

CRIMINALISTICS LABORATORY DIVISION
Sheriff-Coroner Department Contra Costa County
BLOOD ALCOHOL REPORT

Laboratory No. : **LAB01-013173 - 0007**

Submitting Agency : **Martinez Police Department**

Case No. : **01-4316**

Offense : **Death**

Requested by : **Peterson**

Incident Date :

Test **MILLER, DIRK**

Blood Alcohol Results:

Subject

None Detected

Remarks :

SAMPLE COLLECTION

Location Collected :	MTZPD	Collection Time :	02:55 PM
Location Date :	9/29/01		
Collected or Witnessed by :	S BEECHER		

EVIDENCE TO LABORATORY

Delivered Date :	10/3/01	Case type :	DEATH
Delivered by :	Gonzales		
Conditions :	SEALED	Container No. :	11579
Method of Receipt :	Gonzales		

ANALYSIS

Type :	Blood
Remarks :	
Date Acquired :	10/03/01
Analyst:	Jackowski, Anna

I certify, under perjury, under the laws of the State of California, that the above blood/urine analysis was performed during the regular course of my duties, and is a true and correct copy thereof. I further certify that I am qualified to perform these analyses pursuant to Title 17 of the California Code of Regulations, and that the equipment used in arriving at the results was in proper working order at the time I performed this analysis.

Analyst Signature: *Anna Jackowski*

Title: **Forensic Toxicologist**

Date: **10/04/01**

Executed in Martinez, Contra Costa County, California

DECLARATION

SANDRA BEECHER

(Print Name)

, under penalty of perjury says:

I am employed by SOO in the capacity checked below:

- physician
- registered nurse
- licensed vocational nurse
- licensed clinical laboratory technologist
- clinical laboratory bioanalyst
- phlebotomist
- certified paramedic

On this date I took blood from a person identified to me as

Dirk Miller

, the defendant.

I cleaned the area to be punctured with the non-alcoholic disinfectant, included in the Contra Costa County Criminalistics Laboratory blood withdrawal kit.

Using the sterilized needle and holder from the kit, I inserted the needle into the defendant's vein and withdrew enough blood to fill the two vacuum vials.

I discarded the needle, holder and disinfectant and shook the vials thoroughly to prevent the blood from clotting.

The vials of blood were labelled with the full name of the defendant, the date and time of withdrawal and I placed my initials on the label.

I gave the vials to the officer who accompanied the defendant, and I observed the officer seal the top of each vial with a label seal and place his initials on the seal and on the label of each vial.

The sample(s) was/were taken in a medically approved manner.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 9/29/01 at Martinez California.

[Signature]
(Signature of Declarant)

To be completed by person collecting blood.

01-0B173-7
10/03/01 H
H 015 investig officer
ll Martinez PD

(WHITE COPY) DISTRICT ATTORNEY'S COPY - PLEASE RETURN TO THE BLOOD WITHDRAWAL KIT
 (YELLOW COPY) POLICE AGENCY'S COPY - PLEASE DETACH AND MAINTAIN FOR YOUR RECORDS
 (PINK COPY) COPY FOR PERSON MAKING BLOOD WITHDRAWAL - PLEASE DETACH AND MAINTAIN FOR YOUR RECORDS
 (GOLDENROD COPY) LABORATORY'S COPY - PLEASE RETURN TO THE BLOOD WITHDRAWAL KIT

FORENSIC SERVICES DIVISION

Office of the Sheriff Contra Costa County
REPORT OF TOXICOLOGY EXAMINATION

Laboratory Number LAB01-013173 - 0006	Offense(s) DEATH	Date(s) Examined 10/4-10/8/01
Requesting Agency & Case Number Martinez Police Department 01-4316	Date of Request 10/3/01	Examination Requested By Peterson
Complainant(s) PEOPLE	Subject(s) MILLER, DIRK ONEAL, JAMES SMITH, ERNEST	

DESCRIPTION OF EVIDENCE:

The following evidence was brought to the Laboratory by.

From **Gonzales, Robin** To **Morris** on **10/3/01**

- One tape sealed sample envelope Kit # **0705**
 Blood Alcohol/Drug
 Urine Alcohol/Drugs
 One tape sealed plastic bag containing Coroner's
 Blood
 Urine
 Vitreous
 Other

EXAMINATION RESULT:

The sample was **NEGATIVE** for the following drug classes:

- Amphetamines
- Cocaine/Cocaine Metabolite
- Opiates (Codeine/Morphine)
- Benzodiazepines

- Acid/Neutral Drugs
- Basic Drugs
- Other: _____

Subject's Name

MILLER, DIRK

The following drug(s) were **IDENTIFIED** in the sample:

The sample **SCREENED POSITIVE** for the following drug(s):

<input type="checkbox"/> Amphetamines <input type="checkbox"/> Cocaine/Cocaine Metabolite <input type="checkbox"/> Opiates <input type="checkbox"/> Benzodiazepines <input type="checkbox"/> Carboxy-Tetrahydrocannabinol <input type="checkbox"/> Gamma-Hydroxybutyrate (GHB) <input type="checkbox"/> Acid-Neutral Drug(s) <input type="checkbox"/> Basic Drug(s) <input type="checkbox"/> Other	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 10%; text-align: center;">mcg/ml</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">mcg/ml</td> </tr> <tr> <td>Methamphetamine</td> <td style="text-align: center;">_____</td> <td>Amphetamine</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>MDMA*</td> <td style="text-align: center;">_____</td> <td>MDA**</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Cocaine</td> <td style="text-align: center;">_____</td> <td>Cocaine Metabolite</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Morphine</td> <td style="text-align: center;">_____</td> <td>Codeine</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Hydrocodone</td> <td style="text-align: center;">_____</td> <td>Hydromorphone</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Diazepam</td> <td style="text-align: center;">_____</td> <td>Nordiazepam</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Oxazepam</td> <td style="text-align: center;">_____</td> <td>Temazepam</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">_____</td> <td>_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">_____</td> <td>_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>_____</td> <td style="text-align: center;">_____</td> <td>_____</td> <td style="text-align: center;">_____</td> </tr> </table>		mcg/ml		mcg/ml	Methamphetamine	_____	Amphetamine	_____	MDMA*	_____	MDA**	_____	Cocaine	_____	Cocaine Metabolite	_____	Morphine	_____	Codeine	_____	Hydrocodone	_____	Hydromorphone	_____	Diazepam	_____	Nordiazepam	_____	Oxazepam	_____	Temazepam	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____																																										

*Methylenedioxyamphetamine

**Methylenedioxyamphetamine

If a drug is not reported as positive, it indicates either that it was not detected or, if a drug was detected, it was present at a concentration less than this Laboratory's established cut-off levels. All confirmations, if required, are done by Gas Chromatography/Mass Spectrometry.

REMARKS:

Signature & Date OCT 8 2001 Reported By & Title Gary Davis, Forensic Toxicologist Approved By Supervising Forensic Toxicologist 	Distribution <input type="checkbox"/> Distribution Agency <input type="checkbox"/> District Attorney <input type="checkbox"/> File <input type="checkbox"/> Other For Additional Information Call (925)313-2800
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MARTINEZ POLICE

CASE NO. **01-4316** PAGE
REFER CASE #(S) OF

DATE/TIME REPORTED
09/29/01 1004 hrs

CA0071400

CODE SECTION(S) **245(a) (1) PC** CRIME/INCIDENT **Assault with a Deadly Weapon** CLASSIFICATION **Pipe**

LOCATION OF OCCURRENCE
OCCURRED BETWEEN: DATE **9/29/01** TIME **1004** DAY **Sat** VIC **[REDACTED]** LICENSE NO **[REDACTED]** STA **[REDACTED]** YEA **[REDACTED]** MAKE/MODEL **[REDACTED]** STYLE **[REDACTED]** COLOR **[REDACTED]**
AND DATE **9/29/01** TIME **1018** DAY **Sat** SUS **[REDACTED]** LICENSE NO **[REDACTED]** STA **[REDACTED]** YEA **[REDACTED]** MAKE/MODEL **[REDACTED]** STYLE **[REDACTED]** COLOR **[REDACTED]**

DVR INFO RELATIONSHIP OF PARTIES FEARS INJURY VISIBLE INJURY WEAPON INVOLVED: FIREARM KNIFE VVC
 PAIN COMPLAINT OTHER BODILY FORCE NONE PROVIDED

I N V O L V E D P E R S O N S	1	INVLVMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
		S		Smith, Ernest Donald	9/23/36	WM	Bln/Blu
	RESIDENCE ADDRESS [REDACTED]			RES PHONE [REDACTED]	DRIVERS LICENSE # [REDACTED]		STATE CA
	BUS NAME/ADDRESS/PHONE [REDACTED]			OCCUPATION Retired	SOCIAL SECURITY # [REDACTED]		ARREST
2	INVLVMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	
	V	[REDACTED]	[REDACTED]	WM	Bln/Blu	5'7"/170	
	RESIDENCE ADDRESS [REDACTED]			RES PHONE [REDACTED]	DRIVERS LICENSE # [REDACTED]		STATE CA
	BUS NAME/ADDRESS/PHONE [REDACTED]			OCCUPATION [REDACTED]	SOCIAL SECURITY # [REDACTED]		ARREST
3	INVLVMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	
	W	Miller, Dirk					
	RESIDENCE ADDRESS (Confidential)			RES PHONE	DRIVERS LICENSE #		STATE
	BUS NAME/ADDRESS/PHONE Martinez Police Department; 525 Henrietta Street, Martinez, CA 94553			OCCUPATION Police Officer	SOCIAL SECURITY #		ARREST
4	INVLVMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	
	W	O'Neal, James					
	RESIDENCE ADDRESS (Confidential)			RES PHONE	DRIVERS LICENSE #		STATE
	BUS NAME/ADDRESS/PHONE Martinez Police Department; 525 Henrietta Street, Martinez, CA 94553			OCCUPATION Police Officer	SOCIAL SECURITY #		ARREST

I HEREBY ARREST THE ABOVE NAMED SUSPECT(S) ON THE CHARGES INDICATED ABOVE. SIGNED

NUMBER	ARTICLE	QTY	SERIAL NUMBER	BRAND/MAKE	MODEL NO	VALUE	CODE

YES NO EVIDENCE COLLECTED # FINGERPRINTS # ROLLS FILM TOTAL

NARRATIVE

REPORTING OFFICER / SERIAL **233** DATE AND TIME **9/29/01 1200** REVIEWED BY **DB 10-1** FOLLOW-UP NEEDED
Sgt. D. Brown, #61 INV CP JUV/PRO3 DDA VIC/LTR VVC OTHER SIGNATURE OF SUSPECT
MPD DAILY REPORT FORM (REV 9-01) MPD #30 D: SIGNED BY M. THOMPSON #60

INDEXED 01-4316

RIGHT THUMB PRINT

FILE	ARREST	DCMUG	INFORM	COLL	MARTINEZ POLICE		CASE NO.	PAGE
Y							01-4316	2
DATE/TIME REPORTED 9/29/01 1004					CA0071400		REFER CASE #(S)	OF
CODE SECTION(S) 245 (a)(1) PC					CRIME/INCIDENT Assault with a Deadly Weapon		CLASSIFICATION Pipe	
5	INVLMT W	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX WF	HAIR/EYES Blk/Grn	HEIGHT/WEIGHT 5'4"/140
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
6	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
7	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
8	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
9	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
10	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
11	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
12	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
13	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
14	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
15	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
16	INVLMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
RESIDENCE ADDRESS					RES. PHONE		DRIVERS LICENSE #	STATE
BUS. NAME/ADDRESS/PHONE					OCCUPATION		SOCIAL SECURITY #	ARREST
REPORTING OFFICER / SERIAL #					DATE AND TIME	REVIEWED BY	FOLLOW-UP NEEDED	
Sgt. D. Brown, #61					9/29/01			
NV	CPS	JUV/PROB	DOA	MIC/LTR	VVC	OTHER		
MPD DAILY REPORT FORM (REV 8-98) MPD #30					DESIGNED BY M. THOMPSON #60			

INVOLVED PERSONS

1. On 9/29/01 at approximately 1030 hours, I was contacted at my residence to respond to [REDACTED] regarding an officer involved shooting. I arrived on scene at approximately 1100 hours. I was met by Sergeant PETERSON. Also on scene was Martinez Police Officer WALKUP, Pleasant Hill Police Officers DOUG THOMPSON, JAY WOFFINDEN and Corporal D. CONNELLY, Contra Costa County Sheriff's Lt. C. WENZEL, Sergeant R. WILSON and Deputy T. BARDEN.
2. I was informed by Officer WALKUP and Sergeant PETERSON of what took place. After calling for assistance, Pleasant Hill Police and Contra Costa County Sheriff's deputies responded to assist with the crime scene. As additional Martinez Police officers responded, Pleasant Hill and Sheriff's Department officers were relieved to return to their normal duties. Deputy T. BARDEN stayed at the crime scene to assist. He advised me that he was dispatched at approximately 1038 hours and relieved at approximately 1230 hours. During his time at the crime scene, he was in the company of a female, identified as [REDACTED] who also lived at [REDACTED].
3. Deputy BARDEN advised me that [REDACTED] was speaking quite freely with him and he turned on his tape recorder and taped the conversation with her. At approximately 1230 hours, when Deputy BARDEN was relieved, he turned over the tape to me. I later logged the tape into evidence as Evidence Item #1DB.
4. Officer WALKUP advised me that he taped an interview with [REDACTED] which was later transcribed. Officer WALKUP gave me the tape which I logged into evidence as Evidence Item #2DB.
5. After leaving the crime scene, I responded back to the Martinez Police Department. Prior to arriving at the station, County Protocol was enacted. DDA BOB HOLE responded to the police department with additional investigators. All personnel were divided into teams and issued assignments. All information and supplements will be dictated and attached to this report.
6. DA Investigator PAUL PETERSON turned over a plastic envelope to me from the Contra Costa County Criminalistics laboratory. Deputy Sheriff (Criminalist) STOCKWELL had collected the item which was the wallet and contents belonging to suspect ERNEST SMITH. Deputy Sheriff (Criminalist) STOCKWELL turned

245(a)(1) PC

ASSAULT W/DEADLY WEAPON

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over the item to DDA BOB HOLE who, in turn, gave it to DA Investigator PAUL PETERSON. This item was logged into evidence as Evidence Item #3DB.

Sgt. D. BROWN, #61

iam 9/29/01

MARTINEZ POLICE DEPARTMENT

CA0071400

CRIME/INCIDENT

245(a) (1) PC

CONTINUATION SUPPLEMENT

CASE NO.

01-4316

PAGE

OF

One of the first units on the scene, from an outside department, was Officer D. Thompson from P.H.P.D.. He is one of their crime scene investigators. While at the scene he took 17 photographs of the crime scene including personnel doing CPR on the suspect. This film was given to me and I later had them developed.

REPORTING OFFICER / SERIAL NUMBER
D. BROWN / 561

DATE / TIME
9-30-01

INV

CPA

JUV/PROB

DCA

VEH/TA

W/C

OTHER

REVIEWED BY

DATE / TIME

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

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1. On 9/29/01, I was working routine patrol in the Nob Hill shopping center when I heard a radio transmission on the Martinez Police Department channel of "shots fired" and requesting ConFire and AMR to respond. Based on an earlier transmission I had heard, I knew that Officer MILLER and Officer O'NEAL had been dispatched to [REDACTED] for a domestic argument of some type.
2. I responded to that location "Code 3" and arrived within 3 - 4 minutes. Officer O'NEAL was standing on the sidewalk area directly in front of the driveway to [REDACTED]. I asked him where Officer MILLER was. He told me that Officer MILLER was in the rear yard performing CPR on a gunshot victim. I went to the back yard area and made contact with Officer MILLER who was performing chest compressions on the suspect, whom I later identified as ERNEST SMITH (DOB: 9/23/36). I had obtained that information from a subject who identified himself as [REDACTED]'s son, [REDACTED] (DOB: [REDACTED]). [REDACTED] was performing the breath portion of CPR. When it was time for Officer MILLER to perform additional chest compressions, I took over his portion of the CPR. I advised Officer MILLER to direct ConFire and AMR in as they arrived. I continued with chest compressions as [REDACTED] continued with mouth-to-mouth.
3. ConFire personnel arrived within approximately 3 - 4 minutes and took over the CPR procedure. I walked [REDACTED] away from his father, approximately 30' - 40' and initiated a conversation with him. I explained to him that medical personnel would do everything they could to try and save his father's life and asked him if he could tell me what happened. This occurred at approximately 1030 hours.
4. [REDACTED] told me that he lives in the van that is parked in the backyard of the residence, however, has access to the main residence. He told me that his father and niece, whom he identified as [REDACTED] live in the main residence. He told me that he has free access to the residence for eating and restroom facilities, however, sleeps in the van at night.
5. [REDACTED] told me that he had been in a verbal argument with his father earlier in the day regarding an extremely high water bill and had gone outside in order to stay away from his father. He went into his van and laid down. I looked at the van and

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

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noticed it had a mattress along with bedding materials and miscellaneous clothing items. [REDACTED] told me that he was lying on the mattress awake and just trying to relax. He told me that he heard his father in the backyard and that he was yelling. [REDACTED] was unable to determine what his father was yelling about, however, [REDACTED] knew it was directed at him. [REDACTED] told me that his father was approaching the van and began hitting the rear and passenger sides of the van with a metal pipe. There was a metal pipe approximately 2" in diameter and 2' - 3' in length on the ground approximately two (2') feet from the passenger side middle door. I asked [REDACTED] if the pipe I located on the ground was the same pipe his father had been hitting the van with and he told me that it was. [REDACTED] told me that his father approached the side of the van and he was approximately 2' - 3' away from him. His father was extremely upset and yelling, however, [REDACTED] could not remember what his father was yelling about. I asked [REDACTED] what occurred next and he told me that he could hear an officer yelling something to the effect of "drop the pipe". I asked if he knew where the officer was and he told me that the officer was at the rear of the van and pointed to an area approximately 10' to the rear of the van and towards the center of the van. I asked him what happened next and he told me that he heard a single gunshot. I asked him how long of a period elapsed from the time the officer had yelled "put the pipe down" and when [REDACTED] heard the gunshot and he told me "seconds." I asked [REDACTED] if he could define "seconds" and he told me "2 or 3 seconds".

6. I asked [REDACTED] what happened next and he told me that he saw his father get shot and his father dropped to the ground, dropping the pipe. He said he jumped from the van and initiated CPR on his father with Officer MILLER.
7. I asked [REDACTED] if he knew of any medical history regarding his father and he told me that his father had a stroke and [REDACTED] believed he was taking some type of medication for the stroke. He also told me that his father suffered from some type of "brain seizures" however, could not elaborate. I asked if it was possible his father was taking medication for the "brain seizures" and he told me it was possible, however, he was unsure of the medication. I asked him if his father was routinely

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

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- irrational and upset with him and he told me that was a common occurrence. I asked him what else his father had been angry over and he told me that he was not sure, that he had done numerous "stupid things" and that things were not easy between he and his father.
8. Based on the number of officers and medical personnel present, I terminated the interview and walked back over to where ERNEST SMITH was lying and made contact with medical personnel. I was advised that they had determined the time of death as 1039 hours. Sergeant PETERSON was present and advised me that he would obtain all of the names of the medical personnel present. I took a number of photographs of the suspect and immediate area.
 9. I went back over to [REDACTED] and obtained a second tape recorded interview. At approximately 1041 hours, I explained to [REDACTED] that I wanted to have him tell me what had occurred once again, however, I was going to tape record the interview so it could be transcribed at a later time. [REDACTED] told me that he understood and was willing to provide a statement. I then conducted the attached transcribed interview with [REDACTED]. At approximately 1050 hours, I completed the interview and secured the tape for evidentiary purposes.
 10. I escorted [REDACTED] to the street area directly in front of the residence in order to preserve the crime scene. I explained to him that he was not under arrest and I wanted him to voluntarily stay present at the scene so that he could be interviewed by a detective at a later time. [REDACTED] told me he understood and was willing to cooperate in any way that he could. [REDACTED] agreed to stay in a confined area in front of the residence so he would not disturb anything in the crime scene area.
 11. As we were walking from the backyard through the residence in order to get to the front of the residence, the phone rang. [REDACTED] answered the phone and began a conversation with someone. After 3 - 4 minutes, he told me it was his mother and she wished to speak to me. I identified myself to the person and she told me that she was the ex-wife of ERNEST SMITH. She provided the following personal information: She told me her name was [REDACTED] home phone [REDACTED] home address: [REDACTED]

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

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[REDACTED] [REDACTED] told me that her ex-husband, ERNEST SMITH had been receiving medical treatment at Kaiser Hospital for "brain seizures" for approximately seven (7) years. She told me that he has had irrational behavior at times as a result of the seizures. She told me that she talks to him approximately three times a week on the phone and there have multiple times in the recent past in which he has called her, however she was unable to understand what he was saying. She told me it was unintelligible conversation and he would then hang up after a few minutes. A short time later, he would call back and it would appear as though he was normal again. She told me that he would tell her that his medication had gotten straightened out and that he was feeling all right again. [REDACTED] said he was aware of his irrational behavior after he had properly medicated himself. She told me that he became irrational and angry over almost anything and there was no explanation for it. He was prone to fits of anger and "bizarre" behavior. [REDACTED] told me that she was willing to speak to a detective at a later time and provide a more detailed statement as to her knowledge of ERNEST's medical condition. At that point, I terminated the conversation with her and escorted [REDACTED] to the front of the residence.

12. [REDACTED] asked me what was going to occur and I explained that a detective would want to obtain a full and detailed statement from him at the police department. [REDACTED] told me once again that he was willing to provide a voluntary statement and was also willing to wait for a detective to interview him. [REDACTED] told me he was willing to voluntarily go to the police department via a patrol vehicle.
13. Based on the circumstances, I conducted an H&S 11550 investigation on [REDACTED]. After completing the tests, I believed they were inconclusive. [REDACTED] told me he has not used Methamphetamine since his arrest in May for Possession of a Controlled Substance.
14. I made contact with a female subject who identified herself as [REDACTED]. She was out front with Deputy BARTON from the Contra Costa County Sheriff's Department. She told me that she was ERNEST SMITH's granddaughter and she also lived at the residence. I explained the situation to her regarding a detective

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT**

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interviewing her and she also agreed to wait voluntarily so she could be interviewed. She told me that she was in the backyard at the time of the shooting and she had witnessed the incident. I did not discuss what had occurred with her.

15. Reserve Officer WONG arrived within a short time and transported [REDACTED] [REDACTED] to the Martinez Police Department. Reserve Officer WHITE arrived within the same time frame and transported [REDACTED] to the Martinez Police Department.

G. WALKUP, #95

iam 9/29/01

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT**

01-4316MT1 PAGE 1

1. On 9/29/01 at approximately 1115 hours, I was contacted by Martinez Dispatch and requested to respond to the police department to assist in the investigation of an officer involved shooting. Shortly after arriving at the police department, Lt. SMITH asked me to assist in copying radio and telephone transmissions regarding this incident to audio cassette tape for easy access and listening. I successfully taped the telephone and radio transmissions regarding this incident to an audio cassette tape, which I then logged into evidence as Item #1MT.
2. I was then requested by Sergeant BROWN to respond to the crime scene located at [REDACTED] to videotape the crime scene area at the request of DDA BOB HOLE. I spoke with DDA BOB HOLE prior to leaving the police department to determine exactly how he wished for me to videotape the scene.
3. I responded to [REDACTED] arriving at 1543 hours. I videotaped the exterior front through the garage to the rear area and the rear crime scene area, including the suspect who was laying on the ground. I completed a videotape of the crime scene, the rear of the residence. DDA BOB HOLE arrived back at the crime scene and requested me to videotape the suspect's bedroom and master bath area.
4. I went into the residence and videotaped the master bedroom and the master bathroom. This tape was brought back to the Martinez Police Department and logged into evidence as Evidence Item #2MT. I completed this at 1655 hours and cleared to return to the Martinez Police Department.
5. Sergeant BROWN asked me to meet East Bay Regional Parks helicopter at Buchanan Field and do an aerial photography of the crime scene. I responded to the Martinez Police Department where I picked up the appropriate equipment. I then drove to Buchanan Field, meeting East Bay Regional Parks officers at approximately 1720 hours. We flew to the crime scene where I shot a 24 exposure roll of film and shot some additional videotape of the crime scene. I arrived back at Buchanan Field at approximately 1802 hours.
6. I responded to the Martinez Police Department, stopping along the way at Long's Drug Store to put the 35 mm film I had taken from the helicopter in for development.

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Upon arrival at the police department, I logged the videocassette as Evidence Item #3MT into evidence.

7. I have no further involvement in this case.

M. THOMPSON, #60

iam 9/29/01

PC 245(A)(1)

SUPPLEMENTAL REPORT

01-4316JS1

This supplemental report documents the collection of Officer Miller's gun and gun belt, as well as the collection of a GSR Kit performed on Officer Oneal.

On 09/29/01 at approximately 1036 hours I was paged by MPD Dispatch and was requested to respond to MPD for an officer involved shooting. I arrived at MPD at approximately 1100 hours. I was the first investigator to arrive at MPD and I noticed Officer Miller in the briefing room with Officer Gaul. Officer Oneal arrived at MPD in the accompany of Reserve Officer Palmer. Officer Oneal and Officer Palmer went to the conference room. I ensured all officers had been admonished not to talk about the incident.

At approximately 1105 hours I talked to Sgt. Peterson, via telephone, and he told me Officer Miller and Officer Oneal were the involved officers. Sgt. Peterson also told me Officer Miller's gun and gun belt still needed to be collected. At 1110 hours I obtained Officer Miller's Gun and Gun belt. Officer Miller took off the gun belt and gave it to me. The hammer was still in the single action position so I de-cocked the firearm to render the firearm safe. I placed the gun belt in a paper evidence bag and secured it in my office. Miller had his collapsible baton still in the gun belt and I returned the baton to him. All other equipment was left on the gun belt. Officer Miller was offered a replacement gun and gun belt but he declined. The firearm I collected was a department issued Beretta .40 ca, ser# [REDACTED]. Sgt. Peterson told me he had already checked Officer Oneal's gun and gun belt. I was advised Officer Oneal's gun belt did not need to be collected.

At approximately 1115 hours I conducted a gun shot residue kit (GSR) on Officer Oneal. I asked Officer Oneal if he had washed his hands since the incident and he said he did not. I completed the GSR kit and secured it in my office.

I subsequently delivered Officer Miller's gun belt and the GSR kit to CCCSO Crime Lab personnel, Dave Stockwell and Eric Collins (crime lab# [REDACTED]).

J. Sylvia #97
09/30/01

102-01

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INVOLVED OFFICERS:

Officer D. MILLER
Officer J. O'NEAL
Officer S. GAUL
Officer G. WALKUP
Officer J. WUFFINDEN
Corporal D. CONNELLY
Officer D. THOMPSON
Deputy T. BARDEN
Lt. C. WENZEL
Sergeant L. Houle
Reserve Officer SWINDELL
Reserve Officer PALMER
Reserve Officer VIZCARRA
Detective Sergeant BROWN

Martinez Police Department
Martinez Police Department
Martinez Police Department
Martinez Police Department
Pleasant Hill Police Department
Pleasant Hill Police Department
Pleasant Hill Police Department
Contra Costa County Sheriff's Dept
Contra Costa County Sheriff's Dept
Contra Costa County Sheriff's Dept
Martinez Police Department
Martinez Police Department
Martinez Police Department
Martinez Police Department

INVOLVED PERSONS:

[REDACTED]

[REDACTED]

PERSONS CONTACTED:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

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[REDACTED]

INVESTIGATION:

1. On 9/29/01 at approximately 1018 hours, I heard Officer O'NEAL tell dispatch he needed "Code 3" fire and ambulance as well as the Watch Commander to his location. I responded "Code 3" to [REDACTED]. Both Officer WALKUP and Officer GAUL also responded "Code 3."
2. Upon my arrival at 1026 hours, I contacted Officer O'NEAL, who was standing on the left side of the driveway in front of [REDACTED]. Officer O'NEAL told me that Officer MILLER had been involved in a shooting. He told me that when he arrived, the father was waving a pipe around and he responded back to his patrol vehicle to get his Taser. He said, "I was heading to the backyard and heard one shot." He told me the person was down in the back yard. He told me that Officer WALKUP was performing CPR along with the subject's son (later identified to me as [REDACTED]).
3. I could see through the garage into the back yard. I observed Officer WALKUP and [REDACTED] performing CPR on a subject later identified to me as ERNEST SMITH.
4. I told Officer O'NEAL to maintain his position in front of the residence and direct medical personnel to the back yard. I also told him to start an entry/exit log.
5. I contacted Dispatch and advised there had been an officer involved shooting. I instructed Dispatcher BELEELE to invoke the Contra Costa County Officer Involved Shooting Protocol. I responded to the back yard and observed the E. SMITH on the ground near an orange van. A metal pipe was on the ground adjacent to the van. AMR paramedics and ConFire personnel arrived and took over lifesaving efforts.

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SUPPLEMENTAL REPORT**

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6. Officer GAUL and Officer MILLER were also in the back yard at this time. I had Officer GAUL drive Officer MILLER to the Martinez Police Department and asked him to sequester him from other personnel at MPD. I instructed Officer GAUL to maintain constant contact with Officer MILLER and insure his firearm was not removed from its holster. . Officer WALKUP stayed with E. Smith's son, [REDACTED] and obtained a taped statement. See Officer Walkup's supplemental report for details of the contact.
7. I had Dispatch requested assistance from the Contra Costa County Sheriff's Department and Pleasant Hill Police Department. A female subject (later identified as [REDACTED]) was in the back yard screaming and yelling that we had killed her grandfather. It was unclear if [REDACTED] was a percipient witness to the incident. She was instructed to wait in the front of the residence. [REDACTED] walked across the street and sat on the curb.
8. Corporal CONNELLY and Officer WUFFINDEN of the Pleasant Hill Police Department arrived on scene. I had Officer WUFFINDEN relieve Officer O'NEAL at the front of the house and maintain the entry/exit log. At 1122 hours, I inspected Officer O'NEAL's firearm and magazines. His magazines were fully loaded and a round was in the chamber of his firearm. Reserve Officer PALMER arrived and drove Officer O'NEAL to the Martinez Police Department. I told Reserve Officer Palmer to sequester Officer O'NEAL from all other personnel at MPD until he could be interviewed.
9. Officer THOMPSON of the Pleasant Hill Police Department was also on scene and was taking photographs of the scene.
10. Deputy BARDEN from the Contra Costa County Sheriff's Office contacted me in front of the residence. I asked Deputy BARDEN to contact ALLISON and determine if she was a witness to the incident. Deputy BARDEN returned a few minutes later and told me [REDACTED] was making statements that suggested she had witnessed the incident. I provided Deputy BARDEN with a tape recorder to record [REDACTED]'s statements. Later in the day, BARDEN gave me the tape recorder and tape. I gave the tape to Sergeant BROWN.

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11. Officer WUFFINDEN told me he contacted [REDACTED] and [REDACTED] east of the scene. He said both subjects told him they were not at the residence at the time of the shooting and did not witness any part of the incident. See Officer WUFFINDEN's supplemental report.
12. When Detective Sergeant BROWN arrived on scene, I briefed him with the information we had gathered. Reserve Officer VIZCARRA arrived and was directed to a position in the back yard to insure the scene was not disturbed. Reserve Officer SWINDELL arrived and relieved Officer WUFFINDEN. Reserve Officer SWINDELL maintained the entry/exit log until he relieved. See entry/exit log.
13. I contacted CHARLES SCARDACI in his front yard at [REDACTED], which is next to [REDACTED]. When I spoke with [REDACTED] he told me he is hard of hearing and could not understand what I was asking. He told me that I should talk to his wife. I asked him if he saw or heard anything unusual this morning and he said, "no."
14. I contact [REDACTED] inside [REDACTED]. I asked if she saw or heard anything unusual this morning. She told me that she was in the back yard hanging clothes on the clothesline when she heard what sounded like a gunshot. She told me she heard [REDACTED] the neighbor" say something like, "Dad, don't shoot." She told me she was unsure of the order of the statement from [REDACTED] and the hearing of the gunshot. I advised [REDACTED] that a detective would come by and talk to her later today.
15. I contacted [REDACTED] at [REDACTED]. She told me that she was the only one home at her residence at the time of the shooting. She told me she was reading a book in her bedroom and heard what sounded like a "pop" and then yelling. She told me that she was unsure which came first, the "pop" or the yelling. She told me that the windows in her bedroom are double paned and kind of drowned out the "pop." She told me that she looked out the window and saw [REDACTED] crying. I told [REDACTED] a detective would probably contact her later today. She told me that her son, [REDACTED] was waiting outside the crime scene tape and she wanted him to be with her.

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16. I contacted [REDACTED] at the east entrance to the crime scene. He told me that he was not home at the time of the shooting and did not witness anything. I allowed him to enter the area and go into [REDACTED]
17. At 1159 hours, I relinquished the crime scene to Detective Sergeant BROWN.
18. Later at the Martinez Police Department, I witnessed BAD Technician BEECHER draw two vials of blood from Officer MILLER. The vials of blood were packaged, marked and logged them into the Martinez Police Department Refrigerated Evidence Depository.
19. At 1505 hours, I witnessed Officer MILLER provide a urine sample. I packaged the sample and logged it into the Martinez Police Department Refrigerated Evidence Depository.

SGT. G. PETERSON, #86

iam 10/07/01

CRIME/INCIDENT

CONTINUATION SUPPLEMENT

CASE NO.

01-4316

PAGE

1

OF

VICTIM

- SUPPLEMENT ENCL. DATED 09-29-01:

ON 09-29-01, I ASSISTED C. C. C. SENIOR -
 - INSPECTOR VICTOR WISE (925-646-2973), IN THE SEARCH OF
~~_____~~

FOUR ITEMS OF EVIDENCE, AND LOB SAFE -
 KEEPING WERE COLLECTED FROM THE RES. ROOM No. 1-4
 WERE MARKED AND PACKAGED BY THIS OFFICER, AND PLACED
 INTO M.P.D. LOCKED EVIDENCE ROOM.

SEE SENIOR INSPECTOR WISE'S SUPPLEMENTAL
 REPORT FOR FURTHER INFO.

REPORTING OFFICER SERIAL NUMBER

69

DATE/TIME

09-29-01, 2259

CPS

JUV/PROB

DDA

VIC/TR

VVC

OTHER

REVIEWED BY

Patte SC

DATE/TIME

9-30-01

✓

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
TRANSCRIPTION OF TAPED INTERVIEW
01-4316PS1

PARTICIPANT:

AGENT PAUL STARZYK
PAUL PETERSON
[REDACTED]

CNET/MARTINEZ POLICE DEPARTMENT
CONTRA COSTA DISTRICT ATTORNEY
WITNESS

STARZYK: Okay, interview with [REDACTED] at Antioch PD, 2107 hours. Okay ... you were living there for a period of time, right?

[REDACTED]
Right.

STARZYK: How long ... when did you star living there and when ... when ... how long were you there in the house, actually?

[REDACTED]
Late 97 off and on .. Up until now. I mean.. up until the last year. The last year I have not lived in this house, but my wife has.

STARZYK: So, she's been there with him off and on.

[REDACTED]
Like I said, we've been split for about eight months and .. Just recently started talking to each other again and kind of .. you know ... sparking up a relationship. Even that's not firm right now, you know. It's something that, like I said, we have our own problems right now that we're working through and I just came down here just to kinda see her. She came all the way from Washington. She'd moved and just last week, her grandfather helped her get back from Washington and come back with me because ... he wanted to see the two of together. We have a three year old son and it's been ... like I said, it's been really rough ... rocky road and we both kinda cleaned our acts up, you know ... we were both kinda using drugs and what not and we're both doing much better. (Unintelligible) The whole time we were together, but ... and ... and it's weird that we both just happened to be here right at this time because ... he was upset at [REDACTED] and was kicking his ass.

STARZYK: [REDACTED] had actually been physically abusing ...

[REDACTED]
That's what he'd been telling [REDACTED] It came to the point where I was threatening ... threatening, you know, not really physically or anything but was .. you know, but yelling at [REDACTED] you know ... 'hey, asshole. Leave the old man alone, you know, or I'll ... I'll fight you, you know, I'm more your own speed, you know' and it came to that kind of thing.

STARZYK: How often was it that he and [REDACTED] had .. Problems?

[REDACTED]
Well, like I said that he found out the Visa card had been stolen. It turns out

it was [REDACTED]'s girlfriend who'd been charging the charges on it. So, therefore, it led to [REDACTED]. Problem was, [REDACTED] got in the house and stole the cards and everything. Then there's a bunch of other stuff that just ... appeared, you know ... uh ... uh.... New stuff that was in the boxes. I guess [REDACTED] was gonna return the stuff that he purchased on the card.

STARZYK:

Oh, so stuff arrived at the house

Stuff at the house, yeah. And so she's going "this isn't mine." And he thinks he's going crazy cause he knows he's got problems in his head so it's ... he's talking to my wife, you know .. Saying, "Well, I don't know what's going on but there's all this shit come in from?" Cause you know, usually, they would talk. And he would ... with finances and other stuff like that ... he would talk to [REDACTED] about ... you know, he wouldn't talk with me, he wouldn't talk with anybody else really, but he would, you know, him and her would talk about stuff.

STARZYK:

He hasn't been working for a while, has he?

No. Since I ... since he had a stroke.

STARZYK:

And how long ago was that?

Like I said, it's probably been about a year and a half since the first one. He's had two.

STARZYK:

Okay.

So, I ...

STARZYK:

Was he heavily medicated ... after that?

He was on medication, yeah.

STARZYK:

Okay, did he ever complain to you about the medication effecting him in any way? Or ...

Well, [REDACTED] said that .. this is just I wouldn't doubt it, but this is just heresy, but ... she was convinced that [REDACTED] was slipping him drugs.

Illegal drugs?

Illegal drugs. Like speed in his coffee cause he would come home and he would be (unintelligible) and we recognized that the .. The speed. So we tried to tell him something like that but ... he wasn't hearing it, you know, he's from the old times. He doesn't believe people are like that. People will do ... both me and her have seen it first hand. People will do some evil shit. You know?

PETERSON:

Did Ernest? Did Ernest ever have a problem with drinking .. Alcohol? Smoke cigarettes?

He wouldn't allow it. He wouldn't allow it in his house. He wouldn't allow drinking in his house at all. No alcohol. Nothing else. He wouldn't ... when we first started to date, we were smoking some weed or something .. And he caught us and he was pissed. He laid into both of us, You know, I

don't want .. I won't have that shit around my house. That's why when we told him that we thought he was slipping her drugs, he thought that was unheard of. You know, he wouldn't hear that.

STARZYK:

Okay, when from your experience living in the house, did you ever what would you say his work ethic was like? Was he, you know....

Constantly working.

STARZYK:

What kind of .. Give us, like, an average day ...

He was a machinist ... he was a machinist. Like I said, he would work. He would work a 10 hour day or 8 - 10 hours work day, come home from work and then work more, until he finally fell asleep right in the middle of his project. So what happened was he would come home and, I mean, build stuff. He was ... you know, he was a bit of ... of ... an inventor. You know, he ... Gave these custom fold up to cars and stuff like that and a few of them actually worked. A few of them were more ... just .. You know, built up type ...

PETERSON:

Like a prototype type ...

Yeah, but he ... You know ... about 15 years ago, he designed this form of bicycle. Now it's available on the market.

STARZYK:

Really?

but he just never went and, you know, too, care of the patent or anything. Drip all patents, way back when ... this was like 1970 something dripping patents and he just never went and took care of it.

STARZYK:

After he had his strokes, did you notice anything different about him?

He was, like, a lot weaker, you know, I mean ... we used to be pretty kinda close and he just seemed like he wasn't strong and honery as he used to be, I'll tell you. I mean, he really was. He used to be a lot more honery.

STARZYK:

Oh, really?

You know ... Yeah, I mean, you know ...he wasn't as easy to punch though, cause a few things had happened to him where ... kids had robbed him in the neighborhood, also. Like I said, he made this truck from bicycles that folded up and you carry on the ... on the ... on the bus or BART but ... the one difference between the ones he made and the ones you buy in the shop is the ones he made folded up to real, real small, so you could actually put it in a backpack or a bag or something and you can carry this bicycle with you.

STARZYK:

Uh, huh ...

The kids in the neighborhood stole a whole bunch from him. Well, he caught a couple and they threatened to beat him up. They were some big kids from the neighborhood. And .. I was around at that time, so I actually went and talked to the kids in the neighborhood and I don't know if I intimidated them or what, but they gave the bikes back. I came and took all his bikes

back. Well, (unintelligible) starting to have the stroke and his stress level was through the roof. He was, you know, having brain problems, you know what I'm talking ... I'm sure that the dementia and through the, you know, the Alzheimers or whatever was prior.

STARZYK:

Did they actually ... did somebody document that he had Alzheimers or is it just ...

Yeah, no .. they did ... they did ... when .. He was in the hospital the last time, I guess they called it dementia.

STARZYK:

Okay.

So, I ...assume the medical papers for that ...

STARZYK:

Did you notice that he was more .. More irritable or .. He was more passive or ... just didn't have patience with, like [REDACTED] and all the stuff that was ...

Hard to tell but .. But with [REDACTED] he had a lot more patience with and .. And like I said [REDACTED] had really been trying to get her life together. With [REDACTED] he uses a lot of speed. I don't know if you guys know anything about his record or anything, but he was in and out of jail. He's in a shit load of trouble. He would do crazy stuff and he's coming back to make Ernest pay for it every time ... you know, something happens, oh, financially, you know, I mean, he had to take a mortgage out on his house to bail him out of jail, you know, stuff like that. He ... he really put him in financial hole where he's not working. He doesn't have anybody to pay rent. He's got [REDACTED] living there for free. He's taking care of ... he's feeding her and all the neighborhood cats cause she's a cat crazy cat woman. She brings in all the neighborhood cats, puts them in cages in his garage and feeds them. And he sits there and he's supporting it cause he's got Alzheimers and he doesn't know any better. He doesn't give a shit. He's just ... you know, he wants his own little, private, little, you know .. and for the most part, me and my wife tried to give him that.

STARZYK:

Uh, huh.

You know, we'd check in on him from time to time. I mean, we would never let him know we were checking in on him, you know?

STARZYK:

Right.

We'd stop in and say do we have any mail or can we .. you know ...

STARZYK:

Uh, huh.

We'd do some laundry or something over here or whatever. We'd just peek in on him but he ...

STARZYK:

Did all these things, after a while, start to grate on him. Did he ever confide in you or say, you know ...

Yeah. All the time. That's what he'd be saying. Is ... is it was getting to him , you know it was pissing him off.

STARZYK:

Okay.

But he ... just recent, just yesterday, he was talking about the Visa and how he had to put a stop to this and he said the only way he could take was to just cancel his cards and [REDACTED] said, no, no, no. You got to be able to prove that these people took from you cause you're gonna have to pay their bills anyways now. It could be thousands of dollars. We don't know how much it's going to be.

STARZYK:

Uh, huh.

You can't just let these people walk over you cause they have already done that to him before. And they did that to us too. They got ... someone got a credit card in my wife's name and ran up a bill. She never knew she had a credit card or even ... had qualified for a credit card, you know?

STARZYK:

Right.

Somebody else went and found that out and ... and did it there at the same house. So, he got problems. For a while, he had people breaking into the house and ... coming and going as they pleased. A couple of homeless people we think were friends of [REDACTED]'s. That's when me and my wife were out of the state.

PETERSON:

How long has [REDACTED] been with ... at his place? Since 98? As she says?

Off and on, yeah. Off and on since .. 98, 99.

STARZYK:

Did she tend to ... get him upset or was he pretty calm around her too?

Like I said, she really kinda kept to herself for the most part. She kinda had this space in the garage where she would sit on a bench and just kinda stay out there. Very weird relationship. I mean, very ...

STARZYK:

We've spoken to [REDACTED] so what you're saying is not too ...

I'm ... I'm telling you that it was like ... it was like this thing ... I couldn't explain to nobody anywhere .. The [REDACTED] thing was really crazy. All we called her was the Crazy Lady cause ... honestly, every time you tried to have a conversation with her or do something normal, she went completely the opposite direction.

STARZYK:

How did she end up there in the first place, do you know?

She moved in on her own will.

STARZYK:

Just off ...

Just off the street when me and [REDACTED] were living there. That's what I was saying to you was that this kind of started to drive him crazy. This is ...

PETERSON:

Did you just ... did she know somebody? She just appear one day at the house, knock on the door and say "I'm moving in"?

What had happened ... what had happened was we ... we ... we had all met her. She was walking ... she'd done this at a neighbor's house down the

street previously. I found this out later on, okay? But there's a guy named [REDACTED] who lives across from town lake that ... that she used to stay there. And she stayed in his garage. She did the same thing to him. What had happened was that ... we go out there one day at ... having pizza. The lady followed us home, went into the garage and ... started unloading her stuff. This was while we were in the back bedroom and my wife's pregnant. She's feeling irritable. I'm in the back bedroom with my wife. I come out and I see all this stuff going on and I ask her to leave. When I asked her to leave ... she started freaking out on me so I ran away from her, ran in the house and called the cops. The cops came out and this was the first encounter we've ever had with them. I don't know if its police documentary thing but I called and I had the police come. I said, can you please escort this lady out of here. Well, she said she lived there and they couldn't get rid of her. She claimed that she lived and my father-in-law wasn't there. He was at work at that time.

STARZYK:

Uh, huh.

They said, is the owner of the house here. No, he's not here. Well, then you have to call back when the owner of the house is here and he worked graveyard that week. So, he was ... he was gonna be home at midnight or something like that. I'm in bed to go to work the next morning and I said screw it. So, times like ... it's a problem we just couldn't get rid of. One thing to another and he actually ... we kind of were glad she was there for some of the time cause when he had the stroke, she was the only one that was there to call '911'.

STARZYK:

Oh, okay.

Nobody else was in the house, so it was actually a good thing when .. When it came down to that. There was nobody else there.

STARZYK:

You just kind of let her continue to stay there after that.

Well, what had happened was he became good friends with her in a sense. I know, a weird relationship that we could never understand.

STARZYK:

Uh, huh.

Okay? They weren't really girlfriend/boyfriend or anything like that. They ... it was companionship cause he really didn't have anyone there but the dogs. So, to have ... somebody else was in the house, I think made him feel better cause he ... he had nobody. Like I said, his whole family abandoned him. And his son, up until now when he's needed him, was never around from him when he needed him. When he had his stroke, he was never there.

PETERSON:

What did Denise call him? How did she address him? What did she call him. What name did she ...

Oh, I'm not sure.

STARZYK:

You ever hear him

[REDACTED]

I could ... I could ... never even imagine them having a conversation. I really, I mean ... it was every time I was ever around her, she was really intimidated by me cause from the first time I met her, I called the cops on her. And .. Um ... she .. She reported that the police beat her up that time. Because what they did was they took her away from there and they dropped her off down back at the pizza parlor down the street. Round Table. She .. Just loaded back up and came back up and she ... what she does is she goes to the Good Will down there, takes a bunch of the donation crap that's left outside and piles it up at Ernest's house.

STARZYK:

[REDACTED]

Um.

So, it was getting to the point where we were just ... we were getting sick of all that. So, me and my wife just moved out. We were about to have a son, you know, we figured we needed a clean environment that ... that wasn't gonna be like this. And we moved away from there and that ...

STARZYK:

When I talked to your mom a little while ago, she said just before you guys had the baby there was a blow up between you and Ernest and he chased you around with a pipe and .. That was like two ... a week before [REDACTED] delivered.

[REDACTED]

No.

STARZYK:

[REDACTED]

No?

I think she's talking about the pipe incident this last time.

STARZYK:

I asked her that. She said specifically it was right before [REDACTED] was born. So it was 98.

[REDACTED]

He .. He chased me around before, but he never chased me around with a pipe.

STARZYK:

[REDACTED]

How many times did ... did you guys get in beefs that were never reported to the police. Just out of curiosity.

Beefs? Every time that we've ever had a beef, it was pretty much blown up outside and the police were involved. Other than that, he obviously was pretty mild mannered with me. You know? I knew every time that he was upset, he was upset because of his granddaughter and because of stuff, you know, between me and her that ... he tried to help us with it for a long time, you know? And I think he felt responsible for a lot of stuff cause where his mom had committed suicide and ... I guess her ... her uncle, not the one that's in Greg but another uncle who died because ...

STARZYK:

[REDACTED]

Motorcycle crash.

Yeah, so ... so ... Ernest felt responsible because both times we both let those kids die. he was yelling at them and they left. So ... so he carried the burden around with him and he would never talk to anybody about that, you know ... but he did, he had a burden about that, you know and ... same thing that he was with his granddaughter when she was messed up after having her baby, she kinda lost touch with him. I lost visitation of my son which I never did,

so, you know ... I wasn't with her on that whole ... I've always had visitation with my son. I've always been there for my son, you know. Any time ... that's where the relationship was going down for me was that I couldn't stand a woman who wouldn't be there for her son. Well, he was there for her because he saw her side of it, you know ... how she'd been through all this shit and he ... and he ... the last few months, he's actually to me and helped me to even accept her friend into my life. You know, she needs you. You're important to her. I didn't realize that.

STARZYK:

How many times a week would you say had contact with Ernest?

Lately? At least once a week. He's kind of been the go-between for me and her. So ... she was in Washington up until a week and a half ago. And I was living in Lake County for a construction site. I mean, I actually just came back here. I had a warrant that I was trying to clear up because of my work and ... you know, getting my life together and stuff. And I came down here and I'm just back to work up there. I was actually planning on leaving tomorrow night and now my wife has no where to go or nothing to do. I mean ...

STARZYK:

Be around for her.

I have to be ... yeah. I don't know what else to do for her. She has nobody.

STARZYK:

With .. With your contacts with Ernest, did you ever notice him like .. being odd or, I mean ... some days he was a lot clearer in thought and speech. Other days, he seemed to be kinda, you know, out there and you really just couldn't get through to him? Was he getting that way with his ... after his strokes and everything?

He was .. Well, he was always kinda conscious of me. You could talk with the guy. You could reason with him, you know. But he was stubborn. He was just one of those guys that would .. You know, he had a hard time changing his mind if his opinion was based on something.

STARZYK:

Did you feel he was rational, though?

STARZYK:

Oh, yeah.

You could have a rational conversation like we're doing right now? Or would it ... and he just kind of veer off and you'd

No, it wasn't like ... how ... would kind of ... will go and hold up her conversation. Where you could sit with Ernest and have a straight conversation about stuff. Like any person, there was issues he didn't want to talk about, you know, especially when it involved family or something serious. The whole family's had a problem talking about real issues.

STARZYK:

Yeah.

But other than that, I mean the guy was ... he was real coherent, you know, I mean ... I could talk to him on the phone and stuff.

STARZYK:

Would he ... when you did talk to him , if he was ticked off about something, would he just ... or would he just walk in .. Let's say there's something that upset him, like somebody just rang up a huge bill that he just ... come in and blah, blah, blah, blah, blah, like that? Or was he ...

[REDACTED]

Not usually.

STARZYK:

No

[REDACTED]

No.

STARZYK:

Okay.

[REDACTED]

Usually there'd be some kind of warning. There would be some kind of, you know, he would say something first. He was real easy to talk with. He'd ... like the [REDACTED] incident, he called the police already early this morning.

STARZYK:

Were you there at all with any of that?

[REDACTED]

I was there like, right after that happened, picking up my wife this morning about 8:30 I showed up to pick her up and she already told me, the police just left here. I said, what .. You gotta be kidding and she said, no, he wanted [REDACTED] to leave and he ... had told [REDACTED] that [REDACTED] could stay until he went to court date. He figured [REDACTED] was going to go to jail and he already wanted him to have a place to leave his stuff. He just lost his house. Lost all of his stuff. He felt bad for [REDACTED] but ... he didn't feel bad to the point where he was going to take care of [REDACTED]

STARZYK:

Was Ernest mad at the cops at all for their intervention in that?

[REDACTED]

No. He's the one who called.

STARZYK:

He called them the first ...

[REDACTED]

he's the one who called ... yeah. He called both times this happened.

PETERSON:

What was his attitude about the police overall. Ernest's attitude about them?

[REDACTED]

That's what's funny. See he got arrested for swinging on the pipe and everything. He commended the police cause he's been like, they've really kept me from getting into trouble. He goes, from now on, if I have a problem, I'm calling the cops. You know, cause he don't want to be seen as a violent guy cause he got pissed off a couple times, but also he's been beat on, I mean, he's been put through some stuff, you know ... I mean like I said, his son would punch on him ...

STARZYK:

But not by the police.

[REDACTED]

No. No. By other people. He got sick of that. He's, you know, he's one of those old, old type guys. He wanted to stand up for himself, you know.

STARZYK:

Kind of macho kind of guy?

[REDACTED]

Well, yeah. I mean he used to be ... pretty buffed guy. He used to be able to stand up for himself in the old days, you know? Like I told him when he swung the pipe ... I told him right then. I said, this is a felony. Now, this

kind of thing will get you put in jail. I took the pipe from him because I'm not ... I'm not super strong or anything but I knew that ... I knew how strong he was. I knew if he hit me with the pipe and I took it from him, I wouldn't be as hurt. He wouldn't be hurt. We could put an end to this whole damn thing.

STARZYK:

Uh, huh.

and ... and ... I'm going for anger management right now for anger crimes and you know, but I wasn't ... I didn't even do anything. All I did was stand up and scream at my wife in public and I got arrested for it and I had to pay for it, you know. But it taught me a lot. It taught me a whole bunch about anger. You know, it taught me that basically my actions ...

STARZYK:

Yeah, what can happen with ...

Even if I'm not guilty, if I wasn't locked into it.... or wasn't near it, I was involving myself in the whole situation, you know.

STARZYK:

When you were living there, did you said he was a real hard worker and stuff. Did he ... did he end up staying where he was sleeping not very much or he was ... you know ...

Oh, no, he was sleeping just recently ... I stayed there last week or last week with them. Up until .. What ... today Saturday? I guess up till Thursday. Thursday, I started staying back at my dad's house here in Antioch. But ... I was staying there. He was sleeping every night.

PETERSON:

What was an average day like? Give us an average day for Ernest. What time would he get up in the morning? What he did and when he went to bed He'd get up bright and early, about 7 or 6:30 or so. And .. have coffee everyday, have his cup of coffee and paper.

STARZYK:

At the house or did he go out?

At the house. There at the house and he usually run ... run to the store or something on his bicycle. You know, he likes to ride his bicycles around. He had a few clubs and stuff that he'd join. You know, he was going through school. Taking guitar classes and he was ...

PETERSON:

(Unintelligible).

Uh, yeah. He was in a ... what is it called? Toastmasters. Its' a speech preparation group, you know, where you speak in front of people and stuff like that. He was in the Toastmasters. He was in NRA meetings, you know. That's something he just recently quit because he didn't agree with all the NRA. He thought they were a bunch of Nazis. When he came home saying that one, we thought that was kind of funny, you know.

STARZYK:

Did Ernest have any guns in the house?

I'm not sure. I'm sure he did but .. I mean, they're probably chained up cause he put some elaborate chain crap up in the bedroom or something like

that. He was always doing something like that. Tearing something apart because ... he'd start projects and then just never finish them, you know? That's just how the guy was.

PETERSON:

So would you describe him as like, a putterer all day, you know putters around all day or ... always doing something? Did he ever just sit and like, watch TV or was he always doing something.

Uh, yeah. Well, when he would sit, he would usually sit and listen to the radio. Or something and he even then would fiddle with something, you know. Messing with his guitars or what he was making. You know, read a paper or something. He's always be busy doing something. I mean, he wasn't a guy to really relax or lay around the house very much.

PETERSON:

Did he have a set time that he went to bed every night?

I'm not too sure about that.

PETERSON:

What time would you say he went to bed at night?

Like about 10. 10 or so.

STARZYK:

Okay. No alcohol or drugs. No (unintelligible)

Nothing.

PETERSON:

Besides his medication, did he take anything else?

Nope. Just the coffee and I don't know if he was drinking that much coffee here recently. He was a sugar junkie.

STARZYK:

Oh, yeah?

He liked a lot of sugar. Chocolate. He liked ice cream a lot.

STARZYK:

Would you describe him, though, cause you knew him before the stroke and at the stroke.

right.

STARZYK:

Did he tend to ... to get a little more paranoid. You know, a little after the stroke? Were there behavioral shifts and ... I know he was on a lot of medication. And.

He would just to conclusions a little more, yeah ... he might say things that were a little rash or harsh. But all in all, I think he was taking things out a little more also at the same time. You know, things would pass he would just jump to conclusion on... cause he'd always been a little bit jumpy like that, you know ... like I said, he had a lot of problems with ... with his granddaughter and she was trying to grow up in the shadows of what her mom ... her mom had gone through. And .. Seeing all that over again, I'm sure it was part of the reason why he didn't want to have anything to do with her.

STARZYK:

Uh, huh.

Which ... you know ... he'd did his best to be with her, I mean .. Out of all her

family, he was the only one that was better for her and ... he was a bit eccentric, you know. He was a good guy, you know. (Unintelligible) he was trying to teach all the kids in the neighborhood how to bend conduit and how to do electrician work.

STARZYK:

Oh, yeah?

He'd have kids from all around the neighborhood come and stand in his garage while he showed them how to do stuff, you know? Build motorbikes for them and do ... you know, just stuff the kids around there. She was always really nice with them, you know.

STARZYK:

And .. How long had [REDACTED] been there?

I guess just a couple weeks.

STARZYK:

A couple weeks? Did you notice that in that time frame that he got a lot of ... a little bit more upset? A little shorter ...

Yep. I could tell you he just discovered the Visa and all that crap going on behind his back and it was his own son. We didn't even confront [REDACTED] about that. We were just trying to figure out how it had all gone down and ... apparently my wife or somebody found out it was his girlfriend that done it and so they knew who did it and then ... he .. [REDACTED] said that she .. She wasn't positive, but she thinks when [REDACTED] had stole some credit cards or something. She just went and got a rental car and being homeless and broke and living in a garage and she's riding around in a rent a car on what money? You know, she's never paid a dime towards rent or food or anything at that house ever.

STARZYK:

Oh, really?

You know, ever. So ,....

PETERSON:

When Ernest found out about the credit card being missing when he got bills in the mail.

Right.

PETERSON:

Did he go ballistic. But he doesn't confront [REDACTED] about it. He talks to [REDACTED] about it and [REDACTED] and him do a little independent investigation and found out later that it was [REDACTED]'s girlfriend that actually stole it?

Pretty much.

STARZYK:

And when did this all when did they find out that it actually ... that they'd narrowed it down to all this. When did they actually ...

Well, see, I'm only getting part of the story from them. Cause, I mean, as much as they'll let me hear when I'm ... when I'm there. But, just in the last few days. Just in the last like, two or three days did he find out. And he was ready to kick [REDACTED] out. He told [REDACTED] he had a deadline to get out. He wasn't even allowed in the house to shower... to use the kitchen or anything. He was threatened by his son. I mean, I mean I've been over there when he

was physically threatened, you know.

STARZYK:

What did [REDACTED] say to him?

Well, when I was there ... this is a long time ago when I .. When I before I even married my wife .. That I heard him threaten him, but I knew, you know, that [REDACTED] did all these .. Bullied up on him a little bit. And since the stroke, he's just not, you know, the fighter he was before, where .. Honestly, if this had happened before, I don't think [REDACTED] would have pushed him like this, you know, pushed him this far.

STARZYK:

Where had [REDACTED] been staying in the last couple weeks? In the house?

In the back yard in a van.

STARZYK:

He was living in the red van?

In the red van in the back yard.

STARZYK:

Okay, and his dad was not letting him come in the house to shower and stuff?

No.

STARZYK:

At all? During this last week or so?

At all. And when [REDACTED] was in the house, is because he snuck into the house while Ernest was away.

STARZYK:

Okay, and .. Just last couple of days, Ernest found out or narrowed it down to ...

Right. Well, [REDACTED] had stolen from me recently too and ... I went to the house pissed off at Ernest. This was around the time .. this is when the pipe incident happened the last time.

STARZYK:

Oh, back in ...

this is why I called the cops. I called the cops that morning cause I'd been ripped off.

STARZYK:

That was back in July, right?

Right. I called the cops cause I'd been ripped off. I woke up the next morning and my shit was all gone through. My wallet was missing and this is while I'm sleeping. So I said, ... I've been cleaned up, you know, I haven't done any speed, I haven't done no shit in a long ass time. And so I was like, I got to the point where I don't follow into the shit. If you're all on drugs or whatever, shit happened away from me. And I'm there with my wife and my VCR is stolen. A bunch of my shit is stolen out of her ... out of her room. Why I got all pissed off. I woke up the next morning, I went to sleep in the middle of the night, you know and I said, 'fuck this. I got work to do' I'm only .. I was only down her for a few days. I was living in [REDACTED] up north and I was working up there, so, you know, I had a job to get back to I had stuff I'd been doing ... independent contractor I've been working for, so I had to move it around from place to place from job to job and ... so I came down here when I had a weekend off and .. I was pissed about this. Well, the

next morning, I got up and I yelled at Ernest, I said, who the hell took my shit cause [REDACTED] hasn't been here. I haven't been here. Where was my stuff at. And he told me that [REDACTED] had done it. So, I was ticked off about [REDACTED] and me were having a feud that morning also and ... and that's where the pipe came into the whole incident .. Was me yelling at him telling him I'm gonna kick [REDACTED]'s ass for taking my shit, you know and ... all called the cops and that's what I was doing. I said, fuck it, I'm gonna call the cops. Cause I already had the violence .. The violence charges are passed. I did n't need anything else and I was just ... like, I'm at a point where I'm just ... I'd rather not deal with the crap, you know?

STARZYK:

[REDACTED]:

STARZYK:

Sure. Gets you in a lot of trouble. Makes your life more complex. that's what it came down to that day.

What ... had there ever been any other incidents Where Ernest had .. You know ... cause he's now a little bit weaker, a little bit .. You know, not able to defend himself so much, decided to pick up something and go after anybody, whether it be you or [REDACTED] or anybody other than ... the July incident.

[REDACTED]:

STARZYK:

[REDACTED]:

STARZYK:

[REDACTED]:

No.

No?

No, he's been really mellow.

How did he .. Approach [REDACTED] in the mornings and deal with that? With him living out in the van. Did he go out and ...

Every time that I was around them, [REDACTED] was very polite with him and very polite and they .. They would walk separate ways. He would stay in the house and [REDACTED] would stay outside. And .. [REDACTED] didn't want to talk to me. Cause, like I said, he just ripped me off. I was doing the same thing Ernest was doing. Ignoring it... saying, you know screw it. I don't need a Visa. I got a job. I pay for my own shit. I don't need. Whatever he took, it'll come back on him, you know? And I just wanted to live that way, you know, screw it, I mean I know there's nothing you guys can do for me. There's nothing nobody else can do for me. Me and god gotta accept it. You know? And that's ... that's how it is. That's how I was living. That's how Ernest was living too. Hell, [REDACTED] was for the most part with the guy.

STARZYK:

Did you find that in the last week or so that Ernest was getting upset because, number one, Greg was ripping .. His girlfriend had ripped him off but there were other bills coming in the house like utilities of any kind or phone bill or anything like that that was high that he was mad about.

[REDACTED]:

STARZYK:

[REDACTED]:

Not really.

No?

Not really. And believe it or not, with that many people in the house and without that, he would always have that amount of power bill. He would

always run the same power. He would leave certain lights on all the time. He would leave his heater on all the time. He just ... there were just certain ways he likes his house and, you know, he'd leave the radio on or something or ... [REDACTED] would leave her tv on and just let it run and he wouldn't shut it off. He'd just let it roll. So, he never really had big complaints about stuff like that.

STARZYK:

Okay. And you said you were asleep this morning before all this stuff happened? You were staying over at [REDACTED]'s place?

[REDACTED]:

Yeah.

STARZYK:

How far ... it's over by Waverly isn't it?

[REDACTED]:

It's Blueridge. It's right .. it's right at the end.

STARZYK:

The next stop sign.

[REDACTED]:

Yeah.

STARZYK:

Yeah, okay. So you didn't hear any of the ... the altercation at all?

[REDACTED]:

I saw police cars fly up the street. I had a bad feeling and I was in the bedroom. I don't know how to explain it but I had a feeling. I ran out of the house. I was out there doing yardwork for [REDACTED]'s parents. I kind of offered to do some work around there for them. And .. I was getting ready to do the work this morning. I came out and I ran out. By the time I got to the street, [REDACTED] had gotten a ride, I guess from a car that was leaving, coming up that way and she jumped out of the car and ran towards me and told me what happened and I took her back up there.

STARZYK:

this was the first time at 8:30 in the morning?

[REDACTED]:

Oh, no. This was the second time.

STARZYK:

Oh, the second time after the shooting. Okay. You remember who it was that gave her a ride down there?

[REDACTED]:

I'm not sure. I mean it happened so quick all I seen was her come screaming and yelling and crying and I ... just wanted to help her out. I think .. The worst part was when the cops flew by the house this morning, I had this feeling that she was hurt, you know, and I don't know how to explain it but I just had this bad feeling, you know, so I wanted to rush to help her.

STARZYK:

Were you worried that maybe Ernest had hurt her?

[REDACTED]:

No. I was afraid that maybe the police or something had hurt her or something because of her getting in the middle of Ernest and [REDACTED]'s fights.

STARZYK:

Okay. So the only other people that would have been in the house today would have been, what? Ernest, [REDACTED] out in the van, your wife [REDACTED] and ... anybody else that you know of that was at the house at the time?

[REDACTED]:

Uh, [REDACTED] would be the only other one.

STARZYK:

Was she there though?

[REDACTED]

I'm not sure. I'm not sure at all.

PETERSON:

did you see her car out there?

[REDACTED]

I didn't see her at either time I was down there today. I've not seen her at all today. But she usually is almost there almost every day. You know? I'm sure she spent the night. I'm sure she was there first thing this morning.

STARZYK:

does she spend almost every night there?

[REDACTED]

Usually.

STARZYK:

Okay.

[REDACTED]

Or she'd sleep in her car or he'd been trying to evict her recently because of the Visa and stuff like that. He wasn't sure. He didn't know if it was her or the other one but he wanted nothing to do with any of them. That's what he told me at 8:30 this morning when I was over there. He said, [REDACTED], I'm done with them all. I'm knocking them all out." And I said, "What do you mean by that?" and he said, "well, I'm putting them all out." And I said, "Well, what about [REDACTED]" and he said, "No [REDACTED], but everybody else. They can stay out of my house." And ... that's the first time he's really talked about having [REDACTED] kicked out, you know. In a long time, cause .. He just had had it.

STARZYK:

[REDACTED] had never....

[REDACTED]

Yesterday he ...

STARZYK:

had any confrontation with him?

[REDACTED]

No.

STARZYK:

I'm sure it was probably some verbal stuff from time to time when ...

[REDACTED]

Oh, yeah. Yeah. I mean they both have tempers, definitely, but ... I don't think that .. They've ever been violent towards each other.

PETERSON:

You mentioned earlier about [REDACTED] drugs and possibly putting some Meth into coffee. First of all, his beverage of choice, what would you say he'd been on for a while. What would it be.

[REDACTED]

Coffee. Mainly coffee.

PETERSON:

Instant coffee? Did he make his own coffee? Did he ...

[REDACTED]

Out of a coffee pot.

STARZYK:

Okay, so he would actually do the grounds and he'd put it in. Was it an old time coffee pot like a ...

[REDACTED]

yeah, it was just the kind that you put the filter in and ... and that's why [REDACTED] had found like drug baggies near the coffee. In the coffee grinds once and she said, "What the hell is this" you know, and then ...

STARZYK:

Dirty baggies or .. Fresh ones.

[REDACTED]

Well, you couldn't really tell now, they'd already been through the ... through the ... he'd already drank the coffee. So we found this after the coffee had already been brewed and we were like, what the hell is this and then ...

STARZYK:

How long ago was that?

Oh, God. This is at least a year or more. So .. And then after that, like I said, [REDACTED] had walked up on [REDACTED] purchasing drugs down in Virginia Hills shopping center and she said, "I just saw Crazy Lady down there buying drugs. I knew she was a drug addict." Cause, you know, we both said, this girl's ... this woman has got to be on some freaking crap because the way she acts is just ... not sane, you know. And it's more like somebody who's under the influence of speed. If you know anybody that's really wacked out on that shit, she never sleeps. She'd sit in the house for days at a time while ... I mean, I mean I don't understand how she could stay that way. We try to stay up, just to see how late she'd be up, you know and she'd be up first thing in the morning. She's up all night long and ... she would sit and write books about ... sports pages of books, you know. She would sit and .. And take a whole game, you know, football, basketball, baseball, whatever and write it down in the books while ... you know, so we just knew she was wacked. She was really completely wacked. Well, after she'd seen her purchasing the drugs and stuff, we saw that .. We found ...paraphernalia in the garage and we knew it wasn't hers, it wasn't mine, you know , we were pretty much primarily the drug use in the house, you know. We wouldn't want to .. We had a path of drugs and we didn't expect Grandpa to have any kind of, you know, stuff like that and when we saw this out there, we knew somebody'd been using drugs in the house and we knew it wasn't her grandpa, you know? I mean, he's really just adamantly against that crap..

PETERSON:

Did you see the bindle bags that were in the coffee maker?

[REDACTED]

Did I?

PETERSON:

Yeah.

[REDACTED]

Yes. Yeah. That was ... like I said that was a while back.

STARZYK:

... in the baggies?

PETERSON:

You're familiar with what they look like and all that? I mean, you know ...

[REDACTED]

Yeah. I mean, I knew what it was when I saw it. I was in shock cause we were thinking, you know, we can't ... put on this big old push and ask Grandpa, "Hey"...

PETERSON:

How many times had [REDACTED] or you seen that?

[REDACTED]

Just that ... just that time and like I said, ... that's ... there's the one time when we found the paraphernalia out in the garage which we knew couldn't have been hers. (Unintelligible) right by her stuff where she had her bench and everything. So we had ... and then [REDACTED] had seen her .. I hadn't seen her but [REDACTED] had seen her purchasing drugs up at the ... up at the store where she'd

... seemed like a drug deal and when she was ... [REDACTED] ... [REDACTED] doesn't really have anybody she talks to or communicates with or anything, you know, I mean honestly, I don't ... we don't ever see her sitting it out and having a conversation with people. So, it was pretty weird situation.

STARZYK:

PETERSON:

Yeah, we're about half way through.

Just on the drug thing ... when [REDACTED] saw and you saw the bindles in the coffee filter.

Uh, huh.

PETERSON:

Had you ... were you able to observe his behavior after he drank the coffee? After that?

At the time you're talking about when we kind of noticed he was on it, we figured that she had done that to him and we tried to kind of tell him about that.

PETERSON:

But did you notice his behavior being ... what appeared to be on drugs before you found the bags in the ... in the coffee or did you find the bags and go, "God, he's acting weird."

Before we found the bags, we figured he was under the influence of something but he didn't know he was cause, like I said, he was working for .. He was doing machinist .. Working for a machine ... machine somewhere and .. He'd work a lot of hours. When he'd come home, like I said, he'd work graveyard shift and then he'd be up half the day, but he'd be up haggard and tired ... you know, really burned out and we'd be like, "Grandpa, go to sleep" you know, "go lay down", you know, take a load off and he was like, "I can't" and he'd be shaky and stuff like that and .. [REDACTED] said she'd noticed within the last few weeks when she seen him that he's not like that anymore that he's not and I've talked to him in the past and he's not been like that either, so, I mean, it might have just been a couple of times that she did this to him but this was ... it was kind of near the time of the stroke when we found the baggies and stuff like that so ... we were all, we were kind of under the assumption that might have been what did it to him. That gave him the stroke was that she was feeding him drugs but there's no way to prove it. At the time, our two paths did not look too good, so it wasn't like there was something to seek out something like that. We had a whole, you know, different agenda in life right then when we had to deal with.

STARZYK:

Uh, huh.

so we, you know ... sometimes if screwball shit like this happened, it's not something you would hold my whole way of life and also ... kind of had a ragged past with this guy, you know, I mean as far as I lived there and everything with my son being born and everything. I couldn't really be around that kind of influence in my life, you know.

PETERSON:

Who's idea was it to check the coffee filter for the baggies?

[REDACTED] was making coffee. She was going to make some coffee the next day, or, yeah .. That day or something ... I'm not sure. Usually he'd make a pot of coffee in the morning when we lived there.

PETERSON:

Uh, huh.

He'd make a pot of coffee and we'd make our own pot of coffee there in the afternoon. You know? Laura was drinking coffee like all day long. And [REDACTED] does that too. She ... coffee and ice cream. Main diet. I kid you not and garbanzo beans out of the can. I couldn't believe people live on that stuff, but ...

STARZYK:

Did he ever talk about suicide to you? Ernest? Did he ever talk about taking his own life?

No.

STARZYK:

No talk about wanting to end it?

I mean, he was very much against that kind of stuff. He had to put up with [REDACTED]'s mom and ... and ... [REDACTED]'s had a few attempts, suicide attempts which he had a hard time dealing with it. They kind of ... it wasn't that often he'd cry or go through the emotional, you know, display or whatever, but ... when she was (unintelligible) it would really hurt him and it really hurt his feelings and, you know, I don't get that he was the kind to do that, you know? He wasn't suicidal at all.

STARZYK:

Did Ernest ever talk about moving? Recently?

Uh, yeah. Well, like I said, he had some ... he had some property in Oklahoma and ... I think he was planning on going there eventually.

STARZYK:

How did that come up? Or, tell us about that.

Well, he has a daughter, [REDACTED] which is [REDACTED]'s aunt and ... she has a horse and he bought some land in Oklahoma. Well, he told her to get a trailer and take the horse and whatnot and go out to Oklahoma and tend to his land and stay there and, you know, kind of make it your own or whatever, so she went and did that and ... he was thinking about going back out there to join her up until recently and a bunch of stuff happened, he had the stroke and he couldn't go back to work and he had to make the payments on the house and he couldn't lose his house out here that he worked so hard for so ... he had to do a lot of kind of ... rough decisions but he stayed here. I mean, he wanted to leave a long time ago.

PETERSON:

When did [REDACTED] .. Have you ever met Monica?

Yeah.

PETERSON:

How long ago?

when I first met my wife I've been with her for four years .. .five years now, so it's been a while.

PETERSON:

You met [REDACTED] out here in Martinez?

[REDACTED]
PETERSON:

Yeah.

Was [REDACTED] ever living at the house here?

[REDACTED]
PETERSON:

Yeah, she was living at the house when I first started dating my wife.

[REDACTED]:

When did [REDACTED] move in to the best of your knowledge?

PETERSON:

Move in? Oh, geez. I don't know. I think she was .. Living there on and off though since she was in high school until she just recently moved to Oklahoma in the last year.

[REDACTED]

Okay, and ... so [REDACTED] went out to Oklahoma because Ernest had bought some property in Oklahoma?

PETERSON:

right. And [REDACTED] had a drug problem here. She'd ... she'd been kind of really messed up. She was ... she was psychotic.

[REDACTED]

How old is [REDACTED]?

PETERSON:

[REDACTED]'s very psychotic. She was actually the worst one out of the family that I've ever witnessed. She is the most .. Messed up, displaced one of them all.

[REDACTED]

compared to [REDACTED]?

STARZYK:

Compared to [REDACTED]? Compared ... I mean, she's just psychotic. She really is. She's pulled a gun on me before. She's, you know, she's done some crazy stuff. She ... she made an electrical outlet so when you plug into the light in the socket, it'd shock you. She had a metal rod running out of the thing and she was trying to shock people. She's crazy.

[REDACTED]

Let me ask you this. You said she's the most psychotic one out of everybody. Is there some ...

PETERSON:

Well, I just mean as far as [REDACTED]'s mom and ... and the brother, [REDACTED] cause they all have, you know, they're really got bad pasts. I mean, her mom was going through a lot of depression or whatever ... [REDACTED] said she's schizophrenic or ... or something like that. Cause she has some kind of mental problems. She's screwed up. [REDACTED] ...

[REDACTED]

You talking about [REDACTED]?

PETERSON:

[REDACTED], yeah.

[REDACTED]

she's just passed away.

STARZYK:

Right.

[REDACTED]

She's [REDACTED]'s mom.

STARZYK:

Yeah, that's [REDACTED]'s mom. So ... I just assuming... I mean, I hate to do it but just from knowing the family as long as I do .. [REDACTED]'s got the severity of the schizo whatever. I mean, I hope she never hears me say that but , you know, I mean it. She really is the scariest one of them all.

[REDACTED]

Did you ever see any of that in Ernest at all?

No, not really. That's why I said, I don't know where they get it from but

it's from him or not, but he's put up with it. He's sat through quite a bit of it. You know, and there was a time when me and [REDACTED] were living there that he said, "I'm not gonna raise any more kids. I'm not gonna have no more damn kids in my house" and I said, "I can believe. I can relate with you." I said, "I don't blame you. You've been through it all. You've had all this crap come on" to him, you know, he had to raise his daughter's daughter and she had two other daughters that wound up in custody, you know state ... or foster homes. So, he's had this emotional ... emotional roller coaster. Like you say, there was times he'd confide in us, in me and [REDACTED] and he'd try and he'd let us know that he was hurting so bad and stuff like that. And ... and that's why I kind of like the guy's ... I've seen what he's going through and .. Kind of respect him, you know. He's been through hell.

STARZYK:

I see. What we're trying to do is we're trying to understand Ernest. And .. I had contact with him when I was out on the street. But very brief and it was a number of years ago. I think it was pre-stroke. So ... you know, if there's anything else you can think about that will kind of ... in just the last week or so, you know ... anything ...

[REDACTED]:
Like I said, he ... he .. The other day he told me ... he told me,. "You're not going to move in on me, are you?" And I said, "No, sir." I said, "I'm not moving back in your house" and he said, "Good". He said, "I'm trying to get rid of what I got here." And that's about the coolest, as long as he's taking care of [REDACTED], because, like I said, I've been trying to take care of myself, which doesn't involve me taking care of her or taking any care of anybody right now but me. Because ... selfish way, but I have to do it that way. Never again. I've never felt like I've been able to control my life like I have now. You know, I'm kind of empowering myself and ... and ... and I was glad she was there. I was ... glad ... cause they both lonely people. She was going through a lot too. You know, she never went through counseling for anything for her mom or anything. She's never been able to afford it and she always kind of jumped the gun when it came to ... we got free counseling and stuff like that. She would just ... wouldn't take it. You know, she didn't want people to sympathize with her .. Empathize with her and ... it's, it's something that, you know, right now she's just learning to deal with, you know.

STARZYK:

[REDACTED]:
Did she ever express to you how Ernest took it when his marriage failed? It hurt him bad. He would talk about his wife like she was still. come back and be his wife. ... a few years ago. Now, within the last two years or so, he really has dropped it. Cause she had a number of (unintelligible) cause I've gone to the family reunions with them. I've kind of attended, been the chauffeur cause Ernest lost his license and then ... you know, he was driving still but it wasn't what it should be, so I kind of became the chauffeur to and from family functions and stuff like that and she had been to the last few and

he just ... I guess he saw, you know, there was a reason why he didn't want to be with her. You know, cause she really is ... she's a mean one.

PETERSON:

His ex-wife?

His ex-wife, yeah.

PETERSON:

How do you mean

Well, she's more ... about matters of monetary matters than about matters of the heart or ... or ... she could care less about anybody else but herself. You know, as far as I've ever seen. You know, our son was born. She could care less. Stuff like that. She doesn't care.

PETERSON:

So, she likes money?

Yeah, apparently that's ... that's the only thing she's really interested in, you know, I mean, sometimes I've sat around here and that's all she talks about, you know what she's gonna get out of the world or whatever and she doesn't really care about anybody else or ...

STARZYK:

Does anybody ever relate to you why they split up?

Sort of. My wife kind of told me. She ... I guess she was around the time when this happened, so ... she ... she said that, you know, Grandpa was kind of ... you know, he had an attitude, a bad attitude and she got tired of taking care of him as far as cooking, cleaning, cause he was not ... you notice the house, he's not a very good cleaner. He don't give a shit ... He'll take .. Leave it just like it is, you know, the worst bachelor pad, but he'll be happy. As a matter of fact, they cut out the gas to the oven cause he said, "I ain't using it no more." He bought everything that's microwavable and that's just the way he did it, you know. And ... and I respected the guy. He's an old guy but let him .. He's stuck in his ways, you know, as long as he's not hurting anybody, you know. He's doing okay. That's one thing we would check in on him. Make sure he wasn't pissed off or upset or .. Emotional or ... he'd be on his own a lot. He'd spend a lot of time thinking and stuff. And ... but he was always working on something, always busy on something. So, it was usually pretty good for him. Like therapy going out in his shop and working.

STARZYK:

Sure. Did you .. Did you ... I know he took a lot of medication cause I cataloged a bunch of it and ... and he took it pretty regular. Did you ever notice that he didn't take it when he was supposed to and it would tend to ...

Just when he complained about it. This was after the stroke, right after the stroke. Something about the medicine was ... creating or causing him to have the stroke so they ... this is what ... I never heard it from a doctor so all I heard it from him, but he said the medicine was wrong and the doctor's screwed up and he quit taking it. So, I don't know if that was something he was supposed to do or something he wasn't supposed to do.

STARZYK:

How long ago was that that you had that conversation.

[REDACTED]
STARZYK:

That was just like right after the stroke, right? I know ...
So, back in ...

[REDACTED]
STARZYK:

Yeah, he was trying to link the medicine to the stroke, but ... but the last one he had, he had one before that. I'm not even sure how far apart they were.
When was his last one.

[REDACTED]
STARZYK:

Like I say, it had to be like a year ago, maybe a little longer than that. A year and a half ago?

[REDACTED]
STARZYK:

He said he wasn't going to take it anymore cause he felt it was a catalyst?
Right. It might even be longer. It might be a little more than a year and a half ago. I'm not exactly sure.

[REDACTED]
STARZYK:

You know his doctor's name?

[REDACTED]
STARZYK:

No, I don't.

[REDACTED]
STARZYK:

Do you know if he was ever ... did you ever see him have a seizure?

[REDACTED]
STARZYK:

Seizures?

[REDACTED]
STARZYK:

Yeah.

[REDACTED]
STARZYK:

No.

[REDACTED]
STARZYK:

Did you ever hear about him having seizures?

[REDACTED]
STARZYK:

Actually, yes we did see him have a seizure once. It was real mild though. He was ... he was in the driveway working on his car, on his van and ... this was when we lived with him, when I first started to get to know him. He was pretty territorial and he wouldn't let me mess with anything of his tools, anything like that but he talked ... I went out and he was laying on the ground and I said, "Damn, he's not moving" and the sun was beating right on him, dead on him and he's been out there for half an hour and I'm like, well, what's he doing? Is he taking a nap under the car or what? So, I went out and checked on him and I guess he had a little bit of a bit and ... we brought him in the house and cooled him off, gave him something to drink. It was a hot day that day and ... figured the heat probably brought it on him but ... he told me that day to take the tools and go ... finish working on his van. And he never told me anything like that before, so ...I figured something major had happened to him, you know. He wasn't feeling good and that was about the first time we noticed before the strokes. We noticed his health wasn't right.

[REDACTED]
STARZYK:

Is that that white van in front? The Ford in your

[REDACTED]
PETERSON:

No, it was the red one. He, at the time, that thing's still running. He had just took it in the backyard to get it off the road cause he lost his license.

[REDACTED]
STARZYK:

It still runs? That van?

Yeah.

That's his pride and joy.

[REDACTED]
STARZYK: [REDACTED]
STARZYK: [REDACTED]

Yeah. Except he needed to paint it. It still ran.
Wow.

I was a mechanic ...

Did you ever notice him having any problems walking on his right side? Any problems with his right side? When he walked?

A little bit. He kind of would ... he had problems with his hands, I mean, his elbows were kind of stuck in his sides so he'd do everything like this, you know and he'd move something and he'd do something like this and it would be, you know, he was real ... not real strong, you know, I mean he would have a hard time picking things up. Like a pad of paper. He would have to pick it up with both hands, like this and hold it like this, you know.

PETERSON: [REDACTED]

Did he ... did he have a favorite pipe that he always kept? You know, how some people might carry a baseball bat or a sawed off bat in their car or something like that because they had something they were accustomed to or did he just have a bunch of pipes all over the place?

No. He was bending conduit and stuff like that, showing kids in the neighborhood so he was bending pipe and stuff like that so he could route it for electricity, you know electrician ... just got into it about a year and a half ago. He got like ... or a year. Right around the stroke time. He got the ... uglies guide, reference guide for electrician work and he just started going through it. He went through a class and he learned about the wall zones and he's gotten copy quite a bit about it. He wouldn't ... he's one of those guys who likes to share knowledge and stuff like that, you know. I mean, just last night, he wanted me to come in and bend conduit ... which is what the pipe is probably for.

STARZYK: [REDACTED]

When you bend the conduit, I'm ignorant in that area, and ... I'm just thinking it's some type of a channel and you adjust it and you pull it and it bends it?

Yeah. Yeah. What it is, is a big pipe that comes off of a .. Of a ... there's a round insert for the other pipe. You stick the pipe in it, bend this pipe back and it will actually just, like a lever, it will bend the pipe ...

So, you're using your own strength and the leverage.

Right.

Not some hydraulic thing to bend it or ...

And you gotta bend it to a specific ...

Angle.

Angle or degree to ... to where you want it to be. If it's in a corner or whatnot, you want it to sit just right.

Right. You want a 90 degree... you want a ...

Yeah, he was showing all the kids in the neighborhood how to do this stuff, you know.

STARZYK:

[REDACTED]

STARZYK:

[REDACTED]

Is it very difficult to bend it once you put it in the apparatus and .. Pull?
No, no. Not hard at all.

Okay.

I mean, it was ... it's something that .. Basically, he had a hard time doing it, you know, a lot of times and stuff like that, but he was really good on the math and everything, so, you know, angles and exactly how everything was set up, so ... I think he was basically, just wanted people around to help him bend the conduit to get stuff the way he wanted it cause he was redoing his, you know, stuff but ... that was his way of, you know, doing it was teaching us something at the same time. He was always trying to teach something to us.

STARZYK:

[REDACTED]

Oh. What was Ernest's feeling about money?

Never really cared. He'd never get on me. He never had a lot of it or .. You know. He never wanted for much.

PETERSON:

[REDACTED]

Was he behind on anything? Was he in danger of losing the house?

That was ... that was one thing that he was a little bit .. We were a little bit hard to look out and talk to him about. My wife was working for a mortgage broker for a while and she was trying to get, you know, money to help him out on his house and stuff and she did, but ... I guess it was for bills or something. I'm not sure exactly what he owed or ... but I'm sure it wasn't that bad. I think it was basically the house. You know, that was .. That was his main .. I mean as far as money going, he had money or he helped most of his kids out, you know, he bought his daughter a truck and pretty much gave her land in Oklahoma that he had, you know and it really cost a whole lot of money as far as we're used to land here, but you know, for him it was a lot of money, you know fifteen or twenty grand or something, you know, but ... he helped her out a lot.

PETERSON:

[REDACTED]

Is she living there by herself out there in Oklahoma?

Yeah.

STARZYK:

[REDACTED]

She have a phone or anything like that?

Nothing.

PETERSON:

[REDACTED]

How do you get ahold of her?

Well, she did have a phone but up till recently, I guess they've been writing quite a lot. She does write. I mean, she sends letters three or four times a year, you know, she'll send a letter, but like I said, she's kind of a strange one of the family. She

PETERSON:

[REDACTED]

No kids? Married?

No kids. She's divorced twice and ...

PETERSON:

She lives out there by herself?

[REDACTED]
PETERSON:

Yeah. Her and her horse.

What does she do for work? For money?

[REDACTED]
STARZYK:

I heard she works at [REDACTED]'s right now.

Does she have any other relatives out there?

[REDACTED]
PETERSON:

I'm not really, really sure, but I think they do have some family, but it's not from Ernest's family. I think it's somebody else in my wife's family that's out there.

Did Ernest have a will? Do you recall? Was there a will?

He did with [REDACTED]. The two of them were supposed to rewrite his will. She never got to help him do that, but ... he did have a will, somewhere. I don't know.

[REDACTED]
STARZYK:

Do you know ... did you ever see it?

No, but he was under the we helped him out after the stroke. He wanted to write a will. We helped him with, like, he wanted to work out with everybody because ... [REDACTED] didn't really want him to leave her everything because, like I said, [REDACTED] kind of ... [REDACTED]'s kind of crazy and ... and [REDACTED] his ex-wife is really greedy, so she was afraid she was going to come in and sell the house and [REDACTED] wanted to hang on to the house cause, you know, her grandfather's ... at the time of his sanctuary. After all this crap happened, honestly, that's the only place he had. Many times we tried to talk him into selling the house, getting a small apartment, taking the money and going on vacation and ... and ... and .. Going fishing. You know, getting a fishing boat. Something relaxing and he wouldn't hear that. You know, he had his shop there. He liked to have his little area to work on. He'd been in the house for 30 something years, you know.

[REDACTED]
STARZYK:

Uh, huh.

The way he claimed, it was "you will not take me out of this house." So my wife fought for that. She did not want him to leave his house because he was about to lose his house for a while and of course, she helped him get his mortgage refinanced. So, that's when they did the will and everything and [REDACTED] knows the exact specifics of the will or what they .. How they were going to work it out and everything.

[REDACTED]
PETERSON:

You know where the will is?

[REDACTED]
STARZYK:

I'm not sure but she probably does.

[REDACTED]
STARZYK:

Did he have a safe at the house?

[REDACTED]
PETERSON:

I don't think so.

Where does he store important papers?

Shoeboxes.

Shoeboxes?

[REDACTED]
He did. This guy, he collected every receipt he's ever bought of anything in the last years and years and years.

PETERSON:

Was there stuff in his wallet?

Yeah.

STARZYK:

You know?

Yeah, he would. Mostly numbers, anything important to him. It was in his wallet, you know.

STARZYK:

Did he always keep his wallet with him or was that something in his bedroom or ...

Something .. Usually always with him.

STARZYK:

Okay. Who's going to make the necessary arrangements for him, do you know?

Well, [REDACTED] I'm going to help her with that.

STARZYK:

Okay. Do you know if his ex is going to have anything to do with that?

To be honest, I don't think she even cares about it right now. I don't know. We're going to find out. I think right now, she's trying to reach her, but at the same time, she's kind of skeptical because she knows how she is. You know? She's worried .. [REDACTED]'s worried that .. That [REDACTED]'s going to come back and try and take the house over, you know, now.

STARZYK:

Did [REDACTED] remarry?

No.

PETERSON:

Single?

STARZYK:

Yeah. And he's actually been making her house payment. Ernest has.

What?

Yeah. Ernest has been making [REDACTED]'s house payments for .. For a few years. That's kind of where he went broke. He was being sucked dry. That's why ...

STARZYK:

Did he tell you what he was making the house payment for?

No. We never discussed that but I heard him, I've heard him on more than one occasion tell me how he was making payments for her house and letting her live right now and he was paying for his own house, you know?

STARZYK:

Just one more thing that was stressing him out about money.

PETERSON:

Right. And he had no income. He had nothing coming in right now.

Did he have any life insurance that ... you ever heard about? Anybody ever talk about?

I think it was a basic policy. It's like ... I don't even know, like 10 - 15 thousand per kid or something like that and ... I guess it pays for burial so, I'm not sure exactly how it is but I knew he was going to have some kind of

policy cause Laura

End of side one tape

Beginning of side two tape

STARZYK:

[REDACTED]
You said what type of policy?

It was a Met Life, I think. What it was cause ... he .. We were really broke. He came to us and told us when he cashed those in, I have bonds and stocks and other stuff and we never did. We decided, you know, we should keep that cause, you know, you never know, we might .. Our son might need it or something down the line, you know, it was one of those decisions and we actually made the right decision and we never cashed them in but .. He told us all about his life insurance policy and everything. Kind of gave us all the numbers, so I know we'll have the information for all that stuff.

PETERSON:

[REDACTED]
And how long ago was that conversation approximately?

Within the last year. Like when we were starting to separate and everything. We were both on the streets. Homeless and kind of wanted to help us get off the streets, but at the same time, we decided we didn't want any handouts from the world right then and we both needed to kind of go through it on our own. Which I'm glad we did. I mean, but honestly, it put ... it put her where I can respect her again, you know, there was a part where honestly I could not look at her with respect or love or trust or anything like that and vice versa. I was no better. And I had gotten to the point where I was prejudging. You know, looking at her through her, you know, its all hers. Definitely a two of us.

STARZYK:

[REDACTED]
Well, good.

Now that we've gone through it, we're a lot better friends. We'll never get back together and we never patch our marriage up, we're a lot better friends now to be honest with each other, you know, look each other in the eyes and let each other know what we say and what we feel and ... I'll be with her ... I'll be there for her forever. You know? (Unintelligible) but she is a cheat, you know. She's in a bad spot right now.

STARZYK:

[REDACTED]
Anything going to happen with [REDACTED] right now?

I don't know. We'd like to see her not go back to the house, you know. We'd like to make some kind of way of not having her back there and that's something that [REDACTED] will ...

PETERSON:

[REDACTED]
She lives in the garage today?

Yeah. Yeah.

STARZYK:

[REDACTED]
If you go in the garage, is her stuff on the right?

If you go in the garage and you walk all the way back to the little corner, so back to the right ... and if you go back in that corner, there was a bench, a

little wooden bench. That's where she would lay. That's where she would stay.

PETERSON:

She doesn't have a bed?

[REDACTED]

She doesn't have a bed.

PETERSON:

Just a wooden bench.

[REDACTED]

Just a wooden bench which she would sit up at.

PETERSON:

She'd sleep in the living room or

[REDACTED]

At times, she would go in the living room and watch tv and sit in there, but, like I said, when anytime me and Laura were around, she would not be near us or be in the house or be around.

STARZYK:

But she showered in the house.

[REDACTED]

Yeah.

PETERSON:

And did her hair and makeup and ..

[REDACTED]

Right.

STARZYK:

Do you think [REDACTED] is still doing drugs? Currently?

[REDACTED]

Oh, yeah. [REDACTED] said ..she hasn't slept the last three nights that she's been there.

PETERSON:

She's buying her stuff... the last time she was seen by [REDACTED] down at [REDACTED] [REDACTED]?

[REDACTED]

Right. Virginia Hills.

PETERSON:

But she could be .. God knows, she's got a car, she's mobile. She can go anywhere.

[REDACTED]

Right.

STARZYK:

Where would she keep her stuff?

[REDACTED]

I don't know.

STARZYK:

Her purse?

[REDACTED]

God only knows. I mean, we've made ... this sounds kind of harsh and mean and everything but we've got an all time scenario about that woman... just talking, just like, she's got to be on SSI, you know, she's got to be on something to have money. We figured, you know, cause we didn't think she was always ripping Grandpa off. But we didn't know. And we never would talk to him about stuff like that because it would get him upset, you know. It would get his blood pressure up after the stroke. He's been really sensitive about bringing up even the smallest issue. You don't want to do that, you know? He was old and sick and .. And ... and it would just upset him.

STARZYK:

Do you think [REDACTED] would do anything to hurt him? I mean, not that .. Sure, she might have been involved in ... or someone was involved in ...

[REDACTED]

If she was slipping him drugs, I mean, I believe that she was doing it to hurt

him at the time I ... I, like I said when it was happening with the stroke and everything, we kind of pointed the finger like towards her. We thought it might have been her, you know that set the stroke off on him because it came from out of no where and he was doing really good, healthwise and stuff. He just started working again since this last stroke. So he'd been working ... he's been working for a while. He's been working for 6 months or something like that or, you know, I'm not exactly sure about the time, cause, you know, it's only been an hour of his life, but ... he just started working again so I know he was proud of that and everything. He was still doing machinery ... machinist work. And ... I guess he's making tools or something like that, you know ... but he was happy to be back to work and ... what he enjoyed doing and ... after the second stroke, he kind of lost all of that, you know. He thought everything, his work all gone down the toilet.

And ... I've actually worked with people in the bay area. I worked for a real company and they knew the guy because of his work and his quality of craftsmanship and whatnot and .. And .. My boss there had heard of him. You know, and worked side by side with him, which kind of blew me away, you know cause he was pretty well known, you know in the field.

STARZYK:

Was he a perfectionist?

Yeah. I mean, he made custom stuff. He custom welds, custom stuff that, you know, he'd ... he'd create the machine to create tools. You know? He made custom tools all day. Weird parts we'd never heard of. You know, it was ... kinda cool. You know? I admire that about him. Create stuff we're never used to seeing.

STARZYK:

From the things that you've known and it sounds like he was doing pretty good and .. You know, you cared for him and ... through all of his problems and for all this, do you think he possessed the ability to fly off the handle and, you know, have those ... be so upset with [REDACTED] that things could be interpreted to be hostile towards somebody else. You know, just in the face of it.

To be honest, I don't even think that he should have hit [REDACTED]. The way he was towards his kids. He was more of fear, you know, I think. A little bit he was at the point where he was fed up. He didn't know what else to do. I think is all ... what it was ... I mean, I don't really see him flying off the handle, though, you know, unless provoked. Cause I ... well the time when I ... when he chased me around, I did provoke him. You know, I did stand up and say, "God damn it. Somebody ripped me off" you know, and I was pissed off and I bitched and got so excited about it and shook my fists so many times. He just blew up and (unintelligible). I provoked it out of him.

STARZYK:

You think [REDACTED] would have the ability to do that too? As frustrated as he was about being ripped off by ...

I think that was what [REDACTED] was doing. [REDACTED] wasn't supposed to be there in

the first place. He had already agreed to leave that morning. [REDACTED] hopped the fence and came back into there.

STARZYK:

[REDACTED]

Okay, so you think they

He wasn't supposed to be there and Grandpa had not left the house, [REDACTED] said, until the police had already showed up. Grandpa was in the house with the door shut, trying to get the police there. By the time they showed up there, I guess is when it all kind of came to a boiling point. They came ...

STARZYK:

[REDACTED]

The second time.

Yeah, they came, they talked and they ... they were just getting ready to leave when her grandpa, was standing in the back yard. [REDACTED] was yelling at him. They figured the police had already left. This is the second time.

STARZYK:

[REDACTED]

Uh, huh.

So, [REDACTED] just figured this out. She said, that ... that ... he thought the police left, so [REDACTED] was yelling at him coming towards the house to try to get him and [REDACTED] ran outside and said, "Wait. [REDACTED]'s gonna get him." Then the police came in and shot him. Okay, cause I guess he picked up the pipe then cause [REDACTED] was coming towards him. He grabbed the pipe and swung it at the back of the van. I guess he hit the back of the van and ... that's when [REDACTED] said that they shot and ... I mean, I don't know exactly the details but that's exactly how I heard it this morning.

STARZYK:

[REDACTED]

Did [REDACTED] say she saw the shooting?

Yes.

PETERSON:

[REDACTED]

Did she say she heard any thing else from the police officers?

She said that she heard them ... she told ... heard them tell him to drop the pipe. But ... that ... he was turned around and he probably couldn't have heard the cops yelling at him.

PETERSON:

[REDACTED]

Did he have a problem with his hearing?

Little bit. You know. Little bit hard of hearing.

PETERSON:

[REDACTED]

When you talked to him, ... if you were talking to him the way you're talking to us right now, would he be able to hear you?

Yeah, usually.

STARZYK:

[REDACTED]

You wouldn't have to yell to him or scream to him for him to hear you.

No.

PETERSON:

[REDACTED]

Did he have one ear that was better than the other that he asked you to talk to?

Not really, but .. It was kind of ... you'd have to repeat yourself a few times. Sometimes he wouldn't pick up everything you say, but ... he wasn't really hard of hearing so much as, you know ... I don't know if he paid attention or .. Or ...

STARZYK:

At this point, I can't think of anything else to ask. I mean, I know you care about him, it's obvious, you know. It seems to me he's almost like a problem kid.

[REDACTED]

Right.

STARZYK:

Just by the way you described your relationship with him. He ... can't think of anything else, can you?

PETERSON:

No. I can't either.

STARZYK:

Would you object if we came up with some other questions at a later point, to talk to you again?

[REDACTED]

No, I don't mind.

STARZYK:

Okay.

[REDACTED]

I don't mind.

STARZYK:

And the easiest way would be to get in touch with you kind of the same way that I ... I did today, by calling your mother?

[REDACTED]

Yeah, usually my mom knows exactly where I'm at. I kind of keep in touch with her. That's my mailing address here and everything.

STARZYK:

Okay. Does your father have a telephone number out here in case we need to try to ...

[REDACTED]

Yeah, but he doesn't want me giving his phone number to anybody he doesn't even want to be involved in ... cause right now he's kind of ...

PETERSON:

Are you going back to Lake County?

[REDACTED]

No. No, I'm going to be here.

STARZYK:

Okay.

PETERSON:

Okay.

STARZYK:

You talk to your mother on a daily basis, correct?

[REDACTED]

Yeah.

STARZYK:

Okay. All right.

[REDACTED]

My dad, right now, I'm not sure if I'm gonna talk to him for a while. That's kind of the relationship that me and him and kind of ... it's not as bad as all this but, it's ... a little touchy. So ...

STARZYK:

Okay. We really appreciate the fact that you came in and talked to us, you know, I understand you need to be consoling for your wife and everything after everything has happened today and its been kind of a shock, but, you know, the sooner we can get this information, the fresher it is in your mind and ... you know, helps us do our investigation. It's a tragedy the way things turned out today. We appreciate your ...

[REDACTED]

It's been a long stressful day. I just don't even know how to deal with how it feels right now. Like I said, I got a lot of other things going on in my life

right now too that are kind of traumatic but, not to this level and its ... its all hitting me at once. You know?

STARZYK:

Sure.

[REDACTED]

Its kinda like ...

STARZYK:

Puts you on overload.

[REDACTED]

Really. I just want to tell them to take her somewhere where she can go to sleep for a day or two I think. She's worried about the .. Arrangements for the funeral and stuff and she doesn't know exactly where to turn and what to do and that ...

STARZYK:

Well, just ...

[REDACTED]

Cause none of us have money...

STARZYK:

You can go ahead and end it at this point.

PETERSON:

Its 10:20 ... 22:20 hours.

End of interview with Sean Allison

01-4316

RESERVES COMING IN:

- PALMER - ARRIVED
- SWINDELL - ARRIVED
- VIZCARRA - ARRIVED
- WHITE, MARK - ARRIVED
- WONG, DARYL - ARRIVED

DETECTIVES:

- SGT BROWN
- DET SYLVIA
- DET MADSEN - CANNOT COME IN OUT OF TOWN
- DET THOMPSON - ETA 45 TO 60 - 1106RS
- DET VANDERMEULEN - OUT OF AREA
- DET DODD
- DET STARZYK - WILL BE RESPONDING 1155 HRS

OFFICERS:

- CALDERA - ETA 1 HOUR - 1103 HRS
- MUNCHER - ETA DRIVING TIME FROM HOME 1103 HRS AT PD 1206 HRS
- KRUTA - ETA 20 MINUTES - 1104 HRS
- STRETCH - WILL RESPOND ETA AS SOON AS THEY GET BABY SITTER 1112 HRS UNABLE TO RESPOND 1141 HRS - AT 1223 HRS STRETCH ON HIS WAY ETA 1300 HRS
- CHASE - 1116 HRS IN SAN FRANCISCO - ENROUTE BACK HOME
- PATTERSON - 1155 HRS WILL LOOK FOR BABY SITTER - 10-97 AT STATION 1218 HRS
- LEONG - 1159 HRS - NOT AVAILABLE WITH GRANDSON - DAY OFF

On 09/29/01 at approximately 1036 hours I was paged by MPD Dispatch and was requested to respond to MPD for an officer involved shooting. I arrived at MPD at approximately 1100 hours. Upon arrival I was told the shooting occurred at 448 Blueridge Drive in Martinez and that Officers Miller and Oneal were involved. I was also told Ernest Donald Smith 09/23/36 was the person who was shot and he had been pronounced dead at the scene.

While at the police department I ensured officers Miller and Oneal were sequestered separately and they were in the accompanly of another officer. Officer Miller was with Officer Gaul in the briefing room and Officer Oneal was with reserve Officer Palmer in the conference room. I obtained Officer Miller's firearm and gun belt and secured it in my office. I also conducted a GSR Kit of Officer Oneal and secured it in my office. Refer to supplemental report 01-4316JS1 for additional information. Officer Miller was later moved to an administrative office.

I met Sgt. Brown at 448 Blueridge Drive at approximately 1207 hours. The street had been sealed with barrier tape. I inquired with Sgt. Peterson if the interior of the residence had checked for additional occupants and I was told it had not. I know, based on a prior disturbance call (01-3015), a person [REDACTED] had remained inside the residence while MPD was outside. At 1212 hours Officer Walkup and I checked the residence for other people, but we did locate anyone. We exited the residence at 1214 hours. After viewing the scene I returned to MPD at 1242 hours.

I attended the investigation briefing along with MPD and D.A. investigators. I was teamed with D.A. Investigator T. Spyrow and we were assigned to interview the below individuals [REDACTED] [REDACTED] had been transported to MPD personnel and was waiting in the EOC room in the accompanly of Reserve Officer Wong. [REDACTED] had been transported to MPD and was waiting in the Briefing room with Reserve Officer White. Both [REDACTED] and [REDACTED] had been provided meals and the opportunity to tend to their personal needs.

1. [REDACTED]
[REDACTED]
2. [REDACTED]
[REDACTED]
3. MILLER, Dirk
Martinez Police Officer
4. ONEAL, James
Martinez Police Officer

FIRST INTERVIEW OF [REDACTED]

Investigator Spyrow and I first conducted a brief interview with [REDACTED] in order to obtain a consent search of the red Ford Van (CA lic# RXB143) and the residence of 448 Blueridge Drive. This interview occurred in the briefing room at 1521 hours and was also attended by Officer Walkup. This interview was tape recorded. [REDACTED] said he has lived at 448 Blueridge Drive since July and he has been sleeping in the red Ford Van which was in the backyard. [REDACTED] has free access to the inside of the residence and is able to use the bathroom and the kitchen. [REDACTED] said the residence is also occupied by [REDACTED] (niece) and Ernest Smith (father). Ernest Smith sleeps in the master bedroom and [REDACTED] sleeps in the little bedroom. [REDACTED] also said "[REDACTED]" stays at the residence "once in a while" and has property in the van parked in the driveway. [REDACTED] also told me he has access to all of the bedrooms in the residence. I asked [REDACTED] if we could have his permission to search the interior of his van and the interior of the residence. [REDACTED] consented to this search. I also presented and read a "consent to search" form to [REDACTED] and he signed it, authorizing the search of the van and the residence. Refer to the attached consent to search form.

The interview was terminated at 1531 hours. Investigator Spyrow later provided me with a cassette tape of this interview. I submitted this cassette tape into MPD evidence, identified as #JS1.

INTERVIEW OF [REDACTED]

Investigator Spyrow and I interviewed [REDACTED] in the report writing room. I recognized [REDACTED] from the prior PC 245 case which occurred on 07/12/01 in which Ernest Smith was arrested (case# 01-3015). This interview was captured on a cassette tape as well a video tape. This interview began at 1545 hours. I advised [REDACTED] we wanted to gather all information to ensure we understand what happened today. [REDACTED] identified herself and provided her personal information. [REDACTED] said she lives at 448 Blueridge Drive in Martinez. She said she lived at the residence "off and on" all her life, but has lived at the residence consistently for the last three years. [REDACTED] lives at the residence with her grandfather (Ernest Smith). [REDACTED] said she is not currently employed. [REDACTED] said [REDACTED] is her uncle and sleeps in the van in the backyard. [REDACTED] said [REDACTED] has only been living at the residence since she returned from a trip on the 16th of September.

[REDACTED] recalled the incident on 07/12/01 in which Ernest Smith was arrested for hitting her husband ([REDACTED]) with a pipe. Sean has not been at the residence since this incident so Ernest and [REDACTED] have not been involved in any more disturbances. I asked [REDACTED] about additional disturbances she has had with [REDACTED] and she told me they usually go outside so Ernest would not know about them.

[REDACTED] talked about Ernest's health and physical condition. She said Ernst has partial dementia and has had prior strokes, causing seizures. She said Ernest has had "quite a few" seizures beginning before [REDACTED] was born. She said Ernest has had dementia for approximately three years. [REDACTED] also said Ernest had short term memory loss. [REDACTED] does not recall the last

seizure Ernest has had. [REDACTED] said Ernest takes Dilantin for his seizures, but was possibly changing his medication. [REDACTED] said Ernest does not smoke, drink alcohol, or have any other diseases she knows about. [REDACTED] said Ernest's arms stay against his chest, limiting his movements.

[REDACTED] was asked if Ernest's personality had changed and she said it had started to. [REDACTED] was asked if Ernest was able to think clearly and she said he was, "except in incidences of high stress" such as when [REDACTED] was antagonizing him. [REDACTED] also said (in essence) he can't think very quickly in high stress situations, that's why his first reaction was to get a pipe to hit her husband or to pick up a stick to hit [REDACTED]. She said his first reaction was to act violently because of this thought process, which was not the same as it used to be. [REDACTED] said her first observation of a violent act by Ernest was on 7/12/01 and the second was on this date against [REDACTED].

[REDACTED] was asked to describe the events which occurred today. [REDACTED] first noticed a verbal disturbance between Ernest and [REDACTED] at approximately 0800 hours in which they were arguing about a water bill. [REDACTED] yelled at Ernest that if he wanted money then "go to [REDACTED]". [REDACTED] implied [REDACTED] might be stealing from Ernest. [REDACTED] also said Ernest did not want [REDACTED] or [REDACTED] at the house. During this argument Ernest called the police. The police showed up and told [REDACTED] to leave. [REDACTED] believed the police defended [REDACTED] regarding the residency rights of [REDACTED]. The police suggested Ernest get a restraining order on Monday. Ernest then stated "your going to let them kick my ass until Monday". [REDACTED] said the police laughed at Ernest and told him he was not rational.

The police and [REDACTED] compromised and [REDACTED] voluntarily left the residence. [REDACTED] then went down the street and contacted [REDACTED] to see if he needed a ride. [REDACTED] said he did not have a place to go, but he would go to Golden Hills Park. They walked back up the street and [REDACTED] went into the backyard of the residence and into the van. [REDACTED] went into the house and told Ernest Gregory was back in the van. Ernest called the police the second time.

[REDACTED] and Ernest were in the garage when [REDACTED] told Ernest "if you want to hit somebody you know that's a felony - they're considering that assault with a deadly weapon". [REDACTED] said she was trying to talk Ernest out of hitting anyone and being non-violent, because [REDACTED] was instigating. [REDACTED] said [REDACTED] was in the van at this time, not saying anything. [REDACTED] described Ernest as sitting in the garage and was under high stress. She said she could tell Ernest was trying to think and didn't know what to do with himself. [REDACTED] said Ernest was agitated. Again, [REDACTED] said Ernest has trouble thinking rationally in high stress. [REDACTED] continued to calm Ernest down by explaining about restraining orders and that if he acts this way in front of the police he will be arrested again. [REDACTED] even told Ernest to go into the house and she will talk to [REDACTED]. [REDACTED] said she could get [REDACTED] to leave because they were both rational at the time. Ernest appeared to be frustrated and was pacing in the area. [REDACTED] said she could usually calm Ernest down. [REDACTED] again said she believed Ernest became violent when the police didn't do anything the first time.

█████ said the police showed up the second time and parked across the street like they did the first time. The garage door was opened and Ernest went out to tell the officers they could leave. The police then went back to their cars, but █████ "thought there was something funny". Because Ernest's demeanor went from "fear to frustration", this was such a sudden change in his behavior that it was noticed by █████ █████ then motioned to the officers, with a finger gesture, to come back. █████ believed Ernest did not know the police returned to the residence.

The police officer (Miller) returned to the garage and █████ told Miller "you might want to check if he has a weapon". █████ and Officer Miller went back to the garage and the other officer (Oneal) walked half way then returned to his car. █████ and Officer Miller saw Ernest reach down to the ground and pick up two objects from the right side of the garage. █████ described the objects as a shorter stick in his left hand and a longer stick in his right hand. █████ said she had bad vision so she was not exactly sure what the objects were. █████ described the object in Ernest's right hand was (2) to (2 ½) feet with a diameter of (1) to (1 ½) inches round. The object in Ernest's left hand was shorter. █████ said the objects appeared to be sticks or pipes.

█████ said she and Officer Miller were about (30) feet from Ernest and she kept telling Officer Miller "you better get him, you better get him". Officer Oneal walked back to his car and █████ said "where are you going, you better get him". Ernest picked up the objects and walked straight to the van. The front side door was open and the rear side door was closed. █████ and Officer Miller were between (20) - (30) feet from Ernest when Ernest started banging on the door with the objects he had in his hands. Ernest was approximately one foot from the van and struck it no more than four times, then changed it to three times. After the third strike, █████ opened the rear side door. █████ said Ernest was facing away from her, but behind the rear side door.

█████ said she made the statement to █████ █████ he's going to hit you" and she thought Ernest might have intended to hit █████. █████ said she was standing to the right of Officer Miller, but they were just off the concrete in the back yard. Officer Miller did yell to Ernest "drop the stick" after Ernest hit the van the first time. █████ said Officer Miller raised his voice when he made this statement Ernest took one more swing and Officer Miller approached the van. Officer Miller drew his gun after Ernest hit the van a second time and this was when the side door swung open and Ernest hit the van again. It was at this time Officer Miller fired his weapon once. █████ said Officer Miller was (10) - (15) feet from Ernest when he fired. █████ said she was next to Officer Miller during this time. Ernest was shot then fell down. █████ thought Ernest was shot in the back.

I drew a rough sketch of the area where the shooting took place and I showed the sketch to █████ This drawing included the red barn at the north/west corner of the property, the red van and the fence which divided the backyard. █████ placed Officer Miller's and her location to be outside of the fence which divided the backyard. █████ also included the location of █████ who was in the van, and Ernest. Refer to the attached sketch signed by █████. When asked about the sketch, █████ said she and Officer Miller were outside the dividing fence. █████

was asked to estimate the time elapsed from the time Ernest picked the objects up, started outside, until the shooting happened. [REDACTED] estimated a time of two minutes, maybe a little longer.

[REDACTED] was asked if she had any knowledge about any drug or alcohol history with [REDACTED]. She said she did not know at this time. [REDACTED] said Ernest was afraid of [REDACTED], and Ernest has not made any threats towards him [REDACTED]. This morning Ernest told [REDACTED] that [REDACTED] has been picking on him, and that Ernest has not been able to sleep the last couple of nights. [REDACTED] was unsure about Ernest's finances, but believed Ernest got a union pension check and has money saved. [REDACTED] does not pay rent to Ernest.

[REDACTED] was asked about her observations of the first aid provided by anyone at the scene. [REDACTED] said first aid was not adequately provided. She did say one officer took Ernest's pulse and [REDACTED] was "doing the best he could, but no one gave chest compressions. [REDACTED] estimated it took the fire department five minutes to respond to the scene.

This interview ended at approximately 1650 hours. I submitted this cassette tape (evidence item# JS2) and the video tape (evidence item #JS3) into MPD evidence.

INTERVIEW WITH [REDACTED]

Investigator Spyrow and I interviewed [REDACTED] in the report writing room. This interview was recorded on a cassette tape and on a video tape. Officer Walkup, who interviewed [REDACTED] at the scene, was also present. This interview began at 1712 hours.

[REDACTED] provided the same personal information he gave earlier in the day. [REDACTED] has not personally been at 448 Blueridge Drive in Martinez during the prior disturbances. He has only heard of these disturbances. He did hear about the earlier confrontation with [REDACTED]. [REDACTED] said his father (Ernest) and Laura had a close relationship.

[REDACTED] provided information about Ernest's physical health. He said Ernest would "go into convulsions". I asked [REDACTED] if there were any medical reasons that would make Ernest act different than he normally behaves. [REDACTED] said Ernest has been getting awfully upset since [REDACTED] has been there, and that Ernest has never gotten upset before [REDACTED] moved in. During prior arguments with Ernest, they have made up. Until this time, Ernest had only showed his anger verbally towards [REDACTED].

[REDACTED] described the first call in which MPD responded to the residence. At approximately 0800 hours [REDACTED] went into house to make a sandwich and to use the bathroom when Ernest confronted him about the water bill. [REDACTED] went back outside, into the van, and Ernest called the police. Ernest was getting upset so [REDACTED] waited in the van. [REDACTED] said there was no real disturbance between [REDACTED] and Ernest. The police arrived and talked to Ernest on the back porch. The officers told Ernest if he wanted [REDACTED] out he had to be evicted. [REDACTED] said Ernest

started to not make sense and he was irrational with the police so [REDACTED] went to the front yard. [REDACTED] said Ernest started getting upset. The police officers gave Ernest civil advice. [REDACTED] talked to the officers about the situation and [REDACTED] agreed to leave the residence. [REDACTED] said the officers treated him, [REDACTED] and Ernest in an acceptable manner.

[REDACTED] went to Starbucks and Burger King and [REDACTED] came after him. [REDACTED] and [REDACTED] walked back to the residence where [REDACTED] went inside and [REDACTED] went into the van. [REDACTED] was in the van for approximately five minutes before Ernest came out to the van and told [REDACTED] "your not too smart". [REDACTED] remained "laying there and laying there" until he noticed the police. [REDACTED] told me he was laying on a mattress with his head toward the driver's seat and his feet towards the house. [REDACTED] said both of the side cargo doors were open. Ernest came out to the van and [REDACTED] remained inside with his back to the doors. [REDACTED] heard a commotion by someone making statement of, in essence, stay away, put down the pipe, or put it down. [REDACTED] heard [REDACTED]'s and a male's voice. [REDACTED] said he heard [REDACTED] say "leave him alone", "stop it" (referring to Ernest). [REDACTED] made these statements in a tone of voice which [REDACTED] described as being scared and in a high pitch. The officer said "stop", "put it down". [REDACTED] said Ernest called him a "bastard" and "get out of hear".

Officer Walkup questioned Smith about a statement he provided to Walkup at the scene. [REDACTED] said Ernest was yelling in the backyard, but [REDACTED] could not understand what was yelled, only he knew Ernest was yelling. [REDACTED] then approached the van and began hitting the van. [REDACTED] then heard the officer say "drop the pipe" or "put the pipe down". [REDACTED] said these activities happened one after the other, but something was said before the van was struck. When [REDACTED] heard someone say "stop it" or "put it down" [REDACTED] thought for a second someone had a gun, so he peeked out of the van. [REDACTED] saw Ernest facing the van at the side doors. [REDACTED] saw Ernest holding a piece of pipe in one hand, but nothing in the other hand. [REDACTED] said Ernest was swinging the pipe. [REDACTED] said he flinched quickly because he thought he was going to get hit. [REDACTED] showed how he brought his hand to his head in a defensive type move. [REDACTED] was asked how Ernest was positioned when he was swing the pipe. [REDACTED] then used words and body movements to describe Ernest's position. [REDACTED] lunged forward and raised both arms above his head and swung downward. As he did this he said "he was right in the van". [REDACTED] said he was able to hear the officer clearly say "stop" and "put it down". [REDACTED] said he has never seen Ernest that mad before and that he thought Ernest was going to hit him with the pipe.

[REDACTED] said he has never been in a altercation with his father and that [REDACTED] has never pushed or shoved him. [REDACTED] said he has never threatened to beat up Ernest and there would be no reason why Ernest would be afraid of him. [REDACTED] said [REDACTED] was the cause of Ernest's anger towards [REDACTED]. [REDACTED] said he does not pay rent because Ernest would not take it.

I asked [REDACTED] to describe Ernest's physical condition and he said Ernest was "as strong as a ox". Ernest does the yard work at the residence. [REDACTED] said he is not familiar with Ernest's medical condition and could not say if he has had behavioral changes. [REDACTED] did say Ernest had seizures and he gets stressed about little things, but was unsure if Ernest had a hard time reasoning.

██████████ said Ernest did not have a hearing problem, but had "a little vision problem".

I presented a rough sketch of the backyard area to ██████████ and I asked him to place the locations of all involved parties. ██████████ placed himself in the van and said he was laying down. He said there was paper on the van windows and he could not see anyone else. Ernest was at the open van doors and was facing the van. ██████████ was asked to describe Ernest's arm position when Ernest was shot and ██████████ said "he (Ernest) had the pipe going still". Ernest was still in the motion of swinging the pipe when he got shot. ██████████ said Ernest could not bring his arm up so he swung the pipe like a baseball bat. When Ernest was shot ██████████ came out of the van and grabbed Ernest, then laid him down on the ground. ██████████ started to give Ernest CPR, and then he was joined by Miller.

I asked ██████████ to identify Officer Miller's location on the sketch. ██████████ placed Officer Miller within the fenced area. ██████████ said from the time from the shot was heard and he exited the van to the time he saw Officer Miller for the first time was "under five seconds". Officer Miller was already within the fence area when ██████████ saw him. ██████████ said ██████████ was near the garage area, outside of the fenced area. ██████████ dated and signed this sketch.

I asked ██████████ if he saw Ernest look to the officers to determine if Ernest knew the officers were there. ██████████ said he was lying down in the van and he did not see if Ernest look to the officers. ██████████ did not know either way if Ernest knew that the officers were there. Ernest did not make any statements that ██████████ and a police officer were there.

This interview was terminated at 1747 hours. The cassette tape recording was marked as evidence #JS4. The video tape recording was labeled as JS5.

INTERVIEW WITH OFFICER JAMES ONEAL:

On 09/29/01 at approximately 1815 hours Investigator Spyrow and I interviewed Officer Oneal. This interview was tape recorded and was conducted in the police department conference room. No other persons were present.

Officer Oneal was advised we were conducting a criminal investigation, Officer Oneal was a witnessing officer, and we wanted to find out what had occurred. Officer Oneal provided preliminary information and said he had been employed by the Martinez Police Department for (10) to (11) years. He has been assigned to the Patrol Division for this time, except for one assignment as a school resource officer. Officer Oneal has not worked for any other police agency. Officer Oneal current work shift is day shift, working Thursday, Friday, Saturday, and every other Sunday. Officer Oneal's work hours are from 0700 - 1900 hours. Officer Oneal said he got 5 ½ hours sleep from 2400 hours to 0530 hours this date. Officer Oneal said he was not taking any medication. Officer Oneal last ate at a concert the night prior and had one glass of Jim Beam and Coke (2-3 shots) before the concert at 2000 hours. He and Officer Miller had a break together this morning.

Officer Oneal was asked to describe the events of the first call to 448 Blueridge Drive on this date. Officer Miller was dispatched to the address and was already in the area. Officer Oneal was dispatched and responded from the police department. The call was a disturbance between a father and a son. Miller arrived at 448 Blueridge Drive and Oneal was still at Alhambra Avenue and Hwy 4. Officer Oneal heard dispatch ask for Officer Miller's status and Officer Miller said he was "code 4", but Officer Miller wanted another unit. Officer Oneal arrived and saw Ernest in the driveway. Ernest had clenched fists and seemed agitated. Officer Miller was also in the driveway and [REDACTED] was on the sidewalk. Officer Oneal brought the taser with him and he held it to the side. Officer Oneal told Ernest of the taser and this seemed to calm Ernest down. Based on Ernest's facial expressions and demeanor (tenseness/clenching of fist) he appeared to be upset and agitated.

Officer Oneal did not hear any of the prior discussion at the scene, but Officer Miller said they have discussed restraining orders and eviction notices because they have had a hard time getting [REDACTED] out. Ernest did not seem satisfied with the answers given to him. Officer Miller talked to [REDACTED] and he agreed to leave the residence to allow Ernest time to calm down. [REDACTED] then walked away from the residence, eastbound on Blueridge Drive. Officers Oneal and Miller then left the scene. Officer Oneal said Ernest did not seem to be satisfied with the final disposition of [REDACTED]'s residency status.

Officer Oneal was asked about [REDACTED]'s behavior during this first call. Officer Oneal said [REDACTED] was "floating around" and did not stay in one spot. Officer Oneal described [REDACTED] as calm. Officer Oneal said neither [REDACTED] nor [REDACTED] appeared to be intoxicated.

Officer Oneal was at this residence on one occasion to look for a possible stolen car. He does not have any other personal information about the residence, but has heard of prior problems.

Officer Oneal was asked about the second call to 448 Blueridge Drive. Approximately 1 ½ hours later he and Officer Miller was dispatched back to the location for another disturbance between Ernest and [REDACTED]. Officer Oneal was advised Ernest was the reporting party. Officer Oneal asked for probation status on the people, but he was told no one was on probation. Officer Oneal and Officer Miller arrived at the same time and Officer Oneal made contact with Ernest, who was standing on the sidewalk. Ernest did not seem to be as agitated at this time. Officer Oneal did not have a taser with him. Ernest told Officer Oneal that [REDACTED] returned and was creating a problem. Officer Oneal told Ernest they had already given him advice about the problem. They did not talk too much because there was not much else they could do for Ernest. Officer Miller and Officer Oneal began to walk towards their patrol cars. Officer Oneal indicated he was parked across the street, along the south curb, facing eastbound on Blueridge Drive. Officer Miller was parked east of 448 Blueridge Drive, along the north curb, facing westbound.

When Officer Oneal was getting into his car he looked at Officer Miller's car and noticed he was not there. Officer Oneal looked back and noticed Officer Miller and [REDACTED] talking in the driveway. Officer Oneal heard [REDACTED] say "what if he had guns", and [REDACTED] appeared

concerned. Officer Miller and [REDACTED] began to walk up the driveway out of Officer Oneal's view, so Officer Oneal began to walk towards the house to see what was occurring. Officer Oneal was able to see around the van, which was parked in the driveway, he saw Ernest in the garage. Officer Oneal noticed Ernest was holding a "pipe or board or something" in his hands. Officer Oneal walked back to his patrol car to get the taser. The taser fell to the bottom of his bag by the right side passenger door so Officer Oneal had to walk to the right passenger door to retrieve it. By the time Officer Oneal walked back to the driveway, they (Officer Miller, [REDACTED] and Ernest) were in the back yard. Before Officer Oneal could see around the van that was parked in the driveway, he heard a shot. The van in the driveway was blocking Officer Oneal's view of the people in the backyard and the van in the back yard. When Officer Oneal heard the shot, he did not see anything. As Officer Oneal crossed the street he heard a "metal to metal" sound and a commotion. Officer Oneal described this commotion as some type of yelling. Officer Oneal could not determine what was yelled, although he heard a lot of yelling, which he said were male voices.

When Officer Oneal heard the shot he ran all the way into the back and saw Ernest on the ground and [REDACTED] was at Ernest's head. Officer Oneal heard one round fired. Officer Miller was moving around Ernest to administer first aid. Officer Oneal requested, via radio, the fire department and a supervisor to respond. I asked Officer Oneal how long it took for him to hear the shot to when he saw Officer Miller. Officer Oneal said it was immediately and he saw Officer Miller very close to the van area. Officer Oneal also said there was very little time between the yelling and the shot.

Officer Oneal was asked about the location of [REDACTED] Officer Oneal said [REDACTED] was "floating around", yelling and screaming. [REDACTED] left the residence to talk to some neighbors, but she was all over the place.

Officer Walkup arrived prior to the fire department and Officer Oneal briefly told Walkup what had occurred. Officer Walkup then went to relieve Officer Miller. Officer Gaul also arrived on scene. Sgt. Peterson arrived on scene and he was briefed by Officer Oneal.

Officer Oneal was asked if he and Officer Miller discussed this incident and he said they had not. Officer Oneal asked if there was any reason why Officer Miller did not wait for him and he said there was none. Officer Oneal did not believe Officer Miller knew he (Officer Oneal) was following them to the back yard.

I asked Officer Oneal if he noticed anything out of the ordinary with Officer Miller's behavior prior to the shooting. Officer Miller appeared to be normal.

This interview was terminated at 1850 hours. The cassette tape was marked as #JS6.

INTERVIEW WITH OFFICER MILLER:

On 09/29/01 at approximately 1910 hours Investigator Spyrow and I interviewed Officer Miller. This interview occurred in the Martinez Police Department conference room and it was tape recorded. Officer Miller was represented by LDF Attorney Todd Simonson. Deputy D.A. Bob Hole was present for the introduction of this interview.

D.A. Hole advised Officer Miller this was a homicide investigation to determine the cause and circumstances of the fatality. D.A. Hole stated this was not an internal affairs investigation. D.A. Holes advised Officer Miller he was not obligated or required in any way to talk to us, the police department will not require him to talk to us, the law does not require him to talk to us, there is no pressure being exerted upon Officer Miller for him to talk to us. If Officer Miller talks to us, it is because he wants to, and he and his attorney think it is in his best interest to do that. Officer Miller was advised he will not be given any Lybarger warning demanding him to talk to us, nor will he be given any Miranda admonishment. Officer Miller was advised this is not a custodial interview and he is free to walk out at any point. Officer Miller was also advised that if at some point he does not want to talk he does not have to and he does not have to answer certain questions. Officer Miller said he understood what was just explained to him. D.A. Hole then left the interview.

Officer Miller provided the following preliminary information. Officer Miller has two years of law enforcement experience with the Alameda County Sheriff's Department, where he worked at Santa Rita Jail. Officer Miller has been employed with the City of Martinez for approximately five months and is assigned to the Patrol Division. Officer Miller completed a twelve week patrol training program along with an additional two weeks shadow phase. Officer Miller has been released from his training program for 1 ½ months.

Officer Miller is currently working day shift, 0700 -1900 hours, Friday, Saturday, Sunday, and every fourth Monday. On 09/29/01 Officer Miller started his shift at 0500 hours. Officer Miller said he got approximately 6 ½ hours sleep (2130-0400 hours). Officer Miller ate a muffin and some milk prior to the beginning of his shift. The last time Officer Miller consumed alcohol was on Tuesday, a day off, when he had one beer. Officer Miller is not currently taking any medication.

I asked Officer Miller about the types of details he handled before the shooting. He said he handled two animal calls, CVC 10851 report, and a 911 hangup call. Officer Miller said none of these calls were related to any disturbances which had high stress.

I asked Officer Miller about his prior knowledge of the residence. Approximately 2-3 months earlier Officer Miller responded to an assault with a deadly weapon call. Ernest Smith hit [REDACTED]'s husband [REDACTED] in the back with a pipe. Officer Miller arrested Ernest Smith for PC 245 (ADW). Officer Miller recalled this address on this date as the same address where he arrested Ernest Smith for ADW. Officer Miller also recalled Ernest had struck someone with a pipe and had seen these injuries. Officer Miller described Ernest's demeanor as unstable. There were times when Ernest was real calm and there were times when he got real excited really

fast. He appeared to be a violent person and took his anger out of other people and he showed no remorse for doing it. Officer Miller remembered [REDACTED] was not armed with any weapons. Based on this prior call, Officer Miller knew Ernest was capable of injuring someone.

Officer Miller recalled the granddaughter [REDACTED], her husband [REDACTED], 3-4 people who were sleeping in a car in the driveway, an another homeless lady [REDACTED] sleeping in the front room of the residence.

Officer Miller described the first call he and Officer Oneal had at 448 Blueridge Drive. They were dispatched to a verbal disturbance involving a father and his 45 year old son. Officer Miller did not recognize the name or the residence until he arrived on scene and then he recognized the house. Officer Miller got out of his car and approached the front of the house and did not hear a disturbance. The garage door, front and back, were open so he went around back to a sliding glass door and he saw Ernest sitting at a desk. Officer Miller knocked at the glass door and he then made contact with Ernest at the patio area. Ernest said he wanted to have his son to "jump off the golden gate bridge". Officer Miller asked why Ernest said that and Ernest indicated (in essence) his sister did it a couple of years ago and now it is time for him to do it. Ernest also mentioned he wants his granddaughter to jump off the bridge and he wants to jump off the bridge also, but he does not want to do it by himself, he wants to do it with somebody else. Ernest explained that [REDACTED] had a court date coming up on 10/05/01 so [REDACTED] had been staying at the residence until the court date. [REDACTED] was allowed to stay in the van in the backyard, but he had been staying inside of the house eating all of the food. This is what made Ernest so angry. Ernest wanted [REDACTED] to leave the house. Ernest said [REDACTED] had been living at the residence for three weeks. Officer Miller explained to Ernest that [REDACTED] had established residence and Ernest needed to evict him if he wanted him removed. Officer Miller explained he needed to go to the court house on Monday to get the appropriate paperwork or a restraining order. Ernest did not like this answer and he began yelling (in essence) "do I have to go to jail to get him out of my house".

Officer Miller talked to [REDACTED] at the front of the residence. Officer Miller and [REDACTED] agreed that [REDACTED] will go to Safeway to make some phone calls. At this time Ernest approached Officer Miller and [REDACTED], so Officer Miller stepped in between both of them. Ernest looked upset (tight jawed) and started yelling at the [REDACTED] saying your leaving and your never coming back Ernest then tried to go through Officer Miller to get to [REDACTED], as though Ernest was going to attack [REDACTED]. Officer Miller said he was "code-4", but he still wanted another unit. Officer Miller did say he had to push Ernest in the chest to stop him from attacking [REDACTED], just prior to Officer Oneal's arrival. Officer Miller said [REDACTED] was going to leave the residence and stay with a friend. [REDACTED] then began to walk away. Officer Miller then gave Ernest additional civil advice. Ernest became upset and made several statements such as " what's going to happen in 10-15 minutes when he comes back, I'm going to have to defend myself, someone is going to jail". Officer Miller saw [REDACTED] walk away from the location and Ernest sat in a chair in the garage. Officer Miller and Officer Oneal left the scene.

Between the first call and the second call Officer Miller handled a 911 hang up call, and went on a break with Officer Oneal.

Officer Miller described the second call to 448 Blueridge Drive. They responded to a verbal disturbance between the father and the son. Officer Oneal requested a probation check on the people and to determine who the reporting person was. Officer Miller arrived at the scene first and parked east of the residence. Officer Oneal arrived a minute later and parked across the street. Officer Miller and Officer Oneal contacted Ernest in the front yard. Officer Oneal asked Ernest what he wanted done. Ernest said he wanted his son out of the house. Officer Oneal asked if Ernest would leave and Ernest said he would not. Officer Oneal then began to walk back to his car to go back into service.

Officer Miller saw [REDACTED] was at the residence. Ernest walked into the garage while [REDACTED] talked to Officer Miller. [REDACTED] said "have you checked him for weapons - he might have weapons" and this made Officer Miller concerned. Ernest was in the back of the garage, bending over looking for something. Ernest picked up a "large log" in his right hand. This object was straight, four inches round, and 2 ½ - 3 feet long. In the left hand Ernest had a metal bar with a point on it. This object was approximately 1 ½ inches wide. Ernest started walking towards the van with an item in each hand. Officer Miller terminated his conversation with [REDACTED] and started walking towards the garage. Officer Miller yelled "drop the weapon. drop the weapon" as Officer Miller was walking into the garage, approaching Ernest. Ernest was just on the outside of the garage when Ernest turned around to Officer Miller who had his gun out and was pointing it at Ernest. Officer Miller again told Ernest to drop the weapon. Ernest then said "Your going to have to shoot me if you want me to drop these weapons" Officer Miller again said drop the weapon, which he said he repeated about then times. Ernest said a second time, your just going to have to shoot me.

Officer Miller was about twenty feet behind Ernest when Ernest hit the right/rear quarter panel of the van, in a baseball type swing, with the "log". Officer Miller was standing to the rear of the van and he heard Ernest yell at [REDACTED] who was inside of the van. Ernest yelled something similar to, get out of here I'm going to whip your ass. Officer Miller heard [REDACTED] inside of the van, but he does not know what [REDACTED] said. Both of the side doors were fully opened. Miller was still telling Ernest to drop the weapon. Ernest brought the log over his head and swung straight down into the van, like he was reaching. Officer Miller again yelled at Ernest to drop it. Ernest was taking a second swing at which time Officer Miller shot him. Ernest dropped the weapon, looked at Officer Miller, took a couple of steps towards Officer Miller, then fell to the ground.

[REDACTED] immediately came out of the van and cradled Ernest's head and began talking to Ernest, saying "dad don't die". Officer Miller noticed the blood on Ernest's left side. [REDACTED] began to give Ernest breaths for CPR. Miller advised, via radio, there had been shots fired and send a Code-3 ambulance. Officer Miller saw Officer Oneal 20-30 feet behind him carrying the taser. At this point Officer Miller became emotional. I noticed he started to tear and the volume of his

voice dropped as he took a deep breath. Officer Miller was asked if he wanted to take a break, but he declined. Officer Miller began to take Ernest's pulse and when he did not feel a pulse he started chest compressions as [REDACTED] continued the breathing. Officer Walkup arrived on scene and took over chest compressions from Officer Miller. Officer Miller went to the front yard. Officer Miller made a statement that he must have gone into shock after the shooting. Officer Gaul subsequently transported Officer Miller to MPD.

While Officer Miller was giving CPR he saw a bar on the ground, near where Ernest fell. He said there was a bar in one hand and a log in the other. At this time I showed Officer Miller three photographs. D.A. Hole gave me these photographs prior to the interview. One photograph showed a brownish, round, long object laying on the ground. Officer Miller identified this object as the weapon he said was the log. The other two photographs were Polaroid pictures of a long metal file. Officer Miller identified this object as the long pointed weapon Ernest was holding. I subsequently placed these photographs into MPD evidence and marked them as #JS8.

When Ernest first armed himself with the weapons he was in the very back of the garage and Officer Miller was at the sidewalk of the driveway. Once Ernest armed himself he started walking. Officer Miller said he ordered Ernest to drop the items, took his gun out, and started following him at a "brisk pace" trying to catch up to him. I asked Officer Miller where he thought Ernest was going and Officer Miller said Ernest was going to the van. Officer Miller said he knew Ernest was mad, that he saw Ernest arm himself, and that Ernest was going to the van to assault [REDACTED]. I asked Officer Miller if all of the prior calls he has had at this location were all factors he considered as he tried to figure out what was going on in this situation, and he said they were. Officer Miller went on to say he knew from the earlier calls, Ernest hit one person with a pipe and he was doing the same thing again. I asked Officer Miller if he knew Ernest was aware Officer Miller was there. Officer Miller again said Ernest turned around when Officer Miller told Ernest to drop the weapons, with his gun out, walking towards him. Two times Ernest said your going to have to shoot me, I'm not dropping it. Officer Miller believed Ernest was going to assault [REDACTED] with the pipe. Officer Miller said he was "fearing for the other guy's ([REDACTED]s) safety and I didn't want to get hit with it either". Officer Miller did not get closer to spray him and he already had his gun out. Officer Miller did not want to get close enough to spray him or hit him with his baton because Ernest had the pipe.

Officer Miller was asked about the other equipment he carried with him on duty. He said he had an expandable baton which expand to two feet. He again described one of the weapons as being 2 ½ - 3 feet in length. Officer Miller was wearing his black MPD uniform with patches and a silver badge. Officer Miller was asked if he notified Officer Oneal that Ernest armed himself. Officer Miller thought he did when Officer Oneal was at, or in his car, but he said he was more concerned with stopping Ernest. Officer Miller was asked about the use of pepper spray and Officer Miller said he was not close enough to use it. He said the length of the spray was 10 feet. When Officer Miller made it to the van, Ernest was already "doing the damage".

I questioned Officer Miller about the distance he was from Ernest when Ernest was at the van

swing the pipe. Officer Miller said he was 20-30 feet because he did not want to get hit with the pipe either. During this time he was constantly yelling at Ernest to drop the pipe. Officer Miller also told me he yelled, hoping the neighbors would hear him incase something happened, and he wanted Ernest to hear him.

Officer Miller described the manner and intensity of the swings done by Ernest. Officer Miller said Ernest's first swing, which hit the right/rear quarter panel, was done as hard as he could in a baseball type swing. Ernest yelled something similar to "come out. I'm going to hit you". When [REDACTED] did not come out is when Ernest did the overhand chop as hard as he could. Officer Miller did not know what was hit inside of the van, but he said Ernest lunged into the van as he swung.

I asked Officer Miller about [REDACTED]'s actions during this event. Officer Miller said he assumed she was in the front yard or somewhere in front of the house because it took her a minute to run where he was. [REDACTED] ran up screaming "why did you shoot my grandpa, he was unarmed". Officer Miller said his attention was focused on Ernest and he did not know what was going on behind him. Officer Miller did not recall if [REDACTED] yelled or said anything prior to the shooting.

Officer Miller was asked to describe the backyard area. Officer Miller said the yard was large with the van and a row of corn or something planted. There was junk in the garage and in the back patio area. There was a green belt area on the other side of the fence. I asked Officer Miller about the fenced area which enclosed the van, but Officer Miller did not remember the fence, due to the limited time he spent there.

Officer Miller was asked about the earlier statements made by Ernest, during the first incident, about he wanting his relatives and himself to jump off the Golden Gate Bridge, and if he considered Ernest to be W&I 5150. Officer Miller believed Ernest's main goal was to get [REDACTED] out of the house, and not to hurt himself or anyone. Officer Miller said he was not aware of any medical problems Ernest had.

Officer Miller said he was carrying his department issued .40 caliber Beretta and used department issued ammunition. Officer Miller said he fired his weapon once.

Officer Miller's attorney was allowed to asked clarifying questions. Mr. Simonson had Officer Miller confirm the pipe depicted in one of the photos was the weapon used to strike the outside and the inside of the van. Additionally, Officer Miller again stated he knew the son was inside of the van because he was able to hear the son's voice. Officer Miller also said there did not appear to be a lot of room to move around inside of the van. When Ernest was at the opened doors of the van Ernest seemed to be intently looking inside and Officer Miller said he believed Ernest intended to hit [REDACTED]. When Ernest swung inside of the van the first time, Officer Miller said Ernest swung with all the force he had, but Officer Miller did not remember the sound. Officer Miller again said Ernest did a reaching motion, as though reaching for somebody. During the first incident when Officer Miller talked to [REDACTED] in the front yard, Ernest was told to stay in the backyard. However, Ernest disobeyed Officer Miller and came to the front yard to attack [REDACTED].

I asked Officer Miller if he discussed the shooting with anyone other than his attorney and he told me he had not. Officer Miller did not hear any conversation about the event while he had been at the police department.

This interview was terminated at 2004 hours. I subsequently placed this cassette tape into MPD evidence and marked it as #JS7.

After this interview Officer Miller and Mr. Simonson agreed to return to the scene to conduct a walk-through. This walk-through occurred at approximately 2025 hours. The persons present included myself, Investigator Spyrow, D.A. Hole, Criminalists Dave Stockwell and Eric Collins, Officer Miller, Mr. Simonson, Lt. Smith and Lt. Simonetti. The criminalists had already completed their scene processing prior to this walk-through.

Officer Miller showed me where Ernest had originally retrieved the weapons. These weapons were located at the left rear corner of the garage. Officer Miller walked to the rear porch area, just outside of the rear garage door, and indicated the location where Ernest made the statements to shoot him. Officer Miller was then asked to stand where he was when he fired his weapon. Officer Miller stood within the fenced area near the van. The criminalists photographed this area and its relationship to the van. Officer Miller also indicated where the metal bar was seen just after the shooting. This area was also photographed.

J. Sylvia #97
10/05/01 (completed)

JS 10-10-01

This supplemental report documents my telephone conversation with [REDACTED] on 10/03/01. This conversation was tape recorded.

PERSON INTERVIEWED:

[REDACTED]
[REDACTED]
[REDACTED]

On 10/03/01 I was advised [REDACTED] called MPD to provide information about Ernest Smith and his family. [REDACTED] left a message on my voice mail. I telephoned [REDACTED] at 1623 hours and she provided the following information. [REDACTED] received a call from [REDACTED] on 09/29/01 and a message was left. [REDACTED] returned the call and she has not been able to contact anyone, which concerned her.

[REDACTED] told me she is the legal guardian of [REDACTED]. [REDACTED] is the granddaughter of Ernest Smith and the younger sister of [REDACTED]. The mother of [REDACTED] and [REDACTED] was [REDACTED], who had committed suicide 11 years ago. [REDACTED] was removed from Ernest's care when [REDACTED] was eight years old. [REDACTED] is 15 years old at this time. [REDACTED] was removed because of the environment of the household, not for any physical or sexual abuse. [REDACTED] did not have any personal knowledge about events that had occurred at Ernest's house. [REDACTED] has never been to the residence.

[REDACTED] received a call from Ernest approximately two weeks ago and Ernest left a phone message. Ernest did not make any references to suicide but he talked about family issues. [REDACTED] did say there were elements of senility with Ernest. Recently, by mail, Ernest sent [REDACTED] insurance information and wanted [REDACTED] to continue the insurance payments for the kids. [REDACTED] also said she believed he did this in case something happened to him. She said Ernest was in poor health, he just lost his job, and he could not drive. Ernest had also been notified his health benefits had ended.

[REDACTED] said [REDACTED] has had drug and mental problems for a long time. [REDACTED] has not been truthful in the past. [REDACTED] has been placed in an institution for mentally disturbed people, in Tennessee. [REDACTED] had performed self-mutilation in the past. Contra Costa County Social Services had additional information. [REDACTED] said she did not have any personal knowledge that [REDACTED] was suffering from memory loss or blackouts.

I asked [REDACTED] if she knew [REDACTED] and she described him as responsible.

I placed the cassette tape into MPD evidence and marked as #JS9

J. Sylvia #97 10/05/01

JS
10-10-01

MARTINEZ POLICE DEPARTMENT CA0071400

CRIME/INCIDENT

PC 245(A)(7)

EVIDENCE REPORT

CASE NO / INCIDENT NO

01-4316

PAGE
7
OF
1

- A. EVIDENCE
- B. FOUND PROPERTY
- C. SAFE KEEPING
- D. SEARCH WARRANT
- E. FOR DESTRUCTION
- F. PROCESS FOR PRINTS

- 1. VICTIM:
- 2. VICTIM:
- 3. SUSPECT: **SMITH, ERNEST**
- 4. SUSPECT:

OWNERSHIP / DISPOSITION ENTER PROPER CODES

ITEM #	ARTICLE / DESCRIPTION	QTY	SERIAL NUMBER	BRAND/MAKE	MODEL / COLOR	CODE	BIN #
JS9	MICRO CASSETTE TAPE OF MELINDA MORSE						
	DESCRIPTION		LOCATION RECOVERED				
	DESCRIPTION		LOCATION RECOVERED				
	DESCRIPTION		LOCATION RECOVERED				
	DESCRIPTION		LOCATION RECOVERED				
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FINDER (FILL OUT ONLY IF FINDER WANTS TO CLAIM FOUND PROPERTY)
 NAME / ADDRESS / PHONE NUMBER

CLEAR APS CARD SENT

REPORTING OFFICER / SERIAL NUMBER Syhit 97	DATE/TIME 10-5-01	INV	OTHER	INV PRIN	DDA	RECEIVED STAMP
REVIEWED BY	DATE/TIME					

MARTINEZ POLICE DEPARTMENT CA0071400

CASE INCIDENT PC 245(A)(1)	EVIDENCE REPORT	CASE NO/INCIDENT NO 01-4316	PAGE 1
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A. EVIDENCE B. FOUND PROPERTY C. SAFE KEEPING D. SEARCH WARRANT E. FOR DESTRUCTION F. PROCESS FOR PRINTS	1. VICTIM: SMITH, GREGORY 2. VICTIM: 3. SUSPECT: SMITH, ERNEST 4. SUSPECT: <u>OWNERSHIP / DISPOSITION ENTER PROPER CODES</u>
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ITEM #	ARTICLE / DESCRIPTION	QTY	SERIAL NUMBER	BRAND/MAKE	MODEL / COLOR	CODE	BIN #
JS 1	CASSETTE TAPE OF 1 ST GREGORY SMITH INTERVIEW						
JS 2	CASSETTE TAPE OF LAURA ALLISON INTERVIEW						
JS 3	VIDEO CASSETTE TAPE OF LAURA ALLISON INTERVIEW						
JS 4	CASSETTE TAPE OF 2 ND GREGORY SMITH INTERVIEW						
JS 5	VIDEO TAPE OF 2 ND GREGORY SMITH INTERVIEW						
JS 6	CASSETTE TAPE OF OFFICER OWEN INTERVIEW						
JS 7	CASSETTE TAPE OF OFFICER MILLER INTERVIEW						
JS 8	THREE PHOTOGRAPHS (1) 35mm / (2) POLAROID(S) SHOWN TO OFFICER MILLER DURING INTERVIEW						
	DESCRIPTION		LOCATION RECOVERED				
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REPORTING OFFICER / SERIAL NUMBER Sylvia 97	DATE/TIME 105-01	PM	OTHER	JUV PROC	DDJ	REVIEWED STAMP
REVIEWED BY	DATE/TIME					

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT**

01-4316MS1 PAGE 1

Evidence: Item #1MS: One Maxell Cassette tape containing 911 call of 9-20-01 1719 hours

I was advised by Per-Diem Dispatcher John Vizcarra that he received a 911 call from suspect Ernest Smith on 9-20-01. Vizcarra felt that this call may be of value to this investigation. I asked Vizcarra to write a supplement to this case outlining the circumstances of this call.

I copied the call from the dispatch DVD recording system on the above listed cassette tape. Cassette was logged into evidence at MPD.

LT. Mark E. Smith

October 24, 2001

SUPPLEMENTAL TO INCIDENT 01M19140 J. VIZCARRA ID#431

ON 09/20/2001 I WAS ASSIGNED TO THE DISPATCH CENTER LOCATED AT MARTINEZ POLICE DEPARTMENT 525 HENRIETTA STREET IN THE CITY OF MARTINEZ. MY SHIFT BEGAN AT 1700 HOURS AND ENDED AT 0300 HOURS.

AT APPROXIMATELY 1719 HOURS I RECEIVED A 911 EMERGENCY TELEPHONE CALL FROM A SUBJECT VERBALLY IDENTIFYING HIMSELF AS ERNEST D. SMITH DOB 09/23/36. SMITH TOLD ME HE WAS CALLING FROM 448 BLUE RIDGE DR IN THE CITY OF MARTINEZ. THE ALI SCREEN ON MY MAARS VIEW TERMINAL CONFIRMED THIS INFORMATION.

UPON ANSWERING THE 911 EMERGENCY TELEPHONE LINE SMITH WAS CALLING ON I VERBALLY IDENTIFIED THE LINE AS "911". AT THIS POINT SMITH BEGAN SPEAKING VERY LOUD AND VERY FAST. I TOLD SMITH I COULD NOT UNDERSTAND HIM AT WHICH POINT HE REPEATED HIS NAME AND ADDRESS AND CONTINUED TO SPEAK VERY FAST. SMITH SOUNDED VERY AGITATED AND WAS BREATHING HARD INTO THE MOUTH RECEIVER OF THE PHONE. I ASKED SMITH AGAIN TO SLOW DOWN AND TAKE A BREATH TO ALLOW ME TO GET HIS INFORMATION, AND DETERMINE WHAT HIS NEED FOR POLICE SERVICES WAS. SMITH SLOWED DOWN AND BEGAN TO TELL ME ABOUT A FAMILY DISTURBANCE BETWEEN HIM AND HIS SON LATER IDENTIFIED VERBALLY AS [REDACTED]. SMITH TOLD ME HIS SON WAS KICKING HIS DOG, PUSHING HIM AROUND (SMITH, ERNEST) AND THREATENING HIM AND "THIS WAS THE LAST TIME HE WAS PUTTING UP WITH IT".

THROUGH MY QUESTIONING OF SMITH I WAS INFORMED HIS SON WAS NO LONGER AT THE RESIDENCE. I TOLD SMITH I WOULD SEND OFFICERS OUT TO CONTACT HIM AND THAT IF HIS SON RETURNED TO CALL US BACK.

I THEN DISPATCHED TWO OFFICERS AT APPROXIMATELY 1733 HOURS VIA RADIO AND MOBILE DATA TERMINAL (MDT).

MARTINEZ POLICE DEPARTMENT CA0071400

CRIME/INCIDENT 245(A) PC.	EVIDENCE REPORT	CASE NO / INCIDENT NO 01-4316	PAGE OF 1
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A. EVIDENCE B. FOUND PROPERTY C. SAFE KEEPING D. SEARCH WARRANT E. FOR DESTRUCTION F. PROCESS FOR PRINTS	1. VICTIM: 2. VICTIM: 3. SUSPECT: KWEST SMTH 4. SUSPECT: <u>OWNERSHIP / DISPOSITION ENTER PROPER CODES</u>
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ITEM #	ARTICLE / DESCRIPTION	QTY	SERIAL NUMBER	BRAND/MAKE	MODEL / COLOR	CODE	BIN #
1/MS	CASSETTE TAPE 1						
	DESCRIPTION		LOCATION RECOVERED				
	Call of 9-20-01		MPD				
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FINDER (FILL OUT ONLY IF FINDER WANTS TO CLAIM FOUND PROPERTY) NAME / ADDRESS / PHONE NUMBER	CLEAR APS <input type="checkbox"/>	CARD SENT <input type="checkbox"/>
REPORTING OFFICER / SERIAL NUMBER M. SMITH / 53	DATE/TIME 10-24-01	RECEIVED STAMP _____
REVIEWED BY _____	DATE/TIME _____	DESIGNED BY M THOMPSON #60

TIME	ARREST	CODE	INFO	OTHER	MARTINEZ POLICE CA0071400	CASE NO. 01-3015	PAGE 1		
DATE/TIME REPORTED 071201 0759 HOURS					REFER CASE #(S)	OF 2			
CODE SECTION(S) 245.6(A) PC			CRIME/INCIDENT ASSAULT W/ DEADLY WEAPON			CLASSIFICATION PIPE			
LOCATION OF OCCURRENCE 448 BLUE RIDGE DRIVE									
OCCURRED BETWEEN DATE		TIME	DAY	VIC	LICENSE NO	STA	YEA		
071201		0759	THUR	N/A					
AND		TIME	DAY	SUS	LICENSE NO	STA	YEA		
RELATIONSHIP OF PARTIES				<input type="checkbox"/> FEARS INJURY		<input type="checkbox"/> VISIBLE INJURY			
DVR INFO				<input type="checkbox"/> WEAPON INVOLVED:		<input type="checkbox"/> FIREARM			
				<input type="checkbox"/> PAIN COMPLAINT		<input type="checkbox"/> RIFLE			
				<input type="checkbox"/> OTHER		<input type="checkbox"/> BODILY FORCE			
						<input type="checkbox"/> NONE			
						<input type="checkbox"/> PROVIDED			
INVOLVED PERSONS	1	INV/VMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
		S	SMITH, ERNEST DONALD			092336	WM	BLN BLU	509 150
	RESIDENCE ADDRESS					RES. PHONE	DRIVER'S LICENSE #	STATE	
	448 BLUE RIDGE DR., MARTINEZ							CA	
	BUS. NAME/ADDRESS/PHONE					OCCUPATION	SOCIAL SECURITY #	ARREST	
	NONE					RETIRED			
	2	INV/VMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT
		Y	[REDACTED]			[REDACTED]	WM		
	RESIDENCE ADDRESS					RES. PHONE	DRIVER'S LICENSE #	STATE	
	TRANSIENT					N/A			
	BUS. NAME/ADDRESS/PHONE					OCCUPATION	SOCIAL SECURITY #	ARREST	
	NONE								
3	INV/VMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	
	W1	[REDACTED]			[REDACTED]	WF			
RESIDENCE ADDRESS					RES. PHONE	DRIVER'S LICENSE #	STATE		
448 BLUE RIDGE DRIVE									
BUS. NAME/ADDRESS/PHONE					OCCUPATION	SOCIAL SECURITY #	ARREST		
NONE									
4	INV/VMT	NAME (LAST, FIRST MIDDLE)			DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	
	W2	[REDACTED]			[REDACTED]	WF			
RESIDENCE ADDRESS					RES. PHONE	DRIVER'S LICENSE #	STATE		
448 BLUE RIDGE DRIVE									
BUS. NAME/ADDRESS/PHONE					OCCUPATION	SOCIAL SECURITY #	ARREST		
NONE									
I HEREBY ARREST THE ABOVE NAMED SUSPECT(S) ON THE CHARGES INDICATED ABOVE.					SIGNED				
PROPERTY	NUMBER	ARTICLE	QTY	SERIAL NUMBER	BRAND/MAKE	MODEL NO	VALUE	CODE	
YES	NO	EVIDENCE COLLECTED		# FINGERPRINTS	# ROLLS FILM	TOTAL			
<input checked="" type="checkbox"/>	<input type="checkbox"/>			-	1	0			
SYNOPSIS: DURING A VERBAL ARGUMENT, (S) SMITH HITS (V) [REDACTED] ONETIME ON THE BACK WITH A METAL PIPE.									
(TAPED NARRATIVE)									
REPORTING OFFICER / SERIAL				DATE AND TIME		REVIEWED BY		FOLLOW-UP NEEDED	
D. MILLER #11				071201 1200		RA			
<input checked="" type="checkbox"/> INT	<input checked="" type="checkbox"/> CPS	<input type="checkbox"/> JUV/PROB	<input type="checkbox"/> DDA	<input type="checkbox"/> VIC/LTR	<input type="checkbox"/> VWC	OTHER		SIGNATURE OF SUSPECT	
MPD DAILY REPORT FORM (REV 9-95) MPD #30								DESIGNED BY N. THOMPSON #50	

01-3015

INDEXED

MARTINEZ POLICE

CASE NO. **01-3015** PAGE
REFER CASE #(S) OF 1

DATE/TIME REPORTED
7-11-01

CODE SECTION(S)
PC 245(A)(1)

CRIME/INCIDENT
ADW

CA0071400

CLASSIFICATION

INVOLVED PERSONS

5	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
6	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
7	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
8	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
9	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
10	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
11	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
12	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
13	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
14	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
15	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									
16	INV/VMT	NAME (LAST, FIRST MIDDLE)	DOB	RACE/SEX	HAIR/EYES	HEIGHT/WEIGHT	DRIVERS LICENSE #	STATE	ARREST
RESIDENCE ADDRESS			OCCUPATION						
BUS. NAME/ADDRESS/PHONE									

REPORTING OFFICER / SERIAL NO. SYLVIA 97	DATE AND TIME 7-12-01	REVIEWED BY	FOLLOW-UP NEEDED			
INV	CPS	JUV/PROB	DDA	VIC/LTR	VVC	OTHER

1. On 7/12/01 at approximately 0759 hours, I was dispatched to a family disturbance at 448 Blue Ridge Drive. Riding with me was Field Training Officer/Corporal SYLVIA.
2. Upon arrival, I met with Officers KRUTA and ESTANOL who were in the front yard of 448 Blue Ridge Drive. They had several subjects separated near the front driveway and front yard. I contacted Suspect ERNEST DONALD SMITH (DOB: 9/23/36) in the front yard. I asked him what happened. He said 448 Blue Ridge Drive is his residence. He also said his granddaughter, Witness [REDACTED], also lives at the residence with him. SMITH said that last night, Victim [REDACTED] arrived at the residence with his friends, Witness #3 [REDACTED], witness #4 [REDACTED] and Witness #5 [REDACTED]. Victim [REDACTED] slept in the bedroom with his wife, Witness #1 [REDACTED].
3. SMITH said that this morning, Victim [REDACTED] woke and said that his wallet was missing from where he left it the previous night. Victim [REDACTED] and Witness [REDACTED] began arguing over who took the wallet. Victim [REDACTED] later found the wallet approximately two (2') feet from where he left it. At this point, Suspect SMITH said that he joined in the argument, trying to calm Victim [REDACTED]. Suspect SMITH said that Witness [REDACTED] began pushing Victim [REDACTED] out of the house. Suspect SMITH said that he also wanted Victim [REDACTED] to leave because of his boisterous behavior. Suspect SMITH said he went into the garage and grabbed a metal pipe. He said he did this to protect himself. Suspect SMITH then walked to the front yard and confronted Victim [REDACTED]. Suspect SMITH said as he walked out of the house, Victim [REDACTED] said he was going to have his friends "242" SMITH. Suspect SMITH said that he started walking towards Victim [REDACTED] as Victim [REDACTED] began to walk towards him. Victim [REDACTED] grabbed Suspect SMITH's shirt and Suspect SMITH hit Victim [REDACTED] in the back one time with the metal bar. Suspect SMITH said Victim [REDACTED] took the metal bar out of Suspect SMITH's hands and threw it in the yard next door at [REDACTED].

4. I advised Officer KRUTA where the pipe might be and asked him to look for it. Officer KRUTA said that he found the pipe in the bushes in the front yard of [REDACTED]
5. I then walked over to Victim [REDACTED] and asked him what happened. Victim [REDACTED] told me that he came to the residence late at night on 7/11/01 and placed his wallet with a chain attached to it inside his shoe and placed it next to the bed. This morning when he woke up, he noticed the wallet was missing from his shoe and Witness [REDACTED] was awake. Victim [REDACTED] then began to argue with Witness [REDACTED] asking what she did with his wallet. After arguing for several minutes, Victim [REDACTED] said he found his wallet in the closet about two (2') feet from where his shoes were placed. Victim [REDACTED] said Witness [REDACTED] told him to get out of the house because he was disturbing the household. Victim [REDACTED] said that Witness [REDACTED] and Suspect SMITH were both pushing him out of the front door in an effort to make him leave. Victim [REDACTED] said that during the struggle, Witness [REDACTED] struck him in his left eye with her hand one time. Victim [REDACTED] said he then walked to the car in the driveway that his friends, Witnesses #3, #4 and #5 were sleeping in. Victim [REDACTED] said that Suspect SMITH then came out of the house with a pipe and was walking towards him. Victim [REDACTED] said he tried to stop Suspect SMITH from swinging the pipe at him and before he could take the pipe away, Suspect SMITH hit him one time in the back. Victim [REDACTED] then grabbed the pipe with both hands and yanked it away from Suspect SMITH and started to walk down the street. As Victim [REDACTED] was walking in front of [REDACTED] he threw the pipe into the yard.
6. I examined Victim [REDACTED] and saw an approximate four (4") inch red mark on his left shoulder blade. I took five (5) photographs of the injury.
7. I then contacted Witness [REDACTED] and asked her what happened. Witness [REDACTED] said that Victim [REDACTED] came into her bedroom late last night (07/11/01) and went to sleep. Witness [REDACTED] said that when Victim [REDACTED] woke this morning, he became very belligerent and began

yelling about his wallet being stolen. Witness [REDACTED] said that he was disturbing the household and asked Victim [REDACTED] to leave, but he refused to do so. Witness [REDACTED] stated she then began to push Victim [REDACTED] out of the residence. Witness [REDACTED] said she never hit Victim [REDACTED] in the face with her hand. Witness [REDACTED] said she was on the front porch when Suspect SMITH came out of the residence with a pipe and was yelling at Victim [REDACTED] to leave the residence. Witness [REDACTED] said Suspect SMITH walked towards Victim [REDACTED] and Victim [REDACTED] attempted to strike Suspect SMITH with his fist. Witness [REDACTED] said that Suspect SMITH then hit Victim [REDACTED] in the back with the pipe. Witness [REDACTED] then said that Victim [REDACTED] took the pipe away from Suspect SMITH and threw it in the yard next door.

8. I asked for and was granted a consent search for Victim [REDACTED]'s bedroom to observe where the argument started. As we entered the residence, I saw Witness [REDACTED] standing in the living room. I asked her if she saw the incident and she said she was asleep during the incident on the front living room floor. See Corporal SYLVIA's supplemental report regarding the search of the bedroom for details.
9. Corporal SYLVIA and I then exited the residence and contacted Suspect SMITH again. I advised Suspect SMITH that he was under arrest for assault with a deadly weapon and placed him in handcuffs. I double locked the handcuffs and checked for tightness. Suspect SMITH was directly transported to the Martinez Detention facility and released to the custody of the Contra Costa County Sheriff's Department.
10. Corporal SYLVIA and I searched the vehicle that was parked in the driveway and occupied by Witnesses #3, #4 and #5. See Corporal SYLVIA's supplemental report for statements from those subjects.
11. I request this report be forwarded to the Investigations Bureau and the Contra Costa County District Attorney's office for filing of appropriate charges.

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

01-3015JS1 PAGE 1

1. On 7/11/01, I assisted Officer MILLER with this investigation. We were riding as partners during this shift. During the investigation, I interviewed Witnesses [REDACTED], [REDACTED] and [REDACTED]. All subjects had been sleeping in a vehicle that was parked in the driveway of 448 Blue Ridge Drive.
2. I talked to Witness [REDACTED] who told me that he was awakened by yelling between Suspect SMITH and Victim [REDACTED]. He told me that he did not see much, but Suspect SMITH and Victim [REDACTED] were involved in an argument in the middle of the street. Due to his position, he did not see Victim [REDACTED] get hit with the lead pipe.
3. Witness [REDACTED] told me that he was also awakened by the argument between Suspect SMITH and Victim [REDACTED]. During the argument, he saw Suspect SMITH leave the front of the residence and go inside. Suspect SMITH then returned with a pipe. He then saw Suspect SMITH strike Victim [REDACTED] with the pipe in the back area. Victim [REDACTED] then took the pipe away from Suspect SMITH. Martinez Police then arrived on scene. Witness [REDACTED] told me that he did not see Victim [REDACTED] strike Suspect SMITH in any way.
4. I talked to Witness [REDACTED] who told me that he was asleep when this altercation occurred. When he woke up, he saw suspect SMITH with the lead pipe chasing Victim [REDACTED] on Blue Ridge Drive. They were out of [REDACTED]'s view and he did not see Suspect SMITH strike Victim [REDACTED]. Witness [REDACTED] did stated that he heard something being struck, but he could not tell what it was. Soon after the battery, Martinez Police arrived on scene.
5. While at 448 Blue Ridge Drive, I talked to Victim [REDACTED]'s wife. She showed symptoms of being under the influence of a drug. I administered an examination to determine if she was under the influence of a drug. She had an accelerated pulse rate, dilated pupils and she appeared to be agitated. Her pupils also displayed Hippus. I asked Witness [REDACTED] if she had been using drugs and she that she had not. However, she told me she was in San Francisco the previous evening and someone might have slipped something in her drink. I asked her if I could check her bedroom for drugs and drug paraphernalia and she stated that I could.

MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT

01-3015JS1 PAGE 2

We went into her bedroom and she told me there were pipes in the room. She handed me a cigar box that contained numerous Marijuana pipes. She also stated that there was a marijuana bong in the closet. I examined the items and noticed they had Marijuana residue. These items were seized for safekeeping. Witness [REDACTED]

[REDACTED] stated the pipes belonged to her husband, Victim [REDACTED]

6. While talking to the listed witnesses, they told me that Marijuana might be in the vehicle. A search of the vehicle was conducted but no Marijuana was found.

J. SYLVIA, #97

iam 7/13/01

Time: 07/12/2001 09:47:49

Event: 01-013944

INCIDENT INFORMATION

Receive Time 07/12/2001 07:59:43	Clear Time	Call Taker BELEELE, JOYCE	Position CAD1
Classification MSDS	Priority 2	How Receive P	Services Police
Address 448 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ			
Police Agency MP	Sector 2	Beat 3	RD 317

REPORTING PARTIES

Name [REDACTED]	Phone [REDACTED]
Address [REDACTED]	Info [REDACTED]
Name [REDACTED]	Phone [REDACTED]
Address [REDACTED]	Info [REDACTED]

SYNOPSIS

415 P.C. VERBAL BETWEEN BOYFRIEND AND GIRLFRIEND
DISPUTE OVER MONEY
SECOND CALLER STATED THREE MALES AND ONE FEMALE - PHYSICAL
ERNEST DONALD SMITH DOB 9-23-36 WM ARRESTED FOR 245 P.C.
BOOKED INTO MDF

DISPOSITIONS

Closing Classification ASLA	Event Disposition C	Case Number MP 01-003015	Primary Staff MILLER, DIRK
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UNIT HISTORIES / SUPPLEMENTS

Time 07/12/2001 08:01:17	Unit X5	Status DISP	Operator BELEELE, JOYCE	Position CAD1
Time 07/12/2001 08:01:17	Unit X4	Status DISP	Operator BELEELE, JOYCE	Position CAD1
Time 07/12/2001 08:01:28	Unit X5	Status 49E	Operator MILLER, DIRK	Position 1225
Time 07/12/2001 08:01:28	Unit X4	Status 49E	Operator KRUTA, BILL	Position 1222
Time 07/12/2001 08:01:41	Unit X1	Status DISP	Operator BELEELE, JOYCE	Position CAD1
Time 07/12/2001 08:01:50	Unit X1	Status 49E	Operator ESTANOL, MIKE	Position 1223
Time 07/12/2001 08:02:46	Unit X4	Status 97E	Operator KRUTA, BILL	Position 1222
Time 07/12/2001 08:04:18	Unit X4	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
Comment License Plate Check LIC:1DJJ376 LIS:CA Request Key:327495				
Time 07/12/2001 08:06:21	Unit X1	Status 97E	Operator ESTANOL, MIKE	Position 1223
Time 07/12/2001 08:07:02			Operator BELEELE, JOYCE	Position CAD1
Supplement SUBJECTS SEPARATED				
Time 07/12/2001 08:09:06	Unit X4	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
Comment Name and DL Check OLS:CA NAM:SMITH,ERNEST SEX:M DOB:09/23/1936 PUR:C Request Key:327497				
Time 07/12/2001 08:10:07			Operator BELEELE, JOYCE	Position CAD1

Event Report

Time: 07/12/2001 09:47:49

Event: 01-013944

Supplement
 DL/NO [REDACTED]
 RES/ADDR: AS OF 06-08-98 [REDACTED]
 IDENTIFYING INFORMATION:
 SEX:MALE*HAIR:BROWN*EYES:BLU*HT:5-08*WT:160*

DL/NO [REDACTED]*B/D:09-23-1936*NAME:SMITH ERNEST DONALD*
 RES/ADDR: AS OF 10-06-00:448 BLUE RIDGE DR MARTINEZ 94553*
 IDENTIFYING INFORMATION:
 SEX:MALE*HAIR:BLOND*EYES:BLU*HT:5-09*WT:150*

Time	Unit	Status	Operator	Position
07/12/2001 08:13:09	X5	97E	MILLER, DIRK	1225
Time	Unit	Status	Operator	Position
07/12/2001 08:14:30	X1	ECOMM	BELEELE, JOYCE	CAD1
Comment Name and DL Check OLS:CA NAM:[REDACTED] M SEX:F DOB:[REDACTED] PUR:C Request Key:327502				
Time	Operator		Position	
07/12/2001 08:14:41	BELEELE, JOYCE		CAD1	
Supplement CODE 4				
Time	Unit	Status	Operator	Position
07/12/2001 08:14:47	X5	CD4E	BELEELE, JOYCE	CAD1
Time	Unit	Status	Operator	Position
07/12/2001 08:14:47	X1	CD4E	BELEELE, JOYCE	CAD1
Time	Unit	Status	Operator	Position
07/12/2001 08:14:47	X4	CD4E	BELEELE, JOYCE	CAD1
Time	Operator		Position	
07/12/2001 08:15:15	BELEELE, JOYCE		CAD1	
Supplement DMV RECORD FOR LAW ENFORCEMENT USE ONLY DL/NO [REDACTED] RES/ADDR: AS OF 04-27-98:448 BLUE RIDGE DR MARTINEZ 94553* IDENTIFYING INFORMATION: SEX:FEMALE*HAIR:BLACK*EYES:GRN*HT:5-04*WT:140*				
Time	Unit	Status	Operator	Position
07/12/2001 08:32:02	X1	ECOMM	BELEELE, JOYCE	CAD1
Comment Name and DL Check OLS:CA NAM:[REDACTED] PUR:C Request Key:327506				
Time	Unit	Status	Operator	Position
07/12/2001 08:32:16	X1	ECOMM	BELEELE, JOYCE	CAD1
Comment Name and DL Check OLS:CA NAM:[REDACTED] PUR:C Request Key:327507				
Time	Operator		Position	
07/12/2001 08:33:30	BELEELE, JOYCE		CAD1	

Event Report

Time: 07/12/2001 09:47:49

Event: 01-013944

Supplement

DL/NO: [REDACTED]
RES/ADDR: AS OF 11-18-00: [REDACTED]

IDENTIFYING INFORMATION:

SEX:MALE*HAIR:BLACK*EYES:BRN*HT:5-08*WT:160*

DL/NO: [REDACTED]
RES/ADDR: AS OF 11-18-00:1024 [REDACTED]

IDENTIFYING INFORMATION:

SEX:MALE*HAIR:BLACK*EYES:BRN*HT:5-08*WT:160*
ID CARD MLD:01-27-99*EXPIRES:09-04-04*

Time 07/12/2001 08:33:57	Unit X4	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
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Comment
Name and DL Check OLS:CA NAM: [REDACTED] SEX:M DOB: [REDACTED] PUR:C Request Key:327508

Time 07/12/2001 08:34:18	Unit X5	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
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Comment
Name and DL Check OLS:CA NAM: [REDACTED] SEX:F DOB: [REDACTED] PUR:C Request Key:327509

Time 07/12/2001 08:35:21	Unit X4	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
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Comment
Drivers License Check (DMV/NLETS) STA1:AZ STA2:NB NAM: [REDACTED] SEX:M DOB: [REDACTED] Request Key:327511

Time 07/12/2001 08:36:45	Unit X4	Status ECOMM	Operator BELEELE, JOYCE	Position CAD1
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Comment
Drivers License Check (DMV/NLETS) STA1:NB OLN: [REDACTED] Request Key:327512

Time 07/12/2001 08:37:45	Operator BELEELE, JOYCE	Position CAD1
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Supplement

DR.NBNSP0D98
08:37 07/12/2001 00367
08:37 07/12/2001 02321 CA0071400
*MRP09VQOAC

TXT
STATE OF NEBRASKA DRIVER LICENSE ABSTRACT
THIS INFORMATION MAY BE USED FOR CRIMINAL JUSTICE PURPOSES ONLY.

MLA/ [REDACTED]
DOB: [REDACTED] SEX/M RAC/W HAI/BRO EYE/HAZ HGT/602 WGT/180
OLN STATUS: SUSPENDED
CDL STATUS: ** NO CDL **
OLN [REDACTED]

LICENSE CLASS:
RES CO: 01 ISSUED CO: 01 ISSUED:
OLN EXP: CDL EXP:
-----PERMITS-----
CODE: ID CARD CLASS: ISS: 05-02-1997 EXP: 09-12-2001
END OF ABSTRACT

Event Report

Time: 07/12/2001 09:47:49

Event: 01-013944

Time 07/12/2001 09:08:35	Unit X1	Dissociate Status 8		
Time 07/12/2001 09:08:59	Unit X4	Dissociate Status 8		
Time 07/12/2001 09:09:28	Operator BELEELE, JOYCE		Position CAD1	
Supplement 10-19 WITH MR SMITH - ENROUTE TO MDF - CHARGES 245 P.C.				
Time 07/12/2001 09:22:20	Unit X5	Status JAILE	Operator BELEELE, JOYCE	Position CAD1
Location MDF				
Time 07/12/2001 09:23:23	Operator BELEELE, JOYCE		Position CAD1	
Supplement AT THE JAIL FOR BOOKING				

STAFF

Police Unit X1	Staff ESTANOL, MIKE
Police Unit X4	Staff KRUTA, BILL
Police Unit X5	Staff MILLER, DIRK

RESPONSE TIMES

	Event	Police	
Receive	07/12/2001 07:59:43	07/12/2001 07:59:48	
Save	07/12/2001 08:00:42		
Dispatch	07/12/2001 08:01:17	07/12/2001 08:01:17	
Enroute	07/12/2001 08:01:28	07/12/2001 08:01:28	
Arrive	07/12/2001 08:02:46	07/12/2001 08:02:46	
Last Clear	07/12/2001 09:22:20	07/12/2001 09:22:20	
Number of Units	3	3	

MARTINEZ POLICE DEPARTMENT
525 Henrietta Street Martinez, CA., 94553, (925) 372-3440

(CA00714)

Narrative-Supplement Report
CASE NO. 01-4316

SUPPLEMENTAL: ON 09-29-01, A SATURDAY, AT APPROXIMATELY 1030 HOURS I WAS CONTACTED BY THE MARTINEZ POLICE DEPARTMENT (MPD) DISPATCH AND INFORMED THAT AN OFFICER INVOLVED SHOOTING HAD JUST TAKEN PLACE. MY ASSISTANCE WAS REQUESTED TO PARTICIPATE IN THE SHOOTING INVESTIGATION TEAM AND I WENT TO THE MPD TO ATTEND THE PROTOCOL BRIEFING.

AT THE POLICE DEPARTMENT I MET WITH OTHER MPD INVESTIGATORS, AS WELL AS MEMBERS OF THE DISTRICT ATTORNEY'S OFFICE. TOGETHER WE WERE ALL BRIEFED ON THE EVENTS, AS THEY WERE KNOWN TO THAT POINT, WHICH LED UP TO THE SHOOTING. EACH INVESTIGATOR WAS GIVEN THE RESPONSIBILITY OF OVERSEEING, INTERVIEWING OR DOCUMENTING A PARTICULAR EVENT TO DETERMINE WHAT ACTUALLY OCCURRED PRIOR TO THE SHOOTING. FOLLOWING THE BRIEFING WE ALL TRAVELED TO THE SCENE OF THE INCIDENT AND ARRIVED SHORTLY AFTER 1400 HOURS. ONCE THE SCENE WAS VIEWED BY ALL OF THE INVESTIGATIVE TEAMS, WE LEFT THE AREA TO BEGIN OUR RESPECTIVE ASSIGNMENTS.

I WAS PAIRED WITH PAUL PETERSON, A SENIOR INSPECTOR WITH THE DISTRICT ATTORNEY'S OFFICE. AND OUR ASSIGNMENT WAS OBTAIN BACKGROUND INFORMATION REGARDING THE SUSPECT'S (ERNST DONALD SMITH) PAST BEHAVIOR AND POSSIBLE STATE OF MIND LEADING UP TO THE DAY'S INCIDENT. THIS WAS TO BE ACCOMPLISHED BY INTERVIEWING HIS EX-WIFE (REDACTED), A ROOMMATE (REDACTED) AND HIS GRANDDAUGHTER'S HUSBAND (REDACTED).

THE PERSON WE SPOKE WITH FIRST WAS (REDACTED) THIS WAS A TAPED TELEPHONE INTERVIEW CONDUCTED BY INSPECTOR PETERSON WHILE I MONITORED THE CONVERSATION ON A SECOND EXTENSION. THE INTERVIEW WAS CONDUCTED IN THIS MANNER DUE TO SMITH BEING PHYSICALLY LOCATED IN LAKE SIDE CALIFORNIA, NEAR SAN DIEGO. REFER TO INSPECTOR PETERSON'S REPORT NARRATIVE FOR DETAILS OF THAT INTERVIEW.

NEXT WE ATTEMPTED TO LOCATE (REDACTED) WE'D BEEN GIVEN INFORMATION THAT SHE WAS SEMI-TRANSIENT AND LIVED ON A BENCH IN THE GARAGE OF 448 BLUE RIDGE DRIVE, BUT THAT SHE ALSO FREQUENTED THE "STARBUCK'S" COFFEE SHOP IN THE VIRGINIA HILLS SHOPPING CENTER. AT APPROXIMATELY 1630 HOURS WE APPROACHED SEVERAL MEMBERS OF THE "STARBUCK'S" STAFF, DESCRIBED (REDACTED) AND INQUIRED IF THEY KNEW HER OR IF SHE WORKED AT THE COFFEE SHOP. WE WERE INFORMED THAT SHE DIDN'T WORK FOR "STARBUCK'S", WAS JUST A FREQUENT CUSTOMER AND HE BEEN OBSERVED WALKING THROUGH THE SHOPPING CENTER SEVERAL MINUTES PRIOR TO OUR ARRIVAL.

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SUPPLEMENTAL (CON'T): [REDACTED] WAS LOCATED SHORTLY AFTER WE FINISHED SPEAKING WITH THE "STARBUCK'S" EMPLOYEES. SHE HAD RETURNED TO AREA AND ONE OF THE EMPLOYEES POINTED HER OUT TO US.

I MADE CONTACT WITH [REDACTED]. IDENTIFIED MYSELF AND ASKED IF I COULD SPEAK WITH HER. [REDACTED]'S INITIAL RESPONSE WAS "NOT WITHOUT MY ATTORNEY PRESENT." I EXPLAINED THAT SHE WASN'T IN ANY TROUBLE AND THAT I JUST WANTED TO ASK HER SOME QUESTIONS. SHE WAS INVITED TO COME TO THE POLICE DEPARTMENT TO FACILITATE THE INTERVIEW PROCESS. BUT SHE REFUSED.

[REDACTED] WAS VERY APPREHENSIVE ABOUT SPEAKING WITH THE POLICE. SO I ALLOWED HER TO CHOOSE THE LOCATION. SHE INDICATED THAT SHE WANTED TO SIT AT ONE OF THE TABLES OUT IN FRONT OF THE "STARBUCK'S" COFFEE SHOP. I TRIED TO CONVINC [REDACTED] THAT THIS WAS TOO PUBLIC OF A LOCATION TO CONDUCT THE INTERVIEW. AS I DID THIS IT APPEARED THAT SHE WAS GOING TO REFUSE TO COOPERATE ENTIRELY, SO THAT WAS WHERE I SPOKE WITH HER. [REDACTED] REFUSED TO SIT AT THE TABLE WITH US. SHE CHOSE TO STAND NEXT TO HER CHAIR DURING THE ENTIRE CONTACT.

DURING THIS INTERVIEW I LEARNED THAT [REDACTED] FIRST CAME IN CONTACT WITH SMITH AFTER SHE MET HIS DAUGHTER ([REDACTED] SMITH) AT THE ROUNDTABLE PIZZA RESTAURANT IN THE VIRGINIA HILLS SHOPPING CENTER IN 1997. SHE TOLD ME THAT [REDACTED] SMITH INVITED HER TO LIVE AT THE BLUE RIDGE ADDRESS, WHICH SHE DID, ON AN INFREQUENT BASIS. [REDACTED] STATED THAT SHE BEGAN STAYING AT SMITH'S HOME ON A FULL-TIME BASIS IN JANUARY OF 1999. SHE TOLD ME THAT [REDACTED] HAD MOVED OUT OF STATE SHORTLY AFTER SHE [REDACTED] BEGAN LIVING AT THE BLUE RIDGE HOUSE.

I ASKED [REDACTED] IF SHE POSSESSED A KEY TO SMITH'S HOUSE AND SHE SAID SHE DID. [REDACTED] TOLD ME SHE TYPICALLY SLEPT ON A COUCH IN THE LIVING ROOM WHEN SHE WASN'T SLEEPING IN A RENTAL CAR. SHE INDICATED THAT SHE HAD COMPLETE ACCESS TO THE HOUSE TO SHOWER, ACCESS TO DO LAUNDRY AND TO WATCH TELEVISION. [REDACTED] ALSO TOLD ME SHE WASN'T REQUIRED TO GIVE SMITH MONEY FOR RENT, FOR UTILITIES OR FOR FOOD. I TOLD HER THAT I THOUGHT THAT IT WAS ODD THAT SHE WAS ALLOWED ALL OF THOSE PRIVILEGES BUT DIDN'T HAVE TO COMPENSATE SMITH. SHE REPLIED "YEAH IT IS, ISN'T." [REDACTED] TOLD ME SHE WAS NOT INVOLVED IN ANY TYPE OF ROMANTIC RELATIONSHIP WITH SMITH. BUT STATED HE MAY WANT HER AT THE HOUSE FOR FRIENDSHIP.

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SUPPLEMENTAL (CON'T): NEXT I INQUIRED WHAT OTHER PEOPLE LIVED IN THE HOUSE. [REDACTED] SAID THAT SMITH'S SON [REDACTED] HAD BEEN STAYING THERE FOR THE PAST 30 DAYS AND HIS DAUGHTER [REDACTED] BEGAN LIVING THERE APPROXIMATELY EIGHT DAYS EARLIER. [REDACTED] ALSO TOLD ME THAT PEOPLE WERE CONSTANTLY COMING AND GOING FROM SMITH'S HOUSE. SHE SAID A "CAR LOAD" ARRIVED AT APPROXIMATELY 2300 HOURS ON 09-28-01 AND SHE BELIEVED THAT THEY WERE FRIENDS OF [REDACTED]. [REDACTED] TOLD ME SHE DIDN'T LIKE [REDACTED]'S FRIENDS AND WOULD TYPICALLY LEAVE WHEN THEY CAME OVER TO THE HOUSE - AS SHE DID WHEN THEY ARRIVED THE PRIOR EVENING.

I ASKED [REDACTED] WHEN SHE RETURNED TO THE SMITH HOUSE ON 09-29-01. SHE STATED THAT SHE WAS THERE "WHEN IT WAS LIGHT OUTSIDE." I NARROWED THIS TO BETWEEN 0500 AND 0600 HOURS AND SHE INDICATED THAT SHE WAS THERE TO DO SOME LAUNDRY. I ASKED [REDACTED] IF SHE SPOKE TO "ERNST" WHILE SHE WAS AT THE HOUSE AND SHE REPLIED THAT SHE DIDN'T KNOW HIM BY THAT NAME. I ASKED HER IF SHE KNEW HIM BY ANOTHER NAME AND SHE SAID, "I DON'T THINK HE CAN BE DESCRIBED BY SOMETHING AS SIMPLE AS A NAME." I THEN ASKED HER IF SHE SPOKE WITH THE GENTLEMAN THAT OWNS THE HOUSE WHERE SHE IS LIVING. [REDACTED] REPLIED "I DON'T KNOW THAT HE OWNS THAT HOUSE AND HE'S NO GENTLEMAN."

I ASKED [REDACTED] WHY SHE DIDN'T RECOGNIZE THE PERSON SHE WAS LIVING WITH AS A GENTLEMAN. SHE STATED "HE'S ANGRY. HE'S NOT A GENTLEMAN, HE USES FOUR LETTER WORDS." SHE INDICATED THAT HE TAKES MEDICATION AND THINGS HAPPEN TO HIM IF HE TAKES TOO LITTLE OR TOO MUCH. I ATTEMPTED TO GET [REDACTED] TO EXPAND ON THIS, BUT SHE CONTINUED TO LOSE FOCUS ON THE CONVERSATION. [REDACTED] WOULD BEGIN QUESTIONING ME ABOUT POLICE REPORTS AND "911" RECORDINGS. SHE STATED THAT I SHOULD ALREADY HAVE ALL OF THE INFORMATION I NEEDED BECAUSE THE POLICE HAD EVERYTHING RECORDED. [REDACTED] THEN BEGAN MAKING NONSENSE REFERENCES TO THE REPUBLICAN PARTY.

AS I ATTEMPTED TO REFOCUS [REDACTED] TO THE SUBJECT I WAS INTERESTED IN DISCUSSING, [REDACTED] TOLD ME SMITH NO LONGER WENT BY THE NAME "ERNST." I ASKED HER HOW SHE KNEW THAT AND SHE TOLD ME THAT HE (SMITH) TOLD HER THAT MORNING. I ASKED HER WHAT TIME SHE SPOKE WITH HIM AND SHE SAID IT WAS ABOUT 0700 HOURS. I ASKED [REDACTED] WHAT SHE CALLED "ERNST" AND SHE TOLD ME "HE DOESN'T HEAR YOU." SHE EXPLAINED THAT SHE'D SAY, "I'D LIKE YOU TO TELL ME YOUR NAME", BUT WOULD GET NO REPLY.

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SUPPLEMENTAL (CON'T): I ASKED [REDACTED] TO DESCRIBE SMITH'S PERSONALITY IN ONE WORD AND AGAIN SHE WENT OFF ON A TANGENT ABOUT POLICE "911 TAPES" AND HOW I ALREADY HAD THAT INFORMATION. I STOPPED HER. I REITERATED MY REQUEST AND SHE STATED "ACTING OLD." I ASKED HER TO EXPAND ON THAT AND SHE INDICATED HE WAS LIKE A GRUMPY OLD MAN. [REDACTED] TOLD ME SMITH "STAMPS HIS FEET AND SHAKES HIS FISTS. HIS PERSONALITY IS TO SHAKE PEOPLE UP."

I ASKED HER IF HE WAS UPSET THAT MORNING WHEN SHE TALKED WITH HIM AND INITIALLY SHE SAID HE WAS NOT. DURING FURTHER QUESTIONING, HOWEVER, SHE STATED THAT SMITH WAS UPSET ABOUT SOMEONE TAKING A 30-MINUTE SHOWER. I ASKED [REDACTED] IF SHE WAS PRESENT WHEN THE POLICE ARRIVED AT THE HOUSE THAT MORNING AND SHE IGNORED MY QUESTION. I ASKED HER HOW SMITH FELT ABOUT THE POLICE AND SHE TOLD ME "HE REGULARLY CALLED THE POLICE AND FELT THAT THEY WERE A FRIEND." SHE THEN TOLD ME SHE LEFT THE HOUSE TO GO HAVE COFFEE AT THE COUNTY WOOD PLAZA IN WALNUT CREEK AND PRODUCED A RECEIPT THAT SHE SAID PLACED HER THERE AT 0929 HOURS. I ASKED TO VIEW THE RECEIPT, BUT SHE SECURED IT IN HER PURSE AND REFUSED TO PRODUCE IT AGAIN.

[REDACTED] WAS ASKED IF SHE POSSESSED ANY FORM OF IDENTIFICATION. SHE RELUCTANTLY DISPLAYED A CALIFORNIA DRIVER'S LICENSE AFTER I TOLD HER I KNEW SHE NEEDED ONE TO RENT THE CAR SHE WAS DRIVING. [REDACTED] REFUSED TO ALLOW INSPECTOR PETERSON OR ME TO VIEW THE LICENSE FOR MORE THAN A FEW SECONDS. WE WERE ABLE TO SEE THAT THE PICTURE ON THE LICENSE APPEARED TO BE HER AND THAT THE NAME WAS THE SAME AS THE ONE SHE WAS USING.

I ASKED [REDACTED] WHERE SHE RENTED THE TOYOTA (LICENSE #4TGN803) SHE WAS DRIVING AND SHE TOLD ME FROM BUDGET CAR RENTAL IN WALNUT CREEK. I INQUIRED HOW SHE COULD AFFORD TO RENT A CAR WHEN SHE PREVIOUSLY STATED SHE WAS UNEMPLOYED AND RECEIVING NO GOVERNMENT ASSISTANCE. SHE TOLD ME SHE USED HER CREDIT CARD AND IT WAS JUST ABOUT "MAXED-OUT." AT THIS TIME I WAS ABLE TO GET THE FOLLOWING MAILING ADDRESS FROM [REDACTED]

I ASKED HER IF SHE'D BEEN BACK TO THE SMITH HOUSE SINCE SHE LEFT TO HAVE COFFEE THAT MORNING AND SHE STATED SHE HAD. [REDACTED] TOLD ME SHE DROVE PAST THE HOUSE, SAW POLICE CARS IN FRONT OF IT AND DECIDED TO CONTINUE DRIVING. I CONFIRMED THAT HER LAST CONTACT WITH SMITH WAS PRIOR TO THE SECOND RESPONSE OF THE POLICE AND SHE STATED THAT I WAS CORRECT.

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SUPPLEMENTAL (CON'T): BASED ON THIS INFORMATION I WAS CONCERNED THAT [REDACTED] HADN'T BEEN MADE AWARE OF SMITH'S DEATH. BEFORE I COULD SUGGEST WE STEP AWAY TO A MORE PRIVATE LOCATION TO DISCUSS THE EVENTS OF THAT MORNING, [REDACTED] ABRUPTLY ENDED THE INTERVIEW AND TOLD ME SHE WAS GOING TO GIVE HER DOG SOME WATER.

I FOLLOWED [REDACTED] TO THE AREA OF HER RENTAL CAR AND TOLD HER THAT I NEEDED TO INFORM HER OF A VERY DIFFICULT SITUATION. I TOLD HER OF THE SHOOTING AND THAT SMITH HAD DIED AS A RESULT OF THE GUNSHOT WOUND. [REDACTED] WAS COMPLETELY UNEMOTIONAL ABOUT THE INFORMATION I HAD JUST PROVIDED. HER ONLY QUESTION WAS WHETHER INSPECTOR PETERSON OR I HAD BEEN THE ONES TO SHOOT SMITH. WHEN SHE LEARNED WE HADN'T SHE ASKED IF HIS SON WAS PRESENT DURING THE SHOOTING. AGAIN SHE REMAINED EMOTIONLESS AND SIMPLY PROCEEDED TO GIVE HER DOG THE WATER. SHE THEN DROVE AWAY FROM THE AREA WITHOUT ANY FURTHER QUESTIONS OR CONCERNS REGARDING THE SITUATION.

AFTER I COMPLETED MY INTERVIEW WITH [REDACTED] WE RETURNED TO THE POLICE DEPARTMENT TO TRY AND LOCATE [REDACTED] I OBTAINED [REDACTED] LAST KNOWN ADDRESS FROM A DEPARTMENT OF MOTOR VEHICLES (DMV) DATABASE QUERY. THIS RECORD REPORTED HIS ADDRESS, AS OF [REDACTED] I HAD THE MPD DISPATCH CHECK THE REVERSE TELEPHONE DIRECTORY AND TO CALL THE CONCORD POLICE DEPARTMENT DISPATCH TO LOCATE THE TELEPHONE NUMBER ASSOCIATED WITH THE ADDRESS. THIS RESEARCH REVEALED THAT THE CURRENT TELEPHONE NUMBER WAS [REDACTED]

AT APPROXIMATELY 1945 HOURS ON 09-29-01 I CALLED THE NUMBER AND SPOKE WITH [REDACTED]. SHE IDENTIFIED HERSELF AS [REDACTED] MOTHER AND THE LEGAL GUARDIAN OF HIS THREE-YEAR-OLD SON [REDACTED]. I TOLD HER I WAS INTERESTED IN SPEAKING WITH [REDACTED] IN ORDER TO GAIN A BETTER UNDERSTANDING OF HIS WIFE'S GRANDFATHER (SMITH). [REDACTED] TOLD ME HE [REDACTED] HAD BEEN TO HER HOME EARLIER, EXPLAINED WHAT HAD HAPPENED AND LEFT WITH HIS WIFE FOR THE EVENING. [REDACTED] TOOK MY NAME AND TELEPHONE NUMBER AND TOLD ME SHE WOULD HAVE [REDACTED] CALL ME AS SOON AS SHE SPOKE WITH HIM.

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SUPPLEMENTAL (CON'T): BEFORE ENDING THE TELEPHONE CALL [REDACTED] VOLUNTEERED THAT SHE HAD SOME INSIGHT AS TO THE TYPE OF PERSON SMITH WAS. I ASKED HER IF SHE WOULD MIND SHARING THAT INFORMATION WITH ME AND [REDACTED] TOLD ME SHE WOULD BE HAPPY TO TELL ME WHAT SHE KNEW ABOUT HIM.

I ASKED [REDACTED] HOW LONG SHE'D KNOWN SMITH AND SHE ESTIMATED FOR THE PAST 5 YEARS. [REDACTED] REPORTED THAT SHE BELIEVED SMITH WAS "NOT VERY STABLE." SHE STATED THAT SMITH HAD THROWN [REDACTED] AND HIS WIFE OUT OF THE BLUE RIDGE HOUSE JUST A FEW WEEKS BEFORE THEIR BABY WAS BORN. SHE SAID THAT SMITH ATTACKED [REDACTED] WITH A PIPE, BUT HE ([REDACTED]) WAS UNINJURED IN THAT INCIDENT. SHE INFORMED ME SHE HAD TO GO TO THE SMITH RESIDENCE TO PICK UP [REDACTED]/HIS WIFE AFTER THAT ATTACK AND SHE SPOKE WITH SMITH ABOUT THAT INCIDENT. [REDACTED] TOLD ME SMITH WAS VERY UPSET AND THAT HE STATED "I HAVE WEAPONS HIDDEN IN THE GARAGE AND I CAN TAKE CARE OF MYSELF." I CONFIRMED THAT THIS ATTACK OCCURRED PRIOR TO THE 07/01 INCIDENT AND SHE SAID IT HAPPENED IN EITHER MAY OR JUNE OF 1998.

[REDACTED] REITERATED SEVERAL TIMES THAT SMITH WAS NOT MENTALLY STABLE CITING THAT THE ENTIRE FAMILY HAD A MENTAL ILLNESS HISTORY AND WERE ASSOCIATED WITH VIOLENT ACTS. [REDACTED] SAID SHE HAD ALLOWED [REDACTED] AND SMITH'S GRANDDAUGHTER ([REDACTED]) TO MOVE INTO HER CONCORD HOME AFTER THEIR CHILD WAS BORN, BUT "THREW THEM OUT" AFTER [REDACTED] ATTACKED HER.

I ASKED [REDACTED] HOW OFTEN SHE SPOKE WITH SMITH AND WHEN WAS THEIR LAST CONVERSATION. SHE TOLD ME HE FREQUENTLY CALLED HER HOUSE TO SPEAK WITH [REDACTED] BUT WOULD END UP RANTING AND RAVING ABOUT NONSENSE TYPE TOPICS. SHE SAID HER LAST CONVERSATION WITH HIM WAS IN JANUARY OF 2001 WHEN HE CALLED TO TELL [REDACTED] SHE HAD MAIL AT HIS HOUSE. [REDACTED] TOLD ME SHE LIED TO SMITH AND TOLD HIM THAT [REDACTED] DIDN'T LIVE WITH HER ANYMORE IN HOPES HE WOULD STOP CALLING THE HOUSE. IN TOTAL, [REDACTED] PORTRAYED SMITH TO ME AS A VIOLENT AND MENTALLY UNSTABLE INDIVIDUAL.

AT 2000 HOURS ON 09-29-01 I RECEIVED A TELEPHONE CALL FROM [REDACTED] HE INFORMED ME THAT HE'D RECEIVED THE MESSAGE I HAD GIVEN TO HIS MOTHER ([REDACTED]) AND HE AGREED TO SPEAK WITH ME. HOWEVER HE DIDN'T WANT TO LEAVE HIS WIFE ([REDACTED]) DURING HER TIME OF GRIEF - SHE WAS THE GRANDDAUGHTER OF ERNST SMITH. HE TOLD ME HE WAS AT HIS FATHER'S HOME IN ANTIOCH AND AGREED TO MEET WITH ME AT THE ANTIOCH POLICE DEPARTMENT TO COMPLETE THE INTERVIEW.

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SUPPLEMENTAL (CON'T): INSPECTOR PETERSON AND I ARRIVED AT THE ANTIOCH POLICE STATION AT APPROXIMATELY 2100 HOURS. [REDACTED] WAS PRESENT, ALONG WITH HIS WIFE, WAITING IN THE PARKING LOT. HE ACCOMPANIED US INTO THE BUILDING WHILE HIS WIFE REMAINED IN THEIR VEHICLE. AFTER WE LOCATED AN INTERVIEW ROOM, I REITERATED TO [REDACTED] THAT THE INTENT OF THE INTERVIEW WAS TO GATHER BACKGROUND INFORMATION ABOUT SMITH REGARDING HIS PERSONALITY, HIS BEHAVIORS AND ANY SITUATIONS IN HIS LIFE THAT WOULD HELP US UNDERSTAND WHAT MAY HAVE PRECIPITATED THE DAY'S EVENTS.

THE INTERVIEW BEGAN AT APPROXIMATELY 2107 HOURS AND [REDACTED] WAS VERY COOPERATIVE AND CANDID THROUGHOUT THE PROCESS. HE TOLD ME HE LIVED "ON AND OFF" AT THE BLUE RIDGE HOUSE BEGINNING IN LATE 1997 AND ENDING IN JANUARY OF 2001. [REDACTED] STATED HE'D BEEN COMPLETELY OUT OF THE RESIDENCE FOR THE PAST 8 MONTHS BECAUSE HE AND HIS WIFE HAD SEPARATED. [REDACTED] EXPLAINED THAT THEY BOTH HAD JUST RETURNED TO THE AREA AND WERE ATTEMPTING TO RECONCILE. HE INDICATED THAT SMITH WAS INTERESTED IN SEEING THIS HAPPEN AND SAID THAT SMITH WOULD OFTEN CONFIDE IN HIM/HIS WIFE.

I ASKED [REDACTED] IF HE KNEW ANY INFORMATION ABOUT THE OTHER CHILDREN IN THE FAMILY OR SMITH'S EX-WIFE AND HE TOLD ME WHAT HE KNEW. [REDACTED] INFORMED ME THAT SMITH HAD A SON THAT WAS KILLED IN A MOTORCYCLE ACCIDENT, A DAUGHTER [REDACTED] THAT COMMITTED SUICIDE BY JUMPING OFF THE GOLDEN GATE BRIDGE AND ANOTHER DAUGHTER THAT WAS LIVING IN OKLAHOMA. HE [REDACTED] TOLD ME THAT SMITH CARRIED A HEAVY BURDEN ABOUT THE DEATH OF HIS TWO CHILDREN BECAUSE HE'D ARGUED WITH EACH OF THEM RIGHT BEFORE THEY DIED. [REDACTED] TOLD ME THAT SMITH NEVER REALLY TALKED MUCH ABOUT IT, BUT HE KNEW IT TROUBLED HIM DEEPLY.

I LEARNED THAT SMITH HAD A DAUGHTER [REDACTED] LIVING IN OKLAHOMA AND SHE'D JUST MOVED THERE IN THE LAST FEW YEARS. [REDACTED] SAID SHE USED TO LIVE IN SMITH'S HOUSE AND HAD PROBLEMS WITH DRUGS. HE TOLD ME THAT SHE MOVED TO OKLAHOMA TO GET AWAY FROM HER PROBLEMS AND WAS LIVING IN A TRAILER ON LAND THAT SMITH OWNED. [REDACTED] BELIEVED THAT SHE WORKED IN THE LOCAL OKLAHOMA FAST FOOD INDUSTRY. I ASKED HIM [REDACTED] WHAT TYPE OF PERSON [REDACTED] WAS AND HE REPLIED "SHE'S THE SCARIEST ONE OF THEM ALL" REFERENCING THE MENTAL PROBLEMS THAT EFFECTED THE MEMBERS OF THE SMITH FAMILY.

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SUPPLEMENTAL (CON'T): I ASKED [REDACTED] IF HE KNEW WHAT HAPPENED TO SMITH'S MARRIAGE. HE EXPLAINED THAT SMITH'S WIFE LEFT HIM BECAUSE SHE GOT TIRED OF "KEEPING UP AFTER HIM." [REDACTED] TOLD ME HE HAD GOTTEN TO KNOW THE EX-WIFE OVER THE YEARS AT THE ANNUAL FAMILY REUNIONS HE ATTENDED. [REDACTED] INFORMED ME THAT HIS IMPRESSION OF SMITH'S EX-WIFE WAS THAT SHE WAS ONLY INTERESTED MONEY AND DIDN'T REALLY CARE FOR SMITH. HE SAID THAT SMITH KEPT IN REGULAR CONTACT WITH THE EX-WIFE AND UP UNTIL THE PAST TWO YEARS. HAD TALKED AS IF SHE WAS GOING TO COME BACK INTO HIS LIFE. [REDACTED] ALSO INFORMED ME THAT SMITH WAS HELPING TO PAY HIS EX-WIFE'S MORTGAGE.

I ASKED [REDACTED] IF HE COULD EXPLAIN [REDACTED] RELATIONSHIP WITH SMITH. HE TOLD ME SHE HAD LIVED ON A BENCH IN A CORNER OF THE GARAGE SINCE 1998. [REDACTED] SAID [REDACTED] FOLLOWED THEM HOME FROM THE LOCAL ROUNDTABLE PIZZA RESTAURANT ONE NIGHT AND BEGAN TO UNLOAD HER BELONGINGS INTO SMITH'S GARAGE. HE SAID SMITH NEVER EVICTED HER BECAUSE HE FELT SORRY FOR HER. [REDACTED] BELIEVED THAT SHE REMINDED SMITH OF HIS DECEASED DAUGHTER AND THAT SHE SERVED AS A COMPANION IN SOME SORT OF A BIZARRE FASHION. [REDACTED] TOLD ME THAT HE REFERRED TO [REDACTED] AS "THE CRAZY LADY" AND SAID THAT SHE WOULD AVOID HIM. FOR YEARS [REDACTED] AND [REDACTED] BELIEVED THAT [REDACTED] WAS "RIPPING GRANDPA OFF", BUT THEY DIDN'T PRESS THE ISSUE SINCE [REDACTED] HAD BEEN THE ONE WHO CALLED "911" WHEN SMITH SUFFERED HIS FIRST STROKE.

[REDACTED] TOLD ME HE WAS ALWAYS SUSPICIOUS OF [REDACTED]. HE REPORTED THAT [REDACTED] ONCE FOUND A PLASTIC BINDLE BAG IN THE COFFEE MAKER AND SUSPECTED THAT [REDACTED] HAD ADULTERATED SMITH'S COFFEE. HE TOLD ME THIS OCCURRED AT ABOUT THE SAME TIME THAT SMITH SUFFERED HIS FIRST STROKE. [REDACTED] TOLD ME THAT HE AND [REDACTED] HAD EXPERIENCED THEIR OWN PROBLEMS WITH DRUGS AND WERE QUITE FAMILIAR WITH OTHERS WHO ABUSED DRUGS. HE STATED THAT IT WAS HIS BELIEF THAT [REDACTED] WAS AN ABUSER AND SAID THAT [REDACTED] HAD WATCHED AS [REDACTED] PURCHASED DRUGS. [REDACTED] TOLD ME HE NEVER TOLD SMITH ABOUT THE INCIDENT BECAUSE HE HAD PLENTY OF CREDIBILITY/DRUG PROBLEMS OF HIS OWN DURING AT THE TIME. [REDACTED] EXPLAINED THAT SMITH WAS "OLD AND SICK" AND HE DIDN'T WANT TO UPSET HIM WITH MORE STRESS. HE INFORMED ME THAT SMITH NEVER WOULD HAVE ALLOWED NARCOTICS IN HIS HOUSE. HE TOLD ME SMITH WOULDN'T EVEN ALLOW ALCOHOL OR CIGARETTES IN HIS HOUSE.

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SUPPLEMENTAL (CON'T): NEXT I ASKED [REDACTED] IF HE KNEW WHAT WAS HAPPENING BETWEEN SMITH AND HIS SON [REDACTED]. [REDACTED] FIRST EXPLAINED THAT SMITH HAD ALWAYS BEEN A VERY HARD WORKING PERSON. HE TOLD ME THAT SMITH WAS A BIT OF A "MACHO" GUY IN THE YEARS BEFORE HIS STROKES AND PRIDED HIMSELF AS A "BIT OF AN INVENTOR." [REDACTED] THEN CONTRASTED SMITH'S HABITS WITH THOSE OF HIS SON [REDACTED]. HE TOLD ME THAT [REDACTED] WAS A DRUG USER WHO SLEPT ALL DAY, NEVER WORKED AND HAD BEEN IN TROUBLE WITH THE LAW.

[REDACTED] INFORMED ME THAT RECENTLY, THE PAST FEW WEEKS, [REDACTED] HAD MOVED BACK INTO SMITH'S HOUSE AND THIS TENDED TO MAKE SMITH IRRITABLE. [REDACTED] EXPLAINED THAT THE SITUATION HAD GOTTEN SO BAD THAT [REDACTED] HAD BEEN FORCED TO LIVE IN THE BACK YARD IN SMITH'S OLD VAN. HE TOLD ME THAT SMITH WAS AFRAID OF [REDACTED] BECAUSE "HE'D PUNCHED ON HIM" IN THE PAST. I LEARNED THAT [REDACTED] WAS NOT EVEN ALLOWED INSIDE TO USE THE KITCHEN, THE SHOWER OR THE BATHROOM. [REDACTED] SAID THAT THE ONLY TIME [REDACTED] WENT INTO THE HOUSE WAS WHEN HE BROKE IN WHEN SMITH WAS GONE.

I ASKED [REDACTED] IF ANYTHING ELSE WAS DISTRESSING SMITH LATELY. HE [REDACTED] TOLD ME THAT SMITH WAS CONCERNED ABOUT HIS FINANCES. SMITH HAD CONFIDED IN [REDACTED] THAT THE NUMBER OF PEOPLE TAKING ADVANTAGE OF HIM STRESSED HIM. [REDACTED] EXPLAINED THAT SMITH HAD TAKEN A SECOND MORTGAGE ON HIS HOME TO PAY [REDACTED] BAIL ON A RECENT DOMESTIC VIOLENCE ARREST. HE INDICATED THAT THIS BEGAN TO PRESS SMITH'S ABILITY TO MEET HIS MONTHLY FINANCIAL OBLIGATIONS. THEN RECENTLY, SMITH DISCOVERED THAT [REDACTED] AND [REDACTED] GIRLFRIEND HAD STOLEN HIS CREDIT CARDS. [REDACTED] SAID THAT THEY HAD CHARGED NUMEROUS ITEMS ON SMITH'S ACCOUNTS AND HE WAS WORRIED ABOUT THE DEBT.

[REDACTED] WAS ABLE TO PROVIDE ME WITH SEVERAL IMPORTANT INSIGHTS TO THE LAST FEW DAYS/HOURS OF SMITH'S LIFE. [REDACTED] TOLD ME HE'D STAYED AT SMITH'S HOME FOR THE WEEK PROCEEDING THE SHOOTING. HE [REDACTED] SAID HE LEFT ON 09-27-01 AND THAT SMITH HAD BEEN SLEEPING NORMALLY, WAS NOT ACTING UNUSUAL AND WAS CAPABLE OF CARRYING ON A NORMAL CONVERSATION. HOWEVER, SMITH WAS UPSET THAT [REDACTED] WAS STILL LIVING IN THE BACK YARD AND ABOUT THE CREDIT CARD SITUATION. [REDACTED] TOLD ME SMITH APPROACHED HIM AND STATED "YOU ARE NOT GOING TO MOVE BACK IN ON ME ARE YOU? I'M TRYING TO GET RID OF EVERYTHING I'VE GOT HERE."

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Narrative-Supplement Report

CASE NO. 01-4316

SUPPLEMENTAL (CON'T): I ASKED [REDACTED] IF HE SPOKE WITH SMITH THE MORNING OF THE SHOOTING AND HE TOLD ME HE TALKED TO HIM AT APPROXIMATELY 0830 HOURS ON 09-29-01. [REDACTED] TOLD ME HE WENT TO THE HOUSE TO PICK UP [REDACTED] AND THAT THE POLICE HAD JUST DEPARTED - THE FIRST TIME. HE STATED THAT SMITH WAS NOT UPSET WITH THE POLICE. THAT HE VIEWED THEM AS HIS FRIEND AND HAD INDICATED THAT THEY KEPT HIM FROM GETTING INTO "REAL" TROUBLE WHEN THEY ARRESTED HIM FOR THE ASSAULT WITH A DEADLY WEAPON BACK IN JULY. [REDACTED] SAID THAT SMITH STATED, "[REDACTED] I'M DONE WITH THEM ALL. I'M LOCKING THEM ALL OUT" AFTER THE MORNING INCIDENT WITH GREG. HE [REDACTED] EXPRESSED THAT SMITH WAS TIRED OF THE PEOPLE HE WAS TRYING TO HELP TAKING ADVANTAGE OF HIM.

I ASKED [REDACTED] IF HE BELIEVED THAT SMITH WAS CAPABLE OF THREATENING THE OFFICER WITH THE PIPE AND [REDACTED] DIDN'T BELIEVE SO. HE TOLD ME SMITH WAS A VERY STUBBORN MAN. WHO WAS SET IN HIS WAYS, BUT THAT HE WAS MOST LIKELY AFRAID OF [REDACTED] THAT MORNING AND THAT WAS WHY HE HAD ARMED HIMSELF WITH THE PIPE. I REFERENCED [REDACTED] OWN EXPERIENCE WITH BEING STRUCK BY SMITH AND HE TOLD ME THAT INCIDENT OCCURRED BECAUSE HE'D [REDACTED] PROVOKED SMITH. [REDACTED] BELIEVED THAT [REDACTED] ALSO PROBABLY PROVOKE SMITH THE MORNING HE WAS SHOT.

FINALLY I ASKED [REDACTED] IF HIS WIFE ([REDACTED]) WITNESSED THE SHOOTING THAT MORNING. HE TOLD ME SHE HAD SEEN EVERYTHING. I ASKED HIM IF SHE INDICATED WHETHER THE OFFICER TOLD SMITH TO DROP THE PIPE. HE SAID [REDACTED] TOLD HIM SHE HEARD THE POLICE TELL SMITH TO DROP THE PIPE. [REDACTED] INDICATED THAT SMITH DID POSSIBLY POSSESS A SMALL HEARING PROBLEM, BUT SAID IT DIDN'T APPEAR TO INTERFERE WITH HIS ABILITY TO HAVE A NORMAL CONVERSATION. I ASKED [REDACTED] HOW OFTEN HE COMMUNICATED WITH SMITH AND HE ESTIMATED THAT HE SPOKE WITH SMITH ONCE EVERY WEEK FOR THE PAST FEW MONTHS.

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
01-4316**

INVOLVED PERSONNEL

MARTINEZ POLICE DEPARTMENT	INVESTIGATIVE RESPONSIBILITY
Lt. TOM SIMONETTI	Case review
Lt. MARK SMITH	Incident Commander
Sgt. DAVID BROWN	Case Manager/Investigator
Sgt. EV PRINS	Administrative Investigator/IA
Sgt. GARY PETERSON	On-scene Commander
Det. MIKE THOMPSON	Crime Scene/videos
Det. JON SYLVIA	Investigator
Det. PAUL STARZYK	Investigator
Officer BILL KRUTA	Investigator
Officer STEVE CALDERA	Investigator
Officer STEVE GAUL	Witness Security - Officer MILLER
Officer JOHN STRETCH	Crime Scene Security
Officer GLENN WALKUP	Responded to scene/backup
Officer JIM O'NEAL	Responded to scene/backup
Reserve Officer JOHN VIZCARRA	Crime scene security
Reserve Officer BILL SWINDELL	Crime scene security
Reserve Officer DARYL WONG	Witness Security - LAURIE ALLISON
Reserve Officer IRV PALMER	Witness Security - Officer O'NEAL

CONTRA COSTA COUNTY SHERIFF'S DEPARTMENT

Lt. C. WENZEL	Responded to scene/backup
Sgt. R. WILSON	Responded to scene/backup
Dep. T. BARDEN	Scene security

PLEASANT HILL POLICE DEPARTMENT

Corporal D. CONNELLY	Assistant scene supervisor
Officer D. THOMPSON	Scene security/photographer
Officer J. WOFFINDEN	Scene security

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
01-4316**

CONTRA COSTA COUNTY DISTRICT ATTORNEY'S OFFICE

Deputy District Attorney ROBERT HOLE	Case coordinator
Senior Inspector V. WISE	Investigator
Senior Inspector P. PETERSON	Investigator
Senior Inspector T. FORD	Investigator
Senior Inspector T. SPYROW	Investigator

CONSOLIDATED FIRE - ENGINE 5

Captain B. GONZALEZ
Firefighter H. MARQUEZ
Firefighter C. MORGAN-SAVACOOOL

AMERICAN MEDICAL RESPONSE (AMR)

Paramedic GABRIEL
Paramedic ROBINSON

CASE ASSIGNMENTS:

DDA ROBERT HOLE	Lead Coordinator
Sgt. DAVID BROWN	Lead Investigator

INTERVIEWEES

Officer DIRK MILLER
Officer JIM O'NEAL
Victim [REDACTED]
Witness [REDACTED]
Interviews of neighbors
Interviews of firefighters/AMR personnel
Interviews of family - [REDACTED]
Interviews of family - [REDACTED]
Interview of Suspect SMITH's ex-wife

INTERVIEWERS

Sr. Inspector SPYROW and Det. SYLVIA
Sr. Inspector SPYROW and Det. SYLVIA
Sr. Inspector SPYROW and Det. SYLVIA
Sr. Inspector SPYROW and Det. SYLVIA
Sr. Inspector FORD and Officer CALDERA
Sr. Inspector FORD and Officer CALDERA
Sr. Inspector PETERSON and Det. STARZYK
Sr. Inspector PETERSON and Det. STARZYK
Sr. Inspector PETERSON and Det. STARZYK

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
01-4316**

PROBATION STATUS/HOUSE AND CAR SEARCH

Sr. Inspector V. WISE and Officer BILL KRUTA

PRESERVATION OF DISPATCH TAPES

Det. MIKE THOMPSON

CRIME SCENE VIDEO TAPING

Det. MIKE THOMPSON

AERIAL PHOTOGRAPHS

Det MIKE THOMPSON

(East Bay Regional Parks helicopter)

PRESS INFORMATION OFFICER

Lt. TOM SIMONETTI

**OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY
INVESTIGATION REPORT**

Investigation: Officer Involved Protocol

Report No. MPD 01-4116

Subject/Defendant: Ernest Donald Smith

Offense Dates: 9/29/01

Supplement 1

Copies Of Report To:

Deputy District Attorney: Robert Hole

Other: Martinez PD- Detective John Sylvia

Investigator Assigned: Senior Inspector T. Spyrow

Date: Continuous

INVESTIGATIVE SUMMARY

Suspects:

Smith, Ernest Donald dob: 09/23/36

448 Blue Ridge Dr., Martinez 94553 [REDACTED]

Retired CDL# [REDACTED] SS# [REDACTED]

Physical Description: Bln, Blu, 5-9, 150

Victims:

[REDACTED] - See original report.

Attachments:

3. PHPD report # 01-00549-01 of Officer D. Thompson #204.

4. PHPD supplemental report # 01-00549-01 of Officer J. Woffinden #359.

5. PHPD unit History of above call.

Original copies released to Det Sylvia on 10/11/01. Copies of those documents are attached to this report.

Subject/Defendant: Ernest D. Smith

Report/Case No.: (MPD) 01-4116

INVESTIGATION NARRATIVE:

10/09/01 1530 hrs.

I received the reports and incident history I had requested from PHPD. For details refer to same.

JS

Senior Inspector Ted Spyrow

Date: 10/11/01

Time: 10/04/2001 08:21:29

Event: 01-016334

INCIDENT INFORMATION

Receive Time 09/29/2001 10:30:36	Clear Time 09/29/2001 12:39:31	Call Taker DANSIE, JAMIE	Position DISP1
Classification MSOA	Priority 2	How Receive 1	Services Police
Address 448 BLUE RIDGE / VIRGINIA HILLS, MARTINEZ			
Police Agency	Beat	RD	

REPORTING PARTIES

Name MARTINEZ PD	Phone
Address	Info

SYNOPSIS

365/ REQUEST FOR OUTSIDE ASSISTANCE FOR AN OFFICER INVOLVED SHOOTING.

DISPOSITIONS

Closing Classification MSOA	Event Disposition C	Case Number PH 01-005409	Primary Staff THOMPSON, DOUG
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UNIT HISTORIES / SUPPLEMENTS

Time	Unit	Status	Operator	Position
09/29/2001 10:31:43	X2	49D	DANSIE, JAMIE	DISP1
09/29/2001 10:31:43	X3	49D	DANSIE, JAMIE	DISP1
09/29/2001 10:31:54	X2	97E	DANSIE, JAMIE	DISP1
09/29/2001 10:32:04	X3	97E	DANSIE, JAMIE	DISP1
09/29/2001 10:37:43	S15	49D	DANSIE, JAMIE	DISP1
09/29/2001 10:37:47	S15	97E	DANSIE, JAMIE	DISP1
09/29/2001 11:20:40	S15	Dissociate Status 8		DISP1
09/29/2001 11:26:24	X2	Dissociate Status 8		
09/29/2001 11:39:30	X3	Dissociate Status 8		
09/29/2001 12:38:49			Operator DANSIE, JAMIE	Position DISP1

ASSISTANCE RENDERED TO MPD AT SCENE OF SHOOTING.

STAFF

Police Unit S15	Staff CONNELLY, DANIEL
Police Unit X2	Staff WOFFINDEN, JOHN
Police Unit X3	Staff THOMPSON, DOUG

I hereby verify under penalty of perjury under the laws of the State of California that the enclosed instrument is a true and correct copy of the original on file in this Department.

RESPONSE TIMES

Event	Police	Response Time
09/29/2001 10:30:36	09/29/2001 10:30:36	10-4-01 Dispatched

Attachment 5
MRD 01-4116
TS 10/09/01

Signature of Officer
Date of Report
Time of Report
Date of Release

Pleasant Hill Police Department
Event Report

Time: 10/04/2001 08:21:29

Event: 01-016334

Save	09/29/2001 10:31:26		
Dispatch	09/29/2001 10:31:43	09/29/2001 10:31:43	
Enroute	09/29/2001 10:31:54	09/29/2001 10:31:54	
Arrive	09/29/2001 10:31:54	09/29/2001 10:31:54	
Last Clear	09/29/2001 11:39:30	09/29/2001 11:39:30	
Number of Units	3	3	

ATTACHMENT 5
MPD 01-4116
TS 10/09/01

POLICE DEPARTMENT PHONES

ADMINISTRATION

3448.....Chief Cutaia
3445.....Admin. Sec. Maria Ricci
3446.....Lt. Simonetti
3447.....Lt. Smith
3439.....Police Clerk Debi Villasenor

RECORDS

3444.....Records Sup. Debbie Wignall
3435.....Records Irene Merkel
3443.....Records Lynda Atkinson

INVESTIGATIONS

3450.....Sergeant Dave Brown
3451.....Detective Jon Sylvia
3452.....Detective Doug Madsen
3453.....Detective Mike Thompson
3454.....
3460.....Evidence - Robin Gonzales

COMMUNITY SERVICE

3455.....C.R.O. Dan Lynch
3376.....S.R.O. Herb Rounds

TRAFFIC

MISCELLANEOUS

3432.....Conf. Room - downstairs
3433.....Report Writing Room
3436.....W.C.'s Office
3438.....Briefing Room
3459.....P.A.L.
3467.....Light Duty
3580.....Corp. Yard Secretary/
City Maintenance
3590.....Parking Meters
646-2999.....Animal Control

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
TRANSCRIPTION - TAPED INTERVIEW**

PARTICIPANTS:

Officer Glenn Walkup
Gregory Allen Smith

Martinez Police Department
(DOB: 6/28/62)

WALKUP: Officer Walkup, ID #95. It is 1041 on 9/29/01. This will be an interview with [REDACTED] in the rear yard of 448 Blue Ridge in Martinez. [REDACTED] I talked to you a few minutes ago about what had happened and you told me at the time you were inside the van in the backyard and your father came out with a pipe and started yelling at you, hitting the back of the van and then he came up to the van and .. you .. you believed he was going to hit you and that's when you saw ... or you heard the officer yelling at your father to drop the ... the pipe. Can you tell me exactly what you remember now and what had happened?

[REDACTED] He was hitting the van with the pipe.

WALKUP: Why was he hitting the van, though?

[REDACTED] He was upset about something.

WALKUP: Okay. You mentioned that your father is taking some psych drugs?

[REDACTED] I don't know what kind of (unintelligible) A stroke.

WALKUP: Okay. So he came out with the van. Had a pipe. Do you know why he was angry with you today?

[REDACTED] No. He said something about the water bill this morning.

WALKUP: Cause it was too high and ... just upset? Okay. Was there anybody else in the van with you?

[REDACTED] No.

WALKUP: Just you. So when he came outside, what was he yelling at you?

[REDACTED] He ... I don't know what he was yelling. Cause I was in the van laying down.

WALKUP: Okay. Were you sleeping?

[REDACTED] No. I was just kinda staying awake.

WALKUP: Okay. So you hear him yelling at you, but you don't remember

[REDACTED] He wasn't yelling at me. There was a cop behind him or something.

WALKUP: Okay. So, did you step out of the van?

[REDACTED] No.

WALKUP:to look at him? You just stayed inside the van.

[REDACTED] Yep.

WALKUP: Okay, so he hit the back of the van with the pipe and then came to the .. the middle section where the doors open.

[REDACTED] Yep.

WALKUP: Okay. Were you still laying down?

[REDACTED] Yep.

WALKUP: Okay. Was he swinging the pipe at you at that point?

[REDACTED] He was swinging the pipe at the van.

WALKUP: Okay. So ... did you actually see the officer?

[REDACTED] Nope. I was laying down.

WALKUP: What did you hear?

[REDACTED] Just heard the gun shot.

WALKUP: Okay. You told me earlier that you heard the officer yell something to the effect of "drop the pipe". Do you remember exactly what he yelled?

[REDACTED] "Put the pipe down."

WALKUP: "Put the pipe down." Do you remember anything else? Do you remember how many times he said it?

[REDACTED] One time I know of.

WALKUP: One time for sure.

[REDACTED] Yeah.

WALKUP: Could it have been an additional time?

[REDACTED] Just the one time to me.

WALKUP: Just the one time. Okay. How long after you heard him yell "put the pipe down" did you hear the gunshot?

[REDACTED] Seconds, I guess.

WALKUP: Okay. Seconds. Seconds is ... if you can, break it down to, you know, one to two

seconds .. five seconds ...just a ...

Five seconds.

WALKUP: Five seconds? Okay. Did your father say anything? After the officer said, "Drop the pipe", did you hear your father say anything back? Either to you or to the officer?

I don't know. He called me a little bastard or something....

WALKUP: Your father called you a little bastard?

Yeah, something like that.

WALKUP: Something like that? Okay. Trying to ... trying to figure this whole thing out, but I just why this had to happen.

I do stupid stuff in the house, I guess.

WALKUP: Well, had your father and you been fighting recently?

No. He's just been getting upset at me. Now he's dead. Huh?

WALKUP: Anything in general? Just upset with you about everything or something specific?

Nothing specific.

WALKUP: Did you believe your father was going to hit you with the pipe?

I wasn't worried about it that much.

WALKUP: I ... I understand that ... you know, it's your father and ... you're willing to take kind of things from your father that you wouldn't from other people, but did ... did you think he was going to hit you with the pipe?

I thought he would stop.

WALKUP: Okay.

I didn't think he'd get shot.

WALKUP: Okay. That's not something that we hoped for either, okay? Do you have anything else that you remember hearing? Seeing? After the gunshot?

(Sighs)

WALKUP: Came out of the van. ... is that when you started CPR ...

Yes.

WALKUP: ... With the officer? Okay. Can you think of anything else that you didn't ... you

didn't tell me or I didn't ask you right now?

 That was it. (Sighs)

WALKUP: This will be the conclusion of this interview. It is 1050.

End of tape.

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:27:04

Event: 01-019140

Dispatch	09/20/2001 17:33:04	09/20/2001 17:33:04	
Enroute	09/20/2001 17:33:12	09/20/2001 17:33:12	
Arrive	09/20/2001 17:45:36	09/20/2001 17:45:36	
Last Clear	09/20/2001 17:55:52	09/20/2001 17:55:52	
Number of Units	2	2	0

Time: 09/29/2001 11:26:58

Event: 01-015676

INCIDENT INFORMATION

Receive Time 08/04/2001 14:36:19	Clear Time 08/04/2001 15:01:02	Call Taker VIZCARRA, JOHN ID: 431	Position CAD1
Classification MSOA	Priority 2	How Receive P	Services Police
Address 448 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ			
Police Agency PD	Sector 2	Beat 3	RD 317

SYNOPSIS

CHECK RESIDENCE FOR A 83 CADI ELDORADO BRN IN COLOR LIC 1HFB143. VEHICLE IS 10851 OUT OF THIS CITY. SUSP

DISPOSITIONS

Closing Class AUTT	Event Diapo E	Location	Unit Code	Agency: Case Number PD:	Primary Staff CALDERA, STEVE 85
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UNIT HISTORIES / SUPPLEMENTS

Time	Unit	Status	Operator	Position
08/04/2001 14:43:59	X4	DISP	VIZCARRA, JOHN ID: 431	CAD1
08/04/2001 14:43:59	X3	DISP	VIZCARRA, JOHN ID: 431	CAD1
08/04/2001 14:44:08	X4	49E	O'NEAL, JIM ID: 96	1224
08/04/2001 14:44:24	X3	49E	CALDERA, STEVE ID: 85	1222
08/04/2001 14:51:20	X4	97E	O'NEAL, JIM ID: 96	1224
08/04/2001 14:51:29	X3	97E	CALDERA, STEVE ID: 85	1222
08/04/2001 14:54:26			CALDERA, STEVE ID: 85	1222

Supplement
AREA CHECK COMPLETED UTL THE VEHICLE OR SUBJECT

Time 08/04/2001 14:54:27	Unit X3	Dissociate Status 8	Operator O'NEAL, JIM ID: 96	Position 1224
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Supplement
VEHICLE NOT AT THE HOUSE

Time 08/04/2001 14:55:16	Unit X4	Dissociate Status 8		
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STAFF

Police Unit X3	Staff CALDERA, STEVE ID: 85
Police Unit X4	Staff O'NEAL, JIM ID: 96

RESPONSE TIMES

	Event	Police	
Receive	08/04/2001 14:36:19	08/04/2001 14:37:26	
Save	08/04/2001 14:39:07		
Dispatch			
Enroute			
Arrive			
Last Clear			
Number of Units	2	2	0

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:26:52

Event: 01-015033

INCIDENT INFORMATION			
Receive Time 07/27/2001 10:14:53	Clear Time 08/06/2001 02:55:12	Call Taker GONZALES, ROBIN ID: 910	Position CAD2
Classification SUSC	Priority 2	How Receive	Services Police
Address 448 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)			
Police Agency PD	Sector	Beat	RD

REPORTING PARTIES	
Name CASSACIA, GORDON	Phone (925)229-2787
Address 6531 BARON CT, MARTINEZ	Info

SYNOPSIS

ITS EITHER-411 OR 441
RP WAS RIDING HIS BIKE AND A FEMALE SUBJECT ASKED HIM TO CALL THE POLICE- WF, 30 YRS. WHO ADVISED HER BOYFRIEND JUST THREW HER OUT AND STOLE HER CAR
1HFB143 83 CADI ELDORADO BROWN 2DR

DISPOSITIONS					
Closing Class AUTT	Event Dispo C	Location	Unit Code	Agency: Case Number PD: 01-003258	Primary Staff KRUTA, BILL 69

UNIT HISTORIES / SUPPLEMENTS					
Time 07/27/2001 10:18:19	Unit X4	Status DISP	Operator GONZALES, ROBIN ID: 910	Position CAD2	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:18:19	Unit X3	Status DISP	Operator GONZALES, ROBIN ID: 910	Position CAD2	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:28:35	Unit X4	Status 97E	Operator KRUTA, BILL ID: 69	Position 1222	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:29:29	Unit X3	Status 97E	Operator ESTANOL, MIKE ID: 101	Position 1223	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:29:33			Operator CLAYTON, KAREN ID: 904	Position CAD1	Supplement 448 BLUE RIDGE
Time 07/27/2001 10:29:43			Operator GONZALES, ROBIN ID: 910	Position CAD2	Supplement 448 BLUERIDGE DR
Time 07/27/2001 10:33:46	Unit X4	Status ECOMM	Operator CLAYTON, KAREN ID: 904	Position CAD1	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:35:23	Unit X4	Status ECOMM	Operator CLAYTON, KAREN ID: 904	Position CAD1	Location 441 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ (2 TONE BLUE/GRAY HOUSE)
Time 07/27/2001 10:40:27	Unit X3	Status CD4E	Operator CLAYTON, KAREN ID: 904	Position CAD1	
Time 07/27/2001 10:40:27	Unit X4	Status CD4E	Operator CLAYTON, KAREN ID: 904	Position CAD1	
Time 07/27/2001 10:42:32	Unit X3	Dissociate Status 8			

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:26:52

Event: 01-015033

Time 07/27/2001 10:45:03	Unit X4	Status ECOMM	Operator CLAYTON, KAREN ID: 904	Position CAD1
Time 07/27/2001 10:48:22			Operator CLAYTON, KAREN ID: 904	Position CAD1
Supplement SMITH,GREGORY ALLEN 062862				
Time 07/27/2001 10:57:50			Operator CLAYTON, KAREN ID: 904	Position CAD1
Supplement A SVS ENTRY STOLEN VEHICLE LIC/1HFB143 1983 CADI ELD 2D BRO [REDACTED] LIS/CA LIY/2001 LIT/PC ORI/CA0071400 OCA/01-3258 DOT/200107 [REDACTED] MIS/SUSP [REDACTED] ENT/ON CALIF FILE ONLY				
Time 07/27/2001 10:58:16			Operator CLAYTON, KAREN ID: 904	Position CAD1
Supplement NO VICTIM INFO LISTED ON SVS ENTRY, RP ONLY HAS A POST OFFICE BOX IN ANTIOCH, NO PHONE, AND IS A TRANSIENT				
Time 07/27/2001 11:01:03			Operator KRUTA, BILL ID: 69	Position 1222
Supplement her now ex-boyfriend took her keys (not from her personally), and stole her car from his address of 448 blueridge dr. mtz. victim stayed the night w/ sus. [REDACTED] for the past week. victim demands prosecution for stealing her car. paperwork from DMV reviewed showing victim as owner.				
Time 07/27/2001 11:01:08	Unit X4	Disociate Status 8		
Time 07/27/2001 11:06:25			Operator CLAYTON, KAREN ID: 904	Position CAD1
Supplement PLACED ON HOT SHEET				
STAFF				
Police Unit X3	Staff ESTANOL, MIKE ID: 101			
Police Unit X4	Staff KRUTA, BILL ID: 69			
RESPONSE TIMES				
	Event	Police		
Receive	07/27/2001 10:14:53	07/27/2001 10:14:55		
Save	07/27/2001 10:18:05			
Dispatch				
Enroute				
Arrive				
Last Clear				
Number of Units	2	2	0	

Time: 09/29/2001 11:26:46

Event: 01-014743

INCIDENT INFORMATION

Receive Time 07/23/2001 00:20:27	Clear Time 07/23/2001 00:39:05	Call Taker CARTER, BRIAN ID: 107	Position CAD1
Classification MSDS	Priority 2	How Receive P	Services Police
Address 448 BLUE RIDGE DR / VIRGINIA HILLS DR, MARTINEZ			
Police Agency PD	Sector 2	Beat 3	RD 317

REPORTING PARTIES

Name [REDACTED]	Phone [REDACTED]
Address 448 BLUE RIDGE DR, MARTINEZ	Info

SYNOPSIS

415 UNWANTED GUEST. THE RP IN THIS INCIDENT STATES HIS EX-GIRLFRIEND IS AT HIS RESIDENCE (FRONT YARD) AND WILL NOT LEAVE. THE RP SAID SHE HAS A RESTRAINING ORDER AGAINST HIM.

DISPOSITIONS

Closing Class MSDS	Event Dispo E	Location	Unit Code	Agency: Case Number PD:	Primary Staff CHASE, JIM 88
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UNIT HISTORIES / SUPPLEMENTS

Time 07/23/2001 00:21:49	Operator CARTER, BRIAN ID: 107	Position CAD1
Supplement ALPHIEDES, MARLENE 38 YEARS.		
Time 07/23/2001 00:23:59	Unit Z3	Status DISP
Time 07/23/2001 00:24:09	Unit Z3	Status 49E
Time 07/23/2001 00:24:27	Unit Z3	Status ECOMM
Time 07/23/2001 00:25:01	Unit Z3	Status ECOMM
Time 07/23/2001 00:25:04	Unit Z3	Status 49E
Time 07/23/2001 00:30:15	Unit Z3	Status 97E
Time 07/23/2001 00:31:11	Unit Z3	Status DISP
Time 07/23/2001 00:31:51	Unit Z3	Status CD4E
Time 07/23/2001 00:38:10	Operator CHASE, JIM ID: 88	Position 1224
Supplement RP WILL ALLOW [REDACTED] TO SLEEP IN HER CAR THAT IS PARKED IN THE DRIVEWAY.. AT THIS TIME, MATTER ABATED. NO FURTHER POLICE ASSISTANCE NEEDED.		
Time 07/23/2001 00:38:20	Unit Z3	Dissociate Status 8

STAFF

Police Unit Z3	Staff CHASE, JIM ID: 88
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RESPONSE TIMES

	Event	Police
Receive	07/23/2001 00:20:27	
Save	07/23/2001 00:21:48	
Dispatch		

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:26:46

Event: 01-014743

Enroute			
Arrive			
Last Clear			
Number of Units	1	1	0

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:26:34

Event: 00-008573

INCIDENT INFORMATION					
Receive Time 05/06/2000 21:59:13	Clear Time 05/06/2000 22:34:42	Call Taker LEONG, KIM ID: 94			Position CAD1
Classification AIDE	Priority 2	How Receive 9	Services Police		
Address 448 BLUE RIDGE DR # / VIRGINIA HILLS DR, MARTINEZ					
Police Agency PD	Sector 2	Beat 3	RD 317		
REPORTING PARTIES					
Name SMITH ERNEST D				Phone [REDACTED]	
Address 448 BLUE RIDGE DR # , MARTINEZ				Info 911 Caller	
SYNOPSIS					
<p>REPORTS A FRIEND WHO HAS BEEN STAYING AT THE RESIDENCE IS PASSED OUT IN THE BROWN DODGE VAN PARKED IN HIS DRIVEWAY. HE IS MISSING SOME MEDICATION AND DOES NOT KNOW IF SHE INGESTED IT AND/OR SHE IS DRUNK. NO KNOWN SUICIDE THREATS OR ATTEMPTS HISTORY.</p>					
DISPOSITIONS					
Closing Class SUSC	Event Dispo E	Location	Unit Code	Agency: Case Number PD:	Primary Staff MUNCHER, TYSON 84
UNIT HISTORIES / SUPPLEMENTS					
Time 05/06/2000 22:03:41		Operator LEONG, KIM ID: 94			Position CAD1
Supplement WF AGE 45, POSSIBLE NAME [REDACTED]					
Time 05/06/2000 22:07:53	Unit Z3	Status DISP	Operator LEONG, KIM ID: 94		Position CAD1
Time 05/06/2000 22:07:53	Unit Z4	Status DISP	Operator LEONG, KIM ID: 94		Position CAD1
Time 05/06/2000 22:08:07	Unit Z4	Status 49E	Operator CALDERA, STEVE ID: 85		Position 1222
Time 05/06/2000 22:08:24	Unit Z3	Status 49E	Operator MUNCHER, TYSON ID: 84		Position 1216
Time 05/06/2000 22:16:09	Unit Z4	Status 97E	Operator CALDERA, STEVE ID: 85		Position 1222
Time 05/06/2000 22:16:26	Unit Z3	Status 97E	Operator MUNCHER, TYSON ID: 84		Position 1216
Time 05/06/2000 22:17:18	Unit Z3	Status CD4E	Operator LEONG, KIM ID: 94		Position CAD1
Time 05/06/2000 22:17:18	Unit Z4	Status CD4E	Operator LEONG, KIM ID: 94		Position CAD1
Time 05/06/2000 22:20:51	Unit Z4	Status ECOMM	Operator LEONG, KIM ID: 94		Position CAD1
Time 05/06/2000 22:22:44	Operator LEONG, KIM ID: 94			Position CAD1	
Supplement SUBJECT NOT IN VAN AND NOT IN RESIDENCE WHEN OFFICERS ARRIVED. CON FIRE AND AMR CANCELLING. WILL CONDUCT AREA CHECK.					
Time 05/06/2000 22:25:14	Unit Z4	Dissociate Status 8			
Time 05/06/2000 22:25:44	Operator LEONG, KIM ID: 94			Position CAD1	
Supplement UTL.					
Time 05/06/2000 22:25:49	Unit Z3	Dissociate Status 8			
STAFF					

MARTINEZ POLICE DEPARTMENT
Event Report

Time: 09/29/2001 11:26:34

Event: 00-008573

Police Unit Z3	Staff MUNCHER, TYSON ID: 84		
Police Unit Z4	Staff CALDERA, STEVE ID: 85		
RESPONSE TIMES			
	Event	Police	
Receive	05/06/2000 21:59:13	05/06/2000 21:59:57	
Save	05/06/2000 22:03:09		
Dispatch			
Enroute			
Arrive			
Last Clear			
Number of Units	2	2	0

**OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY
INVESTIGATION REPORT**

Investigation: OFFICER INVOLVED FATALITY No. MPD 01-4316

Suspect: Ernest Donald Smith

Date: 9-29-01

Copies Of Report To:

Deputy District Attorney: DDA Bob Hole.

Other: COI Gene Greenwald, Martinez Police Department.

Investigator Assigned: Senior Inspector P. Peterson Date: 9-29-01

Synopsis

On Saturday, 9-29-01, Officers' Jim O'Neal and Dirk Miller responded to a family disturbance regarding Ernest Smith and his estranged son [REDACTED]. Ernest requested advice regarding removing his son from the property [REDACTED] had been living in a van in the backyard of the home. The Officers gave advice to Ernest and [REDACTED] left the residence voluntarily.

A short time later, Ernest called the Martinez Police Dept. and reported that [REDACTED] had returned. Officers' O'Neal and Miller responded again to the residence. Officer O'Neal told Ernest that there was nothing they could do and Ernest became quite upset. Ernest picked up a metal pipe and walked to the van. Officer Miller yelled at Ernest several times to drop the pipe, but Ernest ignored the commands and swung at his son. Fearing for the safety of the son, Officer Miller fired one shot fatally striking Ernest in the torso area.

Senior Inspector Paul Peterson

Date: 10-1-01

PCP

*JWS
10/04/01*

Suspect: Ernest Donald Smith

Case No: MPD 01-4316

Deceased:

Smith, Ernest Donald (DOB) 9-23-36, WM.
448 Blue Ridge Dr. Martinez, Ca. 94553
[REDACTED]

Involved Persons:

Officer Dirk Miller (**Involved**)
Martinez Police Department; 925-372-3440

Officer Jim O'Neal (**Involved**)
Martinez Police Department; 925-372-3440

Deputy District Attorney Bob Hole
Contra Costa County District Attorney's Office; 925-975-6488.

Senior Inspector Vic Wise
Contra Costa County District Attorney's Office; 925-646-2973.

Senior Inspector Ted Spyrow
Contra Costa County District Attorney's Office; 925-646-2318.

Senior Inspector Trish Ford
Contra Costa County District Attorney's Office; 925-646-4675.

Lieutenant Tom Simenetti
Martinez Police Department; 925-372-3446.

Sergeant Gary Peterson
Martinez Police Department; 925-372-3440.

Sergeant Dave Brown
Martinez Police Department; 925-372-3450.

Officer Steve Caldera
Martinez Police Department; 925-372-3440.

Senior Inspector Paul Peterson

PCP

Date: 10-1-01

Suspect: Ernest Donald Smith

Case No: MPD 01-4316

Officer William Kruta
Martinez Police Department; 925-372-3440.

Detective Paul Starzyk
Martinez Police Department; 925-372-3440.

Detective Jon Sylvia
Martinez Police Department; 925-372-3451.

Lieutenant Mark Smith
Martinez Police Department; 925-372-3447.

Sergeant Evert Prins
Martinez Police Department; 925-372-3422.

Officer Glenn Walkup
Martinez Police Department; 925-372-3440

Witnesses:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Senior Inspector Paul Peterson

PP

Date: 10-1-01

Suspect: Ernest Donald Smith

Case No: MPD01-4316

[REDACTED]

Dr. George Buldoc (**Coroner case # 01-2032**)
1960 Muir Rd. Martinez, Ca. 94553
925-313-2850

Iagoda, Sandra (**Coroner's assistant**)
1960 Muir Rd. Martinez, Ca. 94553
925-313-2850

Stockwell, David (**Criminalist**)
1122 Escobar St. Martinez, Ca. 94553
925-646-2455

Evidence:

PP-T-1: Audio-tape of interview with Martha Smith.

Attachments:

Attachment 1: Incident report Martinez P.D., 01-3258.

Attachment 2: Event report Martinez P.D., 01-013944.

Attachment 3: Event report Martinez P.D., 01-019918.

Attachment 4: Contents from Deceased's wallet. (photocopied)

Attachment 5: Sign in sheet for investigators.

Senior Inspector Paul Peterson

Date: 10-1-01

PCF

Suspect: Ernest Donald Smith

Case No.: MPD 01-4316

INVESTIGATION NARRATIVE:

At approximately 1218 hours, on Saturday, 9-29-01, I received a page from Chief Greenwald. I called Chief Greenwald and he told me that a Martinez Police Officer was involved in a shooting. He told me to respond to the Martinez Police Department and contact Bob Hole for further instructions. At 1300 hours I met with other investigators at the City Council chambers in Martinez. At 1415 hours, we briefed on the facts of the shooting and assignments were given. I was teamed with Detective Paul Starzyk and assigned to interview family members and roommates.

At 1606 hours, we began our telephone interview with the deceased's ex-wife [REDACTED]. The interview ended at approximately 1705 hours. Through a series of questions and answers, the following is a paraphrased summary of what she told us:

[REDACTED] was married to Ernest for thirty seven years and divorced him in 1993. After their divorce, [REDACTED] moved down to Southern California but remained in telephone contact with Ernest once or twice a week. She last saw him September, 00. Ernest had a stroke in 1986 which damaged his vision causing him to lose his driver's license. For the last six or seven years Ernest had been taking medication for brain seizures that he had been having. When Ernest talked to [REDACTED] on the telephone he was very irrational, however, once he calmed down he apologized for his comments.

Together, [REDACTED] and Ernest had four children of which only two are living. In 1974 their oldest son died in a motorcycle crash. In 1990 their oldest daughter committed suicide. Their youngest son [REDACTED] (39) recently moved in with Ernest and was living in a van on the property. The youngest daughter, [REDACTED] (38) lives on a 80 acre ranch in Vinita Oklahoma [REDACTED] does not have a phone and was last working at McDonalds in the town of Vinita.

Ernest was a machinist and retired early because of his brain seizures. He was very good with his hands and could fix anything. He invented many things during the course of his life including a

Senior Inspector Paul Peterson

Date: 10-1-01

PCP

Suspect: Ernest Donald Smith

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fold-up bicycle that could be placed in a backpack. After his stroke in 1986, he began to ride his bicycle for transportation.

After [REDACTED] moved out in 1993 several family members lived with Ernest on and off for many years including some of his grandchildren and his daughter [REDACTED]. As time passed, they moved out but remained in contact with Ernest. Most recently a woman named [REDACTED] (43) moved into his garage and was living with Ernest. [REDACTED] was unsure of the relationship but thought that [REDACTED] was homeless. [REDACTED] met [REDACTED] eight years ago and let her move into the garage rent free. [REDACTED] believes that Ernest let [REDACTED] stay because she reminded him of their daughter [REDACTED] who committed suicide. [REDACTED] described her family as "very dysfunctional."

About two months ago, [REDACTED] moved into the van in the backyard. He lost his mobile home in Pittsburg due to financial problems and needed a place to stay. [REDACTED] was having problems with his ex-girlfriend who had restraining order against [REDACTED]. Even though she had a restraining order, she would visit [REDACTED] and cause problems. Many times the Police were called and [REDACTED] was arrested.

Recently, [REDACTED] asked Ernest for \$300.00 to pay for his union dues but Ernest refused because [REDACTED] would sleep all day and not work. He became very angry with [REDACTED] and would call [REDACTED] and complain.

Additionally, Ernest posted a \$3000.00 bond for [REDACTED] to get out of jail. He has limited money and he was quite upset when he found out that he would not get his money back.

[REDACTED] described Ernest as being "very paranoid." Recently Ernest found his old cat dead in the backyard. He buried the cat but later dug it up after because he thought one of his neighbors had strangled the cat. Ernest performed an autopsy on the cat because he wanted to prove that somebody killed it.

About one month ago, Ernest told [REDACTED] that he thought [REDACTED] were stealing checks. He later called [REDACTED] and told her that he found the checks and that he had made a mistake. This was typical paranoid behavior for Ernest. Also, Ernest would write caring notes to his children and post them around the house thinking that they still lived with him at home.

Senior Inspector Paul Peterson

Date: 10-1-01

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Suspect: Ernest Donald Smith

Case No.: MPD 01-4316

A typical day for Ernest was to have coffee in the morning then ride his bike around town. He ate most of his meals at Burger King and never cooked for himself. He never smoked or drank alcohol.

Throughout most of their phone conversations, Ernest would ramble on and on and [REDACTED] would put the phone down. During their last conversation, Ernest told her that he was always "an asshole and he was going to die an asshole"; this was last week.

He told her that he recently bought two large 40' cargo containers and delivered them to the property in Vinita Oklahoma so he could live in them. He wrote [REDACTED] in Oklahoma and told her that he was moving out to live with her in the cargo containers. [REDACTED] refused delivery of the cargo containers and they were returned to the company. [REDACTED] called Ernest and told him to leave her alone.

Ernest had no disputes with the police and frequently called them for service. About two months ago Ernest hit [REDACTED] (granddaughter's husband) with a pipe and was arrested. After he was released from jail, he called [REDACTED] and told her that he was terrified about being arrested. Even though he went to jail for the assault, [REDACTED] described him as a law abiding citizen who loved the police.

Moments after Ernest was shot, [REDACTED] called [REDACTED] and told her that it was his fault. He said the Police were trying to protect him because Ernest was trying to hurt him and now his father was dead.

In summary, [REDACTED] said that Ernest was under a great deal of stress from all the problems he was having and was not equipped to deal with [REDACTED] and all of his issues.

At 1715 hours, we contacted roommate [REDACTED] in front of Starbucks Coffee House on Alhambra Valley Rd. near Blue Ridge Dr. An interview was conducted with [REDACTED] at Starbucks. Refer to Detective Starzyk's supplement.

At 1840 hours we returned to the Martinez Police Dept. and contacted Bob Hole. Hole gave me Smith's wallet which contained many documents. I went through the wallet and photocopied the documents contained in attachment 4.

Senior Inspector Paul Peterson

Date: 10-1-01

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Suspect: Ernest Donald Smith

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At 2109 hours, we met [REDACTED] at the Antioch Police Dept. for an interview. The interview ended at 2222 hours. (Tape-recorded) Refer to Detective Starzyk's supplement.

At 2300 hours we returned to the Martinez Police Dept. for further instructions. I was assigned to attend the autopsy.

At 0800 hours, on Monday, 10-1-01, I attended the autopsy for Ernest Smith. The autopsy was performed by Dr George Buldoc at the Coroners Office in Martinez. Present were Detective Jon Sylvia, Criminalist David Stockwell and Coroner's assistant Sandra Jagoda. Detective Sylvia provided Dr. Buldoc all of Smith's medications as well as the tee-shirt he was wearing when he got shot. (Refer to Detective Sylvia's supplement)

During the autopsy, Dr. Buldoc told me that the bullet perforated Smith's liver, large valve colon, aorta, and 9th lateral rib. Dr. Buldoc showed me a large hole in the aorta which was probably the cause of death. Samples of blood were taken from Smith so that future toxicology tests could be performed.

I have attempted to contact [REDACTED] in Vinita Oklahoma, however, she has no phone or job. I will continue to locate [REDACTED] for a phone interview.

Senior Inspector Paul Peterson

Date: 10-1-01



**OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY
INVESTIGATION REPORT**

Investigation: Officer Involved Fatality

File/Report No.: M.P.D. #01-004316

Subject/Defendant: Ernest Donald Smith

Date: September 29, 2001

Copies Of Report To:

Deputy District Attorney: Bob Hole

Other: Lt. Mike Sloan, Martinez P.D.

J.G. *M. Sloan*

Investigator Assigned: Senior Inspector Trish Ford **Date:** September 29, 2001

INVESTIGATIVE SUMMARY:

Involved Persons:

Team #4 – assigned to complete neighborhood canvass and interviews of AMR/Fire personnel
Trish Ford – Senior Inspector – District Attorney’s Office
Steve Caldera – Corporal – Martinez Police Department

Witnesses:

1) [REDACTED]

2) [REDACTED]

3) [REDACTED]

4) [REDACTED]

5) [REDACTED]

6) [REDACTED]

Subject/Defendant: Smith, Ernest Donald

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7) [REDACTED]

8) [REDACTED]

9) [REDACTED]

10) [REDACTED]

11) [REDACTED]

12) [REDACTED]

13) [REDACTED]

14) [REDACTED]

15) [REDACTED]

Fire Personnel On Scene

1) Hugh Marquez
DOB 1-10-63, HMA
Station 5
205 Boyd Road
Pleasant Hill, CA 94523
Work Phone: (925) 939-1695

2) Bob Gonzalez
DOB 2-12-55, HMA
Station 5
205 Boyd Road
Pleasant Hill, CA 94523
Work Phone: (925) 939-1695

Subject/Defendant: Smith, Ernest Donald

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- 3) Clive Morgan Savacool (Medic)
DOB 4-26-78, WMA
Station 5
205 Boyd Road
Pleasant Hill, CA 94523
Work Phone: (925) 939-1695

Evidence:

- 1) **Item TF-1** One audio cassette recording of the interviews of the neighbors at [REDACTED] Martinez, and the neighbors at [REDACTED] and [REDACTED], Martinez, marked, tagged and submitted with this report. (Only one recording of the interview was made.)
- 2) **Item TF-2** One audio cassette recording of the interviews of the fire personnel from Station 5, Hugh Marquez, Bob Gonzalez, and Morgan Savacool, marked, tagged and submitted with this report. (Only one recording of the interview was made.)

INVESTIGATION NARRATIVE:

On Saturday, September 29, 2001 at approximately 1219 hours, Chief Gene Greenwald contacted me by phone at my residence and requested that I respond to Martinez Police Department (M.P.D.) regarding an officer-involved fatality involving Martinez Police officers.

I arrived at Martinez Police Department at 1335 hours. Senior Inspectors Paul Peterson, Vic Wise, and Ted Spyrow, along with Deputy District Attorney Bob Hole were already present at that location.

Officer Glenn Walkup of M.P.D. conducted briefing. Deputy District Attorney Bob Hole announced team and task assignments. Corporal Steve Caldera and I were assigned to Team #4, and given the task of conducting the neighborhood canvass and interviews as well as interviewing fire and ambulance personnel. At the conclusion of briefing, all teams and Deputy D.A. Bob Hole responded to the scene at 448 Blue Ridge Drive in Martinez. Corporal Steve Caldera and I arrived on scene at approximately 1442 hours. After examining the scene, Corporal Caldera and I began our neighborhood canvass.

On 9-29-01 at 1501 hours, Cpl. Caldera and I contacted Geraldine Melin and her son, Brian Melin, at Geraldine's residence at 442 Blue Ridge Drive. Brian was not present at his mother's residence when the incident occurred. He is, however, familiar with the Smith family as a former neighbor. The interview was tape recorded, and is summarized below:

Senior Inspector Trish Ford

Date: October 12, 2001

Subject/Defendant: Smith, Ernest Donald

Report/Case No.: MPD 01-004316

██████████ moved into her residence in 1973, and the Smith family was already living next door at 448 Blue Ridge Drive. ██████████ said that lately, the police have responded to the Smith residence "a lot." She believes police responded because of trouble with ██████████, the son of Ernest Smith. ██████████ refers to Mr. Smith as Ernest. Whenever police responded to the Smith residence, it would be because of ██████████'s yelling and getting physical with his girlfriend. ██████████ has personally observed this type of physical behavior by ██████████ and has heard the yelling and screaming.

On one occasion, ██████████ saw ██████████ pinning his father against one of the cars. ██████████ believes that at the time this incident occurred, the argument between ██████████ and Ernest was for some trivial reason. She believes that Ernest was watering the plants, and while doing so, he got water on ██████████'s car. ██████████ had Ernest pinned against ██████████'s car (she doesn't remember on what part of the car) holding him against the car by trapping each of Ernest's arms. ██████████ believes the incident occurred a couple of months ago (end of July or beginning of August, 2001).

██████████ described the Smith family as being loud with a lot of disagreements. ██████████ yells a great deal, and when ██████████ (his sister) was home, there was also a lot of yelling and screaming. During the summer, with her windows or sliding glass door opened, ██████████ could hear the screaming and doors being slammed on occasion. She was usually inside her house when these incidents occurred. She did not go outside to investigate further. On the occasion she did see ██████████ pinning Ernest against ██████████'s car, she was looking out of her sliding glass windows, which face the front of the Smith residence. ██████████'s bedroom is in the front of her residence, on the side that faces the Smith residence. She doesn't know if the police responded or not on that incident because she was on her way out the door to leave when the incident occurred.

██████████ has not seen ██████████ for about five years. When ██████████ saw Ernest's granddaughter, she mistakenly thought it might be ██████████ because of the long blonde hair and stocky build. Later, ██████████ learned from a neighbor that ██████████ had moved to Oklahoma above five years ago. ██████████ said that her "vision isn't that good far away." She does not remember the granddaughter's name, but someone had told her it was ██████████.

On the occasions when ██████████ would hear screaming and yelling coming from the Smith residence, she never called the police because she said it would pass. She said her reason for not calling the police was because she believes that yelling and screaming was just the way the Smith family members dealt with things. She did not fear for her safety or that of anyone else; however, her son, ██████████ does fear for her safety. ██████████ did not encourage her to call the police because she usually didn't mention it to him. The incidents didn't happen every day or even every month—maybe a few times a year, but she couldn't be specific.

I attempted to determine whether the yelling by the Smith family was worse on some occasions than others. ██████████ said she is not used to people yelling, and so, it disturbs her a

Senior Inspector Trish Ford

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Date: October 12, 2001

Subject/Defendant: Smith, Ernest Donald

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great deal whenever she hears it. When the yelling would occur, she was unable to hear what was being yelled, so she does not know if threats were being made.

During the incident on 9-29-01, ██████ heard a "pop" and then screaming. She did not mention it to the officer who first spoke to her on scene, but she now believes that ██████ was also yelling and crying. I asked if she could distinguish the voices she heard, and she responded that because she was told ██████ was there, she surmised that it must have been ██████ she heard. She also heard a female voice, which she believes was ██████ yelling. She did not hear any yelling before hearing the "pop." She said she is not certain what time it was when she heard the "pop," and then the subsequent yelling.

After hearing the "pop," ██████ questioned whether it sounded like a gunshot, and she thought "Oh, my God." She then looked out of her bathroom window and saw a policeman in the Smiths' backyard. She saw ██████ crying and up against the house. She saw someone stooping down, but doesn't believe it was an officer because she didn't see a dark blue uniform. She heard ██████ yelling, "You shot my grandfather." She was confused by this because she had originally thought ██████ was ██████, and Ernest is ██████'s father. She couldn't really see what or who was on the ground. She could see the two officers, and she could see ██████ and hear her crying and saying, "You shot my grandfather."

She would describe her relationship with Ernest Smith over the past 28 years as being acquaintances. She did not socialize with Mr. Smith. She stated that her children were friends [with the Smith children growing up.]

██████ believes that Ernest had medical problems because she has seen an ambulance or the fire department respond to the Smith residence a couple of times and take Ernest away. This occurred sometime in 2000, and again in January 2001. Over the last few years, maybe five, Ernest had become frail. She is unaware of any bizarre behavior by Ernest, and never heard him yelling. It was always ██████ whom she heard yelling. ██████ is not familiar with ██████'s estranged husband, ██████.

In ██████'s estimation, Ernest has always been a little different, but to her, his behavior had not gotten any stranger than it had always been. She advised that when Ernest used to take walks, the people who live just east of the ██████' residence would talk to him. ██████ identified these people as the ██████. Upon later contacting ██████, she denied really knowing Ernest Smith). ██████ said that Ernest Smith had not socialized with any neighbors since Brian was a kid.

Cpl. Caldera then asked ██████ if he had anything he wished to add to the information we had obtained from his mother. ██████ said that he had spoken with Mr. Smith quite a bit over the years, as well as with the Smith children. Mr. Smith would always pay for half the fence when it needed to be replaced. He would always say thanks when ██████ would repair the fence. When ██████ was a child, Mr. Smith would always fix ██████'s and his siblings' bicycles when they broke.

Senior Inspector Trish Ford

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Date: October 12, 2001

Subject/Defendant: Smith, Ernest Donald

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Once a week [REDACTED] cuts his mother's grass, and whenever he would see Mr. Smith outside on those occasions, he would speak with him. [REDACTED] also noticed that Mr. Smith had been getting frail over the past few years. According to [REDACTED] and [REDACTED] Mr. Smith had not driven for four or five years, although he used to drive to work. The police had been called sometime ago, they cannot remember when, about Mr. Smith's red van being parked in front of the residence. As a result, Mr. Smith pushed the van into the back yard. His recent mode of transportation was either riding his bicycle or walking. [REDACTED] last spoke with Mr. Smith for about five minutes two weeks ago, at which time, he seemed coherent and happy to see [REDACTED]. When asked if he had ever observed any bizarre behavior by Mr. Smith, [REDACTED] responded, "no, not...no—he's always been the same."

The interview was concluded at 1522 hours.

On 9-29-01 at 1530 hours, Cpl. Caldera and I contacted [REDACTED] and [REDACTED] at their residence at [REDACTED]. [REDACTED] advised us that [REDACTED] is very hard of hearing and, as a result, asked us to speak loudly. The interview was tape recorded, and is summarized below:

The [REDACTED] refer to Mr. Smith as Don. [REDACTED] said that Don has always been a quiet, agreeable person. She believes Don was on medication, but this was something she had heard from her neighbor a long time ago, (later identified to us as [REDACTED], but referred to by [REDACTED] as [REDACTED], [REDACTED] middle name). [REDACTED] said she knows that Don was seeing a doctor, but she doesn't know for what reason. Today was the first time she had seen an ambulance called to the residence; however, if inside her residence, she and [REDACTED] cannot see the Smith residence because of the way in which the houses are situated.

Today, 9-29-01, [REDACTED] was in her back yard hanging laundry on a clothesline. She heard two people talking, but said she doesn't know their identities. She could hear a little bit of what was being said by these two people, but said the specific words had slipped her mind. At first, she thought it was Don and his son, [REDACTED], who were talking, but now she believes it was a police officer talking because that is what her neighbor told her. [REDACTED] said that when she heard what sounded to her like a gunshot, she immediately went inside her residence.

[REDACTED] is about five feet tall, and said that if she is looking into the Smiths' back yard, she can only see the tops of the heads of people who might be standing in the yard. However, she knows the voices of Don and [REDACTED] and that is why she believes it was the two of them she heard talking. She then recalled that she had heard something about a gun, but could not recall the specific words she heard. She believes she repeated the exact words she had heard to Sgt. Gary Peterson, Martinez Police Department, when she spoke to him right after the incident occurred.

[REDACTED] said that Don had always been so even-tempered. When asked if his temperament had changed recently, [REDACTED] responded she did not think so, but added that medication

Senior Inspector Trish Ford

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Date: October 12, 2001

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sometimes changes a person's temperament.

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(It was at this point in the tape recording that I discovered I had accidentally taped over the remaining interview of [REDACTED] and [REDACTED] with the subsequent interview of [REDACTED]. As I was starting the interview of [REDACTED], I had removed the tape from the recorder because I thought the automatic reverse was not working. Apparently, when I replaced the tape in the recorder, I did something to reverse the tape direction and taped over the remaining interview of [REDACTED] and [REDACTED]. Additionally, I taped over the entire interview of [REDACTED], and part of the interview of [REDACTED] and [REDACTED]. Therefore, my remaining account of the interview of [REDACTED] and [REDACTED], and the entire interview of [REDACTED] is based primarily on my recollection of those interviews, as well as Cpl. Caldera's recollection.)

Essentially, [REDACTED] and [REDACTED] became neighbors of Don Smith in 1964, when they moved into their current residence. Don was already residing in his residence at that time. Throughout the 37 years that [REDACTED] and [REDACTED] have been neighbors of Don and his family, they have been cordial with one another, but [REDACTED] and [REDACTED] did not socialize with Don. [REDACTED] said that they might have borrowed tools from one another on occasion, or things of that nature. Both [REDACTED] and [REDACTED] described Don as being a quiet, pleasant individual. [REDACTED] and [REDACTED] have no recollection of hearing screaming and yelling coming from the Smith residence in the past.

[REDACTED] advised that over recent years, she and [REDACTED] have not spoken much with Don, and that Don communicated mostly with their neighbor, [REDACTED]. It was [REDACTED] who told [REDACTED] that Don was on medication, and [REDACTED] believed it was some type of psych medication. [REDACTED] advised that [REDACTED] lived across the street at [REDACTED].

This interview was concluded at approximately 1539 hours.

On 9-29-01 at approximately 1545 hours, Cpl. Caldera and I contacted [REDACTED] at her residence at [REDACTED]. The interview was tape-recorded; however, it was inadvertently taped over with a subsequent interview. A summary of the interview follows:

[REDACTED] moved into her residence in 1962 or 1963—she could not remember the exact year. She retired in 1992, and up until that time she worked and rarely saw her neighbors. [REDACTED] described the relationship between she and Don as being polite and exchanging greetings with one another during the occasional outside encounter. She said they might wave to one another and say hello whenever they saw each other outside.

[REDACTED] advised that about five years ago, Don had a stroke, and he had been subsequently taking some type of medication. [REDACTED] said that Don frequently rode his bicycle in the neighborhood, and also walked in the neighborhood.

On one occasion, [REDACTED] recalled that she was standing at her kitchen window on the

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phone when she heard some yelling, and saw Don chasing [REDACTED]'s husband or boyfriend, [REDACTED] down the street with some type of club. [REDACTED] could not describe the club other than to say that it was about 3-4 feet in length. She does not know whether it was made of metal or wood. She does not remember the color of the object. She does not know what was being yelled. She did not actually see Don hit [REDACTED] with the club, and she did not call the police.

The interview was concluded at approximately 1558 hours.

On 9-29-01 at approximately 1605 hours, Cpl. Caldera and I contacted [REDACTED] and [REDACTED] at their residence at [REDACTED]. This interview was tape-recorded; however, the first few minutes of the interview were inadvertently taped over with a subsequent interview. As a result, the tape of this interview begins with [REDACTED] saying, "One observation I made today coming home...." A summary of that interview follows:

[REDACTED] and [REDACTED] have lived at their current residence for the past 26 years. They were not friends of Don Smith, but knew him on sight. [REDACTED] advised that whenever she is home, she is either inside her residence or in her back yard, so she would have little information to contribute regarding Don Smith.

[REDACTED] advised that today, 9-29-01, when he was coming home from having gone to wash his car, he observed a car parked at the other end of Blue Ridge Drive, but about one block up from Safeway (Safeway is located at Blue Ridge Drive and Alhambra Avenue). Jim believes the car he saw belongs to Don's granddaughter [REDACTED] and her husband [REDACTED]. He noticed it because he thought he recognized the car and it was in a place where cars are not usually parked.

[REDACTED] later clarified that he had seen [REDACTED] and [REDACTED] sitting inside the car. [REDACTED] and [REDACTED] were getting out of the car as he passed, and [REDACTED] had been driving. The car was a small, white car, but he doesn't know the make. The car was parked across from the apartments, just before the first stop sign on Blue Ridge Drive. [REDACTED] said he doesn't really know [REDACTED], but described the man he saw with [REDACTED] as having a little bit of a beard.) [REDACTED] continued up the street to his residence. He was doing some cleaning of the inside of his car when he saw [REDACTED] drive up and park in front of [REDACTED] house ([REDACTED]). [REDACTED] said that [REDACTED] never parks in front of her own residence at 448 or in the driveway of 448, which he thinks is strange behavior. He also noted that [REDACTED] is always driving different cars.

After parking in front of [REDACTED] [REDACTED] got out of the car and entered the residence at 448. She was only inside the residence for a few seconds when she came back out. Don came out after her. Don was carrying a big chain, which [REDACTED] thought seemed threatening. [REDACTED] looked like she did not want to hang around, and she left in her car. (This occurred around 9:15 a.m.) [REDACTED] did not hear any shouting between them, but they did appear to be speaking with each other. [REDACTED] believes that Don just went back inside, but he really wasn't paying much attention at that point. [REDACTED] went back inside his house, and he and [REDACTED] had breakfast. [REDACTED] and [REDACTED] next heard sirens. They did not hear any screaming, shouting, or shots being fired prior to hearing the sirens. Upon hearing the sirens, [REDACTED] went outside to see what

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██████ had been sitting on her family room sofa, looking through the living room and out the living room window, and said she saw a blue car fender, which she later determined to be a police car. She believes it was around 11:00 a.m. when she saw the police car. ██████ and ██████ went outside. Sue heard the girl, the granddaughter, (later identified as ██████) saying, "Well, cops shot my grandfather!" ██████ described ██████ as being a blonde, and said she was "pretty hysterical." ██████ and a guy, (later identified as ██████) had come running up the street from the direction of Safeway, and confronted a policeman, wanting to know what was going on and wanting to go into the property. ██████ had identified ██████ to the policeman as being her husband. Both ██████ and ██████ were upset and using a great deal of foul language. It was at this point that ██████ went back inside her residence.

██████ did not hear any words or commotion coming from the residence today, 9-29-01. However, from standing outside and kind of observing he surmised that ██████ and ██████ had known that something had been going on at the Smith residence, and perhaps, that was why he had seen them earlier parked at the other end of Blue Ridge Drive.

██████ added that when ██████ and ██████ had come running up the street [back toward the Smith residence] ██████ heard ██████ repeatedly say, "Something's happened to my grandfather." As ██████ was making these comments, she was standing in front of ██████'s residence. ██████ observed ██████ standing near her birch tree, leaning against the fence ██████ pointed to the front of the residence]. ██████ said to some woman who was just walking up the street, "The Martinez cop just shot him." ██████'s demeanor was hysterical and angry, and he was using foul language.

██████ said that based on some of the things ██████ was saying, he formed the impression that she had seen what was going on, but he is not really certain. He heard her say the policeman shot him in the back. When I attempted to clarify whether he had actually seen ██████ coming back to the Smith residence from down the street, he stated that he only surmised that to be the case. When he first saw her, she was actually in front of his residence, and he didn't see ██████'s car. ██████ said she had actually seen ██████ and ██████ running toward the Smith residence from up the street, and it was when they reached ██████'s birch tree that she could hear what they were saying.

The ██████ are not aware of any medication that Don was taking. Prior to my having started the interview and turning on the tape recorder, ██████ had asked if the reason the police had responded to the Smith residence was because Don had "gone berserk." I asked him why he had asked that question. ██████ responded that he asked the question because he had seen Don in that "state" before. On one occasion, ██████ and ██████ were preparing to leave for work, and while getting into his vehicle, ██████ observed ██████ running out of the Smith residence. Don was "right on her tail" with a B.B. gun, shooting at her. ██████ had run to the house next door (later determined to be ██████) to get away from Don. ██████ believes Don may have followed her to the location and knocked on the door. ██████ said this behavior was weird and very shocking, and in some ways a little bit amusing. ██████ had asked ██████ what was going on, and he

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jokingly responded that he guessed Don was trying to get rid of her. This incident occurred more than two years ago. [REDACTED] never saw Don chase [REDACTED] with anything other than the B.B. gun.

When asked if he had ever observed any incidents between Don and [REDACTED] [REDACTED] responded that he had observed [and heard] screaming and yelling between them on two or three occasions, lately. He said things had been going along "fairly O.K.," and Don had been fairly quiet until "these kids" started coming back for whatever reason to Don's residence—like kids sometimes do. [REDACTED] believes this was really pushing Don over the top.

On the occasions that [REDACTED] heard Don and [REDACTED] yelling and screaming, Don was basically telling [REDACTED] to get out [of his residence]. [REDACTED] doesn't recall the actual words Don used. [REDACTED] never saw Don chasing anyone, other than [REDACTED], with any kind of weapon. [REDACTED] said that Don had never really bothered any of his neighbors and was fairly quiet until the "kids" began coming around [meaning [REDACTED], [REDACTED], and [REDACTED]]. [REDACTED] said that the kids had been living with Don kind of off and on. He said that [REDACTED] had only returned recently—about two months ago. [REDACTED] thought [REDACTED] had been in jail prior to his return.

When [REDACTED] first heard the sirens today, 9-29-01, he didn't hear them for very long when they suddenly stopped sounding. Before [REDACTED] went outside to see what was going on, he first thought the sirens were for Don because he had been having fainting spells.

[REDACTED] and [REDACTED] are not aware of Don being close friends with any of the neighbors. [REDACTED] said there was no one who would call Don and invite him over for dinner. [REDACTED] and [REDACTED] agreed that Don kept pretty much to himself. [REDACTED] said that a couple of times when she saw Don in Long's Drug Store she said hello to him. He looked at her as though he was supposed to know her, but didn't speak.

This interview was concluded at 1635 hours.

On 9-29-01 at 1645 hours, Cpl. Caldera and I contacted [REDACTED] at his residence at [REDACTED]. [REDACTED] advised us that he does not live in the residence alone, but he was the only one home presently and, also, at the time of the incident. This interview was tape recorded, and following is a summary of that interview:

[REDACTED] refers to Ernest Donald Smith as Don. [REDACTED] has known Don for over 30 years. [REDACTED] is unaware of any medical problems that Don was having, but based on "mentally—the way he was," [REDACTED] believes that Don's health was failing and that something was going on. He is not, however, aware of any specific diagnosis regarding Don's health. According to [REDACTED], Don "was not as sharp as he used to be at an older age."

According to [REDACTED], Don had been acting irrational about a lot of things. On one occasion, Don came to [REDACTED]'s residence and accused [REDACTED] of killing Don's cat. Don's cat had died, and at first, Don asked [REDACTED] if he was using snail pellets in the garden. [REDACTED] told Don,

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yes, sometimes. After that, Don accused [REDACTED] of getting mad at the cat and physically choking it. Don had no reason to believe that [REDACTED] would do something like that. [REDACTED] said he has never acted that way toward an animal. Don and [REDACTED] had always been on friendly terms, and then suddenly, Don accused [REDACTED] of doing that to his cat. [REDACTED] and Don stopped talking after that, and [REDACTED] no longer wanted to have anything to do with him. Don also accused [REDACTED]'s mother of killing the cat.

Don was irrational about what had happened to his cat. [REDACTED] did attempt to talk to Don one time after the accusation regarding the cat, and Don told [REDACTED] not to come over again. He had a "crazy look in his eye" when telling [REDACTED] to leave. Don did not pick anything up or use anything in a threatening manner toward [REDACTED]; he was just watering his plants when he told [REDACTED] to leave. [REDACTED] said Don started to get weird with him. After the cat died, Don buried it in his back yard. He then dug the cat up so that he could try and prove that it had a broken neck. The incident involving the cat occurred about five weeks ago (sometime around the end of August, 2001.)

Don's behavior began to change over the last three months. Prior to that time, Don had always seemed friendly and easy-going. Lately, Don had changed and it seemed to occur when Don's relatives and his granddaughter's boyfriend were around. The Smith family was unable to settle things or talk things out. They would be out front yelling and screaming. It was becoming a common occurrence—there would be some type of incident like this about every five weeks.

[REDACTED] never saw the Smith family using or attempting to use any weapons on one another. [REDACTED] never saw any Smith family member pick up any item and chase after another family member with that item. During the incidents involving screaming and yelling, [REDACTED] could not really make out what was being said. [REDACTED] said it just seemed like the Smith family would get "pissed off" at each other, and then come outside, screaming and yelling. [REDACTED] never saw any Smith family member throw anything at one another.

Besides his granddaughter and her boyfriend, Don's son—[REDACTED] was also living in the residence off and on. [REDACTED] a roommate but not a relative, lived in the residence. [REDACTED] had been living in the residence for quite some time, but the other three (granddaughter, her boyfriend, and [REDACTED]) lived with Don intermittently. Whenever the relatives would come around, [REDACTED] would usually leave because she didn't want to get caught in the middle of arguments. There were always problems whenever [REDACTED] the granddaughter or her boyfriend would come around.

[REDACTED] had been back, living at the residence, but not for very long—maybe a couple of weeks. [REDACTED] had not seen him around for a long time before that. [REDACTED] said he has known [REDACTED] since he was a child.

[REDACTED] is unaware of whether Don had any heart problems. However, quite a while ago, Don went to the "University of California, San Francisco," to get some dental work done. [REDACTED]

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believes that while there, Don passed out in the waiting room. [REDACTED] said that [after that] he would always ask Don if he was alright, but Don never really disclosed what was going on with his health, and would tell [REDACTED] he was O.K. Since Don did not return home for a couple of days after going for this dental appointment, [REDACTED] asked him what had happened upon Don's return, and this is how Scott became aware of this information. Don never told [REDACTED] what caused him to pass out, and he never mentioned any medication he was taking as a result.

[REDACTED] described Don's behavior prior to the relatives coming around as being "pretty calm." [REDACTED] also said that he knew Don had at one time been married to [REDACTED], but [REDACTED] didn't know [REDACTED] really well. I asked [REDACTED] if he had observed any bizarre behavior by Don before he and [REDACTED] divorced. [REDACTED] said the family had never seemed like a "tight" family, and they had always had problems. One son, [REDACTED], was killed when he was about nine years old. He had supposedly gotten angry with his mother, and he was out in Alhambra Valley walking his motorcycle, when he was hit by a car and killed. Then, Don's older daughter, who was [REDACTED]'s mother, supposedly committed suicide by jumping off the Golden Gate Bridge.

[REDACTED] said the Smith family has experienced some hardships, and they have always had a hard time just getting along with one another. They have always had problems discussing things. With Don, the yelling seemed to have increased recently. There was not always a lot of screaming and yelling outside; however, [REDACTED] believes that within the house they had arguments. [REDACTED] believes the Smiths had a lot of unresolved conflicts. The Smith family seemed to let things get all balled up, and then those things would just come out.

Today, 9-29-01, [REDACTED] heard Don loudly yell, "Get out of here." [REDACTED] then heard a gunshot. [REDACTED] was in the family room of his home at the time of this occurrence. I asked [REDACTED] how it was possible for him to hear what he had described since he was inside his family room, and two houses away from Don's house. I then asked [REDACTED] if he was able to hear what he had described because he had the windows or sliding glass doors opened. [REDACTED] then corrected what he had previously said, and stated that he had been upstairs in a bedroom at the time of the incident. He didn't have a television or anything on, and there is a window on the north side of this bedroom. The window in this bedroom was opened. He heard Don say, "Get out of here," and then he heard the gunshot. He did not hear anything prior to that time—no banging, no other noises and no other voices. I asked [REDACTED] how he knew it was a gunshot that he heard. He said he has heard gunshots before, and it sounded like the popping sound a gunshot makes. [REDACTED] heard only the one gunshot.

After hearing the gunshot, [REDACTED] did not call the police. He said he went out in front of his residence to see what was going on, and sat inside his van, which was parked in front of his residence. He saw two police cars in front. He saw two more police cars drive in, and two police officers going into the Smith property with guns. One officer had some type of automatic weapon, and one was carrying a pistol. He stayed outside for a while, seeing the fire truck and ambulance arrive. When [REDACTED] first came out to the front of his house, he saw [REDACTED] running down the street, crying. She was running east on Blue Ridge Drive. She was saying, "The cop killed my grandfather!" He did not see her return, but said she ended up back at the Smith

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█████ advised that Don does not drink alcohol, and █████ does not believe Don's behavior was drug induced. █████ thinks that Don was depressed. A long time ago, perhaps on Memorial Day about 1½ years ago, █████ went to the graveyard with Don to visit the grave of Don's son (the one who was killed while walking his motorcycle). On this occasion, Don expressed to █████ how badly he felt about having been a bad father. █████ said Don "had the blues," and he was thinking about the loss of his daughter and son. █████ described Don as being "sad inside." Don took it really hard when his son died, and he was also saddened when his wife left him.

Other than going to the cemetery with Don, and stopping by Don's house on occasion to chat with him, █████ did not socialize with Don. █████ said that Don used to tinker around in his garage, and he was a machinist at one time. Don "invented" things. █████ described him as a nice guy, and said it was really sad the way things turned out. █████ then said, "Obviously, he must have threatened somebody if, if he ended up getting himself shot."

The interview was concluded at 1701 hours.

On 9-29-01 at approximately 1705 hours, Cpl. Caldera and I contacted █████ at █████. I identified myself to █████, and advised her of our reason for contacting her. She was very brusque, and advised us that she didn't really know anything about Don Smith or his family. I asked her name, and she responded █████. I thanked her for her time, and she closed the door.

On 9-29-01 at approximately 1708 hours, Cpl. Caldera and I contacted █████ at █████. After identifying ourselves to █████, she advised us that she really didn't know Don Smith. She does, however, have a passing acquaintance with █████. █████ said she had possibly seen Don two or three times since moving to her residence in 1992 or 1993. While talking with █████, a man approached the front door from inside the residence. █████ identified him as her husband. █████ walked passed █████ and passed Cpl. Caldera and me, and into his driveway. While doing so, he commented that whatever happened it was excessive. He made no other comments, and after obtaining █████'s date of birth and phone number, Cpl. Caldera and I left the location.

On 9-29-01 at 1735 hours, Cpl. Caldera and I contacted █████ at his residence at █████. When █████ greeted us at his front door, he advised us that he was one of the persons who called 911 to report the incident this morning. The interview was tape recorded, and is summarized below:

When █████ called 911 this morning, the dispatcher told him that Martinez Police were already on scene. What prompted █████ to call 911 was that he had been paying some bills and doing some paper work, when he heard a shot or a pop that sounded like a shot. He believed the noise sounded like a small caliber weapon, perhaps a .22 caliber weapon. After hearing the shot, █████ heard yelling, and it seemed to be going on for a while. He went outside to investigate, and

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determined that the noise was coming from the back yard of the Smith residence. [REDACTED] identified this location by pointing to it as he spoke to us). When he looked into the back yard, he believes he saw a blonde woman with short hair, and she was yelling at someone, "You shot my grandpa!" [REDACTED] could not see the person at whom this woman was yelling. [REDACTED] also saw someone lying on the ground, and he believes two police officers were already starting to perform C.P.R. on the person lying on the ground. The person who was lying on the ground was lying at the side of an old red van, possibly a Ford, near the open side doors, somewhat between the van and a chair. [REDACTED] could also see inside the van, and saw sheets lying over something resembling a bed, indicating to him that someone may have been living in the van.

When [REDACTED] first heard the shot, he thought the son had shot the father. His reason for believing this is as follows: He saw what he believed to be two police officers performing C.P.R. on the person lying on the ground, and a WM in his mid to late 20's, short dark hair, wearing a white shirt. When [REDACTED] heard and saw the female yell, "You shot my grandpa," he presumed that she was talking to the male in the white shirt. [REDACTED] thought about it and decided he was not certain that it was police officers performing the C.P.R. He didn't hear any additional sirens, so he returned to the inside of his residence and phoned 911. He told dispatch that he believed there had been a shooting around the area of Roanoke and Blue Ridge, and dispatch advised him that Martinez Police were already on scene.

[REDACTED] has lived in his residence since Valentine's Day, 1993, and he is unaware of any prior incidents occurring at the Smith residence. He has not called 911 regarding the Smith residence prior to having called today, 9-29-01. He knows that the Smiths once kept a horse in their back yard, and on an occasion when he might drive by the residence, he observed that the property was not being maintained.

[REDACTED] does not know anyone who lives in the Smith residence, but said that on one occasion when he was removing weeds from his side hill, he believes it was the blonde woman he saw today who spoke to him. He was unable to estimate her age because he "didn't get a real good look at her."

I determined from [REDACTED] that his neighbor residing at [REDACTED] might have knowledge of the Smith family.

After calling 911 today, 9-29-01, [REDACTED] went back outside. He saw his neighbor, (who lives on the other side of [REDACTED]), walk down the hill and began looking over the fence (in the direction of the Smith back yard). [REDACTED] then walked to the same location as his neighbor had gone, and he could see C.P.R. being performed on the person who was lying on the ground. The fire personnel, paramedics, and other officers had arrived. The white male in the white shirt was not handcuffed, so that is when [REDACTED] decided that he must not have been the one who shot "the old man."

[REDACTED] does not know the names of any of the Smith family, including their last name. He refers to Don Smith as the "old man," based solely on the way he appeared to [REDACTED]. On

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occasion, while driving by the location, [REDACTED] had seen Don in front of the Smith residence, watering potted plants. [REDACTED] has never spoken with Don Smith.

The interview was concluded at 1747 hours.

On 9-29-01 at approximately 1755 hours, Cpl. Caldera and I contacted [REDACTED] at his residence at [REDACTED] (On the tape, I mistakenly identified the date as 6-29-01.) This interview was tape recorded, and is summarized below:

[REDACTED] was one of the parties who called 911 to report the incident that occurred at the Smith residence on 9-29-01. What prompted his call was his having heard a disturbance—loud voices and then a single gunshot. He then heard what sounded like a male voice saying, “No Dad, No Dad, No Dad,” or words to that effect. [REDACTED] could not distinguish what the loud voices he had heard before the shot were saying. After calling 911, [REDACTED] was told by the dispatcher that they were already aware of the call. [REDACTED] does not know the family involved in this incident.

Prior to this occasion, [REDACTED] has never heard any disturbances coming from the Smith residence. [REDACTED] has lived at his residence for 25 years. [REDACTED] said he has heard skateboarding noises before coming from that area (the Smith residence), but he has not previously heard loud voices.

The interview was concluded at 1759 hours.

On 9-29-01 at approximately 1805 hours, Cpl. Caldera and I attempted to contact the residents at [REDACTED]; however, we received no response. I left my business card, asking the residents to call me.

On 9-29-01 at 1822 hours, Cpl. Caldera and I contacted fire personnel Hugh Marquez, Bob Gonzalez, and Clive (Morgan) Savacool at Station 5 firehouse, located at 205 Boyd Road, Pleasant Hill, California. All three interviews were tape recorded, and are summarized below:

At 1826 hours, I began the interview of Hugh Marquez. Hugh was the driver of the fire truck that responded to 448 Blue Ridge Drive in Martinez. Upon arrival, Hugh, Bob and Morgan responded to the back yard. Hugh saw a young man performing mouth-to-mouth on the man who was lying on the ground (Don Smith). A police officer was kneeling next to this young man, and may have been doing compressions at the time, but Hugh did not see the officer doing compressions. Hugh believes the young man was Don’s son or grandson. This young man kept saying to Don, “You’re gonna live; come back.”

Hugh asked this young man to get out of the way so that the fire personnel could assist. Hugh cut off Don’s clothes and checked for a pulse. Not finding a pulse, Hugh began C.P.R. on Don. Hugh continued compressions for about 15 minutes before Don was pronounced dead.

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Hugh also heard a woman in the back yard talking, saying something to the effect of "it's my grandfather, it's my grandfather." The young man was saying to this woman, "It's O.K. He's gonna live. Don't worry about it." Throughout the time that fire personnel performed C.P.R. on Don, the young man circled around in the area near them, keeping an eye on them as they worked.

A.M.R. responded shortly after the arrival of fire personnel. Don was never conscious during the presence of fire personnel.

The interview was concluded at 1831 hours.

At 1831 hours, I began the interview of Bob Gonzalez. Bob is the fire Captain at Station 5, and was on the engine that responded to 448 Blue Ridge Drive in Martinez. Bob advised that Station 5 was dispatched at 1017 hours to an unknown medical. Approximately two minutes prior to their arrival, they were advised that they would be dealing with a gunshot patient. Upon their arrival, a Martinez Police officer advised that the patient was in the back yard. Bob was the first person from his crew to approach the patient. He noticed a young man performing mouth-to-mouth on the patient. Bob believes this young man was a relative or resident of the location. Bob also saw a police officer doing compressions on the patient.

Bob's crew immediately reassessed the patient, and began performing C.P.R. Upon their arrival, the patient exhibited no signs of a pulse or respirations. Bob did not hear anyone in the back yard making any comments. Bob's crew worked on the patient until the paramedic contacted the base hospital, and the doctor at that hospital made the determination that the patient had expired at 1039 hours. Bob's responsibilities include gathering information while his crew performs the C.P.R. procedure. In the course of this process, he asked questions of the young man who had been performing mouth-to-mouth on the patient upon their arrival. Bob inquired regarding the patient's medical conditions, and determined that the patient had a seizure history and had been taking dilantin and aspirin. This male subject did not advise how long ago this seizure history began. Bob also learned that the patient had a stroke history. The young man did not know if the patient had any allergies to any medications, but mentioned that the niece was out front. The young man did not know anything else about the patient.

There was a comment made, but Bob is not certain as to the person's identity, she had been referred to as "the niece." She was in front of the house across the street when he contacted her. Bob could hear her comment before he asked her any questions. She was indicating that there was a problem—something about "this should have been taken care of before." Bob does not know what she meant by this comment. Bob asked her if the patient had any allergies to any medications.

After the patient was pronounced dead, Bob's crew gathered up their equipment and left the location.

This interview was concluded at 1836 hours.

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At 1837 hours, I began the interview of Morgan Savacool. Morgan is the medic from Station 5. Not all fire stations have medics. There are 13 ALS stations—meaning they have medics, and 28 fire stations without medics.

Upon arrival at 448 Blue Ridge Drive, Morgan got off the engine and retrieved his paramedic equipment, making him the last of his crew to enter the scene. He observed a Martinez Police officer performing chest compressions on the patient. He also saw a person whom he believed to be the son or grandson of the patient performing mouth-to-mouth. Morgan said that the young man doing mouth-to-mouth did not appear to have any training in mouth-to-mouth, but he was basically performing the procedure.

Morgan also saw several Martinez Police officers around the area, but because he is the paramedic, ultimately responsible for the patient, his focus was on tending to the patient. Morgan said that from the beginning of their (fire personnel) arrival, the patient did not exhibit any signs of life. Morgan did, however, follow the protocol determined by the county in these situations, and took the necessary steps in providing treatment. Morgan worked on the patient for 14 minutes, at which time the patient was pronounced dead by the base physician in the emergency room at the base hospital—John Muir Medical Center. Morgan did not recall the doctor's name.

After the patient was pronounced dead by the base physician, Morgan removed all equipment that was not attached to the patient. Everything that is put onto the patient is left on the patient.

When Morgan first arrived, he heard the non-uniformed person who was performing mouth-to-mouth on the patient say words to the effect of "come on Dad" or "come on grandpa." Morgan does not recall whether the subject was calling the patient Dad or grandpa, but said he was speaking words of encouragement. Also, a young lady came into the yard from the garage, and the non-uniformed person yelled something to her like "shut up" or "get out" or words to that effect. Morgan said he didn't get a good enough look at her to approximate her age, but believes she was a relative. He believes she had brown hair, light skin, and was approximately 5-6 in height. Once the non-uniformed person had yelled at the female, Morgan told him to relax. Morgan does not believe this male was alarmed at the female's presence, but just didn't want her there.

Morgan said the male subject continued to make comments of disbelief, and at one point, the police officers told him to remain behind the fence line, which was about 15 feet away from the fire personnel.

Morgan had heard the comment made that the patient was taking stroke medication and had a seizure history, but he does not recall how he learned this information. Morgan did not directly administer any medications to the patient, but delegated to the AMR medic the administration of two different types of medication based on county protocol.

Senior Inspector Trish Ford

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Date: October 12, 2001

This interview was concluded at 1842 hours.

At the conclusion of the fire personnel interviews, Cpl. Caldera and I returned to Martinez Police Department. At that time, Deputy D.A. Bob Hole advised us that another neighbor, whom we had not yet contacted, had approached an officer at the scene, advising that she grew up in the neighborhood and has known the Smith family for years. This neighbor was identified as [REDACTED]. After several unsuccessful attempts to re-contact [REDACTED] that evening, Cpl. Caldera agreed to attempt to contact her on 10-01-01, and arrange to interview her. (See Cpl. Caldera's supplement for details of that interview.)

On 10-01-01 at 1323 hours, I received a phone call from a woman who identified herself as [REDACTED]. [REDACTED] advised me that she had found one of my business cards in her front door at [REDACTED]. I proceeded to interview [REDACTED] and her husband, [REDACTED]. These interviews were not tape-recorded. Their statements are summarized below:

[REDACTED] advised that she has resided at her current residence for 25 years. On 9-29-01, at around 9:30 a.m., [REDACTED] was sitting in the room where she keeps her computer. She heard awful screaming and yelling—like someone had run into a dog or a child on a bicycle. She then heard sirens. [REDACTED] did not hear the gunshot. She said these sounds were coming from [REDACTED] house—the turquoise house on Blue Ridge, just down the hill from [REDACTED]'s residence. [REDACTED] grew up with [REDACTED]'s son.) [REDACTED] also heard some swearing—something to the effect of "Get in the fucking house."

Later, after hearing the sirens, [REDACTED] could see the tail end of a fire truck after it arrived. She could also see the ambulance and two police cars, as well as yellow police tape, but she could not see into the back yard. Pine trees blocked [REDACTED]'s view of the Smiths' back yard from the open window of the room she was sitting in. If she had gone outside and viewed the Smith back yard from a different angle, she would have been able to see into the yard.

Over about the past five years, there have been occasions where [REDACTED] has been awakened in the middle of the night by screaming coming from the turquoise house (Smith residence).

[REDACTED]'s son is now 36 years old, but when he was 15 years old, [REDACTED] came to [REDACTED]'s house and wrote "Fuck John," on one of the [REDACTED] vehicles. [REDACTED] saw the responsible as she was walking back up the hill from [REDACTED]'s house and believed the responsible to be [REDACTED]. [REDACTED] went to [REDACTED]'s house, and contacted her father (Don Smith). [REDACTED] told Mr. Smith what had happened, but he just laughed. Sometime later, [REDACTED] asked her son if [REDACTED] had gotten into any trouble over the incident, and [REDACTED] told [REDACTED] no. [REDACTED] said that [REDACTED]'s father had just thought it was funny that [REDACTED] had gotten caught. [REDACTED] said she did not know Don Smith, other than this one encounter with him.

[REDACTED] said that her neighbor [REDACTED] had told her that an officer had shot someone. She

Subject/Defendant: Smith, Ernest Donald

Report/Case No.: MPD 01-004316

asked that I tell the officer that she and her husband, [REDACTED] are praying for him and they hope everything turns out for the best.

While talking to [REDACTED], she advised that [REDACTED] had an experience to relate regarding the Smiths. I spoke with [REDACTED] and he told me the following:

About one month ago, [REDACTED] was riding his bicycle on Blue Ridge Drive, when a woman, whom he described as 5-6, medium length brown hair, slender, in her 30's, came up to him and asked him to call the police for her. She came from the turquoise house (Smith residence), and she was crying. She told [REDACTED] that her boyfriend had thrown her out of the house with all her belongings in trash bags (which [REDACTED] saw lying in front of the residence), and the boyfriend had taken her car. [REDACTED] rode home, and called the police for her. [REDACTED] said they arrived and talked to her for about one hour.

[REDACTED] and [REDACTED] had no additional information, and the interview was concluded at 1340 hours.

Deceased: Smith, Ernest D.

Martinez P.D. case No. 01-04316

INVESTIGATION NARRATIVE:

On Saturday 9-29-2001 COI Greenwald called me at home and advised of an Officer Involved Protocol Incident involving Martinez P.D. He assigned me to assist in the investigation and requested that I respond to Martinez P.D. I arrived at Martinez P.D. at 1330 hrs and was directed to the City Council Chambers where the investigative personnel were gathering. I met up with other investigators from the Contra Costa D.A.'s Office as well as DDA Bob Hole and several Martinez P.D. Officers as well. Officer Glen Walkup briefed us on the details of the incident as known at that time. We were divided into investigative teams and given our respective assignments. I was teamed up with Officer Bill Kruta of Martinez P.D. We were assigned to search the house of the deceased for items that would tend to show the deceased's state of mind after we had gotten authority to proceed. All of the investigators responded to the scene of the incident after the briefing was completed. We viewed the scene and while there we learned that Martinez Detective Sylvia had confirmed that the deceased's 39-year-old son [REDACTED] (next of kin who was also involved in this incident) lived there at the house as well, and had an active probation search clause. We also later learned that the son had given consent to search the premises.

I had Dave Stockwell from the Contra Costa County Crime Lab photograph the interior of the house with a crime lab camera. I obtained the film from Stockwell and got it developed. Copies of the photos were later given to Martinez P.D. as well.

Officer Kruta and myself searched the interior of the home. We recovered several documents from the master bedroom, the kitchen and fireplace room. These were taken as evidence (photo copies attached) and the originals were booked into Martinez P.D. evidence room. During the course of the search DDA Bob Hole advised me via Nextel radiophone that the son had told investigators that his father (the deceased) hid a large quantity of silver that he used to keep buried in a barn in the backyard. It is believed that he had since moved it to the inside of the home somewhere. Hole requested that we be on the lookout for that. The silver was subsequently found in the master bedroom in a locked chest of drawers located on the west wall. The silver was in the form of what appeared to be solid silver coins mostly in dimes and half dollars, although a one-dollar coin was in the collection too. The silver was divided into separate plastic bags by the coin style, and the bags were placed inside a box. The silver was taken for safekeeping and booked into Martinez P.D. evidence room. We counted the coins and at face value it totaled \$303.80. We also discovered a box of .22 caliber live rounds in a locked closet in the master bedroom. These were taken for safekeeping and booked into Martinez P.D. evidence room. There were several prescription drug bottles throughout the house in the deceased's name. Several of these were taken as evidence of the types of medication that the deceased was taking at the time of his death. These were booked into the Martinez P.D. evidence room. The home had a digital telephone answering machine and it had five messages recorded on it. I recorded the calls stored on the machine with my tape recorder, as it had no removable tape. I retained the tape as evidence and later provided a copy to Martinez P.D.

Senior Inspector V. Wise

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Date: 10-1-2001

VW

Deceased: Smith, Ernest D.

Martinez P.D. case No.: 01-004316

During the course of our search of the house DDA Bob Hole advised me via Nextel radio phone that the deceased's granddaughter [REDACTED] (who also lived at the house) would be responding to our location to retrieve a small dog from the house along with some clothing for herself and things for the dog. She arrived at the home at 1723 hrs and left at 1739 hrs according to the crime scene log kept by Martinez P.D. Officer Kruta or myself accompanied her while she was at the scene. She was cooperative.

We later searched the interior of a red Ford van license no. RXB-143 parked in the backyard after the crime lab had completed the processing of the scene. We found only what appeared to be a mattress, clothing, and personal belongings of the deceased's son [REDACTED] inside.

It should be noted that the interior of the house was very unkempt and in a poor state of repair. It appears as if the deceased was a "Pack Rat" type person that saved various items for no apparent reason as there were stacks of useless items laying every where throughout the home. There was dirty clothing, rubbish, and a lot of odds and ends of broken electrical and mechanical devices stored throughout. It seemed as if the home had not been cleaned in a very long time as there were cobwebs and thick coats of dust over just about everything there. There wasn't much furniture throughout the house. The main living areas of the home were stacked with broken objects amidst the dirt and dust and cobwebs nearly everywhere.

The kitchen was extremely filthy. It had thick dust on what appeared to be old grease covering the walls, counter tops, and cupboards. The cupboards although apparently dark brown colored wood originally, appeared almost black in spots because of the thick coating of old grease and dust. There were cobwebs and spiders on the walls, ceiling, floors, and cupboards. Flour was smeared around on the counter top as if someone had tried to cook something recently and did not cleanup afterwards. A drawer in the kitchen was stuffed full of old "Burger King" food bags. I also found a large size paper cup of old coffee of some sort stored inside a cupboard with pots and pans. It appeared to have been there a long time as it had bluish gray colored lily pads of mold floating on the surface of the liquid. There was not much food in the refrigerator or in the cupboard either.

The bathroom of the master bedroom was filthy. The opaque glass of the shower was a dark gray color from filth and there were thick cobwebs and spiders on the walls, floor, and shower stall exterior. The toilet and sink had a brownish tint to them and did not appear to have been cleaned in quite a while. The bed had very dirty sheets and linen and did not appear to have been changed in quite a while. The closet on the west wall of the master bedroom had a hinged door. The door knob had been removed leaving the hole in it's place and there were holes cut through the adjacent sheetrock exposing the wall studs. A heavy-duty chain was extended through the doorknob hole and the holes in the wall circling around the wall studs, and was secured with a heavy-duty padlock so as to keep the door locked. This closet contained nothing of apparent value. It had old dusty suitcases, clothing and keepsakes inside in apparent dirty condition. The chest of drawers located on the west wall adjacent to the locked closet also was locked in the same fashion. A hole was bored through from top to bottom including all the drawer bottoms and a piece of metal pipe was stuck through the holes from top to bottom and locked into place by another heavy-duty chain and secured by a heavy-

Senior Inspector V. Wise

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Date: 10-1-2001

V. W.

Deceased: Smith, Ernest D.

Martinez P.D. case No.: 01-004316

duty padlock. This chest of drawers contained the box of silver (aforementioned) in one of the drawers. The closet and the chest of drawers had to be opened with bolt cutters to examine their contents. The only other things inside this chest were miscellaneous old clothes and items.

The floor of the master bedroom had dirty clothing strewn about and there were broken objects cluttering the floor, including a home made bicycle and several half finished home made guitars. Upon looking underneath the mattress in the master bedroom we located several old pornographic magazines dating back to 1982 opened to photos of naked women fully exposing their vagina and breasts. The drawers of an adjacent dresser on the north wall contained a medium sized plastic bag of condoms and a phallic shaped vibrator jammed into a drawer full of underwear and dirty clothes. There were stacks about two feet high of dusty old 3 ring binders containing machinist and engineering notes, data, and books on the dresser of the east wall of the room. The room was so cluttered that we had to step over things to walk around.

When we completed our search we released the property back to the deceased's son [REDACTED] Smith who was on scene. We returned to the Martinez Police Station and booked the miscellaneous papers, medication bottles, ammunition, and silver into the property evidence room. I agreed to write the report on our team's actions in this investigation. Officer Kruta also wrote a short report to cover the booking of the property into Martinez P.D. evidence room.

Nothing further.

Senior Inspector V. Wise

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Date: 10-1-2001

VW

**OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY
INVESTIGATION REPORT**

Investigation: Officer Involved Protocol

Report No. MPD 01-4116

Subject/Defendant: Ernest Donald Smith

Offense Dates: 9/29/01

Original

Copies Of Report To:

Deputy District Attorney: Robert Hole

Other: Martinez PD- Detective John Sylvia

Investigator Assigned: Senior Inspector T. Spyrow *T. Spyrow* **Date:** Continuous

INVESTIGATIVE SUMMARY

Suspects:

Smith, Ernest Donald dob: 09/23/36

448 Blue Ridge Dr., Martinez 94553 [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

Physical Description: WMA, Bln, Blu, 5-9, 150

Victims:

[REDACTED] [REDACTED]
[REDACTED], [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
Physical Description: Wma, Bro, Blu, 5-7, 170

Witnesses:

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
Physical Description : WFA, Bln, Grn, 5-4, 140

Sgt. Gary Peterson

Martinez PD 525 Henrietta St., Martinez 94553 (925) 372 3440

Officer Glenn Walkup

Martinez PD 525 Henrietta St., Martinez 94553 (925) 372 3440

Detective John Sylvia

Martinez PD 525 Henrietta St., Martinez 94553 (925) 372 3451

Officer Jim O'Neal #96

Martinez PD 525 Henrietta St., Martinez 94553 (925) 372 3440

Officer Dirk Miller #111

Martinez PD 525 Henrietta St., Martinez 94553 (925) 372 3440

Todd C. Simonson

Attorney At Law Rains, Lucia & Wilkinson LLP

2300 Contra Costa Bl., Suite 230, Pleasant Hill Ca. (925) 609 1699

Evidence:

Item TS-1: Cassette tape of Gregory Smith interview on 9/29/01. (Copy)

Item TS-2: Cassette tape of Laura Allison interview on 9/29/01. (Copy)

Item TS-3: Cassette tape of Gregory Smith interview on 9/29/01. (Copy)

Item TS-4: Cassette tape of Officer Jim O'Neal interview on 9/29/02. (Copy)

Item TS-5: Cassette tape of Officer Dirk Miller interview on 9/29/01. (Copy)

Item TS-6: Duplicate set of 28 photos of scene taken by PHPD under CR# 01-5409.

Original tapes were turned over to Det. John Sylvia (Martinez PD) on 10/01/01. Above copies were placed into evidence.

Vehicles:

1965 Ford Econoline Van Ca. Lic. # RXB143. Registered owner is Ernest Donald Smith. See registration printout for complete details.

Attachments:

1. Incident history of first disturbance. (9/29/01 0821 hrs.)
2. Incident history of second disturbance and criminal histories of Ernest and Gregory

JS

Subject/Defendant: Ernest Donald Smith

Report/Case No.: MPD 01-4116

Smith.

3. Copy of Martinez PD CR# 01-3015.
4. Prior police contacts at residence.
5. DMV printout of registration for Ca. Lic. # RXB143.

Above items attached this report.

INVESTIGATION NARRATIVE

9/29/01 1218 hrs.

Lieutenant Mike Sloan called and requested my assistance in a shooting incident in Martinez, involving one of their Patrol Officers. He said officers had responded to a disturbance call involving a father and son. They handled the call and cleared. The officers were detailed back to the same residence regarding another disturbance between the same parties. Sloan said the father armed himself with a metal pipe and went after his son with it. When the officer interceded, the father went after the officer with the weapon and was shot. Sloan asked me to contact DDA Bob Hole at Martinez PD. He had no further details.

I left my residence at 1235 hrs and arrived at the police department at 1310 hrs.

1320 hrs.

While waiting for other investigators to arrive, the shooting officer was identified as Dirk Miller.

1325 hrs.

A briefing commenced under the direction of DDA Hole to update officers participating in this investigation. Hole, Sgt. Gary Peterson and Officer Glenn Walkup gave us an overview of the incident as well as any action(s) already taken by their agency. From this information, a priority list was started of things that needed to be addressed. These areas were expanded and

Senior Inspector  Ted Spyrow

Date: 10/04/01

Subject/Defendant: Ernest Donald Smith

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later assigned to designated teams created by DDA Hole.

CPR was administered to the suspect by one of the on scene officers and the victim; until emergency personnel arrived. We were told that the suspect had been shot once and was pronounced dead at the scene by Fire and AMR personnel.

I received copies of the suspects criminal history, computer generated histories of both calls today and a copy of Martinez PD CR# 01-3015, in which the suspect had been arrested on 7/12/01 for ADW with a pipe.

After the identifying investigative priorities, four (4) teams were created and the below assignments were made.

Team I

Detective John Sylvia (MPD)

Senior Inspector Ted Spyrow (CCCDA)

We were directed to interview [REDACTED] and Officers Jim O'Neal and Dirk Miller. Hole also wanted us to see if [REDACTED] would give us permission to search his residence and the van in the rear yard.

Team II

Detective Paul Starzyk (MPD)

Senior Inspector Paul Peterson (CCCDA)

Interview [REDACTED], [REDACTED] the suspect's ex wife and a unidentified daughter living in Oklahoma.

Team III

Detective William Kruta (MPD)

Senior Inspector Vic Wise (CCCDA)

Search the residence and van.

Team IV

Detective Steve Caldera (MPD)

Senior Inspector Trish Ford (CCCDA)


Senior Inspector Ted Spyrow

Date: 10/04/01

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Canvass of neighborhood.

For complete details refer to their supplemental reports.

1446 hrs.

I viewed the crime scene with DDA Hole, Det. Sylvia and other team members. We concluded at 1500 hours.

1521 hrs.

We returned to the PD and contacted [REDACTED] in an effort to obtain a consent search from him for the house and van. Our conversation was recorded and will be identified as TS-1. [REDACTED] granted the request and signed the form in our presence. A duplicate copy was left with him. Terminated 1531 hours.

1533 hrs.

I read a copy of Officer Walkup's interview of Gregory Allen Smith. For complete details, refer to same.

1545 - 1650 hrs.

I participated in the interview of [REDACTED]; the suspects grand daughter. She witnessed both altercations and the shooting. For complete details, refer to Det. Sylvia's supplemental report, tape recordings and item TS-2.

1712 - 1746 hrs.

Det. Sylvia and I next spoke to [REDACTED]; the suspects son. The interview was recorded and will be in Sylvia's report. He is the victim in this case and honestly believed his father was going to hit him with the pipe, when the officer shot him. For details refer to TS-3.

1815 hrs.

Officer Jim O'Neal was the next person we interviewed. He was present at both


Senior Inspector Ted Spyrow

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disturbance calls and noticed the suspect armed with the pipe. He did not witness the shooting. The interview was recorded and will be covered in Det. Sylvia's report. For complete details, refer to TS-4.

1901 - 2004 hrs.

Det. Sylvia and I met with Officer Dirk Miller and his attorney, Todd Simonson, in the conference room of MPD, to discuss his involvement in the incident. The conversation was recorded and will be identified as TS-5. Miller was the officer assigned to these two (2) disturbance details. He said the suspect armed himself with a pipe and another instrument. After several warnings to drop the weapon, Miller shot the suspect in defense of another. For complete details refer to Sylvia's report.

2025 hrs.

Officer Miller agreed to return to the scene with his attorney and do a walk through with us. For details, refer to Sylvia's report. We left at 2120 hours.

2040 hrs.

DDA Hole gave me a duplicate copy of scene photos taken by Pleasant Hill Officer Doug Thompson under CR# 01-5409. One of the photos was given to Det. Sylvia to use during his interview of Officer Dirk Miller. For complete details, refer to his report.

2155 hrs.

I concluded my assignment.

10/01/01 0900 hrs.

I made copies of the interview tapes and delivered the originals to Detective Sylvia at Martinez. For complete details, refer to items TS-1 thru TS-5.

10/02/01 0830 hrs.

I spoke to Officer Thompson (PHPD) and requested a copy of his report. He said Officer John Woffinden had also responded to the Martinez scene and interviewed a neighbor. He will include a copy of his report, as well as their computer generated history. Thompson told me that CCCSO personnel were also on scene. For additional information refer to all items of evidence, attachments and supplemental reports.

Senior Inspector  T. Spyrow

Subject/Defendant: Ernest Donald Smith

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JS
Senior Inspector T. Spyrow

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Date: 10/04/01

**MARTINEZ POLICE DEPARTMENT
SUPPLEMENTAL REPORT
TRANSCRIPTION - TAPED INTERVIEW**

PARTICIPANTS:

Officer Glenn Walkup
Gregory Allen Smith

Martinez Police Department
(DOB: 6/28/62)

WALKUP: Officer Walkup, ID #95. It is 1041 on 9/29/01. This will be an interview with [REDACTED] in the rear yard of 448 Blue Ridge in Martinez. [REDACTED] I talked to you a few minutes ago about what had happened and you told me at the time you were inside the van in the backyard and your father came out with a pipe and started yelling at you, hitting the back of the van and then he came up to the van and .. you .. you believed he was going to hit you and that's when you saw ... or you heard the officer yelling at your father to drop the ... the pipe. Can you tell me exactly what you remember now and what had happened?

[REDACTED] He was hitting the van with the pipe.

WALKUP: Why was he hitting the van, though?

[REDACTED] He was upset about something.

WALKUP: Okay. You mentioned that your father is taking some psych drugs?

[REDACTED] I don't know what kind of (unintelligible) A stroke.

WALKUP: Okay. So he came out with the van. Had a pipe. Do you know why he was angry with you today?

[REDACTED] No. He said something about the water bill this morning.

WALKUP: Cause it was too high and ... just upset? Okay. Was there anybody else in the van with you?

[REDACTED] No.

WALKUP: Just you. So when he came outside, what was he yelling at you?

[REDACTED] He ... I don't know what he was yelling. Cause I was in the van laying down.

WALKUP: Okay. Were you sleeping?

[REDACTED] No. I was just kinda staying awake.

WALKUP: Okay. So you hear him yelling at you, but you don't remember

[REDACTED] He wasn't yelling at me. There was a cop behind him or something.

WALKUP: Okay. So, did you step out of the van?

[REDACTED] No.

WALKUP:to look at him? You just stayed inside the van.

[REDACTED] Yep.

WALKUP: Okay, so he hit the back of the van with the pipe and then came to the .. the middle section where the doors open.

[REDACTED] Yep.

WALKUP: Okay. Were you still laying down?

[REDACTED] Yep.

WALKUP: Okay. Was he swinging the pipe at you at that point?

[REDACTED] He was swinging the pipe at the van.

WALKUP: Okay. So ... did you actually see the officer?

[REDACTED] Nope. I was laying down.

WALKUP: What did you hear?

[REDACTED] Just heard the gun shot.

WALKUP: Okay. You told me earlier that you heard the officer yell something to the effect of "drop the pipe". Do you remember exactly what he yelled?

[REDACTED] "Put the pipe down."

WALKUP: "Put the pipe down." Do you remember anything else? Do you remember how many times he said it?

[REDACTED] One time I know of.

WALKUP: One time for sure.

[REDACTED] Yeah.

WALKUP: Could it have been an additional time?

[REDACTED] Just the one time to me.

WALKUP: Just the one time. Okay. How long after you heard him yell "put the pipe down" did you hear the gunshot?

[REDACTED] Seconds, I guess.

WALKUP: Okay. Seconds. Seconds is ... if you can, break it down to, you know, one to two

seconds .. five seconds ...just a ...

██████████ Five seconds.

WALKUP: Five seconds? Okay. Did your father say anything? After the officer said, "Drop the pipe", did you hear your father say anything back? Either to you or to the officer?

██████████ I don't know. He called me a little bastard or something....

WALKUP: Your father called you a little bastard?

██████████ Yeah, something like that.

WALKUP: Something like that? Okay. Trying to ... trying to figure this whole thing out, but I just why this had to happen.

██████████ I do stupid stuff in the house, I guess.

WALKUP: Well, had your father and you been fighting recently?

██████████ No. He's just been getting upset at me. Now he's dead. Huh?

WALKUP: Anything in general? Just upset with you about everything or something specific?

██████████ Nothing specific.

WALKUP: Did you believe your father was going to hit you with the pipe?

██████████ I wasn't worried about it that much.

WALKUP: I ... I understand that ... you know, it's your father and ... you're willing to take kind of things from your father that you wouldn't from other people, but did ... did you think he was going to hit you with the pipe?

██████████ I thought he would stop.

WALKUP: Okay.

██████████ I didn't think he'd get shot.

WALKUP: Okay. That's not something that we hoped for either, okay? Do you have anything else that you remember hearing? Seeing? After the gunshot?

██████████ (Sighs)

WALKUP: Came out of the van. ... is that when you started CPR ...

██████████ Yes.

WALKUP: ... With the officer? Okay. Can you think of anything else that you didn't ... you

didn't tell me or I didn't ask you right now?

 That was it. (Sighs)

WALKUP: This will be the conclusion of this interview. It is 1050.

End of tape.