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13 **UNITED STATES DISTRICT COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 KHOUA VANG; and TED RICHARDS,
JR., individually and as Co-Successors-in-
16 Interest to Decedent DARELL
RICHARDS,

17 Plaintiffs,

18 v.

19 CITY OF SACRAMENTO, a municipal
20 corporation; and DOES 1-50, inclusive,
individually and in their official capacity as
21 agents for the Sacramento Police
Department,

22 Defendants.
23

Case No.: 2:19-CV-00374-JAM-JDP

**NOTICE OF MOTION AND RENEWED
MOTION FOR JUDGMENT AS A
MATTER OF LAW BY DEFENDANTS'
CITY OF SACRAMENTO, SAMEER
SOOD, TODD EDGERTON AND
PATRICK COX; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATIONS OF LEE H.
ROISTACHER AND SEAN D. RICHMOND**

Date: February 14, 2023
Time: 1:30 p.m.
Courtroom: 6
Judge: Hon. John A Mendez
Magistrate: Hon. Jeremy D. Peterson

Complaint Filed: March 4, 2019
Trial Date: October 11, 2022

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1 **TO ALL COUNSEL AND THEIR COUNSEL OF RECORD HEREIN:**

2 **NOTICE IS HEREBY GIVEN** that on February 14, 2023, at 1:30 p.m. before the
3 Honorable John A. Mendez, Courtroom 6, United States District Court located at 510 I Street,
4 Sacramento, California, defendants City of Sacramento, Sameer Sood, Todd Edgerton and
5 Patrick Cox will and hereby do renew their motion for Judgment as a Matter of Law.

6 This motion is brought under Federal Rule of Civil Procedure 50(b) and Local Rule 291.1
7 and is based upon this notice of motion, the accompanying memorandum of points and
8 authorities, all exhibits filed herewith, declaration of Lee H. Roistacher, all pleadings and papers
9 on file in this action, and upon such other matters as may be presented to the court at the time of
10 the hearing.

11 Moving parties attempted to meet and confer with plaintiffs' counsel prior to filing this
12 motion but plaintiffs' counsel never responded to attempts to start a dialog. *See Richmond*
13 *Declaration.*

14
15 Dated: December 28, 2022

Dean Gazzo Roistacher LLP

16
17 By: /s/ Lee H. Roistacher

18 Lee H. Roistacher
19 Attorneys for Defendants
20 City of Sacramento, Sameer Sood,
21 Todd Edgerton, and Patrick Cox
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City of Sacramento, Sameer Sood, Todd Edgerton,
12 and Patrick Cox

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Case No.: 2:19-CV-00374-JAM-JDP

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' RENEWED MOTION
FOR JUDGMENT AS A MATTER OF
LAW**

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INTRODUCTION

1
2 Just before midnight on September 5, 2018, a masked Darell Richards was pointing
3 and waving a handgun at people in downtown Sacramento. Richards twice fled from City of
4 Sacramento police officers into a residential area. After being found several hours later by
5 SWAT officers hiding in a dark and cluttered backyard with a gun, Richards ignored officers’
6 “show your hands” and “drop your gun” commands and pointed his gun directly at Officer
7 Tiner. Reasonably believing Richards was going to shoot Tiner, Officer Patrick Cox and
8 Sergeant Todd Edgerton shot Richards. Richards died from his injuries.

9 Richards’ parents sued on their own behalf and as successors in interest asserting
10 claims under 42 U.S.C. § 1983 for Fourth and Fourteenth Amendment violations and claims
11 under California law. They further sought punitive damages under § 1983 and California law.

12 This Court should enter judgment as a matter of law in favor of Officer Cox, Sergeant
13 Edgerton, and Lieutenant Sood on plaintiffs’ § 1983 claims because qualified immunity
14 insulates them from liability.

15 Based on the evidence presented at trial, no reasonable jury could conclude either
16 Officer Cox, Sergeant Edgerton or Lieutenant Sood violated Richards’ Fourth Amendment
17 rights and no reasonable jury could conclude either Cox or Edgerton violated plaintiffs’
18 familial association rights under the Fourteenth Amendment because, put simply, a reasonable
19 officer under the same rapidly evolving circumstances would have believed Tiner’s life was in
20 danger and the use of deadly force by Cox and Edgerton to protect Tiner was unquestionably
21 reasonable and unquestionably related to the legitimate law enforcement objective of
22 protection of life.

23 Even assuming some potential question exists on a Fourth or Fourteenth Amendment
24 violation, no Supreme Court or Ninth Circuit authority would have put all reasonable officers
25 on notice that using deadly force under the specific circumstances of this case violated the
26 Fourth or Fourteenth Amendment.

27 This Court should enter judgment as a matter of law in favor of Officer Cox, Sergeant
28 Edgerton and the City on plaintiffs’ California Bane Act claim because no reasonable jury

1 could find the predicate Fourth Amendment violation and, additionally, no reasonably jury
2 could find a specific intent to violate the Fourth Amendment by Cox or Edgerton.

3 This Court should enter judgment as a matter of law in favor of Officer Cox and
4 Sergeant Edgerton on plaintiffs' negligence claim because no reasonably jury could find the
5 use of deadly force unreasonable under the totality of the circumstances. Because of the
6 absence of liability, this Court should enter judgment as a matter of law on plaintiffs' vicarious
7 liability claims against Lieutenant Sood and the City (in addition to Sood not being an
8 employer subject to vicarious liability).

9 Because of the absence of any liability, this Court should enter judgment as a matter of
10 law in favor of Officer Cox, Sergeant Edgerton and Lieutenant Sood on plaintiffs' punitive
11 damage claims. Even assuming some liability, no reasonably jury could conclude punitive
12 damages are appropriate.

13 RELEVANT PROCEDURAL BACKGROUND

14 At the close of plaintiffs' case, defendants moved for judgment as a matter of law
15 under Federal Rule of Civil Procedure 50(a). Doc. 148, Exh. 1, Trial Transcript, Day 6 of 11,
16 pages 731:8-741:24 (TT 6, pp. 731:8-741:24)¹; Doc. 116. This Court denied the motion. *Id.*
17 After defendants presented their case and the parties closed, the Court instructed the jury, Doc.
18 150, Exh. 2, TT 8, pp. 1021:17-1048:5, and the matter was submitted to the jury for decision
19 on the following causes of action against the following defendants²:

- 20 * Section 1983 - Fourth Amendment excessive force claims against Officer Cox
21 and Sergeant Edgerton
- 22 * Section 1983 - Fourth Amendment "supervisory liability" claim against
23 Lieutenant Sood

24 ¹ The full trial transcripts are lodged at Docs. 143-153. Defendants attach as exhibits only
25 those portions of the trial transcripts specifically cited. *See* Roistacher Declaration.

26 ² During trial, upon plaintiffs' request, the Court dismissed plaintiffs' sixth and seventh causes
27 of action for assault and battery under California law, the third cause of action for § 1983
28 municipal liability asserted against Chief Hahn and the City, and the fourth cause of action
under California law for "wrongful death-negligence" against Chief Hahn. Doc. 146, Exh. 3,
TT 4, p. 371:7-19; Doc. 148, Exh. 1, TT 6, pp. 731:17-732:18; Docs. 13, 16. Based on those
dismissals, Chief Hahn was no longer a defendant.

- 1 * Section 1983- Fourteenth Amendment loss of familial association claims
2 against Officer Cox and Sergeant Edgerton
- 3 * Bane Act claim (Cal. Civ. Code § 52.1) against Officer Cox and Sergeant
4 Edgerton directly and the City vicariously
- 5 * Negligence (wrongful death) against Officer Cox and Sergeant Edgerton
6 directly and Lieutenant Sood and the City vicariously
- 7 * Punitive damage claim against Officer Cox, Sergeant Edgerton, Lieutenant
8 Sood

9 See Doc. 149, Exh. 4, TT 7, pp. 942:14-947:5 (plaintiffs limiting negligence claim against
10 Sood to vicarious liability); Doc. 150, Exh. 2, TT 8, pp. 1031:13-1034:3 (instructing jury on
11 negligence claim); Doc. 94 (special verdict); Doc. 120 (jury instructions).

12 The jury was unable to reach a unanimous verdict on any of plaintiffs' claims. Doc.
13 153, Exh. 5, TT 11, pp. 1068:4-1072:9. Seven of eight jurors favored a defense verdict on all
14 claims but the excessive force claim against Sergeant Edgerton; on that claim, five jurors
15 favored a defense verdict. *Id.*, pp. 1072:10-1073:12. The Court declared a mistrial on October
16 31, 2022. *Id.*, p. 1072:3-9; Doc. 138.

17 On November 28, 2022, the Court extended defendants' deadline to file this Rule 50(b)
18 motion through December 28, 2022. Doc. 142.

19 MOTION STANDARD

20 A motion for judgment as a matter of law under Rule 50(b) is not a "freestanding
21 motion" but "a renewed Rule 50 (a) motion." *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d
22 951, 961 (9th Cir. 2009). A party must have moved under Rule 50(a) before submission of the
23 case to a jury. *Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1082-83 (9th Cir.
24 2009). Defendants satisfied this procedural requirement.

25 A "hung jury" does not preclude a Rule 50(b) motion. Fed. R. Civ. P. 50(b) (allowing
26 motion when it "addresses a jury issue not decided by verdict"); *Headwaters Forest Defense v.*
27 *Cty. of Humboldt*, 240 F.3d 1185, 1197 (9th Cir. 2000), *vacated on other grounds by*, 534 U.S.
28 801 (2001); *Elliott v. Versa CIC, L.P.*, 2019 U.S. Dist. LEXIS 16744, at *16 (S.D. Cal. Feb. 1,
2019) (citing authorities).

///

1 Under Rule 50, the court must direct entry of judgment when “a reasonable jury would
2 not have a legally sufficient evidentiary basis to find for the party on that issue.” Fed. R. Civ.
3 P. 50(a). Stated another way, when “there is no substantial evidence to support the claim.”
4 *Rutledge v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 677 (9th Cir. 1975).

5 A court’s evaluation of a Rule 50 motion functions mostly like a summary judgment
6 motion. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). The court
7 “draw[s] all reasonable inferences in favor of the nonmoving party, and it may not make
8 credibility determinations or weigh the evidence.” *Id.* A court must grant the motion when
9 ““the evidence, construed in the light most favorable to the nonmoving party, permits only one
10 reasonable conclusion, and that conclusion”” is one of no liability. *Escriba v. Foster Poultry*
11 *Farms, Inc.*, 743 F.3d 1236, 1242 (9th Cir. 2014); *see Headwaters*, 240 F.3d at 1197 (the issue
12 is “whether a fair-minded jury could return a verdict for the plaintiff on the evidence
13 presented”) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

14 “Like summary judgment, however, the mere existence of some alleged factual dispute
15 between the parties or a ‘scintilla of evidence’ will not defeat a properly supported motion for
16 a directed verdict.” *Thomas v. Cannon*, 289 F.Supp.3d 1182, 1194 (W.D. Wash. 2018)
17 (citations omitted); accord *Elliott*, 2019 U.S. Dist. LEXIS 16744, at *15.

18 Unlike summary judgment, however, “some of the prudential reluctance to grant
19 summary judgment — a complete deprivation of a trial — may be relaxed in th[e] [Rule 50]
20 context because the parties have had their day in court.” *Thomas*, 289 F.Supp.3d at 1194
21 (citing *Santa Clara Valley Distrib. Co. Inc. v. Pabst Brewing Co.*, 556 F.2d 942, 944 n.1 (9th
22 Cir. 1977)); accord *Elliott*, 2019 U.S. Dist. LEXIS 16744, at *15; *Green v. City of Phx.*, 2019
23 U.S. Dist. LEXIS 144898, at *24-25 (D. Ariz. Aug. 26, 2019).

24 EVIDENCE

25 The evidence presented at trial was uncomplicated and undisputed.

26 Around 11:30 p.m. on September 5, 2018, the City’s police department received a 911
27 call about a mask wearing man pointing a gun at people outside the Tower Café at 16th and
28

1 Broadway (i.e., Richards). Exh. 6, Tr. Exh. OO (911 call).³ Officers were dispatched to locate
2 Richards and California Highway Patrol Air 21 also assisted. Doc. 146, Exh. 3, TT 4, p.
3 391:5-7; Doc. 148, Exh. 1, TT 6, pp. 788:15-789:17. The reporting party confirmed to a
4 responding officer that Richards pointed a gun at him and others. Exh. 7, Tr. Exh. A, 0:57-
5 1:35 (BWC footage). Officer Tippet – in a patrol car with activated lights – first located
6 Richards who dropped a backpack and fled. Doc. 148, Exh. 1, TT 6, pp. 784:17-786:17,
7 789:20-790:2. Richards did not drop the gun. A nearby security camera captured Richards
8 still carrying the gun in his hand. Exh. 8, Tr. Exh. JJ.

9 After being again located at around 11:38 p.m., Richards ran from officers into a
10 residential area where he jumped fences and proceeded through residential backyards. Exh. 9,
11 Tr. Exh. G, 0:01-0:43 (aerial footage).

12 Richards was subsequently observed coming over a residential fence by AIR 21 and
13 Officer Sanguinetta. Exh. 7, Tr. Exh. A, 3:20-3:45; Exh. 9, Tr. Exh. G, 0:43-1:05 (aerial
14 footage). Richards attempted to jump another fence into the backyard of another residence
15 while Officer Sanguinetta twice yelled “Let me see your hands!” and “Get on the ground!” *Id.*
16 Failing to get over the fence, Richards turned toward Officer Sanguinetta who saw a gun in
17 Richard’s hand. *Id.* Richards then fled once again over another fence. *Id.*

18 Watch Commander Lieutenant Sood established an incident command post, ordered a
19 containment perimeter established where Richards was last seen, and at 12:13 a.m. on
20 September 6 called for SWAT to conduct a yard-to-yard search within the perimeter. Doc.
21 146, Exh. 3, TT 4, pp. 373:12-374:6, 378:20-379:25, 389:25-390:18, 424:24-425:2. SWAT
22 responded to the scene around 1:30 a.m. Doc. 145, Exh. 10, TT 3, p. 402:22-23. Responding
23 SWAT members included Officer Tiner, Officer Cox and Sergeant Edgerton. *Id.* at pp. 239:3-
24 6, 247:4-13; Doc. 146, Exh. 3, TT 4, pp. 414:5-7, 421:8-13.

25 SWAT was briefed. The briefing included identifying Richards, showing a picture of
26 Richards, advising Richards was armed and had pointed his gun at civilians, showing the

27 _____
28 ³ The exhibit list is found at Doc. 135.

1 security camera picture of Richards with a gun in his hand, Officer Sanguinetti's observations
2 of Richards' fleeing while still holding the gun, a note or homework assignment found in
3 Richards' backpack related to dying, information about Richard's having a restraining order
4 against him for felony assault against his brother, and information about some potential mental
5 health issues and drug use by Richards. Doc. 145, Exh. 10, TT 3, pp. 262:20-269:3, 312:17-
6 314:2; Doc. 146, Exh. 3, TT 4, pp. 379:17-382:18, 408:10-409:7, 425:3-429:3, 538:17-539:14;
7 Doc. 147, Exh. 11, TT 5, pp. 575:8-576:11, 545:25-550:20; Doc. 148, Exh. 1, TT 6, pp. 758:7-
8 20, 775:18-776:19, 789:18-795:16, 801:16-804:4; Doc. 149, Exh. 4, TT 7, pp. 822:17-825:19.

9 SWAT's assignment was to locate and isolate Richards and then take him into custody
10 by doing a yard-to-yard search within the perimeter. Doc. 145, Exh. 10, TT 3, p. 321:21-24;
11 Doc. 146, Exh. 3, TT 4, pp. 440:15-442:16; Doc. 149, Exh. 4, TT 7, pp. 825:20-826:4.

12 Just after 3:00 a.m., SWAT Officers Tiner and Cox, Sergeant Edgerton and others
13 began to clear the dark and cluttered backyard at 2017 1st Avenue. Exh. 12, Tr. Exh. C, 44:00-
14 46:00 (BWC footage); Doc. 145, Exh. 10, TT 3, pp. 286:23-288:3, 314:20-315:8, 321:15-20;
15 Doc. 146, Exh. 3, TT 4, pp. 457:1-4; Doc. 147, Exh. 11, TT 5, pp. 564:24-567:23; Doc. 148,
16 Exh. 1, TT 6, pp. 777:13-779:7, 805:1-807:21; Doc. 149, Exh. 4, TT 7, pp. 826:12-829:13.

17 The K-9 was first sent into the backyard but did not alert to anyone's presence. Exh. 12, Tr.
18 Exh. C, 44:00-46:00; Doc. 145, Exh. 3, TT 3, pp. 318:22-320:9; Doc. 146; Exh. 1, TT 4, pp.
19 473:11-475:4; Doc. 147, Exh. 11, TT 5, pp. 585:22-587:17; Doc. 148, Exh. 1, TT 6, pp.
20 755:13-758:6, 761:6-764:23, 778:9-19, 806:3-807:6; Doc. 149, Exh. 4, TT 7, pp. 827:21-
21 828:19.

22 Soon after entering the backyard, Officer Tiner saw movement in front of him to his
23 right and saw Richards under a porch staircase. Doc. 145, Exh. 10, TT 3, pp. 291:17-293:3,
24 320:10-14.

25 Officer Tiner shouted "Show me your hands" twice then yelled "gun." Exh. 12, Tr.
26 Exh. C, 44:00-46:00; Exh. 13, Tr. Exh. F, 1:34:40-1:34:50 (BWC footage); Exh. 14, Tr. Exh.
27 16, 1:26:30-1:27:00 (BWC footage); Doc. 145, Exh. 3, TT 3, p. 293:4-7, pp. 305:10-21,
28

1 320:15-19; Doc. 147, Exh. 11, TT 5, p. 567:1-5; Doc. 148, Exh. 1, TT 6, pp. 779:8-18, 807:22-
2 808:13; Doc. 149, Exh. 4, TT 7, p. 829:14-21.

3 Richards did not drop the gun. Richards immediately pointed the gun directly at
4 Officer Tiner, who thought he was going to get shot and ducked out of the way because
5 Richards got “the drop” on him. Doc. No. 145, Exh. 10, TT 3, pp. 294:7-297:4, 307:15-308:4,
6 309:8-311:22, 320:20-321:13, 327:6-9. Tiner did not shoot because he was unsure of Officer
7 Cox’s location and he “would rather take a bullet or get shot at than have to explain to [Cox’s]
8 family that [he] shot him.” *Id.* at pp. 295:5-297:4.

9 Officer Cox and Sergeant Edgerton heard Officer Tiner’s commands, saw Richards
10 pointing his gun at Tiner, and Cox twice ordered Richards to “drop the gun.” Exh. 12, Tr.
11 Exh. C, 44:00-46:00; Exh. 13, Tr. Exh. F, 1:34:40-1:34:50; Exh. 14, Tr. Exh. 16, 1:26:30-
12 1:27:00; Doc. 146, Exh. 3, TT 4, pp. 458:2-462:18, 476:15-477:19; Doc. 147, Exh. 11, TT 5,
13 pp. 566:20-570:11, 571:2-4, 572:12-19, 582:2-4, 587:18-588:9, 589:24-590:25; Doc. 148, Exh.
14 1, TT 6, pp. 779:8-18, 807:22-808:13; Doc. 149, Exh. 4, TT 7, p. 829:14-21.

15 Not responding to commands and with the gun pointed at Officer Tiner, Officer Cox
16 and Sergeant Edgerton shot Richards multiple times in what was essentially a single burst of
17 fire. *Id.* Another officer had also seen Richards pointing a gun in the officers’ direction before
18 Cox and Edgerton fired. Doc. 149, Exh. 4, TT 7, pp. 829:14-831:8, 833:3-834:14.

19 A gun was found in Richards’ lap after the shooting. Doc. No. 148, Exh. 1. TT 6, p.
20 782:9-783:7; *see* Exh. 15, Tr. Exh. P (photo of gun).

21 Among other wounds, the Medical Examiner found bullet fragment wounds on
22 Richards’ left hand and arm, and a penetrating bullet wound on his right hand with the entry
23 wound on the back of the hand and the exit on the palm. Doc. 144, Exh. 16, TT 2, pp. 169:4-7,
24 172:15-17, 192:23-194:17; Exh. 17, Tr. Exh. 1, p. 3 (autopsy report). As defendants’ expert’s
25 uncontradicted testimony established, these wounds were consistent with Richards pointing a
26 gun at Officer Tiner when deadly force was used. Doc. 150, Exh. 2, TT 8, pp. 915:6-9,
27 916:10-921:19, 924:14-927:2; Exh. 18, Tr. Exh. NN. Bullet fragment damage was also found
28 on the gun. Doc. 150, Exh. 2, TT 8, p. 931:15-18.

1 **ARGUMENT**

2 **A. This Court Should Enter Judgment as a Matter of Law on Plaintiffs’ Claims**
3 **Under 42 U.S.C. Section 1983 Because Officer Cox, Sergeant Edgerton and**
4 **Lieutenant Sood Are Entitled to Qualified Immunity**

5 **1. Doctrine of Qualified Immunity**

6 “Qualified immunity shields government officials under § 1983 unless (1) they violated
7 a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly
8 established at the time.” *J.K.J. v. City of San Diego*, 42 F.4th 990, 999 (9th Cir. 2022)
(quotation marks omitted); see *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

9 Once qualified immunity is raised, the plaintiff must establish both a constitutional
10 violation and controlling precedent existing at the time of the conduct clearly establishing *each*
11 *officer’s* particular conduct violated the constitutional right asserted. *J.K.J.*, 42 F.4th at 999;
12 *Felarca v. Birgeneau*, 891 F.3d 809, 815 (9th Cir. 2018); *Isayeva v. Sacramento Sheriff’s*
13 *Dep’t*, 872 F.3d 938, 946 (9th Cir. 2017); *Cunningham v. Gates*, 229 F.3d 1271, 1287 (9th Cir.
14 2000) (“a court must carefully examine the specific factual allegations against each individual
15 defendant.”).

16 To be “clearly established,” precedent existing at the time of the officer's conduct must
17 “squarely govern[] the specific facts” of the present case, *Kisela v. Hughes*, 138 S. Ct. 1148,
18 1153 (2018), such that it “placed the constitutionality of the officer's conduct ‘beyond
19 debate.’” *Wesby*, 138 S. Ct. at 589. “So long as existing case law ‘did not preclude’ an
20 official from reasonably believing that his or her conduct was lawful, the official has a right to
21 qualified immunity” *Kramer v. Cullinan*, 878 F.3d 1156, 1163 (9th Cir. 2018) (quoting *Lane*
22 *v. Franks*, 573 U.S. 228, 243 (2014)).

23 **2. Prong One: Absence of Constitutional Violation**

24 **a. No Reasonable Jury Could Conclude the Use of Deadly Force by Officer Cox and**
25 **Sergeant Edgerton Violated the Fourth Amendment Because It Was Objectively**
26 **Reasonable to Believe Richards Posed an Imminent Risk of Serious Harm or**
27 **Death to Officer Tiner**

28 Because the Fourth Amendment permits “objectively reasonable” force, *Graham v.*
Connor, 490 U.S. 386, 396 (1989), plaintiffs’ Fourth Amendment claims against Officer Cox

1 and Sergeant Edgerton are dependent on proving the deadly force used by each was
2 objectively unreasonable. No reasonable jury could conclude either used unreasonable force.

3 “‘[R]easonableness’ is an objective inquiry, examined in light of the facts and
4 circumstances confronting the officer without regard to intent or motivation requir[ing] a
5 careful balancing of the nature and quality of the intrusion on the individual's Fourth
6 Amendment interests against the countervailing governmental interests at stake.” *Graham*,
7 490 U.S. at 396-97 (quotation marks and citations omitted).

8 It is well established that “reasonableness” is viewed from “the perspective ‘of a
9 reasonable officer on the scene, rather than with the 20/20 vision of hindsight, ’” which allows
10 “‘for the fact that police officers are often forced to make split-second judgments—in
11 circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that
12 is necessary in a particular situation.’” *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014)
13 (quoting *Graham*, 490 U.S. at 396-97). Indeed, “deference to the judgment of reasonable
14 officers on the scene” is required. *Saucier v. Katz*, 533 U.S. 194, 205 (2001); *see Hunter v.*
15 *Bryant*, 502 U.S. 224, 228 (1991) (error to ask “whether another reasonable, or more
16 reasonable, interpretation of the events can be constructed . . . after the fact.”). “It is also
17 well-established that police officers ‘are not required to use the least intrusive degree of force
18 possible.’” *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (en banc); *see*
19 *Wilkinson v. Torres*, 610 F.3d 546, 551 (9th Cir. 2010) (reasonable use of force “encompasses
20 a range of conduct, and the availability of a less-intrusive alternative will not render conduct
21 unreasonable”).

22 Deadly force is reasonable “if the officer has probable cause to believe that the suspect
23 poses a significant threat of death or serious physical injury to the officer or others. Factors
24 relevant to assessing whether an officer's use of force was objectively reasonable include the
25 severity of the crime at issue, whether the suspect poses an immediate threat to the safety of
26 the officers or others, and whether he is actively resisting arrest or attempting to evade arrest
27 by flight. The immediacy of the threat posed by the suspect is the most important factor.”
28 *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014) (en banc) (cleaned up). “Only

1 information known to the officer at the time the conduct occurred is relevant” in the
2 reasonableness analysis. *Nehad v. Browder*, 929 F.3d 1125, 1132 (9th Cir. 2019); *see Glenn v.*
3 *Wash. Cty.*, 673 F.3d 864, 873 n.8 (9th Cir. 2011) (*Graham* precludes consideration of
4 “evidence of which the officers were unaware.”). “Other relevant factors include the
5 availability of less intrusive alternatives to the force employed, whether proper warnings were
6 given and whether it should have been apparent to officers that the person they used force
7 against was emotionally disturbed.” *S.B. v. County of San Diego*, 864 F.3d 1010, 1013 (9th
8 Cir. 2017). “This analysis is not static, and the reasonableness of force may change as the
9 circumstances evolve.” *Hyde v. City of Willcox*, 23 F.4th 863, 870 (9th Cir. 2022).

10 Richards had brandished a gun in public, a significant crime. *See* Cal. Pen. Code §
11 417. Armed, Richards fled from law enforcement running through a residential area entering
12 and exiting backyards by jumping fences. When initially confronted, Richards refused to
13 comply with demands to surrender and continued to flee through the residential area with the
14 gun still in his hand. The danger to the public was patent. *See Scott v. Harris*, 550 U.S. 372,
15 384 (2007) (reasonableness analysis includes evaluating number of lives at risk and the
16 culpability of suspect in creating the risk); *Forrett v. Richardson*, 112 F.3d 416, 421 (9th Cir.
17 1997) (fleeing suspect through a residential neighborhood implicated risk calculus); *Hartsell v.*
18 *Cty. of San Diego*, 2019 U.S. Dist. LEXIS 35277, at *9 n.1 (S.D. Cal. Mar. 4, 2019) (“Of
19 course, all fleeing suspects pose some risk of harm to the officers, who are generally unaware
20 of whether the suspect has something (literally or figuratively) up his sleeve.”).

21 When finally located in a backyard after the K-9 – less lethal force – failed to alert,
22 Richards ignored commands to show his hands and drop the gun. Under the circumstances, as
23 conceded by plaintiffs’ expert, Doc. No. 147, Exh. 11, TT 5, p. 648:5-10, commands to “drop
24 the gun” constitute sufficient warnings. *Deorle v. Rutherford*, 272 F.3d 1272, 1284 (9th Cir.
25 2001) (officers should provide warning before using deadly force when feasible); *see Krause*
26 *v. Cty. of Mohave*, 846 F. App’x 569, 570 (9th Cir. 2021) (“We reject as unpersuasive
27 Plaintiff’s contention that Selmanson’s repeated orders to drop the gun provided insufficient
28 warning to Krause or that a more fulsome warning was practicable during the short duration of

1 this event.”); *Craig v. Cty. of Santa Clara*, 2018 U.S. Dist. LEXIS 134817, at *61 (N.D. Cal.
2 Aug. 9, 2018) (“‘drop the gun’ was sufficient warning”); *Cosentino v. Kurtz*, 2013 U.S. Dist.
3 LEXIS 69218, at *29 (C.D. Cal. Apr. 16, 2013) (“[T]he Court is aware of no authority
4 mandating the literal words officers must use in the short heat of the moment, facing an
5 immediate threat. Certainly, from the Officers' perspective, repeatedly shouting ‘drop the axe’
6 with guns drawn and fixed, conveyed ‘stop or we'll shoot.’ The Officers had here literally a
7 matter of seconds, and their warnings were sufficient in the circumstances.”).

8 Deadly force was employed only because Richards pointed his gun at Officer Tiner. To
9 be sure, plaintiffs presented no evidence undermining the officers’ testimony that Richards
10 pointed his gun at Tiner. Indeed, the physical evidence is consistent with Richards pointing
11 the gun at Tiner. A gun pointed at officers is unquestionably a serious and imminent threat,
12 which, again, is the “most important” factor in the *Graham* analysis. *S.B.*, 864 F.3d at 1013.

13 Under these undisputed facts, no reasonable jury could conclude the use of deadly
14 force by Officer Cox or Sergeant Edgerton was anything other than objectively reasonable.
15 Indeed, as a matter of law, deadly force is constitutional when, as here, an officer reasonably
16 believes a suspect poses a threat of injury or death to the officer or someone else, *Brosseau v.*
17 *Haugen*, 543 U.S. 194, 197-98 (2004), “at the moment when the shots were fired.” *Plumhoff*,
18 572 U.S. at 777 (emphasis added); see *Hayes v. Cty. of San Diego*, 736 F.3d 1223, 1234 (9th
19 Cir. 2013) (“threatening an officer with a weapon does justify the use of deadly force”).⁴ Not
20 even plaintiffs’ expert disputes Richards presented as a credible life-threatening risk to the
21 officers when deadly force was used. Doc. 145, Exh. 10, TT 3, p. 353:12-17; Doc. 147, Exh.
22 11, TT 5, pp. 639:10-641:19, 647:20-648:4.

23 To be sure, a gun does not even have to be pointed directly at an officer. “When an
24 individual points his gun ‘in the officers' direction,’ the Constitution undoubtedly entitles the
25

26 ⁴ The Supreme Court has rejected the argument that the number of shots fired bears somehow
27 on the reasonableness analysis. See *Plumhoff*, 572 U.S. at 777-78 (“It stands to reason that, if
28 police officers are justified in firing at a suspect in order to end a severe threat to public safety,
the officers need not stop shooting until the threat has ended. ... ‘[I]f lethal force is justified,
officers are taught to keep shooting until the threat is over.’”).

1 officer to respond with deadly force.” *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013)
2 (quoting *Long v. City & Cnty. of Honolulu*, 511 F.3d 901, 906 (9th Cir. 2007) (emphasis
3 added); *see also Smith v. City of Hemet*, 394 F.3d 689, 704 (9th Cir. 2005) (“[W]here a suspect
4 threatens an officer with a weapon such as a gun or a knife, the officer is justified in using
5 deadly force.”); *Bifelt v. Alaska*, 2020 U.S. Dist. LEXIS 36887, at *18 (D. Alaska Mar. 3,
6 2020) (finding rule “well established”).

7 Moreover, an officer need not wait for the “glint of steel” before resorting to deadly
8 force. *Estate of Larsen v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008). As such, the Ninth
9 Circuit has repeatedly explained deadly force is objectively reasonable when a suspect
10 believed to be armed “reaches for” a weapon – or what is believed to be a weapon – or
11 engages in “furtive movements” or “harrowing gesture[s]” even if it turns out the suspect was
12 unarmed. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014); *George*, 736 F.3d at
13 838; *see Rodriguez v. Swartz*, 899 F.3d 719, 732-33 (9th Cir. 2018) (“[I]f a police officer shot
14 a suspect after the suspect brandished what looked like a gun, the officer's reasonable
15 perception that the suspect was armed would entitle the officer to qualified immunity—even if
16 the ‘gun’ turned out to be a cell phone.”), *vacated and remanded on other grounds*, 140 S. Ct.
17 1258 (2020); *Longoria v. Pinal County*, 873 F.3d 699, 706-07 (9th Cir. 2017) (“The most
18 important question in this case is whether Rankin reasonably perceived that Longoira assumed
19 a threatening or ‘shooter's stance.’ ‘If [he] did, [he] w[as] entitled to shoot; if [he] didn't, [he]
20 [was]n't.’”) (quoting *Cruz*, 765 F.3d at 1079); *Cruz*, 765 F.3d at 1078 (police would be
21 justified in shooting suspect behaving “dangerous[ly] and erratic[ally]” who reached for his
22 waistband); *Corrales v. Impastato*, 650 F. App'x 540, 541 (9th Cir 2016) (deadly force
23 objectively reasonable under the Fourth Amendment when unarmed suspect “pull[ed] his
24 previously concealed hand from his waistband and form[ed] it into a fist with a single, hooked
25 finger extended”); *Barnes v. City of Pasadena*, 508 F. App'x 663, 665 (9th Cir. 2013) (“[E]ven
26 if an issue of fact existed about the presence of a gun, the determinative issue was whether the
27 officers reasonably believed Barnes had a gun and posed an immediate threat to safety. The
28 record indicated that they did. The enhanced still photos from the patrol car video undisputedly

1 show something in Barnes's hand, and Plaintiffs pointed to no evidence suggesting that the
2 officers did not believe, or should not have believed, it to be a gun. In light of that belief, the
3 officers used deadly force to ensure their safety.”).

4 Finally, while a suspect’s mental condition does factor into the reasonableness analysis,
5 the constitutionality of an officer’s use of deadly force is not diminished simply because the
6 suspect pointing a gun at officers is or might be mentally ill – there are not “two tracks of
7 excessive force analysis, one for the mentally ill and one for serious criminals.” *Bryan v.*
8 *MacPherson*, 630 F.3d 805, 829 (9th Cir. 2010); *see Lal v. California*, 746 F.3d 1112, 1117
9 (9th Cir. 2014) (“The fact that Lal was intent on ‘suicide by cop’ did not mean that the officers
10 had to endanger their own lives by allowing Lal to continue in his dangerous course of
11 conduct.”); *Estate of Strickland v. Nev. Cty.*, 2021 U.S. Dist. LEXIS 186092, at *17 (E.D. Cal.
12 Sep. 28, 2021) (“Despite the likelihood of Strickland's ongoing mental disturbance, it was ‘not
13 objectively unreasonable’ for officers to consider the presence of a deadly weapon a
14 priority.”); *Elifritz v. Fender*, 460 F.Supp.3d 1088, 1114 (D. Or. 2020) (“Elifritz posed an
15 immediate threat of serious injury or death to the officers, and it was reasonable for the
16 officers to respond with deadly force, even if Elifritz was experiencing a mental health crisis.
17 No reasonable juror could conclude otherwise from the evidence in the record.”).

18 **b. No Reasonable Jury Could Conclude Lieutenant Sood Violated the Fourth**
19 **Amendment**

20 Plaintiffs’ claim against Lieutenant Sood is a so-called “supervisory liability” claim.
21 Because there is no vicarious liability under § 1983, “‘supervisory liability’ is a misnomer.”
22 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). “Knowledge and acquiescence of a subordinate's
23 misconduct is insufficient to establish liability; each government official is only liable for his
24 or her own misconduct.” *Id.*

25 Plaintiffs’ claim against Sood fails at the outset because, as just explained, no
26 reasonable jury could conclude Richards’ Fourth Amendment rights were violated by Officer
27 Cox or Sergeant Edgerton. *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009) (no
28 supervisor liability if no underlying constitutional violation).

1 Plaintiffs claim against Sood fails even if a Fourth Amendment violation existed for
2 lack of causation.

3 Plaintiffs' expert conceded establishing a perimeter was the right thing to do given a
4 suspect armed with a gun had fled, into a particularized area. Doc. 147, Exh. 11, TT 5, pp.
5 610:1-19, 645:7-12. Plaintiffs' expert likewise conceded the SWAT call-out was reasonable as
6 officers searched for a resisting suspect armed with a gun. Doc. 145, Exh. 10, TT 3, pp. 350:1-
7 351:2. Sood's alleged wrongful conduct was seemingly not summoning a Crisis Negotiation
8 Team. But plaintiffs presented no evidence establishing "a sufficient causal connection"
9 "between [Sood's] wrongful conduct and the constitutional violation." *Felarca v. Birgeneau*,
10 891 F.3d 809, 820 (9th Cir. 2018). Whether or not the presence of a Crisis Negotiation Team
11 would have prevented the incident is pure speculation. *Hernandez v. Costco Wholesale Corp.*,
12 2020 U.S. Dist. LEXIS 219855, at *8 (C.D. Cal. July 29, 2020) ("A plaintiff must have some
13 evidence of causation other than 'speculation or conjecture'"); *see Arizona v. Mayorkas*, 584
14 F.Supp.3d 783, 802 (D. Ariz. 2022) ("When an expert merely testifies that a given act or
15 failure to act 'might' or 'could' have yielded a given result, though other causes are possible,
16 such testimony is devoid of evidentiary value. In other words, an expert's mere conjecture and
17 speculation are insufficient to show causation."); *see also Neely v. St. Paul Fire & Marine*
18 *Ins. Co.*, 584 F.2d 341, 345-46 (9th Cir. 1978) ("It is well settled that proof must be sufficient
19 to raise a reasonable inference that the act or omission complained of was in fact the proximate
20 cause of injury. The verdict of a jury cannot rest on guess or speculation. That defendant's
21 negligence could Possibly have been the cause is not sufficient.").

22 In actuality, the evidence establishes a Crisis Negotiation Team would have made no
23 difference because Richards had to be first located before any crisis negotiation could begin,
24 and the shooting occurred as soon as he was located. *See* Doc. 145, Exh. 10, TT 3, p. 314:3-
25 19; Doc. 146, Exh. 3, TT 4, pp. 471:13-472:9, 526:8-21; Doc. 147, Exh. 11, TT 5, pp. 580:7-
26 581:6; Doc. 148, Exh. 1, TT 6, p. 804:11-25; Doc. 149, Exh. 4, TT 7, p. 826:5-11.

1 **c. No Reasonable Jury Could Conclude Officer Cox or Sergeant Edgerton Violated the**
2 **Fourteenth Amendment**

3 “A parent has a constitutionally protected liberty interest under the Fourteenth
4 Amendment in the companionship and society of his or her child and a child's interest in her
5 relationship with a parent is sufficiently weighty by itself to constitute a cognizable liberty
6 interest.” *Ochoa v. City of Mesa*, 26 F.4th 1050, 1056 (9th Cir. 2022) (cleaned up).

7 **i. Absence of Fourth Amendment Violation**

8 A Fourteenth Amendment loss of familial association claim requires an underlying
9 violation of the family member's constitutional rights. *Gausvik v. Perez*, 392 F.3d 1006, 1008
10 (9th Cir. 2004); *Schaefer v. Goch*, 153 F.3d 793, 799 (7th Cir. 1998); *Schwarz v. Lassen Cty.*,
11 2013 US. Dist. Lexis 139681 (E.D. Cal. Sept. 27, 2013), *affd.*, 628 F. Appx. 527, 528 (9th Cir.
12 2016); *Estate of Wasilchen v. Gohrman*, 870 F.Supp.2d 1115, 1139 (W.D. Wash. 2012), *affd.*
13 *sub nom.*, *Tubbs v. Gohrman*, 539 F. Appx. 788 (9th Cir. 2013).

14 As previously established, neither Officer Cox’s nor Sergeant Edgerton’s use of deadly
15 force violated the Fourth Amendment. This conclusively forecloses plaintiffs’ Fourteenth
16 Amendment claims. *Gausvik*, 392 F.3d at 1008; *see Ochoa*, 26 F.4th at 1056-57 (“[T]he
17 Fourteenth Amendment standard applicable to a claim by a relative demands more of such a
18 plaintiff than a Fourth Amendment claim by the victim of an officer's actions” and a plaintiff
19 must show both a Fourth Amendment and Fourteenth Amendment violation).

20 **ii. Absence of a Fourteenth Amendment Violation**

21 “A claim asserting that police officers violated the [] Fourteenth Amendment []
22 during a police shooting must show that the officers’ conduct ‘shocks the conscience.’”
23 *Ochoa*, 26 F.4th at 1056 (quoting *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008)).
24 “There are two tests used to decide whether officers' conduct shocks the conscience.’ Which
25 test applies turns on whether the officers had time to deliberate their conduct.” *Id.* It is the
26 Court that must decide whether deliberation time existed. *Hayes v. Cty. of San Diego*, 736
27 F.3d 1223, 1230 (9th Cir. 2013) (“In determining whether excessive force shocks the
28

1 conscience, *the court must first ask* ‘whether the circumstances are such that actual
2 deliberation by the officer is practical.’”) (emphasis added).

3 Under either test, “the Fourteenth Amendment standard applicable to a claim by a
4 relative demands more of such a plaintiff than a Fourth Amendment claim by the victim of an
5 officer's actions.” *Ochoa*, 26 F.4th at 1056-57. The plaintiff must show “not just that the
6 officers’ actions were objectively unreasonable and thus violated [the decedent’s] Fourth
7 Amendment rights, but that the officers’ actions ‘shock[ed] the conscience’ and thus violated
8 the plaintiffs' Fourteenth Amendment rights.” *Id.* at 1057.

9 “On one hand, the deliberate-indifference test applies if the situation at issue ‘evolve[d]
10 in a time frame that permits the officer to deliberate before acting.’” *Id.* (quoting *Porter*, 546
11 F.3d at 1137). “Deliberation is not possible if the officers ‘encounter[ed] fast paced
12 circumstances presenting competing public safety obligations.’” *Id.* (quoting *Porter*, 546 F.3d
13 at 1139).

14 “On the other hand, the purpose-to-harm test applies if the situation at issue
15 ‘escalate[d] so quickly that the officer [had to] make a snap judgment.’” *Id.* (quoting *Porter*,
16 546 F.3d at 1137). A “quickly evolving and escalating” situation requiring “repeated split-
17 second decisions” leaves no deliberation time. *Porter*, 546 F.3d at 1139. “This test requires ‘a
18 more demanding showing that [the officers] acted with a purpose to harm [the decedent] for
19 reasons unrelated to legitimate law enforcement objectives.’” *Ochoa*, 26 F.4th at 1057
20 (quoting *Porter*, 546 F.3d at 1137).

21 “Legitimate objectives can include ‘arrest, self-protection, and protection of the
22 public.’” *Id.* (quoting *Foster v. City of Indio*, 908 F.3d 1204, 1211 (9th Cir. 2018)); *see*
23 *Wilkinson*, 610 F.3d at 554 (officer acts with legitimate law enforcement objection when
24 acting “to minimize the risk to his own safety and the safety of others”).

25 “Illegitimate objectives include ‘when the officer “had any ulterior motives for using
26 force against” the suspect, such as “to bully a suspect or ‘get even,”’ or when an officer uses
27 force against a clearly harmless or subdued suspect.’” *Id.* (quoting *Foster*, 908 F.3d at 1211)
28 (quoting *Gonzalez*, 747 F.3d at 798)); *see also Wilkinson*, 610 F.3d at 554; *see e.g., Zion v.*

1 *Cty. of Orange*, 874 F.3d 1072, 1077 (9th Cir. 2017) (although use of deadly force was
2 legitimate law enforcement objective, jury could conclude officer acted without legitimate law
3 enforcement objective when after shooting the suspect multiple times at close range, the
4 officer took “a running start” and “head stomp[ed]” suspect's head multiple times).

5 The purpose to harm standard applies because Officer Cox and Sergeant Edgerton had
6 no time to deliberate before using deadly force. They were confronted by a non-compliant
7 suspect at extremely close range with a gun in his hand pointing it at Officer Tiner. The
8 decision to shoot in “the urgency of that moment” was unquestionably a “split-second”
9 decision requiring them to “react instantly, without hesitation.” *Ochoa*, 26 F.4th at 1057 (“The
10 officers did not have time to deliberate before shooting Ochoa. At the time of the shooting[,]
11 [t]he urgency of that moment—caused by Ochoa's failure to follow police commands—
12 forced the officers to react instantly, without deliberation.”); *O'Neil v. City & Cty. of S.F.*,
13 2021 U.S. Dist. LEXIS 129510, at *39 (N.D. Cal. July 12, 2021) (finding purpose to harm
14 standard applicable where “[officer] had less than a second from the time O'Neil emerged from
15 the van to when he shot him. If he had not shot when he did, he might not have had another
16 clear shot later. The fact that the decision to shoot may have been wrong—even clearly so—
17 does not change that it was a choice Samayoa needed to make in a split second before
18 circumstances changed significantly.”); *see also Estate of Lopez v. Gelhaus*, 149 F.Supp.3d
19 1154, 1165 (N.D. Cal. 2016) (explaining Supreme Court precedent suggests the deliberate
20 indifference standard applies only when there is “time to make unhurried judgments, upon the
21 chance of repeated reflection, largely uncomplicated by the pulls of competing obligations.”
22 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

23 An officer's use of deadly force for self-protection or the protection of others is a
24 legitimate law enforcement objective. *Ochoa*, 26 F.4th at 1057. No reasonable jury could
25 conclude otherwise.

26 Moreover, plaintiffs did not show either Officer Cox or Sergeant Edgerton used deadly
27 force for any reason other than to protect Officer Tiner. Plaintiffs presented no evidence of
28 ulterior motive by either Cox or Edgerton. Plaintiffs presented no evidence that either wanted

1 to “bully” or “get even” with Richards. And the evidence presented established Richards was
2 neither clearly harmless nor subdued when deadly force was used.

3 **3. Prong 2: Absence of Clearly Established Rights**

4 Whether the law was “clearly established” is a legal question for the court. *Morales v.*
5 *Fry*, 873 F.3d 817, 821 (9th Cir. 2017). “In analyzing whether rights are clearly established”
6 the court must “look to then-existing ‘cases of controlling authority’ or, absent such cases, to a
7 ‘consensus’ of persuasive authorities.” *J.K.J.*, 42 F.4th at 1000; *see Sharp v. Cty. of Orange*,
8 871 F.3d 901, 911 (9th Cir. 2017) (“[P]rior precedent must be ‘controlling’-from the Ninth
9 Circuit or Supreme Court-or otherwise be embraced by a ‘consensus’ of courts outside the
10 relevant jurisdiction.”); *S.B.*, 864 F.3d at 1016 (“[D]istrict court decisions - unlike those from
11 the courts of appeals - do not necessarily settle constitutional standards or prevent repeated
12 claims of qualified immunity.”).

13 “A clearly established right is one that is sufficiently clear that every reasonable
14 official would have understood that what he is doing violates it.” *J.K.J.*, 42 F.4th at 1000.
15 “The Supreme Court has cautioned that [courts] do not analyze whether rights are clearly
16 established ‘at a high level of generality.’” *Id.* (quoting *Kisela*, 138 S. Ct. at 1152). Indeed,
17 “police officers are entitled to qualified immunity unless existing precedent squarely governs
18 the specific facts at issue.” *Ventura v. Rutledge*, 978 F.3d 1088, 1091 (9th Cir. 2020)
19 (quoting *Kisela*, 138 S. Ct. at 1153).

20 “[S]pecificity’ of the rule is ‘especially important in the Fourth Amendment context’”
21 given the “hazy border between excessive and acceptable force.” *Wesby*, 138 S. Ct. at 590;
22 *Mullenix v. Luna*, 577 U.S. 7, 18 (2015); *see Monzon v. City of Murrieta*, 978 F.3d 1150, 1162
23 (9th Cir. 2020) (“[T]he law must be clearly established in a ‘particularized’ sense, [citation],
24 and the conduct must fall outside the ‘hazy border between excessive and acceptable force.’”).

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1 **a. Fourth Amendment Excessive Force Claims Against Officer Cox and Sergeant**
2 **Edgerton**

3 No Supreme Court or Ninth Circuit precedent has ever held deadly force is
4 unreasonable where a suspect is pointing a gun at an officer. Nor is there a consensus of
5 persuasive authority holding it violates the Fourth Amendment to use deadly force against a
6 suspect pointing a gun at an officer. Indeed, precedent holds otherwise.

7 **b. Fourth Amendment Supervisory Liability Claim Against Lieutenant Sood**

8 No Supreme Court or Ninth Circuit precedent has ever held a supervisor’s failure to
9 engage a Crisis Negotiation Team, or any other failure by Sood plaintiffs think might exist, is
10 sufficient to constitute a Fourth Amendment violation. Nor is there a consensus of persuasive
11 authority establishing such conduct violates the Fourth Amendment.

12 **c. Fourteenth Amendment Loss of Familial Association Claim Against Officer Cox**
13 **and Sergeant Edgerton**

14 Because the constitutional right allegedly violated is found under the Fourteenth
15 Amendment, plaintiffs must point to precedent analyzing the Fourteenth Amendment; Fourth
16 Amendment cases are irrelevant. *See Elder v. Holloway*, 510 U.S. 510, 515 (1994) (“the
17 clearly established right [must] be the federal right on which the claim for relief is based”);
18 *Nicholson v. City of L.A.*, 935 F.3d 685, 696 n.5 (9th Cir. 2019) (“Fourth Amendment cases
19 cannot clearly establish the contours of the Fourteenth Amendment right”); *Rushing v. AG*
20 *Priv. Prot., Inc. (In re Estate of Rushing)*, 2021 U.S. App. LEXIS 35269, at *8 (9th Cir. Nov.
21 30, 2021) (“the legal question [is] whether the ‘asserted federal right was clearly
22 established’”) (emphasis added).

23 Thus, the focus is on the infringement of the plaintiffs’ constitutional right to familial
24 association, not Richards’ right to be free from excessive force under the Fourth Amendment.
25 *See Farmer v. Lopera*, 860 F. App’x 469, 470 (9th Cir. 2021) (“Because a jury could conclude
26 that Lopera violated Trinita Farmer’s clearly established Fourteenth Amendment right to
27 familial association with her deceased son, Tashii Farmer, we affirm”). To that end, plaintiffs
28 must point to controlling authority or a persuasive body of other cases holding conduct

1 substantially like Officer Cox’s and Sergeant Edgerton’s was “conscience shocking” under the
2 purpose to harm standard. *See id.* at 470-71 (evaluating defendant’s specific conduct and
3 concluding “[t]his conduct would constitute a violation of clearly established law since, at the
4 time of the incident, it was clearly established that a police officer who kills a suspect while
5 acting with a purpose to harm unrelated to a legitimate law enforcement objective violates the
6 Fourteenth Amendment.”) (emphasis added).

7 There is no Supreme Court or Ninth Circuit precedent, or a persuasive body of other
8 cases, holding Officer Cox’s or Sergeant Edgerton’s use of deadly force under the facts
9 presented violated the Fourteenth Amendment under the purpose to harm standard, or even the
10 deliberate indifference standard.

11 **B. This Court Should Enter Judgment as a Matter of Law on Plaintiffs’ Bane Act**
12 **Claim Against Officer Cox, Sergeant Edgerton, and the City and Wrongful Death**
13 **- Negligence Claims Against Officer Cox, Sergeant Edgerton, Lieutenant Sood**
14 **and the City**

15 **1. Bane Act**

16 The Bane Act creates a right of action against persons who “interfere[] by threat,
17 intimidation, or coercion . . . with the exercise or enjoyment by any individual . . . of rights
18 secured by the Constitution or laws of the United States, or of the rights secured by the
19 Constitution or laws of this state.” Cal. Civ. Code § 52.1(b).

20 The predicate for plaintiffs’ Bane Act claim is a violation of Richards’ Fourth
21 Amendment rights. Because, as demonstrated earlier, no reasonable jury could conclude the
22 use of deadly force by either Officer Cox or Sergeant Edgerton violated the Fourth
23 Amendment, plaintiffs’ Bane Act claim against each of them necessarily fails. *Williamson v.*
24 *City of National City*, 23 F.4th 1146, 1155 (2022). And the absence of liability against Cox or
25 Edgerton means the City cannot be vicariously liable.

26 Moreover, the Bane Act requires not only the existence of a constitutional or statutory
27 violation but also the defendant’s specific intent to violate a person’s rights. *Sandoval v. Cty.*
28 *of Sonoma*, 912 F.3d 509, 520 (9th Cir. 2018); *Reese v. Cty. of Sacramento*, 888 F.3d 1030,
1043 (9th Cir. 2018). Stated another way, plaintiffs must prove Officer Cox and Sergeant

1 Edgerton intended not only to use deadly force but intended to violate Richards' Fourth
2 Amendment rights when using that force. *Reese*, 888 F.3d at 1045.

3 No reasonable jury could conclude either Officer Cox or Sergeant Edgerton
4 specifically intended to violate Richards' Fourth Amendment rights because plaintiffs
5 presented no evidence establishing such an intent. The evidence conclusively establishes the
6 opposite.

7 **2. Wrongful Death - Negligence**

8 Plaintiffs pursued a direct negligence claim against Officer Cox and Sergeant Edgerton
9 based on their use of deadly force. The claim against Lieutenant Sood and the City was a
10 vicarious liability claim dependent on establishing negligence by Cox or Edgerton. *See* Doc.
11 149, Exh. 4, TT 7, pp. 942:14-947:5 (Sood negligence liability limited to vicarious liability);
12 Doc. 150, Exh. 2, TT 8, pp. 1031:13-1034:3 (instructing jury on negligence claim); Doc. 94
13 (special verdict); Doc. 120 (jury instructions).

14 **a. Cox / Edgerton**

15 There is no "group negligence." To establish liability against Officer Cox, plaintiffs
16 must thus prove *his* breach of the duty to use due care when employing deadly force
17 proximately caused Richards' death. *Hayes v. County of San Diego*, 57 Cal. 4th 622, 629
18 (2013). The same is true for Sergeant Edgerton.

19 Officers have a duty to use due care in employing deadly force and the failure to do so
20 can constitute negligence. *Hayes*, 736 F.3d at 1232. Whereas the Fourth Amendment focuses
21 on the moment deadly force is used, California's negligence law is a bit broader in that the
22 reasonableness analysis focuses on the totality of the circumstances surrounding the use of
23 force. *Hayes*, 57 Cal.4th at 639; *see Tabares v. City of Huntington Beach*, 988 F.3d 1119,
24 1125 (9th Cir. 2021). Essentially the reasonableness test for negligence in the context of
25 deadly force utilizes the *Graham* analysis with the addition of preshooting conduct evaluated
26 as a factor in the totality of circumstances. *Tabares*, 988 F.3d 1125-26.

27 An officer's "tactical conduct and decisions preceding the use of deadly force are
28 relevant considerations under California law in determining whether the use of deadly force

1 gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct
2 and decisions show, as part of the totality of the circumstances, that the use of deadly force
3 was unreasonable.” *Hayes*, 57 Cal.4th at 639. Importantly, the reasonableness of an officer's
4 pre-shooting conduct is not considered in isolation when that conduct did not cause the
5 plaintiff any injury independent of the injury resulting from the shooting. *Id.* at 637. “Rather,
6 it should be considered in relation to the question whether the officers' ultimate use of deadly
7 force was reasonable.” *Id.* As explained by the California Supreme Court:

8 We perceive no sound reason to divide plaintiff's cause of action artificially into
9 a series of decisional moments (the two deputies' decision not to call for a
10 psychiatric expert before entering Shane's house, their decision to enter the
11 house, their decision to speak to Shane, their decision to use deadly force in
12 response to Shane's apparently threatening behavior toward them with a large
13 knife, etc.), and then to permit plaintiff to litigate each decision in isolation,
14 when each is part of a continuum of circumstances surrounding a single use of
15 deadly force by the deputies. Any other approach would be both inefficient and
16 confusing and would conflict with our past decisions on negligence.

17 *Id.* at 637-38.

18 “[A]s long as an officer's conduct falls within the range of conduct that is reasonable
19 under the circumstances, there is no requirement that he or she choose the ‘most reasonable’
20 action or the conduct that is the least likely to cause harm and at the same time the most likely
21 to result in the successful apprehension of a violent suspect, in order to avoid liability for
22 negligence.” *Id.* at 632. And, importantly, “[a]lthough pre-shooting conduct is included in the
23 totality of the circumstances” no “particular pre-shooting protocol (such as a background
24 check or consultation with psychiatric experts) is always required. Law enforcement
25 personnel have a degree of discretion as to how they choose to address a particular situation.”

26 *Id.*

27 Plaintiffs’ negligence claim fails because no reasonable jury could find Officer Cox or
28 Sergeant Edgerton acted unreasonably when employing deadly force. As already explained,
their decision to use deadly force was reasonable under the Fourth Amendment because
Richards pointed a gun at Officer Tiner.

Plaintiffs accordingly must prove preshooting conduct by *Officer Cox or Sergeant Edgerton* falls outside the range of reasonable conduct such that it rendered a reasonable use of

1 deadly force unreasonable under the totality of circumstances giving deference to how they
2 chose to handle the situation faced. Plaintiffs did not.

3 Officer Cox and Sergeant Edgerton, as well as other SWAT team members, were
4 directed to conduct a yard-to-yard search within the established perimeter. Although
5 plaintiffs' expert criticized the decision to conduct the yard-to-yard search and other
6 operational decisions relating to Richards' apprehension, those decisions were not made by
7 Cox or Edgerton. Again, there is no "group negligence," and plaintiffs presented no evidence
8 establishing either *Cox or Edgerton* made any preshooting tactical decisions. The evidence
9 established the opposite – SWAT was given a task to conduct a yard-to-yard search and that is
10 what was done. *See* Doc. 146, Exh. 3, TT 4, pp. 376:24-377:5, 439:1-441:1, 457:16-458:1. To
11 the extent Cox or Edgerton made any tactical decisions regarding how to conduct the search,
12 those decisions do not render the reasonable decision to use deadly force unreasonable under
13 the totality of circumstances.

14 As recently well explained by a California appellate court in affirming summary
15 judgment on a negligence claim against officers using deadly force:

16 Appellant faults Sergeant Mengel for not having a plan as to how to proceed
17 without the use of deadly force after the firing of the less-lethal weapons: A K-
18 9 [police dog] could have been released after the firing of less-lethal. Officers
19 with shields could have rushed [decedent]. Tasers could have been deployed.
20 The SWAT team could have been utilized. A water cannon could have been
21 fired. But there is no precedent which requires law enforcement officers to use
22 all feasible alternatives to avoid a situation where deadly force can justifiably
be used. It would be unreasonable to require police officers in the field to
engage in the sort of complex calculus that would be necessary to determine the
best or most effective and least dangerous method of handling an immediate
and dangerous situation. We must never allow the theoretical, sanitized world
of our imagination to replace the dangerous and complex world that policemen
face every day.

23 *Villalobos v. City of Santa Maria*, 85 Cal.App.5th 383, 391-92 (2022) (cleaned up).

24 **b. Vicarious Liability Against Lieutenant Sood /City**

25 The absence of negligence by either Officer Cox or Sergeant Edgerton forecloses a
26 vicarious liability negligence claim. Moreover, Lieutenant Sood is not the employer and thus
27 cannot be vicariously liable. *See Musgrove v. Silver*, 82 Cal.App.5th 694, 707 (2022).

28

1 (“Due to this special relationship, California deems *employers* to be vicariously liable for the
2 torts committed by their *employees*....”) (emphasis added).

3 **C. This Court Should Enter Judgment as a Matter of Law on Plaintiffs’ Punitive**
4 **Damage Claims**

5 The absence of liability under the Fourth and Fourteenth Amendments forecloses
6 plaintiffs’ punitive damage claim under § 1983. Even assuming some liability, no reasonably
7 jury could conclude Officer Cox, Sergeant Edgerton or Lieutenant Sood acted with an evil
8 motive or intent or reckless indifference or callous disregard for Richard’s Fourth amendment
9 rights or plaintiffs’ Fourteenth Amendment rights. See *Smith v. Wade*, 461 U.S. 30, 56 (1983)
10 (standard for punitive damages under section 1983).

11 Punitive damages are available under California law only where it has been proven by
12 *clear and convincing evidence* that a defendant has engaged in oppressive or malicious
13 conduct. Cal. Civ. Code § 3294(a). “[M]ere negligence, even gross negligence, is not
14 sufficient to justify an award of punitive damages.” *Ebaugh v. Rabkin*, 22 Cal.App.3d 891, 894
15 (1972). Thus, plaintiffs’ punitive damage claim under California law is necessarily dependent
16 on their Bane Act claim. Because plaintiffs’ Bane Act claim is not asserted against Lieutenant
17 Sood, there is no basis for a punitive damage award against him. Regarding Officer Cox and
18 Sergeant Edgerton, the absence of Bane Act liability forecloses the punitive damage claim.
19 Even assuming Bane Act liability, no reasonable jury could impose punitive damages against
20 Cox or Edgerton under the necessarily clear and convincing standard of proof. Clear and
21 convincing evidence is that leaving “no substantial doubt” and that is “sufficiently strong to
22 command the unhesitating assent of every reasonable mind.” *Shade Foods, Inc. v. Innovative*
23 *Prods. Sales & Mktg., Inc.*, 78 Cal. App. 4th 847, 891 (2000); *Harbison v. Am. Motorists Ins.*
24 *Co.*, 636 F.Supp.2d 1030, 1044 (E.D. Cal. 2009).

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CONCLUSION

Defendants respectfully contend this Court must grant its motion for judgment as a matter of law on all plaintiffs' claims because plaintiffs failed to present sufficient evidence to allow a reasonable jury to impose liability against any defendant on any claim.

Dated: December 28, 2022

Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher

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12 and Patrick Cox

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

14 KHOUA VANG; and TED RICHARDS,
15 JR., individually and as Co-Successors-in-
Interest to Decedent DARELL
16 RICHARDS,

17 Plaintiffs,

18 v.

19 CITY OF SACRAMENTO, a municipal
corporation; and DOES 1-50, inclusive,
20 individually and in their official capacity as
agents for the Sacramento Police
21 Department,

22 Defendants.

Case No.: 2:19-CV-00374-JAM-JDP

**DECLARATION OF LEE H.
ROISTACHER IN SUPPORT OF
RENEWED MOTION FOR JUDGMENT
AS A MATTER OF LAW BY
DEFENDANTS' CITY OF SACRAMENTO,
SAMEER SOOD, TODD EDGERTON AND
PATRICK COX**

Date: February 14, 2023
Time: 1:30 p.m.
Courtroom: 6
Judge: Hon. John A Mendez
Magistrate: Hon. Jeremy D. Peterson

Complaint Filed: March 4, 2019
Trial Date: October 11, 2022

25 I, Lee H. Roistacher, declare:

26 1. I am an attorney at law, duly admitted to practice before the courts of this state,
27 and am a partner with Dean Gazzo Roistacher LLP, attorneys of record for defendants City of
28 Sacramento, Sameer Sood, Todd Edgerton and Patrick Cox in the above matter.

1 2. I have personal knowledge of all the matters stated herein and, if called as a
2 witness, I could competently testify thereto.

3 3. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from Trial
4 Testimony Volume 5.

5 4. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from Trial
6 Testimony Volume 8.

7 5. Attached hereto as Exhibit 3 is a true and correct copy excerpts from Trial
8 Testimony Volume 4.

9 6. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from Trial
10 Testimony Volume 7.

11 7. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from Trial
12 Testimony Volume 11.

13 8. Exhibit 6 is a true and correct copy of Trial Exhibit OO. It is an audio file and
14 will be separately transmitted to the Court.

15 9. Exhibit 7 is a true and correct copy of Trial Exhibit A. It is a video file and will
16 be separately transmitted to the Court.

17 10. Attached hereto as Exhibit 8 is a true and correct copy of Trial Exhibit JJ.

18 11. Exhibit 9 is a true and correct copy of Trial Exhibit G. It is a video file and will
19 be separately transmitted to the Court.

20 12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from Trial
21 Testimony Volume 3.

22 13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from Trial
23 Testimony Volume 5.

24 14. Exhibit 12 is a true and correct copy of Trial Exhibit C. It is a video file and
25 will be separately transmitted to the Court.

26 15. Exhibit 13 is a true and correct copy of Trial Exhibit F. It is a video file and
27 will be separately transmitted to the Court.

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1 16. Exhibit 14 is a true and correct copy of Trial Exhibit 16. It is a video file and
2 will be separately transmitted to the Court.

3 17. Attached hereto as Exhibit 15 is a true and correct copy of Trial Exhibit P.

4 18. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from Trial
5 Testimony Volume 2.

6 19. Attached hereto as Exhibit 17 is a true and correct copy of Trial Exhibit 1.

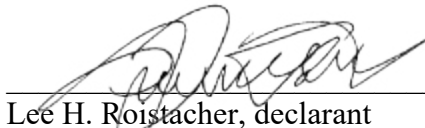
7 20. Attached hereto as Exhibit 18 is a true and correct copy of Trial Exhibit NN.

8

9 I declare under penalty of perjury that the foregoing is true and correct. Executed on
10 December 28, 2022.

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Lee H. Roistacher, declarant

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EXHIBIT 1

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

1 minutes. So take your morning recess now. If it's longer,
2 I'll let Gabe let you know it's going to be a little longer.
3 Again, all admonitions apply. Please follow all those
4 admonitions I've been giving you. Report any violation of
5 those admonitions.

6 THE WITNESS: I'll see you in about 15 or 20 minutes.

7 (In open court, outside the presence of the jury.)

8 THE COURT: Okay, outside the presence of the jury.

9 Mr. Richmond, any motion that you want to make at this
10 time?

11 MR. RICHMOND: Yes, Your Honor. Defense would like to
12 move for judgment as a matter of law pursuant to Federal
13 Court -- Federal Rule of Civil Procedure 50(a) --

14 THE COURT: Okay.

15 MR. RICHMOND: -- as to the entirety of the Second
16 Amended Complaint.

17 MR. BUELNA: May I help Mr. Richmond real quick.
18 Plaintiff will dismiss voluntarily the Monell claim and
19 Defendant former Chief Hahn so that he won't have to address
20 that to the Court.

21 THE COURT: The Court will accept that. The Monell
22 claim, which is the -- actually, what claim is that in the
23 Complaint? Actually, hang on, I want to go back and get my
24 notes.

25 Okay. For the record, in the Second Amended

1 Complaint, the Complaint that is the subject of this lawsuit,
2 the third claim against the City and Chief Hahn is dismissed
3 with prejudice. And the fourth claim as to Chief Hahn and the
4 City are named in the fourth claim, which is wrongful death and
5 negligence, so those defendants will be dismissed.

6 MR. BUELNA: You're saying just Hahn; right?

7 THE COURT: Just Chief Hahn, yeah.

8 MR. BUELNA: Not the City, though, because they're
9 vicariously liable --

10 THE COURT: Vicariously liable; right.

11 MR. BUELNA: -- through 815.2.

12 THE COURT: Okay, just Chief Hahn.

13 MR. BUELNA: Correct.

14 THE COURT: And the Bane Act claim against the City
15 under vicarious liability is still going forward, and then the
16 supervisor liability against Officer Sood is still going
17 forward.

18 MR. BUELNA: Correct.

19 THE COURT: Okay. So you want to be heard on
20 claims -- on the first, second, fourth, fifth and eighth
21 claims. Go ahead.

22 MR. RICHMOND: As to the first -- for the Fourth
23 Amendment claim, I would submit that there has been no -- there
24 was no constitutional violation as to it was objectively
25 reasonable for the officers to shoot at the time that they did

1 when they were presented with Mr. Richards aiming the gun.

2 They testified that they had no understanding of the
3 receipt in the backpack, and there has not been sufficient
4 proof that the idea that he was potentially suicidal affected
5 their conduct in any way. They were conducting the search the
6 same way, and when they encountered Mr. Richards they were
7 encountered with what they perceived to be an immediate threat
8 of lethal force when Richards pointed the gun at them.

9 And there is an abundance of case law that states when
10 under those circumstances the officers are justified in using
11 lethal force. If it is considered that they possibly did
12 violate the constitutional rights of Mr. Richards, defendants
13 submit that there was nothing clearly established under case
14 law appellate authority that under these circumstances they
15 would not be entitled to qualified immunity.

16 THE COURT: Okay. And then the claim against Officer
17 Sood?

18 MR. RICHMOND: Claim against Officer Sood, again, he
19 did not know about -- first of all, he did not know about
20 the -- he testified he had no knowledge of the suicide note or
21 assignment. He also had no knowledge of the receipt for the
22 pellet gun. The things that Officer Sood did were reasonable,
23 the ordering of the perimeter, the SWAT call-out, the reactive
24 authority, all of those decisions made by Mr. Sood were
25 reasonable.

1 And even had he known about this assignment/suicide
2 note and made a call-out to CNT, CNT wouldn't have been
3 utilized in that manner when Mr. Richards was encountered in
4 the backyard. And there is -- the element of proximate cause
5 is missing. There's been no evidence that had those things
6 been done insofar as calling CNT, that would have changed the
7 outcome here.

8 THE COURT: Okay. Let's start with the claim against
9 Officer Sood for Supervisory Liability under 1983. The case
10 law says that a supervisory official may be liable for the acts
11 of a subordinate when there is, one, personal involvement in
12 the constitutional deprivation or, two, if there's a sufficient
13 causal connection between the supervisor's wrongful conduct and
14 the constitutional violation.

15 We know he wasn't personally involved in the shooting
16 in this case. Case law goes on to say a causal connection may
17 be established, quote, "by setting into motion a series of acts
18 by others," close quote, or by, quote, "knowingly refusing to
19 terminate a series of acts by others which the supervisor knew,
20 or reasonably should have known, would cause others to inflict
21 the constitutional injury." That's *Starr versus Baca*, 9th
22 Circuit case from 2011.

23 Is there sufficient evidence to present that issue to
24 the jury?

25 MR. BUELNA: Yes, Your Honor. Starting with Sergeant

1 Sood and the underlying facts taking as true, as the Court
2 knows, that Rule 50, that evidence was presented that there was
3 information of suicidal ideation, and that -- it was the buck
4 stopped with Lieutenant Sood, who had control of the entire
5 scene in the way that -- whether or not CNT and the tactics
6 that were used, including going into a dark yard, rested with
7 him.

8 So although he said, Well, I never had this
9 information, there's been substantial evidence that that
10 information was available to him, a jury could disbelieve him,
11 conclude that he did know and made a bad decision. That set in
12 motion these officers going in with insufficient information
13 into the dark and eventually causing a constitutional violation
14 of excessive force. And so really, the buck stops with him and
15 the Supervisor Liability is based on that series of acts that
16 he set in motion.

17 THE COURT: Okay. Anything further?

18 MR. RICHMOND: Nothing further, Your Honor.

19 THE COURT: Okay. The Court's going to deny the
20 Rule 50 motion on the remaining claims, finding that under
21 controlling law and the plaintiffs have argued taking the facts
22 as true for purposes of this motion only, there is at this
23 point a legally sufficient evidentiary basis for a jury to -- a
24 reasonable jury to find for plaintiffs. So given that
25 standard, the Court will deny the Rule 50 motion.

1 Okay.

2 MR. RICHMOND: Your Honor?

3 THE COURT: Go ahead.

4 MR. RICHMOND: If I may, can I be heard on the 14th
5 Amendment claim?

6 THE COURT: Oh, family relationship. Go ahead.

7 MR. RICHMOND: As for that, your Honor, there has not
8 been any evidence that the shooting officers, Edgerton and Cox,
9 that there was any purpose to harm unrelated to a legitimate
10 law-enforcement objective. There's been no evidence of that.
11 That is the standard when there is no time for them to
12 deliberate. When they were in that backyard, as soon as they
13 encountered Mr. Richards again, they were immediately
14 encountered with him raising a gun and pointing it at them. So
15 plaintiffs must prove that he did have a purpose to harm
16 unrelated to a legitimate law-enforcement objective, and there
17 has been no evidence of that.

18 THE COURT: Hang on. I want to grab the jury
19 instruction.

20 Plaintiffs must prove that defendants' conduct shocks
21 the conscience by a preponderance of the evidence, that the
22 defendants were deliberately indifferent to Darell Richards'
23 right to be free from unreasonable force when they shot and
24 killed Darell Richards.

25 MR. BUELNA: If I may?

1 THE COURT: Hold on. Let me have the rest of that,
2 9.32. I think there's more to that as well. We were looking
3 at it yesterday.

4 MR. BUELNA: I think it depends on which standard.

5 THE COURT: That's why I want you to respond. Just
6 bring it up on your computer, 9.32. The instruction itself,
7 9.32. We were looking at it yesterday. We have a lot of
8 notes.

9 The mere existence of a biological link between a
10 parent and child is not sufficient basis to support a 14th
11 Amendment claim for loss of familial relationship rights.

12 In order to bring that, this claim, parent and child
13 must have relationship which reflect some assumption of
14 parental responsibility.

15 MR. BUELNA: I know that's in dispute here.

16 THE COURT: That's not an issue here. They can
17 bring -- parents can bring a 14th Amendment Due Process claim
18 only if they demonstrate, quote, "consistent involvement in the
19 child's life and participation in child-rearing activities." I
20 don't believe that's being challenged here.

21 It could be brought either as a procedural due process
22 claim or a substantive due process claim. I think you're
23 bringing it as a substantive due process claim.

24 MR. BUELNA: Correct.

25 THE COURT: So substantive due process claim arises

1 when the state interferes with a parent/child relationship,
2 quote "for purposes of oppression," close quote, for instance,
3 quote, "The state has no legitimate interest in interfering
4 with this liberty interest through the use of excessive force
5 by police officers.

6 "A substantive due process claim arises when a state
7 official harms a child in a manner that shocks the
8 conscience" -- that's *Porter v. Osborn* case -- "only if there's
9 a conduct that shocks the conscience is cognizable as a due
10 process violation," it's a *U.S. Supreme Court, County of*
11 *Sacramento v. Lewis* from 1998. It is sustained from the Fourth
12 Amendment Excessive Force claim.

13 The Excessive Force claim standard is objectively an
14 unreasonable standard. It's less demanding than the
15 shocks-the-conscience standard that applies to this substantive
16 due process claim.

17 "It may be possible for an officer's conduct to be
18 objectively unreasonable under the Fourth Amendment, yet still
19 not infringe the more demanding standard that governs
20 substantive due process claims under the Fourteenth Amendment."

21 So there's two tests to decide whether the conduct
22 shocks the conscience: "A state official's conduct may shock
23 the conscience if, one, the official acted with a purpose to
24 harm the victim for reasons unrelated to legitimate law
25 enforcement objectives, or, two, the official acted with

1 deliberate indifference to the victim."

2 I don't think you're proceeding under one. You're
3 proceeding under 2; right?

4 MR. BUELNA: Correct.

5 THE COURT: That they acted with deliberate
6 indifference.

7 MR. BUELNA: Correct, your Honor.

8 THE COURT: Okay. Which test applies turns on
9 specific circumstances of the underlying case. "If the
10 encounter at issue escalated so quickly that the officer had to
11 make a snap judgment, then the plaintiffs must show that the
12 officer acted with a 'purpose to harm.'"

13 I think you're conceding that you're not proceeding
14 under that prong.

15 MR. BUELNA: Correct.

16 THE COURT: "If the situation evolved within a
17 timeframe that allowed the officers to reflect before acting,
18 the Plaintiff must show the officer acted with," quote,
19 "'deliberate indifference.'"

20 With that as the legal standard, go ahead.

21 MR. BUELNA: Yes, and on that point, Your Honor,
22 there's a case directly on point called *Nunez versus City of*
23 *San Jose*, tried in 2019. There was both an MSJ decision on it
24 as well as a post verdict ruling on it.

25 THE COURT: Ninth Circuit.

1 MR. BUELNA: Ninth Circuit. It's in the Ninth
2 Circuit, Northern District. It's not an appellate decision,
3 but it is a case where there was a suicidal young man, he had a
4 gun, he actually shot himself in the head but survived.

5 THE COURT: Let me stop you. So did the Northern
6 District in California issue a written opinion?

7 MR. BUELNA: Correct.

8 THE COURT: Now that's being appealed?

9 MR. BUELNA: That's not being appealed. That's not in
10 the Ninth Circuit. It's just an opinion showing that they used
11 the 14th Amendment that the plaintiff has identified the
12 deliberate indifferent standard where he was suicidal with a
13 gun. The disputed fact is whether or not he raised the gun at
14 officers when they shot, and the District Court held there that
15 because they had some time before, even though the encounter,
16 that moment when he was raising it up, was small, because they
17 had been there for a couple of hours before they made contact
18 with him, that it was more of a longer situation in which you
19 can use the deliberate indifferent standard.

20 So that is similar to here.

21 THE COURT: Are you aware of that case?

22 MR. RICHMOND: I am not aware of that case, your
23 Honor.

24 THE COURT: Okay. I think it's a close question, but
25 again, I'm going to deny the Rule 50 motion on that claim as

1 well, given the standard I need to apply in a Rule 50 motion.
2 I'll allow that claim to go to the jury as well. We'll work on
3 the instructions once the case is submitted, both sides rest.

4 MR. RICHMOND: One more, Your Honor. Could I be heard
5 on the Bane Act?

6 THE COURT: Sure, but the Bane Act kind of goes
7 hand-in-hand with the excessive force claim. But go ahead, you
8 can make a record.

9 MR. RICHMOND: I would submit, Your Honor, that --
10 well, in order to approve a Bane Act violation, there must be
11 evidence of a specific intent to violate the arrestee's right
12 to freedom from unreasonable seizure. And I would submit that
13 that specific intent, there has been no evidence of that in
14 plaintiff's case-in-chief.

15 MR. BUELNA: I would respond that in *Cornell versus*
16 *City and County of San Francisco*, California Supreme Court
17 case, as well as a Ninth Circuit case, it was decided that the
18 specific intent can also be interpreted as reckless disregard
19 for use of excessive force. That's what we have here.

20 So there has been substantial testimony and evidence
21 that force was used with reckless disregard for plaintiff's
22 right to be free from it.

23 THE COURT: Okay. So the motion on the Bane Act claim
24 is denied as well.

25 How many witnesses do you have?

Officer Yasonia - Direct by Richmond

1 notification. Usually we get the heads-up so we don't sleep
2 through the text notification. So once the notification came,
3 I got up, responded.

4 Q. And do you recall what the notification said, the text?

5 A. I don't recall the exact notification, what it said, sir.

6 Q. But it did tell you where to go?

7 A. Yes, sir. It gives you a general area.

8 Q. And did you then go to that location?

9 A. Yes, sir.

10 Q. Do you remember where the location was?

11 A. I don't remember the exact location that it dispatched us
12 to, but I know it was somewhere along the Broadway corridor.

13 Q. And you're a K-9 officer; correct?

14 A. A K-9 handler, yes, sir.

15 Q. And did you then bring your K-9 with you to that location?

16 A. Yes, sir.

17 Q. Are you a part of the SWAT team, Officer?

18 A. It's kind of a unique role. I'm a -- my main focus is a
19 K-9 handler, but I have what's called a SKIDDS certified K-9,
20 which just stands for SWAT and K-9s Integrated During
21 Deployments. So on SWAT call-outs, I respond with the SWAT
22 team. I wear the same uniform as the SWAT team, all that
23 stuff.

24 Q. But you're not considered part of the SWAT Team?

25 A. Per se, correct.

Officer Yasonia - Direct by Richmond

1 Q. Okay. Are all -- strike that.

2 How many canines are in the Sacramento Police Department's
3 K-9 Unit?

4 A. So currently we have ten dogs in our unit. We have one
5 single-purpose lab. That sole purpose is just explosive
6 detection, and the other nine dogs are dual-purpose K-9s, just
7 means they have multiple skill sets.

8 Q. Are all those dogs SKIDDS trained?

9 A. No, sir.

10 Q. And what do you do insofar as the SKIDDS training; how is
11 it that you cross-train with them?

12 A. So how it kind of works is a lot of becoming a SKIDDS
13 handler or a SKIDDS K-9 handler is determined on the officer's
14 desire to work with the SWAT team, and then whether their dog
15 has the temperament and ability to work with a SWAT team. So
16 we -- if you have that and your dog is what we'd call like a
17 seasoned working K-9, we do a training, it's a three-day
18 training to certify your dog to work with the SWAT Team.

19 Q. And the dog's name that you had back in September of 2018?

20 A. Reno.

21 Q. And when you arrived at the location -- strike that.

22 Let me ask you, Officer, are you familiar with the term
23 "tracking" --

24 A. Yes.

25 Q. -- as it relates to police K-9s?

Officer Yasonia - Direct by Richmond

1 A. Yes, sir.

2 Q. And explain what that is.

3 A. So there's several different methodologies in using -- in
4 deploying police canines. The one methodology would be
5 tracking, which is done with a dog on leash lead or what's
6 called the leash. And that's what it -- you usually would use
7 a 30-foot leash, and you would introduce your dog to some type
8 of odor from that individual or potentially the individual
9 you're looking for. The dog just puts his nose -- starts using
10 his nose to try to track down that area or track down the
11 direction where somebody could run.

12 Q. Is Reno or any of the Sacramento police K-9s, are they
13 trained to track?

14 A. No, sir, we don't train tracking.

15 Q. So they -- so you could not have taken an article of
16 clothing from Darell's backpack or bag and given it to the dog
17 and the dog wouldn't have been able to find him in that manner?

18 A. Correct. We don't do that with the dogs.

19 Q. And explain how it is that the dog -- how does the dog
20 work; what is the dog looking for in searching for a person?

21 A. So the reason we use police dogs is dogs have a superior
22 sense of smell and vision, so that's kind of the basis of it.
23 So when dogs are searching, whether it's for an explosive,
24 narcotics, a firearm or a suspect, they're using their nose to
25 try to figure out whatever they're being tasked with searching

Officer Yasonia - Direct by Richmond

1 for. So they're using their eyes and their olfactory in their
2 nose to help alert to whatever odor they're supposed to be
3 looking for.

4 Q. How is it they are -- they know what they're supposed to
5 be looking for?

6 A. It's training, sir.

7 Q. Now, getting back to this -- the incident, you were sent
8 consequently to a specific location, and what were you -- what
9 kind of information were you provided when you got there?

10 A. So we go to the command post usually, and they just give a
11 quick summary of the incident, about what the individual is
12 potentially wanted for, and a description and any other
13 pertinent information they had for him. Then a plan is
14 developed to potentially go look for an individual if we don't
15 know where they're at.

16 Q. Do you remember on this occasion specifically what you
17 were told in regard to the person you were looking for?

18 A. Just that we were looking for an individual who's believed
19 to be armed, who is pointing a weapon at people and fled from
20 officers.

21 Q. Do you know who it was that gave you that briefing?

22 A. I don't recall specifically who led the briefing.

23 Q. Were you provided any information in regard to -- well,
24 strike that.

25 Do you understand that a backpack or a bag was found prior

Officer Yasonia - Direct by Richmond

1 A. I don't recall a time that the Crisis Negotiation Team has
2 gone with us on a yard-to-yard search.

3 Q. And they did not do that on the search that you did for
4 Mr. Richards?

5 A. As I previously stated, sir, I don't recall.

6 Q. And what was your -- what was the specific assignment
7 given to you?

8 A. On the night of the incident?

9 Q. Yes.

10 A. I was assigned to Team 20, which is just one half of the
11 SWAT team, and I was the K-9 resource for that search element.

12 Q. And do you recall arriving at a residence located at 2017
13 1st Avenue?

14 A. I believe that's the address in question, yes, sir.

15 Q. Yes. When you got there, what did you do?

16 A. When we got situated in the area, we had a piece of armor
17 parked in the alley between what was like a parking lot,
18 business complex and the residences on the west side, and then
19 I had my car nearby.

20 Q. And did you approach the residence at 2017 1st Avenue?

21 A. Eventually we did.

22 Q. Did you -- were you one of the officers that contacted the
23 homeowner?

24 A. No, sir.

25 Q. After contact was made with the homeowner by other

Officer Yasonia - Direct by Richmond

1 officers, what happened next?

2 A. Eventually we were directed that we were going to
3 search -- begin our search of the area.

4 Q. And how was the -- how was Reno utilized in conducting
5 that search?

6 A. So typically when we conduct yard-to-yard searches, we'll
7 go up to the point in which we're going to begin the search,
8 and we'll use the dog to essentially leap out in front or send
9 the dog out in front of us to check areas that entry by
10 officers which would increase the risk of injury to us or
11 somebody else. So we a send the dog out in front of us.

12 Q. And where did you first send the dog?

13 A. The side yard of the house, which would be on the west
14 side of the house.

15 Q. Did the dog alert to anything in that side yard?

16 A. No, sir.

17 Q. And explain to the jury how it is that Reno alerts; what
18 is the behavior?

19 A. Well, our police K-9s are utilized in, I guess you'd call
20 it a find and bite capacity. When we send out the dog to
21 search for an individual, if the dog can get to where the
22 individual is at, the dog will apprehend the individual.

23 If the dog can't get to the individual because they're
24 concealed behind a door, or something like that where the dog
25 can't get to them, usually you see police K-9s alert by

Officer Yasonia - Direct by Richmond

1 barking; they will scratch at the door and they'll start
2 whining. There's loud audible cues to alert that the dog can't
3 get to somebody and there's something behind this door they're
4 alerting on.

5 Q. So you mentioned that you had -- first had the side yard
6 searched?

7 A. Yes, sir.

8 Q. And where did you search next?

9 A. There was like a basement or like a little apartment below
10 the main house, because it was elevated off the ground, and we
11 searched inside there.

12 Q. Did the dog alert to anything inside the apartment?

13 A. No, sir.

14 Q. And where did you search next?

15 A. After that we went out the side door, which is on the west
16 side of the house, and there was, I guess what you would call
17 like a half fence. It was a couple feet tall, 3 to 4 feet
18 tall, and there was a swinging gate that led into like what you
19 would call like the main portion of the backyard.

20 Q. And Reno, did he enter the yard first?

21 A. Yes.

22 Q. Did you go in with him when you -- when you ordered him to
23 search?

24 A. It all depends on the situation, but usually if we're
25 searching a yard, I'll be the last person to go in and call my

Officer Yasonia - Direct by Richmond

1 dog.

2 Q. But when he initially goes in, do you go in with him?

3 A. No, sir.

4 Q. Where do you situate yourself so that you can see if he's
5 alert or not?

6 A. It all depends on the environment. Sometimes I'll try to
7 get as close to the front of the area where I'm sending him to
8 try to get a visual of the dog. And if I can't, I'll rely on
9 the SWAT operators who are at the front, they the say, Hey,
10 you're dog is out searching.

11 Q. Did Reno alert to anything in the main portion of that
12 backyard?

13 A. No, sir.

14 Q. What, if anything, did that suggest to you?

15 A. That there was no identifiable odor that my dog could
16 narrow down in that specific area.

17 Q. Would that mean that there's likely not a person in that
18 backyard?

19 A. It could.

20 Q. Now, once you determined that it was -- that he did not
21 alert on anything, did you -- well, did the team enter the yard
22 at that point?

23 A. Yes.

24 Q. And where are you in relation to how the team enters?

25 A. I'm usually last or second to last in entering that area.

Officer DeLeon - Direct by Richmond

1 Officer over at the Academy prior to coming to the SWAT Team.

2 Q. Were you involved in a SWAT call-out on September 6, 2018?

3 A. Yes, sir.

4 Q. How did you become aware of that call-out?

5 A. We got a SWAT notification page to my cell phone.

6 Q. Do you remember what the notification -- what it said?

7 A. Not off the top of my head, no.

8 Q. What did you do in response to receiving that
9 notification?

10 A. Got up, changed out into my SWAT uniform and then drove
11 from home to the command post for the briefing.

12 Q. Do you know approximately how long that it took from the
13 time that you received the notification up until the time that
14 you got to the command post?

15 A. From home to the command post, 30-35 minutes response
16 time.

17 Q. What happened when you arrived at the command post?

18 A. We were given a brief by Sergeant Lee and Sergeant Merten.

19 Q. Do you recall Lieutenant Sood being a part of that
20 briefing?

21 MR. BUELNA: Objection, leading.

22 THE COURT: Sustained.

23 BY MR. RICHMOND:

24 Q. Was there anybody else that you can recall involved in
25 providing that briefing?

Officer DeLeon - Direct by Richmond

1 A. Lieutenant Sood was there. Lieutenant Nichols was there
2 as well.

3 Q. What do you remember being told in the briefing?

4 A. That there is a perimeter established, they had a subject
5 that was pointing a firearm at passerbys and then a short, I
6 believe, foot pursuit ensued where the officer saw the suspect
7 armed with a firearm and jump a fence.

8 Q. Do you know if a bag or a backpack was recovered during
9 that pursuit?

10 A. That is correct, yes.

11 Q. And were you told any of the contents of what was in that
12 backpack?

13 A. They said they found a jail ID bracelet and random
14 paperwork. One of them had some references to dying, like a
15 death assignment almost, but that was it.

16 Q. You remember hearing that at the briefing?

17 A. Yes.

18 Q. Do you remember who specifically said that?

19 A. I do not know, I'm sorry.

20 Q. And then what was your assignment as a SWAT officer?

21 A. I was -- we split the teams into two teams, and I was
22 on -- I was at the time on Team 20. So our team handled one
23 portion of the side of the block while Team 10 handled the
24 other portion.

25 Q. And you ultimately were part of the team that arrived and

Officer DeLeon - Direct by Richmond

1 searched 2017 1st Avenue?

2 A. That's correct.

3 Q. Were you part of the team that made contact with the
4 homeowner there?

5 A. I was part of the SWAT team staff team, yes, but I did not
6 make contact with the homeowner.

7 Q. Were you there when other officers were speaking to the
8 homeowner?

9 A. Like present to overhear the conversation, no.

10 Q. What was done after the contact was made with the
11 homeowner?

12 A. Say that -- repeat the question.

13 Q. After contact was made with the homeowner by the other
14 officers, what was done next?

15 A. We cleared the backyard.

16 Q. And explain how you did that.

17 A. So pretty much we take it systematically. We'll send the
18 K-9 up first. Once the dog goes out and clears a portion of
19 the yard, then we'll call the dog back and move up to the
20 position where the dog was, or in some cases we'll leave the
21 dog in a down position so he's sitting there -- I'm sorry, like
22 sitting, and then we'll move up to the dog and kind of leapfrog
23 ahead to safely cover the yard.

24 Q. Now, there was a small apartment in the side yard; is that
25 correct?

Officer DeLeon - Direct by Richmond

1 A. Yeah, it was like converted underneath the -- just inside
2 the gate.

3 Q. Was a search conducted of that apartment?

4 A. Yes.

5 Q. Were you a part of that?

6 A. I was.

7 Q. And it was cleared?

8 A. That was cleared, yes.

9 Q. And then did you see -- strike that.

10 Who or what goes in first to the main yard?

11 A. When we're doing a yard-to-yard search, we'll use our
12 SKIDDS dogs that are trained with our SWAT team. So we'll send
13 the dog first, again, just to clear ahead of us and then move
14 forward from there.

15 Q. Do you know if the dog alerted to anything in the main
16 portion of the backyard?

17 A. No, not to my knowledge.

18 Q. Did not, to your knowledge?

19 A. No.

20 Q. And then you all proceed into the yard?

21 A. That's correct.

22 Q. And are you assigned to a particular area of
23 responsibility in that main yard?

24 A. So it's not -- when you enter the yard, you're not
25 assigned it like, Hey, you're going to go left. It's just kind

Officer DeLeon - Direct by Richmond

1 of the first person will to go left, the second person will go
2 right, get to your immediate corners, and it's kind of a fill
3 in wherever there's spaces. So at that time I was -- if we're
4 working left to right, I was Number 2 in that fan out.

5 Q. Okay. And so where, then, did you go as the Number 2
6 person?

7 A. So I was left.

8 Q. And at some point did you hear commands being given by
9 other officers?

10 A. I did.

11 Q. And did that direct your attention to where the demands
12 were being -- or commands were being given?

13 A. No. I was staying focused downrange, so towards the deep
14 end of the yard.

15 Q. Do you recall hearing what those commands were that were
16 given?

17 A. Yeah, I heard, "Show me your hands, drop the gun," and
18 then there were gunshots.

19 Q. Did you see -- did you witness who it was that fired the
20 guns?

21 A. I did not.

22 Q. Did you see the shooting of Darell Richards?

23 A. I did not.

24 Q. Did you have your body cam on as you were in that
25 backyard?

1 like a gurgling sound."

2 A. So as we approached him, that's where we heard it. I'm
3 sorry, I thought you said from a distance, no, we didn't,
4 because where we were positioned was on that 2, 3 corner, so we
5 moved it up to approach to give medical aid, my mistake.

6 Q. Fair enough. No harm done.

7 So as you approached, you heard the gurgling sound; right?

8 A. Yes.

9 Q. And then you actually went over to him, you guys covered
10 him. He was lying on his right side; correct?

11 A. Correct.

12 Q. And his hands were kind of up?

13 A. I don't remember his hands.

14 Q. Okay. Do you remember saying something to the effect of,
15 His hands were up like this, and, The gun was in his lap to
16 homicide investigators?

17 A. If that's what I said there in my statement, then yes.

18 Q. Okay. Well, would looking at your statement help refresh
19 your recollection?

20 THE COURT: He said he didn't remember. He said --
21 that's what you said, and he agreed with you.

22 BY MR. BUELNA:

23 Q. Fair enough.

24 And then you also described the position that you
25 discovered Darell in as being essentially like the fetal

Officer Tippets - Direct by Richmond

1 position; right?

2 A. Right.

3 Q. On his right side; correct?

4 A. Yes.

5 Q. And the gun obviously wasn't in either one of his hands,
6 from what you could see; correct?

7 A. I think I said it was in his lap, yeah.

8 MR. BUELNA: No further questions.

9 THE COURT: Anything further?

10 MR. RICHMOND: Nothing further.

11 THE COURT: Thanks for being here. You may step down.
12 (Witness is excused.)

13 THE COURT: You may call your next witness.

14 MR. RICHMOND: Defense calls Officer Joseph Tippets.

15 OFFICER JOSEPH TIPPETS, DEFENDANTS' WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated. Please
17 state and spell your name for the record.

18 THE WITNESS: Joseph Tippets. J-O-S-E-P-H
19 T-I-P-P-E-T-S.

20 DIRECT EXAMINATION

21 BY MR. RICHMOND:

22 Q. Good afternoon, Officer Tippets. By whom are you
23 presently employed?

24 A. The City of Sacramento.

25 Q. The Police Department?

Officer Tippets - Direct by Richmond

1 A. Yes.

2 Q. And in what capacity are you employed by the City of
3 Sacramento Police Department?

4 A. Police officer.

5 Q. Patrol?

6 A. Yes.

7 Q. And when did you become a sworn officer?

8 A. 24 years ago, June of '98.

9 Q. So you've been with the Sacramento Police Department for
10 24 years?

11 A. Correct.

12 Q. Have you always been on patrol?

13 A. I've done a couple years as a neighborhood police officer
14 and a couple years in the reserve unit.

15 THE COURT: Get that mic close to you. Thank you.

16 BY MR. RICHMOND:

17 Q. Officer, were you dispatched on Wednesday, September 6
18 late in the evening for a specific call?

19 A. Yes.

20 Q. And what was the information that you had that was
21 provided to you by dispatch?

22 A. There was a subject in the area of 16th Street and
23 Broadway, unknown race, carrying a gun.

24 Q. And what -- was he just carrying the gun; were you given
25 anymore information?

Officer Tippetts - Direct by Richmond

1 A. Not that I remember.

2 Q. And what did you do in response to receiving this
3 information?

4 A. First thing I did was to drive to the area.

5 Q. And what was the location that you were given information
6 that he was last seen at?

7 A. So the CHP fixed wing aircraft was working that night and
8 was overhead and was watching the subject that they believed to
9 be the person involved in this. They provided updates that the
10 subject was walking on the south curb line of Broadway
11 eastbound towards like 21st area.

12 Q. And you were still in your patrol vehicle when you
13 received this information?

14 A. That's correct.

15 Q. And you said you went to that location. Did you
16 immediately find the subject that you believed that you were
17 looking for?

18 A. Yes. I drove northbound on 21st up to Broadway and was
19 stopped at the red light. The CHP air unit advised that the
20 subject was walking eastbound on Broadway about 20th Street at
21 that point. When I got a green light, I made the westbound
22 turn onto Broadway and the subject was walking towards me.

23 Q. Walking towards you?

24 A. In my direction. He was still on the sidewalk.

25 Q. Okay. And what did you do?

Officer Tippetts - Direct by Richmond

1 A. I turned on my vehicle's overhead spotlights and drove
2 towards him.

3 Q. And did he do anything in response to you driving towards
4 him?

5 A. Yeah, the person had the backpack. They dropped the
6 backpack, and they turned around and they ran, it would have
7 been westbound on Broadway and then southbound on 20th Street.

8 Q. Did you follow him?

9 A. I did.

10 Q. And did you ultimately lose sight of him?

11 A. Yes.

12 Q. And at what point did you lose sight of him?

13 A. He ran into the yard at 2567 20th Street, and I believe
14 that he went over the fence into the backyard at that location.

15 Q. Did you do anything further at that point?

16 A. Yeah. I continued south to the intersection of 20th
17 Street and 1st Avenue where I took up a perimeter spot.

18 Q. Did you get out of the vehicle and chase him over the
19 fence?

20 A. No.

21 Q. Why not?

22 A. It's not safe.

23 MR. RICHMOND: Okay, thank you.

24 THE COURT: Cross.

25 MS. NOLD: We have no questions for this witness, Your

Merten - Direct by Richmond

1 Honor.

2 THE COURT: Thank you for being here. You may step
3 down.

4 (Witness is excused.)

5 THE COURT: Call your next witness.

6 MR. RICHMOND: Defense calls Hans Merten.

7 THE CLERK: Thank you. Please be seated. Please
8 state and spell your name for the record.

9 THE WITNESS: First name is Hanspeter, it's one word,
10 H-A-N-S-P-E-T-E-R, last name is Merten, M-E-R-T-E-N.

11 HANSPETER MERTEN, DEFENDANTS' WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. RICHMOND:

14 Q. Good afternoon, Mr. Merten.

15 A. Good afternoon.

16 Q. By whom are you employed?

17 A. I am currently employed by the Sacramento District
18 Attorney's Office as a criminal investigator.

19 Q. And prior to being employed by the District Attorney's
20 Office, by whom were you employed?

21 A. City of Sacramento Police Department for 27 years.

22 Q. And when you -- did you retire from the Police Department?

23 A. Yes, I did, July of 2021.

24 Q. And when you did retire, what was the title that you held
25 at that time?

MARYANN VALENOTI - U.S. DISTRICT COURT - (916)930-4275

Merten - Direct by Richmond

1 A. I retired as a Sergeant in investigations, but I was a
2 Sergeant in patrol for several years prior to that.

3 Q. In September of 2018, were you in that capacity as
4 Sergeant of investigations?

5 A. No. I was assigned to patrol, graveyards in South Sac and
6 in the City. It was called District 5. So it was basically
7 south of Florin Road to the city limits at Elk Grove, and then
8 from Highway 5 to Highway 99 was my area of responsibility.

9 Q. And what were your duties as the Sergeant of that patrol
10 team?

11 A. To supervise the patrol officers, to respond to calls for
12 services, approve reports, you know, watch over trainees, do
13 evaluations, basically in charge of that area that I just
14 previously described.

15 Q. Do you recall being -- receiving a dispatch from
16 Sacramento Police Department -- well, strike that.

17 Were you on duty on the evening of September 6, 2018?

18 A. Yup, I was.

19 Q. And do you recall receiving a dispatch late that -- well,
20 it would have been late September 5, 2018, in regard to a
21 subject on Broadway?

22 A. Yes. I was actually with the Sergeant, Sergeant Lee, in
23 the area where the incident occurred at the time that the
24 initial call came out from dispatch. I believe it was around
25 11:30 in the evening on September 5. And Sergeant Lee and I,

Merten - Direct by Richmond

1 upon hearing the call, we responded from where we were in the
2 area of Delta Shores Shopping Center, which is Cosumnes River
3 on I-5, so we responded with our lights and siren to the area
4 of 20th and Broadway.

5 THE COURT: Were you in separate cars?

6 THE WITNESS: Yes, we were in separate cars.

7 THE COURT: Okay.

8 BY MR. RICHMOND:

9 Q. Do you recall specifically the information that you
10 received from dispatch?

11 A. The broadcast that came out was, I believe, that there was
12 a subject -- a caller had called in from the Tower Cafe, which
13 is located right there at 15th and 16th and Broadway on the
14 south side. The caller called in and stated that there was an
15 individual who was walking armed with a firearm wearing a mask,
16 and he was headed eastbound on Broadway. That is kind of what
17 I remember initially came out on the broadcast.

18 Q. Did you ultimately receive any additional information by
19 way of the radio?

20 A. Yes. While responding at I-5, Officer Tippetts, who was
21 assigned to the call, stated that he observed the subject, I
22 believe, turn from Broadway onto 20th Street and go southbound.
23 I don't remember exactly where he first saw him, but he did put
24 out over the radio, Officer Tippetts, that the subject had
25 discarded a backpack on the south side of Broadway east of 20th

Merten - Direct by Richmond

1 Street, and he asked if any responding officers could stop and
2 pick up those items -- or that item.

3 Q. And were you the officer that picked that item up?

4 A. Yes, I did. The other patrol officers were going to
5 respond to the scene to deal with the subject who was armed.
6 And so I got on the radio, and I advised that I would stop
7 there and attempt to locate those items, which I did.

8 I think I arrived at about 11:45ish in the evening and
9 located two bags in front of, I believe it's 2000 Broadway.
10 It's basically the southeast corner of Broadway and 20th
11 Street. So I saw them laying there in the parking lot, and I
12 stopped my vehicle and got out and grabbed the two bags and put
13 them on my hood.

14 Q. And what did you do with those two bags?

15 A. Everything was developing pretty rapidly at that time, so
16 I did a quick search. There was a black backpack and there was
17 also a gray and black, I believe, duffle bag, and I did a quick
18 search for any type of weapons, ammunition, any kind of
19 identifying information of maybe who these bags belonged to.

20 Q. And did you find any of that?

21 A. I did. In the backpack I located some paperwork. There
22 was some pamphlets like Army type pamphlets. There was a
23 restraining order in the backpack that had the name "Darell
24 Richards" as the restrained person, I believe, and Devin
25 Richards as the protected person. There was also some

Merten - Direct by Richmond

1 paperwork from a bail bondsman in town, Aladdin Bail Bonds, and
2 on that paperwork I saw the name Darell Richards.

3 So I immediately put that information over the radio so
4 that another officer could start doing searches on that name or
5 those names to see if they could identify those individuals.

6 Q. Were there any other documents that you found in the
7 backpack?

8 A. Not at that time. It was -- like I said, it was a real
9 quick search because everything was developing and we were
10 trying to set up a perimeter, which would be getting patrol
11 officers in strategic places so that we could keep -- contain
12 the suspect. So that was the priority at that time.

13 So I probably only spent about 30 seconds looking through
14 that backpack and bag. There was clothing items in there and
15 toiletries. I put both of those -- both bags into my trunk and
16 then drove down the street and assisted Sergeant Lee in setting
17 up the perimeter with other patrol officers from throughout the
18 city.

19 Q. At any point subsequently did you look into the contents
20 of the backpack?

21 A. Yes. About one hour after getting there -- so I think I
22 reviewed my body camera a couple weeks ago, and it was around
23 12:40 in the morning. Sergeant Lee was getting ready for a
24 briefing of the SWAT officers that had been called out, and so
25 at that time I told Sergeant Lee, I'm going to go look in those

Merten - Direct by Richmond

1 two items, the backpack and the bag again to see if I could
2 find any other, you know, identifying information or anything
3 and just do a little more thorough of a search.

4 And if -- I had a little more time. Things weren't
5 rapidly developing as they were when we were -- initially got
6 there at 12:40, 11:45 the first time.

7 Q. Did you note anything additional when you looked in the
8 backpack that second time?

9 A. Yes. Sergeant Lee was there. He was preparing his
10 writings for the briefing, and I told him, Hey, there's some
11 Army pamphlets in here. There was like a tactical book. I
12 said, There's some -- there's writings, like different types of
13 writings, and then I found one that was addressed -- I think it
14 said, To Mom, and it said, If I were to die -- I can't remember
15 exactly, If I were to die tomorrow, I wouldn't want my mom to
16 be too stressed. And so I read that, what it said, verbatim to
17 Sergeant Lee.

18 And then there were some drawings in there, and I told
19 him, There's different types of drawings and the Aladdin Bail
20 Bonds paperwork and the restraining order. So he wrote those
21 things down.

22 And then shortly thereafter when all the SWAT officers
23 arrived on scene, we then -- there was a briefing that was held
24 at 19th and Broadway.

25 Q. Would you recognize that document that you just referred

Merten - Direct by Richmond

1 to if you saw it?

2 A. Yes.

3 Q. It's been previously marked as Defendant's H. Mr. Merten,
4 is this the document that you were referring to?

5 A. Yes, that would be it.

6 Q. And so you had mentioned that you were describing the
7 contents to Sergeant Lee?

8 A. Yes. So what I did is -- again, in reviewing my body
9 camera two weeks ago, what I did is I read to him --

10 Q. I'm sorry, I'll bring it up.

11 A. I'm sorry. There you go.

12 So I read, "If I were to die, I would let my mom know that
13 I am in a better place and to not be depressed for too long."
14 And I read that to Sergeant Lee, and then I think his response
15 to that was, Okay, so, like, I think he said weird writings
16 about death, and I said, Yeah.

17 And then I said there was also some drawings or some
18 references to the devil and Sam, and that was kind of the end
19 of that. We went over the restraining order, the bail bond
20 stuff and that was pretty much it. I didn't look too much
21 further.

22 There were a lot of papers in this backpack, almost like a
23 school folder that was full of papers. There was a notebook in
24 there with a lot of writings. I didn't sit and read all the
25 writings.

Merten - Direct by Richmond

1 Again, the situation was still developing. We had a
2 subject -- armed subject in this neighborhood, and so we had to
3 get stuff together so we could brief the SWAT officers so they
4 could, you know, do their jobs.

5 Q. Did you ever characterize the document as a suicide note?

6 A. No, not that I recall.

7 I think I referred to it as like a writing about death,
8 and that it was like -- I don't think I ever used the word,
9 like, "assignment." It actually states at the top "Your
10 Assignment," and it has -- basically it says, List five
11 important people in your life. Write down everything that
12 would be left unsaid if one or the other of you were to die at
13 this very moment.

14 Then -- so I don't ever recall referring to this as a
15 suicide note. To me it wasn't a note.

16 I worked homicide for nine years at the Sacramento Police
17 Department --

18 MR. BUELNA: Objection, Your Honor, it's --

19 THE COURT: Sustained. He answered the question.

20 BY MR. RICHMOND:

21 Q. The briefing that was given to SWAT, were you a part of
22 that?

23 A. I was there. Again, it was not my area of responsibility.
24 It was what was called District 4, which would be --

25 THE COURT: Okay, you've answered.

Merten - Cross by Buelna

1 BY MR. RICHMOND:

2 Q. Were you responsible for providing any of the briefing?

3 A. I provided some information at the briefing, yes.

4 Q. Did you discuss this document, Exhibit H, at the briefing?

5 A. I did talk about it, but again, I didn't -- I don't
6 believe I ever referred to it as a suicide note.

7 MR. BUELNA: Objection, motion to strike that last
8 part.

9 THE COURT: The last part will be stricken. The jury
10 will disregard. Nonresponsive.

11 BY MR. RICHMOND:

12 Q. Did you refer to this as a "suicide note" at the briefing?

13 A. No, I don't believe so.

14 Q. Did you hear anyone else refer to this document as a
15 "suicide note" at the briefing?

16 A. No, I don't recall anyone.

17 MR. RICHMOND: Thank you, that's all I have.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MR. BUELNA:

21 Q. Good afternoon, Officer Mertens [sic].

22 A. Merten, no "S" at the end.

23 Q. Merten. I think you just testified you originally found a
24 black backpack and a duffle bag on Broadway; right?

25 A. That's correct.

Sergeant Cunningham - Direct by Richmond

1 Q. And in what capacity are you employed presently?

2 A. As a Sergeant in the Training Division.

3 Q. When did you become a Sergeant in the Training Division?

4 A. January of this year.

5 Q. And prior to taking that assignment, what were you
6 assigned to?

7 A. I was a patrol supervisor.

8 Q. And for how long did you do that?

9 A. About two years.

10 Q. Back in September of 2018, in what capacity were you
11 employed by the Department?

12 A. I was working on Special Weapons -- or SWAT Team.

13 Q. And were you a SWAT operator, or did you have any
14 supervisory responsibilities?

15 A. No.

16 Q. Were you on duty or on call on the night of September 5,
17 2018 to the morning of September 6?

18 A. Yes, I was.

19 Q. Did you receive notification of a SWAT call-out?

20 A. Yes.

21 Q. And how was it that you received that?

22 A. The department-issued phone that I would receive a text
23 message anytime they wanted to utilize the SWAT Team for any
24 type of critical incident to respond to.

25 Q. Do you recall about what time you received that?

Sergeant Cunningham - Direct by Richmond

1 A. 12:13 in the morning.

2 Q. Do you recall what the -- what the text, what it said?

3 A. Respond to our command post, which is at 19th Avenue and
4 Broadway -- or 19th Street and Broadway, regarding a
5 yard-to-yard search for a person wanted for brandishing a --
6 criminal threats.

7 Q. That was all the information that was given to you by way
8 of that text notification; is that right?

9 A. As far as I can recall.

10 Q. Okay. And what did you do in response to receiving that
11 notification?

12 A. I responded to the area of 19th and Broadway and met up
13 with my fellow officers to conduct a briefing.

14 Q. Did you conduct a briefing?

15 A. No. There would be an incident commander who would
16 conduct the briefing, but I was there as part of the SWAT team
17 response to observe the briefing for our assignments.

18 Q. Who was it, then, that did provide the briefing?

19 A. Lieutenant Sameer Sood was the incident commander, and I
20 believe Sergeant Lee and Sergeant Merten were on scene for the
21 briefing.

22 Q. Do you recall what information was provided at the
23 briefing?

24 A. That there was a call for service to the Police Department
25 about a subject on Broadway that was armed with a handgun.

Sergeant Cunningham - Direct by Richmond

1 That subject was confronted by officers and ran from the
2 officers and he was observed with the handgun.

3 Q. Is that the extent of what you remember being advised of
4 at the briefing?

5 A. Could I look at my notes to refresh my memory?

6 MR. BUELNA: No.

7 THE WITNESS: No, okay. Yes.

8 BY MR. RICHMOND:

9 Q. Were you told that a bag or a backpack had been located
10 that may belong to the subject that you're looking for?

11 MR. BUELNA: Objection, leading.

12 THE COURT: It is leading. If he can't remember, he
13 can look at his notes. Just establish that he can't remember.

14 BY MR. RICHMOND:

15 Q. Can you recall, as you sit here today, in response to that
16 question?

17 A. So during the briefing I was advised that there were two
18 backpacks dropped by the subject.

19 Q. And were you told anything in regard to the contents of
20 what was in the bag?

21 A. I recall an identification was located inside one of the
22 bags.

23 Q. And when you say "identification," what do you mean?

24 A. I don't recall if it's a driver's license or an ID card,
25 but I remember there was some type of identification card that

Sergeant Cunningham - Direct by Richmond

1 was located in that bag.

2 Q. Any other documents that you recall being told that was --
3 that were in that backpack?

4 A. No.

5 Q. And then what was your assignment?

6 A. As far as the SWAT officer?

7 Q. Yes.

8 A. I was assigned to my SWAT Team, which is SWAT Team 10, to
9 respond to the area, I believe it would be 1st Avenue and 20th
10 Street.

11 Q. Do you know if any members of the Crisis Negotiation Team
12 were on scene that night?

13 A. I can't recall.

14 Q. Did any of the CNT Team, did they go with you in
15 conducting the yard-to-yard search?

16 A. No.

17 Q. Do they ever?

18 A. Not on a yard-to-yard search, no.

19 Q. Why not?

20 A. Because at that time we didn't have anybody located.
21 We're trying to do a search for a subject, and we're utilizing
22 special tactics that we would use. And they wouldn't have that
23 type of training to go along with us, and so it's potential for
24 a hazard to have them with us while we're conducting that type
25 of a search.

Sergeant Cunningham - Direct by Richmond

1 Q. And you ultimately -- strike that.

2 You searched a yard at 2017 1st Avenue; is that right?

3 A. Yes.

4 Q. How many yards had you searched prior to searching that
5 one?

6 A. As far as our whole team or me personally?

7 Q. You.

8 A. I can recall at least one that I had searched.

9 Q. When you got to 2017 1st Avenue, were you part of the team
10 that made contact with the homeowner?

11 A. I was with the team, but I didn't make contact with the
12 homeowner.

13 Q. Did you hear that conversation at all?

14 A. No.

15 Q. And after contact was made with the homeowner, what did
16 the team do next?

17 A. We conducted a search into the side yard and backyard of
18 that location.

19 Q. You did the side yard first?

20 A. Yes.

21 Q. And was there a lower basement apartment in that side
22 yard?

23 A. Yes.

24 Q. Was that searched as well?

25 A. Yes.

Sergeant Cunningham - Direct by Richmond

1 Q. And it was cleared?

2 A. We didn't locate any subjects in that apartment.

3 Q. So before you entered the main portion of the backyard,
4 what happens first before you enter?

5 A. In terms of our searching?

6 Q. Yes.

7 A. So we utilize a police K-9 to try and locate the subject,
8 if there's anybody's back there. So prior to any officers
9 making that entry to the backyard, a K-9 officer in conjunction
10 with the SWAT team would utilize the K-9 to see if there's any
11 type of notifications that the K-9 would give to the officers.

12 Q. And do you know in this instance -- well, did you see the
13 K-9 as he was searching?

14 A. I only saw a portion of where the K-9 searched.

15 Q. Do you know if the K-9 had alerted to anything in the
16 backyard?

17 A. I wasn't notified of the K-9 alerting to anything.

18 Q. So is it after the dog comes back after he searches, then
19 you enter?

20 A. So the dog did not come back. The dog actually went to
21 the -- I'll call it the farthest north fence line, and that's
22 where I saw the dog from my position where I was at before he
23 entered, and the dog stayed on that fence line.

24 Q. Did the dog staying on that fence line, the north fence
25 line, did that suggest anything to you?

Sergeant Cunningham - Direct by Richmond

1 A. It just suggested that the dog went through and didn't
2 alert on anything in that yard. And so being back there, I
3 don't recall the dog ever doing anything, any telltale signs
4 regarding locating or having any indication of another person
5 back there. But the dog did catch my attention that it stayed
6 by the back fence line.

7 Q. Okay. And when you say the back and the north, would that
8 have been the opposite side of the yard from where Darell
9 Richards was ultimately located?

10 A. Yes.

11 Q. And at some point -- strike that.

12 When you entered the yard you had mentioned that you had
13 gone to -- that would have been to your left; right, if you're
14 going toward that north fence line?

15 A. No. I would -- our approach came from the south, and
16 that's where you come into the backyard. So if we were at the
17 south, the north fence line would be straight ahead, and then
18 to the right would have been the east area where the stairwell
19 was.

20 Q. So when you did go in, you went toward that north fence?

21 A. Yes.

22 Q. All right. And at some point did you later hear commands
23 being given by other officers?

24 A. Yes.

25 Q. And do you know what those commands were?

Sergeant Cunningham - Direct by Richmond

1 A. "Show me your hands, show me your hands."

2 Q. And what did you do, if anything, in response to hearing
3 those commands?

4 A. I was still facing forwards, I was watching where the dog
5 was. When I heard those commands, I started to look towards
6 the right, my right side.

7 Q. Toward your right side. Is that where you heard the
8 commands being given from?

9 A. Yes.

10 Q. And then after the commands were given, did you hear
11 gunfire?

12 A. First I heard "Drop the gun." Then moments after that, I
13 did hear gunfire.

14 Q. Did you see who it was that shot?

15 A. Yes.

16 Q. And who was that?

17 A. It was Sergeant Edgerton.

18 Q. Was he the only --

19 A. At that moment he was the only one I knew. I just
20 remember looking over and seeing him. I didn't learn about
21 anybody else until later.

22 Q. And you said you saw him -- you saw him actually firing
23 his gun?

24 A. Yes, he had his gun up, and yeah.

25 Q. Were you able to see what he was firing at?

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THE COURT: No, but if you are past 15 minutes, you will start hearing from me.

MS. NOLD: That's what I was looking for. Thank you, Your Honor.

THE COURT: Okay. See everybody on Monday.

MR. BUELNA: Thank you, Your Honor.


MR. RICHMOND: Thank you, Your Honor.

THE COURT: Thanks.

(Proceedings adjourned at 12:57 p.m.)

C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

EXHIBIT 2

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

Closing Argument - Plaintiffs

1 was a little out of date, but it was fundamentally sound.
2 That's why they kept it. They may believe that they should
3 have or could have had a better, different policy, but they
4 didn't. They were bound by what was in place that night.

5 You will have to decide how the defendants will be
6 held accountable for a complete and utter disregard for the
7 sanctity of our most precious commodity: A child's life. You
8 will have to decide how they will be held accountable for the
9 choices that they made that night because they were the only
10 ones with choices as Darell laid cowering in that backyard.

11 Without accountability, there is no justice. And
12 without justice, there is no freedom, and there is no closure
13 for this family.

14 On behalf of the two beautiful families of Darell
15 Richards and his legal team, we appreciate your time, your
16 commitment to this case. And with that, we give you the case.

17 THE COURT: Thank you.

18 Okay. We'll hand out the instructions.

19 Members of the jury, now that you've heard all the
20 evidence, it's my duty to instruct you on the law that applies
21 to this case. Your copy of these instructions may be taken
22 with you to the jury room for you to consult during
23 deliberations.

24 It is your duty to weigh and to evaluate all the
25 evidence received in the case and in that process to decide the

1 facts.

2 It is also your duty to apply the law as I give it to
3 you to the facts as you find them, whether you agree with the
4 law or not. You must decide the case solely on the evidence
5 and the law. Do not allow personal likes or dislikes,
6 sympathy, prejudice, fear, or public opinion to influence you.
7 You should also not be influenced by any person's race, color,
8 religion, national ancestry, or gender. You will recall that
9 you took an oath promising to do so at the beginning of the
10 case.

11 You must follow all these instructions and not single
12 out some and ignore others. They are all important. Please do
13 not read into these instructions, or into anything I may have
14 said or done, any suggestion as to what verdict you should
15 return. That is a matter entirely up to you.

16 When a party has the burden of proving any claim or
17 affirmative defense by a preponderance of the evidence, it
18 means you must be persuaded by the evidence that the claim or
19 affirmative defense is more probably true than not true. You
20 should base your decision on all of the evidence regardless of
21 which party presented it.

22 When a party has the burden of proving any claim or
23 defense by clear and convincing evidence, it means that the
24 party must present evidence that leaves you with a firm belief
25 or conviction that it is highly probable, that the factual

1 contentions of the claim or defense are true. This is a higher
2 standard of proof than proof by a preponderance of the
3 evidence, but it does not require proof beyond a reasonable
4 doubt.

5 There are four defendants: Officer Todd Edgerton,
6 Officer Patrick Cox, Officer Sameer Sood, and the City of
7 Sacramento. You should decide the cases to each defendant
8 separately. Unless otherwise stated, the instructions apply to
9 all parties.

10 To help you follow the evidence, I will give up a
11 brief summary of the positions of the parties. Plaintiffs
12 assert the following claims: One, Defendants Edgerton and Cox
13 used deadly, excessive force on decedent Darell Richards in
14 violation of his constitutional right to be free from
15 unreasonable force that violated the Fourth Amendment.

16 Two, Defendants Edgerton and Cox interfered with
17 plaintiffs' familial relationship with decedent Darell Richards
18 when using unreasonable force and reckless disregard in
19 violation of the Fourteenth Amendment.

20 Three, Defendants Edgerton, Cox, Sood, and the City of
21 Sacramento were negligent.

22 Four, Defendants Edgerton, Cox, and the City of
23 Sacramento either deliberately and/or with reckless disregard
24 violated plaintiffs' constitutional right to be free from
25 unreasonable force which violated the Fourth Amendment and the

1 Bane Act.

2 And five, Defendant Sood's acts or failure to act
3 caused his subordinates to violate or interfere with decedent
4 Darell Richards' constitutional rights such that supervisory
5 liability attaches under Section 1983. Plaintiffs have the
6 burden of proving these claims. Defendants deny these claims
7 and contend that at all relevant times, they acted reasonably.

8 The parties have agreed to certain facts. One,
9 defendants were acting under color of state law as law
10 enforcement officers in the course of their employment for the
11 Sacramento Police Department.

12 Two, in the early morning hours of September 6, 2018,
13 Defendants Edgerton and Cox shot their firearms at decedent
14 Darell Richards and killed him. You must, therefore, treat
15 these facts as having been proved.

16 The evidence you are to consider in deciding what the
17 facts are consists of, one, the sworn testimony of any witness;
18 two, the exhibits that are admitted into evidence; three, any
19 facts to which the lawyers have agreed; and four, any facts
20 that I may instruct you to accept as proved.

21 In reaching your verdict, you may consider only the
22 testimony and exhibits received into evidence. Certain things
23 are not evidence, and you may not consider them in deciding
24 what the facts are. I will list them for you: One, arguments
25 and statements by lawyers are not evidence. The lawyers are

1 not witnesses. What they have said in their opening
2 statements, closing arguments, and at other times is intended
3 to help you interpret the evidence, but it is not evidence. If
4 the facts as you remember them differ from the way the lawyers
5 have stated them, your memory of them controls.

6 Two, questions and objections by lawyers are not
7 evidence. Attorneys have a duty to their clients to object
8 when they believe the question is improper under the Rules of
9 Evidence. You should not be influenced by the objection or by
10 the Court's ruling on it.

11 Three, testimony that is excluded or stricken or that
12 you have been instructed to disregard is not evidence and must
13 not be considered.

14 Four, anything you may have seen or heard when the
15 Court was not in session is not evidence. You are to decide
16 the case solely on the evidence received at the trial.

17 Evidence may be direct or circumstantial. Direct
18 evidence is direct proof of a fact, such as testimony by a
19 witness about what that witness personally saw or heard or did.

20 Circumstantial evidence is proof of one or more facts
21 from which you could find another fact. You should consider
22 both kinds of evidence. The law makes no distinction between
23 the weight to be given to either direct or circumstantial
24 evidence. It is for you to decide how much weight to give to
25 any evidence.

1 In deciding the facts in this case, you may have to
2 decide which testimony to believe and which testimony not to
3 believe. You may believe everything a witness says or part of
4 it or none of it.

5 In considering the testimony of any witness, you may
6 take into account, one, the opportunity and the ability of the
7 witness to see or hear or know the things testified to; two,
8 the witness' memory; three, the witness' manner while
9 testifying; four, the witness' interest in the outcome of the
10 case, if any; five, the witness' bias or prejudice, if any;
11 six, whether other evidence contradicted the witness'
12 testimony; seven, the reasonableness of the witness' testimony
13 in light of all the evidence; and eight, any other factors that
14 bear on believability.

15 Sometimes a witness may say something that is not
16 consistent with something else he or she said. Sometimes
17 different witnesses will give different versions of what
18 happened. People often forget things or make mistakes in what
19 they remember.

20 Also, two people may see the same event but remember
21 it differently. You may consider these differences, but do not
22 decide that testimony is untrue just because it differs from
23 other testimony.

24 However, if you decide that a witness has deliberately
25 testified untruthfully about something important, you may

1 choose not to believe anything that witness said. On the other
2 hand, if you think the witness testified untruthfully about
3 some things, but told the truth about others, you may accept
4 the part you think is true and ignore the rest.

5 The weight of the evidence as to a fact is not
6 necessarily dependent on the number of witnesses who testify.
7 What is important is how believable the witnesses were and how
8 much weight you think their testimony deserves.

9 You've heard from expert witnesses who testified to
10 opinions and the reasons for their opinions. This opinion
11 testimony is allowed because of the education or experience of
12 this witness. Such opinion testimony should be judged like any
13 other testimony. You may accept it or reject it and give it as
14 much weight as you think it deserves considering the witness'
15 education and experience, the reasons given for the opinion,
16 and all the other evidence in the case.

17 Plaintiffs bring some of their claims under the
18 Federal Statute 42 USC Section 1983, which provides that any
19 person or persons who under color of state law deprives another
20 of any rights, privileges, or immunity secured by the
21 constitution or laws of the United States shall be liable to
22 the injured parties.

23 In a Section 1983 action, Plaintiffs must demonstrate
24 that the defendant's conduct was the actionable cause of the
25 claimed injury. In order to establish causation on Plaintiffs'

1 excessive force claim, Plaintiffs must establish that
2 defendant's excessive force in violation of the Fourth
3 Amendment was a substantial factor in causing harm to the
4 decedent Darell Richards.

5 A substantial factor is one that a reasonable person
6 would consider to have contributed to the harm. Although the
7 conduct need not be the only cause of the harm, the conduct
8 must be more than a trivial or remote fact.

9 With respect to plaintiffs' claim for excessive force,
10 in general, a seizure of a person is unreasonable under the
11 Fourth Amendment if a police officer uses excessive force in
12 making a lawful arrest and/or in defending himself, others
13 and/or in attempting to stop a fleeing or escaping suspect.

14 Therefore, in order to prove an unreasonable seizure
15 in this case, the plaintiffs must prove by a preponderance of
16 the evidence that the officers used excessive force when they
17 shot and killed Darell Richards. Under the Fourth Amendment, a
18 police officer may use only such force as is, quote,
19 objectively reasonable, close quote, under all of the
20 circumstances.

21 You must judge the reasonableness of a particular use
22 of force from the perspective of a reasonable officer on the
23 scene and not with the 20/20 vision of hindsight. Although the
24 facts known to the officer are relevant to your inquiry, an
25 officer's subjective intent or motive is not relevant to your

1 inquiry.

2 In determining whether Defendants Edgerton and/or Cox
3 used excessive force in this case, consider all of the
4 circumstances known to the officers on this scene, including,
5 one, the nature of the crime or other circumstances known to
6 the officers at the time force was applied; two, whether
7 decedent Darell Richards posed an immediate threat to the
8 safety of the officers or to others; three, whether the
9 decedent Darell Richards was actively resisting arrest or
10 attempting to evade arrest by flight; four, the amount of time
11 the officers had to determine the type and amount of force that
12 reasonably appeared necessary in any changing circumstances
13 during that period; five, the type and amount of force used;
14 six, the availability of alternative methods to take decedent
15 Darell Richards into custody or to subdue decedent Darell
16 Richards; seven, the number of lives at risk: Motorists,
17 pedestrians, police officers, and the parties' relative
18 culpability, i.e., which party created the dangerous situation
19 and which party is more innocent; eight, whether it was
20 practical for the officers to give warning of the imminent use
21 of force and whether such warning was given; nine, whether it
22 should have been apparent to the officers that the person they
23 used force against was emotionally disturbed; ten, whether a
24 reasonable officer would have or should have accurately
25 perceived a mistaken fact; eleven, whether there was a probable

1 cause for a reasonable officer to believe that the suspect had
2 committed a crime involving the infliction or threatened
3 infliction of serious physical harm; twelve, whether there were
4 opportunities to deescalate the situation and use verbal
5 commands; and thirteen, whether decedent Darell Richards was
6 surrounded and/or outnumbered.

7 Probable cause exists when under all of the
8 circumstances known to the officers at the time, an objectively
9 reasonable police officer would have concluded there is a fair
10 probability that the decedent Darell Richards has committed or
11 was committing a crime.

12 Officers are not permitted to use deadly force against
13 a person unless the person poses a significant and imminent
14 threat of death or serious physical injury to the officers or
15 others at the time the force is used.

16 With respect to plaintiffs' claim for loss of familial
17 relationship, in general, a parent has a constitutional right
18 to use a familial relationship with his or her child. In order
19 for Plaintiffs Ted Richards, Jr. and Khoua Vang to prove that
20 Defendants Cox and Edgerton interfered with their familial
21 relationship with their son, decedent Darell Richards,
22 plaintiffs must prove by a preponderance of the evidence that
23 the defendants' conduct shocks the conscience.

24 There are two tests used to decide whether the
25 officers' conduct shocks the conscience. The state officials'

1 conduct may shock the conscience if, one, the official acted
2 with a purpose to harm the victim for reasons unrelated to
3 legitimate law enforcement objectives; or two, the official
4 acted with deliberate indifference to the victim.

5 Which test applies turns on the specific circumstances
6 of the underlying events in each case. If the encounter at
7 issue escalated so quickly that the officers had to make a snap
8 judgment, the plaintiffs must show the officers acted with a
9 purpose to harm.

10 However, if the situation evolved within a time frame
11 that allowed officers to reflect before acting, the plaintiffs
12 must show the officers acted with deliberate indifference.

13 With respect to plaintiffs' claim for
14 negligence/wrongful death, a peace officer may use deadly force
15 only when necessary in the defense of human life. Plaintiffs
16 claim that defendants were negligent in using deadly force to
17 arrest or prevent the escape by decedent Darell Richards.

18 To establish this claim, plaintiffs must prove all of
19 the following: One, that defendants and/or Cox were peace
20 officers; two, that defendants Edgerton and/or Cox used deadly
21 force on decedent Darell Richards; three, that defendants
22 Edgerton and/or Cox's use of deadly force was not necessary to
23 defend human life; four, that decedent Darell Richards was
24 killed; and five, that defendants Edgerton and/or Cox's use of
25 deadly force was a substantial factor in causing decedent

1 Darell Richards' death.

2 Defendant's Edgerton and/or Cox's use of deadly force
3 was necessary to defend human life only if a reasonable officer
4 in the same situation would have believed, based on the
5 totality of the circumstances known to or perceived by
6 Defendants Edgerton and/or Cox at the time, that deadly force
7 was necessary to defend against an imminent threat of death or
8 serious bodily injury to Defendants Edgerton, Cox, or to
9 another person.

10 A peace officer must not use deadly force against
11 persons based only on the danger those persons pose to
12 themselves if an objectively reasonable officer would believe
13 the person does not pose an imminent threat of death or serious
14 bodily injury to the peace officer or to another person.

15 A person being arrested has a duty not to use force to
16 resist a peace officer unless the peace officer is using
17 unreasonable force.

18 Quote, "deadly force," close quote, is force that
19 creates a substantial risk of causing death or serious bodily
20 injury. It is not limited to the discharge of a firearm. A
21 threat of death or serious bodily injury is, quote, "imminent,"
22 close quote, if based on the totality of the circumstances a
23 reasonable officer in the same situation would believe that a
24 person has the present ability, opportunity, and apparent
25 intent to immediately cause death or serious bodily injury to

1 the peace officer or to another person.

2 An imminent harm is not merely a fear of future harm
3 no matter how great the fear and no matter how great the
4 likelihood of the harm, but is one that, from appearances, must
5 be instantly confronted and addressed.

6 Quote, "totality of the circumstances," close quote,
7 means all facts known to or perceived by the peace officers at
8 the time, including the conduct of Defendants Edgerton and Cox
9 and decedent Darell Richards, leading up to the use of deadly
10 force.

11 In determining whether Defendants Edgerton and/or
12 Cox's use of deadly force was necessary, in defense of human
13 life, you must consider Defendants' Edgerton and/or Cox's
14 tactical conduct and decisions before using deadly force on
15 decedent Darell Richards and whether defendants Edgerton and/or
16 Cox used other available resources and techniques as
17 alternatives to deadly force if it was reasonably safe and
18 feasible to an objectively reasonable officer.

19 A peace officer who makes or attempts to make an
20 arrest does not have to retreat or stop because the person
21 being arrested is resisting or threatening to resist. Tactical
22 repositioning or other deescalation tactics are not retreat. A
23 peace officer does not lose the right to self-defense by using
24 objectively reasonable force to arrest, prevent escape, or
25 overcome resistance. If you find that plaintiffs have proven

1 this claim against Defendants Edgerton and/or Cox, you may find
2 that Defendant Sood and the City of Sacramento are also
3 vicariously liable for damages, if any, to the plaintiffs.

4 Defendants claim that decedent Darell Richards' own
5 negligence contributed to his harm. To succeed on this
6 affirmative defense, Defendants City of Sacramento, Edgerton,
7 Sood, and Cox must prove both of following: One, that decedent
8 Darell Richards was negligent; and two, that decedent Darell
9 Richards' negligence was a substantial factor in causing his
10 harm.

11 If defendants prove the above, plaintiffs' damages are
12 reduced by your determination of the percentage of decedent's
13 responsibility. I will calculate the actual reduction.

14 A substantial factor in causing harm is a factor that
15 a reasonable person would consider to have contributed to the
16 harm. It must be more than a remote or trivial factor. It
17 does not have to be the only cause of the harm.

18 A person's negligence may combine with another factor
19 to cause harm. If you find that Defendants Edgerton and/or
20 Cox's negligence was a substantial factor in causing decedent
21 Darell Richards' harm, then defendants are responsible for the
22 harm. Defendants cannot avoid responsibility just because some
23 other person, condition, or event was also a substantial factor
24 in causing decedent Darell Richards' harm.

25 With respect to plaintiffs' claim that defendants

1 intentionally interfered with or attempted to interfere with
2 defendants' civil rights by threats, intimidation, or coercion,
3 a Bane Act claim, to establish this Bane Act claim, plaintiffs
4 must prove all of the following: 1a, that by threats,
5 intimidation, or coercion, defendants Edgerton and/or Cox
6 caused decedent Darell Richards to reasonably believe that
7 defendants would use unreasonable force against him; or 1b,
8 that Defendants Edgerton and/or Cox used unreasonable force
9 deliberately and/or with reckless disregard for decedent Darell
10 Richards' constitutional right to be free from excessive force;
11 two, that decedent Darell Richards was harmed; and three, that
12 Defendants Edgerton and/or Cox's conduct was a substantial
13 factor in causing decedent Darell Richards harm.

14 If you find that plaintiffs have proven this claim
15 against Defendants Edgerton and/or Cox, then you may find that
16 the Defendant City of Sacramento is also vicariously liable for
17 damages, if any, to the plaintiffs.

18 One may authorize another to act on one's behalf in
19 transactions with third persons. This relationship is called,
20 quote, "agency," close quote. The person given the authority
21 is called the, quote, "principal," close quote. The person to
22 whom authority is given is called the, quote, "agent," close
23 quote. When this relationship exists, a principal may be
24 liable for the actions of its agent. This is known as, quote,
25 "vicarious liability," close quote.

1 In this case, the parties have stipulated that
2 Defendants Edgerton and Cox are agents of Defendant Sood and
3 the City of Sacramento. The parties have also stipulated that
4 defendants Edgerton and Cox were acting within the scope of
5 their employment when the incident occurred. Defendant Sood
6 and/or the City of Sacramento are thus vicariously responsible
7 for any harm caused by defendants Edgerton and/or Cox's
8 negligence and/or violation of the Bane Act.

9 With respect to Plaintiffs' Section 1983 claim for
10 supervisory liability against Defendant Sood, Plaintiffs must
11 prove each of the following elements by a preponderance of the
12 evidence: One, Officer Sood acted under color of state law;
13 two, the acts or failure to act of Officer Sood's subordinates,
14 Officers Edgerton and/or Cox, deprived the decedent Darell
15 Richards of his particular rights under the United States
16 Constitution as explained in previous instructions; three,
17 Officer Sood directed his subordinates in the acts or failure
18 to act that deprived the decedent Darell Richards of these
19 rights, or Officer Sood set in motion a series of acts by his
20 subordinates or knowingly refused to terminate a series of acts
21 by his subordinates that he knew or reasonably should have
22 known would cause the subordinates to deprive the decedent
23 Darell Richards of these rights, or (a), Officer Sood knew that
24 his subordinates were engaging in these acts and knew or
25 reasonably should have known that the subordinates' conduct

1 would deprive the decedent Darell Richards of these rights, and
2 (b), Officer Sood failed to act to prevent his subordinates
3 from engaging in such conduct, or Officer Sood engaged in
4 conduct that showed a reckless or callous indifference to the
5 deprivation by the subordinates of the rights of others; and
6 four, Officer Sood's conduct was so closely related to the
7 declaration of the plaintiffs' rights as to be the moving force
8 that caused the ultimate injury.

9 A person acts, quote, "under color of state law,"
10 close quote, or purports to act in the performance of official
11 duties under any state, county, or municipal law, ordinance, or
12 regulation. The parties have stipulated that Officer Sood
13 acted under color of state law.

14 If you find the plaintiffs have proved each of these
15 elements, and if you find that the plaintiffs have proved all
16 the elements that are required to prove, they are required to
17 prove under instructions Numbers 14 and Number 16, that deal
18 with the particular rights, your verdict should be for the
19 plaintiffs.

20 If, on the other hand, you find that the plaintiffs
21 have failed to prove any one or more of these elements, your
22 verdict should be for Defendant Sood.

23 It is the duty of Court to instruct you about the
24 measure of damages. By instructing you on damages, the Court
25 does not mean to suggest for which party your verdict should be

1 rendered. If you find for the plaintiffs on any of the
2 plaintiffs' claims for, one, excessive force; two, loss of
3 familial relationship; three, negligence/wrongful death; four,
4 Bane Act; and/or five, supervisory liability, you must
5 determine the plaintiffs' damages.

6 Plaintiffs have the burden of proving damages by a
7 preponderances of the evidence. Damages means the amount of
8 money that will reasonably and fairly compensate the plaintiffs
9 for any injury you find was caused by the defendants.

10 You should consider the following: On plaintiffs'
11 claims for loss of familial relationship with the decedent
12 Darell Richards and negligence/wrongful death, you should
13 consider the following noneconomic damages: One, the past and
14 future loss of decedent Darell Richards' love, companionship,
15 comfort, care, assistance, affection, society, and moral
16 support.

17 On plaintiffs' claim brought on behalf of decedent
18 Darell Richards for the alleged use of excessive force, under
19 the Fourth Amendment, the Bane Act, and supervisory liability,
20 you should consider the following: One, the nature and extent
21 of decedent's injuries; two, decedent's loss of life; and
22 three, mental, physical, and emotional pain and suffering
23 decedent experienced before his death.

24 No fixed standard exists for deciding the amount of
25 noneconomic damages. You must use your judgment to decide a

1 reasonable amount based on the evidence and your common sense.
2 Your award must be based upon evidence and not upon speculation
3 and guesswork or conjecture.

4 If you find for plaintiffs, you may but are not
5 required to award punitive damages. The purpose of punitive
6 damages are to punish defendants and to deter similar acts in
7 the future. Punitive damages may not be awarded to compensate
8 plaintiffs.

9 Plaintiffs have the burden of proving by a
10 preponderance of the evidence that punitive damages should be
11 awarded for their excessive force, loss of familial
12 relationship, and supervisory liability claims, and if so, the
13 amount of any such damages.

14 Plaintiffs have the burden of proving by clear and
15 convincing evidence that punitive damages should be awarded for
16 their negligence/wrongful death and Bane Act claims, and if so,
17 the amount of any such damages.

18 You may award punitive damages only if you find that
19 Defendants Edgerton, Cox's, and/or Sood's conduct that harmed
20 plaintiffs was malicious, oppressive, or in reckless disregard
21 of the plaintiffs' rights. Conduct is malicious if it's
22 accompanied by ill will or spite, or if it is for the purpose
23 of injuring the plaintiffs.

24 Conduct is in reckless disregard of plaintiffs' rights
25 if under the circumstances it reflects complete indifference to

1 the plaintiffs' safety or rights or if the defendants' act in
2 the face of perceived risk, that its actions will violate the
3 plaintiffs' rights under federal law.

4 An act or omission is oppressive if the defendants
5 injure or damage or otherwise violate the rights of plaintiffs
6 with unnecessary harshness or severity, such as by misusing or
7 abusing authority or power or by taking advantage of some
8 weakness or disability or misfortune of plaintiffs.

9 If you find that punitive damages are appropriate, you
10 must use reason in setting the amount. Punitive damages, if
11 any, should be in an amount sufficient to fulfill their
12 purposes but should not reflect bias, prejudice, or sympathy
13 toward any party.

14 In considering the amount of any punitive damages,
15 consider the degree of reprehensibility of defendants' conduct,
16 including whether the conduct that harmed plaintiffs was
17 particularly reprehensible because it also caused actual harm
18 or posed a substantial risk of harm to people who are not
19 parties to the case.

20 You may not, however, set the amount of any punitive
21 damages in order to punish the defendants for harm to anyone
22 other than plaintiffs in this case. In addition, you may
23 consider the relationship of any award or punitive damages to
24 any actual harm inflicted on plaintiffs.

25 You may impose punitive damages against one or more of

1 these three defendants and not others and may award different
2 amounts against different defendants. Punitive damages may be
3 awarded even if you award plaintiffs only nominal or not
4 compensatory damages.

5 The law that applies to this case authorizes an award
6 of nominal damages on the claims for excessive force, loss of
7 familial relationship, and supervisory liability. If you find
8 for the plaintiffs, but you find that plaintiffs have failed to
9 prove damages as defined in these instructions, you must award
10 nominal damages. Nominal damages may not exceed one dollar.

11 The arguments of the attorneys are not evidence of
12 damages. Your award must be based on your reasoned judgment
13 applied to the testimony of the witnesses and the other
14 evidence that has been admitted during trial.

15 In determining damages for plaintiffs, you should take
16 into account how long plaintiffs will probably live, as well as
17 how long decedent Darell Richards would probably have lived.
18 According to the vital statistics of the United States
19 published by the National Center for Health Statistics, a
20 19-year-old man is expected to live another 58.01 years.
21 Darell Richards was 19 years of age when he died.

22 According to the vital statistics of the United
23 States, a 45-year-old woman is expected to live another 38.08
24 years. Plaintiff Khoua Vang is 45 years of age.

25 According to the vital statistics of the United

1 States, a 41-year-old man is expected to live another 37.84
2 years. Plaintiff Ted Richards, Jr. is 41 years of age.

3 These are average life expectancies. Some people live
4 longer and others die sooner. This published information is
5 evidence of how long a person is likely to live but is not
6 conclusive in deciding a person's life expectancy. You should
7 also consider among other factors that person's health habits,
8 activities, lifestyle, and occupation.

9 Before you begin your deliberations, elect one member
10 of the jury as your presiding juror, the presiding juror will
11 preside over the deliberations and serve as the spokesperson
12 for the jury in court. You shall diligently strive to reach
13 agreement with all of the other jurors, if you can do so. Your
14 verdict must be unanimous. Each of you must decide the case
15 for yourself, but you do so only after you have considered all
16 the evidence, discussed it fully with the other jurors, and
17 listened to their views.

18 It is important that you attempt to reach a unanimous
19 verdict, but of course only if each of you can do so after
20 having made your own conscientious decision.

21 Do not be unwilling to change your opinion if the
22 discussion persuades you that you should, but do not come to a
23 decision simply because other jurors think it is the right --
24 it is right or change an honest belief about the weight and
25 effect of the evidence simply to reach a verdict.

1 Because you must base your verdict only on the
2 evidence received in the case and on these instructions, I
3 remind you that you must not be exposed to any other
4 information about the case or to the issues it involves.

5 Except for discussion with the case with your fellow
6 jurors during your deliberations, do not communicate with
7 anyone in any way, and do not let anyone else communicate with
8 you in any way about the merits of the case or anything to do
9 with it. This includes discussion of the case in person, in
10 writing, by phone or electronic means, via e-mail, via text
11 messaging, or any Internet chat room, blog, website or
12 application, including, but not limited to, Facebook, YouTube,
13 Twitter, Instagram, LinkedIn, Snapchat, or any other forms of
14 social media. This applies to communicating with your family
15 members, your employer, the media or press, and the people
16 involved in the trial.

17 If you are asked or approached in any way about your
18 jury service or anything about this case, you must respond that
19 you have been ordered not to discuss the matter and to report
20 the contact to the Court. Do not read, watch, or listen to any
21 news or media accounts or commentary about the case or anything
22 to do with it, although I have no information that there will
23 be news reports about this case.

24 Do not do any research, such as consulting
25 dictionaries, searching the Internet, or using other reference

1 materials. Do not make any investigation or in any other way
2 try to learn about the case on your own. Do not visit or view
3 any place discussed in the case, and do not use Internet
4 programs or other devices to search for or view any place
5 discussed during the trial.

6 Also, do not do any research about this case, the law,
7 or the people involved, including the parties, the witnesses,
8 or the lawyers, until you've been excused as jurors. If you
9 happen to read or hear anything touching on this case in the
10 media, turn away and report it to me as soon as possible.

11 These rules protect each party's right to have the
12 case decided only on the evidence that's been presented here in
13 court.

14 Witnesses here in court take an oath to tell the
15 truth, and the accuracy of their testimony is tested through
16 the trial process. If you do any research or investigation
17 outside the courtroom, or gain any information through improper
18 communications, then your verdict may be influenced by
19 inaccurate, incomplete, or misleading information that has not
20 been tested by the trial process.

21 Each of the parties is entitled to a fair trial by an
22 impartial jury, and if you decide the case based on the
23 information not presented in court, you will have denied the
24 parties a fair trial.

25 Remember, you have taken an oath to follow the rules,

1 and it is very important that you follow these rules. A juror
2 who violates these restrictions jeopardizes the fairness of
3 these proceedings, and a mistrial could result that would
4 require the entire trial process to start over. If any juror
5 is exposed to any outside information, please notify the Court
6 immediately.

7 If it becomes necessary during your deliberations to
8 communicate with me, you may send a note through the courtroom
9 deputy, signed by any one or more of you. No member of the
10 jury should ever attempt to communicate with me except by a
11 signed writing. I will not communicate with any member of the
12 jury on anything concerning the case, except in writing or here
13 in open court. If you send out a question, I will consult with
14 the lawyers before answering it, which may take some time. You
15 may continue your deliberations while waiting for the answer to
16 any question.

17 Remember, you're not to tell anyone, including the
18 Court, how the jury stands, whether in terms of vote count or
19 otherwise until after you have reached a unanimous verdict or
20 have been discharged.

21 Finally, a verdict form has been prepared for you.
22 After you have reached unanimous agreement on a verdict, your
23 presiding juror should complete the verdict form according to
24 your deliberations, sign and date it, and advise the courtroom
25 deputy that you are ready to return to the courtroom.

1 Couple things about the verdict form: Whoever the
2 presiding juror is -- do you have a verdict form?

3 THE CLERK: Yes.

4 THE COURT: -- make sure it's filled out correctly.
5 Once it is filled out, have the other jurors look at it to make
6 sure it's filled out correctly. There are questions, just
7 follow through on the questions, Questions 1 through 5. And
8 after each question, there are instructions whether you proceed
9 or where you go. Make sure it's dated and signed.

10 Once you reach a verdict, the foreperson should hang
11 onto the verdict. Just notify us that you reached a verdict,
12 and then I'll take the verdict here from you in open court.

13 So again, it's self-explanatory. There are 12
14 questions, and for 11 and 12, there's A and B parts. Just make
15 sure it's filled out carefully and correctly.

16 We've taken your lunch orders. We will have you
17 proceed to lunch. I think you will have lunch in the jury
18 room. From this point forward, you will stay together. If you
19 do take a break, bathroom break or whatever, you cannot in any
20 way discuss that case with anyone. And if, for example, two of
21 you break off for a few minutes, no discussion of the case can
22 occur.

23 So the foreperson only has to enforce the rule that
24 the only time you are discussing this case is when all eight of
25 you are in the room. I'm not going to take away your cell

1 phones, laptops, i-Pads. I'll leave it up to the foreperson to
2 make sure those aren't on, aren't used in any way. And if
3 someone for some reason is looking at their cell phone or iPad
4 or other device, just politely tell them, "You got to turn it
5 off while you are deliberating."

6 The exhibits are sent into the room with you. They're
7 ready to go. Other than the video exhibits, if you do want to
8 see video evidence, just send a note out, and we have to play
9 it here in open court.

10 I would ask you to go until about 4:00 today. If you
11 want to leave a little earlier, that's fine. If you do not
12 reach a verdict today, then you are going to come back at 9
13 a.m. tomorrow. Gabe will tell you where to report. And again,
14 remember, no discussion of the case, no deliberations until all
15 eight of you are in the room.

16 Okay. Take your notebooks in with you, and then as I
17 said, we'll have Gabe bring in the exhibits for you.

18 Okay. We will buy you lunch every day. So hopefully
19 you will enjoy your lunch, and we will have a court security
20 officer also be with you most of the time.

21 Go ahead. Swear them in.

22 (Jury members sworn.)

23 THE COURT: Okay. Thank you. Go into your room,
24 begin your deliberations.

25 By the way, you don't have to send a question out for

1 me asking if you can take a break. It's up to you guys how
2 long you do that. Just let us know when you're done for the
3 day so we know that you've taken off.

4 Again, no outside information allowed, just exhibits
5 and your notes.

6 (In open court, outside the presence of the jury.)

7 THE COURT: Outside the presence of the jury, they're
8 going to have lunch. Usually, I require that you be within a
9 few minutes of the courtroom, but nothing's really going to
10 happen for an hour and a half or so. So go ahead and grab
11 lunch, take a break, but I will enforce the five-minute rule
12 starting about 1:30. We'll let you know when they leave.

13 We'll let you know right away when we get a question,
14 and no answer will go into the jury before I talk to all of
15 you. I won't wait for all lawyers. As long as I have one
16 lawyer on each side, we'll go with the question and we'll send
17 in the answer.

18 The issue I raised this morning about Juror Number 1
19 isn't a basis as a matter of law for qualifying her. The cases
20 indicate you really sort of have to bring in a Bible and read
21 the Bible during deliberations and things like that, which
22 isn't the case, but we have instructed her -- or reminded her
23 not to do that during deliberations.


24 Questions? Comments?

25 MR. BUELNA: Only one thing, Your Honor. We haven't

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

EXHIBIT 3

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

1 SACRAMENTO, CALIFORNIA, MONDAY, OCTOBER 17, 2022

2 --o0o--

3 (In open court, outside the presence of the jury.)

4 THE CLERK: Please remain seated and come to order.
5 The Court is now in session. The Honorable John A. Mendez,
6 Senior United States District Judge, presiding.

7 THE COURT: Outside the presence of the jury.

8 One question for the plaintiffs: In your Second
9 Amended Complaint you have eight claims, unless I'm missing
10 something. I didn't see any jury instructions, and maybe I
11 just missed them, for assault or battery; did you submit any?

12 MR. BUELNA: No. We're voluntarily dismissing those
13 claims, Your Honor.

14 THE COURT: Okay. Thank you.

15 So the record will reflect that the sixth cause of
16 action for assault against Defendants Edgerton, Cox and City of
17 Sacramento is dismissed. And the seventh claim for battery
18 against the same three Defendants is dismissed. Thank you for
19 that.

20 Who's going to be the first witness today?

21 MR. BUELNA: Lieutenant Sood, Your Honor.

22 THE COURT: Okay. Let's bring in the jury.

23 (In open court, in the presence of the jury.)

24 THE COURT: All right. All jurors present. All
25 parties present.

Lieutenant Sood - Direct by Buelna

1 2022, this year.

2 Q. Okay. And prior to that, what was your position?

3 A. Prior to that I was the executive lieutenant for the
4 central command for two years prior, from 2019 to
5 December 2021.

6 Q. And what does that comprise, that role?

7 A. Executive lieutenant basically works directly under the
8 captain of the command. So any time -- basically runs the
9 commands and administrative responsibilities. So any time the
10 captain is not there, the second lieutenant would take on that
11 role.

12 Q. Okay. And prior to that, at about the time of the
13 incident, being September 2018, what was your assignment?

14 A. I was a lieutenant, and I was assigned to patrol as a
15 Watch Commander.

16 Q. And what does that mean to be a watch commander?

17 A. A watch commander is the -- for patrol purposes, you have
18 CSOs, patrol officers, sergeants and then you have lieutenants
19 who are watch commanders, and they oversee the operations --
20 the police operations of a certain shift.

21 Q. And what was your shift?

22 A. At that time it was graveyard.

23 Q. Okay. Now, if there two watch commanders, one watch
24 commanders at a time?

25 A. It depends. Ideally, we like to have two watch commanders

Lieutenant Sood - Direct by Buelna

1 to divide the city up into two sections. At that -- during
2 that night there was two watch commanders.

3 Q. Were you on the north side or the south side of the city?

4 A. I was on the south side of the city.

5 Q. Which is where the incident took place; correct?

6 A. Correct.

7 Q. Now, you haven't always been a lieutenant; right?

8 A. Correct.

9 Q. When did you first start your employment with the City of
10 Sacramento?

11 A. I started my employment with the City of Sacramento Police
12 Department in 2004.

13 Q. And was that the first law enforcement agency you had been
14 hired by?

15 A. It was.

16 Q. So is it fair to say that you've been with the City of
17 Sacramento your entire career?

18 A. That is true, that's correct.

19 Q. And when did you receive your first promotion?

20 A. Well, I became a -- in 2004 I was what they call a pre
21 hire, kind of like an intern, so waiting to go to the Academy.
22 In 2000 -- January 2005 I attended our Sacramento Police
23 Academy. Six months after that I graduated and became a sworn
24 peace officer.

25 Six months into that I had to do what's called field

Lieutenant Sood - Direct by Buelna

1 training where you ride with another officer. So when I
2 successfully passed that, I became a solo police officer, and
3 then I ended up being a field training officer myself several
4 years after.

5 And then in 2014, I believe, I became a sergeant.

6 Q. Okay. So it sounds like between essentially 2006 and 2014
7 you were a patrol officer with some additional responsibilities
8 for field training; is that correct?

9 A. Correct, and other specialized units in that time.

10 Q. And I heard you say you made sergeant in 2004. Is that a
11 patrol sergeant or some other sergeant?

12 A. That's a patrol sergeant, yes.

13 Q. What are the responsibilities of a patrol sergeant?

14 A. You have a specific area, geographic area, smaller than
15 obviously a watch commander, and you have a specific team of
16 officers that you oversee.

17 Q. And so as a patrol sergeant, you're responsible for
18 supervising patrol officers and ensuring that they're complying
19 with the policies and training of the City of Sacramento Police
20 Department; correct?

21 A. Correct.

22 Q. And then sometime later after 2014 you were promoted
23 again?

24 A. Yes.

25 Q. What year was that?

Lieutenant Sood - Direct by Buelna

1 A. That was December of 2017.

2 Q. So in December of 2017 you were promoted to lieutenant?

3 A. Correct.

4 Q. And were you promoted to the position of lieutenant with
5 the assignment of being a watch commander?

6 A. Yes. The common thing is when you're newly promoted, it's
7 back to patrol as a watch commander.

8 Q. Now, can you just explain to us the difference a little
9 bit of the supervisory responsibilities between a patrol
10 sergeant and a watch commander?

11 A. That's a very, very broad question, so I'll try to
12 summarize it as best I can.

13 So a watch commander, like we talked about, is in charge
14 of usually the whole city or half the city. In this specific
15 incident it was just half the city.

16 You oversee all the operations of the police department,
17 field operations for that particular shift. So you ensure that
18 all policies are being adhered to. Any incidences that may
19 have political ramification or officer injuries or serious
20 citizen injuries, or anything that can affect the community on
21 a larger scale, the lieutenant responds and ensures that those
22 situations are handled appropriately. And, of course, all
23 critical instances lieutenant watch commanders respond.

24 Q. And that would include a call, for example, of an armed
25 subject or an armed suicidal subject; right?

Lieutenant Sood - Direct by Buelna

1 A. Correct.

2 Q. And you would be the -- one of the -- you would actually
3 be the final authority on making tactical and strategic
4 decisions related to those calls; correct?

5 A. That is correct.

6 Q. Now, you obviously, even as a lieutenant, have to abide by
7 all the policies and trainings of your department as well;
8 correct?

9 A. Absolutely.

10 Q. I'm sure you've already seen it, but I'm going to show you
11 Exhibit -- Trial Exhibit 33, which is the Hostage Manual. So
12 just give me a moment here.

13 A. No problem.

14 Q. Do you recognize what this is, Lieutenant Sood?

15 A. I do.

16 Q. What is that?

17 A. It's our Sacramento Police Department's Hostage Manual.

18 Q. And obviously -- and I'm going to go down here to the
19 revision date. Do you see the revision date?

20 A. Yes. It says February of 1995.

21 Q. So is it fair to say that this was in policy at the time
22 of the incident?

23 A. Yes.

24 Q. Now obviously you've been sitting here every day, at least
25 that I've seen you, sitting here watching the testimony; right?

Lieutenant Sood - Direct by Buelna

1 A. Correct.

2 Q. Okay. So I'm not going to go through the portions that I
3 went through with other defendants. I'm going to fast forward
4 to a portion that I think may apply to you.

5 And you agree with all the trainings and policies that are
6 contained in that document; correct?

7 A. Yeah, I adhere to all department policies.

8 Q. Do you see here on Subsection D where it's highlighted?

9 A. Yes.

10 Q. This is a part of the initial authority response of a
11 critical incident involving hostage situations or armed
12 suicidal subjects not necessarily barricaded; correct?

13 A. Correct.

14 Q. And you see here it says, "Initial authority" -- I'm going
15 to read from it, "Initial authority includes the responsibility
16 to order the response of a SWAT team and a Negotiations Team.
17 Their response is mandatory." Do you agree with that
18 statement?

19 A. Correct. Yes, I do.

20 Q. Now, during this incident, what was the first thing that
21 brought your attention to the incident?

22 A. We received a call. So as a watch commander we have a
23 police radio, and we scan all channels to keep an ear out for
24 all important, critical incidences.

25 So this one came through dispatch, voiced it over the

Lieutenant Sood - Direct by Buelna

1 radio saying that there was a subject on Broadway wearing a
2 mask waving a gun at citizens.

3 Q. Okay. Once you heard that, what was your response?

4 A. Well, initially you listen and you let your sergeants
5 basically take the first role as far as giving direction. In
6 situations like that, I automatically start driving towards the
7 location, because it may turn into a critical incident, which
8 this one did, so that way I'm over there, and I'm actually
9 already keen to all the details that are related to it.

10 Q. You also -- one of the responsibilities you have, if time
11 permits, is to set up a control center essentially, correct, or
12 a command center?

13 A. If incidences call for that, we essentially establish
14 what's called a command post.

15 Q. Did you do that in this incident?

16 A. In this incident, yes, we did establish a command post.

17 Q. Now, you did -- you did call out the SWAT team, correct,
18 to this incident?

19 A. I did.

20 Q. And you actually held a briefing for them; correct?

21 A. I did.

22 Q. And at that briefing you informed your SWAT team that you
23 had established a perimeter in which you believed the suspect
24 was within; correct?

25 A. That's correct.

Lieutenant Sood - Direct by Buelna

1 Q. You also let them know that there was an air unit that had
2 responded to this incident as well; correct?

3 A. Initially had an air unit, yes.

4 Q. And that's -- that air unit assisted in creating that
5 perimeter; correct?

6 A. It did.

7 Q. And you also let them know that a backpack was located by
8 a Sacramento police officer; correct?

9 A. Correct.

10 Q. And that at that point you believed the backpack actually
11 belonged to the person you were pursuing; correct?

12 A. Correct. We felt it was a high probability that the
13 person who was fleeing was the person that we may have
14 identified from the backpack, yes.

15 Q. All right. And that backpack was located prior, or
16 recovered prior to the SWAT being called out; correct?

17 A. That is correct.

18 Q. And with the help of the contents of that backpack --
19 strike that.

20 Because you believed the backpack belonged to the person
21 you were looking for, you knew that it may be a resource for
22 potentially very important information; correct?

23 A. Correct.

24 Q. And you were actually able to identify who you believed
25 the person to be through that backpack; correct?

Lieutenant Sood - Direct by Buelna

1 A. Correct.

2 Q. You were able to identify the person as Darell Richards;
3 correct?

4 A. Correct.

5 Q. And after scouring the contents of that backpack, you were
6 able to update your SWAT team on some of Darell's history and
7 contacts with the police prior to the incident; correct?

8 A. Correct. But I personally did not scour the contents of
9 the backpack. I was only told information that was in it from
10 a different officer.

11 Q. Now, when you --

12 THE COURT: Sorry to interrupt, let me ask a question.
13 You were able to update the SWAT team, was that you personally?

14 THE WITNESS: I updated the SWAT team personally, Your
15 Honor, yes, but only based on the information that was told to
16 me from the officer who went through the backpack. I
17 personally did not go through the backpack myself.

18 THE COURT: Okay, great.

19 BY MR. BUELNA:

20 Q. Now, you obviously didn't prepare any report in
21 relationship to this incident; correct?

22 A. I did not, no.

23 Q. Obviously, you knew, even at the time of the incident,
24 that it was an extremely serious situation because you had a
25 potentially armed 19-year old and officers responding to him in

Lieutenant Sood - Direct by Buelna

1 a backyard; correct?

2 A. Correct.

3 Q. Now, during that briefing do you remember telling officers
4 that you had recovered what you believed to be a suicide note?

5 A. That is false.

6 Q. You don't recall telling them that; right?

7 A. I didn't tell them that. I told them that a school
8 assignment was located in the backpack with the name of "Darell
9 Richards" on it. It was a school assignment.

10 Q. I'm going to read now from a deposition designated from
11 Defendant Cox, Page 35, Lines 6 through 16.

12 THE COURT: Hang on.

13 MR. BUELNA: It's a prior party deponent admission.

14 MR. RICHMOND: Repeat the location, please.

15 MR. BUELNA: Sure. Page 35, Lines 6 through 16.

16 THE COURT: Line what?

17 MR. BUELNA: 6 through 16.

18 THE COURT: The problem is he's talking about
19 something that someone else told, so there's a hearsay issue,
20 but he doesn't identify the speaker. If you're trying to
21 impeach this witness, you need --

22 MR. BUELNA: I'm not impeaching him. I'm just reading
23 depo designation as a party opponent admission into the record,
24 that's it. It's relevant.

25 MR. RICHMOND: Objection, Your Honor.

Lieutenant Sood - Cross and Direct by Richmond

1 Q. So one with a motion sensor and one was the one we just
2 described, which is from Mr. Foster's backyard; correct?

3 A. Correct.

4 Q. No more than that; correct?

5 A. I believe so, correct.

6 Q. Obviously the perimeter you had established, and we had
7 looked at it, was over that -- part of a city block; correct?

8 A. Correct.

9 Q. And there was an alleyway that cut that block; correct?

10 A. Correct.

11 Q. And so once the officer set the perimeter, which was on
12 the four corners, you believed that Darell, the person you were
13 searching for, was still within that perimeter; correct?

14 A. We believe so, yes.

15 Q. And you don't recall telling your SWAT team that
16 Mr. Darell Richards had mental health issues; correct?

17 A. I don't recall saying that.

18 MR. BUELNA: No further questions at this time, Your
19 Honor.

20 THE COURT: Cross/Direct.

21 CROSS-EXAMINATION AND DIRECT EXAMINATION

22 BY MR. RICHMOND:

23 Q. Good morning, lieutenant.

24 A. Good morning, sir.

25 Q. You had been asked about a perimeter being established,

Lieutenant Sood - Cross and Direct by Richmond

1 that was your directive, correct, to have that perimeter
2 established?

3 A. Correct.

4 Q. And the purpose of that being what?

5 A. To try to contain the subject in a specific area where he
6 may be in so he couldn't escape and further harm team members.

7 THE COURT: It would be easier if you get closer to
8 the mic.

9 THE WITNESS: Sorry.

10 It's to contain the subject in a specific area so that
11 we may locate him.

12 BY MR. RICHMOND:

13 Q. And are perimeters always successful in locating the
14 person that you're looking for?

15 A. Not always.

16 Q. And you had assistance in establishing the perimeter with
17 an air unit; correct?

18 A. Correct.

19 Q. Is there an air unit that's available to the police
20 department at all times?

21 A. Ideally we try to have air support 24/7, but that's not
22 always the case.

23 Q. When you say "air support," there is air support from
24 different agencies, not just the Sacramento Police Department;
25 correct?

Lieutenant Sood - Cross and Direct by Richmond

1 A. Correct.

2 Q. What other agencies provide that support?

3 A. Primarily we work with the Sheriff's Department and
4 sometimes the CHP.

5 Q. And in this case, whose air unit was in the air that
6 evening?

7 A. At this time it was CHP.

8 Q. And CHP is communicating from the air down to you, or to
9 whom directly?

10 A. To -- they voice whatever information that they're seeing
11 via radio so that all the officers on the incident can hear it
12 through their police radio.

13 Q. And are they -- so this incident lasted for over three
14 hours; is that right?

15 A. Correct.

16 Q. And is that air unit up in the air that entire time?

17 A. No.

18 Q. Why not?

19 A. Fuel. They often -- they only get about an hour and a
20 half, two hours max of flight time before they have to land and
21 refuel.

22 Q. Do you know if the air unit had to land at any point?

23 A. They did, they did.

24 Q. Do you know what time that was?

25 A. I believe it was at 1 o'clock -- 1:00 in the morning,

Lieutenant Sood - Redirect and Cross by Buelna

1 A. A BearCat is -- I think it was described earlier. It's an
2 armored -- it's an armored vehicle that has ballistic
3 protection. Imagine a very, very large truck that has
4 bulletproof armor around the whole vehicle.

5 Q. That was actually parked in front or alongside
6 Mr. Foster's house; correct?

7 A. I believe so, yes.

8 Q. And your officers had already made contact with the
9 different residents' houses that they were searching; correct?

10 A. I don't know exactly the order in which they were making
11 contact or exactly how many of them made contact, but I did
12 know that the SWAT, as they were clearing the residences, were
13 attempting to make contact with homeowners, yes.

14 Q. And this sort of search for Darell Richards began around
15 midnight; fair enough?

16 A. I believe SWAT arrived like I believe 1:30 in the morning,
17 so it was after -- it was now September 6.

18 Q. But before SWAT, when patrol officers were pursuing, that
19 started around 11:30?

20 A. Oh, yes, I apologize, yes. The whole incident started,
21 yes, close to midnight.

22 Q. And SWAT responded at 1:30; correct?

23 A. In or around there, yes.

24 Q. And it was approximately 3 a.m. when shots were fired;
25 correct?

Lieutenant Sood - Further Redirect and Recross by Buelna

1 A. Yes.

2 Q. But you never memorialized any of your decision-making
3 analysis into a report; correct?

4 A. Watch commanders don't do reports, usually.

5 MR. BUELNA: That's it.

6 THE COURT: Anything further?

7 MR. RICHMOND: Nothing further.

8 THE COURT: Thank you. You may step down.

9 (Witness is excused.)

10 MR. BUELNA: At this point, Your Honor, I would like
11 to read my deposition testimony.

12 THE COURT: You can read that one question, sure.

13 MR. BUELNA: Thank you.

14 THE COURT: This is from Officer Cox's deposition?

15 MR. BUELNA: Correct.

16 THE COURT: Okay. Go ahead. Page number again.

17 MR. BUELNA: Page --

18 THE COURT: Don't put it up on the screen. Thank you.

19 MR. BUELNA: Page 35, Lines 6 through 16. May I read?

20 THE COURT: Okay, go ahead.

21 MR. BUELNA: Thank you.

22 This is from the deposition of Officer Cox.

23 "Question: Okay. And do you recall what you were
24 told that happened?

25 "Answer: "That there was a subject seen who had --

Cox - Direct by Pointer

1 was walking around. He had a surgical mask covering his face.
2 He was seen at the light rail. He had brandished a handgun.
3 That there was callers from 911 saying that -- giving more
4 details. They had a photograph of the suspect, I believe, from
5 one of the light rail cameras, and I believe he had left a
6 backpack and they had found some sort of -- what they believed
7 at the time to be a suicide note."

8 THE COURT: Okay.

9 MR. BUELNA: Plaintiffs call as their next witness
10 Defendant Patrick Cox.

11 PATRICK COX, PLAINTIFFS' WITNESS, SWORN

12 THE CLERK: Please be seated. Please state and spell
13 your name for the record.

14 THE WITNESS: It's Patrick Cox. P-A-T-R-I-C-K, last
15 name Cox, C-O-X.

16 DIRECT EXAMINATION

17 BY MR. POINTER:

18 Q. Good morning, Officer Cox.

19 A. Good morning, sir.

20 Q. Are you currently a Sacramento police officer?

21 A. I am not.

22 Q. You are currently involved in -- strike that.

23 You are no longer a police officer and you're currently
24 running a business; is that right?

25 A. Yes.

MARYANN VALENOTI - U.S. DISTRICT COURT - (916)930-4275

Cox - Direct by Pointer

1 Q. And that would be the learning domains on the use of force
2 that you and I just went over; correct?

3 A. As well as practical, yes.

4 Q. And those learning domains that we just went over, are
5 those -- are those subjects and topics every police officer is
6 required to know; correct?

7 A. Yes.

8 Q. Now, I'd like to draw your attention to the night and to
9 the early morning of this incident of the shooting death of
10 Mr. Richards.

11 Now, my understanding is at that point in time you were a
12 full-time SWAT member; correct?

13 A. Yes.

14 Q. When you're a full-time SWAT member, that means that you
15 have to be ready to answer a call day or night as long as
16 you're in town; correct?

17 A. Yes.

18 Q. And when you get that call or that page or that text, you
19 have to come down to where that situation is unfolding prepared
20 to act; correct?

21 A. Correct.

22 Q. You have to come down to the situation ready to perform
23 your duties as a police officer according to your training and
24 the policies; correct?

25 A. Yes.

Cox - Direct by Pointer

1 A. Depending on the call, yes.

2 Q. I mean, you've --

3 THE COURT: I can't hear you.

4 THE WITNESS: Depending on the call, yes.

5 BY MR. POINTER:

6 Q. You've had plenty of calls where CNT was a part of it with
7 the SWAT; correct?

8 A. Yes.

9 Q. Now, when you responded to this call for SWAT, you
10 actually were in bed; right?

11 A. I believe so.

12 Q. And part of your responsibility was bringing the BearCat
13 to the scene; correct?

14 A. Correct.

15 Q. And so did you do that?

16 A. I did.

17 Q. So you drove the BearCat, and that's an armored vehicle;
18 correct?

19 A. Correct.

20 Q. It's like an armored SUV?

21 A. I think it's built like a Ford F-150 frame, basically.

22 Q. And did you park it at the scene?

23 A. I parked it at the command post.

24 Q. Let's talk a little bit about the command post. A command
25 post was established a few blocks away from where the perimeter

1 was; correct?

2 A. Yes.

3 Q. And the command post is where -- is that where you went to
4 go get your briefing?

5 A. Yes.

6 Q. And at the command post was where your lieutenant or the
7 watch commander that night was at as well; correct?

8 A. I believe so, yes.

9 Q. And so you go to this command post where Lieutenant Sood
10 was at and you got some briefing; correct?

11 A. I did, but not from Lieutenant Sood.

12 Q. I understand that. But you got briefing at the command
13 post that Lieutenant Sood was at; correct?

14 A. Yes.

15 Q. And during that briefing, did Lieutenant Sood intervene
16 and say, I'm going to take over this briefing?

17 A. The briefing that I was given?

18 Q. Yes.

19 A. No.

20 Q. During the course of the briefing that you received, you
21 were told that officers had -- had been told that Mr. Richards
22 was -- at that time did you know the name of the person who you
23 were looking for at that time?

24 A. I don't recall if they gave a name.

25 Q. At some point in time you learned the name; correct?

1 A. At some point in time, yes.

2 Q. So whether you knew the name or not at the briefing, you
3 do agree that you were told that the person you were looking
4 for was wearing a surgical mask; right?

5 A. Yes. I was shown a picture.

6 Q. And you were also told that that person had brandished a
7 gun; correct?

8 A. Correct.

9 Q. "Brandished" meaning taking out a gun, showing it to
10 people, waving it around; correct?

11 A. Yes, pointing it at people.

12 Q. No reports that he had fired that gun; right?

13 A. No.

14 Q. No reports that he had hit anybody with the gun; correct?

15 A. Yes.

16 Q. Meaning no reports of that?

17 A. Yes, correct.

18 Q. No reports that he had pointed the gun at any police
19 officers; right?

20 A. No, not to my knowledge.

21 Q. No reports that when he fled into the backyards he tried
22 to kick in somebody's door or anything like that; right?

23 A. No.

24 Q. In fact, the information was once officers tried to make
25 contact with Mr. Richards, he ran away, essentially. He jumped

1 some fences into some backyards; right?

2 A. Yes.

3 Q. You haven't received any reports after that that he tried
4 to gain entry into anyone's home; right?

5 A. Not to my knowledge.

6 Q. You haven't received any reports after that that he had
7 verbally threatened anyone; correct?

8 A. No.

9 Q. Essentially, the information, if you were to break it
10 down, was that he was hiding; correct?

11 A. Yes.

12 Q. You also learned that the person that you were looking for
13 had a backpack with them; correct?

14 A. At one time.

15 Q. Yes. Well, put it another way: You learned at briefing
16 that officers had recovered a backpack from the person they
17 were pursuing; right?

18 A. Yes.

19 Q. You were told that officers had looked through that
20 backpack; correct?

21 A. I was told that a possible note was found in there.

22 Q. A possible note was found in the backpack that officers
23 had recovered from the person they were pursuing; correct?

24 A. Yes.

25 Q. And when officers went through that backpack, you were

Cox - Direct by Pointer

1 Q. Did you have any conversation with any of the other SWAT
2 team members that you were going to do this backyard search
3 with that, Hey, we need to wait for the Crisis Negotiation
4 Team?

5 A. No.

6 Q. And, in fact, that's not a decision that's made by you as
7 to whether or not the Crisis Negotiation Team comes out; right?

8 A. It is not.

9 Q. That's a decision that's made, if you will, on a level
10 that's higher than where you were at; correct?

11 A. Correct.

12 Q. By a watch commander or someone on that type of level of
13 responsibility; correct?

14 A. Correct.

15 Q. You haven't been given any directives that said, Once you
16 guys find the person, we're going to make a perimeter, and then
17 we're going to call in the Crisis Negotiation Team; there were
18 no conversations like that, correct?

19 A. Correct.

20 Q. Now, once you arrived on the scene in the BearCat and
21 prior to you and the rest of your SWAT team members going and
22 looking in these different backyards, had you received any
23 additional information that the person you're looking for had
24 taken a hostage?

25 A. No.

1 Q. It's true you hadn't received any additional information
2 that turned this into a heightened state of emergency; right?

3 A. Other than him being armed and, you know, in the public's
4 backyard, no.

5 Q. That was all the information you had; right?

6 A. Yes.

7 Q. It's fair to say that you were -- you and your fellow SWAT
8 team members were given a task or given an assignment, and your
9 job is essentially just to go do what you've been told by the
10 chain of command; is that fair?

11 A. There's typically discussions where, like, say the team
12 leader would suggest, We're going to employ this tactic, and
13 then the SWAT commander has that conversation, and ultimately
14 it's decided upon and we carry out that task.

15 Q. Were you a part of the conversation where the tactics were
16 being discussed and decided on?

17 A. No, I was not.

18 Q. You received the results of that conversation; correct?

19 A. Correct.

20 Q. Which was, We're going to do some backyard searches at
21 3:00 in the morning; right?

22 A. Correct, we're going to do a yard-to-yard search.

23 Q. And we're going to do a yard-to-yard search within a
24 particular perimeter that police officers had established;
25 correct?

1 A. Correct.

2 Q. And there's a methodology of doing this search; right?
3 It's not just random; correct?

4 A. Correct.

5 Q. You start from a particular location and you work your way
6 to clear the entire perimeter; right?

7 A. Yes.

8 Q. And so you started in a yard that was not the yard that
9 the shooting took place in; right?

10 A. Correct.

11 Q. And you started clearing the yards and backyards around
12 the place where the shooting ultimately took place at; correct?

13 A. On a grid pattern we're going to start on one end and then
14 clear a house, leave somebody in that backyard, and then move
15 to the other backyard. So that way it eliminates cross-fire,
16 and if someone, like a suspect who's in that perimeter, jumps
17 over that fence, we still have someone there to address them.

18 Q. Okay. So it's fair to say prior to entering into the
19 shooting in Mr. Foster's home -- prior to entering into the
20 backyard of Mr. Foster's home where the shooting had taken
21 place, the SWAT team did what you described, which is start
22 from one side of the perimeter and worked their way towards the
23 other end of the perimeter, which is where Mr. Foster's home
24 was at; correct?

25 A. I believe we started on the -- so it was opposing from the

Cox - Direct by Pointer

1 same yard that we started at. So we're going to clear the
2 first two yards. I'm not sure how the street was oriented, but
3 we're going to clear the same two yards on the same side,
4 establish someone in that yard, or along that fence line, and
5 then move over to the adjacent yard, which shared the fence
6 line with the yard that we just located -- or we just searched,
7 and then start the search from there.

8 Q. Okay. And you had searched two yards prior to getting to
9 the final yard, which is Mr. Foster's yard; right?

10 A. Correct. I personally had not -- two yards had been
11 searched. I had only searched one yard prior.

12 Q. Understand.

13 Your understanding based upon the SWAT team communication
14 between you all is that two yards had been searched prior to
15 getting to Mr. Foster's yard; right?

16 A. Yes, it would have been the third yard.

17 Q. Okay. And your particular set of SWAT officers was being
18 led by Sergeant Edgerton; correct?

19 A. Correct.

20 Q. And prior to you all searching Mr. Foster's yard where the
21 shooting took place, you guys actually went up to Mr. Foster's
22 house and there was a conversation with Mr. Foster; right?

23 A. Yes.

24 Q. And you went up to his house -- strike that.

25 Part of the purpose of going to his house was to get the

1 Q. As the search is still taking place, yourself, Defendant
2 Edgerton, Officer Tiner and you all are searching Mr. Foster's
3 yard; right?

4 A. With other officers as well.

5 Q. And at the time you're searching Mr. Foster's home --

6 THE COURT: Backyard.

7 MR. POINTER: Backyard. Thank you. I'm sorry.

8 BY MR. POINTER:

9 Q. At the time you're searching Mr. Foster's backyard, no one
10 had made any announcements, police or anything like that;
11 correct?

12 A. Not to my knowledge.

13 Q. Prior to entering into Mr. Foster's backyard, no one said,
14 Come out with your hands up?

15 A. No.

16 Q. Prior to entering Mr. Foster's backyard, no one called in
17 for an airship, whether it be a helicopter, plane or anything,
18 said, Hey, light up the backyard and let's make some
19 announcements; no one did that; right?

20 A. Not to my knowledge.

21 Q. That's not your decision to make; correct?

22 A. Correct.

23 Q. That's also a decision that's supposed to be made by the
24 higher-ups, like the watch commander or the lieutenant;
25 correct?

1 A. Correct.

2 Q. And while yourself and your fellow officers are searching
3 Mr. Foster's yard that -- you heard something that caught your
4 attention; right?

5 A. Yes.

6 Q. And you heard -- it's true that you heard your fellow --
7 Officer Tiner saying words to the effect of like "suspect" or
8 something like that; right?

9 A. Something along those lines.

10 Q. And that prompted you to turn your gun, along with the
11 flashlight, and shine it on Mr. Richards who was sitting
12 underneath the deck; right?

13 A. Correct.

14 Q. And at the time when you put your light on Mr. Richards
15 and he's sitting underneath the deck, he didn't have a gun
16 pointed at anyone when you first put the flashlight on him;
17 right?

18 A. Not when I first put the flashlight on him.

19 Q. He wasn't cussing at officers when you first put the
20 flashlight on him; right?

21 A. Correct.

22 Q. In fact, he never cursed at any officers; right?

23 A. Correct.

24 Q. He never made any verbal threats to anyone; right?

25 A. Not to my knowledge.

Cox - Direct by Pointer

1 Q. Has anyone else told you that?

2 A. No.

3 Q. When you saw Mr. Richards sitting underneath the deck in
4 Mr. Foster's backyard, you were not able to see his hands;
5 right?

6 A. Not at first.

7 Q. And then you heard commands to the effect of, Show me your
8 hands; right?

9 A. Yes.

10 Q. And that was a command that was given to Mr. Richards;
11 right?

12 A. Correct.

13 Q. So you couldn't see his hands, no one else -- none of your
14 other fellow officers were making statements to the effect that
15 they could see his hands either; right?

16 A. Correct.

17 Q. And so the command is given to Mr. Richards, Show me your
18 hands. And it is at that time that you could then see, I think
19 you said, only his left hand; right?

20 A. I don't know if I could ever see his right hand. I know
21 that when I saw his left hand he had the firearm in it.

22 Q. And that was almost immediately at the same time or right
23 after the command came out about, Show me your hands; right?

24 A. Correct.

25 Q. And, in fact, you heard Mr. Tiner give that command about,

Cox - Direct by Pointer

1 Show me your hands; right?

2 A. Yes.

3 Q. And at the time you heard Officer Tiner give the command,
4 Show me your hands, you were standing to the left side of
5 Darell Richards; right?

6 A. He was oriented -- I would have been to his left, correct.

7 Q. It's fair to say from your, as you said, your orientation,
8 your position, you could see the left side of Darell's body;
9 right?

10 A. Yes.

11 Q. And you couldn't see his right hand; right?

12 A. I don't recall his right hand.

13 Q. As far as your positioning to Officer Tiner, he was within
14 arm's -- your arm's reach to your left; right?

15 A. I believe so.

16 Q. Now, you've given deposition testimony in this case;
17 right?

18 A. Yes.

19 Q. All that testimony you gave was under oath; right?

20 A. Correct.

21 Q. Penalty of perjury; right?

22 A. Correct.

23 Q. Just like today; right?

24 A. Yes.

25 Q. And you testified you shot because Darell raised his hand,

1 essentially, with a firearm in it; right?

2 A. He actually pointed the firearm at Officer Tiner.

3 Q. So we're clear, when you first saw Mr. Richards, you
4 couldn't see anything, couldn't see -- strike that. Withdraw
5 the question.

6 When you first saw Mr. Richards, you couldn't see his
7 hands; right?

8 A. Correct.

9 Q. He wasn't already pointing a gun at you or anyone else at
10 that time; right?

11 A. Correct.

12 Q. And, in fact, until someone said "suspect," you all didn't
13 even know he was there; right?

14 A. No.

15 Q. So ostensibly you could have been shot before you guys
16 even noticed that he was in that backyard; right?

17 A. Yes.

18 Q. And Mr. Richards never fired a single shot; correct?

19 A. Correct.

20 Q. And so when you all saw Mr. Richards, your fellow officer,
21 Officer Tiner, said, Show me your hands, and then you saw his
22 hand and it had a gun in it; right?

23 A. Correct.

24 Q. And that's what prompted you to shoot; correct?

25 A. Not until he leveled the weapon, like he was acquiring a

Cox - Direct by Pointer

1 sight picture, and he pointed it at Officer Tiner.

2 Q. When you say "acquiring a sight picture," it sounds like a
3 police procedure. Did you have any information that
4 Mr. Richards was a police officer?

5 A. A "sight picture" is police terminology?

6 Q. I'm not familiar with it.

7 A. Okay. I don't believe it's police terminology.

8 Q. When you saw Mr. Richards and he had been told to raise
9 his hands, and he's raising his hands, and he has a gun in his
10 hand, or what you thought to be a real gun in his hands, he's
11 being told raise his hands, and then you, yourself say, Drop
12 the gun; right?

13 A. Correct.

14 Q. And before the second time you could say, Drop the gun,
15 shots were being fired; correct?

16 A. Because the gun's continuing to come up.

17 Q. And you were the first person to shoot; correct?

18 A. Correct.

19 Q. And Officer Tiner never fired a single shot; is that
20 right?

21 A. Yes.

22 Q. And it's fair to say you're upset with him behind that;
23 right?

24 A. There was -- we've had discussions about it, yes.

25 Q. Prior to any shots being fired off, no one said, It's the

1 went over it. But we use that dog to try to gauge that yard
2 before we move up and actually physically lay eyes on it and
3 clear it ourselves.

4 Q. You did not know that Darell Richards was in that backyard
5 at 2017 First Avenue; did you?

6 A. I did not.

7 Q. There's been the discussion of announcements and
8 announcements not being made. Is there a tactical reason
9 behind not making those announcements?

10 A. If someone is laying in wait for us, like in an ambush, by
11 saying, Hey, we're announcing our presence, we're going to now
12 push out in that yard, now they know that we're coming.

13 Q. You've also had this discussion about the Crisis
14 Negotiation Team, and your testimony is that they are often on
15 scene with SWAT; correct?

16 A. Yes.

17 Q. Do they tag along when you're doing the yard-to-yard
18 search?

19 A. No. It would not be safe for them to do that.

20 Q. Where are they typically stationed if they're on scene
21 somewhere?

22 A. At the command post.

23 Q. And when is it that then they are called to do their job?

24 A. When we have a known location or a established line of
25 communication.

Cox - Cross and Direct by Richmond

1 Q. Did you have a known location of Darell Richards?

2 A. No, we did not.

3 Q. Had you established communication with him?

4 A. No.

5 Q. Are you aware of any occasion where CNT has been used
6 when, again, the subject's location is unknown via some type of
7 public announcement or loudspeaker of some sort?

8 A. From my knowledge, it's usually when there is a known
9 location.

10 Q. There was mention, again, of Mr. Foster, when you arrived
11 to make contact with him, him notifying you that a noise was
12 heard in or around that backyard, a male's voice, and that he
13 had testified that when you guys just arrived, meaning way
14 earlier in the evening when the perimeter was being
15 established, so that would have been a good few hours before
16 you arrived at Mr. Foster's home, did that information that he
17 heard that noise three hours earlier, did you consider that to
18 be useful at all?

19 MR. POINTER: Objection, compound.

20 THE COURT: Sustained.

21 BY MR. RICHMOND:

22 Q. You heard him testify that he had heard that noise a few
23 hours earlier; correct? You arrived at Mr. Foster's home
24 around 3 a.m.; correct?

25 A. Correct.

1 Q. He told you at that time about the noise prior in the
2 evening; correct?

3 A. Correct.

4 Q. Based on that, did you consider that information at all
5 useful?

6 A. Information is useful. That's why we were going to use
7 that dog, because if he ever was in there, at least that
8 would -- if he was within that perimeter and he's moving, that
9 dog can usually let us know what -- if he's there, what
10 direction he is, and then to proceed from there.

11 Q. And so when you did first enter the larger portion of the
12 backyard where Mr. Richards was found, who goes in first?

13 A. So we call it like a decision point. There's like a half
14 gate that was at the edge of that backyard that bordered the
15 entrance for the downstairs apartment. So we pushed up as far
16 as we could.

17 What we'll do is we'll have -- go cross cover, and then
18 someone's assigned to that dog handler to make sure he doesn't
19 stick his head out too far. Keep an eye on him, because
20 sometimes they get real involved in the searching and they'll
21 expose themselves, so there's typically someone there to watch
22 the handler to make sure he doesn't expose himself to an angle
23 that we're not covering.

24 So send that dog out. That dog ranges. Doesn't alert
25 anything. Bring that dog back at that point. There's a

Cox - Cross and Direct by Richmond

1 decision we're going to move forward and take that yard. So in
2 a typical formation someone's going to go left, someone's going
3 to go right and then it gets filled in.

4 Q. Let me stop you there, Mr. Cox. I think what you said is
5 the dog goes in first; correct?

6 A. Yes.

7 Q. And why is that?

8 A. Because that dog -- essentially the dog's a tool. If that
9 dog gets shot, well, it's not an officer. It is, but it's --
10 we're using it as a tool. So we'll send that dog out first.
11 That dog has a heightened sense of awareness. He uses his nose
12 to try and range, try and find an odor, and if it alerts on
13 that person, then we know that we're not exposing ourselves and
14 then we game-plan it from there.

15 But if he doesn't alert to anything or doesn't show signs
16 of any interest, and we believe that yard is clear, now we have
17 to physically check it. So that dog's only good for kind of
18 probing at it. Now we have to physically move and check it.
19 So if that dog didn't alert on anything, we push forward and we
20 clear.

21 Q. So when the dog doesn't alert, what indication, if any,
22 does that give to you?

23 A. That the suspect's no longer there.

24 Q. And the dog that was initially sent, he did not alert?

25 A. Not to my knowledge.

1 Q. And so then that's when the officers then enter the yard;
2 is that right?

3 A. Yeah, we actually have to lay eyes on it to call it clear.
4 So we're not just totally relying on that dog.

5 Q. And is there a particular area of responsibility that each
6 officer has in the yard?

7 A. Depends on where you -- as you funnel in, depending on the
8 exposure that you're getting from different angles, you should
9 be able to recognize it, pick up that angle, but typically the
10 first two who are there, one's going to go right, one's going
11 to go left to those corners that you can't see. Officers are
12 going to fill in behind him and then move through that yard,
13 kind of almost in a line formation.

14 Q. And so when you entered the yard, which way did you go?

15 A. I went to the right.

16 Q. And where was Sergeant Edgerton in relation to you?

17 A. He was behind me at some point as we were stacked up to
18 move. But once I start going down that side of the house, I
19 hear him talking and I know he's coming up on my right, so I
20 start to move to my left to make room for him.

21 Q. And you heard him talking. Was he talking to you?

22 A. Yes.

23 Q. And what was he saying to you?

24 A. At one point he says, "Check the stairs."

25 Q. And what does that mean to you?

1 A. So in the back of the house there is a raised porch that
2 has stairs that go along the side of the house up there. So
3 I'm checking the stairs. I think even on the video it shows me
4 flash my light up there to see if there's -- because they're
5 probably -- someone could have been waiting up there for us.

6 Q. So when he -- when you are checking upstairs, is he
7 providing cover for you looking field level, as it were?

8 A. I believe so. I can't speak to what he was actually
9 doing, but typically you're going to pick up somebody else's
10 coverage and cover the angle that they can't because they're
11 doing something else.

12 Q. And so Officer Tiner was to your -- would have been to
13 your left; is that right?

14 A. Correct.

15 Q. And what was it that drew your attention to Mr. Richards?

16 A. He was in the area that I was moving toward, but Officer
17 Tiner spotted him and shined a light on him and started giving
18 commands.

19 Q. It was at that point when you saw his arms coming up with
20 the gun?

21 A. Yes.

22 MR. POINTER: Objection.

23 THE COURT: What was the objection?

24 MR. POINTER: Leading.

25 THE COURT: Overruled.

1 BY MR. RICHMOND:

2 Q. Explain how his body moved as you were looking at it.

3 A. Officer Tiner had already shined a light on him, started
4 giving him commands and this all happens within seconds. He
5 starts to orient, orient himself toward the direction of
6 Officer Tiner, seemed like maybe he was kind of, might have
7 been leaning on his right hand or something, I'm not sure, but
8 he kind of comes up.

9 Officer Tiner's addressing him. He's looking at Officer
10 Tiner, and then he presents that gun -- or the firearm and
11 begins to point it at Officer Tiner.

12 Q. And it was your testimony that the gun was in
13 Mr. Richards' left hand; is that right?

14 A. Correct.

15 Q. Do you have any doubt about that?

16 A. No.

17 Q. Did you ever see Mr. Richards raise his hands up in some
18 type of surrender posture?

19 A. No.

20 Q. What, if any, de-escalation tactics would be utilized had
21 he not raised the gun and pointed it at Tiner?

22 A. So once we recognized him, he still had the mask on, the
23 hood, if he was abiding by Officer Tiner's hands or his
24 commands, then Officer Tiner probably would have still
25 continued to give him commands, we probably would have backed

Bassett - Cross by Richmond

1 of the manual would be used. Do any of those apply, to your
2 knowledge, to the Darell Richards situation?

3 A. No.

4 MS. NOLD: Objection, lacks foundation.

5 THE COURT: Overruled. He can answer.

6 THE WITNESS: No.

7 BY MR. RICHMOND:

8 Q. Let me direct you to Chapter 9, and that's Page 12. And
9 you were read -- in looking at the second paragraph, and you
10 were read this by Ms. Nold, the second sentence of that, "The
11 Negotiation Team shall be called to all hostage, sniper or
12 armed, barricaded subject situations."

13 A. Yes.

14 Q. Do any of those apply to Darell Richards?

15 A. No.

16 Q. And in all of these, a hostage, sniper or armed,
17 barricaded subjects, again, the commonality is that they are
18 all known locations; is that right?

19 A. Yes, but with a possible exception of a sniper. Sometimes
20 those occur and you don't have a fixed location, but you would
21 definitely want to get CNT out there.

22 Q. Okay. And you are retired from the Police Department,
23 correct, Mr. Bassett?

24 A. Yes, I am.

25 Q. It is no longer your job to stay on top of the policies

Sergeant Edgerton - Direct by Buelna

1 member is dealing with situations of barricaded subjects;
2 right?

3 A. We don't do a whole lot of training on that, but some of
4 it.

5 Q. Okay. And suicidal subjects; right?

6 A. Some of it, yes.

7 Q. Okay. As well as the infrequent apparent hostage
8 situation; correct?

9 A. Correct.

10 Q. But even though you have this additional training, you're
11 still expected to follow all of Sacramento Police Department's
12 policies and trainings; correct?

13 A. That's correct.

14 Q. It doesn't overpower or override those policies and
15 trainings that are in place; correct?

16 A. Correct.

17 Q. Do you recall when it was that you received an alert or a
18 message to respond to this particular incident?

19 A. I do, yes.

20 Q. Okay. What time or day was it?

21 A. A little after midnight, and it was a call from my
22 lieutenant in SWAT, Lieutenant Brian Ellis.

23 Q. Okay. And do you remember what the call was, what he told
24 you that made you want to respond?

25 A. Yes. He said that there was a subject who had fled from

Sergeant Edgerton - Direct by Buelna

1 officers issuing a warrant for brandishing a weapon, pointing a
2 firearm at people and that they thought he was contained in the
3 perimeter.

4 Q. That he thought that he was -- I'm sorry.

5 A. Contained in the perimeter.

6 Q. Okay, thank you.

7 So what did you do?

8 A. I responded to the command post.

9 Q. All right. When you arrived there -- well, can you just
10 describe what's a command post; what does that mean?

11 A. Generally an assembly area where we assemble SWAT officers
12 and anybody helping us out. And we kind of get a brief and
13 then decide a course of action, a tactical plan and then kind
14 of deploy from there to implement that tactical plan.

15 THE COURT: Let's stop there for the afternoon. We'll
16 come back on Wednesday. We'll resume with Mr. Clark first, and
17 then we'll come back to Officer Edgerton on Wednesday. We'll
18 start about 9 a.m. on Wednesday.

19 Over the break, please don't discuss the case with
20 anyone. Do not discuss the case amongst yourselves. Don't let
21 anyone ask you any questions or try to discuss the case with
22 you, and please do not do any independent investigation,
23 research, read anything about the case.


24 I'll see all of you on Wednesday at 9:00.

25 (In open court, outside the presence of the jury.)

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

EXHIBIT 4

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

Sergeant Jarvis - Direct by Richmond

1 Q And what does an EMT do?

2 A Well, on the civilian side of things, an EMT could do a
3 whole bunch of things; could work in a hospital, could ride in
4 an ambulance. On our team it was just somebody with more
5 advanced medical training who -- in times when medical services
6 were needed to be rendered during tactical events, then I would
7 be the primary provider of that care assisted by other team
8 members and other EMTs on the team.

9 Q Very good. Do you also have training in crisis
10 intervention?

11 A Yes, I do.

12 Q And describe what that training is.

13 A Crisis intervention training was a training that the
14 entire department went through, just trying to recognize the
15 signs of and tactics used during -- specifically with people in
16 crisis.

17 Q And were you on duty September 5, September 6, 2018?

18 A During those times, yes, I was on duty for some of that.

19 Q And did you get notified of a SWAT call-out on the night
20 of September 5 or early morning September 6?

21 A Yes. I was at home sleeping, and I was awoken on my
22 phone, which -- I got a SWAT page, which is our way of
23 notification, and I responded into the city.

24 Q Do you recall what the notification -- what it said?

25 A It said that there was an armed subject within a

MARYANN VALENOTI, RMR, CRR U.S. DISTRICT COURT (916)930-4275

Sergeant Jarvis - Direct by Richmond

1 perimeter, gave us a location to meet at, which is pretty
2 standard for a SWAT call-out.

3 Q And when you -- I assume you went from home to the
4 location that you were directed to go to?

5 A Yes.

6 Q That is called the command post; is that right?

7 A Yes.

8 Q And what -- were you provided a briefing at the command
9 post?

10 A Yes, I was.

11 Q And do you recall who it was that provided that briefing
12 to you?

13 A I do not.

14 Q And what do you recall being told at the briefing?

15 A I remember that the call-out was in regards to a subject
16 who -- that calls for service came in about a subject walking
17 down the street with a gun in his hand. And that at some point
18 he was seen, and he fled away from responding officers in a
19 helicopter, and that he was ultimately -- once he ran into a
20 perimeter that started to be set up, he was seen jumping over a
21 fence. When he jumped over the fence he still had the gun in
22 his hand, and then he had jumped back into a perimeter, and
23 that they were pretty certain that he was somewhere in this
24 residential area.

25 Q Do you recall being told about -- well, strike that.

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1 Did you know who it was that you were looking for?

2 A At that point I did not know, and I -- can I refer to my
3 notes?

4 MR. BUELNA: Objection, vague and ambiguous as to
5 time.

6 THE COURT: Do you want to set a time?

7 BY MR. RICHMOND:

8 Q At the briefing, were you provided any information in
9 regard to the identity of the person that you were looking for?

10 A Could I refer to my notes?

11 Q Do you not recall?

12 A I don't recall specifically whether or not his name was
13 mentioned at the briefing or if I remembered it at that point
14 or if I learned of it later.

15 MR. RICHMOND: Can the witness look at his notes,
16 Your Honor?

17 THE COURT: Yeah, if you want.

18 THE WITNESS: I believe they were provided the name
19 of Darell Richards at that point, but they weren't able to
20 positively identify that this was the subject based on the fact
21 that the subject was seen running with a surgical mask on. So
22 we were given the name, but it wasn't like we had a positive ID
23 at this point, but we thought that's who we were looking for.

24 BY MR. RICHMOND:

25 Q And do you know how it was that they got the information

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1 that the person was likely to be Darell Richards?

2 A The subject who ran dropped a backpack, and as they looked
3 through the backpack, they found several items in the backpack,
4 and I think there was something in the backpack that they were
5 able to -- either his name or something that got his name on.

6 Q What else were you told was in the backpack?

7 A In the backpack was some sort of note or some sort of
8 writing in which we were told that the subject had said goodbye
9 to his mother.

10 Q And did that provide any type of additional concern for
11 you?

12 A I think we were looking for somebody who was armed with a
13 gun and ran into a perimeter, and so our general concern was
14 already high. And it was definitely something we also took
15 into consideration that the person we were looking for could
16 potentially pose an increased risk to himself or others or us
17 based on his kind of willingness to -- if he had said goodbye
18 to his mother, that he was no longer concerned about preserving
19 his own life and so he might be more dangerous to us.

20 Q And what was your assignment; what were you told that you
21 were going to be doing?

22 A We were going to do a yard-to-yard search, which just
23 means we were going to search one yard at a time through a
24 residential block, and we were going to start from the south
25 side. The team was divided into two different teams, and like

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1 I said, we were going to work from south to north, and there
2 was one team that was going to work the west side of the block
3 and the other team was going to work the east side of the
4 block.

5 Q And you've done these yard-to-yard searches prior to the
6 one you did here; is that right?

7 A Many times.

8 Q In any of those circumstances, has the Crisis Intervention
9 Team or the CNT team, have they ever gone on a yard-to-yard
10 search with the SWAT team?

11 A No, sir.

12 Q And did you ultimately arrive at a residence located at
13 2017 1st Avenue?

14 A I did.

15 Q Were you part of the team that made contact with the owner
16 of the home?

17 A Yes.

18 Q And did the owner of the home, do you recall him saying --
19 telling you anything specific?

20 A I'm sorry, I was part of that team, but I did not make
21 contact with the owner of that home.

22 Q Okay. And how did you begin the search at 2017 1st
23 Avenue?

24 A So I actually had been left in the yard just to the west
25 facing southbound in the backyard. And the rest of the team

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1 had gone into the initial yard of 2017. Once they moved past
2 where my fence line that I was kind of holding on ended, I went
3 around to join the rest of the team, and as I came up they were
4 holding the rest of the backyard and they were holding a door
5 which led to like a residential location that was like in a
6 first floor basement, whichever one you want to call it, but a
7 residence that was basically on the ground level or just lower
8 than the ground level of 2017.

9 Q And was the -- that residential area or apartment, were
10 you involved in the search of that apartment?

11 A I was.

12 Q And after -- was that -- the lower apartment, was that
13 cleared?

14 A Yeah, we checked it for people and there was nobody there.

15 Q And then after that was cleared, what did the team do?

16 A Once we exited that door, which was, it's on the west side
17 of the building, we started moving towards the backyard. So we
18 were moving down the west side of the structure of the
19 residence towards the backyard, and we came up to a short fence
20 just prior to the -- like the edge of the back of the building.

21 Q And was there a K-9 with the team?

22 A Yes, sir, there was.

23 Q And did the dog search the main yard?

24 A So we held at that point, and we sent the dog into the
25 backyard. And yes, I watched the dog work through the yard,

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1 and did not see the dog take interest really in anything.

2 Q And did that suggest to you one thing or another?

3 A Yes. If the dog had alerted or been agitated in some way,
4 then we would have re-addressed or made a different decision
5 based on a higher chance that the suspect would be in this
6 immediate yard.

7 Q Because the dog didn't alert, did that suggest to you that
8 there was probably nobody back there?

9 A It suggested --

10 MR. BUELNA: Leading.

11 THE COURT: Sustained. Ask the question in a
12 non-leading way.

13 BY MR. RICHMOND:

14 Q The fact that the dog didn't alert, did that cause you to
15 think --

16 THE COURT: Ask him in a non-leading way.

17 BY MR. RICHMOND:

18 Q The dog didn't alert; correct?

19 A The dog did not alert.

20 Q And because the dog didn't alert, did that -- well, strike
21 that. Let me move on.

22 Then does the team then go into the main part of the yard?

23 A Yes. So once the dog had searched and did not provide us
24 any information that the suspect was back there, the team made
25 a movement into the first section of the yard. And the plan

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1 was to clear the first section of the yard and then send the
2 dog deeper, because the dog -- the yard was very long, so we
3 didn't feel like the dog had adequately cleared the entire
4 yard, but just the first initial part of it.

5 Q And did you have a particular area of responsibility in
6 the yard?

7 A Yes. So I was -- pardon me.

8 So initially going into the yard, my assignment was to go
9 to the far left. So I went -- initially, I was the first
10 person to move from the main gate, first or second person, and
11 then went all the way to the left-hand side to where there were
12 some bushes and the fence. And then there was an upside down
13 canoe or boat or something like that on the far left-hand side.

14 Q And did you ultimately hear commands being given by
15 officers?

16 A So I was -- my initial area was the boat and the fence,
17 and so I was clearing that, and then I got down on my knees to
18 look underneath the canoe to ensure that nobody was hiding
19 underneath there. So as I stood up and turned back towards the
20 middle of the yard, I heard several officers yell, "Show me
21 your hands," and then I heard somebody say, "Drop the gun."

22 Q And did that cause you -- your focus to be redirected
23 somewhere?

24 A Yes. So as I stood up and I heard that, I also turned to
25 look that direction. The right side of the yard was pretty

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1 cluttered. There was like an overhanging balcony. That
2 balcony had a staircase that went up to it. Next to the
3 staircase there was a ladder. There was an air conditioner, a
4 barbecue, and some other items on the ground. So I didn't have
5 complete visual into that area. There was also several other
6 SWAT officers in front of me who I didn't know who they were
7 because of -- I couldn't see their name badges or anything.

8 Then as I heard the commands being given and I -- my
9 attention was drawn over there, so I looked over there, and at
10 that time I could see that the flashlights on their guns had
11 also lit up that area, and the only thing I could see to the
12 left of the staircase in between -- over an air conditioner and
13 like in between or to the right of us, one of the SWAT
14 officers, because I could just see a black gun. That's it.

15 Q Held by whom?

16 A I couldn't see who was holding it. I could just see the
17 hand come up from behind some things that were stacked in that
18 area, but I could see that it was held in the air. And then I
19 heard shots.

20 Q And did you believe that the hand that you saw with the
21 gun being raised, was that the person that the commands were
22 being directed to?

23 A Yes. The officers that were giving the commands and
24 shining their lights were shining their lights towards the area
25 where I saw the gun come up. And my belief at that point was

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1 that was -- we had located the suspect, they were giving him
2 commands and that he had raised a gun at the officers.

3 Q Did you see at all the subject raising his hands in a
4 surrender-type posture?

5 A From where he was, his body was obstructed by me. The
6 only thing I could see was his hand and the gun.

7 Q Do you know what hand the gun was in?

8 A No, I wouldn't be able to say that.

9 Q Now, you mentioned that you are an EMT -- or were an EMT
10 for the SWAT team; correct?

11 A Correct.

12 Q Are you familiar with what a pressure pad or pack is?

13 A I'm familiar with a pressure dressing.

14 Q Pressure dressing?

15 A Yes.

16 Q And what is that?

17 A A pressure dressing is something that applies -- it's a
18 dressing. So a dressing is something that goes on the outside
19 of a wound, usually made of gauze. And a pressure dressing is
20 kind of a -- what it sounds like. It's a dressing that also
21 applies pressure. So it covers a wound, but also applies
22 pressure to it.

23 Q Is that something that you typically take with you when
24 you are doing a SKIDDS search with a K-9?

25 A A pressure dressing would be the primary medical

Sergeant Jarvis - Cross by Buelna

1 giving your testimony today?

2 A Briefly, yes.

3 Q Okay. Just taking you to when you heard the commands
4 given in the yard and you turned and looked and saw what you
5 believed to be an arm and a gun; okay?

6 A Yes, sir.

7 Q Excellent.

8 I believe -- do you recall telling homicide investigators
9 that you saw the hand and the gun, and they appeared to be
10 pointing at the officers who were firing?

11 A That sounds about right, yes, sir.

12 Q So the gun and the hand as it came up from where -- your
13 perspective, was actually pointing at the officers who were
14 firing at or even firing back at Mr. Darell Richards; right?

15 A Can you rephrase, sir?

16 Q Sure.

17 I'm just kind of clarifying.

18 A Yeah.

19 Q When you saw the hand and the gun come up, that you --
20 from your perspective, it appeared that it was pointing
21 directly at the officers who were firing; correct?

22 A So there were multiple officers in that area. I actually
23 don't know even today, I don't know which of those officers
24 were the ones that fired. I don't know their positions in the
25 yard.

Sergeant Jarvis - Cross by Buelna

1 I know that the gun was pointed in the direction of
2 officers and that some of those officers fired back or fired at
3 Mr. Richards.

4 Q But you told -- do you remember telling homicide that you
5 could really see his hand and the gun, and it appeared to be
6 pointing at the officers who were firing back; do you remember
7 saying that?

8 A I'm sorry, I don't understand your question, sir.

9 Q Do you remember telling homicide investigators that when
10 you saw the hand and the gun, it appeared to be pointing at the
11 officers who were firing back; do you remember telling homicide
12 that?

13 A Yeah, but -- sure, yes.

14 Q Okay. That's it.

15 Now, after shots were fired, you're responsible, in part,
16 for providing medical services; right?

17 A Eventually, yes, sir.

18 Q And eventually you -- after backing out, you had
19 re-approached Darell and tried to provide some medical
20 services; right?

21 A Yes, sir.

22 Q And prior to doing that, you actually heard gargling or
23 breathing from Darell; correct?

24 A Yes, sir.

25 Q Okay. And that was minutes after shots were fired;

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1 path of the projectiles through the body or at least into the
2 body.

3 Oftentimes autopsy reports are accompanied with autopsy
4 photographs. So I can work with both of those if I did not
5 have the opportunity of attending the autopsy myself.

6 Q And as a result of the autopsy report that you reviewed in
7 this case, do you have an understanding of the wounds that
8 Mr. Richards sustained?

9 A Yes, I do.

10 Q And, Mr. Martini, as part of the information you obtained
11 on this case, did you also obtain the height of Mr. Richards as
12 well as the height of the officers?

13 A Yes, I did.

14 Q And why is that information important to you?

15 A Sometimes that information is critical to an evaluation.
16 In this particular instance it was less critical, but certainly
17 consistent with the overall condition and location of the
18 expended cartridge cases, the type of firearms used as well as
19 the bullet impacts.

20 Q Now, Mr. Martini, with all this information that you had
21 and all this information that we discussed, are you able to
22 reach conclusions about the bullet trajectories in this case?

23 A I can, yes.

24 Q And are you able to develop opinions about the wound
25 ballistics?

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Martini - Direct by Day

1 A I can, yes.

2 Q And putting all this information together, were you able
3 to come up with a reconstruction of the shooting for this case?

4 A Yes, I was.

5 Q And, Mr. Martini, based on your work on this file and your
6 training, education and experience, do the wounds that
7 Mr. Richards sustained tell you anything about the position
8 Mr. Richards was in at the time of the shooting?

9 A As a general statement, yes, they do.

10 Q So I'm just going to walk through a couple of the wounds.
11 Since you reviewed the autopsy report, you're aware that there
12 was a wound to Mr. Richards' right palm; true?

13 A In the area of his right palm corresponding to the back of
14 his hand, yes.

15 Q Did that wound tell you anything about Mr. Richards'
16 position, Mr. Richards' hands during the shooting event?

17 A Yes, it does.

18 Q And what did it tell you?

19 A The entrance for that particular gunshot wound was on the
20 back of the hand. The bullet penetrated through the tissue of
21 the hand and exited on the palmar surface of the hand.

22 Q Based on your review of the file material and your work
23 and your training and education and experience, could
24 Mr. Richards have had his hands up in surrender based on that
25 wound to the right palm?

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1 MR. BUELNA: Objection, incomplete hypothetical.

2 THE COURT: Overruled.

3 THE WITNESS: Typically what I would describe as a
4 surrender position, palms forward in the direction of the
5 gunfire, the shots being fired, that was not consistent with
6 the physical evidence.

7 BY MR. DAY:

8 Q Now, Mr. Martini, there were multiple wounds to
9 Mr. Richards' left leg. Do those wounds indicate to you about
10 how Mr. Richards was positioned at the time of the shooting?

11 A Yes, they do.

12 Q And what do they indicate?

13 A Those wounds, as reported in the autopsy report, have a
14 significant upward directionality. In other words, they were
15 traveling up the leg, and as such, that type of wound path
16 could only occur if the legs were extended or extended while at
17 ground level, which would place Mr. Richards sitting on the
18 ground with his legs toward the direction of the officers.

19 Q Now, Mr. Martini, I want to turn to the wounds to the left
20 forearm. Based on -- and hand. Based on the wounds to the
21 left hand and the left forearm, did you develop any opinions,
22 based on your training, education and experience, about how
23 these wounds were caused?

24 A Yes, I did.

25 Q And what are those opinions?

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1 A The -- what I would describe as superficial wounds present
2 on the fingers of the left hand, are consistent with being
3 generally aligned with the direction of fire, as well as
4 consistent with pulling or grasping a firearm while pointing it
5 in the general direction of the firing officers.

6 Q Mr. Martini, if Mr. Richards was holding the gun, let's
7 say, in his left hand and the gun was -- barrel of the --
8 muzzle of the gun was pointed upward, would you have expected
9 to see the same wound path that you observed on Mr. Richards'
10 left hand?

11 MR. BUELNA: Objection, lacks foundation,
12 mischaracterizes the testimony in regards to wound path.

13 THE COURT: Overruled.

14 THE WITNESS: The direction of the superficial
15 injuries that were present on the left hand fingers, if the gun
16 was held in a upright or generally vertical orientation,
17 specifically the forearm, those superficial wounds would
18 exhibit a significantly different directionality than what was
19 documented at the autopsy.

20 BY MR. DAY:

21 Q Now, Mr. Martini, there's a black binder behind you. If
22 you wouldn't mind, go ahead and grab that black binder, and I
23 would ask you to turn to the Exhibit NN.

24 A I have done so.

25 Q Mr. Martini, do you recognize this exhibit?

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1 A Yes, I do.

2 Q Could you please -- did you create this document?

3 A Yes, I did.

4 Q And could you please explain what this document is.

5 A The document or the image, which I produced, consists
6 primarily of two different aspects.

7 THE COURT: Are you asking to move it into evidence?

8 MR. DAY: I will be, but I want to lay the foundation
9 for it, but if -- I would ask to move it into evidence right
10 now.

11 THE COURT: Do you have any objection to this
12 exhibit?

13 MR. BUELNA: Objection in regards to foundation.

14 THE COURT: Well, he just said he did it.

15 MR. BUELNA: That's -- what did he do? It doesn't
16 lay a foundation for what it is inside of it and if it's drawn
17 to scale or not.

18 THE COURT: Go ahead, lay your foundation.

19 BY MR. DAY:

20 Q Mr. Martini, you were just discussing, basically, what you
21 did to prepare this document. Could you please explain what
22 you did to prepare this document?

23 A Yes, I can. This document -- or this image contains two
24 primary aspects. One is a photograph which was taken during
25 the autopsy, which shows the left hand, primarily the fingers,

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1 in a particular orientation. I took that photograph. I
2 overlaid that photograph with a -- what I would describe as a
3 outlying firearm, which in terms of the important aspects such
4 as a trigger guard size, the location of the grip, the upper
5 assembly, upper frame, as well as a slide assembly. The
6 critical dimensional aspects were sized to that of the replica
7 pistol and then overlaid onto the photograph such as would
8 be -- what would be visible if the hand position was holding
9 onto a properly sized pistol, such as the replica firearm Item
10 Number 16 in this incident.

11 MR. DAY: At this point in time, your Honor, I
12 believe the foundation has been laid to admit Exhibit NN.

13 THE COURT: Any objection?

14 MR. BUELNA: No objections.

15 THE COURT: It's admitted.

16 (Defendants' Exhibit NN admitted in evidence.)

17 BY MR. DAY:

18 Q And, Mr. Martini, does Exhibit NN reflect your opinions of
19 the position of Mr. Richards' hands and fingers and the gun?

20 A In general, yes. It shows relationship of a decedent's
21 hand such as would be consistent with grasping a pistol of the
22 size of the replica pistol, as well as, at least in general,
23 the finger orientation within the firearm.

24 Q And, Mr. Martini, when you developed your opinions about
25 the wounds to Mr. Richards' body, did you look at all the

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1 wounds together?

2 A I analyzed and reviewed documentation both individually
3 and within groups and then in their totality.

4 Q And is that to make sure that based on your review, your
5 opinions are based on the totality of the circumstances?

6 MR. BUELNA: Objection, leading.

7 THE COURT: Sustained.

8 BY MR. DAY:

9 Q Mr. Martini, why would you review the evidence in its
10 totality?

11 A It is all part of the reconstruction process, which
12 provides, through physical evidence, a foundation for my
13 conclusions.

14 Q Mr. Martini, based on your work on this case and your
15 training and experience, is the physical evidence consistent
16 with the statements that the officers have made that
17 Mr. Richards was pointing the gun at one of the officers before
18 the shooting?

19 A That is correct, yes.

20 MR. DAY: Thank you, Mr. Martini. Those are all the
21 questions I have for you right now.

22 THE COURT: Cross.

23 CROSS-EXAMINATION

24 BY MR. BUELNA:

25 Q Good morning, almost good afternoon, Mr. Martini.

1 A That is correct.

2 Q Those are the wounds -- wound path, according to
3 Dr. Tovar; right?

4 A Well, you need to refine that statement. There is a very
5 distinct wound path associated in terms of directionality.
6 That directionality can be in one of two directions due to the
7 nature of those injuries.

8 Q But you read Dr. Tovar's statement. He said if there's
9 any directionality to it, it's just on top; correct?

10 A Those are superficial injuries. In terms of determining
11 whether they're moving from the fingertip up the wrist or from
12 the wrist area to the fingertips, that cannot be determined.
13 Those injuries, though, are not consistent with traveling
14 perpendicular to the linear injury that we see in the
15 photograph.

16 Q Okay. Now, in the photograph I see the -- and if I'm
17 doing it right, the fingers are held out, kind of like this,
18 almost perpendicular to the wrist line; correct?

19 A In general, yes.

20 Q So the gun is in line parallel with the fingers in this
21 photograph; correct?

22 A Correct, yes.

23 Q Is it your testimony that Darell Richards was holding the
24 gun out with the gun pointing this way?

25 MR. DAY: Objection, argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: The image shows generally the wrist and
3 finger only. If you were to take the same firearm -- and if
4 you notice, the firearm is generally parallel to the fingers,
5 that would be correct in terms of orientation.

6 BY MR. BUELNA:

7 Q Can you show it to me through the --

8 A Sure. The injuries where we have on the upper portion of
9 the fingers -- in fact, let's work with the trigger finger,
10 this finger here, as well as the finger next to that; these two
11 fingers, since they're very pronounced and have significant
12 injuries on them. Holding a firearm such as you see here, the
13 firearm would be aligned approximately parallel to the finger
14 placement.

15 Now, it's certainly possible that the fingers may have
16 been curled ever so slightly around the grip, but that same
17 general alignment stays constant.

18 Q So when you wrapped your hand around -- I mean, this is my
19 phone, your hand around the handle of a gun grip, you got to
20 wrap your fingers around it, right, so you're saying it's this
21 part that's showing still?

22 A Keep in mind that your cell phone doesn't have a lot of
23 width to it.

24 Q It has a lot of width to it?

25 A Okay, then thickness.

Martini - Cross by Buelna

1 Q You agree that's wider than the handle of a small pistol;
2 right?

3 MR. DAY: Objection, it's argumentative.

4 THE COURT: Sustained.

5 BY MR. BUELNA:

6 Q I'll ask my next question, then.

7 So let's just take your example, what I think you're
8 saying. You're saying that the gun's being held out this way,
9 and it's parallel with his wrist, right, the fingers, when it
10 gets struck; right; is that correct?

11 A In terms of the actual relationship between the wrist and
12 the forearm, I can't tell you. The image that we have, NN,
13 shows the proper orientation of the hand and --

14 MR. BUELNA: Motion to strike as nonresponsive. That
15 is not the question.

16 THE COURT: Sustained. Ask the question again, then.

17 BY MR. BUELNA:

18 Q When you said he was raising or pointing the gun at the
19 officers, it was -- this is suggesting that it was directly at
20 officers and the fragments were coming down his hand; correct?

21 A As a general description, that would be correct.

22 Q Okay. So he would have had to be pointing his hand, or if
23 it had the gun in it, at the officers in his left hand, right,
24 for that to be true?

25 A One -- in the general direction of the officers. Whether

1 it was one or the other specifically or in between, I can't
2 make that determination.

3 Q Now, obviously one officer testified it was in his left
4 hand. But I think you said at the beginning of your testimony
5 earlier that the importance of physical evidence is that it has
6 no bias; is that correct?

7 A That is correct.

8 Q It either supports, contradicts or there's no
9 determination; right?

10 A Along with perception problems or memory problems.

11 Q Sure.

12 Memory problems or people that lie; right?

13 MR. DAY: Objection, it's argumentative.

14 THE COURT: Sustained.

15 BY MR. BUELNA:

16 Q You're aware that Officer Tiner was the first to see
17 Darell Richards; right?

18 A If I remember correctly, that is correct.

19 Q And he was actually the closest to Darell; correct?

20 A That is my understanding.

21 Q And he was the person who put his flashlight on Darell;
22 correct?

23 A If I remember correctly, yes.

24 Q And he said that the gun was in Darell's right hand;
25 right?

1 go; right?

2 A You mischaracterized my statement. I believe I stated
3 that it is certainly possible, and it's not -- how do I put
4 this? It doesn't always happen. Individual holding a firearm
5 when shot may drop the firearm or may not. It's not a fact or
6 even predictable whether they will or will not.

7 Q Even if the person, I think we talked about it, even if
8 they're shot in the head, there's a possibility they would
9 still hold onto that weapon; correct?

10 A It's a possibility, yes.

11 Q And in this case, obviously, we both agree that
12 Mr. Richards, when he was discovered by Officer Jarvis, did not
13 have anything in either one of his hands; correct?

14 A That's consistent with the photographic documentation.

15 Q Now, I heard you saying that you believed that there was
16 damage to the pellet gun consistent with impact from bullet
17 fragments; am I correct?

18 A Yes, you did.

19 Q Now, you also stated that there was no evidence on the
20 pellet gun to suggest to you that it was directly struck by a
21 bullet; correct?

22 A That is correct.

23 Q For example, we both talked about -- or I heard you say
24 that one of the wounds to his right hand came from the outside
25 and passed through the inner palmar surface; correct?

1 THE COURT: Anything further?

2 MR. BUELNA: No, your Honor.

3 THE COURT: Thank you. You may step down.

4 (Witness is excused.)

5 THE COURT: Any other witnesses?

6 MR. RICHMOND: No, Your Honor. The defense rests.

7 THE COURT: Let's take a short break, and then I'll
8 figure out what we're going to do for the rest of the day. We
9 still have to work on jury instructions. Give me an
10 opportunity to talk to the lawyers. I'll have you come back in
11 about 15 minutes. All admonitions apply during the break, and
12 please report any violation of those admonitions to the Court.

13 (In open court, outside the presence of the jury.)

14 THE COURT: Outside the presence of the jury. You
15 may have a seat. We sent you the proposed draft instructions.
16 Any glaring omissions or changes that we need to go over?

17 MR. BUELNA: I just had two things, Your Honor. I
18 don't think in this case there's any dispute as to whether or
19 not the officers were acting within their employment when they
20 fired. It only seems like there's -- there's only confusion if
21 we add a line item for the City. Under the parts where they're
22 vicariously liable, I don't think there's a question that if
23 the officers are liable, the City's liable. Does that make
24 sense?

25 THE COURT: There's no question for lawyers. The

1 jurors have no idea why. The City's in it. That's the reason
2 why we added that, because at the end of instructions, the Bane
3 Act and the negligence instruction, we added the paragraph
4 about you're going to find for -- find that Cox and Edgerton
5 committed the alleged act before you can find against the City
6 or against Officer Sood on those two claims. They're not going
7 to understand. I don't want an inconsistent verdict that says
8 no to Edgerton and Cox but then for some reason finds the City
9 responsible.

10 So they got to make -- we have to make sure it's
11 clear that the only way they can find the City liable on those
12 two claims is if there's a finding that Cox and Edgerton also
13 are responsible.

14 MR. BUELNA: Understood.

15 The last one that I noticed was on the negligence
16 jury instruction, there's -- Sood isn't on it, and I believe he
17 should be on the negligence instruction as being a part of the
18 preshooting conduct.

19 THE COURT: Rather than a vicarious liability theory,
20 you think separate and apart you have a theory that he's
21 negligent, because then you got a duplicate claim, because
22 you've got supervisor liability already. That's your
23 negligence claim, in effect, as to him.

24 MR. BUELNA: Under the both -- okay. Under the
25 fourth and the negligence theory, the supervisor liability is

MARYANN VALENOTI, RMR, CRR U.S. DISTRICT COURT (916)930-4275

1 going to apply, then, is what you're saying. Because I could
2 see a situation -- those are just -- what if they find
3 negligence yes for --

4 THE COURT: Cox and Edgerton.

5 MR. BUELNA: -- Cox, Edgerton and supervisory
6 liability for them, but no unexcessive force under the Fourth
7 Amendment; does that make sense? Then are we saying that Sood
8 is off because --

9 THE COURT: Sood's not part of the excessive force
10 claim.

11 MR. BUELNA: Okay.

12 THE COURT: He's not in that.

13 MR. BUELNA: Okay.

14 THE COURT: There's no vicarious liability under the
15 1983 claim because he didn't even participate in the shooting
16 itself. You can't include him under your negligence/wrongful
17 death claim other than your vicarious liability.

18 MR. BUELNA: Okay. As long as that -- that that's
19 the way it's being understood is supervisory liability will
20 apply to the negligence claim as well. Because they use
21 negligence --

22 THE COURT: No, no, it doesn't. I mean, it would be
23 inconsistent for them to find -- it would not be inconsistent
24 for them to find against you on supervisory liability and still
25 find excessive force, because he wasn't involved in the actual

1 incident itself. So it would not be an inconsistent verdict
2 for them to find against you on -- find in favor of Sood on
3 supervisory liability but find against the Defendant Cox and
4 Edgerton on excessive force on your 1983 claim.

5 MR. BUELNA: Okay. Let me just -- I'm sorry, not to
6 badger, but just one last --

7 THE COURT: No, no, you're not badgering. No.

8 MR. BUELNA: Let's say, for example, that the jury
9 finds, let's say, no unexcessive force under the Fourth
10 Amendment but yes on negligence, correct, and they also find
11 yes on supervisory liability, that's not an inconsistent
12 verdict; correct?

13 THE COURT: For them to find in favor of your clients
14 on negligence.

15 MR. BUELNA: Uh-huh.

16 THE COURT: And in favor of your clients on
17 supervisory liability.

18 MR. BUELNA: Yeah.

19 THE COURT: That's not inconsistent.

20 MR. BUELNA: That's all I was examining.

21 THE COURT: I don't think so.

22 MR. BUELNA: Perfect.

23 THE COURT: But again, keep in mind, it's also not
24 inconsistent for them to find in your favor on negligence, but
25 not find supervisor liability.

1 MR. BUELNA: I agree.

2 THE COURT: Got it.

3 MR. BUELNA: Agree completely. Yeah.

4 THE COURT: Do you want to include the vicarious
5 liability instruction?

6 MR. RICHMOND: Well --

7 THE COURT: Because we have a paragraph that says
8 obviously that if you find that Plaintiffs have proven this
9 claim against Edgerton and/or Cox, then you may find that the
10 defendant City of Sacramento is also liable for damages, if
11 any, to the Plaintiffs. That's on the Bane Act claim, for
12 example. But I can anticipate a question from the jury saying
13 why? I mean, they don't really understand. There's not a
14 specific reason why they could do that.

15 MR. BUELNA: I agree. If we're going to keep them in
16 on the line item as defendant, meaning line item for liability,
17 then it makes sense to keep in the vicarious liability
18 instruction.

19 THE COURT: Because on the verdict form, Questions 3
20 and 4, the City's in there. So they've got to understand why
21 is the City in there.

22 MR. BUELNA: That's what I was saying. I agree, Your
23 Honor.

24 THE COURT: Okay. Are you okay with keeping it in?

25 MR. RICHMOND: Yes.

1 THE COURT: Okay. So I'm going to add it, then,
2 after Instruction 21. So this will be Instruction 21, and then
3 we'll go from there. 22 will be renumbered -- I'm sorry. So
4 this will be 22. Vicarious liability will be 22, and then
5 we'll go from there.

6 We'll take a break, then we'll get to the plaintiffs'
7 closing argument. We'll come back tomorrow, you'll do your
8 closing argument and then a brief rebuttal, and then I'll
9 instruct. I don't want to instruct before. I want to instruct
10 after.

11 Again, I don't put a time limit on closings. I don't
12 know if you have timed your closings, but if you're getting up
13 over an hour, you're going to see that jury fade. So it's up
14 to you guys. If you get to an hour and a half, then you may
15 hear me start coughing. So take a short break, get set up and
16 we'll start your closings in about 10 minutes.

17 MR. RICHMOND: Your Honor, just for clarity, so we're
18 not dark tomorrow, we'll come in at 9:00 a.m?

19 THE COURT: You got to come in, because they'll be
20 coming in to deliberate anyway.

21 MR. POINTER: Your Honor, in light of -- we ask that
22 we just do all closings tomorrow if that's possible. As
23 opposed to today and --


24 THE COURT: I have a criminal calendar tomorrow.

25 THE CLERK: Yes, you have a criminal calendar.

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

EXHIBIT 5

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

1 SACRAMENTO, CALIFORNIA, MONDAY, OCTOBER 31, 2022

2 --o0o--

3 (In open court, outside the presence of the jury.)

4 THE CLERK: Come to order. Court is now in session.
5 The Honorable John A. Mendez, Senior United States District
6 Judge, presiding.

7 You may be seated.

8 THE COURT: You and Mr. Buelna are switching places?

9 MR. POINTER: Yes.

10 THE COURT: Okay. Outside the presence of the jury,
11 we received a note 1:30 saying, "Your Honor, we have debated to
12 the best of our abilities. We could not agree on Number 1 on
13 the verdict form. Just now a juror wants to change his votes
14 for Number 2 through 4," and it has crossed out, "Number 2
15 through 5 I meant."

16 So my proposed response is, "It's unclear from your
17 note that you've reached a unanimous verdict on any of the five
18 claims. If not, please so inform the Court. If you have
19 reached a unanimous verdict on any of the five claims, please
20 fill out the Verdict Form so that it correctly reflects your
21 verdict."

22 So I do want to take partial verdicts if they have
23 reached them.

24 Any objection?

25 MR. POINTER: No, Your Honor.

1 MR. RICHMOND: No objection.

2 THE COURT: Okay. It wouldn't go very far, let's see
3 what they say. I'm not forcing them back in to deliberate any
4 longer if they don't reach a verdict.

5 Let's stay on the record. If I do have to declare a
6 mistrial, I will ask them, just so all of you know, in terms of
7 numbers how they were divided.

8 MR. POINTER: So are you going to do a jury poll?

9 THE COURT: I'll just ask the foreperson.

10 MR. POINTER: That will be for each count?

11 THE COURT: Each count -- each claim.

12 MR. POINTER: Each claim. Thank you.

13 Should it be a mistrial, I know some judges allow the
14 jury or the attorneys to interact with the jury if they so want
15 to.

16 THE COURT: Some judges ask if there's anything
17 further that could help them. At this point, given they're on
18 Day 4, I'm not going to do that. Some judges ask, "Are there
19 any other instructions you need," or, "We're going to have to
20 have portions of the testimony read back," and then also, which
21 I think is dangerous, "Would it help if I allowed the attorneys
22 a few minutes each to argue a particular point?" I don't want
23 to go there at this point.

24 MR. POINTER: Sure. I actually wasn't clear. I meant
25 assuming --

1 THE COURT: Once they're discharged, you could talk to
2 them all you want, but I also tell them they don't have to talk
3 to you if they don't want to.

4 (In open court, in the presence of the jury.)

5 THE COURT: Okay. All parties present, all jurors are
6 present.

7 The jury has sent a note to the Court indicating that
8 they are not unanimous on any of the five claims. So,
9 Ms. 101063368, let me ask you the following questions on the
10 record. They are really yes or no questions.

11 You could have a seat. Relax. Okay.

12 You've indicated the jury is deadlocked on all five
13 claims; is that correct?

14 JUROR NO. 1: Yes, Your Honor.

15 THE COURT: Okay. Is there anything further you
16 believe the Court can do to assist in the deliberations?

17 JUROR NO. 1: No, Your Honor.

18 THE COURT: Okay. Is it your opinion that the jury is
19 hopelessly deadlocked?

20 JUROR NO. 1: Yes, Your Honor.

21 THE COURT: Okay. Is there any reasonable probability
22 that the jury can reach a unanimous verdict if you are sent
23 back to the jury room for further deliberations?

24 JUROR NO. 1: No, Your Honor.

25 THE COURT: Okay. All right. Then I'm going to ask

1 each of you individually, beginning with we'll go right to
2 left, so Juror Number 2. Do you agree with all the answers
3 given by the foreperson?

4 JUROR NO. 2: Yes, I do, Your Honor.

5 THE COURT: Juror Number 3, do you agree with all the
6 answers given by the foreperson?

7 JUROR NO. 3: I do, Your Honor.

8 THE COURT: Okay. Juror Number 4, do you agree with
9 all the answers given by the foreperson?

10 JUROR NO. 4: I do.

11 THE COURT: Pass the mic down.

12 Juror Number 5, do you agree with all the answers
13 given by the foreperson?

14 JUROR NO. 5: I do.

15 THE COURT: Juror Number 6, do you agree with all the
16 answers given by the foreperson?

17 JUROR NO. 6: I do.

18 THE COURT: Juror Number 7, do you agree with all the
19 answers given by the foreperson?

20 JUROR NO. 7: I do, Your Honor.

21 THE COURT: And Juror Number 8, do you agree with all
22 the answers given by the foreperson?

23 JUROR NO. 8: I do.

24 THE COURT: I do find based on the answers that there
25 is no reasonable probability that this jury can reach a

1 unanimous verdict on any of the five claims if sent back to the
2 jury room.

3 For the record, the jury has been deliberating for --
4 this is their fourth day of deliberations. They have worked
5 incredibly hard, and I know they've worked at trying to reach
6 the unanimous verdict.

7 So because I find that they there's no reasonable
8 probability that they could reach a unanimous verdict, at this
9 point I am declaring a mistrial.

10 So one more question, Ms. 101063368, at this point
11 since I've declared a mistrial, can you go through each claim
12 for me and just give me a number, and tell me the number on how
13 the jury was divided? So, for example, on the first claim,
14 which was for excessive force, what was the number, if you
15 could recall?

16 JUROR NO. 1: I believe there were three yes on the
17 first officer. And one yes on the second officer. So it was
18 Edgerton and Cox. And so at first there were three yeses and
19 on the second there were was one yes, and then everyone else
20 was a no.

21 THE COURT: Okay. On the second claim, the familial
22 loss. Edgerton, do you remember the number?

23 JUROR NO. 1: This would be seven no and one yes.

24 THE COURT: Okay. And then on Cox.

25 JUROR NO. 1: Seven no and one yes.

1 THE COURT: Okay. On the negligence wrongful death,
2 on Edgerton.

3 JUROR NO. 1: I believe seven no and one yes.

4 THE COURT: Okay. And on Cox.

5 JUROR NO. 1: Seven no and one yes.

6 THE COURT: On Bane Act.

7 JUROR NO. 1: Seven no and one yes.

8 THE COURT: For both defendants?

9 JUROR NO. 1: Yes.

10 THE COURT: Both Edgerton and Cox. And on the
11 supervisory liability.

12 JUROR NO. 1: Seven no and one yes.

13 THE COURT: Okay. All right. Okay. You have now
14 completed your service as jurors in this case.

15 On behalf of the United States District Court for the
16 Eastern District of California, on behalf of all the judges of
17 this court, on behalf of the attorneys, we want to thank you
18 for the incredible amount of time and effort that you put into
19 this case as jurors.

20 With respect to that admonition that I've been giving
21 you throughout the trial about not talking about the case, once
22 your discharged that admonition is lifted. That means that you
23 are permitted to speak to anyone about the case or about your
24 service as a juror. But it also means that you do not have to
25 speak to anyone about the case or about your service as a

1 willing to try it again a second time.

2 I just can't tell you how much I appreciate how well
3 all of you got along and how you focused on the case and each
4 side's position, and so for that, I really want to thank you.
5 You're welcome back any time. Thank you, all.

6 MR. DAY: Thank you, Your Honor.

7 MR. POINTER: Thank you.

8 (Proceedings concluded at 2:18 p.m.)


9

10 C E R T I F I C A T E

11

12 I certify that the foregoing is a true and correct
13 transcript of the record of proceedings in the above-entitled
14 matter.

15

16 
17 MARYANN VALENOTI, RMR, CRR
18 Official Court Reporter
19 CA CSR #11266

December 16, 2022
DATE

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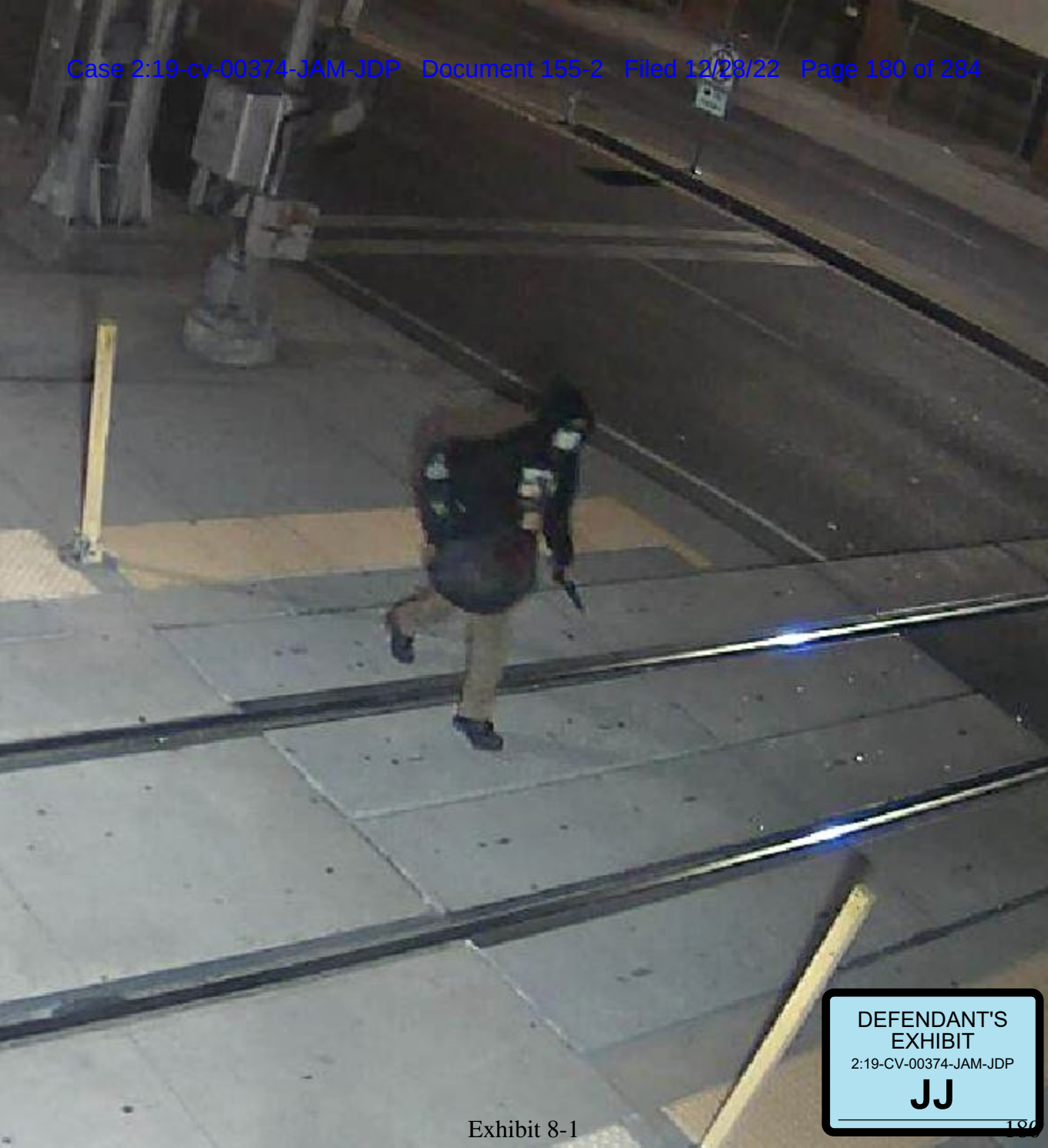
Exhibit 6

Audio File to be Supplemented

Exhibit 7

Video File to be Supplemented

EXHIBIT 8



DEFENDANT'S
EXHIBIT
2:19-CV-00374-JAM-JDP
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Exhibit 9

Video File to be Supplemented

EXHIBIT 10

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

Officer Tiner - Direct by Buelna

1 2018; do you understand that?

2 A. Yes.

3 Q. So on the night of the incident, what was your assignment?

4 A. SWAT.

5 Q. Okay. What does that mean, SWAT?

6 A. Special Weapons And Tactics.

7 Q. Is there additional training or some difference between
8 SWAT and a rank and file police officer?

9 A. Yes. You have to go to a POST certified SWAT school, and
10 then within our department we have a training program that we
11 have to go through to become certified.

12 Q. And at the time of the incident, September 2018, how long
13 had you been on the SWAT team?

14 A. Since January of 2017.

15 Q. So approximately, what is that, a year, year and nine
16 months?

17 A. Yes.

18 Q. Okay. Obviously you mentioned POST academy or POST
19 certified. What does "POST" mean?

20 A. It's the governing body for law enforcement as far as
21 training and certificates.

22 Q. Okay. Is POST an acronym for California Peace Officer
23 Standards and Training?

24 A. Yes.

25 Q. So essentially POST provides the standard for which police

Officer Tiner - Direct by Buelna

1 store purchasing some groceries and you get a call and you're
2 expected to prepare yourself and respond; correct?

3 A. Yes, in a timely manner.

4 Q. And, for example, do you recall approximately what time it
5 was when you got the call to respond to this incident?

6 A. I don't remember exactly the time. It was the middle of
7 the night, though.

8 Q. Would you agree that obviously the shooting took place
9 around 3 a.m.; correct?

10 A. I believe so.

11 Q. And you responded to the scene some hours before that;
12 correct?

13 A. Yes.

14 Q. And so as you said, you had gotten the call in the middle
15 of the night; right?

16 A. Yes.

17 Q. You may have been sleeping; right?

18 A. I believe I was.

19 Q. Okay. But even though you were sleeping, you were
20 expected to prepare yourself, get ready, respond to the scene
21 and perform your duties; correct?

22 A. Yes.

23 Q. And all of the things we just talked about, all the
24 principles of force, composure, management of fear and anger,
25 you were expected to apply those during the incident as well;

Officer Tiner - Direct by Buelna

1 with the mentally ill, they may need more time than other
2 people to respond or comply with commands; correct?

3 A. Possibly.

4 Q. You are trained to take your time as much as possible and
5 de-escalate with the mentally ill; correct?

6 A. If there's time to de-escalate, yes.

7 Q. You are trained that the mentally ill may not respond to
8 commands the same way other people do; correct?

9 A. Yes.

10 Q. And you're supposed to take that into consideration when
11 you're issuing commands; correct?

12 A. Again, if you have that opportunity, yes.

13 Q. And if you know that information before you enter into a
14 situation; correct?

15 A. If you have that information, yes.

16 Q. Again, you are expected -- all these trainings and
17 policies we just went over, you are expected to understand,
18 know and apply during the incident; correct?

19 A. Yes.

20 Q. Now, you mentioned that you were on call -- you received a
21 call to respond to this scene as a SWAT member; correct?

22 A. Yes.

23 Q. And you went to a briefing; correct?

24 A. Yes.

25 Q. A briefing held by Lieutenant Sood; correct?

Officer Tiner - Direct by Buelna

1 A. Yes.

2 Q. And at that briefing, Lieutenant Sood gave you the
3 information that they had about the situation involving Darell
4 Richards; correct?

5 A. Yes.

6 Q. In fact, you were told Darell Richards' name; correct?

7 A. I believe so.

8 Q. You were shown a picture of him as well; correct?

9 A. Yes.

10 Q. You had a briefing of the containment perimeter; correct?

11 A. Yes.

12 Q. You had, as you said, the guy's history; correct?

13 A. Yes.

14 Q. You had all the patrol info; correct?

15 A. Correct.

16 Q. Your assignment was to the BearCat?

17 A. Yes.

18 Q. That BearCat was parked in the alleyway alongside the yard
19 that you would eventually enter by Mr. Foster; is that correct?

20 A. Yes.

21 Q. That block at 21st and 1st is basically where you guys had
22 set your perimeter; correct?

23 A. Yes.

24 Q. Now, at that briefing, beyond the perimeter, you also
25 received information about a potential suicide note; correct?

Officer Tiner - Direct by Buelna

1 A. There was a note or an assignment of some sort. It was
2 unclear what that was. I didn't read it.

3 Q. I would like to read from your deposition, Page 21,
4 Lines 21 through 23.

5 THE COURT: Hang on.

6 MR. BUELNA: Really, for completeness, Lines 13 to 23.

7 THE COURT: Okay. If you offer for impeachment, he
8 said the exact same thing here.

9 MR. BUELNA: Let me just ask him.

10 BY MR. BUELNA:

11 Q. So it was a potential suicide note; correct?

12 A. It was unclear what it was.

13 MR. BUELNA: I think that's impeachment.

14 THE COURT: Go ahead.

15 MR. BUELNA: Okay.

16 BY MR. BUELNA:

17 Q. This is from your deposition transcript where you were
18 under oath at your deposition; right?

19 A. Yes.

20 Q. All right. "Question: Okay. So a potential suicide
21 note, I guess, at that point?"

22 "Answer: Yes."

23 So at deposition you said it was a potential suicide note.
24 Is your testimony now different?

25 MR. RICHMOND: Your Honor, I object.

Officer Tiner - Direct by Buelna

1 THE COURT: Sustained. You should read from Line 13.

2 MR. RICHMOND: As you said you were going to do.

3 BY MR. BUELNA:

4 Q. Question: "Do you remember" -- this is Line 13, "Do you
5 remember in the briefing being notified the -- that the -- that
6 Mr. Richards" -- let me just -- I could actually show this.

7 THE COURT: Just read it, go ahead.

8 BY MR. BUELNA:

9 Q. "In his backpack had something that was being
10 considered -- deemed to be a suicide note.?"

11 "Answer: They had mentioned that there was a note. It
12 was unclear if it was a suicide note, but there had been a --
13 there was a letter or some type of assignment in there that
14 discussed something along those lines."

15 Okay --

16 I'm sorry, "Question: Okay. So a potential suicide note,
17 I guess, at that point?"

18 "Answer: Yes."

19 Is your testimony here different?

20 A. No.

21 Q. You would agree it was a potential suicide note, then?

22 A. I would say that I didn't call it a suicide note, but that
23 it was something that was located that was found that was a
24 note for an assignment and it was unclear to me.

25 Q. But at deposition when were you asked if it was a

Officer Tiner - Direct by Buelna

1 potential suicide note, you said yes; correct?

2 THE COURT: It's argumentative. It's been asked and
3 answered.

4 BY MR. BUELNA:

5 Q. Did you have any information, for example, at that
6 briefing held by Lieutenant Sood that Mr. Richards suffered
7 from mental health issues?

8 A. I don't remember hearing that.

9 Q. I'm going to, at this point, read as a prior party
10 deponent admission, transcript from Edgerton's depo.

11 THE COURT: I got that. Okay, go ahead. Which page?

12 MR. BUELNA: It will be Page 25, Line 12 to Page 26,
13 Line 14.

14 Again, this is for impeachment.

15 THE COURT: You don't have to. Go ahead, there's no
16 objection.

17 BY MR. BUELNA:

18 Q. This is deposition testimony from Defendant Todd Edgerton.

19 "Question: Well, was there any discussion about what the
20 team should or shouldn't do because the person was potentially
21 suicidal?"

22 "Answer: It was pretty standard, like we usually do with
23 the res teams. We asked CNT to negotiate once we locate the
24 suspect. So, you know, there was information that he was --
25 potentially had some mental issues from his family that were

Officer Tiner - Direct by Buelna

1 undiagnosed. There was also potentially information from his
2 family that he was using drugs as well."

3 "Question: That's information you had in the briefing?"

4 "Answer: Yes."

5 So at that point at least, you never heard about his
6 mental health issues during the briefing?

7 A. I don't recall that, no.

8 Q. But Todd Edgerton was at the briefing with you; right?

9 A. He was.

10 Sergeants also have more information because they're going
11 to be doing the game plan. So I don't know if there was any
12 other information that he had that I can't speak about.

13 Q. I now want to read as prior deposition testimony from
14 Defendant Patrick Cox at Page 45, Line 4.

15 THE COURT: Hang on. Page 45, Line 4.

16 MR. BUELNA: Through 20.

17 THE COURT: Let's take it out. Thanks. You're going
18 to read through 20?

19 MR. BUELNA: Yes.

20 THE COURT: Go ahead and start at Line 1. Any
21 objection?

22 MR. RICHMOND: No objection, Your Honor.

23 THE COURT: Okay, go ahead.

24 MR. BUELNA: You want me to start at Line 1?

25 THE COURT: Yeah.

Officer Tiner - Direct by Buelna

1 BY MR. BUELNA:

2 Q. Sure. Okay.

3 Question -- and this is from, for the record, Defendant
4 Patrick Cox's deposition, sworn testimony, Page 45, Line 1.

5 "Question: Okay. At that point did the -- did the team
6 know what the suspect's name was?

7 "Answer: I don't recall.

8 "Question: Okay. I think you describe an understanding
9 that some -- that in the backpack there was some sort of a
10 goodbye note that was perceived by the officers as potentially
11 being a suicide note; is that correct?

12 "Answer: Yes.

13 "Question: Okay. And what, if any, significance did that
14 suicide note have on the team's response?

15 "Answer: I don't know that it had any.

16 "Question: Okay. So you acknowledge that the person you
17 were looking for had a suicide note. Did that cause you to
18 believe that the -- that that person may, in fact, be suicidal?

19 "Answer: I don't recall thinking that. Actually, I'm
20 not -- I can't guess -- I guess speculate. I can't -- I don't
21 remember -- recall how hearing that -- I believe that was part
22 of the brief -- or I know that was part of the brief, but it
23 wasn't -- I guess I was more concerned about the firearm than
24 the mental."

25 So Officer Cox heard about the suicide note at the brief;

Officer Tiner - Direct by Buelna

1 correct?

2 MR. RICHMOND: Objection, lacks foundation.

3 THE COURT: Sustained.

4 BY MR. BUELNA:

5 Q. Officer Cox wasn't a sergeant at the time; correct?

6 A. No.

7 Q. Obviously he gathered this information from the brief?

8 MR. RICHMOND: Objection, calls for speculation.

9 THE COURT: Sustained. It's argumentative, too.

10 BY MR. BUELNA:

11 Q. Obviously this information we just talked about, including
12 the potential suicide note you testified to, was gathered from
13 the contents of Mr. Richards' backpack; correct?

14 A. Yes.

15 Q. And that was recovered early on in the incident; correct?

16 A. I believe so.

17 Q. And then discussed at the briefing; correct?

18 A. Yes.

19 Q. Did you see --

20 MR. BUELNA: I'm going to show the witness Trial
21 Exhibit 19.

22 THE COURT: Okay.

23 MR. BUELNA: Previously admitted.

24 BY MR. BUELNA:

25 Q. Now, there were a number of papers and slips that were

Officer Tiner - Direct by Buelna

1 Q. But it's something that CNT might do; right?

2 A. Patrol could do that as well.

3 Q. Now, before entering the yard, your understanding of the
4 crimes that Darell committed was that he had pointed a weapon
5 at cars or individuals and had fled from the police with a gun
6 in his hand; correct?

7 A. Yes.

8 Q. There's no reports that he actually used this gun, fired
9 it; correct?

10 A. No, not that he had fired it. Just that he had pointed it
11 at people.

12 Q. Okay. And there's no reports that he had injured anyone;
13 correct?

14 A. No.

15 Q. And even when he was confronted by a patrol officer,
16 there's no report that he had pointed it at the patrol officer;
17 correct?

18 A. To my understanding he just ran with it.

19 Q. That was the information you had as it's relevant to
20 Darell and the crimes he may or may not have committed when you
21 entered the yard; correct?

22 A. Yes.

23 Q. Okay. Now, when you entered the yard, you had already
24 searched two of the yards; correct?

25 A. At least -- I believe so, yes.

Officer Tiner - Direct by Buelna

1 Q. Okay. And who did you enter the yard with at 2017 1st
2 Avenue?

3 A. I believe Officer Jarvis and Officer Cox were in front of
4 me, and then myself, I believe Cunningham and DeLeon and
5 Edgerton.

6 Q. And who was at the front -- strike that.

7 Can you describe briefly how you made your way into the
8 yard?

9 A. Like the order?

10 Q. Correct.

11 A. I believe Cox went one to the right. Jarvis went to the
12 left. I went three to the right, and then I believe it was
13 Cunningham; Cunningham or DeLeon, I believe, went towards the
14 middle to the left, and then it would have been filled in
15 behind us.

16 Q. And obviously, if you can recall, the yard had a number of
17 items in it; fair enough?

18 A. Yes.

19 Q. And specifically there was a deck or overhang with a great
20 many number of items; correct?

21 A. Yes.

22 Q. And a barbecue; right?

23 A. Yes.

24 Q. It was a big barbecue; right?

25 A. To my knowledge, yes.

Officer Tiner - Direct by Buelna

1 Q. As you approached that area Cox was to your right;
2 correct?

3 A. Yes.

4 Q. Were you armed with anything?

5 A. Yes.

6 Q. What were you armed with?

7 A. My rifle and my pistol.

8 Q. What type of rifle?

9 A. It was a LWRC .223.

10 Q. Okay. Not an AR-15?

11 A. It's an AR-15 platform.

12 Q. What does an AR-15 platform mean?

13 A. Assault weapon.

14 Q. And how many bullets did you have in your cartridge?

15 A. In my magazine?

16 Q. Correct.

17 A. 30.

18 Q. One in the chamber?

19 A. Yes.

20 Q. So it would be 31?

21 A. No, I believe it would be 30 including that one.

22 Q. Okay. Is it fully automatic or semi?

23 A. Fully auto.

24 Q. And what is the difference between semi and fully
25 automatic?

Officer Tiner - Direct by Buelna

1 Q. Now, did you go -- you were left of Officer Cox; right?

2 A. Yes.

3 Q. Okay. How far left did you go before you saw Darell?

4 A. I don't know exactly how many feet. I have no idea how
5 far I was.

6 Q. Okay. Do you know where you were in relationship to the
7 deck, the overhang?

8 A. I believe I was just out from it.

9 Q. Just out?

10 A. I don't know direction language where that would be.

11 Q. How far approximately from the barbecue do you think you
12 were?

13 A. I don't have any idea feet-wise. I would have to guess.

14 Q. Not very far, though, right, because you were able to take
15 cover behind it quickly; right?

16 A. Yes.

17 Q. Now, when you first saw Darell, he was leaning back in a
18 semi-seated position; correct?

19 A. Yes.

20 Q. You saw him out of the right of your eye; correct?

21 A. Yes.

22 Q. When you saw him out of the right of your eye and you saw
23 him in a semi-seated position -- what does semi-seated mean?

24 A. He was leaned-back to the right; semi-seated, kind of
25 leaning back.

Officer Tiner - Direct by Buelna

1 Q. And when you say he was in a leaned-back position, was he
2 leaning up against like a fence or something?

3 A. No, I don't think so.

4 Q. Okay. But his left shoulder was closest to you; right?

5 A. I believe so.

6 Q. Kind of like -- you see this middle chair here?

7 A. Yes.

8 Q. So you would be in some sort of orientation like this to
9 him (indicating); right?

10 A. I believe so.

11 Q. Okay. And you said you were leaning to his right, so his
12 shoulder was closer to you; right?

13 A. Yes.

14 Q. Okay. And you -- do you put your light on?

15 A. Yes.

16 Q. So when you put your light on, your gun was aimed at him
17 as well; correct?

18 A. Yes.

19 Q. You had the red dot; correct?

20 A. Yes.

21 THE COURT: Back to the mic.

22 MR. BUELNA: Okay.

23 THE COURT: We have to be able to hear you.

24 BY MR. BUELNA:

25 Q. So you put your red dot on, he's in a semi-seated

Officer Tiner - Direct by Buelna

1 position, left shoulder closest to you, turned a little bit to
2 the right; fair enough?

3 A. Yes.

4 Q. Okay. At that point what did you do?

5 A. Started giving commands.

6 Q. You said, "Show me your hands, show me your hands"?

7 A. Yes.

8 Q. So when you said, "Show me your hands, show me your
9 hands," you wanted him to lift his hands or show his hands;
10 right?

11 A. Yes.

12 Q. Okay. And you actually -- when you say, "Show your
13 hands," it's actually a form of de-escalation; correct?

14 A. I believe so.

15 Q. Because you're saying, Hey, show me your hands, comply
16 with that and I'm not going to shoot; right?

17 A. Yes.

18 Q. And typically, would you agree that the first officer that
19 issues verbal commands is the one that continues to until they
20 can no longer; correct?

21 A. Typically, yes.

22 Q. That's because you don't want contradictory commands or
23 confuse the person to whom you are issuing the command; right?

24 A. Yes.

25 Q. Now, as soon as you said, "Show me your hands, show me

Officer Tiner - Direct by Buelna

1 your hands," and you had your gun on him, you said that he used
2 his right hand and he pointed the gun at you; right?

3 MR. RICHMOND: Objection, Your Honor, lacks
4 foundation.

5 MR. BUELNA: You're right, fair enough.

6 BY MR. BUELNA:

7 Q. As soon as you said, "Show me your hands, show me your
8 hands," what did Mr. Richards do?

9 A. Pointed the gun at me.

10 Q. With his left or right hand?

11 A. I believe it was his right hand.

12 Q. So as soon as you said, "Show me your hands, show me your
13 hands," you said he pointed the gun at you with his right hand;
14 right?

15 A. Yes.

16 Q. Can you show me up there on the stand the motion that he
17 made towards you?

18 A. He was in a -- he was in a leaned-back position, and as
19 soon as I said, "Show me your hands, show me your hands," I saw
20 the gun come out.

21 Q. So he actually kind of moved, leaned up and went towards
22 you -- or turned towards you; right?

23 A. I was focused on the gun mostly. I said, "Show me your
24 hands, show me your hands," and the gun came straight out at
25 me.

Officer Tiner - Direct by Buelna

1 Q. Pointed right at you; right?

2 A. Yes.

3 Q. And you never saw his left hand, though; right?

4 A. I don't remember seeing other hands, no.

5 Q. And as soon as you -- so he pointed -- you're sure he
6 pointed it right at you?

7 A. He pointed it at me, yes.

8 Q. Okay. That's an important fact because if a person points
9 a gun right at you, that could justify the use of deadly force;
10 right?

11 A. Yes.

12 Q. Okay. And you said that here on the stand, and do you
13 recall saying that as well in your deposition?

14 A. Yes.

15 Q. Now, when he pointed his gun right at you, you still had
16 your flashlight on him; right?

17 A. I believe so.

18 Q. And so that means your gun was aimed at him as well;
19 correct?

20 A. Yes.

21 Q. But you didn't shoot; correct?

22 A. No.

23 Q. You moved behind the barbecue; correct?

24 A. Yes.

25 Q. All right. And you heard -- shortly after you said, "Show

Officer Tiner - Direct by Buelna

1 me your hands, show me your hands," you heard Officer Cox and
2 Edgerton shoot; correct?

3 A. I heard them -- I heard Officer Cox say something as well,
4 and then as the gun came out, I took cover, and the shooting
5 happened all almost at the same time. It happened so fast.

6 Q. Okay. Now, if you had your gun on Mr. Richards and he
7 pointed the gun directly at you, and there's -- obviously when
8 you have your light on him there's nothing between you and him;
9 correct?

10 A. Correct.

11 Q. Why didn't you fire?

12 A. Because I didn't know where Officer Cox was.

13 Q. He certainly wasn't between you and your barrel; right?

14 A. He was moving into that area, and I would rather take a
15 bullet or get shot at than have to explain to his family that I
16 shot him.

17 Q. Do you have an understanding that Officer Cox doesn't feel
18 that way?

19 A. I do.

20 Q. Did you have a discussion -- and he feels that you did the
21 opposite thing -- that you should have shot, and that you
22 exposed him and the other officers by not shooting?

23 A. Yes.

24 Q. Okay. You disagree with that; right?

25 A. I disagree with it.

Officer Tiner - Direct by Buelna

1 Q. And you ducked out of the way allegedly because -- and I'm
2 just going to say it one more time -- he pointed the gun right
3 at you; right?

4 A. Yes.

5 Q. And now obviously you had a deposition, and you've
6 testified today; correct?

7 A. Yes.

8 Q. But just hours after the shooting you provided a statement
9 to homicide detectives; right?

10 A. Yes.

11 Q. And you understood the purpose of your statement to
12 homicide detectives was that they were investigating whether or
13 not a crime -- whether or not a murder took place; correct?

14 A. Yes.

15 Q. Okay. So you knew that you had to provide them every
16 critical piece of information you could to allow them to make
17 that assessment; right?

18 A. Yes.

19 Q. And you never lied to them; right?

20 A. No.

21 Q. But you didn't tell homicide, just hours after the
22 incident, that he pointed the gun right at you; correct?

23 A. I told them that the gun came up at me, yes.

24 Q. You said you saw the gun, but you never mentioned that it
25 came at you or pointed at you; correct?

Officer Tiner - Direct by Buelna

1 admitted 15, I'm starting at 1 hour 34 minutes and playing to 1
2 minute [sic] and 43 minutes.

3 THE COURT: Is that audio?

4 MR. BUELNA: Yes.

5 THE COURT: I just want to warn my court reporter.

6 MR. BUELNA: I'll try to make sure it doesn't come out
7 too loud.

8 (Audio is played.)

9 BY MR. BUELNA:

10 Q. I'm stopping at 1 hour 34 minutes 46 seconds. This is
11 Officer Jarvis' body camera, but do you recognize generally
12 what his body camera is capturing?

13 A. Yes.

14 Q. And what is it capturing?

15 A. The backyard.

16 Q. Did you hear for a moment, "Show me your hands, show me
17 your hands," and then the shot fired?

18 A. Yes.

19 Q. Do you agree that that was you saying, "Show me your
20 hands, show me your hands"?

21 A. It sounded like it.

22 Q. I'm going to continue to play.

23 (Video is played.)

24 BY MR. BUELNA:

25 Q. I'm going to stop right here. Obviously this is Mr. --

Officer Tiner - Direct by Buelna

1 you worried about shooting Officer Cox and Edgerton, you would
2 have been worried if he did have a gun they'd shoot him.

3 The reason you didn't shoot was because Darell Richards
4 did nothing to threaten you, but instead you knew he was
5 mentally ill, he was complying with your command.

6 MR. RICHMOND: Objection, lacks foundation.

7 BY MR. BUELNA:

8 Q. And you gave him --

9 THE COURT: Stop, stop. Three people can't talk at
10 once. When there's an objection, pause. Your question is so
11 compound that I don't know what he's answering.

12 Objection sustained.

13 MR. BUELNA: Okay.

14 BY MR. BUELNA:

15 Q. His arms were coming up; right?

16 A. The gun was coming up towards me, yes.

17 Q. Well, obviously if the gun's coming up, his arms were
18 coming up; right?

19 A. I didn't see the other one, I only saw one with the gun.

20 Q. The right arm; right?

21 A. That's what it appeared to be.

22 Q. And he was leaning to the right; correct, when you saw it?

23 A. Yes.

24 Q. Okay. And so even though his left hand would have been
25 closest to you, you only saw the right arm; correct?

Officer Tiner - Direct by Buelna

1 A. What appeared to be, yes.

2 Q. And it was going up; correct?

3 A. It was going up in a manner towards me, not up as
4 surrendering, which is why I took cover.

5 Q. Do you know what the code of silence is?

6 A. No.

7 Q. Are you familiar with a principle within law enforcement
8 that you don't -- that you cover for your buddies, you don't
9 snitch, essentially, on officers that do the wrong thing?

10 A. No.

11 Q. You do the right thing; correct?

12 A. Yes.

13 Q. So tell the truth to this jury and to this family of how a
14 19-year-old boy that was suicidal was shot and killed.

15 MR. RICHMOND: Objection, lacks foundation.

16 THE COURT: Also argumentative. Sustained.

17 BY MR. BUELNA:

18 Q. This is my final question: The reason that you didn't
19 shoot that night is because you did the right thing, because
20 Mr. Richards was trying to surrender and Officer Cox butt in on
21 your commands and shot him; correct?

22 A. No.

23 MR. BUELNA: No further questions.

24 THE COURT: You can cross and direct. We're going to
25 try to get all your testimony in so you don't have to return.

Officer Tiner - Cross and Direct by Richmond

1 You may be asked questions outside the scope, and he'll get a
2 chance to ask you further questions.

3

4 CROSS-EXAMINATION and DIRECT EXAMINATION

5 BY MR. RICHMOND:

6 Q. Good morning, Officer Tiner.

7 A. Good morning.

8 Q. Do you have any doubt in your mind, as you sit here today,
9 whether or not that gun was pointed directly at you right
10 before shots were fired?

11 A. No, I do not.

12 Q. And you said so at your -- well, let me back up a little
13 bit. There were portions of your interview that were read, and
14 I believe it started when you were asked, "It was in his right
15 hand and he was holding it down -- up?"

16 And your response was, "No, he was holding it up."

17 So the question that was asked of you is, was the gun
18 positioned down or up; is that right?

19 A. Yes.

20 Q. And your answer was up?

21 A. Yes.

22 Q. And when you were asked, "You saw his arm coming up," your
23 answer was, "I saw his arm coming up." And what is it that you
24 meant by that?

25 A. That the arm was coming up with the gun in it towards me.

Officer Tiner - Cross and Direct by Richmond

1 Q. Okay. And then further on in your interview, you were
2 asked, "Question: And pass on your right?"

3 Your answer is "yes."

4 And, "Question: And that's his responsibility, so he
5 comes up and, you know, that he's taking that responsibility?"

6 Your answer, "I know he's there."

7 "Okay."

8 Your answer, "Absolutely."

9 Next, "And if he" --

10 And your answer, "And if he doesn't, then that guy
11 already, he has the drop on me for sure." What did you mean by
12 that?

13 A. I thought I was going to get shot at.

14 Q. Because the gun was pointing at you; correct?

15 A. Yes, sir.

16 Q. And the Detective responds, "Okay." And then you say,
17 "Absolutely, 100 percent."

18 The detective then says, "Okay."

19 And you say, "He saved my life."

20 Who are you referring to?

21 A. Officer Cox.

22 Q. And why did you say that?

23 A. Because I just had a gun pointed at me.

24 Q. Further down, the question, "When you saw the gun, what
25 were you thinking?"

Officer Tiner - Cross and Direct by Richmond

1 Your answer, "I was thinking this guy is going to shoot
2 us."

3 Would you say that if he was not pointing the gun at you?

4 A. No.

5 Q. Further on, you say, "I'm pushing out this way and there
6 is that deep underneath the stairs."

7 You're referring to the staircase that was shown in the
8 video; right?

9 MR. BUELNA: Objection, hearsay. It's past the point
10 of rehab.

11 THE COURT: Overruled. Go ahead.

12 BY MR. RICHMOND:

13 Q. And the detective asked you, "Underneath?"

14 Your response, "And if there's someone under there, then
15 they have the drop on me. Yeah, which is exactly what
16 happened"; that's your answer.

17 Detective says, "Okay."

18 And then you say, "This guy had me dead to rights"; is
19 that what you said?

20 A. Yes.

21 Q. What did you mean by that?

22 A. He had the gun pointed right at me.

23 Q. Now, there was much said about this, the subject's mental
24 illness. What information, if any, did you have that the
25 person that you were looking for had a mental illness?

Officer Tiner - Cross and Direct by Richmond

1 A. I don't remember hearing anything about him having a
2 mental illness.

3 Q. Was the fact that he was wearing a surgical mask, did that
4 suggest to you that he was suffering from a mental illness?

5 MR. BUELNA: Objection, leading, lacks foundation.

6 THE COURT: Overruled. There was evidence of that.
7 I'm going to allow some leading since I allowed it for both
8 sides. Technically it's cross-examination. So go ahead.

9 MR. BUELNA: Can you restate the question?

10 BY MR. RICHMOND:

11 Q. Did the fact that the subject that you were looking for,
12 Darell Richards, that he was wearing a surgical mask, did that
13 suggest to you that he had some kind of mental illness?

14 A. No. In our profession a lot of times typically when
15 individuals are committing crimes, they will try to hide their
16 identity and use some mask of some sort.

17 Q. Okay. And the document that was found in the backpack
18 that you've heard repeatedly referred to as a suicide note, but
19 you said it was unclear if it was a suicide note.

20 A. Yes.

21 Q. In fact, you said that there was a letter of some type of
22 assignment in there that was discussed.

23 A. Yes.

24 Q. Do you recall where it is that you got the information
25 that it could possibly be an assignment and not a suicide note?

Officer Tiner - Cross and Direct by Richmond

1 A. I believe that was at the briefing.

2 Q. And have you seen the note itself?

3 A. No, I have not seen it.

4 Q. Were you aware that the note -- on the note it reads
5 "Assignment"?

6 MR. BUELNA: Objection, lacks foundation. He just
7 said he didn't see the note.

8 THE COURT: Sustained.

9 BY MR. RICHMOND:

10 Q. Whether you saw it or not, did somebody tell that to you?

11 MR. BUELNA: Objection, lacks foundation, asked and
12 answered.

13 THE COURT: Overruled. He can answer.

14 MR. BUELNA: Compound.

15 THE COURT: Overruled.

16 THE WITNESS: I don't remember that specifically.

17 BY MR. RICHMOND:

18 Q. So again, what was the information that was -- that you
19 recall being given at the briefing?

20 A. That there was a note or an assignment of some sort that
21 was found in the backpack and that it had to do with something
22 along the lines of death or something.

23 Q. What else; what else about the events leading up to the
24 briefing?

25 A. That he had -- the suspect was pointing a gun at

Officer Tiner - Cross and Direct by Richmond

1 individuals, had on a hoodie, a mask, and when he was contacted
2 by police, he fled on foot with the gun in hand.

3 Q. You've also heard about the Crisis Negotiation Team, you
4 were asked about that. What is your understanding of when that
5 team is utilized?

6 A. For them to be efficient, you would have to have a
7 location and a means of communication.

8 Q. Can you think of any prior occurrence that you were
9 involved in with SWAT where the Crisis -- the CNT team was used
10 in a situation similar to this one where you didn't know where
11 the person was?

12 MR. BUELNA: Objection, assumes facts not in evidence
13 and it's an incomplete hypothetical.

14 THE COURT: Overruled. Go ahead, you can answer.

15 THE WITNESS: Not for a yard-to-yard, no.

16 BY MR. RICHMOND:

17 Q. You never recall having CNT utilized on a yard-to-yard
18 search?

19 A. Not to my knowledge, no.

20 Q. Now, explain how it was that the yard-to-yard search; how
21 was that conducted?

22 A. There's typically two teams. The teams split up, and the
23 team leaders will come up with a game plan of where we're going
24 to start. One team will be on one side of the block. The
25 other team will be on the other side of the block. Because

Officer Tiner - Cross and Direct by Richmond

1 backwards intersect typically on a grid, so as one team moves
2 to one yard, the other team will hold until that yard's clear.
3 They'll leave an officer there, and then as they push to the
4 next one, then that other team on the adjacent yard will then
5 clear that yard.

6 It's kind of a leapfrog tactic, and that's to prevent
7 anyone from climbing back over and getting back behind you and
8 then also cross fires.

9 Q. And you, I believe, were asked about the homeowner having
10 heard something three hours earlier; do you recall that?

11 A. I do.

12 Q. And the homeowner heard something, an exclamation, in or
13 near his -- or her backyard; right?

14 A. I read it, yes.

15 Q. Is it common, in your experience, when there is such a
16 perimeter established, there's a large police presence, do the
17 police get a lot of calls from citizens about hearing noises?

18 MR. BUELNA: Objection, lacks foundation, incomplete
19 hypothetical.

20 THE COURT: Overruled.

21 THE WITNESS: Yes. Whenever there's a large police
22 activity, we will typically get multiple callers.

23 BY MR. RICHMOND:

24 Q. And if you were to respond to every call such as that,
25 what effect would that have on the way you conduct the search?

Officer Tiner - Cross and Direct by Richmond

1 MR. BUELNA: Objection, lacks foundation.

2 BY MR. RICHMOND:

3 Q. Are you aware of that?

4 THE COURT: Still objecting?

5 MR. BUELNA: No.

6 THE COURT: Okay. Go ahead.

7 THE WITNESS: Yes.

8 BY MR. RICHMOND:

9 Q. Did that suggest to you that Mr. Richards knew that the
10 police were trying to contact him?

11 A. Yes.

12 Q. You were asked about the receipt for the pellet gun. And
13 I believe it was -- you said that you weren't aware of that?

14 A. I don't remember seeing that, no.

15 Q. If you were aware of that, that there was this receipt for
16 a pellet gun in the backpack, would that have changed the way
17 you conducted the search in any way?

18 MR. BUELNA: Objection, incomplete hypothetical, calls
19 for speculation.

20 THE COURT: Sustained. Does call for speculation.

21 BY MR. RICHMOND:

22 Q. So in going into that, to the backyard, who or what went
23 in first?

24 A. The dog.

25 Q. And what's the purpose of that?

Officer Tiner - Cross and Direct by Richmond

1 MR. BUELNA: Objection, calls for speculation, lacks
2 foundation.

3 THE COURT: If you know. Have you ever been a K-9
4 trainer?

5 THE WITNESS: I've never been one, but we cross-train
6 with them quite a bit.

7 THE COURT: Okay, there's a foundation. Go ahead.
8 You can answer.

9 THE WITNESS: The idea is for the dog to go in and
10 search an area before a clearing team goes in and clears the
11 area.

12 BY MR. RICHMOND:

13 Q. And on this occasion did the dog show any signs of
14 alerting?

15 A. I couldn't see the dog, exactly where he was going, but
16 you could hear the other SWAT officers up front and the K-9
17 handler, and they weren't -- he was saying the dog -- the dog
18 wasn't showing any signs of anything back there.

19 MR. BUELNA: Objection, motion to strike, hearsay.

20 THE COURT: Sustained, hearsay. The K-9 is going to
21 testify; right?

22 MR. RICHMOND: Yes.

23 THE COURT: Okay.

24 BY MR. RICHMOND:

25 Q. But to your knowledge, that dog did not alert; correct?

Officer Tiner - Cross and Direct by Richmond

1 A. Correct.

2 Q. What did that suggest to you, if anything, whether or not
3 the subject was in the backyard?

4 A. That it was clear -- excuse me, that it had been searched.
5 There's a difference between searching and clearing.

6 Q. That it had been searched and that if the dog's not
7 alerting, did that suggest to you that there's nobody in that
8 backyard?

9 A. Yes.

10 Q. So what was it that you heard that directed your attention
11 to where Mr. Richards was in the yard?

12 A. I saw him.

13 Q. You saw him?

14 A. Yes.

15 Q. And what did you do after you saw him?

16 A. Began giving commands.

17 Q. And the commands you gave were what again?

18 A. "Suspect, show me your hands, show me your hands," and
19 then "gun."

20 Q. So when you gave the command to show his hands, you could
21 not yet see them?

22 A. No.

23 Q. But as you were giving the command, did you then see the
24 gun?

25 A. The gun came out directly at me, yes.

Officer Tiner - Cross and Direct by Richmond

1 Q. Pointing directly at you?

2 A. Yes.

3 Q. At any point did you see Mr. Richards raise his hands in a
4 surrender posture?

5 A. No.

6 Q. You stated that you believed that the gun was in
7 Mr. Richards' right hand?

8 A. That's what it appeared to be.

9 Q. What is your main focus at the time you see that gun come
10 out pointing towards you?

11 MR. BUELNA: Objection, vague and ambiguous.

12 THE COURT: Overruled.

13 THE WITNESS: The gun.

14 BY MR. RICHMOND:

15 Q. Describe the lighting in the backyard, Officer Tiner, at
16 the time of the shooting.

17 A. It was dark.

18 Q. Was there any other lighting other than the tactical
19 lights on your weapons?

20 A. I don't recall seeing any.

21 Q. And your job as the SWAT team was what in this particular
22 instance?

23 A. Locate the individual, isolate it, and then take him into
24 custody.

25 Q. Whether or not --

Officer Tiner - Redirect and Cross Buelna

1 THE COURT: Sustained.

2 BY MR. BUELNA:

3 Q. Did you see him turn away from officers as they fired into
4 his body?

5 A. No, I was taking cover.

6 Q. Did you see him raise -- after you ordered him to raise
7 his hands, did you see him try to turn away so he wouldn't be
8 shot and killed?

9 A. No, sir. I saw the gun come straight out at me.

10 Q. Is there any reason why, for example, you and your fellow
11 officers couldn't wait until daylight to make the search?

12 MR. RICHMOND: Objection, incomplete hypothetical,
13 lacks foundation, calls for --

14 THE COURT: Sustained.

15 MR. RICHMOND: -- speculation.

16 THE COURT: Sustained.

17 BY MR. BUELNA:

18 Q. You weren't aware of any exigent circumstances, such as
19 Mr. Darell Richards had taken someone hostage or tried to enter
20 that house, when you went to do the search; correct?

21 A. No, it was the standard yard-to-yard search like I
22 explained.

23 Q. Okay.

24 MR. BUELNA: No further questions.

25 THE COURT: Anything further?

Clark - Direct by Pointer

1 Q. Now, in your review of materials in this case, is it your
2 understanding that the police department set up a perimeter
3 around where they last saw Mr. Richards?

4 A. Right. So they -- as I understand it in the record, he
5 was -- there was a broadcast about him, two units saw him, and
6 he fled. He -- in fact -- and he drops the backpack, and he
7 had -- but he keeps this gun -- they think it's a gun, and they
8 see it as a gun. And I'm not critical of that at all. And he
9 jumps the fence.

10 But once he jumps the fence they -- and apparently they
11 had a CHP heli -- plane that helped see this and had him
12 located in a certain location.

13 So now the first step of setting a perimeter is do the
14 four corners. So you have -- you know that he's in there and
15 you know he hasn't broken through. Once that happens, you can
16 bring in your specialized units, which were done here, if you
17 want, or you wait until morning or you light up the area, one
18 of those things.

19 Q. So did you see that officers in this scenario actually had
20 the four corners establishing the perimeter as you just
21 described?

22 A. Right. So that was a patrol. Patrol did exactly what
23 you're trying to do as a patrol, whether it's a building or a
24 block area, that's what you do. It starts with four corners,
25 and you can put more in there. And the patrol, they set the

Clark - Direct by Pointer

1 location. Then they brought in -- they announced and brought
2 in SWAT to do the apprehension.

3 I'll wait for the next question.

4 Q. Thank you.

5 And so I'm going to ask you -- I'm going to give you some
6 factors I want you to consider, and then I'm going to ask you
7 some questions about that; okay?

8 A. Sure.

9 THE COURT: Before you do that, let's take a short
10 break for the jury and give the court reporter a break.

11 During the recess, again, no discussion among
12 yourself, no discussion with anyone, no independent
13 investigation or research. If any violation of the
14 admonitions, please tell it to the Court.

15 Let's come back, and try for about 10 minutes.

16 (Recess at 12:50 p.m. to 1:05 p.m.)

17 THE COURT: All jurors present, all parties present.
18 You may continue your direct examination.

19 MR. POINTER: Thank you, Your Honor.

20 BY MR. POINTER:

21 Q. Mr. Clark, following up on where we left off before break,
22 officers have established a perimeter. They learn information
23 that the person that they're looking for is in that perimeter
24 by way of one of the homeowners or a resident or a neighbor, if
25 you will, that has a house in that perimeter. What, based upon

Clark - Direct by Pointer

1 You got him contained. Maybe engage verbally with a speaker or
2 something, because you know his name. But you use that time to
3 harvest more information about him, contact the family,
4 et cetera. Because time is part of the toolbox. But -- and
5 you wait for daylight so you have a good visual.

6 Otherwise you would bring in a helicopter with a high
7 intensity light. It's like a football field, it lights up as
8 if it's daylight. You can't do that if with an aircraft.
9 Without that you would not go in.

10 Q. Why is it important to, from your perspective, not go into
11 the yard while it's dark without lighting it up?


12 A. Well, the use of force determines totality of
13 circumstance. Another term that we always keep in mind,
14 "credible threat." So I'm not at all critical of them thinking
15 there's a credible threat. I took their commentary, they
16 thought it was a gun, although there's information regarding
17 that.

18 But when I wrote my report, it was -- if they thought he
19 had a gun, you would not go in in the dark to confront him with
20 a suicide ideation and surprise him and have him do something
21 spontaneously or with reflex and then claim, "I thought he was
22 a threat and shot him." That does not justify it when there
23 are other obvious reasonable alternatives, which are stay at
24 safety, cover -- it's skull-cover safe. And they had the
25 BearCat, which is an armored vehicle, and use cover and verbal

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

EXHIBIT 11

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KHOUA VANG, and TED RICHARDS,) JR., individually and as) Co-Successors-in-Interest to) to Decedent DARELL RICHARDS,) Plaintiffs,) V.) CITY OF SACRAMENTO, a) municipal corporation; and) DOES 1-50, inclusive,) individually and in their) official capacity as agents) for the Sacramento Police) Department,) Defendants.)	Case No. 2:19-cv-00374-JAM-JDF Sacramento, California Wednesday, October 19, 2022 9:01 a.m. Re: Trial Day 5 or 11 Pages 542 through 701
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF: POINTER & BUELNA, LLP by
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Proceedings reported via mechanical steno - transcript produced
via computer-aided transcription

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
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ALSO PRESENT: Christopher Gillespie, Exhibit Technician

Sergeant Edgerton - Continued Direct by Buelna

1 SACRAMENTO, CALIFORNIA, WEDNESDAY, OCTOBER 19, 2022

2 --o0o--

3 (In open court, outside the presence of the jury.)

4 THE CLERK: Please remain seated and come to order.

5 Court is now in session, the Honorable John A. Mendez, Senior
6 United States District Judge, presiding.

7 THE COURT: Do you got your expert here?

8 MR. BUELNA: Yeah. We're going to finish Edgerton,
9 because we're about done with him, and then put the expert on.

10 THE COURT: All right. Let's bring in the jury, then.

11 (In open court, in the presence of the jury.)

12 THE COURT: All right, good morning. All jurors are
13 present and all parties are present.

14 Sergeant Edgerton, you are to take the stand.

15 MR. BUELNA: Your Honor?

16 THE COURT: Yes.

17 MR. BUELNA: It is permissible for the expert to sit
18 and wait inside the courtroom?

19 THE COURT: No.

20 MR. BUELNA: No, okay.

21 THE COURT: Okay, you may continue.

22 TODD EDGERTON, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

23 CONTINUED DIRECT EXAMINATION

24 BY MR. BUELNA:

25 Q. Good morning, Mr. Edgerton.

Sergeant Edgerton - Continued Direct by Buelna

1 A. Good morning.

2 Q. I'm going to kind of skip -- when I say "incident," of
3 course I'm referring to your interactions with Darell Richards
4 on or about the morning of September 6, 2018; okay?

5 A. Okay.

6 Q. Okay, great.

7 I think we had left off and you had arrived actually at
8 the command center in order to get a briefing; do you recall
9 that?

10 A. Yes.

11 Q. Okay. Now, on arrival you received a briefing where they
12 actually identified Darell Richards; correct?

13 A. They did find a backpack with what they thought could be
14 identified information. They thought it possibly could be
15 Mr. Richards, but they weren't sure.

16 Q. Okay. And you actually were shown a photo of Darell;
17 correct?

18 A. Yes.

19 Q. And you knew that through the briefing with Lieutenant
20 Sood, that you had a report of him wearing a mask; right?

21 A. Correct.

22 Q. Pulling or waving a gun at people; correct?

23 A. Correct.

24 Q. And then an officer had followed him into a neighborhood;
25 correct?

Sergeant Edgerton - Continued Direct by Buelna

1 A. Well, I wouldn't say followed. He was in pursuit, full
2 pursuit.

3 Q. Into a neighborhood; correct?

4 A. Correct.

5 Q. That another officer had confronted him; correct?

6 A. Correct.

7 Q. Officer Sanguinetti; correct?

8 A. I believe so, yes.

9 Q. In that he still had a gun on him; correct?

10 A. Correct.

11 Q. He did not point that gun or fire that gun at Officer
12 Sanguinetti; correct?

13 A. Correct.

14 Q. And that he had turned and jumped over a fence; correct?

15 A. Correct.

16 Q. Now, they also harvested or learned some other information
17 from that backpack as well; correct?

18 A. I believe so, yes.

19 Q. They had, in your words, found a goodbye letter to the
20 family?

21 A. Yes.

22 Q. That you agreed it was a potential suicide note; correct?

23 A. I don't believe I agreed it was a suicide note.

24 Q. At deposition, though, you said it was potential -- you
25 agreed that it was a potential suicide note; correct?

Sergeant Edgerton - Continued Direct by Buelna

1 A. Ms. Nold called it a suicide note.

2 Q. And you said yes; correct?

3 A. I said I did not agree it was a suicide note.

4 Q. I will read from Page 24, Line 12 to Page 25, Line 3 of
5 your deposition.

6 Really, it's to Line 22, Your Honor.

7 THE COURT: You're reading it for what purpose?

8 MR. BUELNA: He said that --

9 THE COURT: It says "potential suicide note."

10 BY MR. BUELNA:

11 Q. Would you agree that you said that it -- you agreed that
12 it was a potential suicide note?

13 A. I said it might be. I never seen the note.

14 MR. BUELNA: I think I get to read the portion.

15 THE COURT: Go ahead.

16 BY MR. BUELNA:

17 Q. Okay.

18 "Question: Okay. You were provided any information
19 during that briefing related to a note that was found in
20 Mr. Richards backpack; do you recall that?

21 "Answer: Yes, I do remember that there was some intel
22 where they had found a note in his backpack that appeared to be
23 like a goodbye letter or what they felt was a goodbye letter to
24 his family.

25 "Question: Okay. And that's something that's been

Sergeant Edgerton - Continued Direct by Buelna

1 referred to as a 'suicide note'; is that what you understood
2 that to be, a potential suicide note?

3 "Answer: Potentially, yes."

4 You agree with that statement still; correct?

5 A. Well, it's -- Ms. Nold called it a "suicide note." I've
6 never seen this note. And once I'm involved in this
7 investigation, I'm not in the investigation once I'm
8 interviewed. So I'm not sure -- Ms. Nold has more knowledge of
9 that note than me. So when she calls it "suicide note," I
10 don't know. It's been reviewed since -- I had heard about it
11 once when I was on scene to get a briefing. So I don't know
12 what -- if that -- what has been determined about that note
13 since I heard about it the first time.

14 Q. You deemed it to be a possible suicidal ideation or a
15 possible suicidal threat; correct?

16 A. No.

17 MR. BUELNA: I would like to now read from Page 24,
18 Line 23 to Line -- Page 25, Line 3, Your Honor.

19 THE COURT: Page 24, what?

20 MR. BUELNA: Line 23 to Page 25, Line 3.

21 THE COURT: Go ahead.

22 BY MR. BUELNA:

23 Q. "Question: Okay. I'm not asking you to respond as a, you
24 know, a psychiatric professional. I understand that's not your
25 capacity. It was your general understanding that that was

Sergeant Edgerton - Continued Direct by Buelna

1 deemed a possible suicidal ideation or suicidal threat?

2 "Answer: Correct."

3 A. I don't --

4 Q. I haven't asked you a question.

5 You also learned during that briefing that Darell Richards
6 possibly had some mental issues; correct?

7 A. Correct.

8 Q. And you were never shown a receipt for a pellet gun;
9 correct?

10 A. Correct.

11 Q. Okay. Or had any information provided to you about that;
12 correct?

13 A. Correct.

14 Q. You were also provided information where Darell was last
15 seen within the perimeter; correct?

16 A. What kind of information? There was a lot of information
17 where he potentially was in the perimeter.

18 Q. Sure. You learned that Darell hopped the fence mid block
19 in the alleyway running from Officer Sanguinetti; correct?

20 A. Correct.

21 Q. I'm going to show you what has been admitted as
22 Exhibit 63.

23 In fact, you were shown a map as well at your homicide
24 interview, if you recall; correct?

25 A. Correct.

Sergeant Edgerton - Continued Direct by Buelna

1 than yours?

2 A. I believe he did, yeah.

3 Q. I'm going to play for you from a previously admitted
4 exhibit, De Leon Exhibit 51, from the hours of 1 a.m. and 37
5 minutes to the hours of 2 a.m. and 46 minutes. I'm not going
6 to play it all. I'm just going to play from mark 15 within the
7 BWC.

8 THE COURT: Take that mark off the screen.

9 MR. BUELNA: What's marked? Oh, yeah.

10 THE COURT: This is Exhibit 51?

11 MR. BUELNA: Correct.

12 THE COURT: What is it?

13 MR. BUELNA: It's the body camera from De Leon.

14 THE COURT: Thank you.

15 (Audio is played.)

16 MR. BUELNA: Sometimes the audio works and sometimes
17 it doesn't.

18 Sorry, the audio's not too good. I'll just move on to
19 my next question.

20 BY MR. BUELNA:

21 Q. Now, obviously you prepared and collected your team
22 outside of the residences on that block; correct?

23 A. Correct.

24 Q. Prior to searching the yard of 2017 1st Avenue, you didn't
25 provide any K-9 announcements; correct?

Sergeant Edgerton - Continued Direct by Buelna

1 A. Correct.

2 Q. And you were the supervisor for that -- that SWAT Team
3 that entered the yard; correct?

4 A. Correct.

5 Q. So you're not actually doing the searching, so to speak,
6 you're there to kind of be in the background and oversee the
7 whole search; right?

8 A. Not necessarily. The team's small enough, I'm really
9 doing both, I'm searching as well as supervising.

10 Q. And the sequence of officers as they entered the yard was
11 Cox was to your right, Tiner kind of to your left; right?

12 A. Tiner was also to my right. Cox and Tiner were on the
13 right side of the yard. And then the other officers were on
14 the left.

15 Q. Okay. But Tiner was kind of to the left of Cox; right?

16 A. Correct.

17 Q. And then after then Officers De Leon, Jarvis and
18 Cunningham were in the center of the yard; correct?

19 A. They were on the left and center, yeah. I don't know
20 specifically which positions.

21 Q. And as team leader you tried to do as little searching as
22 possible so that you could have an overall awareness of their
23 search progress and formulate plans to handle different
24 tactical situations; correct?

25 A. True.

Sergeant Edgerton - Continued Direct by Buelna

1 Q. And as your team first entered the yard, no one initially
2 saw Mr. Richards; correct?

3 A. Correct.

4 Q. And at that point there was no illumination in the yard
5 other than your flashlights; correct?

6 A. There were some overhead lighting. I think there was a
7 string of lights to the trees or something like that above us.

8 Q. Other than that, though, it was essentially -- it was
9 still dark; though; right?

10 A. Correct.

11 Q. And your flashlights were very visible in the yard;
12 correct?

13 A. Correct.

14 Q. And you saw Officer Cox covering Tiner's back side;
15 correct?

16 A. Correct.

17 Q. And Officer Tiner was supposed to be covering Officer Cox
18 from threats deeper in the yard; correct?

19 A. Correct.

20 Q. Now, as you entered the yard, you first became aware of
21 Darell's presence when Officer Tiner was over by a grill;
22 correct?

23 A. Correct.

24 Q. You heard Officer Tiner say "show me your hands"; correct?

25 A. Yes.

Sergeant Edgerton - Continued Direct by Buelna

1 Q. Officer Cox then stepped up and illuminated that area
2 underneath the porch; correct?

3 A. Correct.

4 Q. And that's the first time you heard a gun; correct?

5 A. Yes.

6 Q. And at that point you had finally stepped forward;
7 correct?

8 A. Yes.

9 Q. Okay. Up until that point, before you stepping forward,
10 you could not see Darell; could you?

11 A. No.

12 Q. And that's because you were positioned initially several
13 feet behind Officer Cox and to his right; correct?

14 A. Correct.

15 Q. Now, both Officer Tiner and Officer Cox had illuminated
16 the area beneath the porch with their gun lights; correct?

17 A. Correct.

18 Q. And although you could see them illuminating that area,
19 the air conditioning unit blocked your view of Darell; correct?

20 A. Some of them, yeah.

21 Q. And you had heard -- and what made you even step forward
22 was you had, one, seen the flashlights, but, two, heard the
23 orders; correct?

24 A. Correct.

25 Q. And when you first saw Richards, or Darell, he was laying

Sergeant Edgerton - Continued Direct by Buelna

1 over in what you would call a fetal position; correct?

2 A. He was kind of rolling up on the other side.

3 Q. But when you first saw him he was kind of leaning over in
4 the fetal position; correct?

5 A. He was rolling up onto his side from what looked like
6 maybe he had started in the fetal position.

7 Q. So before Darell began to roll over, he was just lying
8 there on his side; correct?

9 A. I don't know.

10 MR. BUELNA: I'd like to read from Page 62, Lines 22
11 through 25 of Todd Edgerton's deposition.

12 THE COURT: From what line?

13 MR. BUELNA: From line -- I could read from --

14 THE COURT: Start at Line 8.

15 MR. BUELNA: Line 8, okay.

16 BY MR. BUELNA:

17 Q. "Question: When you first saw Mr. Richards and you
18 stepped forward, what -- when you first were able to observe
19 Mr. Richards, what was he doing?

20 "Answer: As I stepped forward, I immediately observed
21 him. He appeared to be rolling over and raising a firearm.

22 "Question: When you say 'rolling over,' was he laying,
23 was he laying down on the ground; can you describe what?

24 "Answer: He was almost like laying over in the fetal
25 position, and then what I -- what appeared to me that he was

Sergeant Edgerton - Continued Direct by Buelna

1 kind of rolling over and sitting up at the same time like he
2 had been hiding kind of below. That's why I didn't initially
3 see him below the level of the air conditioner.

4 "Question: When you first saw him, I guess before he
5 began to sort of rollover, were you observing his back prior to
6 him moving?

7 "Answer: No, just kind of his side."

8 So he was kind of leaned over on his side in the fetal
9 position, correct, when you first saw him?

10 A. Like I said, you just read, he was rolling over from the
11 fetal position.

12 Q. If he was rolling over from the fetal position, it means
13 he was initially in the fetal position; correct?

14 A. That's what appeared to me.

15 Q. Now -- and this was after you heard the order "show me
16 your hands" and something about a gun; correct?

17 A. "Drop the gun," yeah.

18 Q. And you don't remember, although you thought it was his
19 right hand initially, what hand the gun was in -- or the
20 firearm; right?

21 A. Correct.

22 Q. But you saw it was like coming up and swinging; correct?

23 A. Yes, it was on an arc, yes.

24 Q. And actually, you said that he actually got square to
25 Officer Tiner, he was square with him; right?

Sergeant Edgerton - Continued Direct by Buelna

1 A. That's what it appeared to me.

2 Q. Okay. And that he actually pointed the gun at Officer
3 Tiner's head; right?

4 A. Yes.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. And you yourself, when it's pointed at Officer
8 Tiner's head, that's when you fired; right?

9 A. As he's bringing it to bear, yes.

10 Q. And he's square; right?

11 A. Yes.

12 Q. Officer Tiner obviously didn't fire; correct?

13 A. Correct.

14 Q. And he was just, as Officer Cox said, just an arm's length
15 away; Officer Cox was just an arm's length away from Officer
16 Tiner; right?

17 A. I recall him being a little further than arm's length, but
18 not too much further, maybe a couple feet past arm's length.

19 Q. Do you remember Officer Cox testified that he was within
20 arm's length?

21 A. He may have.

22 Q. You wouldn't disagree with him; right?

23 A. I would say he was a little farther than arm's length,
24 would be my testimony.

25 Q. So you would disagree with him?

Sergeant Edgerton - Continued Direct by Buelna

1 A. Maybe a little bit.

2 Q. And then you fire, you estimated, five to six shots into
3 Darell; correct?

4 A. Yes.

5 Q. Now, SWAT officers are trained to aim for center mass;
6 correct?

7 A. Correct.

8 Q. And can you just explain to me what "center mass" is?

9 A. Just the torso.

10 Q. The reason why is it's the most surface area and so the
11 high probability that you connect with your shot; correct?

12 A. Correct.

13 Q. Not trained, for example, to aim for the head; correct?

14 A. Sometimes.

15 Q. I mean, if that's what's available, but if you have a shot
16 at the torso, that's what you're supposed to take; right?

17 A. Correct.

18 Q. Now, you believe you shot five to six, but you also had a
19 round count after the incident; correct?

20 A. Correct.

21 Q. And there you learned that you had a 30 round magazine;
22 correct?

23 A. Correct.

24 Q. And there was only 21 bullets left in the magazine;
25 correct?

Sergeant Edgerton - Continued Direct by Buelna

1 A. Correct.

2 Q. So you shot eight to nine times; right?

3 A. I could have, yes.

4 Q. And I'm going to -- you heard the testimony from the
5 medical examiner on the first day -- first day of trial;
6 correct?

7 A. Yes.

8 Q. All right. You heard that each and every one of the
9 bullet wounds was to his left side; correct, except for one to
10 his right hand; correct?

11 A. I don't recall specifically.

12 Q. Okay. So just to be clear, when you see Mr. Ri- --
13 Darell, he's in the fetal position kind of rolled over. He
14 sits up and he -- can you show me, is it like this, he turns
15 and points the gun right at Tiner's head?

16 A. Yes. As he's sitting up, he swings the gun towards
17 Officer Tiner in an upward motion.

18 Q. Until he's square with him; right?

19 A. Correct.

20 Q. Now, I'm going to show you a picture from -- it's a body
21 camera, it's previously admitted Exhibit 15 of Officer Jarvis'
22 body-worn camera, a minute -- 1:42. One moment here.

23 Are you able to see the photograph on your screen?

24 A. Yes.

25 Q. This is from body-worn camera of Jarvis. This is

Sergeant Edgerton - Cross by Richmond

1 gun was in his left hand, the right hand or even if he was
2 holding it in both hands; right?

3 A. Correct. I was concentrating on the gun.

4 MR. BUELNA: No further questions, Your Honor.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. RICHMOND:

8 Q. Good morning, Sergeant.

9 A. Good morning.

10 Q. Let's go to the initial briefing. I believe Mr. Buelna
11 stated to you that you were present at the briefing provided by
12 Lieutenant Sood. Is -- Lieutenant Sood, was he the one that
13 briefed you?

14 A. No.

15 Q. Who was it that briefed you?

16 A. Sergeant Lee and Sergeant Merten, who were the executive
17 sergeants for the incident.

18 Q. And the information that they provided to you during that
19 briefing, did they tell you that that was from Lieutenant Sood?

20 MR. BUELNA: Objection, calls for speculation.

21 THE COURT: Sustained.

22 BY MR. RICHMOND:

23 Q. What do you recall specifically what Sergeants Merten and
24 Lee told you at the briefing that they provided to you?

25 A. I remember them saying they recovered a backpack,

Sergeant Edgerton - Cross by Richmond

1 obviously they talked about the original crime, which was
2 displaying a firearm at several people, subject was wearing a
3 mask. They recovered a backpack. Due to the masks they
4 weren't able to positively identify who they had, but they had
5 a picture from I think a jail wristband in the backpack. They
6 had a letter, which was like a note to the family. They
7 advised that the subject did -- whose wristband they found
8 was -- had a restraining order from his family, had committed a
9 felony assault on his brother several months prior, I believe,
10 and they had him -- basically ran from officers and was still
11 armed the last time he was contacted by officers.

12 Q. In regard to the note, I believe that you referred to it
13 initially in your interview as a goodbye note of some sort;
14 right?

15 A. Correct.

16 Q. Did you ever see the document itself?

17 A. No.

18 Q. Were you told that the document had a title "Catching Up
19 With Loved Ones"?

20 MR. BUELNA: Objection, lacks foundation, calls for
21 speculation. He said he just -- he didn't see it, so why would
22 he know anything about it?

23 MR. RICHMOND: He have might have been told about it.

24 THE COURT: Sustained, sustained.

25

Sergeant Edgerton - Cross by Richmond

1 MR. BUELNA: Objection, lacks foundation, calls for
2 speculation.

3 THE COURT: Sustained.

4 Generally, or do you want to ask him specifically? He
5 wasn't up in the plane.

6 BY MR. RICHMOND:

7 Q. You mentioned that CNT is typically called out when SWAT
8 is. Did I understand your testimony correctly?

9 A. It's common, yes.

10 Q. And is it common to have them called out when you're doing
11 a yard-to-yard search?

12 A. No.

13 MR. BUELNA: Objection, calls for speculation. But --

14 THE COURT: Overruled.

15 Go ahead.

16 THE WITNESS: No. You know, they get called out with
17 SWAT because usually there's a known location. Their --
18 subject's barricaded in a house or served a search warrant, we
19 know where the person is. We generally don't call them out if
20 we don't know where the suspect is. For the same reason we
21 don't call out homicide if we find a couple blood drops in the
22 street. There's nothing for them to do if they can't
23 communicate with somebody.

24 BY MR. RICHMOND:

25 Q. They don't follow you on a yard-to-yard search when you're

Sergeant Edgerton - Cross by Richmond

1 trying to locate somebody; is that right?

2 A. Correct.

3 Q. Why don't they?

4 A. Too dangerous. You know, if we locate somebody in a shed,
5 we can lock it down and go from there and -- but no, they don't
6 follow us around.

7 Q. But you are also trained in crisis intervention; correct?

8 A. Correct.

9 Q. And how would that -- if you were to find Mr. Richards in
10 a yard, would you try to implement the crisis intervention
11 tactics that you've been taught?

12 MR. BUELNA: Objection, calls for speculation,
13 incomplete hypothetical.

14 THE COURT: Sustained.

15 BY MR. RICHMOND:

16 Q. If Mr. Richards didn't have a gun, would you have been
17 able -- or would you have used techniques --

18 MR. BUELNA: Objection, calls for speculation.

19 MR. RICHMOND: I didn't finish the question.

20 MR. BUELNA: Sorry.

21 BY MR. RICHMOND:

22 Q. -- those crisis intervention techniques?

23 MR. BUELNA: Objection, calls for speculation,
24 improper hypothetical.

25 THE COURT: Sustained.

Sergeant Edgerton - Cross by Richmond

1 BY MR. RICHMOND:

2 Q. Why couldn't you use those techniques when you encountered
3 Mr. Richards in the backyard?

4 A. Because he aimed a gun at us.

5 Q. So is it fair to say that you had no time to use any of
6 those tactics?

7 MR. BUELNA: Objection, leading.

8 THE COURT: Overruled. I'll allow leading for both
9 sides.

10 Go ahead.

11 THE WITNESS: We gave him voice commands "drop the
12 gun," but it was very brief, and we couldn't use a full gamut
13 of CIT or communication.

14 BY MR. RICHMOND:

15 Q. Now, you were also asked in the examination by Mr. Buelna
16 regarding less lethal. Do you carry all of that, all of those
17 less lethal weapons with you when you're doing a yard-to-yard
18 search?

19 A. Well, we always have -- each officer carries their CED or
20 taser with us, so we always have it on our hip. And we also
21 have a K-9, which is what I feel to be the best less lethal
22 option we have in the department because it has a brain, so
23 when I say we did have less lethal with us, yes.

24 We also have a beanbag shotgun in the BearCat.

25 Q. Why is it you don't carry the shotgun with you when you're

Sergeant Edgerton - Cross by Richmond

1 pushed the button in the center to turn it off.

2 Q. But you didn't turn it off intentionally at any time prior
3 to the shooting?

4 A. No.

5 Q. Why were announcements not made before you entered the
6 main portion of the yard?

7 A. Well, announcements, you know, to let him know the police
8 were there. He knew the police were there. He evaded them.

9 You know, earlier in the night we reached in front of him,
10 gave him an opportunity to surrender, he didn't surrender. So
11 he knew the police officers were there.

12 Also, I'm entering -- I'm at a disadvantage searching
13 someplace I've never been, a yard I've never been, against an
14 armed subject. So I would like to use some standoff weapon,
15 less lethal weapon to try to find him first. I don't want to
16 yell "Hey, coming in here" if someone's waiting to ambush me.

17 You know, if the lights were out in this courtroom, and I
18 had to come in here and look for someone, I wouldn't want to
19 say, Hey, coming in the door now. It would put me at a
20 tactical disadvantage to somebody who's armed waiting to ambush
21 me.

22 Q. There was a K-9, officer and K-9, with you on the search;
23 is that right?

24 A. Correct.

25 Q. Did the K-9 get sent into the main portion of the yard

Sergeant Edgerton - Cross by Richmond

1 first?

2 A. Yes.

3 Q. And that is because why?

4 A. Well, it's a tactic we use called SKIDDS, which is SWAT &
5 K-9 Interacting During Deployment School, what we call SKIDDS.
6 So these are K-9 handlers we have for our department, and we
7 take the ones whose dogs that we think will work well with the
8 team, and we do some training with them in SWAT tactics. They
9 kind of know our tactics, and their dog kind of gets used to
10 working around us. We use it as kind of a standoff less lethal
11 weapon system.

12 So that dog who's ahead of us and -- kind of checks the
13 area, we still have to go in and physically clear it, but it's
14 an additional layer. The dog has gone in to check to make sure
15 the suspect isn't there before we ever go in, and that gives us
16 the ability to -- on yard-to-yard searches, for example, that
17 dog alerts on a shed, we know the suspect's probably in the
18 shed, we can form an arrest team, make announcements and call
19 that suspect out.

20 Or what sometimes happens is the person's hiding and the
21 dog gets him, bites him and we know where the person is. Now
22 they're -- you know, we can either go call them out with a dog
23 or go up and make contact with them and take them into custody
24 and -- with the dog holding him there basically.

25 Q. But the dog went into the yard and did not alert in any

Sergeant Edgerton - Cross by Richmond

1 way; is that right?

2 MR. BUELNA: Objection, lacks foundation.

3 THE COURT: Overruled.

4 THE WITNESS: I didn't see him alert, and the handler,
5 in my communication with him, did not see him alert either.

6 BY MR. RICHMOND:

7 Q. What did that suggest to you?

8 A. Suggested to me that the suspect wasn't in that yard.

9 Q. And why is it that you just -- if a dog doesn't alert,
10 just turn around and walk out? I mean, why go through the
11 search if the dog didn't alert?

12 A. Dogs are great but they're imperfect. From my
13 experience -- extensive experience training with them,
14 they're -- the scent coming off the human body does weird
15 things. It swirls, it goes up walls, it goes through air
16 conditioning units. So dogs miss scent, and we still have to
17 go in there and search because that's our job.

18 Q. Just going to the moment that you observed Mr. Richards.
19 You had mentioned that his body movement was coming from --
20 being kind of on his right side and coming up in an arc with
21 the gun in his hand; correct?

22 A. Correct.

23 Q. And I believe you testified that you weren't certain which
24 hand the gun was in; correct?

25 A. Correct.

Sergeant Edgerton - Cross by Richmond

1 Q. What was your main focus at that time that you saw that
2 gun coming up?

3 A. My main focus was -- once I realized it was a gun, was
4 stepping out of the way from the arc of the gun, bringing my
5 weapon off safe, bring my weapon up and protecting Officer
6 Tiner, Officer Cox and myself from being shot.

7 Q. Did you ever at anytime see Mr. Richards raise his hands
8 up in any kind of surrender posture?

9 A. No.

10 Q. Having the information from Mr. Foster about the call that
11 was made hours earlier, that he heard something in the yard,
12 having that information at the time that he gave it to you, did
13 that change in any way the way that you conducted the search of
14 that yard?

15 A. No.

16 Q. Why not?

17 A. Like I stated, common suspect tactic is to constantly be
18 moving within that perimeter. So just because someone saw him
19 last doesn't really -- you know, especially three and a half or
20 three hours and 15 minutes before when it was called in, well,
21 that suspect's moving.

22 That was called in I think four minutes after -- or it was
23 marked on the call four minutes after Officer Sanguinetti
24 encountered him. That's about the time it would take someone
25 calling in dispatch to get to our dispatcher working the

Sergeant Edgerton - Redirect by Buelna

1 tactical side. So it seemed it would be around the same time
2 that Officer Sanguinetti dealt with him, he was running.

3 So it wasn't groundbreaking to me that, yeah, he heard him
4 say, "Oh shit." Someone heard him say, "Oh, shit," that he was
5 running from Officer Sanquinetti at that moment in that area.
6 He had spotted him further west. That was the last time an
7 officer had eyes on it.

8 In Sergeant Lightfoot's search, they had found a broken
9 fence board and the dog alerting, and that was further west
10 going north. We also had someone call in a motion light going
11 on in the backyard. That was also I think one yard due north
12 of where the dog was picking up scent on Sergeant Lightfoot's
13 search. That was I think 1:20 in the morning or something like
14 that.

15 So I had information, it was -- it had happened since, you
16 know, within the last hour and a half compared to over three
17 hours ago of that motion light going on.

18 So, you know, kind of all signs were indicating he was on
19 that west side.

20 MR. RICHMOND: Thank you, Sergeant.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. BUELNA:

24 Q. Now, I heard you say that one of the reasons why you don't
25 really recall whether or not it was the right hand or the left

Sergeant Edgerton - Redirect by Buelna

1 hand was because you were so focused on that gun; right?

2 A. Correct.

3 Q. But it wasn't because you couldn't really see him, right,
4 Darell, when you shot him?

5 A. Correct, I could see him, I could see him.

6 Q. But you did see a look of determination on Darell's face;
7 right?

8 A. Yes.

9 Q. I mean, you had time to look and see like he had no
10 fright, that he was completing a plan; correct?

11 A. Correct.

12 Q. All in his face; right?

13 A. Correct.

14 Q. And he had a mask on; right?

15 A. I think something was covering his mouth, yeah.

16 Q. And he looked like he was just kind of ho hum; correct?

17 A. Yeah, it just -- he had no look like we start startled
18 him, he just had a look of -- it was just -- hard to describe.

19 Q. You weren't just focused on the gun, you were focused on
20 his -- the face, too; right?

21 A. I saw his face.

22 Q. Okay. But you didn't see whether or not he was holding it
23 with two hands, left hand or right hand, that doesn't stick out
24 in your mind; right?

25 A. Correct.

Clark - Continued Direct by Pointer

1 once Mr. Richards jumped a fence into a backyard; is that
2 correct?

3 A. Yes.

4 Q. And that officers had no information that the perimeter
5 had been broken prior to them encountering Mr. Richards; right?

6 A. Correct.

7 Q. And that there are officers stationed outside of
8 Mr. Foster's home where the shooting took place; is that right?

9 A. Yes.

10 Q. And that after establishing the perimeter, officers began
11 gathering intelligence; is that right?

12 A. Yes.

13 Q. And what type of intelligence did officers gather prior to
14 encountering Mr. Richards?

15 A. Well, once the perimeter was -- the first perimeter was
16 set up by patrol, which is the typical method, and was a good
17 thing, it was a good tactic, then they bring in -- because he's
18 in a contained area, they bring in a specialized unit, that was
19 SWAT.

20 That requires what we call an incident commander that
21 takes overall charge of the operation and has a number of
22 duties. That includes working with the SWAT commander, a
23 crisis negotiator, et cetera.

24 So when the scene is stabilized, then they -- the incident
25 commander is required to put some effort and direct officers --

Clark - Cross by Day

1 Now, Mr. Clark --

2 THE COURT: You said E, that's P.

3 MR. DAY: P. I'm sorry, I meant P, if I did not
4 enunciate properly. I think I need another sip of water.

5 BY MR. DAY:

6 Q. And, Mr. Clark, it's your understanding that this
7 photograph is the gun that Mr. Richards had on September 5 and
8 6 of 2018; true?

9 A. Yes.

10 Q. And you agree with me that this looks like a handgun that
11 has the capability of firing bullets; true?

12 A. Visually it looks like a real gun, yes.

13 Q. And you previously told me, and I think you did mention
14 this, that the only way you could tell the difference between
15 the gun that Mr. Richards was holding, Exhibit P, and a Sig
16 Sauer P-226 that fired bullets, would be to closely look at the
17 barrel to see the size of the muzzle; true?

18 A. Looking at the barrel close enough to see the diameter,
19 yes.

20 Q. And you agree with me that there was no way from where the
21 officers on the SWAT Team were in the backyard at 2017, that
22 they would be able to look down the barrel of that pellet gun
23 to determine it wasn't a real handgun; true?

24 A. That was my testimony, and I agree.

25 Q. And you agree with me that a pellet gun can cause serious

Clark - Cross by Day

1 injury; for instance, someone could get shot in the eye and
2 they could lose an eye?

3 A. As an instance. It would be quite unique. They would
4 have to hit an exceptionally tender part of the body like the
5 eye in order to cause great injury or penetrate.

6 Q. But it can cause great injury; true?

7 A. In that regard, sure.

8 Q. And in this case you actually told me at your deposition
9 that you never considered that they, meaning the officers, knew
10 it was a BB gun. So you always considered that they, meaning
11 the officers, thought it was a real gun; true?

12 A. No, I said more than that in the deposition. I said, the
13 commentary that I offered in the report took the officer's
14 statement that they did not know. I also mentioned the
15 receipt; however, my commentary was that they would -- seeing
16 that, with no other information, would consider it a real gun.

17 Q. Now I would like to go to Page 101 of Mr. Clark's
18 deposition transcript.

19 THE COURT: Line?

20 MR. DAY: It's Line 10 through 25, specifically 18
21 through 20.

22 MR. POINTER: What page, Counsel? I'm sorry.

23 MR. DAY: 101.

24 MR. POINTER: Thank you.

25 THE COURT: You can start at Line 10. You can ignore

Clark - Cross by Day

1 the objection, which will be overruled. So go ahead.

2 BY MR. DAY:

3 Q. Okay. Mr. Clark, "Question: You already said before that
4 although this type of pellet gun you didn't think could kill
5 anyone, that it could cause serious injury to someone; right?

6 "Witness: I never considered that they knew it was a BB
7 gun, so I always considered that they thought it was a real
8 gun.

9 "Question: And you would agree with me a real gun is life
10 threatening; right?

11 "That's the way I would interpret the set of facts."

12 Mr. Clark, you would also agree with me that raising the
13 gun and deliberately pointing the gun at an officer is life
14 threatening for that officer; true?

15 A. Yes.

16 Q. And when you used the term "life threatening," you mean
17 that an action likely to result in serious injury or the
18 possibility of death of the officer or of another person; true?

19 A. Yes.

20 Q. Now, Mr. Clark, you've provided some testimony about the
21 use of a helicopter and a spotlight. In your investigation on
22 this case, did you ever conduct any type of investigation to
23 determine if the Sacramento PD had access to a helicopter that
24 night?

25 A. I did not investigate. I was not --

Clark - Cross by Day

1 key and the tactics to be used must consider reverence for
2 life. Other than that, I don't know of any policy given to
3 me -- or I didn't get any policy that says you have to use a
4 helicopter.

5 Q. So you're unaware of any policy that requires that; true?

6 A. True.

7 Q. Mr. Clark, we talked about this, there was a perimeter set
8 in this case; true?

9 A. Yes.

10 Q. And you agree it was proper to set a perimeter; right?

11 A. It's essential, and they did it, and that was good for --
12 that was a patrol operation and they did well.

13 Q. But even though a perimeter is established, a suspect can
14 still escape from that perimeter; true?

15 A. It's possible. It depends on how well it's done.

16 Q. Now, Mr. Clark, you're not from Sacramento; correct?

17 A. I'm not from Sacramento.

18 Q. You don't currently live here; true?

19 A. That's true.

20 Q. But you are aware that Mr. Richards was hiding in a
21 residential area; true?

22 A. Yes.

23 Q. And, Mr. Clark, you are aware that the incident started on
24 September 5, and that was a Wednesday; true?

25 A. Yes.

Clark - Cross by Day

1 Q. So September 6 was a Thursday; true?

2 A. That's the way I remember it.

3 Q. And you would agree with me that it's more likely that
4 people will be outside moving around in the morning, say when
5 the sun is coming up, rather than at 3 a.m.; true?

6 A. I think there's even more movement in the morning than in
7 the evening and at night, so I would agree.

8 Q. And you would agree with me that on a weekday morning,
9 such as we have here, especially prepandemic, if we can all
10 remember that, that people would likely be getting up in the
11 morning, getting ready for work and school; right?

12 A. Typically.

13 Q. Now, Mr. Clark, you're also aware that the location where
14 the perimeter was set was close to a light rail station in
15 Sacramento; right?

16 A. Yes.

17 Q. And you're aware that light rail is a form of public
18 transportation in Sacramento; true?

19 A. It is, yes.

20 Q. And you're also aware that Broadway Street was near the
21 perimeter; right?

22 A. I think you're right.

23 MR. DAY: Okay. Why don't we pull up Exhibit 63, and
24 it's Image Number 6804.jpg_6985692, and this is a document --
25 this has already been stipulated to by the parties.

Clark - Cross by Day

1 THE COURT: Why don't we do that after the break.

2 Another short break. During the recess all the
3 admonitions apply. Any violation of those admonitions should
4 be reported to the Court. Let's come back in 15 minutes.

5 (Recess at 12:00 p.m. to 12:16 p.m.)

6 (In open court, outside the presence of the jury.)

7 THE CLERK: Please come to order. Court is back in
8 session. Honorable John A. Mendez presiding.

9 THE COURT: Mr. Richmond, who is the officer on the
10 end? I'm sorry.

11 MR. RICHMOND: This is Deputy Chief Norm Leong. He is
12 here on behalf of the Department in general.

13 THE COURT: Okay.

14 THE CLERK: Please be seated. Bring in the jury.

15 (In open court, in the presence of the jury.)

16 THE COURT: All jurors present, all parties present.
17 You may continue your cross-examination.

18 MR. DAY: Thank you, Your Honor.

19 BY MR. DAY:

20 Q. Mr. Clark, just a few follow-up questions before I move on
21 to the next category. Now, based on your testimony that the
22 handgun, the gun that Mr. Richards had on the evening of the
23 5th and 6th, was a replica designed to look identical to the
24 Sig Sauer P-226, keeping that in mind, even if there was a
25 spotlight on the backyard illuminating Mr. Richards, at the

Clark - Cross by Day

1 distance that the SWAT officers were at, would they have been
2 able to tell from visually, would they have been able to tell
3 that that was a pellet gun versus a real gun?

4 A. Not in my opinion.

5 Q. Now, Mr. Clark, in this case you're aware that officers
6 did give a command of "drop the gun"; true?

7 A. Yes.

8 Q. And yes or no, do you consider the command of "drop the
9 gun" that the officers gave in this case to be a warning?

10 A. Yes.

11 Q. And, Mr. Clark, there was some testimony about body-worn
12 cameras. In your review of the documents for this case, did
13 you come across anything that said that an officer turned off
14 their body-worn camera on purpose?

15 A. No.

16 Q. I would like to pull up that picture from Exhibit 63 that
17 I previously mentioned again. This is Exhibit 63. And you've
18 seen these aerial photos; correct?

19 A. This is an aerial photo.

20 Q. Did you see aerial photos during your review?

21 A. Yes.

22 Q. Just so we kind of orient everyone, this is Mr. Foster's
23 house. This is generally a north direction; true?


24 A. Yes.

25 Q. And so right over here we have a light rail; true?

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

December 16, 2022
DATE

Exhibit 12

Video File to be Supplemented

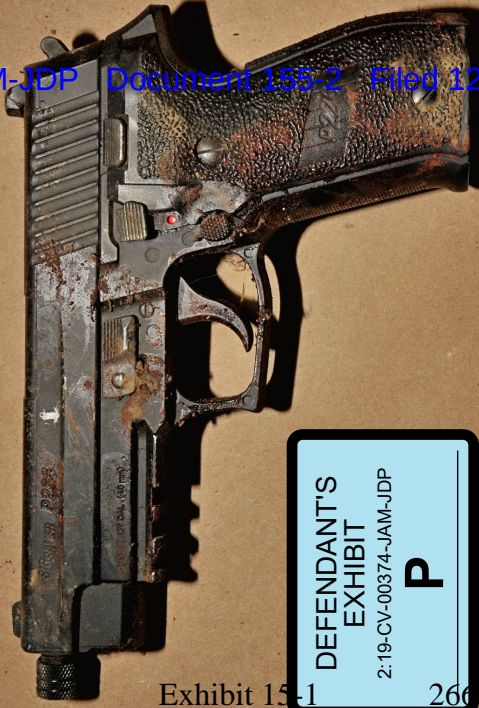
Exhibit 13

Video File to be Supplemented

Exhibit 14

Video File to be Supplemented

EXHIBIT 15



DEFENDANT'S
EXHIBIT
2:19-CV-00374-JAM-JDP
P

EXHIBIT 16

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FOR THE DEFENDANT: CITY OF SACRAMENTO
OFFICE OF THE CITY ATTORNEY by
Sean D. Richmond,
Senior Deputy City Attorney
Matthew R. Day,
Senior Deputy City Attorney
915 I Street, Fourth Floor
Sacramento, California 95814

ALSO PRESENT: Christopher Gillespie, Exhibit Technician

Tovar - Direct by Mr. Buelna

1 THE COURT: It will be so admitted for purposes of
2 his testimony.

3 BY MR. BUELNA:

4 Q. Now, I'm going to show you -- well, let me ask you this
5 way: Do you recall doing an autopsy on a young man by the name
6 of Darell Richards?

7 A. Yes.

8 Q. Okay. And I'm going to show you what is previously
9 stipulated Exhibit Number 1. Are you able to see that on your
10 screen at the witness stand?

11 A. Yes, I am.

12 Q. Do you recognize what this is?

13 A. Yes, I do.

14 Q. What is this?

15 A. This is my autopsy report.

16 Q. And the autopsy report of who?

17 A. Of Mr. Richards.

18 Q. And do you see where it says "Autopsy Findings"?

19 A. Yes, I do.

20 Q. Can you please read for me what were the autopsy findings
21 for Darell Richards?

22 A. Number 1 was, "Gunshot wounds to head and extremities."
23 Number 2 was, "Negative for ethanol and drug intoxication. See
24 toxicology report."

25 Q. And what is the significance of those two findings?

Tovar - Direct by Mr. Buelna

1 gunshot wound, et cetera.

2 Q. Fair enough. So this Number 1, can you please describe
3 just in layman's terms the gunshot wound that you observed on
4 Mr. Darell Richards?

5 A. Sure.

6 So he had a perforating gunshot wound, meaning that the
7 gunshot wound, the bullet, went through the entire head. It
8 entered the left side and exited on the right side, and in that
9 path it hit the scalp, the skull, the brain, and then the skull
10 and the scalp on the other side. In addition, it had a -- it
11 went from left to right. It went front to back and upward as
12 the bullet passed through the head.

13 Q. Was there an entrance and an exit wound?

14 A. Yes.

15 Q. What is an entrance wound?

16 A. An entrance wound is where the projectile first entered
17 the body, and the exit wound would be where it left the body.

18 Q. And for this particular gunshot wound, where was the
19 entrance wound located on the body?

20 A. On the left side of the head.

21 Q. So the left temple?

22 A. Temple region, yes.

23 Q. So what I'm going to show you now is Previously Admitted
24 Exhibit 4. It's stamped, for the record, 18-284104113. Do you
25 recognize what's contained in this photograph?

Tovar - Cross by Mr. Day

1 A. True.

2 Q. You put those conclusions in the autopsy report; correct?

3 A. Yes.

4 Q. And you wouldn't have written something in the autopsy
5 report if it was untrue; right?

6 A. That's correct.

7 Q. And the conclusions you reached that you wrote in the
8 autopsy report are based on your medical opinions; true?

9 A. Yes.

10 Q. So when you wrote in the report that there was an exit
11 wound to the right palmar surface, that was your opinion at the
12 time you wrote the report; correct?

13 A. Yes.

14 Q. And that opinion that it was an exit wound to the palmar
15 surface was made to a reasonable degree of medical certainty
16 based on your education, training and experience; true?

17 A. That was my opinion. It was an opinion based on the
18 characteristics of the wound that it would be the most likely
19 path.

20 Q. Based on your education, training and experience?

21 A. Correct, yes.

22 Q. And the opinion, the exit wound was on the palmar surface
23 was made to -- strike that.

24 When I took your deposition approximately four years after
25 you performed the autopsy report on Mr. Richards, it was still

Tovar - Cross by Mr. Day

1 your opinion that the wound to the right palm was an exit
2 wound; true?

3 MR. BUELNA: Objection, asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 BY MR. DAY:

7 Q. And, again, that opinion you expressed at that deposition
8 was based on your education, training and experience; correct?

9 A. Yes.

10 Q. And as you sit here today, it's still your opinion that
11 the wound to Mr. Richard's right palm is an exit wound; true?

12 A. Yes.

13 Q. Regarding the left hand, you didn't offer any direction
14 for these wounds; true?

15 A. That's correct.

16 Q. And that's because, unlike the exit wound to the right
17 palm, based on your training, education and experience, you
18 couldn't determine the direction; true?

19 A. That's correct. I mean, I was going to say this, and
20 then -- the reality of it is is if it's -- the outer surface of
21 the skin is much -- is out. If you expose the undersurface,
22 it's in. So it's in a, grand scheme of things, a front-to-back
23 or back-to-front trajectory. But 1/16th of an inch -- less
24 than 1/16th of an inch deep into the skin, so it's really
25 not -- typically -- and it's -- because it's an abrasion, and a

Tovar - Cross by Mr. Day

1 scrape of the skin typically don't really provide that
2 information.

3 Q. That doesn't mean there wasn't a direction to those
4 fragments, though; right?

5 A. If those are fragment wounds, yes, there would be some
6 direction. But those are not interpretable, even to form an
7 opinion based on my training and experience.

8 Q. But based on the wounds to the left hand, what we do know
9 is they were not to the palmar surface; correct? They were on
10 the posterior side; correct?

11 A. That's correct, yes.

12 Q. I believe you mentioned this, but just to make sure, the
13 directions that you described the gunshot wounds, those are
14 based on anatomical position, and you never attempted to make
15 any determination as to Mr. Richards' position at the time he
16 sustained the gunshot wounds; true?

17 A. That is correct.

18 Q. Nor could you tell from your examination the order of the
19 gunshot wounds; true?

20 A. That's correct.

21 MR. DAY: Those are all the questions I have for you,
22 Doctor. Thank you very much.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect?

25 MR. BUELNA: Yes, a few questions.

Foster - Redirect by NoId

1 court. That doesn't matter to me, not at this point. They're
2 aware that trial was going to start, and you guys have been
3 incredible in terms of agreeing to cooperate and stipulating.
4 I can't tell you how much I appreciate that.

5 So not on you. Just make sure the message is given
6 to witnesses, okay?

7 MR. RICHMOND: Understood. Thank you.

8 THE COURT: Okay. We'll start about 9:15 tomorrow.
9 See all of you then.

10 MR. BUELNA: Thank you, Your Honor.

11 MR. RICHMOND: Thank you, Your Honor.

12 (Proceedings adjourned at 1:18 p.m.)


13

14 C E R T I F I C A T E

15

16 I certify that the foregoing is a true and correct
17 transcript of the record of proceedings in the above-entitled
18 matter.

19

20 
21 MARYANN VALENOTI, RMR, CRR
22 Official Court Reporter
23 CA CSR #11266

24 December 16, 2022
25 DATE

22

23

24

25

EXHIBIT 17



County of Sacramento

Department of Coroner
4800 Broadway, Suite 100
Sacramento, CA 95820-1530

Kimberly D. Gin
Coroner

Autopsy

External Examination

NAME: RICHARDS, DARELL

CASE NO. 18-04730

POSTMORTEM DATE: 09/07/18


TIME: 10:00

INVESTIGATOR: Caleb Shifflett

AUTOPSY FINDINGS:

1. Gunshot Wounds to Head and Extremities
2. Negative for Ethanol and Drug Intoxication (see Toxicology Report)

CAUSE OF DEATH: Gunshot Wounds to Head and Extremities



Jason P. Tovar, M.D.
Chief Forensic Pathologist/
Pediatric Pathologist
September 24, 2018

JPT/clk

R: 09/10/18

T: 09/10/18

WITNESSES:

Detective M. Severi (Badge #456) and CSI K. Gunther (Badge #6386) of the Sacramento Police Department.

IDENTIFICATION:

The body is identified by a Sacramento County Coroner's ID tag attached to the body bag, labeled with the decedent's listed name and case number. The bag is secured with a lock, inscribed with the number 311866. There is evidence tape across the proximal portion of the zipper.

EVIDENCE OF MEDICAL INTERVENTION:

EKG pads are present on the extremities. There has not been organ procurement.

CLOTHING:

The decedent is clad in a pair of brown pants that have been previously cut up the legs, a pair of black underpants, a tan belt, black boots, a gray sock, and a black sock. The pants are bloodstained and the left pant leg has defects corresponding to the gunshot wounds identified below.

EXTERNAL EXAMINATION

The body is that of an unembalmed, refrigerated, adult man who appears consistent with the reported age of 19 years. The body weighs 136 pounds, measures 66 inches in length, and is well nourished. The skin is remarkable for blunt force injuries, as described below in "Evidence of Traumatic Injury", and is free of lacerations and burns. No wrist scars or tattoos are identified. A well-healed scar is present on the left knee. Rigor mortis is present. Livor mortis is not appreciated.

The head is normocephalic and traumatic, as described below in "Evidence of Traumatic Injury". The scalp is covered by brown hair. There is no balding and the hair can be described as short and curly. A mustache is present and some hair on the chin is present. The irides are brown. There are no petechial hemorrhages of the conjunctivae, lids, or sclerae. The oronasal passages are unobstructed. The teeth are natural and in good repair. The earlobes are unremarkable. There is no hemorrhage or discharge in the external auditory canals. The neck is unremarkable. There is no chest deformity. There is no increased anterior-posterior diameter. The abdomen is flat. The genitalia are those of an adult male. The penis is uncircumcised. The external genitalia are without trauma or lesions. The extremities show no edema, joint deformity, abnormal mobility, non-therapeutic punctures, or needle tracks. There is no cyanosis of the nail beds of the fingers.

EVIDENCE OF TRAUMATIC INJURY:

Gunshot wounds:

1. There is a perforating gunshot wound to the left temple, entering at 4 ½ inches from the top of the head, 3 ¼ inches left of midline, and 1 ¾ inches anterior to the external auditory canal. There is an abrasion along the inferior margin of the wound measuring 1/8 inch. Superior to the wound at about 11 o'clock are punctate abrasions measuring less than 1/16 inch in an area of associated acne. Inferior to the wound on the left side of the cheek are two semicircular lacerations, the anterior-most measuring 1/8 inch and one posterior to that measures 3/16 inch. On the anterior surface of the left cheek just below the lateral corner of the left eye is a curvilinear abrasion measuring 3/16 inch. There is no definitive soot or stippling on the skin surface surrounding the wound. There is an exit wound on the right temporoparietal scalp 1 ½ inches from the top of the head and 3 inches right of midline. The wound measures ¼ inch on reapproximation of the margins. There are lacerations radiating from the margins measuring ¼ to ½ inch. There are brain fragments exuding from the wound. No projectile is recovered. The direction of the wound is from left to right, front to back, and upward. The course is through the left temporal scalp skin along the supraorbital plate, creating comminuted fractures of bilateral supraorbital plates, dura in this region, through the left temporal lobe superiorly and along the inferior surfaces of the left and right frontal lobes, entering into the right parietal lobe, and exiting the right parietal dura, parietal bone, and parietal scalp. There is subcutaneous and subgaleal hemorrhage of the scalp. There is associated subarachnoid and subdural hemorrhage of the brain. There are contusions of the mid-brain, cerebellar contusions, and

basal ganglia contusions. There is an associated comminuted basal skull fracture with a hinge-type fracture identified and facial bone fractures. There is blood in the right external auditory canal, associated periorbital contusions, and contusion of the lateral right scleral surface of the right eye. There is aspiration of blood.

2. There is a perforating gunshot wound to the right hand. The entrance and exit are not clearly defined. There is an atypical defect at the base of the fourth and fifth fingers on the dorsal surface 24 ½ inches from the top of the shoulder. The wound is irregular and measures ¾ inch, with associated lacerations at the lateral margin. No soot or stippling is seen on the skin surface. Medial to this wound is a 1 inch contusion. There is an atypical defect on the palmar surface at the base of the fifth finger at 24 inches from the top of the shoulder. The wound measures 5/8 inch. No soot or stippling is seen on the skin surface surrounding this wound. The tip of the right fifth finger on the palmar surface has an area of laceration measuring 7/16 inch. The distal aspect of the right fifth finger along the medial nail bed has a 1/8 inch abrasion. The direction of the wound is from back to front and upward. The course is through the posterior hand skin, fracturing the fifth metacarpal, and exiting the palmar surface of the right hand at the base of the fifth finger. There is an associated surrounding contusion in the soft tissues and laceration and abrasion of the distal fifth finger.

3. The back of the left arm at the level of the elbow has two penetrating defects. One is located laterally at 12 ½ inches from the top of the shoulder and the other is medial at 12 ½ inches from the top of the shoulder. The lateral-most measures ½ inch and is round, with lacerations at the margin measuring 1/16 inch. The medial-most measures 3/8 inch, with a marginal abrasion measuring 1/8 inch. No soot or stippling is seen on the skin surface surrounding these wounds. Just superior to the wounds on the back of the left arm is a laceration measuring 3/16 inch that is 11 ½ inches from the top of the shoulder. The etiology of this wound is not determined. The paths of these injuries intersect in the soft tissues and bones, where there is fracturing of the radius and ulna in these regions, creating a comminuted fracture pattern. Within this region of fracture, a projectile and fragments of projectile are recovered. A projectile fragment is also recovered from the back of the left forearm at 11 ¼ inches from the top of the shoulder. The direction of these wounds is from back to front and right to left and down. The course is through the skin, radius and ulna creating comminuted fractures, and entering the soft tissues of the elbow and left forearm. The medial surface of the left forearm just below the antecubital fossa has a punctate abrasion measuring 1/16 inch.

4. There is a gunshot wound to the posterior left forearm, entering 16 ¼ inches from the top of the shoulder. The wound is oval in appearance and measures 5/8 inch, with a marginal abrasion measuring 1/8 inch. No soot or stippling is seen on the skin surface. Lateral to the entry site is a palpable fragment underneath the skin with associated contusion measuring ¾ inch. This is located 16 ½ inches from the top of the shoulder. There is no exit wound. The wound is a fragment wound and a piece of jacket is recovered from the soft tissue of the forearm. The direction of this wound is from back to front and right to left and down. The course is through the skin and soft tissues of the forearm.

5. The posterior surface of the left second through fifth fingers has numerous abrasions and lacerations that represent fragment type injuries. On the first finger, there are abrasions just distal to the metacarpophalangeal joint measuring less than 1/16 to 1/8 inch. There is a laceration on the proximal interphalangeal joint measuring ½ inch. The distal interphalangeal joint medially has a 1/8 inch laceration. Just distal to the posterior metacarpophalangeal joint of the second finger is an area of abrasion measuring 7/8 inch. The medial surface of the middle phalanx has abrasions measuring 1/16 to 3/16 inch and at the posterior distal interphalangeal joint is an abrasion measuring ½ inch. The posterior third finger at the proximal interphalangeal joint and middle phalanx has punctate abrasions measuring less than 1/16 inch. There is a punctate abrasion measuring less than 1/16 inch at the posterior distal phalanx of the fifth finger.

6. There is a fragment-type wound entering the posterolateral left thigh 22 ¾ inches from the bottom of the heel. The wound is round and measures 1/8 inch, with a marginal abrasion measuring 1/16 inch. There is no soot or stippling on the skin surrounding the wound. There is no exit wound. The direction of

the wound is from left to right. The course is through the skin and soft tissue and contusion is seen within the soft tissue. No projectile is recovered.

7. There is a gunshot wound to the posterolateral left leg entering 14 inches from the bottom of the heel. The wound is round and measures 1/8 inch with an abrasion inferiorly measuring 1/8 inch. There is no soot or stippling on the skin surface. The exit wound is located in the popliteal fossa of the left leg 17 1/2 inches from the bottom of the heel on center. The wound is oval and measures 1 1/2 inches in length and is a laceration-type injury. The direction of the wound is from back to front, left to right, and upward. The course is through the skin, soft tissue, and skin of the left leg. Superior to the wound on the back of the left thigh is a 1 1/2 x 3/4 inch abrasion. Inferior to the wound on the back of the left leg is a 1/2 inch abrasion.

8. There is a perforating gunshot wound to the anterolateral left shin entering 10 7/8 inches from the bottom of the left heel. The wound is oval and measures 1/8 inch, with an abrasion inferiorly measuring 1/16 inch. No soot or stippling is seen on the skin surface surrounding the wound. The exit wound is located on the medial surface of the left thigh 19 3/4 inches from the bottom of the heel on center. The wound is a lacerated defect with a skin bridge identified in the center. This entire wound measures 1 inch in greatest dimension. There are lacerations medially measuring 1/16 inch and an abrasion superiorly on the wound's edge measuring 1/16 inch. The direction of the wound is from back to front, left to right, and upward. The course is through the skin and soft tissue, fibula, soft tissue, and medial lower left thigh skin.

10. There is a gunshot wound to the posterolateral left leg over the calf muscle, entering 11 inches from the bottom of the heel. The wound is oval and measures 3/16 inch, with an abrasion along the inferior margin measuring 1/8 inch. The exit wound is located on the medial surface of the left knee 17 1/2 inches from the bottom of the heel on center. This is a lacerated defect measuring 5/8 inch, with an abrasion with laceration superiorly measuring 1/8 inch. The direction of the wound is from back to front, left to right, and upward. The course is through the skin and soft tissue and exits the medial left knee skin.

Blunt force injuries: There is a punctate abrasion on the left side of the chin measuring less than 1/16 inch. The right side of the anterior torso has a 3/4 inch transversely oriented abrasion. The anterior right thigh has scattered contusions measuring from 1/4 to 1 inch. Distal to this on the anterior right thigh is a 1 inch contusion. Medial to this on the right thigh is a 3/16 inch abrasion. The right knee has multiple punctate abrasions and a contusion measuring 1/4 inch. There is a punctate abrasion in the right popliteal fossa measuring less than 1/16 inch. The left knee has numerous punctate abrasions measuring less than 1/16 inch. Additionally, just distal on the lower portion of the left knee is an abrasion with contusion measuring 1/2 and 1 inch, respectively. The anterior left shin has a 1/4 inch laceration. There is an abrasion on the anterior left shin measuring 1/16 inch. There are punctate abrasions in the popliteal fossa of the right knee measuring less than 1/16 inch.

These injuries, having been described, will not be repeated.

INTERNAL EXAMINATION

The following observations are limited to findings other than injuries, if described above.

INITIAL INCISION:

The body cavities are entered through the standard coronal incision and the standard Y-shaped incision.

CHEST/ABDOMINAL CAVITY:

The soft tissues of the thoracic and abdominal walls are well preserved. The subcutaneous fat of the abdominal wall measures 1/2 inch. The pleural cavities are smooth and glistening. The organs of the abdominal cavity have a normal arrangement and none are absent. There is no fluid collection. The peritoneal cavity is without evidence of peritonitis. There are no adhesions.

HEAD AND CENTRAL NERVOUS SYSTEM:

See "Evidence of Traumatic Injury". The brain weighs 1300 gm. No natural pathology is observed.

SPINAL CORD:

The entire cord is not dissected.

NECK:

The neck organs are removed *en bloc* with the tongue. No foreign material is present in the mouth, upper airway, or trachea. No lesions are present and there is no trauma of the gingiva, lips, or oral mucosa. There is no edema of the larynx. Both hyoid bone and larynx are intact and without fractures. No hemorrhage is present in the adjacent throat organs, investing fascia, strap muscles, thyroid, or visceral fascia. There are no prevertebral fascial hemorrhages. The tongue when sectioned shows no trauma.

CARDIOVASCULAR SYSTEM:

Within the pericardial sac, there is a minimal amount of serous fluid. The heart weighs 330 gm and is normal in size. The right ventricle is 0.4 cm thick; the left ventricle is 0.8 cm thick; and the septum is 0.7 cm thick. The chambers are normally developed and are without mural thrombosis. The valves are thin, leafy, and competent. The circumferences of the valve rings are: tricuspid valve 11.0 cm, pulmonic valve 5.5 cm, mitral valve 10.5 cm, and aortic valve 6.5 cm. There is no endocardial discoloration. There are no lesions of the myocardium. There are no abnormalities of the apices of the papillary musculature. There are no defects of the septum. The great vessels enter and leave in a normal fashion. The ductus arteriosus is obliterated. The coronary ostia are widely patent. The right coronary artery is the dominant vessel. There is no atherosclerosis of the major coronary arteries. No focal endocardial, valvular, or myocardial lesions are seen. The aorta is elastic and of even caliber throughout, with vessels distributed normally from it. The thoracic aorta is unremarkable. There is no tortuosity or widening of the thoracic segment. The abdominal aorta is unremarkable. There is no dilation of the lower abdominal segment. No aneurysm is present. The major branches of the aorta show no abnormality. The inferior vena cava is unremarkable. The blood within the heart and large blood vessels is liquid and scant.

RESPIRATORY SYSTEM:

Scant secretions are found in the lower bronchial passages. The mucosae are smooth and glistening. The lungs are subcrepitant and there is dependent congestion. The right lung weighs 650 gm. The left lung weighs 400 gm. The visceral pleura are smooth and glistening. The parenchyma is congested and edematous. The pulmonary vasculature is without thromboembolism. There is evidence of aspiration of blood.

GASTROINTESTINAL SYSTEM:

The esophagus is intact throughout. The stomach is not distended. It contains a trace amount of yellow-tan fluid. The mucosa is smooth and glistening. Portions of tablets and capsules cannot be discerned in the stomach. The external and *in situ* appearance of the small intestine and colon are unremarkable. The small intestine and colon are opened along the anti-mesenteric border and are unremarkable. The appendix is present.

HEPATOBIILIARY SYSTEM:

The liver weighs 990 gm and is tan-brown in color and normal in size. The capsule is intact and the consistency of the parenchyma is soft. The cut surface is smooth. There is a normal lobular arrangement. The gallbladder is present. The wall is thin and pliable. It contains 10 cc of bile and no stones. There is no obstruction or dilation of the extrahepatic ducts. The periportal lymph nodes are not enlarged.

PANCREAS:

The pancreas occupies a normal position. There is no necrosis. The parenchyma is lobular and firm. The pancreatic ducts are not ectatic and there is no parenchymal calcification.

URINARY SYSTEM:

The right kidney weighs 100 gm. The left kidney weighs 110 gm. The kidneys are normally situated and the capsules strip easily, revealing a surface that is smooth and pale. The corticomedullary demarcation is preserved. The pyramids are unremarkable. The peripelvic fat is not increased. The ureters are

without dilation or obstruction and pursue their normal course. The urinary bladder is distended. It contains 240 cc of clear, yellow urine. The urine is not tested by the dipstick method.

GENITAL SYSTEM:

The prostate is unremarkable. Both testes are in the scrotum and are unremarkable and without trauma.

HEMOLYMPHATIC SYSTEM:

The thymus is usual for age, with a pink-red color. The spleen weighs 100 gm and is normal in size. The capsule is intact. The parenchyma is firm. There is no increased follicular pattern. Lymph nodes throughout the body are small and inconspicuous. The bone is unremarkable. The bone marrow of the rib is unremarkable.

ENDOCRINE SYSTEM:

The thyroid is red-tan in color. The parathyroid glands are not identified. The adrenals are unremarkable. The pituitary gland is unremarkable.

MUSCULOSKELETAL SYSTEM:

No abnormalities of the bony framework or muscles are present outside of the observed injuries.

SPECIAL SENSES:

The eyes are not dissected. The middle and inner ear are not dissected.

HISTOLOGIC SECTIONS:

Representative sections from various organs are preserved in one storage jar in 10% formalin. No sections are submitted for histology.

TOXICOLOGY:

Bile, femoral blood, heart blood, liver tissue, stomach contents, urine, and vitreous humor have been obtained. Femoral is sent for toxicology.

SPECIAL PROCEDURES:

Blood is obtained for DNA. Head hair and right and left nail scrapings are obtained.

PHOTOGRAPHY:

At scene photos are available. Photographs have been taken prior to and during the course of the autopsy.

DIAGRAMS:

Diagrams were used during the performance of the autopsy. The diagrams are not intended to be facsimiles and are not drawn to scale.

RADIOLOGY:

X-rays are obtained and show radiopacities consistent with the recovered projectiles and retained fragments.

EVIDENCE:

Projectiles and fragments recovered from the decedent were each photographed and placed separately in labeled envelopes.

MICROSCOPIC DESCRIPTION:

None.

JPT/clk
R: 09/10/18
T: 09/10/18

EXHIBIT 18

DEFENDANT'S
EXHIBIT

2:19-cv-00374-JAM-JDP

NN



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Lee H. Roistacher, Esq. (SBN 179619)
2 440 Stevens Avenue, Suite 100
Solana Beach, CA 92075
3 Telephone: (858) 380-4683
Facsimile: (858) 492-0486
4 E-mail: lroistacher@deangazzo.com

5 Susana A. Wood, Esq.
Sean D. Richmond, Esq.
6 Matthew R. Day, Esq.
City Of Sacramento
7 915 I Street, Room 4010
Sacramento, CA 95814-2608
8 Telephone: (916) 808-5346
Facsimile: (916) 808-7455
9 E-mail: srichmond@cityofsacramento.org
10 mrday@cityofsacramento.org

11 Attorneys for Defendants
City of Sacramento, Sameer Sood, Todd Edgerton,
12 and Patrick Cox

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 KHOUA VANG; and TED RICHARDS,
JR., individually and as Co-Successors-in-
Interest to Decedent DARELL
16 RICHARDS,

17 Plaintiffs,

18 v.

19 CITY OF SACRAMENTO, a municipal
corporation; and DOES 1-50, inclusive,
20 individually and in their official capacity as
agents for the Sacramento Police
21 Department,

22 Defendants.

Case No.: 2:19-CV-00374-JAM-JDP

**DECLARATION OF SEAN D. RICHMOND
IN SUPPORT OF RENEWED MOTION
FOR JUDGMENT AS A MATTER OF
LAW BY DEFENDANTS' CITY OF
SACRAMENTO, SAMEER SOOD, TODD
EDGERTON AND PATRICK COX**

Date: February 14, 2023
Time: 1:30 p.m.
Courtroom: 6
Judge: Hon. John A Mendez
Magistrate: Hon. Jeremy D. Peterson

Complaint Filed: March 4, 2019
Trial Date: October 11, 2022

23
24 I, Sean D. Richmond, declare:

25 1. I am an attorney at law duly licensed to practice before all the Courts of the
26 State of California and I am a Senior Deputy City Attorney for the Sacramento City Attorney's
27 Office, the attorneys of record for the Defendants herein. I have personal knowledge of the
28 facts set forth in this declaration. If called upon to do so, I could and would testify to the

1 following facts.

2 2. Pursuant to the Court's Standing Order of March 4, 2019 (ECF No. 4-2),
3 counsel for Defendants attempted to meet and confer with Plaintiffs' counsel prior the initial
4 filing of its renewed Motion for Judgment as a Matter of Law to determine if Plaintiffs would
5 dismiss any of the contested causes of action or have any alternative proposals for potential
6 resolution. A true and correct copy of the meet and confer correspondence is attached to this
7 declaration as Exhibit 1. Hearing nothing from plaintiffs' counsel, I attempted to meet and
8 confer again. A true and correct copy of the meet and confer correspondence is attached to
9 this declaration as Exhibit 2.

10 3. As of the date this motion was filed, Plaintiffs' counsel has not responded to
11 Defendants' efforts to meet and confer. Should plaintiffs' counsel respond after this motion is
12 filed and before the hearing date, and some resolution reached on any issue, I will notify the
13 Court.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on
15 December 28, 2022

16
17 /s/ Sean D. Richmond
18 Sean D. Richmond, declarant

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27
28

EXHIBIT 1

Lee Roistacher

From: Sean Richmond <SRichmond@cityofsacramento.org>
Sent: Tuesday, December 27, 2022 3:12 PM
To: Lee Roistacher
Subject: FW: Vang c. City of Sacramento

Follow Up Flag: Follow up
Flag Status: Flagged

From: Sean Richmond
Sent: Tuesday, November 22, 2022 1:50 PM
To: Patrick Buelna <puelna@lawyersftp.com>; Adante Pointer <apointer@lawyersftp.com>; melissa@noldlaw.com
Cc: Matthew Day <mrday@cityofsacramento.org>
Subject: Vang c. City of Sacramento

Greetings Counsel,

Please allow this as an attempt to meet and confer pursuant to ECF No. 4-2, Section III, prior to Defendants' renewed Motion for Judgment as a Matter of Law [FRCP No. 50(b)]. The intended grounds for the motion are that Plaintiffs failed to meet their burden of proof as to any of the asserted causes of action, that all four individual defendants are entitled to qualified immunity and that Plaintiffs failed to meet their burden in regard to the award of punitive damages. Please advise if you would agree to dismiss any or all of the causes of action or if you have any alternative proposal for resolution.

In addition, I ordered the trial transcript on November 3, 2022, but have been advised that it will not be received until December 17, 2022. I respectfully request that you agree to stipulate to a 30 day extension to file the motion so that I may include specific reference to the record in the motion. Should you decline this request, please be advised that I will move the court for the extension absent your stipulation.

Please do not hesitate to contact me should you have any questions or concerns regarding these matter. Thank you and have a Happy Thanksgiving.

Best regards,

Sean D. Richmond
Senior Deputy City Attorney
Sacramento City Attorney's Office
Phone: (916) 808-5346
Fax: (916) 808-7455

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[Case 2:19-cv-00374-JAM-JDP Document 155-3 Filed 12/28/22 Page 5 of 8](#)
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EXHIBIT 2

Lee Roistacher

From: Sean Richmond <SRichmond@cityofsacramento.org>
Sent: Tuesday, December 27, 2022 11:48 AM
To: Patrick Buelna; Adante Pointer; melissa@noldlaw.com
Cc: Matthew Day; Lee Roistacher
Subject: RE: Vang c. City of Sacramento

Greetings Counsel,

As you are aware, the Court permitted an extension for Defendants to file a renewed Motion for Judgment as a Matter of Law pending the receipt of the trial transcripts. The deadline to file is December 28, 2022. Please allow this as another attempt to meet and confer pursuant to ECF No. 4-2. Please advise no later than close of business, December 28, 2022, if you would agree to dismiss any or all of the causes of action or if you have any alternative proposal for resolution. Otherwise, we intend on filing the motion at the close of business, tomorrow, December 28, 2022. Thank you and happy new year.

Best regards,

Sean D. Richmond
Senior Deputy City Attorney
Sacramento City Attorney's Office
Phone: (916) 808-5346
Fax: (916) 808-7455

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Sent: Tuesday, November 22, 2022 1:50 PM
To: Patrick Buelna <pbuelna@lawyersftp.com>; Adante Pointer <apointer@lawyersftp.com>; melissa@noldlaw.com
Cc: Matthew Day <mrday@cityofsacramento.org>
Subject: Vang c. City of Sacramento

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Best regards,

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