

<p>COUNTY COURT  LARIMER COUNTY, COLORADO  LARIMER COUNTY JUSTICE CENTER  201 La Porte Avenue, Suite 100  Fort Collins, CO 80521  (970) 494-3500</p>		
<p>The People of the State of Colorado,   vs.   Michaela Lynn Surat,   Defendant.</p> <hr/> <p>For the People: Mitchell T. Murray, DDA   For the Defendant: David A. Lane, Eleanor K. Wedum  and Nathan P. Hansen</p>		
<b>FTR TRANSCRIBER'S TRANSCRIPT</b>		

This matter came on for hearing on January 9, 2018, before the Honorable Joshua B. Lehman, Judge of the County Court. This is a partial transcript of the electronically recorded court proceedings consisting of the testimony of Randal Klamser.

## INDEX

<b><u>WITNESSES</u></b>	<b><u>PAGE</u></b>
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**For the People:**

**Officer Randall Klamser**

Direct Examination by Mr. Murray .....	3
Cross Examination by Mr. Lane .....	65
Voir Dire by Mr. Murray .....	73

**For the Defendant:**

No testimony requested.

<b><u>EXHIBITS</u></b>	<b><u>OFFERED</u></b>	<b><u>NOT</u></b>	<b><u>ADMITTED</u></b>
	<b><u>PAGE</u></b>	<b><u>ADMITTED</u></b>	<b><u>PAGE</u></b>

**For the People:**

Exhibit 1	46	–	47
Exhibit 8	48	–	49
Exhibit 15	47	–	47

**For the Defendant:**

Exhibit A	73	–	73
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**IN OPEN COURT, January 9, 2018**

**The Honorable Joshua B. Lehman Presiding**

**RANDALL KLAMSER**

THE COURT: Officer Klamser, please come on up to the witness stand. When you get there raise your right hand and Ms. Acuna will swear you in.

THE CLERK: Do you solemnly swear or affirm under penalty of law that the testimony you'll give before this Court shall be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE CLERK: Please state your name for the record, spelling your last name.

THE WITNESS: My name is Randall Klamser, and it's K-L-A-M-S-E-R.

**DIRECT EXAMINATION**

**BY MR. MURRAY:**

Q Good morning.

A Good morning.

Q You stated your name and it may be obvious, but how are you employed?

A I am a police officer with the City of Fort Collins.

Q And what is your current assignment?

A I'm currently a corporal assigned to the parole – patrol division working day shift.

Q And how long have you worked for Fort Collins Police Services?

A Just several days past six years.

Q Do you have any other law enforcement experience other than working at Fort Collins?

1           A     Yes, I do.

2           Q     And what would that be?

3           A     I was a police officer in the State of California since 2005.

4           Q     Thank you. Today you're in court and you're in uniform.

5           A     Yes.

6           Q     As a patrol officer is this the – the uniform that you wear when –

7           A     Yes.

8           Q     – you're on duty? Were you working on April 6th of 2017?

9           A     Yes, I was.

10          Q     And in what capacity at that point in time?

11          A     I was assigned to the District 1 policing unit, the Old Town policing unit  
12 working the night shift on the weekends.

13          Q     And is the uniform that you have today similar to the uniform you would  
14 have been wearing on April 6, 2017?

15          A     Yes, it is.

16          Q     Can you tell the jury what D-1 is?

17          A     District 1 is the unit title. It's a group of one sergeant and I think seven  
18 officers that works the nightshift. We're solely assigned to downtown specifically, a bar  
19 district, and our primary job responsibility is handling calls for service during the evening  
20 hours downtown. Mainly it's bars.

21          Q     When you talk about this work that you do at D-1, is it different than having  
22 an assignment in a different area?

23          A     Yes, it is.

24          Q     Is that including your transportation or how – how you perform your  
25 functions?

1           A     Yes, it is.

2           Q     Can you describe that for the jury, please?

3           A     District 1 is different. We're primarily a – a walking unit or a foot beat unit.  
4 We all have patrol cars that we drive to the substation underneath the parking garage over  
5 here, but we spend the vast majority of our shift walking around Old Town on foot. It's a  
6 very, very close knit unit because there's only seven of us, so we usually walk in groups of  
7 two to three depending on staffing for the night, and it's unique to the City of Fort Collins  
8 because on any given shift, you know, there could be either a festival or if there's nothing  
9 going on in Old Town, there's still several thousand people at bars and there's only seven  
10 officers. Seven to nine officer, I guess, depending on staffing. So it's very unique in that  
11 sense.

12          Q     And when you – what – and you may have answered this, but time shift do  
13 – do the D-1 officers come on?

14          A     The D-1 shift is typically 5:00 p.m. to 3:00 a.m.

15          Q     And you talk about the bars and the people. How does that impact of affect  
16 what you're dealing with as a D-1 officer versus maybe, you know, patrolling in a suburb?

17          A     It's very, very different. Everything is much– we're constantly in contact  
18 with tons and tons of people. It's a very community-oriented policing type unit. We really  
19 are the face of the department for lots and lots of tourists that don't live here, students that  
20 come to Old Town to enjoy activities down there, families doing dinner time type stuff.  
21 It's just – it's a very community-based unit that you don't really get on standard patrol.  
22 We don't – there's not a lot of downtime or – or deadtime at all. You're constantly walking  
23 somewhere to check an issue at a bar or just go talk to a business owner or make contacts  
24 and make people feel welcome in Old Town.

25          Q     Do you – when you're working a shift in – in D-1 are you by yourself or

1 you usually paired up with someone?

2 A Standard practice is to not go alone. Just based on pure numbers it's not an  
3 – it's an officer safety issue to have one person walking around alone at night. Now we try  
4 to do groups of three, but usually based on staffing it turns into multiple groups of two.

5 Q So three's the attempt, two is the norm?

6 A Yes.

7 Q And – and you've talked a little bit about what the purpose of this unit is  
8 and how you operate. Does the function change as the hours get later?

9 A Yes.

10 Q Can you kind of talk to the jury and maybe express to them what – what the  
11 unit experiences as a part of that?

12 A The beginning of our shift is much more – it's just – there's families out,  
13 there's kids out, there's people who aren't necessarily engaging in bar-specific activities.  
14 We do a lot more walking around enforcing the recent smoking ban came up. That was  
15 tasked to District 1. Lots of cruising issues in old town. Just different styles because at  
16 night it really transitions into more of a bar district – lots more intoxicated people. It's a  
17 younger crowd and it's a very different atmosphere. It's hard to articulate unless you're  
18 down there seeing kind of that shift from dinner hours to more bar hours.

19 Q Thank you. If we go back to the April 6th of 2017, did you get a call at  
20 about 11:13 that evening?

21 A I did.

22 Q What kind of a call was it?

23 A It was a call for a – what we call cold disturbance. It wasn't a fight actively  
24 going on inside a bar. It was a call where there had been a disturbance inside of the Bondi  
25 Beach Bar and one of the parties was inside still and one of the parties had been removed

1 by staff and was outside.

2 Q And who did that call come from?

3 A Staff at Bondi.

4 Q Is that a typical kind of a call?

5 A Yes. They're – bars are required to call us per their liquor license and  
6 ordinances when there's any sort of incident like that in the bar.

7 Q Can you give us any more details about that? That's a part of their liquor  
8 licensing? They have this requirement?

9 A They are required to notify law enforcement whenever there's – in this case  
10 specifically a fight in the bar, yes. They can get in trouble if they don't report that.

11 Q What did you do when you got that call?

12 A I was partnered double with Officer Garret Pastor [sic]. He's also a District  
13 1 officer. And we walked over to Bondi.

14 Q And what information did you get from your agency or however it came to  
15 you as you're going over to Bondi Bar responding to this call?

16 A It – the dispatch broadcast over our radios that there had been a cold  
17 disturbance inside that bar, that one of the involved parties was now outside and one of the  
18 involved parties was inside.

19 Q And you talked about radio. I noticed you have something coming up to  
20 your ear.

21 A Yes.

22 Q What is that?

23 A This is an ear piece. It's connected to my radio, which is down here, so you  
24 guys don't get annoyed with the constant police radio. Only we can hear it.

25 Q And would that have been how the call would have come out to you, through

1 that radio?

2 A Yes.

3 Q Did you get information also giving you some identifying information on  
4 the male that was outside the bar still hanging around?

5 A I – I don't recall the specifics. I would have to refer to my report to refresh  
6 my memory on that, but it is typical practice that the dispatch tries to get some identifiers  
7 whether it's sex of the person, like a male, or a item of clothing – something that helps us  
8 be able to pick them out of a crowd if they start walking away from the bar.

9 MR. MURRAY: If I could have a moment, Your Honor?

10 THE COURT: Yes.

11 Q BY MR. MURRAY: When you're responding to a call like this, what is  
12 your purpose? What – What is law enforcement trying to do when you go to a bar like this  
13 on – on this kind of a call?

14 A Typical response would be we would want to identify everyone involved,  
15 keep them separated, try to figure out what happened between those two people, if any  
16 crimes occurred between the two people in the disturbance and also contact staff at the bar  
17 and see if any crimes occurred with the bar being a victim or bouncers being a victim which  
18 is very common downtown.

19 Q Is this investigation determining whether criminal charges are appropriate,  
20 is that part of what you do to preserve the peace is downtown Fort Collins?

21 A Absolutely.

22 Q What happened when you got to the bar? What did you do first?

23 A As Officer Pastor and I were walking towards the bar, Bondi particularly  
24 has a security guard that kind of watches their patio, and he – as we got close he kind of  
25 pointed over to a gentleman who was not standing in any crowds, standing right in front of



1 the bar leading us to believe that he was involved – especially with the – the indication  
2 with the staff saying that's him. And then I – I then went to contact the head bouncer of  
3 Bondi while Officer Pastor went to contact that individual.

4 Q Did the person that was identified and pointed to, did that turn out to be  
5 Murray Walsh [sic]?

6 A It was.

7 Q And was that the individual that was involved in the disturbance in the bar?

8 A It was.

9 Q Did you get to talk to security?

10 A Briefly, yes.

11 Q And who was it that you talked with?

12 A Bondi's head of security or their head bouncer, Corey Eslinger [sic].

13 Q While you're talking to Corey Eslinger, what is your partner, Garret Pastor,  
14 doing?

15 A Officer Pastor was trying to speak with Mr. Walsh to get – start getting his  
16 side as one of the involved parties of the initial disturbance in the bar.

17 Q What happened while you were speaking with Corey Eslinger?

18 A We were –

19 Q Wait a minute. Let me stop you there. Did – as you – as you came up and  
20 contacted with him – contacted him did he start giving you information about this  
21 disturbance?

22 A Yes, he did.

23 Q While he was giving you that information about the disturbance, was – did  
24 you take note or was the Defendant, Michaela Surat, in the area?

25 A I did take note and yes, she was.

1           Q     Was she in fact communicating with the person who had been identified as  
2 the other party in the disturbance?

3           A     Yes, she was.

4           Q     And just to make sure, is Michaela Surat, the Defendant, is she present in  
5 court today?

6           A     Yes, she is.

7           Q     Can you identify her?

8           A     She's sitting at the table marked Respondent with red hair and a black coat.

9           Q     Thank you. And the location where this all occurred, that's all in Larimer  
10 County, State of Colorado, isn't it?

11          A     Yes, it is.

12          Q     All right. So as you're talking to Corey Eslinger you take note of – of the  
13 Defendant communicating with – with the other party that was involved in the disturbance.  
14 As Mr. Eslinger's giving you information about the disturbance what happens?

15          A     As Corey and I were talking, I had noticed Ms. Surat trying to talk to her –  
16 I assumed boyfriend at the time who was with Officer Pastor, and she – I initially noticed  
17 that she looked upset about whatever had either just happening [sic] or was – just happened  
18 or was happening. As I tried to talk to Corey she walked from outside of the patio – Bondi  
19 has about a waist high gate on the outside patio area attached to their bar, and Corey and I  
20 were talking right at the entrance to that. As he was trying to give me the information she  
21 walked out of the bar and physically bumped into Corey causing him to turn and he then –  
22 there was enough momentum that he then bumped into me while I was talking to him, and  
23 that caught me very much off guard. And as she walked past Corey she then bumped into  
24 me also and continued walking behind me.

25          Q     At that point in time did you have any information that she was involved in

1 this incident?

2 A No.

3 Q Was she a part or focus of what you were there to determine with regard to  
4 this disturbance?

5 A Not initially, no.

6 Q As she came out and – and did the actions that you’ve described, were there  
7 any words exchanged?

8 A Yes. I – after she walked past and bumped into Corey and bumped into me  
9 – the – it took me aback because there was enough room for that not to happen at all. So I  
10 said excuse me, and the response was a very sarcastic excuse you very loud, not anything  
11 I would expect if it was an accident or unintentional.

12 Q And – And can you describe – you’ve done to describe the front of Bondi  
13 and – and the patio area, but can you tell them about – the jury about what kind of people  
14 were around at that point?

15 A It’s predominantly – the Bondi’s a predominantly college-aged bar for our  
16 downtown. There’s a line just outside of the patio that was there at the time. I would say  
17 it probably stretched back at least 20 feet of people in line, and there’s also numerous  
18 people on that patio right outside where we were at.

19 Q And you indicated – so there is quite a number of people there?

20 A Yes.

21 Q But in your opinion was there enough room for her to have moved by  
22 you –

23 A Yes. There’s –

24 Q – maybe having – maybe having to turn sideways, but not to bump into you?

25 A There is bouncers specifically stationed at that entrance to keep it open and

1 easily accessible and it – which it was.

2 Q As she came by – as the Defendant came by, made her contact with Corey  
3 Eslinger and then with you, did you see any reaction in the crowd that was standing there?

4 A I did.

5 Q What did you see?

6 A I noticed there was a group of girls at the very front of the line that their  
7 facial expresses – facial expressions changed to kind of a shocked look about what had just  
8 happened.

9 Q And I'm – And I'm sorry, but I'm going to back up just a –

10 A Okay.

11 Q – for a second. When you go out and you're paired up with an officer like  
12 you were with Garret Pastor, do – do the officers take different roles in an investigation?

13 A Yes.

14 Q And – And can you discuss that briefly?

15 A We definitely want to keep the parties separated. It's best to get the  
16 information one-on-one when there's no outside influences about what happened. With  
17 District 1 sometimes that can be very unique because officers are so outnumbered  
18 downtown – it was just Officer Pastor and I, where we take more of a contact and cover  
19 type role where one officer will get one interview while the other officer just stands back  
20 and watches the crowd for people that may want to get involved or other things just going  
21 on that have nothing to do with us but are very close to us.

22 Q So you will have one officer who's going to contact the witness and – and  
23 do the discussions and the other officer, you call it cover, is kind of –

24 MR. LANE: I'll object to leading.

25 MR. MURRAY: I don't believe it's leading, Your Honor. I think I'm asking a

1 question and I'm not suggesting an answer.

2 MR. LANE: Well, he's paraphrasing the answer and asking is that what it is.

3 THE COURT: It – It seemed to me that he was clarifying what – what he heard so  
4 that he can ask a follow-up question. Ask the – Ask the question again.

5 MR. MURRAY: I – I would not be able to remember exactly how I was going to  
6 do it, but I can approach the same thing a different way.

7 THE COURT: Okay.

8 Q BY MR. MURRAY: When you talk about this cover, what – what purpose  
9 is the cover – the officer who's assuming the cover role taking again?

10 A It's – It's an overall safety officer making sure that the officer who's  
11 interviewing the citizen is fully engaged in that interview. We're not – if I'm in an  
12 interview I am not trying to pay attention to the hundreds of people around me. I'm trying  
13 to give that person all of my time and effort to figure out what happened because of the  
14 potential seriousness of what could be involved. The cover officer's job is to watch that  
15 crowd, do everything I'm not able to do to make sure someone doesn't inject themselves  
16 in my contact or just walk up to want to talk to a police officer which happens a lot  
17 downtown. They cover us and make sure that we can conduct our investigation fairly and  
18 safely.

19 Q And is that contact officer – is having to pay attention to things that are  
20 going on around or someone trying to intervene, does that interfere and impede their ability  
21 to conduct their investigation?

22 A Absolutely.

23 Q Can that role of the officer who is a contact officer and the officer who's a  
24 cover officer, can it switch back and forth during an investigation?

25 A Absolutely.

1           Q     In this case when you approached and began talking with Corey Eslinger,  
2 would you have been primarily fulfilling a contact role?

3           A     Yes.

4           Q     As this investigation continued, Garrett Pastor, you indicated was going to  
5 be in contacting and talking with Murray Walsh? [sic]

6           A     Yes.

7           Q     Would have then become the contact officer?

8           A     Yes.

9           Q     And what would your role then switch to?

10          A     After trying to briefly talk to Mr. Eslinger and get the information, I would  
11 have them stepped back and let Garrett conduct his investigation into the initial  
12 disturbance. Our – Our contact with the bouncers initially is try to be where's the other  
13 person, can we talk to them, is anyone hurt and is the bar a victim. And once we can get  
14 kind of those basics we can then transition into more talking specifically with the people  
15 involved in the fight to see what, if any, crimes occurred during that incident.

16          Q     Now, let's go back to when the Defendant left and had made contact with  
17 both Corey Eslinger and yourself.

18          A     Uh-huh.

19          Q     Your testimony and I believe your report talks about that she bumped into  
20 Mr. Eslinger and yourself.

21          A     Yes.

22          Q     There is also a shoulder check used at some point. Was that your words or  
23 was that Corey Eslinger's words?

24          A     I would – I don't remember if he said that specifically. I would describe it  
25 absolutely like a shoulder check.

1           Q     Can you then describe and – and tell the jury what you mean by that and  
2 what the Defendant did that causes you to give it that descriptor?

3           A     It's – I always describe it as a posturing kind of thing, almost an intimidation  
4 kind of thing. There was enough room for someone to walk by us. We bump into people  
5 all the time in the bars. Most of the time we both look at each other, it's an accident and  
6 everyone leaves. No big deal. This one was much more intentional. There was room for  
7 us both if she wanted to leave the bar to leave without touching either of us. But instead I  
8 would describe it as almost a posturing where someone kind of stands up and does one of  
9 these because they're angry, I guess. I don't know why that would happen. That's not  
10 normal behavior and not a normal experience to have someone intentionally check me  
11 while especially I'm in uniform and in Old Town.

12          Q     All right. So you described the Defendant coming by, having this contact  
13 with Corey Eslinger and yourself, and then this exchange of excuse me and – and the  
14 Defendant responding excuse you. What happened at that point?

15          A     That was when I started having to transition to more I can't talk to Corey  
16 right now. This person, being Ms. Surat, is – is clearly very upset about something. I don't  
17 know why yet but based on that interaction and the level of anger that I was seeing I started  
18 having to now worry about what she was going to do next and not be able to figure out  
19 what happened in the initial incident.

20          Q     Did you break away from your contact with Corey Eslinger?

21          A     I had to.

22          Q     And what did you observe?

23          A     I watched Ms. Surat walk towards Officer Pastor and Walsh –

24          Q     Right.

25          A     I don't want to get it wrong.

1 Q You know, I had it at Walsh, but I may be wrong.

2 A Waltz [sic] – I – I knew it started with a W. I apologize. She's starting  
3 walking towards –

4 Q Could we call him the boyfriend?

5 A The boyfriend. She's starting walking towards Officer Pastor and the  
6 boyfriend which then I did not want her, based on what just happened, inserting herself in  
7 that and now creating issues for Officer Pastor and interrupting that investigation.

8 Q What did you do in response to that?

9 A I told Officer Pastor that he, being the boyfriend, is not free to leave. I had  
10 enough information to determine that yes, some sort of fight took place in the bar and we  
11 don't know what, if any, charges or outcomes are going to come from that but we have the  
12 obligation to investigate. He was detained.

13 Q And did you say anything to – or did you observe anything on the part of  
14 the defendant and – and make any verbal response to her at this point in time?

15 A I did notice that she was walking straight towards them. She grabbed the  
16 boyfriend's arm and started to pull him away from Officer Pastor and walk away.

17 Q And what happened at that point?

18 A At that point I had already completely left Mr. Eslinger and started walking  
19 towards them, and I – I started yelling out because I wasn't – I wasn't close enough to say  
20 he's not free to go, but you can – you can keep going. You can walk away – because she  
21 was not detained at that point.

22 Q Did you observe Mr. Pa- – Officer Pastor do anything?

23 A Yes. Officer Pastor grabbed the boyfriend by the other free hand and started  
24 taking him back and the boyfriend was cooperative. He went back with Officer Pastor.

25 Q Did you overhear Officer Pastor as well say anything to Michaela Surat?



1           A       I did not.

2           Q       So how far away – can you give us an idea how far away from where – and  
3 – and I’m going to ask you to look at your report to refresh your recollection as to the name  
4 of the boyfriend just so we –

5           A       Okay.

6           Q       – do have his name.

7           MR. LANE: Stipulate to –

8           THE COURT: Waltz. Murray Waltz.

9           THE WITNESS: Waltz. Sorry.

10          THE COURT: Or is that – would be correct?

11          THE WITNESS: I don't know why I was thinking Walsh.

12          Q       BY MR. MURRAY: Yes, thank you.

13          A       Waltz.

14          Q       How far away did Ms. – the Defendant, Ms. Surat, pull Mr. Waltz before  
15 Officer Pastor was able to get a hold of him and – and bring him back?

16          A       It was several feet. Far enough – or – or long enough that Mrs. – or Ms.  
17 Surat’s arm was fully extended. Mr. Waltz’ arm – Walsh –

18          Q       Waltz.

19          A       Waltz – his arm was fully extended and Officer Pastor’s arm was extended.  
20 So if you could picture that length of three people, about that far.

21          Q       And after Officer Pastor was able to get a hold of Mr. Waltz’ hand, where  
22 did he move him or take him?

23          A       Officer Pastor – Waltz was cooperative. Waltz let go of Ms. Surat’s hand  
24 and walked several feet the opposite direction back towards the middle of Old Town  
25 Square, toward the front of Bondi’s bar again, opposite of where Ms. Surat was walking.

1           Q     As that's occurring, he's pulling – Officer Pastor's pulling Mr. Waltz away,  
2 and – and the Defendant realizes she no longer has him by the hand. What does she do?

3           A     It – It took maybe a step or two for her to realize, and she immediately  
4 turned around and started walking back towards Waltz and Officer Pastor.

5           Q     And what did you do in response to that?

6           A     I tried to step between them, break that line of either eyesight or  
7 concentration and maybe hopefully get a clue, like okay, I can't go there. There's a copy  
8 right in front of me. And pointed and said that she can walk away.

9           Q     Did that deter her in any way?

10          A     Not at all.

11          Q     What did the Defendant do?

12          A     She continued walking straight at Officer Pastor (inaudible) she was going  
13 to walk right through me like I wasn't even there.

14          Q     Did you do anything at that point in time again to try to deter her and stop  
15 her from interfering in that investigation?

16          A     Yes.

17          Q     What did you do?

18          A     Instead of pointing away I just put my hand up as maybe a change or a  
19 different barrier to stop hoping she would just stop.

20          Q     Did you make any other statements?

21          A     I told her, again, that it – it was very fast. It was – you're – you can keep  
22 walking. He's not free to leave and – and I don't remember. I'd have to look at my report  
23 to refresh my memory on a specific quote, but it was very rapidly evolving at that point.

24          Q     So let's talk about your kind of decision-making process when you're  
25 dealing with someone that's engaging like this. Do you receive training as a part of your

1 employment in tactics and how to deal with someone when you encounter them in a  
2 situation like this?

3 A Yes.

4 Q And is that called defensive tactics or response resistance –

5 MR. LANE: I'll object to leading.

6 THE COURT: It – do you have any response to that?

7 MR. MURRAY: Again, I'm not suggesting the answer, I'm asking him a question.  
8 Because it's a yes or no question doesn't mean it's leading.

9 MR. LANE: He's suggesting the answers. Is this called defensive tactics? Is this  
10 called –

11 THE COURT: It is – It is suggesting the answer. I mean, it is a leading question.  
12 I don't know that it's to a particularly relevant part and a lot of times I allow leading just to  
13 get through kind of these, but if you can rephrase your question. I'll sustain the objection.

14 Q BY MR. MURRAY: What – What is that called?

15 A We receive defensive tactics training, yes.

16 Q Is there some other kind of a training that's called – or some piece of that's  
17 called response resistance training?

18 A A – A element of our defensive tactics training is response to resistance.

19 Q Okay. Thank you. Can you give the jury just kind of an explanation of  
20 what – what it is when you go through a detec- – defensive tactics training?

21 A It's a very broad topic, defensive tactics. Some of it is officer safety, very  
22 defensive type maneuvers. Some of it is weapons usage – not firearms related, just other  
23 – the different tools that we carry on us, and some of it is more take downs, control holds,  
24 arrest techniques. And then the response to resistance component of that is when you are  
25 trying to make an arrest or when you are trying to use a control hold on somebody to gain

1 compliance and it is not working or they are not complying with that control hold, they  
2 resist, so then the response to resistance is then different take downs or different moves to  
3 kind of transition into a – a change or a transition to make the arrest.

4 Q Are there different – as you're given this training, are different levels of  
5 resistance discussed?

6 A Yes, they are.

7 Q And do these – what kind of a range of – of resistances are discussed?

8 A There's several levels of resistance. There's psychological intimidation.  
9 There's verbal non-compliance. There's passive resistance, defensive resistance, active  
10 aggression and an aggravated active aggression.

11 Q Would it be fair or okay for me to ask you to kind of give an example of  
12 some of those?

13 A Yes.

14 Q If we talk about the psychological intimidation, what kind of a thing are we  
15 talking about there?

16 A The psychological intimidation could be if I'm trying to talk to someone or  
17 trying to gain compliance and maybe an arms crossed, a very angry posturing type  
18 behavior, where they're not necessarily – or the person's not necessarily doing something.  
19 They're just trying to either intimidate me or show me that they're not going to comply  
20 with what I'm trying to accomplish.

21 Q And so these are descriptors of what a person might be doing that you're  
22 going to encounter –

23 A Yes.

24 Q – as part of your work potentially. How about verbal non-compliance?

25 A Verbal non-compliance would be yelling at me, saying no – just simply

1 saying no. It could be just anything verbally. If I say, hey, you need to put your hands on  
2 top of your head and interlace your fingers, and they say no, that's verbal non-compliance.

3 Q How about passive resistance?

4 A Passive resistance would be if I'm trying to detain someone and I've got the  
5 legal justification to do so and they're just, you know, not complying. Just standing there,  
6 ignoring me, not saying anything, just like I am not even there talking to them would be  
7 passive.

8 Q And how about defensive resistance?

9 A Defensive resistance is someone that's probably trying to flee. Someone –  
10 if I try to grab a hand to control someone – again, I have the justification to detain – to  
11 detain legally, and they are pulling away and starting to run. They're not trying to attack  
12 me, they are trying to get away.

13 Q And then the next is active aggression.

14 A Active aggression would be more bringing the fight to me. This person  
15 doesn't want to get away. This person wants to – to fight a police officer.

16 Q And then the aggravated active.

17 A Aggravated active aggression would be, I guess – I hate to use the word in  
18 the definition, but that – that active aggression, but worse. It's very aggravated. It's  
19 someone taking a serious fight to me. Someone – maybe not just one hit or one slap, but  
20 someone continually engaging trying to fight a police officer even when an opportunity  
21 comes and goes where they could stop, they could leave, they could run, but they continue  
22 that fight instead.

23 Q So as a part of your training are you also then trained in a set of responses  
24 that are to these different levels of aggression, I suppose, to the different levels of  
25 resistance?

1           A     Yes.

2           Q     And what – what is those called? [sic]

3           A     There's different – my presence is one response, just mere presence in a  
4 uniform and being a police officer.

5           Q     What was the hope that's achieved by that, by just your presence and  
6 uniform and official clothing as a police officer?

7           A     The hope that someone realizes, okay, this is – this is real. I need to calm  
8 down. The cops are here, and we need to figure out what happened. That it's not just an  
9 argument anymore, the police are here.

10          Q     And what's the next level up, I guess?

11          A     The – so the – the physical presence and then just verbal, trying to  
12 communicate to someone, trying to just – just talk. Literally it's verbal compliance.

13          Q     So when you give a – a command like stay over there or get back or  
14 something like that, is that an example of the verbal –

15          A     Yes.

16          Q     – piece? And, again – well, what's after that?

17          A     After – and there's specific words in – in the policy and I would have to –  
18 so I'd have to review the policy for that exact vernacular at this point, but after the verbal  
19 compliance we start getting more into the – the physical control and compliance with the  
20 – trying to control or detain somebody.

21          Q     And when you say physical control, what kind of things are involved in a  
22 physical –

23          A     Actually touching –

24          Q     – control?

25          A     – somebody. Actually putting a hand on them to put them – to gain that

1 compliance whether it's a twisting a wrist or a count- – a pressure and counterpressure type  
2 thing to get them to – to disengage whatever they're doing and realize that it's – it's got to  
3 stop.

4 MR. MURRAY: If I could have a moment, Your Honor.

5 THE COURT: Sure.

6 Q BY MR. MURRAY: So is there a theory that you're trained on as far as  
7 how you, as an officer, change your levels of control in response to the levels of resistance  
8 you're receiving from someone that you're encountering?

9 A Yes.

10 Q And that – and how does that operate?

11 A There's a one-plus-one theory, and there's also – if I'm understanding the  
12 question, a transitional thought process. The one-plus-one theory would be I'm not  
13 expected and I don't have to necessarily if – if someone wants to stand up and box me, I'm  
14 not a boxer. I don't want to be punched. I don't really want to punch anybody. I'm not  
15 expected to then choose their option and box that person. If someone wants to fight like  
16 that, I can go that one-plus-one theory and maybe choose pepper spray, or maybe choose a  
17 Taser if that's justified. I – I'm not expected to abide by the suspect's decision with the  
18 level of force they want to use to resist. The next – the other piece is that transitional  
19 thought process or a tactical pause to where if I am engaging in some sort of behavior – for  
20 example, a Taser. If – If it's not working, I can then take that trans- – take that tactical  
21 pause, take that – take that time to realize this tool's not working. If it didn't work the first  
22 time don't do it a second. Don't do it a third. Don't do it a fourth. I have to transition to  
23 a different tool. For example, if the control hold is not working, don't keep fighting for  
24 that control hold. Don't – Don't keep going there. You might have to transition – or I  
25 might have to transition to a different tool which would be the response to resistance piece

1 and use a take-down or I can – or to allow me to make an arrest.

2 Q And is – is the goal to try and discourage that behavior and obtain  
3 compliance?

4 A Absolutely.

5 Q So as you're encountering Ms. – Ms. Surat, did you kind of go through some  
6 of those levels?

7 A Yes.

8 Q And – And I – I think you described – well, did your presence in any way –  
9 and – and your demeanor, did that in any way deter her?

10 A No.

11 Q Did you use a verbal command?

12 A Yes, I did.

13 Q Did that deter her?

14 A No.

15 Q Did you have contact putting your hand up?

16 A Yes, I did.

17 Q Did that deter her?

18 A No.

19 Q What was she trying to do?

20 A She was trying to get right past me to then go engage either the boyfriend  
21 or Officer Pastor.

22 Q And as a part of your role as cover officer did you believe you needed to  
23 stop that?

24 A Absolutely.

25 Q Why?



1           A       Because based on the behaviors I had seen and – and whatnot, I believed  
2 she – I didn't know, is she going to go after Officer Pastor? Is she gonna go after the  
3 boyfriend? I didn't know what would happen and I can't – I have a responsibility to protect  
4 my partner and protect the boyfriend as a citizen, and I also had an obligation to allow  
5 Officer Pastor and allow the police department to investigate the initial disturbance we  
6 were called there for.

7           Q       That behavior of trying to physically insert herself and – and go over and  
8 engage with where Garrett Pastor is trying to speak with Murray Waltz, did that interfere  
9 with your ability to fulfill your function as a cover officer?

10          A       Yes.

11          Q       Was your attention – where was all of your attention – sorry. Where did all  
12 of your attention need to be focused?

13          A       It needed to be focused on covering Officer Pastor during his interview and  
14 talking to the people actually involved in our call for service which would have been the  
15 other male in the bar or staff at the bar who witnessed it.

16          Q       And instead what did you have to do?

17          A       I could not talk to any of them and I had to deal with Ms. Surat.

18          Q       All right. So as – as we describe the incident you – you describe her walking,  
19 I guess, trying to walk through you and you putting your hand up.

20          A       Yes.

21          Q       What happened at that point?

22          A       It was not intended to be a strike or grab or anything. Just putting my hand  
23 up was hoping to be that physical barrier, just that presence to finally convince her or get  
24 her to break concentration that I can't do what I'm doing. I have to do something else or I  
25 have to listen. Once I put that hand up and she again continued walking what I viewed or

1 what I would describe as right through me, her initial response was don't touch me or don't  
2 – and I apologize, don't fucking touch me. Co- – very – very much comments like that.

3 Q Did she back off or stop in her attempt to walk through you?

4 A No.

5 Q What happened then?

6 A After we made that very first touch where I had my arm out trying to stop  
7 her and the response was don't touch me, I felt her reach up and – with her other hand grab  
8 me by the throat.

9 Q And as best you can recall, which hand would have come up to your throat?

10 A Her left.

11 Q And what did you feel at that point?

12 A I was very taken aback by this. I was almost shocked because I never  
13 expected it to happen. But I felt her nails – the grip was so tight on my neck that I could –  
14 it wasn't the pads of the fingers. I could feel nails actually pinching into my neck to where  
15 it – it hurt. I – I don't want to be grabbed by my throat.

16 Q Did – was that the only physical maneuver she did, or did she follow that  
17 up with other?

18 A That is not the only. She followed up with what I would describe multiple  
19 open-hand slaps at my chest and my upper body out of the anger that I had touched her.

20 Q And as she's coming at you did you try to physically move yourself in  
21 between her and Officer Pastor or – or did you have to do that or were you able?

22 A I was already trying to put myself as that physical barrier between Officer  
23 Pastor, the boyfriend and Ms. Surat. She, while grabbing and slapping, was still trying to  
24 walk around me to get at them.

25 Q And – And I – you indicated you were wearing the uniform. Were you also

1 wearing the equipment you have on today?

2 A One piece was slightly modified. I am currently wearing – I switched to a  
3 body camera that's right on the front of my chest right here – which it's not on. But that  
4 night I was wearing a camera that was mounted to my upper left shoulder.

5 Q And the one you have now, I think you pointed to it, it sits in the middle of  
6 your chest?

7 A Yes. This big rectangle battery thing right here.

8 Q The one that was on your shoulder, how was it attached in position?

9 A It's – so it has a wire that connects to a pack just this that's in my pocket.  
10 But it runs wires up through my vest and then there's just – describe it like maybe a cell  
11 phone type clip that I put on my lapel and there's a magnet keeping it facing forward. It's  
12 about the size of maybe a Sharpie marker pointed forward.

13 Q Thank you. So you described these – this pawing or slapping at your chest.  
14 Did that cause you any pain?

15 A The slapping, no. The slapping, no. It was the neck grab.

16 Q Was it coming into contact with your vest and the rest of your equipment  
17 you're wearing?

18 A Oh, yeah.

19 Q All right. What happened at this point?

20 A At that point it had – her behavior had completely transitioned to someone  
21 I just wanted to leave that could have walked away at any point in time to where now you're  
22 – you're being detained. You're gonna get charged with assaulting a police officer. You're  
23 not allowed to do this.

24 Q Did you at this point in time – well, you talked about the levels of resistance,  
25 and you talked about a defensive resistance where someone's trying to get away. Was what

1 she was doing to you at this point in time in any way a defensive resistance?

2 A Not in my experience, no.

3 Q And distinguish that from a defensive resistance to what she was doing.

4 A A defensive resistance is, again, someone trying to get away. They don't  
5 want to be arrested. They don't want to be detained. Usually it's a – a pulling away and  
6 immediately running. That's in my experience defensive. This was the slaps and the grab  
7 while still trying to walk right past me to get to Officer Pastor and the boyfriend.

8 Q Would that move it up to active aggression?

9 A Yes.

10 Q Okay. Do – what – did you – you talked about putting your hand up to stop  
11 her. What's the next thing you did as far as trying to control the situation and prevent her  
12 from further interfering with what was going on?

13 A Well, as soon as she grabbed me by the throat my immediate reaction was  
14 to get her hand off my throat, so I – I pulled her hand away and it was still not normal even  
15 with Old Town type behaviors and I was kind of taken aback. But stopped her from hitting  
16 me and then tried to gain that physical control because in my mind I knew she was going  
17 to be arrested.

18 Q Did you do something to try and gain physical control?

19 A Yes, I did.

20 Q What did you do?

21 A I tried – again, after I grabbed the hand that was on my throat I tried to keep  
22 contact with that hand to not let her get past me and place her – I tried to place her in a rear  
23 wrist control hold.

24 Q And what was the – the Defendant's reaction as this is going on?

25 A Spinning and squirming physically, yelling still profanities and cussing at

1 me. I gave multiple commands that you are under arrest. Stop resisting. The response  
2 was no. Again, lots of cursing and to the point where she wrapped her foot or her leg and  
3 a hand around a light pole to try to not let me control her or have access to that other stuff.

4 Q And let me ask you about that. This light pole, were Garret Pastor and  
5 Murray Waltz close to where this light pole was?

6 A Yes.

7 Q Were you trying to move her away from that area?

8 A I didn't want her anywhere near them.

9 Q Did her reaching around and – and trying to make contact with this, did that  
10 further interfere with your ability to – to be able to get her away from those two?

11 A Yes.

12 Q What were you doing – what were you saying to her at that point in time?

13 A Multiple commands. You're under arrest. Stop resisting. Please stop  
14 resisting. Ma'am, please stop. I don't want to take you to the ground. You're under arrest.

15 Q And you – did you – as you're telling her this that you're under arrest, were  
16 you giving her instructions on what she should do with her other hand?

17 A Yes.

18 Q And, I'm sorry, what was that again?

19 A Sorry. That is – I was telling her put your other hand on the back of your  
20 head.

21 Q And is that common procedure that you do when you are placing someone  
22 under arrest?

23 A Yes. In order for that control hold to work to effect the arrest, there has to  
24 be some level of compliance. That control hold is based on me having pressure and  
25 counterpressure of only one arm. So we verbally tell them to put their other arm on the

1 back of their head so we can then place the handcuffs on them. But it requires some level  
2 of compliance.

3 Q The person you're placing under arrest has to respond to your demands –

4 A Yes.

5 Q – that they put their hand on their head?

6 A Yes.

7 Q Did you have to make that command more than once?

8 A I believe so, yes.

9 Q Did she ever comply and – and begin to bring her hand up to that location?

10 A No.

11 Q When you made those demands that she – she put her hand on her head,  
12 she's under arrest, what did she do?

13 A It was a very rapid – lots of the – the no, the fuck you's, the cursing at me  
14 and then she used that hand to start trying to pry my – my grip off of her other arm which  
15 is the exact opposite of what I was asking her to do.

16 Q Do you recall her making a statement saying something to the effect of  
17 okay, I'll put my hand on my head?

18 A No.

19 Q If – If she made that did you ever observe her doing anything physical to  
20 comply?

21 A No.

22 MR. MURRAY: I need another moment.

23 Q Do you recall during this time that you're involved in – in trying to gain  
24 some compliance from Ms. Surat and keep her from interfering further, did Garret Pastor  
25 have to – to do anything with regard to his location of where he was with Mr. Waltz?

1           A       He was behind me and at that point 100-percent of my attention was on Ms.  
2 Surat. I don't know what Garrett did during that time. In District 1 when – when officers  
3 all right dealing with resistance like that, it – there's a transition to where he now has to  
4 cover me and stop what he's doing. But if we both get involved in that specific – this  
5 specific type behavior, that opens both us – both of us up for other people, the boyfriend,  
6 maybe friends, random people in the crowd to then come – come at us or potentially attack  
7 us while neither of us are being able to pay attention. I – I don't know what he did. He  
8 was behind me.

9           Q       And you talked about this crowd. Were there a number of people waiting  
10 outside of Bondi Beach Bar?

11          A       Yes.

12          Q       What were they waiting for?

13          A       To get into the bar.

14          Q       Do you recall how many people were waiting there – a rough idea?

15          A       I remember that the line at the bar going past the patio fence and probably  
16 a business or two down. I would say that's typically 30, 40 people. But it was – it was a  
17 average – it was a good Old Town night. There was people everywhere in the square. The  
18 bars – all the bars were open in the square. It's a very crowded atmosphere if you've never  
19 been down there at that time.

20          Q       And at this time of night, 11:13, in your experience, is there usually a fair  
21 amount of alcohol that's been and is being consumed?

22          A       Yes.

23          Q       Does that increase your concerns with regard to the crowd that was in and  
24 around Bondi Beach Bar?

25          A       Yes, very much.

1 Q How so?

2 A Some – Sometimes people – we call it liquid courage, they have drinks and  
3 they might do things they wouldn't typically do or behave in a way they – they wouldn't  
4 typically or make decisions they usually wouldn't make because the alcohol is affecting  
5 them. And unfortunately in an atmosphere like Old Town, sometimes the officers are very  
6 easy targets of those poor decisions or that behavior.

7 Q So you'd gotten to a point with Ms. Surat – you talked about her trying to  
8 use this light pole to help her fight you off or to help prevent you from moving her away.  
9 Once you got her away from that light pole, what – what occurred at that point?

10 A We were still kind of doing a back and forth where I was trying to gain  
11 compliance. I was trying to get – again, that pressure/counterpressure where if I could  
12 control one arm and keep her from being able to move that, maybe that would still shock  
13 her conscience enough that I need to stop. This is police officer. This isn't working. But  
14 with the amount of squirming and spinning and prying at my fingers, I couldn't get a good  
15 control hold on her.

16 Q Did you determine that you needed to – to do something else?

17 A Yes.

18 Q What did you do?

19 A Again, after saying, you know, please stop. I don't want to take you to the  
20 ground. I had started thinking in my head that this isn't working, that transitional I have to  
21 respond to this level of resistance and I'm going to have to use a take-down in order to gain  
22 compliance from Ms. Surat.

23 Q And as a part of your training, what kind of a – are you trained in different  
24 types of take-downs?

25 A Yes.



1 Q What did you utilize in this case?

2 A I utilized what's called a rowing arm take-down.

3 Q And how does that rowing arm take-down work?

4 A The rowing arm take-down is – I – I had control of her one hand and I – if  
5 I can kind of turn – by having the wrist right here –

6 MR. MURRAY: Your Honor, would it be all right – would – would it help you to  
7 stand up?

8 THE WITNESS: It would.

9 MR. MURRAY: May the officer stand up to demonstrate?

10 THE COURT: Any objection?

11 MR. LANE: I have no objection. Mr. Murray can actually be the subject of the  
12 rowing arm take-down. I don't have any objection to that either.

13 THE COURT: I don't know whether he wishes to do that, but can you – can you  
14 demonstrate it without having –

15 MR. MURRAY: I don't need to –

16 THE COURT: – a dummy?

17 MR. MURRAY: I don't need to volunteer.

18 THE COURT: Okay.

19 THE WITNESS: So the –

20 THE COURT: Just make sure that – that – exactly. Thank you.

21 THE WITNESS: The rowing arm take-down and this is – while trying to stand  
22 towards the side of the person I was able to grab – I had the wrist still which I never wanted  
23 to let go of and allow her to get to Officer Pastor, so by having the wrist – the resistance is  
24 usually somewhere pulling back. So as the person pulls this way from me, taking that wrist  
25 up, guiding the elbow and kind of the shoulder and then rowing it, hence the rowing arm –

1 rowing them down and the hope is that someone bends down and then goes down to the  
2 ground. So you kind of use their own momentum to do the take-down down to the ground.

3 Q And is that a standard technique that you're trained in repeatedly?

4 A Yes.

5 Q And that's one of the aspects of defensive training?

6 A Yes.

7 Q How – How often do you as a D-1 officer receive training in – in these kind  
8 of maneuvers?

9 A A D-1 officer receives more defensive tactics training than the rest of the  
10 agency because we get more people wanting to fight with us. It's just kind of nightly. The  
11 agency, I believe, is – is quarterly, and then D-1 takes extra time to train with the DT- or  
12 ADT instructor with just our D-1 group because of how often we use it – defensive tactics  
13 (inaudible) DT.

14 Q How – How often is this rowing arm take-down used?

15 A It's – It's frequent. I couldn't give you a number, but it's a – a very basic  
16 take-down maneuver that I learned in the police academy in California, had at that agency  
17 and learned here in the aca- – in the mini academy at this agency and use in this department.  
18 Anytime we cover responses to resistance we're usually covering at least the rowing arm.

19 Q Thank you. Once the Defendant was taken to the ground, did she then begin  
20 to comply?

21 A No.

22 Q What happened as you brought her to the ground?

23 A After she went to the ground she immediately started hopping back up,  
24 twisting, spinning, yelling and cursing, but Officer Pastor then had to transition over to  
25 help me after the take-down and we were able to at least keep her not face down on the

1 ground, but she wasn't able to get back to her feet prior to us having her in handcuffs.

2 Q So that – as you took her down, did that – that seem to phase her or stop her  
3 in her resisting of arrest?

4 A No. It was the immediate back to twisting, pulling, yelling after she went  
5 down.

6 Q And you describe trying to get up. Did both you and Officer Pastor have to  
7 get involved in keeping her down on the ground?

8 A Officer Pastor did have to break all contact with the boyfriend and come try  
9 to gain control of her other arm, which I never could. And we had to both hold on to the  
10 hands to keep her down and place her in handcuffs.

11 Q Now the Defendant is not that big. She's not a big muscular guy or  
12 anything.

13 A No.

14 Q But she was still able to – was she still able to squirm and fight with you –

15 A Yes.

16 Q – to make it difficult?

17 A Yes.

18 Q Both officers were needed to get her into handcuffs?

19 MR. LANE: Objection to leading.

20 Q BY MR. MURRAY: Were both officers needed to get her into handcuffs?

21 A Yes.

22 Q After you were able to get her into handcuffs, what happened?

23 A The – The boyfriend had – had – did in fact – after Officer Pastor stopped  
24 contact with him, did run up on us and try to get involved. Staff at the bar was able to kind  
25 of form a half circle or somewhat of a circle around us. We work very close with them to

1 kind of give us that operating space. Since we had no cover officer anymore they kind of  
2 took that role for us. I – I had noticed that her – her skirt or her dress had kind of ridden  
3 up and I felt bad so as soon as I got her back to her feet I said that I'm going to pull your  
4 dress down. And then the next thought process is immediately or as fast as soon as possible  
5 get myself and her out of that situation to de-escalate the uproar in the crowd and get people  
6 going back to their nights and not wanting to be involved in what is going on with us.

7 Q You mentioned Mitchell Waltz. During the struggle to try and get handcuffs  
8 on the Defendant, did you in fact have to have some kind of contact or encounter with  
9 Mitchell Waltz?

10 A I did.

11 Q Tell us about that.

12 A He started quickly – I don't know if he ran or – or walked, he wasn't that far  
13 away, right up kind of on my shoulder out of my initial view. And I turned just in time to  
14 look and yell, get back, and with an open hand push him in his chest back and then a  
15 bouncer ended up stepping between us so he couldn't come back.

16 Q If Garret Pastor had been able to maintain his position and what he was  
17 doing, working then as a cover officer rather than having to come assist you, would he have  
18 been able to prevent that from happening?

19 A Absolutely.

20 Q So you talked about that you made a decision that you needed to take Ms.  
21 Surat away from this area to de-escalate things with the crowd and everything. Tell us  
22 about that.

23 A I was hoping also just to de-escalate Ms. Surat. Maybe being away from  
24 the bar where she had just been, or away from the boyfriend, away from where that incident  
25 had just taken place, to try to calm down. That – That's not a normal incident. People

1 don't go out the bar wanting that to happen or thinking that's gonna happen. But as we  
2 walked away there was no de-escalation. There was – Ms. Surat yelling at people in the  
3 crowd to help her. Yelling please help, please help to groups of guys walking towards Old  
4 Town while I was trying to walk her away. And then there was just the continuous cursing,  
5 yelling at me, telling me that I was hurting her, and I was simultaneously on the radio  
6 asking for my supervisor to come, and then trying to get a marked unit there as soon as  
7 possible to put Ms. Surat in a car and then also just have another officer that I could also  
8 de-escalate by taking myself out of the equation to hopefully calm Ms. Surat down.

9 Q You – You mentioned her yelling out to these people. Was she trying to  
10 incite the crowd to come intervene as well?

11 A Yes.

12 Q And did she do that multiple times?

13 A Yes.

14 Q Now did anybody respond?

15 A No. Not – Not to the point where I had to get involved. Groups of guys  
16 stopped, and I had to verbally say she's fine. She's fine. No, she's fine. Because at that  
17 point I was by myself with a handcuffed person in custody. I did not want to deal with a  
18 group of five possibly intoxicated men thinking I was, you know – or I don't know what  
19 they would be thinking. Wanting to get involved. This would not have been a good  
20 situation.

21 Q As you're walking Ms. Surat you're – which direction did you take her away  
22 from Bondi Bar?

23 A It would be north towards Walnut and Linden or, if your familiar with  
24 (inaudible) like vaguely the Illegal Pete's restaurant kind of in that area away from Bondi  
25 Beach Bar.

1 Q Did something occur beyond what you've talked about with her verbally,  
2 did – did she do something else at this point?

3 A Yes.

4 Q What happened?

5 A While we were walking before we got to the sidewalk of Walnut, she  
6 completely stopped supporting her body weight and just collapsed for no reason.

7 Q Was this close in time to when she had been calling out to these people for  
8 help?

9 A Yes.

10 Q What did you do?

11 A I told her please stand up. I – I wasn't applying any sort of pain compliance  
12 or control hold. She was handcuffed. I was just holding her by the – the bicep area trying  
13 to walk. And I said just please stand up. Please just get up.

14 Q Why are you holding the bicep?

15 A Because she's in custody. I don't want her to run away. I – I don't want  
16 this incident to go on any longer than it has to or has already.

17 Q So she collapses down. You make the statement please get up. What  
18 happens then?

19 A Still more cussing, yelling – again, excuse my language, calling me a  
20 fucking pussy. Just very angry about what was going on.

21 Q Did she eventually get back up to her feet?

22 A I had to help her up, but she did.

23 Q And what happened at that point?

24 A Her dress had ridden up again and I just felt bad. I have a wife. I have  
25 daughters. I don't want that. So she had called out to a – a girl and I let that girl come over

1 and we each pulling by the outside of the thigh pulled the dress down again so she could  
2 have, you know, privacy or – or modesty. I don't know what the right word is but fixed  
3 her dress.

4 Q And – And you mentioned calling on your radio. What kind of calls on your  
5 radio did you make after she was placed in custody and as you're going to this area?

6 A Immediately after placing her in custody she was still kind of on her knees  
7 on the ground. That's when I immediately asked for my supervisor. The reaction of the  
8 crowd was lots of ohs and lots of people diverting their attention towards us and at that  
9 point I had no idea what that person's intent is going to be. It – I have to operate in the  
10 sense that they may come want to get involved. So I immediately asked for my supervisor  
11 for that because my supervisor is also a female and I wanted her there right away. I wanted  
12 a girl officer there right away. And then I'm required after a use of force to have my  
13 supervisor come to the scene.

14 Q So she's called because of personal safety concerns, because she's a female  
15 and might help defuse and pursuant to – to policy because it was use of force?

16 A Yes.

17 Q Okay. What other calls did you make or what other assistance did you try  
18 to get?

19 A As – As I was walking her out of the square I saw that there was a marked  
20 patrol unit at the intersection of Linden and Walnut. I didn't know who it was. But as I  
21 got close I – I said on the radio that I'm – that marked unit, come – come over to Linden  
22 and Walnut right now. And as that officer got closer I saw it was Officer Erin Masts [sic]  
23 – it's Erin Fite [sic] now. But I – I told Erin to get – get over here. I wanted, again, another  
24 officer and I wanted to as quickly as I could remove myself to hopefully calm Ms. Surat  
25 down.

1 Q And Erin Fite – Officer Fite, then Officer Mast, is a female?

2 A Yes.

3 Q Did she in fact pull up?

4 A She did.

5 Q And what did you do at that point?

6 A I – as quick as I could I told Erin she's under arrest, I want to give her to  
7 you and I'm just going to cover you to – again, further just work on de-escalation. Work  
8 on calming Ms. Surat down so that I wasn't the one having to deal with her because she  
9 was upset with me and that's just the way to de-escalate and hopefully start letting tempers  
10 stop.

11 Q And did that have any effect on the Defendant?

12 A No.

13 Q What did she do?

14 A Erin started – started to take off Ms. Surat's purse, do standard things before  
15 we were to put someone in a car. Oh, I told Erin I had not patted her down, so Erin started  
16 that process.

17 Q And maybe – let me stop you there. Is there a standard process that – that  
18 is done by law enforcement as you're taking somebody in custody and before you put them  
19 in a car?

20 A Yes.

21 Q Can you tell us about that?

22 A Remove property from them. Pat them down so they don't take any – any  
23 contraband they may have or really anything in the backs of our patrol cars, the secured  
24 areas. Make sure that handcuffs are on correctly, not pinching somebody, not – if there's  
25 anything we can do to try to make it slightly easier, do that and then place them in the car.



1 Q And the intent is going to be where are they going to go after they're placed  
2 in the car?

3 A At that point the intent was Ms. Surat was going to go to jail.

4 Q Okay. And, I'm sorry, but you started to describe as Officer Fite began to  
5 engage that she was going through this process of patting her down, removing things. What  
6 occurred? What did you observe?

7 A I asked – I stayed because I had a body camera on. Officer Mast does not  
8 have a – or did not have a body camera at that point. Our agency was still issuing them out  
9 to everybody. And I asked Ms. Surat if she was hurt and needed paramedics to come take  
10 a look at her at all before she was transported.

11 Q What was her reaction?

12 A Fuck you, not from fucking him.

13 Q Okay. Did she remain in this highly agitated, resistive state?

14 A Yes.

15 MR. LANE: I'll object to leading question, did she remain in this resistive state.  
16 That is a conclusion. That's leading. I ask it be struck. He continues to do this repeatedly  
17 – this kind of questioning.

18 THE COURT: Mr. Murray?

19 MR. MURRAY: I think it's a proper question, Your Honor. I can attempt to  
20 rephrase it.

21 THE COURT: Yeah, it is – it is a bit leading, so I'll sustain the objection. If you  
22 can just ask the question what was her demeanor at that point.

23 Q BY MR. MURRAY: And I'm going to ask you a compound, I suppose, see  
24 if you can answer it. What was Ms. Surat's demeanor as Officer Mast is trying to do this  
25 and what did you observe the Defendant to be doing?

1           A       The demeanor stayed argumentative, yelling, angry and turning back. So  
2 Officer Mast – there was a parked car and then Officer Mast had Ms. Surat – or Officer  
3 Fite, I apologize, had Ms. Surat facing the car while she was trying to conduct that pat  
4 down, and Ms. Surat was turning back to yell at me and not just cooperating with Officer  
5 Mast – Fite.

6           Q       So you end up turning the Defendant over to Officer Mast. Did you then  
7 back away or separate yourself to some degree?

8           A       Yes.

9           Q       After you separated yourself to some degree, were you approached by  
10 anyone?

11          A       I was.

12          Q       Who were you approached by?

13          A       I was approached by a citizen. He was later identified as Michael Finley  
14 [sic]. I had never talked to him. He walked up and said, hey, I saw –

15          MR. LANE: Objection. Hearsay.

16          THE COURT: Is there an exception?

17          MR. MURRAY: Your Honor, I – I think the exception is to explain what the officer  
18 did and let the jury know what steps were taken next. It's not offered for the truth of the  
19 matter asserted, but –

20          THE COURT: I – I don't think what Mr. Finley said needs to be – needs to come  
21 into testimony through this witness because I think that is hearsay.

22          MR. MURRAY: Okay.

23          THE COURT: But what he did as a result of what this person said to him, you can  
24 ask him about.

25          Q       BY MR. MURRAY: Mr. Finley approached you. Mr. Finley –

1 MR. LANE: (Inaudible) –

2 Q BY MR. MURRAY: Did – Did he approach you?

3 A Mr. Finley approached me right by where we were standing. Said he  
4 witnessed (inaudible) –

5 MR. LANE: Objection.

6 THE COURT: Hold on –

7 MR. LANE: Hearsay.

8 MR. MURRAY: Yeah –

9 THE WITNESS: Sorry –

10 THE COURT: But – so don't say anything that he said to you.

11 THE WITNESS: Okay.

12 THE COURT: You can say he said something to you and then what your actions  
13 were as a result of what he said, but I don't – I mean, you can't testify about –

14 THE WITNESS: I won't.

15 THE COURT: – what his actual words were.

16 THE WITNESS: I won't.

17 MR. MURRAY: We don't need to waste a lot of time on this. I'll – I'll just ask  
18 you a more direct question.

19 Q Did he eventually provide a statement to –

20 A He provided me a statement –

21 Q – Fort Collins Police Services?

22 A – of – yes.

23 Q Did he both orally give you one then and also at some point later provide a  
24 written statement?

25 A Yes.

1           Q     Thank you. After your contact with Mr. Finley, did you at some point re-  
2 contact Corey Eslinger and – and also speak with him and get his description about what  
3 had occurred?

4           A     Yes. I walked ba- –

5           Q     I'm not asking you what he said again –

6           A     Oh –

7           Q     – but go ahead and describe what you did.

8           A     I walked back to the bar to talk to Corey, again, about the initial disturbance.  
9 Finally get back to what we were called there for if any crimes took place and take a  
10 statement about my interaction and whatever he witnessed in the square with Ms. Surat and  
11 myself.

12          Q     So you con- – you tried to get – complete that initial purpose for your call  
13 there which is to investigate the disturbance?

14          A     Yes.

15          Q     Were you and Officer Pastor able to do that?

16          A     Eventually.

17          Q     You talked about interviewing Corey Eslinger. Were there other  
18 individuals at Bondi Beach Bar that were interviewed about what had occurred?

19          A     That's only who I interviewed, but I know that other witnesses or other  
20 people were interviewed about both the interaction with Ms. Surat as well as the initial  
21 disturbance.

22          Q     And was Garrett Pastor ever able to complete his interview and discussions  
23 with Mitchell Waltz about what had happened?

24          A     I don't know who ultimately talked to Mr. Waltz. I believe it was Officer  
25 Pastor.

1 Q Okay. During your discussions with Corey Eslinger, was there a discussion  
2 about possible video from Bondi Beach Bar as well?

3 A Yes.

4 Q And – And can you tell the jury a little about that?

5 A I – I know Bondi Beach Bar has in – or, so I guess surveillance for lack of  
6 a better word, surveillance cameras inside of their bar. I also know that they have one that  
7 covers that patio area and then that entry point to their bar.

8 Q Did you have discussions with Corey Eslinger about getting a copy of that?

9 A I did.

10 Q Did he eventually send you a copy of that?

11 A He did.

12 Q Did you believe that you had logged that into evidence with Fort Collins  
13 Police Services?

14 A I did.

15 Q Did you get it logged in?

16 A I did not.

17 Q Do you know what happened in that regard?

18 A I don't. I logged – during the process of putting the file from the computer  
19 to the disk, I don't know what happened. I logged a CD into evidence that I thought had  
20 that video and it was not on the disk.

21 Q Was there any other videos on that disk?

22 A There was.

23 Q Was that the – the video taken off someone's phone that –

24 A Yes. On that disk was the – the cell phone video or the – the viral video of  
25 the use of force I also booked into evidence.

1 Q Are you aware of whether that video from Bondi showing the front was able  
2 to be obtained and made a part of this case at a later time?

3 A It was.

4 Q Have you had a chance to review that video?

5 A I have.

6 Q If I might, Your Honor, I'm going to actually approach the witness with two  
7 different exhibits if you can bear with me. Well, I'm going to approach first with People's  
8 Exhibit 1. Do you recall coming to my office and getting to take a look at People's Exhibit  
9 1 and your point of view camera, item FC276-3?

10 A I do.

11 MR. MURRAY: If I might approach, Your Honor?

12 THE COURT: You may.

13 Q BY MR. MURRAY: Do you recognize People's Exhibit 1?

14 A Yes.

15 Q And what do you recognize that to be?

16 A That is a disk with my body cam video of the incident which I initialed when  
17 I viewed it.

18 Q Now, were there some time at the end of that was eliminated from that  
19 including your video tape of Mr. Finely?

20 A Yes.

21 Q Beyond that, is that a fair and accurate copy of the video that was obtained  
22 from your body-worn camera?

23 A It is.

24 MR. MURRAY: Your Honor, at this point in time I'd offer into evidence, People's  
25 Exhibit 1.

1 MR. LANE: No objection.

2 THE COURT: People's Exhibit 1 is accepted into evidence.

3 Q BY MR. MURRAY: We talked about the Bondi video. If I could approach  
4 with People's Exhibit 15?

5 THE COURT: You may.

6 MR. LANE: Is that the viral?

7 MR. MURRAY: No (inaudible).

8 Q I'm handing you the People's Exhibit 15.

9 A Uh-huh.

10 Q Do you recognize that?

11 A I do.

12 Q And is that a copy of the video from Bondi's security that depicts their front  
13 entrance?

14 A It is.

15 Q And does that fairly – is that an accurate copy of that video?

16 A It is.

17 Q Now you're looking at that from a slightly different angle because, of  
18 course, you're looking this way and the camera's recording the other way, but it does it  
19 fairly and accurately depict some of the interaction with the Defendant at the front of that  
20 bar?

21 A It does.

22 MR. MURRAY: Your Honor, I'd offer into evidence People's Exhibit 15.

23 MR. LANE: No objection.

24 THE COURT: People's Exhibit 15 is accepted.

25 Q BY MR. MURRAY: Officer Klamser, was there another video you

1 obtained as a part of this investigation?

2 A There is.

3 Q And what kind of video is that?

4 A The Downtown Business Association, or the DBA, I know has cameras  
5 throughout Old Town. Specifically there are several that watch the Old Town Square area.  
6 So I contacted our liaison with the DBA and asked to have this specific time-frame from  
7 the cameras covering the area in front of Bondi sent over to me so that I could see if they  
8 were able to capture any of this incident.

9 Q I'm going to approach you with People's Exhibit 8. Do you recognize  
10 People's Exhibit 8?

11 A I do.

12 Q And what is People's Exhibit 8?

13 A This is a disk with the Old Town Square surveillance video of the DBA  
14 camera.

15 Q And does that cover the time-frame from when you and Garrett Pastor come  
16 into view through the time that you escort the Defendant off to the north?

17 A It does.

18 MR. MURRAY: Your Honor, at this time I'd offer into evidence People's Exhibit  
19 8.

20 THE COURT: Any objection?

21 MR. LANE: Under 403 it doesn't really show very much. The other videos are  
22 much clearer and would show a lot more that's relevant. I think it's cumulative and it  
23 wastes everybody's time, but other than that if they want it.

24 THE COURT: I – I am familiar with the video. It's relatively short and it is – it  
25 provides another angle so I – I don't think it's unnecessarily cumulative and I do think it's



1 relevant, so I'll accept it.

2 Q BY MR. MURRAY: Thank you. I want to get – Officer Klamser to talk  
3 again about this point of view camera that you were wearing at that point in time. And,  
4 again, if you could indicate for the jury where you carried that.

5 A It was mounted to a little bracket on my lapel here on this vest, sitting just  
6 above my shoulder.

7 Q And then currently you're wearing a different – I don't know if version is  
8 the right word, but a different mechanism for carrying a body-worn camera with it around  
9 – in the middle of your chest.

10 A Yes. This – so this packet is its own camera and battery. It's just – I chose  
11 to wear this because I didn't want as many wires anymore. Captures the same stuff. It  
12 doesn't look like the one I had on my shoulder. Again, the one I had on my shoulder is a  
13 little bit fatter than a Sharpie marker but sits just right here.

14 Q Is there any other versions that are available for officers?

15 A Our department only gives those two options right now. This or this one  
16 here. Now, this one up here can be worn – you'll see some office- – some officers with  
17 glasses that wear them by their ear and it can be worn right here. There's attachments to  
18 put it on a hat if you choose to wear a hat. But those are primarily this area or shoulder.

19 Q Do each of those cameras and their positions catch a slightly different  
20 perspective?

21 A Yeah.

22 Q If you have it on your head does it move wherever you look?

23 MR. LANE: Your Honor, I'm just going to object. We can get into camera tech  
24 all day long and it doesn't really matter. He's testified what he had. Can we move on?

25 THE COURT: Is there a relevance? Is there a reason –

1 MR. MURRAY: I – I believe it is relevant, Your Honor. Part of the discussion the  
2 People had was – and part of what the jury needs to understand is the different ways  
3 cameras capture things. It – It’s part of what we discussed in both my opening and Defense  
4 Counsel’s opening.

5 THE COURT: I’ll overrule the objection and if you’ll just wrap – I mean, I can’t  
6 imagine you have much more to ask on that.

7 MR. MURRAY: I – I don’t.

8 THE COURT: Okay.

9 Q BY MR. MURRAY: Do they capture different perspectives based on where  
10 they’re positioned?

11 A Yes. If an officer is wearing one, for example, up here, it will catch – if I’m  
12 talking to this person and I hear and turn and look over here, it will capture what I’m  
13 looking at. If an officer like me has it on their shoulder and I’m talking to someone and I  
14 turn and look, it won’t capture what I see which may be documented in a police officer  
15 report because I see it. This one on my shoulder, it may not capture something extremely  
16 close to me because it’s – you know, the lens is out here. It might not capture an actual  
17 touch, but it captures everything kind of in – into here. So it can vary by where an officer  
18 is wearing the camera.

19 MR. MURRAY: Thank you. Your Honor, at this point in time I’d like to play  
20 People’s Exhibit 1 for the jury.

21 MR. LANE: Can we take our mid-morning –

22 THE COURT: I was gonna – I was just going to suggest that. Before we get into  
23 videos why don’t we take the morning break and give the jurors and everybody a chance  
24 to refresh themselves and anybody else. So it’s 10:37 now. Ten minutes?

25 MR. MURRAY: That’s fine with the People, Your Honor.

1 THE CLERK: (Inaudible)

2 THE COURT: Oh, we'll – yeah, but everybody can see that one. That one gets  
3 turned off. So we'll come back at 10:47 – 10:48. Let's call it 10:48 by that clock. Oh,  
4 before – before I release you, we're going to take a recess. I need to remind you that until  
5 the trial is completed you must not discuss anything about this case with each other or  
6 anyone else. This includes members of your family. If someone approaches you and tries  
7 to discuss the trial, please let me know immediately. Do not try to find out any information  
8 about this case from any source other than what you see and hear in this courtroom. Do  
9 not look up anything about the case on the internet or engage in any electronic  
10 communications about it with anybody. And remember, it is especially important that you  
11 do not form or express any opinion on this case until it finally submitted to you. Now,  
12 please rise for the jury.

13 (Recess taken at 10:41:02)

14 (Court resumes at 10:52:56)

15 THE COURT: All right. We'll go back on record in 17M965. Mr. Murray?

16 MR. MURRAY: Your Honor, the People are ready to proceed.

17 THE COURT: Okay. And the equipment's already to go?

18 MR. MURRAY: Yes, Sir.

19 THE COURT: All right.

20 THE CLERK: (Inaudible)

21 THE COURT: Well –

22 MR. LANE: It's more romantic that way.

23 THE COURT: It usually – you can usually see a little better so, yeah, we probably  
24 will. And it's not afternoon so I don't think we have to worry about them falling asleep.

25 MR. LANE: Do we want to put those down?

1 THE COURT: We'll see what it looks like. And usually it's not so bright that –  
2 although it might create a glare.

3 MR. MURRAY: Yeah, go ahead and turn them on.

4 UNKNOWN: As I'm sitting here I can see a big window reflecting off the top  
5 screen.

6 THE COURT: We'll close the windows.

7 UNKNOWN: May I help?

8 THE COURT: Sure.

9 THE CLERK: Please rise for the jury.

10 THE COURT: Please be seated. Mr. Murray, you may proceed.

11 MR. MURRAY: Thank you, Your Honor. At this point I would like to present  
12 People's Exhibit 1 to the jury.

13 THE COURT: Any objection?

14 MR. LANE: No objection.

15 THE COURT: Then let's go ahead and show that.

16 Q MR. MURRAY: Thank you. I'm going to ask Officer Klamser some  
17 questions as we proceed through and I'm going to start with one right now. Officer  
18 Klamser, when you – how is your camera activated?

19 A So both systems, this one and the one on my shoulder, is activated by  
20 pushing this circle button in the middle. It's constantly recording, but there's a 30-second  
21 buffer. So when you're watching the video the first 30 second there will be no sound. The  
22 sound starts from the second I push the button. So it captures 30 seconds prior if that makes  
23 sense also. So if something happens and I wasn't ready, I can at least get the incident on  
24 camera.

25 Q So as we start to watch this video, will – will there be this 30 second display

1 of video without sound?

2 A There will.

3 Q And that's because the camera's on – is that because the camera's  
4 automatically recording but the sound and all that doesn't begin until you push the button?

5 A The sound does not start until I push the button. There's a 30-second buffer  
6 in case an incident happened that I wasn't on for.

7 Q Thank you. Do you recognize what's up on the screen?

8 A I do.

9 Q And can you tell the jury what we're recording at this point in time?

10 A As I was getting close to the bar I turned on my camera to make sure that  
11 anything that happened as I got close was captured.

12 (Video not transcribed.)

13 Q Is this your walk up to the bar?

14 A This is.

15 Q And if we look up in this corner here, up in the upper right corner, what is  
16 depicted up there?

17 A That is the Bondi Beach Bar.

18 Q And there's an individual that appears to be standing over in this area. Do  
19 you recall coming into contact with the person over here?

20 A Yes, briefly.

21 Q And was that the employee of Bondi?

22 A That is that bouncer that I said Bondi has someone watching their patio from  
23 the outside. That's him.

24 Q Thank you. And, again, the gentleman with the white hat that's backwards,  
25 isn't that the bouncer from Bondi Bar?

1           A     It is.

2           Q     Is he pointing out to you Mitchell Waltz?

3           A     He is.

4           Q     Do you see him depicted in this picture?

5           A     I do.

6           Q     And where is he?

7           A     He's the closest person to me at that point in front of the bar. He's wearing  
8 blue jeans and a light blue t-shirt.

9           Q     Is it this individual here?

10          A     It is.

11          Q     Thank you. And we just had the side of a person come into the view of the  
12 camera with what I'm guessing is a Taser?

13          A     Yes.

14          Q     Who is that?

15          A     That's Officer Pastor.

16          Q     Thank you. What's depicted in this video – the video at this point in time?

17          A     So at this point I am seeing this person in the blue t-shirt, Mr. Waltz, he's  
18 involved. I know that already. But that's my first notice of Ms. Surat as being at least  
19 associated to the person that I'm there to talk to because they're talking back and forth  
20 while she's still inside the bar.

21          Q     The individual that's beginning to speak that's just off to the right of your  
22 camera, who is that?

23          A     Just off – he just stepped out to my left, that's Corey Eslinger, the head  
24 bouncer.

25          Q     And I'm sorry, that is – that's left. You know, I'm going to ask you another

1 question here. This is the camera that you had on your shoulder, right?

2 A Yes.

3 Q Can you see your chest?

4 A No.

5 Q Can you see your right arm?

6 A No.

7 Q Can you see your face in any way or your neck or anything like that?

8 A No.

9 Q This camera's pointing out into the front of you, correct?

10 A Yes.

11 Q Now at this point in time you're going to begin to speak with Mr. Eslinger?

12 A Yes.

13 Q Thank you. Can you tell the jury what we just observed?

14 A That would be that initial bump when she bumped into Corey causing him  
15 to bump into me, and then also the – the shoulder check as she walked past me. And you  
16 just saw the – the three girls I described earlier. They were at the front of the line and their  
17 reaction to that as well as –

18 Q So in the background we hear that you – you – who was – who was uttering  
19 the excuse me?

20 A The background is Ms. Surat saying that ex- – or I say excuse me. The  
21 background is Ms. Surat with the excuse you.

22 Q Thank you. All right. Now you described Ms. Surat as she grabbed  
23 Mitchell Waltz' hand and attempted to pull him away from Officer Pastor. Is that what we  
24 just observed in that video?

25 A It is.

1 Q She has continued to walk a few steps to where she's gotten to the corner of  
2 this fence that's depicted in this area here. That's – is that the fence that surrounds Bondi  
3 Beach Bar's patio?

4 A That is.

5 Q And if – if we – do you have an idea – can you tell the jury – give them an  
6 idea the distance between where she is there in that corner and this light post?

7 A The light post –

8 Q And – And if –

9 A Am – Am I allowed to approach it to –

10 Q Yes.

11 A – give a good idea about – the light post I was describing earlier is in – will  
12 be in this general area, but you can't see it in my camera right now.

13 Q And actually let me go back a little bit. I imagine we see it as you swing.

14 A As I turn it should go through my view.

15 Q There was an individual down in the lower right corner with green kind of  
16 shirt on and a black hat. Did – was he connected to this in any way, do you recall?

17 A Could you rewind so I could see?

18 Q This individual here.

19 A I never spoke to that person, but I – I know that there was someone that also  
20 started interjecting themselves and I believe he was wearing identical clothing to that, but  
21 the bouncers primarily had to deal with – during my physical interaction with Ms. Surat.

22 Q Thank you.

23 A That light pole right there.

24 Q Thank you. Okay. Can you let the jury know what we just observed there?

25 A This was that initial interaction I had with Ms. Surat where I said the



1 boyfriend's not free to go. The boyfriend is detained and that she can keep walking hoping  
2 that she would realize she's not detained. Making sure I covered my basis that she didn't  
3 feel detained and that she could keep going. And as I tried to step in between her and  
4 Officer Pastor and the boyfriend as that presence that – that barrier to break her  
5 concentration from them. And that was when she continued walking past me and I tried to  
6 put my arm up after pointing to keep walk – putting my arm up to have that physical barrier  
7 and then as she continued to keep trying – keep going through me to grab the arm to stop  
8 her.

9 Q And can you tell us, if you're watching, at what point you finally are able  
10 to reach out and grab a hold of her wrist?

11 A It was after –

12 Q And I'm – I'm going to say as I – as we watch this, do you think you'll be  
13 able to tell us that?

14 A Yes. It's – It's very quick and you see her hands go out of view, but I – I'll  
15 try, yes. So she starts walking back and –

16 MR. LANE: There's no question pending.

17 THE COURT: Sustained.

18 Q BY MR. MURRAY: Is there something you observed there that you think  
19 would be useful to highlight to the jury?

20 MR. LANE: Objection. Calls for a narrative.

21 THE COURT: I – that's overruled. You can answer that.

22 THE WITNESS: I – I might have misunderstood. I thought the question you  
23 wanted me to describe as we watched it when I was able to – or what I was doing as it  
24 happened. I –

25 Q BY MR. MURRAY: And what I want you to do is just tell us –

1           A     Okay.

2           Q     – this is when I’m trying –

3           A     All right.

4           Q     – to grab her wrist.

5           A     There.

6           Q     So as we see in that video, you see her hands moving and her left arm  
7 sweeping up and coming out of view of the camera –

8           MR. LANE: Objection to the narrative that Counsel’s interpreting what we’re  
9 seeing. The jury will interpret what we’re seeing, not Counsel. And if he has a question I  
10 don’t object to him asking a question, but I do object to him making speeches while asking  
11 questions.

12          THE COURT: Sustained.

13          Q     BY MR. MURRAY: Did you observe on the video when Ms. Surat’s hands  
14 were coming up and moving out of the view of the camera?

15          A     Yes, I did.

16          Q     What is happening while that is going on?

17          A     That was when she was doing those open-handed slaps and grabbing me by  
18 the throat.

19          Q     And it’s after that that – well, you then were able to get a hold of her wrist?

20          A     Yes.

21          Q     Which arm did you – were you able to get a hold off? Do you recall?

22          A     The left.

23          Q     Okay. There was a – a very large movement that was played on the video.  
24 Can you describe for the jury what’s happening there?

25          A     I had a hold of her left wrist and I tried to grab the right arm in order to have

1 control of both arms and gain that compliance, and the response by Ms. Surat was the large  
2 shrug and pulled away from my hand.

3 Q Okay. You've just uttered some words. How has this contact changed with  
4 Ms. Surat at this point in time?

5 A It changed from me wanting her to just leave or give us the distance to do  
6 our initial investigation to now she is under arrest, and it's a separate incident, I guess, than  
7 the first one where I'm now dealing with her. She is my suspect.

8 Q Now you uttered those words, please don't do that, please don't do that.  
9 What – What are you responding to there?

10 A The – The twisting to face me and not comply with what I was trying to do,  
11 the wrapping of her leg and arm around the light pole and the bringing her hands up and  
12 prying my hand away – trying to pry my hand off of her.

13 Q And you made a statement please don't make me throw you on the ground,  
14 something that effect.

15 A Yes.

16 Q Why – Why did you say that?

17 A Because at this point the – I – I'm not able – I'm not being able to gain  
18 control, I'm not getting a good control hold on her, so the response to her resistance in that  
19 tactical pause in my head that I'm taking is thinking what's next. I'm not going to continue  
20 fighting for a control hold. I'm going to then respond to her resistance by transitioning to  
21 true and accurate take-down.

22 Q There was another movement where her hands seem to come up into the  
23 camera's view and sweep away –

24 MR. LANE: I'll object to again Counsel telling everybody what there watching.  
25 That's his interpretation. The jury is here to interpret it without his help.

1 MR. MURRAY: Your Honor, I need – I’m sorry.

2 THE COURT: What it seems like he’s trying to do in that instance is – is bring his  
3 attention to what he’s asking about. The jury, of course, is going to view this and – and  
4 you’re the finders of fact so whatever you see there is – is up to you, and Counsel’s  
5 statements shouldn’t have any affect on that. What he’s indicating is just a point in time  
6 on the video that he’s asking the witness about, so I’ll – I’ll allow it for that purpose. But  
7 the jury should be instructed that what you see on the video should be – you come up with  
8 your own interpretation. You’re the finders of fact.

9 Q BY MR. MURRAY: Were you able to see what I described that was  
10 depicted here?

11 A Yes.

12 Q Can you describe for the jury what the Defendant is doing at that point in  
13 time?

14 A She’s trying to grab my arm and grab my wrist and also pry my hand off of  
15 her wrist.

16 Q Thank you. When we – When we look back over here, what’s – what’s  
17 happening in the background behind Ms. Surat?

18 A That’s the boyfriend and that’s Officer Pastor’s arm.

19 Q Uh-huh.

20 A And Officer Pastor is trying to keep him away now from my interaction  
21 with Ms. Surat.

22 THE COURT: Mr. – Mr. Murray, I’m going to take a break right here really quick.  
23 I’m going to send the jurors out really quick. There’s something I have to address. We’ll  
24 bring – it won’t take long. I’ll bring you right back in. Keep in mind that you’re not to  
25 discuss anything that’s going on, not even with yourselves and don’t form any opinions

1 until the case is finally submitted to you. Please rise for the jury.

2 (Recess is taken at 11:10:53)

3 (Court resumes at 11:11:00)

4 THE COURT: Okay. Please be seated. I received one – one request for expanded  
5 media coverage from the Coloradoan and I understand that there's somebody that's using  
6 a – a cell phone and it's not clear to me what the cell phone's being used for. So is – is  
7 that you, Ma'am?

8 UNKNOWN: It is, yeah. I'm with the Coloradoan. I was just using it to take notes  
9 (inaudible).

10 THE COURT: Okay. That is fine. I – I apologize for taking a break. It wasn't  
11 clear to me whether you were videoing –

12 UNKNOWN: No, I was (inaudible) –

13 THE COURT: – or doing audio recording. Sounds like you read the order and you  
14 know what's going on. Okay. You may use your – your PDA to take notes for sure. Thank  
15 you. Sorry for that interruption.

16 THE CLERK: Please rise for the jury.

17 THE COURT: All right. Please be seated. And you may continue, Mr. Murray.

18 Q BY MR. MURRAY: And I believe we ended with you identi- – we did end  
19 that way.

20 A Yes.

21 Q Thank you. And is that the take-down you described?

22 A That is.

23 Q What did the Defendant do as soon as she came to the ground?

24 A She's immediately trying to get back up and braced herself with her hands  
25 to get up.

1 Q And who is it that entered the screen and is now depicted on the right?

2 A That is Officer Pastor.

3 Q He is now – never mind. Okay. What starts happening at this point?

4 A I got on my radio and I said, Sam 197 – that's the call sign for my supervisor  
5 – and I said, I need you in the square right now.

6 Q And what is the Defendant beginning to do?

7 A At this point she's – I think I heard crying, but she's still not really  
8 complying with us. We are not getting her hands where we want them and she's moving  
9 around not letting us handcuff her.

10 Q How about now? What – can you describe what she's doing?

11 A She's getting up – she's been given another stop resisting command and  
12 she's still not fully handcuffed.

13 Q What just happened there?

14 A That's the boyfriend now clearly upset about what's going on, and you can  
15 see in the lower left-hand portion come right up and over me yelling about it being her  
16 birthday and that's when I push him back with an open hand yelling get back and again try  
17 to go back to dealing with Ms. Surat.

18 Q Do you recognize the individual in the blue jacket?

19 A Yes, I do.

20 Q Who is that?

21 A That is Michael Finley.

22 Q Thank you. Now, I noticed that – is that your face that on occasion comes  
23 into the camera screen as you're walking?

24 A Yes.

25 Q You had testified to – about her calling out to people. Is that what's

1 happening at this point?

2 A It is.

3 Q And who is this coming around the car?

4 A That's Officer Fite.

5 Q Can you tell us what the call was just there that you made on the radio?

6 A I – I turned to look back towards the bar because now I had lost all track of  
7 my partner, Officer Pastor, and wanted to make sure that he was okay. Code – if he says  
8 he's code 4 that means I'm okay, I don't need assistance right now.

9 Q So at this point in time you had just radioed a call to have someone come  
10 check Ms. Surat out?

11 A Yes.

12 Q Is – and what's the purpose in that?

13 A Based on her reaction and – and the take-down and her response of just not  
14 really telling whether or not she wanted paramedics, I made the decision that I wanted her  
15 to be checked out. I wanted to make sure that – that she wasn't hurt and that nothing was  
16 wrong, so I chose to have paramedics come to the scene.

17 Q Did they respond?

18 A They did.

19 Q And – And did they check her out?

20 A They did.

21 Q Did you back off of the scene at that point – or when did you remove  
22 yourself from that scene?

23 A Once Officer Fite had a different cover officer other than me, I walked  
24 across the street and started completing paperwork at a different patrol car.

25 Q At some point subsequent did you return and have the contact with Corey

1 Eslinger?

2 A I did.

3 Q At some point was the Defendant transported to the hospital to further be  
4 evaluated?

5 A She was.

6 Q Did you respond to that location?

7 A I did.

8 Q Why did you respond to that location?

9 A I responded because in the end I was the primary officer. It was my case  
10 and Officer Fite doesn't have a body camera and I wanted to make sure that our entire  
11 interaction after that use of force or specific questions were captured on the body camera.  
12 Specifically, I went to make sure if any injuries were visible or there that they were  
13 documented.

14 Q And did you make inquiry of the Defendant in that regard?

15 A I did.

16 Q Was that at the hospital?

17 A It was.

18 Q Did she make any requests for documentation?

19 A I asked her if she had any injuries she wanted us to take pictures of. I  
20 explained that Officer Fite would take the pictures and I would step out. And she said she  
21 thought her knees had an injury. I did not see any signs of visible injury, but because of  
22 that statement we went ahead and took pictures and documented that.

23 Q Did you see any visible injuries on the Defendant?

24 A I did not.

25 MR. MURRAY: Thank you. Your Honor, I have no more questions at this time.



1 THE COURT: Your witness, Mr. Lane.

2 MR. LANE: Your Honor, we have agreed to share some tech here so perhaps –  
3 can we –

4 THE COURT: Do you need –

5 MR. LANE: – take the jury out for a split second while we gear this up?

6 THE COURT: Yes.

7 MR. LANE: Because I don't want things shown that shouldn't be shown and not  
8 showing things that should be.

9 THE COURT: I appreciate that. We're going to take a very brief recess. We'll  
10 bring you back once we have this AV stuff figured out. Remember, until the trial is  
11 completed don't discuss this with each other, don't go out in the hallway and talk about  
12 anything and don't form any opinions until the case is finally submitted to you.

13 THE CLERK: Please rise for the jury.

14 (Recess taken at 11:21:29)

15 (Court resumes 11:24:07)

16 THE COURT: Please be seated. All right. Mr. Lane, please continue.

17 MR. LANE: Thank you.

18 **CROSS EXAMINATION**

19 **BY MR. LANE:**

20 Q Officer Klamser, there – have you ever heard the – the concept that different  
21 perspectives show different things?

22 A Yes.

23 Q We talked a lot about your body camera on your shoulder and that shows a  
24 different perspective of the body camera in the middle of your chest, doesn't it?

25 A Yes, Sir.

1 Q We saw the take-down from the perspective of your shoulder camera, didn't  
2 we?

3 A Yes, Sir.

4 Q And you've seen this particular cell phone video in the past, have you not?

5 A I have.

6 Q And this has been marked People's Exhibit 17. I would ask you to take a  
7 look at this disk. And I apologize for – I don't know how to stop my e-mails from popping  
8 up. So if I start getting some e-mails, I – I don't know what to tell you. Sorry. Don't read  
9 'em. Anyway, Exhibit 17. You've seen this video, is that correct?

10 A I have.

11 Q This is a different perspective of the take-down, isn't it?

12 A Yes.

13 Q It doesn't show the lead up to the take-down from the perspective of walking  
14 up to the Bondi Bar. It shows from the time that Ms. Surat was near the light post after  
15 you had gone hands-on with her, doesn't it?

16 A It does.

17 Q All right. This is the video that went viral internationally, isn't it?

18 A Yes.

19 Q All right. I'm going to show you this video and it's only nine seconds long.  
20 (Video not transcribed.)

21 Q All right. You saw that, right?

22 A Yes.

23 Q That was the level of force you used on her, is that correct?

24 A It is.

25 Q And that is called what?

1           A     It's a rowing arm take-down.

2           Q     A rowing arm take-down. Let me back that up just very slightly. I'm going  
3 to slow – slowly bring this in. Now you are six feet tall, is that correct?

4           A     Five-eleven and a half, six feet.

5           Q     And you weigh over 200 pounds, don't you?

6           A     I do.

7           Q     And you know Ms. Surat is about 110 pounds, is that correct?

8           A     I – I would guess that, yeah.

9           Q     All right. So you outweighed her by double, is that correct?

10          A     I do not weigh 220 pounds.

11          Q     You're close. I don't know, how – how –

12          A     Yes.

13          Q     Okay.

14          MR. MURRAY: Object as to commentary about clothes, Your Honor. It's the  
15 defense counsel's perspective and opinion.

16          MR. LANE: I said, you're close, aren't you? And he said, yes. So more e-mails.  
17 I don't know how to get rid of that.

18          Q     Now as we move through this there comes a point where her – Ms. Surat's  
19 face is the first thing that hits the ground, isn't it?

20          A     I would disagree.

21          Q     What hits the ground first? Her feet are up in the air, aren't they?

22          A     At that point on that frame, yes.

23          Q     Well, and her face is on the ground, isn't that correct?

24          A     Yes.

25          Q     All right. Well, let's back it up just a split second. This is before her face

1 hits the ground. She's got her right arm extended, is that right?

2 A Yes.

3 Q And then it appears that her right arm is underneath her body and her face  
4 is hitting the ground. Is that correct?

5 A At that point, yes.

6 Q Now, let's show that in real-time one more time. All right. You saw – You  
7 saw a bouncer come charging from the right to the left and shoved somebody out of the  
8 way, didn't you?

9 A Yes.

10 Q All right. We can turn the lights back on at this point. I'm gonna – you  
11 have testified that you are extensively trained in use of force, aren't you?

12 A Yes.

13 Q And there is a thing that you're trained in called the use of force continuum,  
14 isn't that correct?

15 A Yes.

16 Q And the use of force continuum is sort of a – a grading scale of levels of  
17 force and how much each level is needed. Is that correct? For example, the – the lowest  
18 level use of force is command presences, is that correct?

19 A Yes.

20 Q Meaning when you show up and you want people to do what you to tell  
21 them to do, you say it in an authoritative voice and you're wearing your uniform and you've  
22 got a gun and you've got a Taser and you've got pepper spray. We saw your colleague out  
23 in the hall. He has a giant baton on his belt. You have all your armament that police  
24 officers have, and when you're talking authoritatively that is a lowest level use of force.  
25 Your command presence is designed to get people to comply, correct?

1           A       Yes. I would say the command presence and the lowest level would be my  
2 mere presence with everything you're describing before having to say anything.

3           Q       Okay. Well, I mean, people presumably are going to start behaving when  
4 – when you show up. If they don't then you tell them, hey, in an authoritative voice. That's  
5 part of the command presence, right?

6           A       Yes.

7           Q       And then you – you talked a little bit about the use of force and how you're  
8 not expected to lose a fight with a suspect. You are expected to win every fight that you  
9 engage in, correct?

10          A       Yes.

11          Q       And in order to do that, if the suspect is wanting to go hands-on with you  
12 and have a fist fight with you, you don't engage in the same level of force. You are  
13 permitted by law and department policy to go up one level above what the suspect is trying  
14 to use on you, correct?

15          A       Yes.

16          Q       All right. And then your next level of use of force after command presence  
17 would be going hands-on, soft hands-on with someone, correct?

18          A       Hands-on, yes.

19          Q       Well, there's soft hands-on and then there's striking blow hands-on, right?

20          A       I don't describe them as soft hands-on and striking blows hands-on.

21          Q       Okay. Well, you –

22          A       Physical touch.

23          Q       I'm sorry?

24          A       Physical touch.

25          Q       All right. Sometimes physical touch is just soft hands-on like, okay, I want

1 you to walk over this way and you gently put your hand on somebody's back and you escort  
2 them where you want them, right? That would be hands-on?

3 A Yes.

4 Q That's a lot different hands-on than giving somebody, you know, a shove  
5 or punching somebody. That's also hands-on but it's of a different level, isn't it?

6 A Yes.

7 Q All right. Now, you are also trained that a higher level than hands-on is  
8 striking blows, correct?

9 A That is a level of hands-on, yes.

10 Q Okay. But then you can also strike blows with implements, can't you?

11 A Yes, I can.

12 Q That is a higher level of use of force even still, isn't it?

13 A Yes, it is.

14 Q All right. And you are trained in, for example, your partner – what's his  
15 name?

16 A Officer Pastor.

17 Q Pastor. I apologize. Officer Pastor, he's going to walk in and he's got –  
18 you've seen his giant baton that he's got on his hip, right?

19 A He carries a straight stick, yes.

20 Q It's a straight stick. It's – It's about this long, right?

21 A No.

22 Q How long is it?

23 A I don't know the standard length. I choose to carry an expandable baton,  
24 but it's not that long.

25 Q Okay. I was impressed by the size of his baton out there.

1 MR. MURRAY: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. LANE: Okay. All right.

4 THE COURT: We don't need the commentary about how impressed you were with  
5 his baton.

6 Q BY MR. LANE: Okay. My question to you is you are trained when you're  
7 using striking implements, that when you use these things you should try to avoid striking  
8 a suspect in the neck or in the head with a baton if you can avoid it. Isn't that correct?

9 A Yes. There are designated areas we want to avoid or strike depending on  
10 the level of threat we are authorized to use.

11 Q And that is because when you strike a suspect in the neck or the head you –  
12 you could accidentally inflict all the way up to a fatal blow with a – a baton, right?

13 A Potentially.

14 Q Killing a suspect may be excessive force given the circumstances you're  
15 dealing with. You may need to use an implement, but you try to avoid inflicting possibly  
16 fatal damage to someone if you don't need to, correct?

17 A Absolutely.

18 Q All right. Have you seen the photograph of Ms. Surat where her chin has a  
19 very noticeable scrape on it?

20 A I have.

21 Q All right. And, Your Honor, we will make – I – I don't have the – we may  
22 have the hard copy, but not right at this second but we do have it on computer and we can  
23 print.

24 MR. MURRAY: Your Honor, I – I guess I don't have an objection to that, but I  
25 don't believe it was on any kind of exhibit list. It hasn't been disclosed to the People and

1 I – so I don't know what we're talking about.

2 MR. LANE: We just downloaded it, Your Honor, and the People, I think, disclosed  
3 it to us. I will show it to counsel right here.

4 THE COURT: Go ahead and show it to Counsel.

5 MR. LANE: It appears to be taken at the hospital. Hang on a second. Let me  
6 (inaudible). Let me just (inaudible). It was taken at the hospital, Your Honor, and it was  
7 taken by (inaudible).

8 THE COURT: Taken by?

9 MR. LANE: Her parents.

10 THE COURT: Mr. Murray, do you object to – in showing the witness this photo?

11 MR. MURRAY: There's a distinct lack of foundation on the part of this witness.  
12 I – I suppose he could be asked if he's observed it – or apparently he had no involvement  
13 in taking it or law enforcement didn't, but I guess if Defense Counsel wants to show it to  
14 the officer to see if he's seen it before, we can then see where it goes.

15 MR. LANE: Okay. Figure out how this –

16 THE COURT: When – and I – I think the officer had – had testified that he's seen  
17 that picture.

18 MR. MURRAY: I – I don't know how he would know what picture it is, Your  
19 Honor.

20 Q BY MR. LANE: All right. Officer, it's on the screen. Seen that picture?

21 A I have seen that picture.

22 Q Was that a picture – it – do – do you recognize that as Ms. Surat?

23 A I do.

24 Q And do you dispute that that take-down caused that scrape on her chin?

25 A No.



1 Q Okay. Your Honor, we will mark this as Defense Exhibit – I don't know if  
2 you use letters or number for –

3 THE COURT: Letters, please.

4 MR. LANE: We'll call it Defense Exhibit A and we will have copies to distribute.

5 MR. LANE: Your Honor, can I briefly voir dire on the exhibit?

6 THE COURT: Yes, you may.

7 **VOIR DIRE**

8 **BY MR. MURRAY:**

9 Q Officer Klamser, where did you see this picture?

10 A The news media.

11 Q Were you involved in taking this picture?

12 A No.

13 Q Was anybody to your knowledge from law enforcement involved in taking  
14 this picture?

15 A No.

16 Q Do you know anything about what's been done as far as coloring or not  
17 done as far as coloring?

18 A I don't.

19 MR. MURRAY: No other questions, Your Honor.

20 THE COURT: Okay.

21 MR. LANE: Move for the admission, Your Honor.

22 THE COURT: I – any objection to admission?

23 MR. MURRAY: No, Your Honor.

24 THE COURT: Then Defense Exhibit A will be admitted.

25 Q BY MR. LANE: So when you are being trained not to strike someone in

1 the head, you've testified it's designed to avoid head injuries, correct?

2 A Yes.

3 Q Because you understand that – I mean, you have been trained that people  
4 can get into fights and one person can actually push another person who then falls down,  
5 strike their head and that person then suffers a cerebral hemorrhage – or hemorrhage and  
6 they have – it can be fatal, right?

7 A Yes.

8 Q Even when it's not intended. Even when the person who gave the shove  
9 never in a million years would have wanted or expected the person who fell down and hit  
10 their head that died, that happens, doesn't it?

11 A It does.

12 Q And you are also familiar with the concept of, for example, CTE, right, as  
13 it applies to football players, correct? Concussions?

14 A Concussions, yes.

15 Q Concussions leading to permanent brain injuries, is that correct?

16 A Just as a lay person –

17 Q Right.

18 A – following the news and NFL stuff, yeah.

19 Q Okay. So you understand that when you strike someone's head it is an  
20 extremely serious and possibly fatal thing to do?

21 A Can I clarify? Are we still talking with a baton?

22 Q Well, yes. When you – When you are using a striking implement like a  
23 baton and you hit someone in the head, that would be a very serious potential use of force  
24 that could potentially kill someone, right?

25 A Yes.

1 Q All right. Now you threw Ms. Surat down onto the ground, didn't you?

2 A No.

3 Q You did not? Did we not just see you in this viral video throw her onto the  
4 ground?

5 A I do not believe I threw Ms. Surat on the ground. I used the trained take-  
6 down to take her to the ground. I would not describe it as a throw.

7 Q Well, I guess we should watch it again. I guess the jury will decide what to  
8 call it.

9 (Video not transcribed.)

10 Q Now you don't call that throwing her to the ground?

11 A I – I don't.

12 (Video not transcribed.)

13 Q Okay. You can call it a take-down, but the goal is to put the person on the  
14 ground, isn't it?

15 A Yes, it is.

16 Q And you used enough force that her feet left the ground and were up in the  
17 air while her face and her arm were on the ground, didn't you?

18 A They did.

19 Q But you claim somehow that is not throwing her to the ground. Is that right?

20 A I do not believe I threw her to the ground. I tried to maintain – maintain  
21 control of her while taking her to the ground. I did not want to throw her down.

22 Q Okay. How long after you did this did you realize that this video – this  
23 video existed?

24 A If – I heard about it the next night.

25 Q Okay. Now, you would agree that she struck her head on the cement –

1           A     Yes.

2           Q     – wouldn't you? And you would agree that the use of force was so  
3 significant that her feet couldn't catch up to the rest of her body for a split second because  
4 you had so forcefully directed her head into the cement. Isn't that correct?

5           A     No.

6           Q     Did you direct her head into the cement?

7           A     No.

8           Q     Well, her head hit the cement, didn't it?

9           A     It did.

10          Q     And when you are pushing somebody's head down forcefully you're  
11 directing it at the ground, aren't you?

12          A     I never touched Ms. Surat's head –

13          Q     Did –

14          A     – to direct it or push it into the ground.

15          Q     What were you holding on to when you shoved her?

16          A     I was holding on to her wrist and using my other hand to guide the  
17 elbow/bicep area down to the ground.

18          Q     All right. And this technique results in her head striking pavement, doesn't  
19 it?

20          A     It's possible, yes.

21          Q     Not possible. We know that's exactly what happened because we've seen it  
22 from two different videos, haven't we?

23          A     Yes.

24          Q     And we've seen this scrape on her chin too, haven't we?

25          A     Yes.

1           Q       So when you use this technique there is a significant risk that it will result  
2 in a blow to the head of the person that is on the receiving end of this technique. Isn't that  
3 correct?

4           A       I would say it is possible, yes.

5           Q       Well, that wasn't my question. All things are possible. My question is  
6 when you are taking someone down forcefully to that extent where their feet are up in the  
7 air and their head is on the ground – first of all, you agree that's a lot of force, isn't it to –  
8 to knock somebody off their feet to the point where their feet are up in the air and their  
9 head is on the ground. That's a lot of force, isn't it?

10          A       Yes.

11          Q       Okay. And when that kind of force is applied their head is likely to strike  
12 the ground, isn't it?

13          A       Yes.

14          Q       Now, you would agree with me that using a baton to strike Ms. Surat in the  
15 head would have been grossly excessive, wouldn't it?

16          A       It would.

17          Q       And you didn't use any implements to strike her in the head, did you?

18          A       No.

19          Q       But your throw caused her head to strike pavement in such a way that it is  
20 the equivalent of using an implement to strike her in the head, isn't it?

21          A       I can't say yes or no to that.

22          Q       And why can't you say yes or no to that?

23          A       I am not an expert on what could happen if I hit someone in the head with  
24 a baton and its similarities them hitting their head in the take-down.

25          Q       Well, let's talk about your training because you have a lot of training in this

1 technique, don't you?

2 A Yes.

3 Q And you have training from non-physicians, other police officers, to the  
4 effect that you shouldn't hit somebody in the head with a baton, right?

5 A Based on this call and this level of –

6 Q That's not my question, Sir. My question is you have training from non-  
7 medical police officers that it's dangerous to hit somebody in the head with a baton, don't  
8 you?

9 A Yes.

10 Q All right. And when you strike somebody's head on the ground with  
11 cement, have you ever been trained that that is as dangerous as striking somebody on the  
12 head with a baton?

13 A No.

14 Q Do you believe that common sense should tell you that when you smash  
15 somebody's head into cement on the ground, that is the equivalent of a head strike with a  
16 baton?

17 MR. MURRAY: I'm going to object because that question assumes facts not in  
18 evidence, Your Honor.

19 MR. LANE: Well, I'm asking him is it common sense in his mind that they are  
20 about the equivalent of one another.

21 THE COURT: I don't know that he's qualified to answer that question. I certainly  
22 understand the parallel you're drawing, but he's answered that particular question  
23 numerous times saying I don't know. I can't say that. And you keep asking it hoping that  
24 he's going to say yes.

25 Q BY MR. LANE: Well, then let me ask it this way. You're trained in all

1 these use of force continuum techniques, aren't you?

2 A Yes.

3 Q All right. And they teach you that you shouldn't hit somebody in the head  
4 with a baton because you could kill them, right?

5 A Yes.

6 Q Okay. Do they ever teach you that ramming somebody's head into the  
7 pavement is about as dangerous as smashing somebody's head with a baton?

8 A No.

9 Q Okay. Now, as a human being of how many years on planet Earth?

10 A Almost 35.

11 Q Thirty-five years on planet Earth you would use common sense and you can  
12 understand that, wow, that might be very dangerous to ram somebody's head into cement,  
13 right?

14 A Yes.

15 Q And that could cause serious injury or death just like hitting somebody on  
16 the head with a baton could possibly cause serious injury or death, right?

17 MR. MURRAY: Asked and answered, Your Honor.

18 THE COURT: I'll let him answer that question.

19 THE WITNESS: That question?

20 MR. LANE: Yeah.

21 THE WITNESS: Yes.

22 Q BY MR. LANE: Okay. Now, you have testified on direct that there are  
23 these different kinds of aggression that suspects engage in. Do you recall that testimony?

24 A I do.

25 Q And the highest level of aggression is, what did you say, aggravated

1 aggression?

2 A Aggravated active aggression.

3 Q Aggravated active aggression. That is when even if somebody's getting the  
4 best of you and they could disengage and run away, they don't want to disengage and run  
5 away. They want to keep pounding on you, right?

6 A Yes.

7 Q Okay. And the next level down is what, just aggression?

8 A Active aggression.

9 Q Active aggression. And I believe you said Ms. Surat was engaged in active  
10 aggression?

11 A I would use that description, yes.

12 Q All right. That's the second highest level of aggression. Is that right?

13 A Yes.

14 Q Now, you kind of have to balance the aggression scale with your use of  
15 force continuum in deciding how to respond to any given situation, don't you?

16 A Yes.

17 Q All right. So you have a 110 pound woman in a mini-skirt slapping at you  
18 allegedly and choking you and digging her finger nails into your neck, right?

19 A Yes.

20 Q And you have a whole host of options available to you on the use of force  
21 continuum at that point, correct?

22 A Yes.

23 Q All right. You have a gun on your – on your hip at that point, right?

24 A I do.

25 Q And you are trained in how to shoot people and kill them, aren't you?



1           A     I'm trained to shoot and stop a threat.

2           Q     Well, that means shooting people and killing them, right. That's what your  
3 trained to do.

4           A     I would disagree.

5           Q     If somebody – if you're – if you're in danger of imminent serious physical  
6 injury or death, you are legally permitted to pull that gun out and kill the person who is  
7 putting you in reasonable fear of imminent serious bodily injury or death, aren't you?

8           A     Yes, I'm allowed to.

9           Q     And that's why you go to the range, to improve your marksmanship so you  
10 can use a gun to kill someone who is posing that kind of a threat to you, isn't that correct?

11          A     No.

12          Q     No? Why do you go to the shooting range?

13          A     I go to the shooting range so that I can be a good marksman and I can use  
14 my gun if I ever have to. I do not go to the range to learn how to kill people.

15          Q     Well, you shoot people to kill them. They don't train you to shoot people  
16 to wing them, do they?

17          A     No, they don't.

18          Q     They train you when you're pulling your gun and if you're going to shoot  
19 somebody, you shoot to kill, right?

20          A     No.

21          Q     They don't teach you to shoot to kill?

22          A     We are trained to shoot and stop the threat. We hope they don't die.

23          Q     Okay. All right. Well, that's a nice sentiment, but they tell you shoot for  
24 center mass, don't they?

25          A     Yes, they do.

1 Q All right.

2 MR. MURRAY: Your Honor, I'm going to object as to relevance in this line of  
3 questioning.

4 THE COURT: I'm failing to see – I mean –

5 MR. LANE: We're going through the use of force continuum. I'll move on from  
6 here.

7 THE COURT: I think we can move on.

8 MR. LANE: It got a little argumentative.

9 THE COURT: Yes.

10 MR. LANE: I'll move on.

11 Q Now clearly taking out your gun and shooting Ms. Surat was not an option  
12 at that point, right? That would have been so over the top excessive that you would have  
13 been charged criminally, right?

14 A Correct.

15 Q Okay. Down from that would be, for example, taking out a Taser and tasing  
16 her, right?

17 A Down from that would have been an impact weapon like the baton, the  
18 straight stick Officer Pastor wears or the expandable baton I wear.

19 Q Right. And that would have also been grossly excessive in your estimation,  
20 wouldn't it?

21 A I – I would not have chosen that, no.

22 Q Because it's excessive, right?

23 A That's not why.

24 Q Okay. Is it excessive?

25 A Based –

1 Q To smack her with a baton, would that be excessive?

2 A I did not choose that tool because I did not think that this situation, based  
3 on distances and what could have happened with disengaging with her was a good option.  
4 I could have –

5 Q All right.

6 A – but I chose not to.

7 Q Now you are also taught a lot of hands-on pain compliance techniques,  
8 aren't you?

9 A Yes.

10 Q And a pain compliance technique is a technique where by you are inflicting  
11 pain on a suspect to get them to do what you want them to do, correct?

12 A Yes.

13 Q And there's a thing called low profile wrist lock, isn't there?

14 A Wrist lock, yes.

15 Q And that's where you take the pinky finger of the suspect and you start  
16 twisting their arm in a way that causes them to have pain and then they comply with your  
17 commands presumably, right?

18 A The pinky finger, no. The general description you gave of bending the wrist  
19 is yes.

20 Q Okay. There are many ways to do these different techniques, aren't there?

21 A There are specific ways we train to do them, yes.

22 Q Okay. Various departments have various ways, right?

23 A Yes.

24 Q Okay. You had her by her arm – by her wrist, didn't you?

25 A Yes.

1 Q Did you ever at any time attempt to put her in a low profile wrist lock?

2 A I tried to put her in a rear wrist control or a rear wrist lock, yes.

3 Q All right. You had her wrist – did you ever try to simply twist her arm to  
4 get her to comply?

5 A No.

6 Q All right. Did you ever use any pain compliance techniques on her?

7 A I tried, yes.

8 Q All right. And when you were trying to use pain compliance techniques on  
9 her, do you know whether or not you were in fact inflicting pain upon her?

10 A I don't.

11 Q Okay. Would you agree with me that the only person who actually would  
12 know would be Ms. Surat?

13 A Yes.

14 Q Are you trained at all in constitutional rights of citizens.

15 MR. MURRAY: Object as to relevance, Your Honor.

16 THE COURT: Mr. Lane, where are you going with this one?

17 MR. LANE: Well, where I'm going with this is that she has a right to defend herself  
18 from excessive force among other places. That's where I'm going.

19 MR. MURRAY: Your Honor, the statute actually says unlawful force, I believe.

20 MR. LANE: Unre- – it says unreasonable force or excessive force. That's what  
21 that the jury instruction tendered by the People says.

22 MR. MURRAY: Self defense says unlawful force.

23 THE COURT: The instruction that I read to the jury at the beginning of voir dire,  
24 one of them is the instruction as to it not being a defense to prosecution of resisting arrest  
25 that the police officer was attempting to make an arrest which in fact was unlawful. If he

1 was acting under color of his official authority and then attempting to make the arrest, he  
2 was not resorting to unreasonable or excessive force giving rise to the right of self-defense.  
3 In self-defense the amount of force used has to be reasonable given the – the amount of  
4 force that's being used against them.

5 MR. LANE: Okay.

6 THE COURT: So unreasonable or excessive force.

7 MR. LANE: Thank you. That's what I said.

8 Q Officer, are you trained that a citizen has a right to use – that they have a  
9 right to defend themselves against you if you're using unreasonable or excessive force?  
10 Are you trained in that, yes or no.

11 A Yes.

12 Q Okay. And when were you trained in that and can you give me some  
13 background on it?

14 A We receive case – recent case law or new case law training from the District  
15 Attorney's office about court case findings across the nation as they affect law enforcement  
16 and what we do.

17 Q Right. But my question is specifically you – you indicated at one point she's  
18 trying to pry your fingers off of her wrist. Do you recall that?

19 A Yes.

20 Q And if you were inflicting pain upon her and this jury deems that pain to  
21 be excessive or unreasonable force, are you trained specifically she has a right to try and  
22 pry your fingers off her wrist?

23 A The specifics, I don't know. I'm –

24 Q Fair enough. Now, you've indicated that after the take-down she was  
25 continuing to resist arrest. Is that your testimony?

1           A     Yes.

2           Q     And she was allegedly trying to resist arrest by trying to get back up. Is that  
3 right?

4           A     Yes.

5           Q     And, again, let me ask you do you understand that if this jury believes that  
6 that was excessive force or unreasonable force she has a right under the law to resist you?

7           MR. MURRAY: Your Honor, I – Your Honor, I’m going to ask that the question  
8 be stated again if I could just because I think it’s bringing into play so many legal theories.

9           MR. LANE: Well, he’s a law enforcement officer. In order to enforce the law  
10 presumably he has to have some understanding of what the law is.

11          MR. MURRAY: And my point isn’t the officer’s questions, it’s the propriety of  
12 the question. It isn’t the officer’s ability or knowledge. He’s already talked about that.

13          MR. LANE: It –

14          THE COURT: Could you repeat your question?

15          Q     BY MR. LANE: Yeah. If this jury determines that that take-down was  
16 excessive force, are you trained that the law tells – says that somebody who is being  
17 victimized by excessive force has a right to resist? They have a right to use reasonable  
18 force to try to stop you.

19          THE COURT: And hold on just one –

20          MR. MURRAY: I am going to object because I think it brings into play findings  
21 that are reserved for the jury. I – I don’t this is relevant whether he’s been trained or his  
22 opinions on that. These are legal things that the juries – jury gets to decide after the close  
23 of evidence, after the judge’s instruction on that evidence. I don’t believe inquiring of this  
24 officer about a finding the jury is to make is appropriate and proper at this point and  
25 shouldn’t be relevant to their consideration.

1 MR. LANE: I'm just asking if he has any training in this, Your Honor. Does he  
2 know that a citizen has certain rights to self-defense under certain circumstances?

3 THE COURT: Well, and question right there I think is fine.

4 MR. LANE: Okay.

5 THE COURT: I think when you – when you kind of –

6 MR. LANE: All right.

7 THE COURT: – incorporate this hypothesis –

8 MR. LANE: I'll leave it –

9 THE COURT: – it muddles things.

10 MR. LANE: I'll leave it at that.

11 Q Are you aware that a citizen under certain circumstances has an absolute  
12 right to defend themselves against your use of force?

13 A I can't answer that yes or no.

14 Q Okay. Are you trained that a citizen has a right to challenge your authority  
15 verbally and there's nothing you can do about it unless the verbal challenge actually  
16 interferes with your ability to do your job?

17 A Again, that requires more than just a yes or no answer.

18 Q I just want to know if you're trained in it.

19 A Can you ask the question again, please?

20 Q Sure. Are you trained that citizens can question what you're doing or  
21 challenge your authority without risking going to jail?

22 A Yes.

23 Q Okay. We're going to look at the video from your body cam in real-time  
24 because the only way this jury saw it was chopped up, stop, stop, stop, stop. But in a  
25 minute we'll look at it in real-time. Now, you would agree that you were a little irritated

1 with Ms. Surat when she allegedly pushed past you at the Bondi bar?

2 A I – I wasn't irritated, no.

3 Q Well, you – you said – you said sarcastically excuse me, and she  
4 sarcastically said excuse you, right? They were both sarcastic remarks, weren't they?

5 A I wasn't trying to be sarcastic, no.

6 Q Well, you hadn't done anything to warrant you saying excuse me. You were  
7 just standing there, right?

8 A I was standing there, yes.

9 Q Okay. So when she pushes past you your excuse me was not sincere was  
10 it? I mean, you didn't do anything.

11 A I was just saying excuse me. I wasn't trying to be sarcastic. I guess it could  
12 be seeing what kind of response – gauging what kind of response I would get from her, but  
13 I in no way intended sarcasm. Gauging levels of cooperation and I think the response gave  
14 me that clue with what kind of cooperation and what kind evolve – involvement she was  
15 potentially have in this.

16 Q You know, I noticed you're looking at the jury when you're giving these  
17 answers, right?

18 A Yes, Sir.

19 Q Okay. And you're trained to do that, aren't you? You have training how to  
20 testify as a witness, don't you?

21 A Yes.

22 Q And one thing they tell you in witness training school is when you get a  
23 question from the lawyer, look at the jury, make eye contact with them and it helps your  
24 credibility. Is that right?

25 MR. MURRAY: Object as to relevance, Your Honor. Everything we present is



1 for the jury.

2 MR. LANE: Some of it's more scripted than others though, Your Honor.

3 THE COURT: That – I'm – I'll overrule the objection just because this all comes  
4 down to credibility and that's something that the jury might find has – affects his  
5 credibility.

6 MR. LANE: Okay.

7 THE COURT: So I'll allow the answer to that question.

8 MR. LANE: Thank you.

9 THE WITNESS: If I understand your question correctly, yes, I turn to look at the  
10 jury. I think the jury is who I'm talking to and I think it's polite, but I never – there's not  
11 a jury school I've ever attended. It's just stuff I've learned from being an officer for so  
12 many years.

13 Q Well, they actually train you how to testify, don't they? They run you  
14 through it in school. They sit down, okay, when you're a witness this is what you're  
15 supposed to do, this is how you're supposed to look, this is how you're supposed to act.  
16 Look at the jury when you're answering questions.

17 A I learned how to testify in the academy, yes.

18 Q Okay. And that's one of the things they teach you, look at the jury when  
19 you're testifying, right?

20 A Yes.

21 Q Okay. So, getting back to Ms. Surat, you were being sarcastic by excuse  
22 me when she pushed past you, weren't you?

23 A I was not.

24 Q Okay. But she was being sarcastic when she said excuse you, right?

25 A I interpreted that, yes. I assumed or hoped her response would be excuse

1 me, –

2 Q Okay. Now –

3 A – an acknowledgement that it was an accident.

4 Q Now your claim here, she had plenty of room. She – this 110 pound woman  
5 was shoulder checking a bouncer, Corey, right – Corey Enslinger [sic]?

6 A Eslinger, yes.

7 Q Eslinger. How big is he? He's bigger than you, isn't he?

8 A He's stockier than me. Shorter but stockier.

9 Q So 110 pound Michaela Surat has got plenty of room. She can go  
10 anywhere, but she's like, you know, doing a hockey check on a bouncer, right? Is that kind  
11 of what you're telling us?

12 A Yes.

13 Q And then she did the same thing to you, a fully uniformed, armed police  
14 officer. Is that right?

15 A Yes.

16 Q Even though – how much room would you say she had? Can you  
17 demonstrate for me – for example, we see the video on your shoulder. Those girls standing,  
18 waiting in line. Looked pretty crowded, right?

19 A The line was – yeah, it was a crowded line.

20 Q Yeah, and then you guys were all standing in the entry way, right?

21 A Sort of, yes.

22 Q Okay. And she went around between the girls standing in line and you,  
23 right?

24 A Yes.

25 Q Okay. How much space was there?

1           A     I could approximate or guess several feet, but enough to where no contact  
2 was needed –

3           Q     Did you view –

4           A     – or necessary.

5           Q     Did you view Officer Pastor's interview that he gave on video tape  
6 regarding this incident?

7           A     I did not.

8           Q     Okay. Did Officer Pastor tell you, no, it was pretty crowded there?

9           A     No.

10          Q     Okay. Do you know if he told interviewers from the police department,  
11 yeah, it was pretty crowded there?

12          A     I don't know what he said.

13          Q     She didn't have a lot of room to get – get by?

14          A     I don't know what he –

15          MR. MURRAY: Object. Asked and answered.

16          THE COURT: Sustained.

17          Q     BY MR. LANE: Do we have a video showing how much room she did or  
18 did not have?

19          A     The surveillance video from the bar does capture it. It's a little sideways,  
20 not straight on from the exit, but it captures that exit area, yes.

21          Q     That's the one that somehow it disappeared when you were trying to  
22 preserve it, is that right?

23          A     Yes.

24          Q     Now your job is to gather evidence, is that correct?

25          A     Yes.

1 Q Your job is to preserve evidence, isn't it?

2 A Yes.

3 Q And your job is to present evidence in court to jurors who might want to see  
4 that evidence, is that correct?

5 A I believe it's more the District Attorney's job and I'm a tool, but yes.

6 Q Well, who gives this evidence to the DAs?

7 A We do.

8 Q We meaning you, right?

9 A Yes.

10 Q That's your job. Your whole job is investigate crime and preserve evidence,  
11 right?

12 A That is part of the job, yes.

13 Q Okay. And this would be an important piece of evidence, is that correct?

14 A Yes.

15 Q And somehow it just disappeared when you were trying to preserve it, is  
16 that right?

17 A Yes.

18 Q Presumably this is the first case you've ever been involved with where you  
19 personally have received international attention, is that right?

20 A It is.

21 Q Okay. And this is also the first time a video has ever disappeared that you  
22 were trying to preserve, isn't it?

23 A I believe so, yeah, to my knowledge.

24 Q Let's take a look at the video in real-time. But before – before we do it I  
25 just want to set the stage here. Would you agree that from the time Ms. Surat walks past

1 you guys up until the take-down, the entire length of time is about 30 seconds?

2 A I'd say that's a fair guess. It was quick.

3 Q Okay. And you would also agree with me that in a situation that catches  
4 people off guard or by surprise you don't have time to process – you don't – you don't  
5 have time to parse through things like you do in a courtroom frequently. You agree with  
6 what I'm saying? You know what I'm saying? Where I'm going with this is when you're  
7 confronting a situation real-time where it's happening and it's happening fast, you don't  
8 have the luxury of stepping back, sitting down, watching a video tape of what's going on  
9 and thinking the best course of action I should take would be, hmmm, instead of doing this,  
10 I should do that. Or maybe not. Maybe I should do option C. You don't have that luxury  
11 when you're on-scene, do you?

12 A I don't.

13 Q So you're doing the best you can under the circumstances you're  
14 confronting, right?

15 A Absolutely.

16 Q And that would be the same with Ms. Surat, right? I mean, if something is  
17 going on quickly she doesn't have the luxury of sitting down and parsing through it second  
18 by second by second either, does she?

19 MR. MURRAY: Object as to the ability of this witness to testify about Ms. Surat's  
20 thinking patterns or what she may or may not be doing –

21 MR. LANE: I'm just talking about humans generally.

22 THE COURT: The question was more about time and not being able to step out of  
23 it and observe it, not necessarily speculating what's going on in her mind so I'll – I'll allow  
24 the question to be answered.

25 Q BY MR. LANE: Okay. So let's look at the whole thing in real-time and

1 I'm not going to interrupt and then we're going to go back and we'll look at a couple of  
2 things.

3 THE COURT: He's – did you want him to answer your question?

4 Q BY MR. LANE: Well, yeah, I thought he did but go ahead. You would  
5 agree that humans just simply can't – they don't have the luxury of stepping back and  
6 thinking, hmmm, maybe I should do this. Maybe I should think that. Maybe I should say  
7 this. Maybe I should say that. Right? I mean, it's real-time you're reacting frequently.

8 A I would disagree. Ms. Surat had that luxury because she was not detained.  
9 She was told she was free to go.

10 Q Okay. Now before we turn off the lights and I see your posed, would you  
11 agree with me that you told her, you're – he's not free to leave. You're free to leave.

12 A I believe my exact words were you can keep walking or you can keep going  
13 but he's not free to leave.

14 Q Okay. So she had no reason to believe she was doing anything wrong at  
15 that point, correct?

16 A I would –

17 Q You told her she was free to leave.

18 A Yeah.

19 Q Okay. So she has no reason to think I'm doing anything wrong, correct?

20 A At that point no.

21 Q Yeah. And then she walks up on you and you said – do you remember what  
22 you said?

23 A At – At what point are you –

24 Q When she –

25 A – referring to?

1           Q     – actually – she – you say to her, okay, he’s not free to leave. And then she  
2 turns around and starts walking back and you said, but you’re free to leave. And she says,  
3 no, I’m going to stay right here. Do you recall that – or words to that affect?

4           A     I do not recall her saying she wanted to stay right there.

5           Q     Before you ever told her that she was doing anything wrong you tried to  
6 grab her, didn’t you?

7           A     At –

8           Q     The very first contact with her, you reached out to try to grab her and that’s  
9 when she said you don’t have to fucking touch me, right?

10          A     Our first touch, I believe, was open-handed and then she kept going so I  
11 went like that -- to that because she – the open hand didn’t work.

12          Q     Okay. Well, we’ll watch the video. But tell me if – if your recollection is  
13 her first contact with you she puts her hands up and says, you don’t have to fucking touch  
14 me. Remember that?

15          A     Yes, I do.

16          Q     Okay. And at that point you grab her and she ends up turning her back to  
17 you, right?

18          A     Yes.

19          Q     Okay. Now when you grabbed her, would you agree with me, that the video  
20 never shows that you ever said a word to her about, A, why you were grabbing her – you  
21 never told her why, did you?

22          A     No.

23          Q     And she was asking you what the fuck are you doing? Get your hands off  
24 of me, right – or words to that affect?

25          A     Yes.

1 Q At no time in this entire encounter did you ever tell her what she had done  
2 wrong, did you?

3 A I – the specifics of it? No.

4 Q Well, nothing. I mean, all – she’s confronting a situation where you’re  
5 telling her she’s free to go. She then says no, I’m going to stay here. She gets grabbed and  
6 then the chase is on from that point, isn’t it?

7 A No.

8 Q Okay. At any point in this entire video did you ever tell her what she’s  
9 doing wrong?

10 A No.

11 Q Okay. All you were telling her is put your hand up on your head and she’s  
12 continually asking you why. What did I do? What did I do? Right? That’s – she was  
13 asking you for information the entire time, wasn’t she?

14 A That is not all I said, no.

15 Q That’s not my question. I didn’t ask what did you say. I said the entire event  
16 involves her saying why are you doing this? What did I do? What did I do? And you are  
17 giving her commands. Put your hand on your head. Let go of the light post. And she’s  
18 simply repeating herself, what did I do. Tell me why you’re doing this. Isn’t that what  
19 was going on?

20 A That’s not all of it, no.

21 Q I’m not saying it’s word for word, but essentially that’s it, isn’t it?

22 A No.

23 Q Okay. We’ll watch the video. Do you believe a citizen has a right to ask  
24 you a question about what’s going on? Why are you doing this?

25 MR. MURRAY: Again, I ask – I object to the relevance of his beliefs in that regard



1 for the purposes of this case, Your Honor.

2 THE COURT: Yeah, I'll – I'll sustain your –

3 Q BY MR. LANE: Are you trained that a citizen has a right to ask you  
4 questions?

5 A Yes.

6 Q All right. And a citizen has a right to challenge your authority if you're  
7 using excessive force?

8 A Again, I can't answer yes or no to that question.

9 Q Okay. All right.

10 A It requires explanation.

11 Q Okay. When she collapsed while she was walking to the police car in  
12 handcuffs, you called that passive resistance, right?

13 A It – I would – if I had to say it was more passive. She wasn't being assaultive  
14 to me. I – I would probably say that was passive.

15 Q And she collapsed and you – you told this jury she did it for no reason at  
16 all, right?

17 A It appeared to me, yes. We had been walking fine up until that point.

18 Q Well, she gave us a reason on the video tape, didn't she?

19 A I don't understand the question.

20 Q She said – she told us the reason why she got on the ground on the video  
21 tape, didn't she?

22 A If you could point to something she said that I –

23 Q She said you're hurting me, didn't she?

24 A She did say that during this contact, yes.

25 Q Right. Now assuming for a minute and I know you say you just had your

1 hand on her bicep and you weren't hurting her, were you?

2 A I was applying no pressure.

3 Q Okay. And but assume for argument's sake she was in pain. You would  
4 agree that there would be no reason to be hurting her by squeezing her arm excessively  
5 tightly at that point, right? That would be excessive force. If you were squeezing her arm  
6 tight and causing her pain, that would be excessive force at that point, wouldn't it?

7 A It – It could be. That's why I – I just didn't feel the need to grab or use  
8 pressure at all. I was just trying to walk her to the car –

9 Q Under- –

10 A – and keep control.

11 Q Understood. Because it would be excessive if you were inflicting pain on  
12 her at that point, wouldn't it?

13 A Probably, yeah.

14 Q And you're claiming she wasn't in pain, correct?

15 A She did not say she was in pain until she had already collapsed and was  
16 laying on the ground.

17 Q Okay.

18 A And at that point I was not doing anything but holding. There was no  
19 pressure or pain or anything being caused by me that I knew of.

20 Q But you would agree that the only person who would actually know if she  
21 was suffering pain would be Ms. Surat?

22 A Yes.

23 Q Okay. All right. Let's look the video in real-time.

24 THE COURT: And, Mr. Lane, before we get there, I'm hoping to take a lunch  
25 break around 12:30.

1 MR. LANE: You know what? We can watch the video in real-time and then take  
2 a lunch break.

3 THE COURT: Okay.

4 MR. LANE: Does that sound good?

5 THE COURT: Sounds fine with me.

6 MR. LANE: All right. Okay. I'm going to let – play this entire 6 minute 37 second  
7 video uninterrupted so they can see how fast it went.

8 (Video not transcribed.)

9 MR. LANE: Okay. That's really about the only relevant part is about almost four  
10 minutes. Okay.

11 (End of Officer Randall Klamser's January 9, 2018 recorded testimony.)

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COUNTY COURT LARIMER COUNTY, COLORADO LARIMER COUNTY JUSTICE CENTER 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521 (970) 494-3500		
The People of the State of Colorado,  vs.  Michaela Lynn Surat,  Defendant.	▲	<b>For Court Use</b>
<hr/> For the People: Mitchell T. Murray, DDA  For the Defendant: David A. Lane, Eleanor K. Wedum and Nathan P. Hansen		Case Number: 2017M965 Division: 4D
<p style="text-align: center;"><b>CERTIFICATION</b></p>		

I, TRACY McBRIDE, do hereby certify that I transcribed the foregoing record from the electronic sound recording of the January 9, 2018 hearing held in the above-entitled matter.

I do hereby further certify that the foregoing pages, numbered 1 through 99, constitute a true and accurate transcript of the digitally recorded proceedings to the best of my knowledge and ability. I further certify that the foregoing transcript was delivered to Killmer, Lane & Newman and to the Office of the Judicial Administrator, Eighth Judicial District, on March 12, 2018.

I have hereunto set my hand on March 12, 2018

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TRACY McBRIDE, FTR Transcriber