

EXHIBIT O

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOHN BAUER, an individual)
and as Successor in)
Interest of Jacob Bauer,)
deceased; ROSE BAUER, an)
individual and as)Case No.
Successor in Interest of)3:19-cv-04593-LB
Jacob Bauer, deceased,)
Plaintiffs,)
vs.)
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.)
—)

REMOTE DEPOSITION
OF
DR. MICHAEL JOSEPH FERENC
Tuesday, February 9, 2021
Modesto, California

Reported by: B. Suzanne Hull, CSR No. 13495

APPEARANCES

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E X H I B I T S

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Exhibit 42 -	Memorandum, To: Case File 2018-02388, From: Michael Joseph Ferenc, M.D., dated August 2, 2018, Re: Autopsy protocol, Bates Stamp Numbers PPD000196 through PPD000231, thirty-six pages	64
Exhibit 43 -	Diagrams and handwritten notes, four pages	65

Modesto, California

Tuesday, February 9, 2021; 1:05 p.m.

921 Oakdale Road

THE REPORTER: Raise your right hand, please.

DR. MICHAEL JOSEPH FERENC,
called as a witness by counsel for Defendants, being
first duly sworn, testified as follows:

THE WITNESS: I do.

EXAMINATION

BY MR. BLECHMAN:

Q Good afternoon, Dr. Ferenc.

My name is Noah Blechman, I am counsel for the
defendants in this case. I'm going to be -- we
subpoenaed you here for your deposition.

Could you please state and spell your full name
for the record.

A My name is Michael Joseph Ferenc. My last name
is spelled F, as in Frank, e-r-e-n-c.

Q And I'm assuming, Dr. Ferenc, you have had your
deposition taken before?

A Yes, sir.

1 cause is, in fact, vulnerable. It is sort of implicit
2 in -- and they are not -- most doctors would not list
3 this on things, but, for example, somebody could list
4 a cofactor on somebody that falls off a roof, and he
5 breaks a rib, and they say he has heart disease or
6 something like that. By putting that and other
7 significant conditions, they say, yeah. Those rib
8 fractures were significant and, yeah. A person could
9 die from it, but this guy probably died from it right
10 now because he was so weak as a victim because of his
11 bad heart disease.

12 Do you see what I'm saying?

13 Think of the -- think of the analogy of the --
14 and I don't want to waste your time; so I'll make this
15 as brief as I can. The twenty-year-old Marine out of
16 boot camp and his ninety-year-old grandfather both fall
17 off a roof, and they both break the same ribs. The
18 Marine recovers from it, and the ninety-year-old grandpa
19 dies of his heart disease and his bad lungs and
20 everything else. Those are the cofactors that made him
21 a particular victim. They both received the same
22 injury, which may or may not kill in and of itself, but
23 nobody is surprised that Grandpa died. It is horrible,
24 but nobody is surprised.

25 Q So -- and then so what did you mean by the term

1 probable in that section of your report?

2 A Probable probably shouldn't even be there, to
3 be quite honest. I should have just said mechanical
4 asphyxia. It is just that it interplays with all of
5 these other factors. His cardiac hypertrophy, for
6 example, wasn't that bad.

7 (Reporter interruption.)

8 THE WITNESS: His cardiac hypertrophy really
9 wasn't that bad. It is there, but it is not that bad.

10 His morbid obesity works in very well with the
11 restraint system and is a fact that similar-acting
12 factors as making it likely that it was probable --
13 probable mechanical asphyxia. I assume everybody has
14 seen the pictures and everything. Literally, he is
15 morbidly obese, and it affects his ability to breathe in
16 that position.

17 Q Okay. And -- and so his morbid obesity -- was
18 his morbid obesity a significant condition, in and of
19 itself, irrespective of the way he was restrained?

20 A Yes, sir.

21 It is something that makes him a sicker victim
22 in general for almost anything, including if no
23 restraint was involved and nothing else is happening
24 there. Morbid obesity and that methamphetamine level
25 could be on another case with a different fact pattern

1 MR. BLECHMAN: Did you get that last answer,
2 Madam Court Reporter?

3 THE REPORTER: Yes, I did.

4 (Requested portion of record read.)

5 BY MR. BLECHMAN:

6 Q Okay. Now -- and then when you use the term
7 mechanical asphyxia in your report, what does that mean
8 to you?

9 A It means -- I am trying to use it to mean how
10 the body is positioned and how the positioning of the
11 body with those other factors we have just been talking
12 about interact to prevent him from being able to breathe
13 enough.

14 Q And when you included probable mechanical
15 asphyxia while being placed in the restraint by police,
16 I'm assuming you are referring to that wrap device in
17 terms of the lower body sort of attaches and puts
18 somebody in sort of an L position device?

19 A Yes, sir.

20 The wrap, which is a very impressive device as
21 far as I am concerned, very good. But in somebody that
22 is morbidly obese, as you can see, when he is jackknifed
23 or turned into the 90 degree angle, his belly is being
24 pushed into his chest cavity, impairing his breathing.

25 Q So that is how you would explain how placing

1 Mr. Bauer in that device caused probable mechanical
2 asphyxia in your opinion as another significant
3 condition?

4 A Yes.

5 That is the most important component. The
6 other one would be the spit mask on his face, although
7 you usually can breathe through that, but it doesn't
8 help. It is not making it easier.

9 Q You didn't mention the spit mask in your
10 report, did you?

11 A I think I described it in the history that
12 there was a spit mask on his face, but by the time he
13 got to us I don't think he still had it. I would have
14 to go look at my pictures again.

15 Q Right. I don't believe he did.

16 But you didn't include the spit mask in here in
17 terms of any other significant condition, other than in
18 a description you might have done in terms of seeing
19 video and that type of thing, did you?

20 A No.

21 But I consider it part of the mechanical
22 asphyxia. It is like the wrap is -- for example,
23 officers are pushing against his back while he was in
24 the thing. I didn't mention the officers pushing on the
25 back either, but it is just the overall combination of

1 opinion.

2 Q Okay.

3 A By the way, is the audio better?

4 Q Yes. It is much better.

5 A 1990 technology comes to the rescue.

6 Q I love it.

7 Did you, yourself, review any of the paramedic
8 reports or the fire department personnel reports as part
9 of your death investigation?

10 A The only one that I can comment on is the fact
11 that I did look at the paramedic plus report because
12 I listed its number in my report. If the fire
13 department had separate reports, I did not see them or
14 at least I don't remember them.

15 Q Okay. So I understand you have a note as part
16 of page two about the sedative issue; is that correct?

17 A Yeah. Just a minor note, yes, sir.

18 Q And what was the purpose of including that note
19 in the report?

20 A It is sort of like the same concept as the spit
21 mask, which I didn't mention. I just mention some
22 things sometimes to say, okay. Two years from now, when
23 you are doing the dep, or three years, whatever it is,
24 can you remember this issue?

25 And it is just if you are going through the

1 tapes trying to time when -- when he becomes
2 unresponsive and when his cardiovascular system is
3 probably collapsing, it is just interesting that the
4 midazolam doesn't get into his blood circulation after
5 the intramuscular injection, which would suggest that by
6 the time they are giving it to him, his cardiovascular
7 system has probably collapsed.

8 So whatever that is, when somebody really
9 analyzes closely the -- the tapes as to time, that is
10 probably when his system is collapsing. Because it
11 should have been detected. It is not hard and fast, but
12 I just would have expected it because intramuscular
13 injection of drugs -- I mean, even I have done it
14 decades ago -- can act very fast. It can get into the
15 bloodstream very fast.

16 Q Were you, yourself, able to determine from your
17 review of the video evidence when it was that
18 Mr. Bauer's circulatory -- circulatory system either
19 collapsed or was collapsing?

20 A It is just later in the process. I think
21 I make a comment about -- let's see if I do make
22 a comment before I state what I don't know.

23 Well, it has the eight minutes plus because it
24 is approximately eight minutes before Mr. Bauer was on
25 the gurney and paramedics were given full access to him;

1 so more than that number of minutes, he was probably
2 either already in cardiovascular collapse or in the
3 process of going into shock with collapse.

4 Q How would somebody like Mr. Bauer -- how would
5 somebody who is around Mr. Bauer -- like the police
6 officers, for example, here -- determine that
7 Mr. Bauer's circulatory system is collapsing?

8 A Well, in general, you would check for a pulse.
9 You would check for blood pressure. You check to see if
10 he responds to you at all, and purposely not simply
11 saying are you all right or whatever kind of stuff,
12 seeing if he responds. Seeing if his pupils are
13 responding. These are really medical procedures that
14 should be done by the paramedics, but just basic things
15 to see if somebody is alive.

16 Q Could somebody -- would Mr. Bauer be talking
17 and yelling and those type of things if his circulatory
18 system was collapsing?

19 A He could be in initial phases, but he wouldn't
20 be by the time he is in imminent collapse or heavy
21 collapse. Of course he would be unconscious or in the
22 process of dying.

23 Q Do you think the -- so is it your thought that
24 because no midazolam was found in his system that that
25 did not factor into his cause of death?

1 A Yes.

2 I'm sorry. Thanks for correcting me because
3 those rib fractures, to me, again, are another
4 incidental finding from the resuscitation; so I keep
5 forgetting them. I apologize.

6 Q That's okay.

7 But other than that, no other fractures; right?

8 A No, sir.

9 Q And when you -- and -- and you actually looked
10 at his head and his scalp and inside of his skull to
11 determine whether there is any significant findings.

12 And you did not find any; is that correct?

13 A That is correct, sir.

14 Q So there was no indication of any head injury
15 that would have caused his death; right?

16 A No, sir.

17 Q Or contributed to his death.

18 Is that also correct?

19 A That is correct.

20 Q Just so it is clear for the record, I'm going
21 to mark your report, which we produced in this case as
22 PPD196 through 231, that will be the exhibit next in
23 order. I believe we are at forty-two.

24 (Deposition Exhibit Number 42)

25 was marked for identification.)

1 A Yes, sir. Presumably, yes.

2 MR. GWILLIAM: Where is this? Tell me where
3 that is.

4 BY MR. BLECHMAN:

5 Q It is the third -- this one down that says
6 42:12.

7 Okay. There is another one that is
8 thirty-eight minutes, fifty-eight seconds, and you list
9 that number, to some extent, in the middle of that.

10 Do you see that?

11 A Yes.

12 There is nothing after it. And I just remember
13 in general some of these didn't have any information
14 that helped or it was completely redundant; so I didn't
15 make any notes there.

16 Q Okay.

17 A You know, I probably used that one, yeah.

18 Q And -- all right. So a lot of these are maybe
19 shorthand notes. And I know you were typing without
20 really looking because you are trying to just get
21 information down.

22 But these are the notes that you are making
23 watching the video that you are relying upon for your
24 opinions about the cause of death and the contributing
25 factors; right?

1 A Yes.

2 And to summarize information in my report where
3 I list circumstances of death report.

4 Q Like --

5 A The first few.

6 Q Okay. Yeah.

7 If you would look under the 38:10 section,
8 which is the second full paragraph to that section.

9 You do talk about -- you say:

10 "Moving air, 20-30/MIN," period.

11 What did that mean?

12 A At -- at that point in the video he still
13 seemed to be moving air at a slightly increased rate,
14 not the normal about sixteen to twenty a minute but
15 twenty to thirty a minute.

16 Q And is that respirations?

17 A Yes, sir. I'm sorry. It is respirations.

18 Q Okay.

19 A Moving air.

20 Q Okay. And -- okay. In the next section,

21 42:12, you say something about:

22 "Mask, face purple, moving air, screaming,
23 quiet since 17:30."

24 Is that what that means?

25 A It means basically that I observed that

1 although the mask is on his face, I can see his face is
2 turning purple. Initially he is moving air and
3 screaming, which is obvious if he is screaming. But
4 then he got quiet.

5 Q Did you have any concerns about your evaluation
6 of the spit mask causing any distortion of the color of
7 Mr. Bauer's face in any of your evaluation?

8 A I think it might have had an effect on the
9 lower part of his face, but I was referring to the parts
10 of his face you can see without the mask on.

11 Q What do you mean by that?

12 A Well, the mask -- if the mask in some way
13 affected the lower part of his face where it is covering
14 the edge of his nose and his mouth, I can't see that to
15 comment on it. I'm talking about the parts I can see
16 that aren't affected by the mask.

17 Q Right.

18 The reason I ask is I believe some of the fire
19 department personnel testified that because of the sun
20 shining and the sheen of the mask, it was not always
21 easy to tell if, you know, they are seeing a coloring
22 based upon that reflection or based upon Mr. Bauer's
23 face; so I wanted to kind of ask you the same question.

24 Did you think -- well, how confident are you
25 about seeing his face turning purple at some point?

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF KERN)
3
4

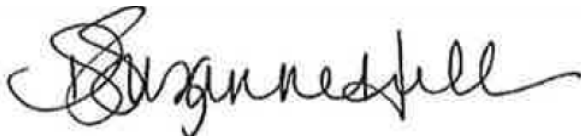
5 I, B. Suzanne Hull, a Certified Shorthand
6 Reporter in the State of California, holding
7 Certificate Number 13495, do hereby certify that
8 DR. MICHAEL JOSEPH FERENC, the witness named in the
9 foregoing deposition, was by me duly sworn; that said
10 deposition, was taken Tuesday, February 9, 2021, at the
11 time and place set forth on the first page hereof.

12 That upon the taking of the deposition, the
13 words of the witness were written down by me in
14 stenotypy and thereafter transcribed by computer under
15 my supervision; that the foregoing is a true and correct
16 transcript of the testimony given by the witness.

17 Pursuant to Federal Rule 30(e), transcript
18 review was requested.

19 I further certify that I am neither counsel for
20 nor in any way related to any party to said action, nor
21 in any way interested in the result or outcome thereof.

22 Dated this 11th day of February, 2021, at
23 Bakersfield, California.

24 
25

B. Suzanne Hull, CSR No. 13495