

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BEFORE THE HONORABLE THANG NGUYEN BARRETT, JUDGE  
DEPARTMENT NO. 84

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff,	)	
v.	)	CASE NO. BB833050
JOSEPH ANTHONY CIAMPI,	)	<u>CHARGES:</u>
Defendant.	)	F(001) PC 69
	/	

---o0o---

PRELIMINARY EXAMINATION  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
DECEMBER 1, 2008  
VOLUME 1  
PAGES 1 - 58

---o0o---

APPEARANCES:

FOR THE PEOPLE:	JAVIER ALCALA Deputy District Attorney
FOR THE DEFENDANT:	DAVID J. BEAUVAIS Attorney at Law
OFFICIAL COURT REPORTER:	HEATHER J. BAUTISTA CSR No. 11600

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INDEX

EXAMINATION

<u>Witness Name</u>	<u>Page</u>
<b>OFFICER MANUEL TEMORES, PAPD</b>	
Direct By Mr. Alcala.....	6
Cross By Mr. Beauvais .....	26

Exhibits

<u>Defense Exhibits</u>	<u>Description</u>	<u>Page</u>
A Marked	CD of dispatch call	33

1 Palo Alto, California

December 1, 2008

2 PROCEEDINGS

3 THE COURT: Calling line number two from the 1:30  
4 calendar, the matter of People v. Joseph Ciampi. Case  
5 number BB833050.

6 MR. ALCALA: Javier Alcala on behalf of the  
7 People.

8 MR. BEAUVAIS: David Beauvais on behalf of Mr.  
9 Ciampi, who is present in court, and his name is misspelled  
10 in the docket, Your Honor.

11 THE COURT: Could you give me the correct  
12 spelling.

13 MR. BEAUVAIS: C-i-a-m-p-i.

14 THE COURT: Yes; I have that as his true name in  
15 the court file.

16 MR. BEAUVAIS: Okay.

17 THE COURT: Thank you. And this matter is here  
18 for preliminary examination. Are both sides ready to  
19 proceed?

20 MR. ALCALA: Yes.

21 MR. BEAUVAIS: Yes, Your Honor.

22 THE COURT: As well as for a motion to suppress.

23 MR. BEAUVAIS: Yes, Your Honor. I would move to  
24 exclude witnesses.

25 THE COURT: Yes. This is case number BB833050.  
26 The motion to exclude is granted.

27 MR. ALCALA: The first witness I'm going to call  
28 is Officer Temores, and I'd like to designate my second

1 witness, Officer Burger, as my investigating officer.

2 THE COURT: That request is granted. And also,  
3 Counsel, in the -- do you know whether your client is  
4 prepared to waive the one continuous preliminary examination  
5 rule in the event I need to interrupt this case to hear  
6 other matters, either this afternoon or on other days?

7 MR. BEAUVAIS: Yes, Your Honor.

8 THE COURT: Sir, you have the right to have a one  
9 continuous preliminary examination rule. That means that I  
10 must dedicate my attention and the resources of the court to  
11 hear this preliminary examination until its conclusion.

12 It could be that I may need to interrupt the case  
13 to hear another case, or if the hearing does not conclude  
14 this afternoon, then I will have to continue it on another  
15 day, and then in between those two dates, I will hear other  
16 cases.

17 Do you understand your right to a one continuous  
18 preliminary examination?

19 DEFENDANT CIAMPI: Yes, I do.

20 THE COURT: And do you give up that right?

21 DEFENDANT CIAMPI: Yes, I do.

22 THE COURT: Thank you, sir.

23 DEFENDANT CIAMPI: Thank you.

24 THE COURT: You may be seated.

25 DEFENDANT CIAMPI: Sorry.

26 THE COURT: Anything else before proceeding with  
27 the testimony, Mr. Alcala? Any other motions?

28 MR. ALCALA: No.

1 THE COURT: Mr. Beauvais?

2 MR. BEAUVAIS: No, Your Honor.

3 THE COURT: Thank you. And you may call your  
4 first witness.

5 MR. ALCALA: That's Officer Temores, and --

6 THE COURT: Just one minute. I still see a lot of  
7 other officers in the courtroom.

8 MR. ALCALA: There is, but the only witnesses I  
9 have are these two. The other ones are subpoenaed by the  
10 defense, I believe.

11 THE COURT: So do you want them -- your witnesses  
12 to remain, or do you wish them excluded?

13 MR. BEAUVAIS: No; I'm asking that all witnesses  
14 be excluded.

15 THE COURT: Okay. Well, since they're your  
16 witnesses, could you invite them out.

17 MR. BEAUVAIS: Okay.

18 THE COURT: Basically, all witnesses in this case,  
19 whether called by the defense or prosecution, please wait  
20 outside.

21 MR. ALCALA: I'm going to check on 'em.

22 THE COURT: Yes.

23 So, Counsel, we are proceeding with both the  
24 preliminary examination and the motion to suppress at the  
25 same time. Do you all agree to that?

26 MR. BEAUVAIS: Yes, Your Honor.

27 MR. ALCALA: Yes.

28 THE COURT: Okay. And please swear in the

1 witness.

2 OFFICER MANUEL TEMORES, PAPD,

3 Being called as a witness on behalf of the People,  
4 having been first duly sworn, was examined and testified as  
5 follows:

6 THE CLERK: Thank you. Please have a seat.

7 DIRECT EXAMINATION

8 BY MR. ALCALA:

9 Q. State your full name and spell it, please.

10 A. Sure. It's Manuel Temores; M-a-n-u-e-l, Temores,  
11 T-e-m-o-r-e-s.

12 Q. I see you're employed as a police officer by the City  
13 of Palo Alto.

14 A. Yes, I am.

15 Q. And how long have you been so employed?

16 A. Approximately two years.

17 Q. And those entire two years, you've been with the City  
18 of Palo Alto?

19 A. Yes.

20 Q. And I want to draw your attention to March 15th of this  
21 year at approximately ten o'clock in the morning, I believe.  
22 Were you on duty?

23 A. Yes, I was.

24 Q. And were you working from a marked police car?

25 A. Yes, I was.

26 Q. And were you working in uniform as the one that you're  
27 wearing today?

28 A. Yes, I was.

1 Q. Were you working with a one-man car or more?

2 A. One-man car.

3 Q. Now, you got a particular call around that time, did  
4 you not?

5 A. Yes, I did.

6 Q. What was the nature of the call?

7 A. It was, from my recollection, a suspicious vehicle that  
8 was occupied, and the reporting party was calling police  
9 because they were concerned -- uh, he was concerned because  
10 it was making his wife and daughter feel uncomfortable by  
11 the way the man was looking at them.

12 MR. BEAUVAIS: Your Honor, I'm going to object as  
13 hearsay if offered for the truth of the matter asserted.

14 MR. ALCALA: Goes to probable cause, which is part  
15 of the motion, I thought.

16 THE COURT: So I will not accept it for the truth  
17 of the matter stated but for probable cause.

18 MR. BEAUVAIS: Okay. Your Honor, do we have an  
19 understanding that I don't have to repeat that objection  
20 each and every time?

21 THE COURT: I would assume it depends on the --  
22 what the People are offering the evidence for.

23 MR. BEAUVAIS: Okay.

24 MR. ALCALA: These preliminary questions are just  
25 to establish the probable cause to establish why the officer  
26 was there to begin with.

27 MR. BEAUVAIS: Could we ask that the last answer  
28 be repeated.

1 THE COURT: And, Counsel, I will do it this time,  
2 but I don't like to have my court reporter repeating  
3 answers.

4 MR. BEAUVAIS: That's fine.

5 THE COURT: Okay? But I do it this time. Madam  
6 reporter?

7 (Record read.)

8 THE COURT: Thank you.

9 Q. (By Mr. Alcala) Now, this information that you first  
10 got, was it over the radio?

11 A. Yes, it was.

12 Q. So it was from your dispatch?

13 A. Yes.

14 Q. Did you ever speak to the reporting party yourself?

15 A. Yes, I did.

16 Q. Okay. Let me get to that later, but the call from your  
17 dispatch, besides the information that they already gave  
18 you, did they give you the location of the vehicle?

19 A. They gave a nearby location.

20 Q. And what was that?

21 A. May I refer to my police report?

22 Q. Yes. You wrote a police report in this case?

23 A. Yes, I did.

24 Q. And you, uh, need to refer to it to refresh your  
25 memory?

26 A. If I may.

27 Q. Go ahead. Just let us know whenever you do that.

28 A. Okay. I'm referring to my police report, and the



1 location of the event is listed as the 200 block of Lincoln.  
2 Q. That's in the city of Palo Alto?  
3 A. Yes, it is.  
4 Q. Is that your beat at that particular day?  
5 A. I don't remember if it was my beat.  
6 Q. Okay. Why would you be responding if it's not your  
7 beat?  
8 A. I was dispatched to it.  
9 Q. Okay. The description of the vehicle, did you have  
10 that?  
11 A. Yes.  
12 Q. And what was that?  
13 A. It was, from my independent recollection, a blue van  
14 that had a bicycle tied to a tree.  
15 Q. Bicycle tied to a tree nearby the van?  
16 A. Yes.  
17 Q. Okay. So you started to, I'm assuming, driving around  
18 the area to look for it?  
19 A. Correct.  
20 Q. And did you find it?  
21 A. I did.  
22 Q. What time did you find it, do you think?  
23 A. About two minutes after I was dispatched from the call.  
24 Q. And this is ten o'clock in the morning?  
25 A. I believe 10:07.  
26 Q. And do you remember if it was raining or clear that  
27 day?  
28 A. It was a clear day.

1 Q. Now, describe the area that -- where you found the van  
2 parked. Was it industrial? Residential?

3 A. It's a residential area.

4 Q. Okay. And the van was parked when you first saw it?

5 A. Yes.

6 Q. And could you describe that van a little better as far  
7 as the windows and how it was kept or whatever?

8 A. Sure. It was an older style type blue van, and I  
9 believe all the windows were covered by either some sort of  
10 foil or aluminum and cardboard, so as if one was to be  
11 looking at the vehicle from the outside, you could not see  
12 the inside of the vehicle at all.

13 Q. Okay. So these are the windows that are on the side of  
14 the van?

15 A. The side and the front; the front windshield.

16 Q. The front windshield itself was covered too?

17 A. I believe so, yes.

18 Q. Did it have a window in the very back?

19 A. I don't remember.

20 Q. But there were windows on the side on the panels?

21 A. I don't remember.

22 Q. Okay. But it's fair to say that every window that was  
23 there was covered somehow?

24 A. Yes.

25 Q. And was there a bicycle locked up nearby?

26 A. Yes, there was.

27 Q. All right. So I'm assuming you were fairly certain  
28 that this is the vehicle that the reporting party was

1 complaining about?

2 A. Yes.

3 Q. Okay. And what did you do first when you drove up to  
4 the vehicle?

5 A. I drove and positioned my vehicle in front of the van.

6 Q. Okay. So you didn't have your lights or anything to  
7 stop it?

8 A. No.

9 Q. And then what did you do?

10 A. I activated my Mobile Audio Video system inside my  
11 patrol vehicle.

12 Q. Okay. Why did you do that?

13 A. It's policy to -- if we're going to make contact, to  
14 activate the system so it records the police contact.

15 Q. Okay. And by the way, had you ever seen this van  
16 before?

17 A. No.

18 Q. Okay. So then once you did that, what did you do next?

19 A. I exited my patrol vehicle, and I walked around the  
20 van.

21 Q. Okay. And could you hear anything coming from inside  
22 the van at that time?

23 A. No.

24 Q. Okay. And then what happened next?

25 A. Agent Wagner arrived on scene as well.

26 Q. Was it just -- was she by herself?

27 A. Yes.

28 Q. And then what happened?

1 A. And we attempted to knock on the door -- excuse me --  
2 and tried to contact whoever was inside.

3 Q. Did you actually knock on the door?

4 A. I believe I yelled to and advised that it was the  
5 police and that we needed to talk to whoever was inside.

6 Q. Did you get a response?

7 A. Not immediately.

8 Q. Okay. Then what happened?

9 A. Then Agent Wagner tried to -- she opened the side door  
10 of the van, and someone from the interior of the van shut  
11 the door very quickly.

12 Q. Okay. Was it the type of door where it slides?

13 A. I don't believe. I believe it was just a regular  
14 swinging door.

15 Q. So it had, like, a hinge on it so it opens like a door?

16 A. Yes.

17 Q. And it opened how much would you estimate?

18 A. A quarter of the way, maybe.

19 Q. And then it quickly closed again?

20 A. Yes.

21 Q. Then what happened?

22 A. So we knew somebody was obviously inside, so we told  
23 them that neighbors were calling because they were concerned  
24 about whoever was inside the van and we needed to speak  
25 with 'em.

26 Q. Did you get an answer?

27 A. Yes, I did.

28 Q. What was the answer?

1 A. Um, it was a muffled answer, but it was something to  
2 regards that, "I don't have to speak with you."

3 Q. Could you tell if it was a man or woman?

4 A. I could tell it was a man's voice.

5 Q. Okay. So then when the person tells you that they  
6 don't have to speak to you, what happens next?

7 A. I believe Agent Wagner told him that if he didn't come  
8 out and speak, we might have to tow the vehicle for  
9 overnight parking.

10 Q. Then what happened?

11 A. And the male inside said that we didn't have a right to  
12 speak with him, to leave; that he wasn't going to come out  
13 and talk to us.

14 Q. Okay. Then what happened?

15 A. So I acted like I was going to notify my dispatch for a  
16 tow.

17 Q. And you weren't actually going to do that, though?

18 A. No, I didn't.

19 Q. Did -- how did you do this acting?

20 A. I put my hand on my radio piece and pretended like I  
21 clicked it, and I notified radio that -- to start me a tow  
22 for an overnight parker.

23 Q. Okay. Now, you said this in a normal voice, I'm  
24 assuming?

25 A. Yes.

26 Q. And you couldn't tell -- or let me ask you. Could you  
27 tell whether the person inside the van was somehow able to  
28 peek at you? Do you know?

1 A. No.

2 Q. You don't know or --

3 A. I don't know.

4 Q. Okay. All right. Then after you did this fake radio  
5 call, then what happened?

6 A. The subject inside the vehicle, excuse me, exited in a  
7 very quick and explosive manner.

8 Q. Okay. Now, do you see that individual in the courtroom  
9 right now?

10 A. I do.

11 Q. Could you point him out and tell us where he's seated.  
12 Tell us what he's wearing.

13 A. He's seated right next to you. He's wearing a gray  
14 coat and blue shirt.

15 MR. ALCALA: If the record could reflect he's  
16 identified the defendant, Your Honor.

17 THE COURT: Yes.

18 MR. ALCALA: Thank you.

19 Q. (By Mr. Alcalá) Now, you described the way he exited.  
20 Could you give me more of a description as far as his -- his  
21 fist, his arms, his attitude, his language?

22 A. Yes.

23 MR. BEAUVAIS: Object to the leading nature of  
24 that question, Your Honor.

25 THE COURT: Overruled.

26 Q. (By Mr. Alcalá) Go ahead and describe as best you can.

27 A. He exited his van in a quick manner directly towards  
28 me. He had his -- both of his fists clenched. He was

1 pointing his finger at my face.

2 Q. How close did he get?

3 A. He was about a foot away.

4 Q. Okay. And was he saying anything?

5 A. Yes. He was screaming at me saying I had no right to  
6 tow his vehicle.

7 Q. Was he cursing at this point?

8 A. Yes, he was.

9 Q. And go ahead and use, if you recall, some of the  
10 language he was using.

11 A. I believe he said we have no fuckin' right to tow his  
12 vehicle.

13 Q. Okay. Now, when he jumped out of his van in -- in this  
14 manner, how far away were you from the van?

15 A. Approximately four feet away; four to five feet.

16 Q. So when he jumps out of the van, he goes directly right  
17 up to you?

18 A. Correct.

19 Q. Okay. Then what happened after that?

20 A. I tried to calm him down by telling him to calm down.

21 Q. Okay. And did that help?

22 A. No, it didn't.

23 Q. Then what happened?

24 A. Officer Burger arrived shortly after that.

25 Q. Okay. So at this point, it's three officers there?

26 A. Correct.

27 Q. Now, did you -- other than making this comment on your  
28 radio about the tow, did you, in any way, force the

1 defendant to exit his van?

2 A. No, I didn't.

3 Q. Did you order him in any way to exit his van? Did you,  
4 in any way, order him to exit his van?

5 A. I did not order him, no.

6 Q. Did you pull your gun at any time?

7 A. No.

8 Q. Okay. So we left off when Officer Burger arrives.  
9 What happens at that point?

10 A. I had noticed the defendant had what I recognized as  
11 pock marks all over both of his arms.

12 Q. Okay. And what was the significance of that  
13 observation to you?

14 A. Pock marks, to me, from my training and experience, are  
15 common with people who shoot drugs into their arms or the  
16 top layer of their skin because their veins had collapsed.

17 Q. Okay. Then what happened after you made this  
18 observation?

19 A. I -- based on the defendant's actions and his pock  
20 marks, I believed he might possibly be under the influence  
21 of some sort of central nervous stimulant.

22 Q. Okay. And what happened after that?

23 A. Officer Burger attempted to speak with the defendant.

24 Q. Could Officer Burger -- strike that question. Did  
25 Officer Burger have any success in calming the defendant  
26 down?

27 A. Nobody did.

28 Q. So this entire time, the defendant continues in the



1 same agitated state that you described?

2 A. Yes.

3 Q. And then when Officer Burger tries to calm him down and  
4 fails to, what happens next?

5 A. Officer Burger looks at me and tells me "550".

6 Q. What does that mean?

7 A. 550, from what I believed Officer Burger was trying to  
8 communicate with me, is short for the Health and Safety Code  
9 11550(a), Adam, which is somebody that is under the  
10 influence of a controlled substance.

11 Q. So it's police short jargon for under the influence?

12 A. Correct.

13 Q. And when Officer Burger says "550", then what happens?

14 A. The defendant hears 550 and quickly jumps back into his  
15 van.

16 Q. Through the same door that he exited?

17 A. Correct.

18 Q. This is the door that's on the side of the van?

19 A. Correct.

20 Q. And that door leads into the back of the van? In other  
21 words, it's not one of the front doors into the cab but into  
22 the back?

23 A. Correct; into the interior of the van.

24 Q. Not the cab portion of it, though?

25 A. No.

26 Q. So he just suddenly jumps after that and right back  
27 into the van?

28 A. Correct.

1 Q. And did he close the door?

2 A. No.

3 Q. What's he do when he goes back into the van?

4 A. He goes all the way to the farthest back portion of the  
5 van.

6 Q. You could see him through the open door?

7 A. Yes.

8 Q. What's he do then?

9 A. He starts screaming that he is not 5150 and begins to  
10 call somebody on his cell phone.

11 Q. Okay. Then what happened?

12 A. We ordered him out of the van.

13 Q. Okay. And what was your concern at this point?

14 A. One, the interior of the van was cluttered with  
15 miscellaneous items. It obviously appeared that the  
16 defendant was -- or somebody was living inside that vehicle  
17 because there was blankets, pillows, food; all sorts of  
18 items that people would need to live with every day.

19 Q. So your concern is that he might grab something?

20 A. Correct.

21 Q. What would be wrong with that? What would be the  
22 danger there?

23 A. It was cluttered, and we didn't really have a visual of  
24 what was inside of the van.

25 Q. So you think there might have been anything that could  
26 be used as a weapon or what?

27 A. Correct; there could have been a weapon that was  
28 immediately behind the defendant.

1 Q. Okay. Were you still trying to investigate the  
2 possible 11550?

3 A. Yes, I was.

4 Q. So when you ordered the defendant to come out of the  
5 van -- and I'm asking you, so you can correct me if I'm  
6 wrong, but when you -- when you do that, that's the first  
7 time you're actually ordering the defendant to do anything?

8 A. Correct.

9 Q. All right. And what's his reaction when you order him  
10 to exit the van?

11 A. He refused.

12 Q. How did he do that?

13 A. I believe he stated he's not getting out of the van.

14 Q. Then what happens?

15 A. I drew my taser out of my taser holster.

16 Q. You withdrew your taser?

17 A. I took out my taser out of its holster.

18 Q. Then what happened?

19 A. And I turned it on by activating the on and off  
20 trigger.

21 Q. Okay. Then what happened?

22 A. I ordered him out of the van and told him if he didn't  
23 get out of the van, we were going to tase him.

24 Q. Okay. And what did he say to that?

25 A. He said he wasn't exiting his van.

26 Q. Okay. Then what happened?

27 A. Officer Burger attempted to grab the defendant by his  
28 arm and pull him out of the van.

1 Q. Okay. Is Officer Burger still standing outside the  
2 van?

3 A. He is directly to my right.

4 Q. Is he doing that from outside reaching in?

5 A. We were both outside, and yes, he was reaching in.

6 Q. Okay. At this point, you're still not choosing to  
7 deploy or use the taser? In other words, the choice is to  
8 pull him out physically before you use the taser?

9 A. Officer Burger attempted to pull him out physically,  
10 yes.

11 Q. Okay. See, my question is why not shoot the taser and  
12 be done with it? Why grab him and risk injury to yourself?

13 A. I personally didn't tase him because I believed he  
14 would eventually cooperate.

15 Q. Okay. So then Officer Burger attempts to pull him out  
16 physically. Then what happens?

17 A. I believe the defendant shrugged his arm away from  
18 Officer Burger.

19 Q. So he pulled away?

20 A. He pulled away.

21 Q. During this time, are you still ordering him to exit?

22 A. Correct.

23 Q. Then what happens?

24 A. I believe Officer Burger was able to pull out the  
25 defendant.

26 Q. So was he -- is he dragging him out?

27 A. From my recollection, I believe after a second attempt,  
28 the defendant decided to exit the vehicle.

1 Q. Okay. Then the defendant comes out of the vehicle, and  
2 how does he come out?

3 A. He comes out, um, on his bottom, which means he was  
4 pushing himself off of the bottom floor of the van, and when  
5 he's doing that, there was a nearby two liter soda bottle  
6 that was partially filled with a clear fluid which he picks  
7 up on the way out.

8 Q. As he's scooting himself on his bottom?

9 A. Correct.

10 Q. And then why was that a concern?

11 A. It concerned me because at the time on the news, there  
12 was incidences regarding juveniles using two liter soda  
13 bottles filled with dry ice and some other chemicals and  
14 using them as explosives.

15 Q. Okay. So you thought potentially this could be a  
16 weapon?

17 A. Yes, I did.

18 Q. Then what happened?

19 A. The defendant exited the van -- or we told him to put  
20 the bottle down, which I believe he did, and he exited the  
21 van, and Officer Burger placed the defendant's arms behind  
22 his back and I believe had his fingers interlaced so we  
23 could search him for any weapons.

24 Q. And did the defendant cooperate with this?

25 A. Initially.

26 Q. Okay. Why do you say "initially"? Then what happened?

27 A. Because as Officer Burger had the defendant's fingers  
28 interlaced, the defendant pulled away his fingers and turned

1 around.

2 Q. And then what happened?

3 A. And then I believe his actions, which concerned me --  
4 and for my safety, I believe Officer Burger pushed him away,  
5 and I told Officer Burger to tase him because I believe  
6 Officer Burger still had his taser in his hand and I did  
7 not.

8 Q. Then what happened?

9 A. I heard the taser shoot and activate, and I could see  
10 the taser wires had pretty much spread everywhere, and I saw  
11 the defendant flail his arms and feet towards Officer  
12 Burger.

13 Q. Now, do you think this is -- when you say "flail his  
14 arms and feet", are you saying he was trying to swing and  
15 kick?

16 A. Correct.

17 MR. BEAUVAIS: Objection as to the defendant's  
18 state of mind what he was trying to do.

19 THE COURT: Sustained. The last answer is  
20 stricken.

21 Q. (By Mr. Alcalá) The -- describe what you mean by  
22 "flailing his arms and his legs". I mean --

23 A. Yes; the defendant was, in my opinion, trying to hit  
24 Officer Burger.

25 MR. BEAUVAIS: Objection. Move to strike as to  
26 his opinion.

27 THE COURT: Sustained. The answer is stricken.

28 Q. (By Mr. Alcalá) Let me ask you this: Forget what the

1 defendant's thinking. Did it look like the defendant's foot  
2 was trying to kick?

3 MR. BEAUVAIS: Objection. Leading.

4 THE COURT: Sustained.

5 Q. (By Mr. Alcala) Describe what his -- forget whatever  
6 his state of mind was -- what his foot was doing. Let's  
7 start with that.

8 A. His foot was kicking towards Officer Burger.

9 Q. Okay. And was it more than once?

10 A. Yes.

11 Q. How many times, more or less? I know you weren't  
12 counting, but if you could give us a general idea.

13 A. Two or three.

14 Q. Okay. Now, once again, the same idea with his -- his  
15 hands. Were they in a fist?

16 A. I believe they were.

17 MR. BEAUVAIS: I'm going to object to the leading  
18 form of the questions, Your Honor.

19 MR. ALCALA: That could either be yes or no.

20 THE COURT: Overruled.

21 Q. (By Mr. Alcala) Okay. Now, once again, the hands --  
22 arms with the hands and the fists, describe what they were  
23 doing.

24 A. They were swinging towards Officer Burger's head.

25 Q. Was it both arms or just one?

26 A. Both arms.

27 Q. Okay. And did you ever actually see him connect with  
28 Officer Burger, either the foot or the -- one of the arms?

1 A. Yes, I did.

2 Q. The swinging of the arms with the closed fist, was it  
3 more than once?

4 A. Yes, it was.

5 Q. Again, give us a general idea. How many times do you  
6 think he swung?

7 A. About five or six.

8 Q. And Officer Burger was wearing a uniform like you were?

9 A. Yes, he was.

10 Q. And what happened after that?

11 A. Officer Burger and the defendant wrestled for about  
12 three seconds.

13 Q. Wrestled standing up or on the ground?

14 A. Standing up at first, and then I believe Officer Burger  
15 was knocked into the interior of the van by the defendant.

16 Q. Okay. Then what happened?

17 A. And then the defendant still got up and was flailing  
18 his arms, and I believe one of the punches struck Officer  
19 Wagner on the side of her head.

20 Q. Okay. And what are you doing in the meantime?

21 A. I was trying to get towards the defendant to physically  
22 restrain him.

23 Q. Okay. And Officer Wagner was wearing a uniform also?

24 A. She was.

25 Q. And then what happened?

26 A. Officer Burger got back up and tackled the defendant.

27 Q. And did they go to the ground?

28 A. Yes, they did.



1 Q. And then what happened?

2 A. I took out my taser and turned it on again, and I took  
3 off the cartridge, and I went and I put the taser on the  
4 defendant's chest and pulled the trigger by activating it.

5 Q. Is this the kind of taser that prongs come out, or do  
6 you have to have physical contact with the body?

7 A. It could be either/or.

8 Q. So the second time you're using it in what manner?

9 A. The second time I'm using it in what is called the  
10 drive stun mode.

11 Q. What that's mean?

12 A. Drive stun is when you remove the cartridge from the  
13 front of the taser, and it acts as a -- you have to contact  
14 the person and pull the trigger.

15 Q. I see. And you did it that way because why?

16 A. Because we were in a close contact fight.

17 Q. Okay. So were you able to successfully taser him in  
18 that second method you described?

19 A. Yes, I was.

20 Q. And then what happened?

21 A. The defendant, who was now bloody -- and I didn't  
22 understand why at the time -- pushed my taser away from his  
23 chest and began kicking me in the chest with his feet.

24 Q. So was he sitting inside the van when he's doing that?

25 A. We were now on the sidewalk, on the ground.

26 Q. Okay. And did he actually kick you in your chest?

27 A. He did.

28 Q. How many times?

1 A. Two or three times.

2 Q. With his feet?

3 A. Yes.

4 Q. Then what happened?

5 A. I attempted to drive stun him again.

6 Q. Were you able to?

7 A. Yes, I was.

8 Q. Okay. Then what happened?

9 A. The defendant said, "Okay. Okay. I'll -- I'll stop,"  
10 and from then on, he followed verbal commands.

11 Q. Okay. Thank you.

12 MR. ALCALA: Nothing else.

13 THE COURT: Thank you. Cross-examination?

14 MR. BEAUVAIS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BEAUVAIS:

17 Q. Officer Temores, how long have you been with the Palo  
18 Alto Police Department?

19 A. Two years.

20 Q. Okay. Did you have experience working as a sworn  
21 officer for any other department before that?

22 A. I did.

23 Q. How many years?

24 A. Year and a half.

25 Q. What department were you in before?

26 A. The Santa Clara County Sheriff's Office.

27 Q. When did you begin your employment with Palo Alto PD?

28 A. I believe it was December of 2006.

1 Q. And is it accurate to describe you as a patrolman? Is  
2 that the term you would use?

3 A. Police officer.

4 Q. Okay. Police officer would be a term that we would use  
5 to designate what a sworn officer is when they first begin  
6 to work for the department; correct?

7 A. Correct.

8 Q. And then there's a hierarchy where you can gain rank;  
9 correct?

10 A. Correct.

11 Q. Okay. Now, at this particular scene, among the three  
12 people who were there from your department, who was the  
13 ranking officer?

14 A. That would be Agent April Wagner.

15 Q. Okay. Is -- an agent's one step up on the hierarchy  
16 from a police officer?

17 A. It is.

18 Q. In many departments, they might call that person a  
19 sergeant?

20 A. It's between a police officer and a sergeant.

21 Q. Okay. It's an intermediate, like a corporal, maybe?

22 A. Correct.

23 Q. Okay. Now, April Wagner was actually the first officer  
24 on the scene; correct?

25 A. No.

26 Q. She was not? You were?

27 A. Yes.

28 Q. Did she come on a bicycle?

1 A. She did.

2 Q. Now, you found out about this call from dispatch;  
3 right?

4 A. I did.

5 Q. And did you have any information about this call other  
6 than what was relayed to you by dispatch?

7 A. I did.

8 Q. What information did you have?

9 A. In our patrol vehicles, we have a computer that also  
10 dispatches the calls; so in other words, we have a CAD  
11 system which stands for Computer Automated Dispatch, and the  
12 call is also typed and sent via that computer.

13 Q. Okay. Do you have a recollection that on this  
14 particular occasion you had received information by radio  
15 dispatch and you had also received information by computer?

16 A. I did.

17 Q. What is your recollection of what the radio  
18 communication said?

19 A. My recollection, they stated it was a suspicious  
20 vehicle, and the reporting party was calling in because his  
21 wife and daughter were being -- they were feeling  
22 uncomfortable by the way the man was looking at them from  
23 inside the vehicle.

24 Q. How many times did you receive information from  
25 dispatch about this call? Was this one communication? Was  
26 it more than one? That's my question.

27 A. I believe it was just the initial call.

28 Q. Are you L-24 or L-42?

1 A. At the time, I was L-42.

2 Q. Okay. Do you know who L-24 was?

3 A. I believe it was, at the time, Officer Kelly Burger.

4 Q. Okay. And do the numbers 1154 have any significance to  
5 you?

6 A. Yes, they do.

7 Q. What do those numbers mean?

8 A. It's a police code for suspicious vehicle.

9 Q. Okay. Did you have any communications with the  
10 reporting party in this case at any time?

11 A. I did.

12 Q. And were those communications before you made contact  
13 with Mr. Ciampi, or were they after your contact with Mr.  
14 Ciampi?

15 A. After.

16 Q. Okay. So when you talked to the reporting party, Mr.  
17 Ciampi had already been arrested and taken to the hospital?

18 A. Correct.

19 Q. Did you walk over to his house, or did you talk to him  
20 on the telephone?

21 A. I called him via telephone.

22 Q. Okay. You didn't hear the, um, the tape, um -- strike  
23 that. You didn't know anything about what the specific  
24 conversation was between reporting party and dispatch before  
25 the call was relayed to you; isn't that correct?

26 A. I just knew what I had been dispatched to and what was  
27 on the CAD that was sent to me via computer.

28 Q. Okay. But the -- for example, the dispatcher did not

1 play for you a recording of the initial call that he had  
2 received from the reporting party; correct?

3 A. Correct.

4 Q. Okay. So your information is being filtered by the  
5 dispatch; correct? You're not getting the original  
6 information. You're getting information that's relayed from  
7 somebody else; correct?

8 A. Correct.

9 Q. Isn't it true that dispatch told you that there was a  
10 homeless person living in a van and had set up shop?

11 A. I don't remember the specifics. I just remember it was  
12 a suspicious vehicle I was dispatched to.

13 Q. Okay. In your telephone conversation with -- with the  
14 reporting party -- I guess we should put his name on him.  
15 His name is Mr. Alzman; right?

16 A. If I may refer to my police report.

17 Q. Sure.

18 A. Yes; Mr. Harold Alzman.

19 Q. Okay. And how long did you talk to him on the phone?

20 A. I don't remember.

21 Q. What -- why did you initiate that call?

22 MR. ALCALA: I'm going to object as irrelevant if  
23 it's after the incident.

24 THE COURT: Sustained.

25 Q. (By Mr. Beauvais) What information did he impart to  
26 you in that call?

27 MR. ALCALA: Same objection.

28 THE COURT: Sustained.

1 Q. (By Mr. Beauvais) Did you -- obviously, you had that  
2 phone call with Mr. Alsman before you wrote your police  
3 report; correct?

4 A. Correct.

5 Q. And your police report relates information that you say  
6 Mr. Alsman gave you; correct?

7 A. Correct.

8 Q. But your report doesn't say where you gathered that  
9 information; correct? Or when you gathered that  
10 information; correct?

11 A. I believe my police report is written in chronological  
12 order; therefore, states that I spoke to Mr. Alsman after  
13 the fight with the defendant.

14 Q. In your telephone conversation with Mr. Alsman, did he,  
15 um, repeat anything about his wife that you had heard  
16 before?

17 A. Can I refer to my police report?

18 Q. Yes.

19 A. Mr. Alsman makes a reference to his wife --

20 MR. ALCALA: Just a minute, I'm going to object to  
21 anything -- I'm not sure we're there yet. If he's asking  
22 him to repeat what Mr. Alsman told him after the incident,  
23 it's my same objection again.

24 THE COURT: Counsel, what's the relevance?

25 MR. BEAUVAIS: The relevance is I think the timing  
26 of the information is crucial, and I think I have a right to  
27 cross-examine about any possible confusion about the  
28 sequence of events. I understand that what information was

1 gathered after the arrest is not going to be relevant to  
2 probable cause, but it is certainly relevant to the  
3 credibility of this witness.

4 THE COURT: In what way?

5 MR. BEAUVAIS: Well, his recollection of the  
6 events, whether he can accurately recall events. I think  
7 it's one thing to say that before he got there he had  
8 information that Mr. Ciampi was making the wife  
9 uncomfortable or giving her strange looks or whether he  
10 found that information later. That's why I'm going into  
11 this.

12 THE COURT: Then ask it directly so we can save  
13 some time.

14 MR. BEAUVAIS: Okay.

15 Q. (By Mr. Beauvais) Isn't it true that the first time  
16 you heard anything about Mr. Ciampi giving Mr. Alsman's wife  
17 strange looks was after the arrest was made in the phone  
18 conversation that you had with Mr. Alsman?

19 A. No.

20 Q. Okay. Did you have any information before the arrest  
21 what this meant; that he was giving her strange looks?

22 A. I don't believe that the -- I was dispatched to a call  
23 of a man giving somebody else strange looks. It was a call  
24 of a man in a vehicle making the wife and daughter feel  
25 uncomfortable.

26 Q. Okay. And is that something that you, as a police  
27 officer, has been trained to investigate?

28 A. I don't understand the question.



1 Q. In your training, have you learned that you should  
2 investigate calls from people who are claiming that someone  
3 else is making their wife uncomfortable?

4 A. I don't believe I was specifically trained in that, no.

5 Q. Okay. As a police officer, do you have any knowledge  
6 of any criminal law that would prohibit someone from looking  
7 at another person in a way that makes them uncomfortable?

8 A. No.

9 Q. Okay. And it is true, is it not, that as you were  
10 rolling on this call to this location, you knew that,  
11 probably, that this was a homeless man living in a van?

12 A. At the time, no.

13 Q. Okay.

14 MR. BEAUVAIS: Your Honor, at this time, I'd like  
15 to have an exhibit marked.

16 THE COURT: Yes.

17 MR. BEAUVAIS: Um, we've stipulated to the  
18 authenticity of this audio recording from the dispatcher.

19 THE COURT: So the CD will be marked as Defense  
20 Exhibit A.

21 (Defendant's Exhibit A, CD of dispatch call, was  
22 marked for identification.)

23 MR. BEAUVAIS: Your Honor, while we're at it, as a  
24 technical point, I would ask for the -- for a stipulation  
25 that the officers did not have a warrant.

26 MR. ALCALA: Stipulated.

27 MR. BEAUVAIS: Thank you.

28 THE COURT: Counsel, are you requesting to play

1 the CD?

2 MR. BEAUVAIS: Yes, Your Honor. At this time, I  
3 would like to play it.

4 THE COURT: And is a transcript -- is a transcript  
5 the one that is marked as Exhibit A to your motion?

6 MR. BEAUVAIS: Yes; that's part of it. That's the  
7 original call from Mr. Alsman, which we would like to have  
8 the Court consider, and then there's also a little snippet,  
9 um, of a radio call from the dispatcher to, um, L-24 and  
10 L-42 in which she relates information, or he -- I think it's  
11 a she -- relates information about the call.

12 THE COURT: And do you have a transcript of that?

13 MR. BEAUVAIS: I don't have a transcript of that.  
14 I just have a transcript of the longer conversation.

15 THE COURT: Okay. Counsel, I will allow it for  
16 now, but the Rule of Court is that if you wish to play an  
17 audiotape, you have to have a transcript.

18 MR. BEAUVAIS: Right.

19 THE COURT: Now, do both counsel stipulate that  
20 the playing of the CD need not be transcribed by the court  
21 reporter?

22 MR. ALCALA: Yes.

23 MR. BEAUVAIS: Yes, Your Honor. That's fine.

24 THE COURT: Okay.

25 MR. BEAUVAIS: Thank you.

26 THE COURT: But please remember the rule. Okay,  
27 Counsel?

28 MR. BEAUVAIS: All right. I was actually aware of

1 that rule, and I -- I didn't know if it applied to  
2 impeachment, or if it -- only to substantive evidence. I  
3 wasn't sure about the scope of the rule, so that was it.

4 MR. ALCALA: Are we going to play the transcript  
5 part or the nontranscript part?

6 MR. BEAUVAIS: We're going to do both.

7 MR. ALCALA: Which one is first?

8 MR. BEAUVAIS: Let's hear the call from Mr. Alsman  
9 to dispatch and from dispatch to Officer Temores.

10 THE COURT: Okay. So the record will reflect that  
11 Defense Exhibit A is now being played. Go ahead, Counsel.

12 MR. BEAUVAIS: My sound system is not boom box  
13 quality, so what I'll do is put the microphone up to the  
14 speaker so that you can hear better.

15 THE COURT: That's why the requirement for the  
16 transcript.

17 (Whereupon, tape was played in open court.)

18 MR. BEAUVAIS: Now, I guess we can put on the part  
19 where the first call came in.

20 (Whereupon, tape was played in open court.)

21 THE COURT: Counsel, let's take the afternoon  
22 recess at this point. 15 minutes.

23 MR. BEAUVAIS: Thank you, Your Honor.

24 (Recess taken.)

25 THE COURT: We're back on the record, and,  
26 Counsel, you may proceed.

27 MR. BEAUVAIS: Thank you, Your Honor.

28 Q. (By Mr. Beauvais) Officer Temores, did you review any

1 documents before coming here to testify today?

2 A. Yes.

3 Q. And could you tell the Court what you reviewed.

4 A. Yes. It's my police report that I wrote.

5 Q. Now, there were three contributors -- well, at least  
6 three contributors to case number 08-1777; correct?

7 A. What do you mean by contributors?

8 Q. Well, you wrote a report; correct?

9 A. Yes.

10 Q. And your fellow officers wrote a report; correct?

11 A. Correct.

12 Q. Did you review their reports?

13 A. Yes, I did.

14 Q. Did you review any videotapes before coming to court?

15 A. No.

16 Q. Did you review any audio?

17 A. No.

18 Q. Did you discuss this case with, um, any of the other  
19 officers at the scene before you came here to testify today?

20 A. Yes, I did.

21 Q. Okay. When did you have that discussion?

22 A. Before court today.

23 Q. Okay. And was there anyone else present?

24 A. What do you mean?

25 Q. Besides -- well, I should probably clarify. Could you  
26 tell us who you had the discussions with.

27 A. Yes. Officer Kelly Burger.

28 Q. Okay. Anyone else?

1 A. None that I remember.

2 Q. So you and Officer Burger discussed this case before  
3 you testified today; correct?

4 A. Yes.

5 Q. How long did you discuss it?

6 A. Approximately five minutes or so.

7 Q. And did you talk with Officer Burger about the events  
8 that occurred that day?

9 A. I believe we just talked about the defendant, and that  
10 was about it.

11 Q. What was said about the defendant?

12 MR. ALCALA: Objection. Relevance. Hearsay.

13 THE COURT: On relevance, sustained.

14 Q. (By Mr. Beauvais) Did you meet with the district  
15 attorney this morning?

16 A. Yes.

17 MR. ALCALA: Object as irrelevant.

18 THE COURT: Overruled.

19 Q. (By Mr. Beauvais) Did you meet with the district  
20 attorney alone this morning, or did you meet with the  
21 district attorney and other people?

22 A. Other people.

23 Q. Who were the other people?

24 A. Officer Kelly Burger and Agent Wagner.

25 Q. Okay. And did you talk about what happened on the day  
26 of the incident?

27 A. Not really, no.

28 Q. Well, what did you talk about?

1 A. I believe that the district attorney introduced himself  
2 and told Officer Burger and I that he was going to place us  
3 up here on the witness stand.

4 Q. Did you exchange your recollections about, um, the  
5 incident in the presence of the district attorney with the  
6 other officers?

7 A. I don't believe so, no. Actually, I did, yes.

8 Q. You did. And did Officer Burger do the same thing?

9 A. We both did very briefly, yes.

10 Q. Was it your intention in doing that to make sure that  
11 your stories were the same?

12 A. My intention was just to answer the questions the  
13 district attorney had asked me.

14 Q. How many times have you testified in court?

15 A. Roughly about six or seven.

16 Q. Okay. And do you have training in how to testify in  
17 court?

18 A. Yes.

19 Q. You indicated that when you arrived at the scene in  
20 your vehicle, that you turned on your Mobile Audio Video; is  
21 that right?

22 A. Correct.

23 Q. Um, did you ever have an opportunity to go back and  
24 review that afterwards?

25 A. I did.

26 Q. Was the sound working?

27 A. No, it wasn't.

28 Q. Um, could you explain the mechanism by which you

1 activate this MAV unit, M-A-V unit?

2 A. Yes. There are two ways to activate it. The first is  
3 from the interior of the vehicle by just pushing a button,  
4 and the second is by remote.

5 Q. Where is the remote located on your person?

6 A. It's on my belt.

7 Q. In this particular instance, how did you activate the  
8 M-A-V unit?

9 A. From the interior of my vehicle.

10 Q. When you drove to the scene that day, were you aware --  
11 strike that. Did you discover that there was a problem  
12 with -- with the audio in the MAV system that you had?

13 A. I was trained, and I -- common practice for me to test  
14 the remote every time I start my shift. In this particular  
15 incident, I believe the remote ran out of battery, which is  
16 common with the microphones.

17 Q. Well, did the battery supply power just for the audio  
18 or also for the visual?

19 A. The battery microphone that I carry on my person acts  
20 as a remote and also only records sound; doesn't record any  
21 video.

22 Q. Okay. Thank you. So you were out of battery power?

23 A. Yes, I was.

24 Q. Had you checked your battery when you came on duty?

25 A. Yes, I did.

26 Q. And it was working?

27 A. Yes, it was.

28 Q. What time did you come on duty?

1 A. I don't remember.

2 Q. Well, did you work a particular routine shift at the  
3 time?

4 A. I don't remember if I was working overtime or my  
5 regular shift.

6 Q. Okay. If it had been your regular shift, what time  
7 would you normally start it and end it?

8 A. This was about nine months ago, so I believe I was  
9 working team one, which starts at 5 a.m.

10 Q. And what time does it end?

11 A. It ends at 4 p.m.

12 Q. This is an 11-hour shift?

13 A. Yes.

14 THE COURT: Counsel, I'd like you to go to the  
15 issues.

16 Q. (By Mr. Beauvais) You recall that Agent Wagner knocked  
17 on the van; correct?

18 A. Yes.

19 Q. And did you knock on the van?

20 A. I don't remember.

21 Q. And you announced that you were police?

22 A. Yes.

23 Q. And what was the very first thing that you can  
24 remember, um, Mr. Ciampi said from inside the van, if  
25 anything?

26 A. The first noise that I heard was mumbled, and I  
27 couldn't make out what he was saying.

28 Q. Okay. What did you do when you couldn't make out what



1 he was saying?

2 A. I believe I spoke louder so in turn he could speak  
3 louder and I could understand what he was saying.

4 Q. Okay. And did he say something to you that, you know,  
5 that you could understand after that?

6 A. I believe he did.

7 Q. What did he say?

8 A. I believe he said he did not have to talk to us.

9 Q. Okay. Did you say anything in response to that?

10 A. I don't remember exactly what I said, but I'm sure it  
11 was that he needed to talk to us.

12 Q. Did, um, Officer Wagner have any conversation with Mr.  
13 Ciampi while he was still inside the van?

14 A. Yes, she did.

15 Q. And what did she say to him?

16 A. I believe she said something to the similar effect that  
17 he needed to come out and talk to us.

18 Q. Do you remember -- well, isn't it true that -- that  
19 Agent Wagner -- agent at that time, or I guess she's still  
20 an agent -- Agent Wagner told Mr. Ciampi that he was  
21 violating a muni code by sleeping in his van?

22 A. I believe she did say something to that effect.

23 Q. Okay. And you remember that Mr. Ciampi replied that  
24 there was no such ordinance, or words to that effect?

25 A. I don't remember what he replied.

26 Q. Is overnight parking prohibited in the place where this  
27 van was?

28 A. I'm not sure.

1 Q. So it would be fair to say at the time that -- um, when  
2 you called for the tow truck to deal with an overnight  
3 parking situation that you weren't sure whether or not this  
4 van was violating any ordinance that prohibited overnight  
5 parking?

6 A. I never called my dispatch for a van -- for a tow  
7 truck, no.

8 Q. You didn't call, but you feigned a call for Mr. Ciampi  
9 to come out of the van; correct?

10 A. Correct.

11 Q. And the basis you used to do that was to tell Mr.  
12 Ciampi that you were going to have the van towed -- I'm  
13 sorry. You said words to the effect that you were going to  
14 have the van towed for illegal overnight parking, and you  
15 said it in a way that you wanted Mr. Ciampi to hear it?

16 A. Correct.

17 Q. Okay. But you, yourself, as a police officer had no  
18 intention to tow that van?

19 A. No, I didn't.

20 Q. Okay. Did it surprise you that Mr. Ciampi, who was  
21 living in that van, might be a bit upset at the prospect of  
22 having his van towed away for no reason?

23 MR. ALCALA: I'm going to object to asking him to  
24 speculate, give the opinion. It's irrelevant.

25 THE COURT: Sustained.

26 Q. (By Mr. Beauvais) Would it be accurate to say that by  
27 what you did, you -- you were threatening to carjack Mr.  
28 Ciampi's vehicle?

1 MR. ALCALA: Objection. Argumentative.

2 THE COURT: Sustained.

3 Q. (By Mr. Beauvais) You indicated in your testimony  
4 that, um -- um, you saw pock marks on Mr. Ciampi.

5 A. Correct.

6 Q. Okay. And, um, you didn't see those pock marks on Mr.  
7 Ciampi until after you used your ruse to get him out of the  
8 van; right?

9 A. Correct.

10 Q. So up to that point, um, there really wasn't any  
11 information whatsoever that he might have been under the  
12 influence of a controlled substance; correct?

13 A. Correct.

14 Q. It was only after he emerged from the van and you and  
15 Officer Burger and Agent Wagner had an opportunity to see  
16 him and see what he looked like; right?

17 A. Correct.

18 Q. Do you remember Officer Burger accusing Mr. Ciampi of  
19 being a heroin addict?

20 A. I don't remember Officer Burger accusing the defendant  
21 of being a heroin addict, no.

22 Q. Did you accuse him of being a heroin addict?

23 A. I don't believe so, no.

24 Q. Do you remember if anyone at the scene accused him of  
25 being a heroin addict?

26 A. I don't remember.

27 Q. Now, you also indicated that Officer Burger had, um,  
28 attempted to calm, um, Mr. Ciampi down?

1 A. Correct.

2 Q. And that was when he -- when he first came on the  
3 scene?

4 A. Correct.

5 Q. Okay. And when Officer Burger first came on the scene,  
6 Mr. Ciampi was already outside the van; right?

7 A. Correct.

8 Q. What were -- what soothing words did Officer Burger  
9 have for Mr. Ciampi to calm him down?

10 A. I don't remember.

11 Q. You just remember that Officer Burger tried to calm him  
12 down?

13 A. Yes, by speaking with him.

14 Q. Okay. But you don't remember anything that Officer  
15 Burger said?

16 A. At that particular moment in time, no, I don't.

17 Q. Okay. How long did Officer Burger persist in  
18 attempting to calm Mr. Ciampi down?

19 A. Couple of seconds.

20 Q. Couple of seconds?

21 A. Yes.

22 Q. Okay. Do you remember, um, Officer Burger telling Mr.  
23 Ciampi to watch his fucking mouth?

24 A. I don't remember that.

25 Q. Do you remember Officer Wag -- Officer Burger telling  
26 Mr. Ciampi to get out of the fucking van after he went back  
27 in?

28 A. I believe I do, yes.

1 Q. At the time that he uttered those words, was he still  
2 attempting to calm Mr. Ciampi down?

3 A. No.

4 Q. Do you recall that Mr. Ciampi had a cell phone in his  
5 hand, um, when he was inside the van?

6 A. He grabbed a cell phone from somewhere inside his van,  
7 yes.

8 Q. And you saw him grab that cell phone and push some  
9 buttons?

10 A. Yes, and I believe he said he was not leaving the van  
11 and he was calling his lawyer.

12 Q. Okay. Now, when he came out of the van, did he have  
13 his cell phone with him?

14 A. I don't remember if he put it down or if he had it in  
15 his hand.

16 Q. Did you collect any, um, evidence at the scene?

17 A. I believe I did, yes.

18 Q. What evidence did you collect?

19 A. I believe it was a -- just my taser cartridge, which I  
20 dropped on the floor after taking it off from my taser.

21 Q. You say dropped on the floor. Do you mean on the  
22 ground?

23 A. On the ground.

24 Q. On the sidewalk?

25 A. Yes.

26 Q. Did it break?

27 A. Yes, it did.

28 Q. And you didn't collect any other evidence?

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

2 Q. Did you see a cell phone on the sidewalk?

3 A. I don't remember.

4 Q. Besides seeing the pock marks and -- strike that. You  
5 saw pock marks that led you to believe he was a heroin  
6 addict?

7 A. Pock marks are common in either heroin addicts or  
8 sometimes methamphetamine users.

9 Q. Okay. Um, did it occur to you that -- that people may  
10 sometimes have skin conditions that may look like something  
11 they're not?

12 A. At that particular time, that didn't occur to me, no.

13 Q. Okay. Did you ask Mr. Ciampi to explain the condition  
14 of his skin?

15 A. I couldn't.

16 Q. Why not?

17 A. 'Cause he was pointing his finger directly in my face  
18 and cursing at me.

19 Q. Okay. Well, because you initiated the discussion about  
20 controlled substances by accusing Mr. Ciampi of being a  
21 heroin addict; isn't that right?

22 A. I don't believe I ever accused him. The thought was in  
23 my head that he might possibly be under the influence of a  
24 controlled substance based on physical indicators that I saw  
25 at the moment, which were pock marks, his aggressive  
26 attitude, and possibly had dilated pupils.

27 Q. Um, where in your report do you indicate that you, um,  
28 believed that he was under the influence?

1 A. If I may refer to my police report.

2 Q. Sure. It's on my page 5, line number 2. Now, you also  
3 indicated in your report that Officer Burger, um, believed  
4 that -- told you that he believed that Mr. Ciampi was under  
5 the influence; right?

6 A. Correct, by Officer Burger using the police jargon  
7 "550".

8 Q. And you said that after he used that jargon, Mr. Ciampi  
9 retreated into the van?

10 A. Correct.

11 Q. And Mr. Ciampi said something about, "I'm not 5150"?

12 A. Correct.

13 Q. Okay. So when Mr. Ciampi said, "I am not 5150," he was  
14 talking about something other than suspicion of being under  
15 the influence of controlled substances; correct?

16 A. Correct.

17 Q. Okay. So you would not have inferred from his  
18 retreating to his van at the mention of 11550 that he  
19 misinterpreted it as 5150 to indicate some kind of  
20 consciousness that he knew that you knew that he was under  
21 the influence?

22 A. That was not my concern at the moment.

23 Q. Okay. How many times did you activate your taser?

24 A. What do you mean by "activate"?

25 Q. Yeah; that's a good question. How many times did you  
26 take it out of the holster?

27 A. About two times.

28 Q. Okay. The first time you took it out of the holster is

1 when Mr. Ciampi was in the van?

2 A. Correct.

3 Q. And just for the time line, he had come out of the van  
4 and then gone back into the van; correct?

5 A. Correct.

6 Q. And he was ordered out of the van and he did not  
7 immediately comply with that order; right?

8 A. Correct.

9 Q. And that's when you took out your taser and you pointed  
10 the taser gun at him; correct?

11 A. Correct.

12 Q. Simply because he would not come out of the van?

13 A. I took out my taser and pointed it at the defendant  
14 because he was refusing to comply with my commands and  
15 Officer Burger's commands.

16 Q. Okay. Refusing to comply with commands?

17 A. Correct.

18 Q. So what he was doing was passively resisting you;  
19 correct?

20 A. I would say he was actively resisting.

21 Q. Well, do you know the difference between active and  
22 passive resistance?

23 MR. ALCALA: Objection. He's arguing with the  
24 witness now.

25 THE COURT: Sustained.

26 MR. BEAUVAIS: Understand.

27 Q. (By Mr. Beauvais) Would you agree with me that passive  
28 resistance would involve conduct such as refusing to comply



1 or refusing to submit willingly to the police officer? In  
2 other words, you're not taking any affirmative steps to get  
3 away, but you're not cooperating either, such as going away?

4 MR. ALCALA: Objection as argumentative and  
5 irrelevant.

6 THE COURT: I'll allow it because this officer  
7 testified that, uh, he took out his taser because the  
8 defendant was refusing to comply with his commands. You may  
9 answer.

10 THE WITNESS: Can you repeat the question.

11 Q. (By Mr. Beauvais) Would you agree with me that passive  
12 resistance is a form of resistance that does not involve the  
13 application of any force but simply refusing to submit your  
14 body to police officer's directives?

15 A. I can agree with that statement.

16 Q. Can agree. Okay. And isn't it the policy of your  
17 department not to use a taser against someone who is  
18 passively resisting?

19 A. I believe that's written somewhere in the policy.

20 Q. Is it your contention that when Mr. Ciampi refused to  
21 get out of the van that he was actively resisting the  
22 officers?

23 A. My concern was that Mr. -- the defendant was possibly  
24 near a weapon inside his vehicle.

25 Q. Okay. Is this the two liter we're talking about?

26 A. No.

27 Q. Okay. Was it some weapon that you imagined might be  
28 there but you didn't see?

1 A. It possibly might have been some weapon that was in the  
2 clutter of his -- of the inside of his vehicle.

3 Q. But you believed that the two liter soda bottle might  
4 have been a dry ice bomb?

5 A. Not at that moment, because I didn't see the two liter  
6 water -- or two liter soda bottle until he exited the  
7 vehicle.

8 Q. Okay. But when he did, you believed that to be -- that  
9 could have been a weapon?

10 A. Yes.

11 Q. What color was the bottle?

12 A. I believe it was a clear plastic two liter soda bottle.

13 Q. And the liquid inside was clear?

14 A. I believe it was, yes.

15 Q. Okay. Any solids in that container that you could see?

16 A. None that I could see at the time.

17 Q. Now, it -- what happened next is Officer Burger grabbed  
18 Mr. Ciampi, used force on his body to get him out of the  
19 van; right?

20 A. Correct.

21 Q. And did you help with that?

22 A. I believe I might have.

23 Q. Okay. And either Officer Burger alone or you and  
24 Officer Burger directed him over to the fence; correct?

25 A. I believe we just tried to get him out of the vehicle,  
26 not necessarily directing him towards any place.

27 Q. Okay. Now, during this entire -- all of these events  
28 up to this point, um, has anyone said, "Mr. Ciampi, you're

1 under arrest"?

2 A. No.

3 Q. Okay. Now, your testimony is that Mr. Ciampi then  
4 tried to break away or appeared to be struggling to get out  
5 of the -- Officer Burger's grip?

6 A. Correct.

7 Q. Okay. And it was at that point you told Officer Burger  
8 that he should deploy his taser?

9 A. I believe my exact words were, "Taser him."

10 Q. Taser him. Okay. How many times did you tell Officer  
11 Burger to taser him?

12 A. Just once.

13 Q. And at the time that you said "taser him", he still had  
14 not been told that he was under arrest?

15 A. I don't believe so, no. He was not under arrest in my  
16 mind at that time, but I had reasonable suspicion that a  
17 crime was occurring and had the right to detain.

18 Q. Okay. And the reasonable suspicion of which crime was  
19 that?

20 A. Being under the influence of a controlled substance.

21 Q. Okay. Now, when you told Officer Burger, um, to taser  
22 Mr. Ciampi, he was not engaged in any kind of offensive  
23 contact toward Officer Burger; right?

24 A. Incorrect.

25 Q. What was the offensive contact?

26 A. I believe Officer Burger attempted to have the  
27 defendant place his hands behind his back so Officer Burger  
28 could search him for any weapons.

1 Q. Okay. And he broke away or he attempted to break away  
2 is your testimony; right?

3 A. He did break away.

4 Q. Okay. He did break away. In other words, what you're  
5 saying is that he's fleeing; right, or attempting to flee as  
6 it appears to you it looks like he may flee?

7 A. At that time, I was thinking he was possibly going to  
8 fight us, not flee.

9 Q. Oh. So you thought that when he tried to get away from  
10 Officer Burger that it was for the purpose of coming back  
11 and fighting with you guys?

12 A. Possibly, yes.

13 Q. Okay.

14 A. Possibly striking one of us.

15 Q. Were there any words said by Mr. Ciampi that led you to  
16 believe that he was about to carry out a battery against the  
17 police officers that were present?

18 A. I don't believe any -- he said anything, but I -- based  
19 on my -- on his actions, I believed he was possibly going to  
20 cause injury to myself or possibly Officer Burger.

21 Q. Well, up to that point, he hadn't struck any officers,  
22 had he?

23 A. No.

24 Q. Okay. In fact, the very first time that he does any  
25 act which is directed toward the officers as opposed to an  
26 act to flee the officers is after he's been tasered; right?

27 A. Incorrect.

28 Q. Well, Officer Burger was the first one to use a taser;

1 right?

2 A. Yes.

3 Q. Okay. Up to that point, he had not -- he had not  
4 attempted to strike you, had he?

5 A. No.

6 Q. He had not attempted to strike Agent Wagner, had he?

7 A. No.

8 Q. And he had not attempted to strike Officer Burger;  
9 right?

10 A. No.

11 Q. Okay. And he had not used any words or threats of  
12 using physical force against any of the officers who were  
13 present at the scene; correct?

14 A. Correct.

15 Q. Now, you tasered him twice?

16 A. Yes.

17 Q. Okay. And the first time you tasered him was when in  
18 the sequence of events?

19 A. It was when the defendant was on the ground actively  
20 fighting with -- I believe it was either Officer Burger,  
21 Agent Wagner.

22 Q. Okay. At the point where he's on the ground with  
23 either -- well, is there a time -- are these two separate  
24 incidences where -- you're referring to where he's on the  
25 ground with Officer Burger on one incident and Officer  
26 Wagner on another incident?

27 A. Yes.

28 Q. Which incident was first?

1 A. It was the defendant pushing Officer Burger down  
2 towards the van; that was the first time. Second time was  
3 when Officer Burger somehow wrestled the defendant to the  
4 ground after he had gotten up from the sidewalk, and the  
5 third was when Agent Wagner was attempting to handcuff the  
6 defendant, but the defendant was fighting with her as well.

7 Q. Okay. So the first time you used your taser, you used  
8 it as a projectile; right?

9 A. No.

10 Q. No. Is that when you did the drive stun? Was that the  
11 first time?

12 A. Correct.

13 Q. Okay. And at that point, he, Mr. Ciampi, is on the  
14 ground; right?

15 A. Correct.

16 Q. He's been tased how many times at that point?

17 A. I believe he was partially tased just once.

18 Q. Just once. There could be more than one cycle of  
19 tasing in a single administration of this taser gun; right?

20 A. Correct.

21 Q. Do you know how many cycles of tasing might have  
22 occurred from Officer Burger's first use of the taser  
23 against Mr. Ciampi?

24 A. No, I do not.

25 Q. Okay. Were you the second officer to use the taser,  
26 then, after Officer Burger?

27 A. Yes.

28 Q. Okay. Was he still tasing Mr. Ciampi when you

1 activated your taser?

2 A. I don't know.

3 Q. You don't know? So you did the drive stun into what  
4 part of his body?

5 A. His upper chest.

6 Q. And just to visualize the scene, where is -- how is his  
7 body in relation to the ground at the time that you do this?

8 A. The defendant was on his back, and I was on top of him.

9 Q. Are there any other officers on the ground with you and  
10 Mr. Ciampi?

11 A. I don't believe there were, no.

12 Q. Okay.

13 THE COURT: And, Counsel, if you could find a  
14 logical place to stop, I have another case behind you that I  
15 need to take care of this afternoon.

16 MR. BEAUVAIS: Okay. I'm almost done with this  
17 little segment, so I will go ahead and finish up. Thank  
18 you, Your Honor.

19 THE COURT: You're welcome.

20 Q. (By Mr. Beauvais) So it's just you and Mr. Ciampi on  
21 the ground when you do the drive stun; right?

22 A. I believe so.

23 Q. Does he yell out?

24 A. I don't remember.

25 Q. Okay. Do you know how many volts there are in this  
26 drive stun?

27 A. I believe there's 50,000 volts.

28 Q. Okay. This would be similar to, um, the use of a stun

1 gun; right? In effect, it's kind of the same?

2 A. I don't know what a stun gun is, sir.

3 Q. Okay. It's a hand-held device that has -- has two, um,  
4 leads on it where electricity jumps from one to the other,  
5 and you apply it to the skin. You create an electrical  
6 charge, okay, that arcs between two poles, and then you put  
7 it onto the person's body.

8 Is that kind of the thing we're talking about  
9 here? Is it the similar kind of concept?

10 A. It's similar concept.

11 Q. Okay. So after you did the drive stun -- how many  
12 times did you do the drive stun?

13 A. Twice.

14 Q. Twice. Do you know how many seconds you did it each  
15 time?

16 A. I'm not sure because the defendant was pushing me away,  
17 and the tasers --

18 MR. BEAUVAIS: And then the last part of what I  
19 wanted to ask, Your Honor, has to do with your second use of  
20 taser force.

21 Q. (By Mr. Beauvais) And that was the use of projectile;  
22 correct?

23 A. No.

24 Q. It was also a drive stun?

25 A. Yes.

26 Q. Okay. Was it in the separate time frame than what  
27 we're talking about right now?

28 A. Yes.



1 Q. Okay. When was that?

2 A. It was after the defendant had kicked me off of him  
3 with his feet. I went back in, and I believe I placed the  
4 taser near his abdominal area and activated it by pulling  
5 the trigger.

6 Q. And how many times did you do that?

7 A. I had just pulled the trigger once.

8 Q. And for how long?

9 A. Once again, I don't know because the defendant was,  
10 again, actively pushing me away and kicking me away.

11 MR. BEAUVAIS: I have no further questions.

12 THE COURT: For now.

13 MR. BEAUVAIS: For now.

14 THE COURT: Counsel, I will continue the  
15 preliminary examination to Thursday afternoon. I understand  
16 that both of you are available.

17 MR. ALCALA: Yes.

18 MR. BEAUVAIS: Yes, Your Honor.

19 THE COURT: Okay. So that will be December the  
20 4th at 1:30 in this department.

21 MR. BEAUVAIS: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon, the Court recessed.)  
24  
25  
26  
27  
28

1 STATE OF CALIFORNIA        )  
                                  )  
2 COUNTY OF SANTA CLARA    )

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I, HEATHER J. BAUTISTA, HEREBY CERTIFY THAT:

The foregoing is a full, true, and correct transcript of the testimony given and proceedings had in the above-entitled action taken on December 1, 2008; that it is a full, true, and correct transcript of the evidence offered and received, acts and statements of the Court, also all objections of counsel, and all matters to which the same relate; that I reported the same in stenotype to the best of my ability, being the duly appointed and acting official stenographic reporter of said Court, and thereafter had the same transcribed into typewriting as herein appears.

Dated:     January 20, 2009

\_\_\_\_\_  
Heather J. Bautista, C.S.R.  
Certificate No. 11600

ATTENTION:  
CALIFORNIA GOVERNMENT CODE  
SECTION 69954(D) STATES:  
"ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT  
MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE  
A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT  
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE  
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR  
PERSON."