STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

**VOLUME I (Pages 1-223)**

THURSDAY, OCTOBER 17, 2024

9:08 A.M.

MEETING HELD

AT THE OFFICES OF

COMMISSION ON POST

860 STILLWATER ROAD, SUITE 100

WEST SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Stenographically Reported By:
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California Certified Shorthand Reporter #6137

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

JOYCE DUDLEY
Governor Appointee
Attorney
(Chairperson)

ROBERT DOYLE
Governor Appointee
Former Command Rank Peace Officer
(Vice Chairperson)

NICOLE CLAVO, Psy.D.
Governor Appointee
Public Member

REGINA HATCHER-CRAWFORD
Governor Appointee
Public Member

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

ELIZABETH T. BUCHEN
Senate Rules Committee Appointee
Public Member

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POST COMMISSION LEGAL COUNSEL

CHRISTOPHER BEATTY
Deputy Attorney General
Department of Justice
Office of the Attorney General

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A P P E A R A N C E S  C O N T I N U E D

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Staff Services Manager
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KEVIN SHERBURNE
Law Enforcement Consultant
Professional Conduct Central Bureau

CARRIE WOOLLEY
Attorney IV
Legal Affairs Bureau

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A P P E A R A N C E S  C O N T I N U E D

ALSO PRESENT

JAMES MUTUKU
Peace Officer, POST ID C25-A69

SIFREDO CANO
Peace Officer, POST ID C03-G01

JAIME BERMUDEZ
Peace Officer, POST ID C36-U28

PAUL MATEJCEK
Peace Officer, POST ID: C65-U31

MARIE MASTERS, Attorney at Law
Rains Lucia Stern St. Phalle & Silver, PC

MARSHAL ARNWINE
ACLU, Northern California

LISA MOORE

EUGENE MOORE

ANGELA SULLIVAN

KORI McCOY

DAVID HARRISON

MICHELLE MONTERROSA

ASHLEY MONTERROSA

MELISSA NOLD

KRIS KELLY

MARIA GRAJALVA

CHRISTIAN CRUZ

PAUL WINDERS

BEATRICE JOHNSON

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Thursday, October 17, 2024, 9:08 A.M.

West Sacramento, California

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BOARD CHAIR DUDLEY: Good morning, again, everyone.

Today's Thursday, October 17th, 2024, and the time is 9:08 A.M.

Thank you all for attending the Peace Officer Standard Accountability Advisory Board Hearing.

Please note that this hearing is being live streamed, recorded and transcribed.

Further, please note that the microphones are auto on-off. Okay. This is especially important for the Board Members. So what that means is, it will come on when you begin to speak. So don't forget, then, if you are doing that, that you need to watch the crosstalk. Okay?

Given that, any questions?

Okay. Now, Chandler, please read the roll.

MR. KNAPP: Good morning, members of the Board.

Thank you, Madam Chair.

Board Member Buchen.

MEMBER BUCHEN: Present.

MR. KNAPP: Board Member Clavo.

MEMBER CLAVO: Present.

MR. KNAPP: Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Present.
MR. KNAPP: Board Member Doyle.
MEMBER DOYLE: Here.
MR. KNAPP: Chair Dudley.
BOARD CHAIR DUDLEY: Here.
MR. KNAPP: Professor Glaser.
MEMBER GLASER: Present.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Present.
MR. KNAPP: Board Member Lara.
(No response.)
MR. KNAPP: And Board Member Pena.
(No response.)
MR. KNAPP: Thank you.
Nine members are present.
BOARD CHAIR DUDLEY: Thank you. A quorum has been established. We are a body of nine people and so five is a quorum.
We have a new member today, who's not a new member, but you've just come back and joined us.
Would you give us your name and tell us a little bit about you?
MEMBER BUCHEN: Yes, good morning. Lizzie Buchen. I work with Smart Justice California and have worked on police accountability issues for many years in

various -- with various entities.

BOARD CHAIR DUDLEY: Welcome.

MEMBER BUCHEN: Thank you.

BOARD CHAIR DUDLEY: And let me ask all of you for the court reporter -- not the court reporter, but the transcriber -- whenever you speak, just before you're about to make your point, say your last name. So in the case of Bob Doyle, he would go: Doyle. And then go on with his comment.

That's going take the pressure off her to suddenly look up, get your name, get the spelling and then go back to what she's doing. So I'm going to try to remember that too. But if we all do that, the transcript will be easier to read.

Okay. Now, speaking with the audience, the time is set aside for members of the public who wish to comment on items not on the agenda but those within the Board's jurisdiction. Public comment on matters on the agenda will be heard after each item is presented.

Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each such matter.

Please be advised that the Board cannot take actions on items not on the agenda, but only to the extent necessary to determine whether they should be

made an agenda item at a future meeting, respond briefly to statements or questions posed, request clarification or refer the items to staff.

Please remember that the meeting is being transcribed, so I may politely interrupt and ask you to repeat or speak slowly and clearly so your comment can be correctly captured in the transcript.

As the Board Chair, I may ask members of the public to limit their remarks to no more than three minutes. Pursuant to existing Board policy, I may conclude the public comment period if multiple speakers are voicing repetitive or similar statements and the 15-minute public comment period has expired.

So before I open public comment on matters not on the agenda, please note that if you have a specific complaint about an officer that is not on today's agenda, you should file a complaint with POST or with the officer's employing agency. And our staff will assist you in this regard.

I would like to remind individuals making comments to not discuss pending complaints or pending disciplinary actions that may later come before the Board for recommendation. If the Board takes action on your complaint, you will have an opportunity to address the Board at the time.

MEMBER JOHNSON: Aye.

MR. KNAPP: Thank you.

BOARD CHAIR DUDLEY: I'm used to always going after Doyle. So --

Okay. That motion passes. No further comment.

Okay. Now we're going to take a ten-minute break and so we'll start again at 20 to 5:00.

And we will start with the presentation of our last case.

(Brief break.)

BOARD CHAIR DUDLEY: Back on the record.

At this time, I will now call upon Law Enforcement Consultant Kevin Sherburne, Professional Conduct Central Bureau and Carrie Woolley, Attorney for Legal Affairs Bureau to provide a report on case POST number 2300017, Paul Matejcek who, at the time of the events at issue, was employed at Brentwood Police Department.

Please.

MR. SHERBURNE: Good afternoon or good evening.

Thank you, Madam Chair.

Thank you for your time again today.

I do have my prefatory statement that I will read for purposes of the record so that this case -- the transcript is considered completely separate and independent from the previous case.

So you'll hear me say some of the same things.

My name is Kevin Sherburne. I'm a law enforcement consultant within the Professional Conduct Bureau Central District. I served as the investigator in the case involving Paul Matejcek who formerly worked for Brentwood Police Department at the time of the serious misconduct.

As the chair mentioned, the case number is POST2300017.

With me to my right is Carrie Woolley, who is legal counsel for POST.

The clear and convincing evidence substantiated in this case, that Mr. Matejcek used force that was excessive and unreasonable, either or both.

For the purposes of the Division's findings, clear and convincing evidence means there was sufficient evidence to establish that, quote, there was a high probability that the charge is true, end quote, and evidence need not establish a fact beyond a reasonable doubt.

Mr. Matejcek began work as a police officer with Brentwood Police Department on August 1st, 19 -- 2017.

Mr. Matejcek obtained a basic certificate in 2019, and an intermediate certificate in 2020.

He remained with the police department until his

termination on August 31, 2022.

Mr. Matejcek appealed the termination to a hearing officer. The hearing officer upheld the finding that the use of force was unreasonable and excessive but recommended a lesser discipline than termination.

After reviewing an advisory recommendation from the hearing officer, the City Manager of Brentwood upheld the termination on January 23, 2024.

The hearing officer's rationale for recommending a lesser discipline is irrelevant here. POST may seek and the Board may recommend revocation even if an officer retains employment.

The facts underlying this case involve a call for service to a home improvement store in Brentwood.

At approximately 5:30 a.m., on April 23rd, 2022, Brentwood Police Department received a call that someone was screaming near the garden sheds at the home improvement store.

Three officers responded to the scene, Officers Josh Flynn and David Franson and Mr. Matejcek.

There, the officers found Victim 1, a homeless person who was known to Mr. Matejcek and the other officers, who was inside one of the sheds.

The officers ordered her outside where Mr. Matejcek placed Victim 1 in handcuffs behind her back and placed

her in a seated, cross-legged position in front of the open door to one of the sheds.

For about seven minutes, the officers engaged in conversation with Victim 1, who alternated between verbally abusive, using foul language, and routine conversation.

The officers later stated that she appeared to be drunk and based upon her comments about being shot in the nose by a laser, possibly under the influence of drugs, illegal drugs.

The officers positioned themselves around Victim 1, who had her back to an open garden shed. The officers stood approximately four or five feet from the victim. After about seven and one half minutes, Victim 1 started to stand up. As she was standing, her hands were still cuffed behind her back.

Officer Franson's body-worn camera -- I will refer to that as BWC sometimes -- shows that Mr. Matejcek took three quick steps toward Victim 1, kicking her with his right foot in her left midsection or upper thigh. Victim 1 fell backwards into the open door of the shed, hitting the door and falling to the ground.

Victim 1 was not injured in the encounter.

Mr. Matejcek later said he feared she would spit at him. He told the IA investigator, however, that she had

never actually hit him in the face with spit. The hearing officer rejected Mr. Matejcek's statement of fear as, quote, speculative, and the exact type of 2020 hindsight analysis the Supreme Court forbids, end quote.

After Mr. Matejcek kicked Victim 1, he brought her to her feet and escorted her to his patrol car while officers Flynn and Franson walked behind him.

They later stated they expressed surprise about the kick because there was no threat of harm or safety issues requiring the use of force or that level of force.

Mr. Matejcek did not take responsibility for his wrongful actions. In fact, Officer Flynn noted that he and Officer Franson told Mr. Matejcek they would take over after Victim 1 was at the patrol vehicle.

Mr. Matejcek's response, quote, he smiled at us.

The officers summoned an ambulance where EMTs determined Victim 1 did not require medical treatment. That Victim 1 did not sustain injury is irrelevant to whether revocation or suspension is warranted. The focus is on Mr. Matejcek's acts constituting physical abuse.

Respondent arrested Victim 1 for public intoxication and battery on a peace officer because she later spat at a community services officer who was

preparing to transport Victim 1 to the county jail.

The clear and convincing evidence substantiated that Mr. Matejcek's use of force was unreasonable or excessive, either or both.

The use of force violated California Penal Code Section 13510.8(b)(3), and POST regulation 1205(a)(3).

Taking into account Mr. Matejcek's perspective, as well as the other officers present, Victim 1 did not objectively pose a threat to Mr. Matejcek or anyone else, including the other officers, was not resisting, and was not attempting to escape.

I will show you some video footage of Mr. Matejcek's use of force. There are two video perspectives to show you.

The first video footage is from Mr. Matejcek's body-worn camera and the second video is from Officer Franson's body-worn camera.

In discussing the video, I'll refer to the time of day, rather than the time during the video. And that display of the time is in the upper right, right next to the date so you'll notice it will be approximately 5:35 in the morning and it will show the seconds.

Tobias, would you please show video one?

(Video played.)

MR. SHERBURNE: That video showed that from the

initial contact when the officers recognized Victim 1, to Mr. Matejcek's placement of the handcuffs on Victim 1, the officers had the situation under control.

Mr. Matejcek immediately recognized Victim 1 and called her by name. We heard that beeping. That was the redaction.

Victim 1 did not display any behavior or words that would indicate she posed a threat to them or a risk of escape. She was compliant to commands to sit down, although she questioned why.

She did not resist Mr. Matejcek assisting her to the ground or placing her hands behind her back.

The video showed that the physical placement of handcuffs on Victim 1 only required one officer, Mr. Matejcek. The other officers did not perceive Victim 1 to be a threat or escape risk and they stood some distance away.

One of the officers did provide light from a flashlight at Mr. Matejcek's request. And the other explored the area in the shed.

One of the officers turned off his body-worn camera as soon as he recognized Victim 1. He would not have done so if he had perceived that she was a flight risk or a threat risk.

Further, that video showed that Mr. Matejcek did

not double lock the handcuffs or conduct a pat-search of Victim 1. This is further evidence that he did not perceive her to be a flight or threat risk.

Also important to note from this video is the handcuffing process itself. When Mr. Matejcek applied the handcuffs to Victim 1's wrists, he applied light pressure at first then adjusted them to a tighter position.

The noise of the ratcheting on the video that we heard of the handcuffs shows that Mr. Matejcek did not apply them in an aggressive manner.

The audio shows that Mr. Matejcek and Victim 1 also engaged in conversation free from emotion or stress.

The audio shows that Mr. Matejcek did not ask Victim 1 if she had any weapons. Again, this is evidence that he did not, at that time, perceive her to be a risk.

The next video footage to show you is from Officer Franson's body-worn camera. This one is about five minutes long. Tobias.

(Video played.)

MR. SHERBURNE: In that video clip we saw Victim 1 and the officers engaged in conversation For about five minutes. During that conversation, Victim 1 did not attempt to resist escape or pose a threat to the

officers. The officers learned enough during the conversation that they believed Victim 1 was possibly experiencing a mental health episode.

After the officers started asking her about her personal property and her consumption of alcohol, Victim's 1 -- Victim 1's demeanor changed.

Mr. Matejcek's conversational tone bordered on mocking Victim 1 and he engaged in a sarcastic exchange with Victim 1.

She then became verbally aggressive and started yelling and cursing. Officer Franson turned off the audio to his body-worn camera at 5:39 and 43 seconds in the morning, which is the time that we had stopped that.

That video showed that the officers had triangulated Victim 1, she was effectively secured with her hands, handcuffed behind her back and seated in a cross-legged position. Her back was to the garden shed and they were several feet away from her. Victim 1 did not pose a risk of threat or escape during this time.

May we see video 3, please.

(Video played)

MR. SHERBURNE: This video shows the officers continued to guard Victim 1 in a triangulated position. While muted, the officers appeared to continue to engage her in conversation. After about eight minutes after

initially being handcuffed and seated in a seated position on the ground, Victim 1 attempted to stand up.

At this point, Mr. Matejcek immediately rushed Victim 1 in about three steps and kicked her before she had even risen to a full standing position.

The force with which respondent, Mr. Matejcek, kicked Victim 1 nearly picked her completely off the ground and backwards into the garden shed door where she fell to the ground.

At the time Victim 1 stood up, she did not reasonable pose a threat to the officers or others and was not resisting or attempting to escape.

Officers Flynn and Franson did not even flinch when they saw her movement because they did not perceive her to be a flight risk or a safety risk.

I have one final video to show you, video number 4. We're going to play this in half speed, if we could, please, Tobias.

(Video played.)

MR. SHERBURNE: This clip showed clear and convincing evidence that Mr. Matejcek's use of force was unreasonable or excessive, either or both.

In sum, these actions were unreasonable and/or excessive because Victim 1 did not present herself to be a safety risk to them, was not resisting and was not

trying to escape.

He could have used less intrusive and reasonable alternatives to force, including verbal commands, control holds or escorting her to a patrol vehicle while they discussed the plan of action, how to deal with her.

The force used was disproportionate to the circumstances the officers faced.

Before I continue, would any member of the Board like to review any of the videos again that we just saw?

(No response.)

MR. SHERBURNE: From a licensing perspective in reviewing the totality of the Mr. Matejcek's professional career, POST also reviewed the previous use of force incident and commendations that he received.

Evidence of prior misconduct and the likelihood of recurrence are two factors that shall be taken under consideration under POST regulation 1213 whether a suspension or revocation is warranted.

In Mr. Matejcek's use of force in May of 2020, although the Internal Affairs investigation did not sustain a policy violation for use of force, under Brentwood Police Department policy, it's important to note that the definition of "not sustained" includes situation where, quote, there is inefficient evidence to fully exonerate, end quote, the officer. Not simply

those situations where the preponderance of the evidence did not substantiate the allegation.

The factual circumstances are similar enough to this case to warrant mention.

That case involved a female subject who was restrained, undergoing a mental health crisis and was belligerent towards officers.

Mr. Matejcek feared spitting in that case.

Mr. Matejcek escalated the situation.

Finally, Brentwood Police Chief Thomas Hansen was the chief during both incidents. In his termination letter to Mr. Matejcek, Chief Hansen stated, quote, nothing can justify the violent force that you used under the circumstances. You employed what can fairly be described as bully tactics, end quote.

During his testimony during the hearing appealing Mr. Matejcek's termination, Chief Hansen also stated that he lacked faith that Mr. Matejcek would use the appropriate level of force in other situations in the future.

Reasonable grounds exist to either revoke or suspend Mr. Matejcek's peace officer certificates.

At this time, I'm done and if you have any question, I'm happy to answer them.

BOARD CHAIR DUDLEY: Are there any questions?

(No reponse.)

BOARD CHAIR DUDLEY: Seeing none, at this time, does the subject officer and/or counsel wish to make public comment?

MS. MASTERS: Yes.

BOARD CHAIR DUDLEY: Welcome. And if you would state your names for the record.

MS. MASTERS: Good evening. My name is Marie Masters. I'm here from RLS Lawyers.

I would like to start off by just pointing out a couple inconsistencies before I actually get into my statement that I had prepared.

It was mentioned that the victim spat at a CSO who was -- would later transport her to MDF, or Martinez Detention Facility. I just want to clarify that the victim actually spat in the CSO's mouth, so it wasn't just being spat at, it was actually -- that's why she was arrested for battery.

In addition, it was stated to some effect, that she wasn't resisting, that the victim wasn't resisting at the time she was being placed on the ground initially.

The fact that former Officer Matejcek had to use a leg sweep to place her on the ground to put her in handcuffs in itself shows that she was resisting, so he had to use that lesser amount of force to actually

overcome the resistance to get her on the ground. So it's just a -- it's a mischaracterization to say that she wasn't resisting.

He also repeated verbal commands to have her sit down or to stay seated. So he had actually used other options, other than physical force prior and they weren't working, which is evidenced by her starting to stand up.

So, getting into my statement, I would like to just take a brief time, as I we know with he try to keep this a little bit short, to address the Division's findings and why I believe they're insufficient to support decertification.

BOARD CHAIR DUDLEY: I'm going to ask you to slow down. It's been a long day for our court reporter.

MS. MASTERS: Yes, ma'am. Sorry about that.

BOARD CHAIR DUDLEY: Thank you so much.

MS. MASTERS: Specifically, I would like to highlight mitigating facts which ultimately show that reasonable grounds do not exist to revoke or suspend former Officer Matejcek's POST certificates based on clear and convincing evidence.

First, in the nearly five years at Brentwood PD prior to this incident, former Officer Matejcek served without being disciplined and/or found to be operating

outside of policy.

The Division report discusses that former Internal Affairs investigation that was -- that was just brought up. And I would like to just reiterate that that resulted in findings of not sustained. And mind you, that -- that investigation was conducted under a preponderance of the evidence standard, which is lower than the clear and convincing evidence standard that we are using here.

While we can consider, you know, prior conduct, it also needs -- a history of discipline also needs to be considered. And the reality is that he was never disciplined for that prior IA because it was not sustained. He was not found to be acting out of policy.

It's just -- it's simply improper to use conduct that was within policy to try to state that there will be potentially future out-of-policy conduct.

Second, former Officer Matejcek was actually recruited by the Brentwood Police Department during the academy. He started at the academy as a non-affiliate, which basically means that you pay your own way through the academy. And then part way through was hired after a recruit training officer who saw his daily performance, saw him as someone that he wanted to work with at Brentwood PD.

The academy involves numerous use of force scenarios. And part of that involves the recruit training officers essentially manufacturing stress to see how the recruits do under pressure.

Former Officer Matejcek was, in part, hired by Brentwood PD because one of his recruit training officers saw how he performed under pressure and through those use-of-force scenarios and, again, wanted him to be part of the team at Brentwood PD.

Even the officer who testified in part of the IA investigation that former Officer Matejcek's use of force was unreasonable said that he still trusts him, to work with him as an officer and to have his back.

That illustrates that this incident is -- on its own, does not make him unfit to do his job as a police officer.

Third, the victim was struck in a way that was intentional, in that it was to avoid injury.

There can be -- we can go back and forth all day about disagreeing whether or not the use of force was reasonable or unreasonable.

But, the fact of the matter is that former Officer Matejcek thought about his actions at the time and thought to himself, well, she's standing up, and I don't want her to run away.

And for those of us who have worked patrol, we know that people who are handcuffed can still run away. And the -- the significant risk when that happens is that they're going to fall face forward with no way to break their fall.

So part of his thought process was, well, I'm asking her to sit down, she's not listening, and so she started to stand up. And he did what he thought was the best way to get her to stay on the ground, without having to get his face closer to her where she could spit on him. Part of this is also his knowledge of her from prior contacts and from prior contacts with other officers, which I will get into in a moment.

But if she had been able -- if the victim had been able to stand -- to finish standing up and run away, she almost certainly would have either fallen face first and being in a parking lot that was asphalt that would be a very bad fall to be face first.

Or would have had to have been subdued by officers, which could have resulted, essentially, in the same sort of face-forward -- face-forward fall.

Instead, the kick was used essentially to push her away and keep her on the ground by contacting her again and you could see in the video partially her torso or upper thigh area.

Officers are also taught during their arrest and control time in the academy that's one of the permissible areas to try to target if you're using personal body weapons. You're supposed to stay away from things like someone's head and face. So Officer Matejcek was intentional in contacting an area of the victim's body that was unlikely to result in any kind of injury.

As we saw in the video, the victim fell back into the door of the shed and landed in a seated position.

She never hit her head. Contrary to what was stated earlier she was never lifted off the ground. Nor did it appear that she was close to being lifted off the ground. She was clearly pushed straight back and down into a seated position.

And then she was not injured. EMS was called and she was ultimately cleared to be transported for incarceration.

Um, next, former Officer Matejcek had extensive prior knowledge of the victim. This is based on prior encounters that he had as well as those in his department.

During his Internal Affairs interview testimony, he made it clear that the victim has a history of physically fighting with police, fleeing from them. She

had previously tried to take another officer's gun, spitting on officers, which is assault and battery.

Just in general, being combative with them.

And part of this is that people with mental health can be erratic, so this notion that because the call started off calmly with both the victim and the officers -- well the entire encounter is relevant. We can't -- it's disingenuous to say, well, it started off calm so there was no reason for it to escalate.

It's been repeated that the victim may -- may suffer from mental illness, and so that's something that needs to be considered because it can also make a person erratic.

All of this is relevant to the mindset that Officer Matejcek had at the time of this incident because he was trying to do -- he was trying to make the best decision that he could given the situation. And make the -- and he believed his course of action was the best plan.

There's no obligation for officers to subject themselves to assault and battery. Just because being spat on may not encompass the type of physical injury that we traditionally think of, like breaking your arm or getting a concussion or something like that. It doesn't -- it doesn't mean that they're obligated to essentially have that happen.

And had he done something else, which I'm hard-pressed to figure out what it would have been. I mean he -- the thought process he went through was he didn't use his TASER, he didn't use his OC, he had been using verbal commands and they just weren't working.

So the next, kind of -- the next option he had that was the least forceful was some sort of hands-on approach, is the phrase that's used. But just some sort of personal body weapon.

Lastly, the totality of the Internal Affairs investigation showed that he -- showed that former Officer Matejcek acted with candor and integrity following the incident. That was commented upon by the arbitrator at binding arbitration -- nonbinding arbitration after he had been terminated.

Former Officer Matejcek agreed that a supervisor needed to come to the scene, which is standard any time there's a use of force, whether it's something that's reasonable, unreasonable. No one knows at that moment, but it's normal for supervisors to come to the scene.

That's not anything out of the ordinary. That wasn't something that was done because anyone at the time felt like this was an exceptional situation. It's just standard.

The Division seemed to dismiss former

Officer Matejcek's description of the incident in his IA interview as illogical. And that's a quote.

But he -- former Officer Matejcek did, in fact, go into a clear explanation of why he took the action he did. It was anything but illogical. He walked everyone through the steps he took and why.

He fully cooperated with the administrative investigation and never displayed any behavior that called his integrity into question.

This incident happened quite awhile ago, as you can see, the date is in 2022. So after this period of reflection, former Officer Matejcek understands why we're here. And in hindsight, seeing where we are now, he would have handled the incident differently.

That said, that reflection doesn't mean that at the time of the incident he wasn't doing what he genuinely thought was his best option.

He chose the tactic that he thought would result in no injury, but would still keep the victim subdued where she needed to be and prevent him from being spat on.

Former Officer Matejcek isn't the type of person that we need to keep out of this profession. And he's essentially served a two-year suspension. He hasn't worked in over two years.

Following his termination, the appeal process took

him through nonbinding arbitration, and at that -- at that nonbinding arbitration, the very experienced arbitrator found that it was an abuse of discretion for Brentwood PD to fire him and recommended a week-long suspension instead.

So surely if it's an abuse of discretion and unreasonable to fire him, revoking his licensure would be even more so.

So with that, we respectfully request that no action be taken. Against either of his POST certificates.

BOARD CHAIR DUDLEY: Thank you. Questions?

MS. MASTERS: Also -- I believe Officer Matejcek also wanted to make a brief statement, but I'm not sure which order you'd like to handle --

BOARD CHAIR DUDLEY: He wants to do what?

MR. MATEJCEK: I would like to make a statement.

BOARD CHAIR DUDLEY: Go ahead.

MR. MATEJCEK: My name is Paul Matejcek. I know reading it is a little difficult especially with that fun "J" that's there.

I was a good police officer. I was trusted and respected by my peers and the community.

And I had had multiple contacts with that specific individual, of her fighting with me, spitting at me,

spitting at other officers. And like my lawyer mentioned, trying to take one of my partners' guns.

I knew this to be a violent individual who often uses methamphetamine and alcohol, which I believe she was under the influence at that time.

I did not want to hurt her. I wanted to send her to the hospital and that was the conversation that I was having with my partner at that time that she began to stand up.

I wanted to de-escalate the situation and not take her to jail. I wanted to send her to the hospital where I knew we weren't going to have to fight with her.

And at that point, that's when she started to stand up. And I gave her two commands to sit back down she didn't listen. And from my previous experiences with her, I know that she was either going to run away from me or spit on me like she's done so in the past and I did not want either of those to happen. And that's why I took the action I did.

I was trained to do exactly what I did, even though it's not pretty, that's what I was trained to do in the academy and by my police department.

If I could take back that moment, in a heartbeat I would. But I know that what I did was the right thing at that time.

If I could change it now, I would. But at that time, I know that I was with -- within the right mindset and I was trying to do the right thing.

To take away my certificates, I believe, would be a disservice to the community of Brentwood, as well as the State of California.

So thank you for your time.

BOARD CHAIR DUDLEY: Thank you.

Thank you both for being here.

MS. MASTERS: I apologize. If I may ask just one clarifying question, so I can make sure the record --

BOARD CHAIR DUDLEY: You want to ask a clarifying question?

MS. MASTERS: Yes, just -- when you say that you wanted to send her or take her to the hospital, can you explain to us what you exactly you meant by that, instead of to jail.

MR. MATEJCEK: Yeah, absolutely. So this particular individual, any time that we told her that she was going to go to jail, that she was being arrested for whatever charge it was, probation violations, drug possession, being under the influence, that's when she would get aggressive with us.

I recognized the signs and symptoms that she was under the influence of narcotics and/or alcohol. And

so, I wanted to send her to the hospital so that way she could sober up and not have to begin a fight with us if I was to tell her that she was going to go to jail, which she's done so in the past.

Does that answer your question?

MS. MASTERS: Yes, thank you.

BOARD CHAIR DUDLEY: And where did she go after this?

MR. MATEJCEK: So we took her to the Brentwood Police Department where she was then photographed, or we tried to photograph her. She was still being combative with us at the police department.

Or before that -- excuse me -- she was medically evaluated on scene by AMR and then she was taken to the police department and then from there she was transported to the Martinez Detention Facility, MDF.

BOARD CHAIR DUDLEY: Okay.

MEMBER CLAVO: I'll try not to belabor my questions.

One question for the attorney, I'm sorry, I don't know your name.

MS. MASTERS: Marie Masters.

MEMBER CLAVO: You said that the supervisor came to the scene?

MS. MASTERS: A supervisor was called and notified.

So basically any time there's a use of force, a supervisor is notified. And I don't want to misquote BPD policy, but my understanding is that it's up to the supervisor's discretion if they actually show up at the scene but they are notified every time there's a use of force.

MEMBER CLAVO: Okay. Quick question, because I thought in the records, in the documentation we received, it stated that they had talked about calling the sergeant, but they didn't actually speak with the sergeant or make contact with the sergeant until they arrived back at the department, where the three of them all conversed with the sergeant together.

Am I misunderstanding what was in the --

MR. SHERBURNE: That is correct. There was a discussion amongst all three of the officers at the scene in the home improvement lot, parking lot, and two of the officers said we need to call the sergeant. The sergeant did not come, you're correct.

MEMBER CLAVO: But did they actually call? I don't remember them saying they called at that time.

MR. MATEJCEK: I can answer that. I did call for the sergeant on the way back to the police department and I informed him that a use of force had been made and that we would meet him back at the sallyport of the

police department where we could discuss exactly what happened.

MEMBER CLAVO: So my second question would be for you, because I heard you say that you wanted to de-escalate the situation. But you were kind of bantering back and forth once she rose to a different degree of attitude, personality, or, you know, mental health situation.

Why did you continue to banter with her if you were trying to de-escalate the situation?

MR. MATEJCEK: What I was doing in that scenario was asking her questions, as far as a 5150 evaluation. Does she want to hurt herself? Does she want to hurt anybody else? Is there any reason that I can send you to the hospital for a mental evaluation instead of continuing to stand here and argue with you.

Is there a reason that I can call an ambulance to come and evaluate you, to send you to a hospital where you'd rather be?

Does that answer your --

MEMBER CLAVO: It does. So maybe I have the voices confused.

Because I was referring to the part with the softball -- the baseball --

MR. MATEJCEK: Absolutely.

MEMBER CLAVO: -- or playing softball. That was not you?

MR. MATEJCEK: So the softball was me, but there was another voice that sounds like mine and that was Officer Flynn.

MEMBER CLAVO: He was the one that was kind of going back and forth with her? Or was that you?

MR. MATEJCEK: I believe that was Officer Flynn. I would have to get the exact transcript, but I can tell you which parts were me and which parts were him.

MEMBER CLAVO: And then you also stated that in -- in the academy or in subsequent training thereafter, you were trained to kick as a part of defense.

MR. MATEJCEK: Absolutely. Yes. So in the academy, and as well as in Brentwood Police Department training, we're trained to kick people exactly that way that I had used that kick.

It's called a stomp kick, where it's less force than you would as, if you imagine like a soccer kick, style kick. And with that, that -- I mean, with you look at it, you see my leg extend and stuff like that.

What you -- when you slow it down you see that my foot, the edge of my foot, the ball of my foot, is actually the part that contacts her. So I'm creating as much distance with that leg as I could. And, yes, we

were trained to kick people that way in the academy and at the police department.

MEMBER CLAVO: Thank you.

BOARD CHAIR DUDLEY: Any other questions?

Dr. Glaser?

MEMBER GLASER: Good afternoon. Thank you for appearing today and for answering our questions.

Would you be willing to comment on whether your kick used more force than necessary given the threat and the situation?

MR. MATEJCEK: Based on the totality and circumstances in my previous contacts with her and my fear of what she was going to do, what I've known her to do, I don't believe that what I did was excessive.

Do I believe that it was outside of our policy?

Well, hindsight yes.

But at the time I believed that what I was doing was fully within my policy and was fully within the state law.

Going back to it now, I believe that it's within state law, but it is without -- or outside of our Brentwood Police Department policy.

According to what my -- our use of force policy, if I'm allowed to use my hands, then I'm also allowed to use my feet.

And the reason that I chose to use my feet in that situation was to create that distance from fear of being spat on.

Mind you that this is also during a time of COVID where any little speckle of bacteria on your face, people are in fear that they're going to get COVID and knowing that she had already told me she had potentially had AIDS and was HIV positive and throw on COVID on top of that, I had plenty of reason to keep my face as far away from her as I wanted. Or as I did.

BOARD CHAIR DUDLEY: Any other questions? Mr. Johnson.

MEMBER JOHNSON: Yes. Johnson.

For the Division. I think you stated, and I saw it in the report, that there was a previous use of force investigation that occurred.

MR. SHERBURNE: That's correct.

MEMBER JOHNSON: I didn't see what it talked about, what type of use of force was it? Physical?

MR. SHERBURNE: Physical force using a forearm to press the subject's body and head down into the gurney where the individual was restrained.

MEMBER JOHNSON: And I guess the last part of my question, then, is so we're entitled to take a look at that also in making a decision going forward?

MR. SHERBURNE: That case or that report is not before us.

And if it were, given the time frame, I don't think that it would fall within -- I would have to look at it, but I don't think it would fall within our area.

MS. WOOLLEY: Board Member Johnson, it is, however, brought to you as part of the factors under 1213 for your consideration as possible prior conduct to show that it's a possibility that Officer Matejcek may, in fact, repeat this sort of conduct.

Since Mr. Sherburne did bring it in, since it is a similar incident to the incident at issue in this case.

MR. MATEJCEK: Mr. Johnson, I can elaborate on that use of force situation if you would like me to and run you through what happened.

I know you guys don't have it right now, but I can tell you what happened if you'd like. It's up to you.

MS. WOOLLEY: That would be outside the scope of these proceedings.

MS. MASTERS: And I would just like to add that POST regulation 1213 also asks for the Board to review prior discipline, of which that did not amount to. So just for clarifying purposes, an investigation was completed but there was no discipline as a result.

MS. WOOLLEY: It's prior conduct or discipline.

It's not just discipline.

MS. MASTERS: In addition to, it's -- yeah, prior conduct, discipline.

MS. WOOLLEY: But it is inclusive.

And Chair Dudley, I do have comments to make as to counsel's comments.

BOARD CHAIR DUDLEY: It's -- the Board considers prior conduct. The Board considers prior conduct in terms of people not having any violations at all, considers prior conduct in terms of action.

MS. MASTERS: Right. Of course.

BOARD CHAIR DUDLEY: It's not given the same weight as the circumstances that we're here before us. It's just something else you can or cannot consider, up to you.

And of course, in this case, it was found unsubstantiated.

Anything else?

Thank you both. You can go back. And I'm just going to ask for public comment, then we're going to go back.

MEMBER BUCHEN: She wanted to say a few words.

MS. WOOLLEY: I just have a few brief comments in response to the public comments that were made.

There were a few public comments that I did want to

address.

Counsel made the argument that peace officers do not have any obligation to submit to assault or battery. That's true. That's absolutely true.

But I do want to point out in this case that was not what was happening here.

The victim here was seated on the ground and was starting to stand up. And just as she's starting to stand up, Officer Matejcek immediately starts to come towards her and violently kicks her into a garden shed. This is not a case where she is violently or actively resisting him and he needs to defend himself, which would be a case of what counsel is saying here.

MS. MASTERS: That's not what I'm saying.

BOARD CHAIR DUDLEY: This is her turn.

MS. WOOLLEY: The other instance -- the other point that she -- that's been made is that this is a kick that Officer Matejcek has been trained to use in his training. And that's true.

And POST trainings they are trained to kick towards the torso. It's a safer area to kick in the body.

But one of the things that the training's very careful to mention is that you do not kick a restrained person. It's not safe to kick somebody who's in handcuffs. And that's the point that they make in the

Brentwood Police Department investigation. And that's one of the reasons that it led to his termination in this one.

Counsel also mentioned -- counsel also mentioned that Officer Matejcek displayed candor and integrity in his Internal Investigation. And he was. He displayed a lot of candor and integrity.

But he also displays a lack of awareness of what his actions were, and how unreasonable his actions were given the totality of the circumstances in this arrest.

And partly it's because he assumed the arrestee in this situation was going to do things. And he acted on that assumption. And he thought, well, I'm going to be attacked by her and so he pre-emptively attacked her. But that's not the standard when we're looking at reasonable uses of force.

The standard is, you have to look at the totality of the circumstances, at the arrest, at the time. And it's not a subjective standard, it's a reasonable officer standard in that situation.

And in this arrest, we had three officers present. Two officers present did not think this was a reasonable use of force.

Flynn and Franson all testified consistently throughout the IA, and at the hearing, that this was not

a reasonable use of force. They did not think this was okay.

And if you watch the full video and you slow it down, you will see their faces. They have a shocked look on their face at the use of force.

The other point that's made that I wanted to address was the fact that there is a lot of effort made to say that Officer Matejcek kicked the victim with the intent not to injure her and that she was not injured. And that was a good outcome that she was not injured.

But we don't know if she suffered any injury. We know that she didn't suffer enough injury to end up in a hospital. But we also know from watching the video that she was under the influence of something.

So it's possible, if we're going to speculate, that she may, in fact, not have known that she was injured because we don't have her medical records. But suffering a kick like that probably did leave some sort of injury. She did lift off the ground. The video shows her lifting off the ground and slamming into a garden shed.

So it is highly unlikely there was no injury to this particular individual.

MEMBER GLASER: Can I ask a question on that point? Can I just ask a question on that point?

The report indicates that she wasn't injured, but I was wondering if that was based on just the absence of a report of treatable injury by the EMTs or if it was based on an affirmative inspection for bruising or anything like that?

MS. WOOLLEY: It's based off the fact that we have no records that indicate she suffered an injury.

MR. MATEJCEK: May I answer?

We tried to take pictures and ascertain if there was any bruising or anything and she wouldn't let us inspect.

We asked her if she was okay. And she just began to yell at us.

She didn't complain of any pain or anything like that, that would indicate that she did have an injury.

MS. MASTERS: And if I may just clarify, my prior position, and then I'll stop because it's I think unproductive to go back and forth. I don't think that's what the purpose of today is.

When the victim began to stand up, that, in itself, is an act of resistance. I agree, obviously watching the video, she's is not standing up and charging at former Officer Matejcek. That's not what we saw in the video.

But the act of standing up is an act of resistance.

Even starting to stand up. And it's the prior history that he had with her that caused him to decide, well, I should use a kick because I don't -- the other option, the only other conceivable option I can think of is leaning in, getting much closer to her and using hands to try to physically push her back on the ground.

But then that exposes you to being spat on, as he knew was very much -- he objected -- he had objective facts in these past encounters that showed -- that caused him to believe that that would happen.

And so it's not -- I'm not trying to represent to you that she was, you know, in the midst of running towards him, trying to attack him that way.

My explanation was a little bit more nuanced than that. So I just want to make sure that that's understood.

BOARD CHAIR DUDLEY: Any other questions?

MEMBER JOHNSON: Yes, I have a question. Johnson.

In the past incidents that you witnessed, her trying to take an officer's gun, running, spitting, was she ever assaulted or a use of force takedown took place in regards to her actions?

MR. MATEJCEK: I'm sorry, did you say was she ever assaulted to us or us towards her?

MS. MASTERS: Are you asking if there were prior

uses of force against her by Brentwood PD?

MEMBER JOHNSON: Exactly. Because, I mean, it wasn't proportional, what I saw.

So I'm asking if she did take an officer -- or attempt to take an officer gun, as stated, did he use use of force on her to prevent that?

MR. MATEJCEK: I was not present for that incident. I had only --

MEMBER JOHNSON: Oh, I thought you had stated that --

MR. MATEJCEK: I was aware that she had tried to take another officer's gun. I wasn't present for that.

MEMBER JOHNSON: Okay. Let me ask it a different way then.

Have you witnessed her attacking an officer?

MR. MATEJCEK: Yes.

MEMBER JOHNSON: Did the use of force from that officer, was it proportional? Did it inflict pain? Did he take her down? What happened?

MS. MASTERS: If you know.

MR. MATEJCEK: In the couple instances that I can think of, it took multiple officers to take her to the ground where, I mean, we had three guys on top of her trying to control her arms and legs in order to put her in what's called -- well, first we put her in handcuffs

behind her back. And then we put her in what's called a wrap, where she's basically hogtied so that way she can't move around.

In that incident we tried to put her into the back of a police car. That's when she tried to spit in my face. And luckily for moving quickly, that's why she wasn't able to spit in my mouth like you testified before.

But yes, I've seen her fight off multiple officers at one time, running on the ground, you name it.

BOARD CHAIR DUDLEY: Any other questions? Okay. Thank you.

Thank you, you can return. Appreciate you being here. Wait one second.

Appreciate you being here. And I'm going to call for anybody from the public. So if you two could leave that table.

Thank you.

MS. MASTERS: Thank you.

MR. MATEJCEK: Thank you.

BOARD CHAIR DUDLEY: Is there any public -- anybody else would like to speak? Any public comment here? Or on the phone?

(No response.)

BOARD CHAIR DUDLEY: Hearing none, we'll adjourn

for our discussion.

(Time noted: 5:49 p.m.)

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(Closed session was held from 5:50 p.m. to 5:57 p.m.)

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(Time noted: 5:59 P.M.)

BOARD CHAIR DUDLEY: Now we're back. Thank you so much. There was a motion?

MEMBER BUCHEN: I move, yes.

BOARD CHAIR DUDLEY: What is that motion?

MEMBER BUCHEN: Motion for revocation.

BOARD CHAIR DUDLEY: Okay. Is there a second?

MEMBER JOHNSON: I second.

BOARD CHAIR DUDLEY: Okay. Mr. Johnson.

And could we have a roll call verdict, please?

Not roll call verdict, but roll call.

MR. KNAPP: Yes. Thank you.

Board Member Buchen?

MEMBER BUCHEN: Buchen, aye.

MR. KNAPP: Buchen, aye.

Board Member Clavo?

MEMBER CLAVO: Aye.

MR. KNAPP: Clavo, aye.

Board Member Crawford.

MEMBER HATCHER-CRAWFORD: Aye.
MR. KNAPP: Crawford, aye.
Board Member Doyle. For the record, Board Member Doyle is not present for this vote.
Chair Dudley.
BOARD CHAIR DUDLEY: Aye.
MR. KNAPP: Dudley, aye.
Professor Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Glaser, aye.
And Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Johnson, aye.
BOARD CHAIR DUDLEY: So no abstentions. No nayes.
The decision was unanimous for revocation.
Thank you.
Okay. Very briefly, upcoming meetings. We're going to have one January 15th and 16th.
What I want to impress upon you is it does appear that hearing will go forward and also it may very well be both days.
So warning you early that we may need to be meeting all of the 15th and 16th as well.
We also have a meeting in April. We don't have any information yet as to whether that meeting will go, but

I think for purposes of your calendar you should absolutely leave it there.

And also April we decided we would take another look at the hourly time we're spending on cases.

As this was the last item on the agenda, do any of the members of the board have any additional comments before we adjourn?

MEMBER JOHNSON: I do. I have a question. January 15th and 16th, is -- what days are that?

BOARD CHAIR DUDLEY: Wednesday and Thursday.

MEMBER JOHNSON: Okay. I'm thinking a holiday.

MEMBER HATCHER-CRAWFORD: What is April?

BOARD CHAIR DUDLEY: April is 16, 17.

Any other questions or comments?

Seeing none, I will need a motion to adjourn for the record.

MEMBER CLAVO: Make a motion.

BOARD CHAIR DUDLEY: Motion to adjourn?

MEMBER CLAVO: Yes.

BOARD CHAIR DUDLEY: Okay. Thank you. Second?

MEMBER JOHNSON: Yes.

BOARD CHAIR DUDLEY: And any opposed? Any abstentions? Okay.

Hearing none, the meeting is adjourned.

Thank you very much for a very long day.

You all worked very hard.

(Proceedings concluded at 6:01 p.m.)

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CERTIFICATE OF REPORTER

I, CONNIE J. PARCHMAN, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Connie J. Parchman, Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of October 2024.

/s/ Connie Parchman
Connie J. Parchman, CSR
Certified Shorthand Reporter
License No. 6137