Deposition Transcript

Case Number: 4:22-cv-06715-DMR
Date: October 24, 2023

In the matter of:

CHAVEZ, et al. v COUNTY OF SONOMA, et al.

MICHAEL DIETRICK

CERTIFIED COPY

Reported by:

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CSR No. 11337, RPR



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF DAVID PELAEZ CHAVEZ, et al.,

Plaintiffs,

vs. No. 4:22-cv-06715-DMR

COUNTY OF SONOMA,
MICHAEL DIETRICK and
DOES 1-25, inclusive,

Defendants.

_____

THE VIRTUAL DEPOSITION OF

MICHAEL DIETRICK

OCTOBER 24, 2023

10:06 a.m.

REPORTED BY:
Roberta Richardson
Certified Stenographic Reporter
CSR No: 11337, RPR
JOB No: 733143

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MICHAEL DIETRICK

ESTATE OF DAVID PELAEZ CHAVEZ vs. COUNTY OF SONOMA

TUESDAY, OCTOBER 24, 2023

Roberta Richardson, CSR NO. 11337

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(Pages 41 through 48 have been designated confidential and are bound separately.)

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(Exhibits 1 through 3 marked)

SANTA ANA, CALIFORNIA;

TUESDAY, OCTOBER 24, 2023, 10:06 a.m.

MICHAEL DIETRICK

having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SCHWAIGER:

Q. Good morning, sir.

A. Good morning.

Q. There we go. We're just getting joined by Mr. Scott.

My name is Izaak Schwaiger. I am an attorney representing plaintiffs in this matter. I'm going to be taking your deposition today.

Before we get started, I'd like you to please state and spell your full name for the record, please.

A. Michael Dietrick; Michael Scott Dietrick; M-I-C-H-A-E-L, S-C-O-T-T, D-I-E-T-R-I-C-K.

Q. Okay. Terrific. Have you ever had your

deposition taken before, sir?

A. I have not.

Q. Okay. Have you ever testified in court before?

A. Yes, I have.

Q. All right. There's some similarities, but frankly, the differences are probably more important so I'll take some time to explain them. I'm sure your counsel has already gone over some of them with you, but it's worth mentioning for our record here.

But before I do that, just to make sure that you understand who everybody is, like I mentioned, my name is Izaak Schwaiger. My co-counsel John Scott is in blacked out screen. You are here with your counsel, Mr. Praet, and then we're joined by Ms. Richardson, our court reporter. She's going to be taking a transcript of everything that we talk about today.

That's the most important part of what we're here to do and there's certain things that you and I can do that can assist Madam Reporter in making sure that that transcript is an accurate representation of what we're talking about today. I'm going to go over some of those with you.

So it's going to be -- just kind of give you the roadmap of how I do a deposition. First I'm going to give you some advisements. Then I'm going to get

into the getting to know you stage. We're going to talk about some work history, your training, education, that kind of thing.

Then we're going to get into the facts of the case a little bit. All right? That's where we're going to do some back and forth. We are going to break every hour for five or ten minutes, depending, until we're done. During that time feel free to do whatever you got to do on a break, talk to your lawyer, get a drink of water, use the bathroom.

If you need to get a break and I haven't called for one, even if it's not at the hour, that's perfectly fine. Just let me know and I think we can usually do our best to accommodate you. All right?

However, if I'm in the middle of a line of questioning that I kind of want to finish before we move on, I might ask you to sit tight for another couple of minutes, let me finish where I'm going, and then we'll take a break unless it's an emergency. Okay?

A. Okay.

Q. All right. Terrific.

As a preliminary matter, are you on duty today or is today an off day?

A. Light-duty.

Q. All right. But you're not expected to -- you

don't expect to be getting a call that you will have to rush off someplace and attend to office business, right?

A. No, I do not.

Q. Okay, terrific. Good. Good. Good.

All right. So just like in court when you're testifying, everything that we do here today is part of an official court proceeding. Even though we're on Zoom and there's no judge here, so it feels a little less formal, this is a judicial proceeding and it carries with it all of the weight and consequences of formal testimony.

You've been given an oath to tell the truth just like you would in court. The court reporter is here to take everything down that we say just like in court. There are lawyers here to ask questions, to lodge objections, those kinds of things just like in court, but we don't have the judge.

What that means, and that's the biggest I think important difference here, is that if there's an objection to a question that I ask you, unlike in court where we wait for a judge to rule on the objection before we're going to answer it, you typically are just going to go ahead and answer the question to the best of your ability unless your lawyers tells you not to. Now it's up to you to decide what questions you answer and

which ones you don't, but a smart person typically listens to his lawyer.

So if you get advice from your lawyer not to answer a question, your best bet is to follow that advice. If you don't get that advice, then you should just go ahead and answer the question to the best of your ability.

Does that make sense?

A. Yes.

Q. Okay, terrific.

If at any time you don't understand a question that I've presented to you, please ask me to rephrase it or to repeat it. I'll do my best to do that. I'm usually pretty good at asking clear questions but I don't get through a deposition without asking a stupid one or two, or asking one that you can't understand. That's just the way it goes.

MR. SCHWAIGER: That was kind of strange. Madam Reporter, you just had a Chihuahua walk across your head.

THE CERTIFIED STENOGRAPHER: It's a Boxer.

MR. SCHWAIGER: Oh, Boxer.

THE CERTIFIED STENOGRAPHER: If he's distracting, I'll shut my door.

MR. SCHWAIGER: No, no. I just looked over and

your nice virtual background was altered for a minute and there was a dog on top of your head. And it was --

THE CERTIFIED STENOGRAPHER:

THE CERTIFIED STENOGRAPHER: Yeah. I discussed that with counsel earlier. He's geriatric, so he stays on the bed.

MR. SCHWAIGER:

MR. SCHWAIGER: Oh, He's welcome to it.

THE CERTIFIED STENOGRAPHER: Okay. Thank you.

MR. SCHWAIGER: Sorry for the interruption there.

Q. Okay. So there's no judge to rule. You're just going to answer the questions to the best of your ability.

If you don't know, that's fine, say that you don't know. All right? No one expects you to have an answer to every question.

If you can't remember, say you can't remember. That's perfectly fine, too. Sometimes the best questions -- or best answers you can give in a deposition are "yes, no, I don't know, I can't remember." All right? If that's the truth of the matter, then so be it. Again, if I don't make myself clear with a question, ask, I'll rephrase it. Okay?

Please do not start answering a question until

after I've actually asked it. The reason for that is twofold. One, if we're talking at the same time, Madam Reporter is going to have a hard time getting everything down on the record. Okay?

Two, you may think you know where I'm going with a question, and you'll probably be right, but occasionally you'll be wrong and you will give an incorrect answer to my question because you hadn't let me finish it.

So it's important for a lot of reasons that we not talk over each other. I will try to extend you the same courtesy and for the same reasons. And that is I'll try not to ask a follow-up question until you've actually finished giving your answer. But I will make mistakes and occasionally step on top of you. And if I do that, I apologize in advance. I mean no disrespect by that.

How are you presently employed, sir?

A. I'm a sheriff's deputy with the Sonoma County Sheriff's office.

Q. I'm going to refer to you as "Deputy Dietrick" as many times as I can. I might call you "sir." If I slip up and call you "Mr. Dietrick" or something like that, I mean no disrespect by that and I try to afford people the respect their title affords them. So okay.

You can call me whatever you want to call me.

I am entitled to your best estimate as to items where an estimate is appropriate, but you're not supposed to give me guesses. So if I ask you from time to time, you know, what time was it, what day was it, how far away was something, you're not going to have necessarily the exact answer. But if you could give me an estimate, I would like you to do your best to try. Fair enough?

A. Yes.

Q. Okay, great. The difference chiefly between a guess and an estimate is with an estimate you've got some basis for making an answer, but with a guess, you're just pulling it out of thin air.

So if I asked you how much money was in your wallet, you can probably give me an estimate without looking. But if I asked you how much money was in my wallet, I might not even have a wallet so that would just be a total guess.

Do you understand the difference?

A. Yes.

Q. When it comes to responses, please try to keep them verbal. Nonverbals don't show up in our record. So a shake of the head, a nod of the head, holding up your hands and saying "it was this big," those types of

things, they don't make it in the record.

When that happens, because it likely will, I will interrupt and I'll say, was that a "yes," or was that a "no," or was that "24 inches" or something like that. And you have an opportunity to correct me there. And I'm not trying to be jerk by interrupting you. I'm just trying to make sure that we have a good record that reflects what we're actually -- the information we're actually exchanging.

Does that make sense?

A. Yes.

Q. Okay. Terrific.

Okay. I guess I should touch on matters of privilege. If your lawyer is going to tell you not to answer a question, it's likely because the answer would infringe upon the attorney-client privilege. I'm sure you understand what that is but it's worth stating really quickly that I'm not entitled to know anything that you talked to your lawyer or your lawyers about. Okay? I don't want to know it. I might be curious about it but really our system doesn't work well unless you can enjoy the confidence of your communications between you and your lawyers.

If you don't know whether an answer might implicate the attorney-client privilege but you think

maybe it will, feel free to let me know. Usually your lawyer is going to know and he's going to object and say don't answer that or something along those lines. But if you think a communication is privileged and your lawyer has not objected, you can ask me, say "Hey, can we take just a quick break so I can talk with my lawyer about whether this is privileged?" And that will be the one time that I'll say sure. Typically I don't want a witness to take a break in the middle of a question and talk to their lawyer, but if it's a matter of privilege and your attorney has not objected, I'm okay with doing that.

Does that make sense?

A. Yes.

Q. Okay. All right. With that, I think that we can go ahead and get underway. If you have questions along the way, please feel free to ask. And I just ask you to keep in mind that, you know, as we go on, this will become fairly conversational. This is an adversarial proceeding, which means that there's one side against another side, but we all try to be polite and professional with each other and hopefully we'll have a good dialogue by the time this is done.

But keep in mind that this is --

(Audio distortion)

BY MR. SCHWAIGER:

Q. -- and formal court proceeding. Okay? So even if it's conversational, keep that in mind. This is serious business what we're doing here today. Okay?

A. Okay.

Q. All right. Terrific.

How many times have you testified in court, would you say?

A. I would say at least five times.

Q. Okay. All right. Great.

So you have some kind of idea about how all this works. You get to have a deposition under your belt after today. That's always helpful, too.

I'm assuming that each time you testified before was in the context of a criminal case; is that correct?

A. Yes, that's correct.

Q. All right. Terrific.

You said that you were a deputy sheriff with the Sonoma County Sheriff's Office.

How long have you been so employed?

A. I believe six years now.

Q. Okay. Do you recall the date that you were

hired?

A. I believe it was July 25th of 2017.

Q. How old are you?

A. I am 36.

Q. Some quick basic biographical questions.

Where are you from originally?

A. From Clearlake, California.

Q. How tall are you?

A. 6-foot.

Q. And sorry, this is the one that no one wants to answer. How much do you weigh?

A. I believe 240 pounds, 245.

Q. All right. Is that pretty consistent with what your weight would have been in July of last year?

A. I believe I was around 230 pounds to 235 pounds at that time.

Q. All right. Gotcha. That's what light-duty will do to you.

So prior to your time with Sonoma County, how were you employed?

A. I was a police officer with the Clearlake Police Department.

Q. How long were you with Clearlake in that capacity?

A. I believe it was four years and ten months,

four years and 11 months.

Q. Okay.

A. So just short of five.

Q. How old were you when you joined Clearlake?

A. I was like 25 or 26.

Q. Did you have any meaningful employment before you worked for Clearlake PD?

A. I managed my family's tire store.

Q. All right. Was that also in Clearlake?

A. Lower Lake.

Q. When did you start that job?

A. Probably about 9 years old.

Q. You started managing the tire shop at 9?

A. I didn't move into a management position until probably about 17.

Q. All right. Do they still have the business?

A. No. We sold it.

Q. What made you decide to take a gander into law enforcement from the family business?

A. Just wanted a better job than what my father had.

Q. Yeah. Everybody, I think. All right, that makes sense.

With that said, there's an awful lot of jobs out there. Why did you pick law enforcement?

A. I guess growing up in Clearlake, it's a very rough city and just thought I might be able to do my part and do some good and try to help some people.

Q. Why fire department -- why not the fire department or EMS as opposed to law enforcement?

A. Couldn't quite tell you. Just something about law enforcement kind of called to me more than the firefighter side.

Q. Do you have any family or close friends that were in law enforcement at the time?

A. No.

Q. So you kind of blazed that trail on your own?

A. Yes.

Q. All right. When did you attend the police academy?

A. I believe it was 2013.

Q. And which academy did you attend?

A. It was the Butte -- Butte Community College police academy. I'm not sure if that's the exact title, but that's where it was.

Q. Why did you head all the way up to Butte?

A. I think it was just a scheduling thing. They could get me in faster than the Windsor Academy could.

Q. Did you go to one academy or had you been to more?

A. Just the one police academy.
Q. Did you graduate on the first try?
A. Yes.
Q. Were you hired by Clearlake prior to attending the academy?
A. I was not.
Q. Okay. So can you kind of tell me how that process worked? Like for instance, did you give up your job at the family business and then go to the academy and then start applying for positions or was it something different?
A. We closed the business. I sold off everything that I could possibly sell off that was mine and put myself through the academy. And then once I graduated the academy, started -- well, started applying while I was in the academy closer towards the end and then continued to look for employment once I graduated.
Q. Okay. Did you apply anywhere else other than Clearlake?
A. Yes, I did.
Q. Where did you apply other than Clearlake?
A. Eureka Police Department, Mendocino Sheriff's Department, Lake County Sheriff's Department. There might be more, but that's all that comes to mind right now.

Q. Okay. Did you get any offers of employment from any other agencies other than Clearlake when you applied?

A. Eureka Police Department was ready to put me into backgrounds right before I spoke to Clearlake Police.

Q. And so you elected to pursue Clearlake instead of Eureka. Why was that your choice?

A. That was my hometown.

Q. What was it like being a cop in your hometown? I mean, Clearlake, it's a city, sure, but it's not a very big city, right? Everybody knows everybody in Clearlake. What was that like?

A. It was a gift and a curse.

Q. Yeah, I can imagine. You know all the places the bad guys are going to run and hide because you used to hide there when you were a kid. But you probably have to hook up former classmates and your old babysitters high on meth or something and you got to arrest her. Was it something along those lines?

A. I ran into a lot of people that I used to go to high school with or knew their families, yeah.

Q. Yeah, I can imagine. All right. So you took the job with Clearlake, but ultimately moved out of Clearlake after four years.

Were you specifically looking for a position with Sonoma County or did you just need to get out of Clearlake? What was it?

A. Sonoma County was a 72 percent pay increase and once I had children, Clearlake Police Department didn't quite pay enough for me to pay all my bills.

Q. All right. I can appreciate that.

Did you apply anywhere else other than Sonoma County?

A. No, I did not.

Q. All right. Did you know anybody at Sonoma County to kind of encourage you to come along that way?

A. Yes, my former FTO was a deputy here.

Q. Who was that?

A. Allen Collier.

Q. All right. Is Allen still with the sheriff's office?

A. I believe so.

Q. So at Clearlake did you have a particular assignment? I don't know how it works out there, or it is just everybody is on patrol? What's the deal?

A. I was on patrol and a field training officer.

Q. Okay. I assume that you went through a field training period at Clearlake prior to taking your first real assignment; is that right?

A. Yes.
Q. Okay. How long was your FTO?
A. I want to say six months, but I don't quite remember.
Q. All right. When did you become a field training officer?
A. I believe it was about a year-and-a-half to two years after being hired.
Q. That's pretty quick, isn't it?
A. It depends on the agency and how busy they are, how much experience you can get in a short amount of time.
Q. How many sworn personnel at Clearlake PD were there when you were there?
A. 20 to 30.
Q. I'm sorry, can you say that again?
A. Maybe 20 to 30.
Q. Okay. Did they have a fairly high turnover?
A. I don't know.
Q. All right. Now, you said that -- you intimated some things about Clearlake kind of being a little rough. You know, I think everybody who spent time in that part of California understands that Lake County in general has some different kind of law enforcement concerns than its neighbors.

Is that a fair statement?

A. Can you repeat the statement?

Q. Yeah. You know, I've been -- I practiced law in Lake County back when I did criminal work as well. It's just a different kind of place with different kind of crime, frankly, than the surrounding counties. At least that was my impression.

Is that your belief as well?

A. I had heard those same types of things but I've only been an officer in Clearlake and Sonoma County, so...

Q. What would --

A. That's my --

Q. Sorry.

A. I was just going to say that's pretty much my only frame of reference, so...

Q. Have you observed any differences in the -- well, let's just say general types of crime that you're investigating in Lake County, specifically Clearlake as opposed to Sonoma County?

A. Not that I can think of. All the same stuff there that -- that there is here.

Q. Is there a higher prevalence of meth use in Lake County or in Clearlake than what you've seen in Sonoma County?

A. It's tough to say because Clearlake is ten square miles and Sonoma County is much larger than that. There is definitely a lot of meth in Clearlake.

Q. Yeah. Okay. So during your time with Clearlake you said that you were an FTO.

Did you have any other special assignments beyond patrol while with Clearlake?

A. No, I did not.

Q. All right. Other than the pay differential, was there anything else you were looking for at Sonoma County when you applied there that Clearlake didn't have?

A. Not that I can think of.

Q. Okay. So after not quite five years with Clearlake, you got accepted on to the Sonoma County Sheriff's Office, and I'm assuming you moved into Sonoma County and took that position; is that right?

A. I did not move to Sonoma County.

Q. Okay. So you kept the homestead in Lake County and commuted to Sonoma County for work; is that right?

A. Correct.

Q. That's a good way to save money because nobody can afford to live in Sonoma County.

A. Correct.

Q. All right. Now, I'm assuming you had to go

through a new FTO period when you hit the sheriff's office; is that correct?

A. Yes.

Q. Who were your FTO's during that time?

A. Deputy Dan Mori, Deputy Ryan -- I think his last name is Patrick. Eric Seibold. That's all I can recall at the moment.

Q. All right. Now, you typically have about maybe five or six FTO's right? Does that sound about right?

A. I believe at least three, but it can always be more.

Q. All right. After FTO, did you roll into a patrol assignment or something else?

A. Patrol.

Q. And what was your assignment?

A. I believe I started on weekend day shift.

Q. All right. And did you have a particular beat that you were assigned?

A. Yes.

Q. What was that?

A. It was west beat, the Sebastopol area.

Q. And how long did you have that assignment before you took on a different set of responsibilities?

A. Close to a year, I think.

Q. All right. After the year did they move you

into courts?

A. I believe that was the next move, was court security.

Q. I think that's pretty normal. How long were you in courts?

A. I think just short of a year.

Q. Now, you see, if I had known you were on west beat, maybe I wouldn't have made the comparison about meth use. Guerneville has got its fair share of meth too, doesn't it?

A. Yes, it does.

Q. Yeah, it's kind of known for that. I think they have a meth fest every year there.

All right. So then you're in courts for a year. How does your job change after you get out of courts?

A. I believe my next assignment was back on to weekend day shift. Or it might have been -- back to patrol on a day shift position.

Q. The same -- same beat?

A. I don't recall.

Q. How long were you on that assignment?

A. A few months until everybody's shift assignment changes once a year.

Q. Okay. So you picked up kind of the tail end of

a cycle and then new assignments came around.

What was your new assignment?

A. After the day shift position that was opened I went to, I believe it was weekend graveyard shift back out in -- in the west beat.

Q. How long did you have that assignment?

A. About a year.

Q. All right. Your first time in west county, your first time on the west beat, who was your supervisor?

A. I don't recall.

Q. Okay. Did you have a patrol partner?

A. Yes, I did.

Q. Who was that, or if there was more than one?

A. I don't recall.

Q. You're about as good with names as I am.

All right. Second chapter back in west county, when you were working weekends graves, who was your supervisor at that time?

A. I don't recall.

Q. Did you have a patrol partner at that time?

A. Yes, I did.

Q. Do you recall who that was person was?

A. That was Deputy Ebert.

Q. What is Deputy Ebert's first name?

A. Cody.
Q. All right. All right. So you're on, I'm assuming -- I know the year -- on weekend graves, west county; is that right?
A. Sorry. Can you repeat that?
Q. Yeah. We've gotten up to the point where you were doing weekend graves in west county.
Did you hold that position for a year?
A. I believe it was close to a year.
Q. Okay. And then how did your assignment change at that point?
A. I went to a weekend day shift position.
Q. What beat?
A. North county.
Q. Okay. When did you take on that position?
A. I don't recall.
Q. Can you give me a year?
A. 2020, 2021.
Q. All right. Fair enough.
Do you recall who your supervisor was when you took your north county beat?
A. I believe it was Sergeant Kelly Burris.
Q. How was Sergeant Burris as a supervisor?
A. She was good.
Q. Did you have a beat partner?

A. Yes, I did.
Q. Who was that?
A. Deputy Josh Seda.
Q. I know that name. I know that I know that person, but I can't remember how.
All right. How long were you doing the north county beat for?
A. Close to a year, I guess.
Q. And I know the west county beat. Can you describe geographically what the north county beat is?
A. It is everything north of Windsor. I believe it's Shiloh Road all the way up to the county line and then extending east towards Napa County and Lake County and extending west to the Dry Creek area, a little further than that. I'm not exactly sure where that line is drawn out there.
Q. So we know that Lake Sonoma has got a couple deputies stationed out there, right?
A. Yes.
Q. Is that a different assignment than north county or is it part of the north county assignment?
A. It is a different assignment.
Q. All right. And I know that the west county beat handles the coast, right?
A. No.

Q. No. Okay. So part of the coast is also north county, or is that its own beat, the coast?

A. The coast is its own beat.

Q. Gotcha. Okay. So someplace in that no man's land between the coast and Lake Sonoma is probably the dividing line where the north county beat runs into the coast beat; is that right?

A. Sounds about right.

Q. Okay. And then to the east, we're going all the way into Napa County or Lake County?

A. Yes.

Q. Okay. All right. Thank you. That makes sense.

Did you ever do any -- I should say like multi-agency work with either Lake County, Napa County, or Mendocino County law enforcement agencies?

A. During the multiple fires in the surrounding counties and in Sonoma County.

Q. All right. So as far as firework goes, but not really any -- well, I should be more specific.

Were you doing law enforcement work or were you doing like disaster relief work?

A. Law enforcement work related to the disaster.

Q. Gotcha. Okay.

Other than that, any other cross-agency type

work?

A. Not that I can think of.

Q. Okay. All right. So we've got you, I think you said for about a year in north county.

How does your assignment change after that period of time?

A. I believe I stayed on the weekend day shift north county.

Q. Okay. And Sergeant Burris is still your supervisor?

A. I believe at that time it was Sergeant Nick Berg.

Q. Okay. All right. And did you have a patrol partner?

A. Yes, I did.

Q. Who was that?

A. Calvin -- Deputy Calvin Goforth.

Q. I know that you're on light-duty right now. What is your current assignment?

A. With personnel.

Q. How long have you been in that assignment?

A. About a year, I guess.

Q. Let me make sure that we've got our timeline correct here. Obviously -- well, I shouldn't say obviously.

We're here to talk about an incident that occurred July 29th, 2022 up in the Healdsburg-Geyserville area. I want to make sure that I've got your work chronology down kind of before we move on from here.

You said that you were working weekend days under Sergeant Berg in the north county beat. Was that during this time frame, July of 2022?

A. Yes.

Q. Okay. And you said about a year you've been working in personnel.

What date did you begin in personnel, if you recall?

A. August or September of 2022.

Q. And your assignment to personnel, was that due to the critical incident or was that something else?

A. I'm [redacted] right now.

Q. Okay. But I'm talking about when you moved into the personnel assignment in August or September, was that as a result of you being involved in the critical incident or was that just a normal change that the administration wanted you to do?

A. It was due [redacted]

Q. Okay. Gotcha. So you've actually been on light status duty for a bit then?

A. Yes.

Q. I'm sorry to hear that. Are you comfortable answering questions about that?

MR. PRAET: I'm going to object to his personnel and medical records so instruct him not to answer. So we can move on.

MR. SCHWAIGER: Well, we have a court protective order as well. And so what I was going to ask is if he was comfortable to discussing that on the record, you know, in the open part of our deposition, and if he's not, then I can ask to go under seal and examine those questions with the benefit of the protective order in place.

MR. PRAET: I'm still going to instruct him not to answer even with the protective order. It's a personnel issue. It's a medical -- medical information. It's privileged and it's not relevant to this case. So I'm going to instruct him not to answer. You can move on.

MR. SCHWAIGER: Well, I'll move on when I'm ready to move one, Counsel.

As far as those arguments, though, I don't know that any of them really hold up when we have a protective order in place that's designed specifically to protect, in this case, confidential information of

peace officers. So I mean, if that's your admonition, that's your admonition, but it's incorrect.

MR. PRAET: Well, you can argue with the Court but I'm going to instruct him not to answer as to any medical issues and we can move on.

MR. SCHWAIGER: Do you have any authority that you can share with me? Obviously probably not off the tip of your tongue, of course, but I wonder if like during the break you can give me some authority. I don't want to pursue it with the court if I don't have to, but I've never been rebuffed on a question like when I've offered to go under seal.

MR. PRAET: Well, you're right. I don't have case law at the tip of my tongue, but I'm instructing him. It's all medical information. It's private information. It's not relevant to this incident. It's post-incident so I'll instruct him not to answer.

MR. SCHWAIGER: Okay.

Q. What is your highest level of education?

A. High school and I guess the college credits that come along with the police academy.

Q. Gotcha. During your time at either Clearlake or with Sonoma, did you have any specialty assignments other than FTO? And by way of specialty assignments, I mean such things as collateral duties. They could be,

say, defensive tactics instructor or they could be a community service officer or they could be, you know, firearms instructor; anything like that?

A. I was a member of the Sonoma County Tac team as well as a EVOC instructor.

Q. What's a Tac team?

A. It is basically for crowd control situations.

Q. Okay. And from what -- during what date range were you involved with the Tac team?

A. I believe I was a member of the Tac team for three years. I don't recall when that started or ended.

Q. Is that something that you volunteered for?

A. Yes.

Q. And why was that something you wanted to pursue?

A. I felt confident that my experience in Clearlake would prepare me for many situations that I would come across in my law enforcement career. However, large crowds was not something we ever typically dealt with in Clearlake. I thought it would be good to have more specialized training in how to deal with the large crowds in Sonoma County seeing how I never really had experienced that in Clearlake.

Q. Okay. All right. Largest crowd in Clearlake is at the Jack in the Box at 2 a.m. I know because I've

been there.

Okay. Three years on the Tac Team. What years were they?

A. I don't recall.

Q. Can you give me your best estimate?

A. Maybe 2018 to 2021.

Q. And during that time were you ever activated as part of the Tac Team?

A. Yes.

Q. How many times?

A. Maybe around two to five times.

Q. Were those all during the George Floyd or Black Lives Matter protests or were there some different activations?

A. There was different activations.

Q. I'm assuming you did activate for the George Floyd BLM protest; is that right?

A. I believe so.

Q. What else did you activate for?

A. There was a large homeless encampment in the Santa Rosa area that they had us assist with.

Q. What did you assist with?

A. Making sure the -- the large encampment was moved along peacefully.

Q. So would it be fair to say that you were -- the

Tac Team was there to disperse the encampment?

A. For the most part Tac Team stood by while other outreach programs were working with the people staying there to get them moved along and get them other resources.

Q. Okay. All right. So that's one activation. What were the other ones?

A. There was a protest at the -- at the sheriff's office and in downtown Santa Rosa, which I believe were related to the George Floyd riots.

Q. You said riots. Were there riots in Santa Rosa?

A. I don't know if they were ever designated official riots or -- or not, but the protests or riots, whatever you like to call them.

Q. Okay. So that would be another two.

What else did the Tac Team respond to while you were there that you assisted with?

A. I believe that was it that I assisted with.

Q. All right. So we have the homeless encampment and then we've got an assembly at the sheriff's office and then downtown Santa Rosa in response to the George Floyd BLM protest; is that right?

A. Yes.

Q. All right. And then EVOC -- let me ask you.

How long is training for the Tac Team?

A. There was a -- there was in-house trainings as well as, I believe it was a week-long training at -- at the FEMA -- at a FEMA facility in Alabama.

Q. Okay. All right. EVOC, I know that has something to do with car chases but I can't remember what it stands for. Can you tell me?

A. Emergency vehicle operations course.

Q. Does that have something to do with car chases?

A. Yes.

Q. All right. Tell me what it is.

A. It is training other deputies on policies and procedures relating to vehicle pursuits.

Q. Okay. How long were you an EVOC instructor?

A. Maybe four or five years.

Q. And can you give me an approximate date range?

A. I'd say approximately 2018 or 2019 to current day.

Q. So you would have worked under Sergeant Burgess with EVOC, right?

A. When I first started, yes.

Q. How was he as a supervisor?

A. I never had any issues with him.

Q. All right. Other than the Tac Team and EVOC, is there any other collateral or special duties that

you've been assigned since you have been at the Sonoma County Sheriff's?

A. No.

Q. All right. I'm going to ask you some questions that may sound silly. And they may sound like I'm invading your privacy and that's because to a degree they kind of are and I apologize for that. If I go too far afield, your lawyer won't hesitate to stop me with these. But these are questions I typically ask everybody and they're not special to you.

Have you ever used a different name?

I think I lost your audio there for a minute. I'm sorry?

A. No.

Q. All right. Thank you.

Have you ever been arrested?

A. No.

Q. Ever been charged or convicted for a crime?

A. No.

Q. Prior to this event, had you ever been diagnosed with any kind of mental illness or psychological disability?

A. No.

Q. Have you ever been accused of professional misconduct?

A. Not that I'm aware of.

Q. All right. Have you ever been the subject of an Internal Affairs investigation or administrative review?

A. I think so.

Q. Okay. Now, what I was talking about before is called our court protective order. All right? The transcript that Madam Reporter is preparing today is a public record just like all courtroom testimony, as a rule, is pretty much public record.

We make exceptions from time to time for what can be public and what has to be held back as confidential. And when it comes to personnel issues, those are protected by law and have to be treated confidentially. So I'm going to say some magic words and then ask you some followup questions about that. The magic words go like this: Madam Reporter, can we now go under seal of the protective order.

So now what will happen is everything that we talk about after this point is not part of the public record. Okay? And it can't be distributed by anyone without an order from the Court. So with that in mind, we are now in confidential land.

(Pages 41 through 48 have been designated confidential and are separately bound. The regular portion continued on page 49.)

BY MR. SCHWAIGER:

Q. All right. Great.

All right. What did you do to prepare for your deposition testimony?

A. I reviewed body cam footage, dispatch audio, policies.

(Audio froze)

BY MR. SCHWAIGER:

Q. All right. What body worn camera footage did you review specifically?

A. My body worn camera as well as Deputy Power's body camera.

Q. Any others?

A. No.

Q. Okay. Have you ever reviewed any other body worn camera footage associated with this case or its investigation?

A. No.

Q. All right. When was the last time that you reviewed the body worn camera footage?

A. Yesterday.

Q. And prior to that, had you seen it before?

A. Yes.

Q. When?
A. When they released the -- when they did the -- what is it called -- I'm sorry. The critical --
Q. Critical incident --
A. Yeah, the critical incident press release.
Q. Okay.
A. Yeah.
Q. So that was a while ago, right?
A. Yes.
Q. When was that? Was that basically -- that had to have been within a week or two of the actual events; is that correct?
A. That sounds about right.
Q. Okay. Had you seen the body worn camera footage at all in between that time, like say when the -- a few weeks after the incident up until yesterday?
A. Sorry. Can you repeat the time frame that you're asking about?
Q. Sure. I'm just wondering if there was another time that you reviewed the body worn camera footage other than when the critical incident came out and then yesterday when you were preparing for your deposition?
A. Not that I can think of.
Q. And that's -- I'm just talking about any body

worn camera footage at all related to the case.

A. Correct.

Q. All right. All right. Great.

How many times have you seen the critical incident briefing video?

A. I don't recall.

Q. More than once?

A. Yes.

Q. Okay. More than twice?

A. Probably.

Q. Okay. More than five times?

A. Probably not.

Q. Okay. All right. Those are the annoying ways that lawyers ask questions. I'm sorry for that.

MR. PRAET: I'll stipulate that it was annoying.

MR. SCHWAIGER: Let that be a standing stipulation, Counsel.

MR. PRAET: All right.

BY MR. SCHWAIGER:

Q. Okay. When you reviewed the critical incident briefing video, was there anything stated in the video that you believe was not correct?

A. No.

Q. Okay. You said that you reviewed the dispatch

audio. How many times have you reviewed that?

A. Just once.

Q. Okay. And when was -- when did you review the dispatch auto?

A. Yesterday.

Q. Okay. Policies; which policies did you review?

A. The use of force.

Q. Any other ones?

A. Not that I can think of.

Q. And you said that you met with your lawyer. Was that Mr. Praet?

A. Yes.

Q. All right. Was there anyone else present in that meeting?

A. Deputy Powers.

Q. All right. Anyone other than Deputy Powers?

A. No.

Q. Okay. Have you been asked at anytime since these events to make a written statement concerning what happened?

A. No.

Q. Have you made a written statement of any kind, it could be a journal entry, a diary, e-mail to your mom, report, anything like that regarding what occurred?

A. No.

Q. Have you been asked at any time since these events to give an oral statement?

A. Not that I'm aware.

MR. PRAET: Meaning like an interview? You're asking about, including an interview?

MR. SCHWAIGER: An interview would count.

Q. Say like -- and that could be an interview with your boss or with IA or with an investigator from the DA's office. It could be anybody.

A. I've spoken about it with my lawyer.

Q. Okay. Other than your lawyer, do you remember giving any -- any oral statements to anyone?

A. No. Oh, the interview with Santa Rosa Police Department.

Q. That would count.

MR. SCHWAIGER: Thank you, Mr. Praet.

THE WITNESS: I thought you were referring to anything besides that. I apologize.

BY MR. SCHWAIGER:

Q. No, not at all. Listen, this is not a -- I mean, sometimes lawyers play the "gotcha" game and all that kind of stuff. Nobody is expected to be perfect at this. All right?

When you get done, you're going to go home and you're going to be like, crap, there was like 30 things

I should have said differently. That's normal. Okay? It's just normal.

I should probably add this, it's a good time to add it. That when we're done, Madam Reporter will make a transcript of what we've done here.

You're entitled to review that and to look to see if there's any mistakes. Okay? Sometimes, though very rarely, the court reporter will make a mistake in the record. You might want to correct it if you find it.

But you're also entitled to substantively change an answer if you feel like it. Right? Let's say you gave me a "no" and you want to change to it a "yes." Actually, you're allowed to do that.

Though I would caution you against it unless it's absolutely necessary because lawyers have a tendency of commenting on things like that to suggest that a person's testimony is less reliable because they've changed it over time.

But with that said, you know, this is -- we're all human. None of us are perfect at this. So you will have a chance to review the transcript when we're done. It will probably be all be correct but you'll have a chance to review the transcript for any reporter errors and offer corrections if you find them. You may also

change substantive responses to questions, such as a "yes" to a "no" or vice versa if such is appropriate, but I would caution you against that because lawyers have a tendency of commenting on changed testimony to suggest that your answer is not going to be reliable since it has changed over time. Something to that effect. Okay, I think we're good.

Other than the statement that was made to SRPD in that interview, have you given any other interviews or made any other oral statements about this case to anyone?

A. No.

Q. Have you discussed it at all with anybody, anybody at all?

A. My lawyer.

Q. Okay.

A. Mr. Praet.

Q. Okay. Great. I know you have family. So, you know, we talk to family and loved ones and close friends about things that are, you know, important in our lives.

Have you talked to family or close friends about this case at all?

A. No.

Q. Is that difficult for you?

A. No.

Q. Okay. All right. When were you interviewed by Santa Rosa police?

A. I believe it was two days after the incident.

Q. And where were you when you were interviewed?

A. The Sonoma County -- I'm trying think of the title of it. The DSA Hall.

Q. The Deputy Sheriff's Association up in Healdsburg?

A. Yes, thank you.

Q. No problem. Well, they've got a couple of them. Was it the one in Healdsburg?

A. No. In Santa Rosa.

Q. Santa Rosa. Okay. All right. So the DSA Hall in Santa Rosa.

Who was there with you for your interview?

A. My lawyer. I cannot recall his name at this moment. And two detectives from Santa Rosa Police Department.

Q. All right. Was there anyone else there from your agency, from the sheriff's office?

A. In the interview?

Q. Yes, sir.

A. No.

Q. All right. What about the DA's office?

A. Inside the interview room, no.

Q. Okay. Your answer begs the next question which is were they outside of the interview room?
A. Yes.
Q. Okay. Tell me about that.
A. The interviews are audio-recorded and there is a video that tasks to a separate room where members of the DA and whoever else needs to be involved can watch the video, but it's not recorded, is my understanding of how the interviews are typically done.
Q. And how did you come to that understanding? Did someone tell you?
A. Yes.
Q. Who told you?
A. I don't recall.
Q. Did you learn it while you were in the interview room?
A. It had been told to me probably sometime during FTO, that that is the typical way that things are done and somebody reminded me of that order of operations prior to the interview.
Q. All right. Who was it that reminded you?
A. I don't recall.
Q. And then how long prior to the interview were you reminded?
A. I don't recall.

Q. Who did you believe to be in that other room watching?
A. I have no idea.
Q. You believe there to be a member of the DA's office, right?
A. Correct.
Q. All right. What did you base that belief on?
A. The fact that I was told that members of the DA would be in the other room.
Q. Okay. All right. Were you told anyone else would be there?
A. Not that I recall.
Q. Did you have any reason to believe that other people were there other than employees of the DA's office?
A. There were a lot of people there. I really didn't care at the time who was watching on the other end.
Q. When you say there were a lot of people there, how do you know that?
A. I saw people there.
Q. Who did you see?
A. I don't recall.
Q. Okay. People from your agency or other agencies?

A. Both.
Q. All right. Who from other agencies did you see?
A. I don't recall.
Q. What other agencies were they from?
A. I know that members of the Santa Rosa Police Department and the Sonoma County District Attorney's Office were there.
Q. Okay. Anybody else?
A. Not that I can recall.
Q. All right. Fair enough. Sorry for the nitpicky questions.
How long did that interview last?
A. Two to three hours, maybe. I don't know exactly.
Q. And you said this happened two days after the shooting; is that right?
A. I believe that was the date.
Q. Okay. Do you know why it took two days to do your interview?
A. I have no idea.
Q. Were you told that the interview was voluntary?
A. Yes.
Q. Were you told that you could leave the interview at any time?

A. Yes.

Q. Were you in any way compelled to make any statements during the interview?

A. No.

Q. Okay. All right. So I know we're kind of doing this in reverse chronological order. Bear with me a little bit on that. I know it's not natural.

So am I correct that the original call for service that you responded to came in at about 8:30 in the morning on July 29th?

A. That sounds about right.

Q. And that ultimately the shooting occurred at approximately 10 a.m.; is that correct?

A. I don't know the exact time of the shooting.

Q. Okay. All right. Then after the shooting, and we are going to get back, we'll talk about all these details, but I want to set kind of bookends now.

After the shooting, were you sequestered?

A. Yes.

Q. What does that mean?

A. My understanding of it is just don't speak to anybody about the incident until I talk to my lawyer.

Q. Okay. Were you -- were you taken somewhere after the incident to be sequestered?

A. Yes.

Q. Okay.
A. Yes.
Q. Where was that?
A. The DSA Hall in Santa Rosa.
Q. All right. Did they have you on lockdown there for two whole days?
A. No.
Q. Was that a "no"? I'm sorry.
A. That was a no.
Q. Okay. So following the shooting, did they take you immediately to the DSA Hall or were there any stops along the way?
A. Just immediately to the DSA Hall.
Q. All right. Did you go by yourself or did somebody else go with you?
A. The sequestering deputy took me there.
Q. Who was that?
A. Deputy Beau Zastrow.
Q. Okay. Was Deputy Powers sequestered as well?
A. Yes.
Q. All right. Did a separate deputy -- was a separate deputy responsible for his sequestration?
A. I believe so.
Q. Different car?
A. Correct.

Q. All right. So -- all right. You drive with Deputy Zastrow. Did you guys have any conversations about anything along the way?

A. No.

Q. You get to the DSA. What happens there?

A. Sat there, got some water, got some food, waited for Santa Rosa Police Department to, I believe, take pictures of us and our equipment.

Q. All right. Were you by yourself when you were waiting or were you waiting with anyone else?

A. I was waiting with Deputy Zastrow.

Q. All right. Where was Deputy Powers?

A. I don't recall.

Q. All right. But not with you?

A. He was in the same building, but we were separated.

Q. Okay. All right. So Santa Rosa brings in their evidence technicians, starts taking photos and stuff like that; is that correct?

A. Correct.

Q. All right. What happens next?

A. They collected evidence, my weapon, I think my boots, my pants. And I got a change of clothes and waited for my lawyer to arrive.

Q. Okay. Did anybody ask you any questions during

that time?

A. No.

Q. All right. What time did your -- how much time after they had finished with the processing of your uniform items and taking pictures did your lawyer arrive?

A. Couple hours.

Q. Okay. Was that Andrew Ganz?

A. Yes, it was.

Q. All right. I like Andrew. I think he's a decent man. I think he's helped out a lot of good cops in the past.

So then you get a chance to meet with Andrew and talk with him?

A. Yes.

Q. Did you talk with him alone or was anyone else in the room with you?

A. I spoke with him alone.

Q. Okay. How long did that take?

A. Couple hours.

Q. All right. After you were done speaking with Mr. Ganz, what did you do?

A. I believe I sat at the DSA Hall and waited until Mr. Ganz advised me when I could leave.

Q. Okay. How long was that before he told you you

could leave?

A. Maybe another couple hours after that.

Q. Okay. All right. Was he speaking with Deputy Powers during that time?

A. I don't recall.

Q. Okay. So then Mr. Ganz tells you that you're free to leave. Were there any caveats on that? And I don't want to get into attorney-client privilege either. So if it's confidential, don't tell me.

But was it like hey, you can leave, but don't leave the county, hey, you can leave but don't talk to anybody, or was it just you're free to go?

MR. PRAET: Object to attorney-client privilege. Obviously I wasn't present, but you can tell him anything your attorney didn't tell you. Don't tell him whatever you discussed with your attorney. So...

THE WITNESS: He just advised me when the -- when the interview with Santa Rosa Police Department would be and told me I was free to go.

BY MR. SCHWAIGER:

Q. All right. Good to go. So what time did you leave DSA?

A. I don't recall.

Q. Was it the evening?

A. Yes.
Q. Was it still light out or was it dark?
A. I believe it was dark out.
Q. All right. What did you do when you left?
A. Drove home.
Q. And home is in Lake County; is that right?
A. Yes.
Q. Okay. What did you do when you got home?
A. Told my wife that I had been involved in a shooting and gave my kids a hug and a kiss.
Q. Were you able to sleep?
A. Um, eventually.
Q. Good. Okay. All right. So Mr. Ganz informed you that you were going to be interviewed in a couple of days. Let me see if I've got the date of that interview. I'm sure that I have it some place here. Let's see.

So probably was it July 31st?

A. That sounds about right.
Q. Early afternoon?
A. I don't recall the time.
Q. All right. The shooting took place on the 29th. You were interviewed on the 31st.

What did you do on the 30th?

A. Hung out with my family. Took my kids to the

lake.

Q. Anything else?

A. Not that I recall.

Q. All right. Did you have any opportunity to speak with your lawyer on the 30th?

A. I -- not that I recall.

Q. All right. How about on the 31st prior to the interview?

A. I believe I spoke with him prior to the interview.

Q. All right. Was that on the phone or was it in person?

A. I believe it was in person.

Q. Was it at the DSA again?

A. Yes.

Q. All right. Okay. At some point were you asked whether you would consent to a voluntary blood draw?

A. Yes.

Q. All right. What is your understanding of the purpose of a voluntary blood draw following an officer-involved shooting?

A. You're asking what the purpose is?

MR. PRAET: What is your understanding?

MR. SCHWAIGER: Yeah.

MR. PRAET: He wants your understanding, not

whether you're right or wrong. Doesn't matter. Just your understanding if you have one.

THE WITNESS: I would imagine it would be to see if the officer is under the influence of anything he shouldn't be under the influence of.

BY MR. SCHWAIGER:

Q. Okay. All right. I think that's a fair question.

When were you asked whether you would give a voluntary blood draw?

A. That was on the 29th, I believe around the time that they were collecting evidence.

Q. So was this back at the DSA or was it someplace else?

A. At the DSA Hall.

Q. And was it SRPD personnel that had asked?

A. Yes.

Q. How did you respond to that?

A. I said no.

Q. Why did you say no?

A. Under the advice of my lawyer.

Q. Okay. Fair enough. Did you have concerns that there might be something in your blood?

A. No.

Q. Have you ever used recreational drugs?

MR. PRAET: Object. I mean 5th Amendment, I suppose. Do you want to keep to the time when he's been a peace officer? I don't know what he did as a kid, but how about as a peace officer?

MR. SCHWAIGER: Yeah. I'm fine with that, Bruce. I would say for 5th Amendment concerns, the California rule for corpus delicti is that absent any other --

Q. You probably know this -- absent any other evidence, a person's statement can't be used against them. It's insufficient as a matter of law to corroborate a criminal defense. You could tell me that you shot the Kennedys and, you know, it doesn't matter unless there's something else out there.

So I think we'll just limit it to as a peace officer, so during your time as peace officer. So for the last how many years that is, about ten years; is that about right?

A. Sounds about right.

Q. The last ten years, have you ever used drugs recreationally?

A. No.

Q. What about alcohol?

A. Yes.

Q. All right. In the last ten years, have you

ever gotten drunk?

A. Yes.

Q. All right. How often would you say you get drunk?

A. Maybe once or twice in a six-month period or a year.

Q. I think that's fair. All right. I also think that's probably a much better number than most people in your line of work or for mine, for that matter.

Had you had any alcohol in the 48 hours prior to the shooting?

A. No.

Q. Okay. Now, during this time you were working weekend days; is that right?

A. Yes.

Q. Can you tell me what that schedule looks like, what's your days and times that you've been working?

A. It is Friday, Saturday and Sunday, every other Thursday, and the hours are 7 in the morning to 7 at night.

Q. Okay. So you're hanging out on the 30th waiting for your interview, not really doing anything related to the case, just spending some family time. Correct me if I miss -- mischaracterized any of your testimony.

On the 31st you head into Santa Rosa for your interview sometime early afternoon. And prior to your interview, you met with your attorney; is that right?

A. Sounds right.

Q. Okay. Prior to the interview, did you have the opportunity to review body worn camera footage?

A. I believe so.

Q. Okay. Where did you review that footage?

A. At the DSA Hall.

Q. Okay. How many times did you see it?

A. I believe just once.

Q. Any portion of the video that you wanted to see more than once?

A. No.

Q. Okay. And when I say "the video," I'm talking about your video, but did you happen to look at other body worn camera footage?

A. Just my own.

Q. All right. And how did you view that body worn camera footage?

A. I believe that was on my lawyer's laptop.

Q. And when was the first time that you saw that?

A. I believe it was the 30th -- or excuse me -- the 31st.

Q. Okay. So immediately prior to giving your

interview?

A. I believe so.

Q. Okay. I say immediately, but I mean it could have been an hour, it could have been three hours, I don't know. Do you have any recollection?

A. I don't recall.

Q. Okay. All right. Now, when you were interviewed by SRPD, do you remember being told that it was a criminal investigation?

A. I don't recall.

Q. All right. What does that mean to you, a criminal investigation?

A. An investigation into a crime.

Q. Committed by whom?

A. Anybody.

Q. All right. Do you remember being told in the investigation -- in the interview that you were being interviewed as a witness and victim?

A. I believe I was interviewed as a victim or a witness.

Q. All right. Not as a suspect; is that correct?

A. That's correct.

Q. All right. Were you ever given any type of advisement regarding, say, your Miranda rights?

A. Not that I can recall.

Q. But you've been a police officer for ten years at the time -- nine. You have a pretty good understanding of what your Miranda rights are?

A. I do.

Q. All right. Do you remember who interviewed you from SRPD?

A. I do not.

MR. SCHWAIGER: Before I jump into this next line of questioning, let's go off the record for a minute.

(Luncheon recess)

BY MR. SCHWAIGER:

Q. Welcome back. Now is when we get to actually start talking about the event a little bit.

Like I said earlier, this is an adversarial proceeding which means there's two sides to it but that doesn't mean that we don't have humanity, what we're doing here. If you need to take a break or if things get emotional or whatever, I'm okay with that. All right. Just let me know.

Because each of us, even manly men, need to take a break sometimes. So let me know if you do; otherwise, we'll just push through. Okay?

A. Okay.

Q. All right. Okay. So I've already asked you whether you were on duty on July 29th, 2022.

MR. PRAET: You froze for a minute there, Izaak, and you're still frozen.

MR. SCHWAIGER: Are we good? Yes? No? Yeah? Bruce, are we good?

MR. PRAET: Is it frozen for you? Hang on.

(Discussion off the record)

BY MR. SCHWAIGER:

Q. I already asked you, I believe, if you were on duty or something to that effect, but that is normally where I start.

So were you on duty July 29th, 2022?

A. Yes.

Q. And were you working north county beat at that time?

A. Yes.

Q. Earlier you told me that your shift goes 7 to 7; is that correct?

A. Yes.

Q. All right. When you get to work for the day, where do you report? The main or someplace else?

A. The main office.
Q. All right. Do you take your patrol vehicle home with you at night?
A. No.
Q. So you drive your POV to the main and then pick up your patrol vehicle there?
A. Yes.
Q. Any kind of daily briefing or anything that you attend before going to work?
A. Typically, yes.
Q. All right. Did you have a daily briefing that morning?
A. No.
Q. Did you check in with anybody, like what was going on in your beat in the last 12 or 24 hours?
A. I didn't have an opportunity that morning.
Q. Okay. Why not?
A. I was dispatched to, I believe it turned out to be a medical call near the area of Windsor.
Q. Okay. All right. Now, you say near the area of Windsor. Earlier you were telling me that the beat is, I think you said north of Shiloh; is that right? Because Shiloh is south Windsor, isn't it?
A. I know it's in the general area getting at Windsor. I don't know exactly the street that it starts

on.

Q. Does north beat swallow up Windsor or does it start on the north edge of Windsor?

A. I believe it swallows up Windsor or at least most of it.

Q. Okay. All right. Great. So you were on a call pretty much from the getgo for some kind of medical situation; is that right?

A. Correct.

Q. Do you remember any of the details of that medical?

A. I believe it was a Welfare check and turned out the guy was having a diabetic issue.

Q. All right. Did you get the call for service for this event? And by the way, when I say "this event," I'm talking about the critical incident that occurred east of Healdsburg, July 29th morning. Okay?

If I say "this event" or "these events," that's what I'm talking about unless I say different. Fair enough?

A. Okay.

Q. Did you get a call for service for this event while you were still on that medical call?

A. Yes.

Q. Okay. Tell me -- tell me what happened. How

did you come to learn that there was a need for patrol response in this certain area and what did you know about the circumstances when you were attached to the call?

A. I believe the original incident started with a suspicious vehicle parked at a winery and there was no driver on scene. It was just an abandoned vehicle.

Q. Okay. So that's just -- that's the entirety of the call that comes in to you?

A. Correct.

Q. All right. Did you dispatch specifically or did you attach yourself to the call?

A. I believe I was dispatched to that call.

Q. Okay. And were you informed of these details regarding the call for service over the radio, over your MDT, something different?

A. It would have either been through dispatch or through the MDT. I don't recall which one.

Q. They're usually kind of the same content-wise; isn't that right?

A. That's typically -- yes, that's correct, they typically are similar.

Q. There might be more details sometimes coming out on the MDT than what you get over the radio, though; is that correct?

A. It can go either way.
Q. That makes sense. All right. It just depends on what the dispatch puts into the computer, I guess; is that fair?
A. Yes.
Q. So you get a call for this fairly rural address. Had you ever been in that area before?
A. Yes.
Q. Okay. How many times do you think?
A. I have no idea.
Q. All right. About ten? Less? More?
A. What do you mean by "area"?
Q. Well, as I understand it, this is a pretty rural area kind of between -- like you can't really go east to Healdsburg on a road very well, right, because you run into the river.
But kind of that area east of Healdsburg, south of Geyserville, west of the Chalk Hill Road. That's kind of my appreciation for where this was.
Is that about right?
A. That sounds correct.
Q. I'm just wondering if you were familiar with the area that you were headed to, if you had been there before, if you knew this is a winery or, you know, it's a hog ranch or whatever?

A. I know a specific large area. I had never been out to that specific property before.

Q. All right. Now you broke up a little bit at the beginning there. I saw Madam Reporter's face so she might not have got the first part of your answer too.

Can you just repeat that for me one more time?

A. I was familiar with the large general area. I had never been to that specific winery before.

Q. Okay. All right. Okay. So you get a call. Do you have any more information that you receive on your way to the call?

A. Not that I recall.

Q. All right. So I'm assuming that this is a necessary but lower priority call since you were just investigating a suspicious vehicle; is that right?

A. That it was a low priority call?

Q. Yes.

A. Initially, yes.

Q. All right. I mean, you're not going code 3, right?

A. Correct.

Q. How long does it take you to get to Thomas Road?

A. To Thomas Road from where I originally was dispatched to?

Q. Well, okay. I should back up again.

How long did it take you to arrive on scene from Windsor?

A. I'm a little confused because the initial call was off of Highway 128.

Q. Right. So what I'm asking you is how long did it take you to respond and get to the location for the call for service from Windsor where you were leaving the medical call?

A. Maybe 20 to 45 minutes; somewhere in there.

Q. Okay. All right. And I think I asked you if you received any other information from dispatch on the way. Did I ask you that?

A. Yes.

Q. And you said no, correct?

A. I don't recall any other additional information.

Q. Okay. What happens when you arrive on scene?

A. To the suspicious vehicle?

Q. Yeah. I mean, you know, you show up. All you know is there is a suspicious vehicle someplace. So when you get there, what do you do, what do you see?

A. There was a vehicle parked on the property quite a ways away from -- from the main road, Highway 128. And the vehicle came back clear, wasn't reported

stolen, no indication that the vehicle had been stolen, such as a punched ignition, broken out windows; anything like that.

Q. All right. So you get there, you run the plates to dispatch. You get nothing. Nothing happened.

So what do you do next?

A. I talked to the reporting party who is, I guess, in some type of -- or I assumed was in some type of supervisor role there that I had no legal authority to remove the vehicle, but they could remove the vehicle if it was on their property and wasn't supposed to be there.

Q. Okay. All right. How does he respond to that?

A. He was fine with that and said he would talk to his boss about how they wanted to handle it.

Q. Okay. What happens next?

A. Sorry, the video cut out again.

Can you repeat the question?

Q. Yes. What happened next?

A. As I was leaving that property, dispatch advised that they were getting a call from a -- that was coming from an address south of the current call that I was on with the suspicious vehicle.

The reporting party was a developmentally disabled female who was reporting that somebody had

tried to break into her house with a rock and broke a window and that her father was out on the property looking for the suspect.

Q. Was that information relayed to you via the radio, MDT; both?

A. I believe it was both.

Q. So what did you do in response to that information?

A. I requested a -- I requested backup to respond.

Q. Anything in particular about that request, like did you give him a level of urgency to respond?

A. I did not.

Q. Okay. And following that, did you get any confirmation that anyone else was coming?

A. My patrol partner for the north beat area, Deputy Powers, advised that he was going to start heading my way from the main.

MR. SCHWAIGER: We're getting a broken signal from you. Hey Bruce, I think it's pretty choppy coming in.

(Recess)

BY MR. SCHWAIGER:

Q. All right. So I don't remember where I was.

So I'm just going to make up some other spot and we'll start there.

I think I was asking you about if you got confirmation that someone was coming and you were saying that Powers was going to respond from the main, but I only heard about every other word so that was my best intuition. Is that right?

A. That's correct.

Q. Now, it would have taken you, you said, between 20 and 45 minutes to get from Windsor to your location. So it's safe to assume it would take Deputy Powers at least that long to get to where you were, if not longer?

A. I know from the main office to that area, yeah, it could be anywhere from 25 to 45 minutes.

Q. Did you wait for him or did you proceed with your investigation?

A. At that point I went to the residence. I don't recall the address, but -- but went to we'll say house number 1. From there -- yeah.

Q. All right. So you went to house number 1. And that was the house from which you received the call that there had been an attempted break-in; is that correct?

A. Correct.

Q. Now, is that what was reported to you via dispatch, is that someone tried to break into the home?

A. I believe so.

Q. Did dispatch report that someone had broken a window or did they report someone was trying to break into the home?

A. Both.

Q. Okay. All right. So when you get to home number 1, what do you do?

A. I contacted the father of the reporting party who was out looking for the suspect. I contacted him at a gate to the property, never actually made it to house number 1, but met him where he was at the front gate.

Q. Did you have a conversation with him about what had occurred?

A. Yes.

Q. What did he tell you?

A. He stated that a Hispanic male had broken a window in his house, that the suspect was barefoot, that the homeowner confronted the suspect with his firearm and fired several warning shots at the suspect's -- at the suspect's feet.

Q. Okay. Now, did he tell you which window was broken on the home?

A. I don't recall.

Q. Did he still have his weapon on him when you arrived?

A. Yes, he did.
Q. Where was he holding the weapon?
A. As my patrol car got close to him, he -- he placed it into his side-by-side and stepped away from the side-by-side.
Q. All right. And how did you react to him telling you he had fired his service weapon towards this person -- not service weapon. I'm sorry. That he fired his firearm towards this person?
A. I mean, it raised my level of concern about, you know, what -- what the suspect may be up to if this -- if the homeowner felt the need to fire warning shots at the suspect's feet, you know, in response to the man breaking his window.
Q. Okay. All right. But you did not investigate the location of these warning shots or the broken window yourself; is that correct?
A. Correct.
Q. What did you do instead?
A. I was trying to get more information as to where the suspect's location was and -- and figure out if he was still in the area and still, you know, threatening anybody else.
Q. Okay. What did you learn?
A. That -- that after homeowner number 1 fired

several shots at -- at the suspect, the suspect stole a truck from the gardener who was on scene and said something about there was some kind of altercation, but he's okay, and he drove off. And then I was trying to figure out what the -- whose vehicle it was, what the license plate was so I could get that out to dispatch.

Q. All right. So you said that he had stolen a vehicle from a gardener; is that right?

A. Yes.

Q. And there had been some kind of an altercation. What do you mean by "altercation"?

A. He said something about the gardener being dragged and that was pretty much it. At that time I was still trying to figure out if it was -- there was a little bit of a misunderstanding as to whether it was the gardener's truck or if the suspect had arrived in his own vehicle.

Q. Okay. And when you say that he stole the truck, was this like a carjacking or did he just get in it and drive off? Did you have any of those details?

A. It was my assumption that it was a carjacking based on the fact that he said he was dragged, but that -- that came when I figured out that it was the gardener's truck that was driven off in and not the suspect's own vehicle that had been brought to the

scene.

Q. Okay. Was there any indication from the homeowner or the first person you're talking to here, the one that had the window broken and fired the warning shots, that the suspect had attempted to harm him?

A. Can you repeat the question?

Q. Sure. First guy, so we're talking about the guy with the warning shots. All right? Did he report that he believed that the suspect had tried to harm him in any way? We know he broke the window, right, and there was a report that he was trying to break in.

So specifically I want to know if there was a report that said this guy had been violent towards him.

A. I believe he mentioned that the suspect was still holding rocks and was yelling at him, but the homeowner number 1 never reported that he was physically injured or anything by the -- by the suspect.

Q. Did he report that the suspect attempted to, say, assault him or batter him?

A. Not that I recall.

Q. And as far as the person who was dragged behind the stolen vehicle, was there any indication that the suspect had attempted to harm him?

A. There was a language barrier with the owner of the vehicle. At that point in time I was more focused

on trying to get the vehicle description and suspect description out to any other incoming units before I dove deeper into those kind of details.

Q. Sure. I can appreciate that.

At any time did you learn that the suspect had been violent towards this gardener?

A. Other than dragging him?

Q. Yes.

A. I didn't receive any other information at that point.

Q. When you say dragging him, what do you mean?

A. That's all the information that I got was in a very quick explanation from homeowner number 1 that he was dragged and then that was all the information I had.

Q. All right. All right. What did you do next? You said that you were getting this information out to dispatch; is that right?

A. Correct.

Q. What did you do next?

A. I got the driver's license of the -- of the gardener who owned the vehicle, had dispatch run his name and see if he could locate any blue Chevy Silverados that were registered to him so we could get that broadcast out as the stolen vehicle that might be occupied by the suspect.

Q. Gotcha. Okay. Did anyone tell you where the stolen vehicle was headed?

A. The homeowner number 1 had stated that the -- excuse me -- the vehicle had driven through multiple gates on the property, but then they lost sight of him. It was a very confusing property so we really didn't have a good sense of direction.

Q. All right. Did homeowner number 1 inform you that there was no way to get out of there, no way out of where the suspect had gone?

A. I don't recall.

Q. What happened next?

A. About that time the homeowner number 1 received a -- I don't know if it was text or a phone call from -- from his neighbor. I'll just refer to him as homeowner number 2, that the suspect was now at his residence. So I relayed that to dispatch. And based on the fact it was such a confusing property, the homeowner number 1 offered to show me the way to get to homeowner number 2's residence, which was just down the driveway from where our current position was.

I turned my vehicle around, parked at the end of that driveway at which time I could see Deputy Powers' vehicle on my computer. The GPS signal was showing that he was -- that he was fairly close to being

on -- on scene with me. I believe he was still on Chalk Hill but that he was fairly close to being there on scene. So I at that point waited for my backup to arrive.

Q. Okay. How much longer did it take for Powers to arrive?

A. Several minutes. I'm not exactly sure of the exact time. I would say less than 10.

Q. Okay. All right. So when Powers arrives, what do you do?

A. We're kind of skipping forward a little bit because Powers had not yet arrived.

Q. Okay. Back up and tell me what happened.

A. Okay. So as I was waiting for Deputy Powers to arrive so that I can have backup to try to bring the incident to a safe conclusion, the homeowner number 2 called dispatch and reported that the suspect was at his house on his knees. I believe he also said that he was armed with three rocks, but the suspect was -- was telling homeowner number 2 to kill him, at which point I felt that that's a dangerous situation for both the suspect and the homeowner number 2 to be in. I need to get there right away.

So I started driving up the driveway to homeowner number 2's house. I saw the stolen blue

pickup was off to my left-hand side near the driveway but down in a ditch. I reported that to dispatch, got up to homeowner number 2's residence and he -- I don't remember if he still had his firearm on him or if he had secured it. I believe he had it secured or put it down when I pulled up. But he had told me that the suspect was gone. He had ran -- well, he believed -- he thought the suspect had run east down the hill or southeast down the hill and reiterated, you know, basically the same thing, he told dispatch he was on -- the suspect came to his house, was on his knees, had three rocks, was begging him to kill him.

Homeowner number 2 said that he held the suspect at gunpoint but at some point in time realized that the gun that he had was not loaded, at which time he retreated back into his house, locked the door and grabbed a loaded firearm. But when he looked back, the suspect had gone.

Q. All right. What language was the suspect speaking?

A. I don't recall what homeowner number 2 -- I don't recall if homeowner number 2 specified what language he was speaking.

Q. At this point given the information that you had received, did you have any concerns that the

individual might be mentally disturbed or 11550, something like that?

A. I had concerns that the suspect could possibly be under the influence of methamphetamine.

Q. Why meth in particular?

A. The erratic behavior, running in rough rural terrain with no shoes. I think that was about it at that point in time.

Q. Okay. All right. So you've already made your way down to talk to homeowner number 2. Is this when Powers catches up with you?

A. Yes.

Q. Did you miss anything in between?

A. Not that I can think of at this time.

Q. All right. So at this point you've got this information, you see the truck and you know the general direction that this guy ran off in; is that right?

A. The general direction in which homeowner number 2 believes that he may have gone.

Q. Okay. All right. So what do you do?

A. Powers and myself began to see if the suspect was still on the property or if we could find a trail or something that would give us a better indication as to where the suspect went.

There were trails all over through the grass.

Homeowner number 2 advised that there's lots of different types of wildlife on his property so there was lots of trails attributed to that.

I believe we asked homeowner number 2 where the closest house would be in that direction. And he stated it was, I believe, south down the hill and that he could give us a ride on his side-by-side which would be much faster than driving back to the main road to find the driveway.

Q. Is that what you did?

A. Yes. We jumped -- I got into the side-by-side with homeowner number 2, started going down the hill. As we were going down the hill, Deputy Powers was on the other side of homeowner number 2's house. We stopped and Deputy Powers jumped in the back of the side-by-side and we continued down the hill, went through a gate that homeowner number 2 had a key for and reached a second gate that homeowner number 2 thought he had the combination to but was having trouble getting it open.

Q. And what happened when you got to gate number 2?

A. It was a low rock wall with a gate attached to it. So Deputy Powers and I jumped that rock wall and based on the fact the suspect seemed to be going from one house to the next, wanted to -- I wanted to see

if -- if anybody at this residence had seen the suspect or if they were okay.

We began walking up the driveway to house number 3. As we got to house number 3, everything seemed to be secure, nothing seemed out of place, weren't able to locate any suspect or sign that anybody had gotten into the house. At that point in time the ranch hand had showed up and let homeowner number 2 through the gate.

Q. Okay. But still no sign of the suspect; is that right?

A. Correct.

Q. What do you do next?

A. The ranch hand advised us that a quad or a side-by-side had been stolen from -- from one of the outbuildings near the gate where we just were. A little confusion on whether he meant quad or side-by-side, but we knew that an off road vehicle had been stolen.

We gave that information out to dispatch. And the ranch hand also advised us that there was a gate on the southeast end of the property, I believe, that was open that he said was never open. That gate was always shut.

Homeowner number 2 offered to continue to give us a ride in his side-by-side. Excuse me. So we got

into the side-by-side and began driving out that open gate to continue looking for the suspect.

Q. Okay. Now, I assume at this point since you believe that he may be on a quad or a side-by-side, are you looking for tracks? How is it that you're going about determining where to go?

A. Looking for tracks for a side-by-side or a quad. I believe there was some faint tracks, but nothing -- nothing glaringly obvious at that point.

Q. So how do you decide what to do next then?

A. We continued to check the property, checked pretty much everywhere we could get to by the side-by-side. There was a second gate at the southeast corner of this other gated area that we were in that looked like it was shut, but didn't look locked. So we drove down there and figured out what would be the only place that a side-by-side or quad could have disappeared to.

So we went through the gate with homeowner number 2 giving us a ride on his side-by-side and continued to just go out on what appeared to be the most traveled path until we eventually found the stolen side-by-side, which was left running in a -- in a creek bed.

Q. Okay. All right. So you find this

side-by-side. It's kind of stuck; is that right?

A. I wasn't sure if it was stuck. The engine was still running. I didn't see any obvious damage. It looked like it could -- like it might be stuck or maybe somebody with a little bit more experience with the side-by-sides would able to get it out of there.

Q. All right. So what do you do?

A. We draw our weapons, approach the stolen vehicle, we don't see anybody inside. I removed the keys from the side-by-side, turned it off, take the keys and put them in my pocket. We still don't know where the suspect is at this point, didn't want him to double-back and get to the side-by-side again and -- and take off.

So I took the keys with me and then Deputy Powers and I just kind of walked the two closest ridges to where the -- where the side-by-side was found. I went off to the left. Deputy Powers went off to the right.

Q. Now, you said the two closest ridges. So you're kind of running parallel to a stream bed; is that right?

A. Correct.

Q. Are you both on the same side of the stream or are you on different sides of the stream?

A. We are on different sides of the stream.

Q. Okay. Now, are you headed for the high ground or are you staying lower?

A. I was up on the high ground walking the top of the ridge to try to see down into the dry creek bed on my right side and whatever was on the other side of the other ridge to my left.

Q. All right. So Powers is headed up a different ridge. You've been in contact with dispatch during this time; is that correct?

A. Correct.

Q. And how are you able to do that? Is that by handheld radio?

A. Yes.

Q. The radio is working okay?

A. They're pretty hit and miss. I can catch some of the stuff that's coming out and I don't know for sure if they're catching everything I'm saying. But yeah, it's kind of in and out.

Q. Okay. All right. Does it change with the topography?

A. Yeah.

Q. Okay. Do you have coms with Powers?

A. Yes, for the most part.

Q. You guys are taking two separate tracks,

correct?

A. Correct.

Q. All right. What happens as you're proceeding on these two separate tracks?

A. At some point in time, I don't know if that was at this moment or prior to the moment we're talking about, the -- I believe it was the sergeant had requested a helicopter from CHP or to call out our helicopter, Henry 1. Like I said, I'm not 100 percent sure when that call was made, but I knew that dispatch had advised that a helicopter was en route and I believe they said it was 20 to 30 minutes away; something like that.

So as we continued to walk the ridgeline, I didn't see any sign of anything. I thought I heard a faint yell coming from Deputy Powers' direction. I believe I put it out over the radio or asked him if he was okay or if he had heard it. I don't recall exactly what was said, but I believe right around the time that I was -- was asking that, Deputy Powers advised that he had located the suspect further up on top of the ridge that he was walking, at which time I ran down the ridge. I was on -- through the dry creek bed and then up to the top of the ridge where Deputy Powers was.

Q. All right. That's a tasking physical

undertaking; is it not?

A. Yes, it was.

Q. Do you know how much elevation you gained running up the other side?

A. I have no clue.

Q. Were you winded?

A. Somewhat.

Q. I think most people would be. You got to Powers eventually, I assume; is that correcter?

A. Correct.

Q. Did Powers give any information to you as you were approaching concerning what he saw the suspect doing?

A. He advised that the suspect was holding two weapons. I believe he described them as a hatchet and a hammer. That the suspect was on top of the ridge on top of the hill pacing back and forth resting his hands on his knees walking back and forth.

Q. Did Powers indicate that the suspect appeared to be tired?

A. I believe so.

Q. All right. And did Powers indicate that the suspect had not yet seen him?

A. I believe so.

Q. Okay. So you approached Power's position.

What happens when you get there?

A. As I approached Power's position, I can see that he's laying on the ground still out of sight of the suspect. I can see that the suspect is on top of the hill in front of me, but there's a large oak tree in between myself and the suspect. So I try to slowly walk over and get behind the oak tree to hide myself from the suspect.

My thought at that time was to wait until we have more resources, which based on the terrain and lack of any identifying markers or addresses, that we were going to need the helicopter to be there to help us coordinate where we were, what was going on. So we just tried to remain unseen until the helicopter arrived.

Q. All right. Some silly questions here. Forgive me.

What's the advantage of having the helicopter in a situation like this?

A. The helicopter is going to be able to advise what address we're at, what our exact location is even if it's just by GPS coordinates. Taking over the radio traffic for us so we can focus more on the suspect and the suspect's actions rather than focusing on the radio and relaying all that information to dispatch ourselves. That's about all that comes to mind at the moment.

Q. What about pursuit of the suspect?

A. Theoretically I see where that might help in some situations. This was -- it was a hilly, grassy kind of pasture like area. However, there's a lot of canopy, you know, from oak trees and other foliage. So it -- it can help in that aspect, but it typically cannot be the only driving factor as far as watching where the suspect is going.

Q. Okay. Would it be fair to say, especially in that kind of terrain, a helicopter is not making an easy landing anywhere?

A. I would say that's correct.

Q. But the helicopter would provide eyes on for your suspect and help coordinate the search and apprehension of the suspect from the ground?

A. Sorry. Can you repeat that?

Q. Yeah. But the helicopter could help coordinate the search for the suspect, right? He's got eyes on from up in the air, right? They got pretty good optics on board those things as far as I understand; is that true?

A. Yes. It could -- it could help in the coordination of locating and following the suspect.

Q. Have you ever had an opportunity to be involved in the pursuit of a suspect where the helicopter was

used prior to this?

MR. PRAET: Just vague as to -- are you talking about in terrain like this or like in a vehicle pursuit on a highway or under what circumstances?

MR. SCHWAIGER: Any circumstances.

THE WITNESS: There is one that comes to mind. I'm sure I've been a minor part in pursuits where the helicopter was used, but no significant involvement.

There was a suspect that was -- we were trying to apprehend somewhere near the Guerneville River area and the helicopter was a great help, but based on the thick vegetation, it was -- it was definitely a -- an effort by both the air and the ground units coordinating together to try to locate that suspect.

BY MR. SCHWAIGER:

Q. Sure. Yeah. I mean, they got the redwood canopy out there, right?

A. Correct.

Q. Are you aware whether Henry 1 is equipped with thermal imaging devices?

A. I believe from time to time it is. However, I know that sometimes that equipment is down. So I do not know if it had the thermal imaging at that point and I also don't know if the thermal imaging works on -- works as well on a hot, sunny day when the ground is warm as

the suspect is also warm. So I am not -- don't have too much information on the exact capabilities of the -- what Henry 1 had at that time.

Q. Okay. All right. But you got a helicopter coming on station. It's going to be of some assistance, whether that is a little or a lot, it's helpful to the situation; is that right?

A. I hope it would be helpful, yes.

Q. All right. Did you think it was going to be helpful?

A. I thought it was going to be really our only other resource that we had --

Q. Okay.

A. -- to us or to help us in any way.

Q. All right. So you said that your first thought you got up there when you were kind of putting the tree between you and the suspect was to wait for more resources; is that right?

A. I don't know if it was my first thought, it was definitely a major driving factor in my thought process as to -- as to what we needed to do, was to wait for more resources.

Q. And specifically those resources would be what?

A. I mean, ideally the helicopter, it would be great to get other deputies out there or K-9, you know,

any kind of other resources like that. The problem is logistically, how are we going to get those resources to where we need to be.

Q. Right. But I mean, you had to have something in mind if your thought was that you should wait for more resources. There had to be resources you thought could get there to help you, right?

A. Right. Mostly just having the helicopter there to try and get eyes on the suspect and also eyes on us. We had no way of relaying our location to anybody. There's no identifying markers or, you know, addresses or anything like that out there.

Q. Let me ask you some more about that. Do you -- does a patrol deputy -- I know inside the car is a little bit different, but on your person does a patrol deputy not have any GPS equipment?

A. There's -- there's GPS on maybe like our personal phones. Typically that area is -- does not have enough cell reception to use the GPS.

Q. All right. Are you aware -- well, did you try to use it?

A. I never had the opportunity to.

Q. Are you aware that the GPS function works independent of cell coverage?

A. I know that it is possible on maybe some

different apps or if the -- if that map is loaded, you know, into the GPS, but I'm definitely not an expert on -- on the GPS on the phone.

Q. All right. Good enough. So suffice it to say you believe that the helicopter would be able to send accurate coordinates as to your position, so that if further ground support were needed, those folks would know where to go?

A. Correct.

Q. All right. So this idea that maybe wait for more resources doesn't pan out because you were telling me what happened next.

A. So as we were -- it looks like I was --

MR. PRAET: You're frozen. Now you're back. Are you back?

MR. SCHWAIGER: I've got you.

MR. PRAET: But now I'm getting that thing that says we have poor reception. You did freeze there for a minute. Let's give it a try and see how it works.

MR. SCHWAIGER: All right.

(Recess)

BY MR. SCHWAIGER:

Q. The good news is that there was --

(Audio distortion)

BY MR. SCHWAIGER:

Q. -- resources ends up not working and you were about to tell me about that, what happens next. So go ahead.

A. So as we were waiting for more resources trying to stay out of sight of the suspect, the suspect saw one of us or both of us, I'm not sure, but he started -- started screaming. It sounded like becoming more agitated that we were there. I tried to deescalate the situation the best I could with my limited Spanish, offered him agua or water, told him no mas problemas, no problems. I think that's the only thing that comes to mind at the moment.

Deputy Powers was doing the best he could to calmly talk to the suspect, tell him to come down to us. And eventually the suspect turned and ran away from us, disappearing behind the hill that he was on, at which time Deputy Powers and myself started walking or, you know, running up the hill to try to get eyes back on the suspect.

As we got to the top of the hill, we could not

see the suspect. I drew my firearm, started to clear the different positions on top of the hill. There were piles of rocks, large trees that I thought potentially the suspect may be hiding behind or maybe preparing to ambush us, so we were looking for the suspect. And then we saw him running I believe south down towards a large creek bed.

Q. Okay. Let me stop you there. By the way, thank you for -- this is a very good way for me to do this and it's pretty efficient for you to tell the story like this, it's good. I'll stop you kind of when I need to ask for clarification on things, but so far it's going at a pretty good pace and I appreciate it.

You said -- well, okay. How far was the suspect from your position when -- actually, strike that.

How far was the suspect from Deputy Powers' position when he was in the prone?

A. Granted there was a pretty decent elevation change so it would be a very rough estimate. I would say 30 to 50 yards. But like I said, it was an elevation change and I'm not -- not 100 percent sure on that --

Q. All right.

A. -- distance estimation.

Q. That's pretty good. Would it be accurate to say that Deputy Powers was stopped, you know, laying down in the grass observing the subject below the crest of the hill and that the suspect was at the top of the hill where the -- where the trees and rocks were?

A. No, because it was such a rolling hill landscape, it would depend on your definition of where the hill started and stopped. But the suspect was on the very top of the hill and -- and Powers and myself were on --I can't think of how to explain it, but basically the bottom of that level of the hill.

Q. Okay. All right. Like a saddle or something below the crest of the hill?

A. I'm not familiar with that terminology.

Q. All right. Well, that's fine. I think I follow what you're saying.

Okay. You said that it appeared to you that the suspect became more agitated and that he was yelling and whatnot after you -- after he saw you; is that right?

A. Correct.

Q. Then you mentioned that you were attempting to use the phrase deescalate; is that right?

A. Sorry. Can you repeat the question?

Q. Yeah. You said you were attempting to

deescalate, and then you gave some examples by like offering him, you know, the limited Spanish that you had. Water, for instance, or telling him that you didn't want any more problems or something to that effect; is that right?

A. Yes. We were trying talk to him calmly, you know, as opposed to screaming at him or pointing guns at him, just trying to get him to -- trying to approach it in a calm manner to -- to try to deescalate things.

Q. All right. This is going to sound silly; bear with me. What does it mean to deescalate a situation?

A. To take an elevated situation or a situation where people are in heightened states of agitation or very high emotions and calm the situation down to bring it to a lower level of -- lower level of agitation, lower level of emotion, try to calm things down.

Q. Another silly question. What's the purpose of doing that?

A. To try to bring the incident to a peaceful resolution and gain compliance, you know, from the suspect. And I think that about covers it.

Q. Have you received training in deescalation techniques?

A. Yes, I have.

Q. Where did you receive that training?

A. I mean, we receive training from, you know, from the academy. That was already, you know, a technique or a phrase that was thrown out in the academy was deescalation. Field training, we have different in-house trainings, you know, debriefing situations. You know, after the call, you know, talking about what we did right, what we might need improvement on.

We have in-service training and more formal training on tactical communication which is -- focuses heavily on deescalation.

Q. Okay. I promised you a break every hour. Let me go for a few more minutes until I get to a natural stopping place and then we'll take a short break. Okay?

A. Okay.

Q. You said that by speaking calmly, trying to bring the situation kind of to a lower intensity, if you will, that was your way of deescalating it.

And I think you said choosing that route as opposed to yelling and pointing guns. I think you said something like that; is that right?

A. I believe so.

Q. Would you agree that yelling and pointing guns doesn't do very much most of the time to deescalate a situation?

A. I would say it depends on the situation.

Q. I mean, there's some times I'm sure that people would basically give you instant compliance if you're yelling and pointing guns, right, because that's kind of a serious situation?

A. I would say it depends on the situation.

Q. All right. Tell me more.

A. About?

Q. You say it depends on the situation. And the reason I wanted to ask you about this is just because you had brought it up.

Like rather than yelling and pointing a gun, you decided to speak calmly and offer the guy water. So I want you to explain why one you felt was better in this situation than the other in terms of deescalation.

A. For this specific instance at that point in time, that was our first time that we had actually laid eyes on the suspect, the first time the suspect had lays eyes on us. At that point I didn't know how he was going to react seeing law enforcement, if it was going to, you know, immediately gain compliance or he calms down, does he become more agitated.

At that point in time we had, you know, we were in a safe position and thought that that's the, you know, the best method to try first, given we had the actual, you know, time -- time to do it at that moment.

MR. SCHWAIGER: All right. All right. Okay. Well, for everyone's benefit, but especially for Madam Reporter, we are going to take a short break.

Counsel, would you like five or ten minutes?

MR. PRAET: Sure. Five minutes is good.

MR. SCHWAIGER: All right. See you back at 10 of.

(Recess)

BY MR. SCHWAIGER:

Q. You said that you got to the top of the hill and had the opportunity to see him disappear.

You went to the top of the hill and you were clearing the area around the trees and the rocks; is that right?

A. Yes.

Q. Describe the rocks to me.

A. Large boulders, kind of random locations. Yeah. I don't know exactly how to describe them.

Q. Well, I mean are we talking about rocks that are, you know, big enough for a person to hide behind, big enough for a pickup truck to hide behind?

A. Big enough for a person to hide behind, probably not big enough for a pickup truck to hide

behind.

Q. So you proceeded to clear the area, make sure that there's no ambush, I think was the word you said; is that right?

A. Or that he was hiding from us.

Q. Okay. All right. At this point do you have enough information in your head to kind of have an opinion about what is going on?

A. At this point now that I had a much more up close view of the suspect's behavior, that he is probably under the influences of methamphetamine.

Q. But your earlier suspicion is -- is stronger even now the longer you've been in pursuit?

A. Correct.

Q. The guy's barefoot is what you said, right?

A. Yes.

Q. He's managed to cover some significant distance and not the easiest terrain without any shoes on?

A. Correct.

Q. He's acting erratically. When you offer him water, he starts screaming up at the top of the hill, right?

A. Correct.

Q. That's pretty standard meth stuff, right?

A. Correct.

Q. But when he sees your presence, he also takes off again; is that correcter?

A. Correct.

Q. So I appreciate the need for officer safety going to an unknown like this.

Did you have any other reason to believe that he might be trying to ambush you other than just like let's be careful he's not, or was there something specific that made that a risk in your mind?

A. He was still holding the two -- the two weapons or I believe it turned out to be a hammer and some kind of tilling instrument. But he was still holding two long sharp objects that could be used as a weapon as he ran away. He didn't drop them.

Q. Okay. All right. So this idea, there's this guy, he is armed with some kind of tool that could easily be used as a weapon, maybe actually armed with two of them, right?

A. Correct.

Q. He's carrying both of them in one hand; is that right?

A. At the point in time that we saw him on top of the hill, he had one in each hand.

Q. Okay. All right.

Then he disappears. You go through to clear

the area because the guy does have things that could be used as weapons.

But other than that, was there any indication that -- was there something going on you thought he was going to ambush you, or you just wanted to make sure that he wasn't?

A. Well, his -- all the prior behavior leading up to this event, you know, breaking out the window which in and of itself, based on how scared the original RP was, the fact that this is not a property just right off the side of the road, this is pretty deep into the rural area, you know, I wasn't thinking of that incident as a simple, you know, breaking the window as far as like a -- as far as just like a vandalism, but it was more of an attempted home invasion. I mean, enough so that the homeowner felt it necessary to fire warning shots at the guy's feet.

Also, you know, stealing -- stealing the gardener's truck. It was mentioned that -- that the owner of that truck was dragged. And then getting confronted by another homeowner with a firearm while still armed with rocks, stealing a second vehicle and rearming himself with now sharp implements, all those things combined were telling me that this was a very high likelihood of having a violent encounter with that

suspect or being ambushed by him had we come up the hill and he would -- was hiding behind the rocks.

Q. Okay. Now, did he respond at all to you when you were yelling at him on the hill, or when you were talking to him on the hill?

A. He -- he yelled at us. Obviously, I don't speak Spanish. I don't know what he was saying. It was very fast and sounded agitated. It didn't sound like any kind of a calm conversation that I've ever, you know, heard in Spanish. It was very -- it sounded very agitated and fast. He did not show any kind of indication of being at all compliant with us.

Q. Did you ever learn what he was saying?

A. I -- I remember hearing something about -- about a translation being done that like you are going to kill me or something like that, but I don't recall at what -- I believe that was off the press release or -- I'm not sure where I got that information from or at what point in time that information was -- I don't know where in like the body cam video that was translated from.

Q. All right. Suffice it to say at the time, if that's what he said, if he was saying you're going to kill me, you didn't know that at that time; right?

A. I had no idea what he was saying.

Q. All right. Did you have cell service where you were?

A. I don't know. I never got the opportunity to check. However, I know that that area is, for the most part, a complete dead zone for cell service.

Q. All right. So you cleared the top of the hill. I think you said that you saw him running down the other side; is that right?

A. Yes.

Q. Okay. What happens next?

A. He began running down -- down the hill south or southeast from where we saw him on the hill. He started running down towards the larger creek bed or riverbed that's there. Deputy Powers was out in front at that point and I was chasing behind them as we went down the hill.

Q. Okay. Were you walking, were you running, scrambling, mix of all of that?

A. We were running.

Q. All right. Is this about when the helicopter comes on station?

A. No. The helicopter was not on scene yet.

Q. So you get down -- correct me if I say anything wrong. You follow the suspect down the hill, right, and that's toward the creek bed that you were talking about

earlier, correct?

A. Correct.

Q. Suspect hits the creek bed, kind of goes through a brushy area; is that right?

A. Well, I think we need to back up just a little bit.

Q. All right. Back us up.

A. So as he was running down the hill, Deputy Powers was behind the suspect. I was behind Deputy Powers. As we entered into the more densely brushed area just before like kind of a cliff leading to the creek, the suspect turned around and -- sorry.

What I should say is, Deputy Powers advised me over the radio that the suspect had turned around and was hacking at the tree with one of the implements. I did not quite see that. I did not quite see the suspect hitting the tree. It was -- I kind of caught a glimpse of him just before and just after that I believe my view was obstructed by other trees that I was trying to get around, but Deputy Powers advised over the radio -- I did hear what sounded like something hitting a tree, you know, shortly before Deputy Powers advised me that the suspect was hitting the tree with the implements.

Q. Okay. Did that have any meaning to you?

A. It did.

Q. What was that?

A. It indicated to me that the suspect was threatening or demonstrating to us what he would do if we got close to him by hitting the tree.

Q. Was that just kind of your intuition, your hunch on that, or was there more to it?

A. Based on my training and experience, that is not -- it's -- excuse me. I am trying to think of the right word, but it's a very strong indication of the suspect's intent or state of mind.

And at this moment, I can't think of any other reason why he would stop running from us, turn around and start hacking at a -- at a nearby tree with the weapons that he still had in his hands.

Q. Well, there's not a lot of good reasons for anything you've seen the guy do so far, right?

A. Correct.

Q. And you believe and you suspect and your suspicions are growing stronger that he's under the influence of methamphetamine, right?

A. Yes, I suspect that he's under the influence of methamphetamine.

Q. People under the influence of meth just do weird stuff, right?

A. I would say that's accurate.

Q. Sometimes they can be violent, right?
A. Absolutely.
Q. Sometimes not, right?
A. Correct.
Q. So you said that you perceived that to be a very strong indicator of his intent or state of mind.
Now, when you say intent, that's what we were talking about earlier. You perceived that to be a demonstration of hey, you get close to me, I'm going to do this to you like I'm doing to this tree; is that right?
A. That is how I perceived it.
Q. State of mind. How is that different from intent in your mind?
MR. PRAET: Are you asking for a legal definition? I think he's already explained what it meant to him.
BY MR. SCHWAIGER:
Q. So the question is you said it would be a strong indicator of his intent or state of mind. Like we were talking about intent. That's pretty plain what that is.
What did you mean when you said state of mind?
A. That his -- yeah. That -- I mean, I guess for the most part, it would be basically the same thing, but

yeah, his intent would be to -- to harm us with the weapons if we got closer and that his state of mind is that he's not going to comply with anything that we have to say. I don't really know how to better define that or describe that.

Q. Okay. I wanted to know if it was different than intent. Like say, you know, someone could be out of their mind, right? They could be 5150. They could be hallucinating. They can be all kinds of things pertaining to their state of mind. I was curious if that's what you meant or if it's just another way of saying intent.

A. Just another way of saying intent.

Q. Okay. All right. Does the sheriff's office have a policy regarding deescalation techniques? Strike that question because that was not actually the question I wanted to ask.

Do they have a policy on deescalation?

A. I don't know at this moment. I know that it is common practice that it should always be attempted first when feasible but I do not know the specific, you know, word for word policy on that.

Q. Well, let me ask you about the training that you've received in deescalation.

In that training, were you trained to consider

such things when approaching, you know, deescalation as the suspect's mental impairment or the fact that he might be under the influence of drugs or he might be having some kind of emotional crisis, for instance?

A. I mean, that is something that is a consideration for any type of suspect contact, whether we are talking deescalation or anything else.

Q. But specifically have you received any training that you should consider those things when you're considering which, if any, deescalation tactics to use?

A. Yes.

Q. And how does the fact that a suspect may be under the influence of drugs or might have a mental impairment or be in an emotional crisis, how do those things bear on your deescalation efforts?

A. It all depends. There's entirely too many variables to dissect every incident and situation. It's a kind of case-by-case basis. It's definitely something you consider going into any kind of suspect contact, but it depends on the crime, the time of day, what resources are available, just too many -- too many factors to nail it down specifically incident by incident. It all depends.

Q. Fair. I think earlier you said something to the effect of this hitting the tree demonstrated to you

that he was not going to comply with you no matter what; is that right?

A. I don't remember what I said specifically, but it -- him doing that further -- further demonstrated to me that he was not going to comply with us, on top of all the other circumstances and things that had happened up and to that point.

Q. All right. So at this point you're convinced he's not going to comply with you with your orders; is that right?

A. I wouldn't say convinced. There's -- but it -- it appeared that way at the time that there was a very strong likelihood that he was not going to comply about what we had to say.

Q. All right. Did you think you were going to end up chasing him all the way over those mountains?

A. I had no idea. Police work is far too many variables to be, you know, to jump to any conclusions like that. So it -- it just depends.

Q. But you got to be planning ahead, too, right?

A. Correct.

Q. So did you think eventually you would just manage to take over the guy or did you think you were going to have to change tactics? What was going on with your planning?

A. At that point in time my plan was to keep eyes on him. Hopefully he stopped before we reached the steep cliff or embankment before the -- before we got to the riverbed. Hopefully by that time the helicopter got to us and we could adjust from there.

But like I said, with police work there's so many variables that you're -- you can't just think ahead to one plan or plan A or plan B or plan C. It's all your plans are going to change constantly as those circumstances come to you and, you know, depending on what -- what happens next.

Q. Right. Right. We use to have a saying when I was in the Marines, for every problem there is a plan that is simple, convenient and wrong. I'm sure there's some corollary in law enforcement.

But did you have a plan going into this or was it just we're going to keep following him and see what happens?

A. The plan was to keep eyes on him the best we could. I mean, like I said, there's too many variables to -- to describe every plan or scenario that was going through my head at that time. You know, if he stopped and just dropped the weapons, then we go from there. If he keeps continuing to run, hopefully by that time we have a helicopter there that can give us better

information on what lies ahead or, you know, what we can do to get other units into the area that he's heading to. Yeah,so I had multiple plans, but they were constantly changing second by second.

Q. Okay. All right. Who was in charge? Was it you? Was it Powers?

A. So it was my call initially. I was the primary officer. Whatever given the fact that now the sergeant is at a different location coordinating different things going on, you know, that can change. But where if we're just going to focus on me and Powers at that moment, Powers was in front of me, he was closer to the suspect.

So typically with foot pursuits, with vehicle pursuits, the officer who is closest to the suspect, whether in a vehicle or on foot, that officer is going to try to keep his attention on the suspect while the second officer, whether they're on foot or in a patrol vehicle, is going to try to take over radio traffic or directing resources, you know, or something like that.

So it just kind of changes minute to minute who is closer. At that point in time, Powers was closest. So he was kind of in charge of the suspect, I was kind of in charge of like, say, radio traffic. But if I -- the suspect changed direction and now I'm in front, now we're kind of switching roles. So I don't know if that

answers your question or not, but...

Q. Yeah, it does. That's sensible.

I'm going to read a statement to you. Tell me if this is consistent with your training. Okay?

"When time and circumstance reasonably permit, a deputy should consider whether it's lack of compliance, is a deliberate attempt to resist or is the result of an inability to comply based on factors, including, but not limited to, mental impairment, drug interaction, behavioral crisis."

MR. PRAET: Which post learning domain was that from?

MR. SCHWAIGER: I'll let you ask the questions at the end of the deposition, Bruce.

MR. PRAET: All right. All right. So you're asking about that multi-facetted statement that you just read. Which part do you want him to -- are you implying to the specific circumstances of this or the general guidelines in the post learning domain?

MR. SCHWAIGER: None of all that.

Q. I'm just asking if that is consistent with training that you have received in deescalation?

MR. PRAET: I'm just going to object; vague

and ambiguous and vague as to circumstances. But in general, is that something you remember from training? I don't know --

THE WITNESS: That sounds familiar.

BY MR. SCHWAIGER:

Q. Okay. All right. Do you know if that is in fact from the Sonoma County Sheriff's policy manual?

A. I assume it since you're reading it to me, but I...

MR. PRAET: Don't assume.

BY MR. SCHWAIGER:

Q. Don't assume. I just want to know if you knew.

A. I don't know specifically where that is from, but it sounds familiar.

Q. All right. Does it make sense to you?

I think we lost you there for a minute there, Deputy. I'm sorry.

What was your answer?

A. I said in general, yes, it does.

Q. I'm sorry, you broke up pretty good.

I believe you said in general, yes, it does.

MR. SCHWAIGER: Yeah. We have a pretty serious problem with your connection over there.

Do you guys want to take five and try to reconnect again?

MR. PRAET: You want me to sign out again?
MR. SCHWAIGER: Yeah, probably so.
MR. PRAET: Yeah, let's take five. I'll sign out and reboot. Let me try that.
MR. SCHWAIGER: We'll go off the record.

(Recess)

BY MR. SCHWAIGER:
Q. So let me just clarify the last of the record. I had discussed some items which may or may not be from Sonoma County Sheriff's policy manual regarding deescalation, asked if that made sense to you. I think you said in general, yes; is that correct?
A. Correct. Are we freezing again?
MR. PRAET: I don't know. Are you not getting that?
MR. SCHWAIGER: I'm getting like a five or six second lag and then it's freezing. Let's stick with it.
MR. PRAET: You know what, let me --
MR. SCHWAIGER: Off record.

(Recess)

BY MR. SCHWAIGER:

Q. So I had reviewed some items regarding deescalation and asked if they made sense to you and I think you said generally, yes; is that correct?

A. Correct.

Q. Terrific. Do you take issue with any of those items that I read to you, disagree with them?

MR. PRAET: Under what circumstances?

MR. SCHWAIGER: Under any circumstances.

MR. PRAET: Well, I'm just going to object as to vague; ambiguous.

BY MR. SCHWAIGER:

Q. You can go ahead and answer.

MR. PRAET: Incomplete hypothetical.

MR. SCHWAIGER: Sure.

MR. PRAET: Do you understand the question?

THE WITNESS: I don't. If you can actually repeat what the -- what you read.

BY MR. SCHWAIGER:

Q. Sure.

"When time and circumstances reasonably permit, a deputy should consider whether a subject's lack of compliance is a deliberate attempt to resist or is the result of an inability to comply based on

factors including, but not limited to, mental impairment, drug interaction, behavioral crisis."

A. And what is your question?

Q. The question was whether you have any disagreement with that statement.

A. Not that I can think of.

Q. Okay. So you said that you kind of came to the conclusion, you determined that -- you know, you don't know what's going to happen in the future, but based on what you've seen so far, the high likelihood is that this guy is not going to comply with your orders, correct?

A. I wouldn't say that was my conclusion, but that was my suspicion.

Q. Okay. All right. In arriving there with that suspicion, did you consider whether -- because, I mean, you also suspected the guy was under the influence of meth, right?

A. Yes.

Q. Okay. So you suspected he was under the influences of meth. You also suspected he's not going to comply.

Did you suspect that one of the possible reasons he might not be complying is that he was under

the influences of meth?

A. Maybe.

Q. Well, I'm sure now. I'm not asking you a Monday morning quarterback thing. I'm talking about when you're out there in pursuit.

Did it occur to you that the reason this guy is acting so crazy and the reason he's not complying with what I'm telling him to do is because he's under the influences of meth?

A. It's a possibility but my primary concern is the risk to the public and whoever might also be out there.

Q. Was there anybody else out there?

A. In hindsight, no.

Q. All right. Were you aware of anyone else out there at the time?

A. I was aware that it a very large property with other large properties, many of which are vineyards and large properties that need to be maintained by people. So it was always a possibility that there are other people out there.

Q. Well, I appreciate that. I don't know that I've yet had a deposition where I haven't run into the question of, you know, the difference between what's possible and what you believe, right?

So, I mean, it's possible he could have been running down to the bat cave or something, right? Anything is possible.

Did you think that there were other people out there?

A. Yes.

Q. Where did you think they were?

A. I thought that there was a possibility that people could be out there and that at any point in time we can run into somebody that's a fieldworker, a farmhand, ranch hand, some type of maintenance person, somebody, you know, out for a walk on their property in the creek. You know, it -- that potential is always out there.

Q. Yes, I accept that. I think that's a true statement. The potential is there.

But I asked you if you believed there were people there. You said, yes. So I followed up with a question, where were these people that you believed were there? Where did you believe they were, rather? So where did you believe they were?

A. In their homes, on their property.

Q. You didn't see any homes, though, did you?

A. I did not.

Q. You didn't see any roads out there either, did

you?

A. I saw roads. I guess it would depend on your definition of a road. Trails, dirt roads; things of that nature.

Q. So let me make sure I'm square on this so we're talking about the same stuff.

From the point where you find the side-by-side or the quad that's running and you take the keys, did you find -- were there any roads after that point?

A. Not -- there were dirt roads on the property, none in close proximity to where we were when we came into contact with the suspect or while the suspect was running down into the creek.

Q. You said it was very remote and likely it was a black hole for cell phone coverage, right?

A. Correct.

Q. Did you see any power lines in that area where you were?

A. In the distance, but then again, I was not looking for power lines.

Q. Sure. Any fences that weren't in horrible states of abandonment or disrepair?

A. There were fences in disrepair. There were nice fences. It was a giant property. A lot of these properties have fences running through by the same

person. Sometimes they separate different properties.

Q. Is it my understanding then after you arrived on the scene where the running side-by-side was abandoned, that there were nice fences in that area?

A. I guess it would depend on your definition of nice. There were fences and like vineyards near where the side-by-side was left.

Q. Okay. So I think we were kind of in our timeline where you were coming down the hill, Powers was in front of you, you see the suspect start whacking the tree. Did you see it or does Powers relay it to you?

A. He relayed it to me.

Q. Did he say that he kept hitting it or did he say he hit it once? Was there any detail about that?

A. I believe he said that the suspect stopped and hit the tree. I could hear the yelling and the thumping, but I didn't physically see the suspect hitting the -- hitting the tree.

Q. Okay. What happens next?

A. The suspect continues running down the hill towards the -- towards the riverbed. At this point in time I get fairly close to where Deputy Powers was. Deputy Powers says something to the effect of I'm going to go taser, you be -- or he was going to go less lethal or taser and then I was going to be lethal cover. And I

said okay.

We continued toward the suspect who slid or ran down the hill. I'm not -- I didn't actually see him go down the embankment. But we knew that he was -- we saw him down now in the creek or riverbed and we were still up on top of the -- I don't know if you want to call it a very steep embankment or a cliff, but kind of a sheer drop to get down to where the suspect was.

Q. All right. How much of a sheer drop? Like was it four feet, ten feet, 20 feet?

A. 20 to 30 feet.

Q. So what did you do?

A. It's hard to find a safe place to go down the embankment. Pretty much just tried to stay more on my feet and slide down the hill, you know, almost in a seated position but more standing up as it was so -- so steep. And basically just a controlled fall or slide down the -- down the embankment until we got to the bottom of the creek bed.

Q. Okay. And when you got -- well, who got to creek bed first? Was it Powers or you?

A. I believe Deputy Powers got to the bottom first.

Q. Okay. Does he have sight of the suspect at this time?

A. I believe so. I believe he said something to the effect of "he's running this way" and indicated he was heading east or up river.

Q. Okay. All right. As far as I know, there's only one river in Sonoma County. No, there's two. I take it back. There's two rivers. That thing is just a trickle of water down at the bottom, right?

A. It was -- it was a large creek bed, some bodies of still water, some spots that was trickling, some spots it was completely barren and dry.

Q. All right. Good. Okay.

So Powers likely has eyes on him, he gets down first, you follow. What happens next?

A. Deputy Powers starts running, I'm following fairly close behind him, I can see the suspect at this point. At this point in time I can hear the -- or pretty quickly -- sorry.

Very soon after we had gotten into the creek bed, I can start to hear the helicopter coming. It sounds like it's very close. Deputy Powers is ahead of me. He's focusing on the suspect. And my line of thought, I'm going to -- I decide that I needed to make sure that the helicopter knew where we were and could see us because they were asking where are you at on the radio.

So I stopped for a moment, kind of waited to see the helicopter coming around the corner. It finally got there. I waved to the helicopter, shined my flashlight at them. They said something to the effect of okay, we can see you. And we -- and I took off running trying to catch up to -- to Powers and the suspect.

And the creek was very windy, winding back and forth. So I could -- I could see the suspect and Powers at some times and then other times I would lose sight of them but I could still -- I could still hear Powers and the suspect, so I continued to run in that direction.

Q. Okay. All right. So you made contact with Henry 1, right, and you got good radio com with them because your line of sight is just a couple hundred yards away, right?

A. It's decent. However, with them being over the top of you in the helicopter in a deep canyon like that, even with my -- my earpiece which is connected to my radio in my ear turned all the way up, sometimes you can't hear everything that's being said, but I know we have some kind of communication.

Q. Did you feel that you missed something that they were telling you?

A. I have no idea. I knew that radio traffic was

going on and that I was probably missing some of it. I felt like I got the majority of it, but it was not easy to hear the -- the radio communications.

Q. All right. Now, it was not easy to hear the radio communications coming from dispatch or it was not easy to hear what was coming from the helicopter or all of it?

A. All of it.

Q. Okay. All right. So you've made contact with Henry 1 and Powers is in pursuit. You circle back to join up. What happens next?

A. So at some point they -- they got ahead of me. I couldn't quite see them so rather than following through the creek bed how we had -- how they had been running because the creek bed kind of snaked back and forth, I tried to run a more straight line up and over the creek beds or the -- through the creek bed and over the embankments to try to catch up to where they were.

And then I could see the -- on a large bend in the creek to my left, I could see that -- I could see Deputy Powers standing in a pretty good sized pool of water and I could see the suspect and looked like they might have been momentarily stopped for a second or that the suspect had turned around. I wasn't quite sure, but I -- I thought that the best course of action now would

be to continue running on a more straight path that I was on to catch up to where they were, especially if the suspect continued running through the creek as he had been doing, I would be much closer.

So I continued straight and ran on top of a -- of a more kind of large flat area of the riverbed or riverbank, which is where the incident ultimately came to a close.

Q. All right. So Powers is following the suspect through the creek. At some point it looks like they may be stopped.

Do you hear an exchange between the two of them?

A. I can hear them yelling back and forth. I don't know exactly what's being said at that point.

Q. Okay. But you're up -- as far as the direction of travel goes, which direction is this creek bed going?

A. I'd say primarily east.

Q. All right. So Powers and the suspect are heading east. You're offset to the right also heading east, but kind of on a little higher ledge; is that right? I shouldn't say ledge. Embankment.

A. Primarily heads east. They were kind of off on a bend that was a little bit more northeast and I was trying to make more of a straight line out of the curvy

river and was -- yeah, more directly east up on a riverbank that was somewhat flatter than the rugged terrain that we had been running through to that point.

Q. Are you tired?

A. Yeah.

Q. Are you frustrated?

A. No.

Q. All right. So you said that you arrive in an area where the incident occurs. Tell me exactly what happens.

A. So as I get on top of the riverbank, at this point in time the helicopter is -- is orbiting for the most part directly above us basically doing circles above us. There is a fairly thick canopy of trees so they can't see everything that's going on, but they were above us.

As I got up onto the riverbank, I kind of passed the position of where Powers was and now I'm, for the most part, parallel with the suspect. The suspect then turns and walks up the riverbank towards me. I pull out my firearm and attempt to hold the suspect at gunpoint. I see that the suspect is still armed with the two tools or weapons and he also has a rock in his right hand. The two -- two other weapons are held both together in his left hand.

As he's coming out of the creek bed towards me, I'm trying to stay somewhat parallel to him so we can kind of get in a triangulated position so I can hold him at lethal cover while Powers gets out of the creek bed and can try less lethal cover.

The suspect is -- he's staring at me, I'm telling him to drop it. I told him to drop it multiple times. Drop it or put it down. As I'm doing that, he's continuing to come towards me. He -- the suspect looks up at the helicopter, raises both of his hands, still holding the rock in his right hand and the two other weapons in his left hand. He's screaming something at the helicopter. I don't know exactly what he's saying.

At this point I can see that Deputy Powers -- out of my peripheral vision can see that Deputy Powers is coming out of the brush and towards the suspect, continued to tell the suspect to -- it was either put it down or drop it, but something to that effect.

The suspect is looking directly at me. The rock -- he kind of placed his hands on his knees just a little bit almost in a resting position, very briefly. He drops the rock in his right hand. It seemed like he unintentionally dropped it but I don't know. The rock dropped from his right hand, at which point he looked over at me, kind of took a step back with his right leg

and grabbed the rock that had just fallen from his hand, went to pick it back up, at which time I believe that he was going to pick up the rock and hit me with it causing, you know, some type of serious bodily injury, whether that be knocking me out, you know, killing me with it. And I fired, I believe it was three rounds at the suspect, which -- which struck him.

MR. SCHWAIGER: Gentleman, I think we may have lost your connection. Nope, you are back. Okay. All right.

Q. The last thing I heard from you, Deputy, is what struck him.

Was that the end of your testimony for that question?

A. Yeah. I was going to pause at that point.

Q. All right. Terrific.

All right. Okay. I'd like to keep moving since we had a little bit of technical break in the middle, but I just want to check with our reporter and make sure you're okay to keep going or if you need a little break.

THE CERTIFIED STENOGRAPHER: I'm fine to keep going.

BY MR. SCHWAIGER:

Q. Now, earlier you had testified that on your

descent Powers had said something to the effect of I'll go taser, you are lethal cover, or something like that; is that right?

A. Correct.

Q. Why does that matter?

A. Just to have some sort of plan. Typically when pursuing a suspect, the first officer to come across a violent suspect or potentially violent suspect and based on the suspect's history of what's happened today, that was definitely the case. The first officer will hold the suspect at lethal cover with a firearm and the secondary officer will -- will try to get into position with a less lethal cover.

And if two officers get to the suspect at the exact same time, it's beneficial that they had planned it out beforehand which officer is going to go lethal cover, which officer is going to go less lethal so you don't have two officers pulling out tasers at the same time and you don't have two officers both pulling out their guns at the same time.

Q. So is the idea that you're ready for the appropriate forced response, whatever that may be, because one person has lethal, one person has less lethal; is that correct?

A. It's -- it's what we've been trained to do to

have the safest result for everybody involved.

Q. Right. I mean, the idea is you don't want to not have lethal cover if you end up needing it, right?

A. Correct.

Q. And you don't want to not have less lethal if that's what you end up needing, right?

A. Correct.

(Audio distortion)

MR. SCHWAIGER: All right. The connection is getting a little dodgy again you guys.

MR. PRAET: I don't know what else to offer you. Can you hear me?

MR. SCHWAIGER: Yep. Let's keep going.

Q. All right. Now, you said that you were attempting to get a triangulated position. Can you tell me what that means more in-depth?

A. If you think of maybe suspects --

MR. SCHWAIGER: Yeah, it's breaking up.

MR. PRAET: Even the internet doesn't like long depos.

BY MR. SCHWAIGER:

Q. Let's keep at it. Let's keep at it.

All right. I was asking you what a

triangulated position is. Let's try again.

A. So if you think of, say, the suspect as the top of the triangle and the two officers would be the base of the triangle, that position is beneficial in the fact that one officer can have lethal cover, the other officer can have less lethal cover.

If time allows, the -- the less lethal officer can try whatever less lethal technique they have at their disposal. And if the less lethal is not effective and you need lethal cover, that can be used safely and not -- not get the officers in a crossfire situation.

Q. So that makes sense. Thank you for that explanation.

Now, so far did you have any indication that this gentleman understood a word that you had been saying along the way?

MR. PRAET: Calls for speculation, but if you knew.

THE WITNESS: I did not know if the suspect understood anything I had said.

BY MR. SCHWAIGER:

Q. My question, though, specifically is did you have any indication that he did understand anything you were saying?

A. No.

Q. In fact, you're trying to speak to him in Spanish because you believed his language is Spanish, correct?

A. I was speaking in English.

Q. Well, you attempted some Spanish along the way, correct?

A. Correct.

Q. And the reason you attempted Spanish along the way is because you thought that he didn't understand English, correct?

A. Correct.

Q. Now, when you have him at gunpoint, what language are you giving him commands in?

A. English.

Q. All right. Did you believe that he might understand those commands?

A. Not so much the verbal commands, but the uniform, police officer, pointing a firearm and yelling at you is typically a universal language to stop what you're doing and comply, at the very least to drop the weapons from your hands.

Q. Okay. And you said that he was -- had his hands on his knees in a resting position; is that right?

A. Briefly, yes.

Q. Did he appear to be winded?

A. It's possible. However, the speed at which he was moving and yelling loudly, not -- not too winded, I assumed.

Q. But it appeared to you that he was, at least for a moment, I think you said in a resting position, right?

A. He put his hands on his knees while holding the rock in his right hand, the two other weapons in his left hand for a very brief moment.

Q. And that's what you would describe -- you had described as a resting position, correct?

A. Yes.

Q. Okay. And then I think that you said that he released the rock that was in his right hand, whether accidentally or intentionally you do not know, but you believed it to be accidental; is that right?

A. Correct.

Q. And then he took a step back with his right leg; is that right?

A. Correct.

Q. All right. Was that important observation for you that he took a step backward?

A. It was not so much a step backward in a retreat or trying to close -- or trying to increase the distance, it was kind of stepping back in more of a

stable or bladed stance as he was going to -- as he was bending down to pick up the rock that just left his hand.

Q. When you said bladed stance, what is that?

A. It's where you have -- if you were to have one -- one foot kind of farther out in front of your other foot in a more stable position.

Q. Now, I always heard of a bladed stance as being kind of standing offset to another individual, so as to basically minimize the surface area of your body if you were to engage in some kind of fight, you know, or as somebody steps to the side like this, they're in a bladed fighting stance.

Is that not your understanding of the same?

A. My understanding is that it's just a -- it's often used to describe that but my understanding is that it's more so about the -- the stability of your -- of your body.

Q. Okay. And was that significant to you that he did that?

A. Yes, because it was simultaneously happening as he was picking up the rock.

Q. Are you familiar with the concept of somebody bending forward to pick something up, they might put a leg back to help them balanced from falling forward?

A. I'm not familiar with that.
Q. Okay. Maybe it happens --
A. I'm just saying -- sorry.
Q. Sorry. That's how I got to pick stuff up or I fall over. I'm sure your counsel's doubly bad. Never mind.
All right. So you stepped back with the right leg. And then you said that he grabbed the rock and went to pick it back up.
I believe that's what you said; is that correct?
A. He picked the rock back up.
Q. Okay. So he actually picked up the rock?
A. Yes.
Q. All right. So he picked up the rock. What did he do with it?
A. As he picked it up, that's when I believe that he was about to cause me imminent harm or great bodily injury. I felt that there was no time to wait for Powers to get into position to try the less lethal taser and that's when I fired three shots from my service weapon striking the suspect.
Q. Now, didn't you say earlier that Powers had got into that triangulated position with you?
A. He was getting up into position, but by the

time that threat had come, he had not deployed his taser.

Q. Powers did deploy his taser, didn't he?

A. In hindsight after watching the -- the body camera slowed down, it appears that we simultaneously, that he pulled the trigger on his taser at nearly the exact same time as I pulled the trigger on my firearm.

Q. All right.

A. And it was two -- it was -- in reviewing the video, it was too close at least for me to determine which one of us had fired first.

Q. I'm sure that's true. It's a very tough call. If anyone can make it, it's not me.

So I'm sure that on the ground faced with that situation, you probably did not perceive that Powers had deployed his taser, at least not at the time you were shooting; is that right?

A. I -- by the time I had perceived the threat and thought to pull the trigger on my weapon, the suspect was -- was on the ground before I could even see that Powers deployed his taser.

Q. All right. We're having connection problems again. Let me see if I can restate that for you.

You said something to the effect of by the time you realized that Powers had deployed his taser, the

suspect was already on the ground after you had shot him; is that correct?

A. Correct.

Q. All right. Good.

All right. Now the suspect had pretty much been carrying rocks around with him for a good portion of this encounter, like from the time that you got there, even before you got there until you shot him, correct?

A. Well, I would say that he had rearmed himself multiple times. These were not the -- I don't believe that they were the same rocks --

Q. Right.

A. -- from house 1 to house 2 and then down in the creek.

Q. Right. Okay. But at house 1, he didn't throw a rock at anybody, right?

A. I knew that had he had thrown a rock through the window of the occupied residence, but I never had the opportunity to -- to get that further information as far as if it was thrown at somebody specifically, if it had hit anybody. So I -- I didn't know at that point if he had tried to actually hit homeowner number 1 or his daughter at that point.

Q. Right, but you talked to homeowner number 1 and

he didn't tell you that he tried to hit him with a rock, right?

A. He did not mention getting hit by the rock.

Q. All right. So as far as you know, and knew at the time, homeowner number 1 nor anyone in his household had been threatened with a rock or had a rock thrown at them, right?

A. I would say that homeowner number 1 described the suspect as having -- as having broken out his window and then having rocks. So he -- he still had other rocks in his hand after he had broken the window.

Q. Do you recall what my specific question was, though?

A. Well, you said that -- no. Could you repeat the question?

Q. Sure. You had no information -- homeowner number 1 did not tell you and you had no information to lead you to believe that the suspect had used a rock as a weapon during his encounter with homeowner number 1?

A. Well, obviously homeowner number 1 felt threatened enough by the guy throwing rocks through his window and still holding rocks that he fired warning shots at the suspect's feet.

Q. Right. But do you remember what my question was?

A. If he ever -- if the homeowner number 1 had verbally stated that he was threatened with the rocks?
Q. Yes.
A. I don't recall homeowner number 1 stating that.
Q. Did he ever state anything to the effect of the suspect threw a rock at me or my family?
A. Not to my knowledge.
Q. Homeowner number 2 was confronted by the suspect as well. He had three rocks in his arms or his hands, correct?
A. Correct.
Q. Did homeowner number 2 say that the suspect tried to hit him with a rock?
A. No, he did not.
Q. Anybody else along the way make any statements that led you to believe that the suspect had used a rock as a weapon towards a person?
A. The rock, no. The -- the other weapons in his hands hitting the trees was -- that was observed by Deputy Powers was an indication that he was willing to use the weapons, but a rock specifically, no.
Q. All right. Well, to be sure, you shot the suspect when he went to pick up the rock, correct, not when he went to go pick up the tools that were still in his hand the whole time; is that right?

A. I shot the suspect after he had released the rock that was in his right hand and then went to re -- and then re-picked it up and had picked it up off the ground.

Q. He never dropped those tools at any time, did he?

A. No.

Q. So it wasn't the tools that was your chief concern, correct?

A. I would not say that that is correct. The tools in his hands were definitely a high concern for me.

Q. Yes, but not the chief concern? You didn't shoot him because he had tools in his hands, right?

A. I would say that that was definitely a factor in my decision.

Q. Okay. Can you explain that to me a little bit more?

A. He's continuously rearmed himself throughout the incident. He's got the two tools in his left hand and now he has dropped the third weapon, which is the rock, and then picks that rock back up. I don't know of another reason why he would reacquire that weapon that he had dropped if not to then use it on me.

Q. Well, he already had his tools in the left

hand, right?

A. Correct.

Q. So did you believe that he was going to attack you with the tools?

A. I believe that was a possibility.

Q. The connection is lousy again.

You said you believe that was a possibility; is that correct?

A. Yes.

Q. Now, again, back to this possibility thing. Of course it's a possibility. Anything is possible, right?

Did you think it was going to happen?

A. That was my belief.

Q. That he was going to attack you with the tools?

A. I believe he was going to attack me with the rock, and if he's going throw the rock at me, the tools are very likely to be the next weapons.

Q. Okay. Would it be fair to say that your belief that he was going to attack you with the rock and then follow that up with attacking you -- sorry.

Let me try to rephrase this. Am I getting this accurately that you believed he was going to attack you with a rock and then follow-up on that attack by attacking you with the tools?

A. I believe that he was going to attack me with

the rock and I believe it was a possibility that after the attack with the rock, it could be followed up with the tools.

Q. All right. How big was the rock?

A. I'd say larger than a softball, smaller than a soccer ball.

Q. Okay. Did he pull back his arm to throw it at you?

A. He was picking the rock up when he was shot. So I -- I did not see that at the time.

Q. Okay.

MR. PRAET: For the record, Counsel, you had your arm raised above your shoulder when you asked him whether he drew it back to throw. I just wanted to make sure we had the same visual.

MR. SCHWAIGER: I appreciate that, Bruce. Thank you very much.

Q. So he did not make any gesture as if to throw the rock, he was reaching for the rock and picking it up when he was shot; is that correct?

A. He had picked it up.

Q. Okay.

A. And coming back up when I shot him.

Q. All right. Did he make a gesture as if to throw the rock?

A. In hindsight after looking at the video slowed down, it appears that way.

Q. So we're going to go back to this again. This is a nice rule that we have that says I'm not allowed to judge what you do with the benefit of 20/20 hindsight. All right? Make sense, right?

Also, you are not allowed to justify what you do with the benefit of 20/20 hindsight. So what we learn after the fact might have some relevance, but it might not. All right. So we can get into that but, frankly, I want to know what you saw at the time.

Did you see him make any movement as if he was going to throw the rock other than picking it up?

A. In my mind, yes.

Q. What does that mean, in your mind?

A. He leaned down, picked up the rock, and as he was coming up, he was about to throw it at me and that's when I shot him.

Q. This is pretty important and your connection is poor. You guys are all freezing up like crazy. Okay, let me make sure I get this question. All right.

I said -- I think you were responded in your mind, yes. And I said, "What does that mean?"

Can you please give me your answer again because I don't think we got it?

A. It appeared to me that as he was picking up the rock, he was preparing himself to throw it at me.

Q. All right. And what was it about his physical movements that appeared to you that he was going to throw the rock?

MR. PRAET: Izaak, you're breaking up, too. Why don't I try -- you're right, this is important. Why don't we try maybe going back to the County internet.

MR. SCHWAIGER: Let's get through this couple of questions and if we need to reset, we can.

MR. PRAET: All right. I just want to make sure you get a good record.

BY MR. SCHWAIGER:

Q. What was it about the physical movement that led you to believe that he was going to throw the rock at you?

A. That his left foot was out farther forward. He stepped back with his right, leaned down, picked it up, picked up the rock, and as he was coming up, his arm was coming up and slightly moving back, and that's when I shot him.

Q. Okay. How far off the ground was the rock when you shot him?

A. One to three feet.

Q. All right. You said that you feared that he would cause you serious bodily injury or death; is that right?

A. Yes.

Q. When you were interviewed by SRPD, you told them that you were afraid that he might break your ankle or knock you unconscious.

Do you recall saying that?

A. Yes.

Q. You did not mention at the time that you feared that he was going to kill you; is that right?

A. Correct.

Q. Was that a newly developed fear or was that a fear that you had on the scene?

A. It was a fear that I had on the scene, but it's a -- it's a difficult thing -- as a man, it's a difficult thing to say. It's -- I can't think of a better way to describe it, but even saying it now, it's a -- it's a hard -- it's a hard thing to come to grips with and it's a hard thing to verbally say out loud. Even with all the pressure and implications that come with this whole process, it's a hard thing for a man like myself to say that. And I -- what's that?

Q. Go ahead. I thought you were finished. You said it's a hard thing to say and you?

A. It's just a hard thing to say. I wasn't even aware that I didn't say that at the time. That was -- that interview was done two days after the incident and I thought I had said it. Apparently I didn't.

But it's -- it's still true that I thought that he was going to knock me out, break an ankle or kill me.

MR. SCHWAIGER: Okay. We're going to take a break. Counsel, I would invite you to use the County's Wi-Fi again because this is very difficult to track.

MR. PRAET: Yeah. Well, whatever we can do to get a good record.

I'm just curious, Izaak, do you have his interview? Because I don't.

MR. SCHWAIGER: Yes, I do.

MR. PRAET: Where did you get the interview?

MR. SCHWAIGER: From SRPD from their subpoena.

MR. PRAET: They gave it to you? All right. Interesting. Okay. So when did you get --

MR. SCHWAIGER: I hope that's not problematic. I mean, you should have got copies of everything on the subpoenas.

MR. PRAET: Yeah. Well, I guess I need to talk to Santa Rosa about that. All right. Sounds good.

I'll -- I'm going to sign out and then go back

to the County Internet. I assume this is going to be our last break? We're almost done?

MR. SCHWAIGER: I'm sure it will be.

MR. PRAET: All right.

(Recess)

BY MR. SCHWAIGER:

Q. All right. You engaged the suspect with your firearm. My understanding is that was a Glock semiautomatic 40-caliber; is that correct?

A. Correct.

Q. Is that your issued service weapon or was that a weapon that you procured yourself?

A. That was my personal weapon.

Q. Okay. So the Sheriff's Office has a policy that allows you to carry a personal weapon?

A. Yes.

Q. Why did you choose a 40-cal?

A. That was the firearm I started my career with.

Q. Was there anything about it that you preferred over, say, a 9-millimeter?

A. Just more used to it and...

Q. I mean, you know, the firearm frame itself, pretty consistent between all the Glock models, right,

between like, say, a 19 and a 22? They're pretty much the same frame, correct, just different barrel, firing mechanism, triggers all the same; isn't that right?

A. I don't know. I'm not a -- not a big Glock guy.

Q. You were carrying a Glock, though, right?

A. Yep.

Q. Okay. All right. My understanding typically is that, correct me if you have a different understanding, but the 40 Cal became popular with law enforcement after kind of some of the weaker modeled 9-millimeter cartridges getting some bad exposure in the 80's and 90's for having an ineffective stopping power.

Is that your understanding?

A. I have no idea.

Q. Is it your understanding that the 40-caliber has greater stopping power than a 9-millimeter?

A. I have no idea.

Q. Okay. You should try the 9-millimeter sometime. It has less recoil. It's easier on the wrist.

Suffice to say, the 40-caliber, that's your personal weapon, and you said that's what you've had throughout your entire career?

A. Correct.

Q. Was it the one issued to you in Clearlake?
A. That was the firearm that was issued to me in Clearlake.
Q. And then you were allowed to keep that firearm after you left Clearlake?
A. I purchased it from the department because they were getting new models.
Q. Okay. You said you fired three rounds, correct?
A. Correct.
Q. All right. Why three rounds?
A. That's just typical with the training, to -- to stop the threat.
Q. What training specifically are you referring to?
A. Firearms training, shooting at the gun range for trainings.
Q. So when you shoot at the range, do you shoot in volumes of three rounds or do you shoot single rounds at a time?
A. Sometimes single. Sometimes three. Sometimes, you know, five, six. It just depends.
Q. How many times have you discharged your service weapon in the line of duty?
A. Twice.

Q. How many rounds did you fire the first time you discharged your weapon in the line of duty?

A. Three to five, I believe.

Q. All right. Was there a reason that you chose three to five rounds or was it just like muscle memory?

A. Are you referring to the first shooting?

Q. Yes, sir.

A. That was I was losing consciousness as I was being beaten with a steel object. I squeezed the trigger until the threat stopped.

Q. All right. Is that what you did here?

MR. PRAET: Is that what what he did?

BY MR. SCHWAIGER:

Q. Squeezed the trigger until the threat stopped.

A. I fired as many rounds as I thought would stop the threat.

Q. Okay. And what was it about three rounds versus say one or two or five that made you believe that that's what it would take to stop the threat?

A. I -- I don't know.

Q. Well, okay. I told you that's a fair answer if that's a true answer, right?

Now, my review of the footage in this case seems like the shots were fired in a pretty rapid succession, one right after the other; is that correct?

A. Correct.

Q. So I imagine that you got those three shots off probably in less than half a second, but I mean, I don't have a stopwatch or anything.

Does that sound about right to you?

A. I would have to review the video.

Q. All right. Would you agree that there was not any time for you to, say, evaluate the threat between trigger pulls?

A. It was continuous fire.

Q. But at a certain point you decided that was enough, correct?

A. Well, it was first a fire, I saw that the threat was stopped and I stopped shooting.

Q. So you fired three times and stopped, but you didn't evaluate after the third trigger pull whether you should put a fourth one down range, right?

A. The suspect was already on the ground so I -- I knew immediately that a forth round was not going to be necessary.

Q. All right. Did you know whether the third round was going to be necessary?

A. It was a rapid -- it was a rapid fire so I -- I don't know. There's no guarantee I'm going to hit him on the -- on the first one to stop the threat.

Q. Sure. Is it fair to say you did not, probably could not evaluate the effectiveness of each shot individually?

A. Can you repeat that question?

Q. I'll make it two questions to make it easier.

Would it be fair to say that you did not evaluate the effectiveness of each individual shot prior to shooting the next?

A. Correct.

Q. But would it also be fair to say that because it was such a rapid rate of fire, that evaluating the effectiveness of each shot wouldn't have even been possible under those circumstances?

A. Correct.

Q. Which gets me back to the question why three shots, you know, but I guess you said you didn't know.

Okay. Where were you aiming when you shot?

A. Center mass.

Q. All right. Where did your round impact?

MR. PRAET: Does he know now or at the time?

BY MR. SCHWAIGER:

Q. Did you know at the time?

A. I did not know.

Q. You were with that body for some time on the ground, correct, afterwards?

A. I figured out where rounds had hit once we started life saving measures.

Q. All right. And what did you observe? What did you determine?

A. There was a hole to the chest, a hole in the, I believe it was the left arm, but one of his arms, and I could see that he had some blood by his ear, but it wasn't -- I wasn't aware if that was a bullet hole or, you know, possibly a head injury from hitting the ground.

Q. I mean, there was a lot of blood coming out of his ear, wouldn't you agree? It was pouring out of his ear?

A. Yeah.

Q. All right. Did you believe that he had been shot through his ear like into his skull?

A. I thought that was a possibility.

Q. Okay. All right. And then after the suspect went down to the ground, what did you do?

A. I approached the suspect, went to handcuff him. That is our -- that's what we're trained to do. So rolled the suspect over, began to cuff him and then started CPR pretty quickly after that.

Deputy Powers suggested that we uncuff the suspect at which time I felt that was safe to do as

the -- the injuries were more apparent at that point.

Q. All right. Okay. I am going to upload an exhibit to the chat. I usually do this at the beginning.

Here's Exhibit 1. That is the notice of today's deposition. You don't have to look at it unless you want to, but it's there in the chat.

I'm going to play a video, it's all about the video, and I'll have that marked as Exhibit 2.

MR. SCHWAIGER: Counsel, is there a stipulation that Madam Reporter need not attempt the futile endeavor of transcribing the audio of this video?

MR. PRAET: I agree to that. And can you just identify for the record which video you're going to play?

MR. SCHWAIGER: Yeah, Bates-stamped 032. It is Deputy Dietrick's body worn cam.

Q. And so I am going to -- I'm going to start about 15 minutes before the shooting. All right? I'm not going to go through all 15 minutes. I just want to kind of do some highlights in the 15 minutes prior. All right?

I will let you know that the sound is usually pretty good coming through here. But with the quality

of our connection, if we have bad connectivity, there might be some things that you can't hear but you should be able to see everything. And we can back it up and rewind if necessary. Rewind. Not even a word anymore, is it?

Okay. So I'm going to mark this as Exhibit 2. This will be our video. Here we go.

All right. Now, Deputy, what should have just happened is that our faces and squares got smaller and that the body worn camera footage came up in your primary window. Is that what happened on your terminal?

A. Yes.

Q. All right. Terrific. Just to orient you to place and time if you're not already, you and Powers are still on top of the hill before the suspect descends into the ravine. All right?

MR. PRAET: Izaak, just for the record, so can you identify a time stamp of when you're starting?

MR. SCHWAIGER: Yes, sir. I'll be starting at 1 hour, 7 minutes and 47 seconds, and then I'll be jumping around a little bit as we move, but I'll make sure that we identify each spot as we move. Okay?

MR. PRAET: Okay.

BY MR. SCHWAIGER:

Q. I'm going to play for probably about 10 or 15

seconds just so you can tell me if things are working okay. Okay? Here we go.

(Video playing)

MR. SCHWAIGER: All right. Is that working on your end?

MR. PRAET: It's very jumpy. It's not smooth flowing. It almost looks like a sequence of screen shots on our end.

MR. SCHWAIGER: That is unfortunate. How is the audio?

MR. PRAET: I didn't hear any audio. Did you?

THE WITNESS: Huh-uh.

MR. SCHWAIGER: Okay. I just hear your heavy breathing, is what I think. So let's play a little bit longer and see if this works.

Madam Reporter, just to make sure our -- see if we can identify the connection.

Is that rolling okay for you on your side?

THE CERTIFIED STENOGRAPHER: Yes.

BY MR. SCHWAIGER:

Q. All right. So we'll do what we can. It seems like you guys' tech limitations might be the issue. Not your fault, of course, but let's play for 1:07:58.

(Video playing)

BY MR. SCHWAIGER:

Q. All right. I just paused it at 1:08:26.

MR. PRAET: Now, I'll just tell you we're still getting that very jumpy segmented. And I could hear some sounds, but it's not intelligible. It's just like almost slow motion segmented -- I don't know what to tell you. If there were words spoken, they're not intelligible on our end.

MR. SCHWAIGER: Well, that's going to make things difficult. Yeah, it does seem the issue is on your end of this.

MR. PRAET: I got no answer for you. Maybe want to go off the record for a second?

MR. SCHWAIGER: Sure.

MR. PRAET: All right. Off the record.

(Recess)

MR. SCHWAIGER: For the record, it appears that for whatever reason, the defense is unable to see the video or audio with the same clarity that all of the other parties to the deposition can. That does

compromise my ability to do an effective examination of the witness using the most important exhibit we have as an exhibit. And the exhibit seems to be transmitting fine to the other parties in the deposition, including the reporter.

The handicap appears to be with the defense. So I'll reserve any remedies that might be available for this but I think we just have to keep pushing through and do the best that we can for the time being.

MR. PRAET: I agree. I mean, there's nothing I can do. We've tried two different Internet providers and for whatever reason, when you post it to us, it's very jumpy and the audio thus far has been unintelligible. It's your depo so you can proceed how you wish.

MR. SCHWAIGER: All right. I can live without the audio. Let's see what we can do to make up for the video.

I'm going to scrub our video forward. Then bear with me because I'm going to have to find our exact place.

Okay. I'm going to play from 1:22:28. And I may just have to very slowly advance these frames. I apologize.

MR. PRAET: FYI, it's not on our screen right

now. You know that, right?

MR. SCHWAIGER: It just occurs to me, Bruce, I think that because this is the unredacted video, I think this is still subject to the court's protective order. Is that your recollection?

MR. PRAET: Got me. Is this what we produced to you?

MR. SCHWAIGER: Yes.

MR. PRAET: Okay.

MR. SCHWAIGER: I don't remember off the top of my head, but I also don't want to have an exhibit floating around out there that's supposed to be subject to the protective order that was not -- wait just a second. Let me doublecheck the original and see what it says and then we'll move forward. Sorry for the momentary delay.

I've never been accused of violating a protective order yet so I don't want this to be my first time. All right.

MR. PRAET: Last time it only cost Arturo Gonzalez $6,000.

MR. SCHWAIGER: I know, that poor guy. And he didn't even do it.

MR. PRAET: Roger did it.

MR. SCHWAIGER: Yep, it was.

Okay. This is marked confidential. So I am happy asking you questions about this in the clear like we're doing right now. But the video exhibit itself, Madam Reporter, will need to be marked confidential subject to a protective order.

All right. Bear with me. I may have to play and suffer through the choppiness of this and then we'll pause it when we need to talk. Line from 1:22:28. Okay.

Could you see any of what I just played?

MR. PRAET: For the record, we can see it. It's just choppy.

BY MR. SCHWAIGER:

Q. Okay. So I paused it at 1:22:34.

Deputy, do you recognize what's -- or what I just played, those last six seconds of video?

A. Yes.

Q. All right. And that's you -- this is your body worn camera, correct?

A. Correct.

Q. All right. So here we are at 1:22:34, we just heard you yell "drop it" in the direction of these bushes which I'm sure we'll soon learn is where Mr. Pelaez Chavez was coming from; is that right?

A. I can't quite hear what's being said, but, yes.

Q. Okay. Let's play it from 1:22:34.

(Video playing)

BY MR. SCHWAIGER:

Q. Okay. Paused it at 1:22:39.

Could you hear yourself yelling "Drop it now, Drop it"?

A. Yes.

Q. All right. Great. Now, I'm just going to kind of back the frame up slowly here. Thankfully I think we're able to do that, but can you see my cursor in the middle of the screen?

A. Yes.

Q. All right. So you can see my cursor here kind of to the center left this dark object. Do you recognize that to be Mr. Pelaez Chavez?

A. Yes.

MR. PRAET: Izaak, for the record, and obviously you're free to during deposition ask him however you want, but I will object that this obviously violates 20/20 hind sight in that he didn't have the ability to slow motion or freeze frame it, but go ahead.

MR. SCHWAIGER: Sure. Sure. I will stipulate

that he could not turn back time and see every frame of this video while it was going on. So I'm going to back up just a couple of frames here and try to see what else we can see since it's choppy on your end.

Q. If I walk it forward like this kind of like in slow motion, does that help? Can you see more that way, Deputy?

A. It's smoother, but --

Q. Less than ideal, I know.

A. Yeah.

Q. Anyway, this is the suspect here. We've already identified center left walking forward you're yelling, "Drop it." I'm going to play from 1:22:38.

(Video playing)

BY MR. SCHWAIGER:

Q. Okay. I'm going to scroll back. I just paused at 12246. I'm going to scroll back here. Okay. So 12245 in this frame, just off your left wrist where you see Mr. Pelaez Chavez, and tell me if this is correct.

It appears that he is holding a rock in his right hand and then the two tools in his left hand; is that right?

A. Correct.

Q. It sounds like he's screaming up at the helicopter; is that correct?

A. Correct.

Q. That's what you recall from the incident itself, right?

A. Yes.

Q. Now, right here as he's holding the rock and the tools above his head, did you have a fear that he was going to attack you with these weapons, like right here and right now?

A. It was definitely a concern and a possibility that he would. However, his attention was on the helicopter and not at me at that moment.

Q. All right. That's what it appears to me when I'm watching this, that he's yelling up at the helicopter. Is that what you perceived at the time?

A. Yes.

Q. But he does have these tools in his left hand and the rock in the right hand. And I think that rock looks about the same size as you've described it, maybe about softball size, maybe a little bigger. But it's up in the air in his hand.

Did you have -- how should I state it? Did you believe that he was going to attack you from this position?

A. Not at that second. His arm is straight, you know, elbow kind of locked out. He's not in a -- he's not in like a throwing stance like he was when I fired the shot.

Q. Okay. All right. Hold on just a second. I just lost my own place. Bear with me.

All right. Let's scroll it forward just inching it forward from 1:22:45. Actually, I'm going to play it and then we'll back up and do this. Here we go.

(Video playing)

BY MR. SCHWAIGER:

Q. Okay. I stopped it at 1:22:51. I'm going to back up the frames here a little bit and I'm just slowly scrolling it back.

Okay. So I'm at 1:22:48. And in this frame here, does it appear that Mr. Pelaez Chavez has moved the rock -- well, he's no longer holding the rock in his right hand, is he?

A. He's transferred the rock from his right hand to his left hand.

Q. Okay. All right. Let me back up just a little more and see if we can catch that when that happens.

Okay. So at 1:22:45, both hands in the air.

We scroll forward and at some place in the next two, three seconds -- there we go. Now his hand comes up and it's empty. So he's taken that stone and he's put it his left arm with the tools I'm assuming; is that right?

A. Correct.

Q. Where was he holding the rock? Was it like in the crux of his arm or was it someplace else?

A. I don't quite recall, but yeah, I guess the -- yeah, the crux of his arm near his elbow.

Q. Okay. All right. At this point did you think he was going to throw the rock at you or attack you in any way?

A. Not at that second.

Q. Okay. All right. All right. So we're going to scroll forward from 1:22:48.

Look at that. I think we might have got a good shot there. There we go. All right.

So in this frame, also 1:22:48, you can see what appears to be Mr. Pelaez Chavez looking up, maybe waving at the helicopter and holding the tools and the stone, like you said, in the crook of his arm. At least that's what I imagine is happening there.

Does that look like a correct statement to you?

A. It's difficult to see, but I believe you're correct.

Q. Okay. All right. Okay. Scrolling forward from 1:22:48. Now I stopped it at 1:22:50. Mr. Pelaez Chavez is center frame. He's looking at you it looks like; is that correct?

A. Correct.

Q. At least in your general direction. And his hands are now down at his sides, correct?

A. His hands are in front of him. It looks like he's got possession of the rock with his right hand or regaining possession of the rock with his right hand and still has the two other weapons held in his left hand.

Q. Okay. And his hands are kind of in front of maybe where his hip pockets are? Does that sound about right?

A. Yeah.

Q. Okay. All right. So scroll forward from 1:22:50. There we go. All right. So a few frames later, still 1:22:50, it looks like he has now put that rock back in his right hand and he's kind of holding the right -- his right hand back with the stone in it and his left hand is till holding the two tools; is that correct?

A. Correct.

Q. Did you think he was going to throw the rock at you or attack you at this moment? I know this is kind

of artificial. So I'm trying to see if we can identify the point of departure.

A. I mean, it's definitely a concern that he's going to. I'm also trying to buy as much time as I possibly can waiting for Deputy Powers to try and get in position with the taser.

Q. Sure. That makes sense.

Would it be fair to say that at this point while you're waiting for Deputy Powers, trying to buy that time, you do not perceive a threat so imminent that it would require use of deadly force?

A. Not at that exact moment.

Q. How far is the subject from you?

A. It's really tough to say from the video. 10 to 20 feet.

Q. Okay. All right. Let's play forward a little bit, playing from 1:22:50. I'm just going to keep scrubbing forward.

All right, 1:22:51. Is this the position, I think you called it the "resting position" where he goes down with his hands to his knees?

A. Yes.

Q. All right. At any point up until this point, were you debating whether you should engage him with lethal fire?

A. I was -- can you repeat the question?

Q. Yeah. I said at any point up until now, right now, was there any question in your mind whether you should engage him with lethal fire?

A. I mean, there was definitely question. I believe that at any moment it could turn to that point where I might need to use deadly force, but -- sorry. I lost the word I was looking for. But had not came to the determination that it -- that it needed to be deadly force at that second.

Q. All right. So at this point you're keeping him under lethal cover, correct?

A. Correct.

Q. Buying some more time for Deputy Powers to get him in that triangulated position we were discussing, right?

A. Correct.

Q. Knowing that Deputy Powers has the taser, the less lethal option available, correct?

A. Correct.

Q. But you're not on the brink of shooting him right now, are you? Like I know you're ready for the potential, but there's nothing so far that has occurred that would lead you to believe that you need to engage him with deadly force at this point, right?

A. Well, I'm on the brink of needing to use deadly force, but I have not -- I mean, I obviously hadn't shot him up until that point. So I didn't cross that threshold.

Q. All right. When he had his armed raise up in the air, did you think that he was going to throw anything at you?

A. I thought that was a definite possibility.

Q. Yeah, I know, possibilities and all. But did you think it was going to happen? There's a difference between something being you thought it was possible and you thought it was going happen.

You understand the difference?

A. I didn't feel the need to shoot him at that point.

Q. Right. Right. And was that because -- well, sorry.

Did you believe in the moment that when this man's hands were up in the air with a tool and a rock, that he was getting ready to throw one of the weapons at you?

A. I don't know another way to answer it besides I knew it was a possibility that he could be doing that, but I knew that his attention was drawn to the -- to the helicopter.

Q. Did you think he was going to charge at you and attack you at that point?

A. I mean, I was hoping that he wasn't going to, but it's -- I mean, it's all -- it's all a possibility. It all happens in a microsecond. I'm on the brink of having to use deadly force, but it never quite reached that threshold until the moment I pulled the trigger.

Q. I hate to put too fine a point on it but it matters for me. I'm talking about the infinite world of possibilities. This always comes up in use of force. Anything is possible. It is possible that he's got a gun in his waistband. That is a possibility, would you agree?

A. Yes.

Q. But did you believe that he had a gun in his waistband?

A. No.

Q. Now, it is certainly possible that when he had his hands in the air, that he was going to throw something at you. I think everyone would agree that's a possibility, right?

A. Yes.

Q. But do you think he was going to?

A. Not at that moment.

Q. Did you think that he was going to, at that

moment do you think that he was going to charge at you?

A. Not at that moment.

Q. Okay. All right. Well, let's play forward a little bit from 1:22:51.

(Video playing)

BY MR. SCHWAIGER:

Q. All right. So I stopped it at 1:22:54. I think what we can see here is Mr. Pelaez Chavez dropping that stone from his right hand. So let's see.

All right. I backed it up to it 1:22:52. Mr. Pelaez Chavez is still in this resting position that you described. Let's scroll forward.

All right. There it is, 1:22:52. Did you see that? He dropped the rock?

A. Yes.

Q. We can do a yo-yo with it here a little bit. All right. And you said that you believed that was probably -- you don't know, but you believe that was probably inadvertent; is that correct?

A. Correct.

Q. Let's scroll forward from 1:22:52. 1:22:59. We have Mr. Pelaez Chavez appeared to be reaching down with his right hand, correct?

A. Correct.

Q. Let's scroll forward and see what we can. Okay. And in this frame 1:22:59, it appears his right hand is empty and his left hand is holding the tools, correct?

A. Sorry. Can you repeat that?

Q. In this frame here it appears to me, just tell me if it appears the same to you, that the suspect's right hand is empty and his left hand is holding the tools?

A. And this is after I shot, correct?

Q. Well, I guess we should turn the sound up for that. But I don't believe so. Let's find out. Play from 1:22:50, regular speed.

(Video playing)

BY MR. SCHWAIGER:

Q. There we go. All right. So you're right. We have -- can you hear yourself say, "Put it down, put it down," and then you engage him with three rounds?

A. I can hear "put it down." it's very muffled. It almost seems like it is in slow motion and I cannot hear any of the gun shots.

Q. All right. Let's play it again at regular

speed from 123. All right.

(Video playing)

BY MR. SCHWAIGER:

Q. All right. So 1:23:03, the suspect is plainly on the ground, correct?

A. Correct.

Q. You can see Deputy Powers advancing from the left of the frame, correct?

A. It looks like he's coming through the trees. So it's hard to see, but, yes.

Q. All right. Just kind of backing that up. Now I'm going to back this whole thing up.

All right. Let me see if I can get the precise second here. 1:22:59 I'm going to play.

(Video playing)

BY MR. SCHWAIGER:

Q. That was it. So it looks to me like any time that we can see Mr. Pelaez Chavez standing is before he was shot, which makes sense. Would you agree?

A. Sorry. Can you repeat that?

Q. It appears that any time we can see Mr. Pelaez

standing is before he's been shot.

Do you agree with that statement?

MR. PRAET: You're at 1:22:59 right now? You're frozen?

MR. SCHWAIGER: That's the internal time stamp on this. The external one might be a little different.

MR. PRAET: Okay. I was just indicating what I see is he's still standing. Maybe he's going down. I don't know how you want to depict it, but he's obviously upright on his feet at that point but I understand what you're saying. The shots have occurred already or are occurring?

MR. SCHWAIGER: Yeah, you know what, it doesn't matter. It's probably a fool's errand to try to parse this out with a bad connection like this.

MR. PRAET: Also, same objection that we're freeze framing, we're slow motion, which is obviously nothing that the deputy was able to perceive at the time, but go ahead.

MR. SCHWAIGER: Fine argument for trial, sir.

Okay. Where was this? This is what I wanted to do. I wanted to stop that video and I wanted to bring up Exhibit 3. Okay. This also -- this exhibit will be subject to the court's protective order.

All right. So I've cued this up. Internal

time stamp is 1:03:51. Okay. Same stipulation that the -- are we good? Did someone say something?

MR. PRAET: No. We didn't say anything, but yeah, the same stipulation, the court reporter is relieved of trying to transcribe any audio.

MR. SCHWAIGER: Right.

Q. All right. So playing from 1:03:52. I've got this cued up. It appears from this view here that this is you, Deputy, at about the, say, 1 o'clock position in the upper right-hand corner and Mr. Pelaez Chavez is in the 10 o'clock position in the left-hand corner.

Do you agree?

A. Correct.

Q. You've seen this video before?

A. Yes.

Q. All right. Let me see if I can get a little bit of a running start at it. There we are. Okay. So I'm going to play from 1:03:59.

(Video playing)

BY MR. SCHWAIGER:

Q. All right. So I paused it at 1:03:56.

Could you see anything, hear anything in that?

MR. PRAET: Wait a minute. You said you

started at 1:03:59 and ended at 1:03:56?

MR. SCHWAIGER: 49.

MR. PRAET: Started at 49. I'm sorry.

MR. SCHWAIGER: I think I misspoke.

Q. Were you able to see what was depicted in that film, Deputy?

A. I could hear nothing, but I could -- I could see a very choppy version of the video.

Q. All right. I am going to go walk this back. Okay. So at 1:03:53 I've got Mr. Pelaez Chavez, it looks like he is looking in the direction of Deputy Powers.

Do you agree?

A. Yes.

Q. All right. And it looks like this is that moment in time that we identified in your body worn camera where Mr. Pelaez Chavez -- let's see if we can find out what's in his hands here.

It looks like he's got his tools in his left hand. It looks like he doesn't have anything in his right hand at this point, although it's kind of difficult to tell. Are you able to tell? This is at 1:03:52.

A. I am not able to tell.

Q. So let's play it forward slowly. All right.

Here we go. So at 1:03:53, it appears that his right hand is empty, correct?

A. I cannot tell based on the video.

Q. Okay. Let's play it forward a little more. All right. Now we're watching him bend over, correct?

A. Correct.

Q. All right. So this is at 1:03:53 to 1:03:54. Then we can slowly move forward and then we're off screen at 1:03:54.

I am going to back this up and see if we can determine when those shots are fired relative to Mr. Pelaez Chavez bending over. So here's 1:03:53. And the shots seem to come right at 1:03:54.

All right. I want to switch back over to your video now. Again, forgive me. Okay. Here we are. Sharing Exhibit 2 at 1:22:59. Give us a little time before then.

All right. You had mentioned earlier that Mr. Pelaez Chavez reached down, grabbed the rock, put a foot back, and started to pick up the rock; is that right?

A. Sorry. Can you repeat that?

Q. Yes. I think that your testimony was earlier that Mr. Pelaez Chavez inadvertently perhaps dropped the rock, then reached down, bent over to pick it up, and

put one of his feet back while he was doing that; is that right?

A. Correct.

Q. Let me move forward to see if I can -- how much of that we can see here from 1:22:55. All right. So there at 1:22:58 we can see his barefoot slide back.

Would you agree?

A. Yes.

Q. At 1:22:59, that's when you engage in fire. All right.

Now, earlier I had asked you if you were frustrated by this encounter. You said no.

Do you recall that?

A. Yes.

Q. All right. I asked you if you were tired. Actually, I think I asked you if you were winded and I think you said no; is that correct?

A. I don't recall what I answered to that question.

Q. Were you winded?

A. Maybe.

Q. Okay. Were you tired?

A. Probably a little bit.

Q. Were you exhausted?

A. At what point are we talking about?

Q. At any point.
A. I know I was exhausted towards the end.
Q. Okay. All right.
A. After 30 minutes of CPR.
Q. Oh, before the CPR. I'm talking about --
A. I was not exhausted before the CPR.
Q. All right. Do you remember telling Santa Rosa police detectives that you were exhausted and wanted water?
A. I don't recall.
Q. Do you remember telling Santa Rosa detectives that you were having a really hard time keeping up, "I was just exhausted"?
A. I don't recall.
Q. Are those true statements?
MR. PRAET: Vague as to time and context. I don't have the transcript so I don't know what you're reading.
BY MR. SCHWAIGER:
Q. During the pursuit of Mr. Pelaez Chavez, is it true that you were exhausted and that you wanted water?
A. I would say I was tired and wanted water, or exhausted if you want to use the term exhausted.
Q. Is it fair to say that you are having a hard time keeping up during the pursuit of Mr. Pelaez Chavez?

A. It was a very difficult foot pursuit, yes.
Q. I understand it was difficult, but you were having a hard time keeping up, correct?
A. I think everybody was, but I was able to keep up. So...
Q. Do you recall telling Santa Rosa police detectives that when Mr. Pelaez Chavez raised his arms in the air at the helicopter, that you were on the cusp of potentially shooting him because he was raising his arms up and you thought maybe he was going to throw one of the weapons at you and charge toward you?
MR. PRAET: Do you have something that you're quoting, Izaak, because we don't have a transcript here.
MR. SCHWAIGER: I know. That why I'm asking him if he recalls making that statement. If he doesn't or if he disagrees that he made that statement, he's at liberty to tell us.
THE WITNESS: I don't recall making the statement, but I -- well --
MR. PRAET: If you don't recall, that's it.
THE WITNESS: Okay.
BY MR. SCHWAIGER:
Q. Do you remember telling SRPD detectives that you were just trying to buy a little bit more time

rather than engage the suspect with deadly force until Deputy Powers could come up with his taser and that's why you didn't engage?

A. I haven't reviewed that. So I -- I don't recall specifically what I said, but you're obviously quoting it.

Q. Well, I am, and it's a little unfair because I have -- but don't take my word for it. Don't answer "yes" or "no" just because you think I'm referring to something. Maybe I'm just making this up.

A. Okay.

Q. Just your recollection.

Do you recall the interview with SRPD being recorded?

A. Yes.

Q. Do you recall your attorney Mr. Ganz also made an individual recording of the interview?

A. I don't recall.

Q. Have you ever had someone throw a rock at you before?

A. Sure, but I don't recall the specific incident.

Q. Are you familiar with the phrase "time, talk and tactics"?

A. No.

Q. Would you agree that in certain situations part

of deescalation is increasing time or distance as it pertains to a criminal suspect?

MR. PRAET: Vague as to circumstances; incomplete hypothetical.

BY MR. SCHWAIGER:

Q. Are you familiar with those terms about increasing time or increasing distance?

A. They sound familiar.

Q. All right. What does increasing time mean to you in a use of force encounter?

A. Maybe more time.

Q. Right. How about slowing things down? Does that sound right?

A. Sure.

Q. Can it be advantageous, according to your training and experience in a use of force encounter, to try to slow things down?

MR. PRAET: Objection; vague and ambiguous, incomplete hypothetical.

Do you understand the question, what he's asking you under what circumstances?

THE WITNESS: I think I understand the question, but can you repeat it or rephrase it?

BY MR. SCHWAIGER:

Q. Yeah, sure. Now, there's this phrase you all

will love. It's called totality of the circumstances. Otherwise known as it depends. And so yes, there's a whole universe of infinite possibilities. But we work within that universe according to certain guidelines. That's why we have training, right? So that it prepares us for the infinite world of possibilities, but gives us guidelines in which to work.

So keeping that in mind, according to your training can it be beneficial in the use of force encounter to slow things down?

MR. PRAET: Same objection; incomplete hypothetical; vague and ambiguous.

Do you know the circumstances under which he's asking you to apply that?

THE WITNESS: I do not.

MR. SCHWAIGER: He doesn't need to know the circumstances. You can lodge your objection.

MR. PRAET: I just did.

MR. SCHWAIGER: Yes, but please don't ask your witness questions or my witness questions. You can ask him when I'm done if you want to.

MR. PRAET: I just asked him if he understood the hypothetical that you gave him, and he doesn't. So you can ask another one.

MR. SCHWAIGER: Counsel, you're inserting

items here that don't need to be inserted.

Q. As I was saying, in a use of force encounter, in the broad universe of possible uses of force, all right, where anything could be possible, can it, in some of those circumstances, pick any that you like, be useful to slow down the use of force encounter preserving all previous objections?

MR. PRAET: Just for the record I am going to insert my same objections; vague and ambiguous; incomplete hypothetical; under what totality of the circumstances, to use your phrase, are you asking the question? In the situation he was facing?

MR. SCHWAIGER: No. Counsel, you didn't listen to my question. I said in any situation, could it be possible? In any. Of any set of circumstances. And if it's not, tell me so. And if it is, tell me so.

THE WITNESS: Anything is possible.

BY MR. SCHWAIGER:

Q. Yes. That's true, right.

Have you been trained that slowing down the use of force encounter can help deescalate the situation?

A. It depends on the circumstances.

Q. All right. So some circumstances it could help, correct?

A. Correct.

Q. And some circumstances it would be foolish, correct?

A. Or impossible.

Q. Sure. All right. Have you similarly been trained that in some circumstances creating distance in a use of force encounter can help deescalate the situation?

A. It's possible.

Q. Sometimes it's not possible, right?

A. Correct.

Q. Now, in this particular encounter, would you have been able to increase the distance between you and Mr. Pelaez Chavez, say as a form of deescalation?

MR. PRAET: At what point?

MR. SCHWAIGER: Prior to shooting him.

MR. PRAET: Are you asking if he could have retreated?

MR. SCHWAIGER: Nope.

MR. PRAET: What are you asking?

MR. SCHWAIGER: You can object to it or not, but I'm entitled to an answer. It's an intelligible question.

MR. PRAET: It is, and I'm just asking if you're saying by increasing distance, you mean could the Deputy have retreated?

MR. SCHWAIGER: And I'm saying no.

MR. PRAET: How is he going to increase the distance?

MR. SCHWAIGER: It's not my deposition that way. It's the witness'. So he can answer my question or not. He can tell me he doesn't understand it but that is not an objection, Counselor.

THE WITNESS: In that circumstance I don't think it would have been a good idea to back up while my partner was trying to get into position to deploy the taser.

BY MR. SCHWAIGER:

Q. Okay, great. Why?

A. It's always easier to -- or more successful to stop a threat with lethal force that is closer to you. Obviously, the further away you are from the suspect, the harder it is to do that.

And Deputy -- Deputy Powers' taser is only effective within a certain range. Also, he's got trees and debris in front of him.

Also, trying to back peddle in that rocky terrain while still trying to hold effective lethal cover is dangerous, that I might back up and trip, fall over something.

Q. Isn't it true that you took the position that

you did because the terrain at the spot where you were was more level than it was down below where Deputy Powers was?

A. It was more level than the creek bed, but it was not a -- a level flat surface by any means.

Q. Now, let me make sure I get this correct. You said that as you increased the distance -- now, I might have missed this. So I don't mean to misstate your testimony. Just tell me if I got it right or wrong.

As you increased the distance, then the effectiveness of your deadly force that you might use diminishes. Is that what you said, or something along those lines?

A. No.

Q. Okay. What did I miss? Because I must have got that entirely wrong.

A. It's more difficult to stop that threat if you're further away from it.

Q. Okay. Why?

A. It's easier to -- easier to -- when you're firing a gun, it is easier to hit a target that is closer to you as opposed to further away.

Q. There you go. All right. What distance do you train at at the range?

A. Anywhere from three feet to I believe it's

25 feet.

Q. Okay. All right. Now, so it becomes more difficult for you to hit your target the farther away you get. That seems to make sense. Is that correct?

A. Sorry. The video cut out. Could you repeat the question?

Q. It becomes more difficult to hit your target with an increase in distance; is that correct?

A. Correct.

Q. Similarly, does it also become more difficult for someone, say, holding a rock to hit you with it as you increase the distance?

A. Well, correct, but although Powers is still going to be in the -- in the -- in that close range to be hit with the rock if he's trying to deploy the taser and I'm trying to be in the best position possible to provide cover for him.

Q. So did you believe that the suspect was going throw the rock at Powers or at you?

A. At the moment I fired, based on the totality of the circumstances, I felt that he was an imminent threat to me. I also felt that it was possible that he could also throw the rock at Powers.

Q. All right. But not an imminent threat to Powers?

A. Potentially, but I thought he was throwing the rock at me.

Q. All right. What does that mean to you, imminent threat?

A. That something is going to -- is going to happen. You know, I can't think of the word. That something is going to happen, you know, right then.

Q. Would you say immediately?

A. If I do not intervene, then it's going to happen.

Q. It's going to happen immediately or sometime in the future, but not immediately? Help me out here.

A. If I don't do something, it's going to happen immediately.

Q. All right. All right. Did you believe that Mr. Pelaez Chavez intended to kill you?

A. I believe that he intended to kill me or cause me great bodily injury.

Q. And that was based -- I mean, at some point there was something that happened that tripped that switch from this is nonlethal force to this is lethal force.

So what was it that tripped that switch that made you believe that this man wanted to kill you or seriously injure you?

A. It was the totality of the circumstances and then him dropping the rock or having the rock fall from his right hand and then rearming himself with that rock and getting ready to throw it.

Q. But it was not when he was just holding it in his hand before, it was only after he dropped it and re-picked it up; is that correct?

A. Can you repeat that?

Q. Yes. You did not feel that while he was holding that rock in his right hand or when he switched it between hands and then switched it back to his right hand, at that point you did not feel that he intended to kill you or cause you serious injury, correct?

A. Not at that exact moment.

Q. The exact moment happened when he dropped it and then went to pick it back up and again?

MR. PRAET: Misstates his testimony.

BY MR. SCHWAIGER:

Q. Is that right?

A. Well, he picked it up.

Q. And that was the moment that this became a lethal force encounter? In your mind, that's what tripped it?

A. Can you be more specific?

Q. When he picked it up, when he picked up the

rock, that's what flipped the switch over to deadly force; is that right?

A. It was the totality of the circumstances.

Q. Well, I understand. But I mean, you're familiar with the phrase "the straw that broke the camel's back," right?

A. Yeah.

Q. Because the totality of the circumstances is almost the same two seconds before you shot him, but something changed. I'm trying to pin down what that was.

So I understand the totality of the circumstances. I get that. But there was something that changed in the second before he was shot to the second when he was shot. I'm trying to identify what it was.

And I think what you're telling me, but I might be wrong, is that it was him picking up the rock and you believing that he was going to throw it at you; is that right?

A. There was no doubt in my mind that when he had dropped that rock, picked it back up, that he was going to throw that rock at me which could kill me or cause me serious bodily injury.

Q. And the reason there was no doubt in your mind

that this is what he was going do was because what?

A. Because of the totality of the circumstances.

Q. Anything in particular that existed when you shot him that didn't exist two seconds before?

A. I mean, the fact that he rearmed himself after dropping one of his weapons, picked it back up.

Q. All right. Do you have any regrets about the situation?

A. I mean, I wish it never had to happen, but it did.

Q. Do you regret shooting Mr. Pelaez Chavez?

A. I mean, I was forced to do what I needed to do to protect myself and my partner. What's to say?

Q. I'm sorry, the last part, I -- you said "and my partner" but I lost the last bit.

A. I don't know what else to say.

Q. Well, I mean, no one has been in another man's shoes, right? But some people wear the same size. So I understand a little bit about the predicament that you're talking about here.

But my question specifically -- and I apologize because it's a hard question to answer. Understanding what you just said, my question is very specific and that is, do you regret shooting Mr. Pelaez Chavez?

A. I wish that he just didn't have to put me in

that position.

Q. I know, and I believe that. But I'm going to make you answer the question. I hate to just keep asking it.

Do you regret shooting him?

MR. PRAET: I think he's answered it. He regrets being forced to and that he was put in that position. I mean, you can ask it ten more times but I don't think his answer is going to change.

MR. SCHWAIGER: We'll see.

Q. There's these things, right? There's passive and then there's active ways of speaking. Right? The whole officer-involved shoot thing is very passive. Way to say it, right? There was an officer involved and an officer-involved shooting. We say that in a very passive sense instead of saying an officer shot someone, which is a more active voice.

And I understand what you're saying when you say I wish that I wasn't in that situation. I totally understand that. Totally understand that. And I believe you.

But my understanding is that you were in the situation. That was the situation where you were put, placed, for good, bad, indifferent, otherwise, that's where you were. I'm sure that you wish that you weren't

there. But you were.

So do you regret shooting him? Not that you were in the position where you felt you had to, but do you regret shooting him?

A. I don't think I did anything wrong, so I would say no.

Q. Okay. I think that's a fair answer. And I appreciate you working with me through that.

MR. SCHWAIGER: What I would like to do is take like a two-minute break so I can confer with my co-counsel and see if we can be done. Is that acceptable to everybody?

MR. PRAET: Being done? Absolutely.

MR. SCHWAIGER: All right. Give me two minutes. We're off the record.

(Recess)

BY MR. SCHWAIGER:

Q. The good news is I'm pretty much done, so your attorney is able to ask you questions if he wants to, but I'm pretty sure he doesn't. But it's something I always have to ask.

The second thing will be we'll ask the court reporter if she needs any clarification on spellings or names or anything to that regard.

MR. SCHWAIGER: So Mr. Praet, do you have anything you need to put on record?

MR. PRAET: Once again, Izaak, you're clairvoyant. I'm going to say no.

THE CERTIFIED STENOGRAPHER: Bruce, did you want a copy?

MR. PRAET: Yes, please.

(The deposition concluded at 4:45 p.m.)

DECLARATION UNDER PENALTY OF PERJURY

I, MICHAEL DIETRICK, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 24, 2023; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as correct, is true and correct.

Dated this_____day of_____, 20_____, at_____, California.

_____
MICHAEL DIETRICK

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MICHAEL DIETRICK Dated

I, the undersigned, a Certified Stenographic Reporter duly licensed by the State of California, do hereby certify;

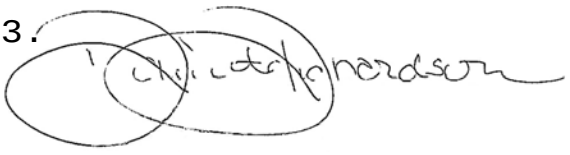
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my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

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript was requested.

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

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

Dated: October 30, 2023.



Roberta Richardson
Certified Stenographic Reporter
CSR NO. 11337, RPR

