: OK.

Grimes: Metal or plastic?

Hardy: It's metal. And it's been dropped a couple of times so around the top, the bottom, it's got some rough edges so.

Mandel: Sgt. Grimes do you have anything to add at this point or any questions to ask of, we're not done yet but I wanted to know before we get off the subject if there's anything you want to ask, clarify?

Grimes: I have a couple of questions, Officer Hardy. You and Officer Andrews were a Baker car.

Hardy: Yes.

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Grimes: You pulled a traffic stop on this car. How many guys are in the car?

Hardy: He pulled the traffic. I was, in the passenger seat in the patrol car, yes. There was three guys in the car.

Grimes: Three guys in the car.

Hardy: Yes.

Grimes: And at one point in your interview, you indicated that when you were trying to control Faulkner outside the car there was still a guy in the back seat?

Hardy: He was in the back seat of the police car.

Grimes: Oh, a police car.

Hardy: Yes. He was the driver, Mr. Miller, he had already been secured. The other two guys...

Grimes: So he wasn't in the back seat of the suspect vehicle?

Hardy: No, he was in a cruiser.

Grimes: Was anybody sitting in the suspect vehicle when you were searching it?

Hardy: No.

Grimes: And you said you were taking Faulkner in custody, can you articulate what charge you were going to charge him with?

Hardy: Well my initial charge was Criminal Impersonation because he gave me a fictitious name that didn't exist on the MDC and he didn't show up in Colorado (inaudible) so it was Criminal Impersonation and then these guys changed the charge to Resisting.

Grimes: And you said after his hands were behind his back, you grabbed his hand and at that point you were going to take him to the ground?

Hardy: At that point I was going to cuff him. I still had my flashlight. I was going to put my flashlight here and hold it because it was still dark. My cuffs are here so I was going to hold his hand, to still hold him but I was going to take my cuffs out because I had this hand and I was going to cuff him. Now this hand before he broke, I didn't get to the cuffing part if he had just, you know, cooperate I wouldn't even had to (inaudible).

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Grimes: But you had just mentioned you were going to take him to the ground, I was just wondering if you were going to take him to the ground and handcuff him or handcuff him and then take him to the ground.

Hardy: No I was going to cuff him first and then take him to the ground.

Grimes: And how were you going to take him to the ground after you handcuffed him?

Hardy: Well if he had cooperated, I would have had him get on his knees and if he had you know not done what he'd done, I wouldn't have had to strike him on the shoulder to make him go forward to go down.

Grimes: And his furthest movement when you grabbed his hands and he spun around or made that spin move.

Hardy: Well he didn't spin you know all the way, I grabbed his shirt so he's actually turning and I'm here like go down, go down and he was still going back while I'm still holding on. Now both of my hands are occupied so. You know and I told him he wasn't you know running from me so.

Grimes: Do you believe he was making that movement to turn and attack you or to flee?

Hardy: I don't know what his intentions were. I was more concerned at that time getting this guy secured. I didn't want to get in a fight with him and this other big guy that Jackson was watching so it was two on two but that other cubby guy was you know and there was other people starting to stand around too so.

Grimes: And at this point is it still you and Jackson Andrews are the only officers on scene?

Hardy: Yes.

Grimes: That's all I have.

Mandel: Moving on. Have you discussed the arrest of Mr. Faulkner and the use of the flashlight to culminate the arrest or make the arrest with anyone outside of the department?

Hardy: Outside of the department?

Mandel: Outside the department, friends, family, girlfriend?

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Hardy: I haven't went into specifics. You know, I said that I may have to talk to IA about a flashlight incident, that's about it.

Mandel: And who did you discuss that with?

Hardy: I discussed it with my ex-girlfriend, who's Sylvia Watkins, who I'm going through a domestic with and some other allegations. I didn't specifically tell her anything. I didn't share any information with her cause I think that night after I got off I went over to her house and she asked me what was wrong. I said I had to use force on a guy. I didn't talk specifically about a name or anything like that.

Mandel: Did you go into detail about how many times you hit him or he had to get stitches or?

Hardy: No.

Mandel: Or put him in the hospital or anything like that?

Hardy: No.

Mandel: OK.

Hardy: Cause I, you know, I actually never saw the guy. I didn't know if he'd gotten stitches because I didn't look at their reports until recently so.

Mandel: On that same topic, have you ever suggested jokingly or not that Sylvia Watkins would get the same treatment that you gave Mr. Faulkner?

Hardy: (Laughing). No.

Mandel: OK.

Hardy: I mean this girl has been a friend of mine. I've known her since about '98. If I wanted to cause any kind of bodily harm to Ms. Watkins I sure wouldn't have to use a flashlight. I mean she only weighs 105 pounds. If I was going to hurt her physically I could have done it a long time ago but I'm not a violent person. I think this is only my, for use of force, I think, since I've been on eight years, is probably like my second or third time using force.

Mandel: Not even in a joking situation?

Hardy: No.

Mandel: Have you ever suggested that?

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Hardy: No.

Mandel: OK. Were you upset that Mr. Faulkner tried to run from you? Did you take that personally that someone was trying to get away from you as an officer?

Hardy: He already lied to me. It didn't matter to me. I mean if I didn't catch him today, I would have caught him another day. I mean and plus you know when I read the report he said that he knew Jackson Andrews so it didn't matter to me an arrest was an arrest. I could always catch him later.

Mandel: So it wasn't a personal thing with you know how some officers take things personal.

Hardy: No.

Mandel: That a guy tries to run or a guy gives him a fake name and they say you don't give a fake name to the cops, you didn't take that personal?

Hardy: It's not illegal to lie against the cops. I mean you could give them false information for whatever you want and whatever reason but it's not illegal to run from the police. I mean I didn't care.

Mandel: All right. When you made the statement and I believe you said it earlier, don't you fucking run from me, is that did you make that here today or was that the same statement that you think you made?

Hardy: No, no, he said, he said something to me about is it okay for the police to hit somebody and you know he was going to and I was like well you know I don't know why you're trying to run, I mean I don't know, don't ask me that.

Mandel: Do you remember making that statement don't you fucking run from me or something similar to that at the time Mr. Faulkner was making furtive movements to get away from you?

Hardy: No, because I, at that time, when I told him to stop resisting and I grabbed onto his hands, I didn't know what Mr. Faulkner was doing.

Mandel: OK. So when you said that earlier, that wasn't something that you were saying that you said on scene that night that was just something that came out during that.

Hardy: He said something but and like I told Sgt. Jensen this happened so fast I mean I stopped my search, I told him to do, you know, turn around, put your hands behind your back and when I reached over to grab his hands, you know, I

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thought that guy was going to grab my stuff and my intention was to get him to the ground as fast as possible.

Mandel: What I'm getting at and I may not be making myself clear earlier on in our interview, you made a statement that you said don't you fucking run from me to Mr. Faulkner and I'm trying to clarify if you were saying that just during our interview that you said something to that effect or those were the words that you used.

Hardy: I said something to that effect and it wasn't when he was you know running, this was after he had been taken down and I saw him bleeding and he was like it's okay for you to bop me upside the head or something. I was like...

Mandel: OK. That cleared it up. Do you think that you lost your temper when Mr. Faulkner tried to run from you?

Hardy: No cause I could catch Mr. Faulkner. I didn't lose my temper.

Mandel: Have you ever used your flashlight as an impact weapon before?

Hardy: Under these circumstances or any other, no. I would have used my PR-24. I would have used my taser so I've never used my flashlight to strike anybody.

Mandel: And you may have covered this before earlier in the interview but why don't you tell me why again why you chose to use the flashlight as an impact weapon that night.

Hardy: That night again when I exited the vehicle my intention was to strike him and when I told him to do what I told him to do, I grabbed his hands and it happened so quick I still had my flashlight in my hand. My intention was to take him to the ground and when I struck him on the shoulder blade, that would have made him go forward, when I had hold of his hand but he got loose and at that point I'm only holding his shirt so he can't fully get away from me and I didn't think to trip him or anything. My intention was to just strike him on the shoulder blade which would have made him go forward and I would have been right on top of him.

Mandel: Have you ever used your PR-24 as an impact weapon?

Hardy: Yes.

Mandel: During your career?

Hardy: Yes.

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Mandel: And was that during an arrest situation?

Hardy: It was during I think a disturbance up at like the ICON or something a couple of years ago. And I've displayed it a couple of times. I'm probably one of the only officers that still carries a PR-24.

Mandel: I believe Sgt. Grimes clarified this question already or got an answer to this question, other than, you in your mind you were going to arrest Mr. Faulkner for felony Criminal Impersonation, when you approached him after finding his ID in the car correct?

Hardy: Yes.

Mandel: Is that the only charge at that point that you knew of?

Hardy: Well at that point I didn't have any other charges against him because the driver admitted to the marijuana. I didn't know if he had any weapons on him so I didn't know about that so and the knife I don't think anybody owned up to that one so.

Mandel: Looking back at the situation now, or the incident now, do you think that you handled the situation correctly?

Hardy: Under the extreme circumstances and the way it happened so fast, and yes.

Mandel: Was there anything that you would have done differently?

Hardy: Yes.

Mandel: Explain that.

Hardy: If I had ample time, you know, I probably would have given Jackson some more clues to say hey you know I'm going to arrest this guy, he's given me false information but you know Jackson was still trying to talk to this other guy and watching him. I probably would have deployed my taser or OC or you know if I probably would have done used some soft hand techniques you know, again, I didn't have ample time to do that it happened so fast.

Mandel: Was there a need for you to go and arrest Mr. Faulkner right away without discussing the tactics with Officer Andrews before going and placing him in cuffs, was there any kind of exigency that you had in your mind?

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Hardy: Yes I didn't know if Mr. Faulkner had a weapon because I had not pat him down. I already found one weapon and drugs when I signaled to Jackson he didn't really get the signal when I said you're not who you say you are put your hands behind your back you're under arrest you know in my mind if you were to say that to me as another officer that means that this guy just lied or he gave you some false information and we got enough for an arrest here.

Mandel: So that was a signal to Officer Andrews that you were going to place this guy under arrest.

Hardy: Well and I said, I told the guy he was under arrest, put his hands behind his back but again Jack was standing between those two guys. There was, I mean, he's standing between this big guy and this guy, then there's me.

Mandel: Describe your relationship with Officer Andrews to me, is it just a working relationship, are you guys friends off work?

Hardy: Nah, I've never hung out with Jackson Andrews off work. I've been on a call or two with him, that's about it.

Mandel: Do you guys get along at work?

Hardy: He works in NPU and I work Patrol Day shift normally so I usually don't see him. I think we went on one call (inaudible) where a guy named Kevin Jones or something. He was a previous felon with a weapon or something.

Mandel: But to your knowledge there's no friction or bad feelings that exist between the two of you?

Hardy: None.

Mandel: And that night were the two of you getting along?

Hardy: We were just doing our jobs. We were going out you know doing a gang detail. We had a list of people. We saw a car with some PC for a stop and you know we got lucky we found some drugs in there and we found some people without IDs and no driver's license.

Mandel: After Mr. Faulkner was controlled and handcuffed you guys did call for a sergeant correct?

Hardy: I did yeah. I called for a Code 1. The first thing we did was call for medical and more units and then asked for Code 1.

Mandel: And Sgt. Jensen arrived?

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Hardy: Yeah I think Sgt. Jensen and Sgt. Dehart arrived. J. D. Walker, a couple of guys came.

Mandel: And the sergeant asked you to brief him on what occurred?

Hardy: Yes.

Mandel: And was it Sgt. Jensen's decision to arrest Mr. Faulkner for resisting arrest and I believe false information?

Hardy: I wrote the charges I believe on the summons so I don't know who told me. I think I brought it up to someone so I got him for criminal impersonation and the charges were said to be okay well why don't you just go with false reporting and go with resisting arrest.

Mandel: Was there anything occurring in your personal life that would have caused you to do anything different at work? Was there anything going on in your family life? I know that you since have split from Sylvia Watkins but that night was there anything that was on your mind that night to make you act any differently?

Hardy: No.

Mandel: OK. Sgt. Grimes?

Grimes: Officer Hardy, how long have you been on the department now?

Hardy: Since March of '97.

Grimes: And do you have prior experience prior to being hired here?

Hardy: I was in the military.

Grimes: What did you do in the military?

Hardy: I was an air defender for a bit. I was a CID intern investigator for a bit. I'm actually in the Air Force Reserves right now as a security force, a senior sergeant.

Grimes: Since you've been on the Colorado Springs Police Department have you received any formal training regarding the use of the flashlight as an impact weapon?

Hardy: No.

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Grimes: Have you received any input, guidance, direction from any of your FTO's, other officers, or anybody on the department regarding the use of a flashlight as a weapon?

Hardy: No.

Grimes: What about in your other areas, Air Force, Army?

Hardy: No.

Grimes: Any of those agencies ever train you on using the flashlight as an impact weapon?

Hardy: No.

Grimes: That's all I have.

Mandel: One last question Officer Hardy, have you been totally truthful with Sgt. Grimes and me today during this entire interview?

Hardy: Yes.

Mandel: Mr. Radabaugh, do you have any questions?

Radabaugh: Just a few. Have you worked this kind of like gang unit or gang assignment before?

Hardy: I think it might have been a long, long time ago cause I go to the gang meetings so it might have been a couple of years ago.

Radabaugh: So you've been doing this on and off for a couple of years?

Hardy: This is probably my second time doing it.

Radabaugh: When you stopped the vehicle that night at Donovan and Fountain did you suspect gang activity before you even walked up and contacted anybody?

Hardy: They had hats on turned to the side. Those are some indicators yes.

Radabaugh: What kind of vehicle was it?

Hardy: It was a Chevy Impala, kind of like the old police cars, the round ones.

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Radabaugh: And when you walked up, you walked up on the passenger side is that correct?

Hardy: Yes.

Radabaugh: So you saw is it Dead Mike?

Hardy: Yes.

Radabaugh: Where was Dead Mike sitting?

Hardy: He was in the front seat.

Radabaugh: And Mr. Faulkner was in the back seat?

Hardy: Like right behind Dead Mike in the passenger's seat.

Radabaugh: Now who asked who to get out of the car first? Was it you or Officer Andrews?

Hardy: I want to say I don't recollect that part, I'd have to look at the report to see that but I think it was Jack because they both got out and I patted down Mr. Spriggs because he's a big guy.

Radabaugh: And Spriggs is the one that got arrested is that correct?

Hardy: No. Faulkner is. Faulkner's the one that got arrested.

Radabaugh: And that's Spriggs here or Spriggs is Dead Mike?

Hardy: Yeah, he's the big guy. He was let go after all this.

Radabaugh: When you patted down Mr. Spriggs describe exactly how you did that?

Hardy: Well he stood out of the car, he put his hands, I asked him to put his hands on the hood of the car and not to move and he did so and I asked him I went from the back and I patted down his, the back of his body and then from there I asked him again is there anything in your pockets. He said no. I patted his pockets the outside, I went around his waistline and I don't think he was wearing a belt because I saw his butt and he had really baggy shorts on and I patted all of him down and I didn't feel anything and he didn't have anything.

Radabaugh: Where was Mr. Faulkner at when you frisked Mr. Spriggs?

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Hardy: I don't know because Andrews was probably dealing with him. I paid attention to Mr. Spriggs.

Radabaugh: Did you ever see Officer Andrews pat down Mr. Faulkner?

Hardy: No, I didn't.

Radabaugh: Now you put Delvikio in the back seat is that correct?

Hardy: No it was Cory Miller.

Radabaugh: Cory Miller I'm sorry.

Hardy: In the back seat of the patrol car.

Radabaugh: So you put Cory Miller in the back seat of the patrol car. Was he handcuffed?

Hardy: No.

Radabaugh: OK. So nobody was handcuffed at this time?

Hardy: No.

Radabaugh: And who put him in the backseat of the car?

Hardy: Officer Andrews.

Radabaugh: So that, so you have one guy in the back seat of the car, just so I'm getting the story straight, in the back of the patrol car, you already knew he was wanted for warrants is that correct?

Hardy: Yes.

Radabaugh: And you place him under arrest for those active warrants?

Hardy: Yes.

Radabaugh: But he was not handcuffed by anybody.

Hardy: No. Jackson put him back there.

Radabaugh: And then you went in to search the car.

Hardy: Yes.

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Radabaugh: OK. Was Dead Mike and Mr. Faulkner inside at that time?

Hardy: No.

Radabaugh: So you went through the car and then during the search of your car, you found a big pocket knife.

Hardy: Yes.

Radabaugh: One of those locked blade pocket knives.

Hardy: And it was a flip open pocket knife.

Radabaugh: How big?

Hardy: I don't know maybe a 3 ½ or 4 inch blade.

Radabaugh: So a big knife in the front seat under the console or arm rest. You found marijuana in the door.

Hardy: Yes.

Radabaugh: And then you found a false or the ID of Mr. Faulkner who had given you the name of Odom.

Hardy: Yes.

Radabaugh: And you checked the picture on that with your flashlight.

Hardy: Yes.

Radabaugh: And the flashlight was in your right hand?

Hardy: Yes.

Radabaugh: So you immediately got out of the car with the ID.

Hardy: Yes.

Radabaugh: You already found marijuana or drugs and a weapon and then you went immediately over and contacted Mr. Faulkner.

Hardy: Yes.

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Radabaugh: And confronted him with the fact that you had found that he had lied.

Hardy: Yes.

Radabaugh: Now when you did that did you have the ID in your hand?

Hardy: No.

Radabaugh: Where was that?

Hardy: I dropped the ID.

Radabaugh: Back in the car?

Hardy: No it was just like on the grass, there's a grassy area right there when you step off the curb. I had dropped the ID over there.

Radabaugh: Because you would have had something in both hands?

Hardy: Yes.

Radabaugh: And then from the time you grabbed his hands when you ordered him to put his hands behind his back and he at that point he complied?

Hardy: No.

Radabaugh: He didn't?

Hardy: No.

Radabaugh: Then go through that.

Hardy: When I told him to put his hands behind his back, he did it. As soon as I touched him he just coooh and you know that kind of made me with all the knowledge I had with his false identity and me not personally patting him down and I didn't see Jackson pat him down, that kind of put me on the alert.

Radabaugh: OK. So let's go through that again. You walk up to him you say you're not who you say you are.

Hardy: Yes.

Radabaugh: You're under arrest.

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Hardy: Yes.

Radabaugh: Put your hands behind your back.

Hardy: Yes.

Radabaugh: What does he do at that very moment?

Hardy: Well he puts his hands behind his back and as soon as I touch him, he breaks his hands free and he spins on me and I'm holding onto his shirt.

Radabaugh: OK. So he followed your orders right away when you told him to put your hands behind your back.

Hardy: Yes.

Radabaugh: And then you walked around him?

Hardy: No I was still behind him.

Radabaugh: OK.

Hardy: So.

Radabaugh: And then the minute your hand touched his...

Hardy: Yes.

Radabaugh: That's when he spun.

Hardy: And he started to run and I was holding his shirt.

Radabaugh: OK. So it's not like you're just giving someone a parking ticket and they get out and then take off running.

Hardy: No.

Radabaugh: Or even a traffic ticket, they get out and they try and break and run.

Hardy: No.

Radabaugh: So you had in your mind now did Mr. did Officer Andrews know that you found a knife?

Hardy: I think I told him I found a knife and some marijuana.

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Radabaugh: You told him as you were finding it or when you got out of the car?

Hardy: I think I told him when I found it. I said knife and marijuana.

Radabaugh: Did he acknowledge that in any way?

Hardy: I don't know.

Radabaugh: Did he do anything now obviously you're concentrating on Mr. Faulkner where was Dead Mike?

Hardy: Dead Mike was near the front of the car and again this is the front of the car and he was near the right front and Officer Andrews was in between kind of like where Sgt. Grimes is and you guys are like this.

Radabaugh: OK. So how far was he from you and Mr. Faulkner?

Hardy: He's probably maybe 8 or 9 feet maybe.

Radabaugh: And how big is Officer Andrews in comparison to Dead Mike?

Hardy: Officer Andrews is about probably about my size, 170, 165, 180 maybe. Dead Mike is like an easy 260, 270.

Radabaugh: Were you concerned at that moment about Dead Mike also?

Hardy: Well I didn't want to get into a fight I mean when I grabbed Mr. Faulkner I was hoping that you know he didn't do anything but Jackson was in between both of them and trying to give him commands don't move, I think he even tried to get up and Jackson told him no don't do anything.

Radabaugh: So Jackson or Officer Andrews was talking to Dead Mike?

Hardy: Dead Mike yeah.

Radabaugh: Or Mr. Spriggs while you were wrestling with Faulkner?

Hardy: Yes.

Radabaugh: OK. Before Mr. Faulkner got on the ground, did Officer Andrews intervene in any way?

Hardy: No.

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Radabaugh: Did he ever say anything to you?

Hardy: No.

Radabaugh: Did he attempt to grab or tackle Mr. Faulkner?

Hardy: No.

Radabaugh: How far was he from Mr. Faulkner?

Hardy: After he saw me struggling with him, he closed in and then once I got him to the ground he came over immediately because we were near the curb and he put handcuffs on him.

Radabaugh: OK. But when you just reached out to grab Mr. Faulkner's hands when they're behind his back you're reaching with your left hand, how far...

Hardy: He was about six to seven feet, he could have been 8 feet, I didn't measure it.

Radabaugh: But one of two steps he would have been there?

Hardy: No he had to go a little more than that.

Radabaugh: That's all I have.

Mandel: Sgt. Grimes?

Mandel: I just have one follow up question to that Officer Hardy is based on finding the knife, the marijuana...

Hardy: Yes.

Mandel: ...multiple suspects, once you do that and you go to arrest it's in your mind that you're going to place Mr. Faulkner under arrest.

Hardy: Yes.

Mandel: Did you consider calling for a second car at that time before placing him under arrest or did you feel it was in your best I guess your best advantage to get him under arrest as soon as possible?

Hardy: It was in my best advantage and Officer Jackson to get him under arrest as soon as possible.

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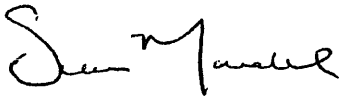
Mandel: Sgt. Grimes?

Grimes: No further questions.

Mandel: Mr. Radabaugh?

Radabaugh: That's it.

Mandel: That will conclude the interview. It's still 8/17/05. It's approximately 2:23 p.m. Thank you.



Sean Mandel
Sergeant
Internal Affairs