

Expert Report of Seth W. Stoughton

I was retained by the Rhode Island Office of the Attorney General to review a July 9, 2021, incident involving officers employed by the Providence Police Department and [REDACTED]. This report is based on the materials reviewed to date. Should any subsequent information cause me to expand, add, or revise any of my opinions, I reserve the right to revise, amend, or supplement this report accordingly.

Please note that this report may include citations to and discussion of documents and information that may not be suitable for public release without appropriate redaction.

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Background and Qualifications

My opinions are based, in part, on my training, professional experience, education, and academic research. My background and qualifications are set forth in the curriculum vitae attached to this report. I highlight and supplement that material here with information relevant to my review and evaluation in this case.

I served as an officer in the Tallahassee Police Department in Tallahassee, Florida. The city of Tallahassee is located in northern Florida; it encompasses over 90 square miles and has a city population of over 180,000 and a metropolitan-area population of over 375,000. The Tallahassee Police Department employs over 350 sworn officers.

I was employed as an officer for a total of five and a half years, serving as a full-time officer from March 2001 until October 2005, and as a reserve (part-time) officer from November 2005 until June 2006. During the course of my service with the department, I was assigned to the Uniform Patrol Division. As a full-time officer, I earned and maintained multiple operator and instructor certifications beyond my state certification as a police officer. I also had a wide range of duties beyond my standard duty assignment. Those duties included serving as a Special Response Team member, teaching report writing, establishing and teaching community self-defense courses, and serving as an acting supervisor as needed. As an officer, I engaged in a large number of unknown risk and high-risk traffic stops, made hundreds of arrests, and used force on a number of occasions.

I served as an investigator in the Florida Department of Education's Office of Inspector General. The Florida Department of Education has state-wide authority related to education, including providing technical assistance and support to 67 local school districts, the Florida School for the Deaf and the Blind, and 28 state and community colleges; the management of statewide education funding and teacher certifications; the administration of private school tuition voucher programs; and the operation of Florida's Division of Blind Services and Division of Vocational Rehabilitation. The Florida Department of Education has more than 2,500 employees and has an annual budget of more than \$20 billion, roughly a quarter of Florida's total budgetary expenditures. The Office of Inspector General is responsible for, *inter alia*, conducting and coordinating investigations into allegations of waste, fraud, abuse, and financial mismanagement within or related to the Florida Department of Education. This includes investigating certain allegations that Florida Department of Education employees engaged in misconduct. In this respect, the Office of Inspector General serves an equivalent function to a police agency's Internal Affairs or Bureau of Professional Standards unit.

I was employed as an investigator for more than two and half years, serving from November 2005 until July 2008. In that time, I earned and maintained several professional certifications related to investigations. As an investigator, I conducted investigations into a wide variety of alleged criminal and administrative violations, including leading multi-agency criminal investigations. I was assigned to handle several particularly sensitive or complicated investigations, including a

whistleblower allegation that the state had improperly garnished millions of dollars in wages from hundreds of individuals who had defaulted on their student loans. In 2007, I was recognized with a Meritorious Performance Award for the quality of my investigations. In 2008, I was given a statewide commendation for the number of my fraud investigations that led to arrest and prosecution. Beyond my investigative duties, I trained new investigators, drafted investigative policy, and reviewed investigative reports.

I have conducted academic research on policing since 2012. I am a tenured member of the faculty of the University of South Carolina School of Law, where I teach in the area of criminal law and procedure. My research focuses on the regulation of policing, including the use of force, police investigations, agency policies, and industry practices. My previous academic appointment was a two-year teaching fellowship at Harvard Law School, where I researched the same topics.

I have published extensively on policing, including on police tactics, the use of force, and investigations. I am the principal author of *Evaluating Police Uses of Force*, a book published by NYU Press in May 2020. My academic articles have been published or are scheduled for publication in the *Emory Law Journal*, the *Harvard Law Review Forum*, the *Minnesota Law Review*, the *North Carolina Law Review*, the *Tulane Law Review*, the *Virginia Law Review*, the *Wake Forest Law Review*, and other prestigious journals. I have published, or have forthcoming, book chapters in *Rethinking and Reforming American Policing: Leadership Challenges and Future Opportunities*; in *Evidence Based Policing: An Introduction*; in *Legal Issues Around the Globe* (Vol. I); and in *Critical Issues in Policing* (8th ed.).

My work is widely relied upon in the field. Electronic versions of my work have been downloaded thousands of times, and my published research has been broadly cited by legal scholars in top journals including the *Yale Law Journal*, the *Harvard Law Review*, the *California Law Review*, the *Duke Law Journal*, the *Columbia Law Review*, the *N.Y.U. Law Review*, the *Georgetown Law Journal*, and the *Cornell Law Review*, just to name a few. My work has also been cited by scholars in other disciplines, most prominently in criminology (e.g., in *Criminology & Public Policy*, *Police Quarterly*, and *Journal of Research in Crime and Delinquency*) but also in geography (e.g., in *Political Geography*) and psychology (e.g., in *Psychonomic Bulletin & Review*). It has also been cited in textbooks, casebooks, treatises (e.g., in Wayne LaFare's *A Treatise on the Fourth Amendment*), and both popular books and academic texts (including in James Forman, Jr.'s *Locking Up Our Own*, Barry Friedman's *Unwarranted: Policing Without Permission*, Stephen Rushin's *Federal Intervention in American Police Departments*, Chris Hayes' *A Colony in a Nation*, and Norm Stamper's *To Protect and Serve*). Further, my academic research has been featured in national and international media, including in *The New York Times*, on National Public Radio, and in a host of other publications.

I am active in policing beyond publishing academic research. I am a Member of the American Law Institute and an Adviser to the ALI's *Principles of the Law, Policing*. I am a Fellow of the American

Bar Foundation. I have provided use-of-force investigations training to the City of Chicago's Civilian Office of Police Accountability on multiple occasions. I have served as a subject matter expert in multiple capacities, including for CNA Analysis & Solutions, which received a Bureau of Justice Assistance grant to develop technical assistance related to police body-worn cameras; in that capacity, I provided verbal and written consultation, as well as presented, by invitation, a keynote address on using police body-worn cameras to investigate and evaluate officer actions with an emphasis on the use of force. I also served as a subject matter expert in the OIR Group review of the Madison Police Department.

I currently serve, by appointment, on the Citizen Advisory Council of the Columbia Police Department in Columbia, South Carolina, a department of approximately 350 sworn officers serving a city with a population of over 130,000 and a metropolitan-area population of over 800,000. I was appointed as one of the original members of the council and have served in that capacity since 2015.

As a policing expert, I am regularly invited to speak about various aspects of policing—including the use of force—to legal, law enforcement, and academic audiences. To date, I have formally presented on policing issues well over 100 times to audiences that include the Fourth Circuit Judicial Conference; the American Judges Association; the Conference of Chief Justices; the National Conference of State Courts; state judicial conferences in Indiana, Kansas, Missouri, New York, North Dakota, Ohio, South Carolina, and Tennessee; the Federal Law Enforcement Training Center; federal Inspectors General & Inspectors General Investigators; the Senior Executive Staff of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the National Association of Women Law Enforcement Executives; the Peace Officers' Association of Georgia; the South Carolina Police Chiefs Association; the Command Staff of the Kansas City (Missouri) Police Department; the Washington State Criminal Justice Training Commission; and a host of others.

I have testified before or consulted with legislators, legislative committees, and public task forces or task force members in California, Massachusetts, North Carolina, Pennsylvania, South Carolina, and Virginia. I have filed or joined multiple briefs *amicus curiae* to the Supreme Court of the United States and United States Courts of Appeals related to police procedure, including tactics and the use of force. I have written about policing for *The New York Times*, *The Atlantic*, *TIME*, and other media publications. Either I or my work on policing has appeared on or been featured in domestic and international print, radio, and television media on more than seven hundred occasions.

I am regularly retained to provide expert review and testimony related to police litigation. I have been retained and qualified as an expert witness in state and federal court and in the course of both civil and criminal litigation.

Compensation

My fee for analysis in this case is \$320 per hour, billed in 0.25-hour increments, as well as reimbursement for expenses incurred. On days when I am expected to testify (in deposition or trial), I bill a minimum rate of 8 hours.

Methodology

To ensure my methodology was reliable, I did not assign credibility to any witness or source of information prior to a comprehensive review of provided materials, I developed my understanding of relevant facts only after a review of all materials provided, and I assumed those facts to be true solely for the purpose of analysis. In sum, I reviewed sufficient information to reach conclusions to a reasonable degree of professional certainty. I then analyzed those facts against a backdrop of the professional standards for police officers and the practices, principles and protocols recognized, relied upon, and employed in the law enforcement profession on the date of this incident. The methodology is consistent with the methodology utilized by other experts in the field of law enforcement when analyzing incidents of this type.

My testimony regarding to police investigations and related concepts are relevant areas of testimony that would assist a jury in understanding the evidence presented to them.

Before developing my opinions in this case, I reviewed the following materials:¹

- Medical Records
 - Various
- Multimedia
 - Audio
 - 911 Recordings
 - 10_Solacom_Pos_06_2021_07_09_01_18_09_by_Start_Time_asc.wav
 - 1_Solacom_Pos_02_2021_07_08_20_16_43_by_Start_Time_asc.wav
 - 2_Solacom_Pos_02_2021_07_08_20_26_20_by_Start_Time_asc.wav
 - 3_Solacom_Pos_09_2021_07_08_20_29_26_by_Start_Time_asc.wav
 - 4_Solacom_Pos_08_2021_07_08_20_30_09_by_Start_Time_asc.wav
 - 5_Solacom_Pos_02_2021_07_08_20_30_48_by_Start_Time_asc.wav
 - 6_Solacom_Pos_06_2021_07_08_20_45_27_by_Start_Time_asc.wav
 - 7_Solacom_Pos_09_2021_07_08_22_43_07_by_Start_Time_asc.wav

¹ Documents are identified by title where possible and by description when a title is inapposite.

- 8_Solacom_Pos_03_2021_07_09_00_48_27_by_Start_Time_asc.wav
- 9_Solacom_Pos_05_2021_07_09_01_03_48_by_Start_Time_asc.wav
- Dispatch Audio (Providence Police Department)
 - 7-8-2021.wav
 - 7-9-2021.wav
- Interviews
 - ██████████.MP3
 - Pawtucket PD Officers
 - Ofc Anthony Richards.MP3
 - Ofc Brendan Schumacher.MP3
 - Ofc Caisey Calabro.MP3
 - Ofc Justin McCabe.MP3
 - Ofc Neftalie Ortiz.MP3
 - Ofc Tyler Mobrince.MP3
 - Providence Fire Department
 - PFD Lt Thomas Miller.MP3
 - PFD Rescue Technician Justin Lyons.MP3
 - Providence Police Department
 - Det Mitchell Guerra.MP3
 - Lt Dennis O'Brien supplemental.MP3
 - Lt Dennis O'Brien.MP3
 - Lt Matthew Jennette.MP3
 - Ptlm Andrew Calle.MP3
 - Ptlm Anthony Moore.MP3
 - Ptlm David Sepe (continued).MP3
 - Ptlm David Sepe.MP3
 - Ptlm Daviniel Urizar.MP3
 - Ptlm James Lewis.MP3
 - Ptlm Jason Bibeault.MP3
 - Ptlm John Manown.MP3
 - Ptlm John Najarian.MP3
 - Ptlm Jose Buten.MP3
 - Ptlm Louis Prete.MP3
 - Ptlm Lucas Ramalho.MP3
 - Ptlm Luis Quinilla.MP3
 - Ptlm Renaud Joseph.MP3
 - Ptlm Sean Cooney.MP3
 - Ptlm Shaolin Herr.MP3
 - Ptlw Demaris Sanchez - Continued.MP3
 - Ptlw Demaris Sanchez.MP3

- Ptlw Jenna Heeder.MP3
 - Ptlw Sarita Fernandez.MP3
 - Sgt Andres Perez.MP3
 - Sgt Eric Greene.MP3
 - Sgt Michael Troia.MP3
 - Sgt Shawn Kennedy.MP3
- Video
 - Body-Worn Camera Video
 - BWC - Colicci & Manown.mp4
 - BWC - Lt Jennette1.mp4
 - BWC - Lt Jennette2.mp4
 - BWC - Lt Jennette3.mp4
 - BWC - Lt O'Brien.mp4
 - BWC - Ptlm Bibeault.mp4
 - BWC - Ptlm Buten1.mp4
 - BWC - Ptlm Buten2.mp4
 - BWC - Ptlm Buten3.mp4
 - BWC - Ptlm Calle1.mp4
 - BWC - Ptlm Colicci1.mp4
 - BWC - Ptlm Cooney.mp4
 - BWC - Ptlm D Sepe1.mp4
 - BWC - Ptlm D Sepe2.mp4
 - BWC - Ptlm Diaz1.mp4
 - BWC - Ptlm Diaz2.mp4
 - BWC - Ptlm Diaz3.mp4
 - BWC - Ptlm Diaz4.mp4
 - BWC - Ptlm Herr.mp4
 - BWC - Ptlm Lewis.mp4
 - BWC - Ptlm Manown1.mp4
 - BWC - Ptlm Manown2.mp4
 - BWC - Ptlm Manown3.mp4
 - BWC - Ptlm Manown4.mp4
 - BWC - Ptlm Manown5.mp4
 - BWC - Ptlm Moore.mp4
 - BWC - Ptlm Najarian1.mp4
 - BWC - Ptlm Najarian2.mp4
 - BWC - Ptlm Prete (In Car).mp4
 - BWC - Ptlm Prete1.mp4

- BWC - Ptlm Prete2.mp4
- BWC - Ptlm Prete3.mp4
- BWC - Ptlm Prete4.mp4
- BWC - Ptlm Prete5.mp4
- BWC - Ptlm Quinilla1.mp4
- BWC - Ptlm Ramalho1.mp4
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 - BWC - Sgt Troia1.mp4
 - BWC - Sgt Troia2.mp4
 - BWC - Sgt Troia3.mp4
 - BWC - Sgt Troia4.mp4
 - BWC- Ptlm Calle2.mp4
- Manton Surveillance Video
- Pawtucket Police Department
 - Reports, 21-3416-OF
- Providence Fire Department
 - Run Report, 2021-22445
- Providence Police Department
 - Dispatch Records Export
 - Garrity Warnings
 - Various
 - General Order
 - 300.01 – Use Of Force, Apr. 4, 2021
 - 310.06 – Police Batons, Oct. 1-, 2019
 - E911 Records
 - Juvenile Bureau Records
 - Reports
 - Case Number 2019-00039498
 - Case Number 2019-00039610
 - Case Number 2019-00104185
 - Case Number 2019-00120631
 - Case Number 2019-00132529
 - Case Number 2020-00021486
 - Case Number 2020-00041536
 - Case Number 2021-00033688
 - Case Number 2021-00052314
 - Training Academy Records
 - Various
- Rhode Island State Police
 - Report, 21RIX1-1193-OF
 - Appendices

- Search Warrant for 2004 Black BMW, July 20, 2021
- Transcribed Statements
 - Jose Buten, July 26, 2021
 - Andrew Calle, July 26, 2021
 - John Najarian, July 26, 2021
 - Dennis O'Brien, July 26, 2021
 - Andres Perez, July 26, 2021
 - Lucas Ramalho, July 26, 2021
 - Demaris Sanchez, July 26, 2021
 - Michael Troia, July 26, 2021
 - Daviniel Urizar, July 26, 2021
 - Sean Conney, July 27, 2021
 - Shaolin Herr, July 27, 2021
 - Shawn Kennedy, July 27, 2021
 - James Lewis, July 26, 2021
 - John Manown, July 27, 2021
 - Dennis O'Brien, July 27, 2021
 - Louis Prete, July 27, 2021
 - Luis Quinilla, July 27, 2021
 - Jason Bibeaully, July 28, 2021
 - Sarita Fernandez, July 28, 2021
 - Mitchell Guerra, July 28, 2021
 - Jenna Heeder, July 28, 2021
 - Matthew Jeannette, July 28, 2021
 - Renaud Joseph, July 28, 2021
 - Anthony Moore, July 28, 2021
 - David Sepe, July 28, 2021
 - Justin Lyons, Aug. 4, 2021
 - Thomas Miller, Aug. 4, 2021
 - ██████████, Aug. 5, 2021
 - Caisey Calarbo, Aug. 13, 2021
 - Neftalie Ortiz, Aug. 13, 2021
 - Tyler Mobrince, Aug. 13, 2021
 - Brendan Schumacher, Aug. 13, 2021
 - Justin McCabe, Aug. 17, 2021
 - Anthony Richards, Aug. 17, 2021
- Rhode Island Office of the Attorney General
 - The Attorney General's Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force and Custodial Deaths, June 17, 2020
- Additional materials not specifically identified

Understanding of Facts

Between 8:16pm on Thursday, July 8, 2021, and 1:18am on Friday, July 9, 2021, the nine separate complainants called 911 to report information that appears to be about the individuals involved in this case. The calls² included:

- At approximately 8:16pm on July 8, 2021, a complainant named ██████ reported that individuals in a black SUV “just shot . . . a fucking BB gun or something,” reiterating that they used a “fucking BB gun” and “some type of, fucking, I don’t know, man, I fucking BB gun or something at [the caller], fucking hit [the caller] in the head”³;
- At approximately 8:26pm, a complainant named ██████ reported that individuals in a burgundy SUV that was “speeding around the corner” before the occupants did “something,” possibly throwing something, that “popped [the caller’s] window,” breaking it⁴;
- At approximately 8:29pm, an unidentified complainant calling from the Narrangansett Creamery reported that there was “guys shooting pellet guns” or “guys with pellet guns, shotguns, pellet guns” who were “chasing [the caller] around” with “BB guns” in a black SUV⁵;
- At approximately 8:30pm, a complainant named ██████ calling from the Narrangansett Creamery as the 8:29pm caller reported “people with BB guns and pellet guns chasing [the caller] around the parking lot” and “one of [the caller’s] guys got hit in the arm”;⁶
- At approximately 8:30pm, an unidentified complainant calling from the Narrangansett Creamery reported having “a couple of kids just pull up to [the caller’s] truck and shoot [the caller’s] truck, hit me in the head,” breaking the truck window with something that the caller did “not know what the hell it is”⁷;
- At approximately 10:43pm, an unidentified complainant reported that he “just got jumped by a bunch of kids in Kennedy Plaza,” saying that “five of them” attacked him, but that he was not hurt⁸;
- At approximately 12:48am on July 9, 2021, a complainant named ██████ reported that “there’s a drive-by, they keep driving by with a gun pointed . . . looks like a BB gun, like a

² Notably, several of the audio files appear to be incomplete, cutting off mid-conversation.

³ 1_Solacom_Pos_02_2021_07_08_20_16_43_by_Start_Time_asc.wav

⁴ 2_Solacom_Pos_02_2021_07_08_20_26_20_by_Start_Time_asc.wav

⁵ 3_Solacom_Pos_09_2021_07_08_20_29_26_by_Start_Time_asc.wav

⁶ 4_Solacom_Pos_08_2021_07_08_20_30_09_by_Start_Time_asc.wav

⁷ 5_Solacom_Pos_02_2021_07_08_20_30_48_by_Start_Time_asc.wav

⁸ 7_Solacom_Pos_09_2021_07_08_22_43_07_by_Start_Time_asc.wav

rifle. And they're shooting it." The complainant described a blue BMW as "driving by on Manton Avenue with like a rifle, BB gun pointing at people and shooting . . . it looks like a BB gun or like a rifle, I don't know. Yeah, it's like, it's a rifle."⁹

- At approximately 1:03am, an unidentified complainant in Kennedy Plaza reported a black BMW convertible with "two kids with BB guns, one just shot [the caller]." The complainant said, "These motherfuckers are shooting up kids," saying "two of them got BB rifles" and "shot one dude in the face" who was "bleeding out his face"¹⁰; and
- At approximately 1:18am, an unidentified complainant reported "a bunch of teenagers in a car, they just shot a bunch of pellets at us," and the caller reported "bleeding from [her] eye." The complainant reiterated that there were "a bunch of, I don't know, teenagers in a car shooting pellets at us," and provided the license plate of the subject vehicle.¹¹

The Providence Police Department received some additional calls, including a complainant from Bank of America security who reported a vehicle occupant who "got out with a BB gun rifle and was shooting at random passersby," describing the suspect as "a young kid with shorts on."¹² That caller described the weapon as "definitely a BB gun, because [the caller] saw him pumping it."¹³

According to a Rhode Island State Police investigation of the incident, the "Providence Police Department received fourteen (14) separate complaints of Assault with a Dangerous Weapon (ADW)."¹⁴

Providence Police Department employees, including Patrolmen John Najarian and Mitchel Voyer and Lieutenant Matthew Jeannette, communicated via radio, connecting the later calls involving the black BMW to the earlier calls involving an SUV.¹⁵

At approximately 1:26am, Ptlm. Najarian saw the subject vehicle, which had previously fled from a Rhode Island State Police officer.¹⁶ As Ptlm. Najarian he drove towards the vehicle, the "operator . . . turned and pointed a firearm at [him]."¹⁷ The vehicle fled, and Ptlm. Najarian activated his

⁹ 8_Solacom_Pos_03_2021_07_09_00_48_27_by_Start_Time_asc.wav

¹⁰ 9_Solacom_Pos_05_2021_07_09_01_03_48_by_Start_Time_asc.wav

¹¹ 10_Solacom_Pos_06_2021_07_09_01_18_09_by_Start_Time_asc.wav

¹² 7-9-2021.wav

¹³ 7-9-2021.wav

¹⁴ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 12.

¹⁵ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 15.

¹⁶ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 15; Witness Statement of John Najarian, July 26, 2021, p. 2.

¹⁷ Witness Statement of John Najarian, July 26, 2021, p. 3.

lights and siren and pursued.¹⁸ Lt. Jeannette approved the pursuit,¹⁹ and reminded officers that they should not assume that the fleeing suspects only had a BB gun as opposed to a firearm.

The vehicle pursuit lasted for approximately forty minutes (0:40:00).²⁰ According to the Rhode Island State Police report, the fleeing vehicle “continually operated at a high rate of speed[] while failing to obey traffic control devices and stop signs.”²¹ At one point, the fleeing vehicle struck a curb, which caused the front passenger side tire to deflate, but the vehicle continued to flee.²²

At approximately 2:02am, the subject vehicle crashed into a fire hydrant and came to a stop.²³ The vehicle was later determined to be occupied at the time by [REDACTED], the driver; [REDACTED], sitting the front passenger seat; and [REDACTED], sitting in the rear passenger seat. A later forensic examination of the vehicle did not find any evidence suggesting the “presumptive presence of blood” in the vehicle.²⁴

Much of the following interaction was recorded on various officers’ body-worn cameras (“BWCs”).²⁵

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¹⁸ Witness Statement of John Najarian, July 26, 2021, p. 4.

¹⁹ Witness Statement of Matthew Jeannette, July 28, 2021, p. 5-6.

²⁰ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 15.

²¹ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 15.

²² Rhode Island State Police, Officer Involved Use of Force Investigation, p. 16.

²³ Rhode Island State Police, Officer Involved Use of Force Investigation, p. 16.

²⁴ Rhode Island State Police, Forensic Services Unit, 21-150 / 21RIX1-1193-OF, p. 2.

²⁵ Citations to and screen captures of BWC video footage are provided according to both the displayed timestamp—that is, the timestamp that appears on the video itself—and, when appropriate, a run-time count for frame-by-frame analysis. Regarding citations to displayed timestamps, most of the BWC videos were configured to display daylight time. This, a timestamp display of 02:00:00 refers to 2am. Some of the BWC footage in this case, including Ptlm. Buten’s BWC, were instead configured to display Zulu time, a way of displaying Coordinated Universal Time (UTC) in a 24-hour format that is four hours ahead of Eastern Daylight Time (EDT) time. For that reason, a timestamp display of 06:00:00Z equates to 2am EDT. Note that timestamps are not necessarily synchronized; for example, events that occur at 02:00:00 on one BWC may occur at 02:00:03.

Regarding citations to run times, this refers to the exact amount of time that has passed from the beginning of the video to the current frame. All refers to run-time will appear in parentheses. Thus, a citation to (00:02:30.500) refers to a frame that appears two minutes and thirty-and-one-half seconds from the beginning of the video.

Notably, the crashed vehicle's airbags did not deploy, as reflected in the following screen captures:

**Herr BWC, 02:03:26
Cropped**



Najarian BWC, 02:03:42



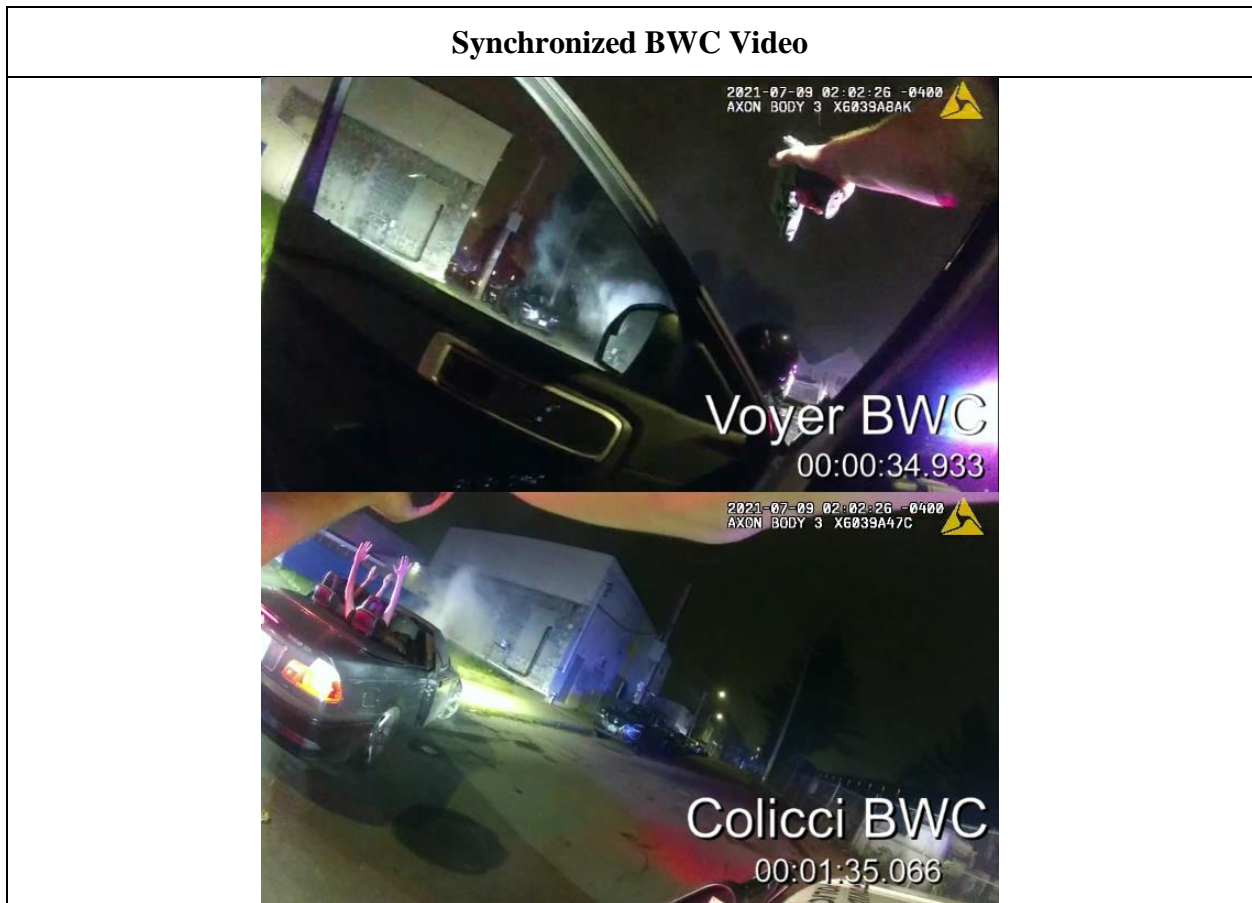
Urizar BWC, 02:03:48
Cropped



This space intentionally left blank.

When Ptlm. Colicci's vehicle stopped immediately behind and to the right of the subject vehicle, he exited, drew his firearm, and held it in a high cover position while standing near his driver's door.²⁶ At the same time, Ptlm. Voyer's vehicle had stopped behind and to the left of the subject vehicle, and Ptlm. Voyer was standing in his open driver's door with his firearm in a high cover position.²⁷

When he did so, the driver and back seat passenger in the fleeing vehicle had their arms raised overhead, as reflected in the following screen capture from a synchronized composite²⁸ of multiple BWC videos:



²⁶ Colicci BWC, 02:02:23.

²⁷ Voyer BWC, 02:02:26.

²⁸ By conducting a frame-by-frame analysis in VCDC Video Editor, I was able to identify key audio and visual events to synchronize several of the BWC videos, creating a composite version. The embedded timestamps of the BWC videos are not synchronized; the timestamp in the Manown BWC is 1.300 seconds ahead of the timestamp in the Sanchez BWC, which is 0.333 seconds ahead of the timestamp in the Colicci BWC, which is 0.800 seconds ahead of the timestamp in the Voyer BWC.

Within approximately ten seconds of exiting his vehicle, Ptlm. Colicci moved forward to the passenger side of the subject vehicle.²⁹ Two unidentified officers—potentially including Ptlm. Ortiz³⁰—moved to the driver side of the subject vehicle.³¹ Within about two seconds, Ptlm. Voyer also moved toward the subject vehicle.³²

Ptlm. Colicci extracted Mr. [REDACTED] from the front passenger seat of the subject vehicle, initially bringing him to the ground on his left side³³ before turning him face down.³⁴ Footage from Ptlm. Colicci's BWC suggests that Mr. [REDACTED] face was not significantly injured at the time; *inter alia*, he was wearing apparently unbroken glasses, as reflected in the following screen capture:



²⁹ Colicci BWC, 02:02:29.

³⁰ Statement of Neftalie Ortiz, August 13, 2021, p. 4.

³¹ Voyer BWC, 02:02:32.

³² Voyer BWC, 02:02:34.

³³ Colicci BWC, 02:02:35.

³⁴ Colicci BWC, 02:02:40.

Ptln. Voyer approached the vehicle as the driver was extracted and brought to the ground,³⁵ climbed over the vehicle as the rear seat passenger was being pulled out,³⁶ and moved to where Mr. ██████ was face down on the ground.³⁷ As Ptln. Voyer approached Mr. ██████, Mr. ██████ was face down with his legs splayed and an officer kneeling on his buttocks or lower back, as reflected in the following screen capture.



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³⁵ Voyer BWC, 02:02:34.

³⁶ Voyer BWC, 02:02:37.

³⁷ Voyer BWC, 02:02:40.

When Ptlm. Voyer got closer, the officer on Mr. ██████ right side was holding his right arm behind his back, as reflected in the following screen capture:



At approximately this time, an unidentified officer said, “Put your hands behind your fucking back,”³⁸ although it is not clear whether this command was directed at Mr. ██████ or one of the other individuals who had been in the vehicle.

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³⁸ Voyer BWC, 02:02:39.

PtIm. Voyer used his left hand to grab the hood of Mr. [REDACTED] clothing,³⁹ apparently pulling Mr. [REDACTED] head up so that he could put first his right hand⁴⁰ and then his left hand⁴¹ underneath Mr. [REDACTED] head in the area of his chin, as reflect:

**Voyer BWC, 02:02:40
(00:00:49.266)
Cropped**



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³⁹

⁴⁰ Voyer BWC, 02:02:41 (00:00:50.333).

⁴¹ Voyer BWC, 02:02:41 (00:00:50.366).

Voyer BWC, 02:02:40
(00:00:49.433)
Cropped



As Ptlm. Voyer lifted Mr. [REDACTED] head, the officer on Mr. [REDACTED] left side grabbed his left arm and moved it back while Ptlm. Voyer continued to lift Mr. [REDACTED] head.

Voyer BWC, 02:02:40
(00:00:49.833)



Voyer BWC, 02:02:41
(00:00:50.200)
Marked



PtIm. Voyer then lifted Mr. [REDACTED] head from his grip underneath Mr. [REDACTED] chin.

At the same time that PtIm. Voyer was lifting Mr. [REDACTED] head, PtIm. Colicci and another officer had placed both of Mr. [REDACTED] arms behind his back, as reflected in the screen capture on the following page:

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Synchronized BWC Video
Labelled



Ptlm. Voyer extended Mr. [redacted] neck so that his face—which was apparently uninjured at the time—was up and forward as Ptlm. Colicci and another officer were holding both of Mr. [redacted] arms behind, as reflected in the following screen capture:

Synchronized BWC Video
Labelled



PtIm. Voyer's positioning at approximately this time is visible on PtIm. Manown's BWC, as reflected in the following screen capture:



The Rhode Island State Police investigation described Ptlm. Voyer's actions by stating that he "applied a mandibular angle pressure point."⁴² Ptlm. Voyer's actions are not consistent with applying pressure to the mandibular angle pressure point. The mandibular angle pressure point is at the *back* of the jaw, roughly underneath the ear lobe between the mandible and the mastoid. As described in one Police Magazine article, "**Mandibular Nerve (behind the ear)**—With a thumb or knuckle, you can apply pressure just behind the ear on the back of the jaw."⁴³ Reaching under the *front* of an individual's chin is not consistent with the application of a mandibular nerve pressure point. Additionally, officers are trained to apply the mandibular nerve pressure point by applying pressure into and across the subject's head, not lifting the subject.

About a second after he started lifting Mr. ██████ chin, Ptlm. Voyer moved his right hand toward the back of the bottom-right side of Mr. ██████ head.⁴⁴ This position is more consistent with the position required to apply the mandibular nerve pressure point, but Ptlm. Voyer does not seem to be applying any counter pressure with his left hand or pushing in with his right thumb, knuckles, or fingers in a way that puts pressure on the appropriate spot. Additionally, Ptlm. Voyer appears to have stayed in a position with his right hand toward the back of the bottom-right side of Mr. ██████ jaw for less than a second-and-a-half before moving his right hand off of Mr. ██████ head.

At the time, Mr. ██████ was still lying stomach down with his hands behind his back, but with his head pulled upward and forward by Ptlm. Voyer.

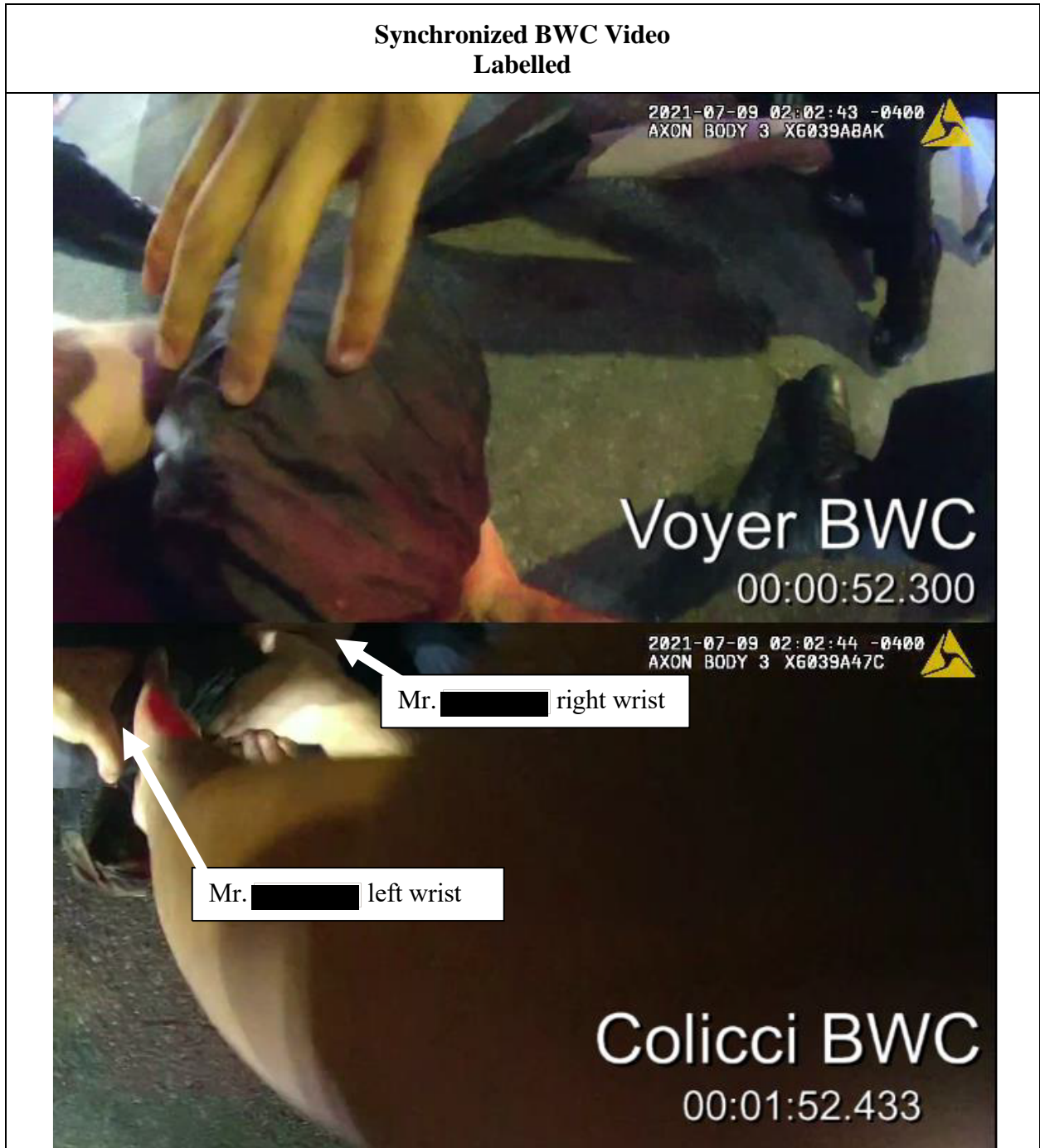
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⁴² Rhode Island State Police, Officer Involved Use of Force Investigation, p. 96.

⁴³ Michael Schlosser and Dallas Schlosser, *Gaining Compliance with Targeted Pressure*, POLICE MAGAZINE, Apr. 7, 2016 (emphasis in original).

⁴⁴ Voyer BWC, 02:02:42 (00:00:51.500).

While Mr. [REDACTED] was in this position, Ptlm. Diaz approached from the front and reached his left hand toward the top of Mr. [REDACTED] head.⁴⁵ As he did so, Ptlm. Colicci and another officer were holding both of Mr. [REDACTED] hands behind his back, as reflected in the following screen capture:



⁴⁵ Voyer BWC

Ptln. Diaz put his left hand on top of Mr. [REDACTED] head, apparently pushing it up and back as reflected in the following screen capture:



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Ptln. Diaz then used what appears to be a closed-fist punch to strike Mr. [REDACTED], apparently hitting him in the face.⁴⁶ Ptln. Diaz's first strike is marked in the following screen capture:



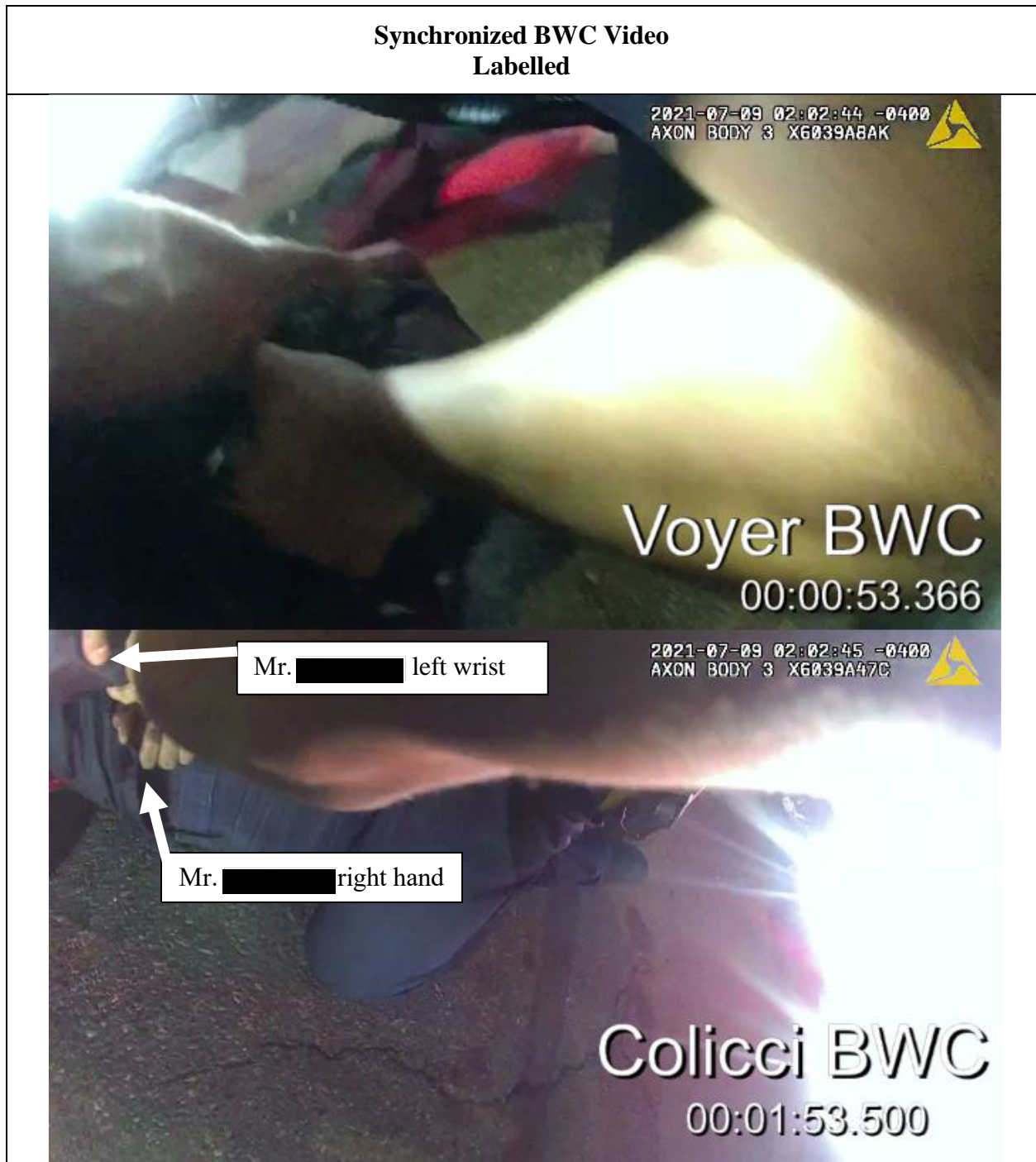
This space intentionally left blank.

At the time, Ptlm. Colicci and another officer had been holding Mr. [REDACTED] hands behind his back, as reflected in the following screen capture (the fingers of Mr. [REDACTED] right hand are obstructed by Ptlm. Colicci's right hand, but are visible in the frames immediately before and after the following screen capture), for at least a second-and-a-half:

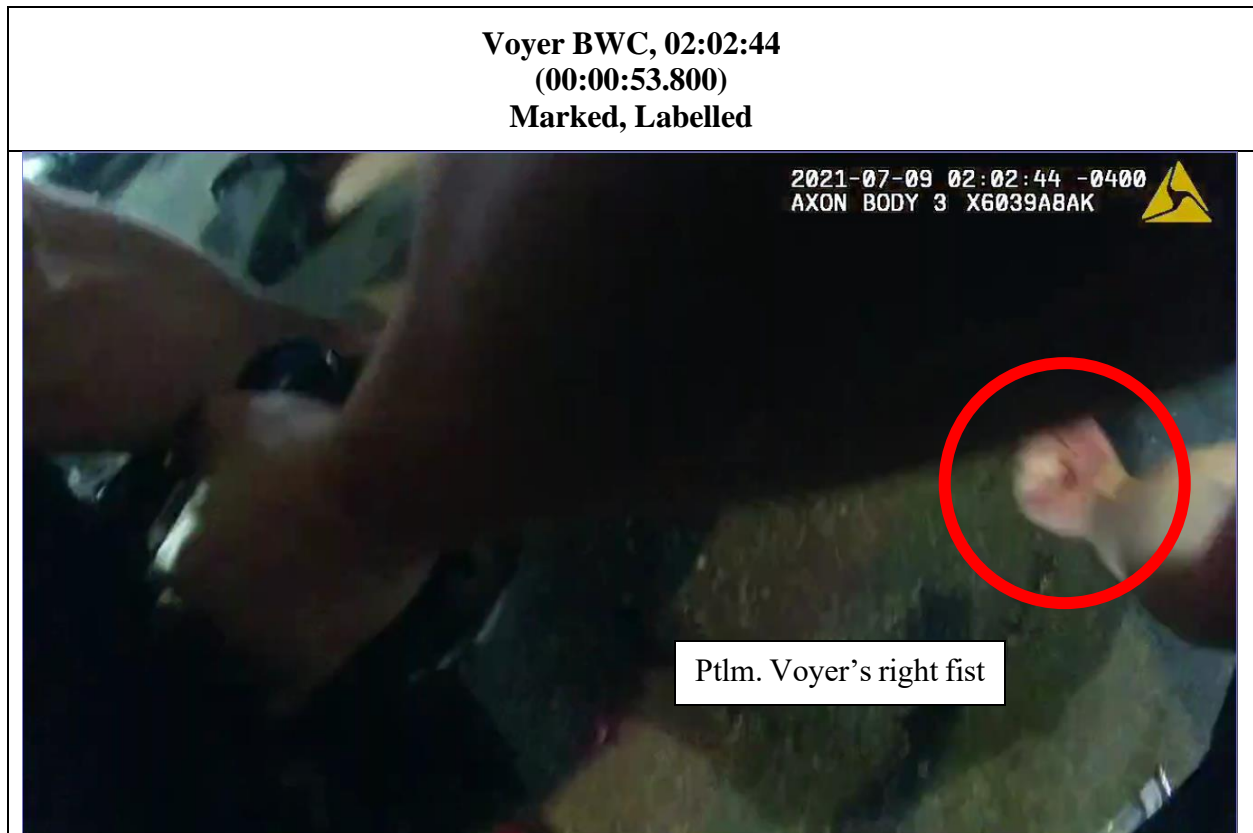


After Ptlm. Diaz's first strike, Ptlm. Voyer released Mr. [REDACTED] head with his right hand and, still using his left hand to hold Mr. [REDACTED] under the chin, appears to throw a series of five closed-fist punches that struck Mr. [REDACTED] on the side of his head.

Immediately before—that is, 0.133 seconds before—Ptlm. Diaz's second strike and Ptlm. Voyer's first strike, Ptlm. Colicci and another officer were still holding Mr. [REDACTED] hands behind his back, as reflected in the following screen capture:

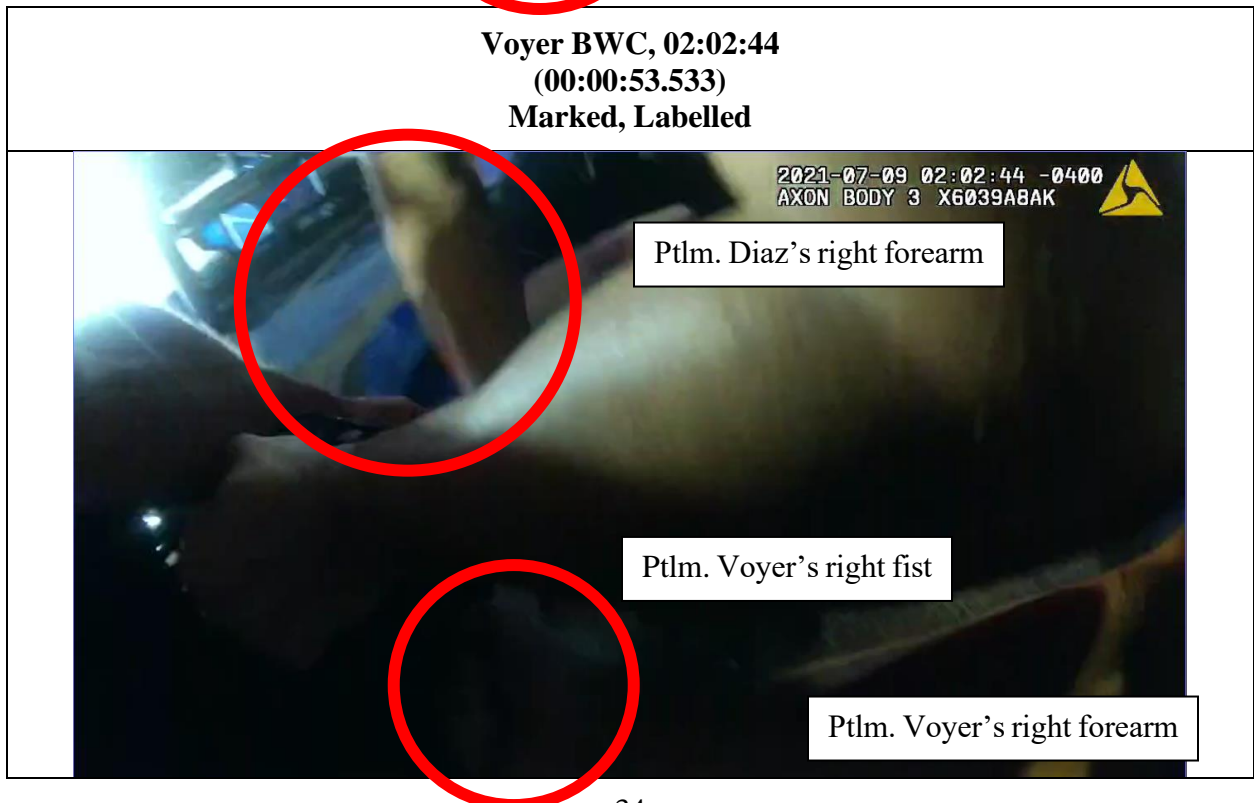
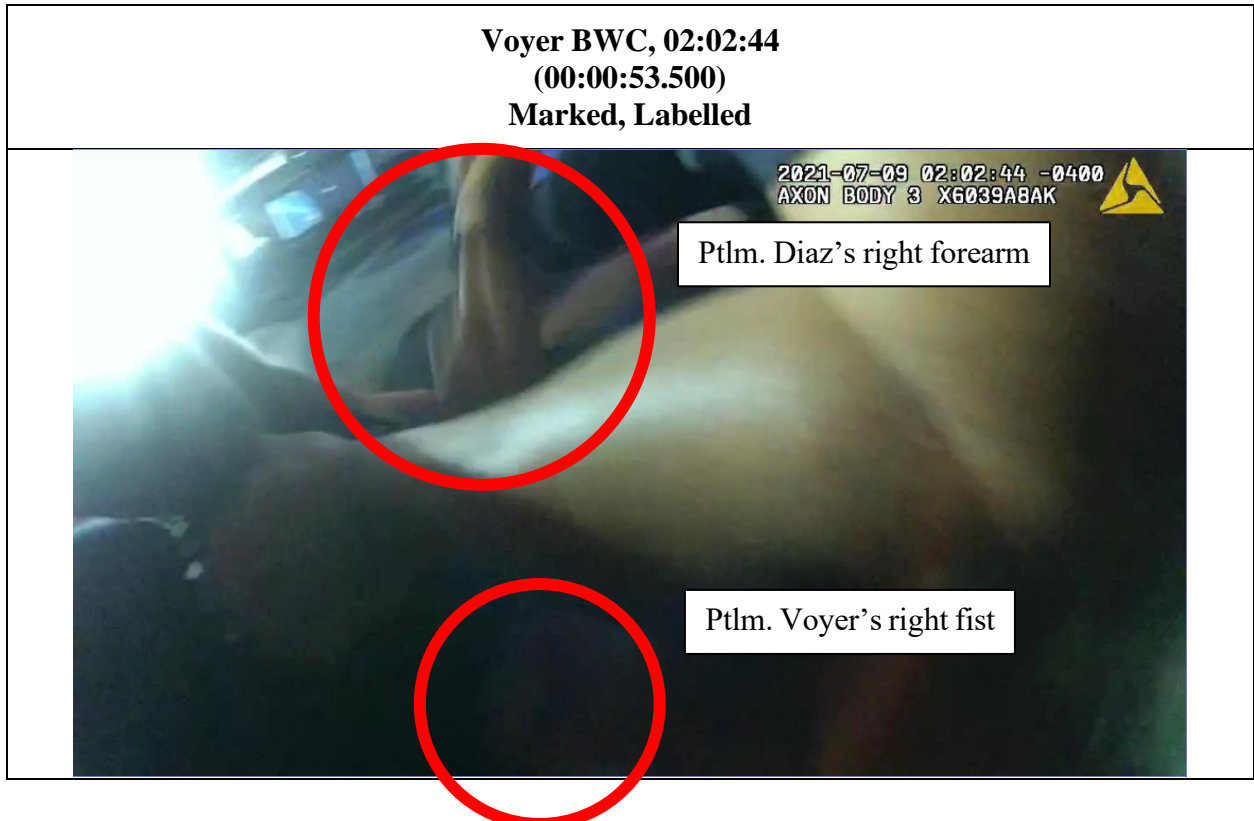


Although partially obscured by Ptlm. Diaz’s left forearm—while his hand remained on top of Mr. ██████ head—Ptlm. Voyer retracted his right hand before striking Mr. ██████ for the first time in the face or the right side of face or head, as reflected in the following screen captures.



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Ptln. Diaz's second strike and Ptln. Voyer's first strike are reflected in the following screen captures:



Ptln. Voyer then partially retracted his arm and threw a second closed-fist punch, as reflected in the following screen captures:



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Although the point of contact of Ptlm. Voyer's second strike is obscured, Mr. [REDACTED] head moves slightly to the left in a manner consistent with being punched in the face or head:

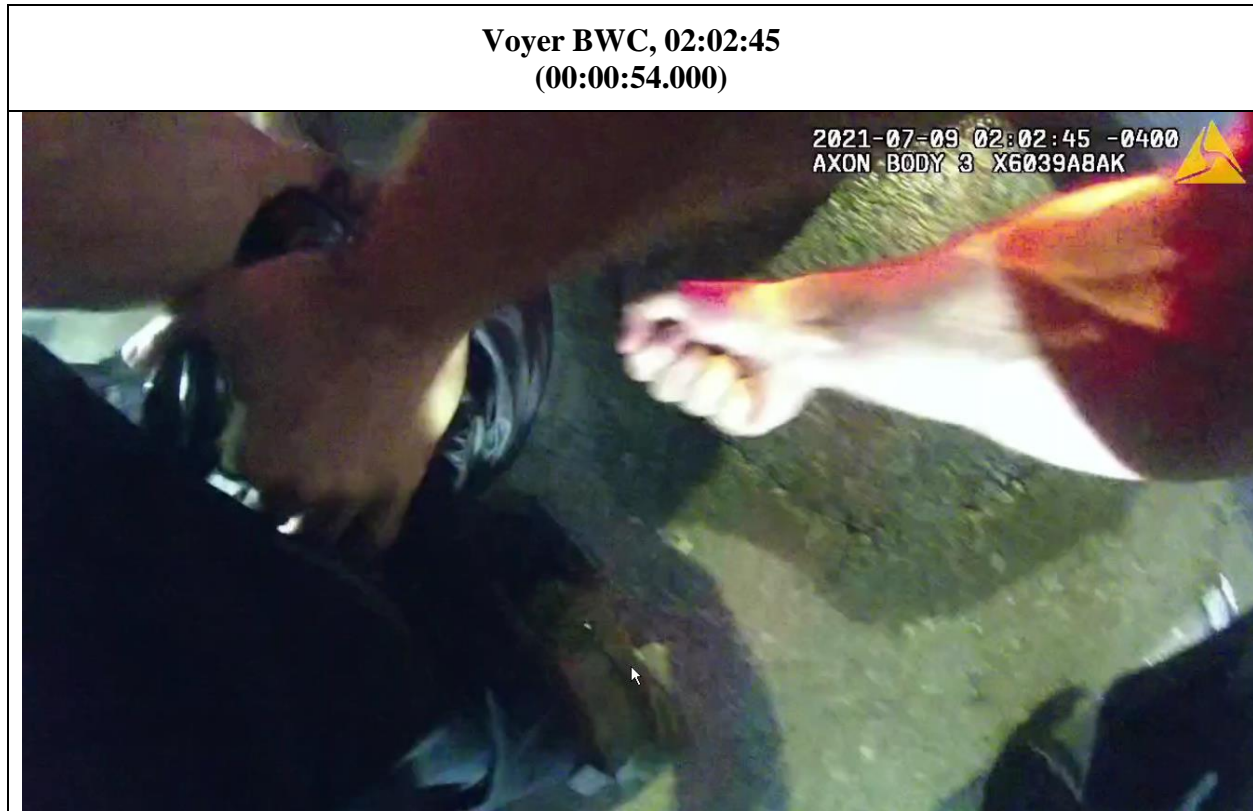
**Voyer BWC, 02:02:44
(00:00:53.866)**



**Voyer BWC, 02:02:44
(00:00:53.900)**

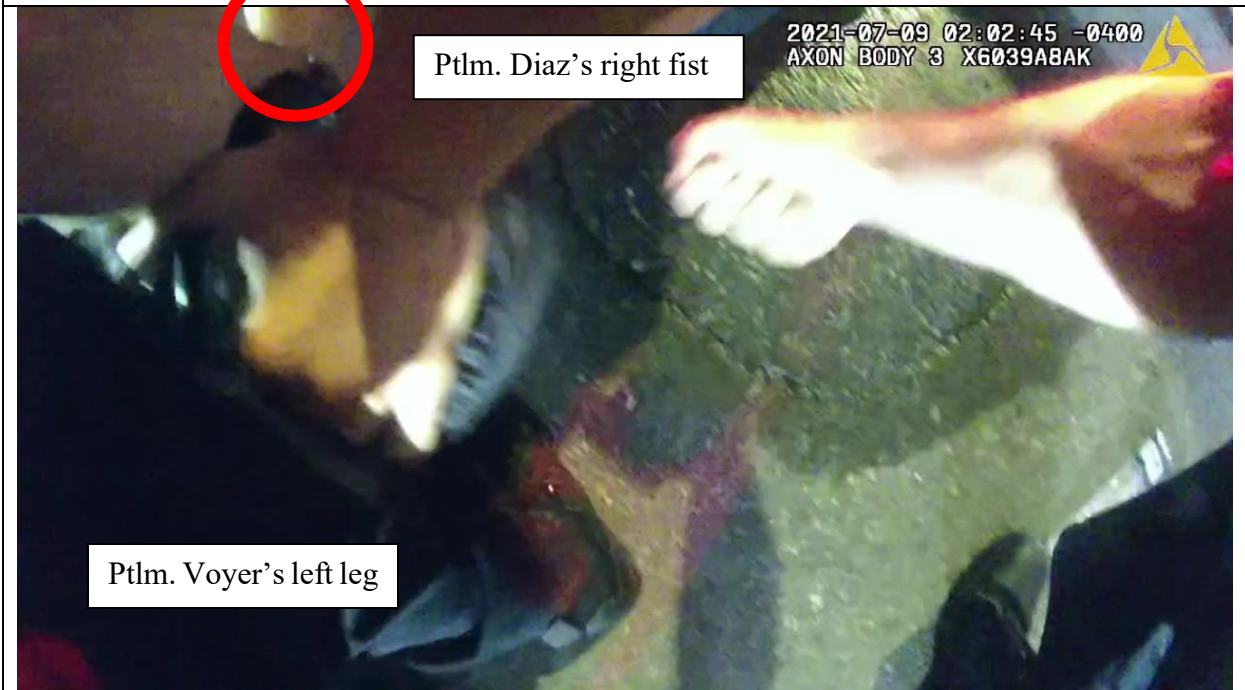


Immediately after that, Ptlm. Diaz throws a third strike and Ptlm. Voyer throws a third strike. Although partially obscured by Ptlm. Voyer's left arm, the following screen captures appear to show Ptlm. Diaz's right hand coming forward, following immediately by Mr. [REDACTED] head angling to the right, in the direction from which the apparent strike came.



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Voyer BWC, 02:02:45
(00:00:54.033)
Marked, Labelled



Voyer BWC, 02:02:45
(00:00:54.066)



Voyer BWC, 02:02:45
(00:00:54.100)



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Immediately after Ptrl. Diaz's third strike, Ptrl. Voyer struck a third time. The point of impact appears to be low on the right side of Mr. [REDACTED] head or neck, as reflected in the following screen captures:

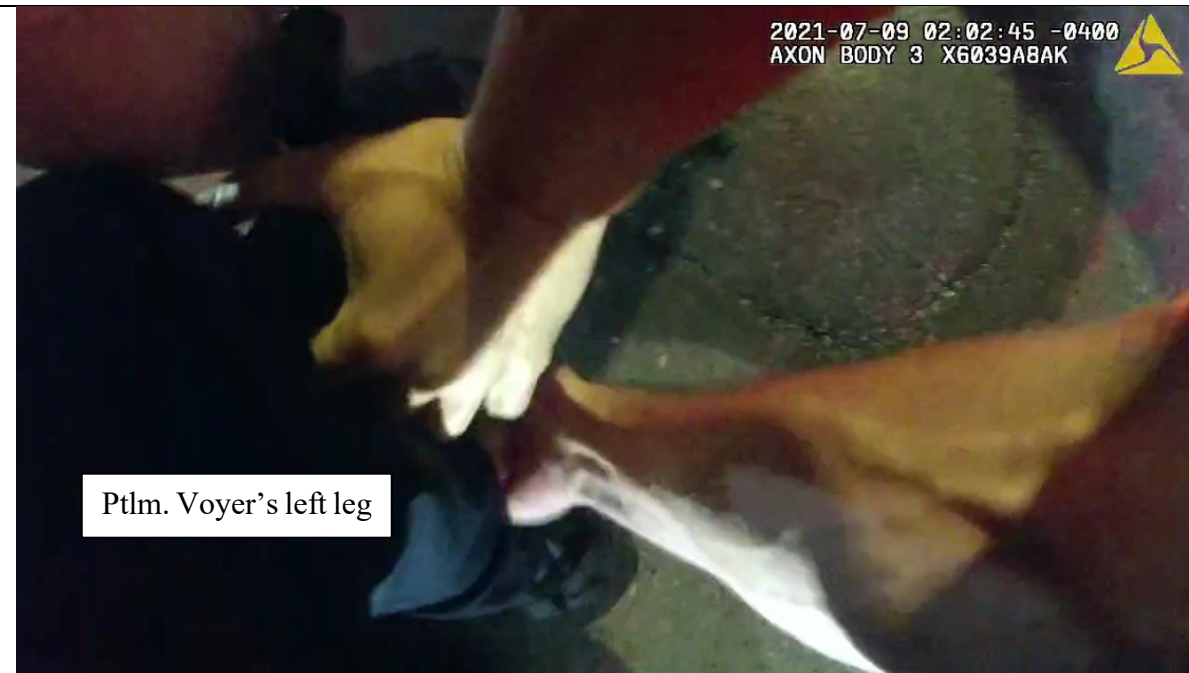


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Voyer BWC, 02:02:45
(00:00:54.233)
Labelled



Voyer BWC, 02:02:45
(00:00:54.266)
Labelled



Immediately after his third strike, Ptrl. Voyer struck a fourth time, hitting Mr. [REDACTED], who was turned slightly to his left at the time, in the face or right side of the face or head:

**Voyer BWC, 02:02:45
(00:00:54.600)**



**Voyer BWC, 02:02:45
(00:00:54.666)**

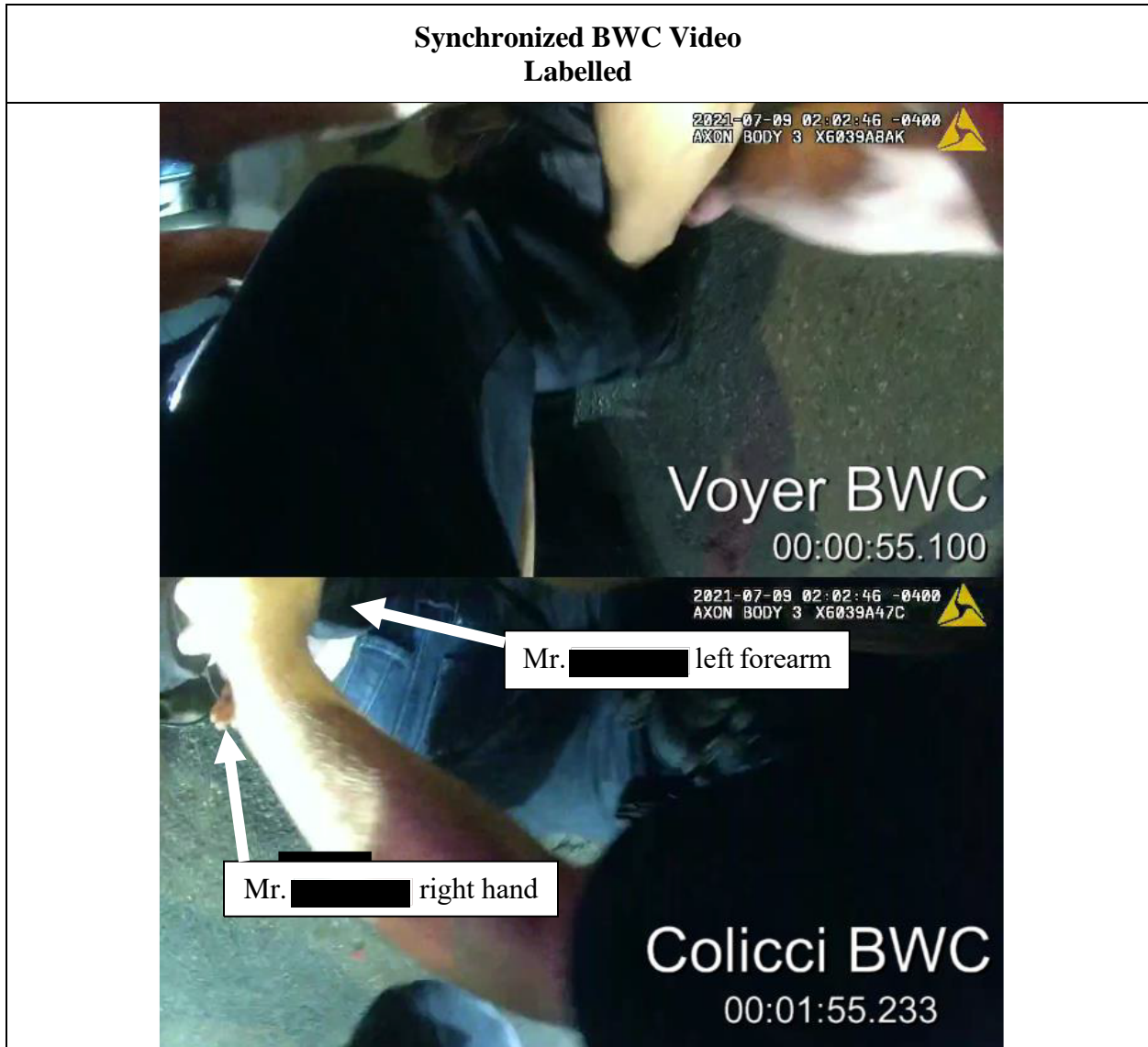


Immediately after his fourth strike, Ptrl. Voyer struck a fifth time, hitting Mr. [REDACTED] as reflected in the following screen captures:



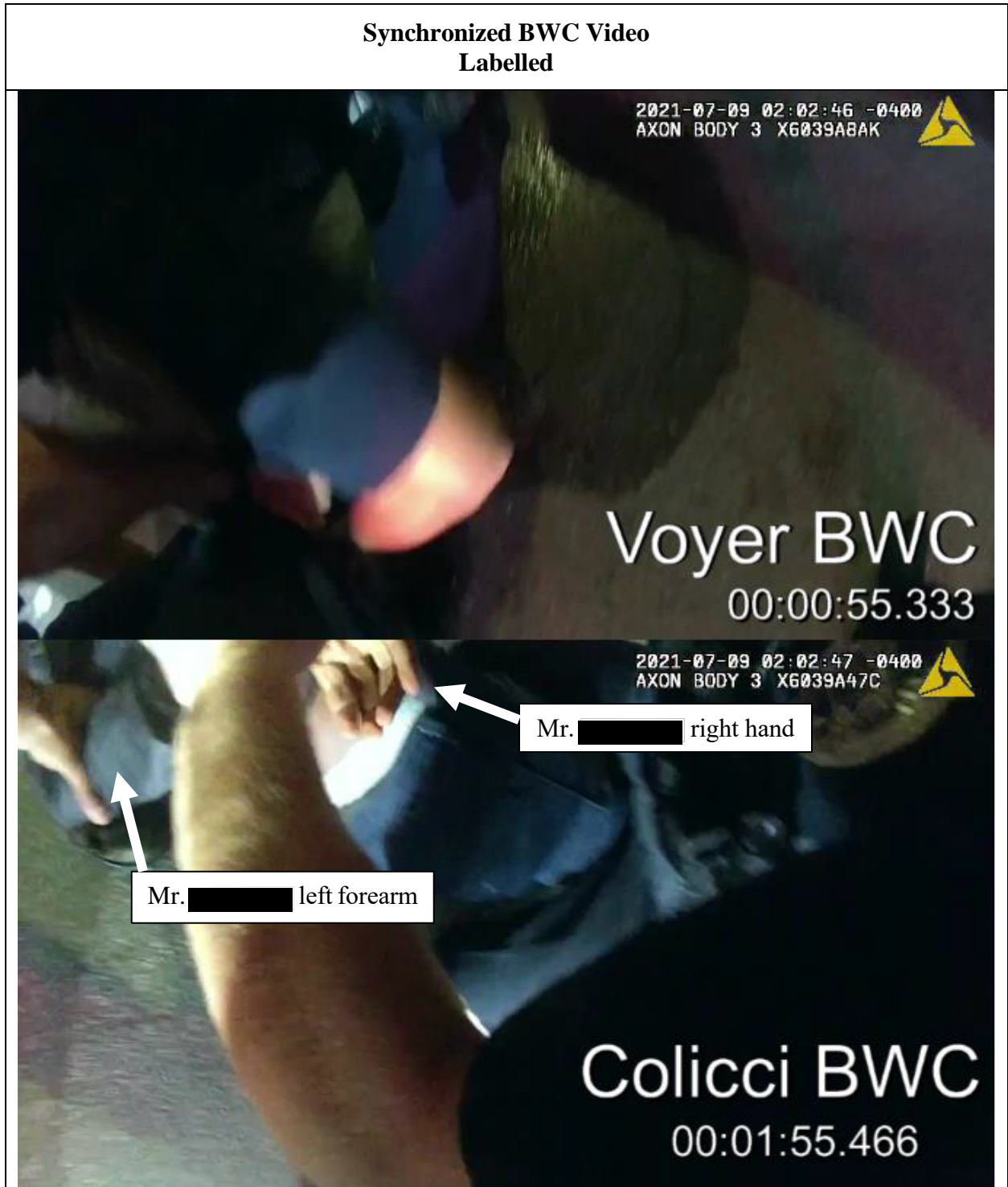
Ptln. Voyer then released Mr. [REDACTED] and stepped away,⁴⁷ temporarily turning his BWC away from Mr. [REDACTED] and Ptln. Diaz.

During Ptln. Diaz's third strike and Ptln. Voyer's second, third, fourth, and fifth strikes, Ptln. Colicci's BWC was obstructed. Less than a tenth of a second after Ptln. Voyer's fifth strike, however, the view from Ptln. Colicci's BWC becomes unobstructed and reveals that Mr. [REDACTED] had rolled at least slightly onto his left side, which suggests that Ptln. Voyer's immediately prior strikes were hitting Mr. [REDACTED] in the face rather than on the right side of face or head. Ptln. Colicci and another officer were still holding Mr. [REDACTED] hands behind his back:



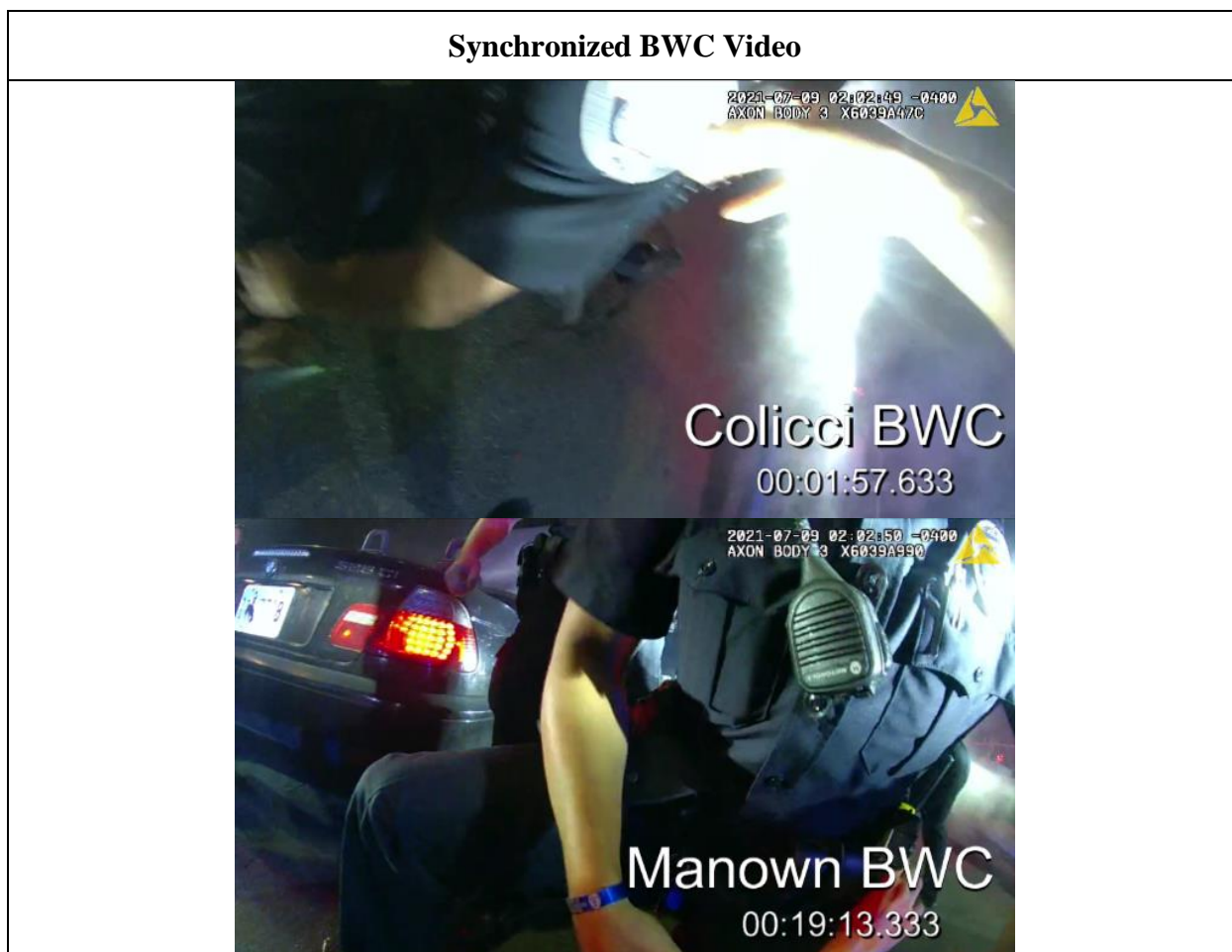
⁴⁷ Voyer BWC, 2:02:46 (00:00:55.633).

The positioning of Mr. [REDACTED] hands behind his back is more clearly visible approximately two-tenths of a second later:



Ptln. Voyer then stood up and faced away from the officers interacting with Mr. ██████.⁴⁸ It is at approximately this point—after Ptln. Diaz struck Mr. ██████ three times and Ptolm. Voyer struck Mr. ██████ five times and turned away—that an unknown officer says, “Hey, stop resisting.”⁴⁹ From a comparison of BWC video from Ptln. Colicci, Ptln. Manown, and Ptln. Voyer, this command appears to be directed at Mr. ██████.⁵⁰

Approximately two seconds later, Mr. ██████ pulled his left hand out of Ptln. Colicci’s grip.⁵¹ At the time, Ptln. Manown was assisting in the apprehension of the passenger who had been pulled out of the rear seat. He was facing in the general direction where Mr. ██████ was lying, as reflected in the following synchronized screen capture:



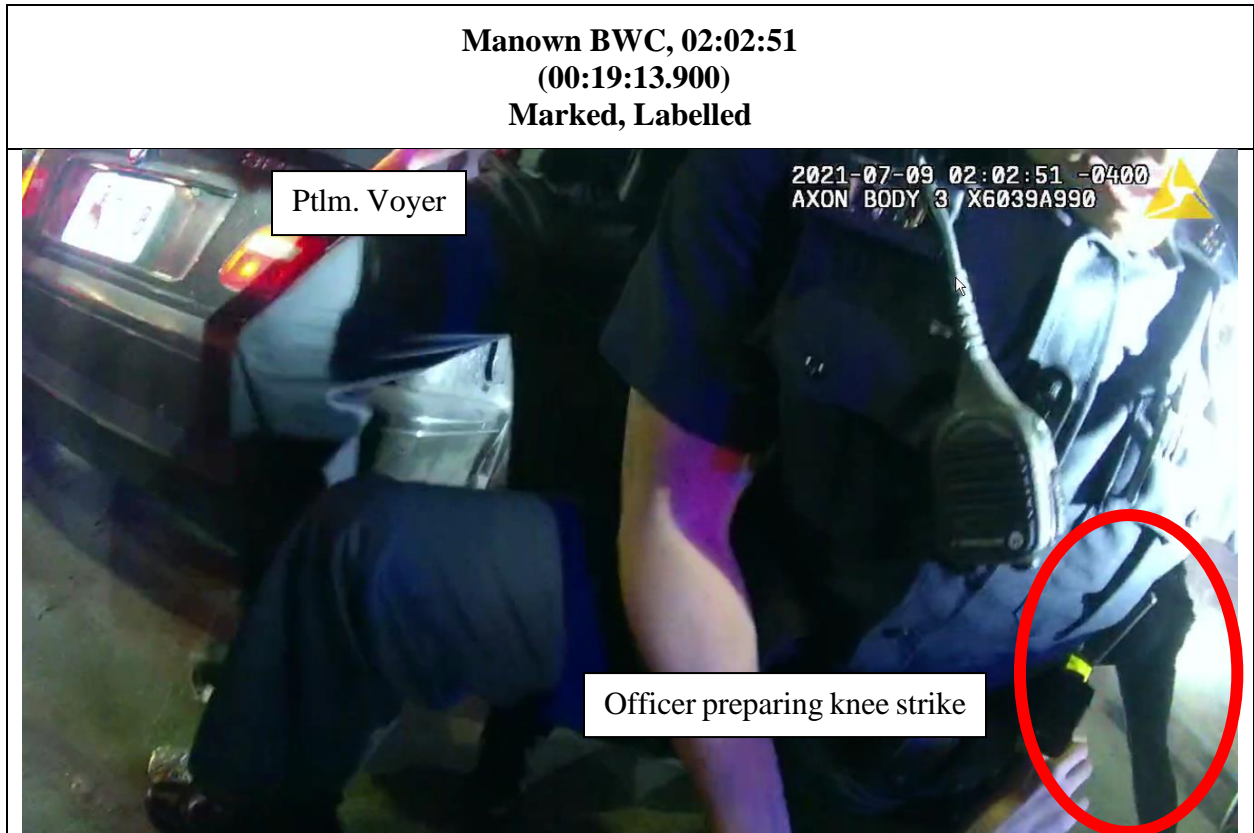
⁴⁸ Voyer BWC, 02:02:46.

⁴⁹ Voyer BWC, 02:02:46.

⁵⁰ Specifically, it is clearly audible on Ptln. Colicci’s and Ptln. Voyer’s BWCs, but only faintly audible on Ptln. Manown’s, which suggests it was used by an officer interacting with Mr. ██████.

⁵¹ Colicci BWC, 02:02:49 (00:01:57.633).

Ptlm. Manown's BWC reflects that an unidentified officer who was on Mr. [REDACTED] left side used at least two knee strikes, as reflected in the following screen captures:



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**Manown BWC, 02:02:51
(00:19:13.900)
Cropped**



This space intentionally left blank.

Manown BWC, 02:02:51
(00:19:14.033)
Cropped



Manown BWC, 02:02:52
(00:19:14.600)
Cropped



**Manown BWC, 02:02:52
(00:19:15.000)
Cropped**



The knee strikes occurred after Mr. ██████ had pulled his left arm away from Ptlm. Colicci⁵² and prior to officers regaining control of it.⁵³ Although not entirely clear from the video, it appears that Mr. ██████ may also have pulled his right hand away from officers prior to the knee strikes.

Ptlm. Voyer then turned back toward Mr. ██████, who was lying face down with three officers immediately around him.⁵⁴ One officer was positioned on his upper legs or lower back, and another was positioned off of his left shoulder. Both of those officers appear to have their hands on top of Mr. ██████.⁵⁵ Ptlm. Diaz struck Mr. ██████ for at least the fourth time, as reflected in the following screen captures:



⁵² Colicci BWC, 02:02:49 (00:01:57.633).

⁵³ Colicci BWC, 02:02:49 (00:01:59.066).

⁵⁴ Voyer BWC, 02:02:51 (00:01:00.533).

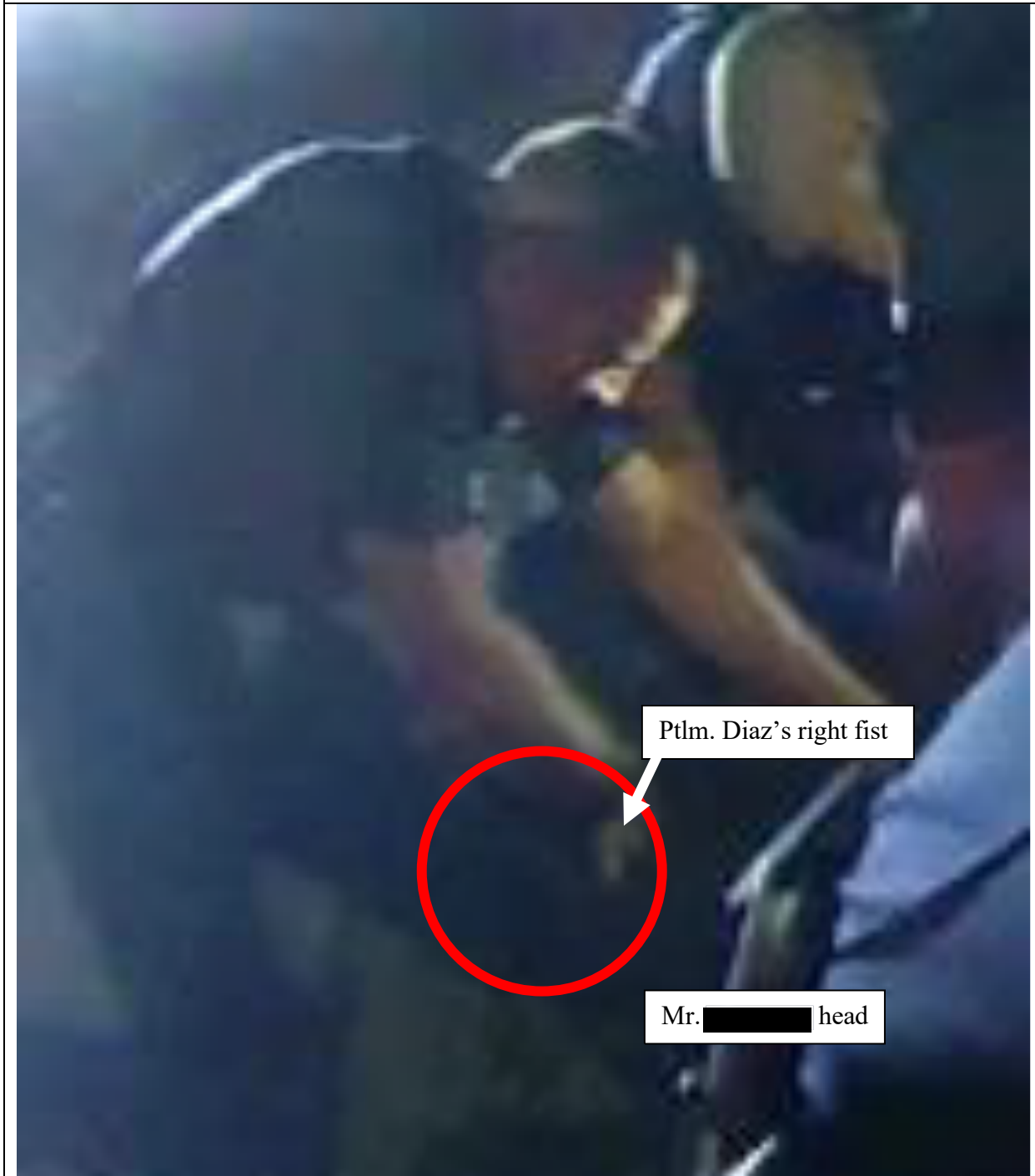
⁵⁵ Voyer BWC, 02:02:51 (00:01:00.100).

Ptln. Diaz's fourth strike appears to hit Mr. [REDACTED] in the side of the face or head, as reflected in the following screen captures:



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Voyer BWC, 02:02:51
(00:01:00.500)
Cropped, Marked, Labelled



Ptln. Diaz then appears to strike Mr. ██████ for the fifth time, as reflected in the following screen capture, although it is not clear whether the strike landed because of an officer interposed between Ptln. Voyer's BWC and Mr. ██████.



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At the same time, Ptlw. Sanchez was approaching. Ptlm. Diaz's raised right arm appears in multiple officers' BWC video footage, as reflected in the following synchronized screen captures:



At approximately that time, Mr. [REDACTED] was still lying on his left side and had brought his left hand up to his face; officers were holding his right arm by his side; his right hand appears to have been down by his waist in front of him. Ptlm. Diaz then struck Mr. [REDACTED] for at least the sixth time, as reflected in the screen captures from the synchronized videos:



Synchronized BWC Video
Marked



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At that point, Ptlm. Voyer again turned and walked away from where Mr. [REDACTED] and Ptrl. Diaz were laying.⁵⁶ Ptlw. Sanchez and Ptlm. Manown, however, were still in a position for their BWCs to record at least some of Ptlm. Diaz's actions.⁵⁷ Ptlm. Diaz threw a seventh strike, as reflected in the following screen capture:



⁵⁶ Voyer BWC, 02:02:53.

⁵⁷ Manown BWC, 02:02:53.

**Manown BWC, 02:02:55
(00:19:17.733)
Cropped**



**Manown BWC, 02:02:55
(00:19:17.766)
Cropped**



The location where that strike struck Mr. [REDACTED] is obscured by an officer's interposed forearm.

PtIm. Diaz then threw what was at least his eighth strike, as reflected in the following screen captures from PtIm. Manown's BWC:



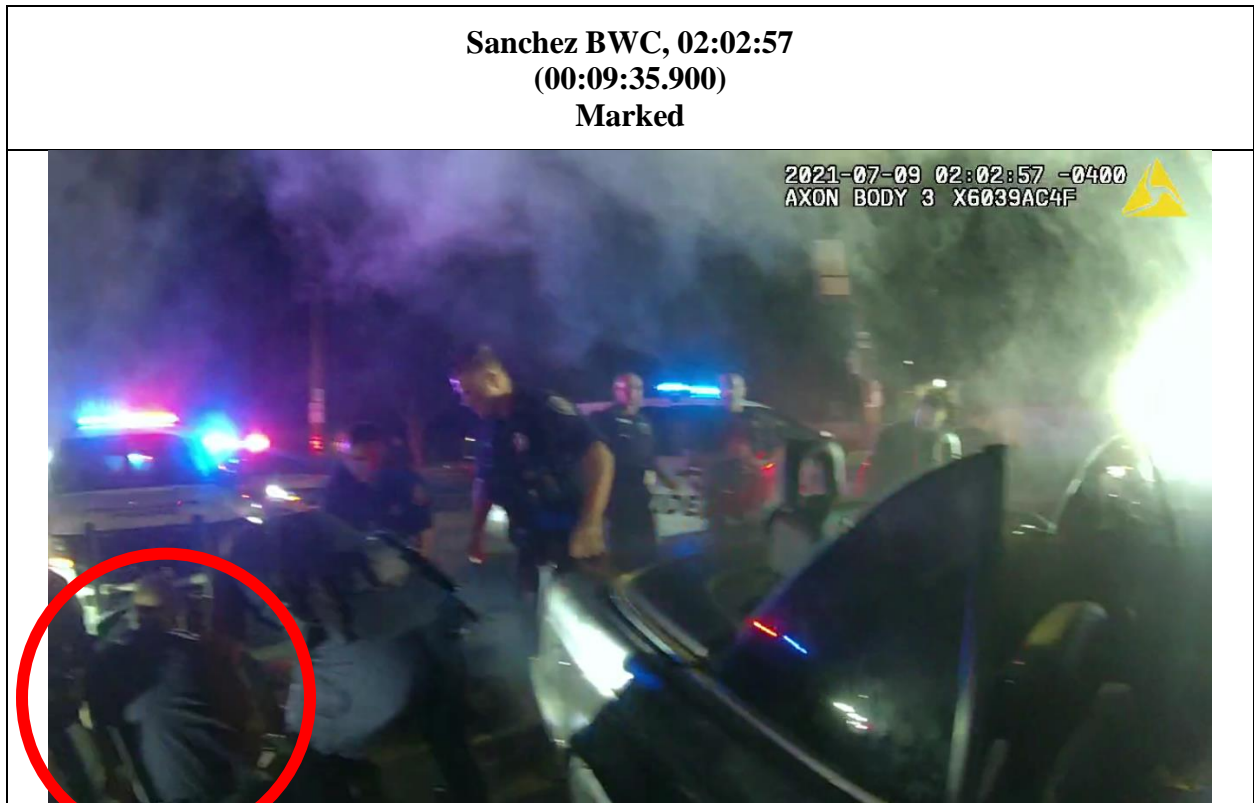
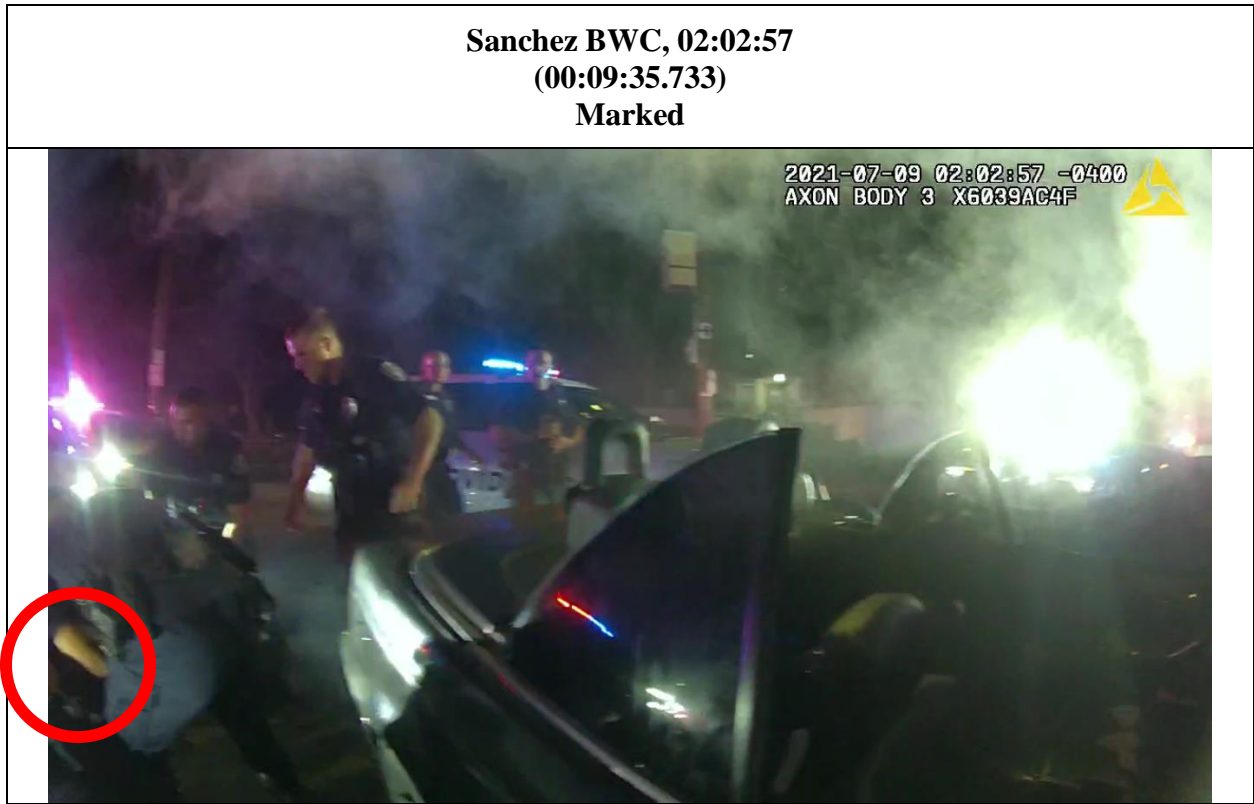
The first portion of Ptlm. Diaz’s strike, as he retracts his arm in preparation for the strike, can also be seen on Ptlw. Sanchez’s BWC, as reflected in the following screen capture:



At the time, Ptlw. Sanchez was walking past the spot where officers were interacting with Mr. [REDACTED], toward the crashed subject vehicle.⁵⁸ After briefly examining the vehicle, Ptlw. Sanchez turned back toward where officers were interacting with Mr. [REDACTED]. As the following screen captures reflect, Ptlm. Diaz continued to throw closed-fist strikes, although exactly where they hit Mr. [REDACTED] is not clear from the video footage.

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Ptln. Diaz threw what was at least his ninth strike, as reflected in the following screen captures:



Ptln. Diaz threw what was at least his tenth strike, as reflected in the following screen captures:

**Sanchez BWC, 02:02:58
(00:09:36.700)
Marked**



**Sanchez BWC, 02:02:59
(00:09:37.100)
Marked**



Ptlm. Diaz struck Mr. [REDACTED] for an eleventh time, as reflected in the following screen captures:

**Sanchez BWC, 02:02:59
(00:09:38.000)
Marked**



**Sanchez BWC, 02:03:00
(00:09:38.133)
Marked**



Ptln. Diaz struck Mr. [REDACTED] a twelfth time, as reflected in the following screen captures:



Ptln. Diaz struck Mr. [REDACTED] a thirteenth time, as reflected in the following screen captures:

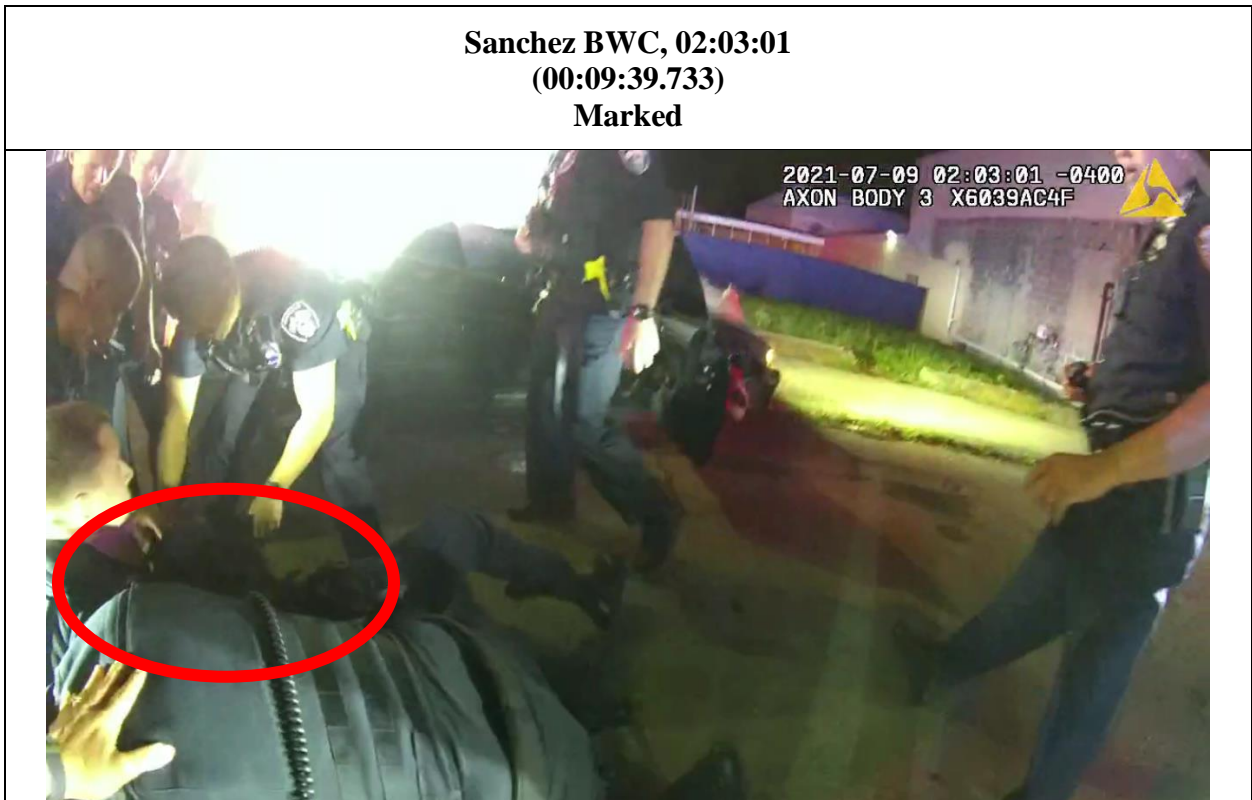
**Sanchez BWC, 02:03:01
(00:09:39.133)
Marked**



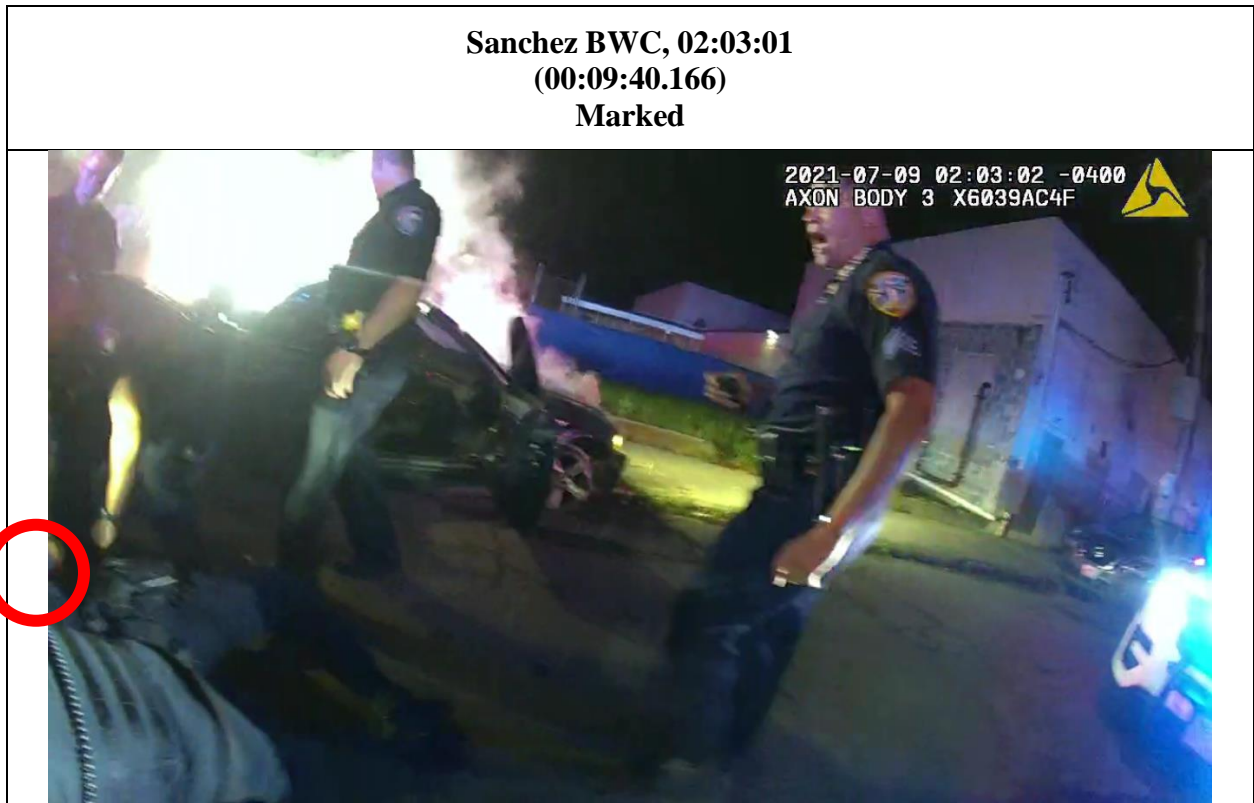
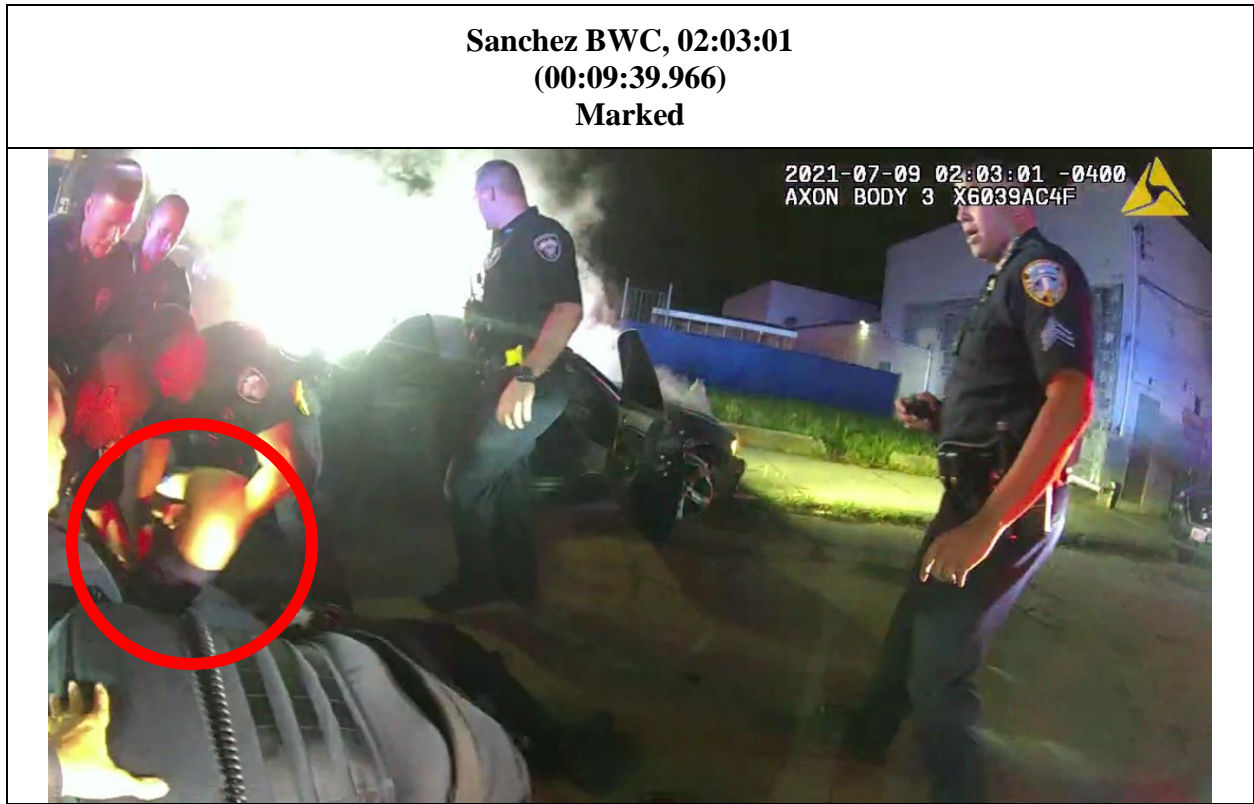
**Sanchez BWC, 02:03:01
(00:09:39.300)
Marked**



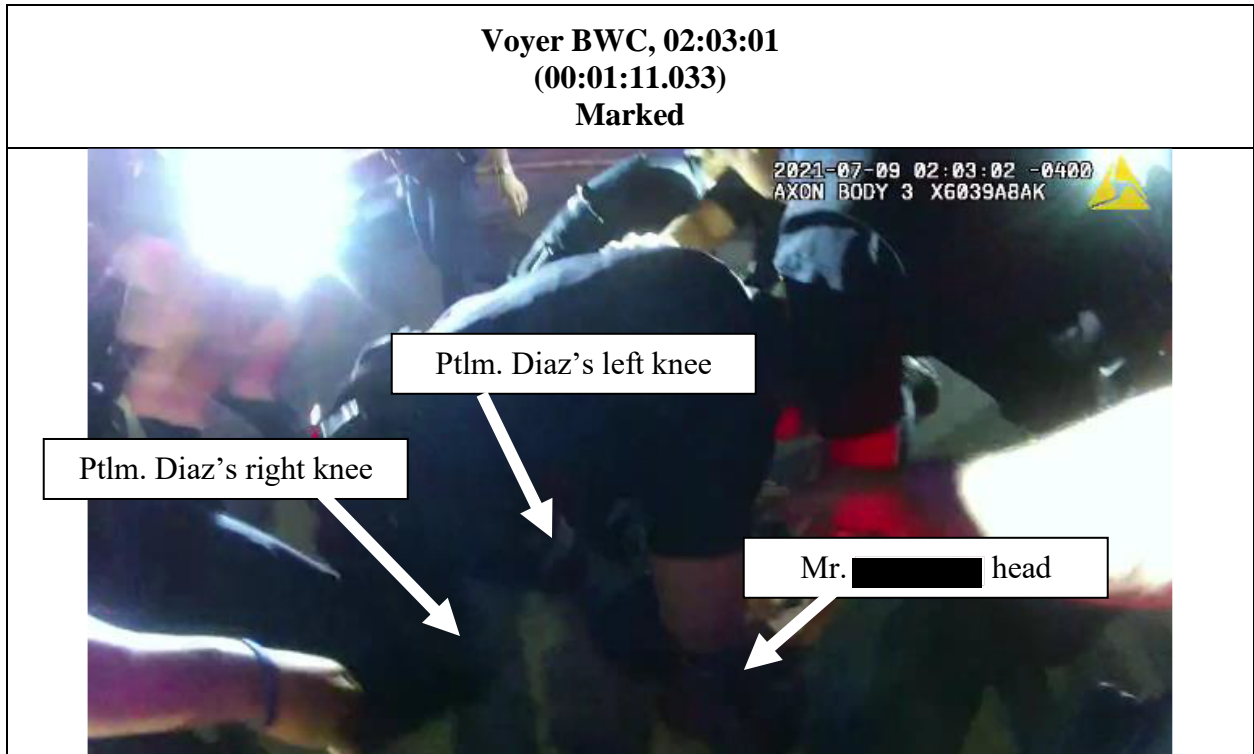
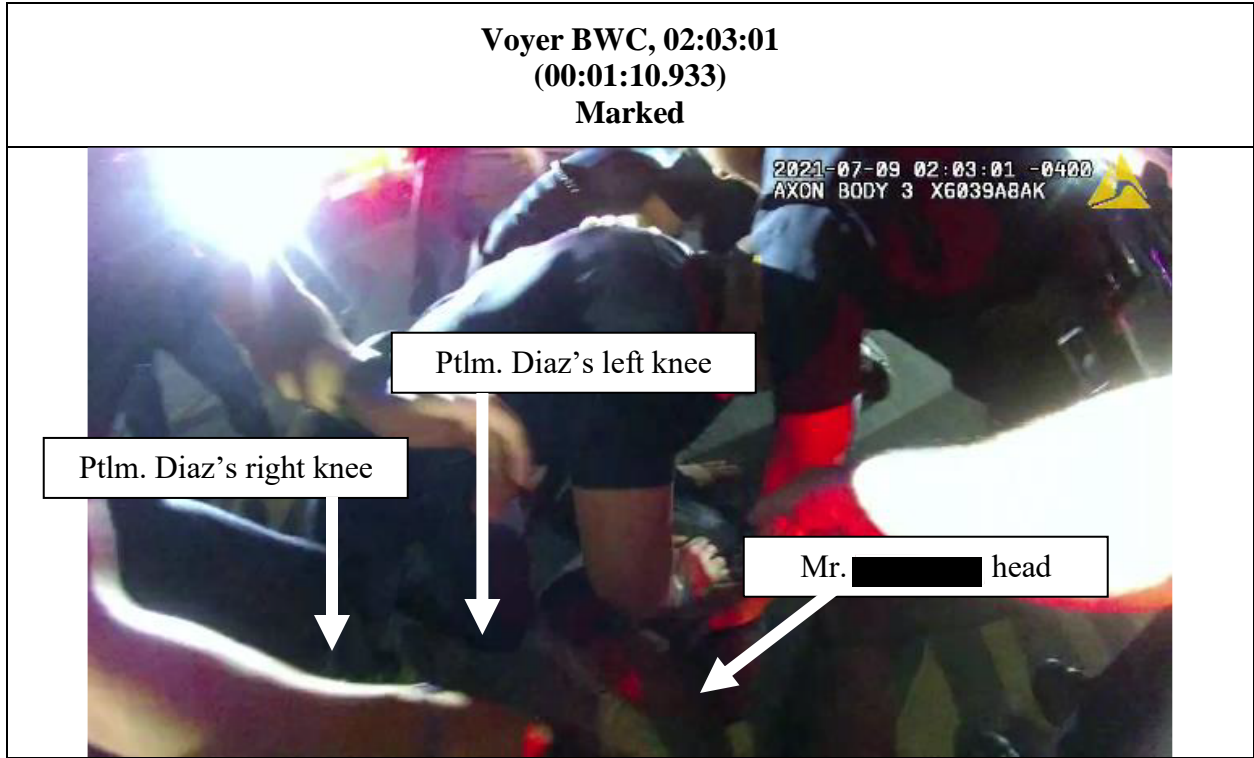
Ptln. Diaz struck Mr. [REDACTED] a fourteenth time, as reflected in the following screen captures:



Ptln. Diaz struck Mr. [REDACTED] with a fifteenth punch, as reflected in the following screen captures:



Ptln. Voyer had returned to where officers were interacting with Mr. [REDACTED], and his BWC recorded what appears to be Ptln. Diaz using a knee strike to Mr. [REDACTED] face or head, as reflected in the following screen captures:



Voyer BWC, 02:03:01
(00:01:11.033)
Marked



Voyer BWC, 02:03:01
(00:01:11.166)
Marked



The movement of Ptlm. Diaz's legs and body are also visible on Ptlw. Sanchez's BWC, which shows his right leg first extended behind him then rapidly come forward, as reflected in the following screen captures:



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**Sanchez BWC, 02:03:02
(00:09:41.133)
Cropped, Brightness Increased (20%), Contrast Reduced (40%)**



**Sanchez BWC, 02:03:02
(00:09:41.300)
Cropped, Brightness Increased (20%), Contrast Reduced (40%)**



In short, Ptlm. Diaz, who had been in in a position with his hips angled and his left side toward Mr. ██████, rapidly brought his right knee forward while simultaneously moving his left knee back and to the side, a movement characteristic of a knee strike from a kneeling position against a subject on the ground.

Ptlm. Diaz then struck Mr. ██████ with a sixteenth punch, as reflected in the following screen captures:



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**Sanchez BWC, 02:03:03
(00:09:41.966)
Marked**



Ptlm. Diaz appears to strike Mr. [REDACTED] with a seventeenth closed-fist punch, this time using his left hand to do so, as reflected in the following screen captures:



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Ptln. Diaz punched Mr. ██████ at least seventeen times. It is possible that Ptln. Diaz, who was effectively punching Mr. ██████ for the entire approximately twenty seconds that he was immediately next to him,⁵⁹ punched Mr. ██████ more than seventeen times. For example, at least at one point during the interaction, Ptln. Diaz threw four strikes over a roughly two second period,⁶⁰ which suggests he had time to throw more than seventeen strikes in twenty seconds. It is possible that Ptln. Diaz threw additional strikes that were not video recorded because of the movements of the various officers wearing BWCs, the various obstructions, and the BWCs' limited field of view.

Ptln. Sanchez later stated that she saw at least one other officer strike Mr. ██████, but she did not remember who it was.⁶¹ Ptln. Colicci later indicated that he struck Mr. ██████,⁶² but such actions do not appear on the BWC video.

Before Ptln. Diaz's seventeenth strike, Sgt. Perez approached, said, apparently communicating via radio, "Alright, Code 3, Code 3, apprehended,"⁶³ and then yelled, "Cuff him!"⁶⁴ He repeated that direction six additional times⁶⁵ as Ptln. Diaz threw at least an additional four strikes and the knee strike. As Ptln. Diaz continued to strike Mr. ██████, Sgt. Perez, who continued to yell, "Cuff him!" and Ptln. Voyer physically pulled Ptln. Diaz away, as reflected in the following screen captures:



⁵⁹ Voyer BWC (00:00:52.733 – 00:01:12.433).

⁶⁰ Sanchez BWC (00:09:38.000 – 00:09:39.733).

⁶¹ Statement of Demaris Sanchez, July 26, 2021, p. 7.

⁶² Witness Statement of Nathaniel Colicci, July 9, 2021.

⁶³ Perez BWC, 02:02:54.

⁶⁴ Perez BWC, 02:02:58.

⁶⁵ Sanchez BWC, 02:03:02; Rhode Island State Police, Officer Involved Use of Force Investigation, p. 133.

Sanchez BWC, 02:03:05
(00:09:43.633)



Sanchez BWC, 02:03:05
(00:09:44.100)



Ptln. Diaz attempted to pull away from Sgt. Perez, making a swinging motion with his arms.⁶⁶ After pulling Ptln. Diaz away, Sgt. Perez continued to yell for officers to handcuff Mr. ██████, who was lying face down with his left forearm underneath his face and his right arm bent⁶⁷ so that his hand was underneath his upper chest.⁶⁸ At the time, one of the officers had seized and was removing a small bag, as reflected in the following screen capture:



Mr. ██████ appeared limp as officers handcuffed him, rolled him over,⁶⁹ and sat him up.⁷⁰

⁶⁶ Sanchez BWC, 02:03:05.

⁶⁷ Voyer BWC, 02:03:05 (00:01:13.333).

⁶⁸ Voyer BWC, 02:03:06 (00:01:15.533).

⁶⁹ Voyer BWC, 02:03:39.

⁷⁰ Voyer BWC, 02:03:40.

When they did so, blood was visible on both the ground and on Mr. [REDACTED] face:

**Voyer BWC, 02:03:26
(00:01:45.766)
Cropped, Labelled**



**Manown BWC, 02:03:43
(00:20:06.233)
Cropped**



Sgt. Troia, who arrived on scene while Mr. ██████ was still on the ground, instructed the officers, “Get him Rescue,” almost immediately after arriving.⁷¹

At some point after Mr. ██████ had been secured in handcuffs and while he was sitting on the ground, an unknown officer—apparently *not* Ptlm. Diaz⁷²—shouted, “Fucking kidding me.”⁷³ Ofc. Diaz approached, squatted and bent to put his face closer to Mr. ██████ face, and spit on the ground or Mr. ██████.⁷⁴ The screen capture on the following page is provided for reference.

⁷¹ Troia BWC, 02:03:26.

⁷² Troia BWC, 02:03:43.

⁷³ Najarian BWC, 02:03:39.

⁷⁴ Buten BWC, T06:03:47Z.

Voyer BWC, 02:03:47
(00:01:56.766)



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Officers bodily lifted Mr. [REDACTED] from the sitting position and placed with his back against a nearby police vehicle; the video suggests that he did not assist with this movement.⁷⁵ Mr. [REDACTED]'s face was bloodied and he sat limply, as reflected in the following screen captures:



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⁷⁵ Sepe BWC, 02:04:20.

Sepe BWC 02:05:03



After donning a pair of gloves, Ptlm. Sepe interacted with Mr. [REDACTED], including rubbing his sternum, a technique used to check responsiveness.⁷⁶ Shortly thereafter, Ptlm. Sepe asked for a pen and apparently checked Mr. [REDACTED] responsiveness by pressing the pen into one of Mr. [REDACTED] fingernail beds, stating, “He’s alert to pain.”⁷⁷

Officers then moved Mr. [REDACTED] to a nearby sidewalk; again, Mr. [REDACTED] does not appear to assist with the movement.⁷⁸ Officers placed Mr. [REDACTED] into a sitting position and held him up.⁷⁹ Ptlm. Sepe continued to use sternum rubs,⁸⁰ telling a sergeant, “Yeah, he’s alright, sarge. He’s in and out.”⁸¹ Ptlm. Sepe later repeated that Mr. [REDACTED] was “in and out of it.”⁸² Ptlm. Sepe identified an injury to Mr. [REDACTED] mouth and attributed it to “the airbags,” saying explicitly that he was

⁷⁶ Sepe BWC, 02:05:06.

⁷⁷ Sepe BWC, 02:05:40.

⁷⁸ Sepe BWC, 02:06:02.

⁷⁹ Sepe BWC, 02:06:23.

⁸⁰ Sepe BWC, 02:06:27.

⁸¹ Sepe BWC, 02:06:29.

⁸² Sepe BWC, 02:06:55.

“assuming” that was the cause of the injury.⁸³ As noted above, the airbags in the subject vehicle did not deploy; it is not clear whether Ptlm. Sepe was aware of that at the time of his comments.

Mr. [REDACTED] was eventually moved to the edge of the road—again he appeared limp and was moved by officers rather than under his own power—where he was kept until medical responders arrived on scene.

A few minutes after officers had set up a crime scene perimeter, Ptlm. Diaz interacted with bystanders, first yelling at them and approaching the tape marking the crime scene perimeter⁸⁴ and yelling for them to “shut the fuck up”⁸⁵ with his arms out as reflected in the following screen captures.



⁸³ Sepe BWC, 02:07:00.

⁸⁴ Troia BWC, 02:07:18.

⁸⁵ Cooney BWC, 002:07:18.



Sgt. Troia repeated Ptlm. Diaz’s last name repeatedly before pulling him away from the bystanders and telling him to “relax” and “knock it off.”⁸⁶

Shortly thereafter, Lt. Jennette instructed a group of officers to stay nearby “in case the projects come out.”⁸⁷ Presumably, Lt. Jennette was referring to the potential for a large crowd to form.

Sgt. Troia also directed officers to “be professional, don’t swear, don’t act like Diaz.”⁸⁸

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⁸⁶ Cooney BWC, 002:07:20.

⁸⁷ Jennette BWC, 02:08:00; Troia BWC, 02:08:00.

⁸⁸ Troia BWC, 02:08:22.

While still on scene, Ptlm. Voyer viewed at least some of the video footage from his BWC relating to the use of force, as reflected in the following screen capture:



Ptlm. Voyer viewed his BWC footage while his BWC was deactivated; the available video footage is the result of a “pre-record buffer” which automatically saves thirty seconds of video immediately prior to the activation of his BWC.

Ptlm. Diaz later wrote in a witness statement that, after the crash:

I then approached [REDACTED] and gave loud verbal commands to place his hand behind his back to which he did not comply and began to conceal his hands underneath his torso as he tensed up his body. At this time, I delivered several open hand strikes to [REDACTED] right abdomen side in order to gain control and affect [sic] arrest.⁸⁹

Ptlw. Sanchez later described Ptlm. Diaz throwing closed-fist punches⁹⁰ and stated that he told both Sgt. Perez and Lt. Jennette that she had observed the punches and had at least some of the relevant events recorded on her BWC.⁹¹

Ptlm. Colicci later wrote in a witness statement that, after the crash:

I opened the door and removed [REDACTED]. I took [REDACTED] to the ground and attempted to place him in a prone position. I gave him loud verbal commands to place his hands behind his back in which he did not comply as he tensed his body and concealed his hands underneath his torso. Due to the nature of the call and not knowing if he was attempting to retrieve a weapon from the fanny pack, I delivered multiple open hand strikes to [REDACTED] body while continuing to issue loud verbal commands for him to place his hands behind his back.⁹²

Sgt. Perez later discussed the incident with Lt. Jennette; they concluded that no Use of Force inquiry was needed because, he later said, they believed that Mr. [REDACTED] injuries were the result of the crash.⁹³ Sgt. Perez later stated that he did not know whether Mr. [REDACTED] was wearing his seatbelt,⁹⁴ although he did not explain why he would have assumed that Mr. [REDACTED] injuries were the result of the crash if he did not know that Mr. [REDACTED] was not wearing a seatbelt. Sgt. Perez also stated that he saw that “the air bags were deployed” in the crashed vehicle,⁹⁵ although, as noted, there was no air bag deployment. Upon being informed that the vehicle did not have air bags, Sgt. Perez stated, “But either way, he could have hit . . . the dashboard, he could have hit the steering wheel, he would have hit . . . another individual, I don’t know.”⁹⁶

⁸⁹ Witness Statement of Domingo Diaz, July 9, 2021.

⁹⁰ Statement of Demaris Sanchez, July 26, p. 10.

⁹¹ Statement of Demaris Sanchez, July 26, p. 7-8.

⁹² Witness Statement of Nathaniel Colicci, July 9, 2021.

⁹³ Statement of Andres Perez, July 26, 2021, p. 11; see also Statement of Matthew Jeanette, July 28, 2021, p. 8.

⁹⁴ Statement of Andres Perez, July 26, 2021, p. 14.

⁹⁵ Statement of Andres Perez, July 26, 2021, p. 8-9.

⁹⁶ Statement of Andres Perez, July 26, 2021, p. 9.

Sgt. Perez later stated that he told Lt. Jennette that he had to pull Ptlm. Diaz off of Mr. [REDACTED],⁹⁷ but Lt. Jennette stated that he did not recall being told about that.⁹⁸

Sgt. Perez stated that he was told that “Internal Affairs had it” and that he should do a Use of Force inquiry.⁹⁹

Lt. Jennette stated that, when the Use of Force inquiry was conducted, he met with Detective Sergeant Romano and “watched some of” Ptlm. Voyer’s BWC video; Lt. Jennette later stated, “Actually, we watched his, some of the tactics that he used, and we had a small discussion about it.”¹⁰⁰

In his later report, Ptlm. Najarian wrote that Mr. [REDACTED] was transported to the hospital “for injuries he sustained from the collision.”¹⁰¹ There was no mention of the use of force or that Mr. [REDACTED] was apparently uninjured when removed from the vehicle.

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⁹⁷ Statement of Andres Perez, July 26, 2021, p. 11.

⁹⁸ Statement of Matthew Jeanette, July 28, 2021, p. 10.

⁹⁹ Statement of Andres Perez, July 26, 2021, p. 14.

¹⁰⁰ Statement of Matthew Jeanette, July 28, 2021, p. 18.

¹⁰¹ Providence Police Department, Report 2021-00052314, p. 6.

Opinions

I was retained by the Rhode Island Office of the Attorney General to review a July 9, 2021, incident involving officers employed by the Providence Police Department and three juveniles. I hold the opinions below to a reasonable degree of professional certainty. The basis and reasons for my opinions are premised upon my education, training, and experience in law enforcement; my knowledge and research as a policing scholar; my knowledge of law enforcement standards, analysis, and study; my familiarity with generally accepted police practices and the professional and academic literature in the field; my review of the relevant actions, policies, and procedures; and my understanding of the facts of this case based upon a comprehensive review of the materials listed above. My opinions and any related testimony are relevant areas that concern issues of which lay jurors are unaware or about which they frequently have misconceptions. My testimony on these topics is relevant and would assist a jury in understanding the evidence presented to them.

My opinions in this case are as follows:

1. The decision to approach the crashed subject vehicle shortly after the crash was reckless, tactically unsound, and inconsistent with generally accepted police practices
2. Ptlm. Diaz's first three closed-fist strikes to Mr. [REDACTED] face or head and Ofc. Voyer's five closed-fist strikes to Mr. [REDACTED] face or head were excessive, unreasonable, and inconsistent with generally accepted police practices
 - A. Mr. [REDACTED], who was on his stomach or side with his hands behind his back and held by officers at the time, presented—at most—a minimal threat
 - B. Any reasonable officer in Ptlm. Diaz or Ptlm. Voyer's position would have realized that the use of closed-fist punches to Mr. [REDACTED] face or head while he was on his stomach or side with his hands behind his back and his head extended up and immobilized had a substantial likelihood of causing serious bodily injury
 - C. Under the circumstances at the time, the use of closed-fist punches to Mr. [REDACTED] face, side of the face, or side of the head was grossly disproportionate to any threat he presented
3. The available evidence tends to suggest that at least some of Ptlm. Diaz's fourth through seventeenth closed-fist punches and his knee strike may have been excessive, unreasonable, and contrary to generally accepted police practices, although there is insufficient information to allow for a definitive expert conclusion
4. There is insufficient information to allow for a definitive conclusion as to the propriety of the unidentified officer's two knee strikes

The rationales for my opinions are provided on the following pages.

1. The decision to approach the crashed subject vehicle shortly after the crash was reckless, tactically unsound, and inconsistent with generally accepted police practices

The operational realities of policing require officers to manage an array of risks and threats. To manage those risks and threats, officers use tactics, which one source has defined as “a sequence of moves that limit the suspect’s ability to inflict harm and [that] advance the ability of the officer to conclude the situation in the safest and least intrusive way.”¹⁰² “Tactics are the techniques and procedures that officers use to protect themselves and community members by reducing risks, mitigating the likelihood that risks will become threats, and preventing threats from manifesting into harms.”¹⁰³ As they determine which tactical techniques and procedures are appropriate, officers must balance different and often shifting priorities in dynamic situations. While there is no way to completely ensure safety, police tactics seek to appropriately balance the safety of officers, subjects, and bystanders in light of those priorities.

Police tactics and tactical decision making are highly contextual; an approach that may be entirely appropriate in one context may be entirely inappropriate in another. To use a simplified example, the tactics that officers might use to address an armed, barricaded subject are generally inappropriate in an active shooter situation and *vice versa*. Context is key, with context being highly dependent on officers’ reasonable perceptions of the situation. For a number of reasons, different officers may perceive the same situation differently. Tactically, it follows that those officers may adopt different approaches, each aligning their approach with their perception of the situation. The ultimate question is whether, in light of the facts reasonably available at the time, the potential risks of the officer’s decision or action were justified under the circumstances by the potential benefits of that decision or action.

Further, it is generally accepted within policing that there may be a range of reasonable responses in any given situation. The spectrum of options represents the number of ways in which the different priorities of the situation may be balanced. To use a simplified example, an officer may be safer from being physically assaulted if they stand farther away from the subject but may have more opportunity to prevent the subject from fleeing if they stand closer, so there may be a range of reasonable distances at which an officer could stand depending on their assessment of the risk of potential assault or potential flight. For purposes of this analysis, then, the question is not whether the officers involved adopted the best possible tactics, but whether their tactics fell within the spectrum of tactical options that could be considered reasonable under the circumstances.

¹⁰² Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger* in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS at 568 (Roger Dunham and Geoffrey P. Alpert, eds., 7th ed., 2015).

¹⁰³ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 155 (2020).

As officers manage the risks and threats of any given situation, they may expose themselves to potential harm, and increase the likelihood that they will use force to address the threat of harm. In some circumstances, this exposure can be warranted. On other occasions, however, an officer's decision to affirmatively create or passively accept a particular threat is unjustified in light of the availability of other tactical options, options that would avoid or minimize the threat.

“Officer-created jeopardy” refers to situations in which officers affirmatively create or passively accept *unjustified* risks or threats that otherwise could have, and should have, been avoided.¹⁰⁴ Officer-created jeopardy is, in essence, a manner of describing unjustified risk-taking that can increase the likelihood of injury to officers and can, correspondingly, increase the likelihood that officers will use force to protect themselves from a threat of physical harm that they were, in part, responsible for creating.

An officer who successfully manages potential threats early in an encounter is less likely to be physically threatened—and thus less susceptible to harm—later in the encounter. In the same vein, the officer is also less likely to perceive any need to use force to address a threat of harm, which increases the *subject's* physical safety. The opposite is also true; an officer's poor tactics can expose them to an otherwise avoidable threat, which increases the likelihood that they will use force to address that threat.¹⁰⁵

Additionally, poor tactics predictably increase the likelihood of a suboptimal outcome by introducing additional and avoidable constraints on an officer's decision-making process. “Time is the single most important tactical concept in policing.”¹⁰⁶ “[P]olice tactics often seek to ‘create’ time in which officers can assess or respond to the situation” as a way of improving the accuracy of an officer's perceptions and the quality of an officer's decision-making.¹⁰⁷ “A poor tactical decision . . . can deprive the officer of time in which to safely make a decision about how to act, forcing the officer to make a seat-of-the-pants decision about how to respond.”¹⁰⁸ For that reason, it is no exaggeration to say that the majority of police tactics are designed to *avoid*, to the extent possible, putting officers into the position of having to make truly split-second decisions. For that reason,

¹⁰⁴ See Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger: Should Police Officers Be Accountable for Reckless Tactical Decision Making?*, in *CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS* 481, 493 (Roger G. Dunham & Geoffrey P. Alpert eds., 6th ed. 2010).

¹⁰⁵ SETH W. STOUGHTON ET AL., *EVALUATING POLICE USES OF FORCE* 155 (2020).

¹⁰⁶ SETH W. STOUGHTON ET AL., *EVALUATING POLICE USES OF FORCE* 159 (2020)

¹⁰⁷ Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 Va. L. Rev. 211, 253 (2017)

¹⁰⁸ Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 Va. L. Rev. 211, 259 (2017)

[o]fficer-created jeopardy . . . includes the actions of officers who, without sound justification, willingly fail to take advantage of available tactical concepts like distance, cover, and concealment (discussed later in this chapter), willingly abandon tactically advantageous positions by moving into disadvantaged positions without justification, or act precipitously on their own without waiting for available assistance from other officers.¹⁰⁹

As a threshold point, it is well known and generally accepted in policing that the operational realities of police-community interactions can be dynamic, implicating different tactical principles as the situation evolves. Encounters can evolve in a number of ways, and officers must be able to respond appropriately to those evolutions. As the International Association of Chiefs of Police has written by way of example, “a so-called routine vehicle stop involving traffic violations may quickly develop into a high-risk vehicle stop when more facts are established by the officer.”¹¹⁰ In the same vein, what starts as a consensual welfare check on a motorist can become an investigative detention as officers develop reasonable suspicion of criminality, a vehicle pursuit if the motorist flees and pursuit is justified, and a barricaded subject if the motorist enters a residence. In each case, it is generally accepted in policing that officers must comply with the relevant policies and use appropriate tactics; an officer should not approach a barricaded subject the same way that they approached the motorist originally just because the encounter *started* as a welfare check. In short, it is well recognized that as the situation changes, officers’ tactics and actions must keep pace.

It is generally accepted in policing that some interactions with motorists are considered especially high-risk and, thus, officers should use “high-risk stop” or “felony stop” protocols (as distinguished from what are typically referred to as “unknown-risk stop” protocols, which are used in standard traffic stops). Officers learn that when they have a particular reason to suspect that a vehicle occupant is dangerous or has committed a serious crime¹¹¹ they use high-risk stop protocol to create and maintain as many tactical advantages as the situation allows in an effort to maximize the likelihood of bringing the situation to a safe conclusion. As one popular police training resource puts it, “Dangerous motorists and passengers cannot always be identified in advance. That is why it is so critical to *control* your stop.”¹¹² High-risk stop procedures are a foundational skill for

¹⁰⁹ SETH W. STOUGHTON ET AL., *EVALUATING POLICE USES OF FORCE* 158 (2020).

¹¹⁰ International Association of Chiefs of Police, *Motor Vehicle Stops* 5, May 2018.

¹¹¹ See, e.g., International Association of Chiefs of Police, *Motor Vehicle Stops* 1, May 2018 (“However, unless an officer has information that allows him or her to clearly designate a vehicle stop as high-risk, such as information that the motorist is a wanted fugitive or is driving a stolen automobile, the stop should generally be regarded as unknown in terms of danger.” (emphasis added))

¹¹² RONALD J. ADAMS, THOMAS A. MCTERNAN, AND CHARLES REMSBERG, *STREET SURVIVAL: TACTICS FOR ARMED ENCOUNTERS*, 79 (1997).

officers, especially patrol officers. As a police tactical manual published in 2018 states, “All law enforcement officers should be trained to be experts in making this stop.”¹¹³

In this case, officers had engaged in a prolonged, high-speed vehicle pursuit with subjects who had, at a minimum, were suspected of shooting people with a BB gun powerful enough to break vehicle windows,¹¹⁴ and who had pointed what appeared to be a firearm at a pursuing officer.¹¹⁵ If the subjects were believed to have engaged in actions serious enough to justify a pursuit, as Lt. Jennette concluded, there was ample specific and articulable bases to conclude that the subjects in the vehicle presented an especially high risk to officers, and thus that high-risk stop protocols were tactically appropriate.

It is generally accepted in policing that, in the context of high-risk stops, officers are not to get in close physical proximity with a suspect vehicle. Instead, they are taught to maintain a tactically advantageous position by using distance, cover, and concealment. “Cover” refers to an obstacle that can physically stop a threat (e.g., a vehicle engine block can stop a handgun bullet), while “concealment” refers to an obstacle that obstructs the subject’s line-of-sight to the officer while physically stopping a threat (e.g., shrubbery or foliage can hide obscure an officer’s location but will not stop a bullet). In the high-risk stop context, officers are generally trained to use engine blocks for cover and open doors or a “wall of light” for concealment.¹¹⁶ High-risk stop protocol holds that the officer who initiates a high-risk stop without other officers on scene is to take a position of tactical advantage and, from that position, keep the vehicle occupants in the suspect vehicle until additional officers arrive.

Once there are sufficient officers on scene, officers are taught to maintain their positions of tactical advantage. As one police tactical training manual puts it, officers should “[c]ontrol the adrenaline rush that drives too many officers to feel they need to rush in toward the suspects.”¹¹⁷ Instead, officers learn to issue a series of instructions directing the subject(s) to exit the vehicle one at a time, to demonstrate that they are not carrying weapons, to approach the officers’ position, and to kneel or lay down so that they can be taken into custody in a way that minimizes the opportunity

¹¹³ CHARLES REMSBERG, DAN MARCOU, JIM GLENNON, *STREET SURVIVAL II: TACTICS FOR DEADLY FORCE ENCOUNTERS*, 95 (2018).

¹¹⁴ 2_Solacom_Pos_02_2021_07_08_20_26_20_by_Start_Time_asc.wav;
4_Solacom_Pos_08_2021_07_08_20_30_09_by_Start_Time_asc.wav.

¹¹⁵ Witness Statement of John Najarian, July 26, 2021, p. 3.

¹¹⁶ A “wall of light” is the use of a police vehicle’s high beams, “takedown” lights, and spotlight that “serves to conceal the officer’s vehicle—specifically the officer’s location in or near the vehicle—from the occupants of the stopped vehicle, whose vision cannot penetrate the wall of light.” SETH W. STOUGHTON ET AL., *EVALUATING POLICE USES OF FORCE*, 174-75 (2020).

¹¹⁷ CHARLES REMSBERG, DAN MARCOU, JIM GLENNON, *STREET SURVIVAL II: TACTICS FOR DEADLY FORCE ENCOUNTERS*, 94 (2018).

for resistance. The objective is to maintain control over the scene and to minimize the hazards of the situation by ensuring that officers make every effort to bring the subject out of a subject-controlled environment (the subject's vehicle) and into a neutral or police-controlled environment (the area near, between, or behind officers' vehicles) rather than putting themselves into a position where they lack tactical advantages or, worse, are at a disadvantage.

These generally accepted principles and practices are reflected in the policies of the Providence Police Department, which state, in relevant part:

XVIII. HIGH RISK/FELONY VEHICLE STOPS

A. When a vehicle driven by a known or suspected felon is located by an officer, and probable cause exists for investigation . . .

. . .

E. The officer will exit the police vehicle quickly, but remain behind the door and accessible to the public address system microphone.

F. Officers shall immediately draw their Department-authorized firearms and point them in the direction of the suspects.

G. The officer in command will direct each suspect, utilizing the public address system, to remove him/herself from the suspect vehicle individually, according to specific directions, and into the appropriate search position, after which the approach may be made.

H. If a public address system is not available, the officer in command will give voice commands. If they are not heard, or ignored by the suspects, the officer will wait for a backup unit prior to approaching the vehicle. The officer should not leave a position of cover to approach a felon's vehicle until assistance has arrived at the scene.

I. The officer in command will give instructions to the support officer, even if not needed, to ensure that suspects realize that additional support is available/on scene.

J. Contact and Cover Procedures

1. The support (cover) officer will cover the arresting (contact) officer and remain on the curb side of the vehicle until all occupants have emerged and are in search positions.

2. The cover officer will not give additional commands, as this could confuse the suspects, but his/her presence will be known by commands given by the contact officer.
3. Extreme caution will be exercised by officers to avoid getting in each other's line of fire.
4. When all suspects have been removed from the vehicle, the cover officer should move to a position to cover the contact officer while the suspects are being engaged.
5. The suspects should be ordered into a prone position, facing away from the contact officer, with their arms and hands extended.
6. If space does not permit the suspects to become prone, they should be ordered into a kneeling position, with their legs crossed when able, and their hands behind their heads, fingers interlaced.
7. Handcuffs should be applied immediately, and all suspects searched thoroughly.
8. Suspects should then be monitored and transported as appropriate.¹¹⁸

Additionally, although lacking in detail, the Defensive Tactics lesson plan at the Providence Police Training Academy reflects the common distinction between “Unknown Risk Suspects” and “High-Risk suspects.”¹¹⁹

In this case, immediately after the subject vehicle crashed, two of the occupants put their hands up as directed. At least two officers—Ptlm. Colicci and Ptlm. Voyer—initially followed generally-accepted police practices by remaining by in positions near their vehicles that provided some tactical advantages while maintaining high cover on the subject vehicle and its occupants. Instead of coordinating and calling the subjects back one at a time, however, Ptlm. Colicci and two other officers rushed forward within about ten seconds of the stop, followed by Ptlm. Voyer, to physically engage the subjects in the vehicle.

There was no compelling tactical justification for officers to abandon the positions near their own vehicles, which provided the advantages of distance and cover or concealment. The subject vehicle had just crashed, two of the subjects had their arms fully extended in the air, and the third (Mr.

¹¹⁸ Providence Police Department, General Order 350.02, Traffic Enforcement, Jan. 24, 2021.

¹¹⁹ Providence Police Training Academy, Defensive Tactics Lesson Plan, May 2014.

██████) did not appear to be attempting to flee. If the subjects in the fleeing vehicle *had* been armed with firearms and chosen to resist, moving forward put the officers into a significantly *disadvantaged* than they had been, making them more vulnerable to gunfire. Additionally, the officers' decision to rush forward created a potential cross-fire scenario, as reflected in the fact that as Ptlm. Voyer approached the subject vehicle, Ptlm. Colicci and two other officer were immediately in front of him with two of the subjects between them.¹²⁰ Indeed, Ptlm. Voyer physically climbed *over* the vehicle to reach the location where Ptlm. Colicci was engaged with Mr. ██████¹²¹ In short, not only had the officers put themselves into more vulnerable positions, they also limited their own ability to respond effectively had the use of deadly force become necessary.

By rushing forward, the initial officers in this case did exactly what officers are directed, trained, and warned to *not* do during a high-risk stop. As a one tactical training manual emphasized, "It is important to note you do not want to approach the suspect vehicle on foot where there is a known danger."¹²² There is simply no way in which officers can reasonably expect to manage the risks that the high-risk stop protocol was developed to manage by moving to a position of close physical proximity to the subject's vehicle.

For the foregoing reasons, the decision to approach the crashed subject vehicle shortly after the crash was reckless, tactically unsound, and inconsistent with generally accepted police practices.

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¹²⁰ Voyer BWC, 02:02:33.

¹²¹ Voyer BWC, 02:02:37.

¹²² CHARLES REMSBERG, DAN MARCOU, JIM GLENNON, STREET SURVIVAL II: TACTICS FOR DEADLY FORCE ENCOUNTERS, 94 (2018).

2. Ptlm. Diaz’s first three closed-fist strikes to Mr. ██████ face or head and Ofc. Voyer’s five closed-fist strikes to Mr. ██████ face or head were excessive, unreasonable, and inconsistent with generally accepted police practices

It is generally accepted within policing that officers have the authority to use force in the course of their duties when appropriate. Officers learn that the use of force is governed by legal rules (e.g., constitutional and state law), administrative regulations (e.g., agency policies), and professional norms (e.g., generally accepted police practices). Officers are taught that these rules, regulations, and norms allow officers to use force when an individual’s actions present an imminent threat of frustrating a legitimate police interest, such as by evading officers’ apprehension attempts, by escaping from, or by physically injuring an officer or another person. When that is the case, officers learn, they are generally permitted to use force that is proportional to the nature and severity of the threat.

The operative facts when evaluating police uses of force are those of which a reasonable officer on the scene would have been aware. In other words, the inquiries in the prior paragraph are to be approached through the lens of the reasonable officer on the scene. This framework is reflected in both constitutional law and generally accepted police practices.

In the context of constitutional law, seizures—including certain police uses of force—are regulated by the Fourth Amendment. The “objective reasonableness” standard for evaluating use of force incidents under the Fourth Amendment was laid out by the Supreme Court in *Graham v. Connor*.¹²³ In *Graham*, the Court held that the determination of whether a particular seizure was constitutionally reasonable “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”¹²⁴ That balancing test demands “careful attention to the facts and circumstances of each particular case.”¹²⁵ Specifically, “[T]he question is whether the officer’s actions were objectively reasonable in light of the facts and circumstances confronting [the officer], without regard to their underlying intent or motivation.”¹²⁶

Officers are trained that, in *Graham v. Connor*, the Court provided guidance as to which facts and circumstances are relevant to the objective reasonableness determination, stating:

¹²³ 490 U.S. 386 (1989). *See also* Minneapolis Police Department, Policy 5-301.01; MPD Training Materials, BATES 001302, 009544, 009602, 10897, and 15222.

¹²⁴ *Graham v. Connor*, 490 U.S. 386, 396 (1989) (internal quotation marks omitted).

¹²⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

¹²⁶ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.¹²⁷

It is generally accepted in policing that the framework for factual analysis requires looking at the facts as they would have been understood by “a reasonable officer on the scene.”¹²⁸ As the International Association of Chiefs of Police laid out in a *National Consensus Policy and Discussion Paper on Use of Force*, “a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States”¹²⁹:

This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information others communicated to the officers, *at the time the force was used* and upon what a reasonably prudent officer would use under the same or similar circumstances. This standard is not intended to be an analysis after the incident has ended of circumstances not known to the officer at the time the force was utilized.

. . .

The decision to employ any force, including the use of firearms, may be considered excessive by law and agency policy or both[] if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation.¹³⁰

Thus, the operative facts and circumstances for assessing an officer’s use of force requires reviewing the facts and circumstances as they would have appeared to a reasonable officer on the scene, subject to the perceptual and cognitive stresses of the situation. Information that a reasonable officer on the scene would have *not* been aware of at the time, including information discovered after the use of force, is relevant only to the limited extent that it can help assess the reasonableness of the officer’s perceptions and conclusions prior to and during the use of force.¹³¹ For the foregoing

¹²⁷ *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

¹²⁸ INTERNATIONAL ASS’N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE 2 (2017) (quoting *Graham v. Connor*, 490 U.S. 386 (1989)).

¹²⁹ INTERNATIONAL ASS’N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE 5 (2017) .

¹³⁰ *Id.* at 8 (emphasis in original) (internal quotation marks omitted).

¹³¹ For example, the reasonableness of an officer’s perception that a subject was reaching for a weapon in their waistband will tend to be corroborated if it is later determined that the subject had a weapon in their waistband. In the same vein,

reasons, my analysis in this report will focus on the information available to a reasonable officer on the scene at the relevant time.

This generally accepted principle is reflected in the policies of the Providence Police Department, which defines “Objectively Reasonable Force” as “that level of force which is necessary and appropriate to bring a situation safely under control when analyzed from the perspective of the reasonable officer possessing the same information and face with the same circumstances as the officer who has actually used force.”¹³²

Evaluating police uses of force requires identifying, from the objective perspective of the reasonable officer on the scene, whether the subject presented an imminent threat and, if so, the nature and severity of that threat as well as the nature and severity of the force used and then assessing whether, in light of generally accepted police practices, the force used was an appropriate response to the threat presented. The following subsections first address the issue of threat and then evaluate the proportionality of Ptlm. Diaz’s first three strikes and Ptlm. Voyer’s strikes to that threat.

A. Mr. ██████, who was on his stomach or side with his hands behind his back and held by officers at the time, presented—at most—a minimal threat

It is well recognized within policing that officers can use force only to address imminent threats to certain government interests, including to ensure officer safety and to effect the apprehension of criminal suspects. It is generally accepted in policing that an imminent threat exists (or reasonably appears to exist) when the subject has (or reasonably appears to have) the ability, opportunity, and apparent intent to cause a particular type of harm.¹³³ “Ability” refers to the subject’s capacity to cause the identified harm through some explicitly identified means or mechanism. For example, an individual armed with a tire iron has the ability to strike someone in a way that can cause serious injuries or death, while an individual without a tire iron cannot. “Opportunity” refers to the subject’s proximity to the potential target in light of the specific harm at issue. For example, an individual with a tire iron who is physically close to an officer has both the ability and the opportunity to strike

the reasonableness of an officer’s perception that a subject was reaching for a weapon in their waistband may be undermined if it is later determined that the subject did not have anything in their waistband at the time. Critically, the later findings are not dispositive: a subject might reach for their waistband even without a weapon there, and a subject who does have a weapon in their waistband might not reach for it. Nevertheless, in this narrow context, information that would not have been available to the reasonable officer at the time can be relevant to the evaluation of the officer’s perspective and conclusions.

¹³² Providence Police Department, General Order 300.01, Use Of Force, Apr. 4, 2021.

¹³³ See, e.g., INTERNATIONAL ASS’N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE at 11 (2017).

Some sources refer to “imminent threats” instead of “immediate threats” There is no wide accepted agreement about how “imminent” and “immediate” are defined. For the purposes of this report, we use the terms “imminent” and “immediate” synonymously.

them with it, while an individual with a tire iron who is fifty feet away has the ability, but not the opportunity, to do so. “Apparent intent” refers to the subject’s perceived mental state, their apparent desire to cause the specific, identified harm. For example, an individual with a tire iron who is physically close to an officer and who is preparing to swing it at the officer has the apparent intention to injure or kill the officer, while an individual who is using a tire iron to change a tire while speaking with an officer standing nearby might have the physical ability and opportunity to do so, but lacks the apparent intention. It is important to recognize that

intent may be properly articulated through a combination of multiple factors even if no individual factor is sufficient on its own. [M]erely holding a tire iron is not in and of itself indicative of the intent to cause harm. Nor is walking toward an officer. Nor is failing to obey an officer’s commands. However, walking toward an officer while holding a tire iron and ignoring the officer’s commands to stop or drop the weapon can be, in combination, indicative of the individual’s intent.¹³⁴

Officers need not wait until a threat has fully manifested into an attack, of course. To continue the example in the previous paragraph, an officer need not wait until the approaching individual actually swings the tire iron before using force. Indeed, at that point the officer’s actions may be too late to prevent the relevant harm. However,

[i]t is also essential to distinguish the concept of “threat,” meaning an imminent danger to a legitimate governmental interest, from the concept of “risk.” Risk is best described as a potential threat. More precisely, risk is the presence of at least one but not all three of the prerequisites of threat (ability, opportunity, and intent) and the potential for the remaining factors to materialize.

While it may be wise, in many cases, for officers to mitigate risk in various ways, the lack of imminent danger to a governmental interest makes it inappropriate to use force at that point. Consider again the example of a motorist using a tire iron to change a tire; as the motorist is changing the tire, they have the physical ability and opportunity to attack the officer with the tire iron, which means that there is some risk to the officer. The officer could step farther away from the motorist (creating distance) or could move to a position that keeps part of a vehicle between them and the motorist (using a physical obstacle to increase the amount of time it would take for the motorist to reach them), but the officer would not be justified in using force at that point because there was no perceptible intent to harm. Although there was some risk, there was no apparent intent to cause harm, and therefore there was no

¹³⁴ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 35 (2020).

threat. And with no threat, there was no governmental interest at stake, and no justification for using force. The same is true in other situations; the fact that someone is capable of causing harm, has the opportunity to cause harm, or has the intent to cause harm does not justify a use of force: all three factors must be present.¹³⁵

Officers learn that determining whether a subject presents any threat—and, if so, the severity of that threat—depends on, as the Supreme Court has articulated it in the Fourth Amendment context, “the facts and circumstances of each particular case.”¹³⁶ Officers are trained that the relevant “facts and circumstances” include, but are not limited to, what have become known as the “*Graham* factors”: “[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight.”¹³⁷ These factors are often incorporated into police agency policy and training.

Importantly, the relevant touchstone for evaluating police uses of force is the nature and severity of the *threat* that the subject’s actions present, which is distinct from the subject’s behavior itself.

[A] superficial assessment based exclusively on the subject’s behavior is insufficient. Consider, for example, a subject who is kicking and punching an officer; clearly, that subject is engaged in assaultive resistance. A mechanical review of the subject’s behavior would lead a reviewer to conclude that officers are justified in using force to protect themselves from assaultive resistance. If, however, the subject is an unarmed and physically diminutive ten-year-old, for example, the threat to officer safety is minimal; the use of severe force is inappropriate in that case even if it might be appropriate against a physically larger subject who was doing the same thing. Similarly, pulling away from officers or fleeing on foot is commonly classified as active resistance, presenting a potential threat to the government’s interest in apprehension, but the same actions present very different levels of threat when the subject is a morbidly obese octogenarian (assuming such an individual presents any threat . . .) as opposed to a young, athletically built subject wearing a t-shirt indicating that they are a member of the local college’s cross-country running team.

As those examples suggest, it is not the suspect’s behavior itself that drives proportionality analysis, it is the extent to which the suspect’s behavior threatens a

¹³⁵ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, *EVALUATING POLICE USES OF FORCE* 36-37 (2020).

¹³⁶ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

¹³⁷ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

governmental interest. Reviewers can assess the severity of a threat by considering subject characteristics, officer characteristics, encounter characteristics, and environmental factors.¹³⁸

Additionally, officers are taught that they must make use-of-force decisions based on the threat that the subject's actions present *at*, or sometimes shortly before, the point at which force was used.¹³⁹

At the time of Ptlm. Diaz's first three closed-fist punches and Ptlm. Voyer's four closed-fist punches, Mr. ██████ was a suspect in a series of Assault with a Dangerous Weapon incidents in which victims had been shot, including in the face,¹⁴⁰ with BB guns powerful enough to break vehicle windows.¹⁴¹ The subject vehicle fled from officers, leading them on a prolonged, high-speed pursuit, and one of the subjects had pointed what appeared to be a firearm at a pursuing officer.¹⁴² When the subjects were physically pulled from the vehicle, there were what appeared to be rifles in the vehicle, and those weapons were not visibly distinguishable as firearms or BB guns. In short, Mr. ██████ was suspected of committing or being in immediate association with individuals suspected of committing a series of serious crimes.

However, at the relevant time of Ptlm. Diaz's and Ptlm. Voyer's punches, Mr. ██████ was not in a position to escape or threaten the physical safety of officers. When Ptlm. Voyer lifted Mr. ██████ chin up, Mr. ██████ was lying on his stomach or slightly turned onto his left side with his hands behind his back, held by Ptlm. Colicci and another officer. This is clear at the time immediately before Ptlm. Diaz's and Ptlm. Voyer's first strike, as reflected in the screen capture on the following page:

¹³⁸ SETH W. STOUGHTON, JEFFREY J. NOBLE, AND GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 51-52 (2020).

¹³⁹ INTERNATIONAL ASS'N OF CHIEFS OF POLICE, NATIONAL CONSENSUS POLICY & DISCUSSION PAPER ON USE OF FORCE 8 (2017) ("This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information others communicated to the officers, *at the time the force was used* and upon what a reasonably prudent officer would use under the same or similar circumstances." (emphasis in original) (internal quotation marks omitted)).

¹⁴⁰ 9_Solacom_Pos_05_2021_07_09_01_03_48_by_Start_Time_asc.wav

¹⁴¹ 2_Solacom_Pos_02_2021_07_08_20_26_20_by_Start_Time_asc.wav;

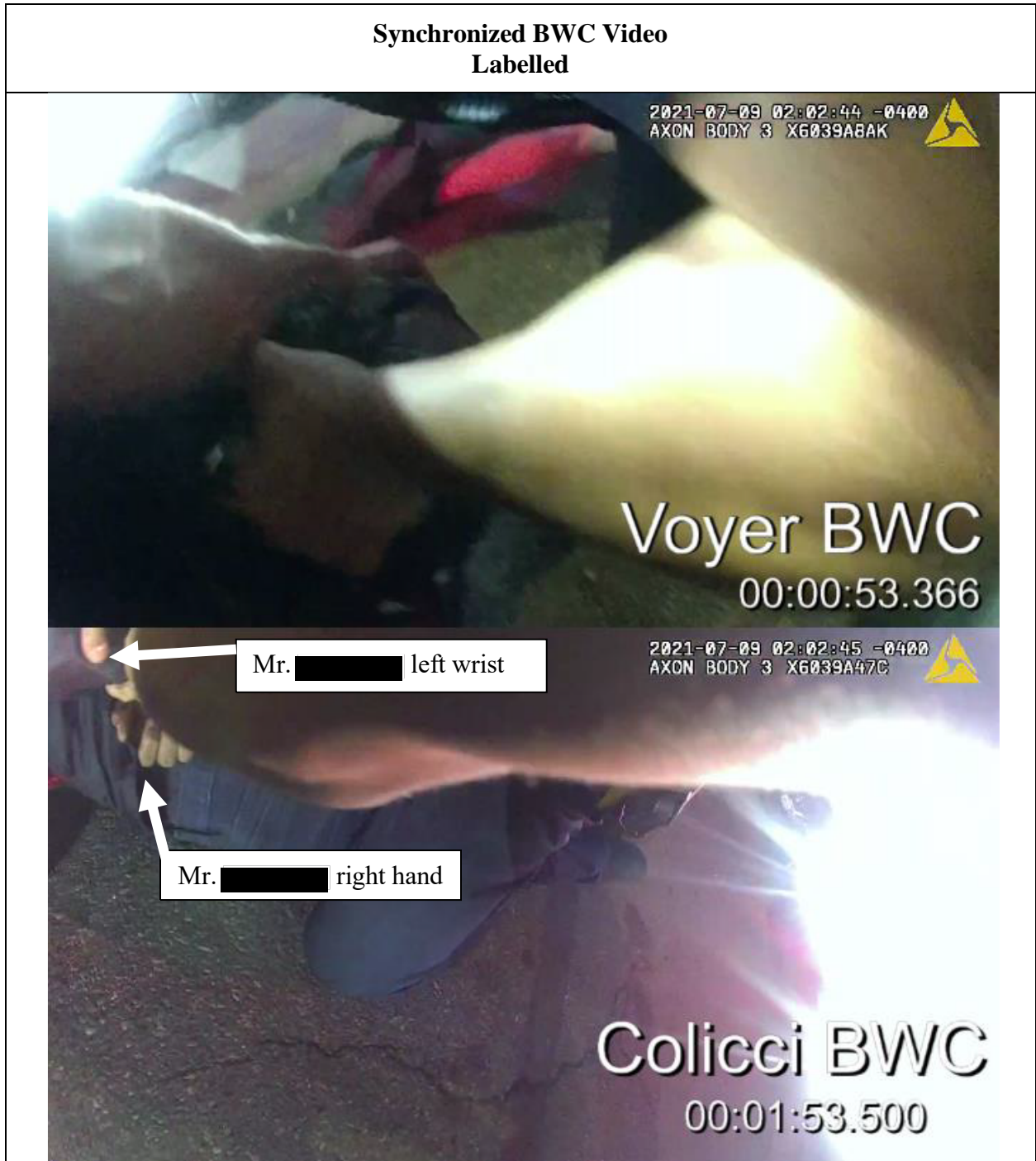
4_Solacom_Pos_08_2021_07_08_20_30_09_by_Start_Time_asc.wav.

¹⁴² Witness Statement of John Najarian, July 26, 2021, p. 3.

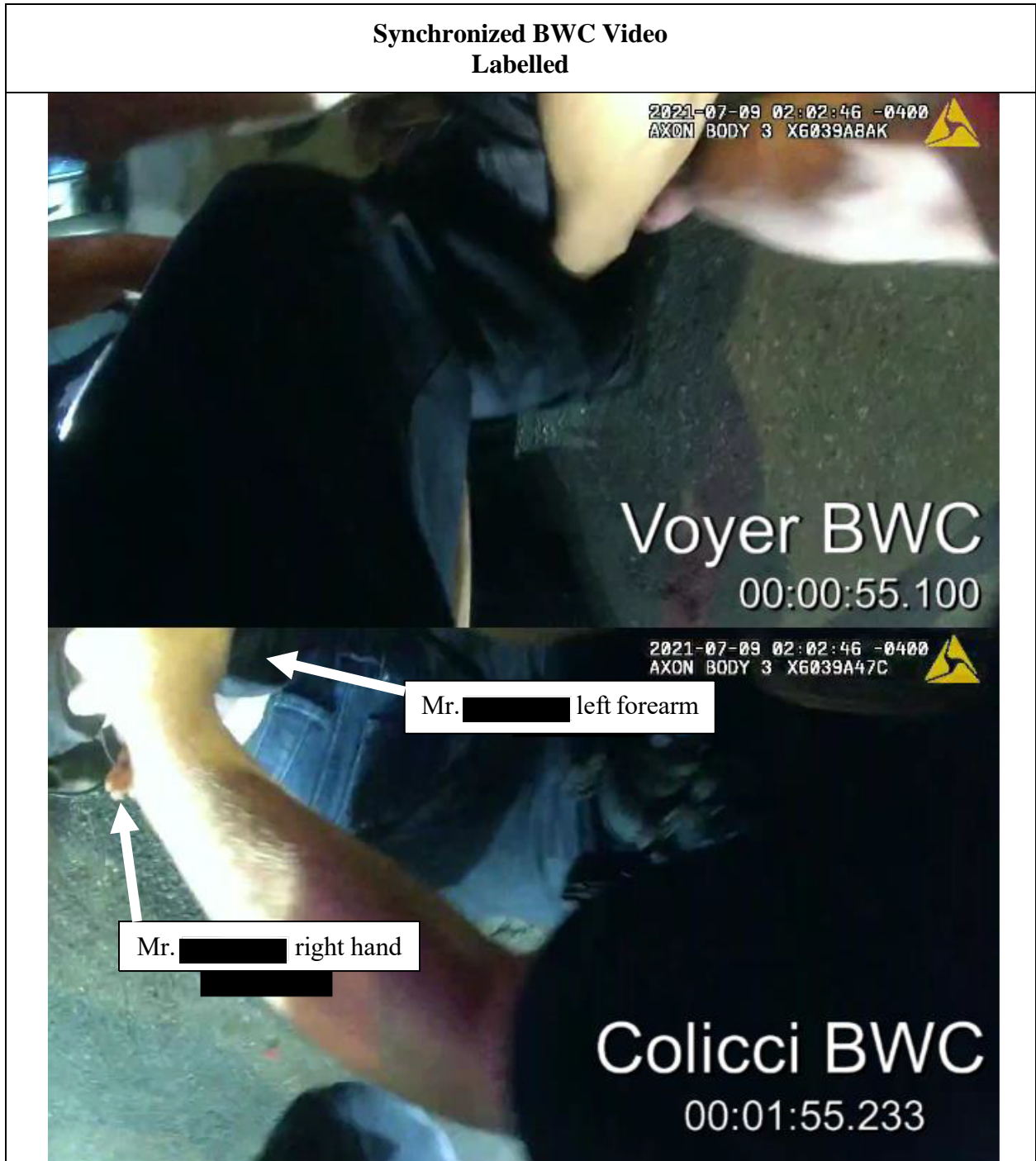
Synchronized BWC Video
Labelled



It was also true immediately 0.133 seconds before Ptlm. Diaz's second strike and Ptlm. Voyer's first strike, as reflected in the following screen capture:



It was also true *after* Ptlm. Voyer's fifth and final punch, as reflected in the following screen capture:



While it is entirely possible that Mr. ██████ was squirming or struggling, the physical position he was in—on his stomach or turned slightly onto his left side with his hands held behind his back by multiple officers—establishes that, at the time, he was generally under the control of officers and could do no more than temporarily delay the application of handcuffs. More specifically, he was not in a position to flee or otherwise evade apprehension and he was not in a position to strike or attack officers.

For the foregoing reasons, Mr. ██████, who was on his stomach or side with his hands behind his back and held by officers at the time, presented—at most—a minimal threat.

B. Any reasonable officer in Ptlm. Diaz or Ptlm. Voyer’s position would have realized that the use of closed-fist punches to Mr. ██████ face or head while he was on his stomach or side with his hands behind his back and his head extended up and immobilized had a substantial likelihood of causing serious bodily injury

It is well known and generally accepted in policing that when officers are confronted by an imminent threat, they may address that threat by using the degree of force that is proportional to the nature and severity of the threat.

As discussed in the prior subsection, evaluating an officer’s use of force requires assessing whether the subject presented an imminent threat to a legitimate government interest and determining the nature and severity of that threat.¹⁴³ It then requires determining the nature of severity of the force used, which is addressed in this subsection.

It is well known and generally accepted in policing that an officer’s actions, including their use-of-force decisions, must be evaluated based on the *foreseeable effects*, not the *actual results*, of such force.

The reasonableness of a use of force depends on the risk inherent in the type and manner of the force being used, not the ultimate effect of that force. For example, firing a gun at an individual is properly considered deadly force because of the potential harm the bullet is likely to cause, even if the bullet only grazes the person’s leg, causing a superficial injury, or misses entirely. Similarly, using a closed fist to strike a subject in the face when the subject’s head is on the ground is properly considered a serious use of force because of the potential for harm, even if the strike results in only a minor injury. In either of those two cases, predicating the

¹⁴³ See Mr. ██████, who was on his stomach or side with his hands behind his back and held by officers at the time, presented—at most—a minimal threat.

reasonableness inquiry on the ultimate injury would lead reviewers to incorrectly ask whether the use of minor force was appropriate. Clearly, that is the wrong way to approach those examples. The correct question is whether the use of deadly force or serious force, respectively, was appropriate under the circumstances. In short, the reasonableness of any use of force depends on the foreseeable harms that arise from the officer's actions—that is, the harms that the “reasonable officer on the scene” would have anticipated—not the actual harms that result.¹⁴⁴

The question of proportionality is, in essence, a matter of determining whether *the severity of the force used*, as determined from its foreseeable effects, is an appropriate response to the *nature and severity of the threat presented* at the time.

It is well known and generally accepted in policing that some parts of the human body, including the face and head, are particularly vulnerable to injury from impact. Police use-of-force training, typically including impact weapons (e.g., batons), often divides the human body into differently colored zones—a green zone, a yellow zone, and a red zone—with each colored zone representing the potential for physical injury to the body parts in that zone. The head, neck, throat, spine, and groin are typically categorized as red zones, indicating that impact with these targets are cause serious injury or death. This generally accepted principal is reflected in the Providence Police Department's policy on police batons, which describes “Red Target Areas” as posing “a substantially greater risk of injury to the subject and with few exceptions constitute[ing] lethal force due to the probability of causing death.”¹⁴⁵

The recognition of the head, neck, and spine as particularly vulnerable parts of the human body extends beyond the context of impact weapons.¹⁴⁶ It is well known and generally accepted in policing that closed-fist punches to the face are highly likely to result in injury to the subject's face, head, or neck. As an article in the popular police-oriented website PoliceOne.com concluded, “[P]urposely striking a person in the face with a fist . . . may cause serious injury.”¹⁴⁷ Additionally:

[U]nder some circumstances strikes to the head or face can be reasonably expected to risk causing death or serious physical injury. There is a substantial likelihood, depending on the type of strike and where the strikes connect, that a strike will damage the eyes, nose, orbital bones, cheekbone, or jaw through blunt trauma; cause

¹⁴⁴ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 23 (2020)

¹⁴⁵ Providence Police Department, General Order 310.06, Police Batons, Oct. 10, 2019.

¹⁴⁶ See, e.g., Omaha Police Department General Order 10-13 (defining the head generally as an “area[] of the body that when struck with an empty hand tactic . . . ha[s] a high risk of causing serious bodily injury”).

¹⁴⁷ Ed Flosi, *When a Cop Throws a Punch to the Face*, PoliceOne.com, Nov. 11, 2010, <https://www.policeone.com/use-of-force/articles/2866927-When-a-cop-throws-a-punch-to-the-face/>.

permanent scarring by, for example, tearing skin or damaging the outer ear; cause the head to twist beyond normal rotation in a way that injures the cervical spine or associated muscles; or cause an epidural hematoma (colloquially known as “swelling in the brain,” this refers to bleeding in the space between the dura, which surrounds the brain, and the skull), which can carry a substantial risk of death. . . .

The risk that a strike to the face or head will result in serious or fatal injury is heightened when the subject’s movement is restricted. When the subject is free to move upon being struck, the subject’s movement can mitigate some of the force of the impact. The instinctive reaction to being punched in the face is to flinch, which involves recoiling by pulling one’s head away from the punch and twisting the hips and shoulders in a way that sheds or escapes the force of the blow. When the subject’s movement is restricted, however, they are substantially less able to recoil or compensate for the punch, which means they absorb the power of the punch without being able to shed or avoid it.¹⁴⁸

This is, in part, why boxers seek to force their opponents back into the corner of a ring or up against the ropes; that position restricts the opponent’s movements. It also offers at least a partial explanation for why the Association of Boxing Commissions and Combative Sports, which sets out the regulatory guidelines and rules for championship professional boxing competitions in the United States, consider holding and striking an opponent to be a foul.¹⁴⁹

Further, it is well known and generally accepted in policing that strikes to the face are a highly unreliable way to induce the subject to comply or cease resistance. It is well known and generally accepted in policing that punching someone in the face is highly unlikely to induce compliance because of the strong human instinct to protect one’s face. As the PoliceOne.com article described,

Another consideration should be the anger reaction that will result from a punch to the face. Remember the last time you were punched in the face? Were you a bit livid at the person throwing the punch? The resulting effect may be that the person will now fight even more strongly against your efforts to control him.¹⁵⁰

In short, it is generally accepted in policing that closed-fist punches to the face present a substantial likelihood of serious bodily injury, especially when the subject’s ability to move is restricted, and are unlikely to induce compliance. Although there can be some variation, it is generally accepted

¹⁴⁸ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 200-01 (2020).

¹⁴⁹ ABC Regulatory Guidelines, July 25, 2005, <https://www.abcboxing.com/abc-regulatory-guidelines/>.

¹⁵⁰ Ed Flosi, *When a Cop Throws a Punch to the Face*, PoliceOne.com, Nov. 11, 2010, <https://www.policeone.com/use-of-force/articles/2866927-When-a-cop-throws-a-punch-to-the-face/>.

that “serious bodily injury” includes injury that creates a substantial risk of death, disfigurement, or permanent loss or impairment of bodily functions. This generally understand is consistent with Rhode Island law, which defines “serious bodily injury” as “physical injury that (1) Creates a substantial risk of death; (2) Causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) Causes serious permanent disfigurement.”¹⁵¹ The Providence Police Department has adopted a consistent definition of serious bodily injury, defining it as, *inter alia*, “a substantial risk of death . . . or permanent disfigurement” or “a substantial risk of protracted loss or impairment of the function of any part or organ of the body.”¹⁵²

For that reason, it is generally accepted in policing that closed-fist punches to the face can present a substantial likelihood of serious bodily injury under some circumstances, especially when the subject’s ability to move is restricted. Thus, it is generally accepted in policing that closed-fist punches to the face constitutes a use of serious force at a minimum and can constitute an application of deadly force.

In this case, Mr. ██████ was lying on his stomach or slightly on his left side with Ptlm. Voyer lifting his head from underneath his chin to the point where his face was pointed forward rather than down. Mr. ██████ was not free to move; his head was being lifted and immobilized by Ptlm. Voyer, as reflected in the screen capture on the following page.

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¹⁵¹ See, e.g., R.I. Gen. L. §§ 11-5-2(c); 11-5-10.1(b); 11-5-14.2(b); 31-27-1.1(b); 31-27-2.6(b); and 46-22.9.4(b).

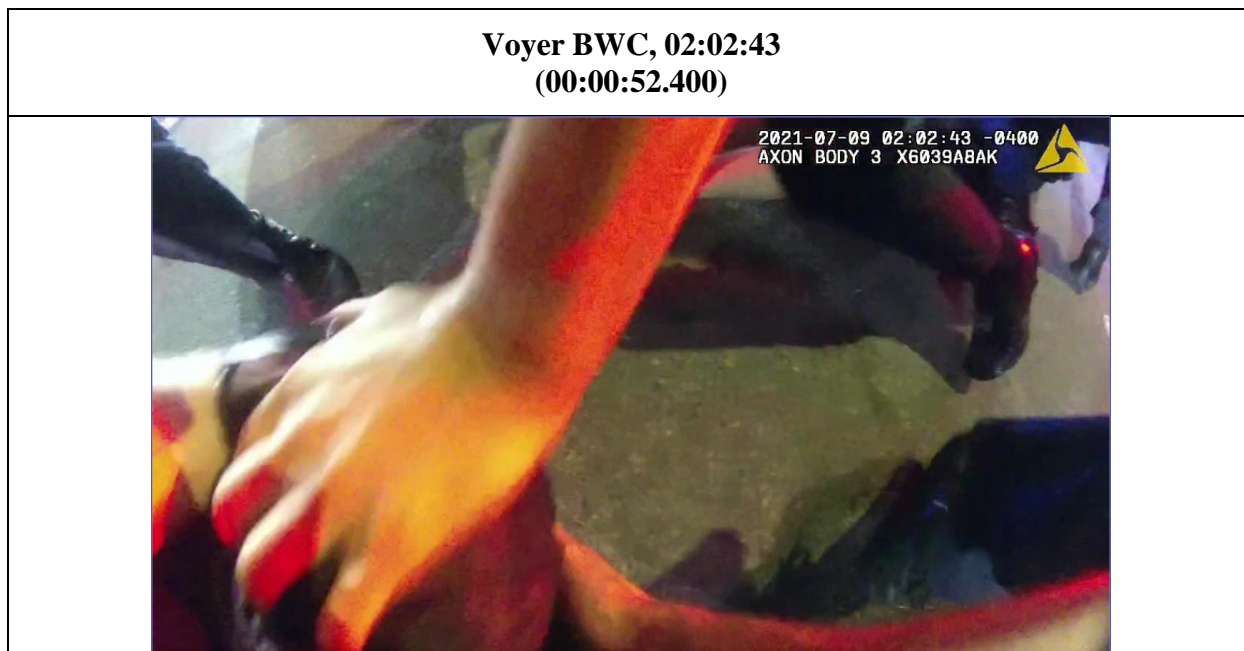
¹⁵² Providence Police Department, General Order 300.01, Use Of Force, Apr. 4, 2021.

Manown BWC, 02:02:43
(00:19:06:266)
Cropped, Labelled



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Ptln. Diaz further immobilized Mr. [REDACTED] head by holding it with his left hand, as reflected in the following screen capture:



Any reasonable officer in Ptln. Diaz’s or Ptln. Voyer’s position would have realized that the force of any blows to Mr. [REDACTED] face or head had a substantial and foreseeable potential to cause serious injury, including “damage [to] the eyes, nose, orbital bones, cheekbone, or jaw through blunt trauma; . . . permanent scarring by, for example, tearing skin or damaging the outer ear; cause the head to twist beyond normal rotation in a way that injures the cervical spine or associated muscles; or cause an epidural hematoma.”¹⁵³

For the foregoing reasons, any reasonable officer in Ptln. Diaz or Ptln. Voyer’s position would have realized that the use of closed-fist punches to Mr. [REDACTED] face or head while he was on his stomach or side with his hands behind his back and his head extended up and immobilized had a substantial likelihood of causing serious bodily injury.

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¹⁵³ SETH W. STOUGHTON ET AL., EVALUATING POLICE USES OF FORCE 200-01 (2020).

C. Under the circumstances at the time, the use of closed-fist punches to Mr. [REDACTED] face, side of the face, or side of the head was grossly disproportionate to any threat he presented

It is well known and generally accepted in policing that when officers are confronted by an imminent threat, they may address that threat by using the degree of force that is proportional to the nature and severity of the threat.

As discussed in the prior subsection, evaluating an officer's use of force requires assessing whether the subject presented an imminent threat to a legitimate government interest and determining the nature and severity of that threat.¹⁵⁴ It then requires determining the nature of severity of the force used and assessing whether the force used was reasonable in light of the threat presented by the subject's actions at the time.¹⁵⁵ The final step is addressing the ultimate question of reasonableness; in this case, that requires evaluating whether the force used by the officers was proportional to the threat presented by the subject.

It is well known and generally accepted in policing that more severe force options must be justified by more serious threats. For example, it is generally accepted in policing that force options that carry a substantial likelihood of death or serious bodily injury are categorized as "deadly force." Officers are taught that the Supreme Court articulated the rules that govern the constitutionality of deadly force. Specifically, officers learn about *Tennessee v. Garner*, which held that the Fourth Amendment permits officers to use deadly force when they have probable cause to believe that the subject presents a threat of death or great bodily harm to the officers or others.¹⁵⁶ The principle of proportionality is obvious in the application of the rules governing the application of deadly force: because force that is substantially like to cause death or great bodily harm is so severe, it is only justified when there is an imminent threat of death of great bodily harm. The same rule applies to

¹⁵⁴ See Mr. [REDACTED], who was on his stomach or side with his hands behind his back and held by officers at the time, presented—at most—a minimal threat.

¹⁵⁵ See Any reasonable officer in Ptlm. Diaz or Ptlm. Voyer's position would have realized that the use of closed-fist punches to Mr. [REDACTED] face or head while he was on his stomach or side with his hands behind his back and his head extended up and immobilized had a substantial likelihood of causing serious bodily injury.

¹⁵⁶ 471 U.S. 1, 12 (1985). The conventional understanding of that rule was complicated in 2007, when the Court decided *Scott v. Harris*. 550 U.S. 372 (2007). In that case, the Court wrote, "*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute 'deadly force.' *Garner* was simply an application of the Fourth Amendment's 'reasonableness' test, to the use of a particular type of force in a particular situation." *Scott v. Harris*, 550 U.S. 372, 382 (2007). *Harris* suggests that "all that matters is whether [the officer's] actions were reasonable." 550 U.S. 372, 383 (2007). As a matter of common practice, however, policing has generally adopted the approach laid out in *Garner*: officers may use deadly force to address imminent threats of serious physical injury or death. 471 U.S. 1, 3, 11 (1985).

less-lethal uses of force: the foreseeable results of an officer's actions must be proportional to the imminent threat presented by the subject's actions.

This generally accepted principle is reflected in the policies of the Providence Police Department, which state, in relevant part, "The level of force used may be based directly upon the level of resistance exhibited by a subject, and may escalate in relation to that level of resistance."¹⁵⁷ Additionally, Providence Police Department policies direct officers to "always employ the minimum amount of force, via the force option which he/she believes to be objectively reasonable under the circumstances, in order to accomplish the lawful objective(s) at hand."¹⁵⁸ Further, agency policy reminds officers that "every police officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person."¹⁵⁹

Given the high likelihood of injury and the low likelihood that a series of closed-fist punches to the face, side of the face, or side of the head would effectively generate compliance, no reasonable officer would have used a closed-fist to strike Mr. ██████ in the face, side of the face, or side of the head under the circumstances.

In this case, however, over approximately two-and-a-half seconds,¹⁶⁰ Ptlm. Diaz struck Mr. ██████, apparently in the face, with a closed fist three times.¹⁶¹ In the same time frame, Ptlm. Voyer struck Mr. ██████, apparently in the face or side of the face or head, with a closed fist five times.¹⁶²

For the foregoing reasons, under the circumstances at the time, the use of closed-fist punches to Mr. ██████ face, side of the face, or side of the head was grossly disproportionate to any threat he presented.

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¹⁵⁷ Providence Police Department, General Order 300.01, Use Of Force, Apr. 4, 2021.

¹⁵⁸ Providence Police Department, General Order 300.01, Use Of Force, Apr. 4, 2021.

¹⁵⁹ Providence Police Department, General Order 100.02, Ethics and Limits of Authority, Feb. 4, 2021.

¹⁶⁰ Voyer BWC 02:02:43 (00:00:52.400) - 02:02:46 (00:00:55.066)

¹⁶¹ Voyer BWC 02:02:43 (00:00:52.733), 02:02:44 (00:00:53.500), 02:02:45 (00:00:54.033).

¹⁶² Voyer BWC 02:02:44 (00:00:53.500), 02:02:44 (00:00:53.866), 02:02:45 (00:00:54.266), 02:02:45 (00:00:54.666), 02:02:46 (00:00:55.066).

3. The available evidence tends to suggest that at least some of Ptlm. Diaz's fourth through seventeenth closed-fist punches and his knee strike may have been excessive, unreasonable, and contrary to generally accepted police practices, although there is insufficient information to allow for a definitive expert conclusion

The framework for evaluating police uses of force is provided above.¹⁶³

Beyond his first three punches, Ptlm. Diaz punched Mr. ██████ an additional fourteen times (Ptlm. Diaz's fourth through seventeenth punches).¹⁶⁴ The point at which most of Ptlm. Diaz's punches struck Mr. ██████ are not clear from the BWC video, although some appear to hit Mr. ██████ in the face or head.¹⁶⁵ Ptlm. Diaz also appears to have hit Mr. ██████ in the face or head with a knee strike.¹⁶⁶

Importantly, at the relevant time, most of Mr. ██████ body is obscured by other officers on the various BWC videos. For that reason, the nature of Mr. ██████ actions—specifically the location of and movement of his hands—at the time of Ptlm. Diaz's last fourteen punches and apparent knee strike are not entirely clear from the available evidence.

This lack of information precludes me from coming to a definitive conclusion as to the propriety of Ptlm. Diaz's last fourteen punches and apparent knee strike. On the one hand, if a reasonable officer in Ptlm. Diaz's position would have perceived that Mr. ██████ was submitting or under the control of officers and did not present any imminent threat, Ptlm. Diaz's last fourteen punches and knee strike would have been unreasonable, excessive, and contrary to generally accepted practices. In the same vein, if a reasonable officer in Ptlm. Diaz's position would have perceived that Mr. ██████ was still resisting but was sufficiently under control to not present a threat of physical harm to officers, any of Ptlm. Diaz's last fourteen punches and knee strike that were directed at Mr. ██████ face or head may have been unreasonable, excessive, and contrary to generally accepted practices. On the other hand, if a reasonable officer in Ptlm. Diaz's position would have perceived that Mr. ██████ was attempting to access a weapon and presented an imminent threat of serious physical harm to the officers, Ptlm. Diaz's last fourteen punches and knee strike may have been reasonable, proportionate, and consistent to generally accepted practices.

¹⁶³ See Ptlm. Diaz's first three closed-fist strikes to Mr. ██████ face or head and Ofc. Voyer's five closed-fist strikes to Mr. ██████ face or head were excessive, unreasonable, and inconsistent with generally accepted police practices.

¹⁶⁴ Voyer BWC, 02:02:51 (00:01:00.333), 02:02:51 (00:01:00.766), 02:02:52 (00:01:01.300), 02:02:52 (00:01:01.400); Manown BWC, 02:02:55 (00:19:18.300); Sanchez BWC, 02:02:57 (00:09:35.733), 02:02:58 (00:09:36.700), 02:02:59 (00:09:38.000), 02:03:00 (00:09:38.766), 02:03:01 (00:09:39.133), 02:03:01 (00:09:39.500), 02:03:01 (00:09:39.966), 02:03:03 (00:09:41.966), 02:03:04 (00:09:42.500).

¹⁶⁵ Voyer BWC, 02:03:03 (00:09:41.966), 02:03:04 (00:09:42.500).

¹⁶⁶ Voyer BWC, 02:03:01 (00:01:11.166).

Although the evidence does not allow for a conclusive opinion, the available evidence tends to suggest that at least some of strikes may have been excessive, unreasonable, and contrary to generally accepted police practices.

First, it is worth noting that, after Ptlm. Diaz's third punch and Ptlm. Voyer's fifth punch, Ptlm. Voyer turned and stepped away from where officers were interacting with Mr. [REDACTED]. It is highly unlikely that an officer would step away from an extent use-of-force situation unless he was confident that the situation was under control.

Second, when Sgt. Perez approached the location where the officers were interacting with Mr. [REDACTED], he said, apparently communicating via radio, "Alright, Code 3, Code 3, apprehended,"¹⁶⁷ and then yelled, "Cuff him!"¹⁶⁸ This order suggests that Sgt. Perez, at least, perceived that Mr. [REDACTED] was in a position from which officers could readily apply handcuffs. Sgt. Perez repeated that direction six additional times in the time period that Ptlm. Diaz threw at least an additional four punches and the apparent knee strike.¹⁶⁹

Third, as Ptlm. Diaz hit Mr. [REDACTED] for the sixteenth and seventeenth time, Ptlm. Voyer was leaning toward him and putting his hand on Ptlm. Diaz's shoulder and Sgt. Perez was approaching Ptlm. Diaz from behind. Immediately after Ptlm. Diaz threw his sixteenth and seventeenth punch, Sgt. Perez physically lifted Ptlm. Diaz away from Mr. [REDACTED] and Ptlm. Voyer put an arm between them and then stepped between them. It is *highly* unusual for officers to physically intervene in another officer's use of force when they perceive that use of force was--or even *could be*--reasonable. Notably, Sgt. Perez later stated that he believed that Ptlm. Diaz had not heard his commands to handcuff Mr. [REDACTED] and he believed Ptlm. Diaz's use of force was justified and within agency policy.¹⁷⁰

Fourth, after Ptlm. Diaz was physically removed from Mr. [REDACTED], and prior to Mr. [REDACTED] being handcuffed, an officer was holding the bag—described as a fanny pack—that Mr. [REDACTED] had been wearing.¹⁷¹ The positioning of the bag behind Mr. [REDACTED] lower back and to his right, suggests that it was not in a position where he could easily access it while lying on his left side with his left arm under his head and his right hand under his upper torso, as reflected in the screen capture on the following page:

¹⁶⁷ Perez BWC, 02:02:54.

¹⁶⁸ Perez BWC, 02:02:58.

¹⁶⁹ Sanchez BWC, 02:03:02; Rhode Island State Police, Officer Involved Use of Force Investigation, p. 133.

¹⁷⁰ Statement of Andrew Peres, July 26, 2021, p.8.

¹⁷¹ Voyer BWC, 02:03:05 (00:01:13.333).

Voyer BWC, 02:03:04
(00:01:13.333)
Labelled



In short, the available evidence suggests that, at least at the time of Ptlm. Diaz’s last strikes, a reasonable officer in his position would not have thought that Mr. [REDACTED] would have been able to access the fanny pack.

Fifth, Sgt. Troia, who arrived on scene while Mr. [REDACTED] was still on the ground, immediately instructed the officers, “Get him Rescue,” after arriving.¹⁷² An individual who is obviously in need of medical assistance is less likely to present a threat that justifies a serious use of force.

Sixth, Mr. [REDACTED] was limp while officers pulled him into a sitting position, moved him from the sitting position to a nearby car, and moved him from the car to the side of the road. In and around that time, Ptlm. Sepe used a series of sternum rubs and pressure at the nail bed, apparently to check Mr. [REDACTED] level of consciousness, and told several officers that Mr. [REDACTED] was “in and out,”¹⁷³ presumably referring to being in and out of consciousness. Although some observers appeared to believe that Mr. [REDACTED] was faking, an individual who is limp and either must be physically moved or chooses to be physically moved cannot reasonably be interpreted as a threat that requires a serious use of force to address.

¹⁷² Troia BWC, 02:03:26.

¹⁷³ Sepe BWC, 02:06:29, 02:06:55

Seventh, Ptlm. Diaz’s actions after his uses of force—attempting to pull away from Sgt. Perez,¹⁷⁴ spitting on the ground or Mr. ██████,¹⁷⁵ and yelling at the bystanders to “shut the fuck up”¹⁷⁶—suggest that he was either unable or unwilling to comport himself the way a reasonable officer would under the circumstances. When officers are incapable or unwilling to properly control themselves and act appropriately under the circumstances, they are more likely to use force in situations that do not justify it or to use more force than the situation requires.

Taken as a whole, the available information tends to suggest that Mr. ██████ did not present a meaningful threat of frustration, escape, or harm throughout the duration of Ptlm. Diaz’s last fourteen punches and apparent knee strike. However, because there is insufficient evidence as to the nature of Mr. ██████ actions at the time and the location of Ptlm. Diaz’s strikes, the available information is insufficiently detailed to allow any expert to come to a definitive conclusion as to the propriety of Ptlm. Diaz’s last fourteen punches and apparent knee strike.

For the foregoing reasons, the available evidence tends to suggest that at least some of Ptlm. Diaz’s fourth through seventeenth closed-fist punches and his knee strike may have been excessive, unreasonable, and contrary to generally accepted police practices, although there is insufficient information to allow for a definitive expert conclusion.

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¹⁷⁴ Sanchez BWC, 02:03:05.

¹⁷⁵ Buten BWC, T06:03:47Z.

¹⁷⁶ Cooney BWC, 002:07:18.

4. There is insufficient information to allow for a definitive conclusion as to the propriety of the unidentified officer's two knee strikes

The framework for evaluating police uses of force is provided above.¹⁷⁷

At one point in the officers' interaction with Mr. ██████, an unidentified officer appears to use two knee strikes.¹⁷⁸ The synchronized BWC videos reflect that these knees strikes were used after Mr. ██████ had rolled onto his side and pulled at least his left hand and potentially his right hand away from the officers holding his hands behind his back.¹⁷⁹

A knee strike can be an appropriate force option to use against an actively resisting subject, depending on where it is targeted and the nature of the subject's actions. For example, a knee strike to the large muscles of the side or upper back may be entirely reasonable and consistent with generally accepted police practices while a knee strike to the spine, neck, or head may be unreasonable, excessive, and contrary to generally accepted police practices. And in the event that a reasonable officer could have perceived the subject presented an imminent threat of death or great bodily harm, the use of a knee strike to the spine, neck, or head may be reasonable and consistent with generally accepted police practices.

In this case, the available information simply does not establish where the knee strike was targeted or hit. The available information also does not establish the nature of Mr. ██████ actions at the time. For that reason, there is an insufficient evidentiary basis for expert evaluation of this use of force.

For the foregoing reasons, there is insufficient information to allow for a definitive conclusion as to the propriety of the unidentified officer's two knee strikes.

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¹⁷⁷ See Ptlm. Diaz's first three closed-fist strikes to Mr. ██████ face or head and Ofc. Voyer's five closed-fist strikes to Mr. ██████ face or head were excessive, unreasonable, and inconsistent with generally accepted police practices.

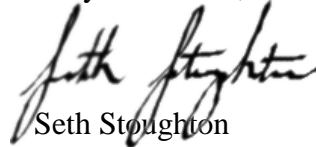
¹⁷⁸ Manown BWC 02:02:51 (00:19:13.900 – (00:19:15.000).

¹⁷⁹ See Colicci BWC 02:02:49 (00:01:57.633).

Submission

The preceding constitutes my report into the July 9, 2021, incident involving officers employed by the Providence Police Department and [REDACTED] [REDACTED]. This report is based on the materials reviewed to date. Should any subsequent information cause me to expand, add, or revise any of my opinions, I reserve the right to revise, amend, or supplement this report accordingly.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Seth Stoughton". The signature is written in a cursive style with a large, sweeping initial "S".

Seth Stoughton

February 2, 2022