STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

THURSDAY, MARCH 21, 2024

9:02 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:
Kathryn S. Swank
California Certified Shorthand Reporter #13061
Registered Professional Reporter

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

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

ROBERT DOYLE
Governor Appointee
Former Command Rank Peace Officer

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

CHARLES LARA
Governor Appointee
Management Rank Peace Officer

MARGARET PENA
Speaker of Assembly Appointee
Public Member

---o0o---

POST COMMISSION LEGAL COUNSEL

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

---o0o---

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

POST COMMISSION STAFF

ANNEMARIE DEL MUGNAIO
Assistant Executive Director
Peace Officer Standards
Accountability Division
Executive Office

CHRISTOPHER BECKER
Assistant Chief Counsel
Legal Affairs Bureau

ROBERT BRINGOLF
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

BRYANT HENLEY
Attorney IV
Legal Affairs Bureau

WILLIAM IMBODEN
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

CHANDLER KNAPP
Staff Services Manager
Executive Office

MARK NAGEL
Law Enforcement Consultant
Professional Conduct Southern Bureau

KEVIN SHERBURNE
Law Enforcement Consultant
Professional Conduct Central Bureau

CARRIE WOOLLEY
Attorney IV
Legal Affairs Bureau

---oOo---

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

---o0o---

ALSO PRESENT

KASEY A. CASTILLO
Counsel for
Officer David Hubbard
(Via videoconference)

CESAR DIAZ
Peace Officer
POST ID C68-U20

SAKU ETHIR
Counsel for
Officer Ivan Sarabia-Medina
(Via videoconference)

DILLON FUSTON
Peace Officer
POST ID C71-S10

BRADLEY M. FIELDS
Counsel for
Officer Dillon Fuston
(Via videoconference)

BEATRICE JOHNSON

DANIEL SANCHEZ

IVAN SARABIA-MEDINA
Peace Officer
POST ID C12-A96
(Via videoconference)

---o0o---

I N D E X

PROCEEDINGS		PAGE
I.	CALL TO ORDER	7
II.	ROLL CALL OF POSAAB MEMBERS	7
III.	PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA	9
IV.	ASSISTANT EXECUTIVE DIRECTOR COMMENTS	11
V.	NEW BUSINESS	
	1. Peace Officer Standards Accountability Division (POSAD) Update	11
	2. Report on Outcome of Case Review from the March 07, 2024 Commission Meeting	21
	3. Election of Vice Chair	24
VI.	APPROVAL OF MEETING MINUTES AND TRANSCRIPT	
	1. Approval of Meeting Minutes from the December 13, 2023 Meeting	29
	2. Approval of Meeting Transcript from the December 14, 2023 Meeting	29
VII.	NEW CASES - REVIEW, DISCUSSION AND RECOMMENDATIONS TO COMMISSION	
	1. POST2311496 - Cesar Hazel Diaz (POST ID: C68-U20) Last employing Agency: Los Angeles School District Police Department	35
	2. POST2300809 - Dillon Fuston (POST ID: C71-S10) Last employing Agency: San Diego Police Department	45
	3. POST2300204 - David Wesley Hubbard (POST ID: C15-B77) Last employing agency: Kern County District Attorney's Office	82

I N D E X C O N T I N U E D

PROCEEDINGS	PAGE
4. POST2322012 - Ivan D. Sarabia-Medina (POST ID: C12-A96) Last employing Agency: Los Angeles County Sheriff's Department	108
VIII. CLOSED SESSION	
(Transcripts prepared and bound under separate cover)	
IX. FUTURE BOARD MEETING DATES	131
May 15-16, 2024 - POST, West Sacramento July 24-25, 2024 - POST, West Sacramento	
X. ADJOURNMENT	134
CERTIFICATE OF REPORTER	135
ERRATA SHEET	136

---o0o---

Thursday, March 21, 2024, 9:02 a.m.

West Sacramento, California

---o0o---

MS. DEL MUGNAIO: Good morning. Welcome everyone. This is our second hearing of the Peace Officer Standards Accountability Advisory Board.

Today before we get into the first order of business, I'm just going to make a quick announcement about the proceedings today. As many of you know, on the Board, Ms. Dudley, our Chair, will not be joining us today. Sadly, she would have been here if she could. But due to some unforeseen circumstances, she will not be joining us today.

So I will go ahead and facilitate at least the first half of the meeting until we get to our cases that are before the Board today. And then we will probably have our vice chair, as long as that person feels comfortable, facilitate the remainder of the meeting.

Does that sound fair to the board members?

(No response.)

MS. DEL MUGNAIO: Okay. Great. All right. I'm going to go ahead and ask Chandler to call the roll this morning.

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

Board Member Buchen.
(No response.)
MR. KNAPP: Board Member Clavo.
MEMBER CLAVO: Present.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Present.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: Here.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Here.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Present.
MR. KNAPP: Board Member Lara.
MEMBER LARA: Here.
MR. KNAPP: And Board Member Pena.
MEMBER PENA: Here.
MS. DEL MUGNAIO: Okay. Thank you.
We have a quorum.
I want to thank those of you who are in attendance today. We want to take a couple of notes to kind of explain to you that this meeting or hearing is being webcast. It is also being recorded and transcribed.
The microphones are on auto on and off, so you do

not have to touch them before you speak. As soon as you begin speaking, they will go live. When you are not speaking, they will not be live.

You will need to watch the cross-talk because if you lean over and talk to your partner, that will be caught on recording and webcast, so just be advised.

I also want to thank those in attendance today for joining us. When you are asked to come forward for public comment, you may introduce yourself and your association. You do not have to. So that is voluntary. I want to make sure that's clear today.

I would like to introduce some of the folks here at the table today. To my left, I would like to introduce Chris Beatty. He's our board counsel.

I'm assistant director -- Assistant Executive Director Annemarie Del Mugnaio of the Peace Officer Standards and Accountability Division.

To my right is Chandler Knapp. He works in EXO.

Thank you.

Okay. We're going to see if there's any public comment before the Board today. This is the time that is set aside for public members of the public who wish to comment on items that are not on the agenda but those within the Board's jurisdiction.

Public comment on matters on the agenda will be

Okay. Motion passes.

The next case will be POST2300809. Dillon Fuston, POST ID C71-S10.

At this time, I will now call upon Law Enforcement Consultant Mark Nagel, Professional Conduct Southern Bureau, and Chris Becker, Assistant Chief Counsel, Legal Affairs Bureau, to provide a report on case POST2300809, Dillon Fuston, who at the time of events at issue was employed by the San Diego Police Department.

MR. NAGEL: Good morning, Vice Chair, Members of the Board. My name is Mark Nagel, and I'm one of the Law Enforcement Consultants assigned to the Professional Conduct Bureau South in the Peace Officer Standards Accountability Division.

With me today is Chris Becker, an attorney with our Legal Affairs Bureau.

I'm here today to present Case 2300809 involving Officer Dillon Fuston, currently with the San Diego County Sheriff's Office.

It is the Division's determination that clear and convincing evidence exists to demonstrate that Officer Fuston committed an act of serious misconduct as set forth in Penal Code section 13510.8, on April 10th, 2020.

Specifically, the Division has determined that

Officer Fuston committed dishonesty as described as serious misconduct.

In this presentation, I will present a brief outline of the Division's Findings of Investigation in this matter, along with supporting slides and a shortened clip of the body-worn camera video.

On April 10th, 2020, Officer Fuston and a partner responded to a call of domestic violence incident. While on scene, Officer Fuston used force on the male suspect on two separate occasions. The force used by Officer Fuston on these two separate occasions was found to have violated the San Diego Police Department's use of force policy.

Next slide, please.

As on the slide, any action by POST relating to the uses of force, however, are not actionable by statute because the date of the incident predates the implementation of Penal Code section 13510.8(b)(3). However, the facts relating to the force used by Officer Fuston are relevant to support the dishonesty, which is covered under Penal Code section 13510.8(b)(1) and (g)(1)(A).

Those facts are: Incorrectly stating the amount of time the suspect was unconscious. Incorrectly stating the suspect was guided to the ground. Falsely stating

the suspect had access to immediate weapons. Stating he used distraction blows to secure the suspect's arm while pausing a half second between each strike.

Before addressing the facts of the matter at issue today, I would like to bring to the Board's attention that the Investigative Summary of Findings submitted to the Board is an amended version. An original Investigative Summary of Findings was issued to Officer Fuston on October 13th, 2023, addressing the Division's findings that he was dishonest in the reporting of his applications of force.

The Division conducted a subsequent review of the facts of the case and noted additional findings related to Officer Fuston's dishonesty surrounding the reporting of his applications of force.

An amended Investigative Summary of Findings, which you have before you today, was then sent to Officer Fuston outlining the original and additional findings. And he was provided with an additional 30 days to appeal.

At the time of events at issue, Officer Fuston was employed as a peace officer with the San Diego Police Department. On September 22nd, '22, he resigned from the San Diego Police Department, and is currently employed as a deputy sheriff with the San Diego

Sheriff's Office, effective September 23rd, 2022. Officer Fuston holds a basic and intermediate certificate.

In this case -- in this case, the Division concluded that Officer Fuston committed four instances of dishonesty used to mitigate his actions and the extent of the suspect's injuries stemming from excessive use of force on April 10, 2020.

First, Officer Fuston stated on multiple occasions the suspect was unconscious for 2 or 3 seconds. For example, Officer Fuston stated the following in his criminal report: Quote, while guiding the suspect to the ground, he fell awkwardly due to his level of intoxication and struck the side of his head on the ground, causing him to lose consciousness for approximately 2 to 3 seconds.

However, our investigation found Officer Fuston's reporting of the time when the suspect was unconscious to be dishonest based on the following:

Officer Fuston keyed his radio and asked dispatch to send medics 11 seconds after he hit the ground. 48 seconds after the suspect hit the ground, Officer Fuston keyed his mic and advised the suspect lost consciousness for 2 to 3 seconds.

1 minute after the suspect hit the ground, Officer

Fuston gave the suspect a sternum rub and told the suspect to wake up.

1 minute and 5 seconds after the suspect hit the ground, Officer Fuston checked the suspect's pulse.

1 minute and 47 seconds after the suspect hit the ground, Officer Fuston checked the suspect's pulse, while the suspect could be heard snoring.

2 minutes and 58 seconds after the suspect hit the ground, the suspect moved his head for the first time.

During Officer Fuston's investigative interview, he said he observed the suspect snoring and saw his eyes flutter as a sign the suspect was conscious.

Officer Fuston clarified his statement and said he misspoke. He said his time assessment was wrong when he said the suspect was unconscious for 2 to 3 seconds.

Officer Fuston stated, quote, "The suspect was alive, but as far as awake and alert, no. Officer Fuston asked if he was accurate in his report."

To this, Officer Fuston responded, "No, I think it's pretty clear."

Second, Officer Fuston's statement that he held onto the suspect's body with both hands to guide the suspect to the ground. Specifically, in his criminal report, Officer Fuston stated the following: Quote, "I knew that the suspect was in handcuffs and wasn't able

to control himself during the fall. So I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me."

However, our investigation found this statement to be dishonest based on the following: As seen in the video footage, the suspect was intoxicated and handcuffed. Officer Fuston swept the suspect's legs out from under him without a plan for protecting the suspect from harm.

Indeed, Officer Fuston's left hand was on the suspect's left arm, and the suspect fell to the right, making it unlikely his left arm would help control the suspect to the ground. The suspect's head was not controlled, resulting in the suspect's head colliding with the concrete floor.

Third, Officer Fuston's statement that the suspect had immediate access to a weapon while lying on the bed was not supported by articulable facts. Specifically, Officer Fuston said the following in his criminal report of the incident: Quote, "The suspect forced his left hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment, and that they were spread out randomly throughout the apartment, I feared there may be another knife in the bed with the suspect. I also had not been able to check

if the suspect had a weapon on his person."

However, our investigation found this statement to be dishonest based on the following:

There was no mention of a weapon in the initial call. The reporting party did not mention weapons. A knife on the table was no longer in reach of the suspect once the table was moved by the officers. Officers did not check the bed for weapons prior to waking the suspect. Officers had a clear view of the suspect's hands for several seconds. The suspect was not patted for weapons until he was taken outside. Neither officer mentions weapons in their reports besides the knife on the table that was moved away.

Fourth, Officer Fuston stated in his investigative interview that he used distraction blows to secure the suspect's arm while pausing a half a second between each strike. Specifically, he said, quote, "I executed distraction blows in order to basically get him to comply with our commands, as well as get his arm up."

However, our investigation found this statement to be dishonest based on the following:

Distraction blows target the lower body and are defined by San Diego policy as open-handed, lesser controlling strikes, using a lower level of force.

Officer Fuston used a closed fist to deliver six

full-force punches to the suspect's upper back, resulting in fractures to multiple ribs.

The injuries sustained by the suspect are not consistent with distraction blows. The use of a closed-fist strike as a distraction technique is not authorized per San Diego Police Department Policy 1.04.

Officer Fuston said he believed the suspect was armed with a weapon. However, he could not articulate specific articulable facts to support his belief that the suspect was armed or had immediate access to a weapon at the time he punched the suspect multiple times.

So Penal Code 13510.8(c)(5) provides that the Commission shall consider a peace officer's prior conduct, discipline, and service record, and any prior instances of misconduct, including any incidents occurring beyond the time limitation for investigation, in evaluating whether to revoke certification for the incident under investigation.

To the Division's knowledge, there are three prior claims against Officer Fuston alleging excessive use of force. They are as follows:

October 27, 2019, while employed by the San Diego Police Department, Officer Fuston responded to an intoxicated male. The suspect resisted arrest by

pulling away from the responding officers and attempted to evade arrest. The suspect was subsequently arrested for narcotics possession and resisting arrest.

A complaint by the suspect was made alleging excessive use of force against officers. The allegation was investigated and determined to be not sustained.

December 14th, 2019, four months before the event we are speaking on today. San Diego Police Department officers, including Officer Fuston, contacted a subject who matched the description of a person wanted for vandalism. The subject did not comply with commands and physically resisted officers. Officer Fuston subdued the suspect by applying a carotid hold. The suspect alleged Officer Fuston used excessive use of force.

San Diego Police Department subsequently conducted an investigation into Officer Fuston's actions that day and determined that he violated their use of force and carotid restraint procedures when he applied a nondepartmental-approved or modified carotid restraint or neck restraint, and when he exceeded the carotid restraint duration hold for 15 seconds.

As for the excessive use of force claim, POST closed this matter as a nonactionable because the events took place in December of 2019, prior to the January 1st, 2022, effective date of Senate Bill 2 and

Penal Code section 13510.8(b)(3).

It is our understanding that the victim in this matter filed a civil lawsuit in San Diego Superior Court on July 2020 against Officer Fuston, the officers involved that day, and the City of San Diego. The lawsuit asserted, among other claims, that Officer Fuston used excessive and unreasonable force against the victim and a reckless -- recklessly administered a chokehold against the victim. This case was removed to federal court and reportedly settled in January of 2024 for $875,000.

While this use of force in this matter was determined to be not actionable by POST under SB 2, it is particularly noteworthy because it occurred four months prior to the events in question, and, in our opinion, likely impacted Officer Fuston's state of mind, played a role, and provided motive in Officer Fuston's dishonesty in reporting the use of force in this case.

On October 20th, 2022, a complainant alleged she suffered a facial fracture and numerous body wounds resulting from an encounter with San Diego sheriffs' deputies, which included Officer Fuston. The use of force was determined to be within department policy and law and was found to have been justified. This case was referred to POST and is currently pending review.

The facts I have just recited support the Division's finding that Officer Fuston was involved in serious misconduct, specifically dishonesty. For purposes of the Division's analysis, "clear and convincing evidence" means evidence of a charge is clear and convincing, so long as there is a high probability that the charge is true. The evidence need not establish the fact beyond a reasonable doubt.

The Division recommends that Officer Fuston's POST certificate be revoked. The Division's recommendation is based on the following:

Police legitimately reflects the belief that police ought to be allowed to exercise their authority, to maintain social order, manage conflicts, and solve problems in their communities. Public trust and confidence in the police involve the belief that the police are honest.

That concludes my opening statement.

Prior to today's hearing, the Board was provided with the full video from the Officer Fuston's body-worn camera showing the events in question. I have taken that video and clipped it to a more condensed version outlining the more relevant events demonstrating Officer Fuston's use of force and dishonesty.

At this part of the presentation, we will show the

condensed version of the video.

(Video played.)

MR. NAGEL: We are going to pause it there. The video does not show any more examples of use of forces. I just want to be mindful of your time this afternoon. We can continue playing, or we can bring it back to the Board, and we're happy to answer any questions if you would like.

VICE CHAIRPERSON DOYLE: Does the Board have any questions?

(No response.)

VICE CHAIRPERSON DOYLE: No.

Also, for the audience, Mr. Lara excused himself from this case because he's a member of the San Diego Police Department. And he left the room before the presentation. So thank you.

Mr. Fuston had forwarded to POST written statements reported to him from members of the public. The statements regarding his character. The division is making them available to you, with the following caveats: At this stage of the proceedings, the only issue for the Board is whether or not the Division's Investigative Summary and Findings provides clear and convincing evidence of serious misconduct.

The Division's position is that character

statements of this kind are not relevant to this inquiry and might be provided -- and might be provided if at all only during a later evidentiary hearing. In an excess of caution, however, staff will provide the letters to you as public comment, keeping in mind that we did not receive them directly from those members of the public. And, again, keeping in mind that the Board's ultimate task is to determine the sufficiency of the Division's Investigate Summary and Findings.

At this time -- at this time, does the subject officer or their counsel wish to make a public comment?

MR. FIELDS: I do.

Can your hear me?

VICE CHAIRPERSON DOYLE: Yes. Please state your name and organization, if you wish.

MR. FIELDS: Thank you. Good morning. My name is Bradley Fields from the Law Firm of Bobbitt, Pinckard & Fields, counsel for Dillon Fuston.

May I proceed?

VICE CHAIRPERSON DOYLE: Yes, please.

MR. FIELDS: Thank you.

Dishonesty is intended to cover intentionally and knowingly making a false statement. Instead, the Commission is using suspicions, inaccurate descriptions, and inaccurate understanding of medical terminology as

the basis for decertification.

If that's the case, any mistake by an officer could be used as the foundation for decertification, and that certainly can't be the case.

With regard to the first allegation as stated in the report, the Commission incorrectly characterizes Officer Fuston's statement as a definitive statement that the suspect had immediate access to a weapon. This was not the statement made by Officer Fuston in his report.

Rather, Officer Fuston stated, "I fear there may be another knife in the bed with the suspect." The statement was based on the totality of the circumstances experienced by Officer Fuston during the radio call.

Specifically, there were several large knives in the apartment, and Officer Fuston could not see the suspect's hands when he made -- when he made first contact.

The Commission is classifying Officer Fuston's statement that there "may be another knife in the bed" as dishonest for the sole reason that Officer Fuston's premonition was incorrect. Just because a premonition turns out to be incorrect does not mean it is a lie.

With regard to Act Number 2, it is unclear what part of the statement the Commission believes was

dishonest. Officer Fuston was correct in the number of blows he delivered in approximately the half second time frame between blows. Officer Fuston reasonably believed the six blows he delivered were intended to be distractionary blows. Whether or not these blows were characterized or categorized as distractionary or impact blows is a question for a use of force expert within Internal Affairs at the San Diego Police Department.

For this sole reason, IA did not agree with Officer Fuston's categorization of these blows, as distractionary blows does not mean he was dishonest when he reported that.

With regard to Act Number 3, as depicted on page 20 of POST investigative documents, as the suspect's right shoulder hit the ground, Officer Fuston's right hand lost contact with the suspect's upper back. It appears Officer Fuston maintained contact with the suspect's left bicep and right upper back throughout the fall.

The first clear loss of contact was when the suspect's lower body and right shoulder had already made contact with the ground.

The left bicep and right upper back are both considered part of the upper body. This is not a dishonest statement. The suspect was already on the ground when his right hand came off the suspect's right

upper back.

Even if Officer Fuston's right hand came off the suspect a split second before the suspect's contact with the ground, it is clear throughout the take-down attempt Officer Fuston's hands were grasping the suspect's upper body. Officer Fuston thought that he maintained contact with the upper body throughout the takedown, and that's objectively reasonable thought that he had while writing the report.

With regard to Act Number 4, we fully admit Officer Fuston was factually incorrect and misstated the amount of time the suspect was unconscious. This is reason that Internal Affairs sustained Officer Fuston on failure to accurately document all the facts and circumstances surrounding the force he used during the suspect -- the arrest of the suspect.

However, Officer Fuston was not dishonest about his time estimate of how long the suspect -- suspect was unconscious. If I had believed by a preponderance of the evidence that Officer Fuston lied, he would have been sustained on dishonesty. Rather, the department clearly believed Officer Fuston solely failed to accurately document the facts and circumstances surrounding force.

In every interaction Officer Fuston had in this

case, the evidence points to an innocent misunderstanding of the medical mechanics of being unconscious.

At every point in the radio call, Officer Fuston clearly articulates the suspect was unconscious for 2 to 3 seconds. He put that out over the radio. He told that to fire personnel. And, finally, he put it in his report. At no time does it appear that Officer Fuston is attempting to cover up his actions.

During his IA interview, he stated that once the suspect was snoring and eyes fluttering, he believed the suspect was conscious. This thought was entirely rational and reasonable in light of Officer Fuston's rudimentary knowledge of unconsciousness.

In concluding, IA was provided all opportunities to sustain Officer Fuston on dishonesty, and instead only sustained him on failure to accurately report facts related to what has been characterized in the -- in the POST report as Dishonest Act Number 4.

The Department did not sustain Officer Fuston for failure to accurately report on any other parts of the -- this case.

Most importantly, with the lower burden of proof of preponderance of the evidence that Internal Affairs at the San Diego Police Department uses, the Department did

not sustain dishonesty as to anything related to this investigation whatsoever.

Again, and in summation, ultimately incorrect suspicions or inaccurate depictions should not form the basis for decertifying a peace officer. If this is the standard, then every statement that is ultimately incorrect can form the basis for decertification.

We ask that this decertification not move forward.

Thank you.

VICE CHAIRPERSON DOYLE: Officer Fuston.

MR. FUSTON: I have prepared a statement if y'all are willing to hear it.

VICE CHAIRPERSON DOYLE: Yes, go ahead.

MR. FUSTON: Good morning, distinguished Board Members. My name is Deputy Dillon Fuston, and I'm present today to shed light on the incident in question as well as provide a perspective on myself as a law enforcement officer that the investigation does not have.

I would like to reiterate that at no point in time was I willfully dishonest in anything that I wrote in my report, said in any Internal Affairs interview, or did on scene.

I would also like to reiterate that nothing I wrote in my report was a material fact in charging the suspect

with any crime. I was -- I was writing a report regarding the events occurred on scene surrounding the use of force against the suspect on scene. I was not the arresting officer, nor did I charge him with any crime that night. I wrote my report from my perspective I had on the scene and from my recollection as I was trained to do in the police academy.

The Internal Affairs investigation you have already been familiarized with was conducted, and I received a two-day suspension without pay for this incident.

Throughout my disciplinary process, I sought senior officers within my department for mentorship and guidance to make sure that the mistakes I made on the scene did not happen again. I did that all on my own accord without any guidance from anyone else to do that.

I accepted my discipline wholeheartedly and returned to duty eager to show that this incident did not define me and who I was as a man or police officer.

I made the necessary adjustments and continue to better myself in order to serve the citizens of my community to the highest standard.

I continued to work for the San Diego Police Department for approximately another year and a half. I was recognized for my high level of police work on multiple occasions and ultimately promoted and selected

to a crime suppression team within Central Division in order to specifically address violent crimes within that service area.

Throughout my time on the crime supression team, I received multiple commendations for my efforts to address violent crimes, including catching murderers and several suspects of gang shootings.

I made the decision to leave the San Diego Police Department and lateral to the San Diego Sheriff's Department to seek a wider range of opportunities that it has as a larger department within the county. This investigation or my discipline played no factor in me leaving my prior department and moving on to another one. I was not running from any discipline or trying to hide anything from anyone.

When I applied to San Diego Sheriff's Department, I personally went to the Internal Affairs Bureau in San Diego Police Department and retrieved entire copies, including the body-worn camera footage you have seen today, as well as audio and video files, to ensure the background investigators of San Diego Sheriff's Department had a complete picture of who I was as a police officer.

That also included over nine commendations that I received after this incident occurred from both my

commanding officers and supervisors. I did this to ensure the most transparency and utmost amount of honesty to the department that I was intending to work for next.

It has been almost four years since this incident has occurred, and I have not received any further discipline for any accord or had any instances of reoccurrence.

I made the necessary changes, and I have moved forward and become a better law enforcement officer because of it.

I would like to reiterate that I never willfully or intentionally attempted to deceive anyone during this incident through dishonest action or reporting. I did not hide anything from my supervisor who was notified on scene. I did not hide anything from Internal Affairs or the investigating detectives.

I would also like to make a note of the October 20th, I believe, 2022, the incident that happened with the Sheriff's Department. That was alleged excessive force with facial fractures. I was merely there on traffic control. The entire incident happened prior to me being there. And I did not take -- the only thing I did on scene, at most, was put my hand on her shoulder and try to calm her down because she was

extremely high on methamphetamine.

As far as the carotid restraint, one thing the investigator left out: A police officer was head butted and sustained a facial injury prior to me utilizing that carotid restraint. I utilized a carotid restraint I was taught in the United States Marine Corps. It was dangerous or ineffective. It was something I was trained on to a higher extent than what I was trained on in the police academy. And that's why I reverted back to my training to use it.

Ultimately, the suspect in that incident also sustained no injuries from me nor did he have any repercussions from me using a carotid restraint.

Just to give you guys a broader perspective on those incidents because I understand that after watching video, and just hearing it on paper, you don't have the perspective that I had on scene.

Every time I used force in this incident, I was merely trying to protect myself and the other officer on scene. I truly and wholeheartedly believed he made a furtive movement towards his waistband to retrieve a large weapon based off the amount of times I had been to that apartment and seen him continuously beat that poor woman time and time again which was -- excuse me. Time and again, I had seen him beat on her.

And every time I was in that apartment, he was aggressive towards me and fellow officers on scene, which was corroborated by a neighbor, which was also left out of the investigation in Internal Affairs. She stated that every time we came to the door, he got into our face.

Regardless of what you saw in the video, he was dangerous towards myself and my partner. And I truly and wholeheartedly believed he was attempting to retrieve a weapon in order to hurt me or my partner. And I had just seen him hurt an elderly female for probably the fourth or fifth time. So I truly believed he was a threat to me.

Thank you for your time.

VICE CHAIRPERSON DOYLE: Board Members have any questions?

MEMBER JOHNSON: Yes, I do.

October 27th, 2019. What role did you play in that excessive force?

MR. FUSTON: Yes, sir.

So it was Halloween night. There was a gentleman attempting to gain entry into his vehicle, that was extremely inebriated. We initially walked up to him and were trying to get him an Uber or an ambulance, if he needed it, to get him home safely, because that was our

main mission for the night.

He discarded his Halloween costume and ran about a block and a half from us. I chased after him. My partner got back into our patrol vehicle and headed him off. I was able to catch up to him. He gave up. As he was falling to the ground, due to his inebriation, I held onto his hands and made sure that he didn't hit his head, and that was the only time I put hands on him when he was not handcuffed. So the only thing I did to him was caretake and ensure he didn't hit his head.

I understand that that video does not make me look like I'm not a monster. I have dealt with this for four years, and I have had to go over these situations time and time again both in my personal life and within my department. But I can promise you today that I have never intended or meant to hurt anyone by using force. I have only done it -- every single time I have done it, it is because I thought I needed to do it in order to protect myself or a victim of a crime.

I feel that law enforcement is my calling above everything else. And I truly wholeheartedly love this job. It's given me a lot, and I have been able to give back to the community. I have saved people's lives. I have been there for people in their worst days. And I mean, if you want to hear one of those stories, I would

be happy to give it. I understand your time is valuable.

But I have one in particular that I would love for you to hear if you have time.

VICE CHAIRPERSON DOYLE: It is outside the record.

Any other questions by the Board?

Yes, ma'am. Ms. Pena.

MEMBER PENA: Were you trained by San Diego Police Department on how to administer distraction blows?

MR. FUSTON: Yes, ma'am.

MEMBER PENA: And what is their policy?

MR. FUSTON: So the policy -- I wouldn't be able to quote it to you. But at the time I used those distraction blows, I thought I was within policy. I believed I could use a closed fist direct to the upper body. Afterwards, through the Internal Affairs Investigation, I was obviously informed I was out of policy.

At the time I used them, I didn't believe that I was doing the wrong thing. If I would have known that -- and, again, that is -- it is my responsibility to know the policy. It is on me. I accepted that, the responsibility for making that error.

But at the time, I believed I could use closed-fist strikes, but it is actually just open-fist, not intended

to cause injury as I believe Mr. Nagel said.

But yeah. I hope that answers your question.

MR. BECKER: Vice Chair, I believe either Mr. Nagel or I can address that question.

VICE CHAIRPERSON DOYLE: Please do.

MR. BECKER: Okay. So the San Diego Department Policy 1.04, Use of Force Distraction Techniques, "Acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes using a lower level of force. These lower level types of strikes are not intended nor likely to cause serious injury.

"Personal body weapons may be used under these constraints when lesser controlling force has not been effective, or the officer reasonably believes lesser controlled force will not be effective.

"If a distraction technique provides [sic] ineffective, a different distraction technique or force option should be considered."

And I think it is worth noting that in the Internal Affairs report, that the agency found that Officer

Fuston was using full-force, closed-fist strikes that were not distraction blows.

MEMBER PENA: And what type of injuries did the suspect experience?

MR. NAGEL: Six fractured ribs.

MR. FUSTON: I believe it was actually three, from the medical report I have seen. Not six.

What I can also tell you about the distraction blows, the reason why I described them as "distraction blows" is because my intention behind them. I wasn't trying to hurt him. I wasn't trying to break any of his ribs. I was merely trying to divert his attention away from his waistband, where his hand was, so that I could not get hurt and my partner could not get hurt.

And my partner was pulling on his left arm with both of his hands and could not get his arm out from underneath his waistband, which I believed meant he was intentionally going for something in his waistband. And I was trained time and time again that weapons come from waistbands. And if someone reaches for their waistbands, I have to act immediately, or I'm going to get hurt.

VICE CHAIRPERSON DOYLE: Any other questions?

Go ahead.

MEMBER JOHNSON: December 14th, the chokehold was

out of policy. That's correct?

MR. FUSTON: Yes, sir. So I applied a carotid, sir, not a chokehold. I didn't crush his windpipe at all. So I did not choke him.

The reason why I was out of policy is purely because I used a carotid restraint that I was taught in the Marine Corps, and not at San Diego Police Department.

I -- I can reiterate that he didn't suffer any injury whatsoever from that.

MEMBER HATCHER-CRAWFORD: I have a question.

VICE CHAIRPERSON DOYLE: Crawford.

MEMBER HATCHER-CRAWFORD: On hindsight of everything, you were able to counteract everything that was said.

In that given situation, would you have used the same level of force -- or not force, because it is alleged. Would you have used the same tactics that you used, is my question.

MR. FUSTON: I think at the end of the day, at the time, you are watching that video, I had eight months on as a law enforcement officer. I didn't even have a year off training. So to say that I wouldn't approach the situation different after now five years and a wealth of experience would be wrong. Because I think as law

enforcement officers, we learn from every single call we go to.

I have learned -- these Internal Affairs investigations and even coming to this Board have taught me an immense amount about law enforcement. I have learned every day I've been on the job. And that's why it has never happened again. I made a mistake. I owned up to it.

Never once did I -- never once did I say, "Oh, this is not my fault." I took it directly on. I made a mistake. I made the necessary adjustments, and I move forward from it.

Obviously, I can't -- I can't go back in time and undo certain things or not other things. But I know where I am today as a law enforcement officer, I have a wealth more of knowledge to be able to handle all sorts of situations. And that's why you have never seen it happen again. And that's both working with the agency that wrote these investigations and the agency now that I work for that's larger than that previous agency.

VICE CHAIRPERSON DOYLE: Any other questions?

(No response.)

VICE CHAIRPERSON DOYLE: Is there anybody from the public that would like to comment on the presentations?

Please.

Please state your name.

MS. JOHNSON: Yes. My name is Beatrice Johnson. And I'm an impacted family member on several levels. And I wanted to -- I wish somebody on the Board would ask the question about if this -- if this -- if this is hitting to the suspect, did he actually put that in his report? Did he actually write that he hit him six times? Did he write that?

The other thing is that from what I saw, the suspect was turned over first. He was asleep. He was drunk. He was asleep. He was turned over first and then he was turned back. There was an opportunity to see if there was a weapon there, or if he had something in his hand. Because on this side, he was turned over. He was asleep. And then he was turned back over.

So the knife part about thinking it was a knife in order to hit, I couldn't see life being threatened when you already turned him over, and he was dead asleep.

And if there was other knives in that place, he was handcuffed going by the kitchen.

And so the -- the devastation of police officers to be able to lie affects families in such a way. It is a slow burn. And so I just think it is important that, you know -- and the fact that he said that he's learning. I don't think police officers should learn on

the job. Because the ability to take life, they have the biggest job because, in a split second, they have the ability to take a life.

And as families impacted by this, our loved ones never come back. And so I just wanted to say that.

Thank you.

VICE CHAIRPERSON DOYLE: Thank you.

Anyone else from the public who would like to speak?

(No response.)

MR. BECKER: Can I make one quick comment before --

VICE CHAIRPERSON DOYLE: Sure.

MR. BECKER: So Mr. Fields attempted to downplay how this turned out in the Internal Affairs investigation. And there's a quote that I just wanted to read from that investigation that I think really kind of displays how serious this was as far as dishonesty and accuracy.

So it said, "Officer Fuston's lack of a feasible safe plan to take Carrera to the ground after he performed an unauthorized leg sweep takedown on a handucffed prisoner resulted in Carrera being knocked unconscious. Officer Fuston told medics and fire personnel Carerra was unconscious for 2 to 3 seconds. In reality, Carerra was unconscious for approximately 2

minutes and 58 seconds.

"Officer Fuston had a duty to care for the wellbeing of Carrera, who was in his custody, but instead provided medical personnel inaccurate information as to how long Carerra was unconscious.

"Officer Fuston admitted to being wrong in his time assessment of Carerra being unconscious, thus providing a wrong injury assessment to medical personnel for an injury he had caused," which is important, because he had a duty to convey appropriate information to medical personnel so that they can treat this individual.

But we feel that he was dishonest in that causing harm to the suspect.

One quick thing, too, that I wanted to mention -- and I think that it was touched on briefly -- was that you have received some statements. Well, they are purported to be from members of the public that was submitted by Officer Fuston.

It was mentioned to you that this is irrelevant and outside of the record. And I just wanted to touch on it briefly.

So if this was a normal hearing, we would have an opportunity, both sides, to present evidence and cross-examine witnesses. If there was character evidence that somebody tried to submit, which is

questionable in a hearing, but if there was, I would have an opportunity to ask these individuals, "Did you actually make this statement?" I would have an opportunity to ask, "How well do you know Officer Fuston?" I would have an opportunity to ask them if they knew certain instances of bad conduct by Officer Fuston and if they changed their opinion about him.

And consequently, I would have an opportunity to submit instances of bad conduct. That is not happening here today. That is why I just want to highlight that those statements are irrelevant to the record, and they are not relevant to the inquiry here today. So...

MR. FUSTON: If necessary, I can provide --

MR. FIELDS: May I -- may I respond since I was referenced in that comment?

VICE CHAIRPERSON DOYLE: Yes. Go ahead.

MR. FIELDS: Thank you. Briefly. Just very briefly.

Just to direct everyone why we are here. While I understand we are here in the context of why we are here is based on an allegation of force and an instance in use of force. The specific allegations that you are here to determine today are whether or not Officer Fuston was dishonest, not whether he used excessive force or not, because that is -- jurisdictionally, that

is -- that is the basis for what you have before you.

Again, as to the issue of the unconscious, Officer Fuston admitted he made a mistake. His -- his rudimentary understanding at the moment of time was the unconscious was when, in essence, he wasn't -- you know, he wasn't responding at all. And, you know, very clearly in that video, within 2 to 3 seconds, you can hear the suspect, you know, certainly audibly snoring. I think everybody would hear that. It was a mistake. And he admitted it was a mistake.

And, you know, I think what really the -- what is extraordinarily important that you recognize here is that this was investigated by one of the largest agencies, law enforcement agencies in the state, the San Diego Police Department. Extraordinarily large agency. Again, one of the largest law enforcement agencies in the state. Very good reputation. And they determined that Officer Fuston was not dishonest in anything that he did in relation to this allegation -- these allegations in this particular incident.

But as Officer Fuston has told you, you know, a while afterward, a year or so afterward, he applied to lateral to the San Diego Sheriff's Department, an even larger law enforcement agency in the state. Does extraordinarily thorough backgrounds. They reviewed

this incident.

Now, obviously, if they thought that Officer Fuston had been dishonest in his -- in his -- in this incident, in the reporting and his testimony regarding this incident, they wouldn't have touched him with a 10-foot pole. And they hired him as well.

So in essence, you have two of the largest law enforcement agencies in the state having reviewed this incident with a fine-tooth comb and determined that there was no dishonesty here.

I understand that obviously, it is not the -- you know, not the findings that we are here on today, but I ask you to consider that very heavily as you make this decision. Because, you know, again, he made some mistakes. There's no question he made some mistakes here. He made some mistakes in his use of force. And he made some mistakes in the way that he characterized what he -- what he had done.

But mistakes and dishonesty are two different things. And with that, I will conclude.

Thank you.

VICE CHAIRPERSON DOYLE: Thank you.

Okay. We will now go into -- we'll adjourn and go into closed session. And we will do that in another room. Thank you.

MR. FUSTON: Thank you all for your time.

(Time noted: 11:58 a.m.)

---o0o---

(Closed session was held from 12:05 p.m. to 12:40 p.m.)

---o0o---

(Time noted: 12:43 p.m.)

VICE CHAIRPERSON DOYLE: We will now reconvene and take a vote on the Board's recommendation to the Commission in the matter of Case POST2300809, Dillon Fuston, who at the time of the events at issue was employed by the San Diego Police Department.

What comments do the board members have?

Yes. Ms. Pena.

MEMBER PENA: I would like to make a motion.

VICE CHAIRPERSON DOYLE: Okay.

MEMBER PENA: A motion to recommend decertification.

VICE CHAIRPERSON DOYLE: Is there a second?

MEMBER JOHNSON: I second.

VICE CHAIRPERSON DOYLE: Second by Mr. Johnson.

Is there any public comment?

(No response.)

MR. KNAPP: Board Member Buchen.

(No response.)

MR. KNAPP: Board Member Clavo.
MEMBER CLAVO: Aye.
MR. KNAPP: Board Member Crawford.
MEMBER HATCHER-CRAWFORD: Abstain.
MR. KNAPP: Board Member Doyle.
VICE CHAIRPERSON DOYLE: No.
MR. KNAPP: Board Member Dudley.
(No response.)
MR. KNAPP: Board Member Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Board Member Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Board Member Lara.
(No response.)
MR. KNAPP: Board Member Pena.
MEMBER PENA: Aye.
VICE CHAIRPERSON DOYLE: There has been a motion and a vote.
MR. KNAPP: And we have four ayes; two abstentions; and a no.
VICE CHAIRPERSON DOYLE: The motion passes.
We're going to break for lunch.
MS. DEL MUGNAIO: Why don't we do 45 minutes.
VICE CHAIRPERSON DOYLE: 45 minutes. 1:30.
MS. DEL MUGNAIO: Thank you.

CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, 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, Kathryn S. Swank, a 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 10th day of April 2024.

Kathryn S Swank

KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061