

1 STATE OF NEW YORK
2 MONROE COUNTY GRAND JURY

3

4 DAY 7:

5

6 Investigation into the death of Daniel T. Prude

7

8

9 Transcript of the Proceedings held before
10 the Monroe County Grand Jury, at the Monroe County,
11 Hall of Justice, 99 Exchange Blvd., Rochester, New
12 York, 14614, on December 21st, 2020.

13

14 APPEARANCES: Letitia James, ESQ.
15 New York State Attorney General
16 Appearing for the People
17 BY: JENNIFER SOMMERS, ESQ.
18 Deputy Chief of Special Investigations
19 BY: MICHAEL SMITH, ESQ.
20 NYS Office of the Attorney General

21

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I N D E X T O W I T N E S S E S

FOR THE PEOPLE:

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I N D E X T O E X H I B I T S

FOR THE

PEOPLE

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1 (Proceeding reconvened.)

2 MS. SOMMERS: We're ready to start this
3 morning. We will be calling [REDACTED].

4 And, for the record, there are 22 grand
5 jurors present.

6

7 (Whereupon, the witness entered to Grand
8 Jury room at a time of 12:21 p.m.)

9

10 [REDACTED], after being duly
11 called and sworn, testified as follows:

12

13 EXAMINATION BY MS. SOMMERS:

14 Q. Could you please state your name and spell it?

15 A. I'm [REDACTED]. [REDACTED]. [REDACTED].

16 Q. Thank you. And, I just want to -- I have a
17 feeling you might be on the fast side. So, on behalf
18 of the court reporter, I'm going to ask you to try to
19 slow down a little bit, okay?

20 A. Yep.

21 Q. Where do you work?

22 A. I'm employed with the City of Jamestown Police
23 Department, 201 East Second Street, Jamestown, New
24 York, 14701.

25 Q. What is your position there?

1 A. I'm a patrolman and a Defensive Tactics
2 Instructor and the Team Leader on the SWAT Team.

3 Q. Thank you. Did you work for any police
4 departments prior to going to the Jamestown Police
5 Department?

6 A. Yes. I went to the Academy 2000 to 2001. I
7 graduated in May of 2001. I was hired by the Lakewood
8 Bus Side Police Department. I worked there until 2005
9 when I laterally transferred to the City of Jamestown
10 Police.

11 Q. Where is Lakewood -- where is Jamestown, just for
12 the benefit of people who may not be familiar? The
13 State is very vast?

14 A. We're the most western corner of New York. We're
15 right on the PA border, so it's, like, two and a half
16 hours southwest of here, going towards Erie,
17 Pennsylvania.

18 Q. Okay. And, is Lakewood in that same general
19 vicinity also?

20 A. Yeah, Lakewood is, like, a suburb of the City of
21 Jamestown.

22 Q. How many police officers are at the Jamestown
23 Police Department?

24 A. Right now there are 60 sworn.

25 Q. Okay. Can you describe -- so, you went through

1 the Police Academy in 2000 to 2001, is that correct?

2 A. That is correct.

3 Q. Could you describe just the general philosophy of
4 the way that DT, Defensive Tactics, was taught at that
5 time?

6 A. The Defensive Tactics curriculum, when I went
7 through the Academy, was very technique based around
8 pressure point control tactics, wrist locks, strikes,
9 and it was completely technique based.

10 Q. So, by technique based, can you just expand on
11 that a little bit more, what do you mean by that?

12 A. So, techniques are -- if you take Brazilian
13 Jiu-Jitsu and I'm going to do a say like a Kimura,
14 there's multiple steps to doing that technique to make
15 it work. Concept based is more of, here is the broad
16 concept of where I want to get to and there's not as
17 many steps.

18 Q. Okay. And, you just used Brazilian Jiu-Jitsu as
19 an example of that, is that correct?

20 A. Correct.

21 Q. So, if, I understand you correctly, back in 2000,
22 when you went through the Academy, the way that DT was
23 taught was more technique focused as opposed to
24 concept focused?

25 A. Correct, and the techniques never really worked

1 together. So, it was one technique for this, and a
2 technique if they did this, or a technique if they did
3 that. So, they never came together in, like, a
4 formulated system or curriculum.

5 Q. Okay. So you, yourself, as you now get out of
6 the Academy and are at the Lakewood Police Department,
7 are you able to see in real-time, in real life, how
8 your DT training, how effective it was?

9 A. Yeah. So, when I went through also the Defensive
10 Tactics Program, there's no resistance during the
11 training. So, we would do these techniques and we
12 would drill them but we'd have no resistance back from
13 the person you're drilling them on. And then, you
14 come out to the streets and you attempt these
15 techniques on someone who's giving you a hundred
16 percent resistance, you would see these fail.

17 Q. Okay. Were they also tested on sober individuals
18 in the Academy?

19 A. Correct. They were tested on other people that I
20 went to the Academy with. So, I'm hoping they were
21 sober.

22 Q. All right. That was my bad -- I'm sorry. I did
23 not think about that. Okay. So, was it your
24 experience that they were effective when you got out
25 of the Academy and you are now dealing with people?

1 A. Yeah. So, in the Academy, you know, I'm getting
2 them done to me, I'm doing them to other people, but
3 I'm not offering them any resistance. So, I'm letting
4 my partner perform these techniques and, you know,
5 there are pressure points; and, you know, if you get
6 pressure points, they hurt but we're not trying to
7 pull it off, we're not trying to move away from it,
8 we're not trying to move away from the wrist locks.
9 So, you leave feeling, like, oh, I know all this stuff
10 and all these techniques that are going to help me
11 take people into custody when they're resisting arrest
12 or don't want to be taken into custody, and then you
13 get out in the street and you feel that, you know,
14 you've got a resistant subject sober, not sober, under
15 the influence, EDPs, whatever, so you start to see
16 these fail.

17 Q. You said EDPs?

18 A. So, like, more mental health. They're severely
19 strong, they're strong and they take pain, they have a
20 high pain compliance.

21 Q. Okay. And, by EDP, were you referring to
22 emotionally disturbed persons?

23 A. Correct.

24 Q. I just want to make it -- okay. So, as a result
25 of your experience in the Academy and now you're out

1 on the street, did you take it upon yourself to -- to
2 learn any type of new techniques that might help you?

3 A. Yes. So, I had very minimal background in any
4 type of combative sports. I wrestled until I was in
5 eighth grade, and then in high school I didn't wrestle
6 any further, I participated in other sports. And, I
7 had some limited points bar in karate, which neither
8 of those skill sets were giving me a benefit at that
9 point in my life of helping control subjects that were
10 fighting with me and the agency I worked for at the
11 time was smaller.

12 It was only two of us working at a time, and
13 it was, like, a village car and a town car. So I had
14 a couple DWIs where I was fairly far out from my
15 back-up and I had -- they were resisting and I ended
16 up getting them into custody. But, it was a good
17 battle and I didn't know much, they didn't know much.
18 Thank goodness for me I was athletic and they were
19 intoxicated so that gave me a little bit of an
20 advantage. But, I took it upon myself to be, like, I
21 need to invest in myself outside of work because
22 work's not investing in enough training for me as far
23 as, like, wrestling, Jiu-Jitsu, controlling a human
24 body.

25 Q. Okay. So, what did you start to immerse yourself

1 in?

2 A. So, I looked at what sports -- what combat sports
3 people are actively getting a resistance against each
4 other and are controlling the human body. So, if
5 you'd look at wrestling, the fundamentals of that, if
6 you'd look at the fundamentals of Brazilian Jiu-Jitsu
7 and the fundamentals of MMA, they're all one hundred
8 percent competing against somebody that is not
9 allowing them to win or take them down or get on top,
10 get a pin or submission or win the fight.

11 So, if you'd look at those fundamentals,
12 what are they doing? They're all controlling the
13 human body. They want to win control of that human
14 body, and how you do that is, how do you control the
15 hips, how do you control the head, how do you control
16 posture, break structure in order to control a person?
17 So, I started looking at what would be the best art to
18 start training besides just strength and conditioning
19 to be able to control people.

20 In our job, we're always having to go hands
21 on with people more than we are having to go to the
22 range and shoot and get into a gun fight. So, I
23 wanted to make myself better to invest in some skills
24 to be able to go hands on with people.

25 Q. Okay. So, did you begin Brazilian Jiu-Jitsu

1 training?

2 A. I did. So, in -- in that timeframe, early
3 2000's, there was very little Brazilian Jiu-Jitsu in
4 our area, and I'm talking all of Western New York.
5 So, there wasn't even a black belt in Buffalo. There
6 wasn't a black belt in Erie.

7 So, I ended up driving six or seven hours to
8 places. I'd go to Cincinnati and train, I'd go to --
9 wherever I could go to a seminar and learn Jiu-Jitsu
10 and then I would come back and train it with my
11 friends two, three, four times a week and then next
12 month I'd go to another seminar. And, I just kept
13 bringing these skills back and training, adding in
14 wrestlers, bringing my wrestling friends in, working
15 with them and, basically, started to learn how to
16 wrestle and do Brazilian Jiu-Jitsu until, around 2006,
17 when I decided to do it competitively and found a
18 place to train out of Erie under a Brazilian Jiu-Jitsu
19 purple belt.

20 Q. And, as you sit here today, what is your level?

21 A. So, I'm a first degree Brazilian Jiu-Jitsu black
22 belt, under [REDACTED] out of -- well, Vermont
23 now, but formerly out of Brazil.

24 Q. All right. Are you suggesting that in every
25 circumstance, when dealing with every individual, you

1 should always begin doing these types of moves, or are
2 there ever situations where you would try to verbally
3 de-escalate?

4 A. So, the use of force continual is -- or, Graham
5 Connor, however you want to look at it, they both
6 serve, kind of, the same purpose, is whatever form of
7 resistance you're getting, tactics play into as well.

8 Showing up with officer presence, giving
9 verbal commands, you're trying to talk to somebody,
10 that's -- talking to somebody and de-escalating works,
11 if you have two parties, both sides have to be wanting
12 to listen and agree to something for those to work,
13 and then, depending on the suspect's actions, depends
14 on officer's actions. So, if the suspect is compliant
15 with verbal commands then the officer is at that low
16 level of just handcuffing them or getting to whatever
17 outcome they're going to do at that point. If the
18 suspect goes up the escalation of force and the
19 officer goes up the escalation of force to maybe hands
20 on tactics, and then you keep going up to where you
21 get to, like, your impact weapons, your tasers and
22 eventually to lethal force.

23 Q. So, we'll return to that in a minute. So, can
24 you just explain the relationship between DCJS,
25 Division of Criminal Justice Services, and DT training

1 for police officers?

2 A. So, in New York State, the Zone Academies have --
3 so, there's different Zone Academies. Our
4 Rochester/Monroe County has a Zone, you go to
5 Syracuse, they have one. There's Zone Academies all
6 over the State with the exception of New York State
7 Police and NYPD. They have their own governing body.
8 They govern themselves. Every other Department in the
9 State of New York, their Academy minimum curriculum is
10 governed by DCJS, the Department of Criminal Justice
11 Services.

12 Q. Does DCJS set floor or ceiling?

13 A. They set the minimum curriculum for the basic
14 Academy. The minimum hours of what the curriculum is
15 that they set has to be met in the basic Academy by
16 all those Zone Academies across the State. Now,
17 Academies can set a higher bar, they can set more
18 hours. That's going to depend on what their Academy
19 structure is set up as.

20 Q. Okay. When you went through the Academy, for
21 instance -- well, first, what is the minimum number of
22 hours?

23 A. So, the Department of Criminal Justice for the
24 basic Academy sets 40 hours of Defensive Tactics
25 training. That is the minimum curriculum. So, the

1 entire time in the Academy, they get 40 hours of DT
2 training.

3 Q. Okay. Are there other agencies that you're aware
4 of that do more Defensive Tactics than the minimum
5 amount set by DCJS?

6 A. Yes. So, the Chautauqua/Cattaraugus County
7 Academy, which I went to and I instruct at,
8 unfortunately, they only give 50 hours. So, we only
9 get ten extra hours of Defensive Tactics. I know
10 Monroe County Academy, which is the jurisdiction here,
11 they do 120 hours of Defensive Tactics training. So,
12 they get, like, three times what the minimum is.

13 Q. Okay. Did there -- I'd like to withdraw that.
14 Who was the Jamestown Police Department Chief in or
15 around 2011?

16 A. It was it [REDACTED].

17 Q. Okay. And, did you and Chief [REDACTED] ever
18 discuss, kind of, the broad issue of DT at Jamestown
19 PD?

20 A. Yeah. So, I was competing in training everyday,
21 training and competing and Mixed Martial Arts and
22 Brazilian Jiu Jitsu, and he sent me to Instructor
23 Development School, which is IDS, and then he sent me
24 to Defensive Tactics School, which is DT Instructor
25 School.

1 Q. And, who certified you in Instructor Development
2 School and DT?

3 A. Those are both certifications you gain under the
4 Department of Criminal Justice Services. They have a
5 minimum hour certification for different instructor
6 courses.

7 Q. And, once you were certified in Instructor
8 Development School and DT, what did that enable you to
9 do?

10 A. Then I could actually teach at the Police
11 Department. So, up until I went to IDS, Instructor
12 Development School and DT, Defensive Tactics School, I
13 was just teaching private seminars, like, Brazilian
14 Jiu Jitsu for police. How to help control people
15 using the fundamentals of wrestling and Jiu Jitsu to
16 control them. Different outcomes, but using the
17 fundamentals of controlling the human body.

18 So, once I got my certifications through
19 DCJS for the Police Department, I could then start
20 teaching at the department level and at the Academy
21 level.

22 Q. Okay. And, did you do so?

23 A. I had a meeting with the Chief and he said I want
24 to completely revamp what our DT Program is. He was a
25 big wrestler and a 20 year military guy and understood

1 that the pain compliance techniques and old school
2 wrist locks, pressure points, were failing all of the
3 time making it more of a danger for civilian suspects
4 and officers on the scene. So, he wanted me to
5 completely revamp the DT and get more of a control
6 tactics type system.

7 Q. So, going back to the DCJS for a moment. Does
8 the DCJS govern or mandate in any way what type of
9 in-service training is provided to officers at the
10 various police departments in New York State?

11 A. Okay. So, there's two types of police
12 departments in New York State. There's accredited
13 through DCJS and non-accredited. If you're accredited
14 through the Department of Criminal Justice Services,
15 you have to meet certain standards, certain hours of
16 training for individual officers that is somewhere
17 between 21 and 24. Each officer has to have that many
18 of hours of training, and each section is different,
19 but you can go on and on to get accredited.

20 Non-accredited agencies don't have any set
21 hours that they have to train, so they might not train
22 any. Now, those 21 to 24 hours, they don't mandate
23 what type of training that has to be in. So, say, if
24 they -- you have to have two hours of use of force,
25 that could be all of us sitting here in the room

1 looking at the penal law on the board through power
2 point and that is your use of force training for the
3 year.

4 So, they mandate certain hours for
5 accredited agencies, but they can't tell them there's
6 -- they can't tell them what they have to do. They
7 don't have any recourse if they're not training with
8 hands on tactics per se. Non-accredited agencies
9 don't even have to submit how many hours or officers
10 are training in their training hours per year.

11 Q. And, just for informational purposes only, are
12 you aware of what percentage of these agencies in New
13 York State are accredited versus non-accredited?

14 A. I don't, but there's -- it's not half.

15 Q. Okay. Thank you. That always surprised me. So,
16 did you begin to train DT during the in-services?

17 A. Yes. So, I came up with a curriculum and I
18 submitted it to the Chief for review, and then he
19 started doing bi-annual trainings.

20 So, I get eight hours twice a year and he
21 would send a group of officers through so many dates,
22 that we took two weeks to get everyone through. I get
23 each officer for eight hours twice a year. We started
24 implementing the control tactics, individual officer
25 takedown, individual officer control, team takedowns,

1 communications. So, one, two, three officer takedown,
2 control and communications.

3 So, what we see in police work a lot is
4 they're fighting a guy and everyone jumps on, nobody
5 has a plan, they're actually working against each
6 other, and now we have a plan. We know what officer
7 one is doing, officer two, officer three is doing as
8 far as control.

9 Q. Okay. And, did you start to observe or see any,
10 sort of, outcomes relative to the uses of force,
11 injuries, that type of, like, measurable outcome?

12 A. The first couple of years we had officers that
13 didn't want to train, didn't want to train on
14 resistance, and after about two years of our
15 administration actually holding them accountable and
16 doing makeups and having them to go through them, they
17 started seeing the other officers on the street that,
18 not say have a skill set.

19 So, your average police officer -- we talk
20 about the average police officer who goes to work and
21 goes home. They may not train wrestling, Defensive
22 Tactics. I'm at the gym five to six days a week and I
23 still am now, at 42, but the average officer doesn't
24 do that. So, we have to understand that when we're
25 seeing the average officer buying into the program

1 communication, team tactics, and that's having a
2 success rate in stopping the events from escalating
3 while they're wrestling, trying to bring someone into
4 custody, you start to see the officer's success rate
5 and injury rate go down, the civilian and suspect
6 officer injury rate go down because ineffective force
7 gives the appearance of excessive force, but it also
8 can escalate, if you go in and two guys can't control
9 this guy, they don't have a plan and it's just at a
10 hands on level, and then it just starts to get worse,
11 and then it starts -- the suspect maybe goes up in the
12 use of force and the officers have to go up in the use
13 of force, whether it be tasers, impact weapons,
14 eventually to lethal force. We were seeing a huge
15 success rate of our officers buying into the program
16 and the rate of officer, suspect injuries going down,
17 we have very little.

18 Q. Were you, as an agency, able to remove some --
19 any, like, traditional equipment that you had been
20 trained on in the Academy that you no longer found
21 necessary?

22 A. The one change I'll speak of was more recent. It
23 was within two years. Myself and another DT
24 Instructor, who was a Lieutenant at the time and is
25 now an active Captain, we went to an expandable baton

1 course, there's multiple different brands and courses.
2 We went to it. We weren't huge fans of it anyways
3 because pain compliance fails a large majority of the
4 time and then it just looks really bad. Most
5 subjects, you know, that don't feel pain, again, are
6 controlled substances on board, alcohol on board. So,
7 they may not feel it now, but they're going to feel it
8 and have injuries the next day.

9 So, we went to ASP School, which is
10 Expandable Baton Instructor School. We did that in
11 the summer of 2019. We came back and we had a meeting
12 with the other Captains and the Chief and we're, like,
13 we don't even see a use for these in police work right
14 now, and they asked why, and we said, we just feel
15 that it's ineffective. If pain compliance is failing,
16 it's giving a bad look or hitting people with an
17 expandable baton multiple times, it's not working.
18 So, our agency has taken the batons off our belts. We
19 don't even carry the expandable baton anymore.

20 Q. Okay. Did there come a point in time when you
21 began to be involved in a more national setting?

22 A. Yeah. So, in 2015 I was teaching for the New
23 York Tactical Officers Conference. It's the NYTOA.
24 I'm the Defensive Tactics Director there.

25 Q. Let me stop you. What is that?

1 A. So, the NYTOA is a conference for SWAT officers.
2 So, we get SWAT officers from all over the country
3 that come to the NYTOA every year and they bring in
4 Instructors from different agencies to work, you know,
5 SWAT tactics, chemical munitions, Defensive Tactics,
6 negotiations, de-escalation, you name it, the
7 conference has a course for it. Explosive breaching,
8 range, gun fighting, all of the things that you can
9 get into, vehicle extractions. So, I'm the Defensive
10 Tactics Instructor for the conference.

11 We also have Tac Ops East, which is held in
12 D.C. every year and Tac Ops south, which is held in
13 Nashville every year, and they're week-long
14 conferences.

15 And, so I was teaching at NYTOA, there were
16 a couple of guys from Las Vegas Metro that were up
17 teaching a ground tactics course, as well, called Code
18 4 Concepts, called C4C for short, and that is under
19 the banner of progressive force concepts, which is an
20 agency, which is a group of companies. So, they have
21 a safe guard side, which is like protective services,
22 they have a cadre that does all the training for all
23 their branches, military special forces, and then the
24 C4C is the combative side.

25 Q. So, how did you become involved? So, you met

1 there and then --

2 A. Yep. So, we met there. We were teaching the
3 same -- same open mind, always trying to improve and
4 get our systems better and safer for all parties
5 involved. So, they flew me out to Las Vegas and I did
6 an 80 hour instructor course of C4C, and now I'm one
7 of their main Instructors.

8 Q. Okay. And, can you just give a general -- which
9 -- like, what are some agencies that employ the
10 techniques that you're going to be talking about
11 shortly?

12 A. All the agencies in New York State, minus NYPD,
13 and then Las Vegas Metro, segmenting in their main
14 form of control and team tactics, same with the north
15 Las Vegas PD. We also teach agencies in the States of
16 Arizona, Washington, Oregon. You name it. There's
17 States we just did a 40 hour Instructor course for C4C
18 in the Austin Police Department, where we implemented
19 all of those tactics as well.

20 Q. So, would it be accurate to say that segmenting
21 is something that's only in the east?

22 A. No. It's nationwide. We've taught in multiple
23 different States and jurisdictions across all police
24 departments that we've gone to train, and that have
25 come to HQ that we've trained. We teach the military,

1 special forces the same tactics as well, as far as
2 combative.

3 Q. Okay. So, you kind of touched on before, getting
4 back to DCJS, once -- you know, once that floor in the
5 Academy is hit, there's really no consistency, in
6 terms of agency to agency, like, the hours or what
7 they trained, if they trained at all during
8 in-service. Is that -- did I mis-state that, because
9 I just put a whole bunch of stuff together?

10 A. No. So, DCJS is a governed body of what minimum
11 curriculum they're taught in the basic Academy. They
12 cannot govern what is taught for in-service. So, they
13 can't hold the agency accountable for not doing
14 continuous in-service training in certain fields. One
15 of those being DT, Defensive Tactics training.

16 Every training, whether it's in New York
17 State for the DCJS, whether it's for C4C when I'm
18 traveling, I always do introductions and I always ask,
19 during their introductions as a person, I want to know
20 yada, you know, name, how long you've been there,
21 agency, so on and so forth.

22 One of the things I want them to talk about
23 is when is the last time your agency held hands on
24 training for the officers? And, it's well under half
25 haven't done hands on training since they left the

1 Academy. That could be anywhere from one year ago to
2 15, 20 years ago.

3 Q. Okay. So, did there come a point in time when
4 you began to be, sort of, involved in DCJS potentially
5 overhauling its system?

6 A. Yeah. I was trying to be pro-active with it, and
7 I put a whole curriculum that we were teaching into a
8 video. While that was getting edited, I received an
9 e-mail from our Academy director via DCJS saying that
10 they were putting a board together of Defensive
11 Tactics Instructors from across the State. And, what
12 they are looking to do is take multiple different
13 certifications, Defensive Tactics -- they're
14 eventually going to re-do the entire basic Academy as
15 far as updating it and making it better. The one they
16 were really starting with first was use of force and
17 Defensive Tactics.

18 Q. Let me stop you right there. Why was that, that
19 they were going to start with that, do you know?

20 A. I don't know that answer.

21 Q. When was the last time, to your knowledge, that
22 the program had been updated?

23 A. It hadn't been updated, at least, since I had
24 started back in 2001.

25 Q. So, it had been, at least, how ever many years

1 this was?

2 A. Yeah, going on 20.

3 Q. All right. Go ahead.

4 A. They sat down -- I originally wasn't in the
5 original group of guys. Being a smaller Academy, they
6 picked guys from Rochester, say Westchester County,
7 Syracuse, Albany. And, I'd been teaching a lot of
8 private Jiu Jitsu for police courses around the
9 country and state and I was working for C4C and
10 instructing for them.

11 So, my name got out there from some of the
12 board guys that they had brought in and all trained
13 with me, either at a conference or a private training.
14 So, I was contacted to join this board. I had a
15 conference call with the DCJS office member that was
16 in charge of re-vamping the DT portion of it. He then
17 had a conference with my Chief, him and myself. And
18 then, he came down to Jamestown and we ran him through
19 our entire curriculum, the principle based over
20 technique based, team tactics, communication.

21 And so, he invited me up to, it was called
22 the Monroe County Public Safety Building, where he
23 invited all the people from the board. So, multiple
24 agencies from the across the State met, and I
25 presented what we had been doing one, at the City of

1 Jamestown, what we had been doing for C4C across the
2 country, and everyone was on board, really --

3 Q. Let me stop you. So, you had the opportunity to
4 present it?

5 A. Correct.

6 Q. And, does there come a point in time when it is
7 determined that this will be adopted in New York
8 State?

9 A. Yep. So, we ran a bunch of pilot programs. We
10 ran a couple of two day programs for guys that were
11 already certified Defensive Tactics Instructors, and
12 then we ran three, two week, 80 hour Defensive Tactics
13 Instructor Programs, that were pilot programs. And
14 then, after the pilot programs were done, the
15 Municipal Police Counsel voted on it and adopted it as
16 the new minimum curriculum for the basic Academies and
17 for the Instructor course.

18 Q. Okay. To your knowledge, are these techniques
19 now being taught to the Police Academy throughout the
20 State?

21 A. Yes. Every Zone Academy, except the State Police
22 and the NYPD, have their own governing bodies.

23 Q. Okay. So, other than the New York State Police,
24 is it accurate to say that DCJS does not govern the
25 New York State Police and the NYPD?

1 A. That is correct. They have their own governing
2 bodies.

3 Q. Are you aware of whether or not NYPD, or the New
4 York State Police, are employing these techniques? If
5 you're not, if you don't know, don't answer. I don't
6 know if you are?

7 A. So, NYPD does their own thing. I don't have any
8 knowledge to that.

9 Q. Okay.

10 A. A black belt, that I'm actually under in the BJJ
11 revolution was the Sergeant, and he was in charge of
12 the PT and Defensive Tactics Programs at the New York
13 State Police for ten years. He retired last year and
14 he now teaches with me for DCJS, and our programs are,
15 what he says, extremely similar.

16 Q. Okay. All right. Is one of the techniques that
17 is taught segmenting?

18 A. So, in team tactics one of our techniques that we
19 talk about is segmenting, and you can put head
20 pressure -- basically, segmenting is we're just
21 controlling the head.

22 So, if I'm a one person operator and I'm
23 there by myself, we talk about being knee on top.
24 Whether the subject is face up or face down, my knee
25 and shin are on top of his hips. So, we want to go

1 from his beltline to, like, the middle of his butt,
2 beltline to the middle of the groin area, where we are
3 controlling his hips, and then head control.

4 So, I'm going to turn his head and I'm going
5 to put pressure on his head and his hips. Again,
6 those are the two main fundamental body parts of
7 controlling a human person from being able to get up,
8 fight; and, as far as control, we teach that in youth
9 wrestling, we teach that in Brazilian Jiu Jitsu for
10 kids, adults, teams, so on and so forth.

11 Q. I am approaching with what's been marked for
12 identification as Grand Jury Exhibit Number 60, do you
13 recognize that photo?

14 A. I do.

15 Q. And, are you actually one of the people in the
16 photo?

17 A. I am the high anchor position in team tactics.
18 So, you would have the knee on top of the subject and
19 then I am the person, which we call the segmenting
20 portion of team tactics, I am taking over head
21 control.

22 Q. Okay. We'll go over that in one second. Is this
23 a fair and accurate photo taken from a video where you
24 display or give an example of segmenting?

25 A. Yes, it is.

1 MS. SOMMERS: All right. Thank you. I'll
2 offer it.

3 (Whereupon, Grand Jury Exhibit Number 60 was
4 then received into evidence.)

5 MS. SOMMERS: Can everyone see okay?

6 GRAND JURY POOL: (All jurors indicating a
7 positive response.)

8 MS. SOMMERS: So, just for the record, I put
9 Grand Jury Exhibit Number 60 up on the screen.

10 BY MS. SOMMERS:

11 Q. Now, I know you gave a lot of terms everyone
12 might not have understood. For the record, there are
13 three people in that photo, correct?

14 A. Correct.

15 Q. Are you on the left or the right?

16 A. I'm the subject that has no hair. So, I'm
17 posting on the guys's head. That is my position.

18 Q. So, you're the bald person on the right?

19 A. Correct.

20 Q. Okay. And, what do you mean by posting on the
21 person's head?

22 A. So, I'm just giving pressure to the top area of
23 the head. So, when we teach segmenting or we teach
24 controlling the head, the guy that's knee on top by
25 himself, would have his hands on his head, if I'm not

1 there.

2 When I come in as team tactics, I then take
3 over controlling the head so he can start to work on
4 his arms. So, that's where we call it segmenting,
5 because we're actually just separating control parts
6 for the officers' jobs. So, I'm controlling his head,
7 and I'm staying on the skull area, avoiding being on
8 the jaw. We're turning the head so that we can avoid
9 the nose, lips, orbital bones, the eyes, those are the
10 weaker parts, more fragile parts of the face.

11 So, when we are performing control tactics,
12 we're not trying to cause injury. We're not slamming
13 the head off, we're not dragging it. We're simply
14 just applying pressure to the head to keep it against
15 something. And, the ground is leverage, the wall can
16 be leverage. So, we're putting pressure down.

17 Here, you'll see that I'm in a modified
18 plank teepee position. We teach it as a teepee or a
19 plank. I can release pressure and maintain contact as
20 the resistance goes up or down, whether the subject
21 becomes more compliant, slows down his resistance, or
22 then again, maybe I release pressure and then he
23 starts to move or fight again, then I can add pressure
24 as we're giving him verbal commands here. We talk
25 about communication. Only one of us is giving verbal.

1 One person is talking.

2 Q. Okay. And, what about the position of the
3 individual with the knee on top?

4 A. So, we can we call it knee on top because it's
5 the same position whether the subject is face up or
6 the subject is face down. And, that is that our shin
7 and knee line are going to be vertical across the
8 beltline, hips area, and we stay on the hips, front up
9 or front back, avoiding the back or the diaphragm
10 area, whether it be stomach up or stomach back, and we
11 have been teaching to stay away from that area for
12 years now.

13 Q. Okay. Is this particular type of tactic, so the
14 segmenting, the knee on top, counter indicated or
15 taught not to be used on an individual who is wearing
16 handcuffs?

17 A. So, the application of segmenting is, in team
18 tactics, when you have a resistant subject. The goal
19 is custody and control. If they are gaining custody
20 and they start to resist, you may have to gain control
21 again. So, we use segmenting any time we need to
22 control a person that's in the level to be hands on,
23 which is an actively resistant subject or higher.

24 Q. Okay. So, is that no then? Is there -- when
25 you're teaching these techniques in the Academy, is

1 there any type of prohibition or preclusion when
2 officers are taught after an individual is handcuffed?

3 A. No, because it's always going to be the totality
4 of the circumstances. It's got to be fluid with when
5 we're using control. It's all going to depend on the
6 resistance level and the totality of the circumstances
7 of each situation of the person's resistance level.

8 Q. Are there any circumstances taught, during the DT
9 Program, where these techniques are taught, are there
10 any situations where officers are instructed to not
11 use these techniques under these conditions?

12 A. No, because it's too much of a gray area. We
13 can't black and white, say, 100 percent this or 100
14 percent that. We -- we talk about custody and control
15 and that falls under Graham Connor, which is going to
16 be what are your three factors, the --

17 Q. So, let me -- I'm going to scoot you ahead for a
18 moment.

19 MS. SOMMERS: And, just for the record, for
20 the grand jurors, Mr. Smith and I will be the ones
21 that advise you about the law.

22 BY MS. SOMMERS:

23 Q. When you're speaking of Graham v. Connor, are you
24 speaking about a court case?

25 A. Yes.

1 Q. Okay. Thank you. Officer [REDACTED], because of
2 your position in terms of teaching, both locally and
3 nationally, have you -- do you have cause to, kind of,
4 monitor nationally use of force incidents and deaths
5 that occur while individuals are in custody?

6 A. So, I break down videos as much as I can get,
7 especially ones that are viral to ones that are less
8 known to always constantly try to evolve what are the
9 tactics and our programs consist of. So, I'm
10 monitoring as much as possible.

11 My inbox, whether it's my e-mail or my text
12 messages, are flooded weekly by officers that I've
13 trained or other DT Instructors of videos, and we're
14 breaking them down. We're constantly trying to
15 improve on what we're doing or what is the
16 shortcomings of officers, what can we do better, or
17 what went wrong in these cases, so that we can
18 constantly monitor what's going on and we can't get
19 old and stale like we did before. It was 20 years
20 before the program was updated. We do that on a
21 constant basis.

22 Q. Okay. Other than the case that you are here
23 testifying about today -- well, actually let me back
24 up a moment. Would it be safe to say that your inbox
25 filled up in the wake of -- of this case? Would that

1 be safe to say?

2 A. Yeah, I got -- I got plenty of e-mails on this.

3 Q. All right. Other than this case, are you
4 familiar with any cases involving agencies in New
5 York, agencies that you've trained with, where an
6 individual has died during the application of
7 segmenting?

8 A. I -- I am not aware of any.

9 Q. In the -- in the wake of this case -- actually,
10 I'll withdraw that.

11 MS. SOMMERS: Does -- do any of the grand
12 jurors have any questions?

13 A JUROR: You had mentioned the part about
14 that you can still use segmenting while a person is in
15 handcuffs. If they are resisting, it's something that
16 can still be done even though the handcuffs, either
17 the knee on the back or the segmenting, it can still
18 be done -- if they're still fighting, even though
19 they're in handcuffs, you can still proceed with
20 segmenting, correct?

21 BY MS. SOMMERS:

22 Q. So, I want to rephrase it. I think I asked the
23 question of, is it -- do you teach that they should
24 not do it with somebody in handcuffs? So, let me ask
25 first. Do you teach that it should not be done on

1 individuals in handcuffs?

2 A. We don't teach that it shouldn't be done.

3 Q. Okay. Do you teach that it should be done? It's
4 a little bit different?

5 A. So, we talk about control tactics is -- the law
6 enforcement outcome is custody and control with the
7 most reasonable amount of force necessary. Whether
8 they're handcuffed or not handcuffed, if the level of
9 resistance meets them using hands on control tactics,
10 or lower or higher, is based on each incident. So, if
11 I'm -- got a person in handcuffs and he can still
12 resist in handcuffs, people in handcuffs are
13 constantly extracting stuff from waistbands,
14 extracting stuff, they're actually putting stuff in
15 waistbands or hiding it or concealing it further.
16 We've also seen videos across country where people in
17 handcuffs are actually taking officers' guns with
18 their hands behind their back in handcuffs. So, just
19 because they're handcuffed doesn't mean that they
20 can't still resist or be a danger, it minimalizes
21 that.

22 So, handcuffs, the proper term for them, are
23 temporary wrist restraints. They're not 100 percent.
24 I've seen people slip out of handcuffs, I've watched
25 videos and breakdown videos of people in handcuffs

1 taking other officers guns and then going into a
2 lethal force situation. But, we do not tell people
3 that they cannot, we -- that is going to be the
4 totality of the circumstances in what they had on
5 scene for each individual incident.

6 Q. And, would it -- kind of, following up on what
7 you said then, taking the totality of the
8 circumstances, which can change in every incident, I
9 assume that there -- would you agree that there would
10 be times that it wouldn't be appropriate based on the
11 totality of the actual officer that's there?

12 A. That's with any hands on or any use of force is
13 -- you have to be in that level of force to use hands
14 on tactics. Like I said, we have verbal commands --
15 we have presence, verbal commands, we have hands on
16 tactics, we have pepper spray, we have less lethal, we
17 have impact weapons, and then we have lethal force
18 options -- or lethal options.

19 Any time you use force, you have to be in
20 that option to use force handcuffed or not handcuffed.
21 The handcuffs really don't change much. What the
22 handcuffs change is, making the amount of movement
23 restricted and what they can do a bit harder. It's
24 not 100 percent. It's not an end all, be all safe --
25 safeguard to them.

1 So, if someone is at a level of resistance
2 where they need to be restrained, there's only certain
3 options that you can go to depending on agencies or
4 what you have available to you. So, is knee on top
5 head pressure an option, yes. Is segmenting an
6 option, yes. Is knee on top, low anchor an option,
7 yes. That's going to be articulated through what
8 level that officers were at that time due to the
9 circumstances.

10 MS. SOMMERS: Yes?

11 A JUROR: Should I ask the question?

12 MS. SOMMERS: Why don't you ask me.

13 A JUROR: So, he had mentioned that knee on
14 top was the method that could be used while in the
15 prone position or face up, is that also the case with
16 segmenting.

17 THE WITNESS: Yes. Sorry.

18 MS. SOMMERS: Go ahead and answer.

19 THE WITNESS: Yes.

20 A JUROR: As a follow up to that, do you
21 teach that one method is preferred over the other
22 prone, versus face up?

23 BY MS. SOMMERS:

24 Q. So, Officer [REDACTED], do you teach individuals
25 in DT that it's safer or better to use these

1 segmenting and/or knee on top with individuals prone
2 or individuals not prone?

3 A. So, when we have to take people into custody, we
4 have to get their hands behind their back. That's
5 nearly impossible when they're stomach up. So, it may
6 start stomach up, or sometimes they may try to get
7 stomach up, but we end up having to turn them and have
8 them stomach down in order to get their hands behind
9 their back. If they're laying on their back, we can't
10 apply the temporary wrist restraints in that position.
11 So, if we're taking them into custody, we always put
12 the face down. It doesn't mean we didn't start face
13 up and we had to work through that to get to that
14 position. So, to take them into custody, they have to
15 be face down just to be able to apply the handcuffs
16 properly.

17 Q. So, if a person is already in handcuffs, are
18 there any, sort of, directions given in term of, like,
19 once they're already handcuffed, do the segmenting
20 face up, or I'm trying to -- how -- how would the
21 hands work?

22 A. So, we don't tell them we prefer one way or the
23 other on that. Once they're in handcuffs, that's,
24 again, what the situation is going to dictate. But,
25 if you've ever had temporary wrist restraints on,

1 whether in person or training, if they're under your
2 back and you're laying on them, it puts a lot of
3 pressure on one, wrist, elbows, and shoulders, and
4 it's very difficult to then be knee on top, smashing
5 those down and head control in that position. So, I
6 would say most people are probably going to be
7 controlled stomach down when in handcuffs if they're
8 still resisting or if giving some sort of resistance
9 due to the fact that their hands have the handcuffs on
10 them behind their back, and this is going to be very
11 painful and difficult to maintain pressure on them at
12 that point.

13 Q. Did the new training modify anything in terms of
14 when to move people to their sides?

15 A. So, like, post cuffing and moving to the car is
16 -- there is nothing implemented right now as far as
17 what DCJS governs for us to teach to them, that is,
18 individual agencies, how they're going to deal with
19 it. And, the reason being is, some agencies have
20 other tools that are available to them. Some agencies
21 have the hobbles, which go around the legs, some
22 agencies have those boards, where it sits them up and
23 they can't move. So, equipment can play a factor into
24 those.

25 Whatever the situations are, medical is

1 coming, maybe there's a car that's not available to
2 put them in, whatever the circumstances are, we don't
3 teach a certain way to do that, that's kind of -- we
4 leave that up to the agencies to teach right now, the
5 post immediate use of force.

6 A JUROR: In your testimony, you mentioned
7 that only one person is supposed to give commands. If
8 we use Exhibit 60 as the example, which positioned
9 officer is supposed to be giving commands?

10 THE WITNESS: So, that's going to be
11 communicated between them. There's no set person
12 that's supposed to be doing it. The reason we say one
13 person is if him and I are both yelling something
14 different, that guy might not know what he wants us to
15 do. So, we suggest one person gives it. I always say
16 it's the contact officer and what I mean by that, it's
17 the knee on top guy. That's my preference. That
18 doesn't mean that if the segmenting guy is giving
19 them, that's okay too. Usually, the reason is, is I'm
20 the one that's going to be working the arms if I'm
21 knee on top. So, if I'm the one working the arms, I'm
22 telling him what arm I want, I'm giving the verbal
23 commands. We call the position I'm in, again, I'm the
24 bald guy on the head, I could be there, I could have a
25 third officer on the legs, or maybe I could just be on

1 the legs and not be on the head, and if I'm on the
2 legs, then it's definitely gonna be that guy giving
3 the commands. So, it's just going to depend on the
4 communications of who's working where or what's
5 available. But, we always suggest we want one just
6 because it makes it easier for the suspect to
7 understand the commands because you understand that,
8 under an elevated heart rate, it's just not the bad
9 guy that's on the elevated heart rate, it's also the
10 officers are fighting with this guy, and they have,
11 every place they go, they are bringing weapons to the
12 -- the situation. So, even if the guy's not armed and
13 they start fighting, at any point in time, that guy
14 could attempt to take their weapon.

15 So, one, maybe they're not in shape, maybe
16 they are in shape, but you're still in a physical
17 struggle. You're still in a fight. So, when you're
18 in a fight, you get that elevated heart rate, skills
19 start to diminish and everyone starts yelling, maybe
20 the guy wants to comply and he just doesn't understand
21 who to listen to.

22 So, we tell people to be most effective, one
23 person give the verbal commands. We do that in our --
24 for our tactical teams too, we suggest one person
25 should be yelling out commands not everybody. Because

1 two people could be yelling out different strategies.
2 One person.

3 Now, that is in a perfect world, not under
4 stress, but for the most part, that's what we suggest.

5 A JUROR: So, to clarify, in the training
6 that you provide there isn't a specific position that
7 is, like, the default?

8 THE WITNESS: No. And, this here, it's
9 going to be either of us could give verbal commands,
10 we need to decide that. We need to communicate that.
11 If there's no one on the head and I'm on the legs,
12 then the knee on top guy is giving it because the guy
13 behind him, why is he giving verbal commands?

14 MS. SOMMERS: Okay. So, for the record, I
15 just want to make sure the record is clear. You're
16 pointing at Exhibit 60, correct.

17 THE WITNESS: Correct.

18 MS. SOMMERS: Did that answer the question?

19 A JUROR: Yes.

20 A JUROR: I just would like to hear more
21 about -- so, this technique, segmenting you use, when
22 people are actively resisting or an actively resistant
23 subject, but then you also mentioned you could back
24 off if needed and if the subject starts to struggle
25 again, he could get back into the position if I

1 understand you right. How do you make the
2 determination that this person is no longer
3 struggling?

4 MS. SOMMERS: Did you hear the question? I
5 just want to make sure. Did you hear the question?

6 THE WITNESS: Yes.

7 MS. SOMMERS: All right. Go ahead.

8 THE WITNESS: So, let me explain what I mean
9 by back off for you. I don't want you to
10 mis-understood what I said. So, I can maintain
11 contact but release pressure in this position. So, I
12 can stay attached to him and release pressure if I
13 feel that resistance stopping.

14 Maybe he's moving, he's trying to get up and
15 then I start to feel that stopping or he -- okay,
16 okay, I'm done, I'm done and he actually does stop.
17 There's been times where the person says, I'm done,
18 I'm done, but he's still actually giving you
19 resistance. So, a lot of that is going to come off of
20 feel and/or him verbally saying he's going to be
21 cooperative. I always maintain contact even though
22 I'm releasing pressure. So, I can stay in that
23 position and not put weight down -- pressure down on
24 the head. So, I'm going to maintain pressure, I'm
25 just backing off pressure when needed or adding

1 pressure when not, until we decide to get him up and
2 moving when medical gets there, if we're going to put
3 him in a car and take him to jail, depending on what
4 the situation is.

5 Does that answer your question, sir.

6 A JUROR: It does. It does. Thank you.

7 THE WITNESS: And, it's hard to see from
8 videos the amount of resistance being given and the
9 amount of pressure being put on. So, in Brazilian Jiu
10 Jitsu and wrestling, we talk about pressure all the
11 time. We want as much pressure on the person as
12 possible because pressure doesn't do damage but it
13 controls the person. We're not striking, we're not
14 hitting them, we're not causing verbal damage -- or,
15 physical damage. We're actually just putting pressure
16 on the strong muscular bone parts of the body.

17 So, in this case, I could be putting a lot
18 of pressure on, or I could be weight in my -- putting
19 my weight into my knees and my joints and just taking
20 pressure off of the head but my hands are still there.

21 So, we teach maintaining contact but
22 relieving pressure when you get cooperation. The
23 reason being is, we kind of talk about pressure points
24 the same. Pressure points, you have to have counter
25 pressure, and then the pressure points. So, say, I'm

1 using a pressure point here. If I just do this, it
2 hurts a little, but I can move away from the pain.
3 Now, I have counter pressure, being my hand, the
4 ground, the wall.

5 Now, I'm going to really start to maintain
6 the pain. The subject starts to be cooperative or
7 stops fighting, I release the pressure but I maintain
8 contact in case I need to put it back -- back on.

9 MS. SOMMERS: And, for the record, the
10 witness had his hands on either side of his head
11 demonstrating. You were saying, if I have it here and
12 here, you had hands on your head, right?

13 THE WITNESS: Correct, yeah.

14 A JUROR: In your opinion, looking at
15 Exhibit 60, if putting one of those knees to the
16 ground, is that an automatic release of pressure?

17 THE WITNESS: Any time we put something to
18 the ground, the ground gets pressure. So, we're
19 taking pressure off.

20 A JUROR: So, putting your knee -- the
21 officers's knee to the ground, you're releasing
22 pressure?

23 THE WITNESS: Yes. And, actually, when
24 we're teaching to control a guy, to get him under
25 control, I always tell people the knee on top

1 position, a shortcomings of that is they put this --
2 can I point to the screen?

3 MS SOMMERS: Yes. So, for the record,
4 you're pointing to the --

5 THE WITNESS: Exhibit 60.

6 MS. SOMMERS: Right. The knee of the person
7 furthest to the left of the two that are not on the
8 ground.

9 THE WITNESS: If he puts this knee on the
10 ground, he releases a significant amount of pressure
11 and that guy can start to move his hips and get up
12 again. So, we always tell people, don't put that knee
13 down because you're on his hips, you're not going to
14 hurt him but you're maintaining that -- that pressure
15 to keep the guy retrained until you're going to move
16 him or you're going to get him into the gurney or get
17 him into the car, whatever you're going to do with him
18 at that time.

19 A JUROR: That applies to the other officers
20 also?

21 THE WITNESS: Yeah, it applies to that -- it
22 applies to any pressure on someone.

23 A JUROR: It seems like there tends to be a
24 pocket of time where there's a lot of gray area no
25 matter what the case is. It seems like it's left up

1 to the police officer's judgment. Is there specific
2 training on the gray area and the things that they
3 should be looking for or how they're supposed to gauge
4 their actions and what's appropriate, if that makes
5 sense?

6 BY MS. SOMMERS:

7 Q. After -- so, let's for instance, say the
8 individual in Exhibit 60 stops fighting back or stops
9 resisting. Is there any training in -- for instance,
10 how, you know, should there be an immediate move to
11 the side? Is that part of this?

12 MS. SOMMERS: Is that the gray area you're
13 referring to?

14 A JUROR: Yeah. I guess I didn't know if
15 there was any -- yeah, specifically, that. Or just a
16 gray area, in general, because I feel like then
17 they're left with a pocket of time where they might
18 not be sure how to act or what might be appropriate or
19 not appropriate if there's not a specific training for
20 it. I understand it's hard to train a gray area, but
21 are there any overall guidelines for that?

22 THE WITNESS: So, two things, they're going
23 to explain to you Graham Connor and the objectively
24 reasonable response at some point.

25 MS. SOMMERS: So, we will -- Mr. Smith and I

1 will discuss the law.

2 THE WITNESS: Yeah. So, on the tactics
3 side, it's going to be what are they doing with the
4 subject? Are they taking him to jail and they're
5 putting him in the car? Are they restraining a
6 juvenile and giving them to their parents when they
7 arrive at the school because he's out of control? Are
8 they waiting for medical so that they can put him into
9 the ambulance?

10 So, like, that gray area is depending on
11 what is their final outcome and where is this person
12 going? You obviously aren't going to hold someone
13 down there for an hour and wait for someone coming.
14 As soon as that objective is met and you know where
15 they're going and that becomes available, then that
16 becomes the next place that that person is going to.

17 So, again, yes, there's a lot of answers to
18 that depending on the exact situation.

19 A JUROR: Okay.

20 A JUROR: I don't know if I asked you first.
21 But, we learned about something called to gain control
22 stomach down, you know, and you have control of the
23 subject, but there was a term called the recovery
24 position when someone is turned on their side.

25 So, I guess, my question is, are you

1 familiar with that part of your training? And, the
2 second question would be, if someone is very large and
3 obese, stomach down, pressure on them, you're seeing
4 they're having difficulty breathing or getting air in
5 and you're saying to keep pressure on or keep contact
6 on them, head down, just like it is here, is there
7 another way to sort of get them in a position where
8 they can breathe if they're struggling or laboring and
9 still keep head contact or control.

10 THE WITNESS: So, the recovery position I'm
11 familiar with. It's another position for primarily
12 not choking on liquids. Again, I can't testify to the
13 medical parts of this. So, head control can be done
14 from numerous positions.

15 The problem is when you've got a resisting
16 subject still resisting or still moving, putting them
17 on their hips freezes their hips to be able to move.
18 If I'm on my side -- so, I'm going to reference
19 Brazilian Jiu Jitsu for you.

20 So, if I'm straight on my back and you're on
21 top of me, okay? I can't get out unless I get to my
22 hip. Once I can get to my side and my hip, now I can
23 start to work to get my knees underneath me to get an
24 under-hook to start to get out. So, in order to get
25 out, I need to get to my side.

1 So, if we're trying to restrain the guy
2 because he's still fighting or still giving some sort
3 of resistance, the best way is to keep his hips flat
4 to the ground, whether it's stomach down or stomach
5 up. Does that make sense.

6 A JUROR: It does. If I'm understanding, so
7 the technique trumps any medical issues that might be
8 going on?

9 THE WITNESS: No. So, at any point during
10 an issue, once the person is restrained and stops
11 fighting, they have to immediately start looking
12 towards what is going on. In this case, obviously,
13 medical is already on their way, that's what they're
14 waiting for I believe.

15 BY MS. SOMMERS:

16 Q. So, is there -- if you are dealing with somebody
17 who is, for instance, obese or you have reason to
18 believe is on some type of a stimulant type drug, are
19 there concerns about implementing these techniques
20 that we have gone through here this afternoon?

21 A. So, the amount of times that we use control
22 tactics to control people to the amount of events
23 where someone has a medical event to the seriousness
24 of this case or the other is so -- the percentage is
25 so far beyond. This isn't happening on a daily basis.

1 Officers are wrestling, fighting with resistant
2 subjects on a daily basis, and it's one, two cases
3 maybe a year that come up. So, I don't have the
4 straight numbers but, as an experience, you're -- you
5 have such a high amount of contacts with police with
6 resistant subjects and then maybe one or two cases
7 where this occurs, these medical events occur.

8 MS. SOMMERS: So, I just want to say one
9 other thing. You mentioned the other one. I just
10 want to -- the elephant in the room a little bit. In
11 the Floyd case, which I know many, many people have
12 seen, was that a segmenting technique that was
13 employed there?

14 A. No.

15 Q. Okay.

16 A JUROR: Back to what you were saying, I
17 tried it at home, the big guy thing he was saying. I
18 tried -- let me try this. I laid on my stomach at
19 home. It is so much harder for a big person like
20 myself to lay on my stomach and try to breathe versus
21 me laying on my side trying to breathe. So, wouldn't
22 it make more sense, if a bigger person, to put a chain
23 on the waist and fasten the handcuffs to that versus
24 you keeping them on their stomach, where they're going
25 to have complications from breathing?

1 BY MS. SOMMERS:

2 Q. So, in terms of a question -- so, I think one of
3 the grand jurors indicated that when he lays on his
4 stomach down -- I don't -- I'm not commenting on
5 whether or not he is in any way -- anyway, that when
6 he lays stomach down, he has more trouble breathing
7 than when he lies on the side. So, I'm sorry, what's
8 this part two? Is there -- is there a way to account
9 for that for his experience of it being harder to
10 breathe?

11 A. So, once the officer's in that circumstance,
12 we're dealing, say, with a larger person, feels that
13 the person is either being cooperative or becoming to
14 the point where they can put them on their side, I
15 think that's a good option. But, again, he's still
16 fighting and resisting, so you have to control him
17 until that is done. If he stops fighting and
18 resisting, you know, he still could be a danger to
19 himself, a danger to somebody else. So, that's why
20 they're still posting, where we train positioning.
21 Stomach up and stomach down, that's going to be, like,
22 a medical question that, if they hook people up to
23 monitors and you could see the amount of oxygen coming
24 in and O2 coming out, that's where you would see that
25 significant change and that data is available for

1 people but I don't have it in numbers. Does that
2 answer the question? There are other, like --
3 there's, like, hobbles and stuff but not every agency
4 has these options out there.

5 MS. SOMMERS: What is a hobble?

6 THE WITNESS: A hobble goes around their
7 feet so they can't get up and move. So, it kind of
8 locks their feet in place and then they're in
9 handcuffs and they move. But a lot of times in those,
10 they end up rolling onto their stomachs too. They're
11 just not being restrained, but they're in those
12 positions.

13 A JUROR: I'm not quite sure how to phrase
14 the question but just a concern that, if I heard you
15 right, that to gain control when a person's on their
16 stomach, that putting your knee and shin around their
17 waist was a part of the technique, when -- or, is it
18 permissible to move from that spot to between the
19 shoulder blades and on top of the lungs and heart and
20 vital organs area to gain control and what effect or
21 impact is that decision of having somebody handcuffed?
22 Is it harder to gain control with your knee around the
23 waist when somebody's handcuffed, does that get in the
24 way to keep that person pinned; and, if you do move to
25 the upper part of the body, is there a time

1 limitation, as far as being safe or possibly being
2 deadly; and, how would you monitor that, if possible,
3 between you and another person -- another police
4 officer as a way to do that to coordinate that, to
5 check on each other? It's a lot of comments. Sorry
6 about that.

7 MS. SOMMERS: No, please. It's fine. First
8 of all, are you asking is it ever appropriate to put,
9 like, a shin or knee across the upper back region,
10 across the lungs?

11 A JUROR: Between the shoulder blades.

12 THE WITNESS: So, that is called a three
13 point landing. They used to teach, like, you would
14 put a knee across, like, the upper shoulders and
15 across the middle of the back and try to get, like,
16 hammer locks to get their hands behind their back.
17 Again, we got away from putting any type of pressure
18 on the diaphragm area.

19 So, anywhere from the bottom of the
20 shoulders to the lower back, we try to avoid pressure
21 there at all times, because whether you're stomach up
22 or stomach down, you can still breathe in those
23 positions as long as there's not an excessive amount
24 of pressure on there. But, human beings cannot put
25 that much pressure on there. But, the head and the

1 hips, you are saying the beltline, we're talking about
2 the beltline, so we're staying off that entire
3 diaphragm situation as much as possible. We don't
4 want to put knees on backs, we don't want to put knees
5 on the vital organ parts. We leave those open as much
6 as possible. I control his head and he can control
7 his hips, but that's still allowing him to expand his
8 diaphragm with his -- only his own body weight.

9 So, what we talk about and, again, kind of,
10 going back to maybe, like, a heavier guy, like, if you
11 lay on your stomach, you can lay on your stomach and
12 you're going to be okay.

13 The -- the only amount of pressure we've
14 changed is your hip, which is skull structure, and
15 your head, which is, again, a strong skull structure.
16 We haven't put anything on that diaphragm situation to
17 have any -- any change or cause due to our restraints.
18 That's what our goal is when we're putting restraints
19 on people with the techniques. That's what we're
20 working on to teach and get across, is the skull is a
21 very, very hard structural format, can't be crushed by
22 a human. Hips, super strong, front up or front back.
23 You put as much pressure on there as possible and
24 you're not going to injure anybody.

25 We're also not restricting their breathing

1 putting pressure on their hips and putting pressure on
2 their head, okay? That is just saying their own body
3 weight is in those positions. It may be an
4 uncomfortable feeling because you're not used to
5 having pressure on your head and your hips, but it's
6 not affecting your neck or your diaphragm area which
7 is where you're breathing.

8 Does that answer your question.

9 MS. SOMMERS: I don't think -- I don't think
10 it did.

11 A JUROR: I think it answered some of it. I
12 guess, my concern is just that moving from the waist,
13 and it may be because the handcuffs are in the way, a
14 person couldn't get control, and prevent the person
15 from trying to turn or stand up, I don't know if it's
16 permissible or part of your training to move up
17 further on the back and put the knee there for a short
18 period of time, just to gain control again, between
19 the shoulder blades, but on top of the chest. I don't
20 know if that's totally avoidable, but sometimes may be
21 needed.

22 THE WITNESS: So, the handcuffs are going to
23 go around the lower back where they're cuffed. So,
24 our knee isn't going to be in their lower back
25 anyways. Our knee is below the hips so it's not

1 avoiding -- our target area of contact and control for
2 our shin and our knee. So, we're keeping that guy on
3 those hips if we need control. And then, on the head
4 -- we avoid that diaphragm, the upper chest area,
5 front or back as much as possible.

6 A JUROR: So, if someone is handcuffed, you
7 just go in below the handcuffs, the upper butt?

8 THE WITNESS: Yeah. Right on your hips,
9 yeah.

10 A JUROR: Below the hips?

11 THE WITNESS: Yeah.

12 A JUROR: I've got one. I would think that
13 you, in the picture there, holding down the head,
14 you've got to cover everything, you're trying to
15 maintain the guy on the ground, but I would assume you
16 have another job of monitoring his breathing and
17 looking at him and observing what's going on with the
18 person down on the ground. So, I assume that, if he
19 had any problems of, like, maybe starting to choke or
20 having to breathe or anything like that, then you
21 would become aware of that. Is that -- is that
22 something that the person holding down the head is
23 trained to monitor in this type of situation.

24 BY MS. SOMMERS:

25 Q. I'll break it down a bit. As between the two, is

1 there one that is primarily responsible for monitoring
2 the subject?

3 A. I would say that both people should be monitoring
4 the subject. This could be -- I might not even be
5 there. The guy that's knee on top, the knee on top
6 has control. He's got a lot going on. One, in this
7 one, there's no handcuffs, so that hand is empty,
8 doesn't have anything in it but still accessible to
9 reach, grab something else. We don't know if that guy
10 has weapons on him. If the hands are behind the back
11 in handcuffs, could he still access something if he
12 had clothes on. If they're naked, we're not worried
13 about that because we know they don't have those
14 weapons to get to.

15 So, yeah, monitoring a subject at all times
16 during the arrest phase is what we call awareness. We
17 talk about the awareness of the person we're fighting.
18 Not just the medical, the breathing, him being able to
19 access weapons, now depending on the officers and
20 situations, that guy's job and that guy's job is to be
21 aware of what is around us. Are there any
22 unfriendlies around us that could be jumping or
23 attacking us? If we have officers that are running
24 security we don't have to worry about that.

25 So, again, each incident is going to be

1 based on the circumstances right then. But, yeah,
2 these guys are super close to being able to give this
3 guy commands, to be monitoring his situation at all
4 times, and that's just overall awareness in these
5 incidents.

6 MS. SOMMERS: Anybody else? You're all set.
7 Thank you.

8 I was just going to say, everyone, we're
9 going to take -- how about ten minutes and then we'll
10 recommence here.

11 THE WITNESS: Thank you.

12 (Whereupon, the witness left the Grand Jury
13 room at a time of 1:36 p.m.)

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1 MS. SOMMERS: So, I was going to mention
2 this and then the witness mentioned it. You heard a
3 lot about Graham v. Connor. Mr. Smith and I, as I did
4 end up mentioning, will be the ones that will instruct
5 you about the law. So, when you hear witnesses talk
6 about things like that, just always be aware that the
7 law doesn't come from the witnesses it comes from us.

8 There's also that hearsay when he talked
9 about what his Chief did with other people and stuff.
10 It was only offered to show the progressions of
11 events. And, at one point he referred to the person
12 in Exhibit 60 as a quote, unquote, bad guy. I just --
13 I was to say -- I didn't want to interrupt him. There
14 are many reasons why individuals end up, you know, on
15 the ground being restrained by police and you're not
16 to, sort of, take anything from that.

17 Okay. Sorry, you're all set. Thank you.

18 (Whereupon, there was a short break off the
19 record.)

20 (Proceeding reconvened.)

21 MS. SOMMERS: So, everyone is back, right?

22 GRAND JURY POOL: (All jurors indicating a
23 positive response.)

24 MS. SOMMERS: So, there is one officer at
25 least who is choosing to waive immunity and come talk

1 to the Grand Jury.

2 So, a couple of things, number one, you're
3 not to draw any negative inferences against maybe
4 anybody else who doesn't choose to come in. So,
5 anybody against whom there's a possibility that a
6 Grand Jury will be asked to vote a charge on has the
7 right to come in but they don't have to. They can
8 exercise that right but they don't have to.

9 I'd also like to tell you that every witness
10 who comes in and waives immunity has the right to have
11 their lawyer with them and you're not to draw any
12 negative inferences that the fact that when the waiver
13 and the testimony occurs that officer will have his
14 attorney with him. It's a very formal process to
15 waive immunity. It's something that's taken out of
16 the criminal procedure law. So, you're not to draw
17 any inferences about that either. It's a process that
18 is required to be followed. The way that it works.

19 A waiver of immunity is, the individual will
20 come in, we'll go through that process with them.
21 They will then have the opportunity to talk to you
22 uninterrupted. The attorney doesn't speak, but the
23 witness speaks. And, they tell you what they'd like
24 to say to you, and then you as well as the Prosecutor,
25 so Mr. Smith and I can ask questions.

1 So, anybody have any questions about the
2 process.

3 GRAND JURY POOL: (All jurors indicating a
4 negative response.)

5 MS. SOMMERS: Okay. I think we're all set
6 then. All right.

7 A JUROR: Immunity from what?

8 MS. SOMMERS: So, immunity from prosecution.
9 So, every single person that comes in -- and it's been
10 a long time since we've discussed this. Every single
11 person that we have subpoenaed in front of you could
12 not be prosecuted for anything, right? Because in New
13 York State, the rules are that, if you come into a
14 Grand Jury and you give testimony, you cannot be
15 prosecuted. So, in order to -- and, we haven't --
16 and, I think we told you, kind of, on the first day,
17 we may end up submitting charges to you against
18 individuals, and so -- so, anybody that we have called
19 in can't be charged with anything because they
20 automatically get immunity. So, individuals that come
21 in and waive immunity, they can still talk in front of
22 the Grand Jury but they can still potentially be
23 charged. Does that make sense?

24 A JUROR: Mm-hmm.

25 MS. SOMMERS: Are you sure? Because

1 sometimes I can be confusing. Did you have anything
2 to add?

3 MR. SMITH: No. Thank you.

4 A JUROR: Somebody said -- could you go over
5 the law you were talking about.

6 MS. SOMMERS: The Criminal Procedural Law?

7 A JUROR: No the Graham, or whatever.

8 MS. SOMMERS: So -- okay. I only wanted to
9 mention it. It's not a law. It's a court case where
10 some principles have come from, and all I was trying
11 to say is, especially, police witnesses or, I think,
12 maybe Dr. [REDACTED] at one point, a lot of people sort of
13 are in that arena tend to talk about it. And, what I
14 was trying to say is, if we determine that reading
15 parts or any part of that is appropriate, we'll tell
16 you. We will -- at a time that -- that's appropriate,
17 so at the end, we'll instruct you on the law.

18 A JUROR: Okay. I wanted to be sure.

19 MR. SMITH: So, please, like anything else
20 related to the facts or the questions that come up,
21 don't do any independent research on that case.
22 Again, to the extent that it does apply, we will
23 instruct that to you at the appropriate time.

24 So, again, one of the officers who has
25 indicated that he would like to testify has agreed to

1 waive his immunity. So, at this time, we're going to
2 call in Officer [REDACTED] and his Attorney,
3 Mr. [REDACTED].
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1 (Whereupon, the witness and his Attorney,
2 ██████████ Esq., entered the Grand Jury room at a
3 time of 1:56 p.m.)
4

5 O F F I C E R ██████████ ██████████, after
6 being duly called and sworn, testified as follows:
7

8 EXAMINATION BY MR. SMITH

9 Q. We're going to start with the waiver of immunity,
10 Officer ██████████. I'm going to hand you what's been
11 marked as Grand Jury Exhibit Number 61 and ask if you
12 and your attorney had a chance to review that
13 document, sir?

14 A. Yes, it looks like the same one.

15 Q. Okay. I'm going to start but reading you each
16 paragraph, Officer ██████████, and if you could indicate
17 whether or not you understand at the conclusion of
18 each paragraph and then I'll have you execute it at
19 the end.

20 In the matter of the investigation into the
21 death of Daniel Prude, waiver of immunity: I, ██████████
22 ██████████, having had the opportunity to consult with
23 counsel, do hereby voluntarily consent to appear
24 before a duly constituted Grand Jury, County of
25 Monroe, State of New York, to be there examined under

1 oath and affirmation and to testify fully and
2 truthfully and all things pertinent to matters
3 properly before the Grand Jury in which I may be
4 concerned.

5 Do you understand that paragraph, Officer
6 [REDACTED]?

7 A. Yes.

8 Q. Paragraph 2: I hereby acknowledge my awareness
9 and understanding that the Grand Jury before which I
10 am appearing is investigating potential crimes
11 relating to the death of Daniel Prude, do you
12 understand?

13 A. Yes.

14 Q. I have a constitutional right to refuse to appear
15 and be sworn and to refuse to give any testimony
16 whatsoever that might tend to incriminate me, do you
17 understand?

18 A. Yes.

19 Q. My decision to appear, to be sworn and to give
20 testimony before this Grand Jury is conditioned upon
21 the execution of this waiver of immunity. Do you
22 understand?

23 A. Yes.

24 Q. If I were permitted to testify, without executing
25 this waiver, I would receive immunity pursuant to

1 Section 190.45 of the Criminal Procedure Law of the
2 State of New York. A witness who gives evidence in a
3 Grand Jury proceeding, who does not execute a waiver
4 of immunity, receives immunity, which means that
5 person cannot be convicted of any offense in any
6 jurisdiction of the State of New York or be subjected
7 to any penalty of forfeiture in any jurisdiction of
8 the State of New York, or -- I'm sorry, for or on
9 account of any transaction, matter or thing concerning
10 which he or she gives responsive testimony. Do you
11 understand that paragraph, Officer [REDACTED]?

12 A. Yes.

13 Q. Paragraph 3: I hereby waive my privilege against
14 self incrimination and any possible or prospective
15 immunity to which I might otherwise become entitled
16 pursuant to Section 190.40 of the Criminal Procedure
17 Law as a result of testifying and giving evidence in
18 this proceeding, specifically, I hereby waive all
19 immunity or privilege which I would otherwise have or
20 could obtain under any of the provisions of the
21 Constitution or under any law from or against
22 indictment, prosecution, punishment, penalty or
23 forfeiture for or on account of any transaction, act
24 or omission, or any crimes under the laws of the State
25 of New York concerning or in reference to which I may

1 testify or produce evidence, documentary or otherwise,
2 in the above described investigation and all other or
3 further specifications being hereby waived.

4 I further expressly waive any privilege,
5 which I would otherwise have under the Constitution or
6 under any law from testifying or producing evidence,
7 documentary or otherwise, in the above entitled
8 investigation.

9 And, I also waive any and all such
10 privileges against the use against me of any such
11 testimony or evidence in any inquiry, proceeding or
12 trial. The filing of this instrument in the Office of
13 the County Clerk is hereby waived by the undersigned.

14 Do you understand Paragraph 3 of the
15 contents therein, Officer [REDACTED]?

16 A. Yes, I do.

17 Q. Do you, sir, swear to waive your right to
18 immunity and to the contents of that affidavit?

19 A. Yes.

20 Q. You so swear?

21 A. I do.

22 Q. Will you sign that document, sir?

23 (Whereupon, signatures were affixed to the
24 document.)

25 MR. SMITH: I'm going to ask the foreperson

1 to sign that document.

2 JURY FOREPERSON: Do you solemnly swear or
3 affirm that you have read Grand Jury Exhibit Number
4 61, for identification, entitled waiver of immunity,
5 and that you understand it?

6 THE WITNESS: Yes.

7 JURY FOREPERSON: Do you further swear or
8 affirm that you have read and executed the waiver and
9 that the statements contained within it are true?

10 THE WITNESS: I do.

11 MR. SMITH: Thank you, [REDACTED] [REDACTED]. With that
12 in mind. I'll offer Exhibit 61 into evidence, the
13 waiver of immunity that was just reviewed and signed
14 by Officer [REDACTED] in Court, notarized by Ms. Sommers,
15 and also signed by the Foreperson, [REDACTED] [REDACTED].

16 (Whereupon, Grand Jury Exhibit Number 61 was
17 then received into evidence.)

18 MR. SMITH: Officer [REDACTED] -- Officer
19 [REDACTED], we can -- we'll start by letting you make a
20 statement about the incident for which you're here,
21 sir.

22 I would note for the record and let you know
23 that your body worn camera from both the pre-incident
24 and the incident on Jefferson Avenue are all in
25 evidence, sir, and to the extent that you would like

1 to refer, play those during your portion of the
2 testimony, you're free to do so, sir, just let us
3 know.

4 THE WITNESS: Okay.

5 So, I'll start off by a little background
6 about myself. My name is [REDACTED]. I grew up in
7 Monroe County and in high school, I enlisted in the
8 United States Marine Corps. As soon as I graduated
9 from high school, I actually went into the Marine
10 Corps and deployed to Iraq as a Team Leader and
11 Afghanistan as a Squad Leader, where I received the
12 Navy Marine Corps Commendation Medal V for Valor,
13 along with other commendations. I exited the military
14 as an E5, or a Sergeant, and came home to Rochester
15 and took the City of Rochester entrance exam for the
16 Police Department.

17 In 2012 I was hired by the Police
18 Department, and after field training, after going
19 through different field training officers, I was
20 assigned to the Genesee Section, which is -- it's now
21 known as the Genesee Section. It was the West
22 Division before. It runs from the Town of Gates,
23 roughly, over to the river or downtown and from Route
24 490 down to the Town of Brighton, roughly now.

25 During my time, I've become a Taser

1 Operator, a General Topics Instructor, instructing at
2 the Academy, and also a Field Training Officer, where
3 I actually train the recruits after they come out of
4 the Academy, sort of, on the job training and get them
5 ready to be out on their own. In 2015 I completed my
6 Bachelors Degree while on the job, and that year I
7 also made the selection process onto our City's SWAT
8 Team.

9 I've been involved in several critical
10 incidents, including homicides, officer involved
11 shootings, things like that. And, I've also received
12 commendations from the Department, Chief's letters of
13 recommendations, several accident police service
14 awards and also a life saving award from an incident
15 on Thurston Road, where there was a triple
16 shooting/double homicide and it was deemed that the
17 actions that I took saved a female's life, one of the
18 incident victims on that scene.

19 Like I said, I completed my degree in 2015,
20 entered the SWAT Team, where I'm currently still
21 employed. And, to get to the actual incident that
22 we're going to be talking about today, it was March
23 23rd, 2020, almost a year ago. I was dispatched to ■
24 Child Street for a male that was supposed to be
25 suicidal that fled from the house. They said he was

1 previously mental hygiene arrested earlier in the day
2 and that he was supposed to have a white tank top on
3 with pajama pants or long johns. I canvassed the area
4 with other officers. I did not locate the person in
5 question, and at one point, I pulled up next to
6 Officer [REDACTED], who was parked on the side of the
7 road. We were both facing the same way, car to car,
8 we call it. And, I was informed from him that the
9 male was supposed to be on PCP. So, based on my
10 previous knowledge, I immediately called an officer
11 bulletin, our officer safety bulletin, to all other
12 officers over the radio that the male was supposed to
13 be on a hallucinogenic, PCP.

14 Based on previous experience, I believe it
15 was November of 2018, I was involve in a call in our
16 Section. It's the last street, I believe it's
17 Brookdale Crescent. The last street if you go down
18 Genesee Street, southbound right before you hit
19 Elmwood Ave where Strong Hospital is, a male was
20 undressing in someone's front yard; and, once the
21 officer's actually arrived on scene, the male was
22 completely naked, seemed to lose touch with reality.
23 He was -- he was talking about things that didn't make
24 sense, and the officers handcuffed the gentleman. He
25 was -- at first, he was compliant and after being

1 handcuffed he became non-compliant. He started
2 thrashing away from the officers, pulling, throwing
3 his body to the ground, was kicking at the officers
4 and --

5 MR. [REDACTED]: You probably need to slow down
6 a bit for the stenographer.

7 THE WITNESS: I apologize.

8 So, the gentleman ended up getting put into
9 the back of a police car and when you're sitting in
10 the back of a police car, there's a metal cage in
11 front of you and a hard plastic seat. That individual
12 started trying to injure himself by hitting his head
13 on the cage and began doing actual, while handcuffed,
14 somersaults in the back of the police vehicle.

15 Once the ambulance arrived on scene and they
16 got the gurney out and they were ready for us, we came
17 up with the decision to use what we call a hobble.
18 It's a -- we wear it around our waists, a lot of
19 officers, right around our duty belt. The easiest way
20 to describe it, it looks just like a dog leash. But
21 you can singe it down. So we usually use it on
22 people's feet to get them to stop kicking at us or to
23 make it so they can't actually run.

24 So, at that point, we rolled the window down
25 for the officer to place the hobble on the gentleman's

1 feet, who was -- his feet were facing us and his head
2 was on the other side of the car. As soon as the
3 window was down, he immediately inverted his body,
4 easiest way to describe it he, like, dolphin dove out
5 of the car and once he got onto the ground, it took
6 approximately four to six officers to actually hold
7 him down. The best way to describe it is he was
8 extremely strong. We just could not hold him down
9 with all those officers.

10 Eventually, once we got control of him, we
11 came up with the decision to move him to the gurney.
12 Once we got that gentleman on the gurney, we couldn't
13 get him strapped down, because, like I said, he was so
14 strong. I actually had to climb onto my trunk, like,
15 bumper area to get high enough where the gurney was to
16 actually be able to put my knee, shin area, across his
17 waist to put enough pressure down so the ambulance
18 crew and the police officers, that were all trying to
19 hold him down, could actually strap him down and get
20 him to Strong Hospital for help.

21 So, while I'm sitting with Officer [REDACTED],
22 this is a previous experience that I've had, I'm
23 thinking that if an officer approaches this gentleman,
24 that if they find him, that they might be facing
25 someone that's having the same exact reactions to a

1 drug induced episode.

2 So, I'm talking with Mr. -- or, Officer
3 [REDACTED], we get another call at 76 West Main Street.
4 It's a cell phone store and we immediately respond
5 over to there. I pulled on the northside of the
6 street and checked the first door that I came to. I
7 believe it leads into an office. It was secured, and
8 I walked around to the front of the location. It is a
9 big plate glass window, and there was a large hole in
10 the window, clearly someone had broken the window and
11 it was about a man size hole, I would call it.

12 I checked the other doors, the main entrance
13 doors, the glass ones, they were both secured. So, we
14 didn't know if someone was still inside or if someone
15 had fled or if they made entry. At this point, I'm
16 thinking that it most likely is the same person that
17 left [REDACTED] Child Street, just based on the distance and
18 the amount of time, and the fact that it was a fairly
19 slow night and there wasn't many people out. So, it
20 just sort of made sense to me that it was probably the
21 same individual.

22 While I'm standing there, another call comes
23 in for Jefferson Ave and Main Street for a male that's
24 covered in blood that's wearing, like, blue pants, a
25 black male covered in blood, wearing blue pants. So,

1 now, I'm thinking he left Child Street, went to 767
2 West Main, broke the glass there, cut himself on the
3 glass and now was three blocks down, approximately
4 three blocks down at Jefferson Ave and West Main
5 Street.

6 So, I immediately respond to there, and I
7 talked to the tow truck driver that called it in. He
8 informed me that the male was running in between cars,
9 almost got struck by several cars, that he was, at one
10 point, I believe, actually trying to get into a
11 woman's car, he was screaming to call the police and
12 he was screaming that he had the Corona Virus and at
13 that point, he continued southbound down Jefferson
14 Avenue. I asked the tow truck driver how far down he
15 was and he said, he's sprinting, he's probably several
16 blocks. So, I radioed -- radioed that out so other
17 officers knew the path he was taking, and I proceeded
18 southbound down Jefferson Avenue to try to get -- make
19 contact with this gentleman who I later found out was
20 Mr. Prude.

21 As I'm driving down Jefferson Avenue, I
22 observe a black male, who's naked, run across the
23 street from the east side of the street and almost get
24 hit by a car, kind of, ran into almost the side of the
25 car and then right behind it, within a few feet of

1 getting struck by a car as I'm pulling up. And then,
2 run to the -- the west side of the street, where he
3 proceeded to pick up, what I later found out, was a
4 wooden chair, almost like a dining room chair, threw
5 that in the middle of the street and then began
6 attacking garbage totes, the ones that you put out,
7 the heavy garbage totes that the trucks actually pick
8 up. So he began tackling those and wrestling with
9 those garbage totes and at one point, was actually
10 gnawing, biting at the garbage cans.

11 So, at this point, based on my previous
12 dealings I told you about, I knew I didn't want to
13 approach this gentleman by myself. I didn't want to
14 get out, so I left a decent amount of space so I would
15 have a little bit of a reactionary gap, and I called
16 out that I was out with the male, knowing that Officer
17 [REDACTED] was probably about two blocks to my east and
18 that other officers had left the same scene with me
19 and they'd be there within a few seconds.

20 My plan, as I was getting out really quick,
21 I didn't have time to really process a plan. But, it
22 was to get out, give him orders; and, if he didn't
23 comply and he rushed me, my plan was to just jump back
24 in my car. I can see he has no weapons on his person,
25 at least. He's naked, his hands are -- there's no

1 weapons in his hands. So, I'm not worried about that
2 at the immediate time but my plan was to just get back
3 in the car and lock the door and let the other
4 officers come to the scene, they're one or two blocks
5 away. So, I don't want to approach him.

6 As I exited my car, I drew my taser. I
7 didn't think it would actually work if he did charge
8 at me. I figured it would have little to no effect,
9 but I was trying to use it as more of a deterrent,
10 hopefully to get his attention to see if he would
11 comply. And, as I exited and I gave him commands, he
12 seemed to understand what I was saying and he
13 immediately complied with all my orders. I told him
14 to get on the ground, he did, I told him to lay down,
15 and I made a decision, at that point, going against my
16 own judgment to approach him because I wanted to take
17 advantage of his compliance. I didn't want him to
18 change his mind. So, I approached him, knowing that
19 officers would be there within a few seconds. I kept
20 giving him commands, as I approached him, so that he
21 wouldn't really have time to think and I can make it
22 to him.

23 So, after I came up to Mr. Prude, I placed
24 handcuffs on him for a mental hygiene arrest and I
25 noticed that he had blood on his forearms and his

1 hands, which I assumed was from the window at 767 West
2 Main. So, I noticed another officer had walked up on
3 scene and I walked back to my patrol car where I
4 called out that we had one in custody so that other
5 officers would slow down. They're coming to my call.
6 I've already called that I'm out with the male, he's
7 supposed to be on PCP, so I don't want them to think
8 maybe I'm going to fight with him, and they're driving
9 at a high speed. So, I call out. We do this often to
10 get the other cars to slow it down so that no one gets
11 injured, no one gets in a car accident.

12 So, I called out that he was in custody.
13 With help of another officer, I sanitized my gloves
14 with hand sanitizer. I didn't have time to put on
15 latex or nitro gloves, which we most of the time
16 don't. I wear batting gloves. They're actual
17 baseball batting gloves. They have leather sticky
18 fronts, the palms and the back is, like, a spandex.
19 So, they're very porous, they let fluids in and out,
20 but they're good for dexterity to be able to feel when
21 you're touching things or driving or anything like
22 that. So, I sanitized my gloves, which is really the
23 only thing I can do at this point with the blood
24 that's on them that's soaking through, and I
25 immediately turn and call for an ambulance to our

1 location for the mental hygiene arrest to get the
2 ambulance started to get Mr. Prude to the hospital.

3 I know that they normally stage at West Main
4 and Broad Streets right at -- right across from our
5 911 dispatch center. I don't know if anyone's
6 familiar with the Nick Tahou's on Main Street. They
7 stage right in that parking lot usually. So I knew
8 that they would be there very quickly, within one to
9 three minutes, based on any type of traffic or speed
10 that -- that they're traveling.

11 So, we're waiting for the ambulance and I --
12 that was right around 3:17, just after about ten
13 seconds after 3:17, and I go back over to Mr. Prude.
14 At this point, he's, kind of, swaying back and forth,
15 he's telling us to look at his genitals, he's telling
16 us that he has feces on his hand. And, at one point,
17 he actually looks to reach behind himself and he tells
18 us he's trying to eat the feces off of his hand. He
19 has blood on his hands like I said, and he's -- he's
20 telling us he wants our mace, he wants our guns, he
21 tells us that he needs it, he's supposed to be
22 suicidal. So, I took that as he wanted to either harm
23 us or himself.

24 So, I continued to watch Mr. Prude; and, at
25 that point, he begins to spit just, kind of, off in an

1 unknown direction, not towards officers directly but
2 he's just spitting. And, at that point, in March of
3 this year, I don't know if you guys remember exactly
4 about the Corona Virus, how we felt, but it was almost
5 hysteria in the country. There was no toilet paper on
6 the shelves, people were panicking, people were going
7 out buying all sorts of products, the shelves were
8 empty. They were going to tell us that millions of
9 Americans were going to die from this and if you got
10 it, it was a death sentence. So, we were afraid of
11 the Corona Virus at that time. Also, we had no
12 personal protective equipment. It was on order, but
13 we weren't getting it. So, we had hand sanitizer,
14 which I'm sure you guys have seen the video several
15 times. That's what I had. So, I went back and used
16 it several times. So, we were worried about that.

17 Also, just to address a question. A lot of
18 people probably have heard me say I asked Mr. Prude if
19 he has HIV or AIDS in the video and that's for a very
20 simple reason. Several years ago, we were involved in
21 a call, it was shots fired into a house party in the
22 early morning, in the Genesee Section, somewhere off
23 of Child Street and one of the officers located the
24 car that was supposed to be shooting and tried to
25 initiate a traffic stop. The car fled, we got into a

1 car chase, and I spiked the car; and, while spiking
2 the car, I sliced my hand open, and then when the male
3 fled from the vehicle, while taking him into custody,
4 his blood got mixed with my blood. I don't know if it
5 was because of HIPPA, the HIPPA laws, or he didn't
6 consent when he went to the hospital, but over the
7 several course -- several months, I went and I got
8 blood taken. So, I had blood draws, doctor visit,
9 blood draw, doctor visit, blood draw, doctor visit,
10 over and over. And, they told me that it could be
11 several weeks to several months before it actually
12 shows up in my system. So, they couldn't tell me if I
13 possibly had HIV, AIDS, Hepatitis, anything like that;
14 and, to be honest with you, I was afraid I was going
15 to transmit anything to my wife. So, over those
16 several months, I was -- I was stressed out by that.
17 So, now I ask people on the road all the time, if I
18 get in touch with their blood or fluids, which happens
19 very often on our job. So, I ask that question of a
20 lot of people.

21 So, Mr. Prude is spitting at this point.
22 None of us want Corona Virus. We're trying to tell
23 him to stay on the ground and continue to tell him to
24 stay on the ground because it's the safest position
25 for him is to just stay where he's at. And, the

1 reason we're telling him that is for several reasons.
2 Until the ambulance gets there, we're in charge of Mr.
3 Prude. We're trying to make the situation safe and
4 that everyone is safe, including Mr. Prude.

5 So, for instance, if he gets up and he runs
6 off and gets hit by a car, that's very bad, and the
7 fact that he almost got hit several times, according
8 to the tow truck driver at Jefferson Ave and West Main
9 Street. And, the fact that when I pulled up, I saw
10 him -- personally, I saw him almost get hit by a car.
11 I don't want that to happen. If he runs off and we
12 have to chase him down and tackle him, he has limited
13 use of his hands. His hands are cuffed behind his
14 back. So, if we tackle him, he's going to fall and
15 we're going to get injured or he's going to get
16 injured. Or, if, God forbid, we don't catch him, now
17 it's -- I think, it was roughly 38 degrees, now he's
18 in an unknown place running off, he's supposed to be
19 suicidal, he might injure himself or someone else,
20 limited use of his hands and he's naked and now he's
21 running through the streets.

22 Also, once he tries to get up, we're going
23 to push him back down to the ground, we do not want
24 him to get up. We know the ambulance is going to be
25 there within a couple seconds to a couple minutes.

1 So, we want him to stay where he's at. We don't want
2 to use force on him. We never want to use force on
3 people. I don't. That just opens up the potential
4 for them to get injured or for us to get injured. So,
5 we're trying to keep Mr. Prude where he's at.

6 A lot of people ask why we didn't give him a
7 blanket? The simple answer to that is, we don't carry
8 blankets, we're not issued blankets. At no point did
9 Mr. Prude say he was cold, at no point did he ask for
10 a blanket or appear cold. He wasn't shivering, he
11 wasn't shaking, at no point did he appear cold.

12 Another thing, a lot of people ask, why
13 didn't we put him in a police car? And, as I told you
14 before, the last incident that I was involved in where
15 someone was experiencing an episode -- drug induced
16 episode, the officers put them in the car, and they
17 attempted to injure themselves and then we had to take
18 them out of the car.

19 We knew the ambulance was coming, we didn't
20 want to move him into a car and then have to
21 potentially use force to put him in the car or to take
22 him out. The safest place was for him to be on the
23 ground. I've seen it where officers have placed
24 someone in the car and then they try to extract them
25 out of the car and they refused and an officer has

1 been kicked in the face and chest area. An officer
2 goes around to the other side of the car, opens the
3 door and the person turns and did the same thing.

4 So, another mis-conception is that people
5 can't fight while handcuffed. And, I will tell you
6 all unequivocally that is not true. I've had people
7 that are handcuffed kick me in the groin, I've had
8 people spit in my face, I've had Officer [REDACTED], who I
9 believe you guys have probably already spoken with,
10 walk someone past me that was handcuffed and they
11 lunged forward and head butted me in my face. I've
12 had people, a gentleman, I had his hands behind his
13 back and I carry a knife behind my duty belt, and with
14 his hands behind his back, he pulled my knife out of
15 my duty belt and out of the sheath, which is in the
16 holder. I've had people try to grab at our gun belts
17 while they're handcuffed. There's been videos where
18 officers have had their guns pulled by people with
19 handcuffs, handcuffed behind their back or, actually,
20 pull and fire the -- the firearm. And, as recently as
21 this passed weekend, on Sunday, in Allegany County in
22 Pennsylvania, there was an incident where a man was
23 handcuffed and he actually -- they took a firearm from
24 him, but he had another one secreted and he actually
25 shot the officer three times, and then got away while

1 all handcuffed.

2 So, to say that someone can't fight, even if
3 they're naked while handcuffed, is absolutely not
4 true. So, we want to keep him where he's at so that
5 we don't have to fight with him. We know the
6 ambulance is going to be there within a few minutes.

7 So, based on the understanding of Corona
8 Virus and trying to keep him where he's at, he's
9 starting to spit and another officer asks me if I have
10 a spit sock, Officer [REDACTED]. He carries his in his
11 car, I carry mine in my pocket with a bunch of medical
12 supplies that I keep. So, I pulled the spit sock out
13 and placed it over Mr. Prude's head. Spit socks you
14 can very easily breathe through. They don't obstruct
15 the breathing at all. The only problem, I would say I
16 have with them, is that sometimes particles still get
17 out. I've had someone spit blood through the mask
18 into my face at the hospital at Strong. So, they --
19 they work. It's a deterrence hoping that they don't
20 spit on us or, when the medical crew gets there, they
21 won't get spit on.

22 So, I placed a spit sock on Officer -- or on
23 Mr. Prude. A few seconds later he starts becoming
24 more combative, becomes angry, turns towards Officer
25 [REDACTED], where he begins trying to spit through the

1 spit sock on Officer [REDACTED] and is spitting on him.
2 Officer [REDACTED] backs up and I continue to tell Mr.
3 Prude to stop spitting as I encircle behind him. I
4 continue to tell him to stop spitting, he refuses, he
5 becomes more agitated and, at one point, he tells
6 Officer [REDACTED] to give him his gun and he starts to
7 get up towards Officer [REDACTED].

8 Another mis-conception is that people can't
9 get up while handcuffed behind their back, and I'll
10 tell you that is not true either. I have people all
11 the time that I handcuff, get up, they'll walk over to
12 the car door, they'll actually open my car door to get
13 in themselves. I've seen people make cellphone calls
14 in the back of the car while handcuffed behind their
15 back. I've seen people light cigarettes while
16 handcuffed behind their back. I've also seen people
17 that I've put spit socks on before, while on a gurney,
18 reach up, pull off their masks, they do it all the
19 time.

20 So, I'm seeing Mr. Prude doing that. While
21 he's trying to get up, he kicks both feet off to the
22 side, which I see all the time, when people stand up
23 while handcuffed, usually I -- the easiest way to
24 explain it is an untrained person versus a trained
25 person. We're trained to stand up without using our

1 hands, especially on our SWAT Team. If we have a gun
2 in our hands, or we're covering our face or our hands
3 are behind our back, or anything like that, we're
4 trained specifically, to stand up and we teach people.

5 So, when I teach people, especially, at the
6 SWAT Selection School, when I see them try to do it
7 prior to me teaching them, they always put their feet
8 off to the side, they try to grip, they thrust their
9 body forward and turn to their knees to stand up.
10 And, this is usually what an untrained person would
11 do, or someone that I would try to get to stand up
12 that is handcuffed after an arrest, I usually will
13 tell them to bring their one foot to their butt, and
14 then turn to their side and get up to their knees.

15 Now, for Mr. Prude, I apologize -- going
16 back, a trained technique would be where you actually
17 place your foot out in front of you, bring your other
18 foot to your butt, you press your body forward, up on
19 your knees, turn your foot out so you don't injure
20 your knee, and then you stand. I can demonstrate that
21 if you guys would like to see that.

22 So, Mr. Prude has his feet off to the side
23 and he's kicking, and in the video you'll see me, kind
24 of, I'm behind him and I lean forward but then I back
25 up because at the time, he's already tried to get up

1 several times, we've told him to stay down. And, he's
2 kicking both feet, but his feet seem to slip on the
3 pavement, he couldn't get the traction. And then, I
4 realized that he gets his feet back and he's thrusting
5 his body forward. He's not trying to get up, he's in
6 the process of getting up, and after showing people
7 how to get up and watching people do this, I know for
8 a fact that Mr. Prude isn't trying to get up, he is in
9 the process of getting up towards Officer [REDACTED].

10 Now, at this point, you can see the
11 ambulance coming down Jefferson Avenue pretty far down
12 the street; and, at that point, I decided to use force
13 to restrain Mr. Prude who was trying to get up towards
14 Officer [REDACTED] like I said. I used head segmenting
15 where we actually push the gentleman down. I made
16 sure his head was turned to the side, airway was
17 unobstructed, face was unobstructed, and I guided his
18 head to the ground, and the easiest way to describe it
19 is, sort of, like, a plank or, like, a diamond
20 push-up. So, your entire body weight's not on him, a
21 lot of it's on your feet, but you're still using the
22 majority of your body weight to try to push them down.
23 It's pressure on your head, I've had it done to me
24 several times. I've done it to people several times.

25 I also performed a hypoglossal nerve

1 technique. The hypoglossal nerve runs along the
2 inside of your jawline right here, and what we do is
3 we put a finger or fingers in behind the jaw and pull
4 the actual nerve towards the bone, towards the jaw
5 bone, and that creates a pressure point, like, a
6 pinching and it creates a momentary pressure point,
7 like, a quick pain compliance technique. So, I also
8 do that while Officer [REDACTED] moves into his position
9 to control Mr. Prude. And, I've also had that done to
10 me several times for extended periods of time and I've
11 also used that on people several times.

12 So, at this point, I am down on Mr. Prude,
13 I'm monitoring for his compliance and I feel a lot of
14 resistive tension. You can see in the video that he's
15 kind of flexing his back, what you can't see is the
16 resistive tension that I feel through his neck and his
17 head.

18 I think every department in the country
19 should have body worn cameras. They're a great tool.
20 They're a great tool to tell the story, the problem is
21 they don't tell the entire story. For instance, if
22 I'm driving my patrol car, the body camera is right
23 here, it's showing my steering wheel, but it doesn't
24 show the person running across the street with a gun,
25 or the car fleeing the scene, or the people fighting.

1 Or, in Mr. Prude's case, almost get hit by a car,
2 throw stuff, objects into the street, and then attack
3 garbage totes. It doesn't show that. Or, if I'm
4 looking at someone, when you watch the video, the
5 officer was looking at him, but really I'm looking at
6 something completely different. I've re-watched body
7 worn camera videos several times where I missed
8 something, someone did something or I missed something
9 because I was looking off to the side or off in the
10 distance and it was almost right in front of me.

11 They also can't hear properly. If
12 something's happening in front of you, you might not
13 hear it, but the camera microphone might hear it, or
14 someone might say something off in the distance, or
15 gunshots or anything, you will hear that, but the
16 camera won't -- won't pick it up.

17 They also can't taste, can't smell and they
18 can't feel or think. So, while you're using force on
19 someone, or even just talking with someone, you're
20 constantly processing, going through a decision cycle.
21 You're observing, you're gaining information and
22 you're making decisions constantly second by second.
23 And, you're basing a lot of that on your previous
24 experiences, as I said before, the other gentleman
25 that we dealt with on hallucinogenics. I'm processing

1 all of this and all of my experiences that I've had on
2 the job while I'm trying to get Mr. Prude to calm
3 down.

4 So, it can -- it can record the body camera,
5 but it can't think, and the worst thing is, it can't
6 feel resistive tension. If I grab someone by their
7 arm and they tense their body up, you can't see that,
8 but you can feel that. They can't feel. So, Mr.
9 Prude -- the good thing about the head segmenting is,
10 it's very effective. The average person doesn't have
11 enough muscles in their neck to actually be able to
12 lift someone's body weight off.

13 And, that's why we went from our old
14 technique, the three point landing, where you kind of
15 put your knee across the back of their shoulders and
16 their neck area to the new technique because it's much
17 more effective to control someone. Like I said, the
18 average person can't lift another person's portion of
19 the body weight off, especially when their head's
20 tilted to the side. We -- if you compromise the head
21 to the side, if you control the head, you usually
22 control someone's body.

23 So, it doesn't feel the resistive tension
24 that Mr. Prude's giving off, which he was. About 30
25 seconds later, give or take, the ambulance is right

1 behind us. And, that's after another officer had
2 moved -- I believe it was Sergeant [REDACTED] had moved the
3 police car. So, when we started using the force, the
4 ambulance is on Jefferson Avenue. Within 30 seconds
5 it's right behind us. I'm using force on Mr. Prude
6 still -- still resisting, and after about, give or
7 take, 20 seconds, I'm wondering where -- where the
8 gurney is.

9 I want to get Mr. Prude off the ground and
10 get him in the ambulance and get him into the
11 hospital. And, I actually looked up and I realized
12 there's no gurney out and that the EMTs are just kind
13 of looking at us, and out of frustration, which I've
14 never had to do on the job, I don't believe said, can
15 you get the gurney out so we can get him off the
16 ground. I asked them to get the gurney out, and I was
17 told that they were working on it.

18 So, at that point, Mr. Prude is still
19 resisting. I believe at one point he starts trying
20 to -- he does start trying to, like, move his head to
21 bite at my fingers. He's actually trying to bite my
22 fingers. He began spitting. I'm using the
23 hypoglossal nerve technique to try to get him to stop
24 doing that. And then, shortly after that, he has less
25 resistive tension and he's not fighting as much.

1 So, at that point, I go to a one leg squat.
2 I actually squat down on my one leg and my other leg
3 is posted out, just for balance, and I have little to
4 no downward pressure on Mr. Prude's head at all. And
5 then, a few seconds, shortly after that, I feel no
6 resistive tension at all; and, at that point, I go to
7 both legs squat and my hands are just resting on his
8 head, and at one point just one hand. But, they're
9 stationed there in case he starts resisting again, but
10 there's no downward pressure at all.

11 I've had a lot of people faint compliance or
12 fake compliance. Some people get exhausted, people
13 stop fighting and then instantly start picking back up
14 and fighting again. So, although I'm not pushing down
15 on him, I'm still keeping my hands there in case he
16 starts to fight, until the ambulance crew comes up
17 with the idea and gets the gurney out so we can get
18 him up.

19 And, the EMT, the female EMT, I believe she
20 might be a Paramedic, she starts asking if he feels
21 hot. And, at the time I was -- I was extremely
22 confused why she would even ask that. Thought maybe
23 it was he had a fever because of the Corona Virus I
24 mentioned. I said, I don't know, he says he has the
25 Corona Virus. I said something about it's freezing

1 out here, he's been out -- I don't know anything. I
2 was confused why she was even asking me that at that
3 time.

4 So, I'm still holding Mr. Prude's head with
5 no downward pressure; and, like I said before, his
6 demeanor started to change because, when we first
7 stepped out, he was very talkative. He was all over
8 the place. He was telling us to look at his genitals,
9 he was looking at abandoned buildings, he was praying.
10 At one point he says scoop crazy. I don't know who
11 scoop is. A lot of people think that it's demeaning
12 what I said to him, but I mirrored or mimicked what he
13 said, and I do that all the time on the job where it's
14 my job to get them into the ambulance and get them to
15 the hospital. It's not my job to -- to dive into
16 their psyche or figure out what drugs they're on, or
17 anything like that. That's for the hospital.

18 So, what I try to do is calm them down. So,
19 when he says something, like, scoop crazy, I say,
20 yeah, scoop crazy, that's pretty much me saying, yeah,
21 you're right, man, just chill out. I'm trying to calm
22 him down. And, I say that a lot of times to people
23 that have drug induced, people that might be on crack,
24 drug induced episodes, or even people that are having
25 psyche issues.

1 So, Mr. Prude's not talking much, or at all
2 at this point, and it was just not the same mannerisms
3 that he was experiencing when we first stepped out.
4 So, at that point, I tried to check for his -- to see
5 if he was coherent and to check his responsiveness.
6 So, I said, hey, man, you good, and I believe I might
7 have even tapped his -- tapped his head. He didn't
8 respond; but, like I said, sometimes people fake pass
9 out on me, sometimes people will be exhausted. It's
10 not abnormal at all for someone to not respond to me
11 when I ask them something.

12 Shortly thereafter, and like I was telling
13 you about the body worn cameras before, it's down here
14 on my chest and my ears are up here. Watching the
15 video after the fact, I can actually hear Mr. Prude
16 vomit. I could not hear that at that time, but I did
17 see a pool -- the easiest way to explain it is, like,
18 you took a water bottle and just dumped it upsidedown
19 on the ground. It just pooled out from his face area,
20 and I let the people around me know that it looked
21 like he was puking and it looked like straight water.
22 And, at that point, I didn't want to roll him onto his
23 back because he's puking and I don't want him to -- to
24 drown in his own vomit, but his head is down and to
25 the side at this point, mouth unobstructed, nose

1 unobstructed and airway unobstructed. So, I figured
2 that gravity would pull that out and I left him in the
3 position he was in.

4 Shortly thereafter, he experienced a -- I
5 noticed a very abnormal breathing pattern. It was
6 very quick successions, like, quick rapid breaths. An
7 easy way to explain it would be almost like a
8 hyperventilation. It was very quick. And then I
9 started to become slightly concerned about his
10 breathing. And, I'm monitoring him the whole time,
11 monitoring for compliance, monitoring him, and his
12 breathing, I had an unobstructed view of his
13 respirations the whole time.

14 So, about five seconds after that, I was
15 monitoring, and I didn't notice any respirations at
16 all. And, I mis-spoke on the video, I said it doesn't
17 -- I told everyone it doesn't look like he has chest
18 compressions, which is obviously when you're doing
19 CPR. I mis-spoke, I meant respirations. It didn't
20 look like he was breathing. So, at that point, I was
21 extremely concerned and I had the officers roll him to
22 his side to check for a pulse and that's when the male
23 EMT actually pushed him onto his back and he began
24 life saving measures.

25 I got a handcuff key from Sergeant [REDACTED] and

1 gave it to Officer [REDACTED], and then we were unable to
2 handcuff him and then put him up onto the gurney, and
3 then while trying to adjust him further up onto the
4 gurney, my hands actually slipped off. And, at that
5 point, I got feces, blood and vomit sprayed all into
6 my eyes, nose and mouth. And then, I proceeded,
7 again, to pull him up onto the gurney, and then I went
8 to my patrol car to try to get the fluids I just told
9 you off of my face and my gloves that were soaked
10 through, knowing that he said he had Corona Virus,
11 obviously.

12 At that point, he was loaded into the
13 vehicle, into the ambulance, and they eventually took
14 him to Strong. As for my previous knowledge of all
15 this positional asphyxia, I do remember learning
16 something about it, I believe in the Academy in our
17 Defensive Tactics. It was so that we wouldn't, what
18 we would call, like, a dog pile in football, you
19 wouldn't put a bunch of people on one person because,
20 obviously, those people's weight multiply and then all
21 of a sudden you can't breathe, you can't actually
22 expand your chest cavity. So, if we had a bunch of
23 people on him, he wouldn't be able to do that. And,
24 that's one of the reasons why we transitioned to this
25 new Defensive Tactics Program. It is much more

1 effective. The moves that we use are much more
2 effective and it's a much lower level use of force to
3 actually gain control of someone. So, it doesn't
4 involve that -- in my instance, I was just working
5 with his head; and, like I said, at no point was his
6 airway obstructed or anything like that. So, using
7 that use of force wouldn't do that, but positional
8 asphyxia, like the hobble I told you about before, if
9 you had hobbled someone's feet so they weren't kicking
10 you or running away and you left them on their stomach
11 handcuffed for an extended period of time, they could
12 possibly asphyxiate and actually suffocate. Or, if
13 you put them in the back of your car hobbled or
14 handcuffed and they rolled onto their stomach or they
15 were on their stomach for an extended period of time,
16 they could suffocate. This was not an extended period
17 of time.

18 I believe my downward pressure on Mr.
19 Prude's head was right around one minute, minute and a
20 half. Like I said, I've had this done to me, I know
21 how it feels. I've had it done several times and I've
22 had it done for extended periods of time. We did not
23 think we were going to be using force on Mr. Prude for
24 an extended period of time at all. Like I said, the
25 ambulance is coming down Jefferson Avenue. We assumed

1 that the gurney is going to come out and we're going
2 to put him on the gurney and he's going to go to the
3 hospital, just like all of our other calls that we go
4 to every night.

5 So, that was my understanding of positional
6 asphyxia.

7 As for excited delirium, I don't ever
8 remember being trained in the Department about excited
9 delirium ever. I have seen videos. There might have
10 been something in, like, a taser presentation that our
11 taser wouldn't work on someone that was experiencing
12 excited delirium because they don't feel pain. Their
13 chemical makeup of their brain is changed based on the
14 drugs. But, as for excited delirium, I have never
15 been trained in that Department.

16 And, the only real understanding I have is
17 from policeone.com videos that I watch. We go over
18 them sometimes in roll call or I watch them on my own.
19 And, usually, what it would entail would be someone
20 usually naked, not complying, or not really being
21 aware of their surroundings. And, they usually will
22 charge the officer and over power the officer. They
23 will either severely injure the officer or the officer
24 will end up having to go to his firearm or her firearm
25 and actually discharging on the person, and a lot of

1 times killing them. So, that was my understanding of
2 those two things.

3 And, as for the level of force, a lot of
4 people say, well, why did you use so much force on Mr.
5 Prude and the fact of that is we have a use of force
6 continuum. It's four levels in New York State. So,
7 level one is usually verbal, two, and then three is,
8 like, striking, and then four is deadly physical or
9 something that would constitute as serious physical
10 injury or deadly physical force.

11 So, we've already exhausted level one.
12 We've already asked him to stay down plenty of times.
13 He's not coherent, he's not understanding or he's not
14 willing to comply. And, we keep telling him to stay
15 down, stay down, stay down, and then he goes to get
16 up. And at that point, we move to level two, which is
17 when I used the head segmenting, is a level two
18 technique. So, at the time, that was the lowest level
19 of force that I was allowed to use, or that I could
20 use and that's what we were trained by New York State
21 and the City of Rochester Police Department. That was
22 the lowest level of force available to me at the time.

23 And then, like I said, he went to Strong
24 Hospital. And, if you guys have questions I'd be more
25 than willing to answer and I apologize for talking too

1 fast.

2 MR. SMITH: Ladies and gentlemen, I'll do it
3 this way. I'll ask my questions for Officer [REDACTED]
4 and go through some of the video. And, at that time,
5 if there are questions, we'll have the grand jurors
6 ask.

7 **EXAMINATION BY MR. SMITH:**

8 Q. You ended with your training, I think, generally,
9 sir, sort of, references to training, so that's where
10 I'm going to pick up. You said you started with the
11 RPD in 2012?

12 A. Yes.

13 Q. So, at the time of this incident, it was
14 approximately eight years, sir?

15 A. Yes.

16 Q. And, you went to the Police Academy?

17 A. Yes.

18 Q. And, were there -- let me rephrase that, sir.
19 Were there courses on the Defensive Tactics at the
20 Academy.

21 A. Yes, there was.

22 Q. And, Officer [REDACTED], just sort of generally, what
23 is your understanding of why and when you would use
24 Defensive Tactics as a police officer in the City of
25 Rochester Police Department?

1 A. We use those whenever it's deemed necessary.
2 There's even parts of the Defensive Tactics that they
3 -- they joke about, that's called verbal judo, and
4 that's de-escalating it down, just trying to use
5 verbal. So, that's used every single day on the job
6 when you're trying to talk to someone or trying to,
7 kind of, change their decision making so you don't
8 have to use force. And, when you have to use force
9 it's usually to effect an arrest or it's just someone
10 that's just not complying with you and sometimes you
11 have to use fore.

12 Q. So, from what you said that sounds like there was
13 some component of training on de-escalation, verbal
14 de-escalation, at the Police Academy?

15 A. Yes. They tell you that that's the first thing
16 you try to do if it's available. Sometimes,
17 obviously, it's very kinetic and you can't get to
18 that.

19 Q. And, any training on dealing with people with
20 mental health issues, people under the influence, any
21 specific training on that is in the Academy?

22 A. During the Academy, we had a block on dealing
23 with people that had mental health issues. It was
24 pretty much the people -- nothing about drug induced
25 psychotic episodes, anything like that. But, it was

1 usually people that were suicidal and they were trying
2 to teach us to, sort of, back up and slow things down,
3 not to use force immediately. And, like I said, we
4 were trying to do that with Mr. Prude, which that
5 wasn't the case. This was a drug induced case from
6 PCP, from a hallucinogenic. We were trying to slow
7 things down and calm him down while the ambulance got
8 there.

9 Q. And, do you -- I think you said this, Officer
10 [REDACTED], but did you also receive in-service trainings
11 as a sworn member of the Rochester Police Department?

12 A. Yes.

13 Q. And, have you received in-service training on
14 Defensive Tactics?

15 A. It's extremely rare, but we were issued a
16 training, about a month or two prior to this actual
17 incident, where we were taught the head segmenting and
18 those, sort of, tactics.

19 Q. And, we'll get to that. Is there any in-service
20 training on verbal de-escalation?

21 A. I haven't had any, no. Not that I recall.

22 Q. And, is the point of the de-escalation training,
23 the little bit you have gotten, sir, to defuse the
24 situation?

25 A. Yes, if I person is -- if they're willing to

1 listen to the de-escalation, sometimes you try to ask
2 them questions to try to change up their -- their
3 processing. Like I said, as I used, as I was
4 approaching him, I continued to talk to him the whole
5 time as I was moving up. Once you stop talking, they
6 start thinking more, so I'm trying to keep talking to
7 him as I'm moving up. But, yes, usually you try to
8 ask questions. At one point, I tried to talk to him.
9 I asked him if he was from Chicago, to try to change
10 up the subject so he will just stay there and be calm
11 to get him talking.

12 Q. Is that part of establishing a rapport that you
13 want to do in an attempt to de-escalate, Officer
14 [REDACTED]?

15 A. At the time, no, it wasn't for that. I was just
16 trying to talk to him, but I wasn't really trying to
17 establish a rapport at the time.

18 Q. Is that a way to de-escalate?

19 A. I believe it would be, I've never been trained on
20 that, though.

21 Q. Showing empathy would be a way to de-escalate?

22 A. Yes.

23 Q. Being courteous and professional?

24 A. Yes.

25 Q. I guess, I want to ask you, sir, just questions

1 about custody and control. When is it -- when, in
2 your mind, Officer [REDACTED], is a subject under control?

3 A. That's very subjective. I guess, in my opinion,
4 a subject's under control when they're in booking,
5 once the Monroe County Sheriff's Deputies take them.
6 I've had people fight me in booking after we thought
7 they were under control. Just because they're
8 handcuffed does not mean they can't fight you. So,
9 control is subjective. It would be when they're out
10 of my custody in my opinion.

11 Q. Fair to say that control is not the same for each
12 officer?

13 A. Yeah.

14 Q. So, it's subjective based on the circumstances?

15 A. Yes.

16 Q. What about the handcuffed, Officer [REDACTED], if
17 someone is handcuffed, I think you just said that
18 doesn't necessarily mean they're under control, is
19 that fair to say?

20 A. No, not at all. Handcuffing doesn't stop you
21 from spitting. It can -- like I told you the one
22 incident that just happened on Sunday, that male was
23 handcuffed and he shot a police officer and then he
24 fled from the scene.

25 Q. In order to get somebody into custody and take

1 them to the booking area, like you just mentioned, is
2 it better that they're in handcuffs?

3 A. Yes, it most definitely helps.

4 Q. Is it easier to handle someone in handcuffs, is
5 that why?

6 A. Yes, usually.

7 Q. It doesn't mean they can't run away, right?

8 A. No.

9 Q. So, it's generally easier to control somebody
10 when they're handcuffed behind their back, is that
11 correct?

12 A. Yes, they have limited use of their hands, yes.

13 Q. What about somebody that's naked? Is there less
14 unknowns for somebody who is naked?

15 A. To be honest, it's usually harder to control
16 someone who is naked, especially, in his instance.
17 Like I said, it's about 38 degrees out, it's -- it's
18 like a sleet, it's not snowing, it's like a sleet, so,
19 he's wet, there's blood on him, he's very slippery.
20 It's extremely hard to grab someone when they're
21 slippery like that. If he had clothes on, it would be
22 easier to -- to pull him or maybe not even have to
23 take him down right down to the ground. But, the fact
24 that he was naked, it actually makes it harder to
25 control someone.

1 Q. Were you able to tell if he had weapons?

2 A. It appeared to me when I first pulled up, I could
3 see his hands and he complied very quickly, put his
4 hands up and I could see that he had nothing in his
5 hands. I didn't know, in the general area, if he had
6 dropped something, but on his person, no, it didn't
7 appear he had anything.

8 Q. And, I guess, before we get into the specific
9 updated training and then the incident, I have a
10 couple of questions about the prone restraint. Again,
11 I think you just mentioned your training and your
12 knowledge a little bit on positional asphyxia?

13 A. Yes.

14 Q. What is your understanding of the recovery
15 position, Officer [REDACTED], do you know what that is?

16 A. I've never been actually shown a recovery
17 position, but I assume that would be onto your side.

18 Q. So, that's not anything that you were
19 specifically trained on?

20 A. I've never been actually physically trained on
21 that, no.

22 Q. Did you have any training -- have you been
23 trained, as it relates to, sort of, the length of time
24 that somebody should remain in the prone restraint
25 position?

1 A. Not a specific time. Like I said, I guess it
2 would be a -- it's considered an extended period of
3 time. But, like I said, that's subjective.

4 Q. So, you weren't trained that, as soon as the
5 scene is safe, that the person should be moved away
6 from the prone position, that's not something that you
7 received?

8 A. It might be in a training bulletin that was sent
9 out that I read briefly. Maybe in 2015 I think one of
10 the bulletins came out, but even if the scene was
11 safe, that would be under -- my understanding that
12 it's safe and he needs to be under control for the
13 EMTs to be able to get there so that they're safe
14 dealing with him.

15 Q. Well then, I guess, whether or not you were
16 specifically trained on that, Officer [REDACTED], is that
17 sort of, a theory that you practice or not?

18 A. Can you rephrase that question?

19 Q. So, if you have someone in a prone position, do
20 you move them off prone once you've decided if the
21 scene was safe?

22 A. Well, usually, in the -- you're saying in a
23 situation similar to this one? Usually we would have
24 them get up and we would have them get onto the gurney
25 or we would actually physically -- like, in 2018, the

1 other gentleman, we had to physically pick him up,
2 three or four officers, walk over and place him down.
3 But, the scene, it's subjective. One officer might
4 think the scene is safe, another officer, like me,
5 who's actually feeling resistive tension does not
6 think it's safe at that point, especially for the EMTs
7 who don't have the same training as us to be able to
8 deal with that person.

9 Q. Okay. Fair enough. Going back to that 2018
10 case, were you on scene when that individual was
11 actually fighting with those officers?

12 A. Prior to getting put in the car?

13 Q. Yeah.

14 A. No.

15 Q. So, you found out about that after?

16 A. Yes. We all watched the body worn camera video
17 after together, while we were writing our use of
18 force.

19 Q. And, Officer [REDACTED], when he got out of the car,
20 were there lots of officers around?

21 A. Yes.

22 Q. Did that suspect get far?

23 A. No. Like I said, we were actually in the
24 process, we came up with a plan to actually reach in.
25 So, as he came out, he jumped right in -- into us, and

1 then to the ground.

2 Q. Did he get hurt, Officer [REDACTED]?

3 A. I don't know. I didn't follow the ambulance to
4 Strong. I don't know, I don't have the report.

5 Q. Do you know whether or not any of the officers
6 were hurt?

7 A. I don't believe anyone was.

8 Q. Okay. I think you said you did get an update on
9 an in-service training on Defensive Tactics a month or
10 so before this happened?

11 A. Yes, and several months prior to that, during our
12 SWAT training.

13 Q. So, you received it twice?

14 A. Yes.

15 Q. Once as SWAT?

16 A. Yes.

17 Q. Once as a patrol officer?

18 A. Yes.

19 Q. And, was this -- the in-service update that moved
20 more to a body control of a technique?

21 A. Yes. The easiest way I can describe it, it was
22 much more grappling or wrestling to avoid striking
23 individuals to gain control of them quicker and to use
24 a lower level of force on people than our old previous
25 program. The new program appears to be much more

- 1 effective in controlling people.
- 2 Q. That's the goal, is to get people under control?
- 3 A. Yes, and more quickly with less officers.
- 4 Q. Again, I think you said earlier, it's easier to
- 5 control somebody who is handcuffed?
- 6 A. Yes, usually, yes.
- 7 Q. Was segmenting on of the techniques that you were
- 8 taught at that in-service?
- 9 A. Yes.
- 10 Q. Did you watch videos on segmenting?
- 11 A. No.
- 12 Q. Did you practice segmenting on each other?
- 13 A. Yes.
- 14 Q. Did you do that both when you took the in-service
- 15 for SWAT and patrol officer?
- 16 A. Yes.
- 17 Q. Do you how many times you were segmented, Officer
- 18 [REDACTED]?
- 19 A. Anywhere between ten to thirty and forty times.
- 20 Probably closer to twenty.
- 21 Q. Did you segment other officers?
- 22 A. Yes.
- 23 Q. Were those drills, sort of, done for lack of
- 24 better word, sort of, real -- were the people
- 25 resisting?

1 A. Yes. Very kinetic, very aggressive, especially
2 in the SWAT round. You didn't know what was going to
3 happen. So, after we were taught the drills, or
4 taught the actual maneuvers, it wasn't a script, it
5 wasn't like, you do this and you do this, it was a
6 person, you're the bad guy and now we have to take you
7 into custody. So, we had to do it kinetically not
8 knowing how they were going to resist and we had to do
9 it that way, several times.

10 Q. What's the point of that, Officer [REDACTED]?

11 A. So that you know -- well, first of all, to give
12 you confidence in your skills and they're also testing
13 you to see that you're actually doing it correctly.
14 Also, like I said, it gives you confidence in your
15 skills, if you're actually seeing that what they
16 taught you is effective and it works and you don't
17 need six officers to jump on top of someone usually
18 and you can do it with two to three officers and gain
19 control of a person.

20 Q. When you did those practice rounds, sir,
21 in-service, were you ever handcuffed during that time,
22 Officer [REDACTED]?

23 A. No. Well, the people that were doing it to my
24 head, we were going through cuffing. So, I was
25 handcuffed while they were doing it until I was fully

1 handcuffed, then I believe, it was let up.

2 Q. During the practice, you were using the
3 segmenting and the handcuffing during the segmenting?

4 A. So, one officer was segmenting the head, the
5 other officer was gaining control, and then actually
6 cuffing one of the two officers.

7 Q. I guess my question then is, Officer [REDACTED], is
8 whether or not, during these practices, either with
9 SWAT or regular patrol in February, both of the times
10 you did this, whether or not before you started the
11 segmenting, where you were handcuffed or the people
12 you were segmenting were handcuffed to start?

13 A. No, we didn't train to start with someone
14 handcuffed.

15 Q. How did it feel?

16 A. It's like a pressure point. Just feels like
17 pressure being pushed on the side of your head. It's
18 not very painful, just feels like pressure.

19 Q. Were you segmenting on hard surfaces?

20 A. They were considered foam mats, and they're hard
21 foam mats in the one DT lab that we used. So, it was,
22 like -- almost like doing it on this carpet I would,
23 kind of, compare it to.

24 Q. Did you ever get segmented on asphalt?

25 A. No.

1 Q. Officer [REDACTED], I think you said that you took
2 the training twice because you were on the SWAT Team?

3 A. Yes.

4 Q. Is the SWAT Team the Special Weapons And Tactics
5 Team?

6 A. Yes.

7 Q. How do you get on the SWAT team?

8 A. It's actually a very long process. I can get
9 into that, if you'd like.

10 Q. I guess, generally, do you have to sign up?

11 A. Yes, you have to send an e-mail to the SWAT
12 Commander and then you have to do an internal
13 departmental correspondence, almost like a memo. You
14 have to write all of the prerequisites of what you
15 want to do to actually get on to the team. Then, you
16 have to go through several processes. It takes
17 almost, like, a six month process. Then you go
18 through an interview, an obstacle course and a
19 shooting portion. If you pass all of those, they
20 might take you to the school. And then, you have to
21 go through now, it's a month long school. I was the
22 first class to go through the month long school and
23 they make cuts throughout that whole school to make
24 selections.

25 Q. So, you have to be chosen?

1 A. Yes, it's a very hard process.

2 Q. Not everybody's chosen?

3 A. No.

4 Q. The SWAT Team is, kind of, an elite unit for
5 police departments, Officer [REDACTED]?

6 A. Yes.

7 Q. You're called to back up the other patrols?

8 A. We have different training and tactics that we
9 use that usually that average officer doesn't. So, in
10 a lot of cases, it's safer for us to go to a scene as
11 the SWAT Team than a regular patrol officer.

12 Q. Safe to say a violent scene, a high risk scene,
13 is that fair to say?

14 A. Yes.

15 Q. Is there a lot of verbal de-escalations on the
16 SWAT Team?

17 A. Yes, actually, there is.

18 Q. Tell us about that?

19 A. A lot of times we go to hostage situations, a
20 barricaded gunman or a barricaded person that might
21 have committed a crime or shot someone or shot someone
22 in the house, and now they won't come out of the
23 house. We don't want to rush in there because we
24 don't want to force them to fire at us or for us to
25 fire at them. So, we try to call them out as long as

1 we have the scene contained, and we use verbal
2 de-escalations or if someone comes out we try to
3 de-escalate with them to get them so we don't have to
4 use force. And, a lot of times we'll use less lethal
5 options to gain custody of them.

6 Q. So, both as a patrol officer and as a SWAT
7 Officer, you have experience de-escalating, is that
8 fair to say?

9 A. We de-escalate in a lot of situations, yes.

10 Q. Do you know what the Crisis Intervention Team is,
11 Officer [REDACTED], CIT?

12 A. Yes.

13 Q. Are you a member of CIT?

14 A. No. We have one member on our entire Platoon, I
15 believe.

16 Q. Do you know how you get on the CIT?

17 A. I think like similar to the SWAT Team. You have
18 to send out an IDC I believe. I'm not a 100 percent
19 sure. And then, you go to a special school where they
20 train for -- it was called something different prior,
21 a few years prior.

22 Q. You're not on the CIT?

23 A. No.

24 Q. Never signed up?

25 A. No.

1 Q. I'm going to ask a few questions, Officer [REDACTED],
2 about, sort of, the scene and what happened at the
3 scene, kind of, ask you a few questions. When you
4 arrived at the scene of the vicinity of 435 Jefferson,
5 had you had information that this individual may have
6 been suicidal?

7 A. Yes. The first call was that he was suicidal and
8 that he had actually been previously mental hygiene
9 arrested earlier in the day. I think it said three,
10 approximately three hours prior.

11 Q. So, you knew that?

12 A. Yes, that was broadcasted.

13 Q. You broadcasted PCP?

14 A. Yes.

15 Q. And, I think you said pretty quickly you hit the
16 alarm for the burglary -- the burglary alarm for the
17 cellphone store?

18 A. Yes.

19 Q. And, you make the connection that this is
20 possibly the same person from [REDACTED] Child?

21 A. Yes, sir.

22 Q. And then, you interact with the tow truck driver
23 in response to that call, is that fair to say?

24 A. Yes.

25 Q. And, that's when you hear about the Corona Virus?

1 A. Yes.

2 Q. Were you concerned just, generally, Officer
3 [REDACTED], about the Corona Virus, about the PCP mental
4 health call?

5 A. I was very concerned to be honest with you. I
6 thought when I was going to get out of my car if he
7 actually came at me, I was going to be fighting for my
8 life. Especially, on videos that I've seen from
9 policeone.com, usually, based on the drugs, they can
10 overpower a single person very easily.

11 Q. So, part of those expectations are from the prior
12 PCP call that you talked about?

13 A. Yes. I don't know for sure if he was on PCP, I
14 believe he was on acid and other hallucinogenics.

15 Q. When you first observed Mr. Prude, he's fully
16 nude?

17 A. Yes.

18 Q. And, it's cold and snowing out, is that correct?

19 A. Yes. Sleet, I believe it was around 38 degrees,
20 so just over freezing.

21 Q. Was he saying anything during that initial
22 observation period, Officer [REDACTED]?

23 A. I was in my car. I couldn't hear, I just
24 observed him, like I said, run from one side of the
25 street to the other and the things that I already told

- 1 you.
- 2 Q. Just what you saw, what you just described, is
- 3 that consistent with PCP use?
- 4 A. Yes, it would be.
- 5 Q. From prior experience?
- 6 A. Yes.
- 7 Q. And, when you get out of your car, Officer
- 8 [REDACTED], you have your taser in your hand?
- 9 A. Yes, I drew my taser.
- 10 Q. And, you drew it at Mr. Prude?
- 11 A. Yes, I pointed it at him.
- 12 Q. And, you told him to get on the ground?
- 13 A. Yes.
- 14 Q. And, you didn't expect that he would get right on
- 15 the ground, did you, Officer [REDACTED]?
- 16 A. No.
- 17 Q. He did, didn't he?
- 18 A. Yes, he was very compliant at first.
- 19 Q. Were you expecting him to run?
- 20 A. I honestly was expecting him to probably charge
- 21 at me, especially, based on his aggression. Like I
- 22 said, he was -- looked like he was physically chewing
- 23 on the garbage cans biting at them.
- 24 Q. Do you remember telling him to put his hands
- 25 behind his back?

- 1 A. Yes.
- 2 Q. Do you remember him saying, look, showing you
- 3 like he had no weapons?
- 4 A. I don't remember specifically, but he did do
- 5 something like this with his hands.
- 6 Q. He said yes, sir, do you remember that?
- 7 A. Yes.
- 8 Q. And do you remember him being in a prone position
- 9 with his hands behind his back?
- 10 A. Yes.
- 11 Q. Did that surprise you?
- 12 A. Yes.
- 13 Q. Did the speed of which he did that surprise you?
- 14 A. Yes. I did not expect him to be compliant at
- 15 all.
- 16 Q. Do you then remember approaching him, Officer
- 17 [REDACTED], and telling him, chill out, man, don't move,
- 18 things to that effect?
- 19 A. Yes.
- 20 Q. Do you then, again, remember him responding, yes,
- 21 sir?
- 22 A. Yes.
- 23 Q. Do you remember him not moving and allowing you
- 24 to handcuff him?
- 25 A. Yes.

1 Q. And a little bit later, do you remember, sort of,
2 saying, on your body camera, we can hear it, saying,
3 that was easy and fast?

4 A. Yes.

5 Q. You said that because that's not what you
6 expected, right?

7 A. No. I was -- I was very surprised that -- like I
8 said, I didn't even want to approach him by myself,
9 but I made the decision based on his compliance.

10 Q. I think around that time is when you noticed you
11 had blood on your hands and you went to go sanitize?

12 A. I knew it immediately, as soon as I walked up to
13 him, I saw it, but I still had to place handcuffs on
14 him; but, unfortunately, we don't get to decide
15 whether or not we touch people.

16 Q. That's right, Officer. There's times when you
17 have to arrest people when they're naked, is that fair
18 to say?

19 A. Yes.

20 Q. And, there's times you have to arrest people and
21 they're dirty, is that fair to say?

22 A. Yes.

23 Q. You don't get to not arrest somebody because
24 they're dirty, right?

25 A. No.

- 1 Q. You don't not arrest somebody because they're
2 naked and has feces on them, right?
- 3 A. Yes.
- 4 Q. Okay. You didn't want to touch him, did you
5 Officer [REDACTED]?
- 6 A. No. At no point did I want to touch Mr. Prude.
- 7 Q. Sort of, a little later that you noticed him
8 spitting?
- 9 A. Yes.
- 10 Q. Placed the spit hood on him?
- 11 A. Yes.
- 12 Q. He wasn't actively spitting when you put the spit
13 hood on him, was he, Officer [REDACTED]?
- 14 A. No, he had just finished spitting.
- 15 Q. Just finished?
- 16 A. Yes.
- 17 Q. Again, sort of, that whole time, had he been on
18 the ground?
- 19 A. Yes.
- 20 Q. Remained on the ground?
- 21 A. Yes.
- 22 Q. Untouched by officers?
- 23 A. Several times he tried to get up and we told him
24 to stay down and I believe one officer, I believe it
25 was Officer [REDACTED], actually, put his hand on his

1 shoulder and told him to stay down and actually placed
2 it on his shoulder.

3 Q. Shortly thereafter, I think, Officer [REDACTED]
4 approaches, you recall that?

5 A. Yes.

6 Q. And, I think he said I'm going to MHA him, do you
7 remember that?

8 A. Yes.

9 Q. And, at that point, Officer [REDACTED], do you recall
10 some of the officers on scene start to laugh a little
11 bit, make some jokes?

12 A. I vividly remember, kind of, being surprised,
13 like, of course, you are. I already called the
14 ambulance, of course, he's going to the hospital.

15 Q. Do you remember hearing the other officers, kind
16 of, giggling, laugh a little bit, Officer [REDACTED]?

17 A. I don't remember it at that exact time but I know
18 for certain I was.

19 Q. Were there other points when there were other
20 officers giggling and laughing about what was going
21 on?

22 A. Yes, while we were on the scene, yes.

23 Q. You, yourself, the other officers, you didn't
24 know -- at the time you were laughing on scene, you
25 didn't know how Mr. Prude's condition was going to

- 1 turn out, did you, Officer [REDACTED]?
- 2 A. No, we had no idea what was going to transpire.
- 3 Q. But you knew he was naked?
- 4 A. Yes.
- 5 Q. You knew he had been at Strong earlier in the
- 6 day?
- 7 A. Yes.
- 8 Q. You knew he was speaking irrationally?
- 9 A. Yes.
- 10 Q. You knew he was in crisis?
- 11 A. Yes.
- 12 Q. I'm wondering, Officer [REDACTED], if you think that,
- 13 perhaps, the officers on scene, including yourself had
- 14 shown a little more empathy, whether or not, maybe,
- 15 that would have changed Mr. Prude's behavior without
- 16 having to go hands on?
- 17 A. I don't know. I couldn't tell you now. At the
- 18 time -- we see these calls all the time. We see
- 19 horrible things every single day on the job, children
- 20 dying, people dying, people -- people hurting other
- 21 people; and, in this situation, the things that Mr.
- 22 Prude was saying were -- were so off the wall. At one
- 23 point he tells us to look at his genitals and then
- 24 immediately he tells us to look at an abandoned
- 25 building. And, that was just so -- so odd to us that

1 it caused us to laugh, and I'm a human being and
2 sometimes things that are that odd to me, I did
3 giggle, yes.

4 Q. There came a point shortly thereafter, Officer
5 [REDACTED], where you had to go hands on with Mr. Prude, I
6 think you just said?

7 A. Yes.

8 Q. And, at that point, I think you said it was
9 preceded by one of the things that Mr. Prude was
10 saying was that he was trying to take officers' guns?

11 A. He told Officer [REDACTED] to give him his gun as he
12 was trying to get up.

13 Q. Did you think that was a legitimate threat that
14 he was asking for the gun, Officer [REDACTED]?

15 A. I thought it was a legitimate action that he was
16 doing trying to get up. I didn't know for sure if he
17 could grab the gun. Like I said, I've seen videos
18 where people handcuffed behind their backs have
19 actually grabbed officers' guns. There's been cases
20 where they've drawn the guns, they've fired the guns.
21 I knew that when he was getting up, he was getting up
22 for a reason. He was showing aggressive intent
23 towards the officer and that he's going to try to do
24 something.

25 So, it's safe for him to be on the ground,

1 in my mind, than him getting up and us having to push
2 him to the ground, or him spitting or head butting,
3 kicking another officer and then us having to use more
4 force. Like I said, we were at a level two. I don't
5 want to move to level three and then end up having Mr.
6 Prude get injured by slamming him on the ground or
7 pulling him on the ground. So, yes, I did believe he
8 was getting up for a reason.

9 Q. I think this would probably be a good time to
10 play the video. So, I'm going to play at this point,
11 Officer [REDACTED], what's in evidence as Grand Jury
12 Exhibit Number 46, which is your body worn camera
13 video from the scene.

14 MS. SOMMERS: Can you see?

15 THE WITNESS: No, I can't.

16 MS. SOMMERS: Well, when it starts.

17 MR. [REDACTED]: Mr. Smith, do you mind if I
18 move where I can see?

19 MR. SMITH: Not at all.

20 THE WITNESS: Your screen is shut right
21 there. The shutter is on.

22 MR. SMITH: Thank you, Officer.

23 We're going to play the video. It's at 4
24 seconds right now. We're going to start the video and
25 I'll pause it to ask you questions, Officer [REDACTED],

1 and if you want to pause the video and have some
2 testimony of what you'd like to say, please let us
3 know.

4 (Whereupon, Grand Jury Exhibit Number 46,
5 the body worn camera video, was played for the witness
6 and the grand jurors.)

7 (Whereupon, the video was paused.)

8 BY MR. SMITH:

9 Q. So, just pausing quickly at the 42 second marker.
10 Officer [REDACTED], would you agree that you gave him
11 about three or four commands and he immediately
12 complied, get down, get on the ground, put your hands
13 behind your back and he said yes, sir, or complied?

14 A. Yes.

15 (Whereupon, the video continued to play for
16 the witness and the Grand Jury.)

17 (Whereupon, the video was paused.)

18 BY MR. SMITH:

19 Q. Just, again, if you'd note, you're getting the
20 handcuffs on, and we're at the 50 second marker, and
21 Mr. Prude is, sort of, prone on the ground, is that
22 correct?

23 A. Yes. And, if you'll notice right here, you can
24 actually see the blood on his wrist there and there
25 was more blood dripping down his forearm into his

1 hand.

2 Q. And, are those the batting style gloves that you
3 had on, Officer [REDACTED]?

4 A. Yes.

5 (Whereupon, the video continued to play for
6 the witness and the Grand Jury.)

7 (Whereupon, the video was paused.)

8 THE WITNESS: So, at that point, if you'll
9 noticed, my hand is up like this. I noticed I have
10 blood on my hand immediately. I don't even call out
11 on the radio with my hand. I actually use my cheek to
12 call out. I don't want to touch anything with his
13 blood on my hands.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 BY MR. SMITH:

18 Q. Again, Officer [REDACTED], that was easy and fast
19 because you didn't expect him to comply so quickly, is
20 that correct?

21 A. Yes.

22 (Whereupon, the video continued to play for
23 the witness and the Grand Jury.)

24 (Whereupon, the video was paused.)

25 THE WITNESS: That's me talking to my

1 Sergeant informing him of what happened.

2 (Whereupon, the video continued to play for
3 the witness and the Grand Jury.)

4 (Whereupon, the video was paused.)

5 BY MR. SMITH:

6 Q. Officer [REDACTED], just pausing at the 2:24 marker
7 in the video. Did you hear Mr. Prude just say give me
8 your gun?

9 A. Yes, he says it several times, and that was also
10 the chair that he threw into the street that I had put
11 back over on the sidewalk.

12 Q. And, at this point in the video, when he's
13 saying, give me your guns or I'm going to get your
14 guns, what position is he in on the ground?

15 A. He's still in the prone position on the side, and
16 I don't feel that threatened at that point while he's
17 saying that. Also, he had already begun spitting at
18 that point, I believe, and Officer -- I'm not sure,
19 but I believe it was Officer [REDACTED] that was asking
20 about the spit sock at that point.

21 Q. And, he's handcuffed at that point?

22 A. Yes.

23 Q. He's not trying to get up at this point?

24 A. No.

25 (Whereupon, the video continued to play for

1 the witness and the Grand Jury.)

2 (Whereupon, the video was paused.)

3 BY MR. SMITH:

4 Q. He's saying a lot of things, right, Officer
5 [REDACTED]?

6 A. Yes, he's incoherent.

7 Q. You don't know if he necessarily intends anything
8 that he's saying, do you?

9 A. I'm going to take him at his word. He's under
10 the influence of a hallucinogenic and he's going to
11 act on what he's doing, I'm assuming. So, everything
12 he says, I'm going to take him at his word.

13 Q. Do you think he was going to hop on a flight?

14 A. I don't remember hearing that; but, like I said,
15 I'm just taking everything he says at his word.

16 (Whereupon, the video continued to play for
17 the witness and the Grand Jury.)

18 (Whereupon, the video was paused.)

19 BY MR. SMITH:

20 Q. Again, I apologize but we're pausing again at the
21 2:43 mark. Officer [REDACTED], as you just heard Mr.
22 Prude again, several times say, give me your guns?

23 A. Yes.

24 Q. Does it appear that he's still laying on the
25 ground?

1 A. He's on his back at that point.

2 Q. Does it look like he's trying to get up?

3 A. No. He's just, sort of, kicking his feet,
4 telling us to get away from him.

5 (Whereupon, the video continued to play for
6 the witness and the Grand Jury.)

7 (Whereupon, the video was paused.)

8 BY MR. SMITH:

9 Q. Officer [REDACTED], pausing at 3:19. I've got one in
10 my pocket. Is that referenced to the spit mask?

11 A. Yeah. He is spitting and Officer [REDACTED] backs up
12 and is going to go to his vehicle to get the spit sock
13 but he said, you said you had one; and, like I said, I
14 carry one in my pocket with a bunch of other medical
15 supplies.

16 Q. Did the spit sit on Mr. Prude -- the spit sock,
17 sorry, on Mr. Prude, that came from your pocket?

18 A. Yes.

19 Q. We'll see you, kind of, place that on his head in
20 just a second?

21 A. Yes, sir.

22 Q. And, Officer [REDACTED], when you placed that on his
23 head, is there room for officers to back up if you
24 wanted to -- to avoid the spit?

25 A. You mean in -- while he's standing -- or, sitting

1 in the --

2 Q. Middle of the street, handcuffed and naked, yeah?

3 A. There would be room for us to back up; but, like
4 I said, we're trying to keep him in his position. We
5 don't want to back up and allow him to get up and
6 allow him to run off and decide -- we need to control
7 the scene for our safety, his safety and the ambulance
8 crew. So, if we back up too far it gives him room to
9 get up and then we'd have to push him back down to the
10 ground. So, we can't back up too far, no.

11 Q. And, in the three minutes that the video has been
12 running, roughly, has he tried to get up yet?

13 A. No. Not that I remember, no.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 BY MR. SMITH:

18 Q. Is that what you were talking about, Officer
19 [REDACTED], when you were saying scoop -- scoop crazy back
20 to Mr. Prude?

21 A. Yes. And then, immediately he tells us to look
22 at his genitals again, which completely was the
23 opposite of what he was just talking about, which
24 caused me to laugh at that point.

25 Q. Before you were laughing, that was your attempt

1 to reassure him, scoop crazy, is that what you were
2 saying?

3 A. Yes. I use that all the time and that would be
4 my idea of a de-escalation to try to get them to calm
5 down.

6 (Whereupon, the video continued to play for
7 the witness and the Grand Jury.)

8 (Whereupon, the video was paused.)

9 BY MR. SMITH:

10 Q. So, pausing at the 4:19 mark. Did we just see
11 Mr. Prude move to his -- to his buttocks?

12 A. He actually turns. I don't know who was standing
13 next to me, I believe it was Officer [REDACTED]. But, I
14 hear him start -- his voice starts inflecting, he's
15 getting more agitated; and, at that point, I try to
16 ask him if he's from Chicago to start some type of
17 dialog to get him to calm down, knowing that the
18 ambulance is going to be here soon. But, yes, he
19 turns, starts talking about the gun and shifts up, his
20 weight up, onto his butt.

21 Q. And, is this the first time in the roughly four
22 minutes, I think we're at 4:19, Officer [REDACTED], that
23 Mr. Prude has gotten to his buttocks in the seated
24 position?

25 A. I believe so. At one point, just prior to this,

1 I believe he starts to look as though he's going to
2 try to get up also. I hear other officers tell him to
3 stay down.

4 Q. And, I think you talked about this. Is standing
5 up from a seated position an easy thing to do?

6 A. No.

7 Q. Sorry, you're not trained?

8 A. Yes. We -- as humans, we always use our hands to
9 get up. Even from this seat, I usually won't just
10 stand up, I'll actually push off of this seat. We do
11 that as humans. But, when you don't have use of your
12 hands, a lot of people that are untrained or
13 unathletic can't get up from a seated position without
14 the use of their hands, so they'll kick their feet off
15 to their side in order to allow them to sit up. So,
16 that allows them to actually get up, and we train
17 differently to allow us to get up. But, someone
18 that's not trained has to use a different technique to
19 actually get up, which Mr. Prude was doing with his
20 feet off to the side.

21 Q. Did you think, Officer [REDACTED], sort of, in his
22 condition that you observed, whether or not trained or
23 untrained, handcuffed and naked behind his back, that
24 he'd be able to get to that seated position up and out
25 quickly?

1 A. I did not know at the time. I've seen several
2 people, even people that are heavier than him or that
3 are older than him be able to get right up while
4 handcuffed on scene even after use of force. But, I
5 didn't know if he could or not until, like I told you,
6 I saw him actually getting up. And then, I -- I
7 witnessed him actually getting up from his position in
8 the same position that I've seen other people that are
9 untrained get up.

10 Q. And, your fear of him letting him get up, Officer
11 [REDACTED], was what?

12 A. Several reasons. Like I said, I didn't want him
13 to run off into traffic and get hit. I didn't want
14 him to run off and us have to go tackle him or him to
15 get away. He can still run. I've gotten in foot
16 chases with people that are handcuffed. I didn't want
17 him to get free from our area of control that we were
18 trying to keep him in so that the ambulance could get
19 there and that way we wouldn't have to use force on
20 him.

21 Once he gets up, the likelihood of us having
22 to walk over and grab him or re-direct him or him
23 fight us or anything like that is exponentially
24 higher. So, I'm -- we want to keep him right where
25 he's at knowing that the ambulance is going to be

1 there very shortly.

2 Q. And, were you more concerned in this situation
3 because of the blood and the feces?

4 A. I was concerned about -- like I said, my previous
5 experience of getting blood on myself. It happens all
6 of the time. Getting blood on our uniforms, getting
7 blood on our hands, blood on our face, people spitting
8 blood in our face. Also, the fact that the Corona
9 Virus epidemic was just -- the pandemic was just
10 happening, so I don't know if that's transmitted
11 through blood. I don't know anything about the -- the
12 pandemic at that point, so I'm just trying to keep him
13 where he's at. Keep us safe, keep him safe and make
14 sure the ambulance crew is safe when they get there.

15 Q. At this point in the pandemic, were you wearing
16 personal protective equipment, PPE or face masks?

17 A. I believe it was ordered but we didn't have it.
18 That -- that sanitizer bottle, they issued us those.
19 And, luckily our police union, they got us bigger
20 bottles from distilleries that usually distill
21 alcohol, they -- they gave us bottles of hand
22 sanitizer. So, that's all we had at that point.

23 Q. So, at this point, on March 23rd, the Department
24 hadn't given you face masks yet?

25 A. Not that I remember, no.

1 (Whereupon, the video continued to play for
2 the witness and the Grand Jury.)

3 (Whereupon, the video was paused.)

4 BY MR. SMITH:

5 Q. Pausing at the 4:42. Officer [REDACTED], give or
6 take that Mr. Prude has been on his buttocks in the
7 seated position for 30 seconds now, give or take?

8 A. Give or take. I don't know the exact time.

9 Q. And, as it stands right now, we're at 4:42 on
10 this video, has he tried to get up or attempted to get
11 up yet?

12 A. I don't remember just looking at it just now, but
13 I don't believe so.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 A. So, at this point, like I said before, you see
18 Mr. Prude thrust his body forward, he's trying to gain
19 momentum. Actually, if you try to get out of your
20 seats right now, most likely, you will all lean
21 forward as you're trying to get out of your seats, and
22 that's what he's doing. He's trying to thrust his
23 body forward to use his momentum to get up, and you --
24 you see his feet at first, they slip, and then he
25 brings them back to gain more traction. And, at that

1 point, I realized that he actually was getting up.

2 Q. And, Officer [REDACTED], at this point, prior to what
3 we're about to see in this moment on the video, Mr.
4 Prude had been compliant, hadn't he?

5 A. I would say he was semi-compliant. He wasn't
6 what we would call a no person, where he's completely
7 against everything we're saying, he was
8 semi-compliant. But, we had to tell him several times
9 to sit down and I'm assuming this is strictly based
10 upon his drug use, the episode he was experiencing.
11 He wasn't responding to all of our commands. I told
12 him to stop spitting several times and he continued to
13 spit. We told him to calm down and he's telling us he
14 wants to take our firearms and then we tell him to
15 stay down and he still tries to get up. So, I would
16 say no, he's not complying with my verbal commands at
17 all.

18 Q. Initially, you told him to get down and he did?

19 A. He was very compliant in the beginning, yes.

20 Q. So, there was some level of compliance with Mr.
21 Prude?

22 A. Yes. And, it appeared that he actually was
23 understanding what I was saying in the beginning.

24 Q. Sort of an unexpected compliance, I believe were
25 your own words on your body cam?

1 A. Yes.

2 Q. Officer [REDACTED], don't you think he would have
3 been receptive to -- to a little more verbal
4 de-escalation? Do you think he would have been
5 receptive to that based on his previous compliance
6 that he had showed you on the scene?

7 A. You would think that; but, like I said, we told
8 him several times if you watch in the video, officers
9 continually lean forward thinking that they're going
10 to have to go hands on with Mr. Prude. We told him to
11 stay on the ground several times and he's not
12 complying. He continues to try to get up until the
13 point where you see he's actually in the process of
14 getting up. And, at that point, I decided to use --
15 knowing that the ambulance is on the street and that
16 we wouldn't be using force for an extended period of
17 time, I decided to go hands on with him at that point
18 to keep him on the ground, ultimately, to keep us safe
19 and him safe without knowing what was going to
20 transpire.

21 Q. Whether or not he had tried to get up before,
22 this was the first time he was getting up?

23 A. Yes. Well, he might have been actually getting
24 up before but he, at some point listened to the
25 commands to stay down and maybe sat back, but this was

1 the time that he wasn't listening and he was actually
2 getting up.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 A. So, at that point, another officer came up on the
7 side of me to help out and I told him to back up. I
8 said I'm already in it. I didn't want -- like I said,
9 a bunch of officers to pile on and knowing that
10 Officer [REDACTED] is right there, you can do with this
11 new program that they taught us, which is very
12 effective at keeping us safe and the people we're
13 using it on safe, you don't need -- in some cases you
14 do, but you usually don't need four or five officers,
15 you can do it with two or three officers to be able to
16 gain compliance of someone. So, at that point, I tell
17 the other officer to back up so we're using less force
18 and I tell him I'm already in. I'm already using
19 force.

20 Q. Is Mr. Prude's head turned at this point?

21 A. It's actually turned to the right side of the
22 screen, so to his left shoulder; and, like I said,
23 it's hard to see because of the spit sock, but his ear
24 is pretty much right where it starts to go from the
25 darker color into the bright white of the -- his ear

1 is right in this area right here and his face is
2 facing that way.

3 Q. Indicating to the middle of the screen where the
4 white spit sock is?

5 A. Yes.

6 (Whereupon, the video continued to play for
7 the witness and the Grand Jury.)

8 (Whereupon, the video was paused.)

9 A. So, at this point, you hear a -- I'm sorry, did
10 you have a question?

11 Q. Go ahead.

12 A. So, at this point, you hear -- well, I guess you
13 could say, almost like a gargling sound or a gurgling
14 sound, and that's usually from the hypoglossal nerve
15 technique that I was talking about. When you pull
16 that, it's a pressure point, it's a pain compliance
17 and it causes someone to actually, like, tense up
18 their neck, their neck muscles. And, it can cause
19 them to make that noise, and if they're talking it
20 sounds, like, grabbley, like, a gurgling sound. And,
21 that's usually what causes that, is them actually,
22 kind of, wincing from the pressure of the nerve being
23 pushed.

24 Q. So, is that the speech pattern that we're
25 hearing; are you indicating that's from the

1 hypoglossal technique being administered?

2 A. Yes. It sounds -- creates tension. Your muscles
3 actually tense up.

4 Q. So, his -- right here, that's not his face being
5 smooshed into the concrete that we're hearing?

6 A. No. I believe this is right after he was trying
7 to bite my fingers and then he also spits and you'll
8 hear me do it again. I think you'll probably be able
9 to hear him make the same noise.

10 Q. What's the purpose of the hypoglossal technique
11 at this point right here, Officer [REDACTED]?

12 A. So, that's a pain compliance. Like I said, I
13 believe at this point is when he actually -- his mouth
14 was opening, like, he was trying to bite, and my
15 fingers, which is -- his ear is right here and my hand
16 is, kind of, across his face right here. So, only a
17 few inches from his -- his mouth area. So, it appears
18 to me, he was trying to bite my fingers, my pinky and
19 ring finger on my right hand.

20 Q. So, you administered that technique to try to get
21 him to stop?

22 A. Yes.

23 (Whereupon, the video continued to play for
24 the witness and the Grand Jury.)

25 (Whereupon, the video was paused.)

1 A. That's me telling him to stop, obviously. I
2 apologize.

3 Q. That was stopped at 6:15. We'll keep playing.

4 (Whereupon, the video continued to play for
5 the witness and the Grand Jury.)

6 (Whereupon, the video was paused.)

7 A. And, that, right there, after he states, scoot
8 crazy, that's what I was talking about where I mimic
9 him, whatever you say, man, just calm down, and then
10 he spits right next to my hand; and, at that point, I
11 do another quick hypoglossal nerve technique, which is
12 just a pain compliance to get him to stop.

13 Q. Officer [REDACTED], is there a concern with him
14 spitting when he's wearing a spit hood?

15 A. It's coming through the mask. Like I said, I've
16 even had people in Strong Hospital spit blood into my
17 face through the mask. It stops some of it, but what
18 it causes it to do is, kind of, spray out instead of
19 being one solid -- one solid piece off spit -- not
20 solid, liquid. But, one area that actually sprays out
21 is like a spray bottle when it hits the mask because
22 it's mesh. So, yes, I am still concerned with the
23 Corona Virus and I don't want him spitting on me. It
24 seemed effective when he was trying to bite at my
25 fingers and I told him to stop when he did it. So, I

1 once again, tried to apply it to get him to stop.

2 (Whereupon, the video continued to play for
3 the witness and the Grand Jury.)

4 (Whereupon, the video was paused.)

5 A. So, at that point, you can't see it. You might
6 be able to see in one of the other officers' videos,
7 but I actually look at the EMTs, whose back of the
8 ambulance is right next to me and I asked them, out of
9 frustration, can you get the -- can you get the gurney
10 out. I didn't understand why they didn't get it out
11 and immediately pull it out, which is what they
12 normally do. And, in my past experiences that I told
13 you, they got the gurney right out, we came up with a
14 plan, we got them into the ambulance with help of the
15 EMTs because we're controlling the scene, and then
16 when they get there, we want them to tell us what they
17 want us to do to get him into the ambulance and get
18 him to the hospital.

19 So, out of frustration I asked them, can you
20 get the gurney out, and I believe that was roughly
21 twenty seconds after they were right behind us on
22 scene. I was just wondering what was taking so long.

23 Q. So, is that what you're waiting for right now?

24 A. I'm waiting, yes. He's still resisting. You can
25 actually see in his back, he's flexing, he's actually

1 trying to pull his head up, but we're trying to get the
2 gurney out so we can find a way to talk, to get him up
3 off the ground and get him onto the gurney.

4 Q. The ambulance is on scene right here?

5 A. Yes, they are. They've been on scene for, I
6 think, probably close to twenty seconds or maybe more.

7 Q. Is there a process involved in getting the gurney
8 out of the ambulance, Officer [REDACTED]?

9 A. The new Striker gurneys that they have on most of
10 the AMR ambulances that they have are electronic now.
11 So, they pull them out and they push a button and it
12 -- the electric actually pushed the bottom of the
13 gurney down, instead of the old ones you pull out and
14 it just drops down. So, it takes a couple of seconds.
15 I'm not an EMT, but I've seen them do it a million
16 times. It's very quick.

17 (Whereupon, the video continued to play for
18 the witness and the Grand Jury.)

19 (Whereupon, the video was paused.)

20 A. So, you can actually hear the gurney, which I
21 didn't hear at the time. That's the noise of the
22 gurney coming out. Like I said, I didn't hear it at
23 the time that it was actually out. I didn't even know
24 that the gurney was out the entire time because I was
25 focusing on Mr. Prude and his resistive tension and

1 everything as I spoke to you about before.

2 Q. And, right at this point in the video at the 6:11
3 marker, at this point, Officer [REDACTED], is he still
4 resisting?

5 A. Yes.

6 Q. You're still feeling Mr. Prude move?

7 A. Yes. Not just move but I can actually feel the
8 resistive tension pushing on my hands. He's using his
9 neck muscles. It's hard to see at this point in his
10 back, but he's still actually lifting his head up.

11 Q. Would you agree, Officer [REDACTED], that at this
12 point, 6:11 in the video, Mr. Prude is less verbal
13 than before you segmented?

14 A. Yes, but I did notice it at this point.

15 Q. Okay.

16 A. He's still saying -- he just said, give me your
17 gun. He -- pardon my language, but he said let me eat
18 some shit, I believe. He said another phrase, but he
19 continually said these phrases throughout our time
20 with him, but he is verbal at this time. It appears
21 he's using the same -- the same verbiage that he's
22 been using, so I didn't see that his speech pattern
23 had changed, that he was less talkative at this point.

24 Q. So, at 6:11 he's not speaking less than when you
25 started segmenting?

1 A. No. Not that I believe, no.

2 (Whereupon, the video continued to play for
3 the witness and the Grand Jury.)

4 (Whereupon, the video was paused.)

5 A. At this point, he is -- at this point, he's not
6 speaking as much.

7 Q. Is he moving as much?

8 A. Not as much, but I still feel the resistive
9 tension, but he's not thrashing, rolling back and
10 forth.

11 Q. Have you taken pressure off, Officer [REDACTED]?

12 A. I don't know right at this second. It was
13 probably within five seconds. I didn't notice this at
14 the time, but they had actually walked the gurney
15 behind me. It'd be right at -- so, on the bottom
16 right hand corner it says 3:21:55, and I believe right
17 at 3:22. So within five seconds is when I go to that
18 one leg squat. So, right about here, where he changes
19 his demeanor.

20 A few seconds ago you asked if he was still
21 being verbal and I believed he was. Right about here
22 is where he starts to change, not as much resistive
23 tension and stuff, and that's within five seconds,
24 less than five seconds, and I go to that one leg
25 stance and take the pressure off of his head. So,

1 very shortly right after this, within two, three, four
2 seconds.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 BY MR. SMITH:

7 Q. I want to pause it at 6:28 about five or ten
8 seconds later than where we just were. At this point,
9 has he stopped making -- saying words and is making
10 noises and kind of groaning. Now, Officer [REDACTED],
11 would you agree with that?

12 A. He is not making any -- he is not saying
13 anything verbal, but yes, it did sound as though he
14 just made some noise, which I don't know if I heard
15 that at the time or not. I'm talking to the EMT.

16 Q. Do you know at this point whether or not you
17 still had pressure?

18 A. I don't. It's right around this time, and, I'd
19 probably have to watch one of the other officer's
20 videos, probably Sergeant [REDACTED] for the exact time,
21 but it was within one of these -- within five seconds
22 or so of this is when I go to my one leg and then
23 within a second or two, I go to a two leg squatting
24 with no pressure on him at all because, at this point,
25 I feel little to no possible resistive tension at this

1 point.

2 Q. With that in mind, was he still on his stomach,
3 he's still prone?

4 A. Yes.

5 (Whereupon, the video continued to play for
6 the witness and the Grand Jury.)

7 (Whereupon, the video was paused.)

8 A. I believe that was me going to one leg right
9 there.

10 Q. Now we've paused it at 6:34. Now, you believe,
11 Officer [REDACTED], you've taken pressure off?

12 A. Yeah, I believe just a second or two ago is when
13 I went to one leg.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 A. So, by this point, I'm on both -- squatting with
18 no pressure, just with my hands, sitting there in case
19 he starts resisting again, but I feel no resistive
20 tension at this point.

21 Q. For the record, we're at the 6:50 mark. Officer
22 [REDACTED], at this point, is Mr. Prude still in the prone
23 position?

24 A. Yes.

25 Q. Is he under control right now?

1 A. I would consider at that very moment, yes, he
2 would be under control and we're waiting. There's
3 also the possibility, like I said, that people fake
4 compliance, that he can become un-compliant
5 immediately and that's why the reason I kept my hands
6 where they were.

7 Q. What's the reason Mr. Prude was kept prone?

8 A. At that point, we were waiting for the ambulance
9 crew to give us the directive of what they wanted us
10 to do with him to get him up onto the gurney, and I
11 did not even know that the gurney had come out. I
12 never heard the -- the actual gurney come out or them
13 tell me. I don't believe they ever told me the gurney
14 came out.

15 Q. Officer [REDACTED], were there some safety reasons,
16 why you didn't -- when he's not moving, you're feeling
17 no resistive tension, why you didn't move him to the
18 side off the prone position?

19 A. To be honest with you, I didn't think about that.
20 I was trying to keep him in a position where I had
21 semi control of him for the ambulance crew so, as soon
22 as they wanted us to move him, we would move him.

23 Q. Here we are at 6:50 in the video; and, again, Mr.
24 Prude is under control, isn't he?

25 A. Like I said, that's subjective. He could

1 immediately -- I've had people that are under control,
2 you might say, and then immediately become
3 un-compliant. So, in my training and experience, I
4 would say he's under brief control, it's very possible
5 that he will continue to -- to not comply or start
6 thrashing around, whether he's exhausted or what the
7 reason for him being compliant at the time.

8 (Whereupon, the video continued to play for
9 the witness and the Grand Jury.)

10 (Whereupon, the video was paused.)

11 A. So, if you -- at this point, Mr. Prude isn't
12 resisting, like I said. He -- his whole speech, at
13 this point, I'm starting to pick up he's not talking
14 anymore. And, at that point, like I said, he was very
15 talkative, even during the use of force, he was very
16 talkative when we were actually trying to stabilize
17 him. And, at this point, I don't hear anything. I
18 believe that's the EMT's boot in the screen right
19 there -- I tried to just, kind of, check for his
20 responsiveness, say, are you good. I tap him on the
21 face and he doesn't respond. And, at this point, I
22 continue to monitor him and wait for the ambulance to
23 tell us when they want us to pick him up and put him
24 on the gurney or when the gurney comes out because, at
25 this point, I don't even know if the gurney is out or

1 not.

2 Q. You were monitoring him prior to making that
3 statement, correct?

4 A. I was monitoring him almost the entire time
5 except for when I looked up and spoke to the EMT. I
6 was watching his breathing patterns, I was watching
7 his face, I was monitoring for compliance. When we
8 use force on someone, we monitor for compliance and
9 then we react accordingly, obviously.

10 Q. And, the reason you asked, you good, man, was
11 because you had some reason to think he wasn't good?

12 A. Based on his speech, he wasn't speaking anymore.
13 I was just checking for his responsiveness. But, like
14 I said, people calm done, people fake compliance all
15 the time. I've had people fake pass out on me and
16 I've had to give them sternum rubs. I don't know if
17 his condition at this time, based on his PCP use, I --
18 I don't know. So, I'm trying to just make sure that
19 he's under control, and it just appeared, based on him
20 not talking anymore, that I just wanted to check for
21 his responsiveness, which he did not respond.

22 Q. Which indicated to you he wasn't good, is that
23 right, Officer [REDACTED]?

24 A. I'm sorry, repeat that.

25 Q. Which indicated to you that he probably wasn't

1 good, right?

2 A. I did not know at the time. I didn't know if he
3 had passed out. I didn't know if he was faking
4 compliance, I didn't know at the time.

5 Q. And, after you asked him that because he was left
6 on his stomach in the prone position?

7 A. Yes.

8 Q. Was he then under control at that point?

9 A. I believe at this point, people would say,
10 probably say, that he was under control and we're
11 monitoring him.

12 (Whereupon, the video continued to play for
13 the witness and the Grand Jury.)

14 (Whereupon, the video was paused.)

15 A. So, if you can just pause. I started saying it,
16 but right there, I did not hear that. You can
17 actually hear him verbally vomit. I could not hear
18 that, but I did see immediately water start to pour
19 out from his face area. Like I said, it's like, if
20 you took a water bottle and poured it and just clear
21 liquid coming out. I apologize, that might be a
22 police officer that's standing there, not an EMT.

23 (Whereupon, the video continued to play for
24 the witness and the Grand Jury.)

25 (Whereupon, the video was paused.)

1 A. So, that's me letting the people on scene know
2 that it looks like he just vomited and tell them it
3 looked like straight water; and, at this point, I
4 start monitoring him even more closely.

5 Q. Have you rolled him over at this point, Officer
6 [REDACTED]?

7 A. No. Like I said, I knew that he was expelling
8 water and I didn't want to roll him onto his back and
9 have him drown in his own vomit. So, I left him on
10 his stomach with his head off to the side so it would
11 drain out so it wouldn't get caught in his lungs or
12 anything.

13 Q. Does there comes a point when it stops coming
14 out?

15 A. I don't know. Like I said, I never heard it.
16 But, it was a slow pool that just kept pooling out,
17 probably about two feet in diameter in his face area.

18 Q. When you turned him over, did you notice that it
19 stopped coming out?

20 A. I'm sorry, repeat that?

21 Q. Did you turn him over off the prone position when
22 you noticed it stopped coming out?

23 A. I never noticed if it had stopped or if it was
24 still coming out. I didn't understand what was going
25 on. I'd never seen anything like that where someone

1 expelled just water out of their body, out of their
2 face.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 A. So, I believe at this point is when I noticed
7 those quick succession of breaths and I started to
8 become concerned. It just was abnormal. I hadn't
9 seen that where someone has -- it just wasn't a normal
10 breathing pattern. It wasn't a steady rise and fall
11 of his chest, which I saw before I was monitoring
12 that, and that's what it appeared to be until about
13 right now, give or take a few seconds.

14 Q. And, for the record, we're at the 7:48 marker.
15 Officer [REDACTED], we're approximately 40 seconds or so
16 past the -- the point when you first noticed or at
17 least verbalized that you noticed Mr. Prude vomiting.
18 Is he still in the prone position at this point?

19 A. Yes.

20 Q. And, what is it that you're waiting for relative
21 to Mr. Prude?

22 A. I'm waiting for the ambulance crew to let me know
23 they're ready so that we can get him up, we can get
24 him onto the gurney. Also, like I said, I don't want
25 to roll him on his back. I don't know if he's still

1 vomiting or what the water is coming out. But, I
2 thought it was safer to keep him on his stomach with
3 his head to his side so that he wouldn't drown in his
4 own vomit.

5 Q. And, at this point, had you been given any
6 indication that the ambulance is ready?

7 A. No. Not at all. They haven't said anything to
8 me that I remember.

9 Q. Officer [REDACTED], is there anything preventing you
10 and a combination with the other officers getting Mr.
11 Prude up off the ground and putting him on that
12 stretcher before it's ready?

13 A. Like I said, I didn't even know the stretcher was
14 out. I never saw the stretcher. I was focusing on
15 Mr. Prude's breathing and his head. I only looked up
16 momentarily when I asked the EMT to get the gurney out
17 and I might have looked up when I was talking to her
18 about, if Mr. Prude felt hot, but I was focusing on
19 him, trying to monitor him.

20 Q. And, this is the point where you noticed the lack
21 of respirations?

22 A. I believe it's right after this, but that's when
23 I noticed the quick -- it was almost like a flutter.
24 Like I said, it was very quick. It wasn't a normal
25 respiration.

1 (Whereupon, the video continued to play for
2 the witness and the Grand Jury.)

3 (Whereupon, the video was paused.)

4 A. If you can pause it right there. So, at that
5 point, like I said, I mis-spoke. I said, it didn't
6 look like he had chest compressions. What I meant to
7 say was it didn't look like he had any respirations.
8 And then I tell the other -- I point out to the people
9 on the scene, because I'm monitoring his breathing,
10 and I roll him to his side to check for the pulse. I
11 have them help me roll him to his side to check for
12 his pulse and then, immediately, the EMT will push him
13 on his back.

14 Q. Do you actually roll him onto his side yourself,
15 Officer [REDACTED]?

16 A. We both do, I believe. We'll have to watch the
17 video. But, yes, we roll him up onto his side so I
18 can easily feel for his pulse.

19 Q. When you say we, is that the other officer --

20 A. Officer [REDACTED], yes.

21 Q. -- and Officer [REDACTED] had, sort of, gone hands
22 on too with Mr. Prude?

23 A. Yes.

24 (Whereupon, the video continued to play for
25 the witness and the Grand Jury.)

1 (Whereupon, the video was paused.)

2 BY MR. SMITH:

3 Q. And, Officer [REDACTED], had your previous concern
4 about rolling Mr. Prude onto his side for fear of him
5 swallowing his own regurgitation, was that abated at
6 that point?

7 A. I rolled him onto his side because I wanted to
8 check for his pulse on his carotid artery. I didn't
9 -- that's the reason I rolled him to his side.

10 Q. Did he have a pulse?

11 A. I couldn't feel it at that time. Like I said, I
12 had gloves on; and, before I could properly feel it,
13 the EMT had pushed him over.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 BY MR. SMITH:

18 Q. Was there -- was there a delay at the scene of
19 getting a cuff key, Officer [REDACTED]?

20 A. I don't know if I would call it a delay, but yes,
21 it was a few seconds to get the cuff key out.

22 Q. But, at that point, when the EMTs are looking for
23 a key, is there a key actually out?

24 A. No, we didn't have a key out. I carry mine in my
25 breast pocket. I don't know where Officer [REDACTED]

1 carries his. I was trying to get it, but I couldn't
2 get it at the time and then Sergeant [REDACTED] gave us his
3 cuff key.

4 Q. That's where the key came from that we saw was
5 from Sergeant [REDACTED]?

6 A. Yes, sir.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was paused.)

10 A. We were going to try to get the cuffs off, but
11 she told the EMT to roll him over prior to that, I'm
12 assuming, to do life saving measures, and then Officer
13 [REDACTED] tells them, I'm ready whenever you are to get
14 the cuffs off. So, once again, we're just waiting on
15 them to tell us what they want us to do.

16 (Whereupon, the video continued to play for
17 the witness and the Grand Jury.)

18 (Whereupon, the video was paused.)

19 A. So, at that point, that's where my hand slipped
20 off and all the liquids that was on his arm went into
21 my face.

22 (Whereupon, the video continued to play for
23 the witness and the Grand Jury.)

24 (Whereupon, the video was paused.)

25 A. So, at this point, I apologize about the

1 language, but at this point, I'm also concerned about
2 myself and the Corona Virus, and now I have all of
3 Biohazard liquids all in my face, my eyes, my nose and
4 my mouth. That's why I'm cursing, obviously, and I am
5 nervous about myself as well as Mr. Prude at this
6 time.

7 Q. And for the record, we're at the 11:29 marker.
8 Looks like you ended your involvement with Mr. Prude,
9 is that true?

10 A. Yes.

11 Q. And, one of the last things that we heard, the
12 EMT Paramedic, the female Paramedic, made a comment to
13 you about knowing exactly why Mr. Prude coded?

14 A. Yes.

15 Q. She said excited delirium, do you recall that?

16 A. Yes.

17 Q. And, you said, I know what it is?

18 A. Yes.

19 Q. And, did you know that it could cause sudden
20 death in certain people exhibiting the symptoms that
21 Mr. Prude had?

22 A. I don't know. I've never been trained on it or
23 -- or learned on it. But, like I said, I've seen
24 videos where even in the subject line, it will say
25 that the person is experiencing excited delirium. So,

1 I was semi familiar with it. I didn't know the
2 causes. I assumed it was from drug use, and I didn't
3 know what to look for for excited delirium or that it
4 could cause you to die.

5 Q. Is that a no then, Officer [REDACTED]?

6 A. No, I did not know.

7 Q. And, I guess, finally, Officer [REDACTED], do you
8 think that you had to go, sort of -- knowing
9 everything you know, do you think you had to go hands
10 on with Mr. Prude at that point? Or looking back, do
11 you think you would have been amendable to a little
12 more de-escalation with this, sort of, earlier
13 compliance?

14 A. Based on my prior training and experience, I went
15 on what I had at the time, and yes, I believe I had to
16 go hands on with him at the time because it was to
17 de-escalate the situation by using force, not to
18 escalate it.

19 Q. Sort of, watching that video now, Officer [REDACTED],
20 do you think you could have rolled Mr. Prude over
21 sooner?

22 A. It is possible. I didn't know about the recovery
23 position at the time. I've never been trained in
24 that, so I didn't know about it at the time. And, I
25 didn't want him to, like I said, drown in his own

1 vomit. So, there is a possibility that I could have
2 done it earlier, yes.

3 MR. SMITH: I have no further questions for
4 Officer [REDACTED]. Do any of the grand jurors have any
5 questions for Officer [REDACTED]?

6 A JUROR: We noticed in most of the videos
7 that a bunch of officers were apparently just, kind
8 of, standing around. Is there any logic to the way
9 they're positioned or just hanging out?

10 THE WITNESS: So, you almost see that we
11 form sort of a semi circle around him. I don't know
12 what the other officers were thinking, but we tend to
13 do this, we're trained in Defensive Tactics to
14 triangulate people to, sort of, have better angles on
15 them. And, at this point, we're trying to keep him
16 where he's at, the ambulance is on the way. We want
17 him to just remain where he's at so we don't escalate
18 the situation. So, I believe, everyone was, kind of,
19 around him to stop egress avenues and whatnot, if he
20 had got up and tried to run away. We just tried to
21 contain the situation. It's almost like a mini inner
22 perimeter around Mr. Prude.

23 BY MR. SMITH:

24 Q. So, there was some precaution that had been taken
25 in the event that he did, in fact, get up and try to

1 run away?

2 A. Yes. But, we're also trying to maintain
3 distance, not to agitate him also.

4 MR. SMITH: Other questions for Officer
5 [REDACTED]?

6 A JUROR: In your experiences, I don't know
7 how many you've been around that maybe have coded, can
8 you explain a little bit of how this may have been
9 similar or different from some of those experiences?

10 BY MR. SMITH:

11 Q. I guess the predicate question is, Officer
12 [REDACTED], have you had subjects, arrestees die --

13 A JUROR: No. She said coded. So, I guess
14 my question is how they all react to that.

15 MR. SMITH: Okay. Have you had subjects
16 arrested that coded?

17 THE WITNESS: So, I've never had anyone,
18 particularly in custody or in handcuffs, ever die;
19 but, unfortunately, I've had to watch countless
20 numbers of people die while on the job, take their
21 last breaths, children die. It happens quite
22 frequently, especially with shooting victims or
23 stabbing victims, even sometimes when you think
24 they're probably going to pull through, they die right
25 in front of you, or you're the last person that they

1 talk to. I didn't really notice -- that's very
2 different than what I experienced. I still don't know
3 fully what Mr. Prude died from. I can't compare that
4 to say a violent offense that was committed on
5 someone, such as a shooting or something. So, I
6 really don't have any prior knowledge of something
7 that happened similar to this.

8 And, I'm sorry if I didn't answer your
9 question properly.

10 MR. SMITH: Any other questions for Officer
11 [REDACTED]?

12 A JUROR: Yeah. As a layperson watching
13 this, I'm trying to distinguish with someone -- Mr.
14 Prude starting -- his presentation started to change,
15 his -- his speech became very garbled, sounded like he
16 was, sort of, gasping. And, you were sure it was
17 because of this pain technique that you were using?

18 THE WITNESS: You're talking about the --
19 the almost gurgling sound?

20 A JUROR: Yes. And, that was a pain
21 technique, and what we heard earlier that pain
22 techniques rarely work, and it rarely works on someone
23 that is under the influence. And, I'm just wondering,
24 as a layperson, could those sounds have been something
25 else?

1 THE WITNESS: No. In my training and
2 experience, those are the exact sounds that you would
3 get. Like I said, I've had that done to me and I
4 know, from my personal experience, it -- it causes you
5 to tense up. As for the pressure points, I'm sure you
6 just said you heard they don't work on -- there are
7 certain people that pressure points don't work on. We
8 have several that we use. Some people, they just
9 absolutely do not work on, or their nerves might be
10 running a different area and it doesn't work. I used
11 it and it was effective on Mr. Prude. He stopped
12 trying to bite at my fingers, and it appeared that,
13 when I did use the hypoglossal nerve technique, he
14 felt it. So, I monitored that for compliance, and I
15 got compliance, somewhat of a compliance, from that.
16 He stopped -- he ceased doing what he was doing, and
17 then in turn, it was used again because it seemed to
18 be effective at that point.

19 So, in my training and my experience, I know
20 that to be that sound coming from him, experiencing
21 the pain. And, even if he didn't feel the pain
22 causing him to tense up, his jawline, making his voice
23 sound different, almost like a gurgling sound. And,
24 at no point in the video do you see my hand ever move
25 or do anything like that, it's just doing this along

1 the jawline with my fingers. Does that answer the
2 question?

3 A JUROR: Yes. The other question is you
4 mentioned some times the body tensing up when you
5 apply that pressure?

6 THE WITNESS: Yes, sir.

7 A JUROR: How do you distinguish that
8 tension from resistance?

9 THE WITNESS: To be honest, a lot of times
10 you wouldn't. His resistance was up with his head
11 turned to the side. So, when I was feeling
12 resistance, I could feel him actually trying to use
13 his neck muscles to lift his head back in this motion.
14 When you're using that pain compliance, it doesn't
15 cause you to move your head or whatnot; and, I
16 apologize, I'll lift this up a little bit, but it
17 causes your neck muscles right here, along your jaw,
18 to actually tighten up. It doesn't cause you to lift
19 your head or turn your head to the side. In most
20 cases, or at least in my experience, it causes your
21 jaw muscles and your neck muscles along your jaw to
22 tighten up, which can inhibit your speech.

23 Obviously, you use your mouth, your jaw,
24 your tongue when you're speaking. So, that inhibits
25 your speech. It doesn't -- in my experience, it

1 doesn't cause you to lift your head up in the position
2 that he was doing. He was lifting his head up in
3 order to get my hands off him. And, I believe, at one
4 point he says, and, I apologize, get the fuck off me,
5 I believe, when I had him on the ground. So, I think
6 that they're completely separate, and I don't think
7 that that would cause him to lift his head up in the
8 manner that he was doing.

9 MR. SMITH: Any more questions?

10 A JUROR: I have one. If he had gone into
11 cardiac arrest during segmenting, would you -- have
12 you ever been medically trained to notice that?

13 THE WITNESS: No, I have not.

14 MR. SMITH: [REDACTED] [REDACTED]?

15 A JUROR: Throughout the video, he's saying
16 that he stayed away from him because of the blood and
17 the bodily fluids. Then, all of a sudden, he goes
18 into the ground and everything with the spitting and
19 everything, why was that?

20 THE WITNESS: So, like I said, we were
21 trying to, kind of, keep a loose perimeter around him,
22 but we were trying to stay back far enough not to
23 agitate him. If you'd walk right up on him, it might
24 agitate him. So, we were trying to keep a little bit
25 of a perimeter.

1 When he started to become more aggressive
2 and actually told the officer that he was going to
3 take his gun, we knew at that point that he was
4 actually getting up, or at least I did in my
5 perception. And, at that point, I decided we had to
6 use force on him to de-escalate the situation, to put
7 him down. We know the ambulance is right down the
8 street, it's coming --

9 MR. [REDACTED]: Slow down.

10 THE WITNESS: I apologize. So, we're
11 actually -- I'm personally trying to put him down to
12 maintain control of him, knowing that the ambulance is
13 going to be there in a couple of seconds.

14 Like I said, we have to control him and we
15 have to control the scene in order for the ambulance
16 to be able to do what they have to do. So, if he is
17 now up and we're fighting with him or tackling him or
18 he, God forbid, grabs one of our weapons or something
19 like that and we have to escalate to a much higher
20 level of force, that's what I was trying to avoid.
21 But, using what I said was the lowest level of force
22 available at the time, based on my training, I'm
23 trying to gain control of the situation and Mr. Prude
24 so that the scene is safe. Because, once the
25 ambulance crew gets there, then they can tell us what

1 they want us to do. Until they get there, we're in
2 charge of the scene. We have to make sure that it's
3 safe for them, and for us.

4 Does that answer your question, sir?

5 A JUROR: Yes.

6 MR. SMITH: Any further questions?

7 A JUROR: Something's been bugging me and I
8 wonder, is there a way to go back on the body cam
9 footage at the very beginning when Officer [REDACTED] got
10 out of the car with the taser? Or is that something
11 that we can look at later on?

12 MS. SOMMERS: Do you want it now?

13 A JUROR: There was a series of questions
14 that Officer [REDACTED] was asking of Mr. Prude when he
15 had the taser pulled and I could swear that I heard
16 him say that Mr. Prude said no or something, but I
17 can't remember what.

18 THE WITNESS: I think I know what you're
19 saying, and I think it was the same that was mentioned
20 earlier. When he does something like this --

21 A JUROR: Yeah.

22 THE WITNESS: I think he said, something
23 like, look, no, something or other.

24 A JUROR: To just reference that he had
25 nothing on him?

1 THE WITNESS: I don't know exactly. I'd
2 have to watch the video. But, I believe that's what
3 you're talking about because he was very compliant.

4 A JUROR: Okay.

5 THE WITNESS: I believe he said, yes, sir.

6 A JUROR: Okay.

7 THE WITNESS: Everything I told him to do,
8 he did.

9 A JUROR: Okay. It just stuck with me and I
10 lost it in context so --

11 THE WITNESS: I believe that was the
12 incident that you're talking about but we can watch.

13 MR. SMITH: It's up to you. If that
14 illuminates something maybe and allows you to ask a
15 question. I, sort of, would submit to you that the
16 basis of my question to Officer [REDACTED] was, sort of,
17 that. You hear him say, no, as he's indicating, like,
18 this on his knees as Officer [REDACTED] is drawing the
19 stun gun -- the taser on him.

20 A JUROR: That's fine.

21 MR. SMITH: Don't let my recollection
22 control.

23 A JUROR: Thank you.

24 THE WITNESS: Thank you.

25 MR. SMITH: So, you're okay then?

1 A JUROR: I am.

2 MR. SMITH: Okay. Any of the grand jurors
3 have any other questions for Officer [REDACTED]? Seeing
4 as there are none, you are excused, sir.

5 MS. SOMMERS: Can I just have one second?

6 All set.

7 MR. SMITH: Thank you.

8 THE WITNESS: Thank you.

9 MS. SOMMERS: Thank you.

10 (Whereupon, the witness and his Attorney,
11 [REDACTED], left the Grand Jury room at a time of
12 4:04 p.m.)

13 MS. SOMMERS: All right. We're going to
14 take five minutes. Thank you.

15 (Whereupon, there was a short break off the
16 record.)

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1 (Proceeding reconvened.)

2 MS. SOMMERS: Is everyone back in the room?

3 GRAND JURY POOL: (All grand jurors
4 indicating a positive response.)

5

6 (Whereupon, the witness and his Attorney,
7 [REDACTED], Esq., entered the Grand Jury room at
8 a time of 4:15 p.m.)

9

10 OFFICER [REDACTED] [REDACTED],
11 after being duly called and sworn, testified as
12 follows:

13

14 EXAMINATION BY MS. SOMMERS:

15 Q. Okay. Just for the record, there's a person
16 sitting behind you. Who is that?

17 A. That's my lawyer, [REDACTED].

18 Q. Okay. Go ahead and have a seat. Would you state
19 your full name for the record and spell it?

20 A. [REDACTED]. [REDACTED]. [REDACTED].
21 [REDACTED].

22 Q. Are you aware that this Grand Jury is
23 investigating an incident that occurred on March 23rd
24 of 2020 involving Daniel Prude?

25 A. Yes.

1 Q. And, have you indicated through your Attorney,
2 Mr. [REDACTED], that you wish to waive immunity and
3 testify?

4 A. Yes.

5 Q. Have you first reviewed what I'm handing you
6 Grand Jury Exhibit Number 62 for identification? Have
7 you reviewed that with Mr. [REDACTED] before you came
8 to the Grand Jury room today?

9 A. Yes.

10 Q. Do you have any questions about it?

11 A. No.

12 Q. Do you understand that even though you're here
13 appearing before the Grand Jury, this Grand Jury could
14 also be asked to consider whether to -- consider
15 whether to charge you with offenses?

16 A. Yes.

17 Q. Do you understand that if that Grand Jury did
18 determine that they wish to vote charges against you,
19 what you say inside of this room could be used against
20 you?

21 A. Yes.

22 Q. Do you understand that, as a police officer, you
23 can't be terminated from your job as a police officer
24 for refusing to waive immunity in front of a Grand
25 Jury?

1 A. Yes.

2 Q. So, this is your choice to come in and waive
3 immunity?

4 A. Yes.

5 Q. And, you understand that most people who've
6 testified in front of a Grand Jury, receive automatic
7 immunity?

8 A. Yes.

9 Q. And, your decision to waive immunity is -- is
10 made voluntarily?

11 A. Correct.

12 Q. Has anyone promised you anything in order to have
13 you come in here and waive immunity?

14 A. No.

15 Q. Forced you in any way?

16 A. No.

17 Q. Coerced you?

18 A. No.

19 Q. And again, any questions that you'd like to step
20 outside and ask your attorney before we begin?

21 A. No.

22 Q. Do you understand that while your attorney is
23 allowed to be here, and you can ask him a question, if
24 you need to, he's not allowed to participate in the
25 process?

1 A. I understand.

2 Q. Okay. And, at this time, I'm going to go ahead
3 and ask you to sign Grand Jury Exhibit Number 62.

4 Okay. And, I'm a notary so I'll take your
5 signature.

6 MS. SOMMERS: And, for the record, I'm going
7 to hand it up to the foreperson to sign also.

8 Thank you. At this time, I would note that
9 the waiver is fully executed and I will ask the
10 foreperson to now give you a separate affirmation.

11 So, just face the foreperson.

12 JURY FOREPERSON: Do you solemnly swear or
13 affirm that you have read Grand Jury Exhibit Number 62
14 for identification entitled waiver of immunity and
15 that you understand it?

16 THE WITNESS: Yes.

17 JURY FOREPERSON: Do you further swear or
18 affirm that you have signed and executed the waiver
19 and the statements contained within it are true?

20 THE WITNESS: Yes.

21 MS. SOMMERS: Thank you. At this time, I'll
22 offer Grand Jury Exhibit Number 62, the waiver of
23 immunity.

24 (Whereupon, Grand Jury Exhibit Number 62 was
25 then received into evidence.)

1 MS. SOMMERS: Okay. So, do you understand
2 that what will happen is that you can give a
3 narrative, if you'd like to use any video, feel free
4 to ask. And then, when you're done, the grand jurors
5 and I will be permitted to ask you questions. Okay?

6 THE WITNESS: Yes.

7 MS. SOMMERS: With that in mind, go right
8 ahead.

9 THE WITNESS: So, just a little about myself
10 to start out, my name is [REDACTED]. I grew up a
11 little bit outside of Rochester. I went to high
12 school at Churchville Chili. Upon graduation of high
13 school, I always knew I wanted to be a police officer.
14 I wanted to help the community in some capacity and
15 that was my choice. Along that path though, I knew
16 getting an education was important to me. So, I went
17 to Saint John Fisher College for four years and got my
18 undergraduate degree in childhood and special
19 education.

20 Upon completion of my degree is when I
21 started the application process for the Rochester
22 Police Department. While going through that, I was
23 also working on my Masters at the College of Brockport
24 in literacy to further my education and I did end up
25 taking the route of being a teacher. Before I was

1 able to finish is when I was hired by the Rochester
2 Police Department and I was not able to finish due to
3 the starting of the Academy?

4 My time with the Rochester Police Department
5 has been a little over two years now. In that time, I
6 graduated in class, graduated at the top of the class
7 of 60 students -- excuse me. I have served in three
8 different areas of Rochester in my two years. The
9 first, being the Central Section, which is the
10 downtown area. The second, being Lake Section, which
11 is Lake Ave, Dewey Ave area, and my third Section that
12 I currently am stationed to is the Genesee Section,
13 which leads me to the events that happened.

14 On March 23rd of 2020, there was a call for
15 a -- at ■ Child Street for a gentleman that had left
16 the location. There was a definition given and
17 broadcasted, it was a male, black, wearing a white
18 tank top and long johns. I did not directly go to ■
19 Child Street. I went to area of ■ Child Street,
20 surrounding streets, to look for the gentleman that
21 had left the house.

22 While playing the area for that gentleman,
23 it was broadcasted that he had an episode of this
24 matter earlier in the day, as well as he was on PCP.

25 Shortly after that information was

1 broadcasted, there was another call that came in for
2 767 West Main Street. My knowledge of the areas, I
3 knew that ■ Child Street was not far from 767 West
4 Main Street. That is also the location of where I
5 often sit to finish reports in my down time. So, I
6 knew I could get there in a timely manner. From the
7 area I was, I reported to 767 West Main Street for the
8 burglary alarm. Myself, Officer ■ and Officer
9 ■ were on scene there. I observed a broken
10 glass window on the west side of the building.
11 Myself, Officer ■ and Officer ■ created
12 somewhat of a perimeter around the building because we
13 didn't know if anybody was inside still or what was
14 really going on.

15 While we were at that location, a third call
16 came in for a gentleman, matching the previous
17 description from ■ Child Street, of a gentleman
18 running southbound on Jefferson Ave screaming that he
19 had Corona Virus, acting erratically in that manner.
20 Myself, my thought process was knowing the distance
21 from ■ Child Street to 767 West Main to the corner of
22 West Main and Jefferson, kind of had reason to believe
23 that it was possibly the same gentleman making this
24 course for himself.

25 So, myself and Officer ■, in our

1 individual patrol cars, left the scene at 767 West
2 Main Street. Officer [REDACTED] stayed at the scene
3 there because we needed to respond and someone had to
4 remain at the scene of the broken glass window.

5 At this time, if I could, I would like to
6 pull up my body cam footage and I can walk through
7 step by step.

8 MS. SOMMERS: Do you want to use the
9 synchronized five camera view or just your's?

10 THE WITNESS: I believe just mine would be
11 okay.

12 MS. SOMMERS: Okay.

13 So, for the record, we're putting Grand Jury
14 Exhibit 37 in evidence into the player.

15 Can everyone see? Did you want the lights
16 down at all? I'm just trying to gauge here what would
17 be easiest for you.

18 GRAND JURY POOL: (All jurors indicating a
19 negative response.)

20 THE WITNESS: Is it possible that I could
21 pause it at certain points?

22 MS. SOMMERS: So, yeah.

23 THE WITNESS: Okay.

24 MS. SOMMERS: So, for the record, we're
25 going to go ahead and start.

1 Can everyone see okay? Would it be possible
2 for you to maybe go here?

3 MR. [REDACTED]: Wherever you'd like me.

4 MS. SOMMERS: I just want to make sure
5 you're not blocking anyone.

6 MR. [REDACTED]: Okay.

7 MS. SOMMERS: We can dim the lights.

8 (Whereupon, Grand Jury Exhibit Number 37,
9 the body worn camera video, was played for the witness
10 and the Grand Jury.)

11 (Whereupon, the video was paused.)

12 THE WITNESS: So, at this moment, I'm headed
13 south on Jefferson Ave. Officer [REDACTED] has called out
14 that he believes he sees the suspect at a garbage can
15 in the middle of the street. The weather conditions,
16 as you can see from my windshield, it's rainy, snowy,
17 sleeting. As I approach the scene, Officer [REDACTED] is
18 getting ready to handcuff the suspect, who's later
19 identified by Officer [REDACTED] as Mr. Prude. When I
20 approach the scene, I take into account the condition
21 that Mr. Prude is in. You could play.

22 (Whereupon, the video continued to play for
23 the witness and the Grand Jury.)

24 (Whereupon, the video was paused.)

25 THE WITNESS: By observing his hands and

1 wrists and leg area, you can see there is blood coming
2 from him. You can play it now.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 THE WITNESS: So, at this point, Mr. Prude
7 has been very compliant with the requests from Officer
8 [REDACTED], getting on his stomach in a prone position,
9 putting his hands behind his back. As soon as the
10 video continues, you'll be able to see the change in
11 behavior, physically and verbally, that Mr. Prude
12 demonstrates.

13 (Whereupon, the video continued to play for
14 the witness and the Grand Jury.)

15 (Whereupon, the video was paused.)

16 THE WITNESS: At this point, we don't really
17 know what Mr. Prude has, whether he has the Corona
18 Virus or not. He mentions -- or, I witnessed the
19 blood on his -- on his hands, his wrists area, his
20 legs, and a little bit in the video, you'll be able to
21 hear him say -- he talks about he was touching his
22 butt, he may have feces on his hands. All things that
23 were taken into consideration while dealing with the
24 situation and Mr. Prude.

25 MS. SOMMERS: Okay. I'm not going to

1 interrupt you at all, but I am going to start noting
2 the times on the video when you ask for it to be
3 paused. So, just for the record, it's 51 seconds.

4 THE WITNESS: Okay.

5 (Whereupon, the video continued to play for
6 the witness and the Grand Jury.)

7 (Whereupon, the video was paused.)

8 THE WITNESS: That's myself talking --
9 that's myself talking, verbalizing to Mr. Prude to
10 stay on the ground, either lying down or sitting down.

11 MS. SOMMERS: And, for the record, that's at
12 -- we just paused it at 57 seconds.

13 (Whereupon, the video continued to play for
14 the witness and the Grand Jury.)

15 (Whereupon, the video was paused.)

16 THE WITNESS: This is the point where
17 Officer [REDACTED] identifies who Mr. Prude is,
18 linking him to the previous occasions that happened at
19 [REDACTED] Child Street and not really -- not really sure at
20 this point if he was the one who was involved with the
21 break-in, but had reason to believe he was due to the
22 blood on his hands, if he had anything to do with
23 that, possibly reaching into the store or touching any
24 type of sharp glass.

25 MS. SOMMERS: So, for the record, it's at

1 1:09.

2 (Whereupon, the video continued to play for
3 the witness and the Grand Jury.)

4 (Whereupon, the video was paused.)

5 THE WITNESS: So, at this point, you can --
6 you can, kind of, hear the words that he's using.
7 He's getting a little more erratic in his language and
8 not really understanding what he's -- what he's
9 talking about, and you could, kind of, see the circle
10 of us surrounding Mr. Prude, while maintaining our
11 distance, because, like I said before, we're not
12 really sure how he's going to act, especially --
13 especially on a drug like PCP.

14 MS. SOMMERS: So, for the record, it's
15 stopped again at 1:19. Go ahead.

16 (Whereupon, the video continued to play for
17 the witness and the Grand Jury.)

18 (Whereupon, the video was paused.)

19 THE WITNESS: So, that's where Officer
20 [REDACTED] states that, when he pulled up, he did see Mr.
21 Prude by the garbage can and he also says he threw a
22 chair into the road. In a little bit, you'll be able
23 to see, on my body cam, that there is a chair in the
24 middle of the road and I actually go over towards the
25 garbage cans to make sure nothing was discarded that

1 would have been of importance to either himself or us.

2 MS. SOMMERS: Again, 1:29 for the record.

3 Thank you.

4 (Whereupon, the video continued to play for
5 the witness and the Grand Jury.)

6 (Whereupon, the video was paused.)

7 THE WITNESS: Once again, he keeps referring
8 to him having feces either on his hands or on his
9 body.

10 MS. SOMMERS: 1:35 for the record. Thank
11 you.

12 (Whereupon, the video continued to play for
13 the witness and the Grand Jury.)

14 (Whereupon, the video was paused.)

15 THE WITNESS: At this point, Officer
16 [REDACTED], he's the one who stated, 'I'm going to MHA
17 him, and we all agreed that that was the best course
18 -- course of action due to how he was behaving and
19 what was going on with his circumstances of being --
20 being under the influence of drugs.

21 MS. SOMMERS: For the record, we're at 1:42.
22 Thank you.

23 (Whereupon, the video continued to play for
24 the witness and the Grand Jury.)

25 (Whereupon, the video was paused.)

1 THE WITNESS: Once again, refers to having
2 feces on his hands. You can hear him -- you can hear
3 him start to spit just outwards. And, this is right
4 before I start walking towards the garbage can. And,
5 as I walk there, you -- you can also hear him talk
6 about when he starts -- this is when he starts asking
7 for officer's guns and other things that are on
8 officer's duty belts.

9 MS. SOMMERS: For the record, we're at 1:53.
10 Thank you.

11 (Whereupon, the video continued to play for
12 the witness and the Grand Jury.)

13 (Whereupon, the video was paused.)

14 THE WITNESS: So, you can tell by the
15 attitude or by how he's acting, he's getting a little
16 more uneasy, a little more erratic in his behavior and
17 how he's talking to officers.

18 At this point, we're trying to avoid as much
19 contact with him as possible while waiting for the
20 ambulance to arrive. We're all -- we're all standing
21 around him, creating a perimeter around him to prevent
22 him from hurting himself by getting up and then
23 possible having to take him to the ground. If that
24 were the case, he would have no way to brace his fall,
25 especially with your hands behind your back with a

1 handcuffed suspect, causing serious injury to him. In
2 the area, if he were to get up, see somebody else,
3 spit on somebody else. Like I said, we don't know the
4 status of his health; and, lastly, the safety of the
5 officers with him asking for our guns and for other
6 things. Just because he is handcuffed, in my
7 experience, doesn't mean he's not a threat still. In
8 my experience, I've had people slip off handcuffs that
9 were behind themselves, people we've put in the back
10 of our vehicles get their hands in front of them, just
11 based off of joint manipulation and flexibility.

12 So, just because he's handcuffed, we take --
13 we take it serious that he's -- he is still a threat,
14 especially, making those comments about possibly
15 killing people in a house and asking for our guns.

16 MS. SOMMERS: So, for the record, 2:21.
17 Thank you.

18 (Whereupon, the video continued to play for
19 the witness and the Grand Jury.)

20 (Whereupon, the video was paused.)

21 THE WITNESS: So, this is where Officer
22 [REDACTED] asks about HIV or AIDS, due to the blood that
23 we do see on Mr. Prude's body and hands.

24 MS. SOMMERS: For the record, we're at 2:38.

25 (Whereupon, the video continued to play for

1 the witness and the Grand Jury.)

2 (Whereupon, the video was paused.)

3 THE WITNESS: So, you could see there, Mr.
4 Prude starts spitting at Officer [REDACTED] in the middle
5 of your screen there, starts to back up. Obviously,
6 it's a large concern, especially, with the Corona
7 Virus and everything that was going on at this time,
8 the lack of knowledge about that. At this time,
9 Department wide, we did not have any type of PPE to
10 equip ourselves with. So, we were taking extra
11 precautions in regards to that.

12 MS. SOMMERS: For the record, we're at 2:53.
13 Thank you.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 THE WITNESS: So, at this point, Mr. Prude
18 shows the ability to go from lying on his side or back
19 position to sitting up. I'm the officer who taps Mr.
20 Prude on the shoulder and tells him, once again, stay
21 seated, as that's the position we feel he is most safe
22 in to prevent him from getting up and injuring himself
23 and others.

24 MS. SOMMERS: For the record, we're at 3:13.
25 Thank you.

1 (Whereupon, the video continued to play for
2 the witness and the Grand Jury.)

3 (Whereupon, the video was paused.)

4 THE WITNESS: So, Officer [REDACTED] applied the
5 spit sock to Mr. Prude due to the excessive amount of
6 spitting that he was doing during this time.

7 MS. SOMMERS: And, for the record, we're at
8 3:32. Thank you.

9 (Whereupon, the video continued to play for
10 the witness and the Grand Jury.)

11 (Whereupon, the video was paused.)

12 THE WITNESS: So, once again, the erratic
13 behavior, the erratic -- the erratic things that he's
14 saying, just a lot of it not making a lot of sense,
15 all taken into account and not really knowing what to
16 expect from Mr. Prude.

17 MS. SOMMERS: 3:51 for the record. Thank
18 you.

19 (Whereupon, the video continued to play for
20 the witness and the Grand Jury.)

21 (Whereupon, the video was paused.)

22 THE WITNESS: So, once again, Mr. Prude
23 shows that ability to sit up and actually shows a
24 posturing technique that we're actually taught in the
25 Academy that, when you don't have the ability to use

1 your hands to stand up, tucking one leg underneath,
2 pushing out with the other, a natural instinctive,
3 kind of way to get up, especially, when you don't have
4 the use of your hands. I go up to him, tap him on the
5 shoulder, once again, tell him to stay down. He
6 announces his discomfort with the handcuffs at this
7 point, and continues to talk radically.

8 MS. SOMMERS: And, for the record, we're at
9 4:07. Thank you.

10 (Whereupon, the video continued to play for
11 the witness and the Grand Jury.)

12 (Whereupon, the video was paused.)

13 THE WITNESS: This is where Mr. Prude begins
14 to try to spit through the spit sock, directly at me
15 and now starts to speak directly at me at this point.

16 MS. SOMMERS: So, we're at 4:17. Thank you.

17 (Whereupon, the video continued to play for
18 the witness and the Grand Jury.)

19 (Whereupon, the video was paused.)

20 THE WITNESS: So, once again, he talks about
21 -- talks about wanting my gun, keeps spitting at me,
22 talks about the potential feces that he has -- he has
23 on him and simultaneously tries to get up with those
24 comments. Myself and Officer [REDACTED] decide that this
25 is the best time, in the best situation for him is to

1 control him because at one point or another, that
2 would have to be done to get him onto the gurney to
3 the ambulance. And, that's where me and Officer
4 [REDACTED] simultaneously go into that act.

5 MS. SOMMERS: 4:35 for the record. Thank
6 you.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was paused.)

10 THE WITNESS: So, at this point, Officer
11 [REDACTED] is using the head segmenting technique and I'm
12 using the segmenting technique of keeping control of
13 his hips. My right knee is placed on his lower left
14 portion of his back, just above his hips above --
15 right above where his handcuffs are sitting on his
16 wrists. While this is going on, taking into
17 consideration the blood that he does have on his
18 hands, wrists, potential feces, as well as slippery
19 conditions and the constant resistive tension that
20 he's showing.

21 MS. SOMMERS: Five minutes for the record.

22 (Whereupon, the video continued to play for
23 the witness and the Grand Jury.)

24 (Whereupon, the video was paused.)

25 THE WITNESS: So, at this point, AMR arrives

1 on scene around 3:21.

2 MS. SOMMERS: For the record, 5:12.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 THE WITNESS: So, here you can see my left
7 arm on Mr. Prude's right tricep and my right hand on
8 his right forearm, constantly monitoring his resistive
9 tension in his arm, as well as -- as well as his
10 condition, well-being. The ambulance arrived about 24
11 seconds ago. Once -- in my training and my
12 experience, once AMR arrives on scene, especially a
13 medical call, it's, kind of, their show to take over,
14 which in this case, it was the same for me. I've had
15 experiences with this Paramedic, as well as the other
16 AMR staff, and that's always been the expectation.

17 MS. SOMMERS: For the record, 5:34.

18 (Whereupon, the video continued to play for
19 the witness and the Grand Jury.)

20 (Whereupon, the video was paused.)

21 THE WITNESS: So, here you can see he's
22 still -- he's still struggling. At this point, I
23 believe Officer [REDACTED] gets involved by controlling
24 Mr. Prude's legs, as he did start to kick and continue
25 to wiggle. Also, myself, monitoring that resistive

1 tension in his arms throughout this time.

2 MS. SOMMERS: For the record, we're at 5:48.

3 (Whereupon, the video continued to play for
4 the witness and the Grand Jury.)

5 (Whereupon, the video was paused.)

6 THE WITNESS: So, at this point, Mr. Prude's
7 becoming more compliant. The segmenting technique is
8 designed to be applied and then taken off, but also
9 continue to remain in a position where it can be
10 re-applied. So, myself, I have relieved pressure from
11 his lower left portion of his back once he becomes
12 more compliant, but remain in the kneeling position in
13 case a suspect, or in this case, Mr. Prude, did decide
14 he didn't want to be compliant anymore.

15 MS. SOMMERS: For the record, we're at 6:11.

16 (Whereupon, the video continued to play for
17 the witness and the Grand Jury.)

18 (Whereupon, the video was paused.)

19 THE WITNESS: So, at this point, AMR has
20 been on scene for a little over a minute; and, for me,
21 it was just a little frustrating, the lack of urgency,
22 as they can see that this is someone who needs
23 immediate help and asking me questions about Mr.
24 Prude's body temperature. I'm not a medical
25 professional. They know more about that stuff than

1 me. It was a very cold day, cold night. Unless he
2 was absolutely burning up or on fire, to my knowledge,
3 it would have felt the same to me, which is -- which
4 is just a little bit of a frustrating aspect for me,
5 because they were just, kind of, standing there.

6 MS. SOMMERS: For the record, we're at 6:19.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was paused.)

10 THE WITNESS: So, at this time, we're
11 continuing to monitor Mr. Prude, his back inhalations,
12 any type of tensions he shows in his arm while we're
13 waiting for AMR to get involved.

14 MS. SOMMERS: 6:37 for the record.

15 (Whereupon, the video continued to play for
16 the witness and the Grand Jury.)

17 (Whereupon, the video was paused.)

18 THE WITNESS: So, Officer [REDACTED] points out
19 that Mr. Prude had some sort of liquid coming from his
20 mouth. I did not initially see it until he pointed it
21 out specifically to me.

22 MS. SOMMERS: For the record, we're at 7:05.

23 (Whereupon, the video continued to play for
24 the witness and the Grand Jury.)

25 (Whereupon, the video was paused.)

1 THE WITNESS: Once again, monitoring Mr.
2 Prude's inhalations..

3 MS. SOMMERS: For the record, at 7:18.

4 (Whereupon, the video continued to play for
5 the witness and the Grand Jury.)

6 (Whereupon, the video was paused.)

7 THE WITNESS: I was showing that Mr. Prude
8 did not have -- did not have any tension in his arm.
9 I was keeping one hand on his arm. Other than that, I
10 had no other contact with him at this time.

11 MS. SOMMERS: For the record, we are at
12 7:30.

13 (Whereupon, the video continued to play for
14 the witness and the Grand Jury.)

15 (Whereupon, the video was paused.)

16 THE WITNESS: So, at this point, AMR is --
17 is finally taking over the scene after we had pointed
18 out that he's lost chest compressions and we -- we
19 rolled him over. And, now, at this point, we're -- at
20 least myself and the other officers are at the
21 disposal of AMR. Whatever they really need us to do
22 or to help them and assist them with, we're there to
23 help.

24 MS. SOMMERS: For the record, we're at 8:07.

25 (Whereupon, the video continued to play for

1 the witness and the Grand Jury.)

2 (Whereupon, the video was paused.)

3 THE WITNESS: So, at this point, I'm working
4 on getting a cuff key from Officer [REDACTED]. I ended up
5 getting one from Officer [REDACTED]. The reason I didn't
6 use my own cuff key is where it sits on my belt is
7 also where my fob was. With the blood on my hands and
8 also having blood in the conditions we were in, it can
9 often pose to be a challenge to get it in a timely
10 manner. So, that is the reason I went to Officer
11 [REDACTED] or someone else who may have one readily
12 available, they come in little pens when you could
13 just pull it off of your vest very quickly. I figured
14 that would be a faster route in order to get the cuff
15 key.

16 MS. SOMMERS: So, 8:27 for the record.

17 (Whereupon, the video continued to play for
18 the witness and the Grand Jury.)

19 (Whereupon, the video was paused.)

20 THE WITNESS: So, at this point, that's the
21 first time I let them know that I do have a key
22 whenever they're ready for me to get the handcuffs off
23 Mr. Prude.

24 MS. SOMMERS: For the record, we're at 8:46.

25 (Whereupon, the video continued to play for

1 the witness and the Grand Jury.)

2 (Whereupon, the video was paused.)

3 THE WITNESS: So, for the second time, I
4 tell the Paramedic and the AMR staff that I do have a
5 key ready for them whenever they're ready to roll him
6 over to get the handcuffs off of him. I wasn't going
7 to just jump in and take over their scene and roll Mr.
8 Prude over myself without their permission.

9 MS. SOMMERS: For the record, we are at
10 9:08.

11 (Whereupon, the video continued to play for
12 the witness and the Grand Jury.)

13 (Whereupon, the video was paused.)

14 THE WITNESS: And, for the third time,
15 that's me telling them that I have a key that they're
16 ready for.

17 MS. SOMMERS: We are at 9:15, 9:16.

18 (Whereupon, the video continued to play for
19 the witness and the Grand Jury.)

20 (Whereupon, the video was paused.)

21 THE WITNESS: So, at this point, I uncuffed
22 Mr. Prude, gave the handcuffs back to Officer [REDACTED],
23 whose cuffs they were; and, throughout the rest of
24 this video, the only other interaction I have with Mr.
25 Prude in this case, specifically, I -- I help with

1 strapping him in, getting him on the gurney and
2 carrying one of the machines that AMR brought out back
3 to the ambulance.

4 MS. SOMMERS: So, 10:04 for the record. Did
5 you want to play it through?

6 THE WITNESS: You can play it through.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was terminated.)

10 THE WITNESS: So, at this point, I have no
11 other involvement with Mr. Prude.

12 I would also like to state, in this
13 situation, in Mr. Prude's condition with him
14 potentially having the Corona Virus, being high on
15 PCP, bleeding, potential feces, possibly infecting
16 other people around him or putting other people in
17 danger, the last thing I wanted to do was go hands on
18 with Mr. Prude. That being said, when we did go hands
19 on, the level of force that we did use was one of the
20 minimalistic levels in our force continuum. It's
21 something that has been performed to myself, on
22 myself, as well as something that I performed on
23 others in my training.

24 MS. SOMMERS: Is there anything else that
25 you want to say about what happened?

1 THE WITNESS: That's it.

2 EXAMINATION BY MS. SOMMERS:

3 Q. Okay. Officer [REDACTED], how old are you?

4 A. 26.

5 Q. And, how long had you been out of the Academy
6 when this happened?

7 A. Around a year and a half -- or, excuse me.
8 Sorry. Out of the Academy would be a year.

9 Q. And then, did you do FTO after that?

10 A. Correct.

11 Q. So, when you say a year, had you been by yourself
12 for a year or had you been in FTO part of that time?

13 A. FTO for part of that time.

14 Q. Okay. So, if you had to approximate, how long
15 have you been an officer assigned to a single car when
16 this happened?

17 A. I would say just under a year, ten -- ten months.
18 Ten or eleven months.

19 Q. All right. So, since you had been, kind of,
20 fresh from the Academy, would you agree that, sort of,
21 the lessons of the Academy were also relatively
22 recent?

23 A. Yes.

24 Q. Were you, in fact, the least senior person on the
25 scene that day, that evening?

1 A. Myself and Officer [REDACTED] were in the same
2 Academy class. Officer [REDACTED] did serve time in
3 Virginia as a police officer, but in totality, yes, I
4 would consider myself the least senior.

5 Q. So, having, kind of, gone through the Police
6 Academy relatively recent when this happened, did you
7 learn in the Police Academy about DT?

8 A. Yes.

9 Q. Did you also learn about verbal de-escalation?

10 A. Yes.

11 Q. And, is one of the, sort of, themes that goes --
12 kind of, runs through DT, that fact that your words
13 can be the most powerful form of de-escalation?

14 A. Yes.

15 Q. Is that sometimes referred to as, like, verbal
16 judo?

17 A. Correct.

18 Q. Is the expectation that you would try to, sort
19 of, verbally de-escalate before going hands on?

20 A. Yes.

21 Q. Did you -- when you arrived behind Officer
22 [REDACTED], were you able to observe the interaction that
23 he was having with Mr. Prude?

24 A. Yes, I was.

25 Q. Did you see Officer [REDACTED] direct Mr. Prude to

1 the ground?

2 A. I did not see him direct Mr. Prude to the ground.
3 I did witness Mr. Prude lying on his stomach, put his
4 hands behind his back and comply while Officer [REDACTED]
5 handcuffed him.

6 Q. So, whatever Officer [REDACTED] did say, Mr. Prude
7 was receptive to because he ended up where you would
8 want him to be?

9 A. Yes.

10 Q. And, were you able to hear Officer [REDACTED] tell
11 Mr. Prude to put his hands behind his back?

12 A. I did not hear him say that, I just witnessed it.

13 Q. So, would it also appear that, whatever was being
14 asked of him, that he did comply with that?

15 A. Yes.

16 Q. Were you there when Officer [REDACTED] asked Mr.
17 Prude if his name was Daniel?

18 A. Yes.

19 Q. And, Mr. Prude answered that yes, it was,
20 correct?

21 A. Yes.

22 Q. And, after he said that his name was Daniel, how
23 many times did you or any other officers on the scene
24 try to use his name to engage with him?

25 A. I cannot recollect how many times.

1 Q. Did you at all?

2 A. I don't believe I did.

3 Q. And, that would be, kind of, a way to try to make
4 a connection with someone, correct?

5 A. Yes.

6 Q. How many times did you ask Mr. Prude if he was
7 cold?

8 A. I did not.

9 Q. And, might that be, kind of, another way to try
10 to connect with someone?

11 A. Yes.

12 Q. When they're struggling?

13 A. Yes.

14 Q. How many times did you ask Mr. Prude if he needed
15 anything or wanted anything?

16 A. We did not. At that point, we -- or at least
17 myself assumed that the ambulance would not be far
18 behind after we cleared them into the scene. Usually,
19 when they are staging, it's only a couple of minutes.
20 And, like I was saying before, we were trying to
21 minimize the amount of interaction that we did have
22 with him, physical interaction with him, due to all of
23 the circumstances.

24 Q. So, on the subject of the ambulance, did you tell
25 Mr. Prude that an ambulance was coming?

- 1 A. I do not believe so.
- 2 Q. Okay. Did anyone on scene direct that the police
3 lights that were flashing be turned off?
- 4 A. No.
- 5 Q. And, would you agree that all these, kind of,
6 things that I just talked about are ways to
7 de-escalate potentially; and, I understand that this
8 is after the fact, but would you agree that those are
9 all potential ways to de-escalate a situation?
- 10 A. Yes.
- 11 Q. When Officer [REDACTED] asked Mr. Prude if he had HIV
12 or AIDS, did Mr. Prude give an answer?
- 13 A. I believe he said no.
- 14 Q. So, did that seem to indicate that he understood,
15 at that point, what was being asked of him?
- 16 A. Yes.
- 17 Q. Okay. Now, I understand that -- that there are
18 situations where handcuffed individuals have been able
19 to obtain weapons, so we'll accept that as a given.
20 Was it really realistic on this night, that that was
21 going to happen?
- 22 A. I believe it was, especially, since he -- Mr.
23 Prude showed the ability to go from a lying down
24 position to sitting up and demonstrated the posture
25 that a person would in order to stand up, and we -- we

1 really didn't want it to get to that point where we'd
2 be finding out if he could get a weapon. That's not
3 the desired outcome.

4 Q. So, I understand that. What I'm trying to get at
5 here, was that your main concern was the weapon or
6 more that he'd just be up and around and available to
7 do other things?

8 A. It was -- I mean, it was a mixture of both. I
9 mean, obviously, the weapon is a very serious concern,
10 but also him standing up not only poses a threat to
11 us, but also himself. Like I said before about, if we
12 did have to go hands on with him from a standing up
13 position, it would have caused serious physical injury
14 due to the lack of him being able to brace a fall.

15 Q. Would you agree that at the point in the video,
16 where you put your hand on Mr. Prude's shoulder, it
17 appeared to have some temporary calming effect on him?

18 A. Yes.

19 Q. And yet, it was never done again, is that
20 accurate?

21 A. I put my hand on his shoulder I believe, a total
22 of three separate times.

23 Q. Okay. And, each time you did that, it did seem
24 to have some effect, would you agree with that?

25 A. Yes.

1 Q. Did Mr. Prude ever try to, kind of, bite you or
2 head butt you in any way?

3 A. Not bite or head butt. He -- like the video
4 showed, the spitting, as well as when he was on the
5 ground also kicking.

6 Q. Would you agree that the spit sock seemed to make
7 Mr. Prude more agitated?

8 A. Yes.

9 Q. Was there any other option that could have been
10 employed to stop him from -- to stop the saliva?

11 A. Not to stop him from spitting.

12 Q. What about stepping back from him?

13 A. I mean, we could have stepped back from him; but,
14 at the same time, now, you're losing distance, if he
15 did want, decided he wanted to get up and now you're
16 dealing with that situation. So, we did have to give
17 him distance; but, at the same time, not too much in
18 order to maintain control of the situation.

19 Q. You -- once Mr. Prude is on the ground, and the
20 segmenting is happening, would you agree that there
21 was really no attempt to use words other than stay
22 down, calm down?

23 A. Correct. Words like that, stop spitting, stop
24 resisting.

25 Q. So, is it, kind of, your experience and training

1 that those are effective means of de-escalating,
2 telling someone to stop it, is that usually what tends
3 to move the ball over the goal post when it comes to
4 de-escalating.

5 A. Usually, when you've gotten to that point in a
6 situation like that, the suspect knows -- knows that
7 they are showing some form of resistance in order to
8 get past that. The first step would be for them to
9 stop resisting so that things can be worked on from
10 there.

11 Q. Nobody, it seems at any time, kind of, from the
12 beginning until Mr. Prude went down really did
13 anything to try to distract him, would you agree with
14 that?

15 A. Yes.

16 Q. So, no attempt to, kind of, like, talk about
17 something that he might have grasped onto, right?

18 A. Correct.

19 Q. Where did you learn segmenting?

20 A. I learned it when I first went through the
21 Academy with RPD, and then I also had an in-service in
22 January of 2020 on it as well.

23 Q. When you learned that technique in the Police
24 Academy, would you agree that it's a controlled
25 environment?

- 1 A. Yes.
- 2 Q. Okay. And, what type of a location was it?
- 3 A. The location we did it was upstairs at a --
- 4 actually, the Public Safety Training Facility in what
- 5 we consider the Defensive Tactics room.
- 6 Q. And, was weight applied to, for instance, your
- 7 head and beltline?
- 8 A. Correct, both.
- 9 Q. And, how did that feel?
- 10 A. Uncomfortable.
- 11 Q. And, when you had that done and it felt
- 12 uncomfortable, were your hands cuffed behind your
- 13 back?
- 14 A. No.
- 15 Q. What kind of a surface were you on?
- 16 A. It was a hard -- it was a hard floor.
- 17 Q. Okay. Was it concrete or asphalt, like a road?
- 18 A. It -- it may have been underneath. There was,
- 19 like, a rubbery coating on top of it.
- 20 Q. Okay. During Defensive Tactics, was the
- 21 principle of removing someone from their stomach and
- 22 turning them onto their side, was that discussed?
- 23 A. It's discussed a little bit when you're trying to
- 24 talk to somebody or get them into a different position
- 25 or trying to stand them up.

1 Q. So, was the phrase or term recovery position used
2 during Defensive Tactics?

3 A. Yes.

4 Q. And, what is the recovery position?

5 A. So, the recovery position, kind of, like you just
6 said, rolling them over to their side. Just -- it's a
7 little more comfortable of a position to be in after
8 being handcuffed and getting into some sort of
9 altercation.

10 Q. When are you trained to put someone into the
11 recovery position?

12 A. When someone has become completely compliant and
13 you, kind of, feel like they're not going to turn
14 their back against you again and start fighting again.

15 Q. On the video, it appears that Mr. Prude stops
16 struggling against you at around the time that the
17 Paramedic is coming back to ask if he's cold, or
18 somewhere around that time, would you agree with that
19 around then?

20 A. Yes.

21 Q. Why was he not moved then to his side?

22 A. Me and Officer [REDACTED] were monitoring him and
23 didn't -- didn't feel it was necessary. If you're on
24 your stomach, obviously, it's -- it's more
25 comfortable, but still a position where someone

1 shouldn't be struggling, as long as there's no
2 pressure being applied to you.

3 Q. As Mr. Prude stopped struggling, how did that
4 effect the amount of pressure that you were applying?

5 A. It was less and less, to a point where,
6 eventually, it was none.

7 Q. And, what was your thought process of why this
8 person who had been struggling was suddenly not
9 struggling anymore?

10 A. Just -- I mean, along with other suspects I've
11 dealt with, eventually, the fighting, they give up. I
12 mean, you have -- you're out numbered, and it's not
13 worth the struggle anymore and it's, kind of, okay,
14 accepting the facts of what's happening.

15 Q. Is that what you assumed was happening here?

16 A. Yes.

17 Q. When the -- I'd like to withdraw that. You
18 indicated that you had been with the female Paramedic,
19 was it the female that you were referring to?

20 A. Yes.

21 Q. You'd been on calls with her before?

22 A. Yes.

23 Q. And, she maybe didn't seem -- maybe, I think you
24 said, quote, on her game, or something along those
25 lines, am I mis-stating it?

1 A. I'm not exactly sure what I said, but the --
2 there seemed to be a lack of -- lack of urgency once
3 they arrived on scene.

4 Q. So, did it -- did you or any of the other
5 officers ever say anything, like, hurry up, like, what
6 is taking so long? Why aren't you doing anything?

7 A. I believe Officer [REDACTED] stated, made some sort
8 of statement about the gurney, as if they needed to
9 get it off a little faster. Me, myself, I did not.

10 Q. Did you apply any type of pressure point
11 techniques to Mr. Prude?

12 A. No.

13 Q. At any time -- I'd like to withdraw that. When
14 was the very first time that AMR got involved in this,
15 actually hands on with Mr. Prude?

16 A. It was after myself and Officer [REDACTED] rolled Mr.
17 Prude over because we realized he no longer had
18 inhalations as -- as we were monitoring his back.

19 Q. Had you ever been involved in any other cases
20 where the subject was either on or suspected to be on
21 PCP?

22 A. No.

23 Q. So, was this the first call that you ever had as
24 a Rochester Police Officer where the subject was
25 suspected of being on PCP?

1 A. Yes.

2 Q. So, did you have any pre-conceived notions of how
3 this person was going to behave or not behave?

4 A. With a lot of drugs, it's kind of assumed that
5 they're not going to be acting normal. With PCP, I've
6 heard of things, like, strength that's, just -- kind
7 of, like, out of this world almost, and those kinds of
8 things, very crazy behavior and very unknowing of
9 what's to come of that person.

10 Q. At one point in the video, I believe it's after
11 the Paramedic asks if Mr. Prude is cold or hot, you
12 make -- is it safe to say that you make a joke?

13 A. Yes.

14 Q. Okay. Why -- what was happening? Why would you
15 do that?

16 A. I did it out of -- like I said before,
17 frustration for the situation. AMR was -- or the
18 Paramedics or AMR, in general, was asking questions
19 they really could have answered themselves as we were
20 dealing with Mr. Prude, kind of, waiting for them to
21 take control of the situation. So, kind of, out of
22 frustration, much like the situation where -- where
23 some people laughed when Officer [REDACTED] stated an
24 obvious question or something like we all, kind of,
25 assumed what was going to happen.

1 MS. SOMMERS: Questions from the grand
2 jurors? No questions?

3 A JUROR: I have one. There's a portion in
4 the video where you said you monitored tension on the
5 -- from the right shoulder.

6 THE WITNESS: Yes.

7 A JUROR: Is that where it looked like in
8 the video you took the right shoulder up, off the
9 ground a little bit, or is it flat to the ground?

10 THE WITNESS: So, the placement of where I
11 had my hands, my left hand on his elbow, his elbow was
12 off the ground. It wasn't his shoulder. But, yes,
13 his elbow was off the ground, strictly from the
14 positioning of the handcuffs being behind his back.

15 BY MS. SOMMERS:

16 Q. Actually, I want to follow up on that for a
17 moment. Was there any time during this where your
18 shin was across the area of his lungs, so the area of
19 the upper back?

20 A. No.

21 Q. Why?

22 A. That's not the technique that you're trained on,
23 and we're trained to control the hip portion of the
24 subject's body, and that's -- that's where I
25 positioned my leg or my knee.

1 A JUROR: When the video started out, showed
2 the police all over the place and the EMT, but after
3 he was no longer breathing, everyone was right there
4 and all concerned about the blood, and everything
5 went, out the window. What happened?

6 THE WITNESS: So, once we realized something
7 was wrong, we wanted to get him help as soon as
8 possible. I can't speak for -- for other officers,
9 but I know, myself, I had already been in contact with
10 him. So, I, kind of, just did whatever was needed in
11 regards to Mr. Prude. I had already been in contact
12 with him.

13 BY MS. SOMMERS:

14 Q. So, are you talking about why you resisted to get
15 him towards the ambulance and stayed around the
16 gurney?

17 A. Correct.

18 MS. SOMMERS: All right. Was that your
19 question?

20 A JUROR: Yes.

21 A JUROR: I have a question but I want to
22 thank you for the work you do. It's not something I
23 would want to do. God bless you.

24 THE WITNESS: Thank you, sir.

25 A JUROR: There was a time when you said you

1 were monitoring tension in his arm; and, while you
2 were monitoring the tension in the arm, it's obvious
3 to me that there was not more left, but nothing was
4 said about that until I think he threw up. So, when
5 you're monitoring this, do you call it out, like, hey,
6 did you see the same thing I saw?

7 THE WITNESS: So, when I was monitoring Mr.
8 Prude, I did have -- for -- for some amount of time
9 both hands on his arm, and then at one point, only one
10 hand on his arm. And, like I said, I relieved
11 pressure on the lower part of his back. So -- can you
12 repeat your question one more time?

13 A JUROR: There was one point, I think at
14 3:30 in the video, where you just had the one hand on
15 him and you stopped to make commentary, that I'm
16 checking for pressure, resistance in his arm and
17 monitoring his breathing.

18 THE WITNESS: Yes.

19 A JUROR: But, while I'm looking at it, I
20 don't see the back going up and down.

21 THE WITNESS: So, as we were -- like I said,
22 monitoring his inhalations, that was one of the things
23 when we realized something was wrong to check to see
24 if there was any -- any type of movement in his arm.
25 You could actually see me in the video, kind of, like,

1 pick his arm up a little bit to see if there's any
2 type of reaction when that happens.

3 MS. SOMMERS: How about -- can we play the
4 video?

5 A JUROR: Yeah.

6 MS. SOMMERS: If we could go ahead and play
7 it.

8 BY MS. SOMMERS:

9 Q. And, while we're teeing it up here, I just want
10 to ask, were you -- was you mind -- I want to
11 understand, were you -- well, you were monitoring for
12 pressure, correct?

13 A. Correct.

14 Q. Was that your primary focus?

15 A. So, at that time, I mean, I wouldn't say I had
16 one specific primary focus. I would say visually
17 monitoring the inhalations on his back, while also
18 monitoring the resistive tension that he's showing,
19 kind of, also at the same time, making sure the area
20 is, kind of, clear. I have that ability, unlike
21 Officer [REDACTED] who is, kind of, in a facedown
22 position, to see my surroundings. So, kind of,
23 multi-tasking while doing that.

24 MS. SOMMERS: Okay. So we're at 6:55.

25 (Whereupon, Grand Jury Exhibit Number 37

1 played for the witness and the Grand Jury.)

2 (Whereupon, the video was paused.)

3 MS. SOMMERS: Actually, we're going to take
4 it back. Maybe, like, can you start around 6:15,
5 please? Or, that's -- for the record, we're at 6:12.
6 Thank you.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was paused.)

10 BY MS. SOMMERS:

11 Q. All right. So, at 6:30 can you tell if -- first
12 of all, is Mr. Prude still making any noises?

13 A. At this moment, he's not making any noises.

14 Q. What about the rise and fall of his chest? Is
15 that displayed here?

16 A. I would have to watch it back. If you could go
17 back a bit.

18 MS. SOMMERS: All right. Maybe go back a
19 little bit.

20 (Whereupon, the video continued to play for
21 the witness and the Grand Jury.)

22 (Whereupon, the video was paused.)

23 MS. SOMMERS: Okay. So, for the record,
24 it's at -- we're at 5:53. So, we went back a little
25 ways.

1 BY MS. SOMMERS:

2 Q. First of all, is Mr. Prude still making noise?

3 A. At that point, I just heard him make a noise,
4 yes.

5 Q. I guess, if he's making -- well, forget it. Go
6 ahead.

7 (Whereupon, the video continued to play for
8 the witness and the Grand Jury.)

9 (Whereupon, the video was paused.)

10 MS. SOMMERS: So, we'll stop it at 6:33.

11 BY MS. SOMMERS:

12 Q. Are you able to tell what you're monitoring, what
13 you're able to see at this point?

14 A. So, still at this point, you can see I have both
15 hands on Mr. Prude. He did make noise at that point,
16 a couple seconds back. So, it's still, kind of, the
17 same -- same monitoring. At this point, I don't have
18 any pressure on Mr. Prude's lower back either.

19 MS. SOMMERS: Go ahead and press play.

20 (Whereupon, the video continued to play for
21 the witness and the Grand Jury.)

22 (Whereupon, the video was paused.)

23 THE WITNESS: So, at this point, this is
24 where we, kind of, come to the realization that
25 something has gone wrong. Back to your question,

1 realizing that the inhalations in his back, we can no
2 longer see those, and Officer [REDACTED] sees the -- sees
3 the fluid coming from Mr. Prude's face. We're, kind
4 of, just monitoring all of that and seeing when it
5 happened.

6 BY MS. SOMMERS:

7 Q. So, I just want to be clear. This is the portion
8 where Officer [REDACTED] realizes that Mr. Prude is
9 vomiting, correct?

10 A. Yes.

11 Q. And, are you saying that this is also where you
12 can see that he wasn't breathing?

13 A. I couldn't tell you exactly when I saw that he
14 wasn't breathing. At this point, I could tell you I
15 was focusing visually on where Officer [REDACTED] was
16 talking about Mr. Prude vomiting or fluids coming from
17 his mouth.

18 MS. SOMMERS: Okay. Press play.

19 (Whereupon, the video continued to play for
20 the witness and the Grand Jury.)

21 (Whereupon, the video was paused.)

22 BY MS. SOMMERS:

23 Q. 7:15. Are you able to see whether Mr. Prude is
24 taking breaths at this point?

25 A. So, at this point, it does -- it does seem that

1 Mr. Prude is taking breaths. You're able to see the
2 inhalations of his shoulder blades.

3 Q. Are you familiar with normal breaths versus
4 something called agonal or guppy breaths, have you
5 ever heard any of that?

6 A. No.

7 Q. All right.

8 (Whereupon, the video continued to play for
9 the witness and the Grand Jury.)

10 (Whereupon, the video was paused.)

11 BY MS. SOMMERS:

12 Q. All right. So, at 7:29 it doesn't appear that
13 Mr. Prude is breathing, would you agree with that?

14 A. Yes.

15 Q. And, had you not noticed this yet?

16 A. When we noticed that something was wrong, the
17 pointing out of Officer [REDACTED] and relieving the
18 pressure and just watching him, at this point, we
19 were, kind of, waiting for AMR to do whatever they
20 needed to do because Mr. Prude was being compliant and
21 we weren't having any issues with what was going on.
22 So, it was, kind of, out of our hands and just, kind
23 of, waiting at this point.

24 (Whereupon, the video continued to play for
25 the witness and the Grand Jury.)

1 (Whereupon, the video was paused.)

2 MS. SOMMERS: So, for the record, it's 7:49,
3 where Mr. Prude has rolled onto his side.

4 BY MS. SOMMERS:

5 Q. Where was the EMT at this point?

6 A. One of the EMTs, I believe, was, kind of, like,
7 right over my shoulder or to the right of me and the
8 Paramedic, I believe, was back at the rig, the
9 ambulance.

10 Q. So, there was a period of time, it appears from
11 the video, where Mr. Prude was not -- his back was not
12 rising and falling, would you agree with that?

13 A. Yes.

14 Q. What was the reason that nobody did anything?

15 A. At that point, as soon as -- I mean, obviously,
16 as you see Officer [REDACTED] notice that, you see me
17 check his -- check his arm, kind of, pick it up, drop
18 it down, see if there's any type of -- any type of
19 movement and there isn't and that's when we decide to
20 roll Mr. Prude over.

21 MS. SOMMERS: Did that answer your question?

22 A JUROR: Yes.

23 BY MS. SOMMERS:

24 Q. Officer [REDACTED], have you ever been on calls
25 before where you've restrained individuals?

1 A. Yes.

2 Q. Have you ever used segmenting before?

3 A. Yes.

4 Q. Is this the first time that something happened
5 relative to someone going unconscious?

6 A. Yes.

7 Q. Is this the first case that you had then, where
8 somebody died?

9 A. Yes.

10 Q. Do you have any experience -- I'd like to
11 withdraw that. You heard the EMT make comments to
12 Officer [REDACTED] about why she believed Mr. Prude quote,
13 unquote, coded. Did you hear that?

14 A. I recall her saying positional asphyxia as one of
15 the things.

16 Q. Do you recall whether it was positional asphyxia
17 or excited delirium?

18 A. Excited delirium, sorry.

19 Q. Okay. Did you know what that was at the time?

20 A. There's been different talks of it. I mean,
21 throughout the Academy, you hear the terminology being
22 thrown around, but it's never -- it's never really hit
23 on. I knew of it, but not really in depth.

24 MS. SOMMERS: Any other grand jurors?

25 A JUROR: So, as the AMR was on scene and he

1 initially threw up, I very clearly hear, oh, you see
2 that, he threw up, oh, it's all water. So, at that
3 point, was the EMT literally just standing there
4 looking over your shoulder, not saying a word about --

5 MS. SOMMERS: Why don't we play the five
6 vantage points. So, this is Grand Jury 49 in
7 evidence, and it has the -- I think it's just a little
8 bit more clear about who was where.

9 Unfortunately, my colleague is the one
10 that's got the hard job.

11 So, for the record, we're going to start
12 this video at about 6:22 in.

13 (Whereupon, Grand Jury Exhibit Number 49 was
14 played for the witness and the Grand Jury.)

15 (Whereupon, the video was paused.)

16 MS. SOMMERS: Okay. So, for the record, I
17 just paused for a moment at 6:35.

18 BY MS. SOMMERS:

19 Q. First of all, looking in the bottom middle. So,
20 I believe it says [REDACTED], is that correct? Did I just
21 point to the bottom middle and it says [REDACTED]?

22 A. Yes.

23 Q. Are you shown in that video?

24 A. Yes.

25 Q. And, where -- am I actually pointing to you?

1 A. Yes.

2 MS. SOMMERS: So, for the record, I'm
3 pointing to the person who's, like, the furthest,
4 blondest person on the right -- no, on the left. I'm
5 sorry.

6 BY MS. SOMMERS:

7 Q. Okay. Has Mr. Prude vomited yet?

8 A. I'm not sure. If you could continue to play the
9 video.

10 (Whereupon, the video continued to play for
11 the witness and the Grand Jury.)

12 (Whereupon, the video was paused.)

13 BY MS. SOMMERS:

14 Q. So -- so, at 6:58, do you have -- did you see an
15 EMT in the picture a few seconds ago?

16 A. Not a few seconds ago, he was unbuckling the
17 gurney and then left the frame.

18 Q. Okay. Do you know where he went or why?

19 A. No.

20 Q. Okay.

21 (Whereupon, the video continued to play for
22 the witness and the Grand Jury.)

23 (Whereupon, the video was paused.)

24 MS. SOMMERS: Can -- okay. So, for the
25 record, we're at 7:20.

1 BY MS. SOMMERS:

2 Q. Is the EMT re-emerging from the ambulance?

3 A. Yes, that's him on the bottom right, Sergeant
4 [REDACTED] camera.

5 Q. Okay.

6 (Whereupon, the video continued to play for
7 the witness and the Grand Jury.)

8 (Whereupon, the video was paused.)

9 MS. SOMMERS: So, for the record, we're
10 stopped at 7:28.

11 BY MS. SOMMERS:

12 Q. Does the EMT come directly to you, or where is he
13 going?

14 A. Right now, it looks like he's on the other side
15 of the gurney. He never comes directly to me.

16 Q. Okay.

17 (Whereupon, the video continued to play for
18 the witness and the Grand Jury.)

19 (Whereupon, the video was paused.)

20 BY MS. SOMMERS:

21 Q. It appears at 7:29, where we just paused the
22 video, is that you trying to gauge Mr. Prude's pulse
23 in Officer [REDACTED] video?

24 A. Yes.

25 Q. And what, if anything, did you feel?

1 A. I didn't feel anything, but at the same time, I
2 didn't really hold it there very -- very long.

3 Q. Okay.

4 (Whereupon, the video continued to play for
5 the witness and the Grand Jury.)

6 (Whereupon, the video was paused.)

7 BY MS. SOMMERS:

8 Q. At 7:15, I hear roll him over on his side -- I'm
9 sorry, 7:35. Did you hear someone say -- someone says
10 roll him over on his side, correct?

11 A. Yes.

12 Q. Was that the EMT?

13 A. No, that was Officer [REDACTED].

14 Q. Okay.

15 (Whereupon, the video continued to play for
16 the witness and the Grand Jury.)

17 (Whereupon, the video was paused.)

18 BY MS. SOMMERS:

19 Q. So, for the record, at 7:44, does the EMT come
20 over?

21 A. Yes, I believe that's him in Officer [REDACTED]
22 camera and you can also see Sergeant [REDACTED].

23 Q. And, is the EMT the one who completes pushing --
24 or, maneuvering Mr. Prude from his side onto his back?

25 A. Yes.

1 (Whereupon, the video continued to play for
2 the witness and the Grand Jury.)

3 (Whereupon, the video was paused.)

4 BY MS. SOMMERS:

5 Q. Did you hear someone just say, un-cuff him, guys?

6 A. Yes.

7 Q. Who was that?

8 A. I'm not sure. I would have to assume it was the
9 EMT.

10 Q. You believe it was the EMT?

11 A. Yes.

12 MS. SOMMERS: Can you rewind it again? Just
13 about three seconds or four.

14 (Whereupon, the video continued to play for
15 the witness and the Grand Jury.)

16 (Whereupon, the video was paused.)

17 BY MS. SOMMERS:

18 Q. Has Sergeant -- I'm sorry, we're at 7:58. Has
19 Sergeant [REDACTED] re-joined the vicinity of the incident?

20 A. Yes.

21 Q. Okay.

22 (Whereupon, the video continued to play for
23 the witness and the Grand Jury.)

24 (Whereupon, the video was paused.)

25 BY MS. SOMMERS:

1 Q. Do you have any idea who it was that said that?

2 A. The voice does not sound familiar to me, so I
3 would have to assume the EMT.

4 Q. Okay.

5 (Whereupon, the video continued to play for
6 the witness and the Grand Jury.)

7 (Whereupon, the video was paused.)

8 MS. SOMMERS: I know we kind of went
9 further, but did that answer the question that you
10 had?

11 A JUROR: Yes.

12 A JUROR: I'm wondering if -- what's the
13 best way to ask this. If an officer's job is to, in
14 this situation, like this, are you trained to just
15 hold the person until the ambulance comes, and once
16 the ambulance is on scene, would it -- are you trained
17 that once they're on scene that they would, in fact,
18 take over the medical portion of the patient?

19 BY MS. SOMMERS:

20 Q. So, do you understand the question? Is there any
21 type of training on the dynamics between the EMTs and
22 the Paramedics and the police officer in terms of
23 medical care?

24 A. So, I don't know if I mentioned it earlier, but
25 once the AMR arrives on scene, through all my

1 experiences and knowledge, it is AMR's scene,
2 especially, when it's a medical scene. As police
3 officers, we are trained on certain things medically;
4 but, obviously, they have much more extensive training
5 and knowledge when it comes to anything medically.
6 So, once they show up, it's their scene. It's their's
7 to take over and we're at their disposal of whatever
8 they need us to do.

9 Q. So, if things are asked of you, you'll do it?

10 A. Yes.

11 Q. And, were things asked of you?

12 A. Things were asked of us to help them get him on
13 the gurney, things like un-cuffing, carrying the
14 equipment to the ambulance, things of that nature,
15 yes.

16 A JUROR: I wanted to know, how long was AMR
17 on site before they were actually hands on with him.

18 THE WITNESS: I'd have to look at a
19 timeline, but I would say probably around three to
20 three and a half minutes.

21 A JUROR: Okay. So, it appears like it's a
22 long time but it's actually not.

23 THE WITNESS: In my totality of the
24 situation, I would consider it a significant amount of
25 time.

1 A JUROR: And, how many officers were on
2 site that night at that scene?

3 THE WITNESS: At the scene right now, I
4 believe six were on scene.

5 A JUROR: All right. Thank you.

6 A JUROR: I've got one statement I guess.

7 MS. SOMMERS: Well, is it a question?

8 A JUROR: Sort of, but everyone is trying to
9 wean through this thing here, but the reason why the
10 main Paramedic -- she was in the ambulance making the
11 drug to calm him down, correct?

12 BY MS. SOMMERS:

13 Q. So, if you know. Do you know why the main
14 Paramedic was not at the scene helping out?

15 A. No.

16 Q. Okay. So -- so, you're not aware of what she was
17 doing when she wasn't there helping you?

18 A. No.

19 Q. Are you -- okay.

20 MS. SOMMERS: I understand -- is that your
21 question? Was he aware or --

22 A JUROR: Just the time, that's why it was
23 taking so long. And, the other guy, he was only on
24 the job for a year, correct?

25 MS. SOMMERS: Which guy?

1 A JUROR: The other EMT.

2 MS. SOMMERS: The EMT?

3 A JUROR: Yeah.

4 MS. SOMMERS: So, again, this officer
5 won't --

6 A JUROR: I know, but perhaps, this was
7 something that --

8 MS. SOMMERS: Right, I know.

9 Any other questions?

10 A JUROR: I have a question. The situation
11 where the AMR arrived, there's -- typically, I'm going
12 to guess, as an EMT basic and a Paramedic, is it
13 usually the EMT basic that gets off the ambulance
14 first or don't you know?

15 THE WITNESS: I couldn't tell you for sure.
16 I would say it's probably situational, based on
17 whatever they have going on, but I couldn't tell you
18 for sure.

19 A JUROR: So, if you could -- if you could
20 do this night over, would you have done the same
21 things or would you have done anything different?

22 THE WITNESS: I would, obviously, hope for
23 an absolute different outcome. I rely, based on
24 training and what I'm trained to do in this situation.
25 I believe I did what I was trained to do, but I would

1 never -- never hope for this outcome of an individual.

2 But, like I said, I do what I was trained.

3 BY MS. SOMMERS:

4 Q. I understand what you're saying, you did as you
5 were trained, as you say; but, just thinking back to
6 how we just -- we, kind of, ran through some things
7 that maybe you didn't do, or anybody, and I understand
8 that we're engaging in 20/20 hindsight here. Do you
9 think that, perhaps, if you could do this all over
10 again, you may have tried some of those other things
11 first?

12 A. Yes. So, in the aspect of before anything got
13 hands on or physical, like, you mentioned before that
14 the de-escalation techniques would have been something
15 that could have been gone to prior, which we did not
16 do.

17 MS. SOMMERS: Is there anything else that
18 you're thinking of?

19 A JUROR: I was thinking that maybe a bit
20 more compassionate, like, I'm sure officers, they can
21 be, right? That's something that's allowed. I was
22 just thinking maybe along those terms?

23 MS. SOMMERS: So, using a little bit of
24 empathy then, perhaps?

25 A JUROR: Yes.

1 BY MS. SOMMERS:

2 Q. Do you wish, looking back on this, that you had?

3 A. Yes, and I feel like that goes back to trying to
4 relate with him a little bit and talk with him more
5 and do things that may have help him verbally before
6 things got to the point where they were at.

7 A JUROR: One quick question, just to
8 clarify in my mind. Whose role is what? So, the
9 police are hands on, they're controlling, but when the
10 EMTs arrive, it's their scene, are there times when --
11 I don't know, are you guys trained on CPR, chest
12 compressions?

13 THE WITNESS: So, we were trained to a
14 certain extent medically to --

15 A JUROR: So, my question would be, are
16 there times where -- where medical providers, the
17 EMTs, arrive on scene and officers are still applying
18 life saving techniques until they can get out, get
19 situated -- get the situation under control?

20 THE WITNESS: Yes, and I've had situations
21 like that where officers do apply those basic
22 techniques before AMR arrives.

23 BY MS. SOMMERS:

24 Q. So, perhaps, maybe just to follow up on that, is
25 there a reason that -- that CPR wasn't begun or

1 commenced before the EMT saunters over to see what's
2 happening?

3 A. So, I mean -- at least myself, I can't speak for
4 other officers, if I see an ambulance that pulls up on
5 scene, obviously, that scene is their priority. So,
6 in my mind, I'm thinking they're here to take care of
7 this gentleman. They're more equipped to do that, as
8 I previously mentioned, with their medical background
9 and medical experience. So, they should have been the
10 ones to initiate that.

11 A JUROR: So, you answered a lot of
12 questions on de-escalation verbally, and maybe some
13 hypotheticals. In your training with your Academy,
14 and the de-escalation process with six officers there,
15 is there a chain of command where maybe six people
16 talking to a suspect can be just as confusing as not
17 saying anything? Is there any type of training as to
18 who should be the person trying to verbally
19 de-escalate?

20 THE WITNESS: We do have some officers that
21 are specifically trained. They're -- it's Crisis
22 Intervention, on whether or not any of my co-workers
23 are, that is something that is done. But, in this
24 situation, there is no -- if a Sergeant's on scene,
25 he's going to talk. It's kind of whoever is in that

1 area, who's being pointed out by the individual. So,
2 it's not necessarily an, okay, this is -- this is this
3 officer's time to talk to this certain person.

4 A JUROR: And, there's no training on if
5 multiple people are trying to de-escalate that it can
6 make the matter worse?

7 THE WITNESS: That is the case. If you have
8 six officers trying to tell one person to do six
9 different things, that definitely does make the
10 problem worse.

11 MS. SOMMERS: Thank you.

12 A JUROR: This is from experience. I know
13 whether the AMR is called or the police is called or
14 if a person not breathing, the Fire Department is
15 there, it seems like the Fire Department handles
16 things more fluently. How come the Fire Department
17 was not there this time?

18 BY MS. SOMMERS:

19 Q. So, do you know if the Fire Department ever was
20 ultimately called, do you recall?

21 A. I don't recall if they were called or if they
22 were on scene. I'm sure some of the body camera
23 footage would answer that question. But, me
24 personally, I don't ever remember seeing anybody in a
25 fire -- from fire show up.

1 Q. So, if there wasn't anyone from the Fire
2 Department captured on any of the body worn cameras,
3 would that indicate that no one from the Fire
4 Department arrived during this portion of the
5 incident?

6 A. Yes.

7 A JUROR: Is it unusual not to have the Fire
8 Department show up?

9 THE WITNESS: It depends on the call. I
10 mean, obviously, they have different types of calls
11 they go to. I'm not a fireman, I don't know exactly
12 what calls they have to go to, or they don't go to, or
13 they get dispatched to, but a lot of times they are
14 dispatched to medical calls but if it is something
15 minor, I know they may get called off, if they have
16 something else to go to.

17 BY MS. SOMMERS:

18 Q. So, I just want to be clear. This was not
19 originally a cardiac arrest or a code, was it?

20 A. No. The original call was the call from the tow
21 truck driver at West Main.

22 Q. And, it ultimately did progress though to the
23 code, right?

24 A. Yes.

25 MS. SOMMERS: Yes, sir?

1 A JUROR: Ultimately, you're not medically
2 certified, correct?

3 THE WITNESS: Correct.

4 A JUROR: And --

5 THE WITNESS: I don't know what you consider
6 medically certified, I guess.

7 A JUROR: I guess -- well, professionally
8 considered a medic?

9 THE WITNESS: No.

10 A JUROR: And, by the time that he stopped
11 breathing, that was when the ambulance was already
12 there, he was still making sounds or acting, making
13 movements well after the ambulance arrived?

14 THE WITNESS: Yes.

15 A JUROR: So, by that point, none of the
16 police officers should have been in charge, according
17 to how everything has been?

18 THE WITNESS: Well, so once AMR arrived on
19 scene and Mr. Prude was -- was under control and he
20 wasn't acting erratically like -- like he was
21 previously and earlier in the body cam footage. If
22 AMR arrives on scene, that's the case, yes. That is
23 their scene to take over.

24 BY MS. SOMMERS:

25 Q. So, I just want to -- in terms of them taking

1 over when the ambulance arrives on scene, does
2 everyone jump up and say, we're done here? I just
3 want to understand what the dynamic is?

4 A. No. As you can see from the videos, it's, kind
5 of, okay, we're here, we're going to take over, but
6 can you do this for us, can you do that for us. We're
7 at their disposal of whatever they need. But, they --
8 I would say that they're aware that they're more
9 medically advanced than us and they're the ones who
10 should be taking care of the patient.

11 A JUROR: But, it would still be your job to
12 control the person until medical says, okay, let's do
13 this. So, it would still be your responsibility to
14 hold whoever you're holding until medical says it's
15 okay, let go. Is it to say, just because the
16 ambulance got there, everybody's not going to just
17 jump up and leave him there?

18 THE WITNESS: No, which we did not.

19 A JUROR: It's still your job to hold him
20 until it's time for the ambulance to take over?

21 THE WITNESS: Correct, yes.

22 BY MS. SOMMERS:

23 Q. Okay. Would it be safer to say it was still your
24 job to control him in terms of whether or not it was
25 appropriate to hold him or not, your job is to control

1 him?

2 A. Yes. I mean, we have suspects that oftentimes
3 will fake compliance just to get that sliver of
4 opportunity to get away or to start fighting again.
5 So, if that helps answer your question, it's -- it's
6 our job to maintain that compliance until AMR gets to
7 us, gets on scene. So, that we don't -- once again,
8 they don't have to deal with that situation and we
9 don't have to get re-involved.

10 A JUROR: To protect you and them?

11 THE WITNESS: Yes.

12 A JUROR: Okay. Thank you.

13 MS. SOMMERS: Anyone else? All right.

14 You're all set. Thank you very much.

15 THE WITNESS: Thank you.

16 MR. [REDACTED] Thank you.

17 (Whereupon, the witness and his Attorney,
18 Mr. [REDACTED], left the Grand Jury room at a time of
19 5:50 p.m.)

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1 MS. SOMMERS: So, I want to thank you all
2 for, I think, a very long day. I'm very grateful for
3 all of you for working this in. You don't have to
4 come in again until the first Wednesday in January,
5 which I believe is the 6th. So, the 6th at 9:30, it
6 may be your last day. I can't say for sure yet, but
7 we will see you the 6th at 9:30, and I hope you all
8 have a wonderful new year.

9 (Proceedings adjourned.)

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STENOGRAPHER CERTIFICATION

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing proceeding, which was taken down by me in a verbatim manner by means of machine shorthand.

Further, that the proceeding was then reduced to writing in my presence and under my direction. That the proceeding was taken to be used in the foregoing entitled action. That the said deponent, before examination, was duly sworn to testify to the truth, the whole truth, and nothing but the truth, relative to said action.

Notary Public.