

Taken By: Detective T. Ferguson
Transcribed from Tape: Betty Bischoff
Date Taken: 3/20/06
Time Taken:
Place Taken:

This is Detective Terry Ferguson with the Major Crimes Unit for the Spokane Police Department. Also present is SCSO Major Crimes Detective Doug Marske and Steven Braun. I'll have you give me your full name in just a minute. It is March 20, 2006 and the time is 1430 hours. The report number is 06-79962 of the incident we'll be discussing, an incident which occurred on March 18, 2006.

FERGUSON: To begin with Steve, I am going to ask you if you are aware that this is being recorded?

BRAUN: Yes I am.

FERGUSON: Do we have your permission to record?

BRAUN: Yes you do.

FERGUSON: Also for the record, did you have an opportunity to discuss this interview with your Spokane Police Guild representative?

BRAUN: Yes I did.

FERGUSON: And we have your permission to go ahead with the interview?

BRAUN: Yes you do.

FERGUSON: I also want to put on the record that we did have an opportunity to discuss the incident prior to the recording. Is that your recollection?

BRAUN: That is my recollection, yes.

FERGUSON: I also want it on the record that you will have the opportunity to review the transcript from this record to make sure that it is accurate to the best of your recollection.

BRAUN: O.k.

FERGUSON: So we will go ahead and discuss the incident that happened at the Zip Trip in Spokane, WA at Indiana and Division on March 18th. This incident happened on a Saturday with dispatch being uh notified via 9-1-1 of a complaint at about 1814 hours. Steve, we're going to go ahead and begin with a little bit of background history just before we get into the actual incident regarding your activities before showing up for work.

BRAUN: O.k.

FERGUSON: Right. And again we want to make sure we know exactly what incident we're talking about.

BRAUN: Yes.

FERGUSON: Did you, can you tell me what your work shift is and what hours you work, and what time you may have gotten off of work on March 18th?

BRAUN: Uh, I work uh Power Shift North. I start work at 1600 hours and complete my shift at 0240 hours. Um, Saturday would have been my Thursday or my 4th day in a row working. Uh, it was my working through Wednesday or working from Wednesday through Sunday shift. My days off vary.

FERGUSON: So you would have worked until Saturday morning at....

BRAUN: 10.

FERGUSON: about?

BRAUN: 2:40.

FERGUSON: 2:40.

BRAUN: Logged off about 2:25.

FERGUSON: And your activities when you went home to go straight to sleep. Did you stay up?

BRAUN: I, I arrived home at about 2:55 in the morning. Had a bowl of cereal, a little cottage cheese. Uh filled up my dog's water dish. Um, so my wife didn't have to do it in the morning when she's feeding him. Uh and then went to, to bed.

FERGUSON: How many hours of sleep did you get that day?

BRAUN: 7 to 8. Which is pretty regular for me.

FERGUSON: That would be routine?

BRAUN: Yes.

FERGUSON: What time do you think you awakened?

BRAUN: Uh, 11:20 to 11:25 in the morning.

FERGUSON: What would you have done for the rest of your free time until you had to go to work?

BRAUN: Uh, my wife [REDACTED] Um, would have had some lunch. Uh, and then I was uh, uh got on the internet a couple of times to see if my teacher for my upcoming class had posted his syllabus yet so I figure out what homework I had to do.

FERGUSON: Did you have dinner?

BRAUN: Yeah just lunch, but yeah I had food before I left.

FERGUSON: Any alcohol, medications....?

BRAUN: No alcohol. I do not take any prescription medications and I do not take any over the counter medications.

FERGUSON: Did you work out that day?

BRAUN: No I did not.

FERGUSON: What time did you leave for work?

BRAUN: Uh, approximately 1510 hours.

FERGUSON: And how long would it take you to get here?

BRAUN: 15 to 20 minutes to get to work.

FERGUSON: When you got to work, what did you do?

BRAUN: Uh, went up to the locker room. Put my uniform on. Uh went into the roll call room. Checked to see if I had any uh new e-mail, any new voice mails, anything put in my personal mailbox. Uh changed out the battery in my portable radio. Um, and then just waited for roll call to start.

FERGUSON: This sounds like its pretty routine for you.

BRAUN: Yes it is.

FERGUSON: and that you don't vary from it much?

BRAUN: No.

FERGUSON: How long have you been working night shift?

BRAUN: Uh, Power Shift, this would be the start or toward the beginning of my 4th year on Power Shift and then previous to that I worked 3 years of graveyard. So ever since I've been on the Department other than the Academy and the uh training car, I've always worked nights.

FERGUSON: How long have you been a police officer?

BRAUN: Uh, a little over 6 years.

FERGUSON: Are you any specialty units?

BRAUN: Uh, I'm a member of the TAC Team and been a member of the TAC Team for about 2 ½ years and I'm also a Field Training Officer and I've been doing that for about 3 years.

FERGUSON: Have you received training in uh use of force?

BRAUN: Yes I have.

FERGUSON: Have you received training and been certified, if that's the right word, to use tasers?

BRAUN: Uh, I've been trained to use tasers and um for lack of a better to way to describe it, the Dept. gave me a taser and said I'm o.k. to carry it, um.

FERGUSON: But you did receive training in it?

BRAUN: Yes, I did.

FERGUSON: And how about your side handle baton? Have you received training for that?

BRAUN: Yes, I have received training my side handle baton.

FERGUSON: So getting back to the night that this happened, uh, routine activity for you prior to roll call?

BRAUN: Yes.

FERGUSON: You suited up?

BRAUN: Yes.

FERGUSON: Was there anything going on in the locker room in terms of anyone saying it had been a hard day, a busy day, anything that would give you a mind frame that....

BRAUN: No.

FERGUSON: it was going to be an unusual night?

BRAUN: No.

FERGUSON: Uh, how long was roll call?

BRAUN: Uh, 20 to 25 minutes.

FERGUSON: Did you have a full team?

BRAUN: Uh, our sergeant was gone.

FERGUSON: And your sergeant is?

BRAUN: Uh, Al Amzen.

FERGUSON: All right.

BRAUN: And one other officer, Doug Strosahl was on vacation that night.

FERGUSON: And how many would that leave you with?

BRAUN: Uh, I believe there were 6 or 7 uh patrol officers there including myself.

FERGUSON: And what area of town are you supposed to be addressing?

BRAUN: North, north side Spokane.

FERGUSON: You've been there just this year?

BRAUN: Uh, I've only worked one year south. Everything else has been north.

FERGUSON: Everything else has been north.

BRAUN: Everything.

FERGUSON: Were you assigned to a one man car?

BRAUN: Yes, I was.

FERGUSON: And what's that car?

BRAUN: Uh, I was in, my call sign is Adam 325 and I was in Patrol vehicle 386 which is one of the two Dept. TAC cars assigned for the members of the TAC Team.

FERGUSON: Does your team normally get assigned specific numbers that carry through? In another words, if you are Adam 325...

BRAUN: I'll be Adam 325 all year.

FERGUSON: Subsequently when you hear other officers responding on the radio, do you know who they are?

BRAUN: Yes.

FERGUSON: What time do you think you actually got onto Patrol that night?

BRAUN: 1630, 1635, right around in there.

FERGUSON: Did you have any calls for service you responded to before this incident?

BRAUN: The, I, I know that I had, did not have any self-initiated activities and the only call that I can remember going on was uh a female had called from a Laundromat on Monroe south of Jackson saying she had been involved in some sort of a domestic altercation on the 16th of March and when I arrived there, she was no where to be found, there were 2 men in the parking lot. Um, a heavysset uh white gentleman who was sitting on a chair outside the doors of the Laundromat and there was an African-American gentleman near a white Cadillac and they were having a conversation and I remember asking both of them if they had seen a female um near the pay phone

or making a phone call. Uh, the larger white male said that yes there was, but she had walked off on foot in an unknown direction so I never made contact with her.

FERGUSON: So if I looked at a CAD printout of that it would show an 11David which is.....

BRAUN: I actually cleared it with a 2 David. She was gone on arrival.

FERGUSON: All right.

BRAUN: So.

FERGUSON: Do you remember about what time that may have been? We talking an hour before maybe this incident or minutes?

BRAUN: It would probably have been oh approximately 1700, 1715, so about an hour before the incident occurred.

FERGUSON: What did you do for the hour in between?

BRAUN: Drove around looking for traffic stops. Seeing if other calls were coming out.

FERGUSON: O.k. Where were you, when you were first aware of an incident that actually ending up being the one we are talking about today?

BRAUN: Uh, I was driving north on Perry and I hit the F5 button on my MDC. The F5 button's purpose is to pull up the calls that are holding in your Patrol area. Um, when I pushed that button as I was driving north on Perry, the call, this call was on the screen and I can't remember if it was labeled as trouble unknown or a suspicious person. I can't remember how it was labeled. Um, I read over the call and saw that a female was calling in saying that a male was messing with the ATM at a Washington Trust Bank at the corner of Baldwin and Ruby. As I was reading that, dispatch um uh called out my call sign and a call sign for Zach Storment which is Adam 326. I immediately got on the air and decided this is the call at Baldwin and Ruby, I'll check and advise.

FERGUSON: What does that mean?

BRAUN: It means I, I don't need another unit with me. I'll go to the area. I'll see what's going on and if there is um some sort of emergency or there's a rapidly developing call, I'll advise radio and ask for another unit then.

FERGUSON: Did you head directly over in that direction?

BRAUN: Yes, I did.

FERGUSON: O.k. go on.

BRAUN: Um, radio said yes. I don't, can't remember exactly what they said, but they acknowledged that yeah, I'll go take care of the call um sent the call to me and disregarded Adam226. I continue to drive north on Perry to Wellesley which is the nearest arterial. I drove west on Wellesley to Division and then south on Division. When I got near the intersection of Bridgeport and Division, Bridgeport being an arterial that only goes east from Division. It doesn't go west. Um, radio advised that uh females were watching the male still. That he ran off east on Nora um and that its possible that he got some of her money, but it wasn't really clear. Then radio asked me if I was still code 4 and I said well if there's another unit available, I'll take another unit. I don't remember hearing radio or dispatch asking somebody else to go on the call. I continued south on Division to Baldwin. I turned east on Baldwin and I remember seeing the Washington Trust Bank at the, I guess it would be, the southwest corner. Um, continued to drive east because the last that I had heard was that the male was running east on Nora. So I thought just go in the area and see if we could if we could run him.

Radio had or dispatch had also advised initially that the male had long blond hair and as I was driving east on Baldwin, I was advised he had long red hair. So I was checking the area and then as I was east on the east side of Ruby, uh dispatch advised that either the female or the new complainant said that the male was in the, near the White Elephant. Um, it's a retail store. I started turning back because Ruby is one way north. I had tried to cut back to get across Ruby when I heard Officer Thompson get on the air and say he saw the male or a male matching that description, description give out, walking into the Zip Trip. I know there's a Zip Trip at Augusta and Division, so I just started driving to the Zip Trip.

FERGUSON: What was Officer Thompson's call sign?

BRAUN: Edward.....is it Edward 252? I can't remember exactly what it is, but I know his voice on the air. So I knew.....

FERGUSON: There was recognition on your part.....

BRAUN: Yeah, I know, I knew it was Karl Thompson because I recognized his voice.

FERGUSON: All right.

BRAUN: I can't remember his call sign. I drove to the Zip Trip. I parked in the parking lot to the Zip Trip just north of the sidewalk that runs along the north side of Augusta, but south of the gas pumps at the Zip Trip. I got out of my car. I grabbed my flashlight from the charger. I grabbed my side handle baton from my Patrol bag. I put my flashlight in my left rear side or flashlight pocket and I put my baton in my baton ring that is on the left side of my duty belt.

FERGUSON: Why did you take your baton with you?

BRAUN: It is routine for me. Um, I think the side handle baton is a good uh impact weapon if you're dealing with someone who is assaultive and it can also be used to um block someone who could might be coming at you with a baseball bat or sword or uh someone who is throwing stuff, it could be used to block, to keep from getting hit from something. From a blunt object.

FERGUSON: Is it routine for you?

BRAUN: Yes it is.

FERGUSON: O.k. go on.

BRAUN: Uh, uh, I walked to the south entrance of the Zip Trip.

FERGUSON: And I'm going to stop you.

BRAUN: O.k.

FERGUSON: For the record, uh we have a sketch, uh basic sketch to scale of the Zip Trip which is the building that is involved with this incident and that Officer Braun is referring to the sketch when he demonstrates the direction of travel he took to enter and will also be using the sketch to indicate where he was when he was involved in the altercation within. O.k., Steve, that having been said, please go ahead.

BRAUN: O.k. uh as I was getting out of my car, I did not see any other Patrol vehicles and I did not see Officer Thompson anywhere, so I wasn't exactly clear where he was at this point. As I walked toward the south door into the business, I could see a clerk behind the counter and there were 3 or 4 customers on the south side of the counter and there were 3 or 4 customers on the south side of the counter near the door that I would have entered if I walked in the south door. Uh, it looks like they were paying for things. I don't know if they were paying for gas or cigarettes or magazines, but I saw there were 3 or 4 customers at the counter. Um, I did not walk in the south door because I did not want to put my gun side toward those customers and I also because I didn't have a clear view of the entire store yet, I wanted to walk around to the west doors so I could try to get a visual picture. See everything that was going on

inside the store. Uh, try to see if I could see the suspect anywhere, see if I could see Officer Thompson somewhere anything else that might have been going on in the store that could have been a potential danger or threat to me.

FERGUSON: From the time that Officer Thompson said that he saw someone matching the suspect description go into the Zip Trip, do you recall any radio traffic.....

BRAUN: I didn't.....

FERGUSON: from him?

BRAUN: I don't recall hearing any radio traffic from him after he said that he saw a male matching the description going into the Zip Trip. I don't remember hearing any radio traffic whatsoever from him.

FERGUSON: So when you arrived and were walking towards the business, you did not know his location?

BRAUN: No and I didn't, I didn't initially see him or um Zehm inside of the business.

FERGUSON: And Zehm is...?

BRAUN: That is the suspect.

FERGUSON: Go ahead.

BRAUN: So I walked west along the south side of the business was, there's windows along that side and I was looking and trying to see if I could see anything that was going on inside of the store. I walked around the uh southwest corner of the store, walking north along the west side of the store and when I reached the door that's center on the west side of the business, I looked in and I could see initially um Officer Thompson. It appeared to me he was wrestling with Zehm near the northwest corner of the south shelf in the center of the business.

FERGUSON: And, yeah it's a mouthful and.....

BRAUN: Yes.

FERGUSON: actually you're able to use the sketch to demonstrate that and I want you to use that red pen to indicate anything you need to.

BRAUN: They're initially right where that long description I just gave. Uh, when I reached the door, I saw that uh that both Zehm and Officer Thompson had

moved slightly northeast and were then centered between the north shelf and the south shelf that are in the center of the store. As I was entering through the door, I could see Officer Thompson's taser with, and I could tell that he had fired the probes, because I could see the wiring coming out and it was on the floor near the southwest corner of the north shelf unit in the center of the store.

FERGUSON: Do you mind using the black marker, and, and we're going to use that to show where equipment is. And you could see that the probes....

BRAUN: Yes, I could see that the probes had been fired. Um....

FERGUSON: Go ahead.

BRAUN: I initially thought Thompson's in a fight with this guy and for a split second after that, I thought it was strange that, 'cause I, I seeing that the probes had been fired from the taser gun, I knew that he had been fighting for at least 30 seconds. Um, or I thought he had been fighting for what would have been approximately 30 seconds just because the taser's on the ground and the probes been fired so just the amount of time that would have had to transpire to me would have been about 30 seconds. But I remember thinking it was odd or almost surreal that a policeman is fighting with this guy and that he had fired his taser and that there was still just customers and a clerk doing business, what appeared to be business as usual and not really paying any attention to an officer fighting with a guy. And then that, I mean that was a thought for like a fraction of a second and then I was back to Karl's in a fight and I need to get in this and I need to help him and keep Thompson, Officer Thompson from getting injured. I need to keep Mr. Zehm from getting injured at all if that is possible. Need to get him under control and try to calm down the situation and then figure out what's going on.

As I was coming through the door, I was pulling out my side handle baton from the left side of my body.

FERGUSON: Did you ever see another baton at the scene before it was over?

BRAUN: No, I did not.

FERGUSON: So what you saw that had been deployed at that point...?

BRAUN: Was the taser gun.

FERGUSON: O.k. Go ahead.

BRAUN: Uh, I pulled out my side handle baton from the left side of my body. I saw that Officer Thompson was on the right side of Zehm and that Zehm was lying on his back on the floor between the north shelf and the south shelf.

FERGUSON: And when you say he is on his right side...Is Officer Thompson also on the floor?

BRAUN: He's either bent over or in a kneeling position. One of the two. I can't remember exactly which. As I started approaching, I could see, I couldn't really clearly see Zehm's right arm, but I saw that his left hand as in a fist. Um, I told him, I told Zehm to stop fighting, stop resisting. I delivered 3 or 4 power jabs with my side handle baton to Zehm's left rib cage below his left arm. Uh, after I delivered those, it didn't appear they had any effect on Zehm. He didn't make any sound. He didn't make even any indication that he knew that I had even delivered power jabs to him with my side handle baton. Um, after I did a quick assessment, I saw that Mr. Zehm still had his left hand in a fist and then at that time, I saw what looked to be some sort of paper that was white or an off white in his left fist that I, initially thought was U.S. currency, but it was just a small amount that I could see.

FERGUSON: Prior to delivering the power jabs, do you recall Officer Thompson saying anything?

BRAUN: I don't recall Officer Thompson saying anything at all.

FERGUSON: Prior to the power jabs, did you say anything?

BRAUN: I, as I was delivering the power jabs, I can't remember if I started saying it before or during, but I said "stop fighting, stop resisting" to Zehm.

FERGUSON: One time, two times, three times?

BRAUN: Two or three times. Uh, I know I said it more than once.

FERGUSON: All right.

BRAUN: Um, after delivering 3 or 4 power jabs, I, I took like a half a step back. I didn't want to get too far away from it just to try and do an assessment to see if there was any, any weapons, if he was still fighting. It still appeared to me that he was fighting and his left hand was still in a fist. Officer Thompson didn't have or didn't have any control really over Zehm and Zehm was still kind of flailing about. He was still, his arms were moving, his legs were moving, um, I....

FERGUSON: What were you thinking right now at that point?

BRAUN: This is going to be a, a big fight. I mean this guy's fighting, I am a larger man and I used my side handle to deliver 3 or 4 power jabs and they had no effect. It's like he didn't even know I was there and I was thinking that this guy is going to be, is gonna be a big fight.

FERGUSON: How big are you?

BRAUN: I'm 6'4" and out of uniform I weigh approximately 275 pounds with my uniform on I weight approximately 305 to 310 pounds.

FERGUSON: O.k. go ahead.

BRAUN: Um, I went to re-engage and Mr. Zehm rolled.... When I delivered the first power jabs he was rolled slightly to his right which is how I was able to get to the lower part of his rib cage, because it was just a slight little lean. He leaned back so he was almost flat on his back. Seeing that his left hand was still in a fist and that Officer Thompson had no control or very limited control over Zehm's right arm, I delivered 2 or 3 more power jabs to Zehm's left rib cage, but this time above his left arm which was...his elbow would have been almost flush with his rib cage. It was down to that area and his left hand again was still in a fist. Uh, after I did deliver 2 or 3 more power jabs, still zero effect on Zehm, again I don't even know if he knew I was there or that I had struck him with my side handle baton. Uh, I then heard Officer Thompson say something to the effect of "get your taser out. Use your taser." So I dropped my side handle baton right along the west end of the south shelf in the center of the store.

FERGUSON: And again Officer Braun, are you indicating that placement on the sketch?

BRAUN: Yes, I am.

FERGUSON: While you're doing that and at this point, I'm going to go ahead and turn, turn off the machine and roll the tape over and that's at about 1555 hours. We'll be off for just a second.

FERGUSON: This is Detective Ferguson. We have turned the tape over and we'll be resuming with the interview with Steve Braun at approximately 1453 hours.

Steve, you're aware that we're back on record?

BRAUN: Yes.

FERGUSON: I think where we left off was that you were using the sketch to....

BRAUN: I, I....

FERGUSON: indicate where you dropped your side handle baton?

BRAUN: Yes. That is correct.

FERGUSON: Continue.

BRAUN: Uh, I dropped my side handle baton because Officer Thompson said "use your taser" and then Officer Thompson said "You might have to take a second to try and get a good shot." Um meaning or what I interpreted as meaning is so that there would be enough spread in the two probes to have enough area of Zehm's body affected to where he would be incapacitated for long enough for us to handcuff him and also so that I didn't shoot Officer Thompson with the taser and take him out of the fight.

FERGUSON: Are tasers more effective the further apart?

BRAUN: Yes they are.

FERGUSON: the probes are? And how close were you?

BRAUN: Uh, approximately 3 feet. Um I was on, I was standing um and my feet would have been near Zehm's left knee roughly or his left upper thigh. Um and I saw that Officer Thompson was still to Zehm's right side and was trying to control his right arm or I couldn't really see what he was doing, but I knew he was fighting with him. Um, I pulled my taser out. There's already a cartridge in it. The taser can be used 2 different ways. If you have a cartridge in it, it shoots out 2 probes uh at a maximum range of 21 feet or you can take the cartridge out and um make actual contact to a person with the taser and deliver um electricity that way. Um, so I turned off the safety and when you turn the safety off, there's a red light that shows where your target is and wherever the red light is where the top probe is going to go. I had enough room to when Officer Thompson was back a little and I saw that I put the red light um on Zehm's center mass or maybe just a half an inch below his sternum. When I saw that I was there and I had a, a clean shot if I discharged the probes from my taser. I did not see where the probes went because Zehm was moving around and still fighting and wrestling so much that I don't even know if either of the probes hit him. Um, I have seen uh people hit with the probes of a taser either in training or out on the street and every time that I've seen it, the person makes kind of an uhhhhh sound and just kind of locks up and gets really tense and then has no control. Just kind of falls over or lays there, but isn't able to move their arms or throw punches or anything like that. Zehm was still moving around. He's still flailing. He didn't make any sound other than the grunts and moans he had been making the whole time when I had been there. Um, he didn't say anything or didn't say anything that I could understand.

FERGUSON: Did you draw any conclusions from those observations?

BRAUN: Uh, my conclusion was that the taser either didn't hit him or it didn't work. Um, so I turned the safety on, removed that cartridge, just dropped it to the floor. Um as I was doing that, um, Officer Thompson and Zehm, Officer Thompson still being near or on Zehm's right arm, they moved slightly counterclockwise. So no Zehm's feet were right next to my left ankle. Um, thinking or hoping that the taser probes missed him, I reached for another cartridge hoping that I could make contact with 2 new probes and um render Zehm kinda immobile so we could get some sort of control and get him in handcuffs and end the fight so that there was no injuries or just maybe bumps and bruises. As I was attempting to put the a new cartridge into my taser, I saw Zehm's left knee bend as if he was pulling his knee toward his body. My initial reaction was that he was going to kick me. As I saw his foot going forward, I felt that he was trying to kick me. The only thing that I felt I could do was bend my left knee slightly because I felt that if he kicked me in the left knee, that he was going to break my left knee. Just 'cause there was, he, he had enough momentum with his foot and I was close enough to him that if he would make contact that he would have broke my left knee. So I dropped the cartridge as I was bending my knee and he actually made contact with my left knee with his left foot. And then his foot either bounced off or he pulled it back after he made contact kicking me. Uh, initially I kind of bent my knee again and, and realized that I wasn't in any pain. I knew I had been kicked, but I wasn't in any pain and my knee still worked so....

FERGUSON: Prior to his kicking action, was there any verbal communication from him?

BRAUN: As he was, right before he kicked me, he didn't say anything to me, but he looked right at me and I, and to me a couple of things went through my mind. The first was that's the first time he knew there was another policeman there and the second one was; he didn't want me there and he was going to assault me. Because he, he was almost looking like, he was acquiring a target. When he looked at me. Um, and then um after he kicked, Mr. Zehm and Officer Thompson rotated then clockwise at and Officer Thompson said something to the effect of do a touch stun, do a drive stun, um, at least that's to the best of my recollection or I just thought I needed to try a drive stun. I put the taser into Zehm's, the left side of his neck and depressed the trigger. The safety was off and depressed the trigger. My finger stayed on the trigger for and maybe a second, but possibly up to 6 seconds so I delivered at least one, but no more than two 5 second bursts with my taser to the left side of Zehm's neck. He made a loud groaning noise, but he was still, he's, his left hand was still in a fist. I could still see that he was pulling back and forth on Officer Thompson. He was still fighting in my opinion. Uh, the taser had the, the drive stun had no effect.

FERGUSON: And what would you have expected?

BRAUN: That he would have, my expectation was he was going to say "Ow, I give up" or "stop" or something to indicate that, that didn't feel good and he didn't give

me that indication at all. Um, after pulling my finger off him and the uh, uh, the 5 second burst or the second 5 second burst was over, uh to the left side of his neck, I pulled the taser back to try to assess if there had been any effect, if he was still fighting. He was still fighting. He pulled his left hand up which was still in a fist up over his head. I don't know if he was trying to punch me, if he was trying to protect his face. I don't know what he was doing when he pulled his hand up, but his hand, his left hand was still in a fist and he pulled his arm up.

I then delivered a drive stun into the area of his left armpit. As soon as I depressed the trigger, I took my finger immediately off of the trigger so I know, I feel very confident that there was only 1 5 second burst delivered that time.

FERGUSON: What was he wearing?

BRAUN: He was wearing a gray t-shirt, a black leather or leather type jacket that was unzipped and open in the front uh and blue jeans and he had long red hair.

FERGUSON: So with the uh drive stun....

BRAUN: The one in the armpit would have been going through his jacket and his t-shirt.

FERGUSON: All right.

BRAUN: And I don't know if that would have um, had any effect or limited the effectiveness of the taser uh when I delivered the drive stun to his left armpit area. Um, that again didn't work, or didn't appear that it worked and he was still fighting. I took a step back and somehow, and I don't know how we got in this position, but Zehm was now in a seated position with his back to me and Officer Thompson on the opposite or away, the opposite side of Zehm facing me. Officer Thompson said try to get a neck restraint. I dropped my taser on the floor, which ended up right next to my side handle baton and the cartridge that I had been trying to put, the second cartridge I had been trying to put into my taser before Zehm kicked me in the left knee. Uh, I got my right hand, open hand near Zehm's right jaw trying to put a neck restraint on. I couldn't see where his mouth or or how his head was positioned because of his long red hair. I felt that if I put my hand, if I tried to go around his neck, that he would have bitten me and I didn't want to get bit. Not knowing if he had any blood borne pathogens, if he would have bit my finger off, anything. So I pulled my hand back and then....

FERGUSON: You, you didn't follow through on the neck restraint?

BRAUN: No, I didn't follow through on the neck restraint.

FERGUSON: And....

BRAUN: I did not get...my hand didn't get any further past the area of his right ear.

FERGUSON: O.k. at this time I have to stop us.

BRAUN: O.k.

FERGUSON: and take care of something, so I'm going to go off the record at about 1506 hours.

FERGUSON: O.k. this is Terry Ferguson. We're back on the record again and I have 1510 hours. Again Steve are you aware that this is being recorded?

BRAUN: Yes I do.

FERGUSON: And we have your permission to do that?

BRAUN: Absolutely.

FERGUSON: Please go on and if memory serves me correctly....

BRAUN: We were talking about the neck restraint.

FERGUSON: O.k. Go ahead.

BRAUN: Um, I should go back a little to when I first walked in. Um another one of the things I remembered thinking was that this guy was wanting to fight and not, he was trying to flee or try to get away. He was trying to fight and with that trying to injure somebody. And I, I that became very clear to me when he looked at me like he was getting a target and actually kicked me. I thought he was trying to hurt me.

FERGUSON: Prior to that, did you, did you draw any conclusions from your observations of his interaction with Officer Thompson?

BRAUN: He was fighting. I mean, that, that, if Officer Thompson had to use a taser and that didn't work and, you know, the way that this guy had both of his hands and, you know, or at least his left, I really couldn't see his right, but his left hand in a fist, he was there to fight and, and to injure somebody and not just leave me alone, I don't feel like going to jail. He was there to fight.

FERGUSON: And you had tried verbal commands?

BRAUN: Yes, I told him to stop fighting, stop resisting and its like he didn't even hear me.

FERGUSON: And you had deployed the taser?

BRAUN: Yes.

FERGUSON: And....

BRAUN: I'd done at least 2, possibly 3 drive stuns. Um and nothing worked.

FERGUSON: And the drive stuns do not include the probe....?

BRAUN: No they do not.

FERGUSON: But they still provide some sort of an electrical current?

BRAUN: Yes, they do.

FERGUSON: That if I remember correctly, you saying that in the past you've seen people react?

BRAUN: Yes I have.

FERGUSON: And in this case, the reaction was not that which you....would have expected?

BRAUN: No and I've actually been um trying to control suspects in the past where another officer does the drive stun on that person and I've gotten residual electricity. I remember one where the electricity went through my right leg and it hurt and I immediately just wanted to jump back away from it.

FERGUSON: So after the application of the 2 to the neck, or or 1, I'm sorry, the 1 to the neck and the

BRAUN: One to the left armpit....

FERGUSON: Yes, then

BRAUN: He, they, it appeared to be me there was no reaction whatsoever. He didn't, he didn't get, I mean he was already tense because, he, he, he was making a fist and was fighting, but it wasn't like he uh locked up, like he lost control of his muscles and the electricity just causes muscle to a kind of tense up. Um, didn't say ow, didn't say stop, didn't say leave me alone, didn't say anything, just kind of grunting.

FERGUSON: You had moved to the neck restraint....

BRAUN: I had, yeah, I had gotten my ^{right} hand about his left ear and when I realized I can't really see where my hands going, I don't want to get bit, and possibly get blood borne pathogen from this guy, I pulled my hand back. I then put both my left hand and my right hand either on uh Zehm's shoulder and collar, but near his left shoulder, jacket collar area. I pushed him immediately to the right so he ended up lying on his right side with his head toward the floor.

FERGUSON: And Steve, did we clarify then when you tried to apply the neck restraint that he was in a seated position?

BRAUN: He was in a seated position. His, his, his buttocks were on the floor. Um, his legs were in front of him. I don't know if his legs were folded, extended straight out, but he was in a seated position with his back directly to me.

FERGUSON: Pardon me for interrupting you....

BRAUN: No, that's fine.

FERGUSON: He had moved from being on the floor....

BRAUN: Yes.

FERGUSON: on his back to a seated position?

BRAUN: Yes. And I don't, I can't remember how he got to that position.

FERGUSON: And the neck restraint was something you did not feel you could successfully without.....

BRAUN: Without a lot of danger to myself getting bit.

FERGUSON: So then go ahead with your description again.

BRAUN: O.k. then I, I, put both my hands on either his left upper arm, left shoulder, left collar of his jacket area. I pushed him to the right uh his right shoulder and his head would have landed on the floor still between the north shelf and the south shelf in the middle of the business.

FERGUSON: So he was in a prone position after the application of that technique?

BRAUN: No, he was on his side.

FERGUSON: O.k.

BRAUN: He wasn't in a prone position. He was on his side. I put my right shin across his left jaw line um and then kept um my left and right hand on his left arm trying to keep some sort of control over him. I was then able to use my right hand to get on my portable radio and I said to radio something to the effect of, this guy is fighting pretty good, we need a couple of more units. Shortly after I said that, I heard Officer Thompson get on the air and say code 6. Which means we need a heightened response, we need a couple of units. We need them to come here using their emergency equipment, overhead lights, audible signal to get here because we need help immediately. Um, then somehow, Zehm was on his back and I was no longer on him. I don't remember, it's possible that I got off of him, but I can't imagine that I would do that I would do that because if my shin is across his left jaw and I'm holding down his left arm, I have some level of control there. I can control where to a certain extent where his head is going to go. If he going to be able to sit back up again and I have control of his left arm because I, I knew his left hand had been in a fist almost the whole time and if I could keep that down to his body, I know he is not going to be able to strike either Officer Thompson or myself. Um, but somehow he was on his back and I was no longer on top of him for a little bit. Um,....

FERGUSON: So you had applied uh force to the left jaw area with a shin and somehow that wasn't effective?

BRAUN: That wasn't effective and I was no longer on top and I no longer had control over him at all um, but I don't know or cannot remember exactly how it is that I was no longer in that position. Uh, when he was on his back, I then put my left knee either on his left forearm or his left rib cage above his arm, but some place where I felt I had at least some control over his left hand so that he didn't have the ability to punch me or Officer Thompson. Um, his right hand in a fist then came up over his face. I don't know if he was trying to punch me, I don't know if he was trying to pull away from Officer Thompson. I, I don't what his intensions were, but his right hand was in a fist and so I immediately grabbed, used my right hand to grab um his right wrist from the pinkie side and then put my left um hand either on his forearm or near his elbow and just to control that hand so that I didn't get punched, Officer Thompson didn't get punched and to try to get some control so the fight would end. I then started to twist his pinkie so his pinkie would have been twisting up toward his face in a counterclockwise motion. Uh, my hope was that I was going to be able to twist his arm in that way. Straighten his arm out, pull him to get him to a prone position so we could handcuff him and get control and end the fight and end the um or lower the possibilities of somebody getting injured whether it was law enforcement or Zehm getting injured. Um, I remember twisting and no pain compliance whatsoever. He didn't make any sounds. I wasn't able to straighten out his arm. I wasn't able to pull him over and I remember

saying that something to the effect of "This isn't working and if I twist too much more, I'm going to break his arm" and I didn't want to break his arm. Um, and then shortly after I said that, I saw another officer come in um and start helping to get control and then a split second later there was 4 or 5 other officers um trying to control Zehm and I was no longer directly um involved in the altercation nor did I have any physical contact with Zehm and my initial reaction was I'm glad there are other officers there because I was starting to get fatigued and didn't know how much more effect I would have had in a fight where the suspect has no pain toler....I mean no pain threshold, doesn't seem to be, have any effect with side handle baton or a taser and I didn't know how much more I could just kind of hold on and fight with him when nothing seemed working to control him.

Um as other officers who um, I'm as they were trying to (unintel) recognize as being um Officer Uberuaga, Officer Raleigh, Officer Dahl uh and I believe Sgt. Torok, trying to control him and get Zehm onto his stomach so they could do a prone handcuffing possession. My initial reaction was I had been in those situations before and you have a couple of officers pulling and turning in different directions so I wanted to try to give some sort of verbal directions so it would move smoothly and the fight would be over. We could get some sort of control. Um, the first thing I saw was some Tampax Tampons on the south side of the north shelf in the middle of the business and I said, turn him toward the Tampons. It didn't sound like they heard me, but when I saw that they weren't able to get him in a prone position and they were still wresting around with Zehm, I couldn't see what Zehm was doing, but I could see that he was moving and other officers weren't able to get him onto his stomach.

FERGUSON: When you were watching this, were there any baton strikes delivered by anyone?

BRAUN: I did not see any baton strikes. I did not see any um tasers used.

FERGUSON: All right.

BRAUN: um, so I picked up my taser, put the second cartridge back in and I picked up my baton because I thought I had to get back in to try and control Zehm and the fight and limit the potential for somebody getting injured again whether it be law enforcement or Zehm or any of the customers that could have still been in the store. Um, as I was picking that stuff up, I saw that Zehm was on his back and that he was getting handcuffed and I felt relieved because it was the beginning of the end of the fight. Um, so I put my taser in my holster, I put my side handle baton in my baton ring, uh and then just kind a, I heard somebody say, do we need to leg restrain or ask, do we need to leg restrain him. I remember thinking that he needed to be leg restrained and I, I'm fairly confident that I said yes he needs to be leg restrained, but somebody said yes, he needs to be leg restrained. I can't remember exactly who that was. Um, I didn't.....

FERGUSON: Do you remember what Zehm was doing or Mr. Zehm was doing at that time?

BRAUN: Zehm was, although he was on his stomach, and he was in handcuffs, he still kind of flailing about and uh, the leg restraints, I remember thinking he needed leg restraints because had kicked me already and he was still kicking with his feet. I don't know if he was trying to strike an officer with his feet or if he was just kicking to be kicking, but he still, he's still wrestling around and, and the control is, well he is in handcuffs, but the control is still limited that the other officers had over him.

FERGUSON: Do you remember if you heard any of the other officers say anything to him?

BRAUN: I, I heard you know a couple of people say, stop fighting, stop kicking, you know, relax, you know, stop resisting, stop fighting. I don't know exactly who was saying that stuff. Um, but I remember hearing, you know, a couple of different voices saying things to that effect.

FERGUSON: From what you observed, was Mr. Zehm complying?

BRAUN: No he was not complying.

FERGUSON: And at some point someone asked do we need leg restraints...?

BRAUN: Yes.

FERGUSON: Someone responded.....?

BRAUN: Yes we do.

FERGUSON: What happened then?

BRAUN: Um, some, somebody um leg restrained Zehm. I couldn't see exactly who it was. I found out later that the leg restraints belonged to Officer Dahl, but I don't know if he is the person or officer who applied the leg restraints. Uh, cause I remember once I saw that he was in handcuffs and there were other officers there, I just kind of walked a little bit and collected myself from that huge adrenalin dump that I had gotten. Uh, uh, as I was doing that is when I saw Officer Thompson's straight stick or straight baton um near the southwest corner of the store near uh what's on the diagram is the Coke display and a Pepsi display. Um, after that I don't, I don't know what happened to it. Uh, and then um I had walked outside and saw Cpl. Johnson and I asked him to take a photograph of a small footprint or boot print on my left knee that I believe came from Zehm when he kicked me in the left knee.

FERGUSON: Did he take a photograph then?

BRAUN: Yes he did. And then I walked back in the store and I heard um I fairly sure it was Officer Uberuaga say "The guy's not breathing. He's turning blue." I, I, I knew that prior the members of the Fire Dept, I don't know which station they came from, had been at the scene because of the taser. I didn't see any firemen around. I ran out the west door and saw a fireman walking toward the fire engine and I yelled "the guy's not breathing. We need help."

FERGUSON: Did they turn around then?

BRAUN: Yes.

FERGUSON: Did they re-enter?

BRAUN: Yes...

FERGUSON: The store?

BRAUN: They did re-enter the store.

FERGUSON: Were you present when they uh.....

BRAUN: Briefly. Um, and then I was just talking with other officers about what had happened. I don't remember any specifics um, but whatever, I saw Sandy McIntyre pick it up. The, looks like a couple of pieces of mail, that we believed Zehm dropped um on the south side of the south shelf. I remember asking Officer Moses to try and contact the original complainant and then get a statement from her. Um, I remember hearing Officer Strassenberg saying that even before Zehm stopped breathing, that we needed AMR to transport him just because the belief at the time, at least by myself, was that Zehm was high on some sort of drugs. I, I thought he was high on methamphetamine just 'cause of the way he was acting and no pain compliance, nothing.

FERGUSON: O.k. for clarification, you were present when someone called for medics prior to.....

BRAUN: Yes.

FERGUSON: Officer Uberuaga saying....

BRAUN: Yes.

FERGUSON: He stopped breathing.

BRAUN: Yes. Medics were called. It's almost immediately after Zehm was placed in handcuffs possibly before the leg restraints went on. It was very early on.

FERGUSON: All right.

BRAUN: Um, and then uh Officer Strassenberg asked me if I would ride in the ambulance with him once AMR arrived. I saw that Officer Strassenberg was going to be in the ambulance as well as a couple of members of the Fire Dept. and AMR staff. Uh I told Strassenberg that I would follow him to the hospital directly behind him and he said that would be o.k. I then asked uh one of the uh AMR staff members, I don't know who it was, which hospital. I was told it was Deaconess. I then followed the ambulance to Deaconess Medical Center with my overhead emergency lights on so that I could stay directly behind the ambulance in case Zehm came to and started fighting again and AMR had to pull over I could be immediately there to, to help. Um, followed AMR all the way to Deaconess Hospital. I entered the hospital, went to the trauma room. I was in there for a minute or two. I had a brief conversation with Officer Strassenberg. I asked him if they ever revived Zehm. Strassenberg said that about halfway through the trip that yes he was revived and I saw medical staff working on him and then Officer Uberuaga entered and told, advised me that I was needed back at the uh Zip Trip. So I drove back to the Zip Trip and when I got back there, uh Lt. Lundgren was there and advised me that uh Ron, Officer Ron Voeller was going to become my shadow. Stay with me um, that he was going to drive me to the station, uh and then after that uh went to the station and was at Major Crimes.

FERGUSON: There was one point I wanted to clear up from our initial interview.

BRAUN: O.k.

FERGUSON: I just need to go through here and find it. This would have been after you entered the store obviously and it looked like Karl was on his right side trying to control his right arm...

BRAUN: Yes.

FERGUSON: and at least in the first interview, you had had some thoughts at that time....

BRAUN: Yes.

FERGUSON: which included, I think you've already put on the record that you thought he was fighting. Were there any other thoughts that went through your mind at that time.

BRAUN: I thought he was fighting, was, was fighting to fight and injure somebody and not to flee. I, I, I've, I've had several throughout my career where somebody kind of struggles a little bit and tries to pull away and maybe even wrestling around a little bit, but when I think about, they're not trying to injure me, they're just trying to get away or they're trying to put on a show for their friends or family members or something. My perception was that Zehm was fighting because he was trying to injure Officer Thompson and he was just, he was try, he was trying to fight to fight. Um, I also, and I don't know if I put this on the record or not, but that split second just thinking it was a little surreal that, you know, Officer Thompson was in this fight with this guy, but the customers and the clerk at the Zip Trip were carrying on business as usual. It wasn't, it didn't even phase them that this was going on. I thought that was odd. So..

FERGUSON: O.k. uh Detective Marske?

MARSKE: Yeah, here the uh in the first interview you said after the third officer arrived, you were glad because you were starting to get.....

BRAUN: Yes.

MARSKE: really tired.

BRAUN: Yes.

MARSKE: You also said something about um besides being tired, you had tried pretty much every technique that you....

BRAUN: Yes.

MARSKE: could to gain control of that, but you didn't say that on the tape. Um.....

BRAUN: I, the one thing I didn't try were um level 2 strikes, like a knee strike or open handed palm strike because of the close quarters and the chance of striking Officer Thompson um or because we were that close to Zehm, I didn't want to do anything that could have intentionally got him to draw blood or bleed because I didn't want any blood, any bodily fluids around that could have given some sort of blood borne pathogen to Officer Thompson or I.

FERGUSON: Did you ever see any blood on either Officer Thompson, yourself or....

BRAUN: After everything was over, I saw that there was some dried blood or that Officer Thompson had been bleeding in his lip, in his lower lip.

STATEMENT OF: Ofc. Steve Braun

RPT: 06-79962

FERGUSON: I'm going to go change the tape again. It's about 1529 hours. We shall return with a new tape. (Tape done).

This is Detective Ferguson and we are back on record after changing the tape and it is 1531 hours. Again Officer Braun, are you are aware that we are being recorded?

BRAUN: Yes.

FERGUSON: And we have your permission to continue?

BRAUN: Absolutely.

FERGUSON: I believe that um we left off with Detective MARSKE uh asking you some questions, so we'll continue with that.

BRAUN: O.k.

MARSKE: O.k. um, your backup arrived and basically replaced you and Thompson, is that what you said?

BRAUN: That is correct.

MARSKE: And how many officers showed up....

BRAUN: I....

MARSKE: or do you remember?

BRAUN: At least 4 or 5.

MARSKE: O.k. Did they immediately gain control of....

BRAUN: No they did not and I, I, that's when I was picking up my taser and my side handle. I was in shock that, that many officers couldn't control him although I couldn't really see his, Zehm's movements, but I remember thinking that I had to get back into the fight, if you will. Because they even 4 or 5 guys that were "fresh" but, I mean they hadn't been fighting, and they were fighting with someone who had been fighting, you know Zehm had been fighting for at least 2 minutes possibly up to 3 or more minutes and 4 or 5, you know, full sized, full grown men, couldn't control one guy that had been fighting pretty good for, you know, 2, 3, 4 minutes.

MARSKE: O.k. Eventually they got leg restraints on him...?

BRAUN: Yes.

MARSKE: we talked about that. Did that, did that stop the fight?

BRAUN: No, he was, he was still flailing around and I remember hearing somebody, and I can't remember who it was saying that he was stretching leg restraints and I was able to look over and see that he had, in fact, pulling the leg restraints and you could see the that they were getting stretched out and there was even uh Officer Dahl was near his leg trying to control his feet and Officer Dahl's a good sized man and, and was still unable to have full control over Zehm's legs.

FERGUSON: Had you ever seen anyone been able to do that with the leg restraints?

BRAUN: Stretch them like that? No.

FERGUSON: And you have seen the leg restraints.....

BRAUN: Yes.

FERGUSON: applied in the field?

BRAUN: Yeah, I've had them applied to me. Um, I've applied them to other people in the past. I, and to have somebody have that much mobility with their legs and just stretch those out, I've never seen that.

FERGUSON: Was there any point during this struggle with Mr. Zehm, that you thought you were going to get hurt?

BRAUN: As soon as I walked in and saw the taser on the ground, I knew that, I, I kind of had a pardon the quote, but "Oh shit this guy's fighting to fight and to injure, not to flee" and then when I struck him with my side handle baton um and had zero effect....

FERGUSON: And again those were power jabs.....

BRAUN: power jabs....

FERGUSON: Right.

BRAUN: Um, I don't know if helpless is the right word, but then again not to boost my ego, but I'm a large guy and I'm fairly strong and if I'm hitting somebody with or power jabbing with a side handle baton and they act like they didn't know I was there, its going to be a pretty good fight and the chance of me getting injured or Officer Thompson getting injured I felt were pretty high.

FERGUSON: Is there anything that you want to add?

BRAUN: Uh, not that I can, not that I can think of.

FERGUSON: I want you to know that if there is something, you know, down the road, that you feel is important for us to know, we would be interested in having that

BRAUN: Yes.

FERGUSON: information?

BRAUN: Yes.

FERGUSON: This doesn't have to be the end and you're going to have a chance to look through the transcript.

BRAUN: Oh and just one thing is um my side handle baton was not collected as evidence from the scene. Um, when I was able to get to my Patrol car and drive back to the station, I saw that my side handle was there, but because of everything that had been going on, I didn't think to take it and give it to Detective Ferguson as evidence. Um, I put my side handle baton in my Patrol bag and then put it in the TAC locker uh which is only has that accessibility to the members of the TAC Team and my side handle baton is my side handle baton and it stays in my Patrol bag. Uh, I don't have it marked with my name or with personnel number, but I do know it on sight because of wear, tear and little things that it has on it

FERGUSON: O.k.

BRAUN: so.....

FERGUSON: I appreciate that information. And again for the record, were you compelled in any way to make this statement?

BRAUN: No I was not. Did it of my own free will.

FERGUSON: Were you offered an opportunity to talk with an attorney before....

BRAUN: Yes I was.

FERGUSON: we had this interview?

BRAUN: Yes I was.

STATEMENT OF: Ofc. Steve Braun

RPT: 06-79962

FERGUSON: Detective Marske is there anything you'd like to add?


MARSKE: Uh, no.

FERGUSON: O.k. we will be going off the record at 1536 hours.

FURTHER INVESTIGATION

DETECTIVE T. FERGUSON #153
SCSO DETECTIVE DOUG MARSKE

MAJOR CRIMES UNIT

 #647 4-6-06
S.S. BRAUN #647

