

Voluntary Statement of Officer Jeffrey (Jeff) Nelson

My name is Jeffrey (Jeff) Nelson. I am a Police Officer for the City of Auburn, in Auburn Washington. This is a voluntary statement I have provided to the Port of Seattle Police, at the request of the King County Prosecuting Attorney's Office, relating to the criminal investigation of an officer involved shooting that occurred in the City of Auburn on or about May 31, 2019. The purpose of this statement is to provide a summary of the facts as I recall them relating to a response to a call I received on May 31, 2019. It is my understanding that the normal protocol in Officer involved shootings, whereby the Chief of Police orders a compelled statement shortly after an incident occurs, has not been followed in this matter. This is the first statement I have provided to law enforcement. Although, the statement was not provided until thirty-one days after the event I have made best efforts to provide my recollections with my best efforts.

On May 31, 2019, I was on duty as an Auburn Police Officer, in Washington. I was operating a fully marked City of Auburn Police Ford Explorer patrol car that is equipped with emergency lights and an audible siren/ public announcement system (P.A.). The vehicle is clearly marked with "POLICE" in large reflective font on both the left and right sides. I was wearing a City of Auburn Police patrol jumpsuit that has City of Auburn Police patches on both shoulders, a cloth Police badge and my name embroidered on the front, and "K-9 Police" on the back. I additionally wear a City of Auburn Police duty belt that is equipped with two pairs of handcuffs, a Pelican flashlight, a radio, three spare pistol magazines, and a level three duty holstered Kimber 1911 pistol/firearm; affixed to my lower left leg is a Department issued Taser.

On May 31, 2019 at approximately 1758 hrs, I arrived at the 1400 block of Harvey RD NE, Auburn King County WA 98002 (Walgreens), regarding a disorderly subject at the location. Dispatch advised me that an adult black male was at the location in Auburn, Washington at 1416 Harvey Road NE, between 14TH Street NE and Auburn Way N. Further, dispatch had advised that the subject was at the above location throwing items at vehicles and hitting and kicking the Redbox machine and/or walls and the location. The male was described as being in his 20's, approximately 5'10" and of medium build, black hair last observed wearing a gray baseball t-shirt with navy blue sleeves and jeans. The male was last observed in the parking lot of Walgreens.

On May 31, 2019 at approximately 17:20 hrs, Dispatch had reported that a male wearing a grey and black sweatshirt and grey pants was throwing garbage around and banging on windows at the Dollar Tree Stores Inc 1241 Auburn Way N, Auburn, Washington. This location is only a few blocks from the Walgreens on 1416 Harvey Road NE in Auburn, Washington. Based on the subject's clothing description and physical actions observed by staff at the Walgreens, the short distance between the Dollar Store and Walgreens, and the fact that the Dollar store incident was reported just 30 minutes prior, I believed it was reasonable that the same subject reported prior at The Dollar Tree was now located at the Walgreens. I had responded to the Dollar Store earlier with Auburn Police Officer Doug Johnson. I learned during the prior incident at the Dollar Store that the subject was observed yelling at customers, acting aggressively, kicking the walls of the business and a vehicle at that location. I performed an area check for the subject with Officer Doug Johnson but we were unable to locate him.

Upon arriving at the Walgreen, I slowly drove clockwise (from north to south) around the parking lot of the business and attempted to locate the subject. I was unable to do so and entered the attached parking lot (west) of Starbucks. I drove adjacent to the drive-thru exit (still in my patrol car), and two juvenile males (approximately 16 years old) exiting the Starbucks approached my patrol car and spoke to

me through my open driver's window. The males stated, "are you looking for the guy that was yelling at everybody and acting crazy? If you are he's over there in the bushes (while pointing east as they spoke)." I told the juveniles that I was at the location for a disturbance. I thanked the juveniles for their information and upon driving away (towards the area identified in the bushes) the males stated, "I think he also tried to break into a car, everyone's afraid to come outside, be careful he seems crazy." My impression from their last statement was that they had experienced something during their encounter or observations of the subject which cause them to be fearful.

I drove north through the Starbucks parking lot and observed a male that matched the physical and clothing description of the subject in question standing under a series of trees within a curbed divider/island that separated the two businesses parking lots. I parked in the Starbucks lot while approximately 30' feet (three parking stalls north) of where I subsequently located the subject.

At approximately 1800 hrs, I exited my patrol car and walked into the vegetated area and observed the male whom I have no recollection of having had any previous contact. (this subject was apparently later identified as Jesse Sarey, whom I have been informed had an outstanding warrant relating to a Failure to Register as a Sex Offender and was a convicted sex offender.) The male was looking down at the ground while pacing back and forth under the trees in a ten-foot linear area. The male was cursing and stated, "all these mother fuckers, fuck these mother fuckers (still looking downward while pacing)."

I identified myself to the male and he stopped walking and faced me while standing approximately five feet away. The male was perspiring on his forehead, he was breathing heavily, he stood with his feet flat on the ground at shoulder width, and his arms were directly at his sides while his fists were clenched. The male tilted his head slightly backward; I observed that the male did not blink his eyes and his nostrils were flared. Around his mouth/lips was a white dried substance and he continually licked his lips (cotton mouth). Based on my training and experience in law enforcement. the subject was in a stance that is a recognized pre-fight indicator, specifically, he faced me with his fists clenched and did not attempt to leave or flee. Additionally, his mannerisms defined that he was likely under the influence of a narcotic.

I attempted to de-escalate the subject's hostile disposition by asking if he was okay or needed medical attention. The subject responded, "Fuck off, you can leave." I advised the male that multiple citizens and employees of multiple businesses called 911 and reported that he was yelling, kicking vehicles, and kicking building walls. The male did not respond to my statements or inquiry. During this contact the subject remained in the same stance and continued to stare at me.

Several seconds elapsed and the male abruptly turned away from me and began walking (south) through the divider while kicking an empty drink bottle. The male entered the parking lot of Walgreens and continued to kick the bottle as he walked south. I observed a white identification bracelet (water damaged and illegible) fall from his pocket and to the ground. The male continued to walk and was approaching Harvey RD NE; I followed him and picked up the bracelet (about halfway from the business and Harvey RD NE) . I called out for the male to return and recover his property. The male turned around and walked back to where I was standing.

Prior to handing the bracelet back, during my verbal advisement I held on to the bracelet so he would remain momentarily to hear my directions, I advised him to stop yelling at citizens, kicking vehicles or disturbing any of the local businesses or he would be arrested. As part of my continuing efforts to de-escalate or calm the subject, I explained that it appeared he was having a hard time and that he was upset, but any business located on 15TH ST NE (visible from where we stood), would provide him with a

cup of water, food or restrooms if he explained his situation and asked politely. I told the subject, "Just be cool. Be nice and things will start to get better. Just be cool." I provided the bracelet back and the male walked within a foot of where I was standing; to avoid being struck I stepped back and away from the male. The male stated to me, "I want something to drink and some money. These motherfuckers are going to give it to me (while gesturing toward Walgreens)." I responded by again attempting to de-escalate the male by repeating that he needed to be nice. The male stated in response, "Then you go buy me a drink, you give me some money." I advised the male that I would not be providing him with that service.

We remained standing in the parking lot a few feet from one another; the male stopped talking and I observed him begin to breathe rapidly as he looked at my face, then my feet and back up to my face; I believed he was mentally preparing himself to assault me after I refused to provide him with the listed items.

The male suddenly turned south and walked toward Harvey RD NE. I maintained a visual of the male to ensure he left the property. Upon arriving at the sidewalk of the north side of the roadway I observed a black glove fall from his rear pants pocket. To prevent the male from returning or triggering an assault I chose not to advise him that he lost the clothing item (so he would keep walking south).

I began walking back towards Starbucks while still being able to observe the male. The male kicked the plastic bottle into Harvey RD NE westbound traffic and entered the congested roadway without utilizing a crosswalk. I subsequently heard a vehicle horn and observed passing vehicles slow down to avoid striking the male as he walked across westbound and eastbound lanes of Harvey RD NE. The male arrived at the south side of the roadway and entered the parking lot of the Maestro Barber Shop and Sunshine Market (mini shopping mall complex). The male walked to the Barber shop sign and struck the sign with an open palm (slapped) and spun the sign. The male walked to the community dumpster of the complex, accessed the lid and threw items about that were accessible.

Based upon the subject Disturbing the Peace (at four separate businesses), that he Annoyed and Bothered the patrons of Starbucks, Obstructed both directions of Vehicular Traffic within Harvey RD NE I believed that Probable Cause to arrest the subject for Disorderly Conduct was present. This conclusion was based upon both the Auburn City Code and/or the RCW regarding Disorderly conduct.

I continued to observe the subject as he remained at the dumpster in order to be able to re-locate him to effect an arrest. I quickly began walking to my parked patrol car and was contacted by an adult female seated in a passenger seat of a white commercial van parked at Walgreens. The female asked me, "Sir, did you get that man's name. He frightened us; we can't get out of the van. If he comes back I don't know what he'll do." The female's statement further confirmed the subject was disturbing the peace. I advised the female I would re-contact the male; if he should return remain in the van or leave the location. I continued to walk and was approached by a male employee of Starbucks. The male identified himself as the Manager, and that his patrons were afraid to come outside due to the male "I was speaking to," and one of his customers advised him that the male attempted to "break into his parked (unoccupied) car." The customer and potential attempted Vehicle Prowl victim was still located in the business.

Based upon the Manager's statement I additionally believed that Reasonable Suspicion to detain and interview the subject for Attempted Vehicle Prowl was also present. I planned to later locate the targeted vehicle and Registered owner at the location for follow up to be conducted regarding the

Attempted Vehicle Prowl offense, but I believed detaining the subject was a priority to protect citizens and property where the subject was last observed.

I re-entered my patrol car and stopped at the intersection of Harvey RD NE and Auburn Way North. Based upon the subject's hostile disposition, the observed pre-fight indicators, that he refused my directions and commands and that he was likely under the influence of a narcotic I requested an additional unit via radio to assist me; I additionally manually activated my in-car Coban Video system. It is my recollection and only an estimate that I activated my Coban Video system approximately 10 minutes after I arrived at the Starbucks parking lot. Given staffing needs it is not my habit to engage or request additional units unless I believe it will be necessary. I did not hear any Officer respond to my request. From that time until and after my contact with the male subject it was unknown if any Officer was available to respond or from what time/distance within the city.

The traffic light cycled and I turned south on Auburn Way North; I entered the west parking lot of the Sunshine Grocery at 1402 Auburn Way North and observed the same subject pacing in front of the business. I parked parallel to the business facing east; the male stopped pacing and squatted down in front of the grocery store while adjacent to an ice cooler, on the west side of the cooler. It is my recollection that the male's back was to the wall as he maintained a squatting position (his feet were still flat on the ground) as he watched me exit my patrol car and approach him. I stopped approximately four feet in front of the male while negotiating a curbed parking block and the sidewalk where the male was located. As I approached the male I noticed that the area was confined and there were numerous tripping hazards. I observed a smaller black SUV parked behind me, and the vehicle was occupied by an adult white male. I heard numerous voices from within the barbershop, and both the front doors of the barbershop and grocery store were ajar. It is my recollection that I was aware multiple members of the public who were in close proximity to me, but my focus was on the male subject. However, I recall being generally concerned for those members given the information I had just received from the witnesses at Starbucks and Walgreens.

The subject adjusted his posture and had difficulty remaining still while looking from left to right. Based upon the listed circumstances (prior) and that I was alone, I chose to speak to the subject in a manner using my best efforts to use verbiage that would not trigger an assault or any attempt to resist or escape into the surrounding populated businesses or roadways. Again, my concern was to safely arrest the subject and avoid endangering the public.

I advised the subject that he was under arrest for Disorderly conduct with a reference as to why the arrest was occurring. The male subject was physically and verbally non-compliant. The male pulled a small cardboard box that appeared to be a makeshift waste receptacle in front of where he had squatted down. The male removed a Steele Reserve Alcoholic beverage can from the box, ripped a plastic bag from around the can and drank from the container. The male pointed with his right arm extended to the west as I explained he was under arrest and that I would need him to put his hands behind his back. I perceived the subject pointing as a request for me to leave. This was another indicator to me that he was not compliant after having been provided notice he was under arrest. The male pointed a second time while drinking from the container.

I requested the male to put his hands behind his back and that I was going to handcuff him. The male refused, and he shifted his body weight in response and began to stand up while using the wall for support. At some point during this contact the male subject yelled that I needed to take my hands off of him. Based upon the male attempting to stand up and to keep him at a reasonable tactical disadvantage I quickly closed the distance to him and extended my arms in an attempt to secure one of his forearms

for upper body control or to apply downward pressure onto his shoulders. My belief was at that time if I rotated him to the right and to a face down position on the ground I could handcuff him or detain him long enough for my assisting Officer(s) to arrive and help me; additionally, this position would prevent him from assaulting me, fleeing into the neighboring businesses or the surrounding area.

The male immediately struck me in the chest just below the neck and knocked my radio microphone from my lapel. This strike was clearly an intentional act and not accidental. At the time I was struck by the subject he should have been clearly aware I was an Auburn Police Officer and he had been informed that I was placing him under arrest. I was in a location and exercising my lawful right and/or duties and there was no basis for resistance or self-defense on his part. At this point in the contact based upon the subject assaulting me I believed that Probable Cause to arrest him for Assault 3rd Degree was present.

His strikes landed with enough force on my protective vest that it stopped my forward momentum and re-directed my arms and hands inward and upwards. The male quickly stood up and into my hands; my hands landed on both sides of his shoulders and bottom of his neck. The male continued to resist verbally and physically.

I recall being aware that an occupant of the smaller black SUV exited the vehicle. I recall hearing him call out something regarding the male and words to the effect that the male subject should stop resisting and the male subject replying to the occupant disagreement with the occupant's requests. I initially had the impression from the actions of the occupant of the SUV that he intended to provide me with assistance. Based upon the occupant's initial statements I believed he was unassociated with the subject and was not attempting to enter the struggle to assist him. The aforementioned occupant remained out of view, it is my recollection at this time he was somewhere behind me.

At this time it is my recollection that the male grabbed onto both of my forearms and attempted to push me backward. I attempted to secure his right arm, extend it and lock his shoulder and elbow straight in order to use it as a lever. I moved my right leg behind his right leg (as he stood with his back against the concrete wall) and attempted to perform a leg sweep and rotate him to the ground using my right hip after I disrupted his balance by pulling his extended right arm (a hip throw).

It is my recollection I was partially turned to the left while still primarily facing the subject in preparation for the tactic. I initiated the hip throw, began to rotate my torso to the left, and due to the male's back pinned against the wall I could not pull his body over my hip. I recall at approximately this point I felt a "pop" on the right side of my rib cage due to the amount of force I used to rotate the male (to defeat his position of using the wall), followed by an intense burning and stinging sensation that ran from my ribs to my right foot. The pain was at a level of intensity that I recall that I had to internally process vomiting, which most likely would result in me having to break contact. I had to make a conscious decision to refrain from vomiting. The male broke free of my grip and continued to use the wall as leverage. It is my recollection at this point that the male pulled his right forearm inward towards his torso, he turned to his left, and used his right elbow and struck me on the right side of my head. The male reached beyond my upper torso toward the right side of my back and I subsequently felt my duty belt being pulled violently upward. In my training and experience this is a sensation that occurs when an individual is attempting to take my firearm. I attempted to push the male away but due to the tight proximity of the wall and ice machine I was unable to do so. The male growled and grunted while his head/face was not visible. I heard the distinct sound of my firearm moving within my plastic holster.

I in a quick reaction I reached backward to my holster and felt the subject's hands on the pistol grip of my firearm, and the weapon was clear of the retention hood and approximately two inches from being

cleared from the holster and in the possession of the subject. It is my belief that the third level of retention (the firearm must be pulled directly upward and not at angle or it stops within the holster), prevented the subject from fully removing the weapon and using it against me.

It is my recollection at this point in the fight I used my right hand and pushed downward on the subject's hands and forced his hands off the weapon and my pistol back downward and into the holster. Due to wearing gloves I could not determine what hand the subject possessed my firearm with. I successfully regained control of my pistol from the subject, but the required force it took to secure the pistol injured my right thumb and right wrist (it felt like a possible sprain). In line with my training, based upon the subject attempting to secure my pistol, I attempted to push him away from me to create space between us. The subject held onto my uniform and pulled himself into my upper torso which caused us to rotate to his right my left as we struggled. While the subject and I were rotating the subject attempted to remove my pistol a second time. It became apparent to me at that moment both due by my observations and due to hearing someone in close proximity state to me, "he tried to grab your gun" that this was indeed occurring. I recall thinking at that time that I was in a potential life-threatening struggle or fight. A person, I believe to be male, was located somewhere behind me and continued to make additional statements, but it was my impression that the person was not physically attempting to stop the subject's hands or physically assist me.

Based upon the numerous attempts to possess my pistol, that I was alone, I was now injured, that the subject was not attempting to escape but was committed to remaining at the location while assaulting me, and that if he was successful at inflicting serious bodily harm or death to me he would then possess a firearm in a populated mini-mall shopping complex and multiple citizens and myself were at risk, I used all the force I could muster and struck the subject on the face near the lower jaw with a closed right fist. My intent was to stop the threat with this force. I was not successful using this level of force.

I struck the male on the face with approximately three upper cut style punches with no effect. The subject maintained control of my jumpsuit with his right hand and in between punches his head would lower and he began accessing and removing the contents of my jumpsuit pockets. The subject pulled my Coban recorder free of my uniform and discarded it. The subject then changed hands and secured my jumpsuit with his left hand and removed my utility knife from my uniform with his right hand. My utility knife is a folding knife with a razor/ serrated blade that is approximately 4 inches in length. I observed the silver blade of the knife become visible. It occurred to me in that instant that the subject had not only removed my knife but had apparently chosen to open it. In that instant I closed my left eye and I prepared myself to be stabbed in the face or neck. I recall instinctively tensing, lowering my jaw and retracting my face in downward motion, where I actually lost visual contact with his right hand. I should indicate that this instinctive action is not something that I feel can be controlled by training. I truly felt at that instant I was about to receive a potentially fatal wound to my neck, brain, or a disabling injury to eyes at that moment.

The subject's back was oriented toward a large ice cooler outside of the business. I used my right hand to remove my firearm from the holster while attempting to use my left forearm to push and block the subject's right arm. I believe the subject was able to observe my pistol as at that moment he released his left hand from my upper jumpsuit region. The subject reached over my left arm with his left hand and attempted to grab the pistol. I rotated the pistol to the right (horizontal hold), and used my left forearm to block the gun from the subject and fired one round into his torso. At the moment I fired I believed that at this point in the struggle based upon all the facts listed above I had no other reasonable alternative regarding the use of force and that the use of deadly force was appropriate to avoid being killed or seriously injured. It is my recollection that at that time, based upon on my left forearm pushing

downward on the pistol slide I felt the gun malfunction. I pushed the subject backward after the shot and against the ice cooler, but due to the baggy t-shirt he was wearing I was unable to determine where the subject was shot or if my round was effective.

The subject fell against the cooler and then rotated to the ground in a kneeling position. I was still oriented to the right (trying to keep the firearm away from the subject); I performed a corrective action and cleared the malfunction, I pulled the slide to the rear to eject any spent round, and to manually cycle a round from the magazine. At the same time, I engaged in scanning (slightly turning my head and additionally using peripherals) behind me to ensure the aforementioned male occupant was not about to run past me and into potential danger.

It is my recollection that upon correcting the malfunction and assessing my peripherals, which included the male occupant, it was my impression that the subject had not been stopped and remained a threat. The male subject was positioned in a squatting fashion with his hands before his knees. I could not discern if my first shot had actually hit him. He appeared to be in a position where he was ready to spring forward and re-engage me in the same fashion he had been fighting with me. My last observation was that he was armed with my knife. My state of mind had not changed as I still believed that at this point in the struggle, based upon all the facts listed above, the subject still posed a threat to myself, and others, and that I had no other reasonable alternative regarding the use of deadly force. It was my assessment that I had to stop the threat and that the use of deadly force was appropriate to avoid being killed or seriously injured.

I fired a second round striking the subject in the head and it appeared this action stopped him from being a continuing threat. I recall seeing the aforementioned male occupant close by and observing him lose composure due to the severity of the incident, and I asked him if he was okay. The occupant stated, "I'm fine. Are you okay?" I requested all of those present to remain at the scene for statement-based purposes.

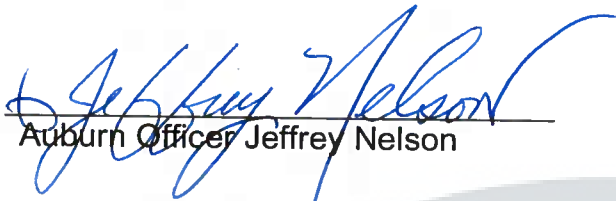
I secured my microphone and advised dispatch via radio what occurred, and I immediately requested Valley Regional Fire Fighters and Paramedics respond to the scene.

Patrons from the Barbershop emerged; they stated when asked that no one was injured inside the business.

While requesting support the level of pain I was experiencing was nearly unbearable; I needed to lay down, but I feared that if responding Officers observed me laying down it would generate an unsafe environment for the now gathering crowd of bystanders and shoppers. I kneeled down and remained until Officer Wickman arrived; he was subsequently replaced by Sergeant S. Feero. I advised SGT Feero what occurred and that no one remained outstanding.

I was escorted from the scene and transported to the Auburn Police Department. My duty belt was removed and I was photographed; VRFA personnel arrived at the station and evaluated me. I was later transported to the hospital for further treatment. I was later photographed by Port of Seattle Police Detectives in the Emergency Room.

I was later discharged from the hospital and placed on Administrative Leave per Assistant Chief M. Callier.


Auburn Officer Jeffrey Nelson

Date: July 2, 2019

