

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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JOHN BAUER, an individual
and as Successor in Interest
of Jacob Bauer, deceased;
ROSE BAUER, an individual
and as Successor in Interest
of Jacob Bauer, deceased;

Plaintiffs,

vs.

Case No.

3:19-cv-04593-LB

CITY OF PLEASANTON; BRADLEE
MIDDLETON; JONATHAN CHIN;
RICHARD TROVAO; STEVEN
BENNETT; ALEX KOUMISS; JASON
KNIGHT; MARTY BILLDT; DAVID
SPILLER; and DOES 1 to 50,
inclusive;

Defendants.

-----/

CONTAINS CONFIDENTIAL MATERIAL WHERE NOTED

VIDEO-RECORDED DEPOSITION OF BRADLEE MIDDLETON
WEDNESDAY, SEPTEMBER 2, 2020

Reported by:

Anrae Wimberley, CSR No. 7778

Job No. 4227606

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inclusive;

Defendants.

_____/

CONTAINS CONFIDENTIAL MATERIAL WHERE NOTED

Transcript of video-recorded deposition
of BRADLEE MIDDLETON, taken at Gwilliam, Ivary,
Chiosso, Cavalli & Brewer, 1999 Harrison Street,
Suite 1600, Oakland, California 94612, beginning at
10:10 a.m. and ending at 1:12 p.m. on Wednesday,
September 2nd, 2020, before Anrae Wimberley,
Certified Shorthand Reporter No. 7778.

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1 APPEARANCES:

2 For Plaintiffs John and Rose Bauer:

3 GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

4 BY: J. GARY GWILLIAM, ESQ.

5 JAYME L. WALKER, ESQ.

6 1999 Harrison Street, Suite 1600

7 Oakland, California 94612

8 (510) 832-5411

9 ggwilliam@giccb.com

10 jwalker@giccb.com

11
12 For Defendants:

13 McNAMARA LAW FIRM

14 BY: NOAH G. BLECHMAN, ESQ.

15 3480 Buskirk Avenue, Suite 250

16 Pleasant Hill, California 94523

17 (925) 939-5330

18 noah.blechman@mcnamaralaw.com

19
20 Also present:

21 JENNIFER McKAY, VIDEOGRAPHER

22 VERITEXT LEGAL SOLUTIONS

23
24 BRITTANY SMITH, LAW CLERK

25 GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

1 Also present (cont'd):

2

3

THE FOLLOWING APPEARED VIA ZOOM

4

VIDEOCONFERENCE:

5

SERGEANT ERIC (MARTY) BILLDT, DEFENDANT

6

SERGEANT JASON KNIGHT, DEFENDANT

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OFFICER JONATHAN CHIN, DEFENDANT

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I N D E X

EXAMINATION BY:	PAGE
MS. WALKER	8

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E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 7	Pleasanton Police Department Policy Manual - Crisis Intervention Incidents; 6 pages	39
Exhibit 8	Call for Service Detail Report; Bates PPD002468 thru 486	48
Exhibit 9	[CONFIDENTIAL] Summary of Statement of Officer Middleton; Bates PPD001172 thru 174	77
Exhibit 10	LD 15: Chapter 3 - Detentions; 5 pages	84

E X H I B I T S (Cont'd)

EXHIBIT	DESCRIPTION	PAGE
Exhibit 11	PowerPoint Slides from Axon Academy TASER Training; 6 pages	100
Exhibit 12	Pleasanton Police Department Policy Manual - Use of Force; 25 pages	127
Exhibit 13	[CONFIDENTIAL] Employee Performance Evaluation of Officer Middleton, 1/13/18 to 1/11/19; 6 pages	139

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QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None)

TESTIMONY REQUESTED TO BE MARKED CONFIDENTIAL:

From page 19, line 1 through to page 28, line 16

From page 135, line 4 through to page 141, line 7

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1 WEDNESDAY, SEPTEMBER 2, 2020;

2 OAKLAND, CALIFORNIA;

3 10:10 A.M.

4 - - -

5 THE VIDEOGRAPHER: Good morning. We are going 10:10:56

6 on the record at 10:11 on September 2nd, 2020. This

7 is Media Unit 1 of the video-recorded deposition of

8 Bradlee Middleton in the matter of Bauer, et al.

9 versus Pleasanton, et al. filed in the United States

10 District Court, Northern District of 10:11:22

11 San Francisco -- United States District Court,

12 Northern District of California, San Francisco

13 Division. Case No. is 3:19-cv-04593.

14 This deposition is being held at Gwilliam

15 Ivory in Oakland, California located at 1999 10:11:40

16 Harrison Street, Suite 1600. My name is Jennifer

17 McKay from the firm Veritext, and I am the

18 videographer. Your court reporter today is Anrae

19 Wimberley, also from Veritext.

20 Counsel, please identify yourselves and 10:11:59

21 state whom you represent.

22 MS. WALKER: Jayme Walker for the plaintiff,

23 and I'm here with my partner, Gary Gwilliam, and our

24 associate, Brittany Smith.

25 MR. BLECHMAN: Noah Blechman on behalf of the 10:12:07

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1 defendants, and I believe via Zoom are some of the 10:12:10
2 other defendants that are attending: Officer Chin,
3 Sergeant Knight, and Sergeant Billdt.

4 THE VIDEOGRAPHER: Will the reporter please
5 swear in the witness. 10:12:21

6 BRADLEE MIDDLETON,
7 sworn as a witness by the Certified
8 Shorthand Reporter, testified as follows:

9 EXAMINATION

10 BY MS. WALKER: 10:12:39

11 Q. Good morning, Officer Middleton.

12 A. Good morning.

13 Q. I understand this is your first
14 deposition?

15 A. Yes. 10:12:44

16 Q. Okay. So we'll go over some of the ground
17 rules to remind you. First thing I want to tell you
18 is, speak out loud and in words so the court
19 reporter can hear you.

20 A. Okay. 10:12:53

21 Q. You're a little soft spoken and I speak a
22 little fast, so I'm sure she will admonish us both.

23 A. All right.

24 Q. But the first and most important rule in a
25 deposition is just to tell the truth. Okay? The 10:13:04

1 Q. So you knew before you ever responded to 10:36:32
2 Jacob Bauer or had contact with him that this is a
3 possibility that someone was seriously mentally ill?

4 A. No.

5 MR. BLECHMAN: Hold on. 10:36:42

6 Objection, calls for speculation, lacks
7 foundation, argumentative as to "seriously mentally
8 ill."

9 Go ahead.

10 BY MS. WALKER: 10:36:50

11 Q. Your answer was no. So my question -- on
12 what basis can you answer no, that you knew --

13 A. 'Cause I didn't know.

14 Q. Well, my question was: Before you ever
15 contacted Jacob Bauer, you knew it was a possibility 10:36:59
16 that you were dealing with someone who was mentally
17 ill?

18 A. Yes.

19 Q. Yes.

20 Okay. At that point, Officer Chin was 10:37:08
21 with you; right?

22 A. Correct.

23 Q. And you go to contact Jacob Bauer. Did
24 you have any discussions with Officer Chin about how
25 you were going to approach this individual or deal 10:37:20

1 with somebody who was possibly mentally ill? 10:37:22

2 A. No.

3 Q. Based on your experience with the John

4 Deming, Jr. case and your subsequent training in

5 crisis intervention techniques, didn't you think it 10:37:35

6 was a good idea to formulate a plan of how you were

7 going to deal with someone who was possibly mentally

8 ill?

9 MR. BLECHMAN: Argumentative as phrased,

10 incomplete hypothetical. 10:37:45

11 But go ahead.

12 THE WITNESS: It's always a possibility that an

13 individual we contact is going to have a mental

14 illness. We didn't know that was this incident.

15 BY MS. WALKER: 10:37:57

16 Q. And so if it's always a possibility that

17 somebody you contact may have a mental illness, do

18 you try to accommodate that in your response to that

19 person?

20 MR. BLECHMAN: Incomplete hypothetical. 10:38:15

21 Go ahead.

22 THE WITNESS: Can you restate the question?

23 BY MS. WALKER:

24 Q. Sure. You said it's always a possibility

25 that someone you contact may have a mental illness. 10:38:21

1 In this case, you were told by the reporting 10:38:23
2 witnesses that this person was possibly crazy;
3 right? Yes?
4 A. Yes.
5 Q. So in this case, it wasn't just anybody 10:38:33
6 you could come in contact with was -- could possibly
7 be mentally ill. In this case you had some facts to
8 alert you prior to the contact that you were
9 possibly dealing with someone in a mental crisis; is
10 that true? 10:38:50
11 A. In somebody's opinion -- it was this
12 gentleman's opinion that he thought this individual
13 could be crazy. I'm not -- I can't say that he knew
14 for certain. He was a store employee. He wasn't a
15 doctor. 10:39:05
16 Q. Well, you had 40 hours of crisis
17 intervention training; right?
18 A. Yes.
19 Q. Okay. So you knew, as a police officer,
20 that your encounter with a mentally ill individual 10:39:09
21 could be dangerous for you; right?
22 A. Correct.
23 Q. You knew it could be dangerous for the
24 person who's mentally ill; right?
25 A. Yes. 10:39:21

1 supervisor prior to making contact with Jacob Bauer? 10:40:39

2 A. No.

3 Q. Who was your supervisor at the time?

4 A. That would have been Sergeant Billdt.

5 Q. Was there any sort of protocol or policy 10:40:50

6 of the Pleasanton Police Department on August 1st,

7 2018 that would have informed your actions in

8 responding to people who are mentally ill?

9 MR. BLECHMAN: Vague and ambiguous, overbroad,

10 incomplete hypothetical. 10:41:03

11 Go ahead.

12 THE WITNESS: Sorry. Once more.

13 BY MS. WALKER:

14 Q. Was there any sort of protocol or policy

15 of the Pleasanton Police Department that would have 10:41:10

16 informed -- helped to inform your actions on

17 August 1st, 2018 when you responded to Raley's to a

18 person who was possibly mentally ill?

19 MR. BLECHMAN: Same objections and

20 argumentative as well. 10:41:23

21 Go ahead.

22 THE WITNESS: No.

23 BY MS. WALKER:

24 Q. Is there currently a policy that informs

25 your actions when you're dealing with mentally ill 10:41:31

1 people? 10:41:34

2 A. A policy?

3 Q. A policy or a protocol.

4 A. No.

5 Q. Were you aware on August 1st, 2018 of any 10:41:40

6 mental health organizations that you could have

7 reached out to to assist you with someone who is

8 mentally ill?

9 A. There are county services and stuff that

10 we sometimes reach out to if given a situation that 10:41:54

11 would meet that criteria, yeah.

12 Q. Okay. What are some of the county

13 organizations that you reach out to if you're

14 responding to a person you believe is in a mental

15 health crisis? 10:42:08

16 A. I would need to refer to my notes on that.

17 I don't -- I don't know off the top of my head.

18 Q. Okay. Where do you keep your notes on

19 that?

20 A. We have pamphlets and stuff with phone 10:42:20

21 numbers for county services in our duty bags.

22 Q. In your duty bag?

23 A. Yeah.

24 Q. Does the Pleasanton Police Department have

25 a CIT unit? 10:42:30

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1 A. Not a specific CIT unit, no. 10:42:33

2 Q. Are there any officers at all that are

3 part of a CIT team that you could contact for

4 assistance in dealing with somebody who's mentally

5 ill? 10:42:43

6 A. No.

7 Q. There weren't at the time in August of

8 2018 and there aren't now; is that true?

9 A. Specific to CIT, no.

10 MS. WALKER: Let's mark this as Exhibit 7. 10:43:16

11 (Plaintiffs' Exhibit 7 was marked.)

12 BY MS. WALKER:

13 Q. You're certainly welcome to review the

14 whole thing, Officer Middleton, but I'm going to

15 direct you to sections and give you an opportunity 10:43:43

16 to read them before you answer questions. Okay?

17 A. Sure.

18 Q. Are you familiar with this policy 419,

19 Crisis Intervention Incidents?

20 A. Not specifically, no. 10:43:56

21 Q. This is a policy that I just pulled off of

22 the Pleasanton Police Department's website. It's

23 dated at the bottom November 18, 2019. It says

24 "Copyright Lexipol." Do you know what Lexipol is?

25 A. The company we use for policy management, 10:44:18

1 yes.

10:44:21

2 Q. Okay. So was it ever communicated to you
3 by the Pleasanton Police Department that they had
4 adopted this crisis intervention incident policy as
5 of November 18th, 2019?

10:44:29

6 A. Not that I specifically recall.

7 Q. So it defines in the definitions of
8 "person in crisis" as "A person whose level of
9 distress or mental health symptoms have exceeded
10 that person's internal ability to manage his or her
11 behavior or emotions." It talks about how a crisis
12 can be precipitated, and part of it says: "Any
13 other circumstance or event that causes the person
14 to engage in erratic, disruptive or dangerous
15 behavior that may be accompanied by impaired
16 judgment."

10:44:50

10:45:08

17 Do you see that?

18 A. Yes.

19 Q. Do you believe Jacob Bauer was a person in
20 crisis, based on this definition?

10:45:16

21 MR. BLECHMAN: Calls for speculation, calls
22 for -- incomplete hypothetical, lacks foundation.

23 Go ahead.

24 It's also vague as to time.

25 But go ahead.

10:45:30

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1 radio that he was negative for weapons; true? 10:53:21

2 MR. BLECHMAN: Hold on.

3 Calls for speculation, lacks foundation.

4 Go ahead.

5 MS. WALKER: Let's mark this as Exhibit 8. 10:53:33

6 (Discussion off the record.)

7 BY MS. WALKER:

8 Q. At the time you contacted Jacob Bauer and

9 you spoke with him and he gave you his

10 identification, at that time you knew he was 10:53:55

11 negative for weapons; isn't that true?

12 MR. BLECHMAN: Same objections.

13 Go ahead.

14 THE WITNESS: No.

15 (Plaintiffs' Exhibit 8 was marked.) 01:41:32

16 BY MS. WALKER:

17 Q. I put in front of you what's Exhibit 8.

18 It says Call For Service Detail Report. Do you know

19 what this is?

20 A. Yes. 10:54:17

21 Q. What is it?

22 A. These are the dispatch notes that are

23 entered into our computer aided dispatch system.

24 Q. Okay. And if you turn to page -- see,

25 there's little Bates numbers on the bottom? 10:54:28

1 testimony. 10:58:31

2 Go ahead.

3 THE WITNESS: No.

4 BY MS. WALKER:

5 Q. If you had known at that stage, if it had 10:58:37

6 become clear to you, based on your training or

7 experience or whatever, that Jacob Bauer had a

8 schizophrenia-like mental illness, would you, at

9 that point, have put your hands on him?

10 MR. BLECHMAN: It's an incomplete hypothetical. 10:58:49

11 It calls for speculation.

12 You can respond.

13 THE WITNESS: Sorry. One more time.

14 BY MS. WALKER:

15 Q. At that point, if you had known that Jacob 10:58:58

16 Bauer had a thought disorder or a serious mental

17 illness or a schizophrenia-like mental illness,

18 based on your training or experience, would you have

19 put your hands on him?

20 A. Yes. 10:59:11

21 Q. So whether he was mentally ill or not, you

22 would have approached the situation in the same

23 manner?

24 A. Yes.

25 Q. Let's turn back to Exhibit 7. Section 10:59:41

1 If you turn back to the beginning of that 11:04:13
2 section 419.5, it says: "It is important to
3 recognize that individuals under the influence of
4 alcohol, drugs or both may exhibit symptoms that are
5 similar to those of a person in a mental health 11:04:26
6 crisis."

7 So whether he was under the influence or
8 experiencing a mental health crisis, you still
9 should have assessed -- tried to assess that; true?

10 MR. BLECHMAN: Argumentative as phrased, 11:04:39
11 incomplete hypothetical.

12 You can respond.

13 THE WITNESS: One more time.

14 BY MS. WALKER:

15 Q. Whether he was under the influence or 11:04:50
16 experiencing a mental health crisis, according to
17 this policy, you should have still tried to assess
18 the situation to determine whether you were dealing
19 with an individual in a mental health crisis?

20 A. Which we did. 11:05:05

21 MR. BLECHMAN: Belated same objections to that
22 question.

23 BY MS. WALKER:

24 Q. What did you do to determine whether you
25 were dealing with an individual in a mental health 11:05:11

1 crisis? 11:05:13

2 MR. BLECHMAN: Argumentative as phrased.

3 Go ahead.

4 THE WITNESS: Again, tried to ask some

5 questions, have a conversation. 11:05:21

6 BY MS. WALKER:

7 Q. Okay. And he responded in a strange

8 manner; true?

9 A. Correct.

10 Q. So didn't that indicate to you that you 11:05:29

11 probably were dealing with someone in a mental

12 health crisis?

13 MR. BLECHMAN: Calls for speculation, lacks

14 foundation, argumentative, incomplete hypothetical.

15 You can respond. 11:05:39

16 THE WITNESS: Again, we didn't know what we

17 were dealing with at the time.

18 BY MS. WALKER:

19 Q. Have you ever been trained that you should

20 consider taking no action or just monitoring the 11:05:47

21 situation, rather than putting your hands on

22 someone?

23 A. While investigating a crime?

24 Sorry.

25 MR. BLECHMAN: It's incomplete, broad 11:05:56

1 hypothetical, overbroad. 11:05:58

2 Go ahead.

3 THE WITNESS: While investigating a crime?

4 BY MS. WALKER:

5 Q. At any time. When you're dealing with a 11:06:04

6 person with a mental health crisis.

7 MR. BLECHMAN: Incomplete hypothetical.

8 Go ahead.

9 THE WITNESS: If it was strictly a mental

10 health crisis that we were aware of, sure. 11:06:14

11 BY MS. WALKER:

12 Q. Well, you regularly come into contact with

13 the mentally ill when you're patrolling the streets;

14 true?

15 A. Yes. 11:06:24

16 Q. And often, people who were committing sort

17 of minor crimes, talking to themselves, knocking a

18 bottle over in a grocery store, often those kind of

19 people are mentally ill; true?

20 A. True. 11:06:38

21 Q. And for that reason, it's important for

22 you to employ your crisis intervention techniques,

23 not only for your safety, but for their safety as

24 well; true?

25 A. True. 11:06:48

1 Q. So have you ever been trained that you 11:06:49
2 should try to consider taking no action or passively
3 monitoring a situation, especially if it involves a
4 really minor crime and a person in a mental health
5 crisis? 11:07:02
6 MR. BLECHMAN: It's an incomplete hypothetical,
7 it's overbroad, calls for speculation.
8 Go ahead.
9 THE WITNESS: That wasn't this case.
10 BY MS. WALKER: 11:07:16
11 Q. That's not my question. Okay? So listen
12 closely. Have you ever been trained that you should
13 try to consider taking no action or passively
14 monitoring a situation, especially when it involves
15 a minor crime committed by a person in a mental 11:07:33
16 health crisis?
17 MR. BLECHMAN: Same objections.
18 Go ahead.
19 THE WITNESS: One more time.
20 BY MS. WALKER: 11:07:42
21 Q. All right. Based on your training,
22 whether it's from POST, the Pleasanton Police
23 Department, your training in crisis intervention
24 techniques, have you ever been trained that you
25 should passively monitor or consider taking no 11:07:55

1 action when you're dealing with a person with a 11:07:59
2 mental health crisis, even if they considered --
3 even if they've committed some minor crime?
4 MR. BLECHMAN: Same objections. Add to that
5 vague and ambiguous as to minor crime or crimes. 11:08:09
6 Go ahead.
7 THE WITNESS: Thank you.
8 Every situation is different.
9 BY MS. WALKER:
10 Q. I understand that. But I'm not asking you 11:08:16
11 to apply it to any situation. I'm asking have you
12 ever been trained, ever in your career, whether you
13 should passively monitor or consider doing nothing
14 when you're dealing with a person with a mental
15 health crisis, even if they've committed a minor 11:08:33
16 crime? Have you ever been told that?
17 MR. BLECHMAN: Same objections as previously
18 stated to the last two similar questions.
19 Go ahead.
20 BY MS. WALKER: 11:08:42
21 Q. Yes or no.
22 A. Yes.
23 Q. Okay. When the reporting party -- when
24 you mentioned something about a vandalism, okay, the
25 reporting party said to you, "It's not much"; right? 11:08:56

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1 MR. BLECHMAN: Hold on. 11:10:05
2 Vague as to time in terms of calm and
3 cooperative.
4 You can respond.
5 BY MS. WALKER: 11:10:10
6 Q. When you initially contacted him.
7 A. Yes.
8 Q. He didn't try to run; right?
9 A. No.
10 Q. There was nothing about the situation when 11:10:21
11 you initially contacted him that was an imminent
12 threat to anyone; true?
13 A. True.
14 Q. Turn to page 355 of Exhibit 7. This goes
15 on, under the section of Deescalation, what an 11:10:48
16 officer should do in a situation where they're
17 dealing with an individual possibly experiencing a
18 mental health crisis.
19 It says: "Responding officers generally
20 should not: Use stances or tactics that can be 11:11:01
21 interpreted as aggressive."
22 But that's not what you did; right?
23 A. That is one --
24 MR. BLECHMAN: Hold on a second.
25 Vague and ambiguous as to "that." It's 11:11:14

1 I had at the time, I felt it was necessary to detain 11:38:55
2 Mr. Bauer in handcuffs.
3 BY MS. WALKER:
4 Q. What information did you have at the time
5 that made you feel it was appropriate to detain 11:39:06
6 Mr. Bauer in handcuffs?
7 A. The fact that he was a suspect in a
8 crime --
9 Q. That -- committed outside of your
10 presence; right? 11:39:15
11 MR. BLECHMAN: Can you just let him answer the
12 questions before you ask a follow-up? I think
13 you're interrupting him a little bit.
14 Go ahead and finish.
15 THE WITNESS: The fact that he was a suspect in 11:39:28
16 a crime who had been seen acting erratically,
17 aggressive. Obviously, he scared some of the
18 employees there. The fact that he's bigger than a
19 lot of individuals who we contact. He was well over
20 200 pounds and bigger than myself or Officer Chin. 11:39:48
21 The fact that he had not been searched.
22 BY MS. WALKER:
23 Q. Anything else?
24 A. No.
25 Q. Okay. You said in preparation for your 11:40:05

1 deposition that you reviewed the administrative 11:40:18
2 investigation?
3 A. Yes.
4 Q. And you reviewed the summary of your
5 statement? 11:40:26
6 A. Yes.
7 Q. Anything in it that you thought was
8 inaccurate?
9 A. Not that I recall.
10 MS. WALKER: 9. 11:40:42
11 (Plaintiffs' Exhibit 9 was marked.)
12 MR. BLECHMAN: Jayme, this is confidential
13 record. How do you want to handle that?
14 MS. WALKER: I can make it a confidential
15 exhibit. I'm not going to ask him very many 11:41:07
16 questions about it.
17 BY MS. WALKER:
18 Q. Exhibit 9 is a portion of the
19 administrative investigation which is your
20 statement, a summary of your statement in the 11:41:22
21 investigation; right?
22 A. Right.
23 Q. And you reviewed that in preparation for
24 this deposition?
25 A. Yes. 11:41:31

1 BY MS. WALKER: 12:04:10

2 Q. You don't recall?

3 A. No.

4 Q. Are you aware that somebody who's

5 experiencing a mental health crisis is at a higher 12:04:25

6 risk from sudden death from repeated Taser use than,

7 say, the average person?

8 MR. BLECHMAN: Lacks foundation, calls for

9 expert testimony.

10 Go ahead. 12:04:39

11 THE WITNESS: I'm not, no.

12 BY MS. WALKER:

13 Q. Why were you using the Taser on Jacob

14 Bauer?

15 A. To overcome his resistance in an attempt 12:04:45

16 to detain him in handcuffs.

17 Q. Were you using it as a pain compliance

18 measure?

19 A. At one point, yes.

20 MS. WALKER: Let's mark this as Exhibit 11. 12:04:57

21 (Plaintiffs' Exhibit 11 was marked.)

22 BY MS. WALKER:

23 Q. So this is -- looks like probably -- I'm

24 not sure if this is the most recent version, but

25 this is the -- excerpts from a PowerPoint from the 12:05:29

1 Axon Academy TASER Training. 12:05:32

2 Do you know if you completed this

3 training?

4 MR. BLECHMAN: Vague and ambiguous as to "this

5 training." 12:05:42

6 MS. WALKER: The Axon Academy TASER Training,

7 Version 21, effective January 14th, 2019.

8 THE WITNESS: I don't know if I've completed

9 this specific training.

10 BY MS. WALKER: 12:05:56

11 Q. When's the last time you did the Axon

12 Academy TASER Training?

13 A. I would have to refer to my training

14 record.

15 Q. Give me your best estimate. 12:06:04

16 A. It would have been at the previous

17 advanced officer school which, at that point, 2017.

18 Q. When's the last time you had Taser

19 training? Do you do it every year?

20 A. Yes. During our annual qualifications. 12:06:25

21 Q. Okay. So do you think -- did you see a

22 PowerPoint presentation given by anybody from the

23 Axon Academy in the last year?

24 A. I don't recall.

25 Q. Does it change -- you've taken it every 12:06:47

1 Officer Middleton, before we went off the record is 12:41:33
2 I was wondering if you'd been trained to avoid
3 circumstances where more than one officer was using
4 a Taser on a person at the same time. Have you been
5 trained about that? 12:41:44

6 A. I don't recall specific training on.

7 Q. Okay. In Pleasanton Police Department's
8 use of force policies on the Taser, have you had any
9 recent training on Pleasanton's own policies?

10 A. I don't recall the last time I read the 12:42:05
11 Taser policy. We get periodic updates. I'm not
12 sure when the last one was.

13 Q. In the Taser policy for Pleasanton Police
14 Department 309.5.2, it says at the very bottom:
15 "Officers should generally not intentionally apply 12:42:24
16 more than one CED at a time against a single
17 subject."

18 Does that refresh your recollection that's
19 part of Pleasanton's policies?

20 A. Yes. 12:42:34

21 Q. And you deployed your Taser against Jacob
22 Bauer, and Officer Trovao, he also deployed his
23 Taser against Jacob Bauer. Do you know how soon
24 after Officer Trovao arrived on the scene did he
25 deploy his Taser? 12:42:51

1 Jacob Bauer a citation and releasing him? 12:46:57

2 MR. BLECHMAN: Incomplete hypothetical and

3 argumentative.

4 Go ahead.

5 THE WITNESS: We didn't even know what we had 12:47:05

6 at the time.

7 BY MS. WALKER:

8 Q. So you had no probable cause to arrest

9 him, you'd agree; right?

10 MR. BLECHMAN: Vague as to time. 12:47:13

11 Go ahead.

12 THE WITNESS: At the time we contacted him, no,

13 not for an arrest.

14 BY MS. WALKER:

15 Q. At the time you handcuffed him, you didn't 12:47:20

16 have any probable cause for even a misdemeanor

17 arrest; true?

18 A. We had reason to detain him.

19 Q. But that's not the question. The question

20 is: At the time you handcuffed him, you didn't have 12:47:33

21 probable cause for a misdemeanor arrest?

22 A. Correct.

23 Q. And you never considered just issuing a

24 citation and releasing him; is that true?

25 MR. BLECHMAN: Argumentative as phrased, it's 12:47:44

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1 MS. WALKER: Let's mark this as Exhibit 12. 12:51:16

2 (Plaintiffs' Exhibit 12 was marked.)

3 BY MS. WALKER:

4 Q. This is long, I don't expect you to read

5 the whole thing, we're not going to go through the 12:51:33

6 whole thing, but I want you to turn to page -- the

7 Bates number is 445. The very last paragraph, it's

8 policy 300.6, Medical Consideration.

9 A. Yes.

10 Q. The very last paragraph says: "Persons 12:51:56

11 who exhibit extreme agitation, violent irrational

12 behavior accompanied by profuse sweating,

13 extraordinary strength beyond their physical

14 characteristics, impervious to pain (sometimes

15 called 'excited delirium') or who require a 12:52:12

16 protracted physical encounter with multiple officers

17 to be brought under control, may be at an increased

18 risk of sudden death."

19 Do you see that?

20 A. Yes. 12:52:23

21 Q. Does that refresh your recollection on

22 policies of Pleasanton that mention excited

23 delirium?

24 A. Yes.

25 Q. Does that paragraph sort of sum up what 12:52:32

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript () was (X) was not requested.

16 I further certify that I am neither
17 financially interested in the action nor a relative
18 or employee of any attorney of any party to this
19 action.

20 IN WITNESS WHEREOF, I have this date
21 subscribed my name.

22 Dated: September 17, 2020

23 
24

25 ANRAE WIMBERLEY, CSR No. 7778