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Expert Report, PPPSC Case No. 345-102915

Date of Report: January 27, 2020

Case Information: *Michaella Surat vs. Randall Klamser and the City of Fort Collins, et al.*, United States District Court, District of Colorado, Case No. 1:19-cv-00901-NRN.

Introduction

This is my report concerning the above-referenced matter, and reflects my opinions, as well as the bases for my opinions in this case. Recognizing that additional discovery may occur over time, I can prepare supplemental and/or rebuttal reports if requested to do so. Furthermore, I have attached to this report a current copy of my expert witness disclosures which includes my curriculum vitae, fee schedule, and a listing of the cases in which I have provided sworn testimony over the past four years.

Retention and Focus

I was retained by the law firm of Killmer, Lane, and Newman of Denver, Colorado and asked to review the materials forwarded to me concerning this case and render my opinions as to the actions of Fort Collins Police Officer Randall Klamser and the Fort Collins Police Department. My focus is on whether Officer Klamser's actions during his seizure and arrest of Michaella Surat on April 6, 2017 were prudent and in concert with established police practice guidelines, and whether the Fort Collins Police Department was the moving force behind the actions taken by Officer Klamser.

Information Reviewed and Considered

I was provided with and have reviewed the following materials regarding this case:

1. Discovery documents provided by the District Attorney for the Eighth Judicial District, which include the case file of the Fort Collins Police Department, Case No. 17-5701 (83 pages).
2. Written witness statement of Kennedy Brooks, April 13, 2017.
3. Typed witness statement of Michael Findlay, April 13, 2017.
4. Fort Collins Police Department policies, procedures, and rules concerning the use of force (Fort Collins Police Department Instructor Manual, Updated July 8, 2016). (Five pages).
5. Fort Collins Police Department training material concerning the use of the, “Rowing Arm Takedown.” (Five pages).
6. Body Cam Video depicting the interactions between Officer Klamser and Ms. Surat, as well as the takedown of Ms. Surat.
7. Third party video depicting the interaction between Officer Klamser and Ms. Surat, as well as the takedown of Ms. Surat.
8. Video of the Fort Collins Police Department internal affairs interview of Officer Klamser, April 21, 2017.
9. Expert report prepared by Officer Al Brown of the Fort Collins Police Department, February 21, 2018.
10. Transcript of Officer Randall Klamser’s sworn testimony, Larimer County, Colorado County Court, Case No. 2017M965, January 9, 2018.
11. Complaint, United States District Court, District of Colorado, 1:19-cv-00901-NRN.
12. Transcript of Officer Randall Klamser’s sworn testimony, County Court, Larimer County, Colorado, 2017M965, August 21, 2018.
13. Transcript of Officer Al Brown’s sworn testimony, County Court, Larimer County, Colorado, 2017M965, August 22, 2018.

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Case Overview

On April 6, 2017, Michaella Surat was arrested by Fort Collins, Colorado Police Officer Randall Klamser. During the arrest, Ms. Surat was violently taken to the ground and she struck her face on the concrete/asphalt surface. She was injured as a result of the takedown. Ms. Surat was initially cited for third degree assault and obstruction but was never charged by the district attorney's office on the assault charge. Ms. Surat pled not guilty to the charges of resisting arrest and obstruction and the case went to trial. Ms. Surat was convicted on both charges.

On March 26, 2019, Ms. Surat initiated a civil suit in the United States District Court, District of Colorado, Case No. 1:19-cv-00901-NRN alleging misconduct on the part of Officer Klamser and the City of Fort Collins, Colorado. In her complaint, Ms. Surat made the following two claims:

1. Excessive force on the part of Officer Klamser.
2. Unconstitutional policies, customs and practices on the part of the City of Fort Collins.

Opinions and Conclusions

My opinions and the bases for my opinions are based on my education, training, and experience over a 58-year career in the business of policing, and the information I have reviewed in this case.

1. In the business of policing, there are established police practices and guidelines that police officers are expected to adhere to in the performance of their duties. When police officers act in concert with these established police practices and guidelines, they are acting in a prudent manner. When officers deviate from these practices and guidelines, they are not acting in a prudent manner and their actions can expose them to administrative, civil, and criminal sanctions. For example:

1a. On October 17, 1989, the International Association of Chiefs of Police (IACP), approved and adopted a set of ethical mandates for police officers. This set of ethical mandates includes the following: (IACP Code of Conduct and Ethical Responsibilities for Police Officers, 1989):

- “All law enforcement officers must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest possible standards of professional policing. The International Association of Chiefs of Police believes it is important that police officers have clear advice and counsel available to assist them in performing their duties consistent with these standards and has adopted the following ethical mandates as guidelines to meet these ends.”
- “A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred

by statute. The fundamental duties of police officer include serving the community; safeguarding lives and property; protecting the innocent; keeping the peace; and ensuring the rights of all to liberty, equality and justice.”

- “A police officer will use responsibly the discretion vested in the position and exercise it within the law. The principle of reasonableness will guide the officer’s determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken. Consistent and wise use of discretion based on professional competence will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing courses of action. It is important to remember that a timely word of advice rather than arrest, which may be appropriate in certain circumstances, can be a more effective means of achieving a desired end.” **Officer Klamser deviated from this guideline and abused his discretion by slamming Ms. Surat face-first to the concrete. His actions were not prudent.**
- “A police officer will never employ unnecessary force or violence and will only use such force in the discharge of duty as is reasonable in all circumstances. Force should only be used with the greatest of restraint, and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhumane treatment of any person.” **Officer Klamser deviated from this guideline and used unnecessary force and violence against Ms. Surat when he slammed her face-first to the pavement, and unnecessarily inflicted pain and suffering. His actions were not prudent.**
- “Whatever a police officer sees, hears, or learns of which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.”
- “A police officer will not engage in acts of corruption or bribery, nor will an officer condone such acts by other police officers. The public demands that the integrity of police officers be above reproach. Police officer must, therefore, avoid any conduct any conduct that might compromise integrity, and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities, or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not receive private or special advantage from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.”
- “Police officers will behave in a manner that does not bring discredit to their agencies or themselves. A police officer’s character and conduct while off duty

must always be exemplary, thus maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach." **Officer Klamser deviated from this guideline by slamming Ms. Surat to the pavement face-first discrediting himself and his police department. His actions were not prudent.**

1b. Throughout the United States today, police training stresses that in cases where police officers and deputies find it necessary to use lethal and less-lethal physical force, the key test for determining whether or not they use appropriate physical force, is found in Graham vs. Connor, (Graham vs. Connor, 490 U.S. 386, 1989). In this landmark case, the United States Supreme Court established the key test for evaluating the physical force used by law enforcement officers. That test was and is, whether the force used was reasonable considering the facts and circumstances present. In other words, the force must be objectively reasonable with careful attention given to the facts and circumstances of each case. This landmark decision by the Supreme Court 30 years ago has been adopted throughout the police community as the foundation standard for the use of force by police officers.

- The Court stated, "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." **Officer Klamser deviated from this guideline by not effectively assessing the situation unfolding before him and slamming Ms. Surat to the pavement face-first. His actions were not prudent.**
- The Supreme Court also articulated in *Graham* that, "The reasonableness of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than with the 20-20 vision of hindsight. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies. Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers...violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation."

1c. In 2001, the United States Department of Justice, in its attempt to promote police integrity, promulgated the following:

- "Law enforcement agencies must recognize and respect the value and dignity of every person. In vesting law enforcement officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Courtesy in all public contacts encourages understanding and cooperation."

- “The most desirable method for effectuating an arrest is where a suspect complies with simple directions given by an officer. When officers are confronted with a situation where control is required to effect arrest or protect the public safety, officers should attempt to achieve control through advice, warnings, and persuasion. Where such verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use force that is reasonably necessary.” **Officer Klamser deviated from this guideline by slamming Ms. Surat to the pavement face-first when it was not reasonably necessary to do so. His actions were not prudent.**
- “Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others.” (United States Department of Justice, “Principles for Promoting Police Integrity, January 2001). **Officer Klamser deviated from this guideline by slamming Ms. Surat to the pavement face-first when it was not reasonably necessary to do so. His actions were not prudent.**

1d. In 2015, and again in 2016, the Police Executive Research Forum (PERF), the academic arm and think tank for policing throughout the United States, established what is referred to as the “30 Guiding Principles, Taking Police to a Higher Standard.” (“Critical Issues in Policing: Use of Force, Taking Policing to a Higher Standard, “Police Executive Research Forum, January 29, 2016). These 30 guiding principles factor in what most police practices experts including myself, have been saying for years in our attempt to improve American policing. For example, the following principles from the list of 30 have relevance to this case:

- The sanctity of human life should be at the heart of everything an agency does.
- Departments should adopt policies that hold themselves to a higher standard than the legal requirements of *Graham vs. Connor*.
- Police use of force must meet the test of proportionality. **Officer Klamser deviated from this guideline by slamming Ms. Surat to the pavement face-first and using physical force that did not meet the test of proportionality. The force used was not proportional to the resistance being displayed by Ms. Surat. Officer Klamser’s actions were not prudent.**
- Adopt de-escalation as a formal agency policy making it clear that de-escalation is the preferred, tactically sound approach in many critical incidents. Officers should be required to receive training on key de-escalation principles and in addition, such training and polices should also include discussions on proportionality, using distance and cover, tactical re-positioning, “slowing down” situations that do not

- pose an immediate threat, calling for supervisory and other resources etc. Officers must be trained in these principles, and their supervisors should hold them accountable for adhering to them. **Officer Klamser deviated from this guideline by not requesting the assistance of a supervisor or another officer when physically dealing with Ms. Surat, and instead, went hands-on one on one with Ms. Surat slamming her face first to the pavement. Officer Klamser's actions were not prudent.**
- Document use of force incidents and review your data and enforcement practices to ensure that they are fair and non-discriminatory. Agencies should develop strong policies and protocols for reviewing all use of force reports to ensure accuracy and completeness, including comparing written reports with video footage from body worn cameras, dashboard cameras, and other sources. Special attention should be paid to ensuring that reports provide clear and specific details about the incident and avoid generic, “boilerplate” language.
 - All critical police incidents resulting in death or serious bodily injury should be reviewed by specially trained personnel, such as a “force investigation unit.”
 - Agencies need to be transparent in providing information following serious use of force incidents and should release as much information as possible to the public, as quickly as possible, acknowledging that the information is preliminary and may change as more details unfold.
 - Use distance, cover, and time to replace outdated concepts such as the, “21-foot rule,” and “drawing a line in the sand.” Agencies should train their officers on the principles of using distance, cover and time when approaching and managing certain critical incidents. In many situations, a better outcome can result if officers can buy more time to assess the situation and their options, bring additional resources to the scene, and develop a plan for resolving the incident without the use of force. Officers should be trained to use distance and cover to create a “reaction gap” between themselves and the individual and to consider all options for responding. **Officer Klamser deviated from this guideline by failing to consider all options, including the assistance of added resources and an alternative control tactic that would not result in Ms. Surat being slammed to the pavement face-first. His actions were not prudent.**
 - Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force. Once on scene and if circumstances permit, supervisors should attempt to huddle with officers before responding to develop a plan of action that focuses on de-escalation where possible. In the case of persons with mental health problems, supervisors who are not specially trained should consult and coordinate with officers on the scene who are specially trained.
 - Scenario-based training should be prevalent, challenging, and realistic. In both recruit and in-service programs, agencies should provide use of force training that

utilizes realistic and challenging scenarios that officers are likely to encounter in the field. Scenarios should be based on real life situations and utilize encounters that officers in the agency have recently faced. Scenarios should go beyond the traditional “shoot-don’t shoot” decision making, instead providing for a variety of possible outcomes, including some in which communications, de-escalation, and use of less-lethal force options are most appropriate. Scenario-based training focused on decision-making should be integrated with officers’ regular requalification on their firearms and less-lethal equipment.

1e. In January of 2017, the International Association of Chiefs of Police (IACP) promulgated what is referred to as the “National Consensus Policy on the Use of Force.” This new model policy was a “collaborative effort among 11 of the most significant law enforcement and leadership and labor organizations in the United States. The 11 police organizations collaborating on and supporting the National Consensus Policy on the Use of Force include the International Association of Chiefs of Police (IACP), the Commission on Accreditation for Law Enforcement Agencies (CALEA), the National Tactical Officers’ Association (NTOA), the Fraternal Order of Police (FOP), the National Organization of Black Law Enforcement Officers (NOBLE), the National Association of Police Organizations (NAPO), the Federal Law enforcement Officers’ Association (FLEOA), the Association of State Criminal Investigative Agencies (ASCIA), the Hispanic American Police Command Officers Association (HAPCOA), the International Association of Directors of Law Enforcement Standards & Training (IADLEST), and the National Association of Women Law Enforcement Executives (NAWLEE). This policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.” (*IACP Model Policy, National Consensus on the Use of Force, January, 2017*). Some of the key provisions of the National Consensus Guidelines include the following:

- The purpose of this policy is to provide law enforcement officers with guidelines for the use of less lethal and deadly force.
- Deadly force is defined as any use of force that creates a substantial risk of causing death or serious bodily injury. **Officer Klamser deviated from this guideline by face-slammng Ms. Surat to the pavement face-first and creating a substantial risk of causing death or serious bodily injury. The physical force used on Ms. Surat potentially constituted deadly force. Officer Klamser’s actions were not prudent.**
- Less-lethal force is defined as any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.
- It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to

exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances. **Officer Klamser deviated from this guideline when he slammed Ms. Surat to the ground face-first. Other reasonably effective alternatives existed at the time, and a reasonably-prudent officer would not have slammed Ms. Surat to the ground face-first given the circumstances of this case. Officer Klamser’s actions were not prudent.**

- Objectively reasonable is defined as, the determination that the necessity for using force and the level of force used is based upon the officer’s evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.
- The decision to use force requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Note: The facts and circumstances to consider are not limited to just the three factors identified and include a variety of factors known to the officer at the time). **Officer Klamser deviated from this guideline. Ms. Surat did not commit a serious crime, did not pose an immediate threat to the safety of Officer Klamser or others and was not a flight risk. She was in fact resisting arrest but her low-level resistance did not rise to the level that justified the use of potentially deadly force. Officer Klamser’s actions were not prudent.**
- Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.
- Training: All officers shall receive training, at least annually, on this agency’s use of force policy and related legal updates. In addition, training shall be provided on a regular and periodic basis and designed to: provide techniques for the use of and reinforce the importance of de-escalation; simulate actual shooting situations and conditions and enhance officers’ discretion and judgment in using less-lethal and deadly force in accordance with this policy. All use of force training shall be documented.

1f. In 2017, the International Association of Chiefs of Police (IACP) revised their model policy concerning standards of conduct for police officers:

- “Officers should not conduct themselves in a manner on or off duty, that casts doubt on their integrity, honesty, judgement, or character, or brings discredit to this agency or impairs the agency’s efficient and effective operation.” (@ IV.A.4.a). **Officer Klamser deviated from this guideline in that his actions did not**

demonstrate the use of good judgement. Officer Klamser's actions were not prudent.

- All officers shall perform their duties faithfully and diligently and shall take responsibility for an exhibit attentiveness, care, and thoroughness in the conduct of assignment and responsibilities. (@ IV.A.4.a.). **Officer Klamser deviated from this guideline by not performing his duties in a way that demonstrated attentiveness and care. His use of potentially deadly force in face-planting Ms. Surat to the pavement did not demonstrate attentiveness and care. His actions were not prudent.**

1g. In the State of Colorado, a police officer is justified in using reasonable and appropriate physical force upon another person when and to the extent he reasonably believes it is necessary to effect an arrest or prevent the escape from custody of an arrested person, unless he knows that the arrest is unauthorized. Officers are also authorized to use reasonable and appropriate physical force to defend themselves or a third person from what they reasonably believe to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape. In terms of deadly force, a police officer is justified in using deadly force upon another person only when the officer reasonably believes that it is necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force, or the suspect indicates that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay. (@ CRS 18-1-707). **Officer Klamser deviated from this guideline by using potentially deadly force in slamming Ms. Surat to the pavement face-first. It was not reasonable and appropriate to do so under the circumstances of this case. There was no justification to use potentially deadly force. There was no indication that Ms. Surat posed an imminent deadly physical threat. Officer Klamser's actions were not prudent.**

- Furthermore, any person is justified in using physical force upon another person for purposes of self-defense or the defense of a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and may use a degree of force which he or she believes to be necessary for that purpose. Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable grounds to believe, that he she, or another person is in imminent danger of being killed or of receiving great bodily injury. (@ CRS 18-1-704)

2. Officer Klamser's takedown and face plant of Ms. Surat in this case was not prudent and in concert with established police practices and guidelines. Moreover, the Fort Collins Police Department failed to adequately train Officer Klamser on the appropriate use of physical force and the resulting consequences of physical force when misused, and in supporting the actions of Officer Klamser and not taking any disciplinary action, the department was the moving force behind Officer Klamser's actions.

2a. Beginning on page 8 of this report, I discuss the International Association of Chiefs of Police (IACP) National Consensus Guidelines on the use of physical force by police officers. And as noted, these National Consensus Guidelines are endorsed not only by the IACP but by 10 other professional police organizations including but not limited to the Commission on Accreditation for Law Enforcement Agencies (CALEA), the Fraternal Order of Police (FOP), the National Tactical Officers' Association (NTOA), the International Association of Directors of Law Enforcement Standards and Training (IADLEST), the National Association of Women Law Enforcement Executives (NAWLEE), and the National Organization of Black Law Enforcement Officers (NOBLE). The National Consensus Guidelines establish several important definitions and distinctions for police officers, especially in terms of using deadly force and less lethal force:

- Deadly force is defined as, “any use of force that creates a substantial risk of causing death or serious bodily injury.” Generally speaking, applications of deadly force include such things as firearms, bombs, knives, roadblocks, ramming vehicles, using an “air choke” (pressure against the trachea which cuts off one’s air), blunt force trauma to the head or neck such as punches, strikes, kicks, beanbag projectiles, 40 mm projectiles, police batons and head strikes to the pavement. I would also include a “blood choke” (pressure applied to the carotid arteries which reduces blood to the brain, resulting in loss of consciousness). The “blood choke” in some police departments is allowed as a less lethal form of force, but in others it is considered deadly force, and for that reason I have included it in both categories of force.
- Less lethal force is defined as, “Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of others.” Generally speaking, applications of less lethal force include such things as “blood chokes” (see explanation above), police baton strikes (other than to the head), TASERS, punches and kicks (other than to the head), beanbag rounds and 40 mm rounds (other than to the head), pressure point control tactics PPCT), wrist locks, arm bars, etc. and OC Spray.

2b. I would also point out that police officers throughout the United States are taught, or should be taught, to avoid striking and causing blunt trauma force to an individuals’ head, neck, and /or spine, except in the most exceptional of cases where the officers may be engaged in a deadly force confrontation. For example, officers are typically taught not to use a police baton on someone’s head, neck, spine or groin because such trauma can cause serious bodily injury or even death. Officers are taught not to punch, kick, knee strike or elbow strike someone in the head, neck, or spine, again because such trauma can cause serious bodily injury or even death. Officers are taught not to use a TASER on someone who is running away due to the fact that once energized and neuro-muscular incapacitation sets in, the subject will most probably fall and injure his or head, neck, or spine, again suffering serious bodily injury or perhaps death. Officers are taught not to shoot beanbag shotgun rounds or 40 mm stun rounds at someone’s head or neck, again

because they may sustain serious bodily injury or even death. A takedown maneuver where someone is forcefully taken to the ground where their contact with the ground results in them striking their head and/or neck falls into the same category. There is no difference. These maneuvers, sometimes referred to by police officers as, “throw downs,” “face plants,” or “head plants,” should not be condoned, except as stated earlier, in the most aggravated of cases where there is a deadly force confrontation occurring or about to occur. I would point out as well that it is easy to prevent an individual’s head from striking the ground first, simply by pulling up slightly on the subject’s upper torso once they lose balance or, resorting to a different tactic. This movement is routinely taught in the martial arts. Nowhere in his report does Fort Collins Police Officer Al Brown, who is the defense expert witness in this case, indicate how specifically Fort Collins Police Officers are taught to avoid causing injury or even serious bodily injury or death during this “rowing arm takedown” maneuver. He only points out that is a department-sanctioned maneuver without any discussion on the proportionality of such force to the resistance being offered or the inherent dangers of using such a tactic. I would point out too that police officers are taught these forceful takedown techniques on padded floor mats, and the reason for using these padded floor mats is to ensure that no officers are injured during their training. Citizens who are thrown face first to the ground do not enjoy the luxury of having padded floor mats under them.

2c. Officer Brown has gone on record stating in his report of February 21, 2018 that the “rowing arm takedown” is “agency approved.” (@ Pages 1 and 3 of Brown’s Report). This means that the Fort Collins Police Department fully sanctions this maneuver and authorizes Fort Collins Police Officers to use it during physical force scenarios. Nowhere in his report does Officer Brown discuss precisely how this takedown maneuver is to be accomplished, and most importantly, nowhere in his report does he discuss how to utilize this takedown move in a manner where the individual taken down does not get injured, especially insofar as head, neck, and facial injuries are concerned (a controlled takedown). Nowhere in his report does he take into consideration the significant potential of this tactic causing death or serious bodily injury.

2d. Case in point: I recently served as a police practices expert in a case out of Southern Colorado where an individual who was handcuffed with his hands behind him was attempting to slip his handcuffs down his backside and under his feet. He was seated in the rear of a police vehicle at the time. The officer involved unceremoniously rolled the individual out of the back seat headfirst and the subject, because he could not brace his fall, landed on the concrete head-first. He broke his neck and instantly became a quadriplegic for the rest of his life. This illustrates how easy a serious bodily injury or even death can occur by forcing someone to land on their head/neck or striking them in the head and/or neck region. I have also worked on many cases over the years involving punches, strikes, kicks, throwdowns, and batons striking an individual’s head, all resulting in concussions, broken blood vessels in the brain resulting in hemorrhages, broken jaws, broken teeth, broken cheek bones, broken orbital sockets, skull fractures and/or lifelong brain damage. Falls to the ground, even falls with low velocity and nowhere near the velocity of the throwdown of Ms. Surat can kill people.

2e. I have, as indicated earlier, reviewed the sworn testimony provided by Fort Collins Police Officer Randall Klamser in this case (Klamser testimony of January 9, 2018, Larimer County, Colorado County Court, 2017M965). From my review of his testimony, it has become relatively clear that the training provided to Officer Klamser by the Fort Collins Police Department has not been in concert with established police practices. I cite the following examples from Officer Klamser's testimony:

- Officer Klamser confirmed (@ 68) that he had been extensively trained in the use of force and had been trained specifically that a baton strike to the neck or head area, "potentially" could inflict a fatal blow (@ 71). He also agreed to the premise that police officers may need to use a striking instrument, but they must avoid inflicting fatal damage to someone if they did not need to. He stated, "absolutely" to this premise (@ 71).
- Officer Klamser also agreed to the premise that if a person is shoved and falls striking their head, they could suffer a fatal cerebral hemorrhage. Officer Klamser responded, "yes" to this premise (@ 74). Moreover, Officer Klamser was aware of CTE (Chronic Traumatic Encephalopathy) and concussions that can result in the business of playing football (@ 74).
- Officer Klamser agreed with the premise that when using the rowing arm takedown technique on an individual, there is a significant risk that it will result in a blow to the head of the person. Officer Klamser replied, "I would say it's possible, yes," (@ 77). Moreover, Officer Klamser agreed that it takes a high degree of force to knock somebody off their feet to the point where their feet are up in the air and their head is on the ground, and that when that particular kind of force is applied, their head is likely to strike the ground. Officer Klamser replied, "yes," (@ 77).
- Officer Klamser agreed that his training emphasized the fact that if he struck someone in the head with a baton, the recipient of that strike could be killed. (@ 79). When asked if he had been taught in his training that ramming somebody's head into the pavement is about as dangerous as smashing somebody's head with a baton, Officer Klamser replied, "no," (@ 79). When asked if his common sense would cause him to believe that it would be very dangerous to ram somebody's head into cement, Officer Klamser replied, "yes," (@ 79).
- When asked if ramming somebody's head into cement could cause serious injury or death just like hitting somebody on the head with a baton could possibly cause serious injury or death, Officer Klamser agreed, and replied, "yes," (@ 79).

2f. In my opinion, Officer Klamser's answers during his testimony of January 8, 2019 clarify why his training has been substandard. Like some police use of force training programs I have seen over the years, it is not uncommon to see a strong emphasis on the mechanics and techniques that can be employed by police officers to thwart resistance and in some cases to defend themselves from an actual or imminent attack. What

typically gets lost in these instructions are the dangers that come into play and the potential negative consequences of certain mechanics and techniques. In other words, police use of force trainers often spend too much time teaching the “what’s” and “how’s” related to the force techniques being taught, and not enough time teaching the “when’s,” the “why’s” and the “why not’s.” From what I have reviewed, this is a problem within the Fort Collins Police Department’s use of force training program, and in Officer Brown’s training regimen. How can a police officer who carries a badge, a gun, a baton, a TASER, O.C. Spray and handcuffs, use a physical force technique that could likely cause serious bodily injury or death in a situation where serious bodily injury or death would not be an acceptable outcome? The answer is relatively simple. It is due to poor supervision and training on the part of the department, as well as poor judgement and imprudent tactics on the part of Officer Klamser.

2g. Officer Brown also indicates in his report of February 21, 2018, “It has been my training and experience that male officers tend to become complacent to female suspect resistance, resulting in additional officers required to control the resistance or increased injury to the officer or suspect. The takedown eliminated the need for additional officers.....” (@ Page 5 of Brown’s Report).

2h. In my opinion, what Officer Brown is saying here is that the Fort Collins Police Department discourages having backup officers present to assist with controlling and handcuffing a female suspect who is resisting, because the rowing arm takedown maneuver will suffice and will save police resource time. In my opinion, based on my 58 years in the business of policing, including 26 years as a chief of police, and having been involved in thousands of use of force cases over the years as an investigator, reviewer and decision-maker, and currently a certified instructor in the prevention of in-custody deaths, this assertion by Officer Brown is certainly not in concert with established police practices. This is not what a prudent police officer would subscribe to. When a police officer is arresting someone, it is his or her duty to ensure that their prisoner is not seriously injured, especially in a situation where the individual is resisting arrest. The best way to accomplish that objective is where possible, simply have another officer assist in getting the individual under control and handcuffed. There is an inverse principle that comes into play here. When more officers are involved controlling and subduing a resistive subject, the less chance there is of injuries to the suspect and/or the officers. When one officer tries to go hands on, one-on-one with a resistive subject, the risk of injury increases dramatically. A cardinal rule in police officer survival is never where possible, attempt to go hands on one-on-one with a resistive subject. Get the assistance of a fellow officer. This is what prudent police officers do.

2i. Officer Brown does not subscribe to this fundamental officer survival strategy, and that causes me concern. Why would he subscribe to the notion that this takedown maneuver is superior to using two officers to achieve control, where less force would be used as compared to a “rowing arm takedown?” Furthermore, I do not know what Officer Brown means when he says that it has been his experience that male officers become complacent when dealing with female suspects who are resisting, and it is a better strategy to simply use the “rowing arm takedown.” Why would it be an inferior

strategy to use two or more officers to subdue a resistive female suspect? This statement by Officer Brown appears to target female subjects who are resisting, with a higher level of force than what prudent police officers would use under the same circumstances.

2j. Officer Brown states in his report that Ms. Surat was verbally non-compliant, used defensive resistance, and escalated the resistance into active aggression, “hitting and/or grabbing Officer Klamser.” I disagree. Nowhere in the videos I have evaluated do I see evidence that Ms. Surat was, “hitting and/or grabbing” Officer Klamser as Officer Brown suggests, and I do not recall seeing any evidence of any assault against Officer Klamser. In fact, the filed assault charge against Ms. Surat was dropped by the district attorney’s office. What does he mean when he says, “Hitting and/or grabbing?” Which is it? Rather, I see in these videos Ms. Surat attempting to avoid being grabbed by Officer Klamser; I see Ms. Surat being told she is being placed under arrest; I hear Officer Klamser say to Ms. Surat, “I don’t want to throw you on the ground;” and I see Ms. Surat being very violently thrown to the concrete or asphalt ground. Officer Klamser had already decided to throw Ms. Surat to the ground in lieu of obtaining assistance from Officer Pastor, or using a different technique, both of which would have resulted in much less physical force being applied to Ms. Surat.

2k. In this case, Officer Klamser, stands nearly 6-0 and weighed 200 pounds. Ms. Surat weighed 110 pounds (Klamser sworn testimony @ 67). The physical force that Officer Klamser employed was not at all proportional to the physical resistance offered by Ms. Surat, and the “face plant” (a slang term often used by police officers) of Ms. Surat to the pavement was an extremely dangerous tactic that could have very seriously injured Ms. Surat. In this situation, given the facts and circumstances at play, this tactic was not justified, and was unnecessary. There are certainly times and circumstances when this type of physical takedown is proportionally justified and necessary, but it was not in this situation. Officer Klamser confirmed in his sworn testimony (@ 76) that the rowing arm takedown technique he used resulted in Ms. Surat striking the pavement with her head as shown in the videos of the incident.

2l. As stated earlier, Officer Klamser should not have attempted to physically arrest Ms. Surat by himself and should have requested assistance in controlling the hands of Ms. Surat or resorted to a different control technique. Officer Pastor was standing just four to five feet away from Officer Klamser and when Ms. Surat started to physically resist, all Officer Klamser had to do was summon the assistance of Officer Pastor. Or, Officer Pastor could have taken the initiative to jump in and assist Officer Klamser. But all Officer Pastor did was stand there watching. Each officer could then have taken control of Ms. Surat’s hands, got them behind her back, and handcuffed her. Instead however, Officer Klamser chose to go one-on-one with Ms. Klamser. Another viable alternative was simply to take one of Ms. Surat’s hands, apply a wrist lock or arm-bar and subdue her in that manner. In watching the video of the arrest, Officer Klamser separates Ms. Surat’s hands just prior to the “rowing arm” takedown and that presented a perfect opportunity for an alternative strategy.

2m. Officer Brown indicates in his report of February 21, 2018, “Officer Klamser correctly escalated his level of control to de-escalate Surat’s resistance by using an agency approved

rowing arm takedown that resulted in Surat being taken off her feet, taken down to the ground, and landing in a prone position on her stomach.” I strongly disagree with Officer Brown’s assessment of what transpired here. It is inaccurate. During my investigation of this incident, I watched the videos of what I will refer to from here on, as the, “violent face plant” of Ms. Surat, and watched the videos not once, but numerous times.

- When examining the video of the violent face plant of Ms. Surat, it is readily evident that at the point Ms. Surat’s head strikes the ground, her feet, legs, and torso are pointed upwards behind her at approximately a 45 to 50-degree angle. Moreover, her right foot is approximately four feet off the ground and her left foot is approximately two to three feet off the ground. She did not land in a prone position on her stomach as opined by Officer Brown. This was a violent face plant and it is fortunate that Ms. Surat did not sustain serious bodily injury to her neck, head or spine or death, as a result of Officer Klamser’s tactics.
- Officer Klamser’s actions were not prudent and in concert with established police practices and guidelines in this case. A prudent police officer would not have used deadly force and performed a violent face plant under the circumstances and simply would have requested another officer to assist in getting Ms. Surat’s hands behind her and handcuffed or would have resorted to a different technique.

2n. Officer Brown stated in his report (@ Page 4), that, “Officer Klamser maintained emotional control throughout the contact, was professional and responded with levels of control that were legal, reasonable, appropriate, and necessary to de-escalate the resistance initiated and caused by Surat’s actions.” I disagree.

- Officer Klamser was not professional during this incident. A professional officer would not have resorted to the use of deadly force with a violent face plant of Ms. Surat given the circumstances.
- As to the actions of Officer Klamser being “appropriate and necessary to de-escalate the resistance,” I would simply submit for reasons already stated, that Officer Klamser’s actions were not at all appropriate and necessary given the circumstances of this case. His actions were not prudent and in concert with established police practices and guidelines.

2o. I doubt if Officer Klamser would have struck Ms. Surat in the head with a police baton; I doubt if he would have punched her in the head with a closed fist, an elbow, a kick or a knee strike; and I doubt if he would have used some other type of instrument or weapon to strike her in the head to simply thwart her resistance. Why then, did he accomplish the same thing by using this violent face plant onto a concrete or asphalt surface? His actions were simply uncalled for and were not prudent and in concert with established police practices.

2p. Officer Al Brown in his sworn testimony at the criminal trial on August 22, 2018 (@ 139 of his testimony transcript) confirmed that the rowing-arm takedown that is taught in

the department and which was used by Officer Klamser, is designed to result in somebody smashing their head into the ground. He replied, “You said, on, yeah, that’s expected. It’s routine. Yeah you’re gonna smack your chin on the ground on the rowing arm technique because instinctively you’re gonna put out your arm to brace your fall, but then, boom, you’re gonna hit your chin.” He also stated, “I believe a concussion can be probable from one good shot.” Officer Brown also confirmed that it is ok for his officers to use a takedown and have the suspect’s head hit the pavement. He also concurred that concerning both a baton and a rowing-arm takedown, “Both have injury potential, yes.” (@ 145 of Al Brown’s testimony transcript of August 22, 2018).

2p. An officer’s actions during a tense and dynamic situation under periods of stress, are reflective of the quality and quantity of the training they receive. In this case, from all indications I have seen thus far, from Officer Klamser’s use of imprudent tactics, and the on-scene supervisor’s determination that Officer Klamser’s tactics were consistent with his training, there are departmental training issues that more likely than not were the moving force behind Officer Klamser’s actions and inactions in this case. I would also submit that Officer Brown, the Fort Collins Police Department’s Senior Lead Defensive Tactics Instructor, has said just that. He has rendered an opinion in his report of February 21, 2018 that the tactics used by Officer Klamser specific to this case were consistent with his training and the specific tactic he used was “agency-approved.” This statement certainly does indicate in my opinion that the Fort Collins Police Department and the City of Fort Collins, as well as Officer Brown in his training capacity, were the moving forces behind Officer Klamser’s actions, and that Officer Klamser’s actions were condoned and sanctioned. I would submit as well that Officer Klamser was cleared administratively in this case and even promoted to the position of corporal, and by so doing, the administration sent a very clear message to Officer Klamser and the rest of the officers working in the street that Officer Klamser did nothing wrong.

3. In summary, Officer Klamser’s actions in throwing Ms. Surat to the ground face first were not prudent and were not in concert with established police practice guidelines. I would also submit that the Fort Collins Police Department was the moving force behind Officer Klamser’s actions, primarily from the standpoint of not pointing out the inherent dangers in the “rowing arm technique,” the department’s endorsement of Officer Klamser’s actions in using potentially deadly force in this situation, not effectively investigating this incident and disciplining Officer Klamser, and then promoting Officer Klamser to the position of Corporal. The Fort Collins Police Department needs to perform an outside audit of the department’s arrest control and self-defense training programs, and of the instructors who are doing the training.

Respectfully Submitted,

Dan Montgomery

Dan Montgomery, Chief of Police (Retired)

Professional Police & Public Safety Consulting, LLC

Attachments: Expert Witness Disclosures