

Cory Bain Esslinger - August 24, 2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO



MICHAELLA LYNN SURAT, Civil Action No.
19-cv-00901-WJM-NRN

Plaintiff,

vs.

RANDALL KLAMSER, in his individual capacity,
and CITY OF FORT COLLINS, a municipality,
Defendants.

VIDEOCONFERENCED DEPOSITION OF CORY BAIN ESSLINGER

August 24, 2020

Cory Bain Esslinger - August 24, 2020

1 who is touching me like that.

2 And the -- as I said, the female who
3 was, you know, later identified to me as
4 Michaela Surat was pushing past myself and
5 Officer Klamser out the doorway.

6 I remember Officer Klamser saying
7 something to the effect of, you know, excuse you, and
8 her report being, No, excuse you. I mean, there was
9 some sort of back and forth with, you know, us being
10 in the doorway, I guess, and in her way.

11 And I remember Officer Klamser, you
12 know, went back to speaking to me when Michaela
13 Surat -- I believe she attempted to pull her
14 boyfriend away from Officer Garrett Pastor and pull
15 him away from the investigation.

16 Q. (BY MR. RATNER) Well, let me stop you
17 right there. And just -- it's easier for the record
18 if we break this down. So when she came back past
19 you and bumped into you and then bumped into
20 Officer Klamser, did you make any determination as to
21 whether or not you thought that was intentional?

22 A. I mean, I felt that she was, you know,
23 possibly in a hurry to try and get past us. And from
24 looking at the video, you know later, Officer Klamser
25 and I were definitely taking up the majority of the

Page 27

Cory Bain Esslinger - August 24, 2020

1 doorway there. But, you know, there was other people
2 going in and out.

3 So in terms of her purposely causing me
4 any discomfort or, you know, causing me concern, I
5 don't believe that was intentional. I think she was
6 just trying to get past me and, you know, didn't
7 realize that I'm sober and didn't want people
8 touching my side.

9 Q. What about Officer Klamser? Did you
10 observe her bump into Officer Klamser?

11 A. Yes, sir. I believe she kind of, you
12 know, just shoulder to shoulder pushed past him,
13 like, you know, it seemed like possibly based on
14 their following interaction that she was annoyed that
15 the cops were even involved in the situation and that
16 her boyfriend was, you know, being spoken to by the
17 police.

18 Q. The video I just showed you, is that
19 what you're describing now?

20 A. Yes, sir.

21 Q. All right. So at some point Ms. Surat
22 goes over to Officer Pastor and her boyfriend; is
23 that correct?

24 A. Yes, sir.

25 Q. And then what happened after that?

Cory Bain Esslinger - August 24, 2020

1 A. So I had shifted my attention back to,
2 you know, Officer Klamser. I believe we had started
3 talking about the incident again when, you know,
4 Officer Klamser had either looked back or something
5 alerted him to the fact that the female that -- you
6 know, Michaella Surat, that had just bumped into us
7 was trying to, you know, pull her boyfriend away from
8 this investigation.

9 And at that point Officer Klamser had
10 just -- you know, he stopped talking to me and went
11 to handle that and left me there at the doorway.

12 Q. Okay. And could you hear any words
13 exchanged between Officer Klamser and Ms. Surat?

14 A. I remember -- and, you know, part of
15 this might be mixed in with, you know, I've seen the
16 videos since then, you know, part of the criminal
17 trial. I had seen all of those. So I'm not sure how
18 much directly came from my memory and how much came
19 from the video, and it's all kind of mixed together
20 now, but I recall that, you know, he was telling her
21 that she was free to leave but the boyfriend was not.
22 And that, you know, she was saying that, you know,
23 she was going to be leaving with him.

24 You know, so while this was going on, I
25 wasn't directly watching, you know, their interaction

Page 29

Cory Bain Esslinger - August 24, 2020

1 the whole time, because we had our whole fence line
2 full of college students started getting riled up.
3 They were all standing on the tables, pulling out
4 their cameras and, you know, all putting in their
5 drunken two cents. So it was kind of a chaotic
6 situation.

7 Q. So when you say "drunken two cents,"
8 what do you mean?

9 A. You know, there's -- there was
10 always -- I wouldn't say hecklers, but you'd have
11 college kids yelling, you know. Some would just be
12 hooting and hollering and some would be, you know,
13 yelling for their friends to come check this out.

14 You know, there was always people
15 yelling at the cops saying, you know, like, don't do
16 that -- oh, yeah, arrest her. Just, basically, you
17 know people with all sort of opinions being loud and
18 drunk and stating their opinions.

19 Q. Was this a typical crowd -- well,
20 strike that.

21 This was, I think, a Thursday night,
22 correct?

23 A. I believe so, sir, yeah.

24 Q. And in your experience, did you
25 consider this a typical crowd on a Thursday night?

Page 30

Cory Bain Esslinger - August 24, 2020

1 A. Yes, sir.

2 Q. And you said that once
3 Officer Klamser and Ms. Surat started to engage, it
4 became somewhat of a chaotic scene with these college
5 kids, correct?

6 A. Correct.

7 Q. And what do you mean by that?

8 A. Just the fact that, you know, we have
9 some sort of altercation between, you know, Michaela
10 and the police and, you know, the boyfriend and the
11 police out front where, you know, tensions are
12 getting higher.

13 And then from our job, you know, at the
14 bar, we have to make sure that, one, people aren't
15 supposed to be standing on tables. It's a huge risk
16 because there's drinks on the table, and then it's
17 even a higher risk with people who are drinking quite
18 a bit and just college kids in general.

19 But just trying to maintain the fence
20 line, keeping people from doing anything too silly or
21 too stupid. So it just seemed like the -- you can
22 kind of feel it in the air the excitement level went
23 from, like, the typical Thursday-night-bar level to,
24 oh, wait, something is happening, let's pull out our
25 cameras and everyone react to it.

Page 31

Cory Bain Esslinger - August 24, 2020

1 Q. Was it your impression, as you stood
2 there, that the crowd was starting to react about
3 what was happening?

4 A. Oh, yeah, definitely, sir.

5 Q. All right. So you heard
6 Officer Klamser tell Ms. Surat that she could keep on
7 walking, correct?

8 A. Yes, sir.

9 Q. And did Ms. Surat keep on walking?

10 A. I do not believe so. I believe that
11 she did not want to leave without her boyfriend.

12 Q. And then so describe to us what
13 happened from that point forward.

14 A. So once again, my attention was flipped
15 between our fence line, you know, my responsibilities
16 towards the bar and my job there and, you know, kind
17 of what was going on in the square between Michaela
18 and Officer Klamser.

19 You know, I recall that he was trying
20 to control her, you know, or telling her that, you
21 know, she was under arrest. I believe it was for,
22 you know, obstruction or, you know, her kept trying
23 to get into the situation between the boyfriend and,
24 you know, Officer Pastor.

25 And then as Officer Klamser was trying

Page 32

Cory Bain Esslinger - August 24, 2020

1 to control Michaelaella, she was, you know, flailing her
2 arms around. You know, it looked like she was -- you
3 know -- it was at a weird angle, but I remember, you
4 know, he had her arms and she was doing stuff like
5 this, trying to either get away or trying to push
6 past him.

7 I remember Officer Klamser saying, you
8 know, please stop, please don't make me do this. And
9 then from there, you know, like I said, my decision
10 was -- or not my decision -- my attention was split.
11 And once again, I'm not sure if I actually witnessed
12 the takedown maneuver myself or if it was -- you
13 know, I've seen the video several times.

14 I remember seeing that Michaelaella was on
15 the ground and Officer Klamser was attempting to
16 place her in handcuffs. And there was a third --
17 there was another male who -- I don't know if he was
18 a friend of Michaelaella or what his involvement was,
19 but he started moving towards Klamser, and I'm not
20 sure what his intentions were, so I pushed him out of
21 the way just to, you know, avoid something worse
22 happening. But I might be going a little further
23 than you asked, sir.

24 Q. Okay. Did you hear Officer Klamser
25 tell Ms. Surat that she was under arrest?

Cory Bain Esslinger - August 24, 2020

1 A. I specifically remember the statements,
2 you know, don't make me do this, please stop. In
3 terms of the verbiage of him saying, you know, you're
4 under arrest and you're under arrest for this, I do
5 not recall if that was actually said or not or if
6 that's something -- you know, a memory from, you
7 know, three-plus years ago was kind of . . .

8 Q. So this happened in 2017. So you're
9 right, that was over three years ago, correct?

10 A. Correct.

11 Q. And would it be fair to say your memory
12 back then was probably clearer than it is now?

13 A. Yes, sir.

14 Q. And you remember giving a video
15 statement to -- it was either Officer Klamser or
16 Officer Pastor about what occurred; is that correct?

17 A. So that night or?

18 Q. Yes, that night.

19 A. Yes. Yes, sir.

20 Q. Okay. And then do you also recall
21 going into Fort Collins Police services and talking
22 with an IA sergeant?

23 A. I do.

24 Q. And then we also indicated that you
25 testified at the criminal trial, correct?

Cory Bain Esslinger - August 24, 2020

1 A. Yes, sir.

2 Q. All right. Have you had any
3 interactions with Ms. Surat or her boyfriend since
4 that time, or did you have any?

5 A. Yes, sir. So, you know, I'm not sure
6 if this ever got brought up. I ended up calling the
7 police about it. But there was a point where -- it
8 felt like it was several weeks or a month or so after
9 the incident where me and my girlfriend at the time
10 were at the Walmart off of East Mulberry in
11 Fort Collins, Colorado.

12 And, you know, the -- my girlfriend and
13 I were just looking at lamps and kind of just
14 browsing when, you know, Michaela had rolled up on
15 a -- I don't know if her leg was in a cast or what
16 was the deal, but that she was on one of those
17 scooters, I believe they provide at the Walmart for
18 people who are, you know, disabled in some way or
19 another.

20 And I believe it was her boyfriend.
21 Like I said, I don't really recall what he looks like
22 or much about him. Just, you know, a taller white
23 male. But, you know, she was -- they were in an
24 adjacent aisle. We were kind of at a T, and they
25 were at the end, and she was just laughing -- which

Cory Bain Esslinger - August 24, 2020

1 is, whatever.

2 I didn't even know if she had
3 recognized me or knew who I was, but then the
4 boyfriend was just standing there staring at me and
5 what seemed pretty aggressive. Just like, you know,
6 the constant eye contact definitely didn't make me
7 feel comfortable. Definitely was starting to get me
8 agitated.

9 So me and my girlfriend had left to
10 another aisle and went down to the vitamin aisle and
11 were there. And as we were standing there, the
12 boyfriend started walking up and down the adjacent,
13 like, T aisle. And it was every time he walked past
14 us, you know, he'd be looking at us and just staring
15 and mean mugging.

16 And I was, like, what's going on with
17 this dude. And my girlfriend realized I was getting
18 so agitated based on his behavior that we should just
19 leave. So I called and filed a report about his
20 behavior that night. Besides that, there was no
21 other interaction.

22 MR. RATNER: Okay. That's all I
23 have -- that's all of the questions I have.

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Cory Bain Esslinger - August 24, 2020

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EXAMINATION

BY MR. LANE:

Q. Mr. Esslinger, why did you leave Bondi Bar?

A. There was a couple of different reasons. You know, I felt like I was getting into my 30s. The way -- Fort Collins and Larimer County weren't exactly the place I envisioned doing my police work. You know, I was there since I was three years old, and the town had changed quite a bit.

But, you know, I had always wanted to work for a mountain town and actually had the opportunity to live in a mountain town and work for a mountain town with affordable housing, so that's why I kind of jumped at this opportunity up here.

Q. And where are you now, did you say?

A. It's Winter Park, Colorado.

Q. Are you a police officer up there?

A. Yes, sir.

Q. Do you have any criminal record?

A. No, sir.

Q. And how long have you been a police officer?

A. So between CSU, Larimer County, and up here, it's probably about six and a half years.

Cory Bain Esslinger - August 24, 2020

1 Q. Okay.

2 A. And then in terms of the full-time paid
3 position, it would just be between CSU police and
4 here. Larimer was a reserve position.

5 Q. Okay. You are trained in how police
6 officers are permitted to use force; is that correct?

7 A. Correct.

8 Q. And you understand the concept of
9 excessive force, do you not?

10 A. I do.

11 Q. What is your understanding of the
12 concept of excessive force?

13 A. I mean, my understanding of what
14 excessive force would be, would be any force that
15 would be over the required amount to either detain or
16 arrest a person. So if, you know, there's -- there's
17 kind of the -- I mean, it doesn't always work like
18 this, but the use-of-force continuum where, you know,
19 if a suspect is using this level of force, you can go
20 to this level of force to, you know, control them or,
21 you know, handle the situation.

22 Q. Right. Actually, the use-of-force
23 continuum is on a numeric scale, isn't it?

24 A. We haven't touched on that one since
25 the academy. Larimer County didn't go off the

Page 38

Cory Bain Esslinger - August 24, 2020

1 continuum as they did at CSU.

2 Q. Yes. But when you are taught the
3 continuum, you talk about like a level 1 use of
4 force, command presence, command voice, those kinds
5 of things. That would be a level 1 use of force,
6 correct?

7 A. From my memory, yes, sir.

8 Q. Okay. And then going hands on with
9 somebody, that ups the use of force, right?

10 A. Yes. That's a higher level of force.

11 Q. Okay. You're trained as a police
12 officer that the level of force you are permitted to
13 use to get the job done is whatever level of force is
14 necessary for you to win an encounter with a suspect,
15 right? In other words if a suspect is in your face
16 yelling at you trying to use what would be a
17 suspect's command presence, you don't have to just
18 yell back, you can go up one level and lay hands on
19 him, because that might be what it takes for you to
20 win an argument or a fight, right?

21 A. Yes, sir.

22 Q. So in other words, the general training
23 on use of force is if a suspect is using level 2
24 force and is putting his hands on you, you can use a
25 higher level of force to control that suspect. In

Page 39

Cory Bain Esslinger - August 24, 2020

1 other words, if a suspect wants to box with you, you
2 don't have to agree to engage in a boxing match. You
3 can take the use of force up a notch, pepper spray
4 him, taze him, which escalates the use of force, but
5 it's required so you can win the fight, right?

6 MR. RATNER: Object to foundation.

7 Q. (BY MR. LANE) Go ahead. You can ignore
8 him. You can answer that question, Mr. Esslinger.

9 MR. RATNER: So, Cory, from time to
10 time, I'm going to -- probably more than just time to
11 time, I'm going to object to Mr. Lane's questions.
12 So just let me get my objection on the record, and
13 then you can answer the question.

14 MR. LANE: It's so rude, Mark, I didn't
15 raise one objection to a thing you asked, but we'll
16 go ahead.

17 Q. (BY MR. LANE) Okay. Do you see what
18 I'm saying? It's like you don't have to go to the
19 same use-of-force level that the suspect wants to
20 engage. You can escalate it so you can be assured of
21 winning the fight, right?

22 MR. RATNER: Same objection.

23 Q. (BY MR. LANE) Go ahead.

24 A. So am I answering it?

25 Q. Yes. Unless Mr. Ratner tells you, do

Cory Bain Esslinger - August 24, 2020

1 not answer that question, he will object. There's no
2 judge here to rule on it. So you just let him object
3 and then you answer the question unless he jumps
4 across the screen, puts his hand over your mouth and
5 says don't answer that question under any
6 circumstances.

7 A. And, you know, I would agree with you,
8 Mr. Lane, in the fact that, you know, somebody wants
9 to start a boxing match with me, that's not going to
10 be -- you know, it's not going to be an appropriate
11 way to handle the situation. Both of us are going to
12 sustain injuries and it's just going to keep going
13 and the risk of injury gets higher.

14 Q. You're expected to win fights, right?

15 A. Yeah. I mean to handle them reasonably
16 and make sure that, you know, a reasonable amount of
17 force is used to control a subject or suspect.

18 Q. Right. So, you know, that generally
19 means you could go up one level in the use-of-force
20 continuum from wherever the suspect is at, right?

21 A. I mean, the way we understand it is
22 that you use a reasonable amount of force for what's
23 necessary at the time, and that's based on the
24 officer's perception.

25 Q. Fair enough. Okay. So the concept of

Page 41

Cory Bain Esslinger - August 24, 2020

1 excessive force is you've used way more force than is
2 necessary from the situation confronting you, right?

3 MR. RATNER: Form, foundation.

4 Q. (BY MR. LANE) Right?

5 A. Can you repeat the question, sir.

6 Q. Yes. Excessive force means you're
7 using more force than is necessary to control the
8 situation, right?

9 MR. RATNER: Same objection.

10 A. I mean, I believe that would be one
11 description of excessive force.

12 Q. (BY MR. LANE) Well, what's another?

13 A. I guess, you know, in my words it
14 was -- typically the way we look at it is if it took
15 X amount of force to subdue a suspect, you know, the
16 one taser application, the one spray of mace, you
17 know, the one punch, any extra after you already have
18 that under -- that suspect under control would fall
19 into excessive force.

20 Q. Okay. So simply put, you're using too
21 much force -- you're using way more force than is
22 necessary to get the job done, right?

23 MR. RATNER: Form and foundation.

24 Q. (BY MR. LANE) That's excessive force.

25 MR. RATNER: Same objection.

Cory Bain Esslinger - August 24, 2020

1 Q. (BY MR. LANE) I know you think I'm a
2 snake and a cobra. I'm really not asking you a trick
3 question, okay. You're not going to die if you
4 answer the question like in a common sense way, and
5 you just say, yes, that is excessive force when the
6 amount of force that you're using is excessive,
7 that's excessive force. That's all I'm asking you.

8 A. When you say it like that, yes. That
9 makes sense. Any force that's above what's required,
10 but it's all -- okay.

11 Q. So in other words, you saw what was
12 going on with Officer Klamser and Michaela Surat out
13 in front of the Bondi Bar, right?

14 A. Correct.

15 Q. You were not a police officer at that
16 time, were you?

17 A. No. I was not fully commissioned.

18 Q. And you saw what Officer Klamser did to
19 Michaela Surat in terms of grabbing her and throwing
20 her onto the ground, correct?

21 MR. RATNER: Foundation and form.

22 Q. (BY MR. LANE) Go ahead and answer.

23 A. Well, as I said, my attention was
24 split. And from what I recall, I mean, it wasn't --
25 I mean, when you say grab and throw, that kind of

Page 43

Cory Bain Esslinger - August 24, 2020

1 paints a picture as opposed to, you know, us being
2 trained in certain maneuvers, you know, like a hip
3 toss or an arm-bar takedown.

4 Q. You saw what he did to her, did you
5 not?

6 MR. RATNER: Form.

7 Q. (BY MR. LANE) You've seen the viral
8 video, if nothing else, haven't you?

9 A. Yes, I have.

10 Q. All right. So you saw what he did to
11 her, right?

12 A. Yes, sir.

13 Q. He threw her down with so much force
14 that her head was hitting the ground before her feet
15 hit the ground; isn't that right?

16 MR. RATNER: Form and foundation.

17 A. I just remember she got hip tossed and
18 put on the ground from some sort of rowing maneuver.
19 I -- I don't work -- I work for Fort Collins so I
20 don't have their name training.

21 Q. (BY MR. LANE) It doesn't matter. I'm
22 not asking you if it was a rowing maneuver or a
23 brutal felony assault maneuver or whatever. It
24 doesn't matter. You saw him throw her onto the
25 ground -- call it whatever you want -- and her head

Page 44

Cory Bain Esslinger - August 24, 2020

1 hit the pavement before her feet did. You saw that
2 in the viral video, didn't you?

3 A. I'd have to rewatch the video. I don't
4 recall the specifics.

5 MR. LANE: Helen, do you have that
6 video handy? Because I don't have the exhibits here,
7 and I can't access.

8 MR. RATNER: That doesn't show it.

9 MR. LANE: What doesn't show what?

10 MR. RATNER: That one -- the one video
11 I showed him was Pastor, and Pastor was focused.

12 MR. LANE: Not the body cam. I want
13 the viral video.

14 MR. RATNER: I don't have that.

15 MS. OH: If you go to deposition
16 exhibits --

17 MR. LANE: I can't go anywhere because
18 I can't access remotely.

19 MS. OH: Oh, okay. I can't access
20 remotely from my system either.

21 Q. (BY MR. LANE) Well, you know the video
22 I'm talking about, right, Mr. Esslinger, the one that
23 went internationally viral?

24 A. Yes. It's been a few years since I've
25 seen it, but I definitely saw it.

Page 45

Cory Bain Esslinger - August 24, 2020

1 Q. Now, you don't think that was excessive
2 force, do you?

3 A. I do not.

4 Q. And that's because in order to control
5 Michaela Surat, Officer Klamser needed to use that
6 level of force, and any lesser force would not have
7 controlled her, right?

8 MR. RATNER: Object to form,
9 foundation.

10 A. I'm not Officer Klamser, and I wasn't
11 the one trying to detain or control her. I don't
12 know what his training, you know, constitutes,
13 though. I'm not sure what Fort Collins Police
14 teaches them to do. So, you know, he was the officer
15 in that situation, and he thought that was what was
16 reasonable, and that's what he did.

17 Q. (BY MR. LANE) Despite not knowing any
18 of those things, you just rendered an opinion that
19 what he did was not excessive force, right?

20 A. Correct. I don't believe that was
21 excessive. She didn't have any long-lasting
22 injuries, no broken bones.

23 Q. Is that what it takes? I mean, if
24 you -- would it have been excessive had he taken out
25 his gun and shot her but only grazed her arm?

Page 46

Cory Bain Esslinger - August 24, 2020

1 A. Yeah. Firearms are a deadly force.

2 Q. Right. But what if he didn't kill her?
3 What if he simply grazed her arm? That stops her and
4 she's scared now. She stops. Is that excessive
5 force?

6 A. Yeah. You can't threaten someone with
7 a gun. That's felony menacing when there's not
8 something that's reaching that level. It's like if
9 we were having a conversation and you called me a
10 name, and I don't appreciate it and I pull a gun on
11 you, that's excessive.

12 Q. Yes, that is. But you don't think
13 tossing a 100-pound woman into a face plant, a body
14 slam, essentially -- call it a rowing-arm takedown if
15 you want -- giving her a concussion, you don't think
16 that's excessive force for what was going on there?
17 You don't think he could have controlled her with
18 some lesser degree of force?

19 MR. RATNER: Form and foundation.

20 A. Once again, I'm not -- I'm not
21 Officer Klamser. I wasn't the one -- you know, I --
22 my time at the bar, I kicked out people, I got into
23 fights with people, you know -- we'd be holding
24 people down on the ground who had punched one of our
25 employees in the face, and we'd have people coming up

Page 47

Cory Bain Esslinger - August 24, 2020

1 saying that's excessive, you need to let them go,
2 and, you know, they don't know what we went through.

3 Q. (BY MR. LANE) I'm not interested in war
4 stories from your days at the Bondi Bar. I'm
5 interested in saying, you've rendered an opinion as a
6 professional police officer that that was not
7 excessive force. And then in the same breath you're
8 saying, I don't know what was in Klamser's mind.

9 Maybe that's what he thought he needed
10 to do. Maybe -- you know, who knows what the
11 situation was. I mean, I can't say what he was
12 thinking, so -- but then you render an opinion that
13 that was not excessive force. Am I right about that?

14 MR. RATNER: Form and foundation.

15 Q. (BY MR. LANE) Am I right about that?

16 A. If I was in his shoes, which I don't
17 know what was going through his head, I don't feel it
18 was excessive force. I've done -- well, I don't want
19 to tell you war stories. Sorry.

20 Q. (BY MR. LANE) So throwing a 100-pound
21 woman down onto the ground, giving her a concussion
22 because she's trying to pull away from you, that's
23 not excessive force?

24 A. Well, it seemed like --

25 MR. RATNER: Form and -- hold on a

Cory Bain Esslinger - August 24, 2020

1 second. Form and foundation and assumes facts that
2 are not in evidence.

3 Q. (BY MR. LANE) Go ahead. Go ahead and
4 answer the question.

5 A. Will you ask the question again, sir.

6 Q. Yes. Throwing a 100-pound woman down
7 onto the ground, causing a concussion, to control her
8 because she's trying to pull away from you, that's
9 not excessive force?

10 MR. RATNER: Same --

11 A. Wasn't she trying to actively, you
12 know, fight against them, not just pull away?

13 Q. (BY MR. LANE) Well, did you see her
14 throw punches at him?

15 A. I saw her arms flailing around.

16 Q. Did you not see Officer Klamser grab
17 her by the wrist as she was trying to get his hands
18 off her wrist?

19 A. No. Like I said, my attention was
20 split. You know, I was watching -- I wasn't just
21 watching from the fence line.

22 Q. Are you trained in the use of striking
23 implements?

24 A. Yes, sir.

25 Q. Like a nightstick, right, or a billy