

EXHIBIT Q

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

John Bauer, an individual and) NO 3:19-cv-04593-LB
as Successor in Interest of)
Jacob Bauer, deceased; ROSE)
BAUER, an individual and as)
Successor in Interest of Jacob)
Bauer, deceased,)
Plaintiffs)
v.)
CITY OF PLEASANTON, et al.,)
Defendants.)
_____)

REMOTE VIDEOTAPED DEPOSITION OF DAVID SPILLER
Livermore, California
Friday, January 29, 2021

Reported by:
Heidi Hummel-Grant
CSR No. 12556
Pages 1 - 89

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

John Bauer, an individual and) NO 3:19-cv-04593-LB
as Successor in Interest of)
Jacob Bauer, deceased; ROSE)
BAUER, an individual and as)
Successor in Interest of Jacob)
Bauer, deceased,)
Plaintiffs)
v.)
CITY OF PLEASANTON, et al.,)
Defendants.)
_____)

Remote videotaped deposition of
DAVID SPILLER, taken on behalf of Plaintiff,
at Livermore, California, beginning at 1:07 p.m.
and ending at 3:19 p.m., on Friday, January 29,
2021, before Heidi Hummel-Grant, Certified
Shorthand Reporter No. 12556.

1 APPEARANCES:

2
3 For Plaintiffs:

4 GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

5 BY: JAYME L. WALKER

6 J. GARY GWILLIAM

7 1999 Harrison Street

8 Suite 1600

9 Oakland, California 94612

10 510.832.5411

11 jwalker@giccb.com
12

13 For Defendants:

14 MCNAMARA, NEY, BEATTY, SLATTERY, BORGES &

15 AMBACHER, LLP

16 BY: NOAH BLECHMAN

17 3480 Buskirk Avenue

18 Suite 250

19 Pleasant Hill, California 94523

20 925.939.5330

21 noah.blechman@mcnamaralaw.com
22

23 Also present:

24 TED HOPPE, VIDEOGRAPHER

25 BRITTANY SMITH

INDEX

Witness:

DAVID SPILLER

Examination:

Page

MS. WALKER

6

EXHIBITS

Description

Page

Exhibit 7	Crisis Intervention Incidents (Previously Marked)	32
-----------	--	----

Exhibit 40	Danville San Ramone Article	27
------------	-----------------------------	----

Exhibit 41	Video	73
------------	-------	----

1 Livermore, California

2 Friday, January 29, 2021, 1:07 p.m. - 3:19 p.m.

3

4 THE VIDEOGRAPHER: Good afternoon. We are
5 going on the record. The time now is 1:07 on 01:07
6 January -- I'm sorry, yeah 1:07, on January 29th,
7 2021.

8 This is Media Unit 1 in the video recorded
9 deposition of Chief David Spiller in the matter --
10 in the matter of John Bauer, et al., versus the City 01:07
11 of Pleasanton, et al., filed in the United States
12 District Court, Northern District of California,
13 Case Number 3:19-cv-40493-LB.

14 This video deposition is being hosted
15 remotely, services provided by Veritext Legal 01:07
16 Solutions.

17 My name Ted Hoppe from the firm Veritext.
18 I'm the videographer.

19 Counsel, could please voice identify
20 yourselves for the record? 01:07

21 MS. WALKER: Jayme Walker for the
22 plaintiffs, and I'm here with my partner
23 Gary Gwilliam and our associate Brittany Smith.

24 MR. BLECHMAN: Noah Blechman on behalf of
25 the defendants. 01:08

1 THE VIDEOGRAPHER: Excellent. 01:08
2 Heidi, could please swear the witness in?
3
4 DAVID SPILLER,
5 called as a witness by and on behalf of 01:08
6 Plaintiff, having been first duly sworn by the
7 Certified Shorthand Reporter, was examined and
8 testifies as follows:
9
10 EXAMINATION 01:08
11
12 BY MS. WALKER:
13 Q Good afternoon, Chief Spiller. My name
14 is Jayme Walker. I represent John and Rose Bauer
15 for the death of their son Jacob Bauer. 01:08
16 Could you state your full name for the
17 record, please?
18 A Sure. My name is David Charles Spiller,
19 S-P-I-L-L-E-R.
20 Q Okay. 01:08
21 Have you ever had your deposition taken
22 before, Chief Spiller?
23 A I believe I have years -- it's been a
24 long time, in a previous civil matter. And I think
25 it was a traffic -- a fatal traffic collision. 01:08

1 Q And -- and sometimes you don't know, one 01:28
2 way or the other, whether someone's mentally ill or
3 under the influence; true?

4 A Yes.

5 Q Okay. 01:29

6 Was it your intent as -- in making the
7 crisis intervention techniques a priority for it to
8 apply in situations for your officers on the street
9 where they suspect someone might be under the
10 influence of illegal drugs or they could possibly be 01:29
11 mental ill, was your intent that they would apply
12 the crisis intervention techniques in that
13 situation?

14 MR. BLECHMAN: It's vague and ambiguous.

15 It's also an incomplete hypothetical. 01:29

16 You can respond.

17 THE WITNESS: My objective or my goal was to
18 provide tools to the front-line first responders so
19 they could effectively manage calls for service and
20 effectively deal with somebody who's experiencing 01:29
21 either a mental health crisis or history of mental
22 illness.

23 MS. WALKER: Okay.

24 Q And you would expect -- and -- and you
25 would expect them to use those tools effectively as 01:29

1 a first-line responder even if the person 01:30
2 experiencing a mental health crisis may also have
3 been engaged in the commission of minor crime? A
4 minor nonviolent crime?

5 MR. BLECHMAN: Incomplete hypothetical. 01:30
6 Vague and ambiguous.

7 Go ahead.

8 THE WITNESS: I -- I would hope that they
9 would use the training, tools and experience to
10 manage the call as effectively as possible. That 01:30
11 would include any previous CIT training.

12 MS. WALKER: Okay.

13 Q And -- and that's the case -- that's the
14 case whether the person experiencing the mental
15 health crisis may also be suspected to be under the 01:30
16 influence of illegal drugs, you would -- you would
17 hope they would use the training tools for crisis
18 intervention techniques for dealing with the
19 mentally ill even if they also suspected that the
20 person may be under the influence of -- of illegal 01:30
21 drugs?

22 MR. BLECHMAN: It's overbroad. And I think
23 it's an incomplete hypothetical as phrased.

24 But go ahead.

25 THE WITNESS: Yes, I would hope that they 01:31

1 would recognize that based on their training that 01:31
2 they received.

3 MS. WALKER:

4 Q And -- and when you referred -- I -- I
5 think in your previous answer to you'd hope they'd 01:31
6 use the training, tools and experience to manage the
7 call as effectively as possible, what sort of tools
8 were you -- were referring to?

9 A As I had previously mentioned, a
10 component of the CIT training, as an example, is, 01:31
11 you know, communication, interaction, and that would
12 apply whether it's a person who's in mental health
13 crisis or not in a mental health crisis.
14 Communication, you know, establishing a rapport, you
15 know, developing observations based on their 01:31
16 training and experience of what may be going on not
17 only with the individual but all of the -- the
18 totality of what's involved in the incident that
19 they're involved in.

20 Q And -- and have you heard of a -- of 01:32
21 using sort of time and distance to de-escalate a
22 situation with somebody who might be mentally ill so
23 that you don't force a confrontation where one --
24 maybe there doesn't need to be one?

25 MR. BLECHMAN: It's vague and ambiguous. 01:32

1 investigations, Captain Craig Eicher. 02:37

2 Do you know who it was that reviewed the
3 administrative investigation to determine whether
4 any remedial training would be useful in the
5 John Deming situation following the administrative 02:37
6 investigation?

7 A I don't recall.

8 Q Did you yourself review the
9 administrative investigation and body camera videos
10 and determine whether you believed remedial training 02:37
11 was needed?

12 A I did review the case, the
13 administrative investigation, I did review body cams
14 associated -- I think it was a different generation
15 of body cams, as I recall -- and I -- I don't 02:38
16 remember any specific areas for remedial training.

17 Q Okay.
18 And whether or not policies were violated in
19 that situation, did you have any -- I don't want to
20 say criticism, but maybe advice and counsel for the 02:38
21 way Sergeant Gora, as the officer in charge,
22 responded in that situation?

23 A Could you reframe that question? Did I
24 have any concerns about the supervisory actions?

25 Q Yes. 02:38

1 A No, I did not. 02:38

2 Q A much better way to state it than I

3 did. Thank you.

4 A No, I did not.

5 Q Okay. 02:38

6 As I -- I want to show you a portion of the

7 body camera -- well, maybe I'll -- I'll summarize

8 it, and if you don't recall it, I can certainly show

9 it to you.

10 But as I saw it, Sergeant Gora and other 02:39

11 officers entered the car dealership with a K9, and

12 John Deming, Jr. sat on top of a -- a car and put

13 his hands up and seemed to be -- he wasn't violent

14 toward the officers at that stage, he was sitting on

15 top of a car, he had his hands up, and the situation 02:39

16 at that stage seemed like a perfect opportunity for

17 Sergeant Gora to employ some de-escalation and

18 crisis intervention techniques.

19 Did you have any criticism of the way that

20 it -- the officer response failed to use crisis 02:39

21 intervention or de-escalation techniques at that

22 stage in the John Deming incident?

23 MR. BLECHMAN: It's an incomplete

24 hypothetical as phrased. It's argumentative as

25 phrased. Misstates the evidence in relation to 02:39

1 that incident. 02:39

2 You can respond.

3 THE WITNESS: I did not have any concerns

4 about the supervisory oversight of that incident.

5 MS. WALKER: Okay. 02:40

6 I -- I do want to show you that video, just
7 so we can all be on same the page. So -- especially
8 because there's been an objection. So I'm going to
9 queue it up to that point that I was just
10 referencing, and then I'll play it for you. Share 02:40
11 my screen and play it for you. Okay. So let's see
12 if I can make this work.

13 I guess I have to -- I have to queue it up
14 after I share my screen, seems to be the issue.

15 And, Madame Court Reporter, you're not going 02:40
16 to really be able to hear any of the voices. So I
17 think you don't have to try take down anything
18 that's said.

19 THE REPORTER: Thank you.

20 MS. WALKER: Let's see. It's not giving me 02:41
21 the option to share the video for some reason. Why?
22 All right. Here we go. So I'm going to move it
23 along. Let's see.

24 Can you all see the video right now? Can
25 you see it Chief Spiller? 02:42

1 clip? 02:48

2 MR. BLECHMAN: Argumentative. Misstates the
3 record.

4 Go ahead.

5 THE WITNESS: I did observe the taser 02:48
6 deployment in the video.

7 MS. WALKER:

8 Q And at that time Pleasanton Police
9 Department had a taser policy in which officers
10 should at least consider whether they should deploy 02:48
11 a taser when a person could fall from a height;
12 right?

13 A Yes.

14 Q And it was still determined at that time
15 that there was no violation of that policy by 02:49
16 Sergeant Gora or by Officer Bennett?

17 A Yes.

18 Q And you can't recall as you sit here
19 today whether any remedial training was done
20 following the -- the John Deming, Jr. incident 02:49
21 specifically with regard to crisis intervention
22 incidents?

23 MR. BLECHMAN: I think it's asked and
24 answered.

25 But go ahead. 02:49

1 THE WITNESS: I don't believe so, no. 02:49

2 MS. WALKER:

3 Q You don't believe there were any

4 remedial training?

5 A That's correct. 02:49

6 Q Was anybody disciplined as a result of

7 the John Deming, Jr. situation?

8 A No.

9 MS. WALKER: I -- I do want to mark that

10 video as Exhibit 41. So we'll upload that to the 02:49

11 Exhibit Share.

12 (Exhibit 41 was marked for identification, a

13 copy of which is attached hereto.)

14 MS. WALKER:

15 Q I'm going to move on to the Jacob Bauer

16 situation on August 1st, 2018.

17 And we've already established that you were

18 the chief of police on August 1st, 2018. I

19 understand you had retired by the time the

20 administrative investigation was completed, which 02:50

21 was sometime in early 2020.

22 And is it typical, in your experience,

23 Sergeant Spiller [sic], that an administrative

24 investigation of an officer-involved death or an

25 in-custody death would take well over a year to 02:50

1 it doesn't create issues from an administrative 02:51
2 investigation.

3 The administrative investigation determines
4 whether it was with -- within policy or not, and it
5 could create some substantive problems if the DA was 02:52
6 going to file charges or needed further
7 investigation.

8 MS. WALKER: Okay.

9 Q Did you have any role at all in
10 reviewing the incident of -- of Jacob Bauer's death? 02:52

11 A I had a very limited role in reviewing
12 the incident.

13 Q As chief of police when that death
14 occurred, did you watch any of the body-worn camera?

15 A My role as reviewing the incident and 02:52
16 watching any videos was with counsel in -- in the
17 wake of the critical incident. City attorney,
18 excuse me. It was with the City attorney.

19 Q So you didn't undertake any review of
20 that incident simply as the chief of police to 02:53
21 determine whether you believed there was a need for
22 remedial training or officers being put on
23 administrative leave or anything like that?

24 A That's not my role. I did not -- I
25 assigned the investigation to be reviewed. My role 02:53

1 would be to objectively review the investigation. 02:53
2 And others who read it would make those
3 determinations in terms of training opportunities
4 that either were remedial or for an advanced officer
5 training opportunity. 02:53

6 Q I thought when we talked earlier about
7 administrative reviews -- or the administrative
8 investigations, that you said it would be the
9 command staff and possibly the use of force training
10 team and yourself who would make recommendations for 02:53
11 officer discipline and -- or remedial training.

12 A That's true, yes.

13 Q So I guess I'm confused on what you just
14 testified that it would not be your role.

15 A It would be my role in the 02:54
16 administrate -- forgive me if I misunderstood.

17 It would be my role to review once an
18 administrative investigation was completed. It
19 was --

20 Q I -- 02:54

21 A -- not my job or my role to investigate
22 it myself --

23 Q I --

24 A -- which would have -- which would have
25 created an objectivity issue when the administrative 02:54

1 You can answer that again. 02:55

2 THE WITNESS: I did not make a determination
3 that there was a deficiency or that there was a --
4 a policy violation.

5 MS. WALKER: Okay. 02:55

6 Q And I just want to -- I don't mean to
7 ask again or -- I just want to make sure I'm clear.

8 Is that because you were withholding that
9 judgment for the completion of the administrative
10 investigation, or did you actually make a 02:55
11 determination that no training or discipline was
12 warranted?

13 A Based on the information that I had at
14 the point when I was reviewing the video or any
15 detail with the City attorney I did not have the 02:56
16 opinion that there was any training deficiency or
17 potential policy violations. But I should be clear
18 that I was not conducting the investigation and did
19 not have the entirety of the evidence at my
20 disposal. 02:56

21 Q Have you had any involvement in review
22 of this incident since the time that the
23 administrative investigation was completed?

24 A None.

25 Q Have you had any communications with -- 02:56

1 THE WITNESS: That is true. But my response 03:01
2 was centered on it totally depends on what the
3 officers are confronted with or what is involved in
4 the incident itself, what the totality of the
5 circumstances were. 03:01

6 MS. WALKER:

7 Q Did you review a point in Jacob Bauer's
8 situation where Officer Middleton tried to handcuff
9 him? Have you reviewed that section of the video?

10 A I reviewed that section of the video 03:02
11 with counsel.

12 Q Okay.

13 Did you make a determination on own,
14 irrespective of counsel, as to whether
15 Officer Middleton appropriately should have 03:02
16 handcuffed Jacob Bauer at that stage of the
17 investigative detention?

18 MR. BLECHMAN: Incomplete hypothetical.
19 It's argumentative as phrased. I think it's asked
20 and answered about whether he made any 03:02
21 determinations.

22 But go ahead.

23 THE WITNESS: I did not make a determination
24 that it was inappropriate based on the
25 circumstances that the officer was confronted with. 03:02

1 Certification of Court Reporter Federal Jurat

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

6 That the foregoing proceedings were taken
7 before me remotely at the time herein set forth;
8 that any witnesses in the foregoing proceedings,
9 prior to testifying, were placed under oath; that a
10 verbatim record of the proceedings was made by me
11 using machine shorthand, which was thereafter
12 transcribed under my direction; further, that the
13 foregoing is an accurate transcription thereof.

14 That before completion of the deposition a
15 review of the transcript 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 of the parties.

19 IN WITNESS WHEREOF, I hereby subscribe my
20 name this 16th day of February 2021.

21
22 
23

Heidi Hummel-Grant

24 Certified Shorthand Reporter No. 12556
25