VOLUME TWO OF FOUR

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorneys for Appellant

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 East Main Street

Lexington, SC 29072
(803) 785-8352

Attorneys for Respondent

INDEX

INDEX i

IMMUNITY HEARING TRANSCRIPT - MAY 31 – JUNE 1, 2011 1

TESTIMONY:

ROBERT E. RUSHTON
Direct Examination by Mr. Garrett 6
Cross Examination by Mr. Myers 103
Redirect Examination by Mr. Garrett 109

GEORGE KIRKHAM
Direct Examination by Mr. Garrett 110
Cross Examination by Mr. Myers 139
Redirect Examination by Mr. Garrett 141
Recall 144

ALAN SHEFFIELD
Direct Examination by Mr. Garrett 147

NICHOLAS MOORE
Direct Examination by Mr. Garrett 160
Cross Examination by Mr. Maye 173
Redirect Examination by Mr. Garrett 177
Recross Examination by Mr. Maye 183
Redirect Examination by Mr. Garrett 185

SARA MELISSA MCALISTER
Direct Examination by Mr. Garrett 188

CLOSING STATEMENT BY MR. HENDERSON 210

CLOSING STATEMENT BY MS. MYERS 220

EXHIBITS FROM IMMUNITY HEARING

STATE'S EXHIBIT #1-A, OATH FOR COUNTY OFFICERS 232

STATE'S EXHIBIT #2-A, FIVE STATEMENTS: MOORE, MCALISTER, SHEFFIELD, SHEFFIELD, AND REID 236

DEFENDANT'S EXHIBIT #1-A, WESTLAW, OATH, DEPUTY SHERIFF 244

DEFENDANT'S EXHIBIT #2-A, GUN PHOTOS 246

DEFENDANT'S EXHIBIT #3-A, STATEMENTS OF R.E. RUSHTON, COMPLAINT LETTER 3/1/11 TO CLERK OF COURT, SUMMONS LETTER 2/10/10 TO CLERK OF COURT, ANSWER FILED 6/10/10 250

DEFENDANT'S EXHIBIT #4-A, STATEMENT, SUMMARY OF EVENTS 7/27/11, SHEFFIELD 283

DEFENDANT'S EXHIBIT #5-A, SUMMARY OF EVENTS, STALLO, 7/22/10 287

DEFENDANT'S EXHIBIT #6-A, 5/29/07 DNR LETTER RO SARA MELISSA HAGER 292

DEFENDANT'S EXHIBIT #1-A, BLACK NOTEBOOK PREPARED BY DEFENSE ATTORNEYS 244

COURT'S EXHIBIT #1-A, LAW SUBMITTED BY DEFENSE 727

AMENDED INITIAL BRIEF OF APPELLANTS 757

COA ORDER - AUGUST 21, 2013 795

TRIAL TRANSCRIPT 797

TESTIMONY:

JOSEPH E. COLLIER, JR. (IN CAMERA)
- Direct Examination by Mr. Maye 799
- Voir Dire by Mr. Garrett 803
- Direct Examination Cont. by Mr. Maye 804
- Cross Examination by Mr. Garrett 815
- Redirect Examination by Mr. Maye 818
- Recross Examination by Mr. Garrett 819

OPENING STATEMENT BY MR. MAYE 844

OPENING STATEMENT BY MR. GARRETT 862

TESTIMONY:

NICHOLAS MOORE
- Direct Examination by Mr. Maye 872
- Cross Examination by Mr. Garrett 921

DONALD GARMAN
Direct Examination by Mr. Maye 985

ROBERT CHARLES DENSMORE
Direct Examination by Mr. Maye 989
Cross Examination by Mr. Garrett 1007

BOBBY RUSHTON
Direct Examination by Mr. Maye 1008
Cross Examination by Mr. Garrett 1036
In Camera Examination by Mr. Garrett 1091
Recross Examination by Mr. Garrett 1094

ALAN SHEFFIELD
Direct Examination by Mr. Myers 1094
Cross Examination by Mr. Garrett 1114

JOSEPH E. COLLIER, JR.
Direct Examination by Mr. Maye 1121
Cross Examination by Mr. Garrett 1153
Redirect Examination by Mr. Maye 1170
Recross Examination by Mr. Garrett 1171

KENNETH H. WHITLER
Direct Examination by Mr. Maye 1173
Cross Examination by Mr. Garrett 1180

GEORGE H. REID
Direct Examination by Mr. Myers 1182
Cross Examination by Mr. Garrett 1190

ROBERT WORLEY
Direct Examination by Mr. Garrett 1224
Cross Examination by Mr. Myers 1266
Redirect Examination by Mr. Garrett 1282
Recross Examination by Mr. Myers 1286

NICHOLAS MOORE (IN CAMERA)
Direct Examination by Mr. Garrett 1301

GEORGE KIRKHAM
Direct Examination by Mr. Garrett 1305
In Camera Examination by Mr. Garrett 1345
Cont. Direct Examination by Mr. Garrett 1347
Cross Examination by Mr. Myers 1353
Redirect Examination by Mr. Garrett 1424

BO WILLIS
Direct Examination by Mr. Garrett 1433
Cross Examination by Mr. Maye 1446
Redirect Examination by Mr. Garrett 1466

CLOSING ARGUMENT BY MR. MAYE 1513

CLOSING ARGUMENT BY MR. GARRETT 1516

CLOSING ARGUMENT BY MR. MYERS 1555

CHARGE OF THE COURT 1598

VERDICT 1638

TRIAL EXHIBIT C-2:

RECONSTRUCTION HEARING – JUNE 14, 2013 1655

TESTIMONY:

REMA THOMAS
Direct Examination by Ms. Ballard 1667

DESIREE RUTLEDGE ALLEN
Direct Examination by Ms. Ballard 1695

GWEDOLYN DORN CHILES
Examination by the Court 1707

NOTES FROM ASSISTANT SOLICITOR ERVIN MAYE 1715

AFFIDAVIT FROM APPELLANTS IMMUNITY HEARING ATTORNEYS – SEPTEMBER 7, 2013 1730

NOTES FROM JUDGE KEESLEY 1737

NOTES FROM DEPUTY CLERK OF COURT REGARDING THE ORDER AND TIME OF WITNESSES 1750

AMENDED ORDER ON RECONSIDERATION OF THE DEFENDANT'S MOTION TO BAR PROSECUTION – DECEMBER 6, 2011 1754

SENTENCING HEARING TRANSCRIPT - JUNE 30, 2014 1778

ABEYANCE MOTION – MAY 4, 2016 1799

COA ORDER – JUNE 17, 2016 1808

RECONSTRUCTION HEARING TRANSCRIPT – OCTOBER 25, 2016 1810

TESTIMONY:

CARSON HENDERSON
Direct Examination by Mr. Strom 1829
Cross Examination by Mr. Aplin 1833

FRANK YOUNG
Direct Examination by Mr. Aplin 1837

REPORT REGARDING RECONSTRUCTION OF THE RECORD - DECEMBER 30, 2016 .. 1847

INDICTMENTS 1861

CERTIFICATE OF COUNSEL 1865

d. Seek help

e. Pacify through dialogue

G. DEADLY MISTAKES

There are ten common deadly errors that officers have made in the past:

1. Not handcuffing or improperly restraining suspect's hands
2. Poor searching or not searching suspect at all
3. Wrestling with arrested subject
4. Failure to watch hands of suspect, especially the palms
5. Taking a bad position - inside position, no proper F.I. stance, etc.
6. Taking unnecessary risks – over-reaching control capabilities
7. Missing danger signs – pre-attack cues that suspect gives (hands above waist, strong side back, head dip, etc.)
8. No defensive tactics skills
9. Not being proficient with equipment
10. Not maintaining a winning attitude (officer should never give up)

Officers must prepare themselves physically, mentally, and psychologically for deadly encounters so we will not give up.

Video: Ohio Incident

H. EIGHT CIRCUMSTANCES OF OFFICER KILLINGS

There are eight major circumstances and situations in which officers are killed nationwide.

1. Arrest Situations
2. Disturbance Calls
3. Investigating Suspicious Persons
4. Traffic Pursuits and Stops
5. Ambush Situations
6. Transport and Custody of Prisoners
7. Mentally Deranged
8. Civil Disorders

More officers are killed in one-officer patrol units while on patrol.

I. WEAPON RETENTION

Around 10% of the officers killed each year with firearms are killed with their own weapons.

1. Reasons Why Officers Are Disarmed

   a. Wearing unsafe holsters

   b. Unsnapped holsters

   c. Overreaching control capabilities

   d. Searching before handcuffing

   e. Handcuffing in front

   f. Failing to use baton forcefully

   g. No training in weapon retention

   h. Getting careless

2. Proper Retention Techniques

   a. SECURE the weapon in the holster with a cross grip with weak hand, placing strong hand on top of gun grip or suspects hand.

   b. POSITION your body by dropping strong side back or shuffling closer to suspect, lowering center by bending knees.

   c. RELEASE is caused by striking suspect's forearm with the bony portion of the officer's forearm, otherwise known as a lateral forearm strike.

J. EDGED WEAPON ATTACKS

Approximately 1,500 officers nationwide are cut by edged weapons each year. Fortunately for the officers, a very small number of the victims die as a result of these attacks.

Precautions Against Knife Assaults

1. Develop awareness for edged weapons. Officers should educate themselves as to the different types of edged weapons found on the street.

2. Always wear soft body armor. This will protect the officer from slashes to the torso.

3. Always watch the suspect's palms (weapons can easily be hidden in the palm area and on the inside of the forearm).

4. Check surroundings for an avenue of escape or obstacles which can be placed between the officer and the suspect.

5. Maintain a safe distance from the suspect. Officers should maintain a distance of 6 – 10 feet from any civilian while in the interview/interrogation process. The minimum distance that officers should be from suspects with edged weapons is 30 feet. The officer's best option in this situation will be their firearm.

K. DOG ATTACKS

Each year officers are being confronted by vicious dogs or attack dogs. Many of the drug dealers and suppliers are using guard dogs to watch over their drugs and homes. When officers execute search warrants or arrest warrants, they are being confronted with attack dogs and many are not prepared. Many of these dogs are receiving special training such as climbing trees, fences, and walls. They are also being fitted with ballistic armor.

Some of these dogs' vocal cords are being cut to keep them from barking or growling. Owners are mixing human blood in with the dogs' food so that the dogs will associate human flesh with food. Many attack dogs are trained to go to the groin and neck of the victim, if available. If not, they will grab anything presented to them such as an arm or a leg. If the officer must sacrifice a limb temporarily, it is best to offer the weak forearm, and immediately draw the service weapon with the strong hand and fire into the dog's neck or head area. If deadly force is not warranted, strike the dog in the throat, eyes, ribs, or genital area. The officer could also hurl the dog into a wall or a hard surface. Loud verbal commands may cause the dog to attack if it thinks you are threatening.

If possible, the officer should get away from the dog or use other distractions, such as water, electrical tools, O.C. spray, or impact weapons. The officer must also consider civil liability issues when using force against an owned animal. It is also advisable to preserve as much of the dog's brain as is possible if shooting is necessary, so that tests can be done to determine if the dog has rabies. Officers may also want to purchase a Dazer Unit, which can stop a dog attack because of its sound frequency which is irritating to dogs.

If disengagement is not possible, turn your body to the side and look at ground. This presents a non-threatening stance for an attack dog.

L. OFF-DUTY SURVIVAL

While off duty, if an officer realizes that a crime is in progress, it would be to the officer's advantage to become a good witness and not get involved.

Problems While Off Duty

1. Lack of Community Support
2. Lack of Equipment
3. Contact and Cover
4. Family and Friends
5. Identification (Badge)
   * Must be careful placing blue sticker on POVs.

M. EQUIPMENT

Equipment plays an important part in safety of the officer.

1. Hat

   Make sure that the brim does not obstruct sight of the suspect.

2. Shirt and Pants

Shirt and pants should be worn approximately ½ to 1 size larger, to accommodate the officer's ballistic vest and to remain intact during a struggle or foot pursuit.

3. Raincoat

The officer should be able to get to equipment on duty belt. A 2-piece rain suit is recommended.

4. Shoes

Patent leather holds moisture, causing feet to blister in summer and remain cold in winter. Athletic/tactical shoes afford the officer the opportunity to perform better in the event of a foot pursuit.

5. Tie

Most departments provide clip-on ties for officers. Officers should not wear the traditional civilian tie, which can be used against the officer in a strangulation assault.

6. Gloves

Officers should wear driving gloves, or tight-fitting gloves, or remove the tips of the fingers from thicker gloves, allowing the index finger to fit in the trigger guard of their firearm.

7. Duty Belt and Holster

Duty belt and holster should be of good quality material, held together with strong stitchin' to aid in weapon retention.

8. Ammunition

Fully loaded speed strips and speed loaders should be worn on duty belt if using a revolver. Magazines for auto-pistols.

9. Jewelry and Earrings

Officers should not wear chains, bracelets, or dangling earrings. These objects may be used to strangle the officer, or used to distract.

10. Latex Gloves

Latex gloves should be kept in patrol vehicle or on the duty belt in the event of vehicular accident calls, fight calls, or HIV calls or transports.

11. Impact Weapons, Sprays, and Tazers

Impact weapons and sprays should be readily available on the duty belt. Impact weapons are usually worn on the weak side and sprays are usually worn on the strong side. Tazers are usually worn on weak side.

12. Flashlights

Flashlights should be of good quality direct lighting. Officers should stay away from chrome-plated types of lights which reflect (announce) where the officer is. A smaller second flashlight should be worn on the belt.

13. Traffic Vests

Traffic vests should be worn when working accident scenes or intersections at night, or in inclement weather.

14. Personal Strobe Lights

Have personal strobe lights to attach to the belt in the event the officer is incapacitated while working with a team in a wooded area or if the officer is working in a traffic situation at night or in inclement weather.

III. SUMMARY

It is hoped that the officer now has a better concept of what the term "officer survival" means to police officers. What officers have learned in this block will be a sound foundation for their future careers in police work.

506

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Officer Survival	250	Revised February 2006

1. Federal Bureau of Investigation, U.S. Department of Justice. FBI Uniform Crime Reports "Law Enforcement Officers Killed." Washington, D.C.

2. Remsberg, Charles. Street Survival: Tactics for Armed Encounters. 403 pp. Calibre Press Inc. Northbrook, Ill. 1989.

3. Remsberg, Charles. The Tactical Edge: Surviving High Risk Patrol. 543 pp. Calibre Press Inc. Northbrook, Ill. 1988.

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Tactical Handcuffing	158	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Basic Instructional Unit	8 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Michelle Collins

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
July 23, 2002	2005

LESSON PLAN PURPOSE:

The student will demonstrate the basic handcuffing techniques using the principles of reaction time, balance displacement and tactical positioning, relative to dealing with the three types of subjects faced in the law enforcement environment: the totally cooperative subject, the potentially uncooperative subject, and the totally uncooperative subject.

EVALUATION PROCEDURES:

Written examination – 80% required for passing

Practical examination – 100% proficiency level demonstrated on standing speedcuffing and the iron wristlock takedown

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

Handcuffs (variety of styles commonly seen in law enforcement)
Flex cuffs
Handcuff keys
Duty belts with holsters
Training guns
Training conducted in the gym (Hands-on)

508

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Tactical Handcuffing	158	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Identify the nomenclature of the handcuffs.
2. Identify the three types of subjects an officer will handcuff.
3. Identify the speedcuffing system design principles.
4. Demonstrate proper grip of the handcuffs when speedcuffing.
5. Demonstrate proper handcuffing techniques from the standing position.
6. Demonstrate the proper use of the iron wristlock takedown when resistance is encountered.
7. Demonstrate proper searching techniques and procedures.
8. Demonstrate high-risk cuffing procedures.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Tactical Handcuffing	158	Revised January 2006

I. INTRODUCTION

Next to an officer's firearm, the handcuffs are one of the most important pieces of equipment he/she will carry. Just as the officer must assure that his/her firearm is always ready to function properly, he/she must also assure that his/her handcuffs are maintained in that condition too.

II. BODY

A. NOMENCLATURE

To begin, the different parts of the handcuffs must be identified:

1. Single strand and teeth
2. Double strand
3. Rivet
4. Key hole and double lock mechanism
5. Swivel
6. Chain

Handcuffs are oval in shape and are made to fit only when they are applied either to the thumb side of the hand or to the little finger side of the hand. The handcuffs must be applied to the part of the wrist with the smallest diameter; a good guideline is using the ulnar bone. This is the boney structure that is located on the top of the wrist on the little finger side. This area between the ulnar bone and the hand is called the "handcuffing groove."

Once the handcuffs are applied, the officer should double lock the cuffs as soon as it is tactically safe to do so. The officer should also check the tightness of the cuff on the subject's wrist. This can be accomplished by the officer envisioning placing his/her little finger in between the cuff and the subject's wrist; if he/she can do this, the cuffs have been applied to a proper degree of tightness.

The subject's hands will always be cuffed to the rear, behind the back, unless he/she has a physical condition that would prevent this type of cuffing from occurring. Keep in mind that handcuffs are considered a temporary restraining device only.

It is recommended that the handcuffs be carried on the strong side of the officer's duty belt. The cuffs should also be carried preset, which means that a couple of teeth on the single strand should be exposed through the double strand.

The type of handcuffs that an officer carries should match his tactical environment. The hinged cuffs, also called security cuffs, offer a higher degree of control for a longer period of time; this is one of the reasons that this type of cuff is seen so frequently in the correctional environment, especially when transporting a subject. The chain link cuffs offer the police officer more flexibilit and are generally easier to apply when arresting a resistive subject.

B. TYPES OF SUBJECTS

When making an arrest, an officer will encounter one of three types of subjects; a totally cooperative subject, a potentially uncooperative subject, or a totally uncooperative subject.

1. Totally Cooperative Subject

This is probably the most common type of subject an officer will face daily. The majority of arrests that an officer makes are misdemeanor arrests, where the subject complies with all of the officer's verbal commands. This is not to imply that the subject could not become uncooperative and resist at any time, but it is not likely.

2. Potentially Uncooperative Subject

This is the most dangerous type of subject to handcuff. There are two types of subjects that will normally fit this profile; the experienced criminal and the intoxicated subject. Studies show that this resistance most often occurs when the subject is first "touched."

3. Totally Uncooperative Subject

A common sense rule of "do not attempt to handcuff unless the subject is under control" should be followed with this type of resistor. An officer should never try to handcuff this type of individual until he/she has adequate backup or assistance.

C. DESIGN PRINCIPLES – TACTICAL CONSIDERATIONS

The PPCT handcuffing system is based on three tactical considerations: approach to contact, control upon touch, and speed in application.

1. Approach to Contact

The officer will move to the edge of the reactionary gap from Level II ½ strong side and cuff from this position. An officer should not penetrate the reactionary gap until both hands have been cuffed. It is also important that the officer have an avenue of escape. Officers should always predict resistance from a subject.

2. Control Upon Touch

It is important that the officer gain immediate control of the subject upon first touch. The "double push principle" requires the officer to simultaneously contact and push the subject's hand with both the handcuff and the officer's hand (that is grasping the subject's thumb). The "double push principle" ensures speedy application of the first cuff, and it minimizes the subject's ability to pull away.

3. Speed in Application

An officer should be able to handcuff a subject using the speedcuffing method of cuffing in three seconds or less.

D. PROPER GRIP

Handcuffs will be gripped in the strong hand, utilizing the pistol grip. The single strand of the top cuff will face forward, which means the officer can look through the double strand much like th sights on his/her firearm. The bottom cuff is turned a quarter turn towards the officer with the single strand facing his/her body for a bottom load and turned a quarter turn away from the officer with the single strand facing to the outside of the officer's hand for a top load. Again, the top cuff is turned to where the officer is looking down his/her sights and the bottom cuff is turned to where he/she is looking through a circle.

E. SPEEDCUFFING

Standing speedcuffing is initiated by directing the subject into a tactically safe position for the officer. First, the officer will identify himself/herself as a police officer, and verbalize to the subject that he/she is under arrest (if applicable). The subject should be told to turn away from the officer, place his/her feet shoulder width apart (or further), and point the toes outward; bend over at the waist, extend his/her hands behind his/her back with the palms facing upward, then look forward (or upward). The subject will then be told not to move, as any movement will be considered resistance.

Proper grip of the handcuffs should be attained before the officer begins his/her approach from a Level II 1/2 strong side position. While the reactionary gap is being maintained, the officer should use the "double push principle" to cuff the first hand; the base of the thumb is grabbed with the officer's weak hand as the cuff is brought up to little-finger side of the subject's hand with the strong hand. The officer pushes in on the thumb and the cuff at the same time, hence the term "double push." If the single strand does not close, the officer's weak hand should be used to close it before moving to the second hand. The subject's thumb is then rotated to the outside as the officer flips his/her palm under, releases the thumb on the first hand, and grasps either the fingers in a handshak grip or the thumb on the second hand. The subject's thumb on the second hand is turned up, and the second hand is then cuffed either thumb-side or little finger-side (top load or bottom load). Once the subject is cuffed, the officer should check for tightness and double lock the handcuffs when it is tactically safe to do so.

When removing the handcuffs, the last handcuff that was applied is the first one to come off. The officer should make sure that the single strand is closed down before removing the second cuff. As the cuffs are removed, he/she should also tell the subject to place the hands in the small of the back.

Speedcuffing is considered soft empty hand control and is designed for the totally cooperative subject. The average time for speedcuffing is three seconds.

F. IRON WRISTLOCK TAKEDOWN

The iron wristlock takedown is used if the subject resists after the first handcuff is applied. The takedown can be used from either the standing or kneeling position. The key to the iron wrist lock takedown is using the handcuff as the main leverage point. The wrist lock is applied by pushing forward on the subject's thumb (towards his/her head), and pulling back and up on the handcuffs at the same time, and decentralizing the subject's center (hips) to the Level II ½ position. The decentralization should be done by stepping back with the rear foot and dragging the front foot. To increase the effectiveness of the wrist lock, the officer should keep the subject's hand below knee level. He/She is then given verbal direction from the officer to turn his/her head away, place his/her arm out to the side, palm facing upward; he/she is then told to spread his/her feet apart wide, and press his/her heels down into the ground.

As the officer moves in to control the subject, he/she first places one knee on the subject's back between the shoulder blades. The other knee is then placed either on the lower back behind the controlled arm, or on the ground next to the subject's ribcage (officer's knee is placed into the subject's armpit). The officer should make sure to place one knee at a time on each location. At that point, the officer should maintain the wristlock, and transition his/her strong hand to reestablish the pistol grip on the handcuff. To do this effectively, the officer should reach around the handcuffed wrist and then establish the pistol grip, with his/her palm facing up to the sky and the single strand of the handcuffs facing outward (toward the subject's feet). The subject's fingers are pointed towards his/her head.

While maintaining the pistol grip on the handcuffs, the officer will tell the subject to bring the other hand towards him/her; as the subject begins to move his/her arm in towards his/her body, the officer begins to move the cuffed hand towards it, then reaches out with his/her weak hand to grab the fingers of the second hand (handshake grip), and push the cuff on thumb side. The officer will stand up, and roll the subject over on his/her side, keeping his/her back towards the officer. The subject is then brought up to a seated position, then to one knee and completely up.

Proper escort to the patrol unit can be done in several ways. The officer can grab the subject's elbow and handcuff, while keeping the gun-side away from the suspect. This will be used if the suspect is cooperative. If the suspect refuses the officer's verbal direction, then the officer can use a rear wrist lock and grab the suspects elbow and place pressure on the back of the hand at the same time.

G. SEARCHING

The proper method of searching should occur once the subject is handcuffed properly. The subject should be put in a disadvantageous position, by telling him/her to spread his/her feet apart and point the toes outward. The officer should then ask the subject if he/she has any weapons or drugs on the body. If a weapon is located, the officer should identify it, remove it and continue to search. Control over the subject while searching can be attained by the officer using pressure on the chain links of the handcuffs with one hand and searching with the other. The searching procedure itself should be extremely thorough and systematic. The officer can either start at the subject's head or at his/her feet. The neck, upper torso, arm pits, waistline, groin, pants legs, ankles and shoes are searched by thoroughly feeling these areas, not a pat-down. Special attention should be given to the inside of the neckline of the shirt, shirtsleeves at the wrists, belt, belt buckle, inside the shoes, and jewelry. Thoroughly feel the pockets of the clothing; the officer should not place his/her hands inside of the pockets without doing this, and preferably should use an instrument (pen, extended handcuff key, kubaton) to turn the lining of the pockets inside out.

When a male officer is in a position to conduct a search on a female subject, he should attempt to locate a female officer to conduct the search for him. If a female officer is not available, the officer will still conduct a search, but only after another officer is present to witness that search. When the breast area is searched, the knife-edged portion of the hand is used along the perimeter of the breast, and the back of the hand will be passed over the breast itself. When searching underneath the breasts, the thumb-side of the hand is used. The entire support system of the bra must be checked; the bra can be pulled away from the body so that any weapons present may drop down to the waistband. When searching the genital area, the back of the hand will be used to assure that a weapon has not been concealed. The officer should always inform the subject prior to searching the breast or the genital area. The officer will also use the back of the hand while searching the buttocks region of a female. If a female is wearing a dress, place her feet close together and pull the dress through the legs to the rear, turning the dress into a pair of pants.

Terry Frisk

The Terry frisk, or pat-down for weapons will begin by placing the subject in a kneeling position, with his/her hands on his/her head with the fingers interlocked. The officer will maintain control b grabbing the subject's fingers and pulling him/her to the rear. The officer can then begin the Terr frisk from a dominant raised position, which will give him/her the following advantages:

* an increased visual field of the subject and the surroundings
* decreased reaction time for the officer
* a strength advantage for the officer
* a position of advantage that will allow the officer to disengage in the event of resistance

If environmental factors prevents the officer from placing the person on their knees, then the Terry frisk can be done from a standing position.

H. HIGH RISK HANDCUFFING

1. Kneeling Position

As always, it is recommended that an officer have a back-up officer to act as a cover officer before approaching a high-risk subject.

The kneeling handcuffing procedure is very similar to the standing handcuffing method. The officer should have target acquisition on the subject, identify himself/herself as a police officer and instruct the subject to get his/her hands up or out away from the body, turn around and face the opposite direction, and kneel down, first on one knee, then the ne knee, cross the ankles, and sit back on them. The officer then directs the subject to bring his/her hands back, palms up, lean over at the waist, look up towards the sky, and told not to move. The subject will be told that any physical movements will be considered resistance. At this point, the officer will holster his/her weapon, attain proper grip of his/her handcuffs, and begin the approach (with the triangulated cover officer present) from Level II ½ strong side. The handcuffs will be applied in the same fashion as standing speedcuffing.

2. Prone Position

As in the kneeling position, the officer will attain target acquisition and verbalize to the subject to get his/her arms away from his/her body, either straight up or out to the sides with the palms facing the officer. The subject is then told to turn away from the officer. Next, the officer directs the subject to kneel on one knee, then the next knee, place his/her left hand on the ground in front of him/her, keeping his/her right hand up, and lower himself/herself down to the ground on his/her stomach. Once the subject is on the ground, he/she is told to keep both hands out to the side, palms up, feet spread apart, toes pointed outward, heels down, and turn the face away from the side the officer is making his/her approach.

The officer should apply the first handcuff from Level II, ensuring that he/she has holstered his/her weapon prior to approaching the subject. The officer should handcuff the subject's hand as quickly as possible, using verbal commands to distract and facilitate the application of the first cuff. In the process of applying the first cuff, the officer should keep the subject's controlled hand locked by pushing the thumb forward and pulling up on the cuff at the sam time. To increase the effectiveness of the wristlock, the officer should keep the subject's

hand below his/her knee level. From this point, the officer's approach and subsequent handcuffing is the same as the Iron Wristlock takedown.

An alternative method to handcuff from a prone position can be used. While facing the suspect, the officer will tell the suspect to place hands out to the side of the body. The suspect will now be ordered to get down on stomach while facing the officer. Once down the suspect will turn head, spread arms out away from body and spread feet apart with heels down. The officer will make suspect raise hands and arms off of ground and approach from a Level I weak side position. The above procedure will be the same once the first handcuff goes on.

III. SUMMARY

An officer's ability to properly apply handcuffs is critical to a safe and effective arrest. The use of the handcuffs is a skill just like many other skills that an officer must master in order to be able to perform his/her job. Properly practicing this skill will improve the officer's capabilities to apply the handcuffs in the most efficient means possible under various circumstances. However, like other skills the lack of practice could result in the officer being unable to handcuff properly.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Tactical Handcuffing	158	Revised January 2006

1. Siddle, Bruce. Defensive Tactics Instructor Manual. Belleville, Illinois. PPCT Management Systems, Inc. 2005. 197 pp.

2. Siddle, Bruce. Defensive Tactics Student Manual. Millstadt, Illinois. PPCT Management Systems, Inc. 2001. 224 p.

516

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Tactical Communications	1013	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Behavioral Science	5 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Lynne B. Fallaw

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
July 11, 1997	2005

LESSON PLAN PURPOSE:

To provide trainees with communication skills and techniques that are designed to diffuse a potentially volatile situation in such a way that generates voluntary compliance, promotes officer safety and enhances professionalism.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PowerPoint Presentation
Student Manual
Handouts

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Tactical Communications	1013	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Explain the goal of law enforcement.
2. Explain how to handle verbal abuse.
3. Discuss our identity as the "contact professional."
4. Identify and discuss the mechanics and art of communication.
5. Identify and explain professional communication tactics.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Tactical Communications	1013	Revised January 2006

I. INTRODUCTION

Statistics show that the number one abuse in this country is verbal abuse. Statistics also indicate that 98% of all resistance encountered by police officers is verbal. These two facts present an interesting dilemma for police officers. On the one hand, we as officers cannot infringe upon a citizen's First Amendment Right to free speech by placing him/her under arrest for something he/she may have said. On the other hand, we must often gain control of verbally abusive and resistant individuals to prevent a volatile situation from escalating into a physical confrontation. The challenge for police officers is to understand this dilemma and develop the ability to take and maintain control through verbal manipulation and persuasion.

The purpose of this block of instruction is to familiarize you with the art of verbal deflection, redirection, and persuasion. The goal is to teach you how to deflect verbal abuse and redirect it by speaking to people in a professional way calculated to avoid confrontation so that you may safely accomplish your law enforcement goals.

II. BODY

A. GOALS

1. Goals of Tactical Communication (Verbal Judo)

a. Officer Safety

The dangerous nature of police work is an anomaly that sets the occupation aside from others. Perceived danger is likely to be more prevalent than that of actual danger encountered on a daily basis, but caution should be exercised at all times, none the less. In South Carolina, the chance of being killed in the line of duty is relatively slim. This statement is not written to belittle the danger of the job by any means, but statistics indicate that officers killed in the line of duty are relatively rare and most often occur as traffic collisions. Conversely, an officer is much more likely to be assaulted and/or injured in the line of duty. More than 90% of assaults on police officers began as verbal confrontations. Using tactical communications, or Verbal Judo, can reduce the number of officer attacks by diffusing situations verbally.

b. Enhanced Professionalism

Unfortunately, law enforcement is viewed as a blue-collar, skilled job. Futurists do not expect law enforcement to receive "profession" designation until 2050, despite the fact that law enforcement meets, and in some cases exceeds, the criteria set forth to be considered a true profession. This is not to say that officers should not conduct themselves as professionals; on the contrary, officers should be professional at all times to discourage the stereotypical perceptions society often has of police officers and encourage the strife to become a professional occupation. The following are the criteria for "profession" designation:

(1) High Visibility

There are no more "dark alleys" for street justice tactics. It is vital that an officer conduct him/herself professionally at all times. By speaking to people in a way that is calculated to avoid confrontation, you will appear to be a true professional to the people you deal with as well as those who may be watching you (video cameras).

(2) Quick Decisions

Law enforcement can be fast-paced and spontaneous decisions must be made to protect life and property, and to serve the public. Officers must practice good judgment and exercise discretion in such a manner achieves law enforcement goals.

(3) Codified Body of Knowledge

In law enforcement, there are actually a minimum of three codified bodies of knowledge – the U.S. Constitution, state laws, and department policy and procedures manuals. It is virtually impossible for an officer to know every bit of information contained within the multitude of codifications; however the officer is expected to be familiar with all of them.

Example: In the case of a deadly force situation, the officer must be familiar with the legal considerations of using deadly force, accompanied by the policy and procedures governing the use of deadly force which include the following elements:

(a) Imminent Jeopardy

Imminent jeopardy can be broken down into four elements, easily remembered by the acronym IAMO:

i. Intent – the perpetrator intended to cause great bodily harm death.

ii. Ability – the perpetrator had the capability of carrying out the intentions.

iii. Means – the perpetrator had the means of carrying out the intentions.

iv. Opportunity – the perpetrator had the opportunity to carry out the intentions.

(b) Preclusion

Aside from meeting the imminent jeopardy standard, an officer must also preclude all other reasonable force options.

(4) Continuous Training

To maintain law enforcement certification, most states and departments require officers to complete a determined number of hours of in-service training.

(5) Adapting to Differences

Akin to making quick decisions, law enforcement officers are required to adapt to change frequently, in some cases in a matter of seconds, by nature of the job. Officers must quickly read situations and adapt to their environment in order to effectively meet goals.

(6) Ethical Standard

Police officers have a Code of Ethics by which officers are expected to abide and conduct themselves. Officers are encouraged to maintain a copy of the Code of Ethics and refer to it periodically as a self-assessment evaluation of their performance.

(7) Licensed

Police officers are, in a sense, licensed by wearing the shield, or star. Such are outward symbols of public trust and should remain untarnished.

c. Decreased Complaints

There are various reasons citizens file complaints on police officers. Topping the list are complaints that an officer was rude, discourteous, disrespectful, or overzealous. This is the result of officers conducting themselves the wrong wa (using a personal face) instead of properly applying Academy training (using a professional face). The appropriate use of Tactical Communications (Verbal Judo) and other techniques/tactics taught at the Academy will decrease complaints because you are treating people with REspect and conducting your duties in accordance with South Carolina law.

d. Reduce Liability

In a litigious society such as ours, it is important to shield yourself as much as possible from liability (direct or vicarious). Properly using the appropriate amount of force can reduce the chances of an officer losing a lawsuit against him/her. In Tactical Communications, there is an awareness of the Use of Force Continuum; however, this course focuses energy in the use of professional presence and words to diffuse and control situations in such a manner to reduce liability brought about by further steps in the Use of Force Continuum. In other words, the chances of being sued as a police officer increase significantly when physical contact is made. Properly using Verbal Judo can reduce the need to use more intrusive types of force.

e. Lessen Stress On The Job

As a profession, policing suffers from some of the highest incidents of divorce, suicide, domestic violence, and alcoholism. Much of this is due to the fact tha police officers are often subjected to situations in which death, destruction, and abuse are the norm (i.e., the dark side of society). Compiling this exposure with

stress resulting from the inability to effectively communicate is unhealthy and unnecessary. Tactical Communications can alleviate stress on and off the job.

f. Court Power

Often, a police officer is at a disadvantage in the courtroom because of limited articulation skills. In this course, tactical techniques will be discussed which will empower the officer in court encouraging officers to become better, more efficient report writers as well as more well-versed in court.

g. Morale

The last, but certainly not least, of the course goals is morale. The inherent nature of police work tends to spiral police officers into cynics. Job satisfaction lowers which causes motivation and effectiveness to decrease which leads to decreased job satisfaction, and so on. Using Tactical Communications effectively can empower the officer to be more professional, reduce internal and external stressors, enhance court power, reduce liability, decrease complaints, and keep the officer safe. This, in turn, leads to higher job satisfaction and enhanced morale.

2. Goal of Law Enforcement and Force Options

a. To Generate Voluntary Compliance

When enforcing laws, it is best to get the subject to voluntarily do what you want him/her to do. This prevents confrontation and helps to promote officer safety. Voluntary compliance keeps us safe because we don't have to fight with someone. How long can you last in a fight? One, two, or maybe three minutes? How far away is back-up? In some cases, back-up is ten minutes away. It is always best to avoid confrontation until your back-up arrives.

Officers get into confrontations and become defensive because of three questions asked by the people they deal with.

(1) Why? As in: "Why are you stopping me?"

(2) Who? As in: "Who do you think you are stopping me?"

(3) Where? As in: "Where do you get off stopping me?"

All of these questions challenge a police officer's authority and are often asked by people who are resisting law enforcement efforts. An officer's ego takes over, he/she puts on a personal face, and a verbal encounter becomes a confrontation. However, the proper use of Tactical Communications deals with such situations by focusing the officer on the challenger's behavior, rather than attitude, and deters the opportunity to become a verbal, or possibly physical, confrontation.

b. Force Options

Police officers have, at their disposal, an ability no other occupations experience...to legitimately use force. Most departments have a written policy on an accepted use of force continuum comprised of five fundamental steps.

(1) Professional Presence

Professional officer presence is the first step and most used type of force used by police officers. Professional presence is vitally important and comprises up to 60% of an officer's effectiveness. Officers must b cautious with body language and other non-verbals. People will inherently "hear" your body language more than words.

(2) Words

The use of Words makes up 97% - 99% of human interaction. In fact a great deal of an officer's time is consumed with communicating with others. Words can get an officer killed, however. The most dangerous weapon an officer carries is not the sidearm, but is, in fact, his/her tongue. Due care must be exercised when choosing what to say, and more importantly how to say the words they choose. It is fundamental that police officers practice the professional use of words to keep themselves safe and to generate voluntary compliance from the public. Police officers, in essence, should be (and some are) the best communicators in the world.

(3) Empty Hand Control

By nature of the job, there are going to be those situations when the first two steps don't get the job done and officers are forced to escalate through the use of force continuum. The proper use of empty hand control tactics (joint locks, pressure point control contact, etc.) can effectively bring a subject into compliance. Keep this in mind, however...when an officer puts hands on a subject, he/she is now in a dangerous situation and th chances of the officer getting injured increases significantly. Unfortunately, less than 1% -3% of officers continue practicing empty hand control after Academy training.

(4) Intermediate Weapons

There are basically two types of intermediate weapons, artificial incapacitators and impact weapons. Artificial incapacitators, such as OC/CS spray, K-9s, tasers, etc., are used when more force than empty hand control is necessary to encourage compliance from a subject. The impact weapon (PR-24, straight baton, or the like), is an intrusive force option that has a high probability of causing serious injury to a subject, or to the officer if the tool is taken from the officer. It is extremely important to continue practice with impact weapons, especially weapon retention.

(5) Deadly Force

In rare instances, it may be necessary for an officer to use deadly force. Officers should be knowledgeable and articulate of the elements required to use such force insure that such elements (IAMO and Preclusion) are present. Keep in mind that the use of deadly force may not be deemed appropriate or legitimate if the officer puts him/herself into the deadly force situation.

B. HABIT OF MIND

In essence, Tactical Communications, or Verbal Judo, is the martial art of the tongue. As with any martial art, there is a mindset (an ethos or attitude, if you will) that accompanies the use of the art in to effectively deal with various factions of the public.

1. *Mushin*

The habit of mind for Tactical Communications is that of ***mushin.*** Mushin is a Japanese term which, when broken down, means "no mind" or "no bias." Police officers are human and as such have personal biases, beliefs, and ideations which make up parts of an officer's personality; however, the officer must shield him/herself from those personal issues when working as a police officer. They should assume the mushin mindset and conduct their duties without personal bias. The closest term in the English language is *disinterested*, loosely defined as being open, flexible, and unbiased. Failure of an officer to assume the disinterested, or mushin, habit of mind may result in personal biases and beliefs manifesting into police action.

2. Types of People

There are an estimated 102 distinct cultures in our society. Learning cultural norms for all of them is virtually impossible; however, it is a good idea for police officers to identify the cultures present in their jurisdictions and take the time to learn cultural norms and quirks to better enhance their safety when interacting with persons of different cultures. In an effort to enhance interaction with the public and communicate more effectively, it is important for officers to read people, and simplify cultural discrepancies by categorizing individuals into one of the following three categories. An officer must be skillful with all three types.

a. Nice

Nice people do exist and will voluntarily comply with what you ask them to do, the first time you ask them. Metaphorically, this can be referred to as "single-keyed." Using the correct verbiage, an officer can generate voluntary compliance from a nice person with the first "key," or set of words. Nice people are generally supportive of law enforcement and are cooperative. Note, however, that the nature of nice people may be eroded some by incidents of poor policing tactics which may be broadcast nationwide, thereby shedding a negative image of police officers.

b. Difficult

The majority of people an officer encounters are difficult people. In fact, police officers themselves are inherently difficult. Putting two difficult people together is a combination that lights the fuse to conflict. The difference is that "difficult" police officers are trained and are encouraged to control their difficult tendencies, and the average difficult citizen is not. Difficult people are "multi-keyed." They value self respect, and therefore, typically will not comply with an officer upon the first request, but will rather ask those questions that upset cops. "Why?" "Who?" "Where?" Most often, an officer must use up to five *keys* to generate compliance from a difficult person.

c. Wimp

Similar to the nice person, a wimp is "single-keyed." They will typically comply with an officer's request the first time, but tend to backstab. They are nice on the surface, but difficult below the surface (i.e., two-faced), and are the worst kind of person to deal with.

3. Deflection Technique (Strip Phrases)

It is very likely that a police officer will encounter verbal abuse at some point during his/her career. It is human nature to react to such abuse by assuming a defensive attitude and "pushing back." An officer must understand, however, that verbal abuse is directed toward <u>what</u> the officer represents, and not the officer personally. Officers should not take verbal abuse on a personal level, as doing so leads to confrontation. Rather, officers should respond to verbal abuse professionally using the deflection technique of strip phrases. Strip phrases avert the subject's verbal hostility and refocuses the officer to the immediate goal.

a. Strip Phrases

(1) "'Preciate it, but..."

(2) "I understan' that, but..."

(3) "O-yesss, but..."

Abbreviated versions of the words are used because we certainly do not *appreciate* or *understand* an individual's verbal abuse, but in an attempt to empathize, we can give the perception through abbreviated terms that we want to work with the person, not against him/her.

Note: All strip phrases end with "but." Every word following "but" must be goal-focused and in professional language.

b. Advantages of the Deflection Technique

(1) It feels good.

(2) It is a springboard-focus technique. The phrase springboards over *playground America* and refocuses on the officer's immediate goal.

(3) It disempowers the subject. Ninety-eight percent of resistance is verbal. Using the deflection technique, the officer is overcoming the resistance in a professional manner and building ground for the officer to stand on.

(4) It sounds good. This is the public relations element that helps you win in the three deadly arenas: Streets, courts, and media.

4. Principles of Self Control (Habit of Mind)

a. <u>Say</u> what you want. <u>Do</u> what I say.

b. I have the last act; therefore, I give you the last word.

c. Respect vs. REspect

Generally the term "respect" implies esteem, high regard, or admiration. "REspect" refers to the construct of treating other people the way you would want to be treated under identical circumstances. This is the essence of professionalism in police work.

5. Houston v. Hill

"Fighting words" narrowly defined

First Amendment protects a significant amount of verbal criticism and challenge directed at police officers as long as it does not incite an immediate breach of peace. Police officers must exercise a higher degree of restraint.

6. The Practice of *Mushin*

A law enforcement officer's environment changes rapidly, and often. To maintain self control, the officer must learn and practice the ***mushin*** habit of mind. To adapt to the environment, officers should choose a cue to focus their minds on being professional and adaptive. Many officers think to themselves the term "showtime," as if they were assuming a new role, or putting on the proverbial mask. Other officers may think of the willow tree that blows in the wind, but returns to its original shape. Whatever cue is chosen should generate a professional mindset for the officer.

C. THE ART OF REPRESENTATION

1. The Law Enforcement Professional

At the outset, it may be well to provide some structure to the notion of the law enforcement professional. In this regard, the Institute of Public Technology and Management provides a design that incorporates the key components of police professionalism into what is termed "The Professional Wheel."

a. Knowledge

b. Enthusiasm

c. Integrity

d. Credibility

e. Objectivity

f. Empathy

g. Flexibility

In order for an officer to function in a consistently professional fashion, each of these components should be balanced in such a way that the "wheel" rolls smoothly. Ultimately, the officer must continually evaluate his/her level of proficiency in each of these areas and strive to improve deficiencies in any given area. In so doing, the police professional will achieve a "wheel" that is true.

2. The Contact Professional (Our Identity)

a. Theory of the Contact Professional

By virtue of the job, law enforcement officers assume the tremendous responsibility of representing their department, which indirectly represents the public. The department holds expectations of how officers are to conduct themselves when performing their duties, and the public holds expectations on how they believe the police should service the community. As the contact professional, a law enforcement officer must conduct his/her duties in such a way and in such a manner that generates voluntary compliance from the public.

b. Practice of the Contact Professional

The practice of the contact professional begins with identifying those within the public and/or jurisdiction who dislike, discredit, or otherwise undermine the efforts of law enforcement and then maintain contact with them in an effort to achieve professional purposes. In other words, officers should recognize what influences may be causing a person to view police negatively and take appropriate steps to whittle away at those negative influences in such a way that we leave the citizen (subject, group, etc.) in better shape than we found them. Often, this is accomplished via officer humbleness (i.e., showing less ego) and exercising REspect.

c. Principles of the Contact Professional

(1) The less ego you show, the more power and control you have over others.

(2) The more ego you show, the less power and control you have over others

(3) To generate voluntary compliance is the essence of professionalism.

(4) Don't belittle or disrespect, be fair, and remove the self.

D. COMMUNICATIONS

1. Mechanics of Communication

Communication is basically an exchange of ideas between two or more people. Most people spend an enormous amount of their day communicating with others, a majority of which is verbal communication. The opposite of talking should be listening. From a factual standpoint, listening <u>is</u> the opposite of talking. However, for many people it is <u>waiting</u> to interrupt. In order to be an effective communicator, one must be an active listener.

a. LEAPS

(1) <u>L</u>isten

Active listening is a must in law enforcement. There are four steps in Active Listening to alleviate this problem.

(a) Keep an open, flexible, and unbiased mind (*mushin*)

This is the Habit of Mind which has previously been discussed.

(b) Hear, literally, what is said

Too often, we, as humans, practice selective listening in that we absorb what we deem important and simply hear other information deemed useless. It is important to actually listen, but keep street truisms (D, 2 in lesson plan) in mind.

(c) Interpret or translate the words (Art of Translation)

Everyone has times when they have felt as if they have said something in the perfect manner only to find out no one understood what was said. This happens because the sender did not put the meaning in the correct context to fit the situation. There are five steps in the Art of Translation.

i. Know

Take a moment to think about the meaning you wish to convey.

ii. Code

Keeping your audience in mind, put the meaning into correct context prior to speaking.

iii. Send

Send the meaning to the receiver using verbals and/or nonverbals.

iv. Decode

After sending your message, you must ensure that the receiver understands. You accomplish this by requesting feedback.

v. Feedback

Ask the receiver or deduct from his/her body language whether he/she understood the meaning of your message.

(d) Respond

Professionals RESPOND rather than react. Reaction is typically a natural, and natural reaction is disastrous because of its personal (not professional) face. We must set natural reaction aside and respond in a professional manner.

(2) Empathy

Quite possibly one of the most important words in the English language is *empathy*. This refers to the ability to place yourself in the shoes or environment of another person in an effort to imagine his/her feelings, emotions, thoughts, beliefs, ideations, etc. Empathy can generate a much better understanding of one's meaning.

(3) Ask

Ask questions for clarification. People use different dialects, and an important aspect of understanding meanings is to understand the terms used to convey the meanings. Asking questions can achieve bett understanding.

(4) Paraphrase (The Art of Paraphrasing)

Paraphrasing is the most important of communication tools. To paraphrase, a person listens to an individual and then ensures understanding by stating back to the original sender the interpreted meaning in the receiver's own words. This gives the sender an opportunity to correct misunderstanding. There are two steps to paraphrasing.

(a) Sword of Interruption

This is used to preempt the receivers understanding. The sword is a word or phrase, such as, "Whoa," "Wait a minute," "Excuse me for a second, but..." This is a kind way of interrupting someone while you communicate and hopefully results in the sender pausing just long enough for you to add the empathetic sentence.

(b) Empathetic Sentence

Immediately following the sword, use a phrase such as, "Let me make sure I heard you right," or "I want to be sure I understand what you are saying." This puts the sender in a state of heightene attention and gives the perception that you truly want to gain the correct meaning.

(5) Summarize

The last step in the listening protocol is summarizing. Put together all of the information and meanings you have received and give back highlights to the receiver to insure that all the information has been brought out. After doing so and receiving affirmation from the sender, ask if there is anything else you should know or he/she wants to tell you.

2. Street Truisms of Communication

a. Meanings vs. Words

Understand that people seldom say what they actually mean. This is not a fault of the person speaking, it is more so the result of influences within the environment of the person speaking. The problem for law enforcement officers is the more influences that are present, the further apart words and meanings get. Influences such as anger, frustration, alcohol, fear, drugs, perception, stress, anxiety, and the like play significant roles in the words that are spoken and the manner in which they are spoken. An officer must read through the words to identify the meaning.

b. 2 = 6

Communication is the exchange of ideas between two people. However, each person sees himself/herself from three perspectives. Understanding this concept is very important. From a communications standpoint we must be able to break through these perspectives and perhaps change tactics.

(1) R.S. – This is the real self.

(2) S.S. – This is the self as seen by self.

(3) S.O. – This is the self as seen by others.

(4) The formula: 2 people x 3 perspectives each = 6 people.

An officer's most important perspective is that of the S.O.; however, a subject's most important perspective is the S.S. This can be challenging for the officer; therefore, it is imperative that the officer keep the principles of the Habit of Mind at the forefront of his/her thoughts.

c. 93% of Your Effectiveness is Delivery Style

We must look at communication from the receiver's point of view. Doing so assists in ensuring the words and the delivery style harmonize as professional language.

Communication is taken for granted most often and the logistics of communication are seldom discussed, despite the fact that there is much that is necessary to understand from the logistics in reference to how we, as officers, interact with the public. Communication can be broken down into three elements.

(1) Content

Content refers to the actual spoken words. As mentioned before, often times words and meanings differ, so it should not be surprising that the words only comprise 7% –10 % of your message. That is why it is not so much what you say, but rather how you say things that accomplish tasks and achieve goals…or generate complaints.

(2) Voice

This is 30-40% of your message that comes across through tone. Tone equals attitude. In other words the tone we use often times telegraphs our attitude. This is problematic because if the content and voice conflict (i.e., don't harmonize), people will believe your tone over your content. The lesson to be learned is "the voice must lie!" The voice can be broken down further into three sub-elements.

(a) Pace

Pace refers to the speed in which a person speaks. Slow talking may be an indication that the suspect is getting ready to act. Fast talking may be an indication of anxiety.

(b) Pitch

Pitch refers to high or low speech. A high pitch may indicate anxiety, whereas, a low pitch may indicate that the suspect is getting ready to act.

(c) Modulation

Modulation refers to the rhythm of speech. Officers can identify a normal rhythm of a person with whom he/she is speaking and recognize if his/her modulation changes significantly.

(6) Other Non-verbal Actions

Most important in communication are the other non-verbals (ONV), or body language that accompanies the voice. ONV make up 50% - 60% of communication meaning. From a receiver's point of view, if the voice and body language are different, human nature causes the receiver to "hear" the body language. (This concept is shared with the force options, previously discussed – up to 60% of an officer's effectiveness is Professional Presence.)

E. TACTICAL COMMUNICATIONS TACTICS

The preceding sections of this lesson plan have focused primarily on the theoretical foundations for the practical applications, or tactics, of Verbal Judo. The following tactics use the theories and concepts previously mentioned, and should be adopted by officers and applied in their daily operations. Doing so will increase officer safety and enhance professionalism of the officer, his/her department, and the law enforcement community as a whole.

Police officers are charged with maintaining law and order. To do this, officers must recognize that our primary role within society is to act as mediators between good and evil. Most people in this country are law-abiding citizens that stand on the side of order. There are those, the exception, that occasionally fall into disorder. When this occurs, our job is to bring those individuals back into order. This is sometimes as simple as calming a chaotic situation. However, there are times when the only way to create order from disorder is to make an arrest. When this decision is made, a suspect automatically has several options. He/She can surrender, fight, flee, or go with dignity. The following tactics open the door for a subject to exercise the latter of his/her options, which is a win-win situation for both the officer and the subject (or citizen).

1. Five Step Hard Style

a. Steps of the Five Step Hard Style

(1) Ask (Ethical Appeal)

During the course of an officer's daily duties, it often becomes necessary for the officer to make a request of an individual (subject or not). This is referred to as asking. The request must be legal, clear, direct, and have a legitimate purpose.

(2) Set Context (Reasonable Appeal)

Upon making a request, an officer may encounter some type of verbal resistance. This is not uncommon and should be handled in a professional manner. In many cases, explaining the purpose of the request will generate voluntary compliance from the individual.

(3) Present Options (Personal Appeal)

For some, however, understanding the purpose of the request is not enough to encourage compliance. In such a case, the officer must then present options, or use the Art of Mediation.

To mediate literally means to cut across. In this case, the officer is now forced to cut across the subject's resistance and present options that allow the subject to comply with dignity. To effectively present options, an officer must think for others as he/she might think for himself/herself 48 to72 hours later. This is achieved by:

(a) Showing empathy

Attempt to identify with the subject is some manner and give the subject the perception that you understand where he/she is coming from. Verbal Judo teaches that "if a man has something to gain or lose, you have something to use." Try to pick up on things the subject may value and set the context using those things.

(b) Setting the context

Setting the context is the most difficult skill within the Art of Mediation. Using the identified *value*, the officer must present options in such a manner that persuades the resistant individual to cooperate. A rule of thumb is to present favorable options first and less favorable options last. Note: the options must be legitimate.

(c) Always including dignity

The officer must ensure that dignity is maintained when and if the individual opts to cooperate and chooses the favorable options.

Regardless of the options you create, you must always keep contact and maintain control.

(4) Confirmation (Practical Appeal)

In some cases, the resistant individual may continue resisting the officer's requests and rationale. In this instance, the officer begins mentally planning a course of action higher in the use of force continuum while asking a confirmation question, such as:

"Is there anything I can say that will get you comply with what I am asking?"

"Sir (or Ma'am), is there anything I can say that will get you to go along with the program?"

"Is there anything I can say to get you to cooperate?"

All confirmation questions should be followed up with:

"I'd like to think so."

(5) ACT

In the rare event that the resistant person hints more resistance, the officer must take appropriate action to gain compliance. The officer should be swift and perform the action that he/she is mentally prepared.

b. Reasons to Use Five Step Hard Style

(1) Provides decisiveness and certainty.

(2) Sounds calm and commanding.

(3) All cultures can cooperate.

(4) Great for reporting and documentation.

(5) Tactical signal to other officers.

2. Conditions When Words Fail (SAFER)

There are instances when an officer's professional presence and words do not achieve the goal of generating voluntary compliance. Those conditions are:

a. Security

Others or property under your control is threatened or placed in imminent jeopardy.

b. Attack

Your personal danger zone (PDZ) is compromised.

c. Flight

Subject unlawfully flees your presence.

d. Excessive Repetition

Verbal options have been exhausted and voluntary compliance is not forthcoming.

e. Revised Priorities

A matter of higher priority requires immediate attention.

3. Officer/Citizen Interaction

a. Traffic (or Pedestrian) Stops

(1) Five purposes for a traffic stop

(a) To stop an ongoing violation of the law. You will accomplish thi purpose merely by stopping the vehicle.

(b) To serve as a general deterrent to other drivers. Your visible police presence with a vehicle at the roadside has this symbolic effect on other traffic.

(c) To change the driver's future driving behavior.

i. Your interaction with the driver during the stop will be a major determining factor in his/her attitude toward law enforcement in the future.

ii. Your goal is voluntary compliance to traffic regulations, but also voluntary acceptance of the laws and enforcement.

iii. People are more apt to accept a new or modified behavior if they trust and respect the authority making the request.

iv. This is the key reason why professionalism is so important at the traffic stop.

(d) To detect possible evidence of a more serious offense. In most cases, this can be done by casual observation and questioning, without causing offense.

(e) To maintain the credibility of your law enforcement agency and to minimize the number of complaints.

i. At many agencies, more complaints are generated from traffic stops than from any other citizen contact.

ii. Officers need to be courteous, balanced and professional in each of the above categories.

(2) The Tactical Eight Steps

(a) These eight steps work well for traffic stops and Terry stops. These steps are designed to enhance officer safety by setting a personalized tone for the encounter without compromising the officer's authority to enforce the law.

i. Greeting

Most people are unnerved by being stopped or approached by police. To "break the ice," it is good practice to offer a neutral greeting. This also sets a personalized tone to the encounter, making it more difficult for the violator to abuse the officer. For example: "Good afternoon."

ii. Identify Yourself/Department.

Identifying yourself and your department removes the opportunity for the violator to ask "Who?" and "Where?" This, again, personalizes the encounter making it safer for the officer. For example: "My name is Mike Jones with the Columbia City Police Department."

iii. Reason for Stop

Tell the violator the justification for the traffic (pedestrian) stop (i.e., the reasonable suspicion or probable cause). Doing so removes the reason for the violator to ask "Why" It is more effective to have a slight pause (2 – 3 seconds) during this step to hook the violator into listening. For example: "The reason I stopped you is (pause) (pause) (pause) I did observe you fail to come to a complete stop at the corner of First and Richland streets."

iv. Justification

The next step is to ask the violator if there is any justification for violating the traffic laws. (This step is optional for pedestrian stops.) Human nature forces people to tell the truth; therefore, silence at this point is usually an opportunity to think up "a good one." For this reason, if the violator is not immediately forthcoming with justification (or the reasoning is not obvious as a result of your assessment of the vehicle's interior), pause only one second and move onto the next step. For example: "Is there any justification for your actions today? (pause) If not..."

v. Driver's License

According to state law, the driver of a motor vehicle must have in his/her possession a valid driver's license when operating a motor vehicle and must present the licens upon a lawful request of an officer. However, an officer safety issue arises because of typical carrying positions of driver's licenses (i.e., wallets and purses). It is acceptable to simply request to see a violator's license. To enhance safety, it may be advisable to first ask if the violator has a license, where the license is kept, and if there are weapons in or around that area, prior to the violator retrieving his/her license.

Upon receipt of the license, it is advised that the officer take note of the violator's last name and then "tuck" the license somewhere out of his/her hands (pocket, belt, etc.), and then refer to the violator as 'Mr. (or Ms.) *last name*' for the remainder of the encounter. Again, this personalizes the encounter.

(For pedestrian stops, the Driver's License step is replaced with a lawful request for identification or for compliance.)

vi. Registration/Insurance

This step can also be an officer safety issue, since the majority of people carry their registration and insuranc verification in the automobile's glove box (especially when state law approves the carrying of a weapon in same). A

simple request for the documents is acceptable; however, it may be advisable to first ask where the documents are and whether any weapons are in the same location, prior to having the violator retrieve the documents.

At this point, the officer may opt to retreat to his/her patrol vehicle to determine what action to take (warning, ticket, admonishment, etc.). Advise the violator that you are going to "evaluate the documents" and will be back with the violator shortly.

(For pedestrian stops, this step is replaced with persuasion steps of the Five Step Hard Style, if necessary)

vii. Decision

Upon safely retreating back to the patrol car, the officer can take whatever action deemed necessary to resolve the violation. Note: Don't "hammer" the violator with tickets and promise the judge will reduce the charges if he/she appears in court. Judges are not bound by your promises and may embarrass you in court. It may be advisable that if you wish for the violator to receive leniency for the violation, the officer has the discretion to convey such leniency on the seen of the traffic stop.

(For pedestrian stops, this step may be replaced with some form of police action.)

viii. Close

Once the officer has made his/her decision, that decision should be explained to the violator. The officer should then ask the violator for understanding and close the encounter with a peace phrase, such as:

"Have a safe day."

"Please drive carefully."

Officers are not encouraged to use the phrase, "Have a good day." This is often viewed as sarcasm that may result in a citizen complaint.

(This step for pedestrian stops is referred to as 'Close and Document.' A peace phrase should be used and the encounter should be documented on an incident report or field interview form.)

(b) Advantages of Using the Tactical Eight Steps

i. Promotes officer safety.

ii. Sounds good.

iii. Meshes well with the five step hard style.

iv. Centers a command presence.

v. Creates a style of policing.

III. SUMMARY

Remember, 97% to 99% of your time as a police officer is spent interacting with the public. It is crucial that an officer develop skills to tactically and tactfully communicate with the people in the three deadly arenas: the streets, the courts, and the media.

The knowledge and technical skills discussed during this block of instruction are designed to promote officer safety and enhance professionalism of officers while interacting with the public in an effort to achieve law enforcement's ultimate goal...generate voluntary compliance.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Tactical Communications	1013	Revised January 2006

1. Thompson, G. J. & Jenkins, J. B. (1993). Verbal Judo: The gentle art of persuasion. William Morrow and Co.: New York, New York.

2. Bullock, R. (May, 2002). BLE/Safe Complete And Legal Enforcement Stops. Lesson plan #2637. SC Department of Public Safety, Criminal Justice Academy Division. Columbia, SC.

538

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Weapon Retention	157	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Basic Instruction Unit	2 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Bruce Hancock

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
September 8, 1998	2005

LESSON PLAN PURPOSE:

The student will learn techniques used to defend his/her handgun against the most common types of assaults.

EVALUATION PROCEDURES:

Proficiency Exam (100%)

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

Dummy Metal Guns
Dummy Rubber Guns
Different Types of Holsters
Holster and Belt
Small Metal Revolver
Dummy Glock
Forearm Pads

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Weapon Retention	157	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Identify the primary reasons why officers are disarmed and killed with their own handgun.
2. Explain tactics for weapon retention.
3. Explain the three step process used to retain an officer's handgun.
4. Demonstrate defenses against attacks on holstered firearms from the front and rear.
5. Demonstrate defenses against attacks on un-holstered firearms from the front.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Weapon Retention	157	Revised January 2006

I. INTRODUCTION

Each year, about 10% of officers who die are killed with their own gun.

One study estimates that 90% of suspects who attempt to disarm an officer will try to kill the officer, if successful. Therefore, the officer should consider this attack as a deadly force assault.

II. BODY

A. REASONS WHY OFFICERS LOSE THEIR WEAPONS

We need to first discuss some of the reasons why officers lose their weapons:

1. Unsafe Holsters
2. Unsnapped Holsters
3. Lack of Assistance
4. Poor Positions
5. Failure to React to Disarming
6. Lack of Skill to React Properly

B. TACTICS FOR WEAPON RETENTION

1. Maintain the reactionary gap.
2. Identify threatening body language.
3. Develop a predetermined survival response.
4. Maintain control of subject and environment.

Weapon retention is based on maintaining distance between the subject and the officer.

C. RETAINING THE WEAPON

1. The officer must always be aware of possible disarming attempts.
2. If the weapon is grabbed, apply pressure and leverage at the weakest link of attack.
3. If the suspect is reaching for the weapon, move the weapon.

An officer must use this three step process to retain the weapon:

1. Secure the Weapon

   a. Rear handgun grip – Strong hand is placed on top of the suspect's hand or on rear of holster if rear strap is present.

b. Front cross grip – Weak hand will lock in thumb break.

2. Position – Step

a. Move to a position to protect the officer. Officer will drop strong side leg back and lower center by bending the knees.

b. Move to a position that will increase the leverage against the attacking hand.

3. Release – Application at Release

a. Apply leverage/release against the weakest link

b. Once the weapon has been recovered, continue protection of the weapon.

c. If the first attempt to recover the weapon is not successful, continue with distraction techniques.

D. HOLSTERED DEFENSES

1. One and Two Hand Grab From the Front (Lateral Forearm Strike)

The officer should secure the weapon in the holster, position his/her body, and use a strong arm forearm strike to the suspect's wrist and forearm. Several strikes may be necessary. The weak arm may also be used. This is called a lateral forearm strike.

a. Medical implications of forearm strikes will normally be no more than bruising. These strikes are hard empty hand control.

b. A strong arm wrap around may also have to be used. If the gun begins to come out of the holster, a groin grab will be used at the same time.

c. An officer may use brachial stuns as a distraction technique if the officer encounters a technique failure.

If initial control techniques do not work or are ineffective on the suspect, the officer should escalate in force that should include strikes to the face and groin, escalating to deadly force if necessary.

2. One and Two Hand Grab From the Rear (Lateral Forearm Strike)

The officer should secure the weapon in the holster and spin toward the officer's strong side. The officer may have to place a strong hand on top of the suspect's hand while spinning to the rear. As officer spins, he/she will deliver a forearm strike to the suspect's forearm. If release fails, officer will go face to face and deliver lateral forearm strikes.

3. If the suspect is attempting a grab, then the officer will remove the gun from the suspect's range as he/she delivers strikes to the hand and the arm. Disengagement may be to the rear or lateral movement can be used. The weak side shoulder can also be thrown into the suspect's arm as the officer steps back with the strong side foot.

E. UNHOLSTERED DEFENSES

After unholstering your weapon, make sure and keep control of the weapon by keeping it out of reach of the suspect. Weapon should be tucked in close to the body (combat tuck position) with the weak hand up. If the weapon is grabbed by the suspect, you should counter by using a effective retention technique. Prior to using these techniques, officers may want to make sure the weapon is pointed toward the subject and pull the trigger. This would occur as soon as the subject grabs your weapon.

When a suspect grabs an officer's weapon, it will normally be either a palm down grip or a palm up grip.

1. Two Hand Grab On Top (Lateral Forearm Strike)

When a suspect grabs the top of the barrel with two hands, an officer will use his/her free hand to grab the suspect's wrist, stabilizing the weapon and pulling it to his/her center. The officer will then bring the weak arm up to the strong side shoulder and deliver a forearm strike to the suspect's forearms. The officer will then pull the weapon into the hip as he/she does the strike. The officer will then disengage and do a tap and rack.

If the officer has technique failure, a front kick to the shin will be used.

2. Two Hand Grab Under (Lateral Forearm Release)

When a suspect reaches under the barrel and grabs the gun with two hands, the officer will grab the suspect's wrist, stabilizing and pulling the weapon in close to the body. The forearm is then placed to the top of the hands and force is applied downward as you strip the weapon.

* Once an officer disengages, if time permits, the magazine should be tapped, and the weapon should be recycled to assure that it is combat ready.

III. SUMMARY

The most important aspect of weapon retention is awareness. Always be aware of your position in relationship to the suspect.

If you are not satisfied with your holster, get a new one. It's our first line of defense and good tactics should always follow.

Remember, every call is a gun call, because your gun is there.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Weapon Retention	157	Revised January 2006

1. Federal Bureau of Investigation, U.S. Department of Justice. Defensive Tactics (A Manual for Law Enforcement). Washington, D.C. 1970.

2. Siddle, Bruce. Police Defensive Tactics Instructor Manual. PPCT Management Systems Inc. Belleville, IL. 2005.

3. Siddle, Bruce. Defensive Tactics Student Manual. Millstadt, Illinois; PPCT Management Systems, Inc. 2001.

544

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Disarming Techniques	1696	Revised December 2005

TRAINING DEPARTMENT:	TIME ALLOCATION:
Basic Instruction Unit	2 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Bruce Hancock

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
September 2, 1997	2005

LESSON PLAN PURPOSE:

The student will learn how to disarm a subject armed with a handgun.

EVALUATION PROCEDURES:

Proficiency Exam (100%)

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

Dummy Guns
Dummy Glock
Dummy Revolver

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Disarming Techniques	1696	Revised December 2005

PERFORMANCE OBJECTIVES:

1. Demonstrate disarming techniques from the front with the handgun pointed at the officer's midsection and head.
2. Demonstrate disarming techniques with the suspect armed and standing behind the officer.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
BLE/Defensive Tactics/Disarming Techniques	1696	Revised December 2005

I. INTRODUCTION

If an officer loses his/her weapon to a suspect and suddenly finds himself/herself at gunpoint, the officer must consider some alternatives, which may include using a disarming technique.

Disarming techniques must only be used as a last resort, because they are so dangerous to attempt. Some experts feel that an individual has a 90% chance of successfully disarming someone with a gun. We don't feel that the odds are that good. An officer probably has roughly a 50/50 chance of coming out on top. There are quite a few variables that must be considered, such as the suspect's state of mind, the suspect's size and gender, as well as the experience of both the officer and the suspect, light conditions, distractions, etc.

If possible, the officer should examine other options before attempting to use a disarming technique. He/She must evaluate the situation and determine if he/she has an avenue of escape.

If cover is available and the officer is unarmed, the officer can dive behind cover and draw a backup weapon. If no backup weapon is carried, the officer must flee the area and go for assistance. We should make sure to use cover and/or concealment to our advantage when fleeing. The officer must also remember to run erratically so that he/she will not be an easy target.

If the officer is armed and the suspect has the drop on him/her, and cover is available, the officer should get behind it and draw a weapon. An officer should not try to outdraw the suspect if he/she has the dror on the officer. Action is always faster than reaction. If no escape route is available, the officer may als consider a fallback position and fire.

If other options are impossible, the officer will attempt dialogue and a disarming technique, if necessary.

II. BODY

A. DISARMING FROM THE FRONT WITH THE WEAPON POINTED AT THE OFFICER

1. Disarming From the Front (Inside Strip)

While carrying on a good dialogue with the suspect, slowly move in close to the weapon. Be careful not to get tunnel vision. Watch the suspect's eyes and weapon at the same time. The officer's hands should come up to a surrender position.

Try to wait for a distractionary window to open. The officer should try to cause a distraction by asking the suspect a question before making his/her move on the weapon.

Regardless of which hand the suspect is holding the weapon in, the officer will parry the weapon and move the target (which is the body) toward his/her non-gun side (weak side). There is a possibility that the weapon will go off, so make sure to get out of the line of fire. The hands will remain up, and ready to react, going directly into the catcher's mitt grip on the suspect's hand and weapon simultaneously. This will consist of grabbing the web of the suspect's hand (the one primarily holding the weapon) with the officer's weak hand, and grabbing underneath the barrel of the weapon with the officer's strong hanc The officer will then pull the weapon into the torso. The barrel of the weapon will be

rotated towards the inside of the suspect's forearm and stripped away from the suspect. The officer should then stun the suspect by striking the suspect with the weapon in the face or the brachial plexus origin. The officer should then begin to disengage to acquire target acquisition. If the weapon belongs to the officer, it should be cleared by performing a tap of the magazine and recycle the weapon before obtaining target acquisition on the suspect. If the weapon belongs to the suspect, the officer should try to secure the weapon under the weak side arm and draw his/her own weapon. Another option would be for the officer to hold the suspect's weapon in the weak hand as he/she draws his/her own weapon with his/her strong hand to obtain target acquisition.

2. Disarming From the Front (Rollover Strip)

As with the inside strip disarming, once the officer moves in close to the suspect with his/her hands in the surrender position, the officer will step towards his/her weak side as the officer parrys the weapon and moves the target (his/her body). The officer will then go to the catcher's mitt grip, which again consists of the weak side hand controlling the web of the suspect's hand and the strong side hand controlling underneath the barrel of the weapon. The weapon is then pulled into the officer's body. The palms of the officer will be rotated down toward the ground. A hard downward push will be used by the officer, driving the weapon toward the ground. At the same time the officer will separate the gun from the suspect's hand. Once the officer has the weapon, a strike to the face with the weapon will be delivered. When delivering this strike, the officer should make sure that the barrel of the weapon is not pointed towards himself/herself. After delivering this stun, the officer will disengage, clear the weapon and go to target acquisition on the suspect.

If, while fighting over the weapon, the officer may choose to point the weapon at the suspect and pull the trigger. Also, if the suspect charges the officer, then the officer will be justified in using deadly force. A distraction technique (front kick) can be used if the technique fails.

B. DISARMING FROM THE REAR WITH THE WEAPON POINTED AT THE OFFICER

1. Suspect standing behind the officer with the gun pointed at the small of the back.

The officer begins in a surrender position and looks over his/her gun side shoulder to try to identify which hand the suspect is holding the weapon in. The officer will simultaneously drop his/her gun side leg back, and gun side arm straight down, pivoting the body around, keeping the non-gun side hand up. As soon as the officer's body is turned, he/she should identify the target (which is the suspect's hand holding the weapon), and attack that hand using the catcher's mitt grip. After this is accomplished, the inside strip is performed, with the technique remaining the same as from the frontal position. Parry the weapon, move the target, catcher's mitt grip, pull the weapon in close to the body, strip, stun, disengage and clear the weapon, target acquisition.

2. Suspect standing behind the officer with the gun pointed at the back of the head.

The officer will begin in a surrender position, checking over the gun side shoulder to try to locate the weapon. With the weapon pointed at the officer's head, the officer will simultaneously drop the gun side leg back, and the gun side arm will remain up, since the weapon is high. The officer will pivot the body around, keeping the non-gun side hand up. As soon as the officer's body is turned around, the technique will remain the same;

catcher's mitt grip, pull the weapon in close to the body, inside strip, stun, disengage and clear the weapon, target acquisition.

3. Suspect standing behind the officer forcing the officer to walk.

The officer begins in a surrender position, looking over the gun side shoulder to try to locate the weapon. Regardless of which hand the weapon is being held in, the officer will gage his/her walking pace to pivot his/her body when the gun side leg is back. The direction of the officer's hand for the parry will be determined by the placement of the weapon by the suspect (i.e., high, at the back of the officer's head, or low, at the small of the officer's back). Again, once the officer has turned his/her body and identified the target (weapon in suspect's hand), technique will stay the same; catcher's mitt grip, pull the weapon in close to the body, inside strip, stun, disengage and clear the weapon, target acquisition.

III. SUMMARY

It is essential that an officer practice these techniques prior to their use on the streets. The officer must be fast and effective since failures can mean his/her life.

Disarming techniques should only be used as a last resort. We must never give up.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Defensive Tactics/Disarming Techniques	1696	Revised December 2005

1. Defensive Tactics (A Manual for Law Enforcement). Federal Bureau of Investigation. U.S. Department of Justice. Washington, D.C. 1970.

2. Siddle, Bruce. PPCT Defensive Tactics Instructor. PPCT Management Systems, Inc., Belleville, IL. 2005.

3. Siddle, Bruce. Defensive Tactics Student Manual. P224. Millstadt, Illinois. PPCT Management Systems, Inc. 2001.

550

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Strategy of Arrest	108	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Police Science	3 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Misty Sorell

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
July 31, 1990	2005

LESSON PLAN PURPOSE:

To provide the Basic Law Enforcement candidate with tools necessary to plan and implement an arrest strategy.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

Implementation of arrest strategy during practical exercises.

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PowerPoint Presentation
BLE Student Manual

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Strategy of Arrest	108	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Cite criminal activity and arrest situations frequently encountered in South Carolina.
2. Describe a suspect's potential reactions to an arrest situation.
3. Explain the elements of planning a successful arrest.
4. Employ proper contact/cover officer principles during an arrest situation.
5. Describe the stages of an arrest.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Strategy of Arrest	108	Revised January 2006

I. INTRODUCTION

The taking into custody of an individual is the single most dangerous task performed by law enforcement officers. Though many arrests are made during the course of a career and many arrests seem similar in nature, no two arrests are ever the same. An officer must never assume any arrest will flow as the previous arrests, even when dealing with the same individual under what seems to be similar circumstances as in previous situations. The following is a guideline to assist the officer candidate in anticipating what the suspect may do and actions the officer can take to ensure his safety.

Statistical data and information referred to is based upon events that have occurred with frequency in South Carolina as reported to SLED by the involved agencies within the 46 counties. This information is published annually by SLED in their book "Crime in South Carolina."

The guidelines set forth are based on the successes and mistakes South Carolina officers have made so that the officer candidate will not have to go through the laborious and risky task of trial and error when beginning his/her career. In other words, avoid reinventing the wheel.

Further, this information is not based on what can happen. It is based on what does happen in South Carolina, in your county, in your cities, in YOUR communities to your fellow officers.

II. BODY

A. CRIMINAL ACTIVITY AND ARREST SITUATIONS

Statistically in South Carolina in 2000, one index crime occurred in South Carolina every 2 minutes, 29 seconds. The following is a break down of crime occurrences in South Carolina as per the South Carolina Law Enforcement Division's Criminal Justice Information and Communication System for the year 2000.

1. In 2000, statistically, one violent crime occurred in South Carolina every 15 minutes, 59 seconds.
   a. One Murder every 30 hours, 6 minutes
   b. One Forcible Rape every 5 hours, 19 minutes
   c. One Robbery every 1 hour, 26 minutes
   d. One Aggravated Assault every 21 minutes
2. In 2000, statistically, one nonviolent crime occurred in South Carolina every 2 minutes, 56 seconds. Experienced officers know full well that a "nonviolent" crime has the potential of becoming a violent crime such as murder or aggravated assault the instant they begin their investigation. Some examples:
   a. One Breaking or Entering every 13 minutes
   b. One Larceny or Larceny every 4 minutes
   c. One Motor Vehicle Theft every 34 minutes

3. South Carolina tracks 29 arrest categories through SLED. Charges range from murder to arson to sex offenses to runaways and "all other." In the year 2000 the following "Top Ten" account for approximately 85% of all arrests made in South Carolina:

--	Drug Law Violations	28,320 arrests
--	Simple Assault	24,684 arrests
--	Bad Checks	23,696 arrests
--	Disorderly Conduct	17,584 arrests
--	Larceny	17,348 arrests
--	Liquor Law Violation	16,816 arrests
--	DUI	13,922 arrests
--	Drunkenness	8,964 arrests
--	Aggravated Assault	8,854 arrests

Defined as an unlawful attack by one person upon another with the intent of inflicting serious bodily injury by the Uniform Crime Reports published by SLED. Aggravated Assaults resulting in serious injury from the use of hands or feet are included as well as attempts to assault and attempts to commit murder.

--	Fraud	5,619 arrests

4. These categories may change in order of frequency, but all have been in the Top Ten for more than ten years. The reasons why revolve around two types of people, the first time offender and the repeat offender.

a. The first time offender

Young people finding themselves in trouble for the first time and learn from their mistakes. People visiting tourist areas and running amuck of the local law while on vacation. These type people find themselves in trouble and immediately learn from their mistakes.

b. The repeat offender:

In 2000 there were 8,854 arrests for drunkenness and 17,584 for disorderly conduct. This is not to say these were all different individuals who were arrested. Some people in South Carolina go to jail several times a week for the above two top ten categories. Some individuals you will encounter may make you feel like you are in a revolving door. There are several reasons why people recommit crimes, from drunkenness to the most violent murder.

(1) A convicted person serves his/her time and reverts to a criminal past. A homeless alcoholic upon serving his/her 30-day confinement in the local detention facility is released. He/She still has no home and is still an alcoholic. Chances are he/she will immediately begin drinking again in local jurisdictions. Or a person convicted of burglary serves a sentence in the state prison system, upon release from prison, having no job skills, reverts back to the life of burglarizing others as a means of obtaining income or money to finance a drug/alcohol habit.

(2) The convicted violent criminal is released from prison due to a court order or released due to an appeal for new trial that has been granted.

Studies have shown that 63% of inmates will be rearrested. A graduate from 9 weeks of training at the Criminal Justice Academy may effect his/her first arrest on a repeat offender. In many instances the new officer may be unaware that the person he/she is arresting is a repeat offender. Or, the rookie officer's arrest may be on an individual who has recently committed a crime that no one is aware of. Your very first arrest just may be an individual who has never been involved with law enforcement, but, and more importantly, your first arrest just may be an individual who has just been released from serving a lengthy prison sentence.

Arrest situations are very dangerous for law enforcement officers. It is important that each officer take his/her training seriously. Your life, the life of your partners and the public depend on you taking each situation seriously.

B. SUSPECTS ANTICIPATED REACTIONS TO AN ARREST SITUATION

You are riding with your field training officer to a call involving disorderly conduct and drunkenness. Your field training officer advises you that you will handle this situation. He/She further advises you that in the past this individual has not caused a problem, well, "most of the time." As you approach the subject you will be wondering what the subject did the other times.

Responding to a crime in some ways is like playing a sport – there is an offense and a defense. In a crime, it is the suspect who plays the offense while law enforcement plays defense. If the defense knew that the offense was limited to four plays, the defense could plan, train, and anticipate these plays to win.

A suspect (the offense) is limited to just four plays, individually or in combination. To remind the officer (the defense) we can use the acronym CASE to assist the officer in anticipation of a suspect's reactions to an arrest situation. By doing so, the officer may know what the suspect may do before the suspect does. And, by anticipating the suspect's next move, officer's can prevent the suspect from making that move.

1. C – COMPROMISE Or COMPLY

The objective of every arrest situation is to have the suspect comply with the arrest or compromise his/her temporary freedom and submit to the arrest.

Example: An armed robber is stopped exiting a store. He runs back inside and grabs a hostage. He returns to the door with a gun to the hostage's head and tells the officers that he will kill the hostage, he will kill anyone who tries to stop him and he will not be taken alive. This suspect is looking for a means of escape; he is threatening death and suicide. Officers take up positions to cut off avenues of escape, maximize their cover to minimize their target potential, and through negotiations, bring a sense of calming and reason to the situation. The suspect didn't go to the store to kill or be killed or even to take a hostage. The suspect after negotiations releases the hostage and complies.

Most arrests are not as involved as an armed robbery/hostage situation. Most arrests made throughout the course of your career will be uneventful. Generally, arrests will not become drawn out critical incidents or make headlines due to proper defense employed by law enforcement officers.

2. A – Assault

The prevention of an assault by the suspect on an officer or citizen is the number one priority of law enforcement officers during the course of an arrest.

In South Carolina, the leading circumstance in which a law enforcement officer is the victim of an aggravated assault is disturbance calls. Examples of these can be found in the "Top Ten" arrest situations: simple assault, disorderly conduct, drunkenness, and aggravated assault.

The second highest circumstance involving an officer becoming a victim of aggravated assault is Traffic Stops. Top Ten examples are drug law violations, DUI, and liquor law violations.

Sixteen percent of the approximately 8,000 SC law enforcement officers are victims of aggravated assault annually.

Regarding SC law enforcement officers killed, the circumstances are reversed. Number 1 is traffic stops and number 2 is disturbance calls.

The bottom line is, it doesn't matter which is first or second in aggravated assaults or officer deaths. Both traffic stops and disturbance calls are extremely dangerous.

Seven out of ten of the Top Ten fall into these categories. Therein lies the danger. The more we do something does not necessarily mean we get better at it, especially if we treat it as routine. Arrests are never routine.

In 1981, John Hinckley fired six shots double action from a revolver with one hand, hitting President Reagan and three others in 1.9 seconds. The weapon most used to fatally attack officers is the handgun – over 75% of the time. Half of the officers shot in South Carolina were shot at a range of five feet or less, half of them with their own gun or their partner's gun. The average number of rounds fired in a deadly force encounter is four. Average length of a gunfight is 2 seconds.

Regarding the possibility of your being assaulted in an arrest situation, the main thing that will give you the tactical edge is an advantageous position. In some cases, it may be a reactionary gap – that distance which makes it difficult for the suspect to get to you. In others, it will be cover or that object which you can put between you and the suspect which will stop bullets.

3. S – Self Destruction

Sometimes the suspect will take his/her own life. Other times, the suspect will engage the officers in what is commonly referred to as "suicide by cop" or "officer assisted suicide."

The main thing here is to be careful. No matter what the circumstances, if the suspect thinks so little of his/her own life, he/she does not think much of yours either.

4. E – Escape

Unless the suspect presents an immediate threat to the public an officer should not put himself or the public in danger to prevent an escape. Many escapes occur when the suspect is in custody. Officers are reminded that handcuffs or other restraining devices are temporary in nature. Nothing beats the proper use of restraining devices, a through search along with watching the prisoner while in custody.

Example: A suspect was in a detention facility awaiting trail for shooting two police officers. The suspect complained of not feeling well, and the suspect was to be transported to a doctor's office. The assignment of transporting was given to two experienced officers whose job it was to perform such tasks – transporting to doctor, to court, extradition, etc. The officers knew what the suspect had done and although they had access to several maximum security restraining devices, they chose to use handcuffs only. Additionally, they chose to use the handcuffs improperly – they handcuffed the suspect in the front. While escorting the suspect between them, the suspect disarmed the officer on his left side, then the other. Then he took a hostage, stole a car, and escaped.

Was it because the officers lacked manpower? Was it because they lacked equipment? Was it because they lacked training, experience, or knowledge of the suspect? What was the reason? Attitude.

C. THE ELEMENTS OF PLANNING A SUCCESSFUL ARREST

Planning is the name of the game, not paranoia. There are three elements of planning a successful arrest. They are all important and are not listed in any order of priority.

1. Speed

Once the decision has been made to arrest a suspect, the officer(s) should move as quickly as safety permits to maintain the element of surprise. There are two important things that effect speed that the officer must be aware of:

a. Hesitation

Hesitation or "lag time" is brought on by a new or infrequent experience.

For example, when you began your handcuffing training you went through a step process before being evaluated on speed handcuffing. You were much quicker at the end than at the beginning because it was no longer new to you.

When you have to handcuff individuals you are going to have to be as good as your speed handcuffing evaluation. You may hesitate if you don't practice because handcuffing has become an "infrequent" experience. If you don't practice, you may not be as proficient, and you run the risk of being assaulted.

The same thing will apply during your departmental firearms qualification and defensive tactics re-certification. If you do not practice and stay proficient, even if on your own time and expense, you will become a liability to your agency. You may not qualify and your career may be jeopardized by job loss or more importantly loss of your life.

b. Reaction Time

Officers play defense during an arrest situation. We react to the offense of the suspect. The one thing that will have more bearing on an officer's ability to react quickly will be the officer's ability to anticipate the actions of the suspect. Going into any and all arrest situations the officer should anticipate CASE.

2. Surprise

During a Terry Stop the individual knows who he/she is. In a building entry, the suspect knows where he/she is. During a suspicious vehicle stop, the suspect knows what he/she has done. Anytime a suspect commits a crime, he/she knows and sometimes plans for the arrival of officers. The only thing a suspect does NOT know is when the officer will take action, unless the officer tells the suspect.

And does the officer tell him? Unfortunately, often times the officer does. Expressions such as "I'm not going to tell you again," or "This is your last chance," or "I'm going to have to arrest you for DUI," tip off the suspect that the officer is preparing to take action. If probable cause exists for an arrest it is far better to initiate the arrest than threaten to arrest.

Surprise has several objectives that work in favor of the officer. By using surprise to your advantage there is:

a. Less chance of organized resistance – the suspect putting his/her pre-plan into action. You reduce this chance by applying CASE and using surprise to your advantage.

b. Less chance of escape – cutting off his/her avenues of escape. Again, escape is limited by applying CASE and using surprise to YOUR advantage.

c. Suicide potential is reduced. Suicide potential is reduce when CASE is applied and surprise is used to YOUR advantage.

d. Less opportunity to conceal or destroy evidence.

D. TACTICAL USE OF CONTACT AND COVER OFFICERS

Whenever the officer is handling a high risk call such as the violent and nonviolent crimes mentioned in the Top Ten Arrest situations, especially disturbance calls and vehicle stops, along with the possibility of an impending arrest, working with another officer is essential.

Some officers argue that they cannot get back-up to respond to calls. Ask yourself, if you were assaulted, could you get back-up to respond to your call for help? Then why can't you get back-up to respond to KEEP from being assaulted?

Fact is SLED statistics reveal a disturbing fact; in cases where an officer was the victim of an aggravated assault, over the last 10 years, the officer had backup present in more than 6 out of 10 incidents. Not only that, in the 4 or so that backup was not present, backup was immediately available; however, the officer did not call for assistance when the situation clearly indicated it was necessary.

The question is "Why was the officer assaulted with backup present when, in most cases, they outnumbered the suspect two to one"?

Answers can be attributed to over confidence, complacency, even the over all attitude of "it can't happen to me." But, in many cases, the assault takes place because the officers have not trained or planned for such an event. They did not realize the teamwork that was necessary in an arrest situation.

The following is a breakdown of duties and responsibilities of two or more officers at the scene of unknown to high risk situations:

1. Contact Officer

   The contact officer conducts the business of the encounter. The contact officer handles all forms of communication, handcuffs and searches of suspects, as well as is the first to approach vehicles and buildings.

2. Cover Officer

   The cover officer protects the contact officer by establishing a "force" presence as the foundation to the force continuum learned in defensive tactics. The cover officer also covers points of likely opposition as the contact officer approaches the suspect, vehicle, or building. Additionally, when practicable, the contact officer discourages escape attempts. The cover officer is addressing CASE.

3. Triangulation

   Whenever possible and especially in a field contact and/or arrest situation, the contact and cover officers triangulate the suspect. Certain rules apply to this triangulation:

   a. The cover officer should be off to the strong side of the suspect so the officer may observe and react to the suspect bringing weapons of opportunity into play.

   b. Initially, the contact and cover officers must maintain a reactionary gap and be cognizant of weapon retention. For this to be a triangle, the distance from the officers to the suspect should be the same as the distance between themselves. This will:

      (1) Divide the suspect's attention.

      (2) Divide the suspect's firepower.

      (3) Eliminate the potential for the officer's being in a cross-fire situation.

4. Role Reversal

   Officers can and must reverse roles at any time for reasons of expertise or to reinforce the safety of the contact officer. Just because you are the officer dispatched to a particular call or initiated the traffic stop, does not mean that you should be a "dictator" of the call. For instance, in a building entry situation the contact officer may be the first one to an open door, but once the contact officer begins doing a threat assessment he/she provides cover for other advancing officers who initially covered him/her.

5. Communication

Communication is the key element in the concept of contact and cover officers participating as a team. It will take a while before your partner can learn to read your mind, so it is essential that you tell assisting officers of your intentions.

In order to maintain the element of surprise, officers should communicate in ways not understood by the suspect such as hand signals or radio code. Many citizens know ten codes and/or signals as well as and even sometimes better than the officers communicating in code. It is important to understand this and not solely rely on ten codes. Hand signals and other forms of non-verbal communication is something you must work on with your partners prior to becoming engaged with a suspect.

Wait for and give feedback before initiating any action. Make sure everybody understands the information you have relayed, the cover officer may have a very good reason why you should not commit yourself to the act or movement you plan to make. Simply put, communication plays a vital role in officer safety as you progress through the three stages of an arrest.

E. THE THREE STAGES OF AN ARREST

There are three basic stages to an arrest. These stages apply to every call an officer will answer during the course of his/her career, from a loud noise dispute to a shooting in progress. The stages occur in chronological order and in order of planning. They are: approach, position, and control.

1. Approach

a. During the approach to an arrest, or any call for that matter, whether by foot or vehicle, do not wait to get to the scene to look for the suspect. Begin looking for the suspect while en-route to the location of the call. Start looking for the suspect when you are within your sight or your sound (whichever is greater) of the suspect's last known location. While en-route to the call the officer should try to "think like the bad guy," trying to anticipate the route the suspect will use to leave the scene.

b. Approach using the route that affords you the most cover and/or concealment. That route may not be a straight line. Officers on the move should always be scanning, looking for cover, and move quickly to that cover. Remember, line of sight is line of fire.

c. Make a visual search for the suspect

(1) Weapons indicators

- shirt tail out
- jacket open in cold weather
- jacket in hot weather (even if carried)
- stiff-legged walk
- bulges in clothing
- reassuring touches to where the weapons might be stored

(2) Body language

- watch the hands (Remember the Golden Rule)
- taking a fighting stance
- scanning eyes
- hard stare
- clenching and unclenching of hands (making fists)

2. Position

a. When using the contact/cover officer concept in an unknown risk situation, use triangulation and reactionary gaps to the officer's advantage.

b. In a high risk situation or suspicious activity situation, create more distance and use cover and concealment.

c. Place the suspect in a disadvantageous position before handcuffing him.

3. Control

No matter how tactically correct or safe an officer's approach and position have been, if the officer is out of control or relinquishes control to the suspect, the officer will not win in a hostile environment, when a suspect chooses to take advantage of this.

An officer can loose control by allowing himself/herself to become angry; letting his/her emotions take over his/her self-control and thinking. There are plenty of examples of this, just look at the headline excessive use of force complaints. A pursuit ends with the suspect stopping the car and giving up. How many times have you seen videos or actual situations where the officers immediately run up to the suspect vehicle? This is an example of letting the emotions and adrenaline, because of over confidence, take ov your self-control. Some cases will then lead to excessive force.

Another example of loss of control would be when an officer is not sure what to do. When you are unsure you give the suspect control just as if you were mad. Let there be no doubt a suspect has a plan in mind, one that you are unfamiliar with, but you can anticipate (CASE). The suspect is just waiting for you to allow him/her to implement that plan. Do not let your guard down and do not lose control of the situation.

The most difficult thing to control is the attitude of the officers. Attitudes ranging from complacency to over-confidence are all dangerous, even more dangerous than the attitude, size, or number of suspects.

Be sure to challenge first. This takes the initiative away from the suspect. Give clear and concise commands. Be forceful, but not aggressive or a hotdog. Be professional and avoid the use of profanity.

Always, always handcuff before you search.

III. SUMMARY

During the course of an officer's career, the officer will make many arrests. The first arrest is usually the one most remembered because training is so recent and nerves are high. Most arrests will be without incident; however, using a strategy when making any arrest, anticipating every suspect's reaction to the current arrest and applying teamwork to proper tactics will lessen the probability an officer will b successfully attacked.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Strategy of Arrest	108	Revised January 2006

1. The Advanced Field Tactics Handbook, Davis, Dancor LTD
2. Basic Patrol Procedures, Perry, Palladium Publications, Inc.,
3. Basic Course Unit Guide, The Commission of Peace Officers Standards and Testing, State of California
4. Crime in South Carolina, SC Law Enforcement Division
5. Officer Safety, Amaral, Amaral Publications
6. Patrol Procedures, Payton, Legal Books
7. Police Field Operations, Adams, Pretice-Hall
8. Police Operations, Peirson, Nesson-Hall
9. Police Reference Notebook, International Association of Chiefs of Police
10. Principles of Police Patrol, Iannone, McGraw-Hall
11. Recidivism of Prisoners Released in 1983, Beck, US Department of Justice
12. SC Law Enforcement Task Analysis Survey, SC Criminal Justice Academy & College of Criminal Justice – University of South Carolina.
13. Street Survival, Adams Et Al, Caliber Press
14. Tactical Edge, Remsberg, Caliber Press
15. Training Keys, IACP
16. Basic Law Enforcement training, State of North Carolina
17. Basic Law Enforcement training, State of South Carolina

562

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Shooting Decisions	72	Revised August 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Police Science	3.5 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		John Yarborough revised/updated by Jim Graham

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
September 30, 2002	January 2005

LESSON PLAN PURPOSE:

To provide the student with a basic understanding of the background, history, and necessary elements of the shooting decision dilemma, and to provide the student with basic criteria and ramifications involved in the employment of deadly force.

To provide the student with a basic understanding of issues within firearms civil/criminal liability, and to familiarize the student with constructive strategies to reduce the possibility of being held liable in a shooting decision.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

Chalkboard, Chalk, Eraser
PowerPoint
TV, VCR, Videotapes
PowerPoint Projector
Lap Top Computer

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Shooting Decisions	72	Revised August 2006

PERFORMANCE OBJECTIVES:

1. Identify the importance of firearms training and the split second decision an officer must make in a deadly force situation.
2. Know the legal issues as to when an officer may employ deadly force against persons, and identify the three elements that must be present for deadly force to be employed.
3. Cite the "Cardinal Rule" in making shooting decisions.
4. Explain the liability formula.
5. Identify the results of negligence in "use of force" issues.
6. Define the importance of policies and procedures regarding firearms.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Shooting Decisions	72	Revised August 2006

I. INTRODUCTION

The sheer nature of a law enforcement officer's job distinguishes him/her from all other groups in our society. Upon taking an oath to enforce laws and protect the citizenry, society bestows upon its officers the authority to use coercive force, from verbal commands to using a firearm. Having been bestowed, however, the authority to use force in the line of duty by law enforcement is one of the most controversial aspects of police work. While it is a necessary tool for officers in controlling crime and apprehending criminals, it is also one of the greatest sources of citizen complaints. Police officers have the right to use force, up to deadly force, in certain specific situations, but questions are raised as to when it should be employed and how much force is necessary.

Due to the nature of law enforcement and the coercive actions we may have to take, police officers sometimes leave themselves open to lawsuits. The public as well as the courts are consistent in one fact: law enforcement officers are held to a higher standard than the ordinary man is. As a law enforcement officer you are expected to know how to handle each situation you are confronted with. Should the situation prove to be coercive, you are expected to know the exact amount of force that would be deemed reasonable and necessary to resolve that particular dilemma. Officers stand a great potential risk of civil and criminal liability should unreasonable force or excessive force be employed to diffuse a given situation.

History Oct. 26, 1881 Tombstone Arizona, the Gunfight at the OK Corral, occurred between the Earps with Doc. Holiday and the Clantons and McLaurys. Testimony of Wyatt Earp: "When I went as deputy marshal to help disarm them and arrest them, I went as a part of my duty and under the direction of my brother the marshal. I did not intend to fight unless it became necessary in self defense, and in the performance of official duty". "I knew it was a fight for life, and I drew and fired in defense of my own life and the lives of my brothers and Doc Holliday." In the end three lay dead and four walked away winners of a deadly shooting decision.

Shooting Decisions is about decision shooting.

II. BODY

A. IMPORTANCE OF FIREARMS TRAINING

A police officer is most likely to be victimized as the result of a spontaneous assault. In fact, 64% of those violators interviewed in a 1997 FBI study – In The Line of Fire – stated that their attack on a law enforcement officer "was either impulsive, unplanned, or opportunistic." Therefore, in nearly two-thirds of assaults on law enforcement officers, the officer must react to the threat in a "split second."

With this in mind, it may be well to emphasize the need for adequate mental preparation for police patrol. After all, the officer's well being clearly depends upon his/her ability to respond to instantaneous circumstances.

1. A police officer's mental preparation is best represented by the "Awareness Spectrum." This color continuum for officer preparedness consists of the following elements:

   a. Condition white is a state of "environmental unawareness."

   b. Condition yellow is relaxed but alert or cautious but not tense.

   c. Condition orange is a state of alarm; you know there is trouble, planning.

   d. Condition red is what looks wrong is wrong.

   e. Condition black is fight or flight or panic.

   An officer should always be in "condition yellow" when on patrol or in public places. Judgment cannot be taught to any officer. However, through training an officer can empower himself/herself with knowledge and skills that will aid him/her in making judgmental decisions when confronted with a coercive situation. The American Heritage College Dictionary 3rd edition defines judgment as: "The capacity to assess situations or circumstances and draw sound conclusions; good sense." With these facts in mind, the intent of this course is to teach good judgment. The period of instruction is intended to provide the officer with the necessary tools for him/her to successfully apply force, especially lethal force, under demanding circumstances.

   A split second decision is the time allotted for an officer to make a judgment as to whether coercive force is warranted and to what extent the force is to be applied.

2. History of Police Deadly Force

   Prior to the 1970s, police officers had tremendous discretion regarding the use of firearms. Police departments often had poorly defined or non-existent policies regarding this issue. Investigations into police shootings were sometimes conducted in a halfhearted manner and police agencies did not always keep records of all firearms discharged by officers. These facts coupled with the public's lack of holding the police accountable for their actions were a recipe for pending disaster. The 60s had a major impact on the way Americans perceived force. Americans were given, by the news media, a front row seat to Vietnam, a first person account of the atrocities of war. The American media raised the public conscience during the civil rights movement with news reports of police use of force. The American public could simply not deny the harsh images of such figures as Sheriff Jim Clark or Chief "Bull" Connor as they used the billy club, the water cannon, and the police dog to suppress peaceful demonstrations. The President's Commission of 1967 noted that many of the civil disturbances of the latter 60s, many resulting in property damage and injuries, were as a result of questionable shootings by a police officer.

   Not surprisingly, by the early 1970s, larger police agencies had begun to draft administrative guidelines that restricted the use of deadly force by officers. Those guidelines generally paralleled revised state laws dealing with use of force issues. Then, in 1985, a Supreme Court decision ruled the common law "fleeing-felon" doctrine as unconstitutional. In essence, the Court struck down the unconstitutional statutes still in effect pertaining to fleeing felons.

3. Changes in Use of Force

a. Tennessee v. Garner

Many state laws have been enacted to modify the "Fleeing Felon Doctrine" c common law. This fleeing felon doctrine originated from the old English common law. This doctrine allowed police officers to use deadly force to apprehend a fleeing felon who would otherwise escape. Under that same common law system felonies were punishable by death. We must keep in mind that felonies in that day were the most serious offenses, including murder, rape, arson, etc. Today, felonies encompass a wide variety of crimes. The fleeing felon doctrine came into question after a 1964 police shooting, and eventually, in 1985, was ruled upon by the United States Supreme Court in a landmark decision.

The U.S. Supreme Court ruled that shootings of any unarmed, nonviolent fleeing felony suspect violated the 4th Amendment of the Constitution in the Tennessee v. Garner, 105 S. Ct. 1694 (1985). The facts of that case are as follows:

At approximately 10:45 p.m. on 3 October 1974, two Memphis TN police officers were dispatched to a "prowler inside call." Upon arrival at the scene, the officers observed a woman gesturing toward the residence next to hers. She advised the officers of hearing glass break and that "they" or "someone" was breaking in next door. One of the two officers notified dispatch of their arrival while the second officer went around to the rear of the residence in question. He heard a door slam and observed somebody run across the backyard to a six-foot chain link fence. The officer, using a flashlight, got a good look at the suspect who was later identified as 15 year old Edward Garner. The officer saw no weapon and later stated that he was "reasonably certain" that the suspect was unarmed. Whi Garner was crouched at the base of the fence, the officer ordered him to stop. As the officer started toward Garner, he began to climb over the fence. The officer, convinced that Garner would get away if he made it over the fence, shot Garner, striking him in the back of the head. Garner was taken to the hospital via ambulance where he died on the operating table. Ten dollars and a purse that were taken from the house were found on Garner's body.

According to Tennessee law at that time, an officer could use any force necessary to effect an arrest if a subject attempted to flee or forcibly resist. The agency's policy was a little more restrictive at the time, however, policy still allowed for the use of deadly force in the case of burglary. Memphis Police Department Firearms review board as well as a Grand Jury reviewed the case and neither took action.

Garner's father then sought relief filing a federal 1983 civil suit. The Federal District Court ruled that the officer's actions, as well as Tennessee state law, were constitutional. A Federal Appellate Court reversed the decision and was eventually argued October 30, 1984, in front of the US Supreme Court.

On March 27, 1985, the United States Supreme Court ruled that it is not reasonable for officers to use deadly force to stop a fleeing suspect. The court further stated:

"It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster."

In other words, unless you have probable cause to believe the suspect could cause serious bodily harm to you or someone else, you cannot use deadly force to stop him/her.

Almost all major agencies have enacted strict policies regarding the use of force that are more restrictive than state law. Many state legislatures have been hesitant to restrict police use of deadly force; therefore, the individual agencies have the burden of developing and implementing sensible deadly force guidelines. At the time of the Garner decision, only a few large agencies in the country had deadly force policies in place that were more restrictive that the "fleeing felon doctrine." Agencies without policies are subjecting themselves to civil litigation.

The U.S. Supreme Court made it easier for a citizen to file a lawsuit and collect civil damages as a result of a police action. The Garner decision is a result of a civil action filed by the father of Edward Garner. Other cases such as Monell v. Department of Social Services, 436 U.S. 658 (1978) and Owen v. City of Independence, 445 U.S. 622 (1980) have made it easier for individuals to file civil lawsuits against agencies under the federal civil rights statute (1983). Monetary rewards in civil litigation today have exceeded millions of dollars. Where a criminal jury may be reluctant to law enforcement officers of criminal charges, civil juries seem to have little reluctance in rewarding huge settlements.

Researchers have taken issues of deadly force and examined use, frequency, and whether incidents are increasing or decreasing. Prior to the 70s there was very little data relating to law enforcement use of force. The last several decades have provided researchers with much data to draw conclusion as to law enforcement use of force and use of deadly force. Many of the descriptive studies are based on the final frame in the split-second an officer has to make the decision to use deadly force or not.

b. Graham vs. Connor

The US Supreme Court in Graham vs. Connor, 490 U.S. 386 (1989) set forth a standard for police use of force. Out of that decision, two words that have become important in any use of force issue are reasonable and necessary.

The facts of the case are as follows:

Graham, a diabetic, asked a friend to drive him to a convenience store to buy some orange juice to counteract an insulin reaction. When he got to the store, he saw a number of people ahead of him, so he quickly left and asked his friend to drive him to another friend's house.

Officer Connor, a Charlotte NC police officer, observed Graham's furtive movements in the store and his hasty departure. The officer became suspicious and stopped Graham and his companion when they left the store. The officer called for backup. During the time, Graham exited his vehicle and passed out the curbside. In the ensuing confusion of arriving backup, Graham was handcuffed. Officers then placed him on the hood of his friend's vehicle. Graham regained consciousness during this interlude and requested the officers verify his condition with the diabetic decal he carried in his wallet. He was told to shut up and was then thrown headfirst into a patrol car. As a result of these actions, Graham suffered a broken foot, cuts on his wrists, a bruised forehead, an injury to the shoulder, and continued to suffer from incessant ringing in his right ear. He later filed a Section 1983 suit.

The Fourth Circuit Court of Appeals affirmed a lower court decision that the force used was not excessive. Upon appeal, however, the Supreme Court reversed the decision and ruled that the lower courts had applied the wrong legal standard – substantive "due process" standard based on the Fourteenth Amendment and ordered reconsideration based on the Fourth Amendment's objective "reasonableness" standard. The Court used strong language to make it clear that in the future all claims of police use of force should be analyzed under the Fourth Amendment and its reasonableness (objective) standard:

All claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard.

(1) Reasonable

That which is reasonable is using or showing reasons or sound judgment and not extreme or excessive force.

(2) Necessary

That which is necessary is that which must be done, is mandatory, or is compelled by circumstances.

In ruling on Graham, the Supreme Court discarded the due process standard used by the lower courts. That standard indicated the defendant had to prove that the officer acted sadistically and maliciously when using force. The Court stated that decisions should be made without regard to the officer's intent or motivation. Also, the court stated the decisions should be made from the perspective of a *reasonable* officer *on the scene.*

In other words, the Supreme Court said that the determining factor in establishing reasonableness should be based on what any reasonable officer would think or do if confronted with the exact same facts or circumstances. A police officer need only demonstrate that his/her application of force is consistent with accepted police tactics and that his judgement is "reasonable" and "prudent."

This makes it imperative for officers to pay careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue. Whether the suspect poses an immediate threat to the officer or others; and whether he is actively resisting arrest or attempting to evade arrest by flight will be key components in determining if force or what level of force should be applied.

4. Three Types of Subjects

In applying force, an officer must first be aware of the classifications of potential suspects. There are essentially three.

a. Totally Cooperative

b. Potentially Uncooperative (This is the most dangerous of the three.)

c. Totally Uncooperative

5. Types of Force

Understanding that an officer must meet a standard of reasonableness in the application of force, it may be well to provide him with some guidelines. These "rules of engagement" are provided through a force continuum. For the most part, such continuums consist of levels of resistance and levels of control; although these various levels roughly correspond, it must be emphasized that the officer is not mandated to follow the levels of control in order provided, but needs only apply the "reasonable" amount of control.

a. Levels of Resistance

(1) Psychological intimidation

(2) Verbal non-compliance

(3) Passive resistance

(4) Defensive resistance

(5) Active aggression

(6) Aggravated active aggression

b. Levels of Control

(1) Officer presence

(2) Verbal direction

(3) Empty hand control (soft and hard)

(4) Intermediate weapons (soft and hard)

(5) Lethal force

c. Force Continuum Variables

(1) Officer/Subject size and gender

(2) Environment conditions/Totality of circumstances

(3) Reaction time

d. Force Options

(1) Penetrate

(2) Disengage – find cover and/or concealment.

e. Whenever force is used, an officer's defensive reaction must be in response to the actions of the suspect at the time of the arrest.

The amount of force must be increased or decreased as it directly relates to the suspect's actions.

f. The law authorizes an officer to use force when necessary to effect an arrest. The officer should not cease in his/her attempt to arrest because of resistance. An officer's use of force is not limited to self-protection, but extended to that amount of force, which is reasonable necessary to perform his/her duty of arrest. When an officer has decided to make an arrest, he/she may use whatever force is reasonably necessary to prevent escape, subject to the limitations imposed by law.

g. If a person resists a lawful arrest by words or threats and is visibly prepared to resist, the officer may use that force that is necessary to effect the arrest.

h. Police officers have no right to use deadly force to effect misdemeanor arrests (misdemeanant). If an officer uses excessive force in arresting someone who offers no resistance and such excessive force puts the person in reasonable fear of death or great bodily harm, the person is justified in resisting even to the point of taking the officer's life. The officer will be liable for whatever injury he/she causes. In misdemeanor cases, the officer has no right to use deadly force, and cannot endanger human life. Further, the officer cannot shoot or kill the offender in order to prevent escape or to overcome resistance.

B. DEADLY FORCE SITUATIONS

1. Self-Defense

An officer may use deadly force when he has reasonable cause to believe he/she is in imminent danger of loss of life or serious bodily harm at the hands of another person. An officer need not retreat from an attack but may stand his/her ground and meet force with force.

2. In Defense of Another Person

An officer who directs deadly force toward a person in defense of a third party acts on the behalf of the person he/she is protecting, and is subject to the same limitations. If the person whom the officer is protecting would have been justified in shooting in self defense, then the officer is justified.

3. To Prevent the Commission of a Dangerous Felony

To prevent a crime from being committed when making an arrest for a felony, an officer may use such force as is necessary to effect an arrest or to overcome the resistance to the arrest. This authority is subject to the limitations applicable to self-defense situations.

4. To Halt the Fleeing Felon

The "Fleeing Felon" Rule after Tennessee v. Garner (1985) says, "An officer may not use deadly force to apprehend non-dangerous (misdemeanant), apparently unarmed fleeing suspects. However, when the officer has probable cause to believe that a suspect poses a significant threat of death or serious physical injury to the officer or others, the officer may use deadly force if necessary to stop the dangerous fleeing felon suspect."

5. Research

a. Felons run a greater risk of being shot by their victims than by police.

b. The number of citizens killed by the police for the nation as a whole remains unknown.

There is no reporting system regarding police shootings in place nationwide, and there is no accurate count of how many citizens are shot or killed by the police each year in the U.S.

6. The Shooting Decision Situation

a. Three elements must be present in order for deadly force to be used:

(1) Ability

Ability is having enough power or skill to do something.

(2) Opportunity

Opportunity is a combination of circumstances favorable for the purpose of time or a good chance or occasion to use one's ability. Probable cause must still exist.

(3) Jeopardy

Jeopardy is great danger, peril, or to have one's life in danger.

b. An officer must be fully aware of those three elements before a shot is fired. The time to decide is within a split second. One has to understand the concepts of ability, opportunity, and jeopardy so that when you are confronted with a shooting decision, you correctly choose your course of action.

c. Officers should attempt to take the tactical advantage and put the suspect at a disadvantage. One way to do this is by the officer using cover and/or concealment for protection and to discourage an attack by the suspect. Concealment will hide you, while cover will both hide you and provide ballistic protection.

C. THE CARDINAL RULE OF SHOOTING DECISIONS

"When confronting suspects, if there is the slightest doubt, **DO NOT SHOOT**."

1. Moral Issues

a. If faced with a shooting decision, could you fire at an assailant without hesitating?

Research shows that the officer's age and length of service are strongly related to the use of deadly force. Younger officers and those with fewer years of police experience were more likely to be involved in a shooting, and to become involved in a repeat shooting than were older, more experienced officers. Conservatively, there are a minimum of 450 deaths each year at the hands of police officers. Additionally 1,200 other incidents occur annually where an officer is present when someone is shot or wounded. An officer must know when and how to employ force, including deadly force, and an officer MUST be able to use deadly force if the situation so dictates.

b. How do you think you would handle a shooting situation?

A shooting incident is a source of major trauma for officers involved. A law enforcement deadly force encounter is a dramatic event. Also, these situations are high profile. Officers involved in a shooting incident will be bombarded with comments and inquiries from other officers on the scene, officers in the department, administration, other agency investigative personnel (criminal investigation), internal affairs investigative personnel, shooting review boards, as well as prosecutors. These are from within the law enforcement community. Outside sources will be from news media, civil groups, politicians, as well as th community. Many officers experience post-shooting trauma. This trauma ca affect job performance, professional relations, and family relationships as well. Many officers find it difficult to continue in their law enforcement career after a deadly force encounter, particularly when no support from their agency was provided.

An officer involved in a shooting will have to provide a brief statement on the scene to investigators as to what happened and may be required to fill out an initial incident report. Depending on departmental police and procedure it is recommended that before making additional detailed statements that officers obtain legal representation and guidance to ensure their rights are protected. Officers should receive a good rest period before making formal detailed written statements to investigators. This rest period will allow officers to recall more accurate information and detail. Officers should avoid making any statements to any other persons other than on a need to know basis.

For these reasons, many departments have created and implemented a post shooting policy. Only after the smoke clears does the long process for the officer involved in a shooting begin.

To better prepare himself/herself, an officer should know the department policy on use of force as well as policies on guidelines for dealing with officers involved in an on duty shooting situation. He/She should also know the resources availabl to officers and his/her families and use these resources.

c. What are some of the wrong justifications for using excessive force?

(1) Stress – Work related stress; personal stress

(2) Anger – Letting suspects personal attacks affect your performance.

(3) Fear – "Condition black"

(4) Limited knowledge – Policy, tactics, communication. Limited knowledge can compound fear in a crisis situation.

2. Video – "Shoot/Don't Shoot" and or "Scenarios"

Purposes

a. To stimulate thinking.

b. To determine your knowledge of what you may encounter on the street.

c. To test your knowledge on shooting decisions.

D. CIVIL/CRIMINAL LIABILITY

Knowing when to use force is an important part of a law enforcement officer's career. The use of force can have grave consequences for an officer. Officers must abide by rules set forth by the courts as well as their department when applying force. Civil liability is one way courts set out to ensure officers abide by use of force rules, as set forth in Tennessee v. Garner and Graham v. Connor.

1. To help minimize the possibility of being in a lawsuit, the officer must:

a. Not violate a person's civil rights. Example: Improper arrests

In Graham v. Connor, the court stated that while "reasonableness...is not capable of precise definition or mechanical application," a number of factors require careful consideration. These factors include:

(1) Whether the suspect poses an immediate threat to the officer or others.

(2) The severity of the crime.

(3) Whether the suspect is actively resisting arrest.

(4) Whether the suspect is attempting to escape custody.

b. Be knowledgeable on arrest tactics. Example: Proper way of placing cuffs on suspect, and proper use of impact weapon.

c. Be familiar with shooting decision issues.

d. Know your departmental policy regarding firearms and use of force.

e. Be familiar with court rulings on officer involved shootings.

2. The Legal Issue

The use of force which is excessive or unnecessary under the particular circumstances of the case is unjustified and may subject the officer to criminal as well as civil liability.

3. Liability

Liability Formula WR (Weapon Reliability) + HR (Human Reliability) = LLP (Legal Liability Potential)

a. WR (Weapon Reliability)

Weapon Reliability is the reliability of the weapon assigned to an officer by his/her agency. It is the officer's responsibility to adhere to departmental policy pertaining to weapon conditioning. Officers involved in shooting situations may receive unneeded criticism and hardship during the course of a shooting aftermath investigation.

(1) Condition of weapon

Any problems should be reported to the department armorer for maintenance.

(2) Care and maintenance it receives

Cleaning and routine inspections, ammunition, number of rounds loaded in weapon, and extra magazines should all be delineated by policy and adhered to by officers.

(3) Technical qualities of the weapon

Will be noted in any shooting aftermath investigation. Only a departmental approved armorer or gunsmith should conduct any technical maintenance on departmental weapons and ammunition.

b. HR (Human Reliability)

(1) Maturity and emotional condition of the officer

An officer who for religious, moral, or other belief knows he/she will never shoot an individual, or an officer who knowingly is unsure if he/she can pull the trigger in a shooting situation should not be in police work. Knowing you possess an inability or unwillingness to shoot is no reflection on you as a person. It does however mean you are a detriment to other officers and the public that you are sworn to protect.

(2) Amount of quality training the officer receives

Training files are discoverable material. Officers learn the basic fundamentals in basic training. It is important that officers continue quality training throughout their career.

(3) History of officer's behavior

Officers' personnel files are discoverable material for attorneys. Some information may also be obtained via Freedom of Information requests by media and others in the community.

c. LLP (Legal Liability Potential)

Your individual Legal Liability Potential is determined by adding the weapon reliability and human reliability. Again, though courts seem reluctant to convict law enforcement in a criminal trial, there is much less reluctance to award monetary damages in civil litigation. Amounts awarded have greatly increased over the years, some exceeding millions of dollars.

4. Areas of Liability

a. The officer injures or kills the subject as a result of excessive force.

b. An innocent bystander is injured as a result of careless aim or ricocheting bullet fired by the officer.

E. CIVIL/CRIMINAL LIABILITY - NEGLIGENCE

1. Definition

Civil/Criminal liability is the responsibility an officer must bear for damages or injuries which that officer has caused to be inflicted upon another person.

2. Liability of an individual officer may be:

a. Direct

A civil/criminal action can be brought against an officer based on the officer's conduct. Negligence for law enforcement officers is the failure to act with the care a reasonably careful officer would use in the performance of duty under the same circumstances. In order for a plaintiff to win in court under a negligent claim, the plaintiff must prove:

(1) That there is a duty placed on the officer to act or not to act in a certain manner.

(2) That the officer BREACHED that duty.

(3) That this breech of duty was the proximate cause of the injury to the plaintiff or deceased.

(4) That the plaintiff did in fact suffer some injury or damage as a result.

b. Indirect

Allows responsibility to be affixed to a superior officer or agency not directly at fault for the person's injury; because of the relationship between the superior officer or agency and the offending officer.

F. LIABILITY REDUCTION AND PREVENTION

1. Know State and Local Law

The courts presume that persons in positions of responsibility know the law pertaining t their duties. The courts presume that law enforcement officers know or should know the law. Thus, in a very real sense, ignorance of the law is no excuse - it certainly is not a valid defense.

2. Know Department Policies and Procedures

Just having written policies is not enough. An agency must be absolutely sure to follow those policies. If it can be shown that an agency has no policy, the agency is in trouble; if it can be shown that an agency has a policy but did not follow it, the agency is in still more trouble.

3. Training

As stated earlier, violators interviewed in a 1997 FBI study – In the Line of Fire – stated that their attack on a law enforcement officer "was either impulsive, unplanned, or opportunistic." Personnel must be properly trained in all aspects of their jobs, for officer survival first and foremost and subsequently for civil and criminal survival.

4. Supervision

If a positive link between the supervisor's conduct and the officer's action can be shown, the supervisor can be held liable for his subordinate's actions. (Ex. Rodney King incident)

Supervisors can be held liable in areas such as failure to train subordinate officers, failure to discipline subordinate officers, and failure to supervise. Thus, supervisors need to be familiar with issues pertaining to direct and indirect liability.

5. Documentation

Proper documentation is the key to lawsuit prevention. Basically, the courts now rule that if it isn't documented, it didn't happen. Protect yourself and department by proper detailed documentation.

III. SUMMARY

A. REVIEW OF MAIN POINTS

B. QUESTIONS/COMMENTS FROM CLASS

C. CLOSING

Judgment as to when to use force, particularly deadly force, can be learned. Officers can through proper training on arrest tactics, shooting fundamentals; statutes, department policy, and report writing/documentation prepare themselves for the split second decision, and also help protect themselves through the course of criminal/civil investigations and possible litigation. Shooting decisions is really about decision shooting.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Shooting Decisions	72	Revised August 2006

1. Artwohl, A & Christensen, L. W. Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight. Boulder, Co. Paladin Press. 1997.

2. Barrineau, H. E. Civil Liability in Criminal Justice. Cincinnati. Anderson Publishing Co. 1987.

3. Brown, M.F. Use of Deadly Force by Patrol Officers: Training Implications. Journal of Police Science and Administration, 12(2):133-140. 1984.

4. Dunham, R.G. & Alpert, G.P. Critical Issues in Policing: Contemporary Readings. Prospect Heights, IL. Waveland Press, Inc. 1997.

5. Fyfe, J. J. Shootings of and by Chicago Police. Chicago Law Enforcement Study Group. 1981.

6. Federal Bureau of Investigation, U.S. Department of Justice. Firearms Instructor Reference Manual. Undated training document.

7. Gillespie, T., Hart, D. & Boren, J. Police Use of Force: A Line Officer's Guide. Shawnee Mission, Kansas. Varro Press. 1998.

8. Sherman, L. W. & Chon, E.G. Citizens killed by Big City Police, 1970-1984. Washington, DC: Crime Control Institute. 1986.

9. South Carolina Criminal Justice Academy Legal Staff

10. South Carolina Criminal Justice Academy. Basic Law Enfocement Training Manual. Undated training manual.

11. South Carolina Criminal Justice Academy. Civil Liability and Law Enforcement. Undated training document.

12. Personal knowledge of SCCJA Firearms Instructors John Yarborough, Michelle Sorell, Cindy Riser and Jim Graham.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Basic Patrol Operations	16872826	Revised January 2006

I. INTRODUCTION

The backbone of the department is a phrase synonymous with the patrol division. Of any division, patrol is the one that could not be eliminated under any circumstance. The patrol function is often summed up in the phrase "protect and serve." That phrase pertains to any possible function or assistance a person could imagine for the patrol officer, one of the many who serve on a daily basis in the unit that is always on duty, no matter what the occasion.

If the role of the patrol officer is so vital and important within an agency or community, then patrol officers should be the best-prepared, most effective persons in a department. When an officer is personally prepared and effective on patrol, not only is it reflected through his work, but in his reputation and the reputation of his agency within the agency and the community. Unlike agency administrators, the patrolman's vehicle is his office. It is imperative that you as a patrol officer have all the necessary supplies and equipment within your reach to properly and professionally conduct your business.

Being prepared before you go on the job is not the end step. You should continue throughout the patrol assignment evaluating the patrol objective, patrol technique, type, for any given situation.

II. BODY

A. PREPARATION

1. Before You Leave Home

The process of initial preparation begins with the officer taking steps to prepare for duty. Preparation of personal equipment is a critical step that is required prior to reporting for duty. The officer's life may depend on his equipment readiness and his personal capabilities with that equipment.

a. Appearance

Before you leave your residence, look at yourself in the mirror and ask yourself, "Am I proud of the way I look today?" Your uniform, your appearance gives the public their first impression not only of you, but also of your agency and law enforcement as a profession. When you look at yourself in the mirror if you can find one thing to criticize, rest assured, so will the public. A clean pressed uniform, shined brass worn in the appropriate position speaks volumes. Remember the first level in the force continuum is officer presence.

Not only will this appearance check ensure you go to work everyday neat in appearance and professional in your carriage, but other safeguards are built in as well.

b. Weapon

When you look yourself over, notice if your weapon is in the holster and your back up (if allowable by agency policy) weapon is secured in its holster. If you have forgotten either weapon at least you can retrieve it before you leave your home. At a minimum if you went to work without your weapon, you would have a large amount of embarrassment. Worse case scenario however is to need your defensive sidearm and realize you left it on the dresser when you reach for it. This could then be classified as a fatal tactical error and cost you your life.

Your weapons systems should be properly maintained, cleaned and serviced. You should always strive to obtain maximum proficiency with your weapons systems, your defensive sidearm, back up weapons, off-duty weapons and shotgun. Prior to going on duty the shotgun should be checked and made sure the weapon is ready to rack and the safety is engaged.

c. Holster

Inspect your holster for damage and function. If your holster is damaged it could impede drawing your defensive sidearm under stressful conditions.

d. Ammunition Carriers

Inspect your ammunition carriers for damage and function. If your ammunition carriers are damaged magazine changes or reloading could be impeded during stressful conditions. As well, rotate the magazine from your defensive sidearm and the magazines in your ammunition carrier.

e. Flashlight

Most agencies issue rechargeable flashlights to officers. Keep your flashlight properly charged for longer life span of the battery. If you own or are issued a rechargeable flashlight you should read the manufacture's guide on the proper way to recharge the battery.

It is also prudent to have a small flashlight that will fit on your duty belt. This way you will always be equipped with a flashlight. In preparing for the worst, it would be advisable to purchase a battery-operated flashlight, no smaller than a 2 C-cell. This flashlight along with spare batteries should be stored in the trunk of your vehicle for emergencies or if your rechargeable flashlight should go down.

It is advisable to also store extra bulbs and flashlight lens in the trunk of your vehicle. Remember we most often use flashlights during hours or times of darkness. Officers should practice changing the bulb (and batteries) in the dark. If your bulb goes out during a building search, you will not be able to turn on the lights to see how to change the bulb!

f. Ink Pens

As you learned in report writing, law enforcement officers in South Carolina are to use black ink pens for writing incident/arrest reports. Two black ink pens placed in your top shirt pocket will ensure you do not find yourself out of ink

without a spare pen. You may also consider storing extra pens in the trunk of your patrol vehicle as well.

2. Prior to Going In-Service

Some officers are assigned vehicles and are solely responsible for the care and maintenance of that vehicle. For those officers the following should also be done before leaving home. Other officers will sign out a vehicle once they arrive at the department. Regardless of whether you have a take home vehicle or a motor pool vehicle, the following is a continuation of proper preparation and should be completed prior to going in-service on patrol.

a. Patrol Vehicle

There are few vehicles that are exposed to rougher treatment than police vehicles. Your patrol car is an emergency vehicle and will likely be operated under emergency conditions during your shift. If your patrol car were the office it would be reasonable to believe that you would take extreme care in maintaining the office/vehicle. Unfortunately this is not always the case. Faulty equipment or conditions may result in disciplinary action and more importantly, may cost an officer or innocent civilian's life.

(1) Service inspection

Pre-check your patrol vehicle to ensure all the fluids are topped-off at the proper level. Make sure you stay current on your vehicle service log. As the time nears for vehicle maintenance, plan ahead so you will not to go over the maximum mileage allowance. Check the air pressure in the tire to ensure you will be operating your vehicle with maximum air pressure. As well, check the tread to see if you are nearing the time to have your tires replaced. If you are unsure of how to properly check the fluid levels of your vehicle or tire pressure ask for assistance while in training or while in your field training program. You will not be responsible for changing the fluids in your patrol vehicle, but you will be required to maintain the proper functioning level on all your fluids. This means you may have to add oil, power steering fluid, transmission fluid, gas, or washer fluid to maintain proper levels for your emergency vehicle to operate at maximum performance.

(2) Vehicle Inspection

At the time you are assigned a patrol unit for duty you should conduct a vehicle inspection before you accept control of the patrol car. If you have a take home vehicle, this same process should be completed prior to leaving your residence.

Walk around the exterior of the vehicle inspecting the windows (also check for cleanliness), bumpers, body, lighting systems, etc. You are inspecting for any damage, breaks, bumps or bulges that may impede your safe operation of the vehicle. Once you complete a walk-around noting any damages on the vehicle, move to the vehicle interior compartment Conduct an inspection of the radio, siren, and public address systems.

Check the computer system for proper connections and operation if applicable. Check the vehicle lighting systems. The headlamps, both dim and bright as well as the brake lights and reverse lights. Check the parking lamps and turn signals, both front and rear. Check also the blue lights, takedown lights, and alley lamps. If any equipment is found to be damaged or unserviceable immediately notify a supervising officer for repair or replacement vehicle. Unless it is absolutely necessary you should never accept a vehicle that is not adequate for aggressive patrolling as well as driving in emergency situations or pursuits.

(3) Searching the patrol vehicle

Officers should search their patrol vehicle before the beginning of every shift and after every transport. Search your vehicle to ensure there is no contraband, evidence or weapons unaccounted for. Pay strict attention to the area in and around the back seat and under the front seat where a prisoner could dispose of items.

b. Before you leave the office

Information preparation is another important factor to consider before you start on patrol. Be on the look-out (BOLOs) notices for missing persons, stolen automobiles, wanted persons, or other critical information on criminal activity that has occurred in your area need to be documented in your field notebook before you start your duty tour. Information sources can be located in many different areas.

(1) Officers you relieve

Make contact with the officer you are relieving in your assigned area of patrol. Ascertain what has occurred during the previous shift. The officer you are relieving is the best source of information on who is out moving around or what type of suspicious or other activity he has observed during the course of his shift.

(2) Supervisors

During roll call or briefing, your supervisor will update you on occurrences within your jurisdiction that you need to be aware of. The supervisor will also notify you of events or happenings within your agency such as training opportunities or promotional opportunities. As well, criminal incidents and BOLOs that have been issued since your shift last worked will be give out.

(3) Released Offense Reports

Released offense reports are the best method of tracking criminal activity in an area. By reviewing offense reports prior to going on shift, officers can locate specific troubled spots such as a rash of burglaries in a specific neighborhood or mobile home lot.

(4) Investigators

Investigators are always looking for someone. From time to time investigators will come to roll call and ask for help locating a specifi· person. Officers should get to know the investigators working in their are. and contact them on a regular basis to learn who the investigators are looking for or at.

(5) Field Interview Forms

Field interview cards give an officer an idea of who or what is being documented by other officers as suspicious. For instance, by reviewing the field interview cards you might observe John Smith has established a pattern of hanging around a particular business at 0200 hours the past several nights. This might give you an indication of his future intent to break into the business. You will then pay particular attention to this business during the times noted.

Officers should always remember the Law Enforcement Code of Ethics. Information learned by an officer or shared within the organization should remain confidential and protected by the officers and should never be shared with anyone outside of the organization. The only exception to this rule is when permission is given to an officer by a supervisor who has the authority to release information.

B. ON PATROL

There are many different methods of patrolling: foot patrol, air patrol, water patrol, mounte· patrol, or vehicle patrol. Many of the different specialized patrol units require experience and/o. specialized training. The new or rookie officer will generally begin his career with vehicle patrol, foot patrol, or bicycle or small engine patrol, therefore this portion of training will be contained to those patrol methods most often assigned to the new patrol officer. No matter the type of patrol you are assigned, the overall patrol objective will be the same, just carried out a little differently. The patrol officer will be confronted, on a daily basis, with a vast array of patrol activity or objectives.

1. The Patrol Objective

The primary duty of the patrol division is protection and service. Under those generalized terms fall many duties to the patrol officer.

a. Preventive Patrol

Preventive patrol centers on the patrol officer, whether on foot, bicycle, or in a vehicle, being visible. The noticeable presence of police officers and patrol vehicles has a deterring effect on crime. Although there is an abundance of statistics on crimes that have already occurred, there is no way to place a numerical value on the number of crimes that have been deterred by the mere presence of a patrol vehicle or a police officer. For example, when you drive home from the academy on Friday afternoons, you may find yourself in a hurry to get home. You begin driving above the posted speed limit in an effort to get home faster. As you drive along you observe a Highway Patrolman parked on the sid. of the road in a stationary radar position. You take your foot off the gas and slow

back down to the posted speed limit. The mere presence of that trooper on the side of the road has affected your adherence to obeying traffic laws.

b. Emergency Calls for Service

Answering emergency calls for service is only a part of a patrol officer's basic duty. The patrol officer is usually the first of the public service professionals at emergency scenes. This is in part due to the mobility of patrol officer's emergency vehicle as well as assigned work zones or areas allow for officers to be closer to calls. It is not unusual for the patrol officer to be the first person on the scene of a fire, shooting, hostage incident, explosion, suicide, or any other emergency call for service. Patrol officers should be familiar with the agency's policy on handling specific emergency situations. It is recommended that officers follow their agency's policy when handling emergency or crisis situations.

Emergency situations are generally chaotic scenes until control is established. And, since the patrol officer usually arrives on scene first the duty to begin restoring calm may rest on the patrol officer's shoulders. As a patrol officer you will or have been trained in emergency first-aid, water-safety as well as other emergency interventions that may become necessary to be employed by the first responding officer until more help or specialized assistance arrives on the scene. The patrol officer must always be mindful that in his authoritative position, citizens will be looking to him for leadership, reassurance, and to reestablish calm. The patrol officer who is as panicked or more panicked than the citizens he is assisting will not be effective, rather he will make the situation worse. The visible nature of your vehicle will aid in restoring that calm, but your demeanor will aid you even more. If it appears to the public that you know what you are doing or that you have taken control of the situation, generally, they will accept your authority and abide by your decisions, which will eventually restore calm back to the situation.

c. Service Calls

The majority of a patrolman's shift will be spent responding to calls for service, what some may call routine calls for service. Although there is no such thing as a routine call for service, it is very easy to become indifferent and complacent when working the same type calls over and over. When a citizen contacts law enforcement for assistance, his/her need, in his/her mind, is the most important act you perform that day. It is easy to become complacent after handling the same type call over and over in a shift. It is also easy to become callous, grouping all similar calls just like this one, same story, same problem, blah, blah, blah. An officer should remember that no matter how minute the problem may seem, it is a problem for the complainant or victim and should be handled in a professional and empathetic manner. Becoming embroiled with callous thought leaves officers vulnerable because they also become complacent. When complacency sets in an officer is open to escapes, assaults, and officer death situations.

d. Public Courtesies

Department policy will dictate whether you will respond to assist in many of the public courtesy situations. Under this broad category fall many duties to the patrol officer. Although the patrol officer will spend the majority of the shift handling

calls for service, the public courtesy calls will be frequent. All calls coming through the communications center will be prioritized and it must be remembered emergency situations or any call pertaining to criminal activity will take precedence over most of these courtesies, no matter who requested the courtesy.

(1) Escorts

(a) Funerals - Agencies that still assist with funeral processions do so as a public courtesy. When leading the escort or stopping traffic at intersections as the procession passes, officers should be mindful that this is a solemn occasion and should treat each escort with professionalism and dignity.

(b) Bank Deposits – From time to time you may be called to assist business or other establishments with a security escort to banks for deposit purposes. Department policy will determine whether individuals are driven or followed to the bank. It is important to keep officer safety in mind and follow proper tactical procedure when escorting someone to a bank to make a deposit.

(c) Hospital Escorts – From time to time you may be flagged down and requested to escort someone to a hospital. Or, you may observe erratic driving or speeding, when you conduct a traffic stop on the individual you are requested to escort him/her to the hospital. This is not a recommended escort due to the emotional state of the driver. You cannot guarantee he/she will obey traffic laws or that the operation of his/her motor vehicle will be conducted in a safe manner.

(2) Locked Vehicles

You may be called to unlock a vehicle door. Your agency policy will dictate whether or not you will perform this courtesy. There are certain cases where public safety is a factor such as a child left in a vehicle that is idling, or a small child locked inside a vehicle in extremely hot temperatures. Again, your agency policy should guide you in how to proceed in such instances.

(3) Death Notifications

Death notifications are one of the most unpleasant tasks an officer will be called on to perform. When delivering a death notification and officer should be empathetic, but direct. Do not beat around the bush; let the individual know the information, straight and to the point. Officers should not be so eager to make a hasty exit. Contact the person's pastor or neighbor or other relatives prior to leaving to ensure you do not leave the individual alone.

(4) Vacation Checks

Your agency may provide the courtesy of checking the local residents' homes while they are away on vacation. It is not recommended that you agency accept a key from the homeowners. An exterior perimeter check,

checking all windows and doors should be adequate. Make sure your agency has a contact number for the homeowner in case there is an emergency.

2. Patrol Techniques

There are two basic techniques to use when on patrol: conspicuous and inconspicuous patrolling. Both of these techniques can be used in an aggressive manner; however, the quickest way to impact criminal behavior or activity in an area is by conspicuous patrolling.

a. Conspicuous patrol

Conspicuous patrol denotes a high profile situation with the officer in uniform driving a marked patrol vehicle so as to maximize visibility. Although officers want their presence known, an effort should be made NOT to establish a set routine. Irregular routes and times are more effective than establishing a set pattern of patrolling. This allows the officer to utilize the element of surprise. For example, you are aware of high prostitution activity at a given location. By aggressively utilizing the conspicuous patrolling technique you will prevent crimes by interrupting a prostitute's activity, or scaring potential customers away by the mere presence of your patrol car. After a period of time wherein the prostitute realizes you are going to be in the area, the prostitute will go home, or leave the area. You have just prevented crime of solicitation as well as a host of other criminal activity associated with prostitution such as theft, assault and battery, criminal sexual conduct, or robbery. Conspicuous patrolling is the quickest way to impact criminal activity or behavior in a given area.

b. Inconspicuous patrol

Inconspicuous patrol is a more covert type of patrol. Inconspicuous patrolling relies on low visibility in order to identify and apprehend criminals. Often this type of operation is conducted in a stationary and concealed manner, with every effort made to blend in with the existing environment. For example, running stationary radar or concealing your patrol vehicle and observing an area known for high drug transaction activity.

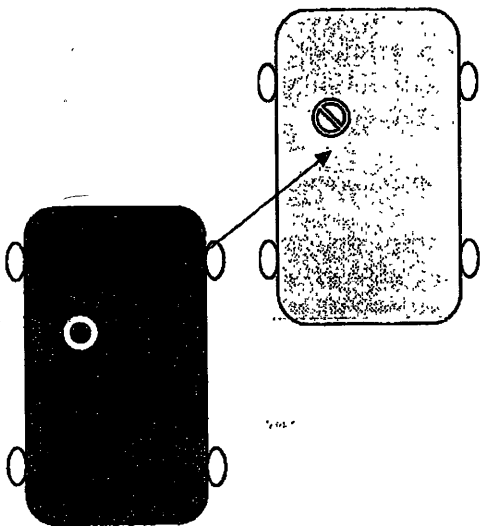
3. Types of Patrol

a. Vehicle Patrol

One of the primary concerns of an officer when operating a vehicle should be safety. Officers are often scrutinized when they operate their vehicles because of the high profile nature of the patrol car. Driving in an unsafe fashion, exceeding the speed limit unnecessarily, or breaking any traffic law can result in a complaint from a citizen. If the officer has to engage in vehicle operation that disregards normal traffic regulations, the officer must understand that the blue light and siren only request the right of way; this does not guarantee that everyone will move their vehicle out of your way. Due care and caution must be employed by the officer during these situations. Furthermore, officers should know what their particular agency policy is regarding code 3 operations.

One disadvantage to the patrol vehicle concept is the car itself. It is easy to cocoon yourself in the patrol car, air conditioning or heat on, your favorite song playing on the radio, not to mention the police radio traffic. Do not isolate yourself from your patrol function. The patrol car is merely a means to transpo you from call to call, from property check to property check, allowing you to cover more area. As well, your patrol vehicle is your first form of cover when you need it. You cannot maximize your protection if you use it as a cocoon. Your vehicle can also become your tomb. Get out of the car frequently. When patrolling, if weather allows, roll the windows down and turn off the FM radio. Listen to the sounds in the area. lass breaking, a person's scream, and even gunshots can be missed if you isolate yourself inside your patrol car.

Officers should be conscious of the environment when driving and take steps to maintain mobility. Do not stop so close to a vehicle to the front as to obstruct your ability to maneuver around that vehicle. On multiple lane highways officers should try to operate in the left lane unless factors require operation in the right lane. This affords the officer the ability to change direction or move around traffic if the situation warrants. When following a suspect or stopping in traffic officers should quarter the vehicle to the officer's passenger side. This technique places the officer's vehicle to the left rear of the suspect vehicle allowing the officer the ability to observe the suspect(s) inside without the suspects being able to easily see the officer.



Lastly, when checking property officers should be careful not to get so involved with the property checks that they ignore the path of their vehicle. Checking property from a vehicle should be done at very slow speeds. This will enhance safety and improve the officer's ability to see if a building has been forcibly entered.

b. Foot Patrol

Foot patrol is the oldest form of patrolling. In today's fast paced society many think foot patrol is an outdated method. Agencies are re-implementing the foot patrol concept and still others are adding a spin to the foot patrol and putting officers on bicycles or roller skates. No matter what the consideration, ever police officer in South Carolina will at one time in their career conduct some form

of foot patrol. High School football games, fairs, festivals, concerts, holidays, or any other time when large numbers of people will be together, you will find officers on foot patrolling the area. Therefore, it is important for all officers to understand the advantages and disadvantages of foot patrol.

(1) Advantages to foot patrol

There are many advantages to foot patrol. Getting out of the police vehicle enables the officer to:

(a) Make person to person contacts with the citizens. Making person to person contact with the citizenry is the greatest advantage to foot patrol. Making contacts with the shop owners and workers as well as people walking the street is good community relations for you and your agency. The patrol officer should remember demeanor, appearance, and carriage make lasting impressions of the officer himself, your agency, and law enforcement in general.

(b) Increase familiarity with the physical characteristics of the territory. Foot patrol beats are smaller in size than areas patrolled by vehicle. An officer will be operating on foot, thus will have more and better opportunity to learn the environment he is working in.

(c) Inspect or explore areas that are not possible from the patrol vehicle. Many jurisdictions have areas that are not accessible by vehicle. While on foot patrol, officers have access to areas such as alleys, building rooftops, etc.

(d) Become more familiar with businesses and the people who work there. In today's society many officers are new to the area as well their agency. Foot patrol officers have an opportunity to get in touch with an area and learn the people who live and work in their assigned zone.

(2) Disadvantages to foot patrol

There are some disadvantages to being on foot patrol. These should be considered when working football games, off-duty jobs or any duty that places the officer on his feet out of the patrol vehicle.

(a) Restricted movement or ability to cover larger areas effectively. Being on foot limits the amount of area that can effectively be covered.

(b) Limits pursuit. Physical limitations in a society that heavily depends on automobile transportation.

(c) Inability to use some equipment. It is difficult to carry gear while on foot patrol. You cannot carry a shotgun. Communication can also be a problem.

(3) Law enforcement officers are constantly reminded to practice officer survival tactics. When operating on foot it is vitally important that officers use proper tactics. Unlike road patrol officers who bring cover with them, foot patrol officers need to be aware they become vulnerable to attack attention is forfeited. Some considerations to be aware of:

(a) Always be aware of cover.

(b) Check out building before entering for type of activity.

(c) Pay attention to vehicles parked around buildings, especially occupied vehicles.

(d) Approach people maintaining a safe distance and control the movement of persons you may be interviewing.

(e) During nighttime use darkness to your advantage.

(f) Do not use your flashlight during situations when light discipline is important.

(g) If a situation warrants back up wait for back-up units before engaging if possible.

c. Plain Clothes

Although most new officers will begin in uniform on patrol it is important to speak to plain clothes or undercover assistants. Agencies will use patrol officers in an undercover capacity to assist with saturation details, prostitution detail, large concerts, large gatherings or other instances where an officer in plain clothes can blend in with the crowd. The same principles of foot patrol apply; however, in most cases you will not have the luxury of having all your equipment such as your radio. There are several special considerations:

(1) Clothing – You should wear clothing appropriate to the event or crowd. You want to surreptitiously blend in with the people at the event. Should you be assigned to plain clothes protecting a foreign government dignitary you would stand out dressed in the latest hip-hop fashion.

(2) Plain clothes officers as well as off-duty officers in plain clothes have been shot at, and sadly killed by fellow officers who did not know them or did not recognize them in civilian clothing. Even if you initiate an incident, the moment uniformed patrol officers arrive on the scene they are going to begin determining who everyone is and what role they play in the event. Until you establish with the uniformed officers who you are by showing your credentials, you look no different to the patrolmen than your suspect. Imagine compounding the stress by adding a weapon, a gun. Incidents involving weapons bring more stress and adrenaline than usual. If the uniform officer sees what they believe to be a civilian armed with a weapon, it is his duty to protect himself as well as the public. Therefore, should you find yourself in plainclothes with an officer giving you verbal commands, DO NOT ARGUE with him. Do what you are told, show your credentials, then resume your control. A plainclothes officer who makes a

furtive move with his/her weapon out, after being told to put the weapon down, gives the uniformed patrolman justification to shoot. The golden rule to remember here is he who is in uniform is in charge, at least until identification is established.

III. SUMMARY

Successful departments have community support and cooperation. A successful department's foundation is built on successful patrol officers. To be successful, a patrol officer must realize his duty is to protect and serve. To carry out his mission, the successful officer will be prepared when called to perform a task no matter how small or large. Many of the patrol officer's skills will be developed while performing job tasks or having repeated exposure to actual incidents. You can improve those skills by properly being prepared and evaluating yourself and your practices throughout your career.

590

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Basic Patrol Operations	16872826	Revised January 2006

1. Remsberg, Charles (1995). *Tactics for Criminal Patrol.* Northbrook, Ill.: Calibre Press

2. Remsberg, Charles (1995). *Street Survival.* Northbrook, Ill.: Calibre Press

3. Remsberg, Charles (1995). *The Tactical Edge..* Northbrook, Ill.: Calibre Press

4. Adams, Thomas F. (1985). *Police Field Operations.* Englewood Cliffs, NJ: Prentice-Hall.

5. Peirson, Gwynne (1976). *Police Operations.* Chicago, Ill.: Nelson-Hall.

6. Amaral, Michel (1986). *Officer Safety.* San Jose California: Amaral

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Disturbance Tactics	146	Revised February 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Police Science	1.5 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Robert A. Bullock, Jr.

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
August 30, 1990	2005

LESSON PLAN PURPOSE:

To acquaint the student with recommended methods to tactically approach, position, and control disturbance calls.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PowerPoint Presentation
Videos
Chalkboard

592

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Disturbance Tactics	146	Revised February 2006

PERFORMANCE OBJECTIVES:

1. Identify key factors that impact on an officer's response and actions at domestic calls.
2. Identify key factors that impact on an officer's response to crowd and/or mob situations.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
BLE/Disturbance Tactics	146	Revised February 2006

I. INTRODUCTION

Responding to disturbance calls is the leading activity involving officer's assaulted. The objective of this block of instruction is to present effective methods of controlling disturbance situations while stressing safety.

The home can be a dangerous place: More violent crimes occur in the home than outside its doors, and more violence occurs between family members than among strangers. This violence can happen in the blink of an eye. Officers who respond to a family dispute need to respond in a professional manner as "peace officers," and many times must assume roles of "big brothers," "mediators," "counselors," or affect an arrest where domestic violence has occurred.

Officers must balance a professional image with tactics that will control the situation, and keep everyone safe. Many times officers can cause more problems, and or increase the tension of the domestic dispute by the way they treat persons involved. Treat everyone as you would like to be treated and always disengage in a polite manner.

Responding to calls and performing traffic stops can also develop into unwanted attention. When crowds gather the moods of the crowd more often than not dictates their actions. It is necessary to approach and respond to gathering crowds appropriately.

II. BODY

A. DOMESTICS

1. Phases

a. Causative: When officers arrive at the scene they should start thinking "what is the underlying cause" of the domestic dispute. Domestic disputes can be triggered by money, sexual, sibling problems, or any number of issues. Learning the underlying "trigger" of the domestic dispute early-on will give the officers a better understanding and plan of how to handle the situation in the event mediation is all that is needed.

b. Verbal: For the most part, officers should ignore the verbal abuse of the domestic parties directed at them so long as it does not involve implied or expressed threats. Officers should realize that many times the disputants are not attacking the officers verbally, but are reacting to the tension, and emotion of the situation. Verbal skills and good interview tactics can help control this problem. For example, in response to a verbal attack, an officer may use Tactical Communications to deflect the assault.

c. Involving children: If possible, officers should search for and remove children from the scene. Keep in mind that children are also victims of domestic violence either by the batterer themselves or the victims. Also, children are often used as pawns in a struggle for power and control.

d. Alcohol or drug abuse: While alcohol and or drug abuse is not the underlying cause of the dispute it does remove inhibitions and is an aggravating factor. Officers should be make a special note to that since it may lead to an assault situation.

2. Officers should assume nothing while dealing with a domestic disturbance call, especially:

a. That this is the first incident involving these disputants. Statistics show that many incidents occur before a person calls for help. More often than not they try to handle the situation by themselves.

b. That one of the disputants has left, and will not return. While officers are involved in the investigation persons have been known to hide nearby or inside the residence unknown to a victim or officers.

c. That the disputant who called is the "one in the right." Officers must remain objective, and use active listening skills while dealing with a domestic dispute. A ploy used by a person who has committed a crime is to call law enforcement first in hopes of winning favoritism. Although a person may believe that they are truly a victim it does not remove officers requirement to determine the Primary Aggressor under the Criminal Domestic Violence statutes.

d. That the disputant "in the right" will not interfere with the arrest of the one "in the wrong." This is especially true if the officer is perceived to have taken sides or unprofessional.

3. Arriving at the scene.

a. Officers should park at least one house away from the address of the domestic dispute. Many officers have been shot-at on their approach to the incident location as soon as they leave the cover of their patrol vehicle. More often than not they are expected to arrive soon and this is the first opportunity a suicidal or homicidal individual has to assault. The sight of the approaching patrol car may allow disputants time to obtain weapons or otherwise prepare for the officers' arrival.

(1) Do not slam patrol vehicle doors. Light and sound discipline is recommended.

(2) The first sight of the patrol vehicle may be the first sign to one of the disputants that the police have been called by the other.

b. If at all possible, do not respond alone. When working with a partner, discuss the actions you intend to take in separating the disputants.

c. If responding alone is absolutely necessary separate the parties by sight and sound. Remove the first person who comes to the door outside with you and interview away from points of likely opposition. Then swap that person with the other party and interview also.

4. Domestic disturbance entry procedures.

a. When arriving at the front door of the domestic dispute call, officers should stand to one side of the door, never in front of it. Officers have been shot through the front door while standing directly in front of it. There is no rule that says that th front door is the only way in. Standing at the front door is what a suspect bent on assault hopes and expects the officer to do.

b. Officers should listen at the door for 20 to 30 seconds before announcing their presence. The primary reason for listening is for officer safety and determines the current state of the dispute. What an officer hears through the walls may be admissible in court as an exception to the hearsay rule.

Common Hearsay Exceptions used in Domestic Violence Cases:

(1) Present Sense Impression – statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance – statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

§16-25-70 (C) Entering the Premises: In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

c. Officers should check the screen door to see if it is locked or open for an unexpected barrier. Screen doors are dark and may provide concealment for someone else.

d. When ready to knock, officers should also announce their presence while waiting for the door to be opened.

e. The officer on the hinged side of an inwardly opening door should enter last to maintain visual contact with the interior thereby covering the other officer during entry.

5. Initial contact. The officers should find out as soon as possible how many disputants they need to interview. Ideally, officers want to deal one-on-one with the disputants.

a. Upon initial contact, officers should display a calm, positive, and professional manner.

b. Responding Unit's Responsibilities

(1) Separate the parties before interviewing by sight and sound. This will help suspects, victims and witnesses cooperate more. The more the interference from others the less the likelihood of getting full cooperation and information.

(2) Restore order by gaining control of the situation;

(3) Take control of all weapons used or threatened to be used in the crime;

(4) Assess the need for medical attention and call for medical assistance if indicated;

(5) Identify all persons, including children, present in the vicinity of the crime by full name, address, social security number, birth date, sex, height and weight;

(6) Privately interview all parties, including children;

(7) Attempt to take written statements from all witnesses, especially the victim, at the time of the initial response (*Note:* Law enforcement are required by law to give a copy of a witness's statement to the witness.);

(8) Never talk to a victim or child witness within sight or hearing of the suspect; never tell the suspect what a victim or child witness said;

(9) Collect and record evidence to include pulled out hair, weapons, and torn or bloody clothing;

(10) Arrange for photographs whenever there are visible signs of injury to persons or property (*Note*: Color photographs should include the crime scene, injuries, any weapons and property damage);

(11) Complete appropriate crime or incident reports necessary to fully document the officer's response whether or not a crime was committed or an arrest made (*Note*: Incident reports should be completed on all domestic calls where complainant or victim contact is made).

(12) If the offender has left the scene and a crime has been committed, officers should:

(a) Obtain information from victims and witnesses as to the offender's physical description, weapons in the offender's possession, the description of any vehicle used by the offender, and where the offender might be. Relay this information to other units;

(b) Conduct a search of the immediate area;

(c) Attempt to locate the offender; and

(d) Remove the complainant and family from the scene if there is the possibility of imminent danger to them.

b. Observations

(1) Officers should observe any visible weapons, or threatening gestures. Note: Anything can be a weapon.

(2) Areas to avoid because of weapons of opportunity:

(a) The kitchen.

(b) The bedroom.

(c) Soft furniture.

6. Emotional stages of the disputants.

a. Fear. Many times the disputants are afraid of going to jail. This may a rational or irrational fear.

b. Hate. Domestic violence calls are filled with strong emotions that may be directed at the officer or just displayed.

c. Depression. Disputants' emotions may be effected by alcohol or drugs. Keep in mind the CASE (Compromise, Assault, Suicide, Escape) state of the individuals.

d. Embarrassment. Most disputants will be embarrassed because the officers are at their home. Officers should be sensitive to this issue. Embarrassment may lead to little or no cooperation.

7. Separation of the disputants – (positions): Separating the disputing parties is a must. They should be separated by sight and sound when possible. If possible, officers should separate the disputants physically, but still keep officer/partners in sight. Officers can choose the following separating positions depending on the circumstances:

a. The wide "H." (Demonstrated by class diagram).

b. The wide "Z." (Demonstrated by class diagram).

c. The "I" formation. (Demonstrated by class diagram).

Some of these can be conducted both indoors and outdoors including during traffic and pedestrian stops. (Demonstrated by class diagram).

8. Courses of action: Depending on the circumstances of the domestic dispute, the officers have the following courses of action:

a. Mediation. Officer should remember that they are "peace" officers and try to return the scene to as peaceful resolution as possible. Mediation is applicable when no laws have been broken and the parties required nothing more than a referral.

b. Referral. Many times officers may refer the disputants to other agencies that may be able to help the disputants. (Examples: Police Chaplain, Churches, Department of Social Services, Family Court, etc.). Referral is applicable when no laws have been broken and the parties required nothing more than mediation.

c. Arrest. If domestic violence is observed, officers may affect an arrest under §16-25-70 (A) or mandated to arrest under §16-25-70 (B).

(1) Probable cause standard; §16-25-20. Acts prohibited:

It is unlawful to: (1) cause physical harm or injury to a person's own household member, (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(2) Discretionary arrest; Section 16-25-70 (A):

An officer may arrest, with or without a warrant, a person at his or her place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of §16-25-20 (A) or (E), or §16-25-65 even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.

A law enforcement officer must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

(3) Mandatory arrest; §16-25-70 (B):

A law enforcement officer must arrest, with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20 (A) or (E), or 16-25-65 even if the act did not take place in the presence of the officer. A law enforcement officer is not required to make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.

B. CROWDS AND MOBS

1. Types of Crowds

a. Definition: A large number of persons collected into a close body without order.

b. Casual Crowd: An assemblage of people showing no group behavior but merely denseness of conflict.

c. Psychological Crowd: An assemblage of people who have a common intent or respond to the same stimuli.

2. Types of Psychological Crowds

   a. Friendly. (Examples: ballgames, churches, parades, candlelight vigils, etc.).

   b. Sighting. (Examples: fires, accidents, etc.).

   c. Agitated. (Usually because the crowd perceives inaction by proper authority such as the police or fire department).

   d. Hostile. (Civil disturbance). Sometimes planned and coordinated.

3. Crowd and Mob Tactics

   a. Avoid drawing attention to yourself so as not to provoke or create a crowd:

      (1) During traffic stops.

      (2) While answering calls.

   b. Remain constantly alert to:

      (1) The number of persons in the crowd.

      (2) Possible entrapment actions (encircling, etc.).

      (3) Moods and motives of the crowd members.

   d. Communicate information: If an officer observes a crowd developing, he/she should withdraw to a safe observation post, and contact his/her communications center immediately with the pertinent information.

   e. In patrol vehicle:

      (1) Remain inside for protection.

      (2) Use the public address system to direct commands to a crowd if possible

      (3) Drive slowly out of the area.

   f. While on foot patrol:

      (1) Maneuver to a position that will protect your rear, avoid encirclement.

      (2) If officer needs to withdraw, do so in a side-stepping motion.

      (3) If near a building, enter a narrow doorway, but be careful of any entrapment positions.

   g. If possible, direct remarks toward specific individuals ordering them to leave and avoid comments to an entire crowd that would agitate. You may need to explain arrest action if that will satisfy persons questioning officer's actions.

   h. Backup officers:

      (1) If an officer needs assistance, responding officers should arrive with the use of blue lights, and siren which will hopefully cause the crowd t disperse.

(2) If arrests need to be made, they should be done so with time coordinated arrivals by the officers.

III. SUMMARY

Officers who respond to a family dispute need to respond in a professional manner as "peace officers," and many times must assume different roles in order to resolve the situation or successfully affect an arrest where domestic violence has occurred.

When crowds gather the moods of the crowd more often than not are good indications of their possible intent. It is necessary to approach and respond to gathering crowds appropriately.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Disturbance Tactics	146	Revised February 2006

1. Bullock, Jr., Robert A. "Domestic Calls" street experience. Over 20 years.
2. Family Violence, Lloyd W. Pagelow, Praeger Press, New York.
3. Felix, Edwin. Police Science Unit, and consultant, C. J. A.
4. Lanier, Mike. Police Science Unit, and consultant, C. J. A.
5. Policing Domestic Violence, Lawrence W. Sherman, The Free Press.
6. South Carolina Criminal Justice Academy. CDV Investigation Manual. 2003. Columbia, S.C.
7. South Carolina Office of the Attorney General and the South Carolina Criminal Justice Academy S.T.O.P. Violence Against Women Programs. Model Protocol for Law Enforcement, Prosecutors and Judges for the Investigation, Prosecution and Disposition of Criminal Domestic Violence, Criminal Sexual Conduct and Stalking Crimes. Second Edition. 1998.
8. True Tales of American Violence, Chris Pfouts, Paladin Press Boulder, Colorado.

602

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Crimes in Progress	107	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Police Science	4 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Misty Sorell

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
July 31, 1990	2005

LESSON PLAN PURPOSE:

To introduce the student officers to the procedures and tactics concerning their response to high-risk and potentially dangerous calls.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PowerPoint
Chalkboard
Chalk
Eraser

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Crimes in Progress	107	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Identify the elements of a tactical approach to a crime scene involving a crime in progress.
2. Identify the proper tactical considerations when responding to a man with a gun call.
3. Identify the proper tactical considerations when responding to a burglary.
4. Identify the proper tactical considerations when responding to a robbery in progress call.
5. Identify the proper tactical considerations when responding to a barricaded suspect or hostage situation.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Crimes in Progress	107	Revised January 2006

I. INTRODUCTION

This unit of instruction is intended to serve as a guideline for a first responding officer to formulate a basic plan for dealing with certain high-risk situations. It is designed to supplement, but not replace, departmental policy. Predictably, the offender knows law enforcement will be responding and will have a plan of action even if it is spontaneous. It is essential that officers, too, have a plan. Preparation is the name of the game, not paranoia.

II. BODY

A. RESPONDING TO A CRIME IN PROGRESS – THE BASIC ELEMENTS

1. The Call

Typically, a first responding officer to a crime in progress receives his information regarding the event from the dispatcher. The dispatcher receives his/her information from a complainant who could be a third party, victim, witness, or even the suspect.

Often times, the complainant has in some way been involved in a stressful situation and may be highly emotional, and the first job of the dispatcher may be to calm the complainant so vital information may be obtained. The results are, at best, the complainant's interpretation of the event.

The dispatcher records the information, lending his/her interpretation of the event, and relays it to the responding officers. Officers receiving the call also interpret the information given to them.

Meanwhile, at the crime scene, activities continue to take place unreported or unknown by the complainant. It is no wonder when officers arrive on scene, often things are not quite as expected.

In other situations, the officer detects the crime in progress and becomes the source of information. Unlike the officer responding to a dispatched call, who has time to formulate a plan, the officer involved in an in progress call must have a plan already in place.

2. The Operation of Response

Whether responding in a vehicle or moving on foot, the operation of response contains three phases that are common to all events and situations. Those phases, in chronological order are: approach, position, and control. These three phases are continual during a situation; each time an officer changes his/her location the phases begin again from approach.

a. Approach

During the approach phase the officer should anticipate that the suspect may be fleeing the crime scene by the same route the officer is approaching the crim scene. Therefore, unless the officer knows for a fact the location of the suspect,

the officer should not wait until arrival at a scene to search for suspects. While en-route the officer should be observant for suspicious vehicles and persons. Failure to do so results in the tactical error – over pursuit. Over pursuit occurs due to an officer's lack of observation and places the suspect to the rear of the officer, or rather to the officer's back.

In order to reduce the possibility of over pursuit, an officer should begin searching for the suspect one-half the distance or time from the scene of the crime. Additionally, when within sight and sound of the crime scene, the officer should practice light and sound discipline. The suspect knows officers will be coming, and it is by sight and hearing that he/she will attempt to locate those officers.

When an officer is approaching in his/her vehicle and when he/she is within sight and hearing of the scene, the officer should de-activate the blue lights and siren – only if it is safe to do so. Heavy traffic conditions or responding to a call involving an officer needing assistance or other public safety exception may preclude this. In addition to de-activating the blue lights and siren, an officer also needs to slow the speed of his/her patrol vehicle to a patrol speed. Patrol speed is a driving speed at which the officer can not only watch the roadway, but also other places the suspect may be such as side streets, alleys, behind trees, in ditches, etc. Patrol speed, in many cases, may be 20 miles per hour.

When safe to do so, an officer approaching a crime scene at night may turn off his/her headlights to avoid being located by sight, when concealment might otherwise keep him/her hidden. This should only be done in the immediate vicinity of the crime scene where the suspect would have the opportunity to see the position of the stopped vehicle. An officer should also refrain from making any noises such as the closing of a vehicle door or the misuse of a flashlight.

Should the officer need to approach the crime scene from the outer to inner perimeter, the objectives of not over pursuing, as well as light and sound discipline still apply. Additionally, the officer should not move toward the inner perimeter via line of sight. Remember, line of sight is line of fire. Instead, take the route that affords the most cover and/or concealment. An officer should be cognizant that what is cover for his/her is also cover for the suspect. Cover must be cleared before it can truly become cover for an officer.

b. Position

Achieving an advantageous position is the goal of the responding officer and cover and concealment are the prime objectives. The first available cover an officer will have upon arrival at a crime in progress is the protection afforded him/her by the engine block of his/her vehicle. An officer should use rapid deployment when exiting his/her patrol vehicle, moving to his/her engine block for cover, in 2 seconds or less. Do not wait until you see the suspect's weapon. (Note: Rapid deployment is covered further in Vehicle Tactics.)

At the same time, the officer should establish a high-risk reactionary gap or not be any closer to the scene than 25 yards.

c. Control

During the control phase, an officer must maintain a proper attitude. No matter how many times an officer has responded to crimes in progress and found the call to be a false alarm, you must never lose sight that no call is to be judged by previous calls, even if it is at the same location, during the same shift.

The first thing an officer must do is anticipate what the suspect may do by applying the principles of a suspect's possible reaction. CASE: compromise, assault, suicide, or escape.

A threat assessment of the area allows the officer to determine which points of likely oppositions represent the greatest threat to him/her and other officers. Examples of POLOs are windows, doors, corners of walls, vehicles, and persons.

An officer should communicate with other responding officers what has been found and what has not been found on the scene. If he/she has located the suspect, that information should be relayed at that time: has the suspect been restrained, is the suspect fleeing or is the suspect offering resistance and if so, where and how. If the suspect has left the scene, which way did he/she go, how, what is the suspect's description, is he/she armed, and if so, with what.

Officers should be prepared to render aid to victims and be prepared to call for other emergency services such as EMS or Fire assistance. Along with rendering aid, the first responding officers may be charged with locating and separating witnesses, beginning the process of taking statements, and protection of the crime scene.

B. MAN WITH GUN RESPONSE

When an officer is dispatched to a man with gun call, the officer has one advantage – this is not going to be an unknown situation. The key is with GUN. This is a high risk situation and caution is the watchword.

1. Approach

When arriving in a vehicle, the officer should practice light and sound discipline when within sight and hearing of the location and begin looking for the suspect. Do not assume the suspect is at the location given – he/she may have moved.

When approaching the location on foot, the officer should make use of all available cover. The officer should remember that unless the location of the suspect is known for a fact, any cover must be considered a POLO until it is cleared. At no time should an officer advance leaving an uncleared POLO to his/her rear. This would be the tactical error – over pursuit.

2. Position

Take cover first, then locate the suspect. The first available cover is brought to the scene with the officer, the patrol vehicle engine block. Therefore, use rapid deployment when exiting the vehicle and gaining cover behind the engine block.

Other positions to consider are the high-risk reactionary gap and when two officers are present. Use the contact-cover concept and triangulate the suspect to divide his/her attention and firepower.

3. Control

When the suspect is located, always challenge from a position of cover. Never approach an armed suspect.

Order the suspect to place the weapon down. With hands raised, have the suspect walk backward towards your position of cover. When the suspect has cleared the weapon's location, but before arriving at your position, order the suspect to turn completely around while you do a visual search for other weapons.

Always place the suspect in a disadvantageous position such as kneeling when he/she reaches your location, and always handcuff before you search.

C. BURGLARY IN PROGRESS RESPONSE

Although many burglary calls are the result of faulty alarms or homeowners failing to secure their property, all in progress or alarm calls must be taken seriously. One cannot predict the outcome of the next situation.

1. Approach

When approaching, officers should be particularly aware of the suspect's vehicle parked nearby the crime scene rather than in the immediate vicinity. If the items to be stolen are small and/or light, burglars do not want to give away their presence by parking too close and arousing suspicion.

Officers should be aware of any individuals walking or running away from the scene of a suspected burglary, especially if they are carrying objects associated with breaking and entering. Items such as crowbars, pliers, or possible stolen items are some things to be on the look-out for.

If the officers are responding to a burglary in progress during the hours of darkness, light and sound discipline should be utilized when within sight and sound of the crime scene.

2. Position

At first, it may not be apparent that a break-in has occurred. Using the high risk reactionary gap and from a position of cover or concealment, implement the sector response plan positioning officers off corners so they can observe one or two sectors.

a. One Officer Initial Response

In some cases due to the size of the department or the size of the area patrolled, a single officer may be dispatched to a burglary call. Although a lone officer cannot contain a four-sided structure, he/she may create the illusion of it to buy time until back-up officers arrive.

Example: During hours of darkness, an officer should cut off all vehicle lights as he/she positions himself/herself using the HRRG at C-1 of the sector response plan. The patrol vehicle is aligned so that when

the headlights, take-down lights and spotlight are on, one or more sector is illuminated. After executing a rapid deployment, the officer turns on all lights to illuminate the sectors. Using the route that affords the officer the most cover and concealment, the officer moves by foot to the opposite corner to observe for any activity.

The purpose for this is based on the suspect's anticipated reaction to CASE. If the suspect assaults the officer, he/she will most likely choose the vehicle as his target. If the suspect attempts to escape, he/she will most likely run toward the officer's position.

b. Two Officer Response

When two officers respond an effort should be made to position themselves so that as many sectors as possible may be observed.

Example: If it is a four-sided structure, an officer using the HRRG may position himself/herself at C-1 where he/she can observe Sectors 4 and 1. This will be his/her assigned area of responsibility, or what he/she can see. This is what he/she is responsible for.

The other officer may position himself/herself on the opposite corner at C-3 and observe sectors 2 and 3, and this is his/her AAR.

3. Control

When the officers, using the HRRG on opposite corners have established an outer perimeter to contain the suspect, they should then locate any POLOs as well as any signs of forced entry in their AAR. If either is detected, then that area should remain covered.

Immediately communicate to your fellow officers any active threats you observe, and then communicate your status (location, *Assigned Area of Responsibility* - AAR). These can be accomplished quickly by using the *Sector Response Plan.*

The Sector Response Plan involves drawing a square around the building. The front of the building is designated Sector 1, the right wall Sector 2, the back wall Sector 3, and the left wall Sector 4. The left front corner is C-1, the right front C-2, the right rear C-3, and the left rear C-4.

Example: Using the HRRG, if your position was C-2, your AAR would be Sectors 1 and 2. You would then do a Threat Assessment of the POLOs and communicate same to other responding officers.

If signs of forced entry are not detected, an officer will be required to approach the structure to search for intrusion. If this is necessary, the officer conducting this search will be the contact officer and a cover officer will be required to cover his/her approach and search. Where there are multiple POLOs, additional cover officers will be required.

The contact officer should look for signs of forced entry at doors and windows as well as holes in walls behind objects along the walls. Officers should also note any access points to the roof and any entry through ventilation ducks below the foundation, through walls, or roofline.

If intrusion is detected, wait to see if the suspects will exit. If the suspect's location is known, call out or force out. If none exit within a reasonable amount of time, form an entry team and execute a protective sweep as outlined in building tactics.

In many situations, it will be the contact officer who will detect the break-in rather than the property owner since in just as many cases the property owner may be absent.

D. ARMED ROBBERY RESPONSE

Due to the high risk nature of an armed robbery call, a coordinated two officer response is recommended.

1. Approach

While en-route to the call, it is important for officers to watch for fleeing suspects using the same route to escape that the officers are using to respond to the call. Exploded "dye packs" and vehicles speeding away from the crime scene should be investigated immediately.

Units not responding to the crime scene location should monitor exit/escape routes.

At the scene, be very observant for the get-away vehicle. Before approaching any vehicle for possible cover, the vehicle must be cleared first.

2. Position

Follow the high-risk reactionary gap and rapid deployment procedures. Do not park within sight of the crime scene. Do use whatever cover and/or concealment is available. The reason for this is not to allow the armed robbers to see the officers on the exterior of the building, thus possibly causing a bad situation to get worse. It could become a hostage situation!

Take a position where the exits may be observed and covered, unlike the response to burglary calls where entire sectors initially had to be observed. On a potential burglary, officers responding may not know if intrusion has occurred, but in an armed robbery situation what is known is the robbers want money and are going to then follow the path of least resistance for their speed of get-away. Therefore on armed robbery scenes it is imperative to observe and cover the exits.

3. Control

Communicate with other officers at the scene and using the sector response plan, coordinate covering all exits. There should be at least one officer per exit; however, it is preferable to have two officers per exit so as to triangulate those exits.

Follow department policy and procedure for confirming an armed robbery in progress. Usually, this entails the dispatcher calling the location using a code word or phrase after being advised to do so by officers who have established the outer perimeter. At no time should an officer approach the location during this time so as not to be observed by suspects inside who then have hostages. Even worse, the officer who approaches an armed robbery scene during this time may become the hostage himself/herself.

Law enforcement's objective in an armed robbery is to get the suspects outside of the building, away from the doorways, in the open, and away from cover and potential hostages.

In the meantime, additional officers on the outer perimeter should concern themselve with citizen endangerment issues, keeping non-essential individuals away from the crime scene.

If the dispatcher initially reports that the alarm is false or that the suspects have gone, an employee should be instructed to meet with the officers on the outer perimeter for verification. The dispatcher should provide the officers with a description of this individual as well as what door he/she will be exiting. If the officers prefer, they may designate which door to exit. Either way, this individual should approach the officer's position.

E. BARRICADED SUSPECT OR HOSTAGE SITUATION RESPONSE

1. Hostage Taker Categories

A barricaded suspect may be alone and represent a danger only to himself/herself or officers at the scene. A barricaded suspect may hold hostages with him/her or he/she may be a sniper holding the community hostage. These individuals usually fall into one of three categories.

a. Emotionally Disturbed People

FBI statistics indicate that approximately 52% of all hostage incidents involve persons classified as "mentally disturbed." There are four broad categories paranoid, depressed, antisocial personality, and the inadequate personality.

b. Criminal

Individuals who barricade themselves or take hostages can be classed into three subcategories, those with a premeditated intent and those who are opportunist.

c. Premeditated

These persons have pre-planned this event and are often involved in situations such as kidnapping for ransom or revenge, criminal sexual conduct or home invasion.

d. Opportunist

These persons usually are interrupted while in the commission of an original crime by law enforcement authorities and take a hostage as a means of leverage.

e. Prisoner

Persons who are incarcerated sometimes riot and take hostages. This type of hostage taker can either be premeditated or opportunistic; however, due to the fact that these individuals are incarcerated they belong in a category of their own. The center of the conflict usually pertains to conditions and wanting improvement at the prison or detention center. By taking hostages, usually law enforcement, th prisoners have more bargaining power and insurance of media coverage. Because

most hostages are law enforcement there is a significant increase in potential injury and possibly death to the hostages.

The preferred response is rapid in nature to prevent leaders from forming within the prisoner ranks. However, in events that involve two or more prisoners previous incidents have shown that basic negotiation principles and guidelines can result in a successful outcome, the negotiated surrender of the prisoner hostage taker.

f. Terrorist

Terrorist can be motivated by either political or religious beliefs.

2. Suspects' Motivational Profile-

Usually, a barricaded suspect/hostage taker will be motivated by one or more of the following:

a. Attention

The suspect is unstable, anxious, and frustrated. He/she wants people to listen to irrational demands and try to use outlets such al media and large crowd gatherings to his/her advantage.

b. Power

The suspect is angry and rejects intervention. He/she will use the hostage or his/her position for leverage to get his way. A cornered armed robbery suspect will try to use hostages as a bargaining chip to arrange his/her escape.

c. Revenge

The suspect who takes hostages for revenge is possibly homicidal. In some instances the taking of hostages is related to what he/she perceives as being rejected, betrayed or abused. The may indicate that it is too late to stop him/her.

d. Despair

The person who takes hostages or barricades himself/herself due to despair will be suicidal. Officers must be mindful that a person who is suicidal may force law enforcement into a suicide by law enforcement intervention situation. The suspect may make depressive, disjointed statements. When despair or suicide potential is noted law enforcement should begin crisis intervention rather than negotiating with the suspect.

3. The Law Enforcement Initial Response

In cases where the officer is responding to a known barricaded or hostage situation an administrative officer (commander or crisis manager) will respond to the scene to coordinate activities. This instruction is designed for the first responding uniform officer at the scene.

According to the FBI, the first 15 to 45 minutes of a hostage takeover are the most dangerous. While they do not recommend the first responding officer begin negotiations, they do suggest that the first responder initiate contact to assess the situation and gain intelligence. This is referred to as the initial response. The initial response has tw objectives stabilize and contain.

a. Stabilize and contain the situation

Ensure your safety by establishing a high risk reactionary gap and utilizing cover. The high risk reactionary gap also serves as the immediate outer perimeter. This perimeter may have to be extended to a second perimeter for public and media safety.

Evacuate endangered bystanders; not only within the outer perimeter but also those nearby to the rear should you need to expand the perimeter as other officers arrive. Make every effort to communicate with citizens with hand signals so as not to alert the suspects.

If this is not possible, physically keep the people away to prevent an accident or panic on the part of the civilians.

Consider contacting the suspect to calm and reassure him/her that everything is all right outside and no one wants to hurt him/her or be hurt.

b. If contact is made

The first statements between the first responder and the perpetrator will set the tone. Demonstrating concern for the welfare of the individuals with such questions such as "Is everyone o.k. in there? Are you o.k?" or "Can I count o. you to keep things calm?"

Avoid asking probing questions such as "What's going on?" The suspect may use this to force a confrontation such as "I'm going to kill a hostage if you don't disappear."

Avoid bargaining or making concessions. If asked, tell the suspect you will check on it or work on it.

Do anything to buy time that does not compromise your safety or the safety of the hostages.

4. Law Enforcement Support Response

Using the sector response plan advise responding officers of the safest avenue of approach.

Advise the responding officers of the best positions to maintain an outer perimeter.

Assist supervisors and other specialized units by controlling the situation, by providing the intelligence including the suspects description, profile, and motivation, as well as the number, description, condition, and location of hostages if know.

5. Firearm Discipline

Hostage takers have been known to change clothing with their hostages.

III. SUMMARY

The preceding information has exposed the officer to calls that, because of their complexity, have the potential of becoming high risk. Prior planning and training for such events is essential because often the smallest details make the biggest difference.

614

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Crimes in Progress	107	Revised January 2006

1. The Advanced Field Tactics Handbook, Davis, Dancor LTD
2. Basic Patrol Procedures, Perry, Palladuim Publication, Inc.
3. Crime in South Carolina, SC Law Enforcement Division
4. A guide for First Responders to Hostage Situations, Federal Bureau of Investigation
5. Managing the Man with the Gun, Danto, FBI
6. Officer Down – Code Three, Brooks, Motorola Teleprograms
7. Officer Safety, Amaral, Amaral Publications
8. Patrol Procedures, Payton, Legal Books
9. Police Field Operations, Adams, Prentice
10. Police Reference Notebook, International Association of Chiefs of Police
11. Police Tactics in Armed Operations, Greenwood, Paladin Press
12. Principles of Police Patrol, Iannone, McGraw-Hill
13. SC Law Enforcement Task Analysis Survey, SC Criminal Justice Academy & College of Criminal Justice-University of South Carolina
14. Street Survival, Adams Et Al, Caliber Press
15. Tactical Edge, Remsbert, Caliber Press
16. Training Keys, IACP

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Building Tactics	105	Revised January 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Police Science	5.5 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		Michelle Sorell

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
July 31, 1990	2005

LESSON PLAN PURPOSE:

To provide the officer candidate with essential skills necessary to tactically clear buildings.

EVALUATION PROCEDURES:

Written Examination, Multiple Choice
70% Minimum Passing Score

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

PowerPoint Presentation
Chalkboard, Chalk, Eraser

616

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Building Tactics	105	Revised January 2006

PERFORMANCE OBJECTIVES:

1. Cite the legal ways an officer may enter a building.
2. Identify the objectives of building tactics.
3. Identify the building tactics force continuum.
4. List outer perimeter issues.
5. List inner perimeter issues.
6. Name the five questions that must be answered prior to making an entry.
7. Identify the different clearing procedures.
8. Explain the different methods of entry.
9. Discuss special problems.

LESSON PLAN EXPANDED OUTLINE

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Building Tactics	105	Revised January 2006

I. INTRODUCTION

Responding to alarms regarding burglary or armed robbery is one of the most frequent calls to which uniformed officers respond. An overwhelming number will be proven to be false, accidentally initiated by weather or human error; however, as with the unknown risk traffic stop, there is no way an officer can predict the outcome.

The following guidelines are for those who respond to these unknown situations. These guidelines emphasize the use of "slow & deliberate" tactics employed by two to four officers. Although they are not intended for use by a specialized team such as a SWAT (drug raid, hostage, service of warrants) which are "known" situations, unknown situations are no less dangerous, and like their known counterparts, require training and planning.

II. BODY

A. ENTERING A BUILDING LEGALLY

Unless the building is entered legally, all arrest made and evidence seized may be for nothing. For the purpose of review, in order for the entry to be legal, one of three conditions must exist to search for an individual:

1. The officer must have a warrant. In some cases, an arrest warrant may be all that is needed such as in cases where the suspect is in his house or a public place. In other situations, such as in the home of another, a search warrant may be needed.

2. The officer may enter with consent providing the one giving consent has the authority to do so.

3. The officer may enter when exigent circumstances exist – for reasons of public safety – such as the pursuit of a fleeing felon who represents a danger to the community.

Officers are reminded to review instructions they have received on Arrest and Searches before implementing these guidelines.

B. BUILDING TACTICS OBJECTIVES

In chronological order, they are:

1. To locate the suspect. The two primary methods are sight and/or sound. These are the same methods the suspect is using to locate the officers. Therefore, the officers must adhere strictly to light and sound discipline prior to their arrival and throughout the event.

2. Isolate the suspect. This means containment or cutting off avenues of escape. This must not be done, however, if cover is sacrificed.

3. Control. This means having a plan, and following sound officer survival & safety procedures. As was pointed out in Strategy of Arrest, if the officer is out of control or relinquishes control of the situation to the suspect, the officer will be at a distinct disadvantage. And, as previously emphasized, the attitude of the officer has the most bearing on this objective.

C. BUILDING TACTICS "FORCE CONTINUUM

As in Defensive Tactics, building tactics has varying degrees of force that may be used to extract a suspect from a building. They are, in ascending order:

1. Call Out

If it is known that a suspect is in a building or if there is reasonable belief that a suspect is in a building, challenge him telling him to come out. Designate which door or other exit and what he is to do upon coming out (hands raised, direction he is to go, etc.) Remember, as with all high risk challenges, it must be done from a position of cover.

2. Force Out

Except for issues involving public safety, (sniper, hostage taker), the most common and successful method of forcing a suspect out of a barricaded situation in South Carolina has been to wait him out. Again, unless there are exigent circumstances, time is on the side of the officer. As surely as what goes up will come down, what goes in building will come out.

As a general rule, the average time involving forcing a suspect out by waiting him out is approximately four hours. And the reasons for this are many such as the suspect is given no break; he must make all the decisions; and no one can replace him. All these are advantages the officer has.

Other methods of forcing a suspect out may include the use of special weapons and tactics and are beyond the scope of this block of instruction.

3. Protective Sweep

In situations where it is not known if there is a suspect inside (such as at the scene of business where a burglar alarm has been activated but there are no signs of entry) or in situations where all known suspects have exited, the officers will execute a tactical entry and search for the purpose of locating not only other suspects, but any victims as well.

D. OUTER PERIMETER ISSUES

1. Approach

During the approach to the crime scene, unless the officer knows for a fact the location of the suspect, the officer should look for suspicious activity en-route to the call.

Additionally, the officer should practice light and sound discipline when he gets within range of the location.

2. Position

An advantageous *position* is one of cover, whether natural or manmade, that will protect the officer. Cover and concealment must be the officer's prime objectives upon arrival and throughout the resolution of the situation.

Initially, the officer will want to maintain a *High Risk Reactionary Gap* (HRRG). This is at a minimum of 25 yards away and will enable the officer to obtain cover and defend his position if necessary. This also establishes the *Outer Perimeter*, that area surrounding the building that isolates or contains the suspect.

Where there are known threat areas, such as open doors, officers should triangulate these to divide the suspect's attention and firepower.

3. Control

Begin a *Threat Assessment* of the location by identifying *Points of Likely Opposition.* POLOs are those areas that are used by suspects to threaten officers. The most dangerous are windows, doors, and corners of exterior walls. Decide which one is the most dangerous of these, and watch it.

When covering POLOs, think angles. A door may represent as many as four locations a suspect may engage an officer – left, right, center, and up. A window has five angles (door + bottom). If a Contact Officer is on the left side of the door and the Cover Officer on the right, the Contact Officer may be engaged from the interior right side of the room and the Cover Officer cannot see it. A Cover Officer must be in a position to cover the movements of the Contact Officer.

Immediately communicate to fellow officers any active threats you observe and the communicate your status (location, *Assigned Area of Responsibility* - AAR). These can be accomplished quickly by using the *Sector Response Plan.*

The Sector Response Plan involves drawing a square around the building. The front of the building is designated Sector 1, the right wall Sector 2, the back wall Sector 3, and the left wall Sector 4. The left front corner is C-1, the right front C-2, the right rear C-3, and the left rear C-4.

Example: Using the HRRG, if your position was C-2, your AAR would be Sectors 1 and 2. You would then do a Threat Assessment of the POLOs and communicate same to other responding officers.

Be aware of citizen involvement in your activities. Some may try to help while others may try to hinder. Be conscious of any tactical activity that may endanger a citizen

Finally, determine the safest route from your position to the crime scene (building) should it become necessary to approach it. Remember, line of sight is line of fire. The safest route is always the one that affords the best cover and concealment. Remember also, that unless you know for a fact the location of the suspect, the suspect could be using the same cover/concealment you are considering. Therefore, no cover/concealment belongs to you until you clear it.

620

E. INNER PERIMETER ISSUES

Before advancing on the building, the officer should make every effort to obtain as much information concerning the building and activities therein as possible. This would include information regarding:

- The floor plan.

  The *floor plan* is a map that makes the journey possible. With knowledge of the floor plan, the officer may be able to determine where the suspect may be hiding and other POLOs as well as cover and the location of activities such as where victims may be found.

  The most dangerous POLOs within a building are hallways, stairwells, doors (all chokepoints) and corners of interior walls. A *chokepoint* is a small or narrow area easily observed and covered by a suspect.

- The identification of subjects in the building other than suspects such as residents of an apartment house or even other officers.

When the decision has been made to move forward to the inner perimeter, consider:

1. Approach

   The officer who makes the initial approach to the building is the Contact Officer. Prior to his advance, he must ensure that Cover Officers are in a position to cover Points of Likely Opposition that pose a threat to his advance.

   As the officer plans his approach, he will take the route that affords him the greatest cover, not the most direct route. Line of sight is line of fire. In doing so, the officer is reminded that unless the officer knows for a fact the location of the suspect, the officer must clear any hiding place from the outer perimeter to the inner perimeter to avoid over pursuit which would place the suspect to his rear. This includes clearing anything the officer intends to use for cover.

   Again, the officer is reminded to practice light and sound discipline, especially while moving from one point of cover to the next.

2. Position

   Position is not only a position of cover, but also a position where the officer may cover a Point Of Likely Opposition, thereby becoming a Cover Officer covering the advance of another Contact Officer if necessary.

   Officers should avoid positioning themselves beneath windows. Additionally, avoid corners of buildings that have windows on both walls close to the corner. If this happens, the officer will become triangulated by two points of likely opposition resulting in his attention and firepower being divided.

   If his position will take him to a door, do not get any closer than 10 feet if possible. Should the suspect open the door, the suspect will have to "break the plain" of the door or stick his head outside the door to see the officer down the wall. If the officer immediately positions himself beside an open door, he can be immediately seen by anyone on the opposite side of the room.

3. Control

When the Contact Officer has completed a safe approach and achieved an advantageous position (cover and/or concealment), the officer should immediately begin a Threat Assessment to determine where or which is his most dangerous Point of Like! Opposition. Most often, this is one that has been previously identified and is presently being covered by a Cover Officer. If this is the case, the Contact Officer becomes a/the Cover Officer who now will cover the advance of the officer previously covering that POLO.

If the Contact Officer has located new POLO, then the officers must decide on whether this new POLO represents a greater threat than previously identified POLOs. For example, a door believed to be closed is in fact open. This may result in an additional Cover Officer being required.

F. FIVE QUESTIONS

The following Five Questions – Who, What, Where, When, and Why – are not in order of priority, but rather are in the order officers are instructed to write reports. Since the officer is already familiar with this order, there is no reason to change it so long as all questions are answered prior to entry.

1. *Who* is going in?

The Contact Officer. The tasking or assignment of Contact Officer is determined by two or more officers completing a Threat Assessment of an area they want to move in to such as a room. The officer who has no threats or the least threat is tasked the Contact Officer. Example: An officer on the 9 o'clock exterior wall beside of the door observes a closed door in his assigned area of responsibility. The officer on the 3 o'clock exterior wa beside the same door observes an open door in his assigned area of responsibility. Therefore, the officer on the 3 o'clock side has the greatest threat that must be covered during entry designating him the Cover Officer, and the 9 o'clock officer is tasked the Contact Officer.

2. *What* are the Cover and Contact Officer going to do during entry?

The Cover Officer is going to cover the greatest threat in his assigned area of responsibility. He will leave that threat only if a greater one presents itself or if the Contact Officer clears it.

The Contact Officer will base his method of entry on the location of cover or POLO, whichever is closest. If cover is closest, the Contact Officer will take that position at which time he may become a Cover Officer for other officer(s) entering. If it is POLO, he will begin the clearing process as the Contact Officer.

3. *Where* are the Points of Likely Opposition – Where is the Cover?

They are in the officers Assigned Areas of Responsibility (AAR). There are three methods used to identify POLOs and Cover:

a. Description – What is it? Is it a POLO or cover? If it is POLO, what makes it dangerous? The officers will need to know this to make a Threat Assessment of all POLOs observed.

b. Direction – The clock method is the simplest to give directions within a room. The clock method begins with the designation of every doorway as being the center of a clock. The left wall (exterior or interior) becomes the 9 o'clock wall. Straight ahead into the room is 12 o'clock. The right wall (exterior or interior) becomes the 3 o'clock wall. Therefore, all locations within the room are given from 9 to 12 to 3 o'clock. Occasionally, the term "watch your 6" is used to caution the officer to guard his rear.

c. Distance – Keep the distance to a POLO or cover in feet.

By using this method, officers who cannot see into the reporting officers AAR can visualize his situation. Communication is the key in this step!

4. *When* is entry to be made?

That decision is made by the Contact Officer. He assumes the greatest risk upon entry; therefore, he calls the shot. Before the Contact Officer executes his entry, he must ensure two things:

a. The Cover Officer(s) use is being maximized. That means that the Cover Officers are covering different POLOs unless there is a POLO that requires more than one Cover Officer such as for reasons of triangulation.

b. The Contact Officer communicates his intent to the Cover Officers. The Cover Officers, in order for them to render the best assistance possible, need to know what the Contact Officer intends to do upon entry.

5. *Why* is entry being made?

This is the most important question. Remember that this is intended to be a protective sweep. If at any time a suspect is located, the officer is reminded of the building entry objectives of Locate, Isolate, and Control and the Force Continuum of Call Out and Force Out. Forcible entries are reserved for public safety exceptions.

G. CLEARING PROCEDURES

There are four methods a Contact Officer may use to clear his AAR while avoiding the Fatal Funnel or the choke point the door creates. This is the area visible to all areas within the room except from 6 to 8 feet away from the door on the interior walls. Two are "natural" and utilize the unaided eye – Angle of Incidence (aka "slicing the pie") and the Quick Peek. The other two are mechanical methods that aid the eye – Mirror and Flashlight.

1. The Angle of Incidence

Unless the Contact Officer is extremely large, if he takes a position close to an exterior wall 8 to 10 feet away from an open door, a suspect standing on the opposite side of the door on the interior wall cannot see him even if the suspect is standing at, but within, the doorway. But neither can the Contact Officer see inside the door.

In order for the Contact Officer to see into the doorway, the officer can either step or lean back from the wall or he can side step towards it. Once the officer can observe the smallest portion of the room within, the Angle of Incidence begins.

If the situation calls for the officer to draw his sidearm, then the officer is in a position to search with his weapon provided he keeps it slightly below line of sight so as not to mask his vision.

The closer the officer advances to the door, the more of the room and his AAR he can se as his Angle of Incidence increases.

Example: Using the clock method, a Contact Officer is positioned on the 9 o'clock exterior wall, 8 to 10 feet away from an opened door (or a safe distance to the left of the door). When he first can see into the opened door, he is looking towards 2:30 into the room (or he is looking towards the right side of the room).

As he advances to the door, his will see more and more of his AAR as his Angle of Incidence increases towards 12 o'clock. Therefore, when there is an officer on both sides of a door (9 o'clock and 3 o'clock exterior walls), the Contact Officer on the 9 o'clock exterior wall will have an AAR of 2:30 to 12 o'clock. The officer on the 3 o'clock exterior wall will have an AAR of 9:30 to 12 o'clock.

A note of caution – when using the Angle of Incidence and a POLO is observed and regarded as a serious threat, the Contact Officer is obligated to become a Cover Officer at that point, and leave the clearing of the rest of his AAR to someone else. Failure to do so will result in the officer becoming triangulated between his identified POLO and his intended direction of 12 o'clock.

2. Quick Peek

The Quick Peek is a means of reconnaissance only and not meant to be a means of targ acquisition as with the Angle of Incidence. The Quick Peek is intended to take a quick look in certain areas when cover will be sacrificed such as breaking the plain of the door to observe down the interior walls between 9:30 and 9 o'clock or between 2:30 and 3 o'clock – areas that cannot be cleared by the Angle of Incidence.

The 9 to 9:30 and 2:30 to 3 o'clock areas are the most dangerous because the plain of the door must be penetrated in order to conduct a reconnaissance.

Example: You are on the 3 o'clock exterior wall. Your partner is on the 9 o'clock exterior wall. While doing Angle of Incidence, he observes and covers a POLO at 2 o'clock. He cannot clear the 9o'clock interior wall with a mirror. Therefore, you would Quick Peek the 9 o'clock interior wall.

The Quick Peek must be done within ¾ second, never from the center of a door or window, and never twice in a row from the same location.

The reason for the ¾ second rule is to defeat the suspects "unanticipated" reaction time. Unanticipated means the officer has been practicing light and sound discipline, and the suspect does not know the officer is there or what the officer intends to do. However, there is a good chance the officer will be seen when executing the Quick Peek, so the importance of doing it quickly and retreating to cover cannot be over emphasized.

The Quick Peek should never be done in the center of a door or window because that is where the suspect anticipates seeing the officer. If the officer Quick Peeks at the corne of a window or at the bottom of a door, it adds "lag" time to the suspect's reaction time.

The Quick Peek should never be done twice in a row from the same location for the obvious reason that the suspect may have targeted the first location.

3. Mirror

A mirror is a practical means of breaking the plain of the door when a Quick Peek is not necessary or too dangerous.

Example: While using Angle of Incidence, Contact Officers on the 9 and 3 o'clock exterior walls did not locate any POLOs within their AAR. They each may use mirrors to clear their parallel interior walls. The Contact Officer on the 9 o'clock exterior wall clears the 9 o'clock interior wall, and the officer on the 3 o'clock exterior clears the 3 o'clock interior.

Another use will be following a Quick Peek when the suspect may have been alerted to the officer's presence.

Example: You are on the 3 o'clock exterior wall. Your partner is on the 9 o'clock exterior wall. While doing Angle of Incidence, he observes and covers a POLO at 2 o'clock. He cannot clear the 9o'clock interior wall with a mirror; therefore, you would Quick Peek as previously discussed. Then you use a mirror to clear your parallel 3 o'clock interior wall.

Example: The Contact and Cover Officers are proceeding down a hallway when they encounter an open door on the 3 o'clock wall. The Contact Officer, in front of the Cover Officer, begins Angle of Incidence looking towards 9:30 within the open door. As the Contact Officer advances towards the door, the Angle of Incidence takes his view of the room to 12 o'clock, thus clearing his AAR. Since both officers are on the same side of the door, two areas have yet to be cleared – the 9 to 9:30 and the 12 to 3 o'clock.

While the Cover Officer standing behind and above covering the 9:30 to 12 AAR, the Contact Officer Quick Peeks the 9 to 9:30, then uses his mirror to clear from 12 to 3 o'clock.

It is very important that when the Contact Officer is tasked with clearing both walls, that he Quick Peek the opposite interior wall first, then use a mirror to clear the parallel interior wall. The reason for this is that the Quick Peek is quicker and the suspect may not be anticipating your location. The next thing through the door may come under fire. Mirrors are expendable.

Mirrors should be of a size that will fit in the shirt pocket and carried there always. Anything larger will be left in the briefcase. The mirror should have at least a two inch reflective surface, slightly convex. Any smaller, and the officer will not be able to observe anything with it, especially when using the flashlight.

The mirror should be reflective on one side only, and should have a means of attaching it to a baton for reach when using it to look under, around, and over obstacles.

4. Flashlights

Whenever an officer activates a light source of any kind, he illuminates a certain field usually much less than 45 degrees; however, he announces his presence 360 degrees. Anticipating that the suspect may be targeting the officer when lights are used, the offic should use a flashlight first as a distracter, then as an illuminator.

Example: Prior to rounding a corner, the officer will extend only the flashlight in the "off" position around the corner. Then he will flash the light to see what kind of reaction he may get – fight or flight. By placing the flashlight on the ground and around the corner, then cutting it on will enable the officer to check the corner by Angle of Incidence, Quick Peek, or Mirror. This is the same method used in doorways.

In field search situations, the officer must extend the flashlight away from his body as far as the arm will reach, use the light in ¾ second bursts, and move between bursts to avoid becoming a target. Unless the officer is using a ballistic shield, any light source attached to a weapons system is not recommended as when used, it brings the light over the officer's center mass and central nervous system (head, spinal column).

The flashlight should provide at least as much illumination as a conventional 2 cell "C" or "D" with a halogen/krypton bulb from a reflector size commonly associated with lights of this design. Any less will not provide the range or width necessary for police duty. It should have a switch that when lightly depressed, cuts the light on, and when released, cuts the light off. It should have a spare bulb and the officer should practice changing bulbs in total darkness. It is unforgivable not to have fresh batteries.

The use of chemlites and strobes for distracters/illuminators are not recommended. Th "rolling flashlight" technique is recommended only as a distracter and only when the ro can be controlled.

H. METHODS OF ENTRY

There are three basic methods of entry – Wrap Around (button hook), Crossover, and Combination.

1. Wrap Around

The Wrap Around method is selected by the Contact Officer when his intentions are to go to the closest POLO or cover which are located in the AAR parallel to his exterior wall.

Example: The Contact Officer is positioned on the 3 o'clock exterior wall and has cleared his AAR. The Cover Officer on the 9 o'clock exterior wall has located in his AAR the closest cover at the 2 o'clock position with a POLO beyond it at 1 o'clock. The Contact Officer confirms this with his mirror, then executes the Wrap Around method by moving from his position on the 3 o'clock exterior wall towards the parallel 3 o'clock interior wall to clear the Fatal Funnel quickly, then moves towards the cover at 2 o'clock. In the meantime, the Cover Officer covers the POLO at 1.

2. Crossover

The Crossover method is used when a Contact Officer intends to move from his position on the exterior wall to a location within his AAR. Unlike the Wrap Around that exposes an officer to a portion of the Fatal Funnel, the Crossover exposes the Contact Officer to the entire Fatal Funnel. Therefore, this method must be done quickly without the slightest hesitation.

Example: Continuing the previous example, the Contact Officer, using the Wrap Around method, has secured the cover at 2. From this position, the officer now assumes the role of Cover Officer as he covers the POLO at 1. The officer on the 9 o'clock exterior wall, having been relieved of his responsibility as Cover Officer now assumes the role of Contact Officer tasked with approaching the POLO at 1 and begin the clearing process. In order to do so, he must cross the Fatal Funnel moving from his position at 9, across 12, to the POLO at 1.

3. Combination

When two contact officers are entering an AAR at the same time, they will use the Combination that combines the Wrap Around with the Crossover.

Example: One Contact Officer is on the 9 o'clock exterior wall with another Contact Officer on the 3 o'clock exterior wall. Under the protection of Cover Officers, these Contact Officers intend to move into the 9 to 12 AAR. The Contact Officer at 9 would execute a Wrap Around while the Contact Officer at 3 would execute a crossover.

Example: Two Contact Officers are positioned one behind the other on the 3 o'clock exterior wall. Under the cover of Cover Officers, the Contact officers intend to enter the 9 to 12 and the 12 to 3 AARs simultaneously. The first Contact Officer would execute a Wrap Around into the 12 to 3 AAR while the second Contact Officer would Crossover into the 9 to 12 AAR.

I. SPECIAL PROBLEMS

There are certain situations and areas within a structure that require special attention due to their potential danger.

1. Lights

If the entry is being made during hours of darkness when the officers have acquired night vision (natural or night vision goggles) and the structure to be entered is well lit, consideration should be given to cut off all lights.

This will inhibit the suspect to observe officers since the suspect will not have night vision. If the structure is dark, if full illumination is possible, it should be done to destroy the suspect's night vision. Illumination should be extinguished prior to entering.

The officers may then use their flashlights for distracters and illuminators.

2. Existing noise

If there is AV equipment operating, the officers may use it to mask their sounds. If there is a need to cut it off, do not attempt at the source as this will give the suspect audio target acquisition. Cut it off at a breaker box, unplug it, or find the remote.

3. Hallways and Stairwells

For the best angles, officers on the left side of the wall should cover the right side and vice versa. When ascending stairs, the lead officer covers ahead while the second officer covers up/high.

4. Doors

Locked doors that open inward may be breached by removing the hinge pins. Unlocked inwardly opening doors can be opened remotely at the door knob with a small pair of vice grip pliers attached to a length of 550 cord.

III. SUMMARY

Basic building tactics have been discussed. Different objectives force, issues, questions, procedures, and methods have been addressed because no two situations are the same. And it is the situation that drives the tactical train. The importance of an officer understanding why to use a certain tactic is every bit as critical as how to do it.

628

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Building Tactics	105	Revised January 2006

1. MOUT FM
2. US Army Urban Warfare School - Mootwa
3. US Air Force Desert Warfare School
4. Joint Services Security Police Academy, CDC 81150, USAF
5. FBI Street Survival School
6. FLETC Officer Safety & Survival School
7. Basic Course Unit Guide, CA Post
8. Basic Law Enforcement Training Manual 1999, SCDPS/CJAD
9. Building Entry, SCDPS/CJAD & SCETV
10. Building Searches, CO LET
11. Crime In SC, SLED
12. Instructor's Guide, TX CLEOSE
13. Military Police Operations, FM 19-10,20
14. Perfect Cop, Sixty Minutes, CBS
15. SC Law Enforcement Task Analysis Survey, SCDPS/CJAD & USC
16. Officer Survival, NC JA
17. Personal Experience

CJA LESSON PLAN COVER SHEET

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Firearms Training System (FATS)	1702	Revised April 2006

TRAINING DEPARTMENT:	TIME ALLOCATION:
Range	3 Hours

PRIMARY INSTRUCTOR:	ALT. INSTRUCTOR:	LESSON PREPARED BY:
		George Weeks

DATE LESSON PLAN PREPARED:	JOB TASK ANALYSIS DATE:
November 15, 2000	2005

LESSON PLAN PURPOSE:

To provide the law enforcement officer candidate with a basic understanding of necessary elements of the shooting decision/use of force dilemma, as well as exposure to situations that could place the candidate in a shooting decision/use of force dilemma.

EVALUATION PROCEDURES:

Active participation in the firearms simulator program with discussion between the officer candidate and instructor wherein the officer candidate must discuss and apply knowledge of the previously listed objectives as related to each scenario.

TRAINING AIDS, SUPPLIES, EQUIPMENT, SPECIAL CLASSROOM/INSTRUCTIONAL REQUIREMENTS:

F.A.T.S IV System
F.A.T.S. IV System Controlled Weapons
F.A.T.S. IV System Controlled OC Spray
F.A.T.S. IV Shoot Back System
F.A.T.S. IV System Flashlight
F.A.T.S. IV System Courseware
Eye protection

630

PERFORMANCE OBJECTIVES

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Firearms Training System (FATS)	1702	Revised April 2006

PERFORMANCE OBJECTIVES:

1. Demonstrate, in an interactive setting, proper tactics and decision making processes for various elements of the shooting decision/use of force scenarios.

Range Safety Rules

1. No live weapons allowed in the firearms simulator training area. No person will be allowed to bring live weapons into the simulator area.
2. No live ammunition allowed in the firearms simulator training area.
3. Only F.A.T.S. simulator weapons are authorized for use in the F.A.T.S. simulator rooms.
4. Any unauthorized persons will not alter the F.A.T.S. weapons in any way. Only academy staff instructors are authorized to alter F.A.T.S. weapons.
5. Safety equipment must be used – eye protection and personal safety protection – at all times the return fire system is in operation.
6. All weapons will be presumed loaded and will never be pointed at anyone or anything except authorized targets on the simulator screen when ordered by an instructor.
7. Each time a weapon is picked up for any purpose, the action will be opened and locked to the rear, and the magazine will be released. Shotguns will have the action open.
8. No simulator weapons outside of the training rooms unless specifically ordered by the instructor.
9. The muzzle of all weapons will be pointed toward the screen when the weapon is out of the holster or out of the case during operation.
10. Simulator weapons equipped with a de-cocking/safety device will be made safe in the proper manner prior to holstering the weapon.
11. Holstered weapons will have the retaining strap snapped at all times when the weapon is in the holster.
12. The load command will be given from the computer screen or the instructor.
13. Do not place trigger finger within trigger-guard until the weapon is drawn and intent to fire is imminent.
14. If a simulator weapon is dropped, notify an instructor. The instructor will check the weapon for safety and operational readiness before the training resumes.
15. Any personal injury will be immediately reported to the instructor.

INSTRUCTIONAL CONTENT
BIBLIOGRAPHY

CLASS TITLE:	LESSON PLAN #:	STATUS (New/Revised):
Firearms Training System (FATS)	1702	Revised April 2006

1. Alpert, G.P. & Fridell, L.A. Police Vehicles and Firearms. Waveland Press, Inc. Prospect Heights, Ill. 1992.

2. Barrineau, H.E. Civil Liability in Criminal Justice. Cincinnati: Anderson Publishing Co. 1987.

3. Brown, M.F. "Use of Deadly Force by Patrol Officer: Training Implications." Journal of Police Science and Administration 12(2): 133-140, 1984.

4. Dunham, R.G. & Alpert, G.P. Critical Issues in Policing: Contemporary Readings. Waveland Press, Inc. Prospect Heights, IL. 1997.

5. Federal Bureau of Investigation, United States Department of Justice. Firearms Instructor Reference Manual. Undated training document.

6. Firearms Training Systems, Inc. Operation and Instructor's Manual F.A.T.S. IV. 1999.

7. Hall, John C. Federal Bureau of Investigation Law Enforcement Bulletin. "Firearms Training and Liability (Conclusion)." 1993.

8. Houghton Mifflin Company. The American Heritage College Dictionary 3rd Edition. 1993.

9. Quinlan Law Bulletin on Police Immunity. Vol.13, Numbers: 3, 5, 6. 1997.

10. South Carolina Criminal Justice Academy Legal Staff.

11. South Carolina Criminal Justice Academy Weapons Range "Shooting Decisions" Curriculum.

12. South Carolina Criminal Justice Academy Range Staff.

13. Strickland, Jr., R. Sniper: Law of Deadly Force. 1993.

Street Survival

From: **Jack Schnur** (jack.schnur@gmail.com)
Sent: Wed 5/11/11 10:52 PM
To: carsonhenderson2@hotmail.com
Cc: George Kirkham (krimedr@aol.com)

6 attachments
BACK COVER.pdf (662.2 KB) , Cover Street Survival.pdf (704.1 KB) , P6.pdf (468.0 KB) , P8.pdf (419.5 KB) , P9.pdf (492.6 KB) , P10.pdf (469.3 KB)

THE QUESTION IS....

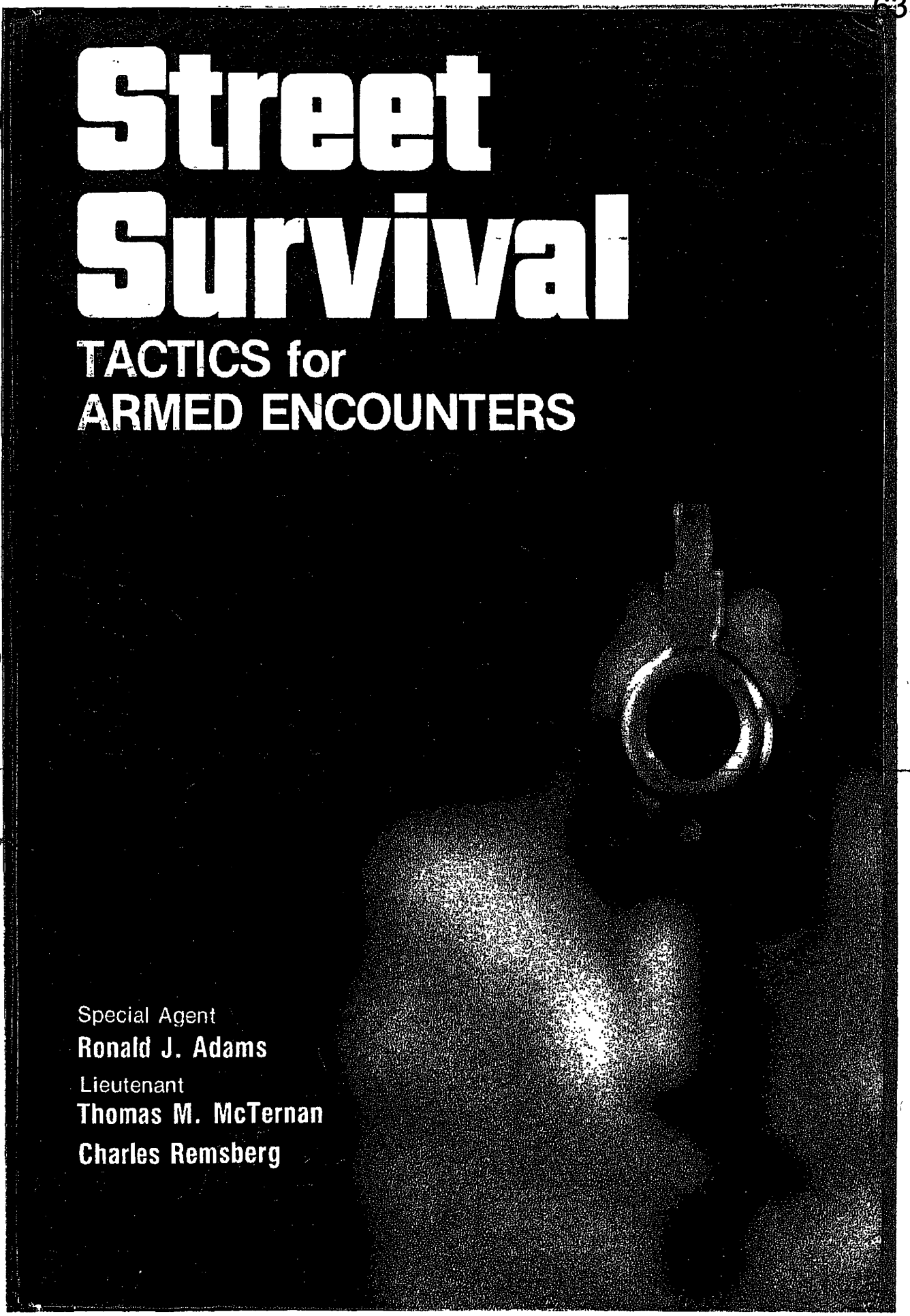
"How many people could have had me today if they'd really wanted me?"

CALIBRE PRESS • 666 DUNDEE ROAD • NORTHBROOK, IL 60062

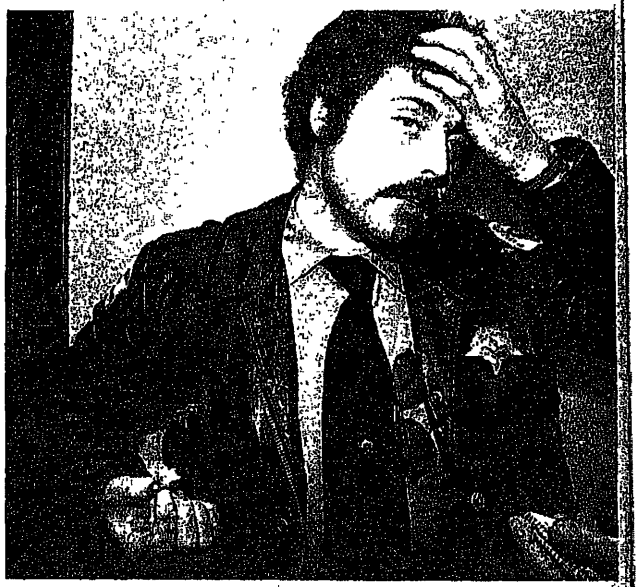
ISBN 0-935878-00-9

Street Survival

TACTICS for ARMED ENCOUNTERS



Special Agent
Ronald J. Adams
Lieutenant
Thomas M. McTernan
Charles Remsberg



A .357 Magnum round was fired at this officer after he and his partner responded to a domestic disturbance call. The bullet hit the officer's nameplate [held in his right hand], twisting the metal and ripping two holes in his leather jacket. His only injury was a bruise on one arm.

Among officers who have managed to survive shooting attacks, more than one has admitted, "I was just lucky." With equal candor, many concede that despite a close call with death, they still would not know what to do differently the next time around.

Luck is a frail reed on which to hang your life—especially if other alternatives are available. And dismal as the police position may appear, there *are* alternatives for handling most violent encounters. Indeed, with the knowledge of survival methods now available, your opportunities for staying alive on the street have never been greater.

Some studies of confrontations have revealed that in as few as 1 per cent of shootings are officers genuinely ambushed without warning or fired at for no apparent reason.[4] Most times, they have prior knowledge of prospective danger. Even when violence does explode suddenly, their fate is not always innately hopeless. *The overwhelming majority of officers killed in gunfights most likely could have emerged alive*—if:

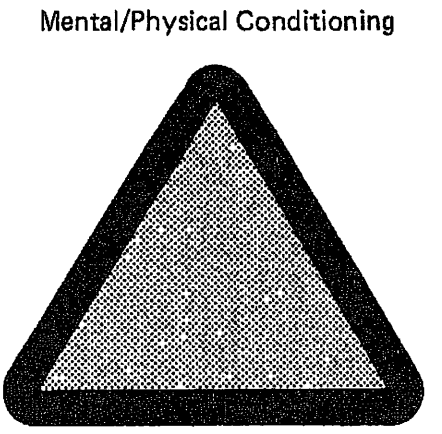
1) they had understood the dynamics of armed confrontations;
2) they had properly evaluated the risks they were facing;
3) they had planned what to do in the event of a deadly threat, and
4) they had known and, through practice, had mastered appropriate survival tactics.

4. "Analysis of Police Combat Situations," New York City Police Department, 1974.

you're assigned to street patrol you may have a shotgun in your patrol car. The more proficient you become with both the mechanical and tactical use of these firearms, the higher your survival quotient, for you can never be certain which you will have at hand at the crucial moment.

Your firearm, of course, is always the tool of last resort. Survival should begin long *before* the moment you need to fire, and if you wait until then to think about it, you are depending on luck, whether you realize it or not.

True survival readiness is like an equilateral triangle involving:



All corners are of equal importance to the whole, and the omission of any element leaves a potentially lethal gap. For a defense structure that will enable you to control the outcome of most life-or-death encounters, your mind, your body and your gun must be molded into a combined, coordinated "weapons system."

The system approach is the core of this book. It requires that you develop skill at a variety of distinct but related procedures of anticipation and response. Some involve shooting, the instant delivery and accurate placement of rounds. Some concern forestalling or avoiding an assailant's shots, making yourself a hard target. *All can be learned.*

Some survival principles may appear harsh. Survival is not community relations, concerned with courtesy and codes of fair conduct; there are no "gentlemen's rules" in a gunfight. Some of the estimated one to four million people carrying con-

cealed guns illegally in this country (and some who own them legally, as well) are willing to take on the police on incredibly brutal terms. To save your life or someone else's, you may sometimes need the ultimate responses.

The ability to use decisive tactics successfully, however, does not equate with recklessness. Actually, it is the *un*skilled officer who is likeliest to be reckless, and thus a danger not only to himself and fellow officers, but to the public he is sworn to protect. Because of his lack of confidence in his ability to protect himself in risky situations, he will react to threats of violence with panic born of desperation. A trained officer, on the other hand, is confident because he is ready, and his controlled skills can help him keep violence to a minimum or stop it instantly. Realistic tactics can reduce the number of incidents that escalate to the point of gunfire, reduce the number of suspects shot or killed by police, reduce the number of tragedies where innocent parties are shot because of mistaken identity, as well as substantially reduce the number of officers wounded or slain—even though the number of contacts between police and criminals remains undiminished.

Nothing set forth in the pages that follow should be regarded as The Absolute Answer to all survival problems. *There are no absolutes in tactics.* No two situations are ever exactly alike, no set of procedures always effective. What's offered are *options* that are valuable for your repertoire of skills because they will work for most officers in most situations most of the time.

Most survival techniques are simple, based on common sense. But they require *extensive practice* to be used successfully. You need to know what works for you, and the tactics you favor need to be honed until they become natural and reflexive. FOR, UNDER STRESS, IN A CRISIS, YOU WILL INSTINCTIVELY REVERT TO THE WAY YOU HAVE TRAINED.

Training to face reality takes extra time, extra energy, extra creativity. It requires that *you* accept the responsibility for assuring your survival education. You need to work constantly at refining, adapting and supplementing your survival capabilities, not only in formal and informal training sessions, but, most important, on a daily basis in the course of your patrol duties.

It's easier, of course, to play the odds that you will be among the fortunate majority whose lives are never challenged. But that's a game of Russian roulette that too many officers have lost.

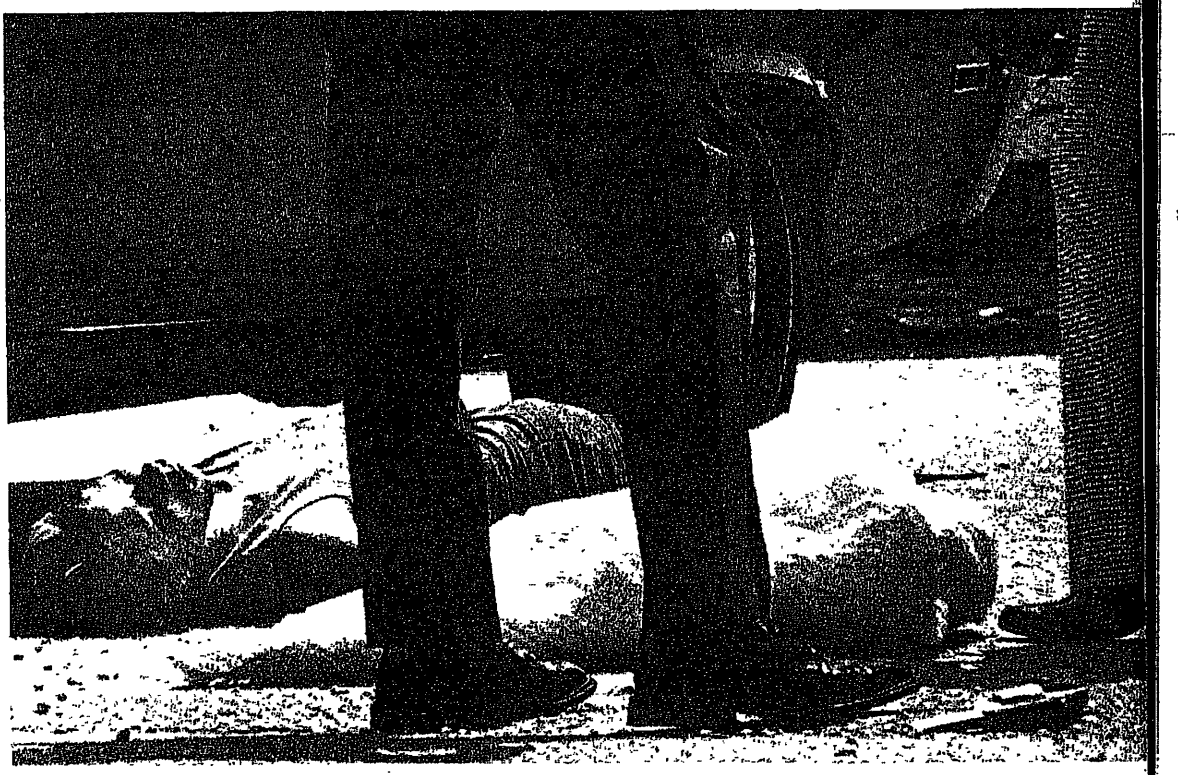
There are no guarantees in law enforcement. The only predictable is the unpredictable. Your next

call could be another "routine" run...or it could be the one that tests everything you've got.

If you wonder whether you're ready, ask yourself: "How many people could have had me today if they'd really wanted me?"

And then ask: "What would I have done if they'd tried?"

The body of a man who moments earlier killed one officer, seriously wounded two others, and wounded his wife and a neighbor. The gun in the foreground belonged to one of the officers.



Street Survival II

From: **Jack Schnur** (jack.schnur@gmail.com)
Sent: Wed 5/11/11 10:53 PM
To: carsonhenderson2@hotmail.com
Cc: George Kirkham (krimedr@aol.com)

7 attachments
P40.pdf (508.5 KB) , P45.pdf (460.4 KB) , P46.pdf (617.3 KB) , P47.pdf (558.2 KB) , P49.pdf (585.1 KB) , P50.pdf (655.3 KB) , P59.pdf (649.1 KB)

arousal as they work and thus are more attuned to picking up subtle clues to danger in their environment.[10]

In some cases, your decision to shoot may be colored by an acquaintanceship with the suspect. In about 27 per cent of the instances nationally where officers are killed, they know their assailants.[11] In such circumstances, you may be tempted to relax your vigilance and not take cover even if you *see* he is armed. If you've had previous encounters with the suspect that were non-violent or in which you've been able to talk him out of drastic action, you may entertain unwarranted hope for "reasoning" the confrontation to conclusion rather than shooting it out.

Probably your greatest attitudinal enemy in a confrontation, however, is *overconfidence*. You've been successful or lucky enough to avoid injury in so many situations that you begin to believe you will never be unsuccessful. Moreover, through movies, television and an enduring cultural myth, you've been bombarded all your life with the concept of the lawman as an invulnerable super-hero, capable of "walking tall" through any challenge that comes his way, with never a thought even to the possibility he might die. In westerns, the image is that of Dodge City, where "you can't be a marshal until you ride a wild horse bareback with a barbed wire bridle at full gallop with a tin cup of red whiskey in your left hand, rope a jackrabbit with your right hand, and don't spill a drop." In the cop television shows, the legend is updated with customized Magnums and semi-automatics and an endless supply of back-up guns.

If you buy into this self-image—and plenty of officers do—you're said to suffer the "Superman syndrome." You believe that simply by making a commitment, by putting your body on the line and "hanging tough," you can face down any danger that threatens; it's a matter of will and bravado overall. Of course, to be a "good cop," you must, of necessity, be aggressive; taking chances, playing hunches and so on are all part of the game. But when you add the elements of foolishness or recklessness to your aggressive conduct, then you fall prey to the worst aspect of this unfortunate syndrome.

A real-life—or more appropriately, real-*death*—illustration is provided by the middle-aged Massachusetts detective who responded to a silent alarm at a local club. Two uniformed officers had beaten him to the place, seen that a robbery was in progress

10. "The Effect of Female Partners on Male Police Shooting Responses," Christina Johns and Andrew Barclay, Michigan State University, 1978.
11. FBI "Law Enforcement Officers Killed" Summaries.

APPROACH TO DANGER | 3

To wait until you need to draw and fire your gun to think about survival tactics is like waiting until you're coughing up blood to think about annual physical checkups. You should have survival in your conscious thoughts the moment you receive an assignment, for the moves you make at the outset may directly affect the outcome. By properly planning your approach to a call, you may be able to *prevent* a shooting from occurring. Or, if that proves impossible, you will have positioned yourself where you are exposed to the least risk and have the best chance of responding safely when danger does erupt.

Where many officers go wrong is in assuming that an assignment is inconsequential and therefore approaching it on what amounts to automatic pilot. They fail to consider that, going in, there is a great deal about *any* situation and the people involved that they do not—cannot—know. Presuming one set of circumstances on the basis of appearances or past experience, they may find themselves confronting quite another, for which they are not prepared. In Oregon, for example, a sergeant who stopped to help a teenage couple in a disabled car did not know the girl was an escapee or that they would kill him because they thought he intended to arrest her. A Milwaukee patrolman responding to a disturbance at a house where police had been fifty previous times without incident did not know that this time the husband beating his wife had picked up a .30-06 rifle on his way home and would shoot the officer for "messin' in." A Georgia officer who walked up to the door of a cocktail lounge that was ajar after normal closing time did not know—until he was shot dead—that an armed burglar was inside.

When you observe a problem on the street or receive an assignment from a dispatcher, all you know for certain is the general direction in which to proceed. What you'll find when you arrive, there's no way of telling.

With a survival orientation, you keep this firmly in mind and *always approach a situation anticipating an armed confrontation*. In many cases, as we know from the common patterns of encounter, an offender has a plan in mind for how he will shoot. So you want to plan ahead, too, but you'll have to let the *circumstances dictate tactics*, not vice versa.

Each step of the way, you consider the opportunities an offender might have for shooting at you and the ways in which you might forestall or respond to an attack. In other words, you make a habit of figuring, "If 'A' happens, I'm going to do 'B,'" adjusting for new developments as you go. It's a habit you practice faithfully, regardless of your assignment. However crude, you discuss your planned movements with your partner and rehearse them mentally, and have a back-up plan in mind in case the first fails. Once the action starts, you won't have time to think things out rationally. *You have to be ready to carry out your plan instinctively*, with a minimum of hesitation, which we call "lag time."

Whenever possible, you want to *cultivate tactics that are unexpected*, to be "systematically unsystematic." Often assailants count on officers responding in predictable, "routine" ways to assignments, and if you are able to depart from stereotyped law enforcement procedures in your approach, you may be able to thwart an assailant's plan while strengthening your own position.

With some calls—"shots fired," "man with a gun," crimes-in-progress and disturbances where a firearm may be available—you have an early warning of possible violence. In other situations, you may have to depend on being observant and applying a "sixth sense" for trouble. Usually there is *some* clue or "danger sign" to violence, something about a scene or a suspect's behavior that isn't quite right. It may involve unusual nervousness on his part or so small a thing as his undue concern with watching you in his rear-view mirror as you approach on a traffic stop. With tactics and a mental attitude that stress anticipation, you'll be in the best position to see the warning...to recognize it...and to pay attention to it.

Many officers get themselves shot at by approaching an assignment carelessly, hastily, sloppily and with overconfidence. Uneventful familiarity breeds complacency. As an armored car driver in Connecticut said after three of his fellow guards

were murdered by robbers, "The hard part is that after awhile you become lax. Your're not thinking security." One might argue that there is no one right way to work and no one way to be totally prepared at all times. True. But there are approach tactics that involve right thinking, and it is certainly possible to develop preparedness far beyond that displayed by many officers who become involved in gunfights.

Here are some proven field techniques that can help you *plan, perceive and perform* for survival in a variety of common situations. They are not necessarily blueprints that can be applied arbitrarily to every instance, but guidelines and options that you will want to consider, adapt and expand upon.

Building Approach

A scenario that occurs with haunting frequency in the FBI's annual summary of law enforcement officers killed concerns an officer who answers a disturbance or robbery-in-progress call, hurries toward the front of the residence or business establishment involved and before he can take appropriate action is mortally wounded with a shotgun, rifle or handgun blast fired at him through the door. He answers a call routinely and is routinely shot, as easily as if he had a "ten-ring" pasted on his chest.

Modern communication puts officers on the scene of any complaint call fast. The chances today are greater than ever that you will arrive while the action is still in progress or at least while the suspect is still in the area. Your objective is clear: You have to *locate* the problem that prompted the call...*isolate* the offender(s) from innocent civilians...and *eliminate* the hazard presented by the offender(s). But there's no assurance you'll get a suspect's cooperation in doing all that. Career criminals are always anticipating the imminent arrival of the police and are very often willing to gamble desperately for freedom by committing a greater crime than the one they're involved in—such as your assault or homicide. "Amateurs," like wife-beaters, psychos and drunks, are often more totally absorbed in what they're doing and are often less vigilant. But, in the passion of the moment, they may be just as prepared and determined to shoot.

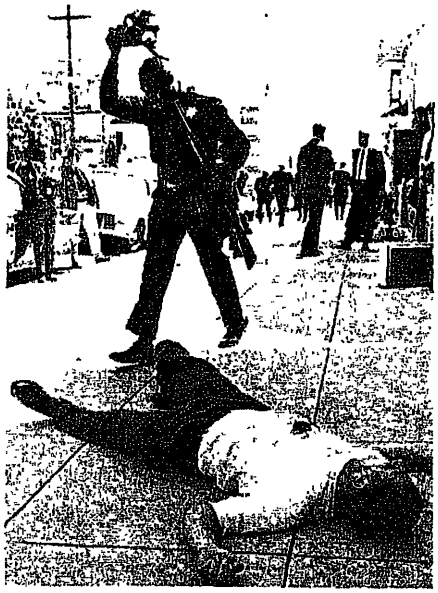
What you want is an *unexpected* approach that may delay a suspect's awareness of your presence until you have a chance to assess the situation you are confronting.

You're best off to *anticipate* the address you're looking for as you approach the scene and park your patrol car three or four doors away on the same side of the street, *before* you reach it. This forestalls your driving directly into the "kill zone." (Here we're using "kill zone" to mean that area which an armed suspect in a given location can control with hostile weapons fire. The term also means that part of the anatomy where incoming rounds will most likely prove incapacitating.) Make as little disturbance as possible. That means: avoid using your emergency lights and siren in your approach (if department policy permits)...turn your radio down low so it can't be heard outside your patrol car...round corners without squealing your tires...at night, consider turning off your engine and headlights and coasting the last 100 feet or so before you stop, using the emergency brake so as not to activate the brake lights. Some departments permit officers to disconnect the buttons in patrol car doors that turn on interior lights when a door is opened. Having done this will help keep your approach unobtrusive. When you exit your unit, ease your car door shut as quietly as you can or leave it slightly ajar if security allows. At night especially, sound travels far and fast; even at low volume, your radio or a door slamming may be audible a block away. A quiet approach may keep you from attracting neighbors and troublesome onlookers, as well as the suspect.

Certainly, don't just "give" yourself to a suspect, as a new patrolman in Tennessee did. Responding to a complaint of a middle-aged man, a known mental case, beating on an old truck behind his house, the officer stopped his patrol car in the suspect's driveway. As he strode up to the residence, he was easy pickings for his assailant, who killed him with a shot to the chest with a 7.65mm rifle.

Approaching the address of your call, you should survey all vehicles parked or moving in the immediate neighborhood and all pedestrians or loiterers. A lay-off man may be waiting in a car or on the sidewalk as a look-out. A car parked with its motor running is automatically suspicious. In some cases, suspects have been known to hide *under* vehicles. Or, if a crime-in-progress has been reported, the offender(s) may be in the process of fleeing as you arrive.

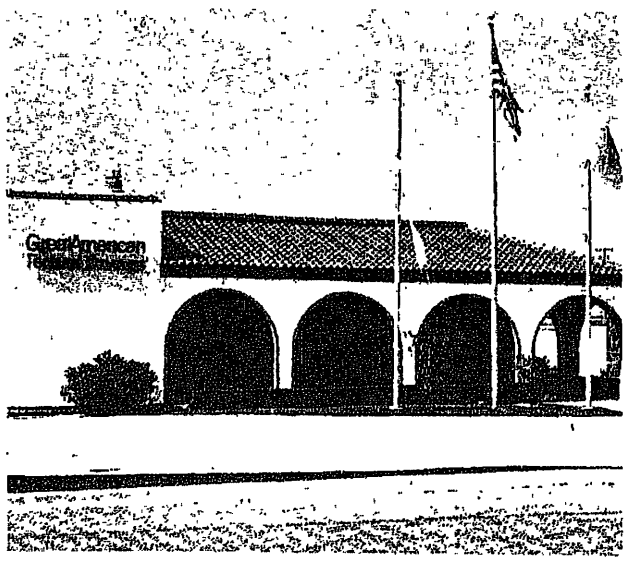
As you move in on foot, you will want to consider available cover which you can use in the event of serious trouble. Employ an invisible advance to the fullest extent possible. Just the sight of you may be enough to impel an armed suspect to shoot. Where there's reason to believe you may be dealing with a violent situation, invisible deployment is critical. It



Many officers find it hard to resist the temptation to rush in and gain control. Lying dead is a 37-year-old plain-clothes officer who rushed in on a burglary suspect.

is usually easier in darkness, but even in daylight or under bright lights by moving behind parked cars, fences, trash cans or shrubbery or by taking an indirect route, you may be able to get close to the building without being observed by anyone inside. Try to blend into backgrounds that match your uniform color where possible, and where colors don't match, try at least to keep your background as dark as your clothing. If you must pass windows, try to go *over* those that are near or below ground level and *under* those that are higher. Try to stay protected by cover when possible and to know always where your nearest cover is. Move rapidly through open areas, trying to move from covered position to covered position.

You want to constantly guard against the "ostrich effect;" that's thinking that because you can't see the suspect, he can't see you. Actually, his perspective on the scene is likely to be entirely different from yours. This was dramatically illustrated to a young Cincinnati patrolman one afternoon when he responded to a silent holdup alarm at a downtown bank. He properly parked around the corner from the entrance and was cautiously approaching on foot along the building's side wall. He was almost to the end when he suddenly realized a major oversight; the wall was of reflective glass, and because its mirrored surface had kept him from seeing through it, he'd forgotten that from the other side that kind of glass is like a normal window. People inside the bank had been able to see him perfectly all along. Fortunately, the call turned out to be a false alarm, or robbers inside could have shot through the glass and killed him any time they chose.



The contemporary design of buildings often works against a safe response for law enforcement.

If there is any indication that the suspect is armed or has access to a gun, try to get the complainant outside with you to a position of cover... call for back-up to help contain the offender...and consider treating the situation as a barricaded suspect incident. The passage of time, negotiation and/or the use of chemical agents are likely to prove far safer alternatives than your barging in in an effort to question or capture him. An unfortunate illustration of this point occurred in Texas where three escaped prisoners were located in a private home. When officers arrived at the scene, several promptly entered the house and started upstairs to flush out the suspects. Before they reached the second floor, one of the escapees suddenly leaned over the railing and shot the lead patrolman dead with a blast to the neck from a .16 ga. shotgun. Only after a gun battle did the surviving officers retreat, station themselves outside the dwelling and finally fire tear gas inside. Even if the suspect(s) escape temporarily, it's better than your getting killed during an ill-conceived capture.

A single officer approach to a door which opens in. The low ground position, use of the baton in your non-gun hand and proper distance from the door add to the element of surprise to any possible armed occupant.

Street Survival III

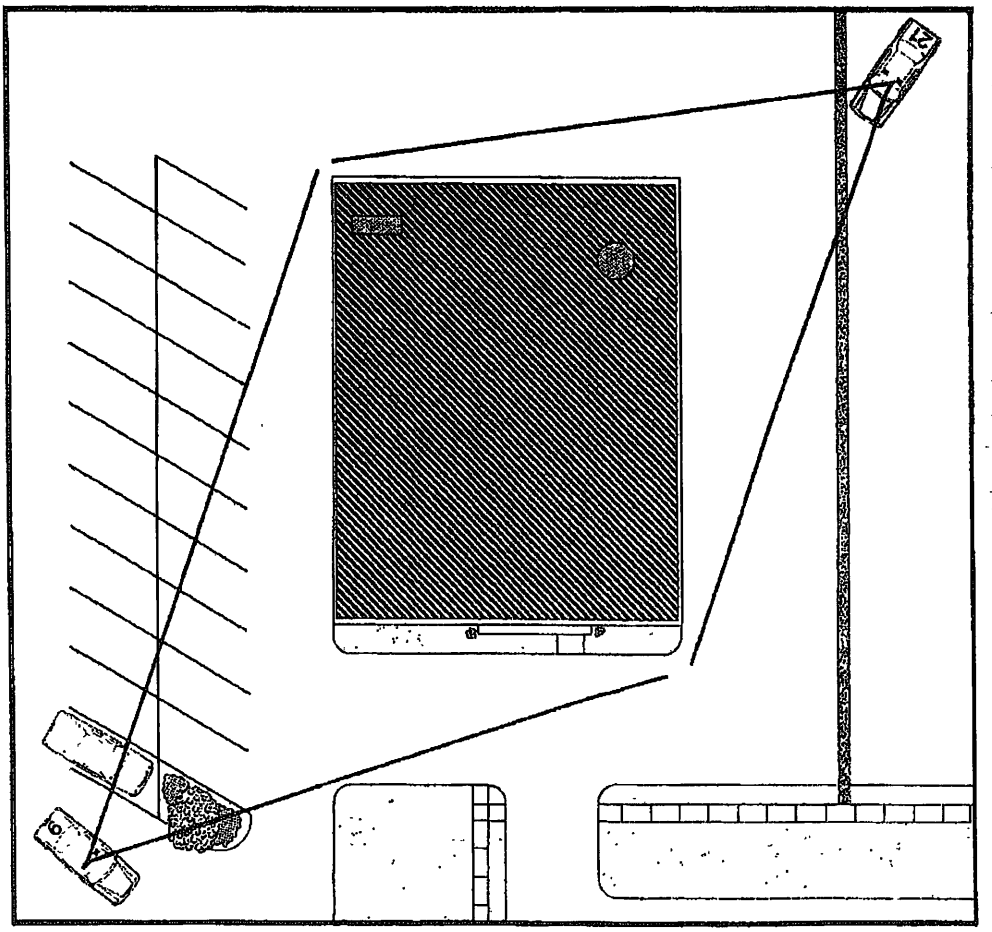
From: **Jack Schnur** (jack.schnur@gmail.com)
Sent: Wed 5/11/11 10:55 PM
To: carsonhenderson2@hotmail.com
Cc: George Kirkham (krimedr@aol.com)

10 attachments
P60.pdf (574.5 KB) , P61.pdf (594.3 KB) , P109.pdf (473.5 KB) , P111.pdf (568.4 KB) , P118.pdf (576.1 KB) , P120.pdf (533.2 KB) , P127.pdf (563.8 KB) , P128.pdf (510.1 KB) , P156.pdf (585.7 KB) , P158.pdf (631.4 KB)

remain outside. The only exception to this order would be in a circumstance in which the outside officers could see *all* those inside and determine that they were sufficiently isolated from the suspect that shots aimed at him would in no way jeopardize them.

To adequately guard buildings, at least two officers are required outside, situated at diagonally opposite corners in positions of cover. Such positions permit each officer to watch two sides for a fleeing suspect, yet avoid cross-fire. Don't, however, stay close to the building, for that allows a suspect who is in an upper window or on the roof to get an easy shot at you below. Position yourself a distance away, in your patrol car if no better cover is available, so that you can watch *up* as well as along the sides of the building.

Inside the building to be searched, you want your gun drawn, ready for use. With a firm, two-handed grip, you can move the weapon in a short arc and back as you approach locations where the subject might be. The gun should follow your eyes.



The proper invisible deployment tactic for almost any building approach. This tactic avoids a cross-fire situation and allows officers in both positions to maintain a visual on possible suspect movement.

If there are only two of you, *just one should move at a time*. It's extremely difficult to move and shoot accurately at the same time, so while one covers, the other moves to a new position, alternating roles as you advance. Concentrate on moving silently. Noise from your leather belt, from leather-soled and -heeled shoes or boots or from metal jangling against metal, like keys and pocket change, can quickly signal your approach.

As you move down hallways or across large rooms, you may confront numerous doorways that open into closets, storage spaces, bedrooms, offices and other rooms. To bypass *any* without checking the area it leads to is extremely risky. A suspect may be waiting just inside for you to move on past, allowing him the chance then to emerge and shoot you from behind. Community toilets in lower-class apartment buildings and hotels seem to be especially popular places for suspects to hide, but *don't assume that any potential hiding place is safe to ignore*. In a survival course in New York City, based on real-life episodes, trainees sent down a hallway in search of an armed suspect come to one door marked: DANGER! HIGH VOLTAGE! KEEP DOOR CLOSED! Those who obey the sign and go on are usually "killed" by a "psycho" who suddenly flings the door open and pops out behind them. If you carry with you a small roll of electrical or masking tape, you can press a piece across the crack of each door you have checked. Then if you notice the tape broken or pulled off as you retrace your search route later, you'll know someone has backtracked on you.

As you plan your approach to a doorway, keep in mind what's called the "fatal funnel" phenomenon. Because you can't know for sure exactly where the suspect will be, you have to be concerned with every part of the room beyond that doorway entry. But from the point of view of one or more suspects inside the room, all sensory concentration can be funneled down to just that small opening. It's *your* only way in, all *they* need to watch. Framed by it, you'd make an obvious target.

Using an approach that minimizes your funnel framing, then, you advance silently toward the doorway by moving *low* along a wall, utilizing whatever cover you can along the way—recesses, hallway trash cans, furniture, etc. It's usually best if you and your partner can approach the doorway from opposite sides. But if that's not possible, one of you should quickly move across the closed doorway at a level *below* the doorknob so you are on opposite sides before attempting entry. (Even if the door is open, a low, fast jump is likely to get you across quickly enough that you won't be hit by someone shooting from inside.)

VERBAL CHALLENGE 5

"Police! Don't move!"

It's hard to predict what will happen when you voice this command to an armed suspect. He may stop dead in his tracks, throw down his gun and plead with you not to shoot him...he may ignore you or pretend he didn't hear and walk away...he may claim he is a plainclothes officer and order *you* to put away *your* gun...he may consider your words an invitation to a gunfight—and start shooting....

Any way you slice it, the moment of confrontation is a tense one, and those three words—"Police! Don't move!"—often mark the turning point of an armed encounter. You may be accustomed to individuals doing what you say, but when you issue a command to a person who has a loaded gun, you have to be prepared for *anything*.

This much is certain...When the risks and potential benefits are weighed, there is always one persuasive argument for attempting a verbal challenge *before* shots are fired: *situations where you confront armed individuals are not always what they seem*. By clearly announcing your office and giving an order to stop the action, you may be able to buy time in which to better establish the suspect's identity and intentions. The last thing you want is to use deadly force against someone who did not commit a crime.

Two contrasting episodes illustrate the point. One night in Chicago an officer was called to a

Another night, in Michigan, an off-duty officer heard three shots fired in rapid succession in a hallway outside his bedroom. It sounded as if he were under attack. Without saying a word, he picked up his revolver and shot back in the direction of the noise. His bullet struck the "offender" in the chest—his six-year-old daughter, who was playing with her brother's cap pistol.

A consistent command like "Police! Don't move!" can prevent such tragedies. Commit it to memory right now if your department doesn't specify a different command. Even when used against a genuine suspect, this statement, forcefully delivered from a position of cover either by your direct voice or over your exterior speaker, may be sufficiently intimidating to keep the situation from escalating into violence. It instantly establishes who you are and tells the person challenged exactly what you want him to do. If he follows your order, his safety is protected and you can gain control of the action without gunfire.

Because of the stress and heightened emotion involved in most confrontations, a verbal challenge is rarely a simple, cut-and-dried matter. Your challenging a suspect successfully and making it stick in many cases will heavily depend on your ability to understand and use applied psychology. And like other survival procedures, your tactics can backfire if not properly and confidently employed.

Practice and experience will sharpen your skills. Meanwhile, here are some of the nuances you'll want to keep in mind in using verbal language, depending on whether you're facing a criminal...a fellow officer whose identity is hidden...or an innocent civilian.

Suspect Control

You're safest if you always assume at the outset that the person you're challenging is an offender and will respond violently. Where that proves not to be the case, you've lost nothing with a conservative approach, and where it is so, you may gain everything. Therefore, where possible:

1. *issue your command from behind cover.* This tactic could have saved a state trooper in upstate New York who tried to arrest a young man who was standing in a street with a .22 cal. rifle after having murdered his girlfriend. When the trooper got out of his car and ordered the suspect to drop his rifle, the man instead abruptly raised it. He shot

Officers in plainclothes are exceptionally vulnerable. Compared to the percentage of police actions they are involved in, the ratio at which they are killed by gunshots is disproportionately high. And in incidents that are especially tragic, a disturbing number of them are shot by fellow officers who mistake them for armed assailants. Such a case occurred in Louisiana when police responded to a store robbery. The victim reported that a white car sped past his business just after the bandit ran out. Police spotted the car and gave chase. Soon the vehicle stopped, and the driver emerged with a gun in his hand. He was shot immediately in the chest by approaching officers and died. Unfortunately, he turned out to be a police tow truck operator who had been chasing the real robber in his private automobile.

This risk can be minimized with an appropriate "challenge and reply" procedure and an immediate concern for being understood. In this case, the challenge becomes a two-way street, involving responsible words and actions by both the challenging officer and the challenged "suspect." Realistically,

You're a uniformed officer just arriving at this scene. How would you react to the man with the gun?

Don't become a victim of the "symbolic opponent syndrome;" that is, making assumptions because of a preconceived notion that places a person into a "bad guy" category because of his race, nationality, age, grooming or mode of dress. *Looks can be deceiving* and should not be used as the basis for irreversible police action. Officers in tactical units or on undercover assignments may be deliberately dressed to look like "suspect types" in order to blend in with their work environment. Their handguns, too, may be small, cheap or otherwise unconventional. At one time, an officer's gun was likely to be "factory blued," with a 2- or 4-inch barrel and manufactured by Smith &Wesson or Colt. In recent years, however, there has been a trend toward the stainless steel or nickel/chrome plated revolver, once stereotyped as carried by criminals. Undercover personnel, especially, may carry derringers or small semi-automatics, so a variety of guns are "police guns" nowadays.

If, in response to your challenge, the "suspect" claims he is a police officer, first order him to slowly holster his gun. Then in a firm but courteous manner, tell him to slowly produce his identification card, badge or any other credentials that will identify him. Examine them carefully to determine their validity and, where possible, check to see that any description in the credentials fits the suspect. You might want to pursue his identity by asking him something police officers, but not most civilians, might reasonably know—like the numbered designation for homicide in your state's penal code.

Do not take your gun off the "suspect" until you are 100 per cent certain his story is legit. Even then, remain on guard and attentive. Credentials can be forged...police badges can be lost, stolen or counterfeited.

If you are the challenged officer:

Keep firmly in mind that you are at a strong tactical disadvantage. Remember: to the challenging officer, you are a suspect. *Act as you would have a suspect act* if you were challenging him. Also, remember that the officer may or may not be in uniform and may or may not conform to your stereotype of a law enforcement officer.

As soon as you are challenged verbally, identify yourself as a law enforcement officer in a loud, clear voice, then state your rank...name...and assignment...and the nature of your actions (making

Those discussed here are the likeliest to work in common confrontation situations. But keep in mind that the right move at the right time is hard to pull off. Certain of these techniques require action on your part that is opposite one's normal impulse. That makes them tough to master—but adds immeasurably to their element of surprise.

Exiting the Kill Zone

An important truth to remember where armed confrontations are concerned is that despite certain superficial resemblances, a law enforcement agency is *not* an army. Consequently, police action at a shooting scene should not be regarded the same as a military maneuver. It isn't Pork Chop Hill, where you have to hold the ground at all costs. In fact, your best—and most surprising—response in some shooting situations is to *pull back* and temporarily yield territory to the suspect. In other words, get out of the kill zone, that area the suspect can effectively control with hostile weapons fire. This can work both when you first spot an armed suspect who has not yet started to shoot...and when you are already under fire.

Exiting the kill zone is most practical when there's some distance between you and your assailant and when you are still in your patrol car. It's especially advisable when:

- your adversary has hostages...
- fires on you from a sniper position you can't see...
- has superior fire power, such as a rifle or shotgun...
- is positioned at a higher level, so you'd have to shoot up to reach him, or
- when his shots or your return fire would endanger innocent bystanders.

Most officers in these circumstances stop their patrol cars and try to figure out what's happening. Or they exit with the intention of standing their ground. On an Indian reservation in Arizona, for example, two tribal policemen responding to a call about an individual shooting out street lights were fired upon as they pulled up. The suspect had a .30-.30 cal. rifle. His first shot shattered the windshield and sprayed fragments of glass into one officer's face. He ducked to the floor—but his partner exited the vehicle in the open and started firing his handgun at the suspect, who was well protected behind a parked car. With understandable

ease, the assailant killed this patrolman with wounds to the head and chest.

Under circumstances like these, where the odds of hitting your assailant are so heavily against you, quickly leaving the kill zone as your first reaction is not cowardice, but good sense. By avoiding a shoot-out, you may save not only your own life but others in the kill zone, as well. Because once you remove yourself, you probably remove the assailant's motivation for firing.

The direction you exit will depend on the environment around you and the location of the suspect, as near as you can figure it. Your options may include:

1. *making a fast right-angle turn into an alley, driveway or street.* If, by using this movement, you can put buildings or other barriers between yourself and the assailant, you effectively remove yourself from the kill zone and gain excellent cover to maneuver behind. In residential areas, you may be able to drive into a garage, which will afford other cover possibilities.

2. *slamming your car into reverse and peeling backward or doing a "J-turn" or a "U-turn"* (provided there's a clear field behind). Perhaps you've just entered a kill zone (say you've rounded a corner and spotted a suspect with a long-gun ahead) but the suspect has not yet fired. Or you're already taking rounds from the front or side. This maneuver is likely to be your least expected response. Especially if a suspect is "tracking" you with his gun, it'll throw him off.

3. *floorboarding the accelerator and speeding forward.* This response is rarely the most desirable, because it is the one a suspect is most likely to anticipate. Indeed, you may be driving ahead toward a secondary ambush prepared by lay-off men. But if you *must* drive across the kill zone to safety, you want as much protection and speed as possible out of your patrol car. *Get down low, fast.* Your dropping down at the first hint of danger can foil a suspect who's expecting your head and chest level to remain constant. Either scoot far down in your seat to shield as much of your upper body as you can and look ahead through the steering wheel...or lean over onto the seat, steering with your left hand and bobbing up and down erratically to check ahead. Whatever your exit, radio for help as you move. *Do not stop* or consider getting out of your car while under fire, unless it is disabled or better cover is immediately accessible. Once you are out of the kill zone, turn at the first right angle that will put a barrier between you and the assailant.

Although cover is probably the most important single tactic for surviving a dangerous situation, about two-thirds of the officers who become involved in shootings make *no* use of it. Sometimes the action happens too fast or in an area where cover is too far away. But often, even after shots have *already* been fired, there's still the opportunity to get behind protection, if you can overcome the tendency to stand and fire from wherever you happen to be.

In many encounters, officers have stood 2 feet from a tree and shot it out with a suspect, when a quick move behind it would have given them excellent protection—and still allowed them to shoot. It's a rare situation in which *some* type of cover is not available: OUTDOORS—a wooden or metal utility pole, automobile, trash can, call or signal box, fire hydrant, mailbox, embankment, concrete or steel steps or the corner of a building; INDOORS—a store counter, walls, heavy furniture, etc. Even if the situation is so urgent that you need to fire at the suspect immediately and *then* move to cover, that's usually better than staying indefinitely in what amounts to a "free fire" zone. Remember: *No exposed firing position offers you as much insurance as firing from cover.*

Of course, when you know in advance that you are confronting a potentially dangerous firearms situation, as did the officers in the three incidents cited above, you want to know not only where your nearest cover is, you want to utilize it in making your approach. By staying behind cover in such circumstances and issuing verbal challenges to the suspect, you can:

1. buy additional time in which to positively identify your adversary (especially important in dim-light situations);

2. better evaluate the situation you are facing before making risky or decisive moves, and

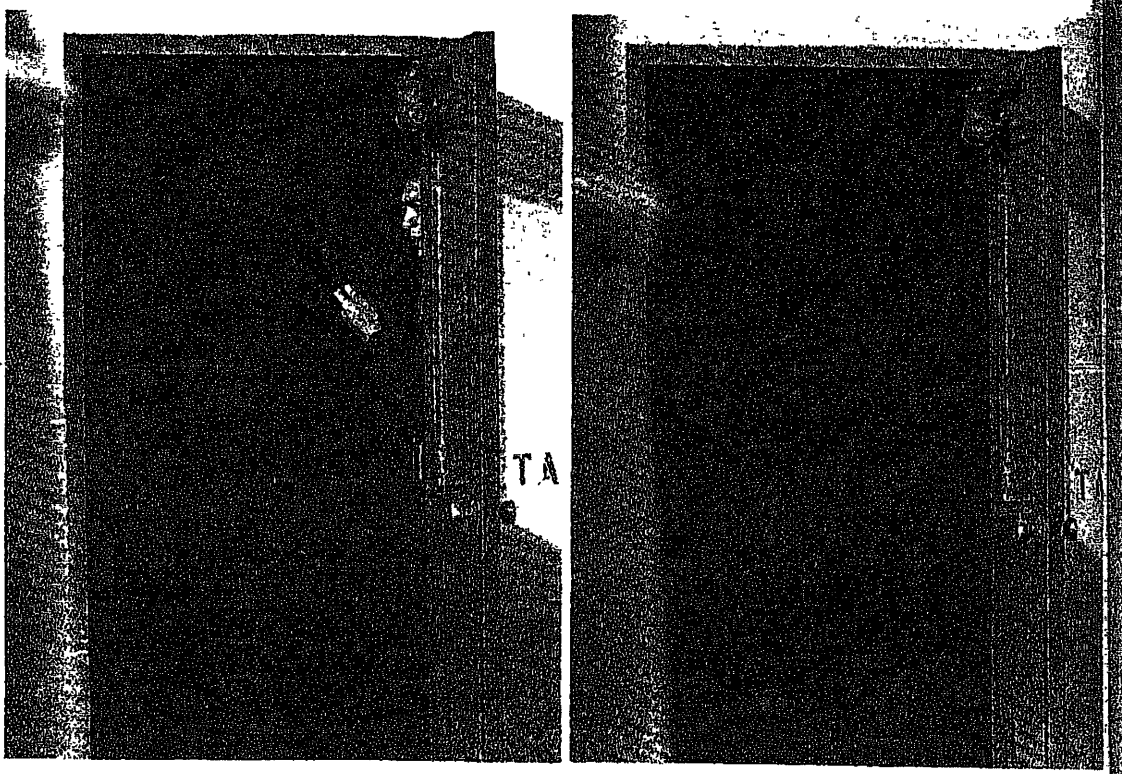
3. gain the advantage of a protected position, which will allow you to return fire with less likelihood of being hit if a gunfight does develop.

To get the maximum benefit from cover, you must understand: the relationship between yourself, your cover, your gun and the suspect's location... how to select the best cover from various options you may have available...how to position yourself behind it in order to get off accurate shots without exposing your own body to gunfire...ways to overcome cover your assailant may be using...and the importance of maintaining good cover, regardless of provocation, when "blowing" it might subject you to an adversary's killing shots.

Concealment pertains to protection from being *seen* by a suspect. It may be provided by natural or man-made objects—bushes, brush, small trees, tall grass, heavy shadows, smoke, crowds, lines of moving vehicles—anything that will *hide* your presence or movements from your adversary. Concealment may keep you from getting shot even if the suspect does detect your presence. However, concealment alone will *not stop bullets*.

Cover will—or at least deflect them or slow them down. Usually cover incorporates concealment, but its salient feature is its capacity for protecting you from hostile fire.

To illustrate: A pasteboard packing carton might provide you excellent concealment, but a suspect could shoot through it and into you as easily as he could through any other paper product. On the other hand, a six- to eight-inch concrete street curb in front of a house might provide life-saving cover against a suspect standing some distance away in the yard. If you kept your head down, shots



In this incident, the officer first took a "standard position" inside a doorway. Then after other officers radioed that he could be seen by the suspect, he stepped back 6 feet and was still able to maintain a visual.

Tactical Edge Reference Pages

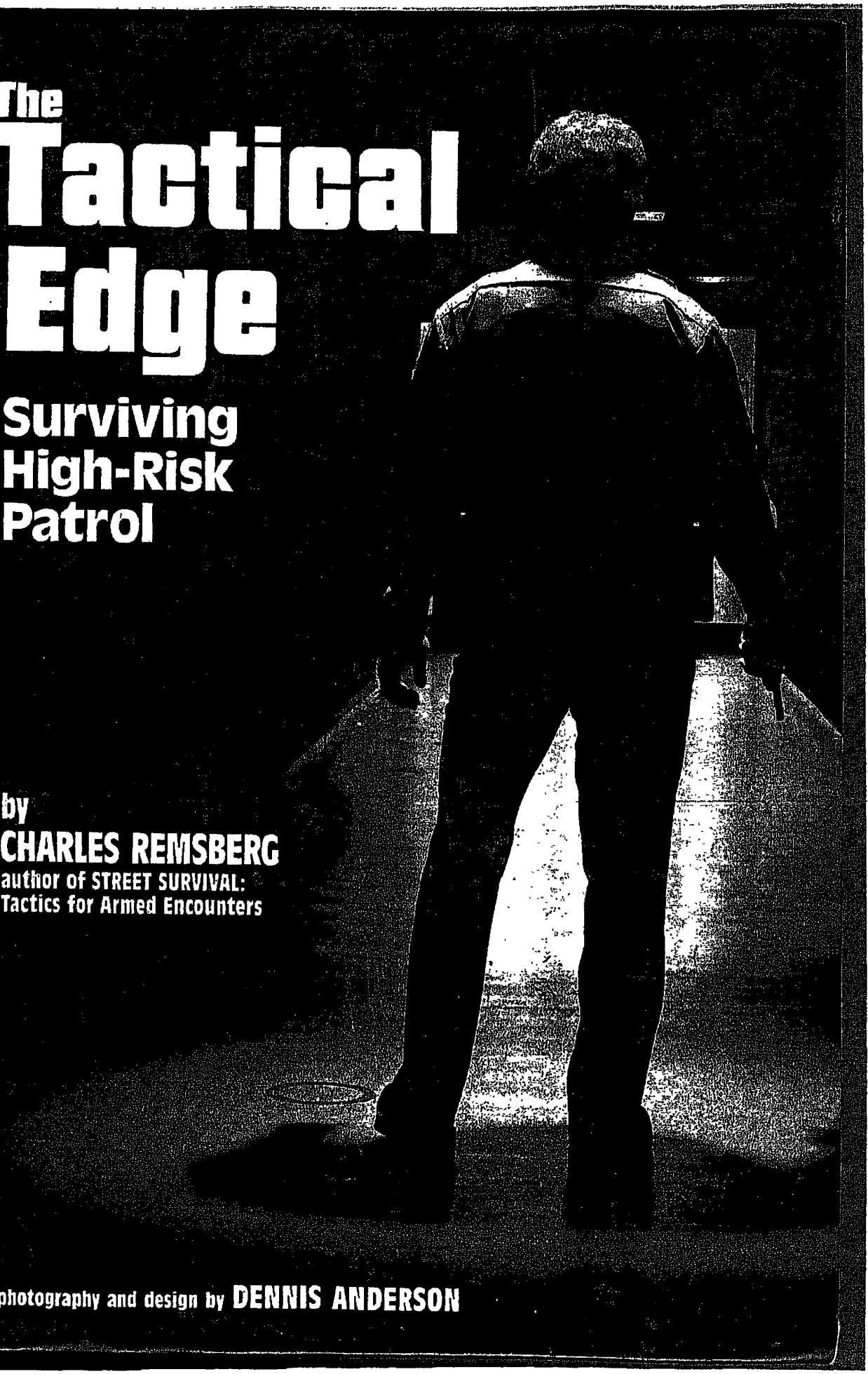
From: **Jack Schnur** (jack.schnur@gmail.com)
Sent: Wed 5/11/11 11:03 PM
To: carsonhenderson2@hotmail.com
Cc: George Kirkham (krimedr@aol.com)

4 attachments

Front Cover.pdf (720.8 KB) , P159.pdf (667.9 KB) , P229.pdf (675.4 KB) , Tactical Edge Table of Contents.doc (23.5 KB)

The Tactical Edge

Surviving High-Risk Patrol



by
CHARLES REMSBERG
author of STREET SURVIVAL:
Tactics for Armed Encounters

photography and design by DENNIS ANDERSON

After 40 tense minutes, the officer finally persuaded the man to slide the shotgun down the stairs. Now unarmed and standing at the stairtop, the offender promised he'd surrender if the officer would meet him halfway.

With his partner covering him, the officer cautiously climbed up the steps as the man descended. He kept his hand extended until the husband grasped it and collapsed into his arms. No shots were fired. No one was hurt.

The officers in the second incident understood the proper *dynamic balance* for resolving most barricade events with *minimum* risk. The *capability* to use force should be present and tactically deployed to isolate and contain the barricader(s)...ready to assault when and if needed. But the key most likely to *safely* "unlock" the house, the motel room, the office, the car, the train, the restaurant, the mobile home, the bank or wherever else a gunman has chosen to stand off the police is something much subtler. It's *psychology.*

As you confront the Problem Area where the suspect is confined, the principles of physical tactics for protecting yourself and other innocent persons are a paramount concern. But as you work to resolve the situation *with a survival orientation,* one Area of Responsibility that will probably prove pivotal for you to control is one you cannot see: the suspect's *mind.* Managing that requires a different kind of tactics.

Physical assault often is clearly impractical when analyzed with Tactical Thinking (or is unjustifiable from a legal standpoint). Frequently your access to the barricader's location is limited, while he enjoys a wide field of view and good protection on all sides. He may be able to fire high-power weapons and defend his position with virtual impunity. Then *psychological tactics* become the *only* sensible choice, at least for the *first* "assault."

Your overall tactical priority on barricade calls usually will be:

1. **talk** him out
2. **force** him out
3. **take** him out.

Especially at first, when everyone's stress is stratospheric, you may itch for a hard-line showdown. But even tough *verbal* commands are rarely your best option. If you go "hard" against most barricaders, you'll get hard back—or you'll kite their emotional distress to a level that's even more difficult to control.

Trying "*softer*" does not mean being weak or naive. It does not mean taking crazy risks like walking unarmed into a barricade to prove you're a nice guy. It means being manipulative...convincing ..conning ...cunning, from a position of strength and street smarts, but under a mantle of empathy and understanding. Remember: *end result,* not macho ego, is the name of the game.

Unlike most street episodes you encounter, a barricade is likely to spark a major law enforcement mobilization. Written policies for "crisis management" may kick in. Multiple agencies may respond. Trained negotiators and tactical teams eventually may come to dominate the scene. But the "star" specialists are rarely on hand when barricades *begin.* Patrol officers or detectives are almost always the first responders. As such, you'll probably make the first contact with the suspect—and with it potentially imprint the whole course of what follows.

Depending on your agency and the circumstances, you may need to hang in only until help arrives. Or you may end up spending hours trying to bring a highly charged confrontation all the way home. In Alaska, for

Entry

Far too many entries into barricades are made by special weapons teams because physical penetration is placed higher on the options scale than it should be. ENTRY INTO A BARRICADE BELIEVED TO BE OCCUPIED SHOULD *ALWAYS* BE ABSOLUTELY THE *LAST RESORT* —*after* waiting... *after* negotiation and manipulation... *after* gassing... *after* sniping all have been considered and rejected as impossible or tried unsuccessfully. *Physical assault should be selected ONLY when there is no other response alternative less likely to result in injury or death.* Think of a SWAT action in the ideal sense as representing "Success Without Assaulting Target." For whenever you go in after a suspect you *know* is armed and who may be able to fix on your location before you can reach his, the potential for losing one or more entry team members is great.

Success will depend on comprehensive intelligence gathering, careful primary and alternative planning, thorough rehearsal, coordinated team movement to the barricade, smooth team action during the assault and good follow-through afterwards.

In *rare* circumstances, the risk and effort may be deemed justified. Say you've got a drunk or drugged barricader who has mellowed out, passed out or gone to sleep, thereby lowering his defenses... or one you believe has killed himself... or one who has begun, or you feel certain is about to begin, killing or torturing hostages and who is unresponsive to less forceful options, such as chemical agents or dogs. Even then, the first rule for your tactical unit should be, IF YOU CAN'T WIN, DON'T GO IN.

Going in, your options are twofold:

1. **tactical entry.** This is a slow, quiet, cautious approach to the barricader's location. You will meet resistance with resistance, but the level of force actually used will be dictated by the suspect's actions. You may end up arresting rather than assaulting him. [This form of entry is appropriate *after* a barricading appears to be over, too. Even if an offender has surrendered, officers eventually will enter the location to look for possible additional suspects, bodies of victims, physical evidence, etc.]

2. **rapid assault.** Here your primary objective usually is to rescue hostages. You're not making entry for a search; you're doing it for *immediate action*. The expectation is that the barricader may very well have to be killed as quickly as possible for the safety of everyone involved. You go in hard and fast, relying on speed, surprise and radical tactics to overcome his resistance. You want the situation to be one where one second there is nothing happening and the next all hell breaks loose and your goal is accomplished before the confused suspect realizes what has happened. That was the case in Tennessee when officers swarmed into a farmhouse where a wanted murderer was holding seven people hostage. "Everyone panicked and started screaming when we came in," one of the officers said later. But even though they had to get past a door blockaded with a sofa, they moved so fast they surprised the suspect in bed with one of his captives and wrestled him to the floor before he could reach a .22 cal. revolver on a bedside table.

These two forms of entry share some important similarities, especially in preparation, but in the actual execution they have decided differences of both technique and risk.

With both, *THOROUGH* INTELLIGENCE GATHERING AND REHEARSAL AHEAD OF TIME IS ESSENTIAL.

Tactical Edge Table of Contents

Tactical Edge
P159
Your first overall tactical priority on barricade calls usually will be
1. Talk him out.
2. Force him out.
3. Take him out.

P229
Entry
Entry into a barricade believed to be occupied should always be absolutely the last resort.

After waiting, after negotiation and manipulation...after gassing

Additional Reference Pages for Testimony

From: **Jack Schnur** (jack.schnur@gmail.com)
Sent: Wed 5/11/11 11:11 PM
To: carsonhenderson2@hotmail.com
Cc: George Kirkham (krimedr@aol.com)

8 attachments
Article Archive.doc (48.5 KB) , escape-from-killing-zone.pdf (312.4 KB) , Plainclothes Survival.doc (73.0 KB) , Police Uniform Influence.doc (53.0 KB) , Psych Effect of Police Uniforms.doc (53.0 KB) , Synposis of References.doc (37.5 KB) , The Need For High Visibility Apparel.doc (39.5 KB) , WhyAreWeKillingOurselves.pdf (167.1 KB)

Attached is some additional references which may be utilized. The attached 'SYNOPSIS OF REFERENCES' describes each of the documents.

Jack Schnur
Research Assistant
Dr. George Kirkham & Associates, Inc.

This Article was Originally Published in Law and Order Magazine, October 2005.

Related Companies: OSHA

Related Subjects/Products: Traffic, Safety, Uniforms, Uniforms, Fabric, Vests, Outerwear

Article Not Displaying Correctly?
Click Here

The Need For High Visibility Apparel

Written by Kirby Beck

The FBI's 2003 Law Enforcement Officers Killed and Assaulted report shows that since 1994, 116 officers were killed as a result of being accidentally struck by motor vehicles. They were on traffic stops, roadblocks, directing traffic, or assisting motorists at the time they were struck.

Anecdotally, however, most police officers that have been on the job more than a few years can name at least one officer they know who was struck, or nearly struck, while on foot near traffic. It is safe to say that several hundred officers around the country are struck each year while walking outside of their patrol vehicles. One other factor would stand out if the data was collected. Nearly 100% of the drivers involved would say that they never saw the officer in time to avoid hitting him.

A driver's attention is usually drawn to an object in or near traffic based on its size, brightness, movement, contrast, or threat (necessity). Officers are wise to incorporate all—except perhaps size—in their tactics to be seen while near traffic. This process of enhancing one's ability to be seen by drivers, and becoming more conspicuous, is known as enhancing one's conspicuity (rhymes with "annuity").

Physical Factors

Have you ever heard your parents, or perhaps other senior adults, say that they just can't see to drive at night anymore? Age has a serious effect on a person's vision and it is particularly noticeable at night. With age, people will naturally lose visual acuity. In other words, their ability to see things sharply diminishes. As their eyes lose flexibility and resilience, their ability to focus quickly and clearly is reduced. Age can narrow one's peripheral vision and reduce color vision and brightness.

The effect of aging on night vision is truly scary. Experts estimate that people lose about one-half of their night vision every 13 years. This occurs due to several factors. First, the eyes are filled with a liquid known as the aqueous humor. As cells within the eye die—as all cells eventually do—the dead cells end up floating around inside the liquid. They are absorbed very slowly. The increasing accumulation of cells eventually affects the ability of light to penetrate through to the retina in the back of the eye. In the daytime, and when there is a lot of light, it isn't much of a problem. At night, when there isn't much light, it is very noticeable.

Second, the retina is made up of receptors known as rods and cones. The cones provide our color vision as well as our clear, focused vision. The actual "focused" area is less than we would see if looking through the inside of a toilet paper roll. It may actually be closer to looking through a straw. We aren't aware the focused area is so small because we are constantly moving our eyes to compensate. To get an idea, stare at this WORD and, without moving your eyes, see how many words around it you can see clearly.

The rods make up the largest part of our vision. Rods support both our black and white and peripheral vision. The rods emit and work together with a chemical called rodopsi—also known as visual purple because of its color—that

assists the eye in seeing at night. Imagine you are sitting in a darkened room. With time, you will eventually be able to see quite well as your eyes adapt to the darkness. Suddenly the overhead lights in the room are turned on, and then off again.

Your ability to see as well in the dark will be gone until your eyes once again adapt to the darkness. The process of adapting is the result of the buildup of rodopsin. When the light was turned on, the rodopsin suddenly burned up. It takes time for the chemical to again regenerate. As a person ages, it takes even longer for rodopsin to regenerate. Simply put, no rodopsin, no night vision.

The final described effect of aging is the condition of the lens itself. The lens can turn somewhat yellow and reduce the amount of light getting through. More than likely, though, the most noticeable effect will be a result of scratches on the lens. Eyes are subjected to sand, dust, and other airborne particulates that float through the air and strike them. Look at the pitting on your car's windshield and you get an idea of what can happen to the eye's lens over time. This irreparable damage can reduce visual acuity; it can also enhance the effects of glare—glare from headlights, glare from sunlight, and even the glare reflecting off of the car's dashboard.

Most of the changes of age are gradual and change isn't obvious. But at night, the changes become most noticeable, and, consequently, most dangerous. Officers who work in areas where significant numbers of seniors drive at night need to be particularly aware and prepared while walking in or near traffic.

Environmental Factors

The effects of aging can be recreated by weather and by the condition of a car's windshield and headlights. Rain or a dirty, pitted windshield can act to enhance glare both day and night. Fog and poorly aimed headlights can reduce the distance that a driver can identify objects and people.

Psychology was mentioned as a cause of concern for officers walking in traffic. Drivers essentially "see" what they want to see—a concept known as "selective perception." For example, as drivers approach a scene with flashing lights and numerous emergency vehicles, they may be more interested in looking at the crushed metal and broken bodies than in watching for an officer directing traffic or crossing the roadway.

Since the drivers are looking for carnage, not pedestrian cops, they are not as likely to see an officer standing in front of them. Officers need to overcome this selective perception by employing one of the tactics which the driver's brain and scanning eyes are unconsciously conditioned to be alert for: movement, size, brightness, or contrast.

In April of 1984, a research company called Dunlap and Associates, working on a US Transportation Department contract, conducted research on common conspicuity devices designed to protect both pedestrians and bicyclists. Using the quiet, darkened roads of a military base, they established the average distances at which a group of drivers both detected and recognized people both with and without various conspicuity devices. A driver must first detect a potential threat before he can recognize it. Once it has been recognized and precisely located, the driver can more successfully avoid the object or person.

The findings most important to LEOs are the detection and recognition distances for pedestrians wearing dark clothes, because this is what the majority of police officers in the United States wear. Note: In this study, the driver's sole purpose was to be on the lookout for people near the roadway. The research environment did not include parked police cars, flashing lights, or any other distracters.

At 30 mph, or 44 feet per second, the average distance of the driver from the subject in the dark clothing when detected was 70.3 feet and 1.5 seconds. The pedestrian was not actually recognized as a pedestrian until the car was 49 feet and 1.1 seconds away. When extrapolated to 55 mph, or 81 feet per second, it gets even scarier. With the detection distance of 70.3 feet, the reaction time is now 0.86 seconds. Recognition time from 49 feet away becomes 0.6 seconds. If the pedestrian in dark clothing is in the traffic lane, as police officers often are, it is

virtually impossible for the driver to avoid a collision.

Without getting too detailed, the study also showed that wearing a white shirt, as a number of officers and deputies do, did not substantially increase detection and recognition. White shirts are not an adequate substitute for other conspicuity devices.

Adding a flashlight to the scenario extended the detection time out to 1379 feet (31.3 seconds at 30 mph) and the recognition to 316 feet (7.2 seconds at 30 mph). Of course, the flashlight had to be pointed at the driver and then moved a bit to enhance detection. Remember, however, these results were obtained with zero traffic on abandoned roadways. The results on a high-speed roadway with heavy traffic would likely vary a lotl

When they added a traffic vest (crude by today's standards), the detection distance was 744 feet and recognition distance was 322 feet. With 7.3 seconds at 30 mph, and 3.9 seconds at 55 mph, to make a plan to avoid a collision, odds of survival are increasing. Combining a flashlight with a vest (especially the high quality vests of today) and the officer may now have a real chance of getting a driver's attention soon enough to be fully recognized and reacted to safely.

This threat has to be truly understood and recognized before some officers will make a plan and commit to using their issued safety equipment. Hopefully the threat is clearer now.

Safety Equipment

Many new police officers are handed their new traffic vest—their OSHA vest—with the plain and simple instruction to: "Wear it when you are out in traffic." This is usually taken to mean when they are out directing traffic. Soon it is stuffed into the bottom of a patrol bag, or left in corner of their locker and rarely seen again.

If the order to wear it whenever they are "out in traffic," were truly followed, they would probably never take it off. After all, every time an officer crosses a street, walks in a parking lot, approaches a violator on a car stop, or checks on a disabled motorist, he is, in essence, out in traffic. It is an unavoidable fact—police officers are almost always in or near moving traffic.

The police uniforms worn today do nothing to enhance the officers' conspicuity in traffic. The technology to do so exists, but paradigms and old ways of thinking about uniforms have to be changed before the uniforms do. In the United Kingdom, Europe, and elsewhere, police have been wearing "Hi-Vis" jackets and vests for a number of years.

The reason is simple: they want police to stand out in a crowd so that they can serve as a deterrent to crime and so that people who need assistance can spot them more easily. The secondary benefit is officer safety in or near traffic. In the UK, unlike in the US, it is a standard mandate by law.

Their Hi-Vis jackets are made of a fluorescent yellow (lime/yellow actually) material with several broad stripes of retro-reflective material around the body, arms, and shoulders. The stripes outline the basic shape of a person, important in the recognition phase of driving. The UK officers don't mind wearing their Hi-Vis jackets because they have seen their effectiveness in both keeping them safe and in deterring crime.

As hunters and road workers have discovered, fluorescent colors like blaze orange and fluorescent yellow have a near magical effect in dawn and dusk light. The colors almost seem to glow. Fluorescent colors work because they reflect back more light than they absorb. Special molecules in the material do absorb certain types of light, especially ultra-violet light, but re-emit or reflect them back in longer wavelengths that are more visible to the human eye. Because UV light is so prevalent during cloudy days and at dusk and dawn, it explains why fluorescent colors are so effective during those conditions.

Some think that fluorescent colors are effective at night, but it is quite the opposite. Because fluorescent colors

require sunlight to reflect back, they aren't at all visible at night. As light diminishes, fluorescent colors appear to turn black; therefore, even fluorescent fabrics must include retro-reflective material for effectiveness at night.

Using bright and contrasting colors in jackets and clothing can also create somewhat high visibility daytime uniforms. Many bike patrol officers around the country are wearing two-tone jackets in color combinations like yellow and navy or royal blue and navy. While still not as effective as true fluorescent Hi-Vis colors, these two-tone jackets do stand out better in traffic. Some police agencies around the country are slowly allowing their patrol officers and other specialists to wear these two-tone jackets and rainwear.

Nighttime Technology

Retroreflective material began development nearly 50 years ago. 3M™ and their Scotchlite™ reflective materials have been the major player in retroreflective research and production. The most commonly used retroreflective products are a silver color. This is because they consist of small glass beads imbedded in a metalized layer and bonded to heat-activated adhesive or fabric backing.

But technology today is changing, and options may become available to the ubiquitous silver color. The reflective material is beginning to take on many different colors, including those found on police uniforms and jackets. Some of these fabrics even enable manufacturers to make the entire garment out of it. The color may appear to be dark blue, or a similar color, but when it is struck by directed light, it shines back in the traditional silver color.

Although this technology is not yet as bright and effective as the traditional products and doesn't meet occupational standards, it may not be too long before is it perfected. Companies must and will find a way to attach reflective stripes and dots to various areas of a police uniform to show movement and outline the human body when illuminated by vehicle lights. This will enhance officer safety without a separate garment.

Retroreflective materials are essentially small mirrors. They reflect light directly back toward the light source that strikes it. They do not retain light like so-called photo luminescent materials. A good number of officers fear that any retroreflective material on their uniform will somehow "give them up" in tactical situations. But they will not glow like the face of a Navy Seal's watch.

The reflective effect is only visible within a very small observation angle. If an observer is more than 3 degrees away from the light source, the reflector will not be seen. For example, if your partner is standing roughly 15 feet or more away at your side, pointing his light at someone wearing a retroreflective vest, your partner will see the reflection quite brightly. It is very likely that you won't see the reflection at all. This is because you have exceeded the 3 degree observation angle.

IPMBA Police Cyclist Instructors (PCIs) are all given a demonstration during their training to show them the real effect of retroreflective materials. Two students are selected. One wears a garment with a large amount of retroreflective material applied to it. The second has no retroreflective material at all, but he will wear a large metal badge on his left breast. The class of observers stands a distance away while the two volunteers walk towards them out of the darkness and stop directly under a streetlight. What is seen surprises many.

The officer wearing the retroreflective material is visible, of course, but there is no reflection off of the highly reflective uniform. The officer wearing no reflectors is also visible under the light, but a bright object clearly sparkles on his left breast. New PCIs learn that in order for a person to see the reflected light from the officer's uniform, he would have to be within 3 degrees of the directed light. In this case, the person would have to be on top of the streetlight to see the reflection.

Ironically, while many officers and administrators reject using uniforms with retroreflective material, they don't hesitate to wear a large metal badge with shiny mirror-like angles that can direct light in many directions. While large metal badges are beautiful, and worn with pride, embroidered cloth badges on outerwear are tactically much better at night if you don't want to be identified at a distance.

Where Do We Go From Here?

Uniforms should be designed and worn that take into account the most common light source, vehicle headlights. They must highlight movement, identify the wearer as human, and provide 360° degree protection. It should not require putting on a special garment, like a vest or jacket. We have already seen how often this system fails. The reflectors should be always there, working passively in the background, ready to protect the officer anytime he is on a car stop, or otherwise near traffic.

Officers needn't fear wearing these garments. They should be more concerned when they don't. Take a look at a fire fighter's turnout gear or the jump suits worn by flight medics. The retroreflective stripes are strategically applied to give the wearer an easily recognizable moving human form, protection that is always there helping them to be detected and recognized sooner.

To be most effective, reflectors should be applied near wrists, at the waist, across the back, and even near the bottom of pant legs or around the knee. Retro-reflective patches can be applied to the back of shoes or boots. Some might be applied to a Sam Browne belt or some of the equipment cases. Adding a large POLICE emblem, made with retro-reflective material, to the back of shirts and jacket is also helpful.

Improving LE uniforms will require "thinking out of the box" and examining our views about uniforms. After all, what is the purpose of a uniform? They are supposed to both identify and protect the wearer. Few of our current uniforms truly meet these criteria at night.

The Federal Highway Administration's most current revision of the Manual of Uniform Traffic Control Devices (MUTCD) has a section addressing roadway workers that includes police and other first responders. The manual essentially codifies the use of certain protective clothing anytime a worker is working near the roadway. They will require the use of equipment that meets ANSI Class II and Class III protection level standards by approximately 2007. These are the highest standards for the greatest number of threats. The requirements will be enforceable by OSHA.

There is good news. Most of the uniform manufacturers are aware of these conspicuity issues and requirements. They have designed uniforms for other public safety workers that already incorporate many of the safety features discussed. The companies are more or less waiting for law enforcement's image of their uniforms to catch up to existing technology.

Though fabrics have changed, police uniforms look about the same today as they have for decades. Our outdated perceptions about uniforms may well be putting officers at risk, especially at night. Despite the fact that departments issue their officers Hi-Vis traffic vests, few are wearing them during most of their exposures to traffic threats.

Police officers don't wait for a gun call to don their body armor. They wear it throughout their shift, passively present in the event that it is needed. The dangers officers are exposed to in traffic are equally deadly, and, truth be known, may be more frequent.

Virtually every motorist who runs down an officer didn't intend to do so. This makes them even less predictable and more numerous than criminals with guns. Hopefully, law enforcement will someday step away from their long held traditional uniform models and modernize with clothing that will better protect them from all of the threats that can injure and kill officers.

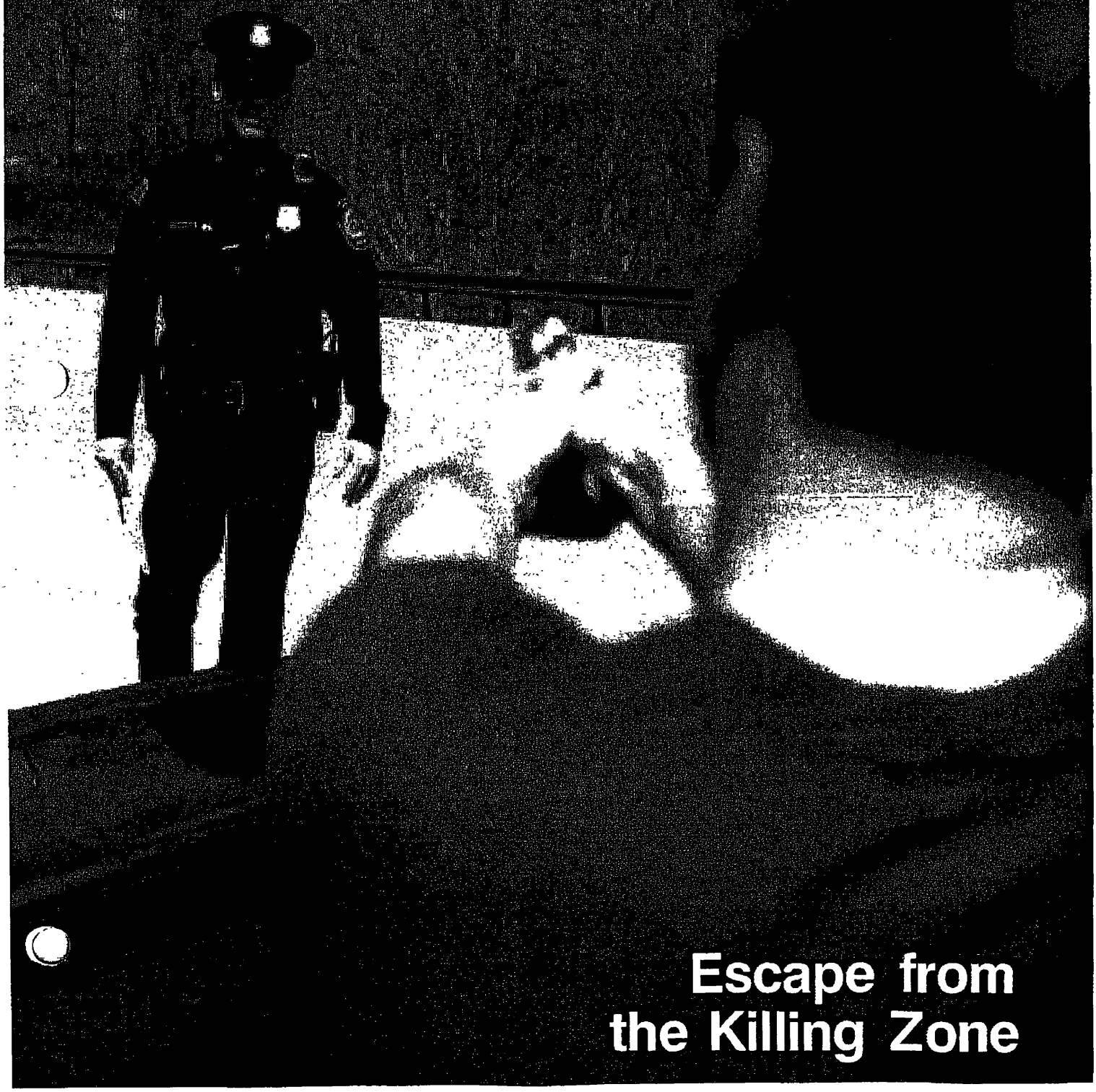
Kirby Beck recently retired after 28 years with Coon Rapids, MN Police. He is a certified IPMBA Police Cyclist Instructor and Instructor Trainer, and may be reached at Kirby@kbeckconsulting.com.

Sponsored Links
http://www.3m.com/scotchlite

U.S. Department of Justice
Federal Bureau of Investigation

March 2002

FBI Law Enforcement BULLETIN



Escape from the Killing Zone

Escape from the Killing Zone

By ANTHONY J. PINIZZOTTO, Ph.D., EDWARD F. DAVIS, M.A., and CHARLES E. MILLER III

©K. L. Morrison

On a daily basis, law enforcement officers encounter many situations that potentially place them in grave personal jeopardy. While this depicts the nature of the profession, all too frequently, officers increase the likelihood of personal injury by their desire to apprehend offenders at all cost. Their keen sense of justice and their desire to keep their communities safe from social predators sometimes cloud their judgement, which can increase the possibility of harm to themselves.

While engaged in such activities as foot chases and vehicle pursuits, officers often exhibit a tendency to rush into what can be described as "the killing zone," that is, within a 10-foot radius of the offender.[1] Why? Most officers relate that they engage in these types of pursuits "without thinking" and "without formulating a plan of action." They also report that the object of a pursuit is to apprehend the violator. While this represents a reasonable response, officers should concentrate their efforts not simply on apprehending the violator but *safely* apprehending the violator. In addition, officers, who have admitted rushing into these situations, did so while unknowingly making some inaccurate assumptions—primarily, that the fleeing offenders were attempting to escape from the offenses known to the officers. However, whether involved in foot or vehicle chases for apparently minor violations, officers must understand that the offenders in these incidents *already* have demonstrated their willingness to resist arrest. Further, their reason for flight may involve far more serious violations than those known to the officers. Most important, these individuals may lead officers into areas advantageous to themselves, such as a gang area where the offenders might have accomplices, a housing project more

familiar to the offenders than to the officers, or a dark or wooded site where the officers may become disoriented and unable to report their location to the dispatcher. What causes officers to become entangled in these situations and possibly drawn into the killing zone?

CASE STUDY

Shortly after eight o'clock on a Tuesday evening, a police dispatcher received a call reporting a prowler at a three-level apartment complex. Due to a large number of calls for service that summer evening, an officer was not able to get to the apartment to take a report until ten o'clock that night. When the responding officer arrived at the parking area of the apartment complex, an off-duty, uniformed officer from the same department, who happened to be returning to his own apartment, met him. The two officers proceeded to the apartment where the call originated to speak to the complainants.

The officers learned that the complainants had seen an individual on the balcony of their second-story apartment. They described the alleged prowler as a Hispanic male, approximately 14 or 15 years of age, 5' 6" in height, and weighing approximately 90 pounds. Because of the construction of the apartment complex, the balcony was accessible either from the apartment's sliding door or, with considerable effort, from a window in the second-floor hallway. The complainants requested that the officers question the residents of the third-story apartment.

Initially, an occupant of the third-story apartment denied having any relevant information, reporting that no one fitting the youth's description lived there. Further questioning, however, revealed that someone fitting this description was visiting one of the residents of the apartment. Having taken the information, the officers left the apartment building and walked to the responding officer's patrol vehicle.

As the two officers were discussing the incident, a security officer employed by the apartment complex approached them. He stated that a young boy apparently was stranded on an air conditioning unit that protruded from the apartment building. All three of the officers went to the side of the building and observed a teenage Hispanic male, weighing approximately 85 to 90 pounds, about 5' 6" tall, wearing a T-shirt, sneakers, and tan pants perched on an air conditioning unit. Because the teenager appeared unable to get down, the responding officer decided to call the fire department to respond with a ladder. However, before he could broadcast his request to the fire department, the responding officer

Dr. Pinizzotto is a clinical forensic psychologist in the Behavioral Science Unit at the FBI Academy.

Mr. Davis is an instructor in the Behavioral Science Unit at the FBI Academy.

Mr. Miller is an instructor with the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia.

noticed that the young male inexplicably had climbed into the window of the third-floor apartment. All three of the officers immediately attempted to locate the youth.

The responding officer entered a walkway within the apartment and noticed the youth, approximately 5 feet from him, lying prone on the floor of a corridor with his arms extended in front of him. Immediately, and without any warning, the youth jumped up, ran toward the officer, and began flailing his arms. Unknown to the responding officer at that moment, the youth actually was stabbing him in the arm, chest, and stomach areas with a dagger. Hitting the officer's protective vest, the youth continued to move the weapon lower until he struck below the vest.

At this point, the responding officer, realizing that he was being stabbed, pulled his service weapon and attempted to fire. When the gun did not fire, the officer believed that it malfunctioned and pulled the trigger again, wounding the youth in the arm. (The officer learned later that his gun functioned well. The reason that he could not pull the trigger the first time was due to temporary muscle and nerve damage from the stab wounds.)

When the off-duty officer heard the shot, he ran toward the sound of the gunfire. As he approached the doorway, the youth fled the building, stabbing the off-duty officer in his side. At this point, the security officer approached the area and saw the youth running from the scene. After chasing the youth into the nearby woods, the security officer ended the pursuit. A neighbor, hearing the gunfire and seeing that two of the officers were wounded, called for emergency assistance.

After sending search dogs into the woods, backup officers apprehended the youth approximately 1½ hours later. The youth, who had wounded two officers with a dagger and eluded a third officer, turned out to be the same teenage prowler reported earlier that evening.

> ***"Considering the reasons for an offender's actions proves paramount when those actions do not seem to fit the target crime."***

CASE ANALYSIS

Although it remains both easy and frequently unfair to judge law enforcement officers' actions, constructively reviewing such incidents can assist in preventing future injuries and deaths. In the case study, what did the officers do right? Could they have done something differently? Does it appear that the officers made certain assumptions about the nature of the call for service, the suspect, or each other's actions? How did these assumptions affect their decisions to act? What plan or approach did the officers exhibit? How did the officers communicate with each other? Was the communication effective?

Officers continually need to remind themselves that, when entering the killing zone, they must become exceedingly aware of the increased possibility of injury to themselves. For example, from 1990 to 1999, nearly 75 percent of officers feloniously killed died within that 10-foot radius of the offender.[2]

While officers obviously must enter this killing zone to apprehend individuals, they need to realize that they may be reacting too quickly, misreading behaviors or actions of offenders, or missing danger signs or signals that offenders may send unintentionally. Training should prepare officers to react appropriately and safely when they must take immediate action in a situation that necessarily brings them into the killing zone. Realistic and practical exercises can instill in officers the skills and mental preparedness that they can call on automatically when confronting offenders. Law enforcement agencies should ensure that officers receive training in such critical issues as formulating action plans, following established policies, knowing their physical and mental conditions, remaining aware of their surroundings, considering offender reactions, and exploring tactical options.

Plan of Action

Has training made officers consider formulating a plan of action, rather than simply reacting to the behavior of offenders? As officers respond to calls for service or initiate chases, do they consider

various situations that they might face? How will they deal with these? If officers receive practical and realistic training, they will run less risk of being surprised and easily taken advantage of. For example, an offender may lead an officer into a tunnel area, where no opportunity for cover exists, so that the offender can suddenly turn and attack. In such cases, officers should run parallel to offenders, not follow the same path, so that offenders planning an attack will not know the exact location of the officers.

The complainants in the case study described the youth to the responding officer as young, wearing only a T-shirt, sneakers, and tan pants. The description fits many teenagers—most of whom are neither criminals nor dangerous. Could someone so described harm an officer? After years of encountering thousands of teenagers who have not presented a physical threat, perhaps the responding officer made assumptions that almost cost him his life. Even in situations that appear nonthreatening and mundane, officers must consider "what if" circumstances to provide them with options for reacting to surprising occurrences.

Foot Pursuit Policy

Law enforcement agencies should realize that developing a foot pursuit policy not only enhances officer safety but decreases the chances that a mishandled foot pursuit will develop into a possible use of deadly force situation.[3] In the interest of officer safety, agencies should consider policies that address foot pursuits while officers are alone or those occurring under specific circumstances, such as when—

- multiple suspects flee a scene in the same direction;
- offenders flee into nonpublic structures or dwellings, isolated wooded sites, known drug-trafficking areas, or locations unfamiliar to pursuing officers; or
- officers know offenders and can reasonably arrest them on a warrant at a more advantageous time.

> ***"To react appropriately under demanding and life-threatening circumstances, an officer's physical and emotional condition prove vitally important."***

In the case study, when the security officer initiated a foot pursuit, the youth already had seriously cut the responding officer and stabbed the off-duty officer. What options did the security officer have? Was he knowledgeable of the surroundings? Was he as knowledgeable of the surroundings as the youth? Could the youth have planned an ambush? Could other youths have been awaiting their arrival? Not knowing the youth's intentions, the security officer wisely halted the chase and waited for backup.

Officer's Condition

Is the officer prepared to subdue an offender after a prolonged chase? What is the officer's present physical condition? Could the offender intend to run the officer into exhaustion to give the offender the upper hand? Is the officer under excessive amounts of stress, including personal or professional issues, that could cause possible distractions?

Experienced officers recognize that if they are not in good physical shape, a pursuit, especially on foot, can deplete their energy. At the point of physical contact, the officer can have a clear disadvantage, particularly in situations, such as the case study, where the suspect was young, energetic, and in excellent physical condition.

However, officers may not realize how their emotional and psychological health can work either for or against them. Just as poor physical conditioning depletes the energy level of an officer, so do excessive amounts of stress and strain. Medical experts have demonstrated that when human organisms are under high levels of stress over extended periods of time, not only does their physical strength lessen but their cognitive abilities, such as memory, thinking, and attention, diminish. Stress not only kills physically but emotionally as well.[4]

To react appropriately under demanding and life-threatening circumstances, an officer's physical and emotional condition prove

vitally important. In the case study, if the responding officer and the off-duty officer had experienced recent major emotional conflict and crisis (at home or on the job), their abilities to accurately and quickly process information could have become impaired. This could have affected their perception as well, particularly hearing and seeing.

Knowledge of Area and Surroundings

Is the officer aware of the surroundings as the chase begins? If not consciously aware of the surroundings, the officer can experience "tunnel vision" and lose awareness of peripheral threats, such as accomplices lurking nearby or areas with hidden pitfalls. This could lead the officer into dangerous, yet preventable, situations. For example, an offender may lead an officer intentionally around a blind corner and plan an ambush or sudden overwhelming attack or into buildings that contain prearranged traps.[5]

In the case study, due to a large volume of calls for service, the first available police unit had to respond to the call at the apartment complex, rather than the regularly assigned officer who patrols the area. The responding officer was acquainted generally with the geographical street plan, but unfamiliar with the configuration of the large apartment complexes in the area and possibly unacquainted with back alleys and side streets.

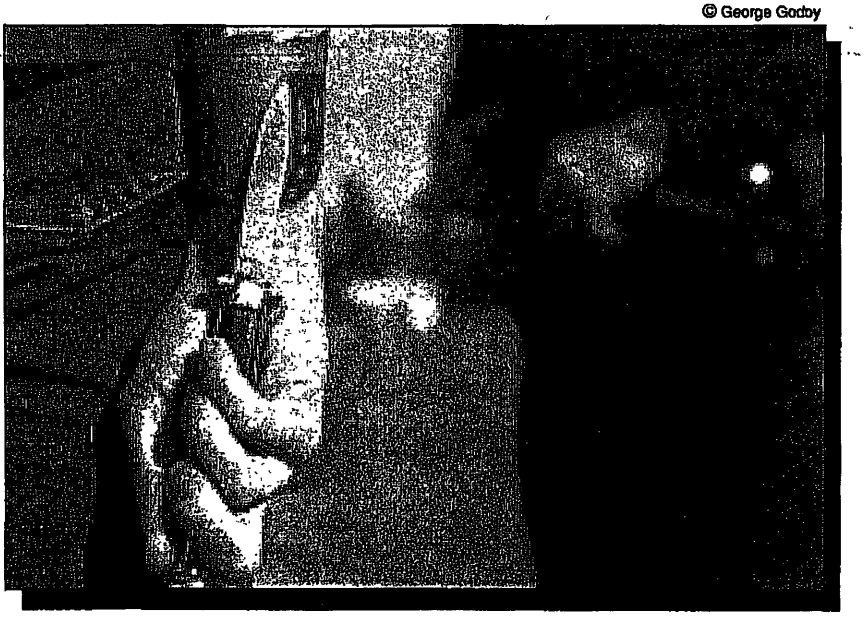
When officers become engaged in a pursuit in unfamiliar territory, several possibilities can result. For example, they can expend as much of their energy and thoughts on trying to determine where they are as they do on keeping the suspect in sight. Or, they can place all of their time and attention on the pursuit suspect and become totally disoriented as to where they are, even unable to give the dispatcher an accurate location. Therefore, especially in unfamiliar surroundings, officers must exercise great caution to avoid being drawn into the killing zone.

Reasons for Offender's Actions

Considering the reasons for an offender's actions proves paramount when those actions do not seem to fit the target crime. For example, in a traffic stop, the driver pulls to the curb and runs from the vehicle. The officer should consider the seriousness of the traffic violation and question whether a person would risk fleeing for such a minor offense. If this reaction does not make sense to the officer, perhaps it represents a clue that the driver may have committed a more serious crime.

Even in what some consider an increasingly violent society, in the experience of many police officers throughout America, 14- or 15-year-old boys rarely stab law enforcement officers. But, as shown in the case study, this does happen. The officers did not know why the youth was on the air conditioning unit. Burglary? Peeping? Leaving his girlfriend's residence? Running away from home? If caught by the police, how would he react? Run? Surrender? Argue? Fight? Many officers would not expect that someone so young could have warrants for several counts of attempted homicide; practice combat, hand-to-hand knife fighting regularly; or state that he would never go to prison as the youth in the case study did. What do most officers expect when they attempt to make an arrest? They need to remain vigilante and expect the unexpected,

© George Godby



even in the most seemingly nonthreatening circumstances.

Tactical Considerations

Use Verbal Commands

Do officers consider and use verbal commands prior to and during a confrontation? For example, officer training should stress that when they catch up with an offender or the offender stops, officers should not close the distance between them immediately. Instead, they should give verbal commands to test the offender's compliance. In cases where offenders do not comply, officers should not move closer until adequate assistance arrives on the scene.

Create Distance

Sometimes officers should create distance between themselves and offenders, rather than moving closer. Has training taught officers to consider creating distance between themselves and the offender? Distance gives the officer increased time to react to offenders' actions, thereby enhancing officer safety.

Contain, Not Apprehend

Circumstances may occur when officers should contain the offender in an area, rather than rush in to apprehend. For example, an offender flees into an abandoned building with exits that the officer can view safely from the outside. If backup units are en route, the officer may want to remain outside the building until these other officers arrive on the scene. In any pursuit, officers must weigh the risks and benefits before rushing in to capture suspects. Should they attempt to gain physical control and arrest the subject immediately? Or, should they remain outside the killing zone (i.e., retreat and seek cover) until adequate assistance arrives on the scene? What are the chances that the offender may overpower the officer if the officer physically attempts to control the offender at this point? While officers must assess the situation and base their decisions on a variety of factors, the training they have received greatly impacts their decisions and, in turn, strongly affects the outcome of the incident.

> ***"Realistic and practical exercises can instill in officers the skills and mental preparedness that they can call on automatically when confronting offenders."***

Choose to Handcuff

Sometimes circumstances merit officers holding offenders at some distance and awaiting assistance before attempting to handcuff them. Tactical considerations always result from how officers perceive the situations they encounter. Perceived reality determines tactical approach. Clearly, it proves impossible to have all tactical equipment available (e.g., high-powered firearms, less-than-lethal weapons, and riot gear) as officers encounter each pedestrian or motorist. Although they may not have tactical hardware available, officers must engage a tactical mentality at all times. Should they deploy current resources? Or, should they wait, contain the threat, and approach with backup? Should they continue to approach into the killing zone after an armed suspect who just stabbed two officers? Or, should they create some distance until the suspect complies with verbal orders? When a suspect has demonstrated well-developed marshal arts skills, with or without an additional weapon, should they attempt to place handcuffs on the subject or wait for available backup? By considering how they will respond to these types of situations before they face an actual threat, officers can improve their chances of avoiding the killing zone and still bring the offender to justice.

CONCLUSION

Because the law enforcement profession constitutes an inherently dangerous occupation, its members must explore ways of curbing the hazards. Regular and realistic training, both at the academy and during in-services, can sharpen the skills officers need to safely effect arrests. Practical, hands-on training can encourage officers to rehearse various situations that they may encounter and experiment with different strategies that they can employ to react to them. Training should include "what if" situations and require officers to offer a number of possible solutions. Officers should develop their own "what if" scenarios

that pertain to their particular patrol areas. Partners should develop and rehearse "what if" scenarios that involve their actions as partners, as well as their actions if situations require them to act alone.

The more practical, realistic, and applied the scenarios are, the greater the likelihood that officers will rehearse them. Much like fire drills that all schoolchildren practice, the more officers rehearse, the less chance exists that they will be caught off-guard when a real emergency occurs. Safety of the officer during an arrest is not an option; it is a requirement. Officers must learn how to escape from the killing zone and, equally important, know when to avoid entering it in the first place. ✦

Endnotes

[1] The authors based this article on research they are conducting currently, interviewing officers who survived attacks by offenders. For additional information on past research in this area, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller, U.S. Department of Justice, Federal Bureau of Investigation, *In the Line of Fire: A Study of Selected Felonious Assaults on Law Enforcement Officers* (Washington, DC, 1997).

[2] Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Program, *Law Enforcement Officers Killed and Assaulted, 1999* (Washington, DC, 2000), 13-14.

[3] For information on establishing a foot pursuit policy, see Shannon Bohrer, Edward F. Davis, and Thomas J. Garrity, Jr., "Establishing a Foot Pursuit Policy: Running into Danger," *FBI Law Enforcement Bulletin*, May 2000, 10-15.

[4] For additional information, see Arthur W. Kureczka, "Critical Incident Stress in Law Enforcement," *FBI Law Enforcement Bulletin*, February/March 1996, 10-16.

[5] Supra note 3.

Subscribe Now

United States Government
INFORMATION

Order Processing Code:
* 5902

☐ YES, please send _____ subscriptions to:
FBI Law Enforcement Bulletin (FBIEB) at $36 each ($45 foreign) per year.
Price includes regular shipping & handling and is subject to change.

The total cost of my order is $ _____.

Credit card orders are welcome!
Fax orders: (202) 512-2250
Phone orders: (202) 512-1800
Online orders: bookstore.gpo.gov

Name or title (Please type or print)
Company name Room, floor, suite
Street address
City State Zip code+4
Daytime phone including area code
Purchase order number (optional)

Check method of payment:
☐ Check payable to: Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐ Discover
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
(expiration date) ☐☐☐☐
Authorizing signature 1/2001

Mail to: Superintendent of Documents, PO Box 371954, Pittsburgh PA 15250-7954
Important: Please include this completed order form with your remittance.
Thank you for your order!

POLICE
THE LAW ENFORCEMENT MAGAZINE
COMMUNITY FOR COPS

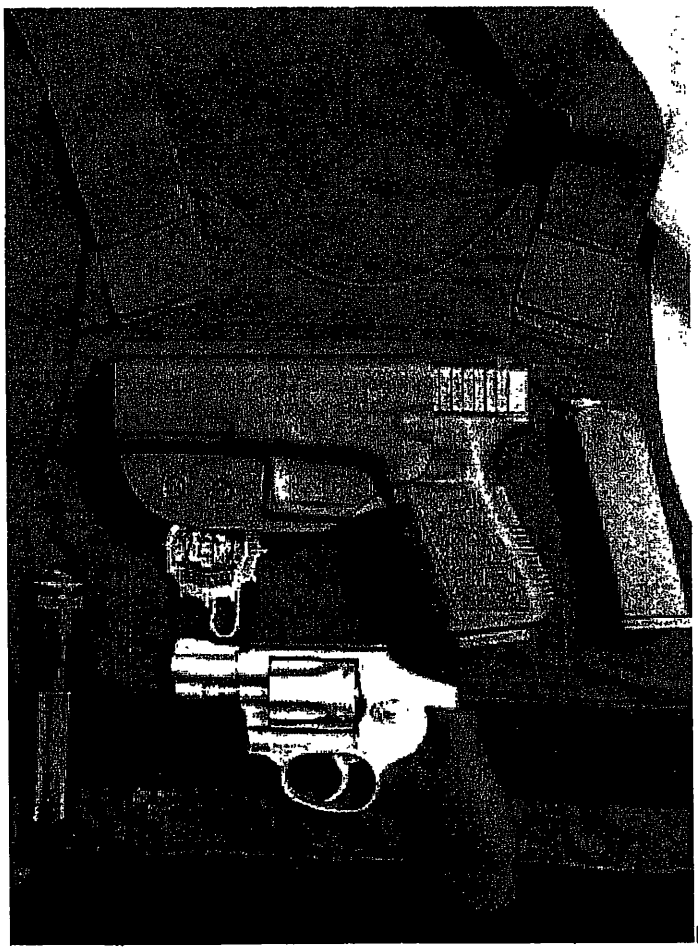
Departments : The Winning Edge

July 2009

Plainclothes Survival

Wearing street clothes while you work can be a great experience, but it doesn't make the job any easier or any safer.

by Adam Kasanof



Even plainclothes officers need to wear a vest and carry a variety of gear. You never know when you'll need them.

When you are in plain clothes, you face certain potential dangers that uniform officers easily avoid.

First, you can easily be misidentified. This can happen if you are working undercover or working as a detective. After all, you work in police operations without a uniform that immediately and instantly identifies you as an officer to both the public and your fellow officers.

You also don't have the luxury of a big duty belt to carry all your gear. So you have a tendency to pack light. That's a tendency that can lead to tragedy. Even if you are wearing a suit and tie on the job, you still need your tools.

The following is some advice that I can offer my plainclothes colleagues still on the job.

Gear and Equipment

Wear Your Body Armor. If you arrest or confront suspects, search buildings, stop cars, or respond to emergency calls, you need to wear body armor. Many types of armor can easily fit under a suit (Hint: you may want to buy work clothes in a slightly larger size to accommodate armor).

There are bullet resistant "investigator" style jackets, "raid" jackets, denim jackets, and photographer's utility vests. Even undercover officers in narcotics or firearms now wear armor whenever practical-and it very often is practical-given the variety of armor available today.

Drive Carefully and Watch the Traffic. An unmarked car, especially one without a roof light bar, is much less visible to other drivers than a marked car, so drive accordingly. If you have only a tiny dashboard flasher or no special lights at all, don't even think of doing pursuits or responding to emergency calls the way you would in a marked car. And please wear a seat belt.

Be careful when you get out of your car on a street or highway, especially at night, since you may be hard for drivers to see. Keep a reflective traffic vest handy in case you have to work at a checkpoint or roadblock, stop traffic at a scene, or stop on the highway shoulder to investigate or collect evidence.

You Need Your Tools. Local laws, agency regulations, and the exact nature of your assignment will affect what gear you can carry. If you work in a non-undercover assignment such as a detective, an investigator, or a plainclothes officer who is not pretending to be a bad guy and you're unlikely to be held or searched by suspects who are trying to figure out whether you are an officer, you need the following, at a minimum:

- A service handgun, not just a tiny .380 autopistol or two-inch barrel .38 revolver.
- A backup firearm.
- A spare magazine if you carry an autopistol. You may not think you need the ammo. But if your gun malfunctions, you may damage your magazine while clearing it and need another good magazine to reload.
- A department portable radio, in case you need to call for help, hear calls for help from your fellow officers, or need to coordinate your actions with other officers. If radio size is a problem, see if your department can get one of the new small portable radios. If

your agency won't issue you one but will allow you to use one, consider purchasing one for yourself. Talk to your agency before you buy a radio, so that you get one that's compatible with your agency's radio system. Be sure to test your new radio before you use it, to make certain that it works.

- A cell phone, in case you're caught in a dead spot where your department radio won't work, or you have other radio problems, and need to call for help or contact other officers. Cell phones are very handy in cases where you believe suspects have police scanners or stolen police radios and can monitor your radio transmissions. Note that a cell phone, while valuable, does not replace a department radio, which lets you speak directly with a dispatcher without having to go through 911.
- Defensive tools in addition to your firearm, including OC spray, an expandable baton, or other authorized impact defensive tool. You may need to defend yourself or someone else in a situation where using a firearm isn't appropriate or legally justified. In that case, it's a lot better to have options apart from empty hand strikes or control techniques.
- Handcuffs, both for securing suspects and as a last-ditch defensive tool.
- A flashlight, even in the daytime because you may find yourself in a dark basement, on a dark stairway, or searching for evidence hidden in the dark interior areas of a vehicle. A flashlight can certainly help your shooting in low-light conditions but, more importantly, it helps you decide whether to shoot at all. A flashlight can be vital for target identification, in other words figuring out who is and isn't a deadly threat.

Avoid Mistaken Identity

Identify Yourself When You Can Safely Do So Before Taking Enforcement Action. When you aren't properly identified, you increase tvhe risk that someone will mistakenly svhoot you, thinking you're an armed criminal.

A suspect might shoot you. Of course, all too many criminals would shoot a police officer rather than be arrested. There are other suspects who wouldn't intentionally shoot a police officer but would shoot someone they think is a criminal. Many criminals who resist arrest or shoot plainclothes officers often claim that they didn't know that the people they shot were police officers.

Other officers might shoot you, especially if they are from another precinct, unit, or agency, or even from another jurisdiction, and don't know who you are.

A lawfully armed citizen might shoot you, thinking you're a burglar or street robber.

When you remain unidentified, the people you deal with-whether armed or not-may try to run or resist you, which can be dangerous for you and them.

When you can, say who you are and show who you are. Don't just say that you're a police officer; show your badge, shield, ID or credentials. Wear a raid jacket when possible. In a noisy or stressful situation, someone may not hear or understand your spoken ID or warning.

If you are challenged by uniformed or identified officers who don't know who you are, do what they say. In any confrontation between officers, the uniformed or identified officer is in charge. Period.

Don't Stop Cars or Search Buildings Unless You Really Have To. Ideally, if you have to stop a car, do it together with uniformed officers in a marked vehicle or call uniformed officers to the

scene after you pull the car over so that the person stopped would know you're law enforcement personnel. If that's not possible, have identification out, wear a raid jacket or other identifying clothing, and clearly identify yourself to the people you stop. If there is a problem or question about your identity, have a uniformed unit respond.

Searching a building can be exceptionally dangerous in plain clothes. If someone calls 911, thinking you're an armed burglar or robber, responding uniformed or plainclothes officers may come searching for you, guns drawn. If you must search a building in plain clothes, it's far safer for each plainclothes officer to search together with a uniformed officer. And each plainclothes officer should wear a raid jacket, cap, or other identifying garment.

Inform Your Fellow Cops That You Are Working In Their Area. Make sure that the agencies where you plan to work, including local precinct, district, and division officers, know that you'll be working in plain clothes and when and where you'll be. It doesn't hurt to go by some uniform roll calls to introduce yourself, thank the officers for their help, and ask them to contact you if they get any information of interest to you.

Don't Sneak Around to Crimes in Progress Without Telling Anyone. When a heavy call comes over the air, you may want to be first on the scene for a chance to capture a robber or burglar. But if other responding officers don't know that you're there, you may be mistaken for an armed suspect and possibly shot.

Tell the radio dispatcher and other units whenever you respond to a call and be very careful when you get there.

Get Help When You Need It. Ask for help from SWAT, emergency services, and regular uniformed personnel when making high-risk arrests or executing high-risk search warrants.

Complacency Kills

Never Let Your Guard Down. Someone you arrest for a misdemeanor warrant might have a string of felony convictions, and not want to go back to prison. Check a suspect's prior arrest and conviction record before you arrest him, when you can legally do so.

The non-violent suspect you've arrested before without incident may now be drunk or on drugs and violently unstable. Some arrests or confrontations may be "high risk," even if you don't know it. So take every arrest or confrontation seriously.

Carefully Search and Secure Prisoners. Rear handcuff and search all prisoners before putting them in your vehicle. If you have to move quickly, search the areas readily accessible by handcuffed prisoners, such as the rear waistband of their pants. Thoroughly search prisoners again when you reach your destination. Do not leave prisoners unattended, no matter how well you have secured them. Make sure prisoners can't access areas where firearms or other potential weapons are stored.

Plainclothes work carries its own special risks, but if you follow the recommendations above, you can help reduce those risks.

Adam Kasanof retired from the NYPD as a lieutenant, and is also a lawyer. However, nothing in this article constitutes legal advice. You can contact him through David Griffith at david.griffith@PoliceMag.com.

COPYRIGHT © 2011 POLICE Magazine. ALL RIGHTS RESERVED.

PoliceOne.com News

Click to Print

03/04/2005

The psychological influence of the police uniform

By Richard R. Johnson, M.S.

Introduction

Most people can identify a police officer by the official police uniform. When citizens on a busy street are in need of help, they scan the crowds of pedestrians looking for the distinctive uniform of a police officer. Drivers who come to an intersection occupied by a person in a police uniform usually willingly submit to that person"s hand directions. Criminals usually curb their unlawful behavior when they spot a uniformed police officer in the area. Many parents teach their children to respect and trust a person in the police uniform. Police academy recruits relish the day when they may finally wear their official police uniforms. What is so special about a uniform which is often made of cheap polyester and is usually hot and uncomfortable to wear?

The crisp uniform of the police officer conveys power and authority. When a police officer puts on his or her uniform the officer is perceived in a very different way by the public. He or she is viewed as embodying each person"s stereotypes about all police officers. Research has suggested that clothing has a powerful impact on bow people are perceived, and this goes for the police officer as well. The uniform of a police officer has been found to have a profound psychological impact on those who view it. Research has also suggested that even slight alterations to the style of the uniform will change how citizens will perceive the officer.

The police uniform is a tradition as old as the field of law enforcement itself In 1829 the first modem police force, the London Metropolitan Police, developed the first standard police apparel. These first police officers, the famous "Bobbies" of London, were issued a dark blue, paramilitary-style uniform.. The color blue was chosen to distinguish the police from the British military who wore red and white uniforms at the time. The first official police force in the United States was established in the city of New York in 1845. Based on the London polico, the New York City Police Department adopted the dark blue uniform in 1853, Other cities, such as Philadelphia, Boston, Cincinnati, Cleveland, Buffalo, and Detroit quickly followed suit by establishing police departments based on the London model, including the adoption of the dark blue, paramilitary-style uniform.

To this day, the majority of police uniforms in. the United States continue to have a paramilitary appearance and are generally of a dark color. Darker colors may have been preferred for their case in cleaning and their ability to help conceal the wearer in tactical situations. Dark colors help cover up stains and keep the officer from being easily spotted by lawbreakers, especially at night. However, why do most police agencies insist on dressing patrol officers in uniforms? Is this simply because of tradition? Is it only for the ease of identification by citizens? Maybe it is because the uniform actually psychologically influences how officers are perceived by the public.

The Social Significance of Clothing

When a person encounters a stranger, the person seeks clues from the stranger"s appearance which can reveal things about the stranger. One powerful clue to a person"s background is clothing. Clothing serves as a mental shortcut to identifying a persons sex, status, group membership, legitimacy, authority, and occupation. Clothing and physical appearance are very important in the initial development of social relationships. Studies have revealed that physical appearance, including clothing, is the factor most often used in developing a first impression of someone. Clothing has been found to have an even greater effect on making first impressions

than does personality.

In early social interactions, clothing has a significant psychological influence on people"s perceptions. Personnel administrators who were asked to rate the competency of similar female job applicants consistently rated the women in conservative, slightly-masculine attire as the most competent. In another study, both high school students and teachers were asked to rate, pictures of female athletes, some of whom were in uniform and the others in casual street clothes, All of the athletes were perceived as being more professional, possessing higher ability, and having more team spirit when viewed in uniform. Both students and teachers, have also rated photos of students in private school-type uniforms as having higher scholastic ability.

The uniform worn by a police officer also elicits stereotypes about that human being"s status, authority, attitudes, and motivations, The police uniform serves to identify a person as one vested with the powers of the state to arrest and use force. The uniform also serves to establish order and conformity within the ranks of those who wear it by suppressing individuality. The psychological and physical impact of the police uniform should not be underestimated. Depending on the background of the citizen, the police uniform can elicit emotions ranging from pride and respect, to fear and anger.

The Power of the Police Uniform

Research has supported these suggestions about the police uniform"s power and authority. In one study people who were asked to rank order 25 different occupational uniforms by several categories of feelings. The test subjects consistently ranked the police uniform as the one most likely to induce feelings of safety. In another experiment, models were consistently rated as more competent, reliable, intelligent, and helpful when pictured in a police uniform than they were in casual street clothes. Drivers were also found to commit far fewer turn violations at an intersection if a person wearing a police-style uniform was standing on the sidewalk near the corner. This occurred even though the uniform was not that of a real police department in the area and had no badge or weapons. One interesting experiment to test the power of the police uniform was conducted by psychologist Dr. Leonard Bickman. Pedestrians on a city street were approached at random and ordered by a research assistant to either pick tip a paper bag, give a dime to another person, or step back from a bus stop. The research assistant was alternately dressed in casual street clothes, a milkman uniform, or a grey, police-style uniform bearing a badge but lacking weapons. Only the police-style uniform resulted in a high rate of cooperation from citizens. Obedience to the police-style uniform usually continued even after the research assistant quickly walked away and did not watch to ensure compliance.

Changes in the Uniform Style

Although the police uniform, in general suggests the authority of the wearer, details about a police officer"s uniform, such as the style of hat or the tailoring, can influence the level of authority emanating from the officer, Photographs of uniformed male and female police officers were evaluated wearing nine different styles of head gear, including no hat at all. Even though psychological tests showed that the officers were perceived to have authority under all of the circumstances, the type of hat varied the level of authority attributed to the officer. The traditional "bus driver" garrison cap and the "smoky bear" campaign hat were found to convey more authority than the baseball cap or no hat at all. Many studies have looked at the influence of eliminating the paramilitary style of the police uniform. In one experiment students viewed black and white drawings of three styles of police uniforms. Two of the uniforms were of a traditional paramilitary-style, but were lacking a duly belt or weapons. The third, nontraditional uniform involved a sport coat blazer over slacks, and a shirt with a tie. Although all three uniforms were rated similarly for objectivity and trustworthiness, the blazer style uniform rated slightly higher for professionalism, However a similar experiment using color photos found the traditional, paramilitary style uniforms rated as more honest, good, helpful, and competent than the blazer uniform.

In 1969, the police in Menlo Park, California dispensed with their traditional navy blue, paramilitary-style uniforms and adopted a nontraditional uniform in hopes of improving police community relations. The new, nontraditional uniform consisted of a forest green sport coat blazer worn over black slacks, a white shirt, and a black tie. The officer"s badge was displayed on the blazer and the officer"s weapons were concealed under the coat. Once word spread about Menlo Park"s attempts, over 400 other police department in the United States also experimented with a blazer style uniform.

After wearing the new uniforms for 18 months the Menlo Park police officers displayed fewer authoritarian characteristics on psychological tests when compared to officers in the surrounding jurisdictions. Also for that first one-and-one-half years with the new uniforms, assaults on the Menlo Park police decreased by 30% and injuries to civilians by the police dropped 50%. These changes were originally thought to have been a result of the uniform changes but there were other factors at work at die same time. The number of college educated officers in the department increased dramatically and the traditional autocratic management style of the department was abolished during this same time period.

In 1977, after wearing the blazer style uniform for 8 years, the Menlo Park Police Department realized that the sport coat uniform did not command respect and returned to a traditional, paramilitary-style uniform. A final evaluation showed that although assaults on officers had dropped during the first 18 month of wearing the new uniforms, the number of assaults steadily began to rise again until the rate was double that of the year before the uniform change occurred. During the four years after the Menlo Park police returned to a traditional style uniform the number of assaults against their officers dropped steadily. The experiments with the hats and the style of the police uniform suggest that changes in the style of a police uniform can have an effect on the perceived authority, power, and ability to control. What about the color of the police uniform? Does the color of the uniform psychologically influence the people who view it? Does the color have an influence on the officer who is wearing the uniform?

The Influences of Color

The majority of police uniforms in the United States today are produced in darker colors such as black, blue, brown, green, and grey. Just as with the style of the police uniform, the color of the police uniform has meaning. Psychological tests have found that people associate colors with specific moods. For example, red is generally associated with excitement and stimulation, thus explaining why it is often a color in flashing emergency vehicle lights. These tests have also found that the color blue is associated with feelings of security and comfort, and black is most often associated with power and strength. Studies of both high school and college students in the United States have found that students perceived light colors such as white and yellow as weak, but also good and active, The same students perceived dark colors such as black and brown as strong and passive, but also as bad. These results were not based on cultural influences because they did not vary with the race of the students.

Even people in Europe, Western Asia, Central Africa, and the Middle East had similar perceptions of colors. Across all cultures that have been studied, light colors are consistently associated with goodness and weakness, while dark colors are consistently perceived as strong but evil. On psychological inventories, test subjects rate lighter colors as more pleasant and less dominant. Dark colors on the other hand elicit emotions of anger, hostility, dominance, and aggression.

Color has a considerable impact on clothing and perceptions of the wearer. Clothing color was found as the most common determinant when people rated pictures of models for attractiveness. Job applicants wearing dark business suits were perceived as more powerful and competent than those who wore lighter suits. Another interesting study found that referees who viewed several videotaped plays of a football game were more likely to assess stiffer penalties against a football team wearing a black uniform than a team wearing a brightly colored uniform. The referees consistently perceived the team in black as more aggressive. This experiment was supported by an analysis of all professional football and hockey teams in the U.S. which found that teams who wore dark colored uniforms were assessed far mom penalties for roughness than teams who wore lighter uniforms. Again these results suggest that teams in darker uniforms were perceived negatively by the referees.

Experiments have also suggested that athletes tend to act more aggressively when dressed in dark colors. College students were dressed in black jerseys and grouped into teams of five. They were then asked to rank order which sports they would most like to play. The students consistently ranked the most aggressive sports, such as football and rugby, at the top of the list. The experiment was then repeated with a new group of students and white jerseys. This time the students selected less aggressive sports, such as baseball or basketball.

If the results of these studies in color were applied to the police uniform, it would seem to suggest that darker

police uniforms may be sending negative subconscious signals to citizens. A dark police uniform may be subconsciously encouraging citizens to perceive officers as aggressive evil, or corrupt. If this is true, the proliferation of blue-black police uniforms is sending a very negative message to the community. The experiment with the colored jerseys also suggests that police officers in dark uniforms may be subconsciously influenced to act more aggressively. If this is true, police uniform colors need to be modified across the nation.

In one experiment test subjects were presented with color photos of two traditional paramilitary-style uniforms. One of the uniforms, consisted of the dark navy blue shirt and pants that is so commonly worn by municipal police agencies today. The other traditional uniform was that typical of California sheriff deputies, consisting of a khaki shirt and dark green pants. Although both uniforms ranked similarly as good, honest, helpful, and competent, the lighter colored sheriff uniform rated noticeably higher for warmth and friendliness. This finding is significant since the she-tiff uniform only has a light colored shirt, with the pants still being very dark. It would appear that a uniform which is only half dark sends a better message that the all blue/black uniform.

With today"s focus on community-oriented policing and efforts to present a more friendly image to the public, the color of the police officer"s uniform might be making the task more difficult than necessary. Because of the citizen"s negative psychological perception of dark colors, he or she may perceive a police officer in a negative manner partly because of the officer"s uniform color. If referees believe they are seeing more aggressive behavior from athletes wearing black, it may be assumed that citizens will perceive officers in black uniforms as more aggressive than if they were wearing lighter colored uniforms.

Officer Safety Concerns

The police uniform may also influence the safety level of the officer who wears it. As has already been mentioned, dark colored uniforms may promote subconscious negative feelings from citizens. These negative feelings may encourage some citizens to consider violent action when confronted by the police because the citizen perceives the officer as aggressive.

In addition to the color, the condition of a police officer"s uniform and equipment can also have an impact on the officer"s safety. Interviews with prison inmates who have murdered police officers indicate that the killers often visually "sized-up" the officer before deciding to use violence. If the officer looked or acted "unprofessional" in the assailant"s eyes, then the assailant felt that he was capable of successfully resisting the officer. A dirty or wrinkled uniform, or a badly worn duty belt may convey a message to a suspect that the officer has a complacent attitude about his or her job. This complacency can be an invitation to violence.

In many situations involving the use of force, the fact that a police officer has a distinguishable uniform can help prevent the officer"s injury or death. An officer in plain clothes is at risk of being harmed by citizens and other officers as a result of misidentification. Almost any police officer would immediately draw his or her weapon on a person who is wearing jeans, a T-shirt, and is carrying a gun in his or her hand. A plain clothes officer who is chasing a burglary suspect through backyards at night is at risk of being shot by a home owner who believes the officer to be a criminal. The uniform helps both citizens and fellow police officers identify the wearer as having a legitimate purpose for trespassing, using force, or carrying a weapon.

Summary

The uniform of a police officer conveys the power and authority of the person wearing it. Clothing, including the police uniform, has been found to have a powerful psychological impact on those who view it. When humans contact other humans they subconsciously search for clues about the other person so that they can understand the context of the encounter. The police uniform is a powerful clue as to the wearer"s authority, capabilities, and status.

Research has revealed that the uniform has a subconscious psychological influence on people, based on the person"s preconceived feelings about police officers. When a person wears the police uniform, citizens tend to be more cooperative with his or her requests. People also tend to curb their illegal or deviant behaviors when a police uniform is visible in the area.

Research has revealed that alterations to the traditional, paramilitary police uniform can result in changes in perceptions by the public. The style of the clothes, the type of hat worn, the color of the material, and even the

condition of the clothes and equipment have an influence on how citizens perceive the officer. For these reasons police administrators need to take their uniform policies seriously. The selection of a uniform style, regulations on the proper wear of the uniform, how well uniforms are maintained, and policies on when officers may wear plain clothes should all be taken very seriously. The police uniform should be considered an important tool for every patrol officer.

Back to previous page

PoliceOne.com News

Click to Print

03/04/2005

The psychological influence of the police uniform

By Richard R. Johnson, M.S.

Introduction

Most people can identify a police officer by the official police uniform. When citizens on a busy street are in need of help, they scan the crowds of pedestrians looking for the distinctive uniform of a police officer. Drivers who come to an intersection occupied by a person in a police uniform usually willingly submit to that person"s hand directions. Criminals usually curb their unlawful behavior when they spot a uniformed police officer in the area. Many parents teach their children to respect and trust a person in the police uniform. Police academy recruits relish the day when they may finally wear their official police uniforms. What is so special about a uniform which is often made of cheap polyester and is usually hot and uncomfortable to wear?

The crisp uniform of the police officer conveys power and authority. When a police officer puts on his or her uniform the officer is perceived in a very different way by the public. He or she is viewed as embodying each person"s stereotypes about all police officers. Research has suggested that clothing has a powerful impact on bow people are perceived, and this goes for the police officer as well. The uniform of a police officer has been found to have a profound psychological impact on those who view it. Research has also suggested that even slight alterations to the style of the uniform will change how citizens will perceive the officer.

The police uniform is a tradition as old as the field of law enforcement itself In 1829 the first modem police force, the London Metropolitan Police, developed the first standard police apparel. These first police officers, the famous "Bobbies" of London, were issued a dark blue, paramilitary-style uniform.. The color blue was chosen to distinguish the police from the British military who wore red and white uniforms at the time. The first official police force in the United States was established in the city of New York in 1845. Based on the London police, the New York City Police Department adopted the dark blue uniform in 1853, Other cities, such as Philadelphia, Boston, Cincinnati, Cleveland, Buffalo, and Detroit quickly followed suit by establishing police departments based on the London model, including the adoption of the dark blue, paramilitary-style uniform.

To this day, the majority of police uniforms in. the United States continue to have a paramilitary appearance and are generally of a dark color. Darker colors may have been preferred for their case in cleaning and their ability to help conceal the wearer in tactical situations. Dark colors help cover up stains and keep the officer from being easily spotted by lawbreakers, especially at night. However, why do most police agencies insist on dressing patrol officers in uniforms? Is this simply because of tradition? Is it only for the ease of identification by citizens? Maybe it is because the uniform actually psychologically influences how officers are perceived by the public.

The Social Significance of Clothing

When a person encounters a stranger, the person seeks clues from the stranger"s appearance which can reveal things about the stranger. One powerful clue to a person"s background is clothing. Clothing serves as a mental shortcut to identifying a persons sex, status, group membership, legitimacy, authority, and occupation. Clothing and physical appearance are very important in the initial development of social relationships. Studies have revealed that physical appearance, including clothing, is the factor most often used in developing a first impression of someone. Clothing has been found to have an even greater effect on making first impressions

than does personality.

In early social interactions, clothing has a significant psychological influence on people"s perceptions. Personnel administrators who were asked to rate the competency of similar female job applicants consistently rated the women in conservative, slightly-masculine attire as the most competent. In another study, both high school students and teachers were asked to rate, pictures of female athletes, some of whom were in uniform and the others in casual street clothes, All of the athletes were perceived as being more professional, possessing higher ability, and having more team spirit when viewed in uniform. Both students and teachers, have also rated photos of students in private school-type uniforms as having higher scholastic ability.

The uniform worn by a police officer also elicits stereotypes about that human being"s status, authority, attitudes, and motivations, The police uniform serves to identify a person as one vested with the powers of the state to arrest and use force. The uniform also serves to establish order and conformity within the ranks of those who wear it by suppressing individuality. The psychological and physical impact of the police uniform should not be underestimated. Depending on the background of the citizen, the police uniform can elicit emotions ranging from pride and respect, to fear and anger.

The Power of the Police Uniform

Research has supported these suggestions about the police uniform"s power and authority. In one study people who were asked to rank order 25 different occupational uniforms by several categories of feelings. The test subjects consistently ranked the police uniform as the one most likely to induce feelings of safety. In another experiment, models were consistently rated as more competent, reliable, intelligent, and helpful when pictured in a police uniform than they were in casual street clothes. Drivers were also found to commit far fewer turn violations at an intersection if a person wearing a police-style uniform was standing on the sidewalk near the corner. This occurred even though the uniform was not that of a real police department in the area and had no badge or weapons. One interesting experiment to test the power of the police uniform was conducted by psychologist Dr. Leonard Bickman. Pedestrians on a city street were approached at random and ordered by a research assistant to either pick tip a paper bag, give a dime to another person, or step back from a bus stop. The research assistant was alternately dressed in casual street clothes, a milkman uniform, or a grey, police-style uniform bearing a badge but lacking weapons. Only the police-style uniform resulted in a high rate of cooperation from citizens. Obedience to the police-style uniform usually continued even after the research assistant quickly walked away and did not watch to ensure compliance.

Changes in the Uniform Style

Although the police uniform, in general suggests the authority of the wearer, details about a police officer"s uniform, such as the style of hat or the tailoring, can influence the level of authority emanating from the officer, Photographs of uniformed male and female police officers were evaluated wearing nine different styles of head gear, including no hat at all. Even though psychological tests showed that the officers were perceived to have authority under all of the circumstances, the type of hat varied the level of authority attributed to the officer. The traditional "bus driver" garrison cap and the "smoky bear" campaign hat were found to convey more authority than the baseball cap or no hat at all. Many studies have looked at the influence of eliminating the paramilitary style of the police uniform. In one experiment students viewed black and white drawings of three styles of police uniforms. Two of the uniforms were of a traditional paramilitary-style, but were lacking a duty belt or weapons. The third, nontraditional uniform involved a sport coat blazer over slacks, and a shirt with a tie. Although all three uniforms were rated similarly for objectivity and trustworthiness, the blazer style uniform rated slightly higher for professionalism, However a similar experiment using color photos found the traditional, paramilitary style uniforms rated as more honest, good, helpful, and competent than the blazer uniform.

In 1969, the police in Menlo Park, California dispensed with their traditional navy blue, paramilitary-style uniforms and adopted a nontraditional uniform in hopes of improving police community relations. The new, nontraditional uniform consisted of a forest green sport coat blazer worn over black slacks, a white shirt, and a black tie. The officer"s badge was displayed on the blazer and the officer"s weapons were concealed under the coat. Once word spread about Menlo Park"s attempts, over 400 other police department in the United States also experimented with a blazer style uniform.

After wearing the new uniforms for 18 months the Menlo Park police officers displayed fewer authoritarian

characteristics on psychological tests when compared to officers in the surrounding jurisdictions. Also for that first one-and-one-half years with the new uniforms, assaults on the Menlo Park police decreased by 30% and injuries to civilians by the police dropped 50%. These changes were originally thought to have been a result of the uniform changes but there were other factors at work at die same time. The number of college educated officers in the department increased dramatically and the traditional autocratic management style of the department was abolished during this same time period.

In 1977, after wearing the blazer style uniform for 8 years, the Menlo Park Police Department realized that the sport coat uniform did not command respect and returned to a traditional, paramilitary-style uniform. A final evaluation showed that although assaults on officers had dropped during the first 18 month of wearing the new uniforms, the number of assaults steadily began to rise again until the rate was double that of the year before the uniform change occurred. During the four years after the Menlo Park police returned to a traditional style uniform the number of assaults against their officers dropped steadily. The experiments with the hats and the style of the police uniform suggest that changes in the style of a police uniform can have an effect on the perceived authority, power, and ability to control. What about the color of the police uniform? Does the color of the uniform psychologically influence the people who view it? Does the color have an influence on the officer who is wearing the uniform?

The Influences of Color

The majority of police uniforms in the United States today are produced in darker colors such as black, blue, brown, green, and grey. Just as with the style of the police uniform, the color of the police uniform has meaning. Psychological tests have found that people associate colors with specific moods. For example, red is generally associated with excitement and stimulation, thus explaining why it is often a color in flashing emergency vehicle lights. These tests have also found that the color blue is associated with feelings of security and comfort, and black is most often associated with power and strength. Studies of both high school and college students in the United States have found that students perceived light colors such as white and yellow as weak, but also good and active, The same students perceived dark colors such as black and brown as strong and passive, but also as bad. These results were not based on cultural influences because they did not vary with the race of the students.

Even people in Europe, Western Asia, Central Africa, and the Middle East had similar perceptions of colors. Across all cultures that have been studied, light colors are consistently associated with goodness and weakness, while dark colors are consistently perceived as strong but evil. On psychological inventories, test subjects rate lighter colors as more pleasant and less dominant. Dark colors on the other hand elicit emotions of anger, hostility, dominance, and aggression.

Color has a considerable impact on clothing and perceptions of the wearer. Clothing color was found as the most common determinant when people rated pictures of models for attractiveness. Job applicants wearing dark business suits were perceived as more powerful and competent than those who wore lighter suits. Another interesting study found that referees who viewed several videotaped plays of a football game were more likely to assess stiffer penalties against a football team wearing a black uniform than a team wearing a brightly colored uniform. The referees consistently perceived the team in black as more aggressive. This experiment was supported by an analysis of all professional football and hockey teams in the U.S. which found that teams who wore dark colored uniforms were assessed far mom penalties for roughness than teams who wore lighter uniforms. Again these results suggest that teams in darker uniforms were perceived negatively by the referees.

Experiments have also suggested that athletes tend to act more aggressively when dressed in dark colors. College students were dressed in black jerseys and grouped into teams of five. They were then asked to rank order which sports they would most like to play. The students consistently ranked the most aggressive sports, such as football and rugby, at the top of the list. The experiment was then repeated with a new group of students and white jerseys. This time the students selected less aggressive sports, such as baseball or basketball.

If the results of these studies in color were applied to the police uniform, it would seem to suggest that darker police uniforms may be sending negative subconscious signals to citizens. A dark police uniform may be subconsciously encouraging citizens to perceive officers as aggressive evil, or corrupt. If this is true, the

proliferation of blue-black police uniforms is sending a very negative message to the community. The experiment with the colored jerseys also suggests that police officers in dark uniforms may be subconsciously influenced to act more aggressively. If this is true, police uniform colors need to be modified across the nation.

In one experiment test subjects were presented with color photos of two traditional paramilitary-style uniforms. One of the uniforms, consisted of the dark navy blue shirt and pants that is so commonly worn by municipal police agencies today. The other traditional uniform was that typical of California sheriff deputies, consisting of a khaki shirt and dark green pants. Although both uniforms ranked similarly as good, honest, helpful, and competent, the lighter colored sheriff uniform rated noticeably higher for warmth and friendliness. This finding is significant since the she-tiff uniform only has a light colored shirt, with the pants still being very dark. It would appear that a uniform which is only half dark sends a better message that the all blue/black uniform.

With today"s focus on community-oriented policing and efforts to present a more friendly image to the public, the color of the police officer"s uniform might be making the task more difficult than necessary. Because of the citizen"s negative psychological perception of dark colors, he or she may perceive a police officer in a negative manner partly because of the officer"s uniform color. If referees believe they are seeing more aggressive behavior from athletes wearing black, it may be assumed that citizens will perceive officers in black uniforms as more aggressive than if they were wearing lighter colored uniforms.

Officer Safety Concerns

The police uniform may also influence the safety level of the officer who wears it. As has already been mentioned, dark colored uniforms may promote subconscious negative feelings from citizens. These negative feelings may encourage some citizens to consider violent action when confronted by the police because the citizen perceives the officer as aggressive.

In addition to the color, the condition of a police officer"s uniform and equipment can also have an impact on the officer"s safety. Interviews with prison inmates who have murdered police officers indicate that the killers often visually "sized-up" the officer before deciding to use violence. If the officer looked or acted "unprofessional" in the assailant"s eyes, then the assailant felt that he was capable of successfully resisting the officer. A dirty or wrinkled uniform, or a badly worn duty belt may convey a message to a suspect that the officer has a complacent attitude about his or her job. This complacency can be an invitation to violence.

In many situations involving the use of force, the fact that a police officer has a distinguishable uniform can help prevent the officer"s injury or death. An officer in plain clothes is at risk of being harmed by citizens and other officers as a result of misidentification. Almost any police officer would immediately draw his or her weapon on a person who is wearing jeans, a T-shirt, and is carrying a gun in his or her hand. A plain clothes officer who is chasing a burglary suspect through backyards at night is at risk of being shot by a home owner who believes the officer to be a criminal. The uniform helps both citizens and fellow police officers identify the wearer as having a legitimate purpose for trespassing, using force, or carrying a weapon.

Summary

The uniform of a police officer conveys the power and authority of the person wearing it. Clothing, including the police uniform, has been found to have a powerful psychological impact on those who view it. When humans contact other humans they subconsciously search for clues about the other person so that they can understand the context of the encounter. The police uniform is a powerful clue as to the wearer"s authority, capabilities, and status.

Research has revealed that the uniform has a subconscious psychological influence on people, based on the person"s preconceived feelings about police officers. When a person wears the police uniform, citizens tend to be more cooperative with his or her requests. People also tend to curb their illegal or deviant behaviors when a police uniform is visible in the area.

Research has revealed that alterations to the traditional, paramilitary police uniform can result in changes in perceptions by the public. The style of the clothes, the type of hat worn, the color of the material, and even the condition of the clothes and equipment have an influence on how citizens perceive the officer. For these reasons police administrators need to take their uniform policies seriously. The selection of a uniform style, regulations on the proper wear of the uniform, how well uniforms are maintained, and policies on when officers

may wear plain clothes should all be taken very seriously. The police uniform should be considered an important tool for every patrol officer.

Back to previous page

The Psychological Influence of the Police Uniform
March 2005
Police One News
FBI Law Enforcement Bulletin

Excerpts:

- Speaks of the fact most people can identify the police via their official police uniform.
- Criminals usually curb their unlawful behavior when they spot a uniformed police officer.
- Research suggests even slight alterations (like covering it up) to the uniform will change how citizens will perceive the officer.
- The police uniform serves to identify a person as one vested with the powers of the state to arrest and use force.
- Research supports the fact the police uniform is the one uniform most likely to include feelings of safety.
- In many situations involving the use of force, the fact that a police officer has a distinguishable uniform can help prevent the officer's injury or death.
- An officer in plain clothes is at risk by being harmed by citizens as a result of misidentification.
- Almost any officer would immediately draw his or her firearm on a person who is wearing jeans, a t-shirt and carrying a gun in their hands.
- A plain clothes officer who is chasing a suspect through backyards at night is at risk of being shot by a homeowner who believes the officer to be a criminal
- The uniform helps both citizens and fellow police officers identify the wearer as having legitimate purpose for trespassing, using force, or carrying a weapon.
- The police uniform is a powerful clue as to the wearer's authority, capabilities, and status.
- The selections of a uniform style, regulations on the proper wear of the uniform, how well the uniforms are maintained and policies on when officers may wear plain clothes should all be taken very seriously.

POLICE the Law Enforcement Magazine
July 2009
Plainclothes Survival

Excerpts:

- When you are in plain clothes, you face certain potential dangers that uniform officers easily avoid.
- First, you can be easily misidentified
- Identify yourself when you can safely do so before taking enforcement action.
- When you aren't properly identified, you increase the risk that someone will mistakenly shoot you thinking you're an armed criminal.

- There are other suspects who wouldn't intentionally shoot a police officer but would shoot someone they think is a criminal.
- Many criminals who resist arrest or shoot plainclothes officers often claim that they didn't know that the people they shot were police officers.
- A lawfully armed citizen might shoot you, thinking you're a burglar or street robber.
- When you remain unidentified, the people you deal with-whether armed or not-may try to run or resist you, which can be dangerous for you and them.
- Show you're badge, ID or credentials.
- It's far safer for each plain clothes officer to search together with a uniformed officer.

Law and Order
The Need for High Visibility Apparel

Excerpts:

- 2003 FBI Law Enforcement Officers Killed and Assaulted report shows how many officers were killed as a result of being struck by motor vehicles.
- While this report focuses on reflective uniforms and vests for nighttime traffic enforcement issues, it also mentions documented issues with failing eyesight in low light and nighttime hours.
- Uniforms are for officers to stand out in a crowd so that they can serve as a deterrent to crime.
- The article speaks of the large metal badge with 'shiny mirror like angles' which can direct light in many directions. Badges are reflective in some instances and the article recommends using cloth sewn on badges for a more subdued look.

OPTAC International
2002
Why Are We Killing Ourselves: A look at accidental shootings of police officers by police officers.

This article is primarily for SWAT team operators and firearms instructors but lists cases where officers were shot by other officers including one instance where an officer was killed by another during the execution of a search warrant. The officer who was killed was conducting surveillance when the briefing was taking place and rendered aid with his handgun drawn during the execution of the warrant. He was not wearing any visible police identification.

- Even during entries into buildings with trained officers preparing for an assault or resistance, the necessity of police identifiable attire is recommended. They do not recommend hiding or covering up insignia or the like to conduct high risk entries.
- All officers, except snipers, who deploy on a tactical operation, will have law enforcement identification clearly visible on their outer garments.

FBI Law Enforcement Bulletin
March 2002
Escape from the Killing Zone

Excerpts:

- Officers often exhibit a tendency to rush into what can be described as the killing zone.
- Officers should concentrate their efforts not simply on apprehending the violator but safely apprehending the violator.
- If officers receive practical and realistic training, they will run less risk of being surprised and easily taken advantage of.
- Tactical considerations include:
    - Use of verbal commands
    - Officers should use verbal commands to test the suspect's compliance
    - Create distance
        - Distance gives officers increased time to react to offenders' actions thereby enhancing officer safety.
        - Officers should wait outside the killing zone, retreat and seek cover until adequate assistance arrives on scene.
        - Although they may not have tactical hardware available, officers must engage a tactical mentality at all times.
        - Should they deploy current resources? Or should they continue to approach into the killing zone? Or create distance?

Commission on Accreditation for Law Enforcement Agencies (CALEA)
Standards which are best practices in law enforcement whether the agency in question is accredited, or not.

- **43.1.5 The agency has written procedures for conducting, or participating in, surveillance, undercover, decoy and raid operations.**
    - The raid operation can be equated to high risk entry which the officers may have been planning.
- **41.3.4 A written directive designates the specifications for all authorized personal equipment and apparel not issued by the agency to be worn by uniformed personnel.**
    - The agency should determine the specifications and authorize all personal equipment and apparel, not issued by the agency, used/worn by the uniformed personnel to ensure uniformity and prevent use of unauthorized or substandard items.
- **22.2.7 The agency has a written directive concerning personnel identification that includes provisions for:**
    - b. providing official agency identification with at least the personnel's photograph
    - The intent of the standard is to ensure the public can identify law enforcement officers and be certain that the person they are dealing with is

in fact an officer. This should enhance the officer's ability to perform their duties, promote confidence in the public and make officers more accountable for their actions.

The Need For High Visibility Apparel
Written by Kirby Beck
This Article was Originally Published in Law and Order Magazine, October 2005
Improving LE uniforms will require "thinking out of the box" and examining our views about uniforms. After all, what is the purpose of a uniform? They are supposed to both identify and protect the wearer. Few of our current uniforms truly meet these criteria at night.
http://www.hendonpub.com/resources/articlearchive/details.aspx?ID=28

Who's in the House?
May, 2005
By Rudy from Flagstaff, Arizona PD

You arrive at the residence to where you were dispatched and are greeted by the lady of the house out front. She called because when she got home, she heard something upstairs. She is very scared and believes that a burglar may be in her home.

Before beginning your search of the house, take inventory. Who lives with her? Is it possible that her husband or one of her grown children came home unexpectedly early? When she was in the house, did she notice anything out of order? From the outside, can you see any signs of forced entry? How about this...are there any weapons in the house?

Here's a scenario. It is her husband who came home early. He is upstairs moving some things around when he hears someone coming up the stairs. That someone is you and your partner moving as quietly as possible, but the husband doesn't know this. The husband thinks that his wife is not due home until later and now he suspects a burglar. He grabs his lawfully owned revolver from his safe and waits. It is a recipe for disaster.

Perhaps when faced with the situation of the husband possibly being home, announcing "Police!" in a loud command voice would be in order. The husband would probably respond to the commands and not retrieve his gun. If there is no response, consider calling a K-9 unit if available to conduct the search.
http://www.njlawman.com/Police%20Tactics/General.htm

Retreat is an Option
December, 2004
By NJLawman.com

In law enforcement, we are not taking the hill that will change the war. In almost every situation when contemplating a course of action, retreat should be among the choices being considered.

We're not saying to retreat every time a situation goes bad. However, when retreat is available and death or serious injury are facing you, retreat is a perfectly acceptable decision.

In fact, before committing to any situation, a retreat route should be considered. For example, you respond to a call of a verbal dispute at a residence. As you approach the steps to the porch, you should be looking for a safe exit route should someone answer the door holding a shotgun.

Or, if working in a prison mess hall surrounded by society's finest, you should be asking your self "what is my way out if a a major disturbance erupts."

We all plan in our heads when responding to situations. Planning a quick exit should be part of this process.
http://www.njlawman.com/Police%20Tactics/General.htm

Where is Cover?
December, 2004
By NJLawman.com

When handling any encounter-type call, you want to always be aware of your closest cover. When initially arriving at a situation, you should get in the habit of looking for cover in case it is needed.

And remember, there is a difference between cover and concealment.
http://www.njlawman.com/Police%20Tactics/General.htm

US DOJ FBI March 2002 Law Enforcement Bulletin

Escape from the Killing Zone

CASE ANALYSIS
Although it remains both easy and frequently unfair to judge law enforcement officers' actions, constructively reviewing such incidents can assist in preventing future injuries and deaths. In the case study, what did the officers do right? Could they have done something differently? Does it appear that the officers made certain assumptions about the nature of the call for service, the suspect, or each other's actions? How did these assumptions affect their decisions to act? What plan or approach did the officers exhibit? How did the officers communicate with each
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

Create Distance
Sometimes officers should create distance between themselves and offenders, rather than moving closer. Has training taught officers to consider creating distance between themselves and the offender? Distance gives the officer increased time to react to offenders' actions, thereby enhancing officer safety.
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

Contain, Not Apprehend
Circumstances may occur when officers should contain the offender in an area, rather than rush in to apprehend. For example, an offender flees into an abandoned building with exits that the officer can view safely from the outside. If backup units are en route, the officer may want to remain outside the building until these other officers arrive on the scene.
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

Although they may not have tactical hardware available, officers must engage a tactical mentality at all times.
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

Should they deploy current resources? Or, should they wait, contain the threat, and approach with backup? Should they continue to approach into the killing zone...Or, should they create some distance until the suspect complies with verbal orders?... By considering how they will respond to these types of situations before they face an actual threat, officers can improve their chances of avoiding the killing zone and still bring the offender to justice.
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

CONCLUSION
Because the law enforcement profession constitutes an inherently dangerous occupation, its members must explore ways of curbing the hazards. Regular and realistic training, both at the academy and during in-services, can sharpen the skills officers need to safely effect arrests. Practical, hands-on training can encourage officers to rehearse various situations that they may encounter and experiment with different strategies that they can employ to react to them. Training should include "what if" situations and require officers to offer a number of possible solutions....Officers must learn how to escape from the killing zone and, equally important, know when to avoid entering it in the first place.
http://www.fairfaxcounty.gov/sheriff/academy/officersafety/escape-from-killing-zone.pdf

Why Are We Killing Ourselves:
A look at accidental shootings of police officers by police officers

Written by Stuart A. Meyers
Copyright © 2002
Revised 2005

All officers except snipers, who deploy on a tactical operation will have law enforcement identification clearly visible on their outer garments. This identification will consist of any two of the following items: badge, patch, raid jacket with POLICE or SHERIFF'S DEPARTMENT printed in the front and back, or any item readily identifiable by all department members and citizens.
http://www.optacinternational.com/officersafety/pdfs/WhyAreWeKillingOurselves.pdf

OPTAC INTERNATIONAL

creating knowledge™

Why Are We Killing Ourselves: A look at accidental shootings of police officers by police officers

Written by Stuart A. Meyers
Copyright © 2002
Revised 2005

Accidental shootings occur in law enforcement training and real-life situations at an alarming frequency. There is a direct correlation between training standards, safety protocol and operational performance. Recent deaths of police officers at the hands fellow police officers prompted the author to investigate the prevalence of this situation. The results of this investigation are not only disturbing, but shocking and elicit the following questions:

Why are we killing ourselves?

How do we ensure safe and effective training?

Prior to answering these questions, an understanding of the dilemma we face must be achieved. First the obvious, law enforcement officers carry firearms and handle them on a regular basis. SWAT officers and range personnel are even more prone to accidental discharges because of the sheer frequency that results from their weapons handling, training and operational requirements.

What is even more disturbing than the pervasiveness of improper firearms safety, is the fact that most law enforcement training is devoid of safety standards and is unrelated to operational requirements. All law enforcement training must be conducted with established safety guidelines and be a realistic portrayal of operational requirements. In addition, training should be designed to prepare and test officers in their individual and in the case of SWAT officers, team responsibilities.

A properly designed and implemented training program will enhance the opportunity to achieve the successful realization of operational objectives, to include officer safety issues. By implementing and practicing safety standards and protocol in training, a basis for operational safety can be created. A lack of safety standards or their subsequent enforcement can result in death or serious injury. While the author understands that "accidents" can occur, we need to eliminate or at the very least, minimize their severity.

This article is primarily directed toward firearms instructors and Special Weapons and Tactics team operators, team leaders and commanders. However, there is also a direct application for any law enforcement officer who carries a firearm and administrators with fiscal responsibilities.

The following incidents are described using the states of their occurrence and are only a few examples of police officers shooting themselves or other police officers, all resulting in death or serious injury.

- A Rhode Island police captain was shot in the head and killed by a sniper during a training exercise. The captain had conducted a scenario earlier in the day where the sniper deployed in an observation role, only with binoculars. During a break, the sniper asked and received permission to retrieve his rifle from his police department locker. When the sniper returned, he deployed to his final operational position on top of a bus for the next scenario. The scenario had not yet started and the captain was seated in another bus that was to be the target location. The sniper decided to check his view of the target location. His magazine was removed from the rifle when he attempted to "dry fire" after sighting-in the captain seated on the bus. Although it has not been confirmed, it is believed that the round in the chamber had been left there from a previous training session and the chamber had not been checked. The captain, described as a weapons safety

devotee, was killed instantly when the round penetrated his skull. The sniper was indicted on a charge of involuntary manslaughter by the grand jury and plead no contest.

- An Alberta, Canada SWAT officer was shot and killed by a fellow SWAT officer during a hostage rescue training exercise. Members of two different groups from the same SWAT team were practicing room-clearing techniques for hostage rescue operations. One of the officers was assigned to research and development of cameras and fiber optic systems. A short break was taken for this officer to retrieve the system from his vehicle parked in a public parking lot. Per department policy, he reloaded his handgun prior to entering a public area. Upon his return, he hurriedly set up the camera system because team members at another location were awaiting the officers participating in this training to arrive at their location for additional training. After set-up was complete, the same officer was assigned as an assaulter on the entry team for the next scenario. He unloaded the magazine from his handgun, but was interrupted and did not remove the bullet from the chamber. When entry was made during the scenario, he fired one shot at another SWAT officer playing the role of a hostage taker, striking him in the neck. The round exited through his face, killing him in the arms of another SWAT officer. This was to have been a dry weapon exercise. It was commented by fellow team members, "Losing three officers going through the door [on an operation] would not be as bad a losing one officer this way."

- A Maryland SWAT officer was shot with a shotgun during a room clearing exercise at a police department SWAT school. The pellets struck his upper shoulder and arm, after ricocheting off his body armor, causing the permanent incapacitation of his arm. Several officers were also struck with pellets and sustained non-life-threatening injuries. Blanks and fireworks were to be used during the exercise. Officers had been attending the SWAT school from multiple jurisdictions. The officer who fired the shot, arrived late for the training and bypassed all safety checks. He fired the weapon down a hall during an entry team scenario. The officer thought shotgun was still unloaded from a training session conducted the previous evening. After this incident, the Commander of the Maryland SWAT team banned ***all*** SWAT training, except for qualifications, for several years. His intent was to prevent future accidental shootings from occurring under similar situations. As a result of this incident, the officer who was shot retired on a medical disability. The SWAT Commander retired on a stress related medical disability and the officer who fired the shot, retired on a psychological disability.

- A Maryland SWAT officer was shot in the back of the head and killed by a fellow SWAT officer while executing a narcotics search warrant on a residence. The officers had been briefed that automatic weapons may be present in the house. The officer killed was the pointman on his tactical team and approached the house on his hands and knees to place the hydraulic breaching tool in the door. As the hydraulic "rabbit" tool expanded, it caused the door to emit a loud cracking noise sounding like gunfire. Two members of the entry team behind the officer believed the team was under fire and discharged their weapons. At the same time, the officer who had just inserted the rabbit tool, started to stand and was struck and killed by the gunfire from one of the team members behind him.

- An Oregon SWAT officer was shot in the head and killed during a tactical training exercise. The SWAT officer and his teammates were training in a building where only simulated ammunition was to be used. A team member retrieved a magazine thought to be unloaded, from the SWAT truck. This occurred during a lunch break and a safety check was not conducted when the officer with the magazine returned to the scene. The .223 weapon was fired from a position on the parameter of the operation, killing the officer who was playing the role of a suspect. An investigation by the Sheriff's Department Review Board found, "The SWAT team failed to have policy and standard operating procedures in place for safety issues dealing with training requiring live weapons." As a result of this incident the SWAT team was disbanded and only recently has been restructured.

- An Oregon SWAT sergeant was shot in the chest by a SWAT sniper during a tactical operation. Team members were searching for the suspect accused of wounding a relative. The incident occurred on a cold, foggy evening where the police helicopter could not break through the fog to view the terrain. One person was wounded inside the house. The suspect had last been observed at the rear of his house, in brush area on his 10 acre property. The SWAT officers did not know that there was pile of brush that had been burning earlier in the day, located in the same area. The sniper and observer set up in their final operational position

on the 2-3 corner of the residence, approximately 70-80 yards away from where the suspect had last been seen. The sniper observed what was later described as an "ember in the brush pile" giving the appearance of a person smoking a cigarette. The observer's radio was not working throughout the operation causing the sniper to handle radio transmission responsibilities. The sniper was in position with his .308 rifle and 4.5 x 14-power scope with an illuminated reticle. The observer had a .223 rifle with 1.5-power mildot scope. A perimeter was established by SWAT team members. Ten minutes prior to deployment the sniper and observer were advised the suspect was 15 yards off of Side 3, at the brush/burn pile. The entry team had been positioned at the 1-2 corner staged to enter the residence when the sergeant who was the entry team leader, split the entry team without advising the rest of SWAT team via the radio. Three officers now moved to the 2-3 corner, while four officers moved to Side 4 of the house. Due to the fog and brush, the entry team members were not observed by the sniper/observer team during their movement. Normally, changes of plan are communicated to all team members. The SWAT Commander also communicates tactical team movement and sniper team coverage responsibilities. However, it is unknown why this procedure was not followed or why there was a lack of communication. The sergeant moved to a position approximately 15 yards from the 3-4 corner. The sniper was convinced the burn pile had the image of a person and observed what appeared to be the clear outline of a person. The observer stated the image seen looked like the suspect. Due to the angle of the sniper/observer team position, the sergeant was about 10 yards to the left of the pile. In previous tactical team training and on operations, team members never move alone. The figure observed had what appeared to be a rifle being held in a firing position up in his shoulder. Tactical team members usually keep their weapons in the low-ready position while moving, unless they encounter a target. The sniper observed an individual scanning the area with his weapon up and ready to fire. The individual under observation then stopped like he had acquired a target in the area where team members had been positioned. The sniper fired his rifle to protect other team members staged in the direction where the muzzle of the individual's weapon was pointed. There was no doubt in the sniper's mind that the person he shot had a weapon and had picked up a target to engage. The weapon being held appeared to be a rifle matching the information previously provided to tactical officers at the briefing. The sergeant who was shot with a .308 round by the sniper was actually holding an MP-5 sub-machine gun. The round penetrated the sergeant's vest and entered the left side of his chest. He is expected to recover from his injuries and has left the SWAT team.

- A North Carolina Deputy Sheriff unaware that a military training exercise was being conducted, shot and killed a Special Forces lieutenant and wounded another soldier. The deputy stopped what he thought was a suspicious vehicle driven by a local man. The soldiers riding in the truck were dressed in civilian clothes, carrying a disassembled M-4 rifle in a duffel bag. When one of the three men in the truck came at the deputy, he used pepper spray, then opened fire, killing the lieutenant and wounding the other soldier. The soldiers thought the deputy was role-playing and intentionally resisted arrest. The deputy believing his life was in imminent danger of serious injury or death, shot the soldiers. Military personnel did not notify Sheriff's department officials of the training exercise, because no one thought they would be involved. As a result of this incident, military officials announced changes in training scenario procedure to include the elimination of role-playing with civilian law enforcement agencies and requiring soldiers to remain in uniform.

- A Texas SWAT sergeant was accidentally shot and killed by a fellow SWAT team member during a barricade situation. The sergeant and other SWAT team members entered a home during a standoff with a suicidal man thought to have several weapons. Officers initially responded to the residence for a domestic dispute involving the man and his wife. After the wife left the home, the man dragged several pieces of furniture into the yard, doused them with gasoline, and then set them on fire. When officers arrived on the scene, the man was barricaded inside of the house. Several hours later, officers began clearing the windows in the house by knocking the glass out and removing any blinds obstructing the view into the home. One shot was initially fired be a member of the SWAT team, accidentally killing the SWAT sergeant. Other officers on the scene, thinking the shot was fired from the suspect inside the house, fired a total of 179 rounds. The unarmed suspect was wounded by the ensuing gunfire, but did not surrender until additional tear gas was fired into the home. The jurisdiction involved has paid over $1,000,000 to settle lawsuits resulting from this incident. In addition, the chief of police who was out of town during the incident was fired from his job due to political repercussions.

- A Texas police corporal was shot by a fellow instructor in the head during active-shooter response training at a local junior high school. All of the officers involved were wearing helmets and vests and were not supposed to have live ammunition. After a lunch break, the corporal and another instructor were demonstrating a drill to other officers when the instructor's weapon discharged, striking the corporal in the head with a live round. The instructor had pulled his own loaded 9mm semiautomatic handgun from his holster which he reloaded when he went to lunch. However, the weapon was not unloaded again when he returned to the training, causing this fatality.
- A Texas police officer was accidentally shot and killed by a fellow officer while serving a search warrant. Members of the narcotics team were executing the search warrant in a residence with multiple connecting doorways and rooms. The officer entered the room through one doorway, but after clearing the room, appeared in another doorway. A fellow narcotics officer upon observing someone with a weapon whom he did not immediately recognized, became startled and fired his shotgun killing the officer.
- A Texas police officer was accidentally shot and killed by a fellow officer while explaining a training exercise conducted earlier in the day. The officer had returned to the police station from the training site and was demonstrating a tactical training exercise conducted earlier in the day. The officer forgot he had reloaded his weapon after the training session and became very involved in his explanation when he fired one shot, killing his fellow officer.
- A Texas police officer was shot and killed by a fellow officer during the execution of a narcotics search warrant at an apartment. The tactical team was comprised of officers from two jurisdictions who attended an operational briefing prior to deploying. The officer who was shot did not attend the briefing, because he was conducting surveillance at the scene. The officer saw the tactical team was delayed at the entry point and rushed to the door to assist with his handgun drawn. He was not wearing a raid jacket or visible police identification and was unknown to the entry team member from another jurisdiction who fired the shot. The officer was shot with an MP-5 submachine gun. A lawsuit was filed by the officer's family resulting in a multimillion-dollar award.
- A New Jersey police lieutenant accidentally shot and killed himself while cleaning his pistol. He and other officers had just completed the department's semi-annual qualification course and was cleaning his .40 caliber handgun when it discharged, striking him in the abdomen. He was transported to a local hospital where he died approximately one hour later.
- A Nebraska police officer was shot in the chest and killed by another officer during a defensive tactics training exercise. The .45 caliber handgun had been reloaded during a break in training. The officer who fired the shot was not aware it would be used later in the day.
- A Louisiana police officer was shot and killed during a training exercise at the police academy. Another officer shot the police officer in the chest during a felony car stop scenario. All weapons were to be unloaded. It is unknown why a live round was in the gun during the exercise.
- A Louisiana police lieutenant was accidentally shot and killed by a fellow officer during a drug arrest. A task force comprised of several law enforcement agencies was taking down a vehicle occupied with drug dealers. The lieutenant was attempting to control and pat down a combative suspect on the ground. Another officer covering the suspect with a handgun, applied too much pressure to the trigger and accidentally shot the lieutenant in the head.
- An Illinois police officer was accidentally shot and killed during a training accident. The officer was demonstrating a disarming technique when the officer he was working with grabbed his weapon and fired. The assisting officer was unaware that it had been reloaded. Four days later, while showing officers what happened, a captain from the same department, accidentally shot and killed himself. The captain removed the magazine from his weapon but forgot to take out the chambered round.
- A New York police sergeant was accidentally shot and killed by another officer while executing a search warrant. When gunfire began inside the residence, the sergeant was mistakenly shot and died at the scene.

- A Virginia SWAT officer was shot by a SWAT teammate during a training exercise. The round struck the officer in the abdomen, below his vest.
- A California police officer was killed when he was shot in the side during a multi-jurisdictional training exercise aboard an Amtrak train. The officers in the exercise were supposed to have unloaded weapons.
- A California police officer was shot and killed by a fellow officer during the execution of a high-risk search warrant. The officer's team was serving a warrant at a house thought to be occupied by three heavily armed drug dealers. The house was subsequently found to be unoccupied. Smoke grenades had been deployed, reducing visibility. The officer was in a room when a fellow officer mistook him for a suspect with a gun. The officer was shot with a shotgun and died 30 minutes later at a local hospital. His wife sued the SWAT supervisor, the police department, and the city. She settled with the city for **$3,500,000**. The United States Court of Appeals, Ninth Circuit held that the police department "acted with deliberate indifference to maintenance, training, and control of its SWAT teams, and that such indifference was proximate cause of sergeant's violation of officer's Fourth and Fourteenth Amendment rights, stated cause of action under 1983.U.S.C.A. Const. Amend 4, 14: 42 U.S.C.A. 1983."

These incidents are devastating for the officers, their families, and the agencies involved. Officers who were shot, officers who accidentally fired their weapons, witnesses and teammates all become victims having to live with this trauma for the rest of their lives. In addition, an occurrence of this type of incident can tarnish the hard-earned reputation of even the best law enforcement agency.

Officers and team leaders must speak-up immediately and acknowledge when breaches of safety protocol are observed. Supervisors and commanders must address these concerns to ensure injury and loss of life does not occur. The cost of proper training should not affect officer safety or operational concerns. In addition, the resulting liability from insufficient training standards will far exceed the cost of any training program.

Training Cost Factors

Budgetary constraints affect training. The number of officers requiring training, overtime considerations, the ability to attend outside agency training programs or employ outside instructors and equipment costs (targets, bullets, weapons, etc.) are all integral components of a training budget. The size of a training budget will be directly related to departmental size and operational requirements.

Fiscal conservatives oftentimes attempt to restrict the ability for officers to train properly. Administrators must consider the legal and financial consequences for failure to provide safe and effective training for their officers. The following judicial awards demonstrate the court's willingness to hold law enforcement agencies liable for failure to properly train and supervise their officers.

- A woman with a knife who approached an officer fighting with her brother was awarded $6 million for the officers' actions in shooting her eight times. The jury found that the city failed to adequately train and supervise its officers. Willingham v. Boynton Beach, U.S. Dist. Ct. Miami Fla., April 11, 1998, reported in The New York Times, National Edition, p. 16 (April 12, 1998).
- The County of Los Angeles was liable for $750,000 as a result of an off-duty deputy sheriff's accidental shooting of another bar patron during an altercation outside bar. The suit claimed the county did not adequately train deputies on securing their guns while off-duty or responding while off-duty, to challenges. Huffman v. County of Los Angeles, CV95-4071-HLH, U.S. Dist. Ct., Los Angeles, Calif, reported in LA Daily Journal, p. 2 (Oct 18, 1996).
- The County and deputy were found liable for the accidental shooting death of the deputy's partner. An award in the amount of $1 million in damages and $636,800 in attorneys' fees were issued in a case where the plaintiffs alleged the deputy received no firearms training. Carr v. Hicks, U.S. Dist. Ct., WD Tenn, No 89-3090 ML/B, Nov 9, 1993, 37 (7). ATLA L.Rptr. 257 (Sept 1994).
- The estate of man shot by officers entering trailer without announcing themselves during the execution of a search warrant received a $950,000 settlement. The suit claimed that the county failed to properly train officers in the use of their weapons. Bryant v. County of Dodge, U.S. Dist. Ct., ED Wis, No 95-C-0526, Apr 25, 1996, reported in 39 ATLA L.Rptr. No 7, p. 273 (Sept 1996).

- A jury awarded $200,000 to an arrestee for an officer's alleged use of excessive force during the arrest. The city and police chief were found liable for having a policy of inadequate training, supervision, and discipline. Hogan v. Franco, 896 F.Supp. 1313 (NDNY 1995).
- The family of a man shot and killed by officers when he lunged at them with knife received a $500,000 settlement. The city and police chief were found liable due to inadequate training and supervision of police department employees. Garcia v. City of Robinson, U.S. Dist. Ct., WD Tex, No W-93-CA-415, Sept 14, 1995, reported in 39 ATLA L. Rep.No 1, pg 15 (Feb 1996).
- The District of Columbia was liable for $425,046.67 in the shooting of an arrestee by an officer. The award was based on inadequate training in extra jurisdictional arrest authority, physical training and disarmament training. Parker v. District of Columbia, 850 F.2d 708 (DC Cir. 1988).
- Liability was imposed for failure to place a police officer that was unfit for his assignment into a non-sensitive position after numerous disciplinary reports had been brought to the attention of the supervisor. Under this theory of negligence, administrators must be aware of the capabilities and inadequacies of their employees to learn and develop these skills prior to assignment. The concept of administrative negligence had historically been directed toward excessive use of force in this area. However, the concept has been expanded to include the failure to establish, maintain and enforce standards. Liability can be incurred for negligent supervision, Moon v. Winfield, 383 F.Supp 31 (N.D. Ill. 1974).
- The plaintiff, who had been arrested by police officers, fell down several times while in custody and responded incoherently when asked if she required medical attention; no medical attention was ever provided. The plaintiff was later released from custody and taken by her family to the hospital where she was treated for several emotional ailments. She brought action against the City of Canton under 42 USCS § 1983 for violating the plaintiff's right, under the due process clause of the Federal Constitution's Fourteenth Amendment, to receive necessary medical attention while in police custody. Shift commanders responsible for making a determination if medical attention was required were not provided any special training to make such determinations. The United States Supreme Court held that failure-to-train liability is proper "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." It also held that inadequate training could serve as a basis for liability only where the failure to train amounts to deliberate indifference by policy makers of the agency. In adopting the deliberate indifference standard, the court explained that inadequate training applies when the need for more or different training is obvious and failure to implement such training is likely to result in constitutional violations. The court further noted that officers must receive ongoing training for typical and recurrent situations that face the officer. The case was remanded back to district court. City of Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed. 2d 412 (1989).
- In § 1983 action against the county, its sheriff and several deputies, the United States District Court, Western District of Washington, entered judgment on the jury verdict finding the defendants liable for damages for excessive use of force used while arresting citizens in four separate incidents. The defendants appealed the verdict. The Court of Appeals upheld the verdict and found that: (1) the sheriff was the official policy maker regarding law enforcement practices; (2) the county's failure to adequately train its deputies as to the constitutional limits of use of force was deliberate indifference to the safety of county inhabitants as matter of law for purposes of § 1983 liability; and (3) the evidence supported an award of punitive damages. The court awarded punitive damages only against the individual deputies, totaling $320,000. It awarded $528,000 in compensatory damages against all of the individual deputies and the County. The district court awarded $323,559.65 in attorneys' fees, expenses and costs to plaintiffs. The issue is not whether the officers had received any training--most of the deputies involved had some training, even if it was minimal at best--rather the issue is the adequacy of that training. Davis v. Mason County, 927 F. 2d 1473 (CA9 1991).

An understanding of department liability is critical to the development of a tactical team. Supervisors and team members need even more specialized training to properly respond to inherent dangers. The potential monetary repercussions will far exceed any investment in training.

Solutions

Once we understand that these are not isolated incidents, but a direct result of improper training, inadequate/neglected safety standards, or poor execution of operational objectives we can address solutions. Law enforcement and military agencies must develop training programs for their officers. These programs must incorporate realistic training and objectives based on operational responsibilities, expectations, and officer safety. Officers should become proficient at each level of their training before advancing. In other words, prior to conducting live-fire entry team training for the first time, start with empty weapon exercises. As proficiency and understanding of goals and objectives increase, difficulty can also increase.

The use of blank and simulated ammunition can be introduced. When officers are proficient, single person live-fire entries working toward the goal of entire team live-fire entries and room/building clearing exercises can be conducted. The ultimate SWAT exercise would consist of a live-fire sniper initiated entry with an entire SWAT team entering and clearing a building, engaging hostile targets while not engaging images of hostages and innocent people. For patrol officer training, work toward the goal of multiple officers clearing a building on a suspicious situation or active-shooter response, using live-fire when necessary.

An in-depth analysis of training concepts and protocol will be covered in a future article dedicated to the development of training programs. This critical area is often overlooked by law enforcement agencies, but is the foundation of an efficient and effective operational response.

Training Safety

In conjunction with developing a training program, safety standards and protocol must be established. The following safety standards and protocol are followed at all OpTac International, Inc. training programs and schools.

OpTac International Training Safety Standards and Protocol

- Prior to conducting any scenario or training exercise, the dispatch center of the jurisdiction where the training is to be conducted will be notified. If neighboring law enforcement jurisdictions are in close proximity or could reasonably be expected to come in contact with the training/scenario site, then their dispatch centers will be contacted as well.
- Whenever possible, "Police Training In Progress" signs will be placed on access roads at the scenario site.
- A designated safety vehicle equipped with a mobile telephone will be parked in close proximity at the training location.
- Depending upon the total number of personnel to be trained, a minimum of two people will be assigned as safety officers.
- The safety officers will have overlapping responsibilities with both being required to conduct separate weapons and ammunition checks of all participants.
- All participants are advised that they are safety officers as well. Any unsafe act must be reported immediately. Participants also have the authority to halt the training exercise to address any concerns.
- Participants are advised to keep their fingers off of the trigger unless preparing to fire and to be aware of proper target identification and backdrop.
- Participants must wear and carry all necessary operational gear with them at all times (except live ammunition unless instructed).
- Officers arriving late, or leave and later return to the training/scenario may not participate.
- If a break is taken during the training, the inspection process is conducted again in its entirety.

- Prior to the commencement of training exercises/scenarios, participants and observers line up in a safe direction and unload all weapons.
- Participants must present ALL weapons to instructors/safety officers for visual and physical inspection. Three instructors/safety officers are responsible for conducting this safety check. If there are only two designed safety officers present, then one participant will be a designated safety officer to assist in conducting this weapons check. Unless a live-fire exercise is to be conducted, live ammunition must not be present in any weapon, gear, pockets, bags, or other equipment used by the participants.
- Record serial numbers of all weapons to be used in the training session, after they have been checked for live ammunition.
- When using vehicles as part of a training exercise, they must be checked for live ammunition as well. Efforts must be made to restrict access to any area where live ammunition could be present.
- If live-fire training is to be conducted, ALL weapons are visually and physically inspected by instructors/safety officers. Instructions are given to the participants to wait for the specific command to load and fire their weapons. They are again instructed to ensure proper target identification and backdrop, prior to discharging their weapons. Prior to commencement of the exercise, all training areas must be cleared of personnel who may have inadvertently entered a danger zone. Ballistic vests and helmets must be worn at all times by participants and safety officers (except for exercises conducted exclusively for snipers).
- Officers/trainees will not be permitted to fire alone on the range (for formal training sessions only). At least one safety officer or instructor must be within view and voice contact of any officer/trainee conducting live-fire training on the range.
- If blank rounds are to be used, one round is fired to demonstrate the degree of force discharged from the weapon. Participants are instructed to ensure their weapons are not pointed directly at anyone within 20 feet.
- For stalking exercises where blank rounds are used, officers/trainees will not sight-in instructors acting as spotters/suspects down range. Targets will be posted in the area where the spotters/suspects are located for officers/trainees to sight-in and engage. Anyone observed sighting in a spotter/suspect will be removed from the training and be subject to disciplinary action.
- If simulated ammunition is to be used, a demonstration of the impact after being discharged from the weapon is conducted, prior to deployment. Participants are instructed to only fire sufficient rounds to stop the threat. Participants and safety officers must wear eye protection and have all exposed skin covered with clothing. Groin protection such as an athletic cup or thick towel must be used for males as well as females.
- For night-fire exercises, all participants and instructors must be accounted for when returning from target areas on the range. Safety officers must also check the areas and a roll call conducted to ensure no one has been left behind.
- For shoot-house exercises, all live-fire areas must be cleared of personnel, prior to the commencement of training. Observers are positioned in a designated safe location or directly behind the participants. They must have direct voice contact with the participants. Participants are instructed not to inadvertently point their weapons at teammates in front of them or to turn around with their weapons in hand. Once an area has been passed, any targets missed and subsequently observed may not be engaged.
- At the conclusion of the training day, officers will reload their duty handguns in a safe direction, prior to leaving the training site.

Safety standards and protocols must be enacted prior to conducting any training. The above recommendations are designed to promote safe weapons handling while conducting realistic training. For further information please contact OpTac International, Inc.

Operational Safety

Law enforcement officer safety should be the most important factor on any critical incident. It has been suggested in the tactical community that the lives of hostages are more important than the lives of rescuing officers. While the author recognizes the inherent risks associated with hostage rescue, he suggests that the primary concern of ANY operation should be officer safety.

If officers are killed deploying on an operation, the entire operation may be compromised. Dead or seriously injured officers are unable to rescue anyone. In order to avoid unnecessary risks, safety issues should be considered in the formulation of an operational plan. However, when developing an operational plan, an understanding of safety standards and protocol must be established.

OpTac International, Inc. Recommended Tactical Team Deployment Safety Standards and Protocols

- Whenever possible, all law enforcement personnel involved in the operation should attend the incident briefing. Exceptions to this protocol would include incidents requiring exigent deployment of officers or pre-deployment of surveillance personnel.
- Officers will be briefed and updated on team member positioning and changes throughout the incident.
- All officers except snipers, who deploy on a tactical operation will have law enforcement identification clearly visible on their outer garments. This identification will consist of any two of the following items: badge, patch, raid jacket with POLICE or SHERIFF"S DEPARTMENT printed in the front and back, or any item readily identifiable by all department members and citizens. Snipers will carry a badge and their official identification cards in a pocket or bag.
- Weapons such as shotguns that can be used to discharge less-lethal munitions will be marked to visibly differentiate them from lethal weapons. Officers deploying with less-lethal weapon systems will ensure live-ammunition is not present.
- Prior to leaving the staging or briefing area all officers will ensure their weapons are loaded, a communications check is conducted, and an incident overview has been provided.
- Prior to final deployment, officers will be instructed to take their weapons off of the safe position, to keep their fingers off of the trigger unless preparing to fire, and to be aware of proper target identification and backdrop.
- Law enforcement snipers should deploy in two-person teams.
- Once officers have relayed their perimeter position to the command post, they will advise the command post of future changes in their position.
- At the conclusion of any deployment where additional weapons were loaded, these weapons will be unloaded in a safe direction and stored per department policy.

This protocol should be incorporated into a detailed operational plan, determined by the exact circumstances and nature of each critical incident. Tactical team training, policy, tactics, available equipment, personnel and training are all factors affecting a final plan. The creation and implementation of an operational plan will enhance the ability to successfully resolve critical incidents with minimum risk to officer's lives.

In this article the author has attempted to educate the law enforcement and military community on potential training and operational hazards and provide a variety of solutions to avoid these tragedies. In interviewing

many agencies involved in training and operational accidents, the author had the opportunity to speak with commanders, SWAT team members, witnesses to shootings, and officers directly involved in the shootings. There is a deep sense of regret, embarrassment, psychological trauma and in many cases, a desire to restrict information regarding the circumstances of their occurrence for personal and legal reasons.

The information presented is for educational purposes only. It is not designed to limit training or law enforcement response procedures and options. We have an overwhelming obligation to provide educational resources and information that could save lives, in particular, the lives of brother and sister officers. If we develop the attitude that IT can't happen to us, then be assured IT will. In addition, the excuse that tactical officers are so highly training that safety protocol does not need to be followed is absurd. We must not assume anything and ensure that all officers adhere to established safety standards. The entrustment of all lives is everyone's interminable responsibility.

Stuart A. Meyers is the Chief Executive Officer of OpTac International, Inc. and President of Operational Tactics, Inc., a non-profit organization dedicated to the education of law enforcement and military personnel. To comment or for further information, please access www.optacinternational.com, www.operationaltactics.org, or email info@optacinternational.com.

Bibliography

AELE Law Enforcement Legal Center, website: www.aele.org, 2002.

Dallas Morning News, Article Section 1A, February 26, 2002.

Interviews with law enforcement officers from Rhode Island, Maryland, Oregon, Texas, Louisiana, Virginia, and Canada, names and agencies withheld, 2002.

Lawyers Cooperative Publishing, *U.S. Supreme Court Reports*, Lawyers Edition, Rochester, New York, 1991.

Operational Tactics, Inc. Recommended Tactical Team Deployment Safety Standards and Protocol, Gaithersburg, Maryland, 2002.

Operational Tactics, Inc. Training Safety Standards and Protocol, Gaithersburg, Maryland, 2002.

The Blue Knights Foundation, Inc., website: www.officerdown.com, 2002.

The Washington Post, Associated Press Article, A Section, February 26, 2002.

West Group, Inc., website: www.westlaw.com., 2002.

16

CRIMINOLOGIST

DR. GEORGE L. KIRKHAM

POLICE / PRIVATE SECURITY CONSULTANT and EXPERT WITNESS

Address: 12444 Aviles Circle
Palm Beach Gardens, FL 33418
(Metro Palm Beach Area)

Phone: (800) 488-9231 or (561) 301-2645

FAX: (561) 691-8171

E-mail: krimedr@aol.com

Web: http://www.krimedr.com

The Professor Who Became A Cop

SUMMARY OF PROFESSIONAL VITA

Dr. George Kirkham, who has been described by the late William F. Buckley, Jr. as "...an honor to his profession," received his doctorate in criminology on a full scholarship at the University of California, Berkeley. He is currently Professor Emeritus at the Florida State University College of Criminology & Criminal Justice, where he taught and conducted pioneering research for twenty years. His many professional honors as a criminologist include The Distinguished Service Award, The Freedom's Foundation at Valley Forge Award and the J. Edgar Hoover Award.

He is nationally and internationally known as "the professor who became a cop" for taking leave of his university post to study crime and the police in a way that no criminology professor had before: after attending and graduating from a police academy, Dr. Kirkham spent six months as a patrolman on a high crime beat in a major American city. After rejoining the faculty at Florida State University, he continued working as a fully-sworn police officer on a part time basis throughout his academic career, ultimately serving with four different law enforcement agencies in assignments as diverse as uniformed patrol, crisis intervention, vice & narcotics, criminal investigation and undercover work as part of an organized crime strike force.

Over the years, his observations on the police have appeared in research and law enforcement journals in many other countries, including England, Canada, Germany, India, Australia and Russia. He has authored 23 law enforcement training films and video tapes which are used to instruct police officers and administrators throughout the nation. Under grants from the U.S. Department of Justice, Dr. Kirkham's award winning film series, "Police: The Human Dimension" was distributed to the law enforcement training directors of all 50 states and the F.B.I. Academy. This series is also used at Peel Centre in London to train the British Metropolitan Police.

Dr. Kirkham has served as a consultant to over 50 American law enforcement agencies at the federal, state and local levels. He has been called upon more often than any other criminologist in the nation to serve as a case consultant and expert witness in civil and criminal actions involving police, jail and private security issues. His experience as a consultant to both plaintiffs and defendants throughout his professional career encompasses over 1,500 cases in all 50 states.

In addition to receiving widespread professional recognition, Dr. Kirkham's work has also been the subject of considerable attention by the mass media and the American public: he was the subject of a CBS 60 MINUTES segment entitled "Ivory Tower Cop," and has made numerous national television appearances to discuss the subjects of crime and the police, including ABC's GOOD MORNING AMERICA, MSNBC's THE ABRAMS REPORT, FOX NEWS, BBC, and NBC's TOMORROW SHOW. His article, "A Professor's Street Lessons" was serialized in newspapers throughout the nation and has been read by more police worldwide than any article ever published by the F.B.I. during the seventy-six year history of its LAW ENFORCEMENT BULLETIN. Dr. Kirkham's best-selling personal autobiography, SIGNAL ZERO, was selected by Book-of-the-Month Club as one of its alternates and his views on the police have appeared in publications ranging from NEWSWEEK, TIME, U.S. NEWS & WORLD REPORT, READER'S DIGEST and PEOPLE MAGAZINE, to the UNITED STATES CONGRESSIONAL RECORD and INTERPOL..

TO VIEW FULL CREDENTIALS, REFERENCES, FEE INFORMATION, AND RULE 26 CASE LIST, EITHER CLICK ON THE INDIVIDUAL LINKS BELOW OR CALL 1-800-488-9231.

Professional Vita *References* *Fee and Expense Policies* *Rule 26 Case List* Get Acrobat Reader

FOR YOUR CONVENIENCE, YOU MAY DOWNLOAD ALL FOUR FILES AT ONCE.

*** To View the 4-minute Informational Video: Click Here - This Video Requires Real Player *** real ONE PLAYER

This website created by Gardens Computer Services

Gardens Computer Services

Professional Vita
February 2010
Dr. George Kirkham

SUMMARY

Dr. George Kirkham, who has been described by the late William F. Buckley, Jr. as "...an honor to his profession," received his doctorate in criminology on a full scholarship at the University of California, Berkeley. He is currently Professor Emeritus at the Florida State University College of Criminology & Criminal Justice, where he taught and conducted pioneering research for twenty years. His many professional honors as a criminologist include The Distinguished Service Award, The Freedom's Foundation at Valley Forge Award and the J. Edgar Hoover Award.

He is nationally and internationally known as "the professor who became a cop" for taking leave of his university post to study crime and the police in a way that no criminology professor had before: after attending and graduating from a police academy, Dr. Kirkham spent six months as a patrolman on a high crime beat in a major American city. After rejoining the faculty at Florida State University, he continued working as a fully-sworn police officer on a part time basis throughout his academic career, ultimately serving with four different law enforcement agencies in assignments as diverse as uniformed patrol, crisis intervention, vice & narcotics, criminal investigation and undercover work as part of an organized crime strike force.

Over the years, his observations on the police have appeared in research and law enforcement journals in many other countries, including England, Canada, Germany, India, Australia and Russia. He has authored 23 law enforcement training films and video tapes which are used to instruct police officers and administrators throughout the nation. Under grants from the U.S. Department of Justice, Dr. Kirkham's award winning film series, "Police: The Human Dimension" was distributed to the law enforcement training directors of all 50 states and the F.B.I. Academy. This series is also used at Peel Centre in London to train the British Metropolitan Police.

Dr. Kirkham has served as a consultant to over 50 American law enforcement agencies at the federal, state and local levels. He has been called upon more often than any other criminologist in the nation to serve as a case consultant and expert witness in civil and criminal actions involving police, jail and private security issues. His experience as a consultant to both plaintiffs and defendants throughout his professional career encompasses over 1,500 cases in all 50 states.

In addition to receiving widespread professional recognition, Dr. Kirkham's work has also been the subject of considerable attention by the mass media and the American public: he was the subject of a CBS 60 MINUTES segment entitled "Ivory Tower Cop," and has made numerous national television appearances to discuss the subjects of crime and the police, including ABC's GOOD MORNING AMERICA, MSNBC's THE ABRAMS REPORT, FOX NEWS, BBC, and NBC's TOMORROW SHOW. His article, "A Professor's Street Lessons" was serialized in newspapers throughout the nation and has been read by more police worldwide than any article ever published by the F.B.I. during the seventy-six year history of its LAW ENFORCEMENT BULLETIN. Dr. Kirkham's best-selling personal autobiography, SIGNAL ZERO, was selected by Book-of-the-Month Club as one of its alternates and his views on the police have appeared in publications ranging from NEWSWEEK, TIME, U.S. NEWS & WORLD REPORT, READER'S DIGEST and PEOPLE MAGAZINE, to the UNITED STATES CONGRESSIONAL RECORD and INTERPOL.

Consulting Office: 12444 Aviles Circle
Palm Beach Gardens, FL 33418

1-800-488-9231
(561) 301-2645
FAX: (561) 691-8171

Education:

B.A. (Crim.) California State University at San Jose (1964)
("With Distinction" and "Departmental Honors in Criminology")

M.S. (Crim.) California State University at San Jose (1966)

D. Crim. University of California at Berkeley (1971)

Present Occupation: Professor Emeritus, College of Criminology and Criminal Justice
The Florida State University, Tallahassee, Florida

Law Enforcement Consultation:

Experience as a private consultant and expert witness for both plaintiff and defense in over 1,500 cases of civil litigation arising from police actions, private security operations, and jail and confinement conditions in 50 states.

Executive Director and Certification Board Member of the National Academy of Police Specialists (N.A.P.S.)

Former Associate Member: International Association of Chiefs of Police (I.A.C.P.)

Former Member, Police Benevolent Association (P.B.A.)

Certified Police Officer, State of Florida (1973-1992)

Author, with Professor James D. White, of a series of police civil liability training films and instructional manuals currently in use throughout the United States (see "Publications") in the training of both line officers and administrators.

Member, Board of Directors, Americans for Effective Law Enforcement (1974-1979); A.E.L.E. is a non-profit legal research organization founded by Fred Inbau, John Henry Wigmore Professor of Law Emeritus at Northwestern University; it serves the law enforcement profession through amicus curiae briefs, publications, workshops, and research programs.

Member, Board of Directors, International Law Enforcement Stress Association (ILESA).
Director, National Conference on Stress in Policing (Orlando, Florida, 1978).
Served as an instructor, lecturer, or consultant to the following agencies and organizations:

- Governor Dukakis' Callahan Commission, Massachusetts Police Training Council (1988)
- Beijing, China, People's Police College
- British Metropolitan Police, Peel Centre
- New York City Police Department, Police Benevolent Association
- NBC News, for proposed documentary on convicted mass-murderer, Theodore Bundy

Detroit Police Officers' Association
Philadelphia Police Department
Pennsylvania State Police
Virginia State Police

Maine State Police
Yonkers, New York, Police Department
Police Officers Association of Michigan
Albuquerque, New Mexico Police Department
Cincinnati, Ohio Police Department
Dayton, Ohio Police Department
Roanoke, Virginia Police Department
Toronto Metropolitan Police
United States Military Police Training Center, Fort McLellan, Alabama
United States Treasury Department, Consolidated Federal Law Enforcement Training Center
Federal Bureau of Investigation, Quantico, Virginia
Northwestern Traffic Institute
International Association of Women Police
North Carolina Law Enforcement Officer's Association
Advisory Council on Sheriff Affairs, Lorain, Ohio
Florida Sheriff's Association
Florida Peace Officer's Association
State of Indiana, Fraternal Order of Police
Southern Police Institute
Law Enforcement Assistance Administration (L.E.A.A.)
Kenosha, Wisconsin Professional Police Association
Ohio Association of Police Chiefs
Western Colorado Peace Officers Association
National Association of State Directors of Law Enforcement Training (N.A.S.D.L.E.T.)
Florida Police Standards and Training Commission
Jacksonville, Florida Police Department
St. Petersburg, Florida Police Department
Tallahassee, Florida Police Department
Office of the State Attorney, 16th Judicial Circuit of Florida (for investigative evaluation of organizational and personnel problems within the Key West, Florida Police Department)
Member, Selection Board for Chief of Police for Fort Walton Beach, Florida
New Port Richey, Florida Police Department
National Institute for Occupational Health and Safety, U.S. Department of Health, Education and Welfare (for police stress research)
Leon County Sheriff's Department
Florida Highway Patrol
National College of District Attorneys
California District Attorneys Association
Florida Criminal Justice Educator's Association
Americans for Effective Law Enforcement (A.E.L.E.), Evanston, Illinois, Board Member 1975-1979
Florida Public Defenders Association
Florida Professional Practices Council
State of Utah Peace Officers Association
Columbia, South Carolina Criminal Justice Academy
Wisconsin Department of Justice
Police Task Force, Governor's Committee on Criminal Justice Standards and Goals (1974, Member: Florida)
Utah League of Cities
Hillsborough County, Florida Sheriff's Department

Other Professional Experience:

Research Criminologist, Systems Analysis Division, Stanford Research Institute (1970), Menlo Park, California.
Project Director and Research Associate, The Center for Interdisciplinary Studies, California State University at San Jose (1968-1970).

Consulting Editor, Journal of Police Science and Administration (1976-1978).

Editorial Consultant, Harper and Row Publishers, Media Division (1974-1978).

Graduate, Florida Police Standards and Training Academy (1972).

Police Patrolman, City-County of Jacksonville, Florida (1973).

Police Officer, City of Tallahassee, Florida (1974-1991).

Deputy Sheriff, Leon County, Florida (1978-1979).

Agent, Organized Crime Division, Broward County Sheriff's Department under U.S. Department of Justice Grant (1975).

Correctional Counselor, California Department of Corrections, Soledad State Prison (1965-1966).

Director, H.E.W. Study of Jail Inmates on Work Release (Elmwood Rehabilitation Facility (1968-1970).

Doctoral level counseling under supervision of psychoanalyst Bernard L. Diamond, M.D., at Langley Porter Neuropsychiatric Clinic (1966) and Mount Zion Hospital Outpatient Psychiatric Clinic (1967).

Publications: Books:

George Kirkham & Leonard Territo, Ivory Tower Cop (Durham: Carolina Academic Press, 2009).

George Kirkham & Leonard Territo, Criminal Investigation Instructor's Manual for Ivory Tower Cop (Durham: Carolina Academic Press, 2009).

Leonard Territo & George Kirkham, International Sex Trafficking of Women and Children: Understanding the Global Epidemic (New York: Looseleaf Law Publications, 2010).

George L. Kirkham & Laurin Wollan, Introduction to Law Enforcement (New York: Harper and Row, 1979).

George L. Kirkham, Signal Zero: The True Story of a Professor Who Became a Cop (New York: J.B. Lippincoft, 1976). Selected by Book-of-the- Month Club as November 1976 alternate. Motion picture options sold: 1977, 1979, 1980, 1983, 1984, 1985, 1986, 1987,1988, 1989, 1990, 1991, 1992.

Educational Films/ Video Tapes Published:

George L. Kirkham and James D. White, Police Human Relations: Non-Verbal Communication, Parts I, II, & III (Tallahassee, Florida: The Florida State University and the Tallahassee Police Department, Freestyle Productions, 1989).

George L. Kirkham and James D. White, Police Civil Liability: Negligent Operation of Police Motor Vehicles (New York: Harper and Row, 1978).

George L. Kirkham and James D. White, Negligent Use of Police Firearms (New York: Harper and Row, 1978).

George L. Kirkham and James D. White, Police Use of Deadly Force (New York: Harper and Row, 1979).

George L. Kirkham and James D. White, Excessive Force and the Police (New York: Harper and Row, 1979).

George L. Kirkham and James D. White, Police Supervisory Liability (New York: Harper and Row, 1979).

George L. Kirkham and James D. White, Police Officers and the Federal Civil Rights Act (New York: Harper and Row, 1979).

George L. Kirkham, Police: The Human Dimension: "Stress" (New York: Harper and Row, 1976).

George L. Kirkham, Officer Stress Awareness (New York: Harper and Row, 1976).

George L. Kirkham, Internal Adaptations to Stress in Modern Law Enforcement

(New York: Harper and Row, 1976).
George L. Kirkham, External Reactions to Stress in Policing (New York: Harper and Row, 1 976).
George L. Kirkham, The Police Marriage: Personal Issues (New York: Harper and Row, 1976).
George L. Kirkham, Police Children: Issues and Problems (New York: Harper and Row, 1976).
George L. Kirkham, The Police Marriage: Social Pressures Affecting It (New York: Harper and Row, 1976).
George L. Kirkham, Police Authority and Informal Discretion, Part I (New York: Harper and Row, 1976).
George L. Kirkham, Police Authority and Informal Discretion, Part II (New York: Harper and Row, 1976).
George L. Kirkham, Minorities and the Police (New York: Harper and Row, 1976). Recipient of the Golden Eagle Award, Council on International Non-theatrical Events: selected to represent the United States in motion picture events abroad. Also awarded The Chris Plaque, Columbus Film Festival (1976).
George L. Kirkham, Police Ethics: Part I (New York: Harper and Row, 1976).
George L. Kirkham, Police Ethics: Part II (New York: Harper and Row, 1976).
George L. Kirkham, The Police Officer in the Community Part I (New York: Harper and Row, 1976).
George L. Kirkham, The Police Officer in the Community: Part II (New York: Harper and Row, 1976).

Articles and Professional Papers:

George L. Kirkham, "Police Firearms Accidents," Police (May, 1989), Vol. 12, No.3.
George L. Kirkham and James D. White, Body Language and Policing: A Training Series, Parts I, II, & III (Tallahassee, Florida: The Florida State University, 1990). Convener, "Death Behind Bars," (Panel Presentation on the problem of suicide in Jails and Prisons), Southern Conference on Corrections, (February, 1989).
George L. Kirkham and James D. White, "A Police Civil Liability Handbook," Harper and Row, 1976).
George L. Kirkham, "The Policeman and the Law: A Changing Perspective," Barrister (December, 1976).
George L. Kirkham, "The Criminologist as Police Officer; A Participant-Observation Study," paper presented to the American Society of Criminology; subsequently published in Donal E.J. MacNamara and Frank Reidel, The Police: Problems and Prospects (New York: Praeger, 1975).
George L. Kirkham, "On the Etiology of Police Aggression in Black Communities," paper presented to the American Society of Criminology (1974).
George L. Kirkham, "Doc Cop," Human Behavior (May, 1975).
George L. Kirkham, "A Professor's Street Lessons," F.B.I. Law Enforcement Bulletin (March, 1974); reprinted as "From Professor to Patrolman: A Fresh Perspective on the Police," The Journal of Police Science and Administration (May, 1974): also reprinted by numerous law enforcement journals throughout the world, including Interpol.
George L. Kirkham, "Jail Inmates on Work Furlough," with T. Conway Esselstyn, Ph.D., et. al., Criminologica (November, 1969). Also presented by Kirkham at the joint annual meeting of the American Society of Criminology and the American Association for the Advancement of Science (1968).
George L. Kirkham, "Evaluating Work Furlough," with Alvin Rudoff, Ph. D., et. al., Federal Probation (March, 1971).
George L. Kirkham, "The Potential Rehabilitative Role of Work Release Programs for Jail and Prison Inmates," paper presented at the First Inter-American Congress on Criminology, San Juan, Puerto Rico, 1971.
George L. Kirkham, "The Utility of Internships as an Educational Device in the Field of Criminology," paper presented (in absentia) at the Second Inter-American Congress of Criminology, Caracas, Venezuela (1971).

George L. Kirkham, "The Female Homosexual," in Simon Dinitz and Walter C. Reckless, Critical Issues in the Study of Crime (Boston: Little, Brown and Company, 1968).
George L. Kirkham, "Homosexuality in Prison," in James M. Henslin, ed., Studies in the Sociology of Sex (New York: Appleton-Century-Crofts, 1971).
George L. Kirkham, "Gender Disorientation" in Edward Sagarin, ed., Sex on the American Scene (New York: Dell, 1962).
George L. Kirkham, "Transsexuals in a Formal Organizational Setting," in The Journal of Sex Research (May, 1969); Sagarin, Odd Man In; Societies of Deviants in America (Chicago: Quadrangle, 1 968).
George L. Kirkham, "Cross-Dressing by Males" with Edward Sagarin, in Sexual Behavior (April, 1972).

Research Grants

"Work Release Programs for Jail Inmates: Their Economic and Rehabilitative Value" ($600,000, 1968, with T. Conway Esselstyn, Ph.D. and Alvin Rudoff, Ph.D.

"Model Police Interpersonal Communications Training Project," Law Enforcement Assistance Administration ($125,000, 1974).

"Training Municipal Police in Community Relations and Emotional Control Skills," Law Enforcement Assistance Administration ($50,000, 1973).

"Enrichment of the Criminology Curriculum at Florida State University" ($25,000, 1972).

"Training Correctional Personnel in Stress Management Techniques," National Institute of Corrections and Florida Division of Corrections (with Professor James D. White, 1979) ($10,000).

National Recognition and Community Service Awards

Innovative research and work in the field of law enforcement have been the subject of numerous national media programs and publications, including:
CBS "60 Minutes"
NBC "Tomorrow Show"
ABC "Good Morning America"
Newsweek
U.S. News & World Report
People Magazine
Reader's Digest

J. Edgar Hoover Award ". . . for outstanding contributions to effective law enforcement" (Miami Beach, 1976).

Distinguished Service Award, Reserve Law Officers Association of America, 1974.

26th Annual Freedom's Foundation at Valley Forge Award for the 1975 article, "What a Professor Learned When He Became A Cop."

"Award of Appreciation in Recognition of Outstanding Service on Behalf of Municipal Police in the State of Ohio," Ohio Association of Chiefs of Police, 1974.
"Award of Recognition," Toronto Metropolitan Police, 1976.

Optimist International Award for Outstanding Service to Law Enforcement," 1975.

"Award in Recognition of Outstanding Service to Law Enforcement Nationwide," Florida Peace Officers Association, 1974.

"Award for Outstanding Contributions to Law Enforcement Education and the American Justice System," California Association of Justice Educators, 1976.

"Award of Recognition," Southern Police Institute, University of Louisville, 1976.

Listed in "Who's Who in Law Enforcement" (1989).

Founder, Ernest Ponce de Leon Memorial Law Enforcement Scholarship at the Florida State University College of Criminology and Criminal Justice (1990).

Academic Honors

Awarded the Robert S. And Florence Moore Scholarship for doctoral study in Criminology (University of California, Berkeley, 1968).

Awarded the Stanley M. Tasheira Memorial Scholarship for doctoral study in Criminology (University of California, Berkeley, 1968).

Graduation Bachelor of Arts with Distinction and Departmental Honors in Criminology.

Citation for Academic Excellence as Dean's Scholar, California State University at San Jose, 1963.

Dean's Honor Scroll ". . . in recognition of outstanding achievement," San Jose City College, 1962.

Rotarian's Award for Scholarship, San Jose City College, 1962.

Member, National Honor Society in Sociology, Alpha Kappa Delta.

Member, National Honor Society in Psychology, Psy-Chi.

Member, California State University at San Jose Men's Scholastic Honor Fraternity, Tau Delta Phi.

Member, Alpha Gamma Sigma Collegiate Scholastic Honor Fraternity.

CURRICULUM VITAE

Richard A. Flippo, Sr.

24 Holly Circle
North Augusta, SC 29860
Telephone: (803) 634-1974
Web Site: www.habitraining.com
(Official): dflippo@emd.sc.gov
Secure: rflippo@cybercop.esportals.com
Navy: Richard.Flippo@navy.mil
LEO: Dick.Flippo@leo.gov
HSIN: Dick.Flippo@hsin.dhs.gov
(Personal): dickflippo@bellsouth.net

ACADEMIC

Masters of Education in Adult Education, with a concentration in Technology, Armstrong - Atlantic University, Savannah, GA, May, 2005

Bachelor of Arts in Psychology, with Cognates in Biology and Education, University of South Carolina, Columbia, SC, December, 1974.

PROFESSIONAL ORGANIZATIONS AND SOCIETIES

International Association of Law Enforcement Intelligence Analysts - Member

International Association of Arson Investigators (IAAI) - Past Member of the Board of Directors of the South Carolina Chapter, Director & Co-Founder of SC Chapter, Past Member

International Association of Chiefs of Police - Past Member

International Society of Law Enforcement and Criminal Justice Instructors - Chief South Carolina Delegate

ACADEMIC AND OTHER PROFESSIONAL APPOINTMENTS, HONORS

Dean's List - University of South Carolina, Columbia, SC – Undergraduate, 1974

DEPARTMENTAL COMMITTEES AND DUTIES

Graduate Security School Instructor-Webster University, Fort Gordon, GA from January 2011 to March 2011

Task Force for Emergency Readiness-Planner, Preparedness Department, SC Emergency Management Division from July 2009 through the present

Senior Instructor/Program Developer for the Intelligence Branch, Computer, Financial and Intelligence Division (CFI), Federal Law Enforcement Training Center (FLETC)'s program focusing on investigative analysis, from April 2004 through July 2009

Senior Instructor/Program Coordinator for CFI's 76 hour Intelligence Analyst Training Program (both in-house and exported versions), from April 2003 to January 2009.

Assistant Program Coordinator for 36 hour Case Organization and Presentation Training Program (both in-house and exported versions), from April 2008 to July 2009

Primary Briefer to Office of State and Local Training's (OSL), FLETC, Advisory Council, Intelligence Analyst Training for State and Local Analysts, October 2006 to July 2009

Co-Coordinator of Curriculum Development Conference for OSL's 40 hour Introductory Intelligence Analyst Training Program - March 2006.

Invited Subject Matter Expert – Curriculum Development Conference and Reviewer of Pilot Program, Anti-terrorism Intelligence Awareness Training Program – OSL, Atlanta, GA – August 2004

Coordinator of Curriculum Review Conference for CFI's 76 hour Intelligence Analyst Training Program - June 2004

Coordinator of Curriculum Review Conference for the Behavioral Science Division's (BSD) - FLETC, Advanced Law Enforcement Interview Training Program, 2002

Senior Instructor of Interviewing Techniques, Cultural Awareness, Handling Victims/Victimology, and Co Program Coordinator for Distance Learning Instructor Training Program, BSD, March 1999 to April 2002

Instructor of Interviewing Techniques, Cultural Awareness, Handling Victims/Victimology and Co Program Coordinator for Distance Learning Instructor Training Program, BSD, BSD, May 1997 to March 1999

Senior Investigator with Defense Investigative Service- Augusta, GA Resident agency – 1987 through 1997

Senior Security Specialist – Savannah River Operations Office (SROO), US Department of Energy (DOE), Aiken, SC – 1984 through 1987

Assistant Operations Security Officer, Assistant Intelligence Officer, Security Education Officer, Sensitive Compartmented Information Courier-SROO, DOE,

Special Agent Training Officer, Technical Investigative Aids Custodian, Evidence Custodian, Automatic Weapons Handler & Custodian, Naval Criminal Investigative Service (NCIS), NAS Cecil Field, FL-1982 through 1984.

TEACHING AND OTHER INSTRUCTIONAL RESPONSIBILITIES:

Graduate Security School Instructor-Webster University, Fort Gordon, GA from January 2011 to March 2011-Behavioral Issues, Emergency Planning, etc.-January 2011 to May 2011

Interim Program Coordinator & Senior Instructor, Introductory Intelligence Analyst Training Program, OSL, FLETC- April 2006 to December 2006 and October 2007 through February 2008.

Program Coordinator & Senior Instructor, Intelligence Analyst Training Program, Computer and Financial Investigations Division, FLETC- April, 2003 to Present.

Interim Program Coordinator & Senior Instructor, Intelligence Awareness for Law Enforcement Executives Training Program, OSL, FLETC- October, 2007 to February 2008.

Overview of Law Enforcement Intelligence, Fairfax County, VA Police Department, Chantilly, VA. (3 Days) - June, 2003.

Deputy Regional Intelligence Area Commander for Administration, Regional Intelligence Area – 14 (Southeastern United States), NAS Atlanta, GA

Senior Instructor in Basic and Advanced Interviewing, Distance Learning Instructor Training, Cultural Awareness, and Handling Victims/Victimology – Behavioral Science Division, FLETC, Glynco, GA – February 1999 to October 2004.

Deputy Regional Intelligence Area Commander for Training, Regional Intelligence Area – 14, NAS Atlanta, GA, 1998-2002.

Visiting Instructor, US Department of Justice, Executive Office for the United States Attorneys, Office of Legal Education, National Advocacy Center, Columbia, SC - March, 2000 to Present.

Training Officer, US Navy Reserve, Naval Investigative Service Regional Office-Reserve Unit-1407, 1984-1987, NS Charleston, SC.

Collateral Duties as Security Education Officer/Assistant Intelligence Officer/OPSEC Officer/Special Nuclear Material Courier, with US DOE, SROO-DOE, Aiken, SC - February 1984 to November 1987.

Collateral Duty as Special Agent Training Officer (Conducted firearms, evidence and investigative aids training for Resident Agency), US Naval Investigative Service, NAS Cecil Field, FL - April, 1982 to February 1984.
Police Vocational Instructor, Program Manager, and Course Developer, South Carolina Criminal Justice Academy, Columbia, SC - June, 1977 to April 1982.
Assistant Firearms Instructor- Lexington County, SC- 1975 through July 1977.
Shift Manager/EMT Supervisor (Conducted Weekly Training Sessions for Staff), Paramedical Services, Inc., Aiken County, SC – 1973 & 1974.

OTHER PROFESSIONAL ACTIVITIES

BOARDS AND COMMITTEES:

Portal Administrator for Intelligence Analyst's Secure Portal on Cybercop
Chairman of Federal Law Enforcement Training Center's, (FLETC) Glynco, GA, Behavioral Science Division (BSD) Training Accident Investigation Team
Member of FLETC's Computer Virus Recovery Team
Merriweather, SC Volunteer Fire Department- Founder, Volunteer Fireman, Fire Chief and Chairman of the Board of Commissioners 1983-1987
Ballentine, SC, Volunteer Fire Department-Founder, Volunteer Fireman, and Chairman of the Board of Commissioners
President of the Belvedere Athletic League – 1983 -1985, Belvedere, SC.
Vice Chairman, Merriweather Elementary School's Parent Teacher's Organization - 1984

MILITARY

Retired, United States Navy Reserve Commander, with 25 years of service. Naval Officer Designator - 1635 (Intelligence Officer), Naval Officer Billet Codes of 9616, 9617, & Station Security Officer. (Former Commands and Duty Stations available upon request.)

CONSULTANCIES:

Anti-Terrorism Intelligence Awareness Training Program, Curriculum Review Conference-Office of State and Local Training, FLETC-January 2006

PUBLICATIONS

PEER REVIEWED ARTICLES:

"The Cleansing Breath: What is it?". FLETC Journal, Volume 3, Issue 2, Spring 2005.
"Comparing the Intels". FLETC Journal, Volume 5, Issue 1, Fall 2008.

MEMBERSHIPS AND PROFESSIONAL AFFILIATIONS

International Association of Law Enforcement Intelligence Analysts 2004-Present
International Association of Chiefs of Police 1977-1980
Chief South Carolina Delegate to the International Society of Law Enforcement and Criminal Justice Instructors 1979-1982
Founding Member of the Board of Directors of the SC Chapter of the International Association of Arson Investigators (IAAI) 1980-1982
Member of the National Chapter IAAI 1980-1982
Founder & Fire Commissioner for the Ballentine Volunteer Fire Department 1980-1982
Volunteer Fireman at Ballentine Volunteer Fire Department 1980-1982
Volunteer Fireman, City of North Augusta, SC 1967-1973 & 1984-1992
Founder & Chairman of Merriwether Volunteer Fire Department Board of Commissioners 1983-1987
Fire Chief of Merriwether Volunteer Fire Department- 1983-1987

WRITING

Published articles in the Federal Law Enforcement Training Center Journal (Peer Reviewed)
Researched and Composed dozens of lesson plans for use in training federal agents, intelligence analysts and officers – topical areas included: Law Enforcement Intelligence, Basic and Advanced Interviewing skills, Ethics, Handling Victims/Victimology, Distance Learning Instructor Training, etc. (Including Students Texts, Student Handouts, and examination questions, which were under continuous review and update.) 1997-2009
Researched and Composed more than 20 topical lesson plans for use in police officer instruction - topics included: Patrol Procedures, Mechanics and Techniques of Arrest, Traffic Direction and Control, Report Writing, Handling Hazardous Materials, and Use of Police Chemicals, etc. (Which were all continually being reviewed and updated.) 1977-1985
Composed numerous lectures, speeches, and agenda in connection with offices held 1980-1991
Assisted in composing, numerous lectures speeches, and articles for research publications during undergraduate and graduate studies 1973-1982
Extensive research background and American Psychological Association writing skills acquired doing research in college, and in collection of data for previously mentioned lesson plan composition 1973-1982
Compiled numerous reports including statistical data and graphic displays 1977-1987
Assisted in script preparation of police training films 1977-1982
Prepared monthly briefs for US Navy personnel 1982-Present
Composed dozens of lesson plans, student texts, and various handouts for classes for which I was responsible. 1997-Present
Researched and Composed hundreds of letters, OPLANS, orders, briefs, agenda, meeting minutes, and other technical writings for supervisors, managers, superior officers, and Seat-of-Government officials, as a USN Reserve-Intelligence Officer. 1983-July 2008
Researched and composed numerous papers, critiques, term papers and other scholastic documents in my pursuit of my Master's Degree.1982-1985 & 2002-2005
Authored and published auricles for law enforcement journals. 2004

AUDIO-VISUAL

Technical Advisor in numerous police training films and video tapes 1975-1982
Script Writer-On screen talent-Co producer-Technical Advisor of an award winning monthly police training program. 1977-1982
Technical Advisor-Script Consultant-Co producer of several audio-visual federal law enforcement training tapes. 1997-Present
Co producer-Script Writer-Communications Director for a National Award winning three hour live police training tele-conference. May 1997
Developed numerous computer assisted presentations for training classes. 1985-Present
Developed numerous technology dependant training aides in my pursuit of my Master's Degree. 2002-2005

COMPUTER SKILLS

Thoroughly familiar with Microsoft Office Suite, except Access, to the instructor level.
Familiar with numerous other Classified and Unclassified data bases, in-depth knowledge of the World Wide Web, and ability conduct complex queries, to produce actionable results, data mining through restricted and opens sources.
Production orientated skills in HUMINT, MASINT,IMAGINT, OPINT
Capable of supporting role in SIGINT
Capable of performing basic data recovery.

Knowledgeable of LAN's, WAN's, and network topology.
Thoroughly familiar with Operations Security (OPSEC), Physical, Personnel, and Information Security, to the instructor level.
Familiar with personal computer hardware and functions.
Experienced in Internet Investigations, surveillance and tracing measures.
Capable of instructing in Cybercrimes.

PUBLIC SPEAKING

Provided oral testimony at numerous hearings, trails, administrative boards, council and other legislative meetings, at local, state, military and federal levels.
Non-partisan speech making for college student governments. 1967-1969
Five years of daily public speaking to police officers as a police instructor at a State Criminal Justice Academy on numerous topics. 1977-1982
Conducted weekly training activities while an EMS supervisor. 1972-1973
Conducted monthly training for U.S. Navy personnel while NIS Special Agent. 1982-1984 & from 1984 through 1994 on a quarterly basis
Conducted monthly training sessions for US DOE personnel. 1985-1986
Conducted monthly commission, association, or organization meetings in connection with civic duties. 1980-1988
Conducted monthly training briefs and current events briefs for U.S. Navy Officers and enlisted personnel, both active duty and reservists. 1982 - 2008
Conducted federal law enforcement training on a daily basis as an instructor with the FLETC. May 1997-July 2009

OTHER SCHOOLS OR TRAINING

Apr 1972 - Emergency Medical Technician Training, Aiken Technical Education Center
June 1974 - USC & Medical University of SC- Alcohol & Drug Abuse Counselor Training
Aug 1974 - University of Georgia - Southeastern School of Alcohol and Drug Studies
Apr 1975 - SC Criminal Justice Academy (SCCJA) - Basic Jail Management
May 1975 - Advanced Jail Management, SC Department of Corrections
July 1977 - Basic Law Enforcement Training, SCCJA
Sept 1977 - Law Enforcement Firearms Instructor Certification, FBI & SCCJA
Jan 1978 - Motor Vehicle Traffic Accident Investigation, Northwestern University (The Traffic Institute) & SCCJA
July 1978 - Technical Motor Vehicle Traffic Accident Reconstruction, The Traffic Institute & SCCJA
Aug 1979 - Law Enforcement Firearms Instructor Re-certification, FBI and SCCJA
Nov 1980 - Fire Fighting Fundamentals, South Carolina Fire Academy (SCFA)
Dec 1980 - Police Instructor Training, North Carolina Justice Academy
May 1981 - Testing in the Police Selection Process, Auburn University
Sept 1981 - Cardio-Pulmonary Resuscitation Instructor's Training, American Red Cross
July 1982 - Naval Criminal Investigator Course, FLETC, Glynco, GA
Sept 1982 - Foreign Counter Intelligence Training, Office of Naval Intelligence (ONI) & Naval Investigative Service (NIS) Washington, D.C.
Oct 1983 - On-the-Job-Training (OJT), Fleet Intelligence Center
Apr 1984 - Navy Reserve Officer Indoctrination
Dec 1984 - Internal Security Seminar, DOE - SROO
Jan 1985 - Naval Officer's Orientation Correspondence Course, US Navy Education and Training Command (NAVEDTRA)
Jan 1985 - Aspects of Alcohol and Drug Abuse Rehabilitation, Coastal Carolina

Apr 1985 - Basic Intelligence Officer Training, Navy/Marine Corps Intelligence Training Center (NMCITC)
June 1985 - Substance Abuse in the Workplace Seminar, American Society for Industrial Security (ASIS)
Sept 1985 - Defense Industrial Security Program Correspondence Course, Defense Security Institute,
Sept 1985 - Personnel Security Adjudicator's Seminar, Security Committee, Central Intelligence Agency
Oct 1985 - Operations Security Workshop, DOE, Albuquerque Operations Office
Feb 1986 - Ocean Surveillance Information System Course, Lowry Air Force Base
July 1986 - DOE-Headquarters Policy & Guidance Update, SROO
Oct 1986 - General Firemanship Training, Aiken County, SC, Fireman's Association
Dec 1986 - Substance Abuse in the Workplace Seminar, ASIS
Jan 1987 - Fundamentals of Naval Intelligence Correspondence Course, NAVEDTRA
Jan 1987 - Basic Firefighter's Course, SCFA
Apr 1987 - Seminar on Human Intelligence, Defense Intelligence Agency (DIA), Bolling AFB
May 1987 - Classified OJT-FCI, NIS, Washington, DC
Jan 1988 - Security Manager's Correspondence Course, NAVEDTRA
Feb 1988 - Personnel Security Investigator's Course, DSI-DIS
Feb 1988 - Seminar on Issues in International Terrorism, DIA, Bolling AFB
June 1988 - FCI Course, NIS, NAS Memphis, TN
Feb 1989 – OJT for Operational Intelligence, US Central Command
Feb 1989 - ADP Concepts & Terms Correspondence Course, US Army Professional Development Center
July 1989 - Dynamics of International Terrorism, US Air Force Special Operations School
Oct 1989 – Firearms Instructor Training Program, FLETC
July 1990 - OJT-Post War Intelligence Activities, NIS, Naval Station Panama Canal, PN
Jan 1991 - Recall to Active Duty in support of Operation Desert Shield/Storm (ODS/ODS)
Feb 1991 - Security Manager's Correspondence Course, NAVEDTRA
Nov 1991 – OJT-CLASSIFIED PROJECT, NCIS, NAS Key West, FL
Dec 1992 - Emergency Program Manager's Correspondence Course, FEMA
Mar 1993 - Physical Security Course, US Army Military Police School
Apr 1993 - OJT-Joint Counter-drug Operations, 2nd US Army Headquarters
Apr 1994 - Emergency Preparedness-USA Correspondence Course, FEMA
Apr 1994 - NCIS Agent Afloat-Operation SAIL – Commander, Amphibious Group-Two USS Kearsarge
Oct 1994 - OJT-Joint Counter-drug Operations Intelligence Project, US Atlantic Command
Oct 1995 - Expeditionary Warfare Intelligence Course, NMCITC
Apr 1996 - Custodial Interview/Interrogation Techniques, Defense Investigative Service
Jan 1997 - DIS Advanced Interview Training Seminar, Defense Investigative Service
June 1997 - Radiological Emergency Management Correspondence Course, FEMA
June 1997 – OJT, Design, Research, & Conduct Foreign Intelligence Brief, NCIS & CIA
July 1997 - Debrief American Scientists on Return from Foreign Travel, NCIS & CIA
Aug 1997 - Distance Learning Instructor Training Program, FLETC
Nov 1997 - Indications and Warnings Orientation Course, Joint Military Intelligence Training Center
Dec 1997 - Law Enforcement Instructor Training Program, FLETC
Jan 1998 - Reid Interview Techniques, John E. Reid and Associates
Sep 1999 - Recall to Active Duty in support Defense Security Service
Feb 2000 - Law Enforcement Instructor In-Service Training Program, FLETC

Mar 2000 - Practical Exercise Evaluator Training Program, FLETC
May 2001 - Western Regional Training Seminar, US Department of Treasury, Victim/Witness Coordinator
Sept 2001 - Classified Work, Office of Secretary of Defense, Missing Person/POW Office
Apr 2002 - Recall to Active - Duty Liaison to Law Enforcement Sector, NIPC-FBI Hq's
June 2002 - Special Events Contingency Planning Correspondence Course, FEMA
June 2002 - NIPC-101, Basic UNIX Networks and Networking, FBI Academy
June 2002 - NIPC-105 UNIX for Investigators, FBI Academy & SUN Microsystems
Aug 2002 - NIPC-110 Networks & Networking for Agents, FBI Academy & SYTEX Corporation
Nov 2002 - Incident Command System, FIRESCOPE CALIFORNIA, NS Anacostia
Mar 2003 - Law Enforcement Instructor In-Service Training, FLETC
June 2003 - Intelligence Analyst Training Program, FLETC
Aug 2003 - OJT-US NORTHCOM's Intelligence Liaison to Defense Intelligence Agency
Oct 2003 - Anti-Terrorist Level I Awareness Training Computer Based Training, US Dept of Defense Correspondence Course
Jan 2004 - Case Map Software Training, Case Map Corporation
Apr 2004 - Navy Instructional Theory Correspondence Course, NAVEDTRA
June 2004 - Curriculum Review Conference for Intelligence Training, FLETC
June 2004 - Information Security Training, Department of Homeland Security Correspondence Course, FLETC
Aug 2004 - Anti-Terrorism Intelligence Awareness Training Program, FLETC
Jan 2005 - NAVEDTRA, NAS Pensacola
Feb 2005 - NAVEDTRA, NAS Pensacola
June 2005 - FLETC Leadership Through Understanding Human Behavior
Dec 2005 - OJT National Geo-Spatial Intelligence Agency
Jan 2007 - Cyber Counter-Terrorism Investigations Training Program, FLETC
Oct 2008 – Firearms Instructor Refresher Training, FLETC

AWARDS

Army Commendation Medal for counter-drug work performed with the 2nd USA Headquarters, Fort Gillem, GA 1993
Navy Achievement Medal for work as Administrative Officer, Commander - Amphibious Group Two-Detachment 0267, NAS Atlanta
South Carolina Achievement Ribbon for exemplary work as an Emergency Planner with the Emergency Management Division, of the SC Adjutant General's Office-July 2010
Commendably Outstanding Performance (COP) Award for work completed with the Behavioral Science Division (BSD), FLETC-July, 1998
COP Award for work completed with the BSD, FLETC-April, 1999
COP Award for work completed with the BSD, FLETC-April through May, 2001
Cash Award for Outstanding Service to a Participating Agency, collateral investigation & criminal characterization- April through May, 2001
Certificate of Outstanding Performance for the Western Regional Treasury Victim/Witness Coordinator Training, Las Vegas, NV-May 2001
COP Award for work with the Intel Analyst Program, Financial Fraud Institute (FFI), FLETC-June 2003
COP Award as Program Coordinator for BSD (DLITP) while assigned to FFI, February 2004
COP Award as a TDY Instructor to BSD while assigned to CFI, August 2005
COP Award as Program Coordinator of IIATP while assigned to OSL, July, 2006
COP Award as Program Coordinator of IIATP while assigned to OSL, April – December, 2006

COP Award as Program Coordinator for CFI (IATP) while assigned to CFI, Oct, 2006 – August, 2007

CLEARANCES

Top Secret with SCI Access, current through February 2011.
DOE "Q-Sensitive, with SCI Access" which can be reinstated based on my record.

Officer Master Data Sheet

SSN:
Name: Rushton, Robert E.
D.O B.:
DL No .:

Gender.
Race:
Education.
Active Status: A - Active

Cert Type: Class 1
Cert Date: 06/26/2007
Recert Date: 06/26/2010
Orig Cert Date: 06/26/1998

Agency: McCormick Co. Sheriff's Office
ORI#: 330000
Hire Date: 11/01/2009
Position: 400 - Other

Note:

Cert Type	Status	Cert Date	Recert Date	Cert#
C1 - Class 1		06/26/2007	06/26/2010	
DM - Data Master		12/13/2004	12/13/2006	DM7924
RA - Radar		12/07/2004	12/31/2007	

Hire Date	Date Left	Agency	Cert Type	Reason
05/04/1998	10/20/1998	McCormick Police Dept.	Class 1	Volunta
10/21/1998	06/03/2005	McCormick Co. Sheriff's Office	Class 1	Volunta
07/02/2005	07/20/2009	McCormick Co. Sheriff's Office	Class 1	Militar

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY AS CONTAINED IN THE FILES OF THE S.C. CRIMINAL JUSTICE ACADEMY.

Jeffery R. Finch
CUSTODIAN OF RECORDS

DATE 12/13/2009

Course Date	Crs#	Course title	Cert Type	Hours
06/26/1998	1135	B - Basic Law Enforcement - #365	Class 1 Basic	334
09/10/1998	3171	Legal Update	Legal Update	2
09/15/1998	3149	Core In-Service	Core	4
09/30/1998	2000	In-Service	In-Service	8
12/13/1998	2721	Police Traffic Speed Enforcement Radar Operator	Radar Cert	24
09/19/1999	3171	Legal Update	Legal Update	2
09/20/2000	3171	Legal Update	Legal Update	2
12/13/2000	2782	Datamaster (Fall)	Data Master Cert	8
03/15/2001	3977	Make Up CDV/Core	In-Service	4
03/31/2001	2000	In-Service	In-Service	43
04/09/2001	MRN	Mandatory Retraining Notification		0
06/27/2001	3977	Make Up CDV/Core	Core	4
06/27/2001	3978	Make Up Legal	Legal Update	2
09/14/2001	2496	Crime Scene Techniques for Investigators	In-Service	40
12/04/2001	3725	Radar Recertification - Regions 1 - 3	Radar Recert	3
02/15/2002	2598	Detective Level I	In-Service	40
06/27/2002	3977	Make Up CDV/Core	Core	4
10/01/2002	3791	DataMaster Recertification - Regions 1-3	Data Master Rece	3
11/11/2002	3171	Legal Update	Legal Update	2
02/19/2003	2594	Interview & Interrogation - CJA	In-Service	16
08/12/2003	3171	Legal Update	Legal Update	2
05/31/2004	2000	In-Service	In-Service	71
06/09/2004	1058	Criminal Domestic Violence - Core	Core	4
06/24/2004	MRN	Mandatory Retraining Notification		0
06/27/2004	3977	Make Up CDV/Core	Core	4
06/27/2004	3978	Make Up Legal	Legal Update	2
10/12/2004	3791	DataMaster Recertification - Regions 1-3	Data Master Rece	3
12/07/2004	3725	Radar Recertification - Regions 1 - 3	Radar Recert	3
03/31/2005	2000	In-Service	In-Service	16
06/27/2005	3977	Make Up CDV/Core	Core	4
06/27/2005	3978	Make Up Legal	Legal Update	2
06/27/2006	3977	Make Up CDV/Core	Core	4
06/27/2006	3978	Make Up Legal	Legal Update	2
05/31/2007	2000	In-Service	In-Service	7

Hire Date	Left	Agency	Cert Type	Reason

Course Date	Crs#	Course title	Cert Type	Hours
06/25/2007	MRN	Mandatory Retraining Notification		0

Westlaw

Code 1976 § 23-13-10

C

Code of Laws of South Carolina 1976 Annotated Currentness
Title 23. Law Enforcement and Public Safety
Chapter 13. Deputy Sheriffs Generally
Article 1. General Provisions
§ 23-13-10. Appointment; approval by court; responsibility of sheriff for acts of deputy.

The sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy.

CREDIT(S)

HISTORY: 1962 Code § 53-71; 1952 Code § 53-71; 1942 Code § 3486; 1932 Code §§ 3486, 3487; Civ. C. '22 § 2032; Civ. C. '12 § 1146; Civ. C. '02 § 830; G. S. 652, 653; R. S. 713; 1870 (14) 332; 1880 (17) 4; 1927 (35) 44; 1936 (39) 1390; 1937 (40) 86.

LIBRARY REFERENCES

Sheriffs and Constables ⚿ 16.
Westlaw Topic No. 353.
C.J.S. Sheriffs and Constables §§ 32 to 46.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees § 57, Home Rule Act.

ATTORNEY GENERAL'S OPINIONS

While a sheriff has absolute authority as to the hiring and discharge of a deputy sheriff, he must successfully complete the minimum basic training requirements established by such provision to have law enforcement authority. 1986 Op. Atty Gen, No. 86-58, p 182.

Sheriff has absolute authority regarding employment and discharge of personnel within his department; such personnel are subject to "general personnel system policies and procedures" of county; county anti-nepotism ordinance would be inapplicable to any employment decisions made by sheriff, applications for employment should be handled by county and not sheriff. 1985 Op. Atty Gen, No. 85-7, p 40.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Hiring and discharge of deputy sheriff are matters solely within prerogative of sheriff, and it is extremely doubtful whether action could be taken by county council to withdraw appropriation for particular deputy sheriff's position so as to result in termination of particular deputy. 1985 Op. Atty Gen, No. 85-82, p. 231.

A sheriff does not have authority to appoint special or honorary deputies unless specifically authorized by statute. 1976-77 Op. Atty Gen, No. 77-190, p 145.

A Deputy Sheriff may not employ deputies under him even though the Sheriff is disabled. 1976-77 Op. Atty Gen, No 77-181, p 140.

A Deputy Sheriff holds office during the term and at the pleasure of the Sheriff who appointed him. 1974-75 Op. Atty Gen, No. 4210, p 255.

Under the South Carolina Constitution and statutes, a sheriff acts personally through his deputies and there is a legal presumption that a deputy assumes the identity of the sheriff when acting within the scope of his authority. 1970-71 Op. Atty Gen, No. 3214, p 196.

A sheriff may be held personally liable in a civil action for any tortious act done by one of his deputies acting in line of duty. 1970-71 Op. Atty Gen, No. 3214, p 196.

Under the common law the sheriff had sole authority to appoint his deputies, but since the appointment of deputies is regulated by statute, the method of appointment may be changed by the legislature. 1962-63 Op. Atty Gen, No. 1557 p 127.

A section of a county appropriations act authorizing employment of a deputy sheriff, with limited duties, was valid and in no way restricted the authority of the sheriff to appoint his general deputies. 1962-63 Op. Atty Gen, No. 1557, p 127.

NOTES OF DECISIONS

In general 1
Appointment and removal of deputies 2
Extent of sheriff's responsibility 5
Sheriff's responsibility for acts of deputies 4
Who are 'deputies' 3

1. In general

County is precluded from exercising any supervisory function or control over sheriff or his deputies, and is relieved of responsibilities for sheriff or deputies in performance of official duties, therefore, plaintiff must look to sheriff and not county government for redress of grievances in civil rights action by mother for fatal wounding of son by deputy sheriff. Allen v. Fidelity and Deposit Co. of Maryland (D.C.S.C. 1981) 515 F.Supp 1185, af-

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

firmed 694 F.2d 716.

Applied in Middleton v. Pearman (D.C.S.C. 1969) 305 F.Supp. 1203.

Cited in Pelfrey v. Oconee County (S.C. 1945) 207 S.C. 433, 36 S.E.2d 297.

Stated in Willis v. Aiken County (S.C. 1943) 203 S.C. 96, 26 S.E.2d 313.

This section, when construed with what is now § 14-7-820, renders a deputy sheriff ineligible for jury service. State v. Johnson (S.C. 1923) 123 S.C. 50, 115 S.E. 748.

A tax sale following an execution levied by a deputy who was not regularly appointed under this section and § 23-13-20 is void. Barrineau v. Stevens (S.C. 1906) 75 S.C. 252, 55 S.E. 309.

2. Appointment and removal of deputies

A deputy serves at the sheriff's pleasure. Botchie v. O'Dowd (S.C. 1993) 315 S.C. 126, 432 S.E.2d 458.

A sheriff may not compromise his statutory authority to discharge deputies at his discretion. Botchie v. O'Dowd (S.C. 1993) 315 S.C. 126, 432 S.E.2d 458. Sheriffs And Constables ⚿ 21

Discharged deputy did not have a protectable property interest in continued employment with the sheriff's department; to hold otherwise would eviscerate the sheriff's ability to discharge deputies at his pleasure as described in § **23-13-10**. Botchie v. O'Dowd (S.C. 1993) 315 S.C. 126, 432 S.E.2d 458.

Although § **23-13-10** grants a sheriff unreviewable employment and discharge authority over deputies in terms of a council-implemented grievance procedure because deputies are not included within the term "employees" used in § 4-9-30(7), it does not preclude judicial review of a claim of wrongful discharge based upon a violation of a deputy's constitutional free speech rights. To hold otherwise would strip the courts of their power of review and thereby place a sheriff's discharge decision beyond the reach of the very constitution which creates the sheriff's office. Botchie v. O'Dowd (S.C. 1989) 299 S.C. 329, 384 S.E.2d 727.

A sheriff may remove a deputy without a hearing. State v. Goldsmith (S.C. 1914) 96 S.C 484, 81 S.E. 147.

A sheriff is authorized by this section to summarily remove a deputy peace officer appointed by him, and such power is not affected by what is now § 23-13-240, except in so far as it is made the duty of the sheriff to remove the deputy on the request of the executive officers of a corporation for such causes as are therein stated. State v. Goldsmith (S.C. 1914) 96 S.C. 484, 81 S.E. 147.

© 2011 Thomson Reuters. No Claim to Orig US Gov. Works.

3. Who are 'deputies'

A former lieutenant in the county sheriff's department was not "personal staff" of an elected official, who would be excluded from protection under Title VII, where he did not report directly to the sheriff, he saw the sheriff only at monthly meetings of all supervisors, he was not a member of any command staff, he did not assist in any of the sheriff's election efforts, he was initially hired as a deputy by the sheriff's predecessor and was simply re-commissioned by the sheriff, and his position was created and compensated under state law. Cromer v. Brown (C.A.4 (S.C.) 1996) 88 F.3d 1315. Civil Rights ⚿ 1116(3)

This section is broad enough to include temporary law enforcement officers who acted under the sheriff in a subordinate capacity. Scott v. Vandiver (C.A.4 (S.C.) 1973) 476 F.2d 238.

4. Sheriff's responsibility for acts of deputies

Every sheriff is liable for the acts of all his officers, and all persons acting under him in every subordinate capacity; and they on their parts, are bound to conduct themselves in the like manner as the sheriff himself ought to do, if he were present. Scott v. Vandiver (C.A.4 (S.C.) 1973) 476 F.2d 238.

Under South Carolina law, state prison corrections officer alleging that sheriff's deputies planted contraband on his vehicle, leading to criminal charges, could not bring action against sheriff under statute making sheriff responsible for misconduct of his deputies; such statute was repealed by implication by South Carolina Tort Claims Act (SCTA). Robinson v. Metts, 1997, 86 F.Supp.2d 557, affirmed 188 F.3d 503, certiorari denied 120 S.Ct. 1166, 528 U.S. 1157, 145 L.Ed.2d 1076. Sheriffs And Constables ⚿ 100

South Carolina statutes impose liability on sheriffs for illegal actions of their deputies. Brunson v. Hyatt (D.C.S.C. 1976) 409 F.Supp. 35.

A sheriff is responsible for the acts of his deputies performed in the course of his official business, and the sheriff's bond will be responsible for any damages that may be suffered by any party as a result of negligence or improper acts in performance of such business. Trammell v. Fidelity & Cas. Co. of New York, 1942, 45 F.Supp. 366. Sheriffs And Constables ⚿ 157(3)

A deputy acts as his sheriff's agent under South Carolina law. Heath v. Aiken County (S.C. 1988) 295 S.C. 416, 368 S.E.2d 904. Sheriffs And Constables ⚿ 17

Deputy sheriff serves at sheriff's pleasure. Rhodes v. Smith (S.C. 1979) 273 S.C. 13, 254 S.E.2d 49.

The liability of a sheriff or constable for the official acts of a deputy is not based upon the doctrine of respondeat superior, but on the fact that the deputy is his representative, for whose acts he is as liable as if they had been done by himself. Rutledge v. Small (S.C. 1939) 192 S.C. 254, 6 S.E.2d 260. Sheriffs And Constables ⚿ 100

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

5 Extent of sheriff's responsibility

Assault by a sheriff's deputy in the performance of his duties is among the specific acts for which a sheriff is liable. Scott v. Vandiver (C.A.4 (S.C.) 1973) 476 F.2d 238. Sheriffs And Constables ⚿ 100

Where deputy sheriffs admitted that a civil rights complaint stated a cause of action against them for acts growing out of their arrest and imprisonment of plaintiff, complaint also stated cause of action against the sheriff. Brunson v. Hyatt (D.C.S.C. 1976) 409 F.Supp. 35.

State statute providing for appointment and responsibility of sheriffs and their deputies and stating that "sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy" did not subject sheriff to vicarious liability under 42 USCA § 1983 for conduct of deputies. Wyatt v. Fowler (S.C. 1997) 326 S.C. 97, 484 S.E.2d 590. Civil Rights ⚿ 1358; Sheriffs And Constables ⚿ 100

The sheriff's liability extends to acts of his deputy for abuse of process, assaults committed while performing the duties of the office, failure to serve process, failure of deputy to pay over money collected by him, a wrongful levy on or taking of property under color of legal process, and other similar official acts. Rutledge v. Small (S.C. 1939) 192 S.C. 254, 6 S.E.2d 260.

The liability of a sheriff for the acts of his deputy extends to many matters, but all are confined to such acts which are performed in the sphere of office of the deputy, where the wrong committed by him is official and not solely the personal act of the deputy. Rutledge v. Small (S.C. 1939) 192 S.C. 254, 6 S.E.2d 260.

Code 1976 § **23-13-10**, SC ST § **23-13-10**

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw.

Code 1976 § 23-13-20

C

Code of Laws of South Carolina 1976 Annotated Currentness

Title 23. Law Enforcement and Public Safety

Chapter 13. Deputy Sheriffs Generally

Article 1. General Provisions

§ 23-13-20. Bond and oath.

Each deputy sheriff shall, before entering upon the discharge of his duty, enter into bond in the sum of one thousand dollars, with sufficient surety, to be approved by the sheriff of the county, conditioned for the faithful performance of his duties and for the payment to the county and to any person of all such damages as they or any of them may sustain by reason of his malfeasance in office or abuse of his discretion. He shall, in addition to the oath of office now prescribed by Section 26, of Article III, of the Constitution, take the following oath (or affirmation) to wit: "I further solemnly swear (or affirm) that during my term of office as county deputy, I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, will conduct myself at all times with due consideration to all persons and will not be influenced in any matter on account of personal bias or prejudice. So help me, God." The form of such bond shall be approved by the county attorney and, with the oaths, shall be filed with and kept by the clerk of court for the county.

OATH #1

OATH #2

A blanket bond may be used in any county to fulfill the bond requirement of this section upon approval of the County Council and the County Attorney.

CREDIT(S)

HISTORY: 1962 Code § 53-77; 1952 Code § 53-77; 1942 Code §§ 3488, 3494; 1932 Code §§ 3488, 3494; Civ. C. '22 §§ 2033, 2039; Civ. C. '12 § 1147; Civ. C. '02 § 831; G. S. 654; R. S. 714; 1870 (14) 332; 1880 (17) 4; 1912 (27) 865; 1981 Act No. 105, § 1.

LIBRARY REFERENCES

Sheriffs and Constables ⚿ 19.
Westlaw Topic No. 353.
C.J.S. Sheriffs and Constables §§ 37 to 38.

LAW REVIEW AND JOURNAL COMMENTARIES

Coverage for Cops: Should Injuries Sustained by Off-Duty Sheriff's Deputies in Their Patrol Cars Be Compensable Under the Worker's Compensation Act? 55 SC Law Rev 695 (Spring 2004).

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Willis v. Aiken County (S.C. 1943) 203 S.C. 96, 26 S.E.2d 313.

Code 1976 § 23-13-20, SC ST § 23-13-20

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw

S.C CONST Art. III, § 26

C
Code of Laws of South Carolina 1976 Annotated Currentness
The Constitution of the State of South Carolina 1895
Article III. Legislative Department
§ 26. Oath of office.

Members of the General Assembly, and all officers, before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God." (1954 (48) 1852; 1955 (49) 23.)

EDITOR'S NOTE

The present provisions of this section are identical to § 5 of Article VI. For similar provisions in Constitution of 1868, see Const 1868, Art II, § 30.

CROSS REFERENCES

Legislative provisions concerning oath of office of members elected to General Assembly, see § 2-3-10.
Oath prescribed by South Carolina Constitution, Art III, § 26, to be endorsed upon back of bond of State Superintendent of Education, see § 59-3-10.

LIBRARY REFERENCES

States ⚿ 28(1).
Westlaw Topic No. 360.
C.J.S. States §§ 81, 90 to 93.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law § 13, The Composition and Qualifications of the General Assembly.

S.C. Jur. Elections § 50, Oath.

S.C. Jur. General Assembly § 4, Oath of Members of General Assembly.

© 2011 Thomson Reuters. No Claim to Orig US Gov. Works.

ATTORNEY GENERAL'S OPINIONS

Holding of the offices of magistrate and member of the House of Representatives constitutes dual officeholding within the meaning of South Carolina Constitution. But when the oath of office to the House is made, the office of magistrate will be held de facto, and even though this constitutes dual officeholding, all acts done in this capacity will be valid until a successor can be appointed. 1969-70 Op. Atty Gen, No. 2988, p 262.

A Senator's constitutional oath does not require him to maintain County lines in senatorial districts, but when the final judicial authority has spoken, its construction of the constitutional requirement of equal representation must be followed. 1982 Op. Atty Gen, No 82-71, p 70.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Denmark v Corley, 100 SC 433, 84 SE 884 (1915). State v Messervy, 86 SC 503, 68 SE 766 (1910).

Stated in Verner v. Seibels (S.C. 1901) 60 S.C. 572, 39 S.E. 274.

S.C. CONST Art. III, § 26, SC CONST Art. III, § 26

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works

738

OATH FOR COUNTY AND STATE OFFICERS

COPY

1. Immediately return this completed, notarized oath form to:

Secretary of State Jim Miles
Post Office Box 11350
Columbia, South Carolina 29211
Attention: Spencer Hewitt

2. Print your name, the office to which you have been appointed/elected, and your mailing address plainly. Make each letter plain and distinct.

NAME: Robert Edward Rushton

APPOINTED OFFICE: Deputy Sheriff - McCormick Co.

MAILING ADDRESS: P.O. Box 123 - McCormick SC

TERM TO EXPIRE: Pleasure of Sheriff

State of South Carolina
County of McCormick

First, I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve and protect and defend the Constitution of this State and of the United States.

So help me God.

Sworn to and subscribed before me this
02 day of Nov., 19-2009

Robert E Rushton
Signature of Appointee

Kathryn P. Butler
Notary Public of South Carolina

My Commission Expires 07-22-19

STATE'S EXHIBIT

C

Code of Laws of South Carolina 1976 Annotated Currentness
Title 23. Law Enforcement and Public Safety
Chapter 13. Deputy Sheriffs Generally
Article 1. General Provisions
§ 23-13-50. Authority to perform duties of office.

When duly qualified a deputy sheriff may perform any and all of the duties appertaining to the office of his principal.

CREDIT(S)

HISTORY: 1962 Code § 53-84; 1952 Code § 53-84; 1942 Code § 3488; 1932 Code § 3488; Civ. C. '22 § 2033; Civ. C. '12 § 1147; Civ. C. '02 § 831; G. S. 654; R. S. 714; 1870 (14) 332; 1880 (17) 4.

LIBRARY REFERENCES

Sheriffs and Constables ⚿ 79.
Westlaw Topic No. 353.
C.J.S. Sheriffs and Constables §§ 57 to 60.

NOTES OF DECISIONS

In general 1

1. In general

A deputy acts as his sheriff's agent under South Carolina law. Heath v. Aiken County (S.C. 1988) 295 S.C. 416, 368 S.E.2d 904. Sheriffs And Constables ⚿ 17

Stated in Willis v. Aiken County (S.C. 1943) 203 S.C. 96, 26 S.E.2d 313.

Code 1976 § 23-13-50, SC ST § 23-13-50

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw

Code 1976 § 16-11-420

Code of Laws of South Carolina 1976 Annotated Currentness
Title 16. Crimes and Offenses
Chapter 11. Offenses Against Property
Article 6. Protection of Persons and Property
§ 16-11-420. Intent and findings of General Assembly.

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

CREDIT(S)

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Code 1976 § 16-11-420, SC ST § 16-11-420

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

C
Code of Laws of South Carolina 1976 Annotated Currentness
Title 16. Crimes and Offenses
Chapter 11. Offenses Against Property
Article 6. Protection of Persons and Property
§ 16-11-430. Definitions.

As used in this article, the term:

(1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

(2) "Great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(4) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

CREDIT(S)

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Code 1976 § 16-11-430, SC ST § 16-11-430

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw.

Code 1976 § 16-11-440

Code of Laws of South Carolina 1976 Annotated Currentness
Title 16. Crimes and Offenses
Chapter 11. Offenses Against Property
Article 6. Protection of Persons and Property

§ 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

(E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

CREDIT(S)

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

The Protection of Persons and Property Act could not be applied retroactively, and therefore, defendant, whose charged criminal acts including voluntary manslaughter occurred four months prior to the Act's effective date, was not entitled to jury instruction on presumptions set forth in the Act, specifically, for purposes of self-defense, that one is presumed to have reasonable fear of imminent peril when using deadly force against another unlawfully entering his or her residence, occupied vehicle, or place of business; statutory language indicated that the Act was to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect. State v. Bolin (S.C.App. 2009) 381 S.C. 557, 673 S.E.2d 885. Homicide ⇐ 751

Code 1976 § 16-11-440, SC ST § 16-11-440

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw

Code 1976 § 16-11-450

C

Code of Laws of South Carolina 1976 Annotated Currentness
Title 16. Crimes and Offenses
Chapter 11. Offenses Against Property
Article 6. Protection of Persons and Property

§ 16-11-450. Immunity from criminal prosecution and civil actions; law enforcement officer exception; costs.

- SELF DEFENSE
- DEFENSE OF HABITATION
- RIGHT TO RESIST UNLAWFUL ARREST
- 17-13-20: NIGHTTIME ARREST OF FELON

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

CREDIT(S)

HISTORY: 2006 Act No. 379, § 1, eff June 9, 2006.

Code 1976 § 16-11-450, SC ST § 16-11-450

Current through End of 2010 Reg. Sess.

COPYRIGHT (C) 2010 BY THE STATE OF SOUTH CAROLINA

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

Westlaw.

Code of Laws of South Carolina 1976 Annotated Currentness
Title 23. Law Enforcement and Public Safety
➞ Chapter 23. Law Enforcement Training Council
➞ **§ 23-23-10. Purpose; definitions.**

(A) In order to insure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training.

(B) It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed. Nothing in this chapter may be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law enforcement officers which exceed the minimum standards set by the council, hereinafter created, nor, unless specifically stated, may anything in this chapter be construed to affect any sheriff, or other law enforcement officer elected under the provisions of the Constitution of this State.

(C) It is the intent of the General Assembly in creating a facility and a governing council to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status.

(D) Upon the signature of the Governor, all functions, duties, responsibilities, accounts, and authority statutorily exercised by the South Carolina Criminal Justice Academy Division of the Department of Public Safety are transferred to and devolved upon the South Carolina Criminal Justice Academy.

(E) As contained in this chapter:

(1) "law enforcement officer" means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed; and

(2) "council" means the Law Enforcement Training Council created by this chapter.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

§ 23-23-20. South Carolina Criminal Justice Academy.

There is hereby created the South Carolina Criminal Justice Academy which shall provide facilities and training for all officers from state, county, and local law enforcement agencies and for other designated persons in the criminal justice system. Correctional officers and other personnel employed or appointed by the South Carolina Department of Corrections may be trained by the department. Administration of this academy must be vested in a director who is responsible for selection of instructors, course content, maintenance of physical facilities, recordkeeping, supervision of personnel, scheduling of classes, enforcement of minimum standards for certification, and other matters as may be agreed upon by the council. The director must be hired by and responsible to the council. Basic and advance training must be provided at the training facility.

§ 23-23-30. South Carolina Law Enforcement Training Council; members; terms.

(A) There is hereby created a South Carolina Law Enforcement Training Council consisting of the following eleven members:

(1) the Attorney General of South Carolina;

(2) the Chief of the South Carolina Law Enforcement Division;

(3) the Director of the South Carolina Department of Probation, Parole and Pardon Services;

(4) the Director of the South Carolina Department of Corrections;

(5) the Director of the South Carolina Department of Natural Resources;

(6) the Director of the South Carolina Department of Public Safety;

(7) one chief of police from a municipality having a population of less than ten thousand. This person must be appointed by the Governor and shall serve at his pleasure;

(8) one chief of police from a municipality having a population of more than ten thousand. This person must be appointed by the Governor and shall serve at his pleasure;

(9) one county sheriff from a county with a population of less than fifty thousand. This person must be appointed by the Governor and shall serve at his pleasure;

(10) one county sheriff from a county with a population of more than fifty thousand. This person must be appointed by the Governor and shall serve at his pleasure; and

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(11) one detention director who is responsible for the operation and management of a county or multi-jurisdictional jail. This person must be appointed by the Governor and shall serve at his pleasure.

(B)(1) The members provided for in subitems (A)(1) through (A)(6) above shall be ex officio members with full voting rights.

(2) The members provided for in subitems (A)(7) through (A)(11) above shall begin serving on January 1, 2007.

In the event that a vacancy arises, it must be filled by appointment or election and confirmation of the original authority granting membership on the basis of the above referenced criteria.

(C) This council shall meet for the first time within ninety days after January 1, 2007, and shall elect one of its members as chairperson and one of its members as vice chairperson. These officers shall serve a term of one year and may be reelected. After the initial meeting, the council shall meet at the call of the chairperson, or at the call of the majority of the members of the council, but it shall meet no fewer than four times a year.

(D) Members of the council shall serve without compensation. A council member who terminates his office or employment which qualifies him for appointment shall immediately cease to be a member of the council.

§ 23-23-40. Certification requirement.

No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the Law Enforcement Training Council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment the department must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and within three working days of the notice the firearms qualification program as approved by the director must be provided to the newly hired personnel. If the firearms qualification program approved by the director is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the powers of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor is he eligible for any compensation by any law enforcement agency for services performed as an officer. Exceptions to the one-year rule may be granted by the director in these cases:

(1) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time; or

(2) in the event of the timely filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period; or

(3) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the Law Enforcement Training Council; or

(4) if it is determined by documentary evidence that the training will result in undue hardship to the requesting agency, the requesting agency must propose an alternate training schedule for approval.

Notwithstanding another provision of law, in the case of a candidate for certification who begins one or more periods of state or federal military service within one year after his date of employment or appointment, the period of time within which he must obtain the certification required to become a law enforcement officer is automatically extended for an additional period equal to the aggregate period of time the candidate performed active duty or active duty for training as a member of the National Guard, the State Guard, or a reserve component of the Armed Forces of the United States, plus ninety days. The director must take all necessary and proper action to ensure that a candidate for certification as a law enforcement officer who performs military service within one year of his employment or appointment is not prejudiced in obtaining certification as a result of having performed state or federal military service.

§ 23-23-50. Continuing Law Enforcement Education Credits (CLEEC) in domestic violence requirement; guidelines for exemptions.

(A) A law enforcement officer who is Class 1-LE certified in this State is required to complete Continuing Law Enforcement Education Credits (CLEEC) in domestic violence each year of a three-year recertification period. The number of required annual CLEEC hours in domestic violence shall be determined by the Law Enforcement Training Council but must be included in the forty CLEEC hours required over the three-year recertification period. The training must be provided or approved by the South Carolina Criminal Justice Academy and must include, but is not limited to, the following curriculum: responding to crime scenes, Fourth Amendment issues, incident report writing, mutual restraining orders, orders of protection, determining primary aggressors, dual arrests, victim and offender dynamics, victims' resources, victims' rights issues, interviewing techniques, criminal domestic violence courts, victimless prosecution, offender treatment programs, and recognizing special needs populations.

© 2011 Thomson Reuters. No Claim to Orig US Gov. Works.

(B) The Law Enforcement Training Council shall develop guidelines to provide for an exemption from the requirement of certain Class 1-LE certified law enforcement officers whose job responsibilities may not include responding to domestic violence cases from completing CLEEC hours in domestic violence each year. The request for an exemption must be made by the chief executive officer of the law enforcement officer's employing agency. A waiver or exemption from domestic violence training must not reduce the forty CLEEC hours required over the three-year period.

§ 23-23-60. Certificates of compliance; information to be submitted relating to qualification of candidates for certification; expiration of certificate.

(A) At the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter. Members of the council may individually or collectively visit and inspect any training school, class, or academy dealing with present or prospective law enforcement officers, and are expected to promote the most efficient and economical program for police training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. The council may make recommendations to the director, the General Assembly, or to the Governor regarding the carrying out of the purposes, objectives, and intentions of this chapter or other acts relating to training in law enforcement.

(B) All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for certification shall submit to the director, for his confidential information and subsequent safekeeping, the following:

(1) an application under oath on a format prescribed by the director;

(2) evidence satisfactory to the director that the candidate has completed high school and received a high school diploma, equivalency certificate (military or other) recognized and accepted by the South Carolina Department of Education or South Carolina special certificate;

(3) evidence satisfactory to the director of the candidate's physical fitness to fulfill the duties of a law enforcement officer including:

(a) a copy of his medical history compiled by a licensed physician or medical examiner approved by the employer;

(b) a certificate of a licensed physician that the candidate has recently undergone a complete medical examination and the results thereof;

(4) evidence satisfactory to the director that the applicant has not been convicted of any criminal offense that

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

carries a sentence of one year or more or of any criminal offense that involves moral turpitude. Forfeiture of bond, a guilty plea, or a plea of nolo contendere is considered the equivalent of a conviction;

(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

(a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

(b) evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver's license issued by any jurisdiction of the United States;

(c) evidence satisfactory to the director that a local credit check has been made with favorable results;

(d) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions.

In the director's determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at a determination of good character,

(6) a copy of the candidate's photograph;

(7) a copy of the candidate's fingerprints;

(8) evidence satisfactory to the director that the candidate's present age is not less than twenty-one years. This evidence must include a birth certificate or another acceptable document;

(9) evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution.

(C) A certificate as a law enforcement officer issued by the department will expire three years from the date of

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

issuance or upon discontinuance of employment by the officer with the employing entity or agency. Prior to the expiration of the certificate, the certificate may be renewed upon application presented to the director on a form prescribed by the director. The application for renewal must be received by the director at least forty-five days prior to the expiration of the certificate. If the officer's certificate has lapsed, the department may reissue the certificate after receipt of an application and if the director is satisfied that the officer continues to meet the requirements of subsections (B)(1) through (B)(9).

(D) The director may accept for training as a law enforcement officer an applicant who has met requirements of subsections (B)(1) through (B)(8).

§ 23-23-70. Certificates to be issued to certain officers appointed as chiefs and certain retired law enforcement officers.

(A) A retired law enforcement officer with twenty years or more law enforcement experience who subsequently serves as a magistrate or municipal judge of this State and is or has been appointed chief of a municipal department by the governing body thereof must be issued a certificate as a law enforcement officer pursuant to Section 23-23-60 if that person completes the legal course for Class I certified officers taught by the Criminal Justice Academy. This provision applies to a retired law enforcement officer of this State with twenty years or more law enforcement experience whose certificate has lapsed due to a three-year break in service who subsequently is appointed chief of a municipal department by the governing body thereof.

(B) A retired South Carolina law enforcement officer must be issued a certificate pursuant to Section 23-23-60 , authorizing him to serve as a certified law enforcement officer, if the officer meets the following qualifications at the time of application:

(1) the officer must have been retired pursuant to Section 9-11-60 or 9-11-70 for not more than ten years, except that the department may certify an officer who has been retired for more than ten years if the officer provides evidence satisfactory to the director that he has received law enforcement training and experience sufficient to qualify him to serve as a certified law enforcement officer;

(2) within the previous three years, the officer must have completed a legal course and all other training programs for certified officers mandated by law and taught by the Criminal Justice Academy; and

(3) the officer must have maintained a constable commission during his retirement, without interruption.

(C) A retired federal law enforcement officer must be issued a certificate pursuant to Section 23-23-60, authorizing him to serve as a certified law enforcement officer, if the officer provides evidence satisfactory to the director that he has received law enforcement training and experience sufficient to qualify him to serve as a certified law enforcement officer.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

§ 23-23-80. South Carolina Law Enforcement Training Council; powers and duties.

The South Carolina Law Enforcement Training Council is authorized to:

(1) receive and disburse funds, including those hereinafter provided in this chapter;

(2) accept any donations, contributions, funds, grants, or gifts from private individuals, foundations, agencies, corporations, or the state or federal governments, for the purpose of carrying out the programs and objectives of this chapter;

(3) consult and cooperate with counties, municipalities, agencies, or official bodies of this State or of other states, other governmental agencies, and with universities, colleges, junior colleges, and other institutions, concerning the development of police training schools, programs, or courses of instruction, selection, and training standards, or other pertinent matters relating to law enforcement;

(4) publish or cause to be published manuals, information bulletins, newsletters, and other materials to achieve the objectives of this chapter;

(5) make such regulations as may be necessary for the administration of this chapter, including the issuance of orders directing public law enforcement agencies to comply with this chapter and all regulations so promul- gated;

(6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council;

(7) require all public entities or agencies that employ or appoint law enforcement officers to provide records in the format prescribed by regulation of employment information of law enforcement officers; and

(8) provide by regulation for mandatory continued training of certified law enforcement officers, this training to be completed within each of the various counties requesting this training on a regional basis.

§ 23-23-90. Internal documents relating to requirements or administration of chapter as basis for court action.

An oral or written report, document, statement, or other communication that is written, made, or delivered concerning the requirements or administration of this chapter or regulations promulgated pursuant to it must not be the subject of or basis for an action at law or in equity in any court of the State if the communication is between:

(1) law enforcement agencies, their agents, employees, or representatives; or

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works

(2) law enforcement agencies, their agents, employees, or representatives and the South Carolina Criminal Justice Academy or the Law Enforcement Training Council.

§ 23-23-100. Compliance orders; penalties.

(A) Whenever the director finds that any public law enforcement agency is in violation of any provisions of this chapter, the director may issue an order requiring the public law enforcement agency to comply with the provision. The director may bring a civil action for injunctive relief in the appropriate court or may bring a civil enforcement action. Violation of any court order issued pursuant to this section must be considered contempt of the issuing court and punishable as provided by law. The director also may invoke the civil penalties as provided in subsection (B) for violation of the provisions of this chapter, including any order or regulation hereunder. Any public law enforcement agency against which a civil penalty is invoked by the director may appeal the decision to the court of common pleas of the county where the public law enforcement agency is located.

(B) Any public law enforcement agency which fails to comply with this chapter and regulations promulgated pursuant to this chapter or fails to comply with any order issued by the director is liable for a civil penalty not to exceed one thousand five hundred dollars a violation. When the civil penalty authorized by this subsection is imposed upon a sheriff, the sheriff is responsible for payment of this civil penalty.

§ 23-23-110. Law enforcement in municipality with single officer when officer attending training.

When a municipality employs only one law enforcement officer and that officer is attending law enforcement training at the South Carolina Criminal Justice Academy as required by law, the sheriff of the county wherein the municipality is located, or the head of the entity in charge of countywide law enforcement if the county sheriff is not, shall provide systematic patrolling of the municipal area while its law enforcement officer is attending the training.

§ 23-23-115. Training of officers with Savannah River Site Law Enforcement Department.

Notwithstanding another provision of law, a person employed as a law enforcement officer with the Savannah River Site Law Enforcement Department, a United States Department of Energy facility, may attend and be trained at the Criminal Justice Academy in accordance with training and certification standards established by the State. Expenses for mandated and elective training must be established by the Criminal Justice Academy and paid by the law enforcement officer's employer. An authorized representative of the United States Department of Energy shall certify to the academy that the officer is employed as a law enforcement officer at the Savannah River Site and request the officer's admission to the academy for training.

§ 23-23-120. Reimbursement for training costs.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(A) For purposes of this section, "governmental entity" means the State or any of its political subdivisions.

(B) After July 1, 2007, every governmental entity of this State intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required under this chapter must comply with the provisions of this section.

(C) If a law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State and within two years from the date of satisfactory completion of the mandatory training a different governmental entity of this State subsequently hires the law enforcement officer, the subsequent hiring governmental entity shall reimburse the governmental entity with whom the law enforcement officer was employed at the time of attending the mandatory training:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(D) If the law enforcement officer is employed by more than one successive governmental entity within the two-year period after the date of satisfactory completion of the mandatory training, a governmental entity which reimbursed the governmental entity that employed the officer during the training period may obtain reimbursement from the successive governmental entity employer for:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training, or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

(E) The governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer must not be reimbursed for more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

(F) A governmental entity, prior to seeking any other reimbursement, must first seek reimbursement from the subsequent hiring governmental entity under the provisions of this section. In no case may a governmental entity receive more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.

(G) No officer shall be required to assume the responsibility of the repayment of these or any other related costs by the employing agency of the governmental entity of the employing agency in their effort to be reimbursed pursuant to this section.

(H) Any agreement in existence on or before the effective date of this section, between a governmental entity and a law enforcement officer concerning the repayment of costs for mandatory training, remains in effect to the extent that it does not violate the provisions of subsections (E), (F), or (G). No governmental entity shall, as a condition of employment, enter into a promissory note for the repayment of costs for mandatory training after the effective date of this section.

§ 23-23-130. Retention of academy-generated revenue.

Notwithstanding any other provision of law, revenue received from the sale of meals to employees and students attending non-mandated, advanced, or specialized training courses, sale of student locks and materials, sale of legal manuals and other publications, postal reimbursement, photo copying, sale of miscellaneous refuse and recyclable materials, tuition from non-mandated, advanced, or specialized courses, coin operated telephones, revenue from E-911 and coroner training, private college tuition, and revenue from canteen operations and building management services, revenue from "Crime-to-Court" and other Criminal Justice Academy training series shall be retained by the academy and expended in budgeted operations for food services, expansion of the department's distance learning programs, professional training, fees and dues, clothing allowance, and other related services or programs as the director of the Criminal Justice Academy may deem necessary. The Law Enforcement Training Council, Criminal Justice Academy shall report annually to the General Assembly the amount of miscellaneous revenue retained and carried forward.

END OF DOCUMENT

© 2011 Thomson Reuters. No Claim to Orig. US Gov. Works.

OTHER FORENSIC EXPERTS

- FSN Main

Other Experts:

- Trace & Chemical Analysis
- Drug Identification
- Forensic Pathology
- Medical Review Officer
- Crime Scene
- Questioned Documents
- DNA

CRIME SCENE

Consulting:
Don Girndt is a retired Agent of the South Carolina Law Enforcement Division with over twenty years of law enforcement experience. He has testified in courts of record in South Carolina, North Carolina, Georgia and Maryland. Since 1995, he has been a valuable asset to the private sector as a forensic consultant in the areas of fingerprint identification, footwear identification, crime scene analysis and bloodstain pattern interpretation. Member of the International Association for Identification.

Testing:
I offer my service as a private forensic consultant in the areas of fingerprint identification, footwear identification, bloodstain pattern interpretation, crime scene analysis and evidence collection and preservation.

Expert:
Donald C. Girndt
103 South Gregg Street
Columbia, S.C. 29205
803-254-0686 - Residence
803-446-6875 - Cell
803-255-0047 - Fax
whorlwind1@aol.com

All Materials © Forensic Science Network, LLC.

18

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Case No. J-036561, J-036562, J-036563, J-036564, J-036565, J-036566

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

AMENDED INTIAL BRIEF OF APPELLANTS

Desa Ballard
Harvey M. Watson III
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Emails: desab@desaballard.com
harvey@desaballard.com

Carson Henderson
THE HENDERSON LAW FIRM, PC
109-B Oak Avenue
Greenwood, South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: carsonhenderson2@hotmail.com

Billy J. Garrett Jr.
GARRETT LAW FIRM, PC
109 Oak Avenue
Greenwood, South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: danamcvicker@earthlink.net
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities ii
Statement of Issues on Appeal 1
Statement of the Case 2
Statement of the Facts 4
Standard of Review 9
Argument 10

I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW 10

II. DOES PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING REQUIRE DEFENDANT TO PRESENT EVIDENCE OF THE APPLICABILTY OF IMMUNITY, AND THEN PLACE UPON THE STATE THE BURDEN OF SHOWING AN EXCEPTION TO IMMUNITY 12

A. Appellant established applicability of the presumption and immunity 14

B. The State must respond to Appellant's showing of entitlement to the statutory presumption and immunity by meeting its burden of production to show an exception to immunity 15

1. The State cannot even meet the first criteria for the exception, as Rushton was not a "law enforcement officer" at the time of the incident 16

a) Interpreted properly, statutorily mandated judicial approval of deputy appointments does not violate the separation of powers ... 17

b) Statutory oath requirement is a distinct and mandatory prerequisite that Rushton failed to satisfy 19

c) Rushton's certification as a Class I law enforcement officer had lapsed, and necessary training to recertify was not completed prior to the events in question 21

d) Failure to qualify as a "law enforcement officer" does not bar prosecution, but merely precludes certain exception to immunity.....22

2. The State cannot support a finding that Appellant knew or should have known Rushton was a law enforcement officer at the time of the incident.....22

a) The facts, when viewed properly from the perspective of Appellant as compelled by the common law and codification thereof, compel a finding that Appellant was reasonable in his belief that he was not firing upon a law enforcement officer.....23

b) Appellant provided expert testimony regarding the procedural and technical failures of Rushton, Moore, and McAllister that further justify a necessary finding of reasonableness on the part of Appellant.....27

c) Rushton was not in uniform or appearance a law enforcement officer.....27

Conclusion.....29

TABLE OF AUTHORITIES

CASES

Adams v. H.R. Allen, Inc.,
397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) 10, 12

China v. Parrott,
251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968) 10

Carolina Power & Light Co. v. City of Bennettsville,
314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994) 18

City of Rock Hill v. Harris,
391 S.C. 149, 154, 705 S.E.2d 53 (2011) 18, 21

Gathers By and Through Hutchinson v. South Carolina Elec. and Gas Co.,
311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993) 12

Hodges v. Rainey,
341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) 21

Moseley v. Welch,
209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946) 18

Nelson v. Coleman Co.,
249 S.C. 652, 155 S.E.2d 917 (1967) 12

Stanley Smith & Sons v. D.M.R. Inc.,
307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992) 14

State v. Bradley,
120 S.E. 240, 242, 126 S.C. 528 (1923) 29

State v. Dickey,
669 S.E.2d 917, 923, 380 S.C. 384, 396 (Ct. App. 2008)(*cert. granted)* 15

State v. Duncan,
392 S.C. 404, 709 S.E.2d 662 (2011) 9, 12, 15

State v. Osborne,
21 S.E.2d 178, 182, 200 S.C. 504, (1942) 15

State v. Sampson,
12 S.C. 567 (1880) 15

State v. Williams,
326 S.C. 130, 485 S.E.2d 99 (1997) 15, 23

Townes Associates, Ltd. v. City of Greenville,
266 S.C. 81, 221 S.E.2d 773 (1976) 9

Willis v. Aiken County,
26 S.E.2d 313, 315, 203 S.C. 96 (1943) 17, 19, 20

CONSTITUTIONAL PROVISIONS

S.C. Const. art. III, § 26 16

S.C. Const. art. V, § 11 9

STATUTES

S.C. Code Ann. § 16-11-401 *et seq.* (2006) 2, 4, 9

S.C. Code Ann. § 16-11-420 (2006) 12

S.C. Code Ann. § 16-11-420(A) (2006) 15

S.C. Code Ann. § 16-11-430 (2006) 15

S.C. Code Ann. § 16-11-440 (2006) 13, 21

S.C. Code Ann. § 16-11-450 (2006) 21, 22

S.C. Code Ann. § 16-11-450(A) (2006) 13, 16, 23

S.C. Code Ann. § 23-13-10 (1976) 16, 17, 18, 20, 21

S.C. Code Ann. § 23-13-20 (1976) 16, 21, 22

S.C. Code Ann. § 23-13-60 (1976) 22

S.C. Code Ann. § 50-11-2570(B) (Supp. 1988) 23

OTHER AUTHORITIES

Am. Jur. 2d, Evidence § 123 14

Trial Handbook for South Carolina Lawyers § 12:2 at 472 (4th ed. 2007) 14

Rule 607, SCACR 10

STATEMENT OF ISSUES ON APPEAL

I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW?

II. DOES PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING REQUIRE DEFENDANT TO PRESENT EVIDENCE OF THE APPLICABILTY OF IMMUNITY, AND THEN PLACE UPON THE STATE THE BURDEN OF SHOWING AN EXCEPTION TO IMMUNITY?

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals (Court) following Appellant Joe Ross Worley's arrest on or about November 9, 2009. Appellant was charged with three (3) counts of Assault and Battery with Intent to Kill and three (3) counts of Possession of Weapon during a Violent Crime arising from his firing of a rifle at an unknown person. later revealed to be a newly re-hired employee of the McCormick County Sheriff's Department. Appellant remains in jail, without trial, during these pre-trial proceedings of almost three (3) years.

Appellant raised as a defense to the charges the immunity from criminal prosecution afforded by the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* (hereinafter "the Act"). On December 3, 2009, the Honorable William P. Keesley denied pre-trial bond. On February 23, 2010, Judge Keesley again denied bond. Defense counsel moved for an order setting the case for trial, which was denied by order dated August 11, 2010. In the same order, Judge Keesley warned the prosecution that the case must be expedited.

Judge Keesley thereafter held a hearing on the applicability of immunity provided by the Act on May 31, 2011 and June 1, 2011. On July 5, 2011, Judge Keesley issued an Amended[1] Order on Motion to Bar Prosecution, denying Appellant's assertion of immunity. In that order, Judge Keesley recused himself from further proceedings in the action, and again denied Appellant's request for bond.

[1] The initial order was issued on June 24, 2011, but later amended to correct scrivener's errors.

On July 6, 2011, Appellant filed a Motion to Reconsider the denial of immunity, and a separate Motion to Reconsider Denial of Bond. Judge Keesley requested briefs[2] from both Appellant and the State on the immunity issues. Appellant filed his memorandum in support of reconsideration on August 1, 2011 and the State submitted a return on August 12, 2011. Appellant then filed a reply brief on August 22, 2011. On August 22, 2011, Appellant also filed a Motion to Supplement the Record on Rehearing, seeking to have Judge Keesley supplement the record of the hearing on immunity of an attached exhibit that reflected the State's witness Mr. Rushton was not certified as a law enforcement officer at the time of the events in question leading to arrest of Appellant.

Judge Keesley denied the motion to supplement by order dated February 22, 2012. Upon receipt of that order, Appellant realized the exhibit that was submitted in conjunction with the motion to supplement was already part of the hearing record, having been introduced at the hearing, and the actual exhibit intended to be the subject of the motion to supplement had not been presented to Judge Keesley for consideration. Accordingly, Appellant filed a Motion *Nunc Pro Tunc* to Supplement the Record on February 23, 2012. At the time of this initial brief, that motion remains pending before Judge Keesley.

Judge Keesley issued an Amended Order on Reconsideration of the Defendant's Motion to Bar Prosecution that was signed December 6, 2011 and filed December 8, 2011. Appellant timely filed a notice of appeal on January 20, 2012. Appellant subsequently filed two motions for extension of time in which to file the initial Appellant's brief.

---

[2] On October 10, 2011, counsel for Appellant provided Judge Keesley with a partial transcript of the proceedings (see discussion in Statement of the Facts infra) held before him on May 31 and June 1, 2011, on the immunity issue.

STATEMENT OF FACTS

In the early hours of November 15, 2009, Appellant fired a rifle to shoot an adult male who was pointing a gun at him as he stood on his second floor porch. The shot injured Robert Rushton, who was pointing a gun at Appellant[3]. Rushton was there with two officers (Nick Moore and Sara McAllister[4]) of the McCormick County Sheriff's Department investigating a report of shots being fired earlier that night. (Tr. p. 33, lines 1 – 11). A hearing on the applicability of immunity provided by the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* was held on May 31, 2011 and June 1, 2011. Unfortunately, only enough information to compile a partial transcript of this hearing survived a theft from the court reporter's records before a complete written transcript could be completed. (Tr. p. 159, lines 15-17; Tr. p. 231). Regrettably, Appellant's testimony is among the missing portions of the transcript.

At that immunity hearing, a neighbor testified that Appellant's family cat, Sweat Pea, was known to have been injured and that there were foxes in the area. (Tr. p. 152, l. 20 – p. 153, l. 11). Mr. Rushton testified he would not be surprised if Appellant had fired at a fox as Appellant contends. (Tr. p. 41, lines 21 – 23; Tr. p. 93, lines 2-3). Neighbors further testified that they often heard gunshots in the area, although some when Appellant was not at home, and had relayed their objections to the noise to Appellant's mother. (Tr. p. 148, lines 22 – 24; Tr. p. 149, lines 15 – 21). There is no evidence a prior noise report was ever communicated to Appellant by law enforcement. (Tr. p. 86, lines 6 – 9). On

[3] The property was owned by Appellant's mother, with whom he resided.

[4] Entered into evidence was a document detailing the termination of Deputy McAllister from her prior employment with the SC Dept. of Natural Resources. (Defense exhibit 6 from immunity hearing). She was fired because DNR discovered that she had participated in the destruction and concealment of critical evidence in a fatal accident investigation, only to then lie on three separate occasions about her actions during questioning by DNR officials. (Tr. p. 191, lines 8 – 14).

the night in question, the neighbors contacted police regarding shots fired in the area. (Defense Exhibit 4 from hearing).

The neighbors did not advise Appellant they had contacted police, so Appellant had no notice that anyone would be arriving at his home. Testimony conflicted regarding the exact time of the shots heard by the neighbors, with the latest time estimated by a neighbor to be 3:30 a.m. (Statement by Gayle Sheffield dated 11/15/09). Dispatch notified Mr. Rushton of the call sometime after 4:00 a.m. (Tr. p. 30, lines 9 – 11). Appellant shot Mr. Rushton sometime after approximately 4:30 a.m. (Tr. p. 64, line 5).

Appellant testified that by the time of their arrival, he was sound asleep in his bed. (Tr. p. 225, line 9). The neighbors who contacted police were expecting police presence and had their windows open. (Tr. p. 153, lines 20-21). Appellant was located upstairs, inside of a dwelling that he testified was well insulated. (Tr. p. 213, lines 8-9).

Rushton admitted that he believed a deer poacher was active in the area and was responsible for the prior shots. (Tr. p. 35, lines 6 – 8, Tr. p. 36, lines 2 – 5, Tr. p. 41, lines 14 - 15). Rushton did not have on a uniform; instead he was wearing merely khaki pants, a green shirt, and a small badge on his belt. (Tr. p. 21, line 13 – p. 22, line 14). He was not wearing McCormick County's standard deputy uniform, any reflective items such as a vest, or any hat identifying him as law enforcement, even though Rushton had a vest and hat he could have worn. (Tr. p. 22, lines 15 – 23; Tr. p. 25, lines 5 – 9; Tr. p. 24, lines 4 - 8).

Rushton, Moore, and McAllister did not telephone, or have dispatch call, the house in which Appellant was asleep to alert the residents of their impending arrival. (Tr. p. 87, lines 10-22). All arrived without sirens and blue lights in operation; in other

words, they arrived silently. Rushton and Moore approached the house, under a covered porch, knocked on the door, and rang the doorbell. The ground level door that was knocked upon, which was where the doorbell was located and is the only entrance to the house, had no peephole or other means to examine the identity or appearance of the person(s) on the other side. (Tr. p. 213, lines 10-18). There were no windows on the ground level, and no police cars could be seen from the upstairs windows. Id. Rushton's car, without blue lights or siren on, was parked on the other side of the house, out of Appellant's line of sight. (Tr. p. 92, lines 11-12; Tr. p. 213, lines 12-14). Moore's car and McAllister's car weren't parked on Appellant's property, and likewise did not have sirens or lights activated. (Tr. p. 197, lines 24 – p. 198, line 8).

Appellant testified that he had heard media reports of home invasions having occurred in the rural area, his mother's home had been burglarized at least once before successfully, and attempted burglaries had occurred on multiple occasions. (Tr. p. 212, line 23 – p. 213, line 3). Appellant also presented evidence that the night in question was the darkest night of the month. (Tr. p. 125, lines 5-7; Moon calendar submitted as portion of exhibit notebook by Defendant; Amended Order on Motion To Bar Prosecution, p. 3).

Appellant testified that he did not see anyone and only saw total darkness outside. (Tr. p. 213, lines 10-12). Moore and McAllister testified that they saw the light come on initially as they were at the rear of Appellant's house getting ready to leave. (Tr. p. 162, lines 10 – 18.). Every witness is consistent in acknowledging the light was not on continuously. Moore testified that he never had a clear look at Appellant, only seeing his silhouette. (Tr. p. 164, lines 18 – 24). McAllister said she never even saw Appellant. (Tr. p. 196, lines 18 – 21).

The shooting occurred immediately after Appellant stepped onto his balcony, with his weapon in the port position, not aimed at anyone. The State contends there was a verbal exchange prior to that shot wherein Appellant supposedly asked who was at his home, received a response that it was law enforcement, and replied with a statement of non-concern including profanity. (State's Exhibit 2 from immunity hearing).

Deputy Moore's claims a call of "Sherriff's office" and "gun!" were made, after which Appellant immediately fired at Rushton. (State's Exhibit 2 from immunity hearing). It is undisputed that the shooting happened almost immediately after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation between those involved. (Tr. p. 45, lines 25 – p. 46, line 9). Rushton testified that "it just happened so fast right then." (Tr. p. 46, lines 22 – 23.)

Evidence of the angle of trajectory and damage to Rushton's weapon and hand confirm that his weapon was aimed at Appellant when Rushton was struck by Appellant's fired bullet. (Tr. p. 66, lines 6 – 10; Amended Order on Motion To Bar Prosecution). Rushton's testimony confirms that he aimed his weapon at Appellant, despite no menacing, threatening, or illegal action having been taken by Appellant, merely by being in possession of a weapon of self-defense. (Tr. p. 46, lines 18 – p. 47, line 1; Tr. p. 47, lines 22 – 23; Tr. p. 54, lines 10 – 14; Tr. p. 63, lines 1 – 7).

Ruston testified the shot knocked him to the ground. (Tr. p. 52, line 2). Although armed with a semi-automatic rifle at the time and therefore capable of doing so, there is no evidence that Appellant sought to hunt down or further injure the person he had just shot. The notion that Appellant would not have shot Rushton if he had known Rushton was there on behalf of the police is not controverted with any evidence as to motive,

substantial prior criminal history, or evidence of ill will towards law enforcement generally. (Tr. p. 34, lines 4 – 8; Tr. p. 204, lines 6 – 8; Tr. p. 136, lines 25 – p. 137, line 8; Tr. p. 126, lines 15 – 19).

Appellant's expert, Dr. George Kirkham, examined the premises at night and reviewed the actions of Rushton, Moore, and McAllister before testifying that the trio failed to follow proper police procedures in many respects, so much so that "if you were making a training video for officers" the actions of these actors could be used to train for what not to do in such a situation. (Tr. p. 137, lines 24 – p. 138, line 3). Dr. Kirkham further stated "what seems to be clear that could have prevented this tragedy from happening[:] proper police procedure. That's all." (Tr. p. 142, lines 8 – 10).

At the hearing and subsequently upon reconsideration, the issue of whether Rushton was a duly authorized deputy was disputed. Rushton's own testimony was that he never took any oath of office, and that his appointment was never approved by any circuit court judge. (Tr. p. 9, lines 21 – p. 10, line 6). When the State produced an oath form signed by Rushton, Ruston testified only that his signature was on the document, not that he had taken the oath. (Tr. p. 109, lines 2 - 3).

STANDARD OF REVIEW

The Supreme Court, in its one opinion directly applying the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* (hereinafter "the Act") and the procedure to be implemented in the application thereof, both at the trial court and upon appeal, was silent as to the appropriate standard of review that should be applied by appellate courts considering initial trial court determinations of immunity. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).

The Circuit Court is a general trial court with original jurisdiction in civil and criminal cases. Article V, § 11. The immunity provided by the Act of course only arises in criminal proceedings. Nevertheless, it is civil in implementation, relying on the civil standard of "preponderance of evidence" and civil in the nature of its relief, as it acts not only to bar to conviction, but a complete bar to a wider range of acts constituting "prosecution" generally. See Duncan, at 409, 664 ("the legislature intended to create a true immunity, and not simply an affirmative defense").

Because the issue of immunity was tried by a judge alone and is equitable in nature, Appellant contends any appellate court considering the judgment should use a standard of review appropriate for equitable actions tried in such a manner. Therefore, the underlying facts in this matter would be reviewed with the ability to find facts in accordance with this Court's own view of the preponderance of the evidence. See Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENT

I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW?

Rule 607, SCACR details the requirements for a state-employed court reporter regarding transcripts and tapes of proceedings in circuit court. State-employed reporters are required to maintain both primary and backup tapes of a proceeding for a full five years after the proceeding. Id. The SC Court Reporter Manual, issued pursuant to order of the State Supreme Court, establishes the standards of conduct of all state-employed court reporters in the South Carolina judicial system. It states that a court reporter "is responsible for obtaining a clear, complete, and understandable record of the court proceedings" and that reporter materials "should be kept in a secure and safe manner." Id., p. 14, 17.

Nevertheless, the state-employed court reporter that was tasked with creating a transcript of the immunity hearing proceedings held on May 31, 2011 and June 1, 2011 before Judge Keesley has not produced a complete transcript of those proceedings. (Court Reporter Certification, Tr. p. 231). Importantly, Appellant bears absolutely no responsibility for this failure. Fortunately, missing transcripts and incomplete records, and the need and nature of correction thereof, have been addressed previously by courts in South Carolina.

Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired. Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) (citing China v. Parrott, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278

(1968)). "A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." Id.

Unfortunately, the portions of the immunity hearing transcript that are missing are not limited to mere ancillary matters of record. Rather, the portions missing are of grave and critical importance, including the testimony of the accused himself. Appellant provided that testimony at great risk and jeopardy, requiring first a waiver of his Fifth Amendment right to remain silent, subjecting himself to intense cross-examination by the State well before ultimate trial on the pending charges themselves before a jury of his peers. The critical issues in this matter are determinations of the reasonableness of Appellant's actions on the night in question, and Appellant's proferred information regarding his subjective thoughts and impressions, as well as information regarding the premises at which the events unfolded, are critical to a full and fair consideration of the matters, which is why he willingly waived his right to remain silent and submit sworn testimony at the immunity hearing.

The appropriate remedy for the State's failure should be the augmentation of the record on appeal, which Appellant attempted to bring about through a Motion to Supplement the Record. That motion was denied by order of this Court on December 19, 2012. Absent acceptance of that proffered supplementation then, the matter should be remanded to the lower court with direction to evaluate Appellant's proffered reconstructive materials, as well as any others deemed appropriate through which a meaningful and more complete record for review can be created. Only then is this matter appropriate for appellate review. Recent case law, however, indicates partial

reconstructions may be disfavored. See Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012) (remanding for new trial in light of rejected attempt at partial record reconstruction).

If augmentation of the existing record is ordered instead of complete re-hearing, Appellant should receive an inference in his favor regarding all testimony and evidence that was not initially preserved for review. If a party fails to produce testimony of an available witness on a material issue, it may be inferred that such testimony would have been adverse to him. Nelson v. Coleman Co., 249 S.C. 652, 155 S.E.2d 917 (1967). Likewise, when a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. Gathers By and Through Hutchinson v. South Carolina Elec. and Gas Co., 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993). Although Respondent did not directly lose the portion of the transcript, the actor that did was a State actor, and thus the actions of the court reporter should be imputed to the State as Respondent.

II. PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING REQUIRES APPELLANT TO PRESENT EVIDENCE OF THE APPLICABILTY OF IMMUNITY, AND THEN PLACES BURDEN UPON THE STATE TO PROVE AN EXCEPTION

As noted by the State Supreme Court, the Act "does not explicitly provide a procedure for determining immunity." State v. Duncan, 392 S.C. 404, 409, 709 S.E.2d 662, 664 (2011). However, the Act does clearly articulate the legislative intent was to codify the common law Castle Doctrine, providing for the ability of law-abiding citizens to protect themselves via their constitutional right to bear arms, and thereby protect their right to "expect to remain unmolested and safe within their homes." S.C. Code Ann. §

16-11-420. The Act provides definitions for certain terms before the critical portions applicable in this matter appear, beginning with the presumption, which provides:

> (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury ... when using deadly force [against] another person if the person:
>
> (1) ... has unlawfully and forcibly entered a dwelling ...; and
>
> (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440.

The actual provision providing for immunity under the Act then reads as follows:

> (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A).

The statute thus begins with the explanation of the legislative intent by citing the expectations of the state's citizens, and buttresses that starting point by granting an express presumption in their favor if certain criteria are met. Then the immunity provision comes, which has a clear organization of general grant of immunity, then listing of possible exceptions. The State argues the applicability of an exception to that presumption and immunity, but for purposes of the discussion of the statute and its application to Appellant, proper analysis by the lower court necessarily begins with Appellant seeking to establish applicability of the general presumption and immunity.

The burden of producing evidence shifts from side to side as the proceedings progress. Am. Jur. 2d, Evidence § 123. Generally accepted principles of burden of persuasion and burden of production place upon the party seeking relief, and who are in possession of the means by which an affirmative showing can be made, with the obligation to present evidence. Stanley Smith & Sons v. D.M.R. Inc., 307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992)("the burden of evidence is imposed on the party best able to sustain it, that is, the party having peculiar knowledge of the facts or control of the evidence relating to an issue). "Once the party to whose advantage the presumption operates has proven the basic facts giving rise to the presumption, the burden of persuasion shifts to the party against whom the presumption operates." Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 12:2 at 472 (4th ed. 2007). Appellant thus contends the burden of persuasion, or at minimum the burden of production, should shift to the State to accomplish application of an exception to immunity.

The lower court, however, goes beyond placing the burden on Appellant of entitlement to the immunity itself, and also places the additional obligation on Appellant of disproving any possible exception. Appellant contends placing that second, additional burden on Appellant beyond mere entitlement to immunity is an error of law necessitating a reversal and remand by the Court of Appeals.

A. Appellant established applicability of the presumption and immunity.

Appellant contends that he has presented evidence that demands application of the statutory presumption and immunity pursuant to the Act, and any factual findings to the contrary would be unsupported by the evidence, clearly wrong, or controlled by error of

law and thus justify reversal and remand. See State v. Williams, 326 S.C. 130. 135, 485 S.E.2d 99, 102 (1997)

The lower court erred as a matter of law by determining Appellant failed to prove entry or attempt at entry into Appellant's dwelling. S.C. Code Ann. § 16-11-420(A) is clear in its intent to absorb and continue the wealth of common law related to the Castle Doctrine. Section 16-11-430 thereafter defines "dwelling." It is undisputed that the home where Appellant was staying that night qualifies as his dwelling and his residence. Given that presence in his dwelling, deep-rooted case law extends the area for qualified defensive action to include Appellant's curtilage, an important aspect of South Carolina jurisprudence continued by express incorporation of the statute. See State v. Sampson, 12 S.C. 567 (1880)(an outhouse can be part of a dwelling if connected under the same roof); State v. Osborne, 21 S.E.2d 178, 182, 200 S.C. 504, (1942)("may repel trespassers in or upon the house...as if he were under his own roof or within his own doors.").

Rushton had "entered" the dwelling, given his location under the roof and eaves of the house, the very type of place "where the property owner alone has the right to be, to the exclusion of the general public." State v. Dickey, 669 S.E.2d 917. 923, 380 S.C. 384, 396 (Ct. App. 2008)(*cert. granted*). In Duncan, the "victim" was only on the porch of the shooter's residence, which was determined to have been within the scope of the Act's definition of dwelling. 392 S.C. at 407, 709 S.E.2d at 663.

The entrance of Rushton was unlawful because he was not a law enforcement officer, as discussed in detail *infra*, and thus could not have been acting within the proper scope of his duties of employment as a "deputy" while on Appellant's premises that evening. As such, he had no right to be on the premises, and was a trespasser. Moreover,

it is clear that Rushton aimed his weapon at Appellant before Rushton was shot. (Tr. p. 66, lines 6 – 10; Amended Order on Motion To Bar Prosecution).

B. The State must respond to Appellant's showing of entitlement to the statutory presumption and immunity by meeting its burden of production to show an exception to immunity.

S.C. Code Ann. § 16-11-450(A) provides an exception to the statutory immunity. The criteria for the exception requires that the person against whom the deadly force was used was a law enforcement officer, that person was acting in the performance of his official duties, and either he identifies himself in accordance with applicable law, or the person using deadline force knows or should have known that the person was a law enforcement officer.

1. <u>The State cannot even meet the first criteria for the exception, as Rushton was not a "law enforcement officer" at the time of the incident</u>.

"Law enforcement officer" is not defined by the Act. Rushton was hired by the county sheriff to be a "deputy," which is defined apart from the Act in other statutory and constitutional provisions. No one becomes a qualified, recognized deputy sheriff without taking certain actions required by law. First, Article III, Section 26 of the State Constitution requires an oath be taken. Next, S.C. Code Ann. § 23-13-10 requires an appointment and approval process be completed, and S.C. Code Ann. § 23-13-20 contains an additional statutory oath that must be completed. The two (2) oaths have to be filed with the County Clerk of Court. No case law or statutory provision creates an "almost deputy" office that can be held. Therefore, as a matter of law, one is either a

deputy or not. Since Rushton is not, he has no other claim to assume the title of "law enforcement officer" within the meaning of the Act.[5]

The lower court's opinion as written and applied to Appellant, however, expressly invalidates both of the referenced statutory provisions. Appellant submits that all such portions of the Order compelling or evidencing that conclusion and result are errors of law. That error is exploited by the State to qualify Rushton as a deputy, and thereby avail itself of an exception under the Castle Doctrine that it otherwise would not qualify for given the absence of involvement of a "law enforcement officer."

(a) Interpreted properly, statutorily mandated judicial approval of deputy appointments does not violate the separation of powers.

S.C. Code Ann § 23-13-10 sets out a requirement that the sheriff's appointed deputy "be approved" by a circuit court judge. He made this legal determination, apparently, so as to minimize the failure of the State to satisfy its burden of proving that Rushton was properly deputized. The lower court deems this a violation of the separation of powers, to the extent "it provides for judicial approval of executive branch appointments." (Amended Order on Motion To Bar Prosecution, p. 9). Prior review of the same statutory requirement by the Supreme Court, however, raised no such issues. See Willis v. Aiken County, 26 S.E.2d 313, 315, 203 S.C. 96 (1943) (rejecting argument that deputy was not a separate officer from the Sheriff, and referencing the manner in which deputies were appointed *and* approved). Mere interaction or participation by elements from multiple branches of government is not the equivalent of merger and loss

[5] Although not made as an argument by the State, Rushton could cite mere employment with the sheriff's department as sufficient to qualify him as a "law enforcement officer" but such a claim would stretch the meaning of that phrase past its logical limits. Otherwise, any janitor employed by a department would carry the same "officer" title with all the rights, privileges and obligations that go along with it.

of separation as the presiding judge gratuitously determined in what appears to be a ruling to lessen the impact of the State's absence of proof on this issue.

As the order cites, statutes are to be construed first upon their plan meaning if unambiguous, as this statute in question is certainly. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). However, when judging the constitutionality of a given statute, the courts should if possible

> construe[ ] [the statute] so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.
>
> City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53 (2011)(citing Moseley v. Welch, 209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946)).

Instead, the lower court makes a narrow and most extreme interpretation of the term "approved" and imbues the circuit court judge with the power of veto and rejection of the sheriff's employment decisions.

With an eye toward meeting the obligation to construe it in any way so as to render it effective, however, the "approved" language in S.C. Code Ann § 23-13-10 could, and therefore should, be read to merely require the involvement of the circuit court judge to verify the appointment and completion of the necessary oaths/other actions. In essence, such a reading would merely create judicial certification of compliance with a mandatory process, something judges do every day and in many different ways. This very case involves judicial determination of an executive's compliance with statutory law, and no more implicates the separation of powers than when a notary, and executive branch officer, participates by necessity of law in the completion of any number of judicial activities (completion of affidavits, etc.).

Having thus shown that the statutory provision is capable of interpretation so as to render it valid, the statute remains valid, and the consequences for failure to comply must be addressed by the Court in its opinion. Rushton's own testimony was that he never took any oath, and that his appointment was never approved by any circuit court judge. No evidence to the contrary was presented, and thus the only rational conclusion based on the evidence presented was that Rushton had not been approved as required by statute.

As a matter of law, therefore, the State failed to establish that Rushton met the prerequisites to be a "deputy." By extension, the State failed to prove that Rushton was a "law enforcement officer" for purposes of the immunity exception contained within the Act. Even when the State produced an oath form signed by Rushton, Ruston testified only that his signature was on the document. (Tr. p. 109, lines 2 - 3). Rushton did not testify[6] he took the oath. (Tr. p. 12, lines 2 – 8, Tr. p. 9, lines 21 – p. 10, line 6).

(b) Statutory oath requirement is a distinct and mandatory prerequisite that Rushton failed to satisfy.

The "right, authority, and duty of a deputy sheriff are thus created by statute." Willis v. Aiken County, 26 S.E.2d 313, 316, 203 S.C. 96 (1943). The Supreme Court in that matter was addressing specifically the same requirements now codified in S.C. Code Ann § 23-13-10, which establishes a separate requirement of the taking of an oath by a deputy "before entering upon the discharge of his duty." The statute expressly mentions the Constitutional Oath of Article III, and sets forth an additional oath that must be completed as set forth verbatim. Clearly the legislature's intent was to add a distinct,

[6] The order references the Constitutional oath, and states that Appellant produced no evidence it was not forwarded to the Secretary of State, as the form indicated it would be. This is an example of the improper placement of burden of production discussed in section III supra, as it was the State's responsibility to prove compliance with all necessary aspects of Rushton's deputization, not Appellant's burden to produce evidence of non-compliance

mandatory oath *above and beyond* the constitutionally mandated oath, which the Supreme Court in Willis accepted as a given without discussion or rejection. Again, the evidence presented was that Rushton did not recall taking any oaths upon his employment with the County, and Rushton never testified that he took the oath that he signed. which does not comply with the language required by § 23-13-10.

The Court characterizes Appellant's interpretation of the statute as "strict, technical evaluations." (Amended Order on Motion to Bar Prosecution, P. 13). The statute does not require any complex or "technical" actions. It merely, and in plain language, puts recitation of a particular oath as a barrier to qualification as a deputy, a barrier Rushton and the State cannot surmount. Appellant has only made simple demands for compliance with a simple statute. Surely mere compliance with controlling plain language of a statute cannot be devalued and dismissed as a "strict" interpretation.

Treatment of this statutory oath requirement as just "supplemental" to the Constitutional requirement is at its essence a mere a refusal to enforce the clear, mandatory intent of the legislature. It can be fairly characterized as "additional" or "supplemental" to the Constitutional oath, but neither characterization diminishes or excuses failure to comply with its mandatory nature. That result could not have been intended by the legislature, who went through the trouble of crafting the statute to place the requirement, despite acknowledging the existence of a similar oath requirement already.

The legislature's requirement is a minimal barrier to deputization, but any barriers that the legislature deems fit to impose expressly are intended because of the significant

meaning and consequence created once that process is completed. That significance is destroyed by the lower court's nullification of the mandatory nature of the statute.

In the process of nullifying that provision of the State Code, the lower court's conclusion operates to delete the word "officer" from § 16-11-440 and 450. Once the barrier to becoming an officer is removed, the castle doctrine statute would then provide an exception for any member of "law enforcement," not just officers thereof. Under that standard, mere labeling of any county employee as a "deputy," regardless of demonstrated noncompliance with the requirements set forth in § 23-13-10 or 20, is enough to grant that employee the full protections expressly reserved for "law enforcement officers." Surely that result would be the sort of "plainly absurd" result that courts are to avoid when interpreting statutes. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

(c) Rushton's certification as a Class I law enforcement officer had lapsed, and necessary training to recertify was not completed prior to the events in question.

Rushton left his employment with the McCormick County Sheriff's Department and spent four years working abroad between 2005 and 2009. (Tr. p. 7, lines 21 – p. 8, line 4). He testified upon cross examination that he "had to catch up all the training hours I had missed for the previous four years." (Tr. p. 9, lines 11 – 12). He claimed to have taken a criminal domestic violence update and legal update. (Tr. p. 13, lines 16 – 20). No such training, however, is listed on his training record submitted at the hearing.

(Court's Exhibit 1 from hearing). That same document shows he was certified[7] as a Class I law enforcement office on June 26, 2010, nearly seven months *after* the night in question. Id. The only evidence of training is thus contradicted by a certified document from the Criminal Justice Academy that was entered into the hearing record as an exhibit.

(d) Failure to qualify as a "law enforcement officer" does not bar prosecution, but merely precludes certain exception to immunity.

The Court justifies its determination that failure to comply with the oath requirement of S.C. Code Ann. § 23-13-20 "does not deprive the State of the ability to prosecute here for shooting a deputy." That first assumes qualification as a deputy, which as shown has not been met as a matter of law. Second, that is an oversimplification of the collateral consequences of Rushton's (and the County's) failures. Failure of an exception is not the equivalent of proof that the underlying immunity applies. The failure here does preclude the State from availing itself of the "law enforcement officer" exception under § 16-11-450, but does not by itself bar prosecution. The bar to prosecution, if any, comes as the result of Appellant's separate preliminary showing of entitlement to the necessary presumption and immunity, as set forth hereinabove in Section III.A.

2. The State cannot support a finding that Appellant knew or should have known Rushton was a law enforcement officer at the time of the incident.

Assuming for the purposes of argument that Rushton is determined to be a "law enforcement officer" as a matter of law or factual finding by the presiding judge, the

[7] The date referenced is a recertification date. Since Rushton had spent more than three years away from the McCormick County Sheriff's Department, his certification had lapsed. See S.C. Code § 23-23-60. The June 26, 2007 date listed is, upon information and belief, the date of that lapse, and is not indicative of continuous certification that was not renewed until 2010.

State would still need to show that Rushton "identifie[d] himself in accordance with applicable law." S.C. Code Ann. § 16-11-450(A). The State may also make the requisite showing by producing evidence that Appellant knew or should have known Rushton was a law enforcement officer. Id. The evidence, however, compels the conclusion that Appellant acted reasonably in ignorance of the fact that Rushton was (purportedly) a law enforcement officer, in part because of Rushton's failure to follow proper procedures for responding to a "shots fired" dispatch. Any factual finding to the contrary is "clearly wrong" such that the findings may be set aside on appeal. See State v. Williams, 326 S.C. 130, 485 S.E.2d 99 (1997)

(a) The facts, when viewed properly from the perspective of Appellant as compelled by the common law and codification thereof, compel a finding that Appellant was reasonable in his belief that he was not firing upon a law enforcement officer.[8]

Appellant testified that he was aware of home invasions occurring, and that his mother's home had been burglarized at least once before successfully, and attempted burglaries had occurred on multiple occasions. (Tr. p. 212, line 23 – p. 213, line 3). The Order mentions that Appellant had discharged his firearm in the area that evening, as he was allowed to do lawfully since his mother's house was in an unincorporated area, not a "neighborhood" as the order claims, and he was protecting his pet from a fox pursuant to S.C. Code § 50-11-2570(B) (right to shoot at furbearing animal damaging property). The Order mentions neighbor complaints to Appellant's mother about Appellant's shooting, but absolutely no firm testimony or evidence indicates that Appellant was ever advised of

[8] Again, as set forth in detail *supra*, Appellant contends that Rushton was not a "law enforcement officer" within the meaning of the Act,

that conversation. (Tr. p. 149, lines 15 – 18). There is no evidence a prior noise report was ever communicated to Appellant by law enforcement. (Tr. p. 86, lines 6 – 9).

Rushton, Moore, and McAllister did not telephone, or have dispatch call, the house in which Appellant was located, and they were not responding to any contact initiated by Appellant. ((Tr. p. 87, lines 10-22). The neighbors that called the police had not contacted Appellant or notified him of police involvement on the night of the shooting or any previous occasion. (Tr. p. 149, lines 15 – 18). As he testified, Appellant was sound asleep in his bed when the disturbance on the property began.[9] (Tr. p. 225, line 9). He was upstairs, inside of a dwelling that was well insulated. (Tr. p. 213, lines 8 – 9, Amended Order on Motion To Bar Prosecution, p. 3).

The Court's reference to the ability of neighbors to observe and hear various events is irrelevant and misguided. Those neighbors were expecting police presence, as they had in fact initiated police presence, and they had their windows open. (Tr. p. 153, lines 20-21).

The ground level door that was knocked upon, which was where the doorbell was located and is the only entrance to the house, had no peephole or other means to examine the identity or appearance of the person(s) on the other side, which is submitted as a more than appropriate reason for Appellant to not open this door. (Tr. p. 213, lines 10-18). There were no windows on the ground level, and no police cars could be seen from the upstairs windows. Id. Rushton's police car, without blue lights on, was parked on the other side of the house. (Tr. p. 92, lines 11-12; Tr. p. 213, lines 12-14). It was also

[9] Testimony conflicted regarding the exact time of the shots, although witnesses seemed to agree that there were only two shots fired. Even using a time later than Appellant's own recollection, the 3:30 a.m. time testified to by the neighbor, still puts an hour between the final shot and when Rushton arrived on scene, which was more than ample time for Appellant to reach a deep sleep prior to awakening suddenly.

parked behind an SUV. (Tr. p. 39, lines 16 – 18). Moore's car and McAllister's car weren't parked on Appellant's property, and likewise did not have sirens or lights activated. (Tr. p. 197, lines 24 – p. 198, line 8). Appellant had no obligation to remove and open the only barrier to entry into his home, just to determine the identity of an uninvited, demanding visitor of unknown purpose or identity in the middle of the night. It is unreasonable to require otherwise.

Appellant presented evidence that the night in question was the darkest night of the month, and the Court stated it had no reason to disbelieve that evidence (Amended Order on Motion To Bar Prosecution, p. 3). That raises the issue regarding the use/non-use of a balcony light. Moore and McAllister testified that they saw the light come on initially as they were at the rear of Appellant's house getting ready to leave. (Tr. p. 162, lines 10 – 18.). This clearly explains why Appellant did not see any person in his yard when he first turned on the light and looked out over the yard from within his house.

Every witness is consistent in acknowledging the light was not on continuously. The Court finds that there was a verbal exchange wherein Appellant supposedly asked who was at his home, received a response that it was law enforcement, and replied with a confrontational statement. (Amended Order on Motion To Bar Prosecution, p. 6).

Appellant maintains no such verbal exchange occurred, and there is no evidence to indicate that Appellant was disposed to, or had any reason on the night in question, have reacted in such a cavalier manner to the supposed announced presence of law enforcement, regardless of the time of night. (Tr. p. 46, lines 18 – p. 47, line 1; Tr. p. 47, lines 22 – 23; Tr. p. 54, lines 10 – 14; Tr. p. 63, lines 1 – 7). Thus Appellant's testimony that he would not have shot Rushton if he had known Rushton was there on behalf of the

police, (Amended Order on Motion To Bar Prosecution, p. 3), is uncontroverted and should be accepted by the Court.

Appellant had no death wish, and had no grudge against law enforcement. and thus the only reasonable explanation for why he would turn on the light and step onto his balcony, which also is the actual explanation, is that Appellant had not yet understood or acknowledged the presence of purported law enforcement. The Court acknowledges that Appellant testified about a failure to see any blue lights, or hear sirens, or see that the area was cordoned off, but "his testimony in that regard is not credible." (Amended Order on Motion To Bar Prosecution, p. 4). However, the reason Appellant did not see any blue lights, hear any sirens, or see a cordoned off area is that those actions were *never taken* by anyone, and thus the testimony is not contested in that regard and cannot be found to be no credible.

It is undisputed that the shooting happened almost immediately after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation between those involved. (Tr. p. 45, lines 25 – p. 46, line 9). Rushton testified that "it just happened so fast right then." (Tr. p. 46, lines 22 – 23.) Deputy Moore's statement to the ATF was that this action was supposedly met with a call of "Sherriff's office" and "gun!" after which Appellant immediately fired at Rushton. (R. ___). Even without agreement with Moore's statement, it is undisputed that the shooting happened within a very brief after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation with or dialogue with any particular person. Accordingly, there is no evidence to support the contention that even had those statements been made, that there was sufficient time to process the information prior to Appellant's shot.

(b) Appellant provided expert testimony regarding the procedural and technical failures of Rushton, Moore, and McAllister that further justify a necessary finding of reasonableness on the part of Appellant.

The lower court ignores the significant and relevant testimony of Appellant's expert, Dr. George Kirkham. Dr. Kirkham, a member of law enforcement himself, examined the premises at night and reviewed the actions of Rushton, Moore, and McAllister on site that morning. (Tr. p. 114, lines 23 – 24). He testified that the trio failed to follow proper police procedures in many respects, so much so that "if you were making a training video for officers" the actions of these actors could be used to train for what not to do in such a situation. (Tr. p. 137, lines 24 – p. 138, line 3). Dr. Kirkham further stated "what seems to be clear that could have prevented this tragedy from happening[:] proper police procedure. That's all." (Tr. p. 142, lines 8 – 10).

(c) Rushton was not in uniform or appearance a law enforcement officer.

The Order states that Rushton did not have on a military style uniform, "but had his badge displayed." (Amended Order on Motion To Bar Prosecution, p. 6). There is neither evidence nor any indication how the clothing worn by Rushton differed from the stereotypical outfit a burglar might employ, aside from the small badge on a belt. Rushton did not have on a uniform; instead he was wearing merely khaki pants, a green shirt, and a small badge on his belt. (Tr. p. 21, line 13 – p. 22, line 14). He was not wearing McCormick County's standard deputy uniform, any reflective items such as a vest, or any hat identifying him as law enforcement, even though Rushton had a vest and hat he could have worn. (Tr. p. 22, lines 15 – 23; Tr. p. 25, lines 5 – 9; Tr. p. 24, lines 4 - 8). Appellant testified that he did not see the badge anyway, which is highly likely and

understandable given Rushton's first appearance to Appellant involved a gun aimed at Appellant on a dark night.[10]

Appellant's actions after shooting Rushton support this belief, and actions in conformity therewith up until that point, that he was protecting himself within his castle and not mistakenly shooting a purported member of law enforcement. There is absolutely no evidence that Appellant maliciously sought to hunt down or further injure the person he had just shot. Ruston testified the shot knocked him to the ground. (Tr. p. 52. line 2). Appellant was armed with a semi-automatic rifle that contained additional unspent ammunition, including a round in the chamber. (State's Exhibit 2 at immunity hearing, p. 3 (Statement of Moore)). Appellant could have easily fired multiple shots at Rushton if he had intended to be as evil as portrayed by the State.

Instead, Appellant fired a warning shot into the air over Ruston's head. Then, consistent with someone protecting himself and not intent upon attacking known law enforcement. Appellant remained within the protection of the home for a short time, then searched the premises and even helpfully placed Mr. Rushton's damaged pistol inside the patrol car before meeting with the Sheriff who arrived on scene later. (State's Exhibit 2, p. 11 (Sheriff Reid's statement).

The Order repeats Appellant's statement as "Where are you, you son of a b____?" (Amended Order on Motion To Bar Prosecution, p. 7). Although not clear from the order, it is important that the statement be clarified as definitively referring to a single person, as Appellant contends he was only aware of a single, un-uniformed person on his premises that evening, and not the trio that the State wants to focus on. Moore

[10] As the Court notes in its order, evidence of the angle of trajectory and damage to Rushton's weapon confirms that it was aimed at Appellant when struck by Appellant's fired bullet.

testified that he never had a clear look at Appellant, only seeing his silhouette. (Tr. p. 164, lines 18 – 24). McAllister said she never even saw Appellant. (Tr. p. 196, lines 18 – 21). These statements, even without reliance upon anything Appellant testified regarding, compel but one factual finding supported by evidence, that Appellant was reasonably ignorant of the presence of more than one person, let alone multiple persons with law enforcement, that dark morning.

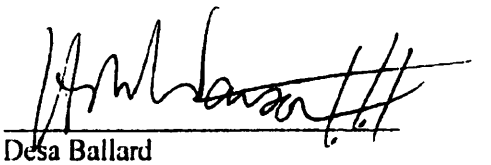
Retrospectively, of course, it is obvious that Rushton, Moore and McAllister were trying to serve the community and do their jobs. But when examined from the perspective of Appellant, or any other reasonable person placed in his shoes, at the relevant time when Appellant was making decisions about what to do, the only evidence available compels a finding in favor of Appellant as to this personal or imputed knowledge, and thus the inapplicability of the State's attempt at proving an exclusion to immunity. The root source of such a perspective is longstanding precedent that says a man may defend his castle "if necessary or apparently so." State v. Bradley, 120 S.E. 240, 242, 126 S.C. 528 (1923). Appellant's actions exist squarely, and necessarily, within the boundaries of "apparently so" without any evidence that may be relied upon to justify a contrary factual finding.

CONCLUSION

Appellant respectfully submits that an insufficient records exists by which this Court can engage in a meaningful review of the relevant facts presented at the hearing, necessitating at minimum a remand for augmentation of the record with an inference in favor of information submitted by Appellant, or in the alternative a complete re-hearing.

However, even on the limited record preserved, appropriate application and enforcement of all relevant provisions of statutory law and common law principles discussed in this memorandum compels extension of immunity to Appellant and rejection of the State's attempted application of an exception thereto. As such, Appellant respectfully requests the denial of immunity from prosecution be reversed, with remand for issuance of a proper order dismissing these matters against Appellant, and for such other and further relief as this Court may deem necessary and proper.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III
BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, SC 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
harvey@desaballard.com

Carson Henderson
THE HENDERON LAW FIRM, PC
109-B Oak Avenue
Greenwood South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: carsonhenderson2@hotmail.com

Billy J. Garrett Jr., Esquire
GARRETT LAW FIRM, PC
109 Oak Avenue
Greenwood South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: danamcvicker@earthlink.net

ATTORNEYS FOR APPELLANT

January 8, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Case No. J-036561, J-036562, J-036563, J-036564, J-036565, J-036566

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

APPELLANTS' AMENDED INITIAL DESIGNATIONS OF MATTER

Pursuant to Rule 209(a) and (b), SCACR, Appellants hereby designate the following matter, which was before the lower court (as defined in Rule 202(b)(1)) to be included in the Record on Appeal in this matter. Appellants reserve the right to supplement these designations in conjunction with the submission of their initial reply brief.

All designated matter does not include proof of service or exhibits unless otherwise specified:

1. Amended Order on Motion to Bar Prosecution executed by Judge Keesley filed July 12, 2011.
2. Amended Order on Reconsideration of the Defendant's Motion to Bar Prosecution executed by Judge Keesley filed December 8, 2011.

3. Order on Defense Motion to Bar Prosecution executed by Judge Keesley filed June 24, 2011.
4. Defendant's Motion to Reconsider filed July 6, 2011.
5. Defendant's Brief in Support of Motion to Reconsider dated July 29, 2011.
6. State's Reply to Motion and Brief for Reconsideration dated August 12, 2011.
7. Defendant's Reply to State's Brief in Opposition to Motion to Reconsider filed August 23, 2011.
8. Defendant's Motion to Supplement the Record filed August 22, 2011.
9. Defendant's Second Motion to Reconsider filed on December 15, 2011.
10. Arrest Warrants J-036561, J-036562, J-036563, J-036564, J-036565, J-036566 dated November 15, 2009.
11. Bureau of Alcohol, Tobacco, Firearms and Explosives Field Report dated April 28, 2011.
12. Partial Transcript of Record from Immunity Hearing before Judge Keesley on May 31, 2011 and June 1, 2011.
13. Defendant's Motion *Nunc Pro Tunc* to Supplement the Record on Rehearing or Take Judicial Notice filed February 23, 2012.
14. Defendant's Exhibits 1-7 from Immunity Hearing held before Judge Keesley.
15. Court's Exhibit 1 from Immunity Hearing held before Judge Keesley.
16. State's Exhibits 1 and 2 from Immunity Hearing held before Judge Keesley.

The undersigned is informed and believes, and therefore certifies, that the matter designated is relevant to the appeal in this matter.

Respectfully submitted,

Desa Ballard
Harvey M. Watson III
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Emails: desab@desaballard.com
harvey@desaballard.com

Carson Henderson
THE HENDERSON LAW FIRM, PC
109-B Oak Avenue
Greenwood, South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: carsonhenderson2@hotmail.com

Billy J. Garrett Jr.
GARRETT LAW FIRM, PC
109 Oak Avenue
Greenwood, South Carolina 29646
Telephone 864.229.8000
Facsimile 864.229.8001
Email: danamcvicker@earthlink.net

ATTORNEYS FOR APPELLANTS

January 8, 2013

The South Carolina Court of Appeals

The State, Respondent,

v.

Joe Worley, Appellant.

Appellate Case No. 2012-210646

ORDER

Appellant has filed a notice of appeal from the denial of his motion for immunity pursuant to the Protection of Persons and Property Act (the Act).[1] Because the denial of a request for immunity under the Act is not immediately appealable, this appeal is dismissed. *See State v. Isaac*, Op. No. 27302 (S.C. Sup. Ct. filed Aug. 21, 2013) ("[T]he denial of a defendant's request for immunity under the Act is an interlocutory order not subject to immediate appeal . . . .").

This court notes that this appeal has been remanded for the reconstruction of the missing portions of the immunity hearing transcript. That reconstruction will no longer be necessary, so the remand order is rescinded. At trial, the parties should proffer to the court any testimony relevant to the immunity motion that is not presented to the jury.

Finally, because this appeal has been dismissed, Appellant's motion for partial remand to request a pre-trial bond hearing is moot.

FOR THE COURT

[1] S.C. Code §§ 16-11-410 to -450 (Supp. 2012).

Columbia, South Carolina

cc:
Desa Allen Ballard
Mark Reynolds Farthing
Harvey MacLure Watson, III
Carson McCurry Henderson
Billy J. Garrett, Jr.

FILED
21 August 2018

I would propose that be made a part of this record as well so that it can all go up together. And I think that will enable us to have as much of a record as we can have to reconstruct that testimony.

THE COURT: Okay. And just so I'm clear, in reading the order denying the immunity from prosecution, it sounded as if there was two days of full trial testimony taken by Judge Keesley.

MS. BALLARD: Yes, sir. It's a rather large record.

THE COURT: Right. And I think what you're saying is turn in the transcript of that, any supplemental notes or records you think you need to add, but you're not seeking to reconstruct the actual hearing itself.

MS. BALLARD: No, sir. What I'd like to do is put in the reconstruction hearing, which was the transcript --

THE COURT: Sure.

MS. BALLARD: -- from the June 14th hearing, plus all of the exhibits. And I can't refer you to exhibit numbers because the way we did it is, at the hearing, Judge Keesley kind of explored what might be out there. And he had the clerk send her notes and Mr. Maye sent his notes, and we had already

introduced into testimony {sic} Mr. Worley's testimony. But an order never came about because we didn't finish the proceedings on remand.

So I think the best thing I can do, to protect my client, is to introduce the June 2013 hearing before Judge Keesley and all of the exhibits from that in order to satisfy the Court of Appeals' order.

THE COURT: Mr. Myers.

MR. MYERS: We have no objection.

MS. BALLARD: Thank you, Your Honor. I'll get those things marked, and we'll have them made part of the record.

THE COURT: Thank you.

MS. BALLARD: Thank you.

THE COURT: Anything further with regard to the issue of preservation?

MS. BALLARD: Nothing for the defendant, Your Honor.

THE COURT: Do you think it's a good time to go ahead and go through the pretrial motions in limine from the defense at this stage? Any reason why we can't?

Well, it's 15 till 1:00. We've got the jury coming in at 2:00; is that right?

THE COURT: From the defense?

MR. HENDERSON: No, sir.

THE COURT: Very good.

Mr. Myers, are you ready to proceed with your in camera hearing?

MR. MYERS: Yes, sir.

THE COURT: Okay, sir. You can call your first witness.

MR. MAYE: The State would call Investigator Joe Collier to the stand.

JOSEPH E. COLLIER, JR.,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAYE:

Q Investigator Collier, state your name for the record.

A Joseph E. Collier, Jr., C-o-l-l-i-e-r.

Q Where are you now employed?

A At the McCormick County Sheriff's Department.

Q How long have you been in law enforcement? What -- and what did you do prior to being a law enforcement officer?

A I was in the United States Navy for six years on active duty and four years on reserves, where I specialized in electronic signals intelligence.

Q Okay. You also had firearms training, did training in small arms while you were in the Navy; correct?

A Yes, sir. One of my collateral duties was as a nuclear weapons guard. I was trained as a Special Response Team member.

Q Okay. Tell us about your specialized training. I know that you've had -- you've been a narcotics officer; correct?

A Yes, sir.

Q You've been a training officer for the sheriff's department for a number of years; is that correct?

A Yes, sir.

Q Tell us about the specialized training and experience that you have in the area of small arms, firearms, and the associated ammunition for small arms.

A I am certified by the South Carolina Criminal Justice Academy as a firearms instructor and have been so certified since 1995. I'm certified by the National Rifle Association Law Enforcement Instructor Division as a patrol rifle and handgun/shotgun instructor and have been since 2004, I believe. And I also was certified by Blackwater

as a tactical carbine instructor.

THE COURT: As a what?

THE WITNESS: As a tactical carbine instructor. And that was in 2001, that certification.

BY MR. MAYE:

Q You also, it's my understanding, been to Glock Armorer School; is that correct?

A Yes, sir.

Q And you completed that and you are a Glock Armorer?

A Yes, sir, and I have been for a good many years. I'm also a graduate of the Glock Instructor Program.

Q Okay. And if memory serves me correctly, you also attended and had specialized training in the area of firearms at the New Jersey State Police Academy at Sea Girt, New Jersey; is that correct?

A Yes, sir. In 1998 or '99, you accompanied us on that trip.

Q All right. Let me ask you this: Do you act as a training officer for the sheriff's office now as one of the many hats that you wear at the sheriff's office?

A Yes, sir.

Q Okay. Is part of your training the selection

of firearms and ammunition, and do you act as an advisor to the sheriff?

A Yes, sir, I do.

Q Do you also not carry out and conduct the firearms qualification for officers on a regional basis, not only the sheriff's office, but for a myriad of different agencies --

A Yes, sir. The Solicitor's Office, the Ethics Commission, retired law enforcement officers, a long list of retired SLED agents and law enforcement officers, and some officers from the FBI.

Q You have been to numerous federal law enforcement training facilities, I believe FLETC facilities? You've been to numerous specialized courses and training there in that regard as well, have you not?

A Not in firearms, not at FLETC, no, sir.

MR. MAYE: Your Honor, at this time, based on his qualifications, I'd certainly offer him up to the defense in this case, if they care to ask him about his qualifications, but I believe the State's met the requisite threshold to qualify him as an expert witness in the area of small arms, firearms, and the associated ammunition. And I offer it to the defense, if they've got any objections to his

qualifications as an expert. We would certainly maintain, respectfully, that that would go to weight, but not his qualifications.

We do believe, in South Carolina, he would meet the threshold of having specialized knowledge and experience that would assist the trier of fact in reaching any decisions in regard to firearms or ammunition.

THE COURT: Mr. Garrett, any voir dire?

VOIR DIRE

BY MR. GARRETT:

Q This particular ammo, did you look at it?

A What particular ammo?

Q The ammo that's involved in this case.

A I have looked at it, yes, sir.

Q And did you analyze it?

A No, sir.

Q So what is your purpose?

A I'm here because I was directed to be here.

MR. MAYE: Your Honor, I would object to asking questions about -- from doing a visual inspection of the ammo. I'm not going to ask him if he X-rayed it. I'm not going to ask him if he fired it in the ballistic gel. I'm going to ask him from a visual inspection and in looking at this commercially

available ammo --

THE COURT: Let me ask Mr. Garrett this: The area, if I understand, is small arms and firearms and associated ammunition, is to be an expert in those areas. Do you have an objection to him being qualified in those areas?

MR. GARRETT: Not -- no, not -- that's fine.

THE COURT: Okay.

BY MR. MAYE:

Q Investigator Collier, let me ask you this: I'm going to hand you now --

MR. MAYE: And I guess we can go on and mark this for identification. It's marked as Sheriff's Office 3, and I don't want to mess the court reporter up; I'll do whatever she wants to, but she can assign it whatever number she would like to for identification. But it's Sheriff's Office Item Number 3 right now.

(State's Exhibit Number 3, magazine and bullets, marked for identification.)

Q I'm going to ask you to look at State's 3, at this point in time for ID, a sealed bag and accompanying items that are in that bag. Could you tell us what's in that bag?

A There's a magazine and four unfired 30-06

caliber rounds.

Q Let me ask you this: Have you had an opportunity -- you helped to gather the evidence in this case and all. Have you had an opportunity to look at the unfired cartridges that were retrieved in this case from the Remington 742 rifle that was taken by the sheriff's department --

THE COURT: Just a second. Is that -- maybe you need to pull that microphone a bit back. We're getting feedback.

BY MR. MAYE:

Q Have you had an opportunity to look at the unfired cartridges and the magazine that came from the Remington 742 rifle that was seized from Mr. Worley's residence that's been associated with the shooting of Investigator Bobby Rushton or Officer Bobby Rushton?

A Yes, sir.

Q Okay. Have you looked at those and done, basically, a visual analysis of those unfired rounds?

A Yes, sir.

Q What can you tell us, with specificity, is the difference in between those rounds? Are they standard? Are they stock rounds? Have they been

modified? Or what can you tell us from looking at those rounds in this case?

A Well, they appear to have been modified. The standard .30-06 round would be normally a lead core with a copper jacket. These appear to have a steel rod -- I'm not sure of what type -- that has been inserted into the bullet section, and they appear to have been filed to a sharp point at the very end.

Q Okay. Are you -- can you look and observe the tool marks on there and the way that it's been modified? Can you tell me whether or not that's consistent with commercially produced ammunition by one of the ammunition companies like Federal or Winchester or somebody that makes ammo? Based on your experience and training, can you look and compare and contrast that ammo with that steel tip that's been placed into it and inserted into the bullet? Can you tell us how that differs from standard hunting and commercially available ammunition?

A Well, having hunted for many years and also seeing many different types of ammunition, I have never seen any ammunition, including in the military, that had a point like this that had a steel core that was readily visible and pointed at

the end, filed like this appears to have been.

Q Okay. So this is an exceptional lot of ammunition? Those four unfired rounds, based on all of your experience and training, both in the military and all of your experience as a law enforcement officer, that -- that is the first time that you've encountered rounds that were modified in that fashion; is that correct?

A I have never seen anything like this.

Q Okay. Quite obviously, based on your experience and training, it would have to be whoever manufactured or modified those, what way would somebody be able to modify those?

A Well, having looked at them and thought about it, I'm not sure. It appears that possibly the bullet was drilled and the rod was inserted. My question would be there was that the heat generated doing so would possibly make the round cook off because of the amount of powder that's in there.

So I'm not sure if the bullets were done and then inserted as in a reload or if it was done -- possibly, I've seen things that were drilled and machined in water to keep them cool, but it's very strange, the way it's inserted. And I never have seen anything like this, and we were talking about

that when I first saw these.

Q Okay. So you could either -- in manufacturing something like that, you could check it and lay and flatten it and drill it and insert the core, but you would have the danger of the round cooking off --

A The round cooking off.

Q -- and falling off when you were doing so?

A Definitely.

Q Or you could either buy a bullet and modify the bullet and then load it as a reload? That would be one possibility?

A Certainly.

Q Correct?

A Certainly.

Q Which would be safer and more sophisticated, but you'd also have to be able to crimp the bullet back down with the powder in it and the primer intact on the end of the casings; correct?

A Obviously, if you had reloading equipment, that would not be a problem. I would not want to be machining it with the bullet intact.

Q But, obviously, whatever method was utilized in order to round this bullet, the nose of it off, drill it and insert that steel core, quite obviously, that has been done.

A Yes, sir.

Q Correct?

A Yes, sir.

Q And, quite obviously, not only has a steel core been inserted in the bullet portion of those four unfired rounds, but it has been sharpened to an exceedingly fine point?

A Yes, sir, very much so, as sharp as a nail.

Q Okay. Tell us about a lead bullet, either a soft lead bullet or a hollow point round as to when it hits soft tissue -- you're involved in the selection of ammunition that the sheriff's department uses; is that correct?

A Yes, sir.

Q That's one of your duties down there and one area of expertise that you have at the sheriff's office; correct?

A Yes, sir.

Q Okay. When a soft or a hollow point bullet hits soft tissue, what is the resulting impact or what happens when that does that?

A Normally, the hollow point bullet will create a larger wound channel because the intent of the hollow point is for the bullet to spread --

Q Yes.

A -- therefore, creating a larger wound channel, which would incapacitate a person, a violent person quicker.

Typically, in rifle ammunition, regardless of the caliber, you don't see hollow points used as much as you do just a jacketed solid bullet, although, with some of the hunting rounds available, you do see that now. But a solid round would penetrate deeper, typically, penetrate a harder surface much more effectively than a hollow point round.

Q Okay. And for bullets to be modified, I know that, in the military, large rounds that are fired, for example, by a large round like a tank, they refer to those as sabot rounds. They have a softer external area for a large bore and then they have a hardened insert. They call that a sabot round, do they not?

A Many times, yes, sir.

Q And the purpose of that is to go up against a hardened surface, for example, armor plating, and have all of the power that's behind a big round, and when it impacts that area, that hardened steel core penetrates armor plating; is that correct?

A That's the intent behind that.

Q Okay. That round right there, that rifle round, has been modified in a similar fashion, has it not?

A With that steel core inserted, I would think so, because the outer jacketed core would tend to peel away and leave the hard insert to penetrate.

Q Okay. And rounds modified in that fashion would be able to penetrate body armor with ease, would they not?

A Certainly, but a .30-06 round by itself would also penetrate body armor with ease.

Q But bulletproof vests also have a shock plate in the center; do they --

A They do have a shock plate, yes, sir --

Q What is that made out of?

COURT REPORTER: Please don't talk over each other.

MR. MAYE: Sorry.

THE WITNESS: Oh, I'm sorry.

BY MR. MAYE:

Q What is that shock plate made out of?

A Typically, metal or some type of ceramic, or the cheaper ones are made out of some type of Kevlar fiber.

Q Okay. As those rounds are modified, they would

be much more capable of penetrating that shock plate or any hardened shock plate that was in body armor, would they not?

A I would think so because of the steel core.

Q If someone took shield behind the door of an automobile or some hardened surface that was metal, that round would be much more capable of penetrating the metal, certainly deeper, and would have a much better chance of penetrating any type of metal, would it not?

A I would certainly think so. This is the equivalent of a military armor-piercing round, which is normally a steel core.

Q And that round has been modified to make it an armor-piercing or a body armor-penetrating round; correct?

A That would be my belief of the intent of why -- I would know no other reason to do it.

Q That was my next question. In all of your experience and training in law enforcement, have you ever seen rounds modified in that fashion for a legitimate sporting purpose?

A No, sir. I have never seen any rounds modified in this fashion at all.

Q Okay. And, in fact, there's a lot of science

and research that goes into bullet shape and the shape of the projectile or the bullet by firearm manufacturers, is there not?

A Oh, definitely.

Q Okay. Because they reach, what, supersonic speeds?

A Definitely.

Q And a .30-06 round is certainly a round that reaches supersonic speed. It's not a subsonic round.

A Oh, no. No, typically, the .30-06 would run in 2500 to 3500 feet per second at least.

Q Okay. So when you begin to modify a round like that, a hunting round, you begin to dramatically alter the ballistic characteristics of it, and you, in fact, erode or hurt the intended purpose of a hunting round by modifying a bullet in that fashion, would you not?

A I would think that, ballistically, that ballistics have gone áll to pieces with this steel insert. The bullet is not shaped like it was intended to be shaped originally, obviously. I don't know of any reason for it being done.

Q Other than to penetrate body armor --

A Or hard surfaces.

Q -- or to penetrate a hard surface.

Either the shock plate or some hardened surface like metal or the shock plate in a vest?

A Yes, sir, I would think so.

Q And that would be your expert opinion as to those rounds; that they have been modified in a fashion that for, let's say, close range, they would be much more effective in penetrating a hardened surface, a bulletproof vest, or a shock plate?

A Definitely, because from a hunting standpoint, they would -- it would be such a small wound channel, that it would not be effective.

Q So if you were going to shoot small game with it, for example, a fox, a muskrat, something small with it, you've done exactly the opposite from what a hunting round needs to do. You've destroyed that round's ability to mushroom and make a big wound channel; correct?

A Yes, sir, I would think so.

Q Okay. So if you intend to use that round for hunting purposes or a legitimate sporting use, you've destroyed its effectiveness; is that not correct?

A Yes, sir.

Q But you've definitely enhanced that round's

effectiveness to penetrate the body armor that a police officer might wear; correct?

A It would certainly do so, or metal or any hard surface.

Q Okay. Thank you.

MR. MAYE: Your Honor, that's basically it. We have a firearms examiner that's coming from SLED, but I knew that certainly Investigator Collier is more than qualified to give that expert testimony. I'd certainly offer him to any cross-examination prior to any argument by the State as to the relevancy of this as to the intent in this case.

THE COURT: Thank you, sir.

Mr. Garrett?

MR. GARRETT: Thank you, sir.

CROSS-EXAMINATION

BY MR. GARRETT:

Q Officer Collier, do you duck hunt?

A Sir?

Q Do you duck hunt?

A No, sir.

Q Do you know anything about lead when the federal legislature made its changes to where we had to make it steel shot?

A I do -- I'm aware of that, yes, sir.

Q All right. And there's a reason for that. Would you tell the Court the reason for that being --

A The reason for the change is because the migratory birds were ingesting the lead.

Q They were what?

A They were ingesting the lead, and it was causing, you know, I guess, lead poisoning.

Q And it was killing off our ducks?

A Excuse me?

Q It was killing off our ducks?

A Yes, sir. And geese and stuff, yes, sir.

Q And so we decided to make it a law that you had to use steel shot in order to protect the environment?

A Yes, sir, I believe that's correct.

Q Now, suppose you're an environmentalist.

A Okay.

Q Suppose you work in a nuclear power plant and you're an engineer, suppose you've been loading your ammo since the beginning of time, and suppose, at the same time, you wanted to go ahead and make sure that when you shoot your animals at or around the lake there, you don't expose them to lead as opposed to metal. That's possible, isn't it?

A I'm sure it could be, yes.

Q But that's a possible use other than to use it to try to pierce -- pierce armor or whatever?

A Certainly it could be used that way. It wouldn't be effective, but it could be used that way.

Q Well, it could be. And if somebody had just shot a fox with the same ammo or didn't even know the fact that they were loaded that way, I mean, can you -- do you have to inspect them to tell that they're loaded that way?

A Do you have to inspect them?

Q Yeah.

A You would have to look at them, yes, sir.

Q And you haven't taken one apart, have you?

A No, sir.

Q To see how exactly it was done?

A No, sir.

Q So, as an expert, in order to come to that conclusion, wouldn't you have to take it apart?

A To find out exactly how it had been done, you probably would.

Q Okay. And you haven't done that?

A No, sir.

MR. GARRETT: All right. No further questions.

MR. MAYE: I've got one.

REDIRECT EXAMINATION

BY MR. MAYE:

Q That bullet is still entirely encased in lead; is that not correct?

A It's encased in copper jacketing. Whether there's lead present still inside the bullet or not, you can't tell.

Q But if somebody wanted to buy ammunition, you can get steel-jacketed ammunition, you can buy military ammunition, surplus ammunition --

A Yes, sir.

Q -- on a regular basis?

A Yes, sir.

Q And you don't have to insert a hardened steel core and sharpen it to a razor point if one were an environmentalist, because there are a wealth of ammo choices that are available that would not be lead. They would, for example, be steel-jacketed military ammunition; is that correct?

A Certainly.

MR. MAYE: Okay. Thanks.

MR. GARRETT: May I recross?

THE COURT: Yes, sir.

****

RECROSS-EXAMINATION

BY MR. GARRETT:

Q You don't have any problem with people doing their own loading, do you?

A Reloading? No, sir.

Q Loading and reloading their own -- and if they want to do it a different way, that's really none of the government's business, is it?

A It doesn't bother me.

Q It's not a violation of the federal law to modify that bullet in a long gun, is it?

A Apparently not.

Q Apparently not.

A Yes, sir.

MR. GARRETT: Thank you.

THE COURT: Thank you, sir. You may step down.

MR. MAYE: Your Honor, basically, in this case, we have -- they are asserting in this case, I can tell at this point in time -- like I said, they haven't put up any testimony in this case, but I can tell from the arguments of counsel, they are trying to counter him having ammunition that was specifically modified for the purpose of which we've got our expert to talk about here.

There's no legitimate supporting basis for

this. The only reason that someone would manufacture ammunition like this would be to penetrate a hardened surface or to penetrate body armor. And, certainly, that would go to -- that's one of the questions in this trial, what his intent was.

We certainly would maintain, under a 403(b) analysis, it goes specifically to intent.

THE COURT: Well, let me ask you this: Wouldn't you have to have more additional information from a foundational standpoint to make it relevant?

MR. MAYE: Well, Your Honor, the fact that the gun was loaded with all of that ammunition, and we took -- one reason -- I think it's going to come out in this case, that the capacity of this weapon is four and one. It has a four round -- the Remington 742 rifle has a four-round box magazine. If you chamber a round and drop the mag and loaded an additional round, you could have basically four point plus one. The only way -- I mean, maximum, if you had a fully charged weapon with one in the chamber and four in the magazine, you could fire five rounds.

I think it's going to become evident in this

case that two rounds were fired at the officer. One was fired striking him. An additional round was fired just shortly thereafter. Then when they came back and got the gun, it was hidden in the house, and they found it inside the house after the time of the shooting, it still had four rounds in it. It was reloaded.

And so I think, in this case, there's going to be no question that he reloaded a round that was exactly like the other three that were in the magazine. There would have been no way for him to fire two rounds out of this gun and not specifically -- this individual specifically load one of these -- and they don't want the words cop killer and armor-piercing rounds. It's exactly what these rounds are. There's no other -- to try to say that he was an environmentalist, we would just maintain would be the most ridiculous assertion, that someone wanted to insert a steel core.

This is body-armor penetrating ammo, which he loaded --

THE COURT: What you are going for is what I was looking at a little bit and that is some type of knowledge.

MR. MAYE: Well, he loaded it. Absolutely. We

maintain there's no other way. They could not have gotten this gun with four rounds in it and him firing two if he didn't come out of that house and reload that gun. He dropped that magazine right there out and put at least one additional round in. So he certainly had knowledge.

He can't say that he got this gun that had been put up since 1972 or something like that and picked it up and fired it. He had one of those rounds in his hand, and he loaded it.

And like I said, it's not like it's just one odd round is like that. Every round in this gun.

And, also, we've got evidence in this case that he shot through the Glock handgun. And we're going to put that gun into evidence in this case. It destroyed it. It disintegrated that Glock handgun. It blew the rounds from that 40-caliber gun all over the yard. It penetrated, it went through the gun and it went through his hands. It absolutely carried out its intended purpose.

Now, they're wanting to say that this dad modified them, because this is, we would maintain, devastatingly significant evidence in this case, totally irrelevant, in that somebody shot this officer with a .30-06 weapon with rounds that were

expressly modified to either penetrate body armor, a shock plate, or a hardened surface. The general public doesn't buy or manufacture or make rounds like this.

He's trained as a machinist in this case. That came out from the initial testimony. I don't know if he'll testify or not, but he said he had specialized training as a machinist. It takes somebody with specialized training in order to manufacture something with the uniformity that that has. We maintain it is exceedingly relevant in this case as to the issue of intent.

We have somebody that didn't pick up -- a .30-06 is a devastating weapon in and of itself. It can go through body armor, almost any type of body armor, absent something with a ceramic shock plate or a specially manufactured shock plate. But somebody that would modify a round like this would be specifically doing it to penetrate body armor or a hardened surface.

And we think that that is overwhelming evidence that someone had malicious intent in this case and was intending to hurt a police officer or somebody wearing body armor or somebody that was shielding themselves behind a hardened surface, because

there's no legitimate sporting reason to have manufactured rounds like that.

And we think, with his background, we think there's circumstantial evidence that he did it. We think there's direct evidence in this case that he had it, he knew what he had, and he reloaded that gun.

THE COURT: Thank you.

MR. GARRETT: Your Honor, by his own admission, a .30-06, in and of itself, without any other capabilities in this case would have done the same thing probably to that pistol.

It's really interesting, the bullet casing, the actual front of the trigger guard, there's a hole in the middle of it where the officer was pointing the gun at my client, and the bullet went right through it, and it did destroy it, but it didn't go into his body other than through his hand, didn't go into the rest of his body.

But the point is is that, by their own knowledge, they have no evidence whatsoever that he has any antipolice attitudes or he was drunk or anything like that, Your Honor. They have nothing like that. No evidence whatsoever that he was in any way mean-spirited towards anybody except trying

to get rid of a fox earlier that evening.

He fired two shots at a fox. And he really wasn't trying to kill the fox; he was trying to motivate him out of there. The fox had bothered his cat. The cat called Sweet Pea. And they had been having trouble with this fox. And that evening, earlier before this thing happened, he fired that thing from the same gun at a fox. And a fox sure isn't the police and certainly isn't a person.

And so -- on the same evening, he also fired it at two fox. But, again, it's an environmental bullet.

MR. MAYE: Your Honor, respectfully --

THE COURT: I got it. Thank you.

MR. MAYE: Excuse me.

THE COURT: Here's my ruling on that: Certainly, this environmental aspect of that would be subject to cross-examination, but assuming that the State is able to lay the proper foundation, I am going to find that it is relevant and that it is not -- the prejudicial impact is not -- the substantive value doesn't -- excuse me -- I'm trying to do a 403 analysis, and I'm not doing very good.

But the value is not substantially outweighed by the prejudicial impact to this defendant. So,

with that being said, there still has to be a proper foundation.

MR. MAYE: Absolutely, Your Honor. We understand. We just wanted to -- because that was a motion in limine at the start of the case, we wanted to be sure that we addressed it, because like I said, I think it's going to -- it's probably coming into play with the very first witness that we've got in this case.

THE COURT: Okay. Well, I'm glad we went ahead and got it done now.

Guys, thank you for you being willing --

MR. HENDERSON: Your Honor, are they going to be allowed to call it cop killer? I mean -- or armor piercing?

THE COURT: Let my say this, I was addressing eight and ten together. I think there is a distinction. I think that, you know, the cop killer needs to be toned down.

MR. MAYE: Your Honor, we can do that. We can call that ammunition with intent -- body armor-penetrating ammunition or armor-piercing rounds. I know that they would have a specific objection to the cop killer. I think the cop killer designation is more Teflon bullets anyway.

THE COURT: Subject to your objection to my prior ruling, any problem with calling it armor-piercing?

MR. GARRETT: No problem with calling it armor-piercing, because it is.

THE COURT: Okay. And then -- I think that would be appropriate under the circumstances.

MR. MAYE: And, Your Honor, like I said -- and specifically, in this case, what we would maintain is not only armor-piercing, but body armor-piercing rounds as well, Your Honor. We're not going to call it a cop-killer bullet, but certainly, interchangeably, we think it could be referred to either way.

THE COURT: I don't know if I know what the armor -- I don't know what the difference is between body armor and armor. I guess armor would be a tank; I don't know. What is the difference?

MR. MAYE: Well, you know, body armor is Kevlar. And like I said, it stops a bullet by grabbing it and spreading it out.

THE COURT: Oh, the distinction you were making over there earlier about the one being --

MR. MAYE: Yes, sir.

THE COURT: That will be fine.

MR. MAYE: Thank you.

THE COURT: Anything else from the State before we break for this afternoon?

MR. MYERS: No, sir.

THE COURT: Anything from the defense?

MR. GARRETT: No, sir, Your Honor.

THE COURT: I note your objection on the record from the defense as to my ruling in limine.

With that being said, thank you for working late tonight. We'll see y'all at 9:30 in the morning.

MR. MAYE: Thank you, Your Honor.

MR. GARRETT: Thank you.

MS. BALLARD: I won't be here till later, Your Honor. Thank you.

THE COURT: Got you.

(The proceedings were concluded for December 16, 2013.)

(The following proceedings were held on December 17, 2013.)

THE COURT: Mr. Myers, anything from the State before we begin opening statements?

MR. MYERS: Nothing from the State.

THE COURT: Anything, Mr. Garrett?

MR. GARRETT: Nothing from the defendant, Your

Honor.

(The jury enters the courtroom at 9:40 a.m.)

THE COURT: All right. Ladies and gentlemen of the jury, good morning. First, let me thank you all for being here promptly. That helps move us along and get things going smoothly.

Before we get started, I'm going to ask you all to stand, and I'm going to give you the oath before we get started. Would you please stand and raise your right hand?

(The jury was duly sworn by the Court at 9:41 a.m.)

THE COURT: Let the record reflect that all jurors gave an affirmative response to the charge.

First, Madame Forelady, before I begin the charge to you, let me just say this to you and the rest of the jurors: This is not an endurance contest, so if, at any time, that you need to take a break -- most court reporters, this one including who is Stacy, will tell you that I have a tendency sometimes to get engaged in the trial and I might run a little long. So if you need a break and I'm not giving you one at the time, raise your hand, and I will be glad to accommodate you.

Also, if I call you back to the courtroom

before you're ready, please let us know. If you need anything while you're -- during the breaks, drinks or something else, please let us know, and we'll make sure that we do our best to accommodate your needs as jurors, okay.

Also, I told you yesterday, before I excused you, that I would ask you if anyone read, heard, or had seen anything about this case during the break overnight. If you have, raise your right hand.

Let the record reflect that no one responded.

Also, has anyone spoke with each other or with anyone else about this case during the break?

Likewise, they all responded in the negative. Thank you.

Now, ladies and gentlemen, as you know, we're about to start the case of the State versus Joe Ross Worley. I don't know if any of you have been involved in the judicial system before, either in a civil case or a criminal case, but I will tell you that I will suspect each and every one of you have watched what purports to be a trial on T.V. or at the movies or some combination of the two. Let me quickly dispel you: Trials are nothing like T.V. They're nothing like the movies. They don't happen in five-minute vignettes or ten-minute vignettes.

They're slow, they're very deliberate, and they're very methodical. They're not entertainment, but they are a fundamental part of our democracy. As in the vernacular of attorneys, trials are a search for the truth to try to ensure that justice is done.

Now, these attorneys you have in the courtroom, when they were sworn in to the bar, they take an oath to be zealous advocates for their clients. And they have a duty to aggressively and zealously represent their client's position and interest in any court proceedings, and this will be no different.

But let me also tell you this: They're also officers of the court. What that means is you, as a jury, can expect these attorneys to be professional, to be competent, and to be ethical in their dealings with one another, in any witnesses, and with this Court throughout this case.

Likewise, you have just taken an oath where you swore or affirmed that you would do your best to reach a fair and a just verdict in this matter. What that simply means is the parties, the attorneys, and this Court have a right to expect of you that you will be reasonable, that you will be

impartial and ethical in your dealings, and you will abide by your oath.

Now, what I'm telling you now is not the law that you will apply in this case. They are simply remarks on what you can expect on the procedural aspects of this case.

First, all of you have requested that you be allowed to take notes. Some judges will not let you do that; I think it is important to let you do that. But each trial, I give jurors who select to have notes a little precautionary warning:

Number one, at the time when you are allowed to begin your deliberations at the end of this case -- and you'll know with no uncertain terms that you are to begin your deliberations then, when you start to debate what the facts are in this case -- just because something appears in a juror's notes doesn't mean it trumps somebody else's memory, okay. That's why they're deliberations, Ms. Forelady, and you will just have to hash out the differences.

Also, in making findings of fact -- and I'll tell you more about that in a minute -- one of the functions you will have to engage in is to judge the credibility of the witnesses or the evidence you have before you. Now, sometimes, one of the parts

of that is watching a witness' demeanor while they're on the stand. If you get so engaged in taking your notes that you watch or you miss a subtle reaction of somebody on the stand, you may not be able to make that determination of their demeanor in judging their credibility. So I warn you against that.

Now, in this case, the defendant is charged with assault and battery with intent to kill and also possession of a weapon during the commission of a violent crime. As I told you yesterday, these indictments -- the fact that this defendant was charged and arrested and indicted is not evidence of his guilt. It does not raise an inference of his guilt nor a presumption of his guilt. These documents are simply what we call the charging documents by which the State of South Carolina brings a criminal defendant, such as Mr. Worley, before the Court, before a trial, and a determination of his guilt or innocence.

In fact, as to both these indictments, Mr. Worley has said, I'm not guilty. What that means is is that the burden is on the State of South Carolina to prove his guilt by proof beyond a reasonable doubt. The State has the burden to prove

each and every element of both charges by proof beyond a reasonable doubt.

It will be up to you, at the end of this case when you are told to begin your deliberations, to determine whether or not the State has met its burden to one or both of these indictments.

With that being said, let me give you a brief idea of what reasonable doubt is so you can have this in your mind throughout this trial, and I'll charge you more on that at the end of this case. A reasonable doubt is this: A reasonable doubt is the kind of doubt that would cause a reasonable, sincere, and conscientious person to hesitate to act in an important matter of their own affairs.

Now, the State has the burden of proving the defendant guilty beyond a reasonable doubt. Now, some of you may have been involved or served on a jury in a civil case. In that case, the burden of proof is by a preponderance of the evidence, which is to say the greater weight of the evidence. In criminal cases, the burden of proof is much more powerful than that; it is proof beyond a reasonable doubt.

Now, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's

guilt. With that being said, ladies and gentlemen, there are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the testimony and the evidence, you are firmly convinced that the defendant is guilty of the crime or crimes for which he has been charged, it will be your duty to find him guilty. On the other hand, if you think there is a real possibility that the defendant is not guilty to the charge or charges for which he is before you, then you must give him the benefit of the doubt and find him not guilty.

Now, your purpose as jurors are to determine the facts. That is a nice way of saying guilt or innocence. You are the sole judges of the facts, so therefore, if I do anything throughout the course of this trial that seems to indicate to you the verdict you are to reach or the facts you are to find, I'm going to ask you and also instruct you that you are to disregard it.

I'll tell you that our constitution in South Carolina does not allow any trial judge to make a comment on the facts nor to have an opinion on the

facts. I consider my job somewhat akin to being a referee in a sporting event, to make sure that the process is followed, that the rules are followed, and at the end of the day, to instruct you on the law that you must apply in this case.

Now, ladies and gentlemen, as finders of the fact, you will determine the facts from the testimony and the evidence that you hear in this courtroom. You will not be and you shall not be influenced by what you hear outside of this courtroom, any opinions or comments that you may have had or heard outside of this courtroom. Now, it will be up to you to determine what inferences you feel are appropriate -- appropriately drawn from the facts and the evidence that is admitted in this case.

Now -- and it is important -- it is very important for you, during the course of this trial -- and this will be a few days, as I understand it -- to pay close attention during the testimony because, ordinarily, an erroneous finding of fact by a jury is not correctable on appeal. If I make a mistake of law, there are groups down in Columbia that will correct my errors of law, but normally, if you make an incorrect finding of fact,

that's not correctable.

Now, on the other hand, the law that makes you the sole judges of the facts, makes me the sole judge of the law, and that is equally important as your job as finders of the fact, mine is to the instruction on the law. You must follow the law as I give it to you. You may disagree with it, you may think that it should be something other than it is, but it would be incorrect and a dereliction, I guess, for lack of better terms, of your sworn duty and oath as jurors to try to apply law that is not as I charge to you.

As I told you earlier, before we let you go yesterday, you may not and you shall not begin your deliberations until the end of this case. What that simply means is, at any time during a break, overnight, or at some other time during this trial, until I specifically say, Now, you may begin your deliberations, you may not talk amongst yourselves or with anyone else about this case, either directly, orally, in writing, or by any other type of communication device.

Also, I'm not going to go all the way through it, but I'm also going to remind you that you may not and shall not engage in any third-party or

juror-independent research. You are to determine what the facts are based solely on the testimony and the evidence that is presented here in this courtroom and according to the law as I give it to you during this trial.

Madame Forelady, ladies and gentlemen of the jury, to let you generally know where we are during any case, each trial, whether it be criminal or civil, has five phases. The first phase will be opening statements, the second phase will be the presentation of the evidence, the third phase will be the closing arguments by the attorneys, the fourth phase will be my charge on the law to you that you must apply, and the fifth phase will be your deliberations. I tell you that just so you'll have a general idea about where you are, and I'll also tell you that the presentation of the evidence will take up the vast majority of the time in this case.

Now, in just a moment, the Solicitor will make what is called an opening statement. The Solicitor will explain to you what the issues are in this case or what at least he contends the issues are in this case. The defendant's attorney, Mr. Worley's attorney rather, may make an opening statement, but

he's not required to. Remember that, at all times, the burden remains on the State of South Carolina to prove his guilt by proof beyond a reasonable doubt.

Now, what the Solicitor, and if Mr. Worley's attorney chooses to, tells you in opening statement, it is not evidence. These attorneys have not been sworn. They've not been subjected to examination and cross-examination. That's not to minimize what they say because what they say is helpful and it helps you understand what the case is about and to guide you through this case, but if, at the end of this case -- and I'll remind you if what either or both of them tell you is contrary to your memory of what the facts are, then your memory will control.

In every case that I've ever been involved with, either as an attorney or a judge, there are objections. I anticipate there will be no difference in this case. Sometimes, Madame Forelady, you may feel like you're cattle being herded in and out of this courtroom. I'll tell you that goes into what I was telling you earlier about trials being slow and methodical. Attorneys have an absolute duty to object any time that they feel like something is wrong in the courtroom, whether it be the presentation of evidence or the manner of the

questioning or something of that sort.

The fact that an objection was made, and if I let you stay in here in the courtroom while I respond to that objection, it is not to be discussed by you. And, Madame Forelady, when you begin your deliberations, it will be your duty to not allow any juror to discuss the fact that there was an objection or my ruling on that objection, okay.

Now, Madame Forelady, it will be your job to preside over the deliberations at the end of this case. And again, at any time, if there's any need to communicate with me, I'm going to ask that you write the information down on a piece of paper, the question or whatever it is, sign your name, and give it to one of the bailiffs so they can get it to me, and we can take appropriate action on that, okay.

At this point, what I'm going to do to make sure that I have not omitted to tell you something that I should have or I may have stated something incorrectly, I'm going to ask that you briefly go back to your jury room, then we'll bring you back out for opening statement, okay. Madame Forelady.

(The jury retires to the jury room.)

THE COURT: Mr. Myers, any additions or exceptions from the State?

MR. MYERS: None, Your Honor.

THE COURT: Mr. Garrett?

MR. GARRETT: None, Your Honor.

THE COURT: Do you want to take a quick break or are you ready to go now?

MR. MYERS: We're ready.

MR. GARRETT: We're ready.

THE COURT: Okay. Would you bring the jury back in once they're --

MR. MAYE: Your Honor, my victim and my officer ducked out for a second. Let me retrieve them.

THE COURT: All right. That's fine.

MR. MAYE: Thank you. I'm sorry.

THE COURT: That's all right.

(Pause.)

MR. GARRETT: Your Honor, clarification. Yesterday, we made a motion to sequester. We wanted to make sure that that did not include our expert witness.

MR. MYERS: I think it applies to all of the witnesses.

THE COURT: Normally my rule, Mr. Garrett, is that it does include your expert witness.

MR. GARRETT: It does apply.

THE COURT: If you tell me there's an exception

to that, I'll be glad to look at it, but I thought it included -- excluded everybody.

MR. GARRETT: Beg the Court's indulgence.

MR. HENDERSON: Your Honor, our sequestration motion was strictly for fact witnesses. And actually, I was going into the fact that we had an expert, and in fact, I believe the defense may have an expert, but keep in mind, our expert's already sat through one set of live testimony that he has used to help form his opinion. And I think the rule on experts is that he can stay in here to hear evidence at the trial or before the trial.

THE COURT: I know the rule is that he can testify and formulate his opinion as to what he heard in trial or presented in trial.

Where is your expert, Mr. Myers? Is he here?

MR. MYERS: Yes, sir. He's back in the back room. And I wouldn't have agreed to this unless everybody was excluded, except maybe custodian of records.

THE COURT: I tell you what, I'm going to agree with Mr. Henderson. You can get your expert and bring him in here. I'm going to let their expert stay in here.

MR. HENDERSON: I think he's here, Your Honor.

I think he's sitting --

THE COURT: I'm talking about Mr. Myers' expert.

MR. HENDERSON: I think Mr. Myers' expert --

MALE SPEAKER: Yes, sir. I was not aware that I was sequestered.

THE COURT: Oh, okay.

MR. HENDERSON: He's not, Your Honor.

THE COURT: I got you. You can stay. I'm going to let the experts stay. I note Mr. Myers' objection for the record.

Do you want to go ahead and make sure your expert is here?

MR. HENDERSON: Oh, he is here, Your Honor. He's sitting on the front row.

THE COURT: Okay. Anything else?

MR. GARRETT: No.

THE COURT: All right. We got everybody, Mr. Maye?

MR. MAYE: We're prepared, Your Honor. Thank you.

THE COURT: Mr. Garrett?

Would you bring the jury back in please, sir?

(The jury returns to the courtroom.)

THE COURT: If the bailiffs will make sure that

nobody comes in or out of the courtroom during opening statements.

Mr. Myers, is the State ready for the opening statement?

MR. MYERS: The State's ready, Your Honor.

THE COURT: Mr. Garrett, does the defense wish to have an opening statement?

MR. GARRETT: We do, Your Honor.

THE COURT: Very good.

Mr. Myers.

MR. MAYE: May it please the Court, Your Honor.

THE COURT: Mr. Maye. Excuse me.

OPENING STATEMENT

MR. MAYE: Ladies and gentlemen, November the 15th of 2009 was a Sunday. Alan and Gayle Sheffield, in the very early morning hours of that Sunday morning, just before the hours of four o'clock in the morning, were sound asleep in their house on Presidents Drive here in McCormick County. Both of them were suddenly jolted awake by a Remington 742 semiautomatic .30-06 rifle being fired in close proximity to their house. As the shock and the rudeness of being awaken by that wore off, the reality set in that it was an all-too-familiar situation that was playing out there at their house

at Presidents Drive.

All of you that have been taken away from what you would have normally been doing this week to come up here and sit as judges of the facts in this case, been taken away, as the Judge mentioned to you earlier, from your jobs, from whatever you would have been doing this week to come up here for this vitally important matter.

All of you live here in McCormick County. To set the stage for all of the events that took place, subsequently, on November the 15th of 2009, you leave here from the courthouse on 378, driving back out towards the lake. You go across the bridge there, Little River Bridge, just a little ways, and you turn left on Holiday Road. There's some businesses out there, there's a hospital facility out there. You hang a left right there. You go out and you hook another left on Independence Drive, and you drive down till you just about get to the lake to the Little River subdivision.

And as you get out there to the end, Presidents Drive kind of makes a loop around. And there are a lot of nice older houses out there. That's not in Savannah Lakes Village, but that's an older subdivision that was here for a long time. There

are a lot of nice houses in there, and there's a mix. There's some older lake houses that were in there, a little more simple construction, and there are some big, fine houses that have been built lately.

Alan and Gayle Sheffield live out there. In the weeks that had taken place prior to November the 15th of 2009, the Sheffields had a problem. Their next-door neighbor, Mary Worley, lived right next door to them, not much difference than the width of this courthouse here apart. The houses are in pretty close proximity because they're all rode up around the cove there, as the road, that circular drive goes around.

Well, they were faced with a situation where Mary Worley had a son that's here, charged with assault and battery with intent to kill and possession of a weapon during the commission of a violent crime today. He's seated right over there with his lawyers.

On the weekends, Mary Worley's son, Joe Ross Worley, was coming out there to the lake house, and it was a repeating pattern. The Sheffields were being bothered because, on over in the very early morning hours, usually over the weekends in the

weeks that took place prior to that day, Joe Ross Worley would be out there raising cane, cussing, talking loud in the middle of the night, and shooting off a gun.

As early as September the 9th of 2009, Ms. Sheffield had been down to the sheriff's department, because it was taking place even before then, and she had complained to the sheriff's office about it, that Joe Ross was out there, he'd be out in the middle of the night, calling around, cussing, and shooting off this gun.

Now, you're going to hear from the testimony in this case and as it develops, the Sheffields were in kind of a difficult situation. They liked Mary Worley and they didn't want to be bad neighbors and they didn't want to create bad blood or animus between them, but they also didn't want to be laying asleep in the bed at night with somebody shooting a high-powered .30-06 rifle next to them and cussing and talking loud and disturbing them, as close as the houses are.

And you're going to hear Mr. Sheffield even talked to Mary Worley about it. And you're going to learn, for whatever reason, either she wasn't able to or didn't want to, it didn't stop.

But you're going to hear again, November the 15th of 2009, when they got awakened again, and it had been going on for all that time, they had had enough, and they called 9-1-1. They called the sheriff's department. They had already gone out and filed a preliminary report, tried to address it, nothing had worked. They called 9-1-1.

You're going to hear it's about four o'clock in the morning on an early Sunday morning in McCormick, and there's not a lot going on at that particular time of night on that night, and there are three officers only. Bobby Rushton, the first of them. And you're going to hear Bobby Rushton had just gotten back recently from Afghanistan where he'd been serving. He'd been gone for about four years, but he had previously been employed with the sheriff's department, but he was back. He'd gotten everything straight again. He got his training and experience and sworn back in again as an officer. He was back on the job as a sheriff's deputy, and he was working that night.

You're also going to hear there was another officer from the sheriff's department, Nick Moore, that responded, and a female deputy named Melissa McAllister. All of them were out patrolling at

different areas and they're driving regular marked patrol cars and they're all out at different areas, but they converge. They get a call. The Sheffields call in and tell the sheriff's department, Look, we complained on this guy before, Joe Ross Worley, out there, talking loud, cussing, shooting his gun off. It's happening again. He's out there on the deck of the house. Shots are being fired, you know, right now, tonight.

So the officers go out there, the three of them. There's not a lot going on. I submit to you you're going to hear from them. They converge out there, and they travel down and try to locate the house. You're going to hear that Bobby Rushton was kind of behind the other two officers, but he's looking for the street sign and the names there, and he sees out at the end of the driveway. The first two officers go by, and they don't see the driveway.

You'll hear from Investigator Rushton or Officer Rushton in this case that he sees a little wooden sign out there that says Worley, and he's tipped off that's where it is, so he turns in the first driveway. The other officers -- the driveways almost parallel each other as they go back in there to the houses. But two of the officers pulled in

and stopped their patrol cars, and Bobby Rushton goes down and stops his. And you're going to hear they all get out of the car.

Officer Rushton's going to tell you that he can see over next door at the Sheffields' residence, he can see some movement and he can see a light. He can see some individuals moving around over there, and so he thinks those are the complainants or somebody that's involved in it. That's the only activity he sees as he goes out there in the dark in the night at four o'clock in the morning. And he gets out of his car. He goes over to talk to Alan and Gayle Sheffield, goes over towards their house.

Melissa McAllister and Nick Moore get out and go to the back of the Worley residence. And you're going to see diagrams, you're going to see information on this, but the house basically -- the Worley household is kind of an elevated structure with a tapered roof on either side, predominantly faces out towards the lake. Garage door at the bottom of it. There's a balcony up above. There's sliding glass doors and windows looking out towards the lake, but it's a structure like where there's storage and things downstairs and living quarters are upstairs.

But Melissa McAllister goes up to the back corner of the house. Nick Moore goes around. Bobby goes over to the Sheffields' house. You're going to hear from the officers as they testify in this case, Nick Moore goes around to the door at the bottom of the front side facing the lake and starts beating on the door and ringing the doorbell and hollering, Sheriff's office, Sheriff's office. Beats on the door. Knocks. Beats on the door. Knocks. Nothing. Nobody comes out. Nothing.

You're going to hear that Officer Rushton is over talking to the Sheffields. He gathers the information from them, gets that same information, Look, we've complained. We're laying in the bed. We're tired of this loud talking. We're tired of him shooting in the middle of the night. Do something about it.

You're going to hear that, as Officer Rushton is standing there talking to the Sheffields, that towards the lakeside of the house, what we call the front of it, there's some high-intensity lights that light up the yard. They see one of those lights come on on the house and light up the yard as it goes down towards the lake, and then they see it go off. So they know somebody's up, and they know

somebody's turning that light on and off. So Officer Rushton tells the Sheffields, Go back to your house.

They all get back over there to the edge of the house, Bobby, Nick, and Melissa. They walk up the side of the house, around to the front where the deck is. The same thing again: Bobby Rushton and Nick Moore get around kind of underneath this balcony area or the raised-up portion where the door is, knocked on the door, Sheriff's office. Ring the doorbell, Sheriff's office. Beating, trying to get somebody to respond.

Now, Melissa McAllister positions herself back at the side of the house, not up there where they're beating on the door, but she is back along the side of the house. The two officers are steadily beating on the door, trying to get somebody to come out, knocking, ringing the doorbell.

You're going to hear that Nick Moore and Officer Rushton hear the sliding glass door from the balcony up above, they could hear it open. And you're going to hear that Bobby Rushton was down there, and he backs up from the doorway. And he looks up at the sliding door that's up on the balcony into the darkness. Now, the light has been

turned on and turned off. So as they come around to the front of the house, there's no light on.

And you're going to hear from Bobby Rushton that, as he's peering into the darkness and looking, that he can see a figure up there at the sliding door, and he says, Sheriff's office, and identifies himself. Nick Moore hollers, Sheriff's office. And you're going to hear in this case that Joe Ross Worley, who's standing up there at the sliding door, responds back, in response to them calling out sheriff's office, I don't give a fuck.

You're going to hear that as Officer Rushton is peering up there and seeing Joe Ross Worley, he realizes that he has a rifle or a long gun in his hands. He's going to tell you, as he's watching him and keeping his eye on him there and sees him with that long gun, he sees him looking off to the side and easing over towards the edge of the balcony to where Melissa McAllister and Nick Moore are. He's backed up out of the yard looking up there. He sees him peering over and easing side to side with that gun. He hollers out to the other two officers that are there to notify them of what's going on, Gun.

Then he and Nick Moore say, Sheriff's office, drop the gun. And you're going to hear that Bobby

Rushton, as he's watching him ease over towards the edge of that balcony over to where the other two officers are, he begins to draw his weapon. And just at that point in time, the high-intensity floodlight comes on and blinds him, and he is completely blind and cannot see what's going on as he's peering up there into the darkness, and suddenly his vision is blocked out by that bright light.

You're going to hear, ladies and gentlemen, from the witnesses in this case, at that point in time, Joe Ross Worley, the defendant in this case, having been advised that they are sheriff's officers and replying, I don't give a fuck, takes that Remington 742 semiautomatic .30-06 rifle and fires at Officer Rushton.

You're going to hear this shot hits right as he brings his hand up, the round comes in his hand and completely shatters the Glock handgun that he has in his hand. Blows it to pieces. Spreads the bullets that are in the magazine, the hand grip magazine that hold the bullets for this gun, just sprays the bullets all over the yard there, and absolutely shatters his hand.

He is knocked flat on the ground, ends up

flopped over, facedown on the ground. You'll hear that Officer Nick Moore and Melissa McAllister are around there at the side of the house looking at him. The balcony is up here. He's been shot. He's lying in the yard, facedown, motionless.

You're going to hear that Officer Nick Moore, who's over at the edge of the balcony where the wood from the balcony is shielding him, he begins to call out as he sees any sign of life to Bobby Rushton, Come to me.

You're going to hear that Bobby Rushton, at that point in time, having been wounded as seriously as he had been wounded from being shot with this .30-06, comes to, starts to run and/or crawl over to where Nick and Melissa are around the side of the house. And as he starts to move and Joe Ross Worley realizes he's not dead from him shooting him, he fires the Remington 742 rifle again, missing him.

You're going to hear the officers, at this point in time, they're in full retreat. Joe Ross Worley's armed with a high-powered rifle. He's got the high ground on them. There's nothing that they can do but retreat.

Their comrade, their fellow officer, Bobby Rushton, is seriously wounded at this point in time.

They gather him up and take him down the side of the house to the backyard and get him down in the edge of the house there and get him down to try to take assessment as to what in the world they can do to help him in this case. They're in full retreat, these three officers. They can't get out on their radios down there.

Nick Moore sends Melissa McAllister back to the car to get a cell phone so they can call for help at this point in time. And as they are trying to take stock of what they can do with Bobby's shattered hand and the situation at hand, they hear Joe Ross Worley, who has come out of the house looking for them, they hear him say, as he comes along the side of the house, Where are you, you son of a bitch, or son of a bitches? They hear him. He's in full pursuit of them at that point in time.

Well, they know, at this point in time, there's nothing they can do but flee, to try to get Bobby out of there. So these three officers gather up and flee across the yard there back up towards the back of the property and get in one of the cars and flee.

They've got Bobby. He's seriously injured at this point in time. They need to get him out of there, so that's exactly what they do. They get in

one of the patrol cars of the three that had been driven down there and are parked out there in the yard, and they drive him away. And they go back up to 378. And, of course, they're calling for help at this point in time. The EMS comes. They begin to try to treat Bobby in this case, to try to do what they can for his shattered hand.

You're going to hear that the sheriff himself, Sheriff Reid, is rousted up out of the bed that night and that, ultimately, he and Nick Moore go back down there, and the sheriff gets out of his car and he wades up in there. And you're going to hear, as he gets back to the Worley household, that he sees two individuals walking in the yard there, and they got flashlights. And he's going to tell you, as he walks up there, they're shining the flashlights in his face.

You're going to hear from the sheriff in this case that it's Joe Ross Worley and his mother who are outside with flashlights. And you're going to hear, without any response at all from the sheriff -- the sheriff doesn't say a word to him -- Joe Ross Worley, the defendant in this case, says, I put your deputy's gun in his patrol car.

The sheriff then asked, Who was doing all the

shooting?

Joe Ross Worley responds, I was.

Now, Sheriff Reid, at that point in time, states to him, You know you shot the deputy. And incredibly, Joe Ross Worley's response is, not that there was any mistake or any confusion, he said, The deputy didn't have any business ringing my doorbell.

I submit you're going to hear from the sheriff in this case, he cleaned it up a little bit, but what he actually said was, The deputy didn't have any business ringing my damn doorbell.

Now, here, the sheriff of the county's out there, and he's telling him that he shot the deputy, and he's telling him he shot him because he didn't have any business ringing his doorbell.

Naturally, he is arrested. The sheriff's deputies and everyone descends on the house. You can imagine what takes place with an officer shooting. And they go back up in the Worley household in this case, and lo and behold, they find that Joe Ross Worley has hidden that Remington 742 up under the bottom of a couch in the house. Now, they can see the butt stock sticking out when they go in the house. Now, they can see that there's a case lying open on a bed, but the gun didn't go back

in the case; he hides it up under a bed.

And you're going to hear that the officers take custody of that Remington 742 rifle. And you're going to hear some expert testimony and you're going to hear a lot of talk about guns and ballistics and all, but this is a semiautomatic rifle, you'll hear from the experts that testify in this case. And a semiautomatic rifle is not like a machine gun, when you hold the trigger down and it just boop, boop, boop, shoots one after another.

A semiautomatic rifle, you pull the trigger, it shoots. You pull the trigger, it shoots. You don't have to do anything. You don't have to work a bolt. You don't have to pump an action to make each round go in. You pull the trigger and every time you pull the trigger, the gun goes off.

And a Remington 742 has got what they call a magazine; it's a box that goes under the bottom of it, and it holds four bullets. So if you load the four bullets up and pop it up in the bottom of that gun and lock it in place and pull a lever back, you can put one in the chamber. If you drop the box back out again, you can add one more bullet to it. So the maximum amount of rounds that you could have in that gun would be five, but you'd have to go

through a pretty good step to do that. You'd have to load four in, put it up, pull it back, let it go forward, drop the magazine, put another one in, then you'd have five in it.

I submit you'll hear from the Sheffields that he shot twice that night when they called 9-1-1. And you'll definitely hear in this case he shot one time when he shot Bobby Rushton and hit him, and he shot again when he realized he wasn't dead, and he tried to hit him again. That's two shots.

The sheriff's department's going to tell you, when they get this gun, it's got four rounds in the magazine. So you'll hear from the testimony in this case he had to have reloaded it after he shot once and hit Bobby Rushton and shot again to try to hit him as he was down, as he started to move, as he showed any signs of life. But before he comes out looking for him, Where are you, you sons of bitches, he reloads it. So he's got a full magazine when he goes back out in pursuit of that officer.

More significantly still, you're going to hear expert testimony in this case that the very bullets that are loaded up in that gun have been modified. They've been drilled out, the soft core that would have been in those bullets, they've been drilled

out, and a highly sharpened steel point has been inserted into those bullets.

You're going to hear from the experts in this case that the purpose of that is to defeat body armor or to defeat armor, and that's what he's got that Remington 742 rifle loaded with, not hunting rounds, but rounds designed to defeat body armor or to penetrate a hardened surface.

You're going to hear from Bobby Rushton, who'll tell you about the wounds and the injuries to his hand, from a doctor who came in, his shattered hand, he lost a finger. His law enforcement career is over for good, as he comes into this courtroom to testify in this trial.

Now, the Judge has already told you in this case the State's got the burden of proof. He's charged with assault and battery with intent to kill, and the Judge is going to go into great detail and tell you about what that is. He's also charged with the crime of possession of a weapon during the commission of a violent crime. Now, the State's got the burden of proof in this case, and I submit to you that the State welcomes it.

At the conclusion of all of the evidence in this case and after you hear the law from the Judge,

the State's going to ask you for guilty verdicts in this case for assault and battery with intent to kill and for possession of a weapon during the commission of a violent crime.

Mindful of the facts that you have been taken away from what you would have normally been doing this week to sit as the judges of the facts in this case, we're going to ask that you do justice and come back with a verdict that speaks the truth in this case.

THE COURT: Mr. Garrett.

MR. GARRETT: If it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. GARRETT: Madame Forelady and ladies and gentlemen of the jury, that's a very interesting statement you just heard, and I want you to hold the State to what they just said. Hold them to that burden of proof.

There's a lot of things, the misdirection going on here that I want to try to help y'all understand about this case. And I want y'all to listen to all the evidence and everybody that has anything to say, listen closely and use your common sense.

There's absolutely no reason that Mr. Worley

would want to hurt Bobby Rushton. Let's start with that. What would the motive be to hurt Bobby Rushton?

Y'all may not understand this, but as you hear this case, it's horribly tragic, because it starts off with a cat by the name of Sweet Pea, and this cat was found, and it was a scraggly cat and it had a collar on it. And Mr. Worley's father took on the cat and protected this cat, and it became a cat here in McCormick.

And they'd been over on that property for over 40 years. The Worley family comes down here every weekend and has for 40 years. They've been broken into before.

This family is there with his mother, who is 84 years old at the time. Mr. Joe Worley and his mother, 84 years old, in their little garage apartment, and their cat, Sweet Pea. And when you go out there, if His Honor will let you go out there, there's an elaborate cathouse and catwalk that they built. They love their little cat.

Well, in September, when the Sheffields complained the first time, there's a fox -- actually, it was the Sheffields that told the Worleys that there was a fox out there -- and that

fox had injured this cat, had injured it to the point they had to take it to the vet.

Now, Mr. Worley that evening, the 15th, November the 15th of 2009, goes out on his balcony, and he hears a noise. He flips on his light, and he sees movement out there, and he said, The dadgum fox again. So he's out there hollering at it and trying to get rid of it. He goes into his house and gets his father's -- his deceased father by now -- gets his gun, and he loads it with ammo that his father had. And he goes outside and he shoots towards the lake to motivate the fox that was bothering their cat to get out there. He shot twice. He went on back to bed. And he might have hollered, but he shot twice and then he went back to bed.

And that's only happened one other time. It happened back in September when Ms. Sheffield complained. Now, she complained to his mother, Ms. Mary Worley. Ms. Mary Worley never told Joe about -- anything about it. Never told him that she complained about him shooting down there or shooting at this cat {sic}. It's not against the law to shoot in the county, all the way out there. It's not against the law.

Now, so here we've got two sets of things going

on. Joe goes back to bed. His mother is still asleep and is asleep. He goes to sleep. Well, unbeknownst to him, the Sheffields decide to call the law.

And the next part of this is going to be really interesting. Y'all need to look at the times. Why is that important? The relevant time here is 107 seconds. Just 107 seconds. One minute and 47 seconds for a lot of things to have happened. So let's kind of -- let's kind of walk through it just a minute:

Mr. Worley's in the bed. Law enforcement gets called at 4:06. They all converge upon the property. Mr. Rushton pulls his car into the Worley driveway, but he doesn't have any blue lights on. He doesn't announce his presence. The other two cars pull into Mr. Stevens' driveway. And you'll see that these roads are parallel; they run side by side. You got two cars over there and one car here, but none of them have any blue lights on.

They walk to the back of the Worley house. The Worley house is so designed that it only has one entrance, and that's in the front towards the lake. They're at the back.

And as said, Mr. Rushton sees the Sheffields

over there, and he walks through the woods, 137 feet through the woods, to go talk to the Sheffields. While over there, the light comes on. The knocking by Rushton -- excuse me -- the knocking by Moore and McAllister woke him up. And actually, it wasn't the knocking that woke him up; it was the ringing of the doorbell.

This house is so insulated and was built by an engineer. Their father was a nuclear engineer at the Savannah River Plant. And he had built this house specifically to be airtight, soundtight, airproof, that type of thing.

So he was woken by the bell. So while they're over there talking, Melissa Moore -- Melissa McAllister and Officer Moore walk to the back of the house again, thinking that there's nobody going to come to the door. The light comes on. They all converge back to the front of the house.

Now, y'all need to listen to the testimony because it's really important at this point in time. Mr. Rushton's not in a uniform. Unfortunately, Mr. Rushton, it was his first night back to work. He was not in uniform. In addition to that, he was carrying a very small flashlight. He wasn't carrying a police flashlight. I submit to you this

is a police flashlight {indicating}. He was carrying a little burglar's flashlight or a light that looks like a burglar.

What happens is -- and I want you to listen to Nick Moore's testimony because it's important, because when he talked to the Federal Government about this case, in his interview, he said this is what happened. He said they knocked on the door and they announced, got no response. The light came on. The light came on. They heard a door open. As the sliding glass door opened, Mr. Worley stepped out with a gun in the port position. And that's important. He had his gun up.

At that time -- at the same time he steps out, Rushton is walking with his flashlight. He drops his flashlight, and he comes up, and he aims his gun to shoot Mr. Worley. Mr. Worley, not recognizing him as a police officer, and it happened just that fast (indicating), and he shot him.

Now, ladies and gentlemen, I submit to you, when you see the gun and how it's demolished, you will see that Officer Rushton had to have that gun pointed directly at Joe Worley, and all Mr. Worley could do was defend himself. He has an absolute right to self-defense if he was in his house, on his

balcony, under his eave, under his roof. And this person, who he says, from Joe's testimony, you will hear, basically this: All I said was, Freeze. And they say all they said was, Gun. And then, boom, right after the word gun, boom.

So y'all need to really watch that timeframe, because within a minute and 47 seconds, Mr. Rushton is still over -- and you'll listen to the dispatch. In a minute and 47 seconds, Mr. Rushton is still talking to the Sheffields. All the way to the time that the -- Melissa McAllister has run all the way back to the car now and has got on her mic and says, Officer shot, officer down, is a minute and 47 seconds.

So he had to walk -- Mr. Rushton had to walk all the way from the Sheffield house, through the woods, at dark, to get back over there, all of this colloquy or whatever happened there had to happen, and then the shots were fired, and then they ran off. As far as he was concerned, the burglar had ran off.

Now, if he intended to kill him, this semiautomatic rifle that he had, this .30-06 is a self-loading gun. In other words, it's a semiautomatic. What happens is, as soon as you

shoot a round, it puts another round in it. He's on top of him, and he's on the ground. If he wanted to kill him, he had him right there in his sights. He didn't want to kill him. He shot the gun. He didn't shoot him. He shot the gun. And if that man hadn't pulled the gun on him, he wouldn't have shot him. It's just that simple.

And had he known he was a police officer, he wouldn't have shot him. And if he'd come over there with blue lights, if he had come over there in a uniform, with sheriff on it, a badge, sheriff's badge, you know, a hat that says sheriff, where a person who has just woken from a sleep could recognize that it was an officer, instead he thought it was somebody trying to come in on him and hurt him and his mother.

And in all the horrible tragedy of it, it was all over this cat. That's the horrible tragedy of it.

Mr. Worley's not happy about the fact that he shot this officer. And there's some questions about whether or not he was truly an officer at the time. Some oaths that had to be taken, some bonds that had to be made, some documents that had to be signed. While he was gone in Afghanistan, he wasn't working

for the United States Military. The evidence will show instead that he was working for a private contractor, so he wasn't in the military while he was there. And he was coming back right from a war zone, and we believe that the procedures that he carried out that night were horrible.

We've got the renowned Dr. George Kirkham here, who is a criminologist. He's going to discuss exactly what police procedures should have been followed and what were followed, and but for his failure in his police procedure, he would never put himself into that position.

On top of that, the evidence is going to show that this case is about money. Officer Rushton has sued Joe Worley and his mother, brought a lawsuit against them.

So I want you to keep all of that in mind as you sit here and you listen to this case. There's two real sides of this story. I just ask you to listen to both sides, give both sides a fair trial. Thank you.

THE COURT: All right. Would you call -- how long is your first witness?

MR. MAYE: He's a fact witness. He'll be as long as any we're going to have.

THE COURT: All right. I'll tell you what then, let's go ahead and take a quick break, and then we'll come back with the witness at that point.

Madame Forelady, if you'll take the jury back to the jury room. If you need anything, please let us know.

(The jury retires to the jury room)

THE COURT: Let's take about a 10 to 15-minute break.

(Brief recess.)

THE COURT: State ready to proceed?

MR. MAYE: The State's ready.

THE COURT: Defense ready?

MR. GARRETT: Defense is ready.

THE COURT: Would you bring the jury in, please, sir?

(The jury returns to the courtroom.)

THE COURT: All right. Madame Forelady, did the jury find all they needed -- have all they needed during the break?

MADAME FORELADY: Yes.

THE COURT: Very good.

Is the State ready to proceed?

MR. MAYE: The State's ready, Your Honor.

THE COURT: Defense ready?

MR. GARRETT: Defense is ready, Your Honor.

THE COURT: Call your first witness.

MR. MAYE: The State would call Officer Nick Moore of the McCormick County Sheriff's Office.

NICHOLAS MOORE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAYE:

Q Officer Moore, state your name for the record.

A Nicholas Moore.

Q Nick, tell the ladies and gentlemen of the jury where you're from, give them a little information about your background in law enforcement.

A I'm from Abbeville, South Carolina. I started my career with the City of Abbeville Police Department in 1999, worked there as a patrol officer until 2007. In 2007, I started work for the McCormick County Sheriff's Office.

Q So on November the 15th of 2009, you were working for Sheriff Reid; right?

A Yes, sir.

Q Okay. Let's get straight to it. Deputy Moore, tell us about the events of November the 15th of 2009. When did you go on shift that night?

A At six o'clock, Saturday night. 6:00 p.m.

Q 6:00 on Saturday night.

Officer Moore, how did you get involved in this? Where were you when you initially took the call?

A I initially took the call, I was on Highway 81 in Mount Carmel, which is on the north end of McCormick County.

Q Okay. Let me show you something. Let me show you a map. Let's get oriented here.

MR. MAYE: Any objection?

MR. GARRETT: No objection.

MR. MAYE: Your Honor, at this point in time, to save time, I'm going to offer this as State's 1. I think there's no objection to this.

MR. GARRETT: No objection, Your Honor.

THE COURT: It's admitted without objection.

(State's Exhibit Number 1, aerial map, was marked and admitted into evidence.)

BY MR. MAYE:

Q Officer Moore, I want you to come down off the stand here and take State's Exhibit Number 1, orient the ladies and gentlemen of the jury to where we're talking about. And I want you to basically draw out for them -- pick a landmark somewhere close to where you were and show them how you drive to get down to

where you responded to that night.

A (Witness leaves the witness stand.)

To where I was?

Q Yes, sir.

A Can you balance it for me, please?

Q Sure.

A I would have been somewhere in here off the map. I would have came Highway 7 to 378.

Q What's at that corner right there at 7?

A The Village Store.

Q Okay.

A A convenience store/gas station.

Took a right here {indicating}, 378.

THE COURT: Let me stop you right quick.

Can these jurors see over here? Okay. I'm sorry.

THE WITNESS: Took a left. I'm sorry. I would have took a left. Made a right onto Holiday Road right here, passed by the Sandy Branch Fire Department, I believe, Savannah Lakes Nursing Home, Petra Health Care -- it's changed names; I can't exactly recall. Would have traveled down Holiday Road to Independence where we would have made a left-hand turn, traveled down Independence, made a right onto Presidents, made another right into the

Worley residence, which I actually turned into the driveway past the Worleys' residence, which would have been the -- I can't remember the name; I'm not sure.

BY MR. MAYE:

Q Go back and retake the stand then.

A (Witness resumes the witness stand.)

(Pause.)

MR. MAYE: Any objection?

MR. GARRETT: No objection.

MR. MAYE: Again, the same procedure, Your Honor. I'm going to ask to admit this as State's 2, which I understand comes in without objection.

THE COURT: Admitted without objection.

(State's Exhibit Number 2, aerial map, marked and admitted into evidence.)

BY MR. MAYE:

Q Nick, to further help the ladies and gentlemen of the jury get oriented, I want you to come down off the stand and show them, when you go onto President Drive, orient them to where the Sheffields' property is and the Worleys' property is on that.

A (Witness leaves the witness stand.)

Okay. The Sheffields' is here {indicating},

Worleys' here, and then here's another neighbor, Stephens, in which I pulled into this driveway, which it runs parallel. Y'all heard him speak earlier of that. This is the Worleys' in black.

Q Okay.

A (Witness resumes the witness stand.)

Q Nick, do you remember about what time it was the night you were on patrol, do you remember about what time you got a call to go out and respond to the shots fired call?

A Yes, sir. It was around four o'clock. The clock in my patrol car, I believe, said 4:06, but it's not completely accurate. It would be different probably from what would be the dispatch office would have, but it would be close.

Q Okay. Who all was on shift that night? This is Sunday night, the 15th of November of 2009. Who all was on shift?

A Myself, Bobby Rushton, and Melissa McAllister.

Q Okay. How do you patrol? Were you in uniform? Were you wearing a -- what were you doing that night and how were you dressed?

A I was dressed basically like I am now, in a uniform. I drive a marked patrol car. I was just traveling around the Mount Carmel area. The other

deputies, I can't say where exactly they were at the time.

Q Were y'all driving marked patrol car -- regular McCormick County Sheriff's Department marked patrol cars?

A Yes, we were.

Q Okay. And stand up there. Is that the uniform that y'all wear now?

A This is the uniform we wear now, yes.

Q Okay. Y'all don't wear the old Barney Fife style of uniform. Is that typical of what y'all wear?

A Yes, it is.

Q Okay. And that's about what you had on that night?

A It's very similar.

Q Okay. All right. As y'all go in -- as you go down Independence and you get to Presidents Drive, who's in front and who's behind? Tell us what's happening.

A I do believe Melissa and Bobby were both in front of me.

Q Okay.

A I was the last one to turn in because, apparently, I must have came the furthest; I'm not

sure.

I followed in. We go into Presidents. We're looking for the address of [redacted] It's hard to see the addresses sometimes at night. I drove past it. Bobby stated on the radio that he sees it here. There's a piece of wood marking it. I pull into the driveway right past it.

Q Okay. Let me stop you for just a second.

Nick, I want you to take a look at this, without showing it or publishing it to the jury right now.

A Okay.

Q I want you to take a look at this. What is this item that I'm showing you? And I'm going to mark it for ID at this point in time. Give me just one second.

MR. MAYE: I'd like to mark this for State's, for ID.

(State's Exhibit Number 4, diagram, marked for identification.)

BY MR. MAYE:

Q Deputy Moore, let me show you State's 4 for ID, ask you if you can identify this that I've got for identification. What is this?

A It's a diagram of the scene, the crime scene.

Q Okay. Did you help participate in the preparation of this diagram?

A Yes. Myself, an artist, and the other officers involved all went to the scene, and went over some of the facts of the case while the artist took notes to draw this diagram.

Q Did y'all take photographs and all and provide him with the photographs and all?

A Yes, we did.

Q Okay. Let me ask you this: Does it fairly and accurately reflect the basic layout of the yard there at the Worley household: The residence, the building, the driveways? Does it basically, fairly and accurately, represent the scene there?

A Yes, it does. It's not to scale, but, yes.

Q Okay. But the critical areas in this and the basic layout, even though you say it's not to scale, do fairly and accurately reflect the area of the Worley household?

A Yes.

MR. MAYE: Your Honor, at this time, the State moves to admit this into evidence. I believe we've laid a foundation for it, subject to any objections to the defense.

MR. GARRETT: Your Honor, we have a matter

outside the presence.

THE COURT: Okay. Madame Forelady, would you take your jury to the jury room, please.

(The jury retires to the jury room.)

THE COURT: Mr. Garrett.

MR. GARRETT: Your Honor, for general demonstrative purposes, we wouldn't have any problem with him referring to it, letting him look at it. But to make it evidence, this case is absolutely critical -- the defense's case is absolutely critical to have exactness in time and distance, and that doesn't have any of the relevant times and distances on it. I don't want the jury to be misled by a not-to-scale drawing, because it also doesn't reflect the evidence as it relates to Bo Willis' crime scene investigation. It's not included on that. So it's not fairly and accurately representing the area, and our defense is based on absolute timing.

THE COURT: Well, let me ask you this: Since the parties have stipulated and I've agreed to allow the parties to go out to the scene, what prejudice would you suffer, since the document itself says it's not to scale, and not all the objects are out there shown, wouldn't that be more a subject for

cross-examination more than admissibility?

MR. GARRETT: Your Honor, we believe it doesn't fairly and accurately represent it. And, also, it doesn't even have the lake there, the area where the fox was. So, you know, again, if they want to, you know, if we had an accurate drawing with distance and measurements and that type of thing, we wouldn't have any problem with it, but we feel like that is a misleading document, and we shouldn't be put to the task of having to demonstrate those distances that aren't even accurately reflected there at all.

MR. MAYE: Your Honor, basically, we would maintain that goes to weight not admissibility. I think we've laid an adequate foundation for it. I think the cases would certainly support that.

The jury's going out to the scene to view this. It states clearly on there that it's not to scale and not all items are shown, but we would like it admitted into evidence. We think we've laid an adequate foundation, and any objections go to weight rather than admissibility.

THE COURT: Anything further, Mr. Garrett?

MR. GARRETT: Your Honor, again, it's misleading because it doesn't have distances in this case. And we need accurate distances and we need

for the lake area to be in place.

THE COURT: All right. I note your objection. I'm going to find that it's admissible, that a proper foundation has been laid, and especially any prejudice suffered by the defense will be overcome by the fact that the State -- I mean, that the jury is going to be taken to the actual crime scene itself. So I'm going to admit it into evidence subject to your objection.

MR. GARRETT: Thank you, Your Honor.

THE COURT: Everybody ready to start back?

MR. MAYE: The State's ready, Your Honor. Thank you.

THE COURT: The defense ready to start back?

MR. GARRETT: Yes, sir.

THE COURT: Could you bring the jury in, please?

(The jury returns to the courtroom.)

THE COURT: Mr. Maye.

MR. MAYE: Thank you, Your Honor.

(State's Exhibit Number 4, diagram, admitted into evidence.)

BY MR. MAYE:

Q Officer Moore, I'm going to show you State's 4 now that's been admitted into evidence. Come down

and help orient the ladies and gentlemen of the jury and show them where y'all drove in from Presidents Drive, orient them as to how you arrived.

A From Presidents Drive, Bobby would have been the one that came into the actual driveway for the Worleys. Myself and Melissa would have went to the next driveway, as I was explaining on this one, which would have been this driveway here {indicating}.

Q Okay. All right. Tell the ladies and gentlemen of the jury what you did when you got there. Y'all pull up. You've already testified Bobby pulled into their driveway, and you pulled in just next door. What did you do?

A Once we got there, Bobby had -- he had -- I saw Bobby go over to the neighbors' house, the Sheffields. At the time of the incident, I didn't know they were Sheffields, so I'll -- but the neighbors' house.

He went there. Myself and Melissa went to the Worleys' residence, and I attempted to speak with someone by knocking on the door, getting somebody to come downstairs.

I knocked on the door, rang the doorbell. I announced that I was sheriff's office to let whoever

know inside the residence that we were sheriff's deputies.

Q How many times did you do that?

A Numerous. You know, more than once. I can't give you an exact amount of how many times I did it, but numerous. I would have given him fairly enough knocks and doorbell rings to come to the door before I decided nobody was coming to the door.

Q No matter how loud you spoke or how hard you knocked, you couldn't get anybody to the door?

A Couldn't get anybody to the door.

Q And you rang the doorbell as well?

A Yes, I did.

Q Okay. Show them on this diagram, where is that door on this house?

A (Witness leaves the witness stand.)

Right here by these steps, up under this -- where the diagram says large window, that would have been upstairs. The door that I was knocking on would have been directly basically up under that window on the lower level.

Q Okay.

A (Witness resumes the witness stand.)

(Pause.)

MR. GARRETT: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

BY MR. MAYE:

Q Officer Moore, let me show you this photograph and ask you, can you identify that photograph?

A Yes, I can. That's the lower door in which I was knocking on and the upper level of the Worley residence.

Q Okay. Now, you don't know the exact date this photograph was taken, do you?

A No, I do not.

Q Okay. So there are items around. There's a towel hanging and things like that. You're not saying that that is exactly as it was that night, but the basic layout of the house, the structure of the house, where the door is, where the balcony is on that structure, does that fairly and accurately reflect that -- subject to those exceptions, the items of personal property that are around?

A Yes, sir.

Q Okay. But that fairly and accurately reflects it?

A Yes, sir, it does.

Q Okay. But you're not saying that that was taken on the 15th?

A No, I'm not.

MR. MAYE: Your Honor, subject to that, I'm going to move to admit it in evidence.

THE COURT: What number would that be?

MR. MAYE: I haven't marked it for ID, and I apologize.

THE COURT: Exhibit Number 5.

Any objection?

MR. GARRETT: With reservations, no.

THE COURT: Okay. Admitted without objection with reservation.

(State's Exhibit Number 5, photograph, marked and admitted into evidence.)

BY MR. MAYE:

Q Nick, come down here and show the ladies and gentlemen State's 5 and show them where you were knocking on the door and announcing your presence.

A (Witness leaves the witness stand.)

I would have been on this {indicating} side of the door, which would be y'all's left, my right; this area right here. Deputy Rushton would have been on this side of the door.

Q When he later came back; correct?

A Yes, when we later came back, yeah. I'm sorry.

Q Okay.

A At the first one, he was over at the Sheffields, I was over here by myself knocking, and from this {indicating} side.

Q Okay. Now, the upper photograph, does that reflect the balcony area of the household?

A Yes.

Q Okay. All right.

A (Witness resumes the witness stand.)

Q So you're knocking and announcing and beating. You can't get anybody to the door. What's the next thing that happens?

A The next thing, I decide that nobody's going to come to the door. I'm just going to go ahead, get with Bobby; get with Melissa; the complainants, which would have been the Sheffields; and leave for the night. As I walk --

Q Okay. What's the next thing that happens?

A I walk over to -- Bobby actually meets me kind of in the middle of both yards. Melissa's there also. I tell them, Can't make contact with anybody at the door, may as well just leave for the night.

At that time, a light comes on from the residence, so that I -- I know then we know somebody has woke up. The light goes back off, and we go over and attempt again to make contact with somebody

in the residence.

Q Where is that light that y'all see go on and then subsequently go off? Where is that light?

A Up on the top deck. It lights up the whole front yard.

Q Okay. I'm going to show you what's State's 5. Can you show them the location of the light that you saw or that you can see that was going on and off?

A (Witness leaves the witness stand.)

Yes. These top lights in this area. There's one on each side of the residence.

Q In the upper portion here, the light on the top of the balcony area?

A Yes.

(Witness resumes the witness stand.)

Q Okay. Officer Moore, once y'all saw that light go on and go off, what did y'all do?

A We went back to the door, myself, Rushton -- Deputy Rushton went with me at this time. We're knocking on the door, ringing the doorbell and, again, announcing, Sheriff's office, steadily knocking on the door. At that time, I can hear some movement up top, like the sliding glass door slide. You can hear that, but you still can't really see anybody.

Q Now, where were you standing at the time that you could hear it sliding? Where were you standing?

A Still basically right beside that door, up against the wall, but up against the door, by the door. You want me to point it out?

Q Yes. And about where was Bobby?

A (Witness leaves the witness stand.)

I would have been in this general area up against the wall. Bobby would have been basically in the same area until he heard the door slide open.

Q Okay. So no one comes to the door. Y'all are knocking and --

A (Witness resumes the witness stand.)

Nobody -- nobody has came to the door while we were knocking and announcing. We were knocking and announcing, Sheriff's office. At that time, I heard a voice say, What do y'all want? Again, say, Sheriff's office. The voice says, I don't give a fuck.

Q Okay. So you announce, Sheriff's office, and what is said in response?

A I don't give a fuck.

Q Okay. What's the very next thing that happens?

A The door was opened. I could hear a step out onto the porch. I look up. Bobby has started to

step backwards to where he can see, because we're under the porch at that time, so he had started to walk backwards out into the yard to where he could see what was going on with that door.

Q About where did Bobby step out on this diagram? About where did he go to at that point in time?

A (Witness leaves the witness stand.)

He would have stepped off of the porch and headed into this general direction.

Q Okay. Where are you at the time that he's backing up and walking in here?

A I'm still over here by the residence, by the door, but close to the residence.

Q Are you able to see from your vantage point whoever is walking up here?

A I can see a silhouette of a person.

Q Okay.

A (Witness resumes the witness stand.)

Q What's the next thing that happens?

A Bobby, he's walking backwards. I'm under there. I see a silhouette come out onto the porch and see movement. Bobby, he yells, Gun. Myself and Bobby yell, Sheriff's office, drop the gun. The lights come on --

Q Now, what light comes on?

A The lights on the porch. The bright lights. Light up the whole front yard.

Q That light comes on?

A That light comes on.

Q What's the very next thing that happens?

A Bobby's shot. He hits the ground, just {snapping fingers} seconds. Time the light comes on, it's almost like he turned the light on and the shot went off.

Bobby hits the ground. I see that Bobby is still moving. I tell him to come to me. Bobby looks at me and starts to come towards me. When he does, another shot is fired.

Q Now, where are you at the time that the second shot -- once Bobby shows signs of life, where are you when that second shot is fired?

A I'm still basically in this same -- this same area by the door close to the house.

(Witness leaves the witness stand.)

Q You're on this side of the house?

A Yes. Still in this -- in this general area. I stayed in this general area until Bobby got to me after he had been shot.

Q Where were you calling for him to come to you?

A Over here, this area {indicating}.

Q And where is he, approximately, at that time?

A Over here by this railroad tie, in this area. He had fallen down after he was shot.

Q As he begins to move, which direction does he travel?

A Towards me, over here.

Q He's coming back towards you?

A Coming back towards me.

Q And that's when the second shot is fired?

A That's when the second shot is fired, yes.

(Witness resumes the witness stand.)

Q Okay. What's the next thing you do after Bobby has been shot and the second shot at him is fired? Where do you go next?

A Once Bobby gets to me, I see that he is wounded. I look at his wound. There's been another shot. I realize that the main thing to do is to get Bobby out of there and get him help.

We start to make distance between us and head back towards where our vehicles are parked.

Q Which side of the house did you go up at that point in time?

A That's -- we go back on this same side of the house that I was -- that I was on the whole time.

(Witness leaves the witness stand.)

Q Where do y'all head to once you gather Bobby up?

A Our cars are over here. We first head to here --

Q Yes.

A -- to right directly behind the house, because at that point, I know that -- well, I don't know that, but I feel that I'm out of danger for a second to assess the situation.

Q Okay. Where is Melissa at this point in time?

A At this point in time, to be honest, I don't really know.

Q Okay. What happens next after y'all are at the back of the house and you're assessing his injuries? What happens next?

A I hear a voice from over in this {indicating} area state, Where you at you son of a bitch?

At that time, I realized we're in danger; we got to go. So I take Bobby to these bushes where I let him catch his breath once again, because he's hurt. His equipment is falling off of his belt. He has a duty belt on, and his equipment is starting to fall off.

We stop here. We catch our breath for just a minute. That's when I tell Melissa to go get me a

cell phone, get a patrol car, we got to get out of here.

Q The person that says, Where are you, you son of a bitch, they're on this side of the house?

A Somewhere in this side. I never saw -- I never saw the person. I just heard the voice.

Q But you know they were outside in this area?

A I know they was outside on this side of the residence.

Q Okay.

A (Witness resumes the witness stand.)

Q So once you hear that there's somebody outside looking for you -- Where are you, you son of a bitch? -- what does that cause you to do at that point in time?

A That caused us to create more distance. We continued to try to get out of there. That's when I had told Melissa to go get a car, get a cell phone, get us some help, because our walkie-talkies won't make contact with the office. I can't get in touch with them; they can't hear me.

So she goes to get a car, and we continued -- I'm going to have to show you again.

(Witness leaves the witness stand.)

Q Sure. Use whatever you need.

A We continued to try and retreat. We go up through here. There's a light pole with a -- what I call a night light, a yard light, street light, whichever you would refer to, in this area. We leave and go up here, and there's a large bank right here {indicating}.

Once again -- Bobby falls once again right here as we're trying to get out. The whole time, we're just continuing to try to get to safety. Melissa pulls her patrol car in this general area here. That's where we load -- we load Bobby up, take him to -- can I use the other one?

Q Sure. Whatever you need. Just say what the State's Exhibit is if you're going to refer to it.

A Okay. It's State's Exhibit 1. We load Bobby into the back seat of the patrol car. I leave my patrol car, leave Bobby's patrol car on scene. We get it -- we all three get in Melissa's patrol car, and we leave the same way we came in and go to 378 to meet the ambulance.

The ambulance that normally would have responded was already on a call; it had to come from Modoc that night. That's why I went here to meet the ambulance to get him medical attention as fast as I could.

At that time, I think I had called for the sheriff on the radio during that, but I also called the sheriff and the chief deputy on the telephone once I got to this location where we met the ambulance.

The sheriff met me there. We went back after --

Q Just go back and retake the stand. You can put that down.

A Okay.

(Witness resumes the witness stand.)

Q So without going into anything the sheriff said, do you apprise the sheriff of the situation at hand and tell him the information that has taken place?

A Yes, yes. The sheriff and the chief deputy both, and both of them told me that they were on their way.

Q Okay.

A Sheriff got there. Excuse me. Myself, the sheriff, and Officer Wideman from the city police department went back to the Worley residence. As we're walking down to the Worley residence, we see two flashlights in the woods.

Q Do y'all turn in the driveway or where do y'all

pull up?

A I do believe we pulled right in the driveway, at the top of the driveway, because I rode back down there with the sheriff in his patrol car.

Q Okay.

A Stopped at --

Q So what happens next?

A We walked towards the individuals that were out there with the flashlights. And we get to speaking with them, and the -- they were shining the flashlights towards our face, and I remember the sheriff telling one of them, Don't shine that flashlight in my eyes.

And they asked him who he was, and he said, I'm Sheriff Reid. Who are you? And they stated their names, Joe Worley and I believe it's -- I'm not sure of his mother's name. I have no --

Q His mother? Those were the two individuals?

A Yes.

Q Let me ask you two questions in this case; one's going to sound silly: The place it was where Bobby got shot and shot at again and the location you responded to, what county is that in?

A McCormick County.

Q That's in McCormick County?

A Yes.

Q The individual that came out and identified himself as Joe Ross Worley, is he present here in the courtroom today?

A Yes, he is. He's sitting right there.

Q Could you tell us where he's seated and how he's dressed?

A He's sitting right there {indicating} in a blue suit, light blue shirt, and tie.

Q The gentleman that's standing up right now?

A Yes.

Q Okay. That's Joe Ross Worley?

A Yes.

MR. MAYE: Your Honor, I'd like for the record to reflect he's identified the defendant, Mr. Worley, in this case.

THE COURT: The record so reflects.

THE WITNESS: So Mr. Worley then, he tells the sheriff, I put the deputy's gun in his patrol car.

BY MR. MAYE:

Q Wasn't in response to any question; he just stated that?

A He just stated that. He was not questioned at any time by the sheriff. He just stated that, I put the deputy's gun in his patrol car.

Q All right. What's the next thing that he says?

A The sheriff asked who had been doing all the shooting. And Mr. Worley said, I have. And the sheriff then asked him, Do you realize you shot my deputy? And he said, Yes, he had no business ringing my damn doorbell.

At that time, that's when I placed Mr. Worley under arrest.

Q He didn't say anything about a mistake of identity or anything else? Are you absolutely certain?

A No. He never mentioned that it was a mistake, that he thought somebody was trying to break in on him, that he thought somebody was trying to hurt him. All he said was, He had no business ringing my damn doorbell.

Q So you took him into custody; correct?

A Yes.

Q Skip forward a little bit. You had him charged in this case with assault and battery with intent to kill; correct?

A Yes.

Q And possession of a weapon during the commission of a violent crime?

A Yes.

Q Correct?

A Yeah.

Q Is assault and battery with intent to kill a crime of violence in South Carolina under 16-1-60?

A Yes. It's defined under 16-1-60, South Carolina Code of Laws.

Q Okay. And so those are the two charges that you caused to be levied against the man that you arrested out there that night: Assault and battery with intent to kill on Bobby Rushton and possession of a weapon during the commission of a violent crime?

A Yes.

Q Okay. What was the next thing that you participated in or what did you do out there, Nick? What happened next?

A After that, the sheriff spoke with Ms. Worley and asked her for consent to go into the residence to try to locate the gun.

Q Did y'all obtain consent from her?

A Yes, we did.

Q What did you do? Where did you go?

A Went inside the residence, and the first weapon that I --

Q No. Just go into the weapon in this case that

is at issue in this case, only this weapon in this case.

Let me ask you this -- in fact, I'm going to show you at this point in time --

THE COURT: Just let me stop you right there.

Ladies and gentlemen of the jury, to the extent there may be weapons introduced in this case, these weapons have been disabled, so they're not capable of firing, so you'll feel at ease during the course of this trial.

And I'm instructing the witnesses involved in this case: When handling these weapons, do not point them at anyone during the course of this trial. I know you wouldn't; just to make sure.

MR. MAYE: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. MAYE: And the weapon has been rendered by the sheriff's department in accordance with the rules for the courts of South Carolina.

The bolt's secured and there are zip ties through it and it's rendered where it cannot be fired.

THE COURT: Thank you, sir.

MR. GARRETT: Without objection, Your Honor.

THE COURT: Admitted without objection.

(State's Exhibit Number 6, Remington rifle, marked and admitted into evidence.)

BY MR. MAYE:

Q I'm going to show you State's 6 that's into evidence in this case and ask you if you can identify this, tell us what it is.

A This is a Remington .30-06 semiautomatic rifle Model 742.

Q Did you record the serial number that night?

A Yes, I did.

Q Now, Investigator Moore, you were involved in the processing of a number of items of evidence in this case in accordance with your responsibilities with the sheriff's department that night; correct?

A Yes, I was.

Q Okay. What's the serial number of that weapon?

A The serial number of this weapon is 7070652.

Q And that's the weapon that you seized at the Worley household --

A Yes, it is.

Q -- that night?

A This is the evidence tag that I would have put on it the date that I seized it.

Q And you're absolutely certain that's the gun that you seized at the residence?

A Yes.

Q Okay.

(Pause.)

MR. GARRETT: Without objection, Your Honor.

MR. MAYE: Your Honor, I have four photographs that are going to be by -- I'm offering them, and the defense is stipulating. I'm moving to admit these four photographs into evidence.

THE COURT: These are going to be numbers 7, 8, 9 and 10?

COURT REPORTER: Yes, sir.

THE COURT: They'll be admitted without objection.

(State's Exhibit Numbers 7 through 10, photographs, marked and admitted into evidence.)

BY MR. MAYE:

Q Officer Moore, I'm going to show you State's Exhibits 7, 8, 9 and 10.

A Okay.

Q Tell the ladies and gentlemen of the jury -- and utilize these exhibits -- when you went in for your search for the weapon that had been used to shoot Bobby Rushton in this case, where did you locate what's been marked into evidence already as State's 6, the Remington 742 rifle? Where did you

find it?

A In the living area upstairs residence under a -- what I would call a love seat, a short couch.

Q Okay. Show them what you first saw that indicated to you that there was a gun put up under there.

A (Witness leaves the witness stand.)

What I first saw was the stock of the butt of the rifle sticking out from under --

THE COURT: Mr. Maye, would you have him identify the exhibit?

BY MR. MAYE:

Q What number is that?

A Number 9. State's Exhibit Number 9.

Q So the weapon was hidden under the couch?

A Yes, it was.

I also --

Q What was the next one or what's the exhibit number? You can refer to it, just --

A State's Exhibit Number 8 --

Q -- do it by number.

A Okay. The first thing I -- the next thing I saw was the barrel sticking out of the other end.

Q What did you then do next?

A Then we moved the couch away from the rifle

where we could photograph it before we ever moved it.

Q Okay. Do you have that photograph? What number is it?

A Number 7. That's just the rifle laying on the floor. All we did was picked up the couch and move the couch.

Q Okay.

A And I have one of the couch if they want to see it.

Q Sure. What number is that?

A Number 10 is just the couch.

Q That weapon was stuck up under the couch?

A (Witness resumes the witness stand.)

Yes, it was. There was a -- inside of the residence also was a case for this weapon and a scope that would have went on a rifle, laying on a bed in the back room, opened.

Q On a bed?

A On a bed, yes.

Q Again, this weapon was nowhere near that bag; it was hidden under a couch?

A Yes, that's correct.

Q Okay. You seized that weapon and sheriff's -- took it into custody?

A Yes.

Q Correct?

A Correct.

Q All right. Let me ask you this. Let me show you what's been marked at this point in time as State's 3 for ID. Ask you if you can identify the items that are in that bag.

A Yes. These are the .30-06 rounds that I removed from the rifle when I seized it that night.

Q What else is in that bag, the black object that's in that bag?

A The magazine in which you would load the rounds into. And there's four rounds in here that have been modified.

Q Okay. Now, you took custody of those and cleared those -- you removed those bullets from the weapon?

A Yes. When I seized it, before I would have transported this weapon in my patrol car, I would have took the rounds out of it to where it wouldn't fire.

Q Okay. And you documented that and you're absolutely certain that those are the modified rounds and the box magazine from that same 742 that you seized there at the scene?

A Yes. This is it. This is my evidence bag with my handwriting on it, date and time.

MR. MAYE: Your Honor, I move to admit these into evidence at this time.

MR. GARRETT: Without objection.

THE COURT: Admitted without objection.

(State's Exhibit Number 3, magazine and bullets, admitted into evidence.)

BY MR. MAYE:

Q Now, Officer Moore, the gun -- the box magazine holds how many rounds?

A Four.

Q Okay. So what's the maximum number of rounds that you could have in that weapon at any one time?

A You could have five, if you had four in the magazine and one chambered.

Q Okay. And so when you got the weapon where it was hidden under the couch, it still had four rounds in it?

A Still had four rounds in it, one in the chamber, three in the magazine.

Q Okay. And Bobby got shot, and there was a second shot; correct?

A Correct.

Q And when you seized the weapon, it had four

rounds in it?

A That's correct.

Q So at the time that you seized it, it had been reloaded? At least one additional round had been put in it?

A Yes, would have had to have been.

Q Okay.

MR. MAYE: I'd like to mark this for identification.

(State's Exhibit Number 11, shell casings, marked for identification.)

MR. MAYE: Any objection to these three photographs?

MR. GARRETT: No.

MR. MAYE: Your Honor, I have three photographs, at this point in time, that the defense has indicated they do not have any objection to being admitted into evidence. I'm going to ask the court reporter to record them.

THE COURT: They'll be 12, 13, and 14?

COURT REPORTER: Yes, sir.

THE COURT: They'll be admitted without objection.

(State's Exhibit Numbers 12 through 14, photographs, marked and admitted into evidence.)

BY MR. MAYE:

Q Officer Moore, I'm going to show you two bagged items that are cumulatively marked as State's 11 for identification. I believe they're marked on the bag as -- for ID, both are 11, but I believe one of the bags has Sheriff's Office Evidence Number 3 and 4; is that correct?

A On the inside of the bag.

Q Okay. On the inside of the bag.

Let me ask you this: Where were those -- what are the items that are in 11 and where were those obtained?

A These are .30-06 shell casings in which the bullet had been fired. They were obtained in the yard by the steps. Can I show on the --

Q Sure.

A (Witness leaves the witness stand.)

Q Utilizing State's --

A 4.

They were located in this general area by the steps.

Q Okay.

A (Witness resumes the witness stand.)

MR. MAYE: Your Honor, at this time, I move to admit the two bagged items which are attached

together that are 11 for ID at this point in time.

THE COURT: Any objection?

MR. GARRETT: Without objection.

THE COURT: 11 will be admitted without objection.

(State's Exhibit Number 11, shell casings, admitted into evidence.)

BY MR. MAYE:

Q Utilize these three photographs with the jury, show them where you located those rounds and how you identified them. And each photograph, as you refer to it, use the number.

A (Witness leaves the witness stand.)

Okay. Number 12, and I'm going to use Number 4 also. This Photograph Number 12 which shows the shell casings in the yard that are in this general area {indicating}.

Q Okay. All right. What are the other photographs, the other two photographs? Refer to them by number and what do they show?

A Number 13 and Number 14 are the shell casings also in the yard, same place before we picked them up, with the tags inside of them, number 3 and number 4, that's for identification purposes. And that's the .30-06 shell casings in the yard.

Q Okay. Thank you, sir.

A (Witness resumes the witness stand.)

(Pause.)

MR. MAYE: Your Honor, I have at this time -- I'm moving into evidence actually eight bags that have a sheriff's office number on them of 6, 7, 10, 11, 12, 13, 14, and 15. I have all of these bags. Rather than put individual numbers on them, since they're all similar items, I'm going to staple them together.

THE COURT: You're going to make it a group exhibit?

MR. MAYE: I'm going to make it a group exhibit. I'm going to staple them all together here. I've announced the numbers. They're -- each of the bags have that number at least somewhere on them that indicates the sheriff's office number. And I've shown them to the defense. They indicate that they don't have any objection to these eight bags of items -- different items coming into evidence in this case.

THE COURT: Okay. That will be Number 15?

COURT REPORTER: Yes, sir.

THE COURT: Admitted without objection?

MR. GARRETT: I do.

THE COURT: Thank you.

(State's Exhibit Number 15, eight bags of unfired rounds, marked and admitted into evidence.)

BY MR. MAYE:

Q I'm going to show you State's 15 that's now in evidence in this case. Nick, what are those eight bagged items, the eight separate bags there? What are those items?

A These are the unfired rounds that we recovered from Bobby's handgun.

Q Okay. What was the result -- once Mr. Worley shot Bobby, what was the resulting damage to the handgun?

A The handgun grip basically exploded, along with the magazine that holds the rounds in it. That's why they were scattered all through the yard. And there's only eight of them here. I guess we were unable to find the rest of them.

Q What's the capacity of the full-size Glocks that y'all were carrying at the time?

A Thirteen in the magazine, one in the chamber.

Q And they're 40 caliber. So those are unfired rounds that came out of --

A Yes.

Q -- Bobby's gun when it blew apart?

A Yes.

Q Of course, Bobby never fired his gun that night, did he?

A No, he did not.

(Pause.)

MR. GARRETT: Without objection.

MR. MAYE: I've got three photographs, at this point in time, Your Honor, that we're going to admit without objection.

THE COURT: 16, 17, and 18 admitted without objection.

(State's Exhibit Numbers 16 through 18, photographs, marked and admitted into evidence.)

BY MR. MAYE:

Q Let me show you what's been admitted in evidence as State's 18 at this time point in time.

A Okay.

Q Come down here and tell the ladies and gentlemen of the jury what 18 is.

A (Witness leaves the witness stand.)

Number 18 is a railroad cross tie that was in the front yard. That's approximately where, when Bobby was shot, where he fell or either he may have tripped over that. I can't say exactly, but that's where he was at when he shot and fell face-first.

Q Is that close to the same location as when he got up, where Mr. Worley shot at him again?

A Yes.

Q I'm going to show you State's 17 as well. Show them what that is.

A Number 17, once again, is the railroad cross tie.

MR. MAYE: Your Honor, I have an additional photograph here that's going to come in without objection.

That's State's 19 now in evidence, Your Honor.

THE COURT: Admitted without objection.

MR. GARRETT: Without objection.

(State's Exhibit Number 19, photograph, marked and admitted into evidence.)

BY MR. MAYE:

Q I'm going to show them State's 19. Tell the ladies and gentlemen of the jury the relevance to your testimony of this photograph or what that area depicts.

A Okay. Number 19 is the area that I had stated previously in Number 4 where we had went up the embankment by the light pole, once again, where Bobby fell due to him being injured, his stuff was falling off his belt, as we were trying to leave the

area to get him to safety.

Q That's an approximate location where you heard Mr. Worley outside?

A Approximate location where we heard Mr. Worley say, Where you at, you son of a bitch?

Q Okay. I'm going to show you State's 16 -- you can keep standing up here -- that's already in evidence in this case. Talk about this view of the house, the significance of that car.

A This side would have been the side where I would have heard the voice coming -- Where you at, you son of a bitch? -- because I would have been on the other side. This vehicle is a vehicle that was on the scene when we got there that night, remained there the entire time. I'm assuming that it belongs to the Worleys.

Q Okay. But that one was there and stayed there the whole time?

A That vehicle was there and stayed there the whole time, yes.

Q Okay. Now, it depicts a patrol car in there, but this was taken later in the morning; correct?

A Yes, it was. That's approximately where Bobby's patrol car would have been parked, but that is not his car. This is taken later that day.

Q These cars are all marked the same way. They're police cars with push bars and light bars and markings and everything else on them?

A Yes. Yes.

Q So the car he was driving was essentially identical to this one --

A Identical to that one, yes.

Q A full-blown police car?

A Yes.

(Witness resumes the witness stand.)

(Pause.)

MR. MAYE: Mark this for ID, please.

(State's Exhibit Number 20, photograph, marked for identification.)

BY MR. MAYE:

Q Nick, I'm going to show you what's marked as State's Exhibit 20 and ask you, in this case, what does that photograph depict that's 20?

A That's Joe Worley on the night he was arrested.

Q Okay. That's as he appeared, his face and all and his facial features as he appeared that night?

A Yes.

Q Okay. Now, he's got some kind of black thing or some kind of hood around the front of him covering up his T-shirt there. That's something

they put on at the jail?

A They do that at the county jail.

Q So there's contrast for the photo?

A Yes.

Q He wasn't wearing this black cape thing out there that night?

A No, he was not.

Q But this is him as he appeared that night, Joe Ross Worley? This is the individual that you took into custody --

A Yes, it is.

Q -- that night for shooting Rushton?

A Yes, it is.

MR. MAYE: Your Honor, that's State's 20 for ID. At this point in time, I'm going to move to admit it into evidence at this point time.

MR. GARRETT: With that caveat, Your Honor, that the black thing was not on him that night.

THE COURT: Admitted without objection.

(State's Exhibit Number 20, photograph, admitted into evidence.)

BY MR. MAYE:

Q Officer Moore, let me ask you this: Is there any doubt in your mind that you adequately identified yourself to Joe Ross Worley that night as

sheriff's officers and he fired upon Bobby Rushton after being advised of that?

A No. There is no doubt in my mind, because he replied back, I don't give a fuck.

Q You're absolutely certain that he heard you identify yourselves as sheriff's department, fired on him anyway?

A Yes.

Q You're absolutely certain, as Bobby got up, he fired upon him a second time?

A Yes, I am.

MR. GARRETT: Leading, Your Honor.

THE COURT: Rephrase.

MR. MAYE: Withdrawn.

Nothing else.

THE COURT: Let me see the attorneys around here for a second.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen of the jury, what we're going to do now, after consulting with the attorneys, is that, instead of letting cross-examination begin and taking a lunch break in the middle of it, I'm going to go ahead and

call a lunch break now. Then we'll bring you back at 1:30, and we will resume testimony at that point.

Let me remind you, you're going to be on lunch on your own; however, while you're at our lunch, you may not speak amongst yourselves or with anyone else about this case. If anyone comes up to you and tries to speak with you about this case, just say, I'm a juror; I can't speak with you. If they persist, bring it to one of our attention, and that will be dealt with immediately. Okay?

With that being said, we'll excuse you for lunch and ask that you be back in your jury room at 1:25, please.

(The jury was excused for lunch.)

THE COURT: All right. Mr. Moore, since you're still on the stand, you may not speak with anybody about your testimony. It's okay to have general conversation with folks, but nothing whatsoever about your testimony, about this case. Okay, sir?

THE WITNESS: Yes, sir.

THE COURT: All right. Very good.

We're in recess until 1:30.

(Whereupon, there was a luncheon recess.)

(Defendant's Exhibit Numbers 1 through 3, dispatch logs, and Court's Exhibit Number 2, record

reconstruction, marked for identification.)

THE COURT: State ready to proceed?

MR. MYERS: The State's ready.

THE COURT: Defense ready?

MR. GARRETT: Defense is ready, Your Honor.

THE COURT: Will you bring the jury in, please?

MS. BALLARD: Your Honor, just for the record, I added the exhibit as Court's Exhibit Number 2 that we talked about yesterday.

THE COURT: And that is for purposes of settling the record?

MS. BALLARD: Yes, sir.

THE COURT: Okay. Thank you, Ms. Ballard.

MS. BALLARD: It's been marked, and I've given Mr. Myers a copy.

THE COURT: Thank you.

(The jury returns to the courtroom.)

THE COURT: Madame Forelady, ladies and gentlemen of the jury, before we get started, let me check to see if you spoke with anyone or anyone attempted to speak with you about this case during the lunch break.

(There was no response.)

THE COURT: Very good.

Defense ready for cross-examination?

MR. GARRETT: Yes, Your Honor.

THE COURT: Mr. Garrett.

MR. GARRETT: Officer Moore.

CROSS-EXAMINATION

BY MR. GARRETT:

Q Officer Moore, that night is probably and, in fact, it was the darkest night in November 2009 for that month; in other words, a no-moon night.

A Okay.

Q Was it?

A I don't know. I have no way of knowing.

Q You don't remember?

A No, I don't remember.

Q I just noticed, when you said as y'all were coming up, you didn't see -- y'all were unable to see the Worley driveway, and Bobby said on the radio dispatch he saw the driveway.

A Yeah. There's a lot of driveways in the county that we drive past when we're first looking for them.

Q I understand.

MR. GARRETT: For identification, this is Defendant's Exhibit Number 1, 2, 3.

MR. MAYE: No objection. Put them into evidence as defense exhibits.

THE COURT: 1, 2, and 3?

MR. GARRETT: 1, 2, and 3.

THE COURT: Be admitted without objection.

MR. GARRETT: Thank you, Your Honor.

(Defendant's Exhibit Numbers 1 through 3, dispatch logs, admitted into evidence.)

BY MR. GARRETT:

Q These are some dispatch excerpts. And you were on the radio that afternoon, weren't you?

A Yes, sir.

Q And if the Sheffields had called in at 4:06:22 --

A I'm not sure of the exact time.

Q Not sure what time?

A Not exactly.

Q But if that was the dispatch log, you show around four o'clock is what you said when --

A In the area, yeah.

Q In the area?

All right. And then, at 4:06, did you hear dispatch talking to Mr. Sheffield? Did you hear any of that?

A No. I can't hear what dispatch says to them.

Q You can't hear what they said. Have you went back and looked at it to see what was being said

that night?

A No, I have not.

Q You haven't? Okay.

Let's suppose that this was said to dispatch that night.

A I have no way of knowing.

Q Okay. Well, let's -- would you step down here and let's read this?

A Okay.

(Witness leaves the witness stand.)

Q We've stipulated these are excerpts from that night. So let's go -- Mr. Sheffield apparently called at 4:06:22, right there. Could you read what it says right there?

A McCormick 9-1-1, what's your emergency?

Q Okay. Then Mr. Sheffield said what?

A Well -- all of this took place in one second, from here to here?

Q No. We know that's not true. Okay? That's just part of it, but that's the way it's set up, and that's what your log will show.

A Okay. I'm just asking about this sheet you have here. It's saying all this took place in less than one second.

Q I understand. Go ahead.

A Yes. My name is Alan Sheffield. I -- we reported about a month or so ago. I need to speak to the sheriff or something. My neighbor sits outside and talks at the top of his lungs, sounds like he fires guns.

COURT REPORTER: I didn't hear the last part. I didn't hear the last part.

THE WITNESS: Which part? Sounds like he fires guns?

BY MR. GARRETT:

Q All right. And then dispatch responds?

A Okay. I'll let you speak with law enforcement dispatch. Hold on.

Q Response from Mr. Sheffield?

A Thank you.

Q Dispatch?

A Sheriff's office.

Q Okay. Mr. Sheffield again?

A Yes. Good morning. My name is Alan Sheffield. I live out at 130 Presidents Drive. My wife had reported our neighbor about a month or so ago, sits outside at night talking very loudly, occasionally what appears to be discharging guns. He's done it twice tonight, and he's out on the deck again.

Q Dispatch?

A Okay.

Q Then Mr. Sheffield?

A The name of the house is Worley. I think it's 146. We are at 130.

Q And that 130, that will be Presidents Drive?

A I would assume, yes.

Q Okay. Dispatch?

A I'll send someone down.

Q Mr. Sheffield?

A Thank you.

Q Dispatch?

A I need a county unit at three zero Presidents Drive. Correction: It'll be 146 Presidents Drive for loud --

Q All right. Did you get that call or is that what went out to you? Is that the first time you heard it or do you recall?

A I can't recall exactly what she said.

Q Okay. Go on down next.

A Be advised, caller says that he and his wife have complained before about the neighbor.

Q Okay. Complete the rest of that.

A Who sometimes -- he said he comes outside and talks very loudly and discharges firearms. He says he's on the deck doing that now.

Q Melissa?

A 10-4.

Q And I'm assuming Melissa works at dispatch? Do you know who Melissa is?

A Yeah, Melissa McAllister.

Q Okay. That will be Melissa McAllister. All right. Go ahead.

Is this a question mark?

A Yes. That would be me asking, He's discharging the firearm now?

Q And what did dispatch say?

A Affirmative.

Q That's not true, is it? When you got out there, he wasn't out there discharging a firearm?

A Not when I got out there, but I don't know what he was doing at 4:09.

Q Okay. Let's move on.

A Is the complainant at 146 or is the subject at 146?

Q Melissa?

A That was Melissa.

Q Okay. And then what's dispatch say?

A Subject's at 146. The complainant is at 130.

Q And Melissa says 10-4. What does that 10-4 mean?

A I guess 10-4 that she copies the address. I don't know. I mean, I have no way of knowing what she would say 10-4 to.

Q Okay. Is 10-4 a call sign or basically a statement by her saying I got the information?

A It would be okay or affirmative.

Q Okay. And then Melissa comes back?

A I'm still looking for Presidents Road.

Q And then who's next?

A Bobby.

Q What time is that?

A 4:27.

Q 35?

A Yes.

Q And what does Bobby say?

A Could you have the complainant, ask them if they live next door to the right-hand side of the -- I guess it didn't copy -- with their lights on in the garage.

Q All right. What does dispatch do?

A 113, be advised I'm not getting any response from that residence.

Q And then what does Bobby say?

A Headquarters, I'm speaking with them.

Q All right. Now, earlier on, you said that, in

your testimony -- hold on a minute, let me look at this drawing -- Bobby was speaking with the Sheffields. Would that have put him right here {indicating}?

A I can't say where he was at speaking with them, not the first time.

Q How many times did he speak to them?

A Twice, I do believe.

Q All right. Explain that.

A Explain?

Q That Bobby spoke to the Sheffields twice.

A He went over there when we first got there, I believe, and then he went -- may have went back after we decided to leave. I can't speak for sure exactly what Bobby did.

Q All right. But you said that Bobby went over there to talk to the Sheffields?

A Uh-huh.

Q The light --

A No, it was over here when --

Q You were over --

A When the light flickered, we was over here.

Q You were at the house?

A Yeah.

Q Okay.

A Over here, not at the house. Don't try to tell me where I was at. We was over here.

Q You were where?

A Over in this area, between the houses.

Q Okay. You were between the houses.

You and Melissa had started walking back, as I understand it; is that correct?

A Yes.

Q Y'all got no response from the Worley home?

A Yes.

Q So y'all started walking back, and then y'all met up with Bobby?

A Yes.

Q Okay. At some point, the light come back on, flickered on and off. Then y'all decided to walk back down to the house?

A Say that again.

Q The light came on. At some point, y'all decided to walk back down. Wherever y'all had met up, y'all decided, when you saw the light turn on, you walked back down to the house?

A Yes.

Q All right. Now -- so at 4:29:22, dispatch said they weren't getting any response from the residence, but at 4:29:35, headquarters, I'm

speaking with them?

A Uh-huh.

Q And then at 4:31:22, what does Melissa say?

A Shots fired. We need an ambulance.

Q All right. And the time between 4:29:35 and 4:31:22 is how much time?

A Close to two minutes.

Q Is that 147 seconds? Excuse me, 107 seconds?

A Close to two minutes.

Q Okay. All right. So let me make sure I understand that. Looking back at this diagram now, and I'm looking at State's Exhibit Number 2 -- and y'all were back down towards the corner of the house again?

A When?

Q After y'all met back up and went back down there.

A Yeah. After we went back down there, after the light came on and then back off, we would have went to the -- back to the corner of the house.

Q All right. So then you went back to the corner of the house, then the exchange of what happened out there. And then you took off going in this direction, and you said you lost sight, I think, for a few moments of Melissa; is that correct?

A (No audible response.)

Q But Melissa is the one --

COURT REPORTER: I'm sorry. Did he answer?

THE WITNESS: Yes.

MR. GARRETT: He said yes.

BY MR. GARRETT:

Q Melissa had taken off and had started running to the car to get a call out; is that correct?

A To go -- yes, sir, to go get a call out to get a cell phone to try to get help because Bobby had just been shot.

Q With your finger, please show us the direction that she would have taken to get to where her car was.

A I have no idea what direction she would have taken. Her car would have been in this general area {indicating}, but I have no idea which direction she would have taken. I can't do that. I mean --

Q Well, she wouldn't have run in front of the house for sure; right?

A I wouldn't assume, but I have no way of knowing.

Q So she probably would run behind the house before the ditch that you described earlier and came over to get to her car in the other driveway? I

mean, that's where her car was, wasn't it?

A Yeah, her car was over there.

Q All right. Thank you.

Now, let's move on from there, after shots were fired.

A Okay. Melissa again says, We need an ambulance.

Q And dispatch 107?

A Yep.

Q And 107 is whose car number?

A Nobody's car number. It would have been my call sign.

Q It was your call sign.

A Yeah.

Q Dispatch?

A Any unit contact dispatch.

Q Okay. Next?

A We got an officer.

Q Next?

A Headquarters, where is that ambulance going to be at?

Q Okay. When you were doing this, where were you at? When you were making these calls, had you gotten back to your car?

A No. That's why it's incomplete, because you

can't copy the radio transmissions.

Q Okay. So how were you communicating with them wherever you were at when you were communicating?

A On my walkie-talkie. They're taking down what they can copy.

Q Okay. You had a mic on; is that right?

A No.

Q Are you sure you didn't?

A I'm positive. I hadn't wore one in 15 years.

Q Would you know why the record said that you did?

A What record?

(Pause.)

MR. MAYE: This is hearsay. I object.

THE COURT: Just one moment.

Madame Forelady, will you take the jury back to the jury room, please?

(The jury retires to the jury room.)

MR. MAYE: Your Honor, I think this is as good a time as any. We had a Castle Doctrine hearing, and it was in front of Judge Keesley; it was not in front of the jury. We let all kind of things go in that were hearsay and let officers get cross-examined about all sorts of things just in the interest of economy and not to object to that. But

he's basically trying to take a summation of events printed by Officer Joe Collier and cross-examine this officer off of that. I know that it's written by someone else.

THE COURT: Okay. Let me make sure I understand. You say it's a summation of events, so it is an incident report?

MR. MAYE: No, sir. It is basically the -- Officer Collier's recollection of the incidents. It's not the official incident report, but it's what he wrote down that he did out there. So he's basically trying to take words recorded by somebody other than this officer and impeach him with it, which is hearsay.

And we've also got an issue -- he's already brought up at one point in time on opening statement. We had ATF come out because he had these bullets that have been modified, and he also had a failure to stop conviction. He can't possess a firearm under federal law.

An agent from ATF came out and looked at this, about picking it up in federal prosecution. He interviewed the officers and collected their incident reports. He recommended that a U.S. attorney, that they pick it up; the U.S. attorney

did not. It was basically prosecuted for possession of a weapon by somebody who had more than a year conviction.

THE COURT: All right. Let's keep it straight to what we're dealing with. I'm not --

MR. MAYE: I'm basically saying now I'm going to object in limine to him going into anything that's in Investigator Stallo's {phonetic} report and cross-examine him, because it's hearsay, and I'm going to object to him trying to cross-examine this officer off something that Officer Joe Collier wrote.

If it's any statement of his, he can certainly cross-examine him and attempt to impeach him, but taking something prepared by an ATF agent to transfer to the U.S. Attorney's Office, taking some statement from Investigator Collier, it's just pure hearsay.

THE COURT: You may be right. Let's deal with this report right here --

MR. MAYE: Yes, sir.

THE COURT: -- and then when it come up, just raise it. Okay, sir?

MR. MAYE: That's it. And I'm raising that now, that's hearsay.

THE COURT: Got ya.

Now, tell me why that is not hearsay.

MR. GARRETT: This is a response to our request for discovery concerning the condition of the uniform --

THE COURT: That doesn't mean it's not hearsay.

MR. GARRETT: It's the government's response. It's the government's response to our discovery request about the conditions that evening.

THE COURT: Well, Mr. Maye says this is essentially a --

MR. GARRETT: I can put it in through --

THE COURT: Hang on. It's an unofficial incident report that was a narrative drafted by one of the officers the night in question; is that correct?

MR. GARRETT: That's not correct.

THE COURT: Okay. Then what is it?

MR. GARRETT: This is specific answers to specific requests for discovery that we sent and made a request for it --

THE COURT: Let me look for --

MR. GARRETT: -- and they responded.

THE COURT: I mean, just because it's produced in discovery doesn't mean it's exempted from the

hearsay rule and other discovery rules -- I mean, not discovery rules -- evidence rules.

(Pause.)

THE COURT: So which number are we talking about, Mr. Garrett?

MR. GARRETT: 15, I believe.

THE COURT: It's 15. Deputy R.E. Rushton not wearing any type of body --

MR. GARRETT: It's right in that -- I think it's the next one down, that Moore was. It's right in there.

MR. MAYE: But again, Your Honor, like I said, it's hearsay. It's what another officer wrote.

THE COURT: Hang on.

MR. MAYE: Yes, sir. Sorry.

THE COURT: Go ahead. Tell me which one it is.

MR. GARRETT: Number 17, Your Honor. I apologize.

THE COURT: That's all right. I'm just -- get to the point.

So, basically, this is a printout of the microphone that he had on during the incident?

MR. GARRETT: Yes, sir. That's what I'm --

THE COURT: Under what evidence rule does it come in?

MR. GARRETT: It's an admission by a party opponent, that he was wearing a mic. He said he wasn't. I think that's proper impeachment.

THE COURT: Say that again, please, sir.

MR. GARRETT: I said, I think it's an admission by a party opponent that he, in fact, had a microphone on, and if he wants to say that he didn't, then it's impeachment.

THE COURT: I mean, I think the fact that he was wearing or not wearing a microphone is an admission, but the contents of the microphone, I believe, is hearsay.

MR. GARRETT: He just said that he didn't have a microphone on him is the point.

THE COURT: Okay. And please correct me. I've been listening to it; I thought I was pretty intently. I thought the objection was the contents what he's saying that it's hearsay, okay.

MR. GARRETT: No.

THE COURT: To the extent that that is your objection, it's sustained. To the extent you're asking him whether or not he had a microphone on or not at the time of questioning, it's overruled because that is admitted to.

MR. GARRETT: Okay. Thank you.

MR. MAYE: Again, Your Honor, I just want to be sure I follow the Court's --

THE COURT: Okay. And I'm sorry. What I understood your objection was were the contents of this statement or this microphone, somebody typed up the contents. I sustain your objection as being hearsay.

MR. MAYE: Yes, sir.

THE COURT: The response as to whether or not he was wearing a microphone is not. And I overruled the objection to the extent that you allege that it's hearsay because it would fall under admission from the State in this matter based on your discovery responses.

MR. MAYE: Your Honor, I'm just making sure. He's basically taking not what this officer said, but what any other person in here said and trying to impeach him by saying it's true by saying Officer Collier said that.

THE COURT: Number one, I'm not asking for argument.

MR. MAYE: Yes, sir. I understand.

THE COURT: You asked for clarification. Let me give you clarification what it is.

MR. MAYE: Yes, sir.

THE COURT: Mr. Garrett can inquire as to whether or not this other officer had on a body mic based on number 17 in the discovery responses that said he did. As to the contents of what that body mic might have revealed is sustained.

MR. MAYE: Okay. Thank you, Your Honor.

THE COURT: Very good.

You ready? Anybody -- any question about my ruling?

MR. GARRETT: I understand, Your Honor.

THE COURT: Okay. Are y'all ready to proceed, Mr. Garrett?

MR. GARRETT: Yes, Your Honor.

THE COURT: State?

MR. MAYE: State's ready, Your Honor. Thank you.

THE COURT: Very good.

Would you bring the jury in?

(The jury returns to the courtroom.)

THE COURT: All right. Mr. Garrett.

MR. GARRETT: Thank you.

THE COURT: Yes, sir.

BY MR. GARRETT:

Q Officer, you say you were not wearing a body mic?

A No, I was not.

Q Okay. What about Rushton? Was he wearing a body mic?

A Yes, he was.

Q And what about Melissa? Was she wearing a body mic?

A She generally does, but for that night, I can't say for sure.

Q Well, can you explain how -- can you explain 15 and 17? Read 15.

A 15?

Q Yeah.

MR. MYERS: Not out loud.

THE COURT: Read silently.

BY MR. GARRETT:

Q Silently read 15.

A Okay.

Q Okay. Well, why would I be told that it had -- that you had a body --

A I can't answer what somebody else told you. I didn't have one on. That's all I can tell you. Never have wore one in my 15-year career. My belt's wore out from taking the radio on and off, if you want to look at it.

Q And as it relates to Bobby, it says he wasn't

wearing a mic.

A If I recall correctly, he had one on.

Q Did you have any way to record any of this other than what we're doing here, as far as dispatch?

A Did I have any other way?

Q Have any way to record what all was going on at that time, your phone or any other source?

A Phone was in the car.

Q Okay. So you didn't have any source to record it with.

Did you have a handheld radio?

A Walkie-talkie?

Q Walkie-talkie?

A Yes.

Q Okay. All right. So is that what you were working from?

A Yes.

Q Okay. Let's pick back up.

A Okay.

Q All right. You got shots fired at 4:31:22, and then we went on down. We've got an officer -- and 4:36:37, you said, Headquarters, where is that ambulance?

A Yeah. Headquarters, where is that ambulance

going to be at?

Q You recall that.

Looking at Defendant's Number 3, that's 4:36:50. Is that your --

A That's me. I said, We'll get this son of a bitch later.

Q Okay. And 4:37:05?

A I told dispatch to contact Junior, who is the chief deputy, and the sheriff.

Q All right. Have a seat.

A (Witness resumes the witness stand.)

Q Now, you've given several versions of the events from that evening; is that correct?

A To whom?

Q Well, you gave a -- you gave your initial -- your incident report that you prepared; is that correct?

A Uh-huh. Yes, sir.

Q And you prepared that incident report, looks like, on 11/15/09, that day; is that right?

A I would have to look at it, but I would say, yeah.

Q Okay. And then on a later time, you also talked to an Officer Stallo; do you recall that?

A Yes.

Q Okay. An ATF officer, federal officer?
A Yes, I did.
Q And you gave him a statement?
A I gave him a copy of my actual statement, yes.
Q All right. And then there was a trial in front of a hearing officer. And you testified under oath at that time as well on May 31 and June 1 of 2011; is that correct?
A I don't know the dates. I've testified a lot. I've talked about this a lot.
Q Okay. Now, effectively, they took your written statement and made that the incident report; is that correct?
A Who did?
Q Whoever prepared the incident report, took your statement and made it the incident report and put your name and Melissa's name on it; is that correct?
A I'd have to see what you're talking about to answer that.
Q Do you recognize this incident report?
A Yes, this is mine.
Q Is that yours and Melissa's, at the bottom where it's signed as the reporting officers?
A Yes. Her name is on it, but that does not mean it's 100 percent hers. It would have been mainly

mine. Her name would have been on there because she was just a witness to the incident.

Q All right. And do you recognize that document?

A Yes.

Q And what is that?

A That's my statement.

Q All right. So is it -- now, have you looked at your statement in relationship to the incident report to see basically it did not follow that incident -- your incident report and your statement was all one and the same?

A I'd have to take time to read both of them to double-check that.

Yes, they appear to be close to the same.

Q All right. And you've had an opportunity now to review them?

A Yes, sir.

Q Okay. I'd like to kind of go over these with you. Okay?

The incident report, 11/15/09, when it gets down to the part where it's talking about, Rushton went to speak with the Sheffields, it only says in your incident report, does it not, that he only went to talk to them one time, doesn't it?

A I'd have to look at it to tell you what it

says.

Yeah, that's what it says in here, but I can't -- once again, I can't exactly tell you what Rushton did the whole time.

Q I understand, but you reported in there that he went over to talk to the Sheffields while you and Melissa went to knock on the door. And that was what you testified here to today.

Now, is there any room in there for him to go back over to the Sheffields again later on?

A Once again, I can't a hundred percent say whether he went back over there or not.

Q So you don't know where Bobby Rushton was during this limited time?

A Not the whole time we were out there while he was speaking with the complainant and I was knocking on the door, no. I can't account for his every single action.

Q Okay. So he was over there talking --

A And I wrote this statement, also, after he had been shot, and I had been shot at, too. We were both scare -- I was scared to death when I wrote this statement. So, you know, there may be some typos in it. I'm sorry for that.

Q Well, a typo is one thing; I'm okay with that.

But saying Mr. Rushton went over there a second time, now as we sit here today, is there any way --

A I can't tell you where Rushton was at --

THE COURT: Just one second. Let me stop both of you. Let Mr. Garrett finish his question before you begin because the court reporter can't take everything down. Okay?

THE WITNESS: Yes, sir.

BY MR. GARRETT:

Q I understand you can't account for him, but you didn't see him go back over there a second time that evening; is that correct?

A I can't tell you where Deputy Rushton was at the whole time.

Q All right. In your statement, you say that you and Melissa went to the door, the Worley door, and you knocked several seconds -- rang the doorbell and knocked; is that correct?

A You said that's in my statement?

Q Yes, sir.

A Okay.

(Witness reviewing document.)

Help me out and show me where I say that because I'm...

Q Okay. {Indicating.}

A Okay. It says: I, Deputy Moore, went to the door and rang the doorbell and knocked. It doesn't say that McAllister went with me.

Q Okay. She didn't?

A Well, it don't say that.

Q My question is, Did she?

A And rang the doorbell?

Q Went behind you or went down there with you while you rang the doorbell?

A Once again, she was in the general area, but I can't account for her every move.

Q Okay.

A I can't say that she rang the doorbell or not. I know I did, and I announced, Sheriff's office, numerous times while ringing the doorbell and knocking on the door.

Q All right. And at some point in time, you decided that the person inside wasn't coming out?

A Yes.

Q And you turned around and you went back?

A Yes. I was going to leave, yes.

Q Okay. And as you turned around to go back, assuming you were down here at this -- you were down here at this area right here at the door?

A At what point?

Q When you were ringing on the doorbell.

A Yes.

Q All right. You decided, at some point, you needed to leave and you left. And which direction -- can you help the jury see which direction you were, and in your area there, where did y'all meet up to go back down there?

A That one would help me more on that.

Q All right. Talking about --

A Wait a minute. Let me use this one for just a second, and then that one was...

Q Referring to State's Exhibit 4 first. Go ahead.

A The door would have been under this window; that's where I'd been knocking. And I left, I would have left out this way {indicating}.

Q Okay.

A And we would have met up somewhere in this general area {indicating}.

Q Okay. Now, this is all wooded right here; right?

A It's a patch of thin woods.

Q Okay. And there's actually a gully that goes down here; isn't that correct?

A I have no idea.

Q You don't remember that?
A No, I don't remember that.
Q You never transversed the gully then, so you probably were in this area here?
A In that general area. I can't pinpoint an exact location on where I was at.
Q And so where was Melissa?
A At that point?
Q At that point.
A She had come over to where we were.
Q Okay. So now all three of you are together?
A Yes.
Q Okay. And I'm assuming that the reason he came over there was the light in the Worley home on that corner came on and then went off immediately; is that right?
A He came where?
Q Is that why you and Bobby -- Bobby left the Sheffields and headed in this direction, and then you turned back around --
A He left the Sheffields because the light came on? Is that what you're asking me?
Q Yeah.
A I don't know. I mean, I don't know why he would have left. I can't --

Q We can ask him that.
A Yeah.
Q But the bottom line is, for some reason then y'all turn back around to go back down there, why did y'all do that?
A I went back down there because the light came on.
Q Okay. The light came on --
A And back off.
Q Went back off. And y'all met up in the back there, approximately in this area here that we're talking about. Y'all met up somewhere in here, according to you, or in here?
A At which point?
Q After the light came on and went off.
A No. No, sir.
Q All right. Well, help me.
A No, sir. You twisted that up. The light never came on before we went back here. We went back here because I didn't get a response at the door.
Q I understand. That's what I'm saying.
A Okay. Then the light came on and back off. That's why we went back down there.
Q That's my point. So y'all didn't meet up until after the light came back on is the point.

A No.

Q Y'all didn't have any reason to go back down there because you were leaving.

A We didn't -- we met up, the light was off. We went back down there when the light came on. We met up when I decided wasn't nobody coming to the door. The light didn't have nothing to do with us meeting up.

Q Okay. All right. So y'all all were going to leave right then. As far as you knew, Rushton was going to leave, Melissa was going to leave, and you were going to leave?

A When?

Q After you made the decision that you couldn't get anybody to the door and you went back --

A After I rang the doorbell, announced, Sheriff's office, numerous times, nobody came to the door, yes, I was going to leave.

Q Okay. And then --

A Then I met with Bobby and Melissa.

Q Okay.

A That's when the light came on.

Q Then the light came on?

A And went back off.

Q And went back off. And y'all decided to go

back down there?

A Yes.

Q I got you. Okay.

Now, all this is happening during that 107 seconds that the light goes off and y'all meet up, and then the call for shots fired, was all within 107 seconds; is that right?

A I don't know how many seconds it was.

Q Okay. Now, I announce Sheriff -- we went back down there, and you announced, Sheriff's office. You can go back to your report there. And then I knocked on the door again.

And it's important because, this time, you didn't say you rang the doorbell, did you?

A Yeah, that's what I said. I knocked on the door again. I didn't say anything about ringing the doorbell.

Q Did you say anything about announcing, Sheriff's office, at that point?

A Yeah. Just before I knocked on the door, I announced, Sheriff's office.

Q Okay. So you announced, Sheriff's office, you knocked on the door, you didn't ring the doorbell, and then you say you heard the subject say, What do y'all want? Is that what you said?

A That's what I said, yes, sir.

Q Okay. Now, while this allegedly, What do y'all want, was said, was the light on or was the light off?

A The light would have been off.

Q Would have been off; right?

A Uh-huh.

Q Okay. Then you heard {sic}, I heard the door open from the upper deck. I'm assuming that's the sliding glass door?

A Yes.

Q So you've done that, now you hear a door opening; is that correct? And you announce --

A I've done what?

Q You say you announce, Sheriff's office -- as that door is opening, you're announcing, Sheriff's office. Is that what you're saying?

A It says -- according to my statement, it says, What do y'all want? Then I announced, Sheriff's office, and he yelled, I don't give a fuck, is what my statement right here says.

Q All right. So I'm assuming that in order for him to have said that, he would have had to be out there on the deck to say that. He'd have to come out and be on the deck to say that?

A I can't assume.

Q Well, I mean, how could you hear him otherwise? You're saying he was in the house hollering that or what are you saying?

A I don't know where exactly he was at. He was up above me, but I can't say exactly where his location was when he said that.

Q All right. And then Rushton says -- yells, Gun; right?

A When?

Q Right then. Rushton yells, Gun, right about this time. I mean, that's the next thing in your sentence, isn't it?

A Yeah.

(Witness reviewing document.)

Okay. Yeah.

Q And then it says you drew your weapon; is that correct?

A Correct.

Q Did you see -- were you able to see Joe?

A I could see a silhouette.

Q A silhouette. Was the light on or was the light off?

A The light was off.

Q The light was still off; is that correct?

A Off.

Q All right. So then you heard a gunshot?

A No. The light came on before there was a gunshot.

Q Okay. Let's look and see what you said in your statement. Where does it say in there that the light come on?

A I don't know. You got to remember, this statement was written after I worked 17 hours and my partner had just been shot and I had felt like I had been shot at, too. I was scared. I typed a statement, went home to get some rest.

Q And so the fact that you're saying now that the light came on is something is an afterthought that you put into something after?

A No. It's not something that's an afterthought. It's the truth.

Q All right. Let's -- how have you prepared for this hearing today?

A How -- how --

Q How have you prepared for this hearing today?

A What do you mean exactly?

Q How did you get ready for this hearing today?

A I spoke with the officers involved. I read over my notes.

Q Okay. And did you work with the prosecution?

A Yeah, I spoke with them.

Q Okay. And did you figure out how to deal with your inconsistent statements?

A No --

MR. MYERS: Objection. That's improper.

THE COURT: I sustain that objection.

MR. GARRETT: Pardon me, Your Honor.

BY MR. GARRETT:

Q All right. So then you say you hear a gunshot and Rushton said he was hit, and we both found cover to get away from the residence. I advised McAllister to get to her vehicle, come around to give us cover. And then, Where are you, you SOB? Started more distance, arriving 300 yards, maybe a few feet. Is that correct?

A Say that again.

Q It says you had also drawn your weapon. Then I heard a gunshot and saw Rushton go down. Rushton stated he'd been hit. Rushton then made it to me and we both found cover due to the fact that they were in an unknown location. Is that correct?

A Uh-huh. Yes, sir.

Q All right. Now, are you telling this jury that after somebody has just told you that they don't

give an F and y'all can't see him, that Bobby walked right out there in front, is that what you're saying, after having heard that?

And I think you said he was walking in this direction {indicating}. He might have fell over the --

COURT REPORTER: I didn't hear the last part.

MR. GARRETT: He may have fell over the railway tie.

THE WITNESS: He walked backwards, in my assumption, to see who was on the top deck or to get a visual when he heard that door open, but I can't speak exactly for what Bobby was doing.

BY MR. GARRETT:

Q Okay. Now, if the person was out on the deck, it's impossible then to go in and cut the light on, isn't it?

A I have no idea.

Q You hadn't been out there and y'all haven't sent an electrician out there to find that out?

A I hadn't.

Q All right. Are you aware, now that you said you reviewed all the statements and everything about everybody about this, are you aware that there is a light that is on the inside that, in order to turn

it on, he would have had to have been inside the house to turn it on?

A I have not discussed anything about what the electrician did, where the light switches were inside that residence.

Q So if it's found out that the only way possible for Mr. Worley to turn his light on, he would have had to leave the deck and go inside the house and turn on the light?

A I don't know.

Q You just don't know?

A I don't have any idea where his light switches are.

Q Okay. Now, on Wednesday, July 21st, 2010, did you have an opportunity to talk with the federal agent, Stallo?

MR. MAYE: Your Honor, I object if he's going into anything --

THE COURT: Just one second.

Madame Forelady, would you take your jury to the jury room, please?

(The jury retires to the jury room.)

THE COURT: Okay. What's the nature of the objection?

MR. MYERS: We probably didn't make it clear,

but I swear I thought a little while ago, when the jury was out, that we asked them to let's take that up not in front of the jury.

THE COURT: What I was saying a few minutes ago in my understanding was that under Number 17 of the responses by the State's discovery, an officer was identified, other than Officer Moore, as having a body mic on. What I said was that Mr. Garrett cannot question him as to the contents of what that mic might have had on -- reflected, because that would be hearsay, but the response that this gentleman or person was wearing a mic was an admission by the State, and I let him ask whether or not that person had a mic on.

Now, as to Stallo, I said to Mr. Maye that he very well may have a good objection, but let's wait until it comes up. So he raised his objection at the time.

MR. MYERS: I'm sorry. I thought he made a motion in limine that we take it up before --

THE COURT: That's okay. And I didn't really -- I just said bring it up at the time. Well, tell me what the --

MR. MAYE: Your Honor, it would be helpful -- like I said, I've got it, that I can hand up here.

Agent Stallo came and -- like I said, they were reviewing this to prosecute him on the federal side. Agent Stallo came out. He basically collected the statements. He looked out -- he wrote up his own summation of a narrative, a summary of events and a narrative that this agent wrote up. I'm going to pass this up to you.

But in there, he says he collected the written statements from all these guys, and he incorporated and made that a part of it. He was basically preparing his own little summation and the documents in this case to pass forward to the U.S. Attorney's Office.

And I know at the -- we have the benefit of having been through the Castle Doctrine hearing, and they attempted to basically take the narrative that Stallo wrote and said, Well, there's nothing in here in this narrative of which Stallo wrote about X, so you didn't say that. And there's -- you said this or Stallo said something in a different order than you said it in there, so I'm going to impeach you with Stallo's comments. And like I said, we think that that's total hearsay.

Now, they can get Stallo here, if this officer testifies and they want to put up in their case and

call Stallo and say, Isn't it true he told you X, isn't it true he told you Y, but to have this officer have to respond to what Stallo wrote and be cross-examined on what Stallo wrote is pure hearsay. And it's what we would --

THE COURT: Mr. Garrett, why would Stallo's report, as opposed to the officer's incident report, not be hearsay?

MR. GARRETT: The question, Your Honor, is not that. The question is, is whether or not the officer actually told Stallo these things. He can either say, yes, he did or, no, he didn't.

THE COURT: Well, I mean, you can ask him whether he said it or not, but you cannot impeach him with the report because it does not say it.

MR. GARRETT: I understand.

THE COURT: Because that would be his own reflection of what --

MR. GARRETT: That would be from Stallo.

THE COURT: -- he thought he heard or didn't hear from this officer.

Now, the question as to whether or not this officer told him, I think is appropriate, but to the extent you try to impeach him by what's in this report, I would sustain the objection. Okay?

MR. GARRETT: All right.

THE COURT: Do you understand what I'm saying, so we're all clear?

MR. GARRETT: I'm clear.

THE COURT: Okay. Any questions?

MR. MAYE: No, sir, Your Honor. Thank you. And I apologize. Like I say --

THE COURT: And, please, don't thank me. This is part of the process.

MR. MAYE: Yes, sir. But like I said, we went through that in the previous. Thank you, Your Honor.

THE COURT: All right. Mr. Garrett, are you ready to resume?

MR. GARRETT: I am, Your Honor.

THE COURT: Mr. Maye, are you ready?

MR. MAYE: Yes, sir, Your Honor. Thank you.

THE COURT: Bring the jury back in, please.

(The jury returns to the courtroom.)

THE COURT: Mr. Garrett.

MR. GARRETT: Thank you, Your Honor.

BY MR. GARRETT:

Q Did you have occasion to meet with a Officer Stallo on Wednesday, July the 21st, 2010?

A Yes, I did.

Q All right. Was it an interview?
A We spoke.
Q Okay. I'm just going to ask you a few questions and ask you whether or not you told Stallo these things. Okay?
A Okay.
Q Do you have a copy of the statement?
A I do.
Q Have you had sufficient time to review it?
A Yes.
Q All right. Did you tell Officer Stallo that Deputy Rushton, Moore, and McAllister arrived at the incident location; Deputy Rushton approached the complainant, Sheffield, while Deputy Moore knocked on the door of the Worley's residence?
A To be honest with you, I can't tell you what I told Stallo. This is a summary of his report, and it says on here that my statement was attached to his. But I can't sit here and tell you exactly what I told him on that day.
Q All right. So you --
A This says, A narrative, summary of events --
Q That's fine. You don't recall?
A -- that he would have written down, so.
Q I understand. You don't recall. Is that your

answer?

A Yes.

Q Okay. The next thing, that Deputy Moore knocked on the door for several minutes and was leaving when the top deck floodlights turned on. Did you say that?

MR. MYERS: Your Honor, he's reading the report.

THE WITNESS: Deputy Stallo wrote --

THE COURT: Just one second.

MR. MYERS: It's hearsay.

THE COURT: I'm going to sustain the objection as to the way the question's asked.

Rephrase your question, please, sir.

BY MR. GARRETT:

Q Did you tell Officer Stallo these things?

A I can't say. He wrote this, not me.

Q I understand. I'm just asking you, did you tell him that?

A I don't recall.

Q Okay. Did you say to him, Deputy Moore returned to the door and heard someone walking on the top deck above his head?

A I can't recall what I told him.

Q That's fine.

A That's why I give him a copy of my statement.

Q That's fine.

And did you tell him, Deputy Moore knocked on the door for several minutes and was leaving when the top floodlights turned on? Is the answer you don't recall?

A No, I don't recall.

Q Okay. All right. Then Deputy Moore witnessed Deputy Rushton walk towards the top deck and heard Deputy Rushton yell at the person on the top deck, Sheriff's office, and then yelled, Gun. Did you tell him that?

A I give him my statement.

Q Okay. Deputy Moore next heard gunfire and saw Deputy Rushton fall to the ground. Do you recall telling him that?

A (Witness shook head.)

Q Is that a no?

A No. No, I don't recall -- I give him a copy of my statement. What he wrote is what he wrote.

Q I understand.

MR. MYERS: At this time, Your Honor, under Rule 106 for completeness, we ask that his statement that he made, that he wrote out, it now be introduced into evidence, because he's taking

piecemeal stuff out. It's incomplete. So we would like everything Mr. Garrett gave him as to this witness, that it be offered in evidence under Rule 106.

THE COURT: I will grant that motion. Would you make that statement a part of this, please, sir?

MR. GARRETT: Is this Stallo?

MR. MYERS: No, sir. The thing that this officer --

THE COURT: His statement -- I got it.

MR. GARRETT: The incident report?

MR. MAYE: No, sir. His written statement, Your Honor, which I have.

THE COURT: One at a time.

MR. MAYE: Sorry.

THE WITNESS: Yeah, I have a copy of my statement.

THE COURT: Would you show that to the State to make sure that's the statement we're referring to?

MR. MYERS: And the incident report that he questioned him about piecemeal.

THE COURT: Just one second.

Would you please -- let's go ahead and take an afternoon break, and then we'll bring you back.

(The jury retires to the jury room.)

THE COURT: Just for the record, Mr. Myers moved that the witness' statement and the witness' incident report be included or admitted into evidence for completeness. I granted that motion, and that's what we're in the process of doing. That's why I sent the jury out to give you an opportunity to get those together. Okay, sir?

MR. GARRETT: Thank you for doing that, Your Honor. I have handed it to him. I think Mr. Maye has got it.

Will that be a Defense Exhibit or a State's Exhibit?

THE COURT: I'll make it a Court's Exhibit. The written statement will be Number 3. The incident report will be Number 4. If you don't mind, Madam Court Reporter.

COURT REPORTER: Sorry?

THE COURT: The written statement of this witness will be Exhibit Number 3 -- Court Exhibit Number 3. The incident report will be Number 4.

While y'all are marking those, let's take about a 5, 10-minute break, and then we'll make sure we're all good to go. Okay?

You can't talk to anyone.

THE WITNESS: I just need to use the restroom.

THE COURT: That's fine.

(Court's Exhibit Number 3, statement, and Court's Exhibit Number 4, incident report, marked for identification.)

(Brief Recess.)

THE COURT: Mr. Garrett, for the record, did we get those exhibits, the statement and the incident report, marked as Court Exhibits?

MR. GARRETT: Yes, Your Honor.

THE COURT: Okay. Very good.

Any other administrative matters before we bring the jury back? From the defense?

MR. GARRETT: Nothing from the defense, Your Honor.

THE COURT: From the State?

MR. MYERS: No, sir.

THE COURT: Okay. Are you ready to proceed?

MR. GARRETT: I am.

THE COURT: The State?

MR. MYERS: Yes, sir.

THE COURT: All right. Would you bring the jury in?

(The jury returns to the courtroom.)

THE COURT: Mr. Garrett.

MR. GARRETT: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. GARRETT:

Q In addition to your statement and then your incident report and your discussions with Stallo, you also have given sworn testimony on May 31st and June 1st of 2011; is that correct?

A I'm not sure of the dates.

Q (Hands document to witness.)

In that examination, the question was asked about whether or not once the light came on, whether or not it stayed on and was on when Officer Rushton stepped out. It was your position at that time that the light stayed on the entire time, wasn't it?

I'll refer you to page 165, line 22.

A Yes. That's what I said in that line, but then right up under it, I say, again, that once he cut the light off and back on and back on -- or off, he left it on, just shortly up under that.

Q Well, that's my point. The light was on when Rushton walked out there. As he was walking, the light came on while Rushton was out there --

A Out where?

Q -- is that correct? Is that correct?

A Out where?

Q Out in front of the house where you said

Rushton had walked.

A The light came on seconds before he was shot or instantaneously.

Q Okay. And in your prior statements, you've always said that the first thing you heard was the step out. And earlier on, you said the light came on at that time. When he stepped out, the light came on at about the time he stepped out. Isn't that in your testimony?

A He stepped out, the light came on, Bobby was shot. It was all within {snapping fingers} matter of seconds.

Q All right. Like seconds?

A Like seconds.

Q All right. And so -- and that's the point. This alleged discussion about, Who y'all, we the police, or the sheriff's department, or drop y'all's gun and all that, that just didn't happen, did it?

A Yes, that did happen.

Q Well, the gun -- you said in your testimony, the moment you heard the word gun, you heard a shot; is that correct?

A Within seconds. When Bobby said, Gun, we said, Sheriff's office, put the gun down. It all happened within seconds.

Q Before you even got it out, there was a shot, wasn't it?

A Your timeline has that all that transmission happened in less than a second.

Q That's not my timeline, sir, that's yours.

A Well, that's the one you presented.

Q It's the EMS --

A It's not mine --

Q -- that's your record.

MR. MAYE: Your Honor, objection.

THE COURT: I sustain that. Let me warn both counsel and the witness: We're not going to engage in argumentative. He ask questions, you answer the question. You understand?

THE WITNESS: Yes, sir.

THE COURT: You understand?

MR. GARRETT: I do, Your Honor.

THE COURT: Okay. Thank you.

BY MR. GARRETT:

Q You don't challenge any of those -- on the EMS records, you don't challenge any of those statements or the times on it, do you?

A (No response.)

Q You don't challenge any of those dates or times on that time stamp?

A It's not mine. I can't say for sure.

Q Okay. But if it's EMS, your dispatch logs, you would disagree with them?

A I have no control over dispatch or dispatch logs.

Q And so you're saying they're inaccurate?

A I didn't say that. I said I have no control over them. Somebody higher up than me has control over that.

Q Okay. Now, when Bobby was shot, your partner had just been shot, what did you do?

A At which point? When he had --

Q Immediately. He's shot. He goes down. You said it was quick. What did you do?

A I told him to come to me, once I saw that he was moving.

Q Okay. And did you hear the second shot?

A I did. When he got up to come towards me is when I heard the second shot.

Q All right. And in prior testimony, you said that then you heard the statement, Where you at, you SOB? Right after you heard -- right after he shot -- on his way to you, you've stated in previous testimony that he -- that Bobby, as he was coming towards you, the second shot rang out, and that was

a statement made by Mr. Worley, Where you at, you son of a bitch? Is that correct?

A When did I say this?

Q You talking about in your prior testimony?

A Yes.

(Pause.)

Q So you've heard no statement -- you're telling the jury you've heard no statement by Mr. Worley at or about the time the second shot rang out?

A I told -- after the second shot and we was retreating, I later heard him. You just said that I said it immediately after.

Q You haven't said that to anybody?

A Immediately after?

Q Or -- or --

A No.

Q -- during those seconds you said he was --

A "Where you at, you son of a bitch" would have been a short time later, after we had retreated to the backyard.

Q Okay. Back here you said you heard it coming from this direction here?

A Coming from this direction. We would have had retreated into this general area by the time I heard that, not immediately after he fired the shot.

Q That's the only door right there, isn't it?

A Down here?

Q Yeah.

A I do believe so. There's a garage door and this door and the upper door.

Q But that's the only way to get in and out of here; right?

A I do believe so.

Q All right. And he was -- he was coming back towards the door when you were over here in this area. He was coming back towards the house the second time, wasn't he?

A Who was?

Q Mr. Rushton.

A He was coming towards me. I was back here.

Q Okay. But that's towards the Worleys' door; right?

A The door's over this way. I was over this way. He came towards me.

Q All right. You said you saw Joe in silhouette. Did Joe see you?

A I have no idea.

Q Okay. Could he have seen you from where you were at?

A He should have been able to.

Q Why is that? If he was shooting in this direction, how could he see you up here?

A If he'd a looked, he would have seen me, but I can't say whether he seen me or not.

Q Okay. And he did use the term SOB as opposed to plural S -- sons of bitches?

A To the best of my recollection, he said, Son of a bitch, but he could have said --

Q So it sounded like he was talking about one person he was talking about?

A To the best of my recollection, yes.

Q Now, when he shot him, did you have your gun aimed at him?

A At Joe?

Q At Joe. When the bullet rang out and struck Mr. Rushton, did you have your gun --

A I drew my gun and pointed it in the general direction. It never was -- would have been pointed at Joe, because I couldn't have actually had a safe -- good enough target on him to point it directly at him.

Q Okay. So what you saw -- the target you saw was not a good enough target for you to make out to be able to properly shoot?

A It was not a good -- I did not have a safe

shoot situation.

Q All right. And did you know where the gunshot flashed? Because it's completely dark out there; right?

A Do I know what now?

Q Do you know where the gunshot flashed -- which way the gunshot flashed on the second flash?

A I have no idea about a gunshot flash.

Q Did you see the first gunshot flash from the .30-06?

A No, I did not.

Q Did you see the second one?

A No, I did not.

Q All right. And have you done an examination of the ground at or around where you say that Bobby fell to determine whether or not you could find a bullet in or about his location?

A Have I? No, I have not.

Q Well, you were part of the investigation team, weren't you?

A Yes. I was out there.

Q You were part of the investigation team, weren't you?

A Yes.

Q All right. And did y'all look in the area at

or about where Bobby fell and whereabout the second shot you heard to see whether or not there was any bullets or anything in the ground at or about his location?

A I did not.

Q Do you know whether any member of your team did?

A No, I have no idea.

Q Wouldn't that be relevant?

A I have no idea.

Q Well, you heard Joe testify that he shot it up into the air; right?

MR. MYERS: Objection.

MR. MAYE: Your Honor --

THE COURT: I sustain that objection.

MR. GARRETT: Your Honor, may we have --

THE COURT: All right. Madame Forelady, will you mind going to the jury room for a second, please?

(The jury retires to the jury room.)

THE COURT: Mr. Garrett, your client has not taken the stand. We don't know at this point whether or not he's going to exercise his rights under the Fifth Amendment. Until such time, I'm not going to allow you to get in any prior testimony by

this witness at all.

MR. GARRETT: Yes, sir.

THE COURT: And if I'm -- if there's a rule that tells me I'm wrong, please point it out to me, but it seems inherently unfair for you to be able to bring up testimony by this witness and then turn around and claim the privileges under the Fifth without having the right to be able to be cross-examined on this witness -- on that statement.

MR. GARRETT: He was cross-examined, Your Honor.

THE COURT: Not in this trial he hadn't.

MR. GARRETT: And they lost our transcript.

THE COURT: You know, I understand the inherent unfairness of that or what appears to be. I'm faced with this trial now. And at such time, you know, if you want me to not excuse this witness and you can call him back, if your client chooses to testify -- and we'll go over the Fifth Amendment rights with him at the appropriate time -- then I'll let you call him back. But I'm not going to let you go into his statements at this point with this witness without him taking the stand.

MR. GARRETT: Will that be for any witness then who is in the courtroom? It's not an out-of-court

statement, Your Honor. It's, in fact, an in-court statement that they heard -- they heard the testimony.

THE COURT: Well, here's the problem, as I said, and y'all -- I'm asking all the attorneys to correct me if I'm making an incorrect -- y'all prove to me if I'm wrong or tell me -- show me where I'm wrong. For you to sit there and cross-examine this officer or any other witness, State or defense, concerning prior testimony by this defendant and then for him to exercise his right under the Fifth, which is his absolute constitutional right, is inherently unfair in this matter because it doesn't allow cross-examination on those grounds. Now, if there's a rule that shows me I'm wrong, tell me, and I'll be glad to reevaluate it.

MR. GARRETT: Your Honor, it's not an out-of-court -- it's not an out-of-court statement. In fact, it's an in-court statement, so it's not -- it can't be hearsay. It's cross-examined testimony. And he was --

THE COURT: So Mr. Garrett --

MR. GARRETT: -- in here because the judge didn't sequester them.

THE COURT: -- let me ask you this.

MR. GARRETT: Yes, sir.

THE COURT: On the converse side of that, if your client were to choose to exercise his rights under the Fifth Amendment, but chose to testify at a Jackson Denno hearing or another type of preliminary hearing, do you think it's appropriate that his statements, although sworn, be brought up in trial even though he exercised his rights under the Fifth Amendment?

MR. GARRETT: No, sir.

THE COURT: No. That would be reversible error. I can't imagine that you could. So the converse is, you know, you can't do the other side either that I can see.

You know, I hear what you're saying, and I don't disagree that it's in-court testimony and it's not -- it's not a hearsay testimony. I think it's a matter of -- I'm not being very eloquent about it, but for him to be shielded by the Fifth Amendment but use it as a sword at the same time is not appropriate.

MR. GARRETT: But he wasn't shielded by the Fifth Amendment in this case, Judge. He got up in sworn testimony and testified.

THE COURT: Well, my understanding of the rules

-- and y'all correct me -- Jackson Denno testimony is not subject -- doesn't waive your Fifth Amendment rights at trial, neither does one of these immunity hearings.

MR. GARRETT: Your Honor, he testified in full is all I'm trying to say. And the Solicitor's had a shot at him in full on --

THE COURT: So, Mr. Garrett, you're telling me that anything he said, even if your client exercises his rights in this trial not to testify, that any of his prior sworn testimony can be brought out by the State in this case?

MR. GARRETT: Absolutely.

THE COURT: I disagree with you on that. If you can prove to me I'm wrong, I'll give you an opportunity to show me I'm wrong and to present it to this jury, but I don't believe that's correct.

MR. GARRETT: Yes, sir.

THE COURT: Do y'all need a minute or two?

MR. GARRETT: Can we have just a moment?

THE COURT: Yes, sir.

(Pause.)

MR. GARRETT: We're ready.

THE COURT: And let me make sure I'm clear from my ruling on the record. My ruling -- and I'm

having my law clerk look at it further. So, number one, that the defendant -- at this juncture in the trial, the defense cannot use pretrial sworn testimony of the defendant to cross-examine the State's witnesses or its own witnesses while the defendant may exercise his rights under the Fifth Amendment not to testify. If he chooses to testify, then it may be subject to cross-examination since it is sworn testimony. Okay?

If I'm incorrect in my ruling, I will give the defense an opportunity to present that testimony which it wants to have. Okay?

MR. GARRETT: Beg the Court's indulgence.

(Pause.)

MR. GARRETT: Your Honor, I understand what His Honor is saying as to all fact witnesses; that there may be a different rule as it relates to an expert witness. Is that --

THE COURT: Okay. It may be a different rule for expert witnesses?

MR. GARRETT: Expert witnesses on that.

THE COURT: We'll cross experts when we get there.

MR. GARRETT: Yes, sir.

THE COURT: Everybody clear on that?

MR. GARRETT: I'm clear.

THE COURT: Are you ready to go?

MR. GARRETT: Yes, sir.

THE COURT: All right. The State ready?

MR. MYERS: Yes, sir.

THE COURT: Would you bring the jury in, please?

(The jury returns to the courtroom.)

THE COURT: Mr. Garrett.

MR. GARRETT: Thank you, Your Honor.

BY MR. GARRETT:

Q Officer Moore, then, as it relates to all these statements -- and we're getting back to the first statement that you made -- is it true that, because you had just experienced this bad circumstance and whatnot, that your memory may not have been as good as you would have liked for it to have been?

A On the morning that I wrote the statement?

Q Uh-huh.

A That is correct.

MR. GARRETT: Thank you. No further questions.

THE COURT: Redirect?

MR. MAYE: Nothing else. Thank you.

THE COURT: You may step down, sir.

Would you call your next witness, please?

MR. MAYE: The State would call Donald Garman to the stand.

DONALD GARMAN,

having been duly sworn, testified as follows:

THE COURT: Sir, if you'll state your name for the record and spell your last name for the record, please.

THE WITNESS: My name is Donald Garman, G-a-r-m-a-n.

DIRECT EXAMINATION

BY MR. MAYE:

Q Mr. Garman, if you would, as to your involvement on November the 15th of 2009 -- where do you live now?

A I live in Savannah Lakes Village.

Q You live in Savannah Lakes Village.

And where did you originally work? And I assume you retired from somewhere and came from somewhere else?

A I was -- most of my adult life in Rochester, New York.

Q Okay. Did you work up in Rochester, New York, as an EMT and did you participate in EMT training when you were in New York?

A I was involved in emergency medical services.

I was an EMT, advanced EMT, EMT instructor, hazmat instructor. I was a safety engineer in the industry.

Q Okay. Mr. Garman, since you've come here to be a McCormick County resident, have you volunteered your services and expertise to the county? And if you have, would you tell the ladies and gentlemen of the jury in what capacity?

A I joined the Sandy Branch Fire Department and Edmire First Responders in the summer of 2009.

Q Let me ask you about the date that Officer Rushton, Bobby Rushton, was shot in the hand in this case. Did you respond as part of your duties as a first responder for the fire department there?

A Yes. We were paged out to respond, and we were told to respond to the location of the firehouse on Holiday Road, as law enforcement was going in to try and control the site. And we were told to hold there.

Q Okay. Did you have an occasion to assist and render medical treatment to Bobby Rushton at that time when he was transported up there in a patrol car?

A Yes. When he was brought back there, I worked with Mike Sharp, who was our chief, and I was

responsible to work with him. I was working on controlling the bleeding, stopping the bleeding, while Mike was doing other things, such as getting ready to start an IV.

Q Could you describe the condition of Officer Bobby Rushton's hand when you got there and what steps it was necessary for you to take in order to treat the trauma to his hand?

A Okay. Well, obviously, we gloved up first, but the hand was pretty well torn up. There was a lot of open tissue. There was an avulsed finger.

Q What does avulsed mean?

A Torn like as opposed to a clean cut with a laceration or with a knife. This is literally ripped apart from trauma.

I started using compresses to control the bleeding, trying to pull the hand together, steady the hand so that Mike could get a site for putting the IV in.

Q Did y'all administer an IV to him and put an IV in at that time?

A Mike did put an IV in as I bandaged the hand, and he continued to -- he finished bandaging the hand.

Q The wound that you're describing sounds as if

it is an extremely serious wound to a hand; is that a fair --

A It was a very serious wound. There were parts of the hand -- the inner workings, if you will, of the hand, some tendon, ligament, blood vessels exposed.

Q And you helped stabilize him in order for him to be transported on further for treatment in a hospital setting; is that correct?

A Yes, I did.

MR. MAYE: Answer any questions that the defense has for you.

MR. GARRETT: I don't have any. Thank you for your services.

THE COURT: Cross-examination?

MR. GARRETT: None.

THE COURT: May this witness be excused?

MR. MAYE: Yes. Thank you.

THE COURT: Thank you, sir. You may be excused.

MR. MAYE: The State would call Dr. Robert Densmore to the stand.

****

****

****

ROBERT CHARLES DENSMORE,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MAYE:

Q Dr. Densmore, if you would, state your full name for the record in this case.

A It's Robert Charles Densmore.

Q Dr. Densmore, what type of doctor are you? I'm referring to you as doctor, but what type of doctor are you?

A I'm a plastic and reconstructive surgeon.

Q Okay. Dr. Densmore, where are you employed now? And let me ask you, where were you employed back November the 15th of 2009 and in the ensuing weeks afterwards?

A I am currently employed at the Medical College of Georgia at Georgia Regents University and at the Veterans Hospital at Charlie Norwood.

At the time I was there also, I was the chief of hand surgery for plastics, and I am still currently the chief of plastic surgery at the VA.

MR. MAYE: Your Honor, at this point in time, I'm going to offer him as an expert in the area of hand surgery and treatment to hand injuries, subject to any cross-examination that he might be subject to

from the defense.

THE COURT: Any voir dire?

MR. GARRETT: None, Your Honor.

THE COURT: Do you stipulate to his expertise?

MR. GARRETT: We stipulate to his qualifications, Your Honor.

THE COURT: Very good.

Ladies and gentlemen of the jury, let me say this: Usually a witness is limited in their testimony to what they see, they smell, they hear, they feel, basically their senses, and they're generally not allowed to give their opinion unless they are qualified as an expert. On the other hand, if, for reason of your education or your experience, you have developed an expertise in a particular area, you're allowed to give your opinion in the area of your expertise.

In this case, everyone agrees that Dr. Densmore is an expert in the field of hand surgery and treatment of hand injuries --

MR. MAYE: Yes.

THE COURT: -- and reconstructive surgery. As such, he'll be allowed to give his opinion in that area. Expert testimony is like any other testimony in this case. You may accept it, you may reject it,

or give it as much weight as you think is appropriate based on the testimony.

All right. Mr. Maye.

BY MR. MAYE:

Q Dr. Densmore, some time at November 15th, 2009, and forward, in the ensuing weeks and months, did you have an occasion to treat Officer Bobby Rushton from McCormick County Sheriff's Department for a gunshot wound and the subsequent injury to his hand in this case?

A I did.

Q Okay. Would you please describe to the ladies and gentlemen of the jury what type of trauma was associated with the injury that he suffered as a result of that gunshot wound and what steps you took to treat him as a result of that injury?

A He had severe injury to his right hand. This was a combination of a penetrating trauma from a high-velocity round, as well as a blast injury, for lack of a better term.

The entrance wound was on the back of his hand, and the exit wound was a much larger wound on the palm of his hand. The bones to the middle finger and the ring finger within the palm were both shattered. The middle finger had a section of bone

missing, and what we call the proximal nerve phalangeal joint, the first joint of the finger was completely destroyed.

He underwent a total of four operations with me. The first operation was an initial assessment and stabilization and an initial debridement of that wound.

So, on the first operation, we explored the wound, we removed any debris that was immediately apparent in the wound. We controlled the bleeding. We did a carpal tunnel release because the amount of swelling could compromise the nerve that goes through the carpal tunnel.

We repaired the index finger bone with K-wires. There was a segment of bone missing; we wired that back in. We did an extensor tendon repair to the index finger. We controlled the bleeding by ligating the blood vessels, and then we repaired the laceration to the top of his hand. And we amputated the middle finger because it was not viable, and without that joint being present, it was not something that we could reconstruct.

We then took him back to the operating room on the 17th for a relook. This is common when we have a trauma injury, and we think that there's going to

be tissue that is potentially not viable. We'll try to leave tissue that looks questionable in the first operation so that if it pinks up and does well, then we can leave that there for reconstruction and then kind of declares itself over the next 24 to 48 hours.

In the second operation, we went back in the -- in between the bones of your palm is what we call the interosseous muscles. These are the muscles that bend your fingers this way {indicating}. All of the other movement to your fingers are in your forearm, but the ones that bend the first joint are actually in your palm.

So on either side of the middle finger, there are muscles that come up and insert into the tendons of the finger. The bullet had gone right through there. And the common digital artery, the one that comes out, you have your radial artery and your ulnar artery that make an arch in the palm, and then they give off a single artery that comes up between the fingers that then branches out to the fingers.

So you have a common artery that comes up here and then it branches into the index and the middle finger, and common artery that comes up between the ring of the middle finger and splits, and then one

that goes up between there. So each common artery supplies two different fingers.

His common artery to the middle -- between the middle and the index and the middle and the ring was destroyed on both sides. So he had no blood flow to the distal middle finger, and he lost half the blood flow to his ring finger and his index finger.

So based on that and the muscles that were on either side of the middle finger, those were not -- not doing well. So we did what's called a ray amputation. The first amputation was taken here {indicating}.

If he had stayed vital and the muscles had been okay, we might have been able to close it, but we're still given a gap in his hand when he makes a fist. Because the muscles weren't living and because the blood flow didn't look good, we took the bone to the middle finger all the way back and trimmed it there, and then bring the index finger over and the ring finger over to try to close that gap.

It mimics -- it's not the best term, but kind of a cartoon hand. In a cartoon hand, they usually draw three fingers. It converts it to three-fingered hand.

At that second operation, we debrided it. We

found some shrapnel that we weren't able to get out the first operation because it was in between the fingers. When we took the middle finger out, we were able to get to some of that and remove that. And then we used the skin from the back of the middle finger to close up the defect that was in the center of his hand because that had been blown away.

And those were the first two operations that we did. Then he entered into a period of rehabilitation, and then we came back four and a half months later in March, and we did a second operation.

Unlike a cut or a stabbing injury, which is a low-energy type of induration, or if you have just a fracture because you hit it on something or something like that, the blast was -- caused a lot of inflammation. So there was a lot of tissue damage, and then, afterwards, it causes a lot of inflammation and scarring. So we had hoped that we would be able to get the joints moving.

Your body is amazing, but it's not very smart. Things that don't move get stiff. Things that do move stay limber. If you break your forearm and don't put it in a cast, your body will actually make a pseudo joint there and it will flex, and never

heal. If you cast it, then it makes it hard and it forms a new bone.

In Bobby's situation, we had fractures to the two remaining bones in his hand, and we had to immobilize those, but we've got all this inflammation. The body is trying to heal everything and because it's not moving, because we've got to hold the fractures, it's forming scar tissue around the joints that should be moving. So we're trying to move those, get those to limber up. And after four and a half months, it was pretty clear that the fingers weren't going to move properly.

So we took him back for what's called a capsulotomy. A capsulotomy is where the joint capsule, all the ligaments around the joint, get so tight that the joint won't move anymore. So we cut those joint capsules to allow the joint to start to move again.

We did what's called a tenolysis. The tendons -- excuse me -- the tendons to the back of his finger and to the front of his fingers that are involved with straightening and flexing the finger had scarred into their tendon sheath so they wouldn't slip. It's like a cable system. And if you had a tunnel or a tube and you crimped that tube

down on a cable, it couldn't hold up and wouldn't be able to move it even if the joints were able to move. So we freed up all of the adhesions around the tendons.

And then we -- the index finger -- the index finger, we did the tendons, we did the capsulotomy of the MCP joints, and then the PIP, the first joint and middle joint, the most important one for flexing your finger, we did to the index finger, the long -- the ring finger, and the small finger. So the three remaining fingers, we freed those up and started back on rehab.

The next operation -- the fourth operation was in October. Now, Bobby has an incredible pain threshold. He works hard. And what actually ended up happening was, he's working so hard at trying to free those joints up that the fracture of the metacarpal had not been able to heal. He was pulling so hard trying to bend here, it actually bent at the place where that joint is, and that causes what we discussed earlier, the nonunion to the joint.

Since the joint won't -- a fractured bone won't heel if you keep bending it, he had a nonunion to the index metacarpal, which we ended up putting a

plate on.

So when we went back later on, the joints still were not able to move enough to the index finger to allow him to do a good pinch. So because the first joint was so stiff and it had had this fracture which we plated, we wanted to get that plate out and we wanted to fuse this first joint. The idea is, Well, if it's not going to move, let's at least put it in a place where it'll be more functional. So if your finger is straight, you can't really do anything with it. So if we bring the finger in, then we can pinch with it, we can reach and put a key pinch to the side, and you can use it as a hook, but it's not much more than a hook. And that was the last operation that we did.

Q So, Doctor, what you're describing is a catastrophic injury to the hand?

A Correct.

Q He lost a finger, and he lost significant, meaningful, and useful function to the hand in this case?

A I have his Greenleaf evaluation, which is the evaluation that we did in March of 2011. So after that last injury, I talked to him about, you know, how do you feel about the function of your hand?

And, essentially, with the fusion of the first joint of his index finger, he can't move that joint at all; it's fixed. He has a small amount of movement here, and he's just barely able to pinch.

So the range of movement is -- in his evaluation is about 85 percent of the function of this finger is gone. It's just sort of sitting there as a hook. And I really wanted to know whether he wanted me to change the position of it, whether it was in the best position for him, and he said, I think it's about as good as it can get, and we'll go, you know, go on from here.

So, on that evaluation -- that evaluation, the thorough evaluation of the whole hand, it describes the sensory loss, the movement loss of that hand.

So the index finger, when we evaluate sensation, normal sensation, we'll touch you with two points. And somebody with really sensitive fingers might be able to tell that you're touching with two points even if those points come down to a couple millimeters apart because your fingers -- you can reach in your pocket and tell the difference between a penny and a dime or a penny and a nickel. Those are only a couple of millimeters' difference. You can't do that on your tummy. You put a penny on

your tummy, you might not even know it's there, because the nerves are spread out more. But there's a lot of nerves in your hand. And we do a thing called two-point discrimination. So normal is one to five.

Fair, if you're a heavy industrial worker and you use your hands for carpentry and you're -- it's a trade-off; you want your hands not to be sensitive because you'll be getting blisters all the time, but it costs you in the sense -- sensitivity of your hands, they're tougher, but they don't feel as well as somebody who does less strenuous work.

So fair sensation would be 6 to 10 millimeters. Poor sensation would be 11 to 15 millimeters. And then what they -- the step between that and anesthetic -- anesthetic means he doesn't feel anything -- is pressure. You can tell that it's being touched and that's it. You can't tell whether it's two or one, even at more than 15 millimeters, which is more than a half an inch. So you're touching him in two places on his finger more than 15 millimeters apart, and he can't tell that there's two points there and they just call that pressure sensation.

So on his index finger, that's basically all