

EXHIBIT G

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 ERIC (MARTY) BILLDT
THURSDAY, SEPTEMBER 3, 2020

Reported by:

Anrae Wimberley, CSR No. 7778

Job No. 4227616

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Defendants.

_____/

CONTAINS CONFIDENTIAL MATERIAL WHERE NOTED

Transcript of video-recorded deposition
of ERIC (MARTY) BILLDT, taken at Gwilliam, Ivory,
Chiosso, Cavalli & Brewer, 1999 Harrison Street,
Suite 1600, Oakland, California 94612, beginning at
10:05 a.m. and ending at 3:01 p.m. on Thursday,
September 3rd, 2020, before Anrae Wimberley,
Certified Shorthand Reporter No. 7778.

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21 Also present:

22 JENNIFER McKAY, VIDEOGRAPHER

23 VERITEXT LEGAL SOLUTIONS

1 Also present (cont'd):

2 LINDA LIM, PARALEGAL

3 GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

4
5 SERGEANT JASON KNIGHT, DEFENDANT

6
7 THE FOLLOWING APPEARED VIA ZOOM

8 VIDEOCONFERENCE:

9 OFFICER JONATHAN CHIN, DEFENDANT

10 OFFICER BRADLEE MIDDLETON, DEFENDANT

11
12 BRITTANY SMITH, LAW CLERK

13 GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

14 --oOo--

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E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 14	Interview of Sergeant Billdt; 37 pages	6
Exhibit 15	Pleasanton Police Department Policy Manual - Mental Illness Commitments; 3 pages	61
Exhibit 16	Complete Body Cam Video of Sergeant Billdt, No. 378; MP4 file	76
Exhibit 17	Still Frame from Sergeant Knight's Body Cam Video, No. 390; 1 page	114

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TESTIMONY REQUESTED TO BE MARKED CONFIDENTIAL:

From page 128, line 22 through page 130, line 1

From page 179, line 3 through page 187, line 1

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1 THURSDAY, SEPTEMBER 3, 2020;

2 OAKLAND, CALIFORNIA;

3 10:05 A.M.

4 - - -

5 (Plaintiffs' Exhibit 14 was marked.)

6 THE VIDEOGRAPHER: Good morning. We are going
7 on the record at 10:05 a.m. on September 3rd, 2020.

8 This is Media Unit 1 of the video-recorded
9 deposition of Marty Billdt in the matter of Bauer,
10 et al. versus the City of Pleasanton, et al., filed 10:05:26
11 in the United States District Court, Northern
12 District of California, San Francisco Division, Case
13 No. is 3:19-cv-04593.

14 This deposition is being held at Gwilliam
15 Ivary in Oakland, California, located at 1999 10:05:45
16 Harrison Street, Suite 1600.

17 My name is Jennifer McKay from the firm
18 Veritext and I'm the videographer. Your court
19 reporter today is Anrae Wimberley, also from
20 Veritext. 10:06:00

21 Counsel, please identify yourselves and
22 state whom you represent.

23 MR. GWILLIAM: Yes, I'm Gary Gwilliam. I
24 represent Mr. and Mrs. Bauer in this action.

25 My paralegal, Linda Lim, is present and my 10:06:09

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1 partner, Jayme Walker, will likely come into the 10:06:14
2 room before the deposition is completed, so . . .

3 MR. BLECHMAN: Noah Blechman on behalf of the
4 defendants. Also present is Defendant Sergeant
5 Jason Knight. And there may be some defendants that 10:06:30
6 pop in our Zoom shortly.

7 MR. GWILLIAM: Fair enough.

8 THE VIDEOGRAPHER: Would the reporter please
9 swear in the witness.

10 ERIC (MARTY) BILLDT, 10:06:39
11 sworn as a witness by the Certified
12 Shorthand Reporter, testified as follows:

13 EXAMINATION

14 BY MR. GWILLIAM:

15 Q. Would you state your full name and address 10:06:53
16 for the record, Sergeant Billdt.

17 A. And address?

18 Q. Please.

19 A. Full name is Eric Martin Billdt. My
20 nickname is Marty. 10:07:04

21 Q. You can give your work address.

22 A. My work address is 4833 Bernal Avenue,
23 Pleasanton, California 94566.

24 Q. And you're currently a sergeant at the
25 Pleasanton Police Department; is that correct? 10:07:15

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1 specific date. 10:21:10

2 Q. In your advanced officer training, was
3 that specific training in order to become a
4 sergeant?

5 A. No. 10:21:17

6 Q. Tell me about your advanced officer
7 training.

8 A. It's just the scenarios that we all go
9 through as police officers.

10 Q. Up until August 1st, '18, what kind of 10:21:26
11 specific training had you had in how to deal with
12 mentally ill people that you might encounter in the
13 city?

14 A. I've been to the CIT training in 2016. I
15 believe we had an update on that in, like, 2017. I 10:21:47
16 was a school resource officer, so I've had some
17 trainings going through school -- going through
18 school resource officer training, I guess. There's
19 a week-long class where a portion of that is dealing
20 with mental illness generally in youth. 10:22:08

21 And I've had -- I've been to a couple of
22 other conferences for -- as a school resource
23 officer where I -- where there's -- that topic has
24 come up.

25 Q. Can you be more specific about what 10:22:23

1 exactly you've been trained in your -- let's say, 10:22:26
2 your CIT training as it relates to how to deal with
3 mentally ill people that you might encounter in the
4 streets?

5 MR. BLECHMAN: Overbroad, incomplete 10:22:35
6 hypothetical.

7 Go ahead.

8 THE WITNESS: Well, a lot -- to be specific, I
9 would probably need a specific example. But to be
10 general, I would say every situation is different. 10:22:47
11 You may not know that you're dealing with a mentally
12 ill person. You may be dispatched to a call
13 where -- like at a hospital, where you obviously
14 know there's a mental illness going on or some signs
15 and symptoms of that. 10:23:13

16 But generally, a lot of the training is --
17 it's very -- it's not specific. It's generalized,
18 because every situation is different. And first and
19 foremost, they always teach in these trainings that
20 officer safety and the safety of others is 10:23:36
21 paramount.

22 BY MR. GWILLIAM:

23 Q. Have you been specifically trained, up
24 until August 1st, '18, on how to assess or evaluate
25 whether someone might be suffering from a mental 10:23:46

1 And I know that at some stage during the 10:52:54
2 investigation, let's call it, or during the time
3 that you were at the scene, you began to look at
4 witnesses and this sort of thing, and you considered
5 yourself as a supervisor at the scene. Do I 10:53:07
6 understand that correctly?

7 A. That's correct.

8 Q. So as far as you were concerned, were you
9 the incident commander at that scene?

10 A. I was -- I would say, yeah, I was made the 10:53:16
11 incident commander. I knew that it was my officers,
12 because it was my team that initially responded.
13 But I also knew I had two senior sergeants there to
14 help me through. This would have been one of my
15 first major use of force incidents, so I knew I 10:53:35
16 could rely on them to walk me through.

17 Q. Okay. Well, I know you did have contact
18 with the previous sergeant and to a certain extent
19 with Sergeant Saragusa.

20 Is that how you pronounce his name? 10:53:51

21 A. Sarasua.

22 Q. Sarasua, okay. Close enough.

23 So you would rely on those. But from a
24 command standpoint, you would have been the incident
25 commander because both Chin and Middleton were 10:54:04

1 Middleton, was that one of the options he had when 11:01:11
2 he was first encountering Jacob Bauer, before they
3 decided to put handcuffs on him, was that he might
4 call his supervisor.

5 Do you recall that he testified to that? 11:01:22

6 A. I don't recall him saying that.

7 Q. Well, let's assume that that was an
8 option. What I want to do is, I want to ask you --
9 and it is sort of a hypothetical question --
10 assuming for a minute that Middleton had decided to 11:01:35
11 call you in the office before he decided to detain
12 and put handcuffs on Jacob Bauer, you would have
13 been glad to talk to him about what options he had
14 available at that time; correct?

15 A. Correct. 11:01:52

16 Q. Okay. And let's assume that he called you
17 with information that he had about the dispatch and
18 that there was a man that was wandering around and
19 talking to himself and was exhibiting signs that the
20 Raley's department said could be bipolar or could be 11:02:09
21 signs of mental illness.

22 If he had called you and said, hey, I've
23 got a guy looks like he's exhibiting signs of mental
24 illness, do you have any idea what advice you might
25 have been able to give him at that time? 11:02:26

1 MR. BLECHMAN: Incomplete hypothetical, 11:02:28
2 misstates some of the record.
3 But go ahead.
4 THE WITNESS: I would ask him what other
5 information do you have. 11:02:34
6 BY MR. GWILLIAM:
7 Q. But let's just say that he's got the
8 information we have here, which is that -- and that
9 he was there -- that the guy was ranting to himself,
10 he was walking around, he was -- they were following 11:02:44
11 him. By the time they got to him, he appeared
12 strange, that he was talking about being concerned
13 about bad thoughts, and that he was exhibiting signs
14 that Middleton said, hey, I think he's showing signs
15 of some mental illness. Do you have any -- what 11:03:05
16 options would you have had to give him at that time,
17 Sergeant Billdt?
18 MR. BLECHMAN: Incomplete hypothetical,
19 misstates the record.
20 Go ahead. 11:03:16
21 THE WITNESS: Well, it sounds like, based on
22 what you're telling me, someone who may be suffering
23 possibly from a mental illness, could possibly be
24 suffering from drug intoxication. If that's the
25 only information, obviously conduct a welfare check 11:03:36

1 on the subject, try to engage in conversation, see 11:03:39
2 what you can learn from him, see what kind of
3 resources we can provide.

4 Maybe if he is under the influence, you
5 can go that route. If he is suffering from mental 11:03:51
6 illness, we can provide him with assistance and
7 possibly get him to the hospital for treatment.

8 BY MR. GWILLIAM:

9 Q. Okay. Would that be under a 5150?

10 A. Correct. 11:04:04

11 Q. Okay. When you said something about we
12 could do something for a welfare check, what did you
13 mean by that, Sergeant Billdt?

14 A. Welfare check is just go and check on that
15 person's welfare, find out -- you know, ask 11:04:15
16 questions, see what's going on. Go ahead.

17 Q. You learned later that Jacob Bauer was
18 living with his parents, I presume?

19 A. I learned that later.

20 Q. You learned that later. But let's assume, 11:04:29
21 again, we're in this situation where Middleton says,
22 hey, I want to call the supervisor, I want to call
23 Billdt and say, hey, I need some help about how to
24 deal with this guy, would you have recommended that
25 maybe he see if he can contact his family and see 11:04:43

1 what was going on with this guy? Particularly after 11:04:48

2 they found out he didn't have any warrant.

3 MR. BLECHMAN: Incomplete hypothetical,

4 misstates the record.

5 Go ahead. 11:04:58

6 THE WITNESS: That's always an option, because

7 sometimes people with mental illness are already

8 under the care of a doctor, maybe they're already on

9 medications, maybe they have an appointment that

10 day. I mean, these are all hypotheticals that we're 11:05:11

11 doing here.

12 So sometimes, in my experience, if you

13 place someone on a 5150 hold, they might lose out on

14 essential appointments. So sometimes it might be

15 best to self commit, sometimes it might be best to 11:05:29

16 give them to a family member, sometimes if it's

17 immediate need, you just transport them right there.

18 I mean, these are all -- a long response to your

19 question, it's possible.

20 BY MR. GWILLIAM: 11:05:43

21 Q. If they were to call somebody to the scene

22 to assist them for a 5150, would they call an

23 ambulance? Let me rephrase that.

24 If there was a 5150 to be done with this

25 guy, would that go to Valley Memorial Hospital? Is 11:05:57

1 THE VIDEOGRAPHER: Back on the record. The 11:27:14
2 time is 11:27.

3 BY MR. GWILLIAM:

4 Q. Sergeant Billdt, while we were off the
5 record, I did two things: I gave you a previously 11:27:20
6 marked Exhibit 12, which starts with the use of
7 force policy, although it does have a lot more in
8 it. And I gave you a newly marked Exhibit 15, which
9 is Policy 420, Mental Illness Commitments.

10 Are you familiar with these Pleasanton 11:27:35
11 Police Department policies?

12 A. Yes.

13 Q. Okay. Let's start with Exhibit 15, which
14 is the Mental Illness Commitments, and we were
15 talking a little bit about this before. What is the 11:27:46
16 purpose of this policy, as far as you are concerned,
17 Sergeant Billdt?

18 A. It's a guideline for mental illness
19 commitments.

20 Q. Okay. Is it also a guideline for how to 11:27:56
21 deal with mentally ill people under certain
22 circumstances when officers may encounter them?

23 A. I think that's more -- a little bit
24 more -- you mean crisis or -- in crisis or just
25 mentally ill -- dealing with mentally ill -- 11:28:16

1 paramedics, who have a higher level of care, to make 11:37:09
2 that determination.

3 Q. Had you had any experience with so-called
4 excited delirium in your peace officer experience
5 before August 1st, '18? 11:37:22

6 A. Only through training.

7 Q. Okay. Did you consider at any time while
8 you were at the scene, before the paramedics arrived
9 on the scene, that Jacob Bauer might be suffering
10 from excited delirium? 11:37:37

11 MR. BLECHMAN: Calls for expert testimony,
12 lacks foundation, and calls for speculation.

13 Go ahead.

14 THE WITNESS: That thought did not cross my
15 mind at that time. 11:37:50

16 BY MR. GWILLIAM:

17 Q. Has it since crossed your mind since you
18 look back on the situation?

19 MR. BLECHMAN: Incomplete hypothetical, calls
20 for expert testimony, and lacks foundation. 11:37:59

21 Go ahead.

22 THE WITNESS: It's possible.

23 BY MR. GWILLIAM:

24 Q. It's probable, wouldn't you agree?

25 MR. BLECHMAN: It's argumentative, asked and 11:38:07

1 Q. What's your best estimate? 15 minutes? 11:42:06
2 15, 20 minutes?
3 A. Until the phone call was made?
4 Q. Yeah.
5 A. I believe it was -- the request was made 11:42:14
6 within five minutes.
7 Q. Okay. Well, maybe we'll be able to tell
8 when we go through the video, you think?
9 One more general question before we get
10 into the video. 11:42:32
11 At any time up until the time the
12 paramedics came and were evaluating him, did you
13 consider that Jacob Bauer was severely mentally ill?
14 MR. BLECHMAN: Calls for speculation and lacks
15 foundation, vague and ambiguous as to severely 11:42:53
16 mentally ill, calls for expert testimony.
17 Go ahead.
18 THE WITNESS: I don't recall that thought
19 crossing my mind.
20 BY MR. GWILLIAM: 11:43:03
21 Q. At any time, even now, have you ever
22 thought that, in looking back on it, he was
23 exhibiting signs of severe mental illness?
24 MR. BLECHMAN: Calls for expert testimony, it's
25 an incomplete hypothetical, vague and ambiguous as 11:43:14

1 him; correct? 11:56:10

2 A. Yes.

3 MR. GWILLIAM: Okay. Let's go on for a while

4 then.

5 (Video played.) 11:56:17

6 MR. GWILLIAM: Stop here.

7 BY MR. GWILLIAM:

8 Q. I was curious, you're walking away from

9 the scene here. Where are you going?

10 A. I'm going to get the leg restraint, the 11:56:50

11 wrap device.

12 Q. The wrap. So whose -- was it your

13 decision to put a wrap on him at that time?

14 A. No. It was -- I agreed with the decision,

15 but I went to go retrieve it for the officers. 11:57:02

16 Q. Whose idea was it to put the wrap on him?

17 A. Officer Granados.

18 Q. And how did that come about? Did he just

19 say let's go get a wrap and everybody agrees or did

20 he confer with you about it or Knight or what? 11:57:19

21 A. It's typical for us, with a subject that

22 is resisting, violently resisting, to place them

23 into a wrap for their safety and officer safety.

24 Q. At any time, did you have any concerns

25 about the use of a wrap on Jacob Bauer, as you 11:57:38

1 understood his situation at that time? 11:57:42

2 A. At that time?

3 Q. Yeah.

4 A. No.

5 Q. Did you have any concerns that the wrap 11:57:48

6 might be considered a danger to his health?

7 A. No.

8 Q. So you went -- you're going to get the

9 wrap here. Is that what you're doing?

10 A. That's correct. 11:58:02

11 MR. GWILLIAM: Okay, let's move forward.

12 (Video played.)

13 MR. GWILLIAM: Let's stop it here at 3:08.

14 There you go. This is 3:07.

15 BY MR. GWILLIAM: 11:58:30

16 Q. Now, I want to ask you at this point, did

17 you, at this point, have any specific concerns about

18 the health of Jacob Bauer or his safety?

19 A. I can't recall.

20 Q. Were you concerned that people might be 11:58:42

21 kneeling on him when he was on his stomach?

22 A. At that time? The thought didn't cross my

23 mind at that time.

24 Q. Did the thought ever cross your mind that

25 he might have difficulty breathing with all these 11:59:00

1 Q. How many times was he ultimately tased, to 12:01:59
2 your understanding?

3 MR. BLECHMAN: Calls for speculation and lacks
4 foundation.

5 Go ahead. 12:02:06

6 THE WITNESS: From officers' statements that --
7 four times, but my understanding is that the Taser
8 was deployed more times.

9 BY MR. GWILLIAM:

10 Q. At any time while you were the supervising 12:02:17
11 officer on the scene, did you have any concerns
12 about the use of Tasers on Jacob Bauer?

13 A. Absolutely.

14 Q. What were your concerns in that regard?

15 A. That he receive medical attention, as part 12:02:28
16 of our policy.

17 Q. Because he had been tased?

18 A. Correct.

19 Q. Did you have any concerns that the tasing
20 process might cause him serious health issues at the 12:02:39
21 scene?

22 MR. BLECHMAN: Hold on.

23 May call for expert testimony, lacks
24 foundation, calls for speculation.

25 Go ahead. 12:02:58

1 THE WITNESS: Again, that -- that thought 12:02:59
2 didn't cross my mind at that time.
3 BY MR. GWILLIAM:
4 Q. Okay. When we talked about this before,
5 you were under the impression that the Tasers were 12:03:08
6 not being effective on bringing him under control;
7 is that correct?
8 A. That's what I observed, correct.
9 Q. All right. And why do you think that was?
10 MR. BLECHMAN: Calls for speculation and lacks 12:03:21
11 foundation of this witness, it calls for expert
12 testimony.
13 You can respond.
14 THE WITNESS: Again, I don't know what it was.
15 I don't know what was causing him -- for it to be 12:03:32
16 nonresponsive to the tase.
17 BY MR. GWILLIAM:
18 Q. Were you aware, at the time you were on
19 the scene, that if, in fact, he was suffering from
20 an excited delirium, that the Tasers might not be 12:03:50
21 effective because of his mental situation?
22 MR. BLECHMAN: Calls for expert testimony,
23 incomplete hypothetical, lacks foundation, calls for
24 speculation of this witness.
25 Go ahead. 12:04:03

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1	A. No.	12:15:36
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2 Q. I want to ask you this question,
3 Sergeant Billdt. At any time -- we're going to
4 continue to go through this video, but at any time,
5 did you feel that you should try to deescalate this 12:15:45
6 situation?

7 MR. BLECHMAN: Vague as to time, vague as to
8 "deescalate this situation."

9 Go ahead.

10 THE WITNESS: Deescalate. At this time, again, 12:15:57
11 the goal was to safely render the scene safe, and
12 that's what they were doing.

13 BY MR. GWILLIAM:

14 Q. Is the answer to my question no?

15	A.	No.	12:16:12
----	----	-----	----------

16 Q. You never considered deescalation at any
17 time?

18 A. I don't recall if that came across my
19 mind.

20 Q. Did anybody at the scene ever say anything 12:16:19
21 about, hey, let's step back and assess this
22 situation and deescalate?

23 MR. BLECHMAN: Vague as to time.

24 BY MR. GWILLIAM:

25	Q. Let me rephrase that.	12:16:28
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1 Did anybody at any time say, hey, let's 12:16:28
2 step back and try and assess this situation?

3 MR. BLECHMAN: Vague as to time, calls for
4 speculation and lacks foundation as to other people.

5 Go ahead. 12:16:34

6 THE WITNESS: I don't recall that conversation
7 occurring.

8 BY MR. GWILLIAM:

9 Q. Would you describe the scene we were
10 watching as chaotic? 12:16:40

11 MR. BLECHMAN: Argumentative.

12 But go ahead.

13 THE WITNESS: Looks chaotic.

14 BY MR. GWILLIAM:

15 Q. Did that concern you, that you were 12:16:47
16 observing a situation that was chaotic?

17 A. Yes, it was a concern.

18 Q. What concerns did you have about that?

19 A. Well, obviously, I think I've stated is
20 safely taking him into custody, rendering medical 12:17:11
21 aid, making sure officers are okay, making sure -- I
22 mean . . .

23 Q. Finished with your answer?

24 A. Yes.

25 Q. What, if anything, did you do to see if 12:17:27

1 you could reduce the chaos at the scene there? 12:17:30

2 MR. BLECHMAN: Vague as to time.

3 Go ahead.

4 THE WITNESS: At this point, I didn't -- at

5 this point, that thought hadn't crossed my mind, 12:17:43

6 so . . .

7 BY MR. GWILLIAM:

8 Q. We're going to go through the whole video,

9 but at any point, I'm looking at the whole time you

10 were there, it was pretty chaotic right up until the 12:17:51

11 time they got the wrap on him, wouldn't you agree?

12 MR. BLECHMAN: Vague and ambiguous as to

13 chaotic.

14 Go ahead.

15 THE WITNESS: It was very fluid, yes. 12:18:01

16 BY MR. GWILLIAM:

17 Q. Does "fluid" mean the same as chaotic?

18 A. Well, I mean, there are a lot of moving

19 parts. It looks chaotic, so yes.

20 Q. All right. My question, again is, what, 12:18:10

21 if anything, did you consider to try and reduce that

22 chaos up until the time that the paramedics arrived?

23 A. I don't recall what I did.

24 MR. GWILLIAM: Let's move it along.

25 (Video played.) 12:18:25

1 his head and neck like that at some stage during the 01:23:59
2 encounter?

3 A. I don't recall seeing that.

4 Q. Did you have concerns that these officers
5 might be putting too much pressure on his head and 01:24:08
6 torso area, where he might not be able to breathe?

7 A. Again, a lot of things are going through
8 my mind. I don't remember if that went through my
9 mind at the time.

10 Q. So as far as you're concerned, you don't 01:24:23
11 remember ever having any concerns or anything going
12 through your mind about whether Jacob Bauer could
13 breathe adequately; is that correct?

14 MR. BLECHMAN: Misstates the witness'
15 testimony. 01:24:35

16 But go ahead.

17 THE WITNESS: No, that's not what I said. I
18 said I don't recall seeing or having that thought go
19 through my mind, about them having pressure on his
20 head or neck like -- I think that's what the 01:24:52
21 question was before.

22 BY MR. GWILLIAM:

23 Q. Let me try the question again.

24 At any time during the encounter, up until
25 the time the paramedics came on, did you have any 01:25:02

1 concern about pressure being placed on Jacob Bauer's 01:25:09
2 body, head, or neck that might impede his breathing?
3 A. Again, I can't remember what was going
4 through my mind at that time.

5 Q. Okay. So you don't know one way or 01:25:22
6 another whether you thought about that. Is that
7 your testimony?

8 A. Again, I don't remember that going through
9 my mind.

10 Q. Are you trained in circumstances where 01:25:32
11 there might be pressure on a person's neck or body
12 that they have to be concerned about whether they
13 can breathe?

14 A. Could you be specific about what kind of
15 training? 01:25:48

16 Q. Well, have you had any training about --
17 concerning a subject who is being restrained by
18 police having concerns about being able to breathe?

19 A. Absolutely. There's always a concern for
20 that. 01:26:03

21 Q. And that's something you've been trained
22 on?

23 A. That's something we're trained on.

24 Q. Tell me a little more about what your
25 recollection is about your training as it regards to 01:26:12

1 Q. I mean, that's the kind of thing you would 01:27:20
2 be trained to avoid, the George Floyd situation.

3 Would you agree with that?

4 A. Agree.

5 Q. Okay. But again, getting back to here, 01:27:27
6 you never had any specific concern about whether
7 Jacob Bauer could breathe up until the time he was
8 in the care of the paramedics.

9 Am I correct about that?

10 A. What I said was, I do not recall if one of 01:27:42
11 those thoughts came to my mind at the time.

12 Q. Well, you certainly didn't do anything
13 about it; correct?

14 MR. BLECHMAN: Argumentative.

15 Go ahead. 01:27:54

16 Vague and ambiguous as to "it."

17 THE WITNESS: At the -- based on your question,
18 no.

19 BY MR. GWILLIAM:

20 Q. All right. Was a spit mask placed on him? 01:28:09

21 A. Yes.

22 Q. Why was that placed on him?

23 A. Because he was bleeding and he had bitten
24 Officer Chin.

25 Q. Are there certain restrictions and rules 01:28:21

1 about the appropriate placing of spit masks on 01:28:23

2 subjects?

3 A. Yes.

4 Q. And what are those, as you understand it,
5 in terms of any counter considerations to using it? 01:28:30

6 A. So there's some parameters. One is make
7 sure it's placed in a position so you still breathe.
8 Obviously, you're not going to apply it to someone
9 who is throwing up or you need to remove it to not
10 restrict their breathing. Those are some -- without 01:28:55
11 looking at probably specific, but come to the top of
12 my mind.

13 Q. Would you consider that one of the
14 considerations that would indicate you should not
15 place a spit mask on a subject is if, in fact, 01:29:06
16 they're having difficulty breathing?

17 MR. BLECHMAN: Incomplete hypothetical, vague
18 and ambiguous as to "difficulty breathing."

19 Go ahead.

20 THE WITNESS: Yes, it could. 01:29:19

21 BY MR. GWILLIAM:

22 Q. Okay. And do you know whether or not, at
23 the time the spit mask was placed on Jacob Bauer,
24 whether he had had any difficulty breathing up to
25 that point? 01:29:27

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1 MR. BLECHMAN: Calls for speculation, calls for 01:29:28
2 expert testimony.
3 Go ahead.
4 THE WITNESS: I don't know.
5 BY MR. GWILLIAM: 01:29:33
6 Q. Wasn't it pretty obvious that his
7 breathing was labored and difficult as a result of
8 this encounter by the time you put the spit mask on
9 him?
10 MR. BLECHMAN: Calls for expert testimony, 01:29:44
11 calls for speculation and lacks foundation of this
12 witness.
13 THE WITNESS: Again, I don't -- I don't know
14 what the -- whether or not it was labored.
15 BY MR. GWILLIAM: 01:29:58
16 Q. Well, you were watching him.
17 Didn't you -- couldn't you tell that he
18 was having labored and difficult breathing at some
19 stage during this encounter?
20 MR. BLECHMAN: Same objections. 01:30:07
21 Go ahead.
22 THE WITNESS: I don't recall him having.
23 BY MR. GWILLIAM:
24 Q. Okay. Let me change the subject.
25 During the time that you were supervising 01:30:15

1 the scene out there, did any of the officers under 01:30:17
2 your supervision employ what you call distractionary
3 blows?
4 A. Yes.
5 Q. And who did that? 01:30:29
6 A. Officer Chin and Officer Trovao.
7 Q. Did you observe those distractionary
8 blows?
9 A. I did.
10 Q. Both of them? 01:30:44
11 A. I believe I recall both of them, but . . .
12 Q. Have you been trained in the use of
13 so-called distractionary blows and how they should
14 be used?
15 MR. BLECHMAN: Incomplete hypothetical. 01:31:01
16 Go ahead.
17 THE WITNESS: With distractionary blows, we can
18 use, per our use of force, tools which can be other
19 tools that we have on our -- it could be hands,
20 feet, it could be a flashlight, it could be 01:31:21
21 different --
22 BY MR. GWILLIAM:
23 Q. All right. Up until August 1st --
24 A. I wasn't done.
25 Q. I'm sorry. 01:31:31

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1 A. So with these tools we have, we can, at 01:31:31
2 times, use these as other means to gain compliance
3 of a subject.

4 Q. Are they -- is the purpose of them to
5 distract from something, as the term would imply? 01:31:46

6	A. Yes.
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7 Q. All right. And you've been trained in the
8 appropriate use of these so-called distractionary
9 blows; correct?

10	A. I can't recall specific training.	01:32:02
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11 Q. Is not the appropriate use of a
12 distractionary blow to be a palm blow?

13 A. Again, I can't recall specific --

14 Q. Do you think it's appropriate that
15 somebody should hit somebody like Jacob Bauer with 01:32:16
16 their fists?

17 MR. BLECHMAN: Incomplete hypothetical, vague
18 and ambiguous as to hit with the fist.

19	But go ahead.
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20 THE WITNESS: It depends on the situation and 01:32:27

21 it depends on the reasonableness of that force.

22 BY MR. GWILLIAM:

23 Q. Do you think, under the circumstances of
24 this situation, Jacob Bauer being on the ground, at
25 least four or five officers on him at the time you 01:32:40

1 arrived, that it was appropriate for somebody to hit 01:32:43
2 him with their fist at that time?
3 MR. BLECHMAN: Calls for expert testimony, it's
4 incomplete hypothetical, misstates the record, vague
5 and ambiguous, calls for speculation as well. 01:32:55
6 Go ahead.
7 THE WITNESS: At the time, yes.
8 BY MR. GWILLIAM:
9 Q. Okay. But in fact, Chin hit him directly
10 on his torso with his fist, did he not? 01:33:08
11 A. I don't recall directly where he hit him.
12 Q. Well, I don't have that video pulled up,
13 but I'm pretty sure it's in Bennett's video where I
14 saw him directly hit him with the fist. If that
15 happened, that would be inappropriate. Would you 01:33:26
16 agree with that?
17 MR. BLECHMAN: Calls for expert testimony,
18 lacks foundation, calls for speculation, incomplete
19 hypothetical.
20 Go ahead. 01:33:33
21 THE WITNESS: I don't agree with that.
22 BY MR. GWILLIAM:
23 Q. It was okay to hit him with the fist?
24 MR. BLECHMAN: Same objections.
25 Go ahead. 01:33:40

1 (The following testimony is 01:38:15
2 non-confidential:)

3 * * *

4 BY MR. GWILLIAM:

5 Q. Do you think -- you're the supervisor at 01:38:17
6 the situation out there. Given the situation of
7 Jacob Bauer being on the ground where he was, and
8 where Trovao was, do you think he had any
9 justification to hit Jacob Bauer with his baton?

10 MR. BLECHMAN: Calls for expert testimony, it's 01:38:30
11 an incomplete hypothetical, calls for speculation of
12 this witness.

13 Do you want to do this part out of the
14 confidential?

15 MR. GWILLIAM: Yeah, it is out of the 01:38:41
16 confidential.

17 MR. BLECHMAN: This last question and answer is
18 now out of the confidential.

19 You can respond.

20 BY MR. GWILLIAM: 01:38:46

21 Q. Do you need the question read to you
22 again?

23 A. Do I believe it was justified that he
24 struck Mr. Bauer --

25 Q. With a baton -- 01:38:54

1 A. -- with a baton? 01:38:55

2 Q. -- under the circumstances that it

3 happened.

4 A. That it happened.

5 MR. BLECHMAN: Same objection. 01:38:59

6 Go ahead.

7 THE WITNESS: Under the circumstances, yes.

8 BY MR. GWILLIAM:

9 Q. Why?

10 A. Because he was actively resisting. He was 01:39:07

11 combative.

12 Q. And what do you think that hitting him

13 with --

14 MR. BLECHMAN: Were you finished?

15 BY MR. GWILLIAM: 01:39:15

16 Q. I'm sorry. I didn't mean to interrupt

17 you. Apologize. I don't want to interrupt you. I

18 want to hear your testimony.

19 A. That's all right. I lost my train of

20 thought. 01:39:25

21 Q. Had you finished your answer?

22 A. I did now.

23 Q. What purpose was there to be accomplished

24 by Trovao hitting him with his baton?

25 MR. BLECHMAN: Calls for speculation of this 01:39:34

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1 testified to. This is a -- a baton to the head, and 01:43:48
2 I don't know if Officer Trovao said he struck him in
3 the head. So is it appropriate, a head strike? I
4 don't know. Based on what was going on, what he
5 saw, what his frame of mind was. Was it accidental? 01:44:07
6 There's a lot of things that come into play. Was he
7 aiming for the shoulder? I can't answer that
8 question.
9 BY MR. GWILLIAM:
10 Q. Well, you used the word "head strikes" in 01:44:19
11 your statement.
12 Didn't you mean by that that he hit him in
13 his head?
14 A. Again, I'm not referring to his baton.
15 Q. So you think he hit him with his fist in 01:44:31
16 his head?
17 A. Possibly.
18 Q. Do you know what he hit him with in his
19 head?
20 A. I did not see him hit him with the baton. 01:44:41
21 Like I said previously in my statement, I believe he
22 was using -- he used his hands. And I said it looks
23 like he gave him two head strikes, distraction
24 blows.
25 Q. How many of the videos have you reviewed 01:44:57

1 and make sure that they did not use excessive force. 01:46:20

2 Would you agree with me?

3 A. I agree.

4 Q. Okay. And if, in fact, Officer Trovao hit

5 him in the head with a baton, that would be 01:46:29

6 excessive force, would it not?

7 A. It could be, yes.

8 MR. BLECHMAN: Hold on.

9 Calls for expert testimony, incomplete

10 hypothetical, lacks foundation. 01:46:38

11 Go ahead.

12 THE WITNESS: Yes, it could be.

13 BY MR. GWILLIAM:

14 Q. Okay. Do you think that you did a good

15 job in overseeing these officers at the scene here, 01:46:47

16 in retrospect?

17 A. In retrospect, I think I did a good job

18 for a three-week supervisor. Having the luxury of

19 having two senior officers, yes.

20 Q. Would you have done anything different, 01:47:05

21 now that you've kind of had a chance to think back

22 on it and have a little more experience?

23 MR. BLECHMAN: Calls for speculation.

24 BY MR. GWILLIAM:

25 Q. In terms of overseeing these officers? 01:47:14

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1 (Video played.) 01:55:37

2 MR. GWILLIAM: Okay, stop it there.

3 BY MR. GWILLIAM:

4 Q. They appear to be trying to roll him over.

5 Do I understand what they're doing there? 01:56:05

6 A. Yeah, I believe they're trying to roll him

7 over to get him into the leg restraint.

8 Q. Okay. Why would they need to roll him

9 over to get him into the wrap restraint?

10 A. Well, I'm not sure if it's applied at this 01:56:21

11 point or not. So you apply knees down and then you

12 roll them over to apply the support chest piece.

13 Q. So about this point, which the video says

14 it's 8:10, do you think it would have been a good

15 idea to step back and maybe just let this guy sit up 01:56:44

16 and breathe and reassess the situation?

17 MR. BLECHMAN: Calls for speculation,

18 incomplete hypothetical.

19 Go ahead.

20 THE WITNESS: I don't know. 01:56:57

21 MR. GWILLIAM: Okay, let's move it along.

22 (Video played.)

23 MR. GWILLIAM: Stop here.

24 BY MR. GWILLIAM:

25 Q. This is you speaking? 01:57:29

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 22, 2020

23 
24

25 ANRAE WIMBERLEY, CSR No. 7778