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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

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

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PRELIMINARY EXAMINATION
REPORTER'S TRANSCRIPT OF PROCEEDINGS
DECEMBER 4, 2008
VOLUME 2
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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

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1 Palo Alto, California

December 4, 2008

2 PROCEEDINGS

3 THE COURT: Thank you. Returning to the matter of
4 People v. Ciampi. Case number BB833050, and both counsel
5 are present, defendant is present, and we are resuming the
6 preliminary examination.

7 MR. BEAUVAIS: Thank you, Your Honor. At this
8 time, Your Honor, pursuant to a discussion in chambers, I'll
9 be calling Eric Heller out of order, and there's no
10 objection.

11 THE COURT: Is that correct, Mr. Alcala?

12 MR. ALCALA: That's correct.

13 THE COURT: Thank you.

14 MR. BEAUVAIS: And, Your Honor, since there's a
15 witness exclusion order, I would ask that Officer Temores
16 stay in the hallway.

17 THE COURT: Yes.

18 ERIC KEANE HELLER, PAFD,

19 Being called as a witness on behalf of the
20 Defendant, having been first duly sworn, was examined and
21 testified as follows:

22 THE COURT: Thank you. Good afternoon.

23 THE WITNESS: Good afternoon.

24 THE COURT: And you may proceed, Counsel.

25 MR. BEAUVAIS: Thank you, Your Honor.

26 DIRECT EXAMINATION

27 BY MR. BEAUVAIS:

28 Q. Could you please state your full name for the record.

1 A. Yes. Eric Keane Heller; E-r-i-c, K-e-a-n-e, Heller,
2 H-e-l-l-e-r.

3 Q. Okay. And, Mr. Heller, what is your occupation?

4 A. Firefighter engineer and paramedic.

5 Q. Who are you employed by?

6 A. Palo Alto Fire Department, City of Palo Alto.

7 Q. And as an engineer, what do you do?

8 A. Mainly when I'm on the fire engine, I'm the one who
9 drives.

10 Q. Okay. So you wear many hats?

11 A. Yes.

12 Q. How long have you worked for the City of Palo Alto in
13 this capacity?

14 A. I've worked for the fire department for eight years,
15 and I've been a paramedic for four years and an engineer for
16 four years.

17 Q. Okay. And could you describe to the Court what kind of
18 training you have to be an expert --

19 MR. ALCALA: I'll stipulate he's an expert
20 paramedic.

21 MR. BEAUVAIS: Thank you. And assume, um, that
22 stipulation extends to his expertise in detecting someone
23 who's using intoxicating substances?

24 MR. ALCALA: I'm not sure about that, no.

25 THE COURT: Maybe you can voir dire on that if you
26 wish to qualify him.

27 MR. BEAUVAIS: Okay. I'll do that, Your Honor.
28 Thank you.

1 Q. (By Mr. Beauvais) Mr. Heller, as part of your work, do
2 you encounter people who are intoxicated or under the
3 influence?

4 A. Yes.

5 Q. Okay. Do you have any training by which you detect
6 whether or not a person's under the influence?

7 A. Through CEs -- through initial class when I went
8 through EMT, which is basic life support as well as a course
9 in the advanced life support portion when I became a
10 paramedic, as well as CEs that we take for continuing
11 education. We get speakers that come in, doctors and so
12 forth, who give us practical experience as learning it out
13 on the line -- learning on the line and coming across --
14 coming across -- learning, basically, from patients that you
15 deal with out on the line, out there in the world on calls
16 and realizing what we learned. Also from police as well who
17 have experience.

18 Q. Okay. And the training that you're talking about, did
19 you have this training before March 15th, 2008?

20 A. Yes.

21 Q. And could you explain to the Court why it would be
22 important for you to be able to determine whether a person
23 is under the influence of a controlled substance in the
24 course of your work?

25 A. Yes. If it comes down to possibly noticing something
26 different with their vital signs, which is basically what we
27 primarily go by to determine if someone's going to be okay
28 or not and to determine -- try to determine the best we can

1 of what substance they have abused, if they have at all.

2 Q. Now, um, can you tell the Court where your --

3 MR. BEAUVAIS: At this time, Your Honor, I would
4 officer him as an expert on detecting the presence of
5 intoxicating substances in a person -- in a patient.

6 MR. ALCALA: Does that include illegal substances
7 or alcohol?

8 THE COURT: Maybe you wish to voir dire.

9 MR. ALCALA: Yes, I do.

10 VOIR DIRE EXAMINATION

11 BY MR. ALCALA:

12 Q. Okay. So when we're talking about intoxicating
13 substances, do you mean alcohol or illegal drugs like
14 cocaine and methamphetamine and heroin?

15 A. We deal with all of it. What I come across more in the
16 job is alcohol.

17 Q. Okay. So let's forget the alcohol.

18 A. Okay.

19 Q. And how much training do you have in detecting people
20 under the influence of controlled substances such as heroin,
21 methamphetamine, cocaine?

22 A. I don't know if you're talking hours or so forth. I
23 would say -- I would say I have more book knowledge of it
24 than practical, than coming across patients that have it, if
25 that makes --

26 Q. Well, let me ask you this way --

27 A. I don't know how to --

28 Q. Okay.

1 A. Okay. Sorry about that.

2 Q. What percentage of your experience is actually
3 detecting people under the influence of an illegal substance
4 versus alcohol? Could you characterize it as you have,
5 let's say, 90 percent of alcohol, 10 percent of illegal
6 drugs; something like that?

7 A. I would probably say 85 alcohol, 15 drug.

8 Q. Okay. And when you say the 15 percent drug, we're
9 talking about all those drugs?

10 A. The opiates, methamphetamines, hallucinogens.

11 Q. And most of that knowledge of the 15 percent is through
12 books?

13 A. Part of 15. I'm -- I don't know about actual calls I
14 deal with somebody who's under the influence of a drug.
15 This isn't talking about book knowledge; more real-life
16 experience with coming across people out on medical calls I
17 have and under the influence.

18 Q. For example, this year, how many cases have you
19 approximately responded to where people are under the
20 influence of illegal drugs?

21 A. This year in 2008?

22 Q. Yes, approximately.

23 A. I'd say probably seven, eight.

24 Q. Seven or eight individual cases?

25 A. Um-hum.

26 Q. Yes?

27 A. Yes.

28 Q. Now, are you ever asked to determine whether someone is

1 under the influence? In other words, for you to make the
2 call, or is it someone that's admitting to you that they
3 used drugs?

4 A. I'd say half -- well, I'd say maybe 25 percent of the
5 time they may admit it.

6 Q. Okay.

7 A. The other 75 percent, I'm having to take my signs and
8 also their symptoms, what they're feeling, and make a
9 determination.

10 Q. Okay. Okay. And then finally, you've actually taken
11 classes on identifying people under the influence of illegal
12 drugs?

13 A. Yes.

14 Q. Okay. And what classes were those?

15 A. In normal EMT course or in my paramedic course,
16 learning it from doctors, nurses, and paramedics as well as
17 we'll get occasional speakers in our department as part of
18 our continuing education.

19 Q. Okay.

20 MR. ALCALA: Thank you. I'll submit it to the
21 Court.

22 THE COURT: I will find this witness qualified as
23 an expert to testify on the area of recognition of people
24 being under the influence of a controlled substance.

25 MR. BEAUVAIS: Thank you, Your Honor.

26 DIRECT EXAMINATION - CONTINUED

27 BY MR. BEAUVAIS:

28 Q. Are you Officer Keller, or how should I address you?

1 A. Eric.

2 Q. Eric. That's a little too informal for court. I'll
3 just call you Mr. Heller.

4 Mr. Heller, on the March 15th, 2008, did you, um,
5 go to a scene where a man had, um, suffered a taser injury?

6 A. Yes.

7 Q. Okay. And was that at Lincoln and Bryant in Palo Alto?

8 A. Yes.

9 Q. Okay. You know about what time you arrived at that
10 location?

11 A. Um, offhand, just referring to the report I wrote, at
12 about 10:30 in the morning.

13 Q. Okay. Did you go to that location in an ambulance?

14 A. Yes, I did.

15 Q. Was there anybody with you?

16 A. Yes.

17 Q. Who was that?

18 A. Sean Connors; S-e-a-n, Connors, C-o-n-n-e-r-s.

19 Q. And what does Mr. Connors do?

20 A. He is a firefighter paramedic.

21 Q. Who was driving that ambulance?

22 MR. ALCALA: Objection. Irrelevant, really.

23 THE COURT: Sustained. Counsel, let's go to the
24 issues. It's not relevant who was driving the fire truck or
25 ambulance.

26 Q. (By Mr. Beauvais) When you arrived at the scene, did
27 you see a gentleman by the name of Joseph Ciampi?

28 A. Yes.

1 Q. Do you see him here in court today?

2 A. Yes.

3 Q. Okay. Could you describe what he's wearing.

4 MR. ALCALA: I'll stipulate this is the defendant
5 he saw that day -- or the person he saw that day.

6 Q. (By Mr. Beauvais) What did you do when you got to the
7 scene and you encountered Mr. Ciampi?

8 A. From what I remember of the call, I have certain
9 general pictures of it, not the whole complete call in
10 detail. I deal with hundreds of calls each year. He was
11 being evaluated by the on-scene paramedic of the fire
12 engine, and at that point, I came up and stand back and wait
13 for the report from the paramedic, and he tells me what he
14 has learned and what he's found at that point, and then I
15 continue on with the assessment for evaluation.

16 Q. And do you know who that person was?

17 A. Yes.

18 Q. Who was that?

19 A. Brendan, B-r-e-n-d-a-n, Buller, B-u-l-l-e-r.

20 Q. Okay. What did you do after -- strike that. What --
21 what did Mr. Brendan Buller tell you about what he knew at
22 that point?

23 MR. ALCALA: Objection. Hearsay.

24 THE COURT: Counsel?

25 MR. BEAUVAIS: Um, I'm basically asking that
26 question to determine what actions he took thereafter and
27 why he took them.

28 THE COURT: I will allow it for that purpose; not

1 for the truth of the matter stated.

2 You may answer.

3 THE WITNESS: I may answer?

4 THE COURT: Yes.

5 THE WITNESS: Okay. Um, what he -- now, what I
6 remember, and I don't remember exactly if I had heard from
7 the paramedic or someone else on the scene, that the
8 gentleman was running and had got tased; that he is doing
9 fine; he's atraumatic, means doesn't have any major trauma
10 to him; and then he shares what was on the heart monitor.
11 He put him on the heart monitor as well as other vital
12 signs, blood pressure and heart rate.

13 Q. (By Mr. Beauvais) Okay. And did you see those results
14 from the heart monitor?

15 A. Yes.

16 Q. And were they within a normal range?

17 A. Yes.

18 Q. Were they high? High normal, like --

19 A. High normal.

20 Q. Okay. And the vital signs that you mentioned --

21 A. What are the vital signs?

22 Q. Besides the heart monitor, what other information?

23 A. Heart rate, blood pressure.

24 Q. Okay. What about his blood pressure?

25 A. Blood pressure was within normal limits.

26 Q. So what did you do after you received the report from
27 the paramedic on the scene?

28 A. Um, I palpated -- basically, touched down his body to

1 see if he can alert me to any areas of tenderness that hurt
2 on him as well as assess areas, for instance, knee scrapes,
3 any that I could possibly see; any puncture wounds that -- I
4 don't know, where would come from a taser because nothing
5 was in him at the time, and then at that time proceed to the
6 ambulance.

7 Q. Okay. Did he have any blood on him?

8 A. I don't recall --

9 Q. Okay. So you took him --

10 A. -- so I don't want to guess.

11 Q. You took him to the ambulance?

12 A. Yes.

13 Q. And did you ride with him in the back of the ambulance?

14 A. Yes.

15 Q. What did you do in the ambulance with him, if anything?

16 A. Um, I don't remember offhand, so I'm just referring to
17 my report.

18 Q. That's fine; if you need to do that.

19 A. Is that I basically took another set of vital signs,
20 and then also to, um, basically determine his orientation, I
21 asked person, place, the time, and the event to see if there
22 was any loss of consciousness which would bring a higher
23 suspicion for injury.

24 Q. Okay. And was he oriented as to person, place, time,
25 and the incident?

26 A. Event, yes, he was.

27 Q. Did you note that in your report?

28 A. Yes, I did.

1 Q. Where would that be noted?

2 A. It is under where I had said what I had done; asked the
3 history of what had happened at the scene. I took his vital
4 signs. I did a physical exam.

5 Q. Okay.

6 A. And then put him on a heart monitor.

7 Q. Okay. And when you did those things, everything came
8 up normal; right?

9 A. Yes.

10 Q. Now, there is a test called the Glasgow -- or could you
11 explain what that is?

12 A. The Glasgow coma scale. So we test the eye movement
13 for when I approach him, does he track me? Does he follow
14 me? And -- which is the highest rating, and yes, he does.
15 The next part is verbal.

16 Q. Before we go to the verbal --

17 A. Um-hum.

18 Q. -- would the Glasgow test have any relevance to whether
19 or not a person is under the influence?

20 A. Yes; it could. There's several other illnesses that
21 wouldn't have no correlation.

22 Q. Sure.

23 THE COURT: Counsel --

24 MR. BEAUVAIS: With being under the influence --

25 THE COURT: Counsel, so far I have heard very
26 little relevance to the issues at hand. If you want to ask
27 for his determination as to whether your client was under
28 the influence, why don't you just ask that direct question.

1 MR. BEAUVAIS: I'll get right to it.

2 THE COURT: Okay.

3 Q. (By Mr. Beauvais) Mr. Heller, in your opinion, was Mr.
4 Ciampi under the influence?

5 A. From what I could tell, no. I had circled -- we had
6 two areas where it asks do I suspect an alcohol or any drug
7 on board; in his body, basically.

8 Q. Okay.

9 A. And is he under the influence of alcohol or drug, and I
10 put "no" by each one of them.

11 Q. Okay. Were there any other aspects of his, um,
12 condition or behavior that influenced your determination
13 that he was not under the influence?

14 A. Yes. Pupil size is -- has a good amount to do with it.
15 His pupils were within normal limits, the size of them, and
16 they reacted well to light, as well as his vital signs --

17 Q. Anything else?

18 A. -- were indicative. Body movement, eye contact.

19 Q. What about speech?

20 A. Speech as well could have been another indication, but
21 then again, these are all clues that I put together and make
22 a determination because there could be many other
23 illnesses --

24 Q. Okay.

25 A. -- determined, and I felt he was not under the
26 influence.

27 Q. Thank you.

28 MR. BEAUVAIS: I don't have no further questions.

1 THE COURT: Thank you, Counsel. Any
2 cross-examination?

3 MR. ALCALA: Very briefly, yes.

4 CROSS-EXAMINATION

5 BY MR. ALCALA:

6 Q. Now, you describe -- you examined the defendant to make
7 a determination from the clues whether or not he might be
8 under the influence of something illegal; correct?

9 A. Yes.

10 Q. And this you did with the defendant's cooperation; is
11 that correct?

12 A. Yes.

13 Q. So in other words, he was letting you look into his
14 eyes, he was letting you take his blood pressure, he was
15 letting you look at his arms and body, things like that;
16 right?

17 A. Yes.

18 Q. Now, this you were doing well after all the commotion
19 had ended; correct?

20 A. I don't know about how much longer it -- I don't know
21 at what point it occurred.

22 Q. Okay. When you got there --

23 A. Not fully positive; sorry.

24 Q. When you got there, was the defendant fighting anybody?

25 A. No.

26 Q. Okay.

27 A. I don't -- and I don't quite remember, but I think I
28 would remember, but --

1 Q. Well, you probably would remember if the defendant was
2 slugging a police officer in the face; right?

3 A. Yeah.

4 Q. You didn't see that, did you?

5 A. No.

6 Q. You didn't see the defendant kicking the police officer
7 in the chest, did you?

8 THE COURT: If you could slow the pace, and also,
9 Mr. Heller, just wait for counsel to finish his question.

10 THE WITNESS: Apologies.

11 MR. ALCALA: The last question was?

12 (Record read.)

13 THE WITNESS: No.

14 Q. (By Mr. Alcala) Okay. So it's fair to say, then, when
15 you got there, the scene was calm?

16 A. Yes.

17 Q. And when you examined the defendant, he was calm?

18 A. Yes.

19 Q. And you examined him inside the ambulance; is that
20 correct?

21 A. Initially outside.

22 Q. And then more thoroughly?

23 A. Inside.

24 Q. Okay. Now, if the defendant had not allowed you to
25 examine him, would you have been able to make a
26 determination whether he was under the influence or not?

27 A. It would raise suspicion more.

28 Q. Well, could you even make the call, is what I'm asking

1 you, if he absolutely would not let you examine him
2 whatsoever?

3 A. No; you never can make a full determination.

4 Q. Now, some of the symptoms of people under the influence
5 of drugs, and I'm asking you, number one, is they're
6 combative? That could be a symptom, couldn't it?

7 A. Depends on the drug.

8 Q. Okay. But that could be, depending on the drug; right?

9 A. Sure.

10 Q. Like methamphetamine, for example?

11 A. Yes.

12 Q. The person could be agitated, couldn't they?

13 A. Yes.

14 Q. They could be jumpy?

15 A. Yes.

16 Q. They could be overreacting to what other sober people
17 consider to be a normal situation?

18 A. Yes.

19 Q. They could have scabs on their skin if they were
20 intravenous drug users?

21 A. Yes.

22 Q. All right. All right. Thank you.

23 MR. ALCALA: Nothing else.

24 THE COURT: Thank you. Any redirect?

25 REDIRECT EXAMINATION

26 BY MR. BEAUVAIS:

27 Q. At the time that you examined Mr. Ciampi, he was
28 handcuffed, was he not?

1 A. I do not remember.

2 Q. Okay. You don't remember if he was in custody or not?

3 A. He was. Yes, he was in custody, but I do not remember
4 visually him seeing him handcuffed.

5 Q. Okay. But if you had indicated that he was in custody,
6 would it have been normal in your experience, when you're
7 taking someone who's in custody to the hospital, that they
8 would be handcuffed?

9 A. Yes. We sometimes either get them handcuffed with the
10 cuffs, or we put soft restrains onto the gurney.

11 Q. Okay. Thank you.

12 MR. BEAUVAIS: I have no further questions.

13 MR. ALCALA: Nothing else.

14 THE COURT: Thank you. May this witness be
15 excused?

16 MR. ALCALA: Yes.

17 MR. BEAUVAIS: Yes, Your Honor.

18 THE COURT: Thank you, Mr. Heller.

19 THE WITNESS: You're welcome.

20 THE COURT: So now we will resume --

21 MR. BEAUVAIS: Officer Temores.

22 THE COURT: -- the cross-examination of Officer
23 Temores.

24 Officer, please just resume the stand.

25 THE WITNESS: Yes, Your Honor.

26 THE COURT: And let me remind you that you are
27 still under oath.

28 THE WITNESS: Yes, sir.

1 THE COURT: You may proceed.

2 MR. BEAUVAIS: Thank you, Your Honor.

3 CROSS-EXAMINATION - RESUMED

4 BY MR. BEAUVAIS:

5 Q. Good afternoon, Officer Temores.

6 A. Good afternoon, sir.

7 Q. Can you estimate for us, um, how long after you arrived
8 at the scene it was until Mr. Ciampi came out of the van for
9 the first time?

10 A. About two or three minutes, approximately.

11 Q. And during that two to three minute period, you were
12 able to talk to Mr. Ciampi; correct?

13 A. It -- able to try to communicate with the defendant,
14 yes.

15 Q. Well, there was dialogue, wasn't there? There was
16 dialogue between the defendant, for example, and Agent
17 Wagner; correct?

18 A. Initially, it was -- like I said before, I couldn't
19 understand him.

20 Q. Okay.

21 A. It was muffled, but then once we were -- once the
22 defendant was able to exit his van, we were able to somewhat
23 talk to him.

24 Q. Okay. Well, you did note, did you not, that while Mr.
25 Ciampi was still inside the van, he had told you that he
26 didn't want to talk to you, and you were able to understand
27 that; right?

28 A. Yes.

1 Q. Okay. Was he detained at that time?

2 A. Which time?

3 Q. While he was still inside the van and before he had
4 gotten out?

5 A. No.

6 Q. So he told you that he didn't want to talk to you, and
7 your testimony is that he was not detained. Why didn't you
8 just go away?

9 MR. ALCALA: Objection. Arguing with the witness,
10 actually.

11 THE COURT: Sustained.

12 Q. (By Mr. Beauvais) Why didn't you leave?

13 A. I wanted to find out --

14 MR. ALCALA: I'm sorry. Did the Court sustain?

15 THE COURT: I sustained the objection.

16 MR. ALCALA: Okay.

17 MR. BEAUVAIS: I asked a different question.

18 Q. (By Mr. Beauvais) Why didn't you leave the scene?

19 MR. ALCALA: Objection. That's the same question,
20 I think.

21 THE COURT: I will allow it.

22 Q. (By Mr. Beauvais) Why didn't you leave the scene when
23 he told you that he didn't want to talk to you?

24 A. I wanted to find out who he was.

25 Q. Did you ask him who he was?

26 A. He didn't want to talk to me.

27 Q. Why did you want to find out who he was?

28 A. To make sure he wasn't some sort of 290 registrant or

1 some pervert, because the call was initially that he was
2 looking at two females.

3 Q. Is it your understanding from your training that, um,
4 you can encounter a citizen who you do not believe or that
5 you're not detaining and demand that they produce reg --
6 identification?

7 A. In this case, I was dispatched to that call, to that
8 particular area, that particular description of vehicle, so
9 I was investigating who that person was.

10 Q. I guess I -- I understand that you were dispatched
11 there. Does that change what my -- the answer to my
12 question? Do you believe that you can go up to a citizen
13 who is not involved in any criminal activity, there's no
14 reasonable suspicion of criminal activity, and demand that
15 they produce identification and tell you who they were?

16 A. You can go up to anybody, it's called an -- a
17 consensual encounter, and ask them for I.D.

18 Q. Sure. They can consent. Did Mr. Ciampi consent?

19 MR. ALCALA: Objection. Asking him to speculate
20 as to state of mind. It's arguing now.

21 THE COURT: Overruled.

22 THE WITNESS: Question one more time?

23 Q. (By Mr. Beauvais) Mr. Ciampi didn't consent to
24 furnishing you with any information, did he?

25 A. He wanted us to leave.

26 Q. Right. So my question to you is is it your
27 understanding from your training that you cannot demand and
28 get information about a person's identity who does not want

1 to give it to you when that person is not suspected of any
2 crime?

3 A. That would be correct.

4 Q. Thank you. Now, it was for that reason that he had
5 refused to interact with you that you called the tow truck;
6 right?

7 A. I wanted him to exit the van, come out and talk to us.

8 Q. Right. And what were you going to say to him once he
9 got out?

10 A. Find out what he was doing.

11 Q. Did you ever talk to him about Mr. Alsman's complaint?

12 A. I mentioned that we were there because a neighbor had
13 called several times.

14 Q. Okay. And you were going to talk to Mr. Ciampi and
15 tell him what about this complaint about Mr. Ciampi?

16 A. I would have probably told him that the neighbors were
17 concerned because he was making his wife and daughter feel
18 uncomfortable and why he was parked there.

19 Q. Why didn't you just tell him that through the door?
20 Just say, "The neighbor complained that his wife was
21 uncomfortable about you being in the area"?

22 A. Through the door I told him we were there because the
23 neighbor had called several times.

24 Q. And also, Agent Wagner told him that you guys were
25 there because he, uh, was living overnight in the van in
26 violation of the municipal code; right?

27 A. Correct.

28 Q. Did you understand that code to exist yourself?

1 A. I'm not very familiar with the code, but I believe
2 there is a Palo Alto municipal code written about overnight
3 parking.

4 Q. Is there a code about -- this was at ten o'clock in the
5 morning; right?

6 A. 10:07, yes.

7 Q. This was not -- wouldn't be subject to any overnight
8 parking ordinance, would it, at 10:07 in the morning?

9 A. I'm not sure.

10 Q. Okay. But do you know of any ordinance that
11 specifically prohibits a person from sleeping in their van
12 any hour of the day in Palo Alto?

13 A. I'm not sure.

14 Q. Okay. Could you tell us what happened to your
15 cartridge.

16 A. Which one? I have two.

17 Q. Well, the cartridge to your taser gun that broke.

18 A. Yes. Before I -- before I, uh -- well, what I did was
19 I took it off and dropped it on the ground, so --

20 Q. By accident?

21 A. No; purposely.

22 Q. Is that when it broke?

23 A. I'm not sure when it broke, but I believe it must have.
24 It hit a hard surface.

25 Q. Okay. Is that in evidence?

26 A. I'm not sure.

27 Q. Well, did you turn over evidence to the officers that
28 control the property room?

1 A. I don't have my report in front of me, and I don't
2 recall --

3 Q. Okay.

4 A. -- whether I did or not.

5 Q. Okay. How many times was -- did -- from your
6 observations at the scene, how many times was Mr. Ciampi
7 tasered either by a drive stun or by a projectile? What was
8 the total number?

9 A. I believe it was three.

10 Q. Now, isn't it true that when Officer Berger fired his
11 taser the first time that the projectile grazed Mr. Ciampi's
12 cheek and then went over the fence?

13 A. I'm not sure if it grazed his cheek. I believe one
14 dart was embedded in his forearm, and the other was embedded
15 in the fence directly behind him. Therefore, it only had a
16 partial effect on the defendant.

17 Q. Did you go into the property to see whether or not you
18 could recover the -- any of these probes?

19 A. I don't have a reason to.

20 Q. You would not have had a reason to?

21 A. No.

22 Q. Are you saying that all the probes were accounted for?

23 A. I'm not sure. I didn't handle the evidence portion of
24 it, so I don't know what happened.

25 Q. Okay. And you -- did you fire any projectiles
26 yourself?

27 A. No.

28 MR. BEAUVAIS: I have no further questions.

1 THE COURT: Thank you, Counsel. Any redirect?

2 MR. ALCALA: I have about three questions.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MR. ALCALA:

6 Q. Now, when the defendant came out of the van the first
7 time, you did not order him out of the van; am I correct?

8 A. Correct; he came out on his own.

9 Q. And when you -- when he came out, and I'm asking you
10 either yes or no, was he agitated when he came out?

11 A. Yes; very.

12 Q. Was he combative towards you?

13 MR. BEAUVAIS: Objection to the leading form of
14 the question.

15 MR. ALCALA: It's either yes or no.

16 THE COURT: Overruled.

17 Q. (By Mr. Alcala) Was he combative towards police?

18 MR. BEAUVAIS: Objection. Vague as to what
19 "combative" means.

20 THE COURT: Overruled.

21 Q. (By Mr. Alcala) You can answer.

22 A. I felt threatened because he came out of his van with
23 clenched fists, and I would say --

24 Q. The last question is does Palo Alto have a 72-hour
25 parking limitation for vehicles on the street?

26 A. Yes, we do.

27 Q. Thank you.

28 MR. ALCALA: Nothing else.

1 THE COURT: Thank you. Any recross?

2 MR. BEAUVAIS: Yes, Your Honor.

3 THE COURT: Very briefly.

4 MR. BEAUVAIS: Very briefly.

5 RECCROSS-EXAMINATION

6 BY MR. BEAUVAIS:

7 Q. You said he came out on his own, but he came out
8 complaining that you had called the tow truck; right?

9 A. Yes.

10 Q. Okay. And he came out -- when he came out, he had a --
11 a tape recorder in his hand, did he not?

12 A. No, he didn't.

13 Q. He did not have a tape recorder in his hand?

14 A. Not to my recollection, no.

15 MR. BEAUVAIS: No further questions.

16 MR. ALCALA: Nothing else.

17 THE COURT: Thank you. You are excused. Thank
18 you, Officer.

19 THE WITNESS: Thank you.

20 MR. ALCALA: The People rest.

21 THE COURT: Any further evidence on behalf of the
22 defense at this time?

23 MR. BEAUVAIS: Yes, Your Honor. I'd like to call
24 Officer Burger.

25 THE COURT: Yes.

26 ///

27 ///

28 ///

1 OFFICER KELLY BURGER, PAPD,
2 Being called as a witness on behalf of the
3 Defendant, having been first duly sworn, was examined and
4 testified as follows:

5 THE COURT: You may proceed, Counsel.

6 DIRECT EXAMINATION

7 BY MR. BEAUVAIS:

8 Q. Officer Burger, when you --

9 THE COURT: Could you ask for the full name.

10 MR. BEAUVAIS: Yes. I'm sorry.

11 Q. (By Mr. Beauvais) Could you please state your full
12 name and spell your name for the record.

13 A. My name is Kelly Burger; first name, K-e-l-l-y, last of
14 Burger, B-u-r-g-e-r.

15 Q. Okay. And what is your occupation?

16 A. I'm a police officer.

17 Q. What department do you work for?

18 A. I work for Palo Alto.

19 Q. How long have you been a police officer with Palo Alto?

20 A. About five years now.

21 Q. Have you been promoted at all during that five year
22 period?

23 A. No.

24 Q. Have you ever worked for any other department as a
25 police officer?

26 A. No.

27 Q. Were you present in court for the entire testimony of
28 Officer Temores?

1 A. Yes, I was.

2 Q. Were you present at the scene on March 15th, 2008,
3 where there was an encounter with a Joseph Ciampi?

4 A. Yes, I was.

5 Q. Now, when you arrived at the scene, did you have a MAV
6 unit installed in your vehicle?

7 A. Yes, I did.

8 Q. And did that MAV unit record audio and visual at the
9 time of the incident?

10 A. What -- what type of recording are you talking about?
11 Because only audio was recording. My camera was pointed
12 down the street.

13 Q. But I'm just asking if the video was working.

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. But -- but, in fact, the video wasn't recording
18 anything because the camera was aligned in a direction that
19 it wouldn't pick up anything that was going on; correct?

20 A. That camera was recording forward.

21 Q. Right; not toward the scene where you were or where Mr.
22 Ciampi was or where Officer Temores was or Agent Wagner?

23 A. That's correct.

24 Q. Okay. But the audio did record the entire incident;
25 right?

26 A. I believe so.

27 Q. Okay. At least from the time you got there, it
28 recorded?

1 A. Yes.

2 Q. Okay. And, um, did you have an opportunity to review
3 that recording?

4 A. Yes, I did.

5 Q. Okay. Do you know when you did that?

6 A. I recall reviewing it after the encounter and prior to
7 my testimony today.

8 Q. Okay. And what was the -- tell us when it was you
9 reviewed it just before your testimony today.

10 A. It was the day before we first started.

11 Q. Okay. November 30th?

12 A. That's correct.

13 Q. Okay. Did you review it with anyone else?

14 A. No.

15 THE COURT: Counsel, I'd like you to go to the
16 issues. This is not a deposition.

17 MR. BEAUVAIS: Okay.

18 THE COURT: It is not discovery.

19 MR. BEAUVAIS: That's fine. I'll do that.

20 Q. (By Mr. Beauvais) When you got there, was Mr. Ciampi
21 out of the van?

22 A. Yes, he was.

23 Q. And was Officer Temores and Officer Wagner talking to
24 him?

25 A. When I first got there?

26 Q. Right.

27 A. No.

28 Q. What was happening when you first got there?

1 A. When I first arrived on scene, I heard what I later
2 found was the defendant yelling -- not yelling, but using
3 profanity and argumentative words towards the officers at
4 the scene.

5 Q. Okay. And did you then join into the discussion?

6 A. Yes.

7 Q. Okay. And did you use profanity back to Mr. Ciampi?

8 A. Yes, I did.

9 Q. Okay. And you saw Mr. Ciampi retreat into the -- into
10 the van at one point?

11 A. Yes.

12 Q. Okay. And you ordered him out of the van; is that
13 right?

14 A. That's correct.

15 Q. And you were wearing sunglasses; is that right?

16 A. At that time?

17 Q. Yes.

18 A. What -- at what point, because there's times where I
19 was wearing 'em and I took 'em off.

20 Q. Were you wearing sunglasses when you went to the scene?

21 A. Yes.

22 Q. Are those prescription sunglasses or regular
23 sunglasses?

24 A. Regular sunglasses.

25 Q. Do you wear corrective lenses or contact lenses?

26 A. No.

27 Q. Now, you pulled Mr. Ciampi out of the van?

28 A. Yes.

1 Q. Was he being detained at that time?

2 A. Yes.

3 Q. For what?

4 A. Resisting, obstructing, delaying my investigation.

5 Q. Your investigation of what?

6 A. I was trying to determine if he was under the influence
7 of alcohol and/or drugs.

8 Q. At that point, you didn't know whether he was or not?

9 A. I can't say for sure, no, but I believed he was.

10 Q. Were -- was he detained because you thought he was
11 under the influence, or was he detained because you were
12 trying to figure it out?

13 A. He was detained because I believed he was under the
14 influence.

15 Q. Were you going to arrest him for that?

16 A. I was going to further investigate.

17 Q. And by that, what do you mean?

18 A. I was going to look at signs and -- further signs and
19 symptoms of drug influence.

20 Q. What signs and symptoms of drug influence were you
21 intending to look for?

22 A. Several key features.

23 Q. Tell us what they are.

24 A. Blood pressure, skin temperature, nystagmus,
25 indications within the eyes, pupils.

26 Q. Did you have equipment with you to take his blood
27 pressure?

28 A. No.

1 Q. Did you have any equipment to take his skin
2 temperature?

3 A. No.

4 Q. Did you have any equipment to measure nystagmus?

5 A. Yes, I did.

6 Q. What is that?

7 A. I have a, um, cue card that I carry in my pocket.

8 Q. Okay. And up to that point, what indications did you
9 think you had that gave you reasonable cause to detain Mr.
10 Ciampi because he was under the influence of drugs?

11 A. Initially, what I saw was fresh and old abscesses on
12 his arms. I noticed that he was excited and he was
13 extremely upset. Appeared -- as I said, appeared very
14 agitated. His pupils appeared to be dilated, but under the
15 circumstances, I couldn't establish how dilated they exactly
16 were. I had to estimate in my report. That's about it.

17 Q. Did you ask him if he was under the influence?

18 A. I don't recall.

19 Q. Did you ask him about his skin and -- and, um, if there
20 was some explanation for his skin?

21 A. I don't recall.

22 Q. Well, nobody was in a hurry here. You didn't -- you
23 don't recall whether or not you tried to elicit any
24 information from Mr. Ciampi about whether he was under the
25 influence or not?

26 A. I wouldn't agree with that.

27 Q. Did you tell Mr. Ciampi, "You are detained"?

28 A. No.

1 Q. Instead of telling him, "You are detained," you pulled
2 him out of the van; right?

3 A. I never had a chance to tell him he was detained.

4 Q. Okay. You pulled him out of the van; correct?

5 A. Correct.

6 Q. You had to help Officer Temores in pulling him out of
7 the van?

8 A. That's correct.

9 Q. And you slammed him up against the fence; right?

10 A. I wouldn't use those words.

11 Q. You pushed him up against the fence?

12 A. I wouldn't use those words either, actually.

13 Q. Okay. What words would you use?

14 A. I would use the words somewhere along the lines of I
15 braced him against the fence.

16 Q. Well, you had to get him to the fence from the vehicle;
17 right?

18 A. That's correct.

19 Q. How far was that?

20 A. Somewhere between, maybe, six to eight feet.

21 Q. Did he go willingly to the fence?

22 A. Not exactly.

23 Q. Did you tell him why you were taking him to the fence?

24 A. I didn't have time to.

25 Q. And when you got to the fence, had you already pulled
26 out your taser, have your taser in your hand?

27 A. No.

28 Q. Okay. What point did you pull out your taser? Was he

1 already up against the fence?

2 A. As far as pulling out my taser, do you mean drawing it
3 from my holster?

4 Q. Yes.

5 A. I withdrew my taser from my holster twice, I recall.

6 Q. This would be the first time or the second time?

7 A. The second time.

8 Q. The first time you did it was to try to get him to come
9 out of the van; right?

10 A. It wasn't my intent to use the taser to get him to come
11 out of the van.

12 Q. Well, weren't you using the taser as a means to enforce
13 your commands?

14 A. No.

15 Q. Were you using the taser as a means to enforce somebody
16 else's commands?

17 A. No.

18 Q. What were you using the taser for?

19 A. I was using the taser because he retreated into the
20 van, went over a bunch of clothes. I did not know if anyone
21 else was in the van. I did not know if he was arming
22 himself. I was concerned for my safety and the safety of my
23 fellow officers at the scene.

24 Q. Okay. Now, the second time that you drew your taser
25 was when Mr. Ciampi was up against the fence?

26 A. That's correct.

27 Q. Did you put -- when did you put your gun back in your
28 holster after the first time?

1 A. I never withdrew my gun, sir.

2 Q. Your taser gun. I'm sorry. Maybe I misunderstood. I
3 thought you said that you had taken your taser gun out of
4 its holster when Mr. Ciampi was rummaging around in the van.
5 Did I get that wrong?

6 A. That's correct.

7 Q. You did?

8 A. When I went into the van, I drew my taser from my
9 holster.

10 Q. Okay. So did you put it back -- at what point did you
11 put it back in your holster?

12 A. When I began to pull the defendant from the vehicle.

13 Q. Okay. And then you took it out again when he was up
14 against the fence?

15 A. I believe so, yes.

16 Q. What position was he in up against the fence?

17 A. At what time?

18 Q. When you pulled your taser out.

19 A. He was against the fence facing me.

20 Q. And at that point, you pulled out your taser and you
21 fired?

22 A. Yes.

23 Q. Did you announce that you were going to fire?

24 A. I believe I did.

25 Q. What did you say? What were the words?

26 A. I can't recall the exact words, but it might have been
27 along the lines of, um, "Taser, taser, taser."

28 Q. Okay. Did you hear any of the other officers mention

1 or inviting you or suggesting that you use a taser?

2 A. I don't recall.

3 Q. Okay. Now, at the time that you had Mr. Ciampi up
4 against the fence, um, he wasn't handcuffed or anything, was
5 he?

6 A. No.

7 Q. Okay. And you tased -- you shot the taser the first
8 time; right, and it went over the fence?

9 A. That's not true.

10 Q. Okay. How many times did you fire projectiles in the
11 direction of Mr. Ciampi?

12 A. Once.

13 Q. Okay. And is this taser projectile of the probe that
14 lodged into his arm?

15 A. Um, I don't remember seeing a taser probe in his arm.

16 Q. At any time?

17 A. I don't recall. If I can refer to my report, I might
18 be able to better refresh my memory.

19 Q. Well, did you see a probe in any part of his body?

20 A. I don't recall seeing a probe in his body.

21 Q. Okay. So is it your testimony, then, that you only
22 fired one time at him, but you don't know where the probe
23 went?

24 A. There are two probes that come out of the taser. Which
25 one are you referring to?

26 Q. Either one or both.

27 A. I did find one taser probe lodged in the fence area
28 where the defendant was standing.

1 Q. What position was Mr. Ciampi in when you fired the
2 taser?

3 A. He was standing facing me.

4 Q. Okay. Where was Officer Temores at that time when Mr.
5 Ciampi was standing there facing you?

6 A. I don't remember. He was in the area.

7 Q. Well, could you estimate how far away he was from you?

8 A. No, I can't.

9 Q. Okay. Can you estimate how far Officer Wagner was away
10 from you?

11 A. No.

12 Q. Okay. Well, do you think it was ten feet or less?

13 A. I honestly can't say. I was focused on the defendant
14 at that time.

15 Q. Now, after one of these probes made contact with Mr.
16 Ciampi, he then started to move toward your taser gun,
17 didn't he?

18 A. I can't ever say for sure if a taser probe came in
19 contact with him from my taser.

20 Q. Okay. Is it your testimony, as you sit here today,
21 that you're not really sure that you tased Mr. Ciampi?

22 A. No.

23 Q. Okay. You're sure you did?

24 A. No, I'm not.

25 Q. Okay. You're not sure?

26 A. As far as the probes hitting him, no. As far as him
27 being tased or being affected by a taser, yes.

28 Q. Okay. So you're saying that he was affected by a

1 taser, or are you -- are you not sure if it was your taser
2 or if it was someone else's taser?

3 A. Initially, he was affected by my taser by standing on
4 the wires.

5 Q. Standing on the wires?

6 A. That's correct.

7 Q. Was he barefoot?

8 A. Yes, he was.

9 Q. Okay. And at that point, you saw him lunge for your
10 taser gun; right?

11 A. No.

12 Q. Did you see him lunge?

13 A. He lunged towards me.

14 Q. Did you see a downward motion of his arm in the
15 direction of your taser gun?

16 A. Not initially, no.

17 Q. At some later point, did you see that?

18 A. No. All I remember is him coming at me and trying to
19 punch me.

20 Q. Were you struck in the head?

21 A. Yes, I was.

22 Q. How hard was that? Could you describe?

23 A. It was hard enough that I felt it and with enough force
24 that it knocked my sunglasses that was on top of my head off
25 and my sunglasses broke.

26 Q. At that point, your sunglasses were on top of your
27 head?

28 A. Yes.

1 Q. Okay. Were you struck in any other part of your body?

2 A. I recall being punched in the chest.

3 Q. Did you sustain any injury to your head?

4 A. Little pain.

5 Q. Did it leave any kind of a mark or bruise?

6 A. I didn't look at the top of my head to see if there was
7 a bruise, no.

8 Q. You didn't seek any medical treatment for any of your
9 injuries?

10 A. I'm going to refer to my report for a clear answer on
11 that.

12 Q. Okay.

13 THE COURT: Counsel, again, this is not a
14 deposition.

15 MR. BEAUVAIS: Okay. That's fine, Your Honor.
16 I'll move on.

17 Q. (By Mr. Beauvais) Now, you said that, um, there was
18 some contact made with your chest.

19 A. I said I was punched in the chest.

20 Q. Punched in the chest; right. Now, was that before --
21 at some point, Mr. Ciampi went down to the ground; right?

22 A. That's correct.

23 Q. And were you involved in him going down? Were you
24 going down to the ground with him, or was that Officer
25 Temores?

26 A. Um, initially, I was the one that threw him down to the
27 ground.

28 Q. Okay. You threw him down to the ground?

1 A. That's correct.

2 Q. Okay. Now, did you throw him down to the ground before
3 or after you were hit on the top of the head?

4 A. I threw him down to the ground after I was hit on the
5 top of the head and punched in the chest.

6 Q. Okay. And at some point -- strike that. Where was
7 Officer Temores at that point?

8 A. I don't remember.

9 Q. Okay. At any time during this encounter with Mr.
10 Ciampi, did -- were you aware of Officer Temores discharging
11 his taser gun?

12 A. Yes.

13 Q. Okay. Did -- was that a discharge of a projectile, or
14 was it a drive stun?

15 A. Drive stun.

16 Q. Did you ever see him fire a projectile?

17 A. No.

18 Q. Okay. Now, the drive stun, um, where were you when you
19 observed Officer Temores using the drive stun?

20 A. I was standing about a foot or two feet away from him
21 when he was wrestling with the defendant. I was, I believe,
22 loading my taser.

23 Q. What could you observe about what Officer Temores was
24 doing?

25 A. I remember him drive stunning the defendant, I believe,
26 in the torso area. I'm not exactly 100 percent sure, but I
27 remember him using the drive stun, and, um, I believe that
28 was also when Agent Wagner was kicked in the head.

1 Q. Did you see Agent Wagner get kicked in the head?

2 A. If I remember correctly, yes.

3 Q. Was Agent Wagner kicked in the head while you were
4 still on top of Mr. Ciampi?

5 A. I was never on top of Mr. Ciampi except for handcuffing
6 him.

7 Q. Okay. That was at the very end of all this; right?

8 A. That's correct.

9 Q. Okay. So at some point, Mr. Ciampi got up again.
10 After you took him down, he got up again; right?

11 A. Um, I don't recall him ever -- I don't remember if he
12 got up really fast or if he stayed on the ground. It was
13 very -- it was a very dynamic event.

14 Q. Right. And it was a very fast moving event too; right?
15 This all happened in a very condensed period of time?

16 A. That's correct.

17 Q. When we try to break it down in court, sometimes seems
18 like the incident went on for eternity, but this was
19 actually probably less than a minute?

20 A. I can't put a time limit on it.

21 Q. Okay. So after Mr. Ciampi got up, um, did he go back
22 down again?

23 A. Like I said, I don't remember if he ever got up.

24 Q. Did you ever inspect Mr. Ciampi's wounds?

25 A. Yes; briefly.

26 Q. What wounds did you observe?

27 A. I recall he had blood on his forearms when I went to
28 place the handcuffs on him.

1 Q. Okay. Any other places that you observed injuries?

2 A. Injuries from the altercation or previous injuries?

3 Because like I stated earlier, he had abscesses and marks on
4 him.

5 Q. Right. From the skin disorder that he had, but I'm
6 talking about new injuries, fresh injuries from this
7 incident.

8 A. I only remember the blood on his forearms.

9 Q. Okay. Did you notice that his shorts were bloody?

10 A. I don't remember.

11 Q. Did you have any blood on you?

12 A. I would assume, yes.

13 Q. You don't remember?

14 A. No.

15 Q. Did you see any blood on any other officers who were
16 present at the scene?

17 A. I -- I really don't remember.

18 Q. What did you know about what was going on at this
19 location when you were going there to make contact with Mr.
20 Ciampi?

21 A. Uh, I remember the call for service, and I remember
22 arriving on the scene, and -- and what type of -- can you
23 restate the question so I can make a better answer.

24 Q. Well, you got a call from dispatch to go to the scene;
25 correct?

26 A. That's correct.

27 Q. And the dispatch was actually -- if I remember this
28 correctly, the dispatch used your call sign and Officer

1 Temores' call sign from dispatch?

2 A. I believe so.

3 Q. Okay. And you are L-24?

4 A. At the time I was L-24.

5 Q. Okay. So you heard L-24 on the radio; right?

6 A. That's correct.

7 Q. And you heard a report about a homeless guy setting up
8 shop; right?

9 A. I don't remember if the call came out as a homeless guy
10 setting up shop. I don't remember if that was exactly the
11 call.

12 Q. Okay. What did you think the call was?

13 A. I remember it something along the lines of a suspicious
14 vehicle parked on a residential street, and the reporting
15 party was concerned for his family.

16 Q. Okay. Do you remember hearing, um, the dispatcher say,
17 "I don't know if it's occupied or not. Our subject is
18 living out of a van in the area of Lincoln and Ramona"?

19 A. It sounds familiar.

20 Q. Okay. Do you remember dispatch saying information,
21 "The RP asked him to move along, but he set up shop"?

22 A. I don't remember that part.

23 Q. Okay. As a police officer for the City of Palo Alto,
24 for as long as you've been a police officer there, are you
25 aware of the city having any ordinance that prohibits a
26 person from sleeping in their van on a public street?

27 A. No.

28 MR. BEAUVAIS: Your Honor, at this time, I'd like

1 to play the audio of the incident from this officer's MAV
2 unit.

3 THE COURT: Do you have a transcript?

4 MR. BEAUVAIS: I do.

5 THE COURT: And is it a CD or --

6 MR. BEAUVAIS: It's on a CD. It does have video,
7 but it's very boring because the camera is focused down the
8 street.

9 THE COURT: That's fine. So you would like the CD
10 marked as defense next in order?

11 MR. BEAUVAIS: I'd like to ask that we play it
12 first and then mark it.

13 THE COURT: That is fine. And, Counsel, do you
14 stipulate that the playing of the CD need not be
15 transcribed?

16 MR. BEAUVAIS: Yes, Your Honor.

17 MR. ALCALA: So stipulated.

18 If it's okay with the Court, I'm going to share
19 this with the officer as it's played because there's only
20 one copy.

21 THE COURT: That is fine. Are you playing it?

22 MR. BEAUVAIS: It's the beginning; there's a
23 little intro here, and he's now driving down the street, and
24 I don't intend to play this whole thing because I'm mainly
25 focused on the incident itself.

26 There was a long after period.

27 THE COURT: So just stop wherever you want to
28 stop.

1 MR. BEAUVAIS: Okay. Thank you, Your Honor.

2 THE COURT: You're welcome.

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

4 MR. BEAUVAIS: I believe that's it. I'm going to
5 stop it at this point, Your Honor.

6 THE COURT: Okay.

7 Counsel, I could barely hear anything toward the
8 end, so on the transcript --

9 MR. BEAUVAIS: It's a real challenge. You'd have
10 to probably use earphones.

11 THE COURT: But -- so where do you stop on the
12 transcript?

13 MR. BEAUVAIS: I stopped at approximately 10:19.

14 THE COURT: That's on page ten?

15 MR. BEAUVAIS: Yes.

16 THE COURT: The bottom of page ten?

17 MR. BEAUVAIS: Approximately, yes.

18 THE COURT: Okay. So basically, up to page ten of
19 the transcript that you have played?

20 MR. BEAUVAIS: Yeah. I didn't play the rest of
21 it, but it's all here, so --

22 THE COURT: Okay.

23 Q. (By Mr. Beauvais) Officer Burger, do you have a
24 nickname, "Killer", in your department?

25 A. No.

26 Q. Okay. 'Cause on this transcript, there was a
27 discussion between you and a sergeant, and sergeant asked
28 you if you were okay, Killer. Do you remember that?

1 A. No.

2 Q. Okay. And you said, "I'm fine, Sarge"?

3 A. Is that in the transcript here?

4 Q. Yeah.

5 A. What page?

6 THE COURT: Page 12, line 2.

7 MR. BEAUVAIS: Thank you.

8 THE WITNESS: I've never been -- never heard that
9 nickname for me before ever.

10 Q. (By Mr. Beauvais) Okay. Have you ever tasered
11 somebody before this particular incident?

12 A. In the field or in training? Because in the field, no.

13 Q. In the field, no; this was your first time?

14 A. That's correct.

15 Q. But you had done it in training?

16 A. That's correct.

17 Q. When did you have the training?

18 MR. ALCALA: I'm going to object as irrelevant,
19 really.

20 THE COURT: Sustained.

21 MR. BEAUVAIS: I think it's relevant whether it
22 was before or after the incident.

23 THE COURT: Sustained.

24 MR. BEAUVAIS: I have no further questions of this
25 witness, and I do have one other witness, which would be
26 Officer Wagner.

27 THE COURT: Any further questions, Mr. Alcala?

28 MR. ALCALA: Maybe two questions.

1 CROSS-EXAMINATION

2 BY MR. ALCALA:

3 Q. So that day, you were in uniform as you are today on
4 duty; correct?

5 A. That's correct.

6 Q. Now, when you first encountered the defendant to when
7 you finally had him under control, was there any time that
8 you can describe the defendant as cooperative with you?

9 A. No.

10 Q. So there was never any time to sit down and explain to
11 the defendant what you were doing, no time to take his
12 temperature, look into his eyes, or to evaluate him for
13 under the influence?

14 A. No.

15 MR. ALCALA: Thank you. Nothing else.

16 THE COURT: Anything further?

17 MR. BEAUVAIS: No.

18 THE COURT: You may step down. Thank you.

19 Please call your next witness.

20 MR. BEAUVAIS: Your Honor, my next witness would
21 be Agent Wagner. I haven't seen her here this afternoon.
22 She was here yesterday or the last time we were in court
23 under subpoena.

24 She's not out there.

25 THE COURT: So what do you want to do?

26 MR. BEAUVAIS: Um, I would propose coming back
27 tomorrow, putting her on, and arguing the case. I think the
28 Court had said Friday was available earlier this week.

1 THE COURT: Counsel, I'd like this to be done
2 tomorrow afternoon.

3 MR. BEAUVAIS: There will be -- it's the last
4 witness. She'll be rather short too.

5 THE COURT: Um --

6 MR. ALCALA: Can I try to expedite? Do you have
7 her phone number?

8 MR. BEAUVAIS: No; I just have the police
9 department's number. No.

10 MR. ALCALA: Okay. Because the last time we were
11 here, after that, I suggested to counsel he get the people's
12 phone numbers. Do we have -- maybe we could do this off the
13 record.

14 THE COURT: Yes.

15 (Discussion held off the record.)

16 THE COURT: Maybe you can facilitate getting in
17 contact with Agent Wagner and ask her to be here at 1:30
18 tomorrow.

19 MR. ALCALA: I do know that there was a police
20 incident this afternoon, involved an assault on an officer.
21 A lot of officers had to respond to that. Maybe she's not
22 here for that reason.

23 THE COURT: That's fine. And, Mr. Ciampi, do you
24 continue to waive your right to a one continuous preliminary
25 examination, because I will be hearing other cases in the
26 morning tomorrow, and we're going to continue your case to
27 1:30 tomorrow.

28 DEFENDANT CIAMPI: Yes, sir.

1 THE COURT: Okay. Thank you. So then I will
2 continue this matter to 1:30 tomorrow.

3 And before we leave, you wish to have the CD that
4 you just played marked as defense next in order?

5 MR. BEAUVAIS: Yes, Your Honor. It's right here.

6 (Defendant's Exhibit B, audio CD from Officer
7 Burger's MAV unit, was marked for identification.)

8 THE COURT: Okay. Anything further, Counsel?

9 MR. BEAUVAIS: No, Your Honor. That's it.

10 THE COURT: Okay. Court is in recess.

11 (Whereupon, the Court recessed.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

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5 I, HEATHER J. BAUTISTA, HEREBY CERTIFY THAT:

6 The foregoing is a full, true, and correct
7 transcript of the testimony given and proceedings had in the
8 above-entitled action taken on December 4, 2008; that it is
9 a full, true, and correct transcript of the evidence offered
10 and received, acts and statements of the Court, also all
11 objections of counsel, and all matters to which the same
12 relate; that I reported the same in stenotype to the best of
13 my ability, being the duly appointed and acting official
14 stenographic reporter of said Court, and thereafter had the
15 same transcribed into typewriting as herein appears.

16
17

Dated: January 20, 2009

18
19

20 _____
21 Heather J. Bautista, C.S.R.
22 Certificate No. 11600

23

24 ATTENTION:
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