

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARK EMIL DAY,

APPELLANT

APPELLATE CASE NO 2018-001918

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

2016-GS-10-06619

2016-GS-10-06620

2016-GS-10-06621

2016-GS-10-06622

STATE OF SOUTH CAROLINA)

) TRANSCRIPT OF RECORD

-vs-

) October 17-18, 2018

MARK EMIL DAY,

) Charleston, South Carolina

Defendant.)

B E F O R E:

The Honorable Roger M. Young, Judge and a jury.

A P P E A R A N C E S:

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Ninth Judicial Circuit

E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Christopher Gravely	70	79	--	--
Amber Rossillo	81	88	95	96
Christopher Talbott	97	114	137	140
James Stewart	142	149	152	--

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1 (October 17, 2018.)

2 THE COURT: So we got four charges that are
3 going?

4 MS. PROCTOR: Yes, Your Honor. Basically on
5 each officer there's two charges, two for each officer.
6 We also have a motion to -- I don't think we need any
7 witnesses -- to open out the gun that -- the knife,
8 excuse me, the knife that was in the co-defendant's
9 pocket that was found. It was not Mr. Day's. The
10 co-defendant, unfortunately, is deceased, but he had a
11 knife in his pocket, and I think the State wants to
12 introduce that knife into evidence.

13 I don't even know if he knew the guy had a
14 knife. Nobody mentioned a knife. The security people
15 said they had razor blades or something, taking tags off,
16 the knife had nothing to do with him --

17 THE COURT: Let's just take them one by one
18 rather than just random, so what's the first one we need
19 to deal with?

20 You said there's no Jackson v. Denno now.
21 They're not asking for -- they're not going to try to put
22 in a statement, so that's on the record.

23 MS. PROCTOR: A motion to sequester the
24 State's witnesses.

25 MR. DuTREMBLE: No objection, Your Honor.

1 MS. PROCTOR: And a motion to determine what
2 prior convictions they will use if Mr. Day takes the
3 stand.

4 THE COURT: What do you have that you intend
5 to offer?

6 MR. DuTREMBLE: The only conviction that we
7 would intend to use for impeachment purposes in this case
8 would be the conviction of the underlying shoplifting
9 from which this arrest is from, because North Charleston
10 police were responding to Target in reference to multiple
11 shoplifters armed with knives and cutting tools, and
12 those are the only things we plan to use for impeachment
13 purposes, if necessary.

14 THE COURT: Okay. That's what they want to
15 offer.

16 MS. PROCTOR: Your Honor, we don't have a
17 problem with bringing up that he was charged with
18 shoplifting in this incident because, basically, the
19 trial is whether he disarmed a police officer and if he
20 injured a police officer -- assaulted a police officer,
21 so I was even going to bring up the shoplifting. He
22 shoplifted. We know that. He pled to it, but we don't
23 have a problem with the State bringing it up.

24 THE COURT: Okay.

25 MR. DuTREMBLE: So, just for purposes of

1 clarification, is that basically yes, North Charleston is
2 responding to a shoplifting call?

3 MS. PROCTOR: Yes. I mean, that's why they
4 were there. No, I don't have a problem with that.

5 MR. DuTREMBLE: That's the only prior we
6 intend to use, Your Honor.

7 MS. PROCTOR: And that would be, I guess, the
8 only prior bad act. We already gave you our voir dire.

9 MR. DuTREMBLE: Yes.

10 MS. PROCTOR: Do you have a problem with any
11 of those questions?

12 MR. DuTREMBLE: I don't have a problem with
13 any of those.

14 THE COURT: Well, I'll probably let in most
15 of them. I don't usually let in all of them, but I'll
16 look at it. Okay.

17 Anything else?

18 MS. PROCTOR: I think the statements of
19 Jackson v. Denno, is my understanding.

20 MR. DuTREMBLE: We have no intention of
21 admitting any statements of the defendant.

22 THE COURT: Okay.

23 MS. PROCTOR: And, again, the motion to
24 compel the officer's files because this was an incident
25 where they were Tasing someone. We would like to know

1 from the files how many times they've used the Tasers,
2 why did they use the Tasers at that time, have they had
3 any disciplinary problems relating to just Tasers, and
4 that, I think, goes to the credibility of the police
5 officers who are going to testify today because this is a
6 total case about Tasers, and I think it's important that
7 we have those files.

8 Not with disciplinary on other things, we
9 just want to know about if they've been disciplined on
10 overuse of Tasers; anything with Tasers, that's all. I
11 don't care about the other stuff.

12 MR. DuTREMBLE: State's position is that
13 that's under the freedom of information act. Defense
14 could have subpoenaed that at any time in the last two
15 years. It's not something that's ordinarily turned over
16 by law enforcement to the State for purposes of
17 discovery.

18 Additionally, we did retrieve and turn over
19 the interdepartmental use of force report where all of
20 these officers were cleared and not given any sort of
21 disciplinary infraction on this, so it is the State's
22 contention that is not within the purview of discovery
23 that we are responsible for.

24 MS. PROCTOR: Well, Your Honor, under Giglio,
25 I think they are responsible to turn over any impeachment

1 evidence about whether they've Tased somebody or not and
2 what's happened because, as I said, this case is about
3 Mr. Day --

4 THE COURT: Well, he said, if I heard him
5 read this right, you had a previous report that cleared
6 the others and turned it over.

7 MR. DuTREMBLE: I turned that over yesterday
8 afternoon. It was the interdepartmental use of force
9 report we referenced yesterday.

10 MS. PROCTOR: But that's why they used Tasers
11 here. We want to know -- on impeachment, when we're
12 talking about how many times did you whip out your Taser
13 and you did it right here, they did it a lot, we want to
14 know if they've ever been disciplined for overuse of it
15 and when they've had to use it. I think that's --
16 mainly, this whole case, that is what he's charged with,
17 and I think it's important that we know that.

18 MR. DuTREMBLE: Additionally, Your Honor,
19 that's information that can be elicited on
20 cross-examination.

21 THE COURT: Is there anything you have?

22 MR. DuTREMBLE: Excuse me?

23 THE COURT: Do you have anything responsive
24 to that?

25 MR. DuTREMBLE: No, Judge.

1 THE COURT: All right. He doesn't have
2 anything on there.

3 MS. PROCTOR: Well, I know he doesn't, but he
4 could have gotten it.

5 THE COURT: You could have asked me yesterday
6 when we had a hearing on this and we had all night.
7 We're 30 minutes from starting this trial.

8 MS. PROCTOR: I'll be honest: I didn't know
9 that was our motions hearings.

10 THE COURT: I had y'all in because y'all
11 asked to come in and talk to me about pretrial stuff.
12 That was the message I got, so I had you all in. There
13 was no limitations on what you could have talked about.

14 I had you in at your request. I didn't want
15 to talk to you. I was in the middle of a trial all day,
16 and all I kept getting was emails, can I meet with you,
17 and I said bring them in when we finally got it to the
18 jury.

19 MS. PROCTOR: All right. I apologize. I
20 thought you wanted to know --

21 THE COURT: I didn't want to meet with you.
22 I met with you at your request, so anything that you
23 would have wanted, you should have asked for it
24 yesterday, and you could have contacted North Charleston
25 last night to get anything. I mean, it's a little late

1 right now.

2 MS. PROCTOR: Well, he's had our motions,
3 Your Honor, and, as I said, he gave us the discovery
4 yesterday. A lot of discovery we have received has been
5 in the last two weeks, so we've been doing as much as we
6 can. The reason I didn't go over the motions yesterday,
7 I just wanted to give you, which is probably my fault,
8 heads up of what we were going to do today.

9 Mr. Day wasn't here yesterday. This wasn't
10 going to be -- I didn't know we were going to put this on
11 the record yesterday.

12 THE COURT: Well, Mr. DuTremble says he
13 doesn't have anything responsive to your request, so --

14 MS. PROCTOR: But I don't think he's ever
15 asked the police that. That's my problem.

16 THE COURT: Well, have somebody contact North
17 Charleston and see if they have anything responsive to
18 that.

19 MR. DuTREMBLE: Sure. So you want all the
20 officers involved or just --

21 MS. PROCTOR: No, just the two, those two
22 officers, that's it.

23 MR. DuTREMBLE: My investigator is on that
24 now, Judge.

25 THE COURT: All right. What else?

1 MS. PROCTOR: One second. I believe that is
2 all. One moment.

3 (Discussion off record.)

4 THE COURT: All right. How many witnesses
5 are you going to have?

6 MR. DuTREMBLE: Excuse me, Judge?

7 THE COURT: Witnesses, how many?

8 MR. DuTREMBLE: Six witnesses, Your Honor.

9 THE COURT: How long do you think your case
10 will take?

11 MR. DuTREMBLE: Probably not long because the
12 fact that we're stipulating 911 was called in reference
13 to shoplifting, one of our witnesses is no longer
14 necessary, so that reduces us to five. I anticipate we
15 could probably rest in, like, maybe two hours.

16 MR. WARING: Judge, we should be done, I
17 think, no later than early afternoon.

18 THE COURT: How long do you anticipate?

19 MS. PROCTOR: The only witness we will have,
20 we will decide at the end, would possibly be Mr. Day.
21 We're not sure yet. Oh, possibly Officer Malone, but it
22 depends on how the other case goes, but they are probably
23 very short.

24 THE COURT: Okay.

25 MS. PROCTOR: Let me just double-check to

1 make sure I've got everything.

2 The only thing I'm asking now is I did ask
3 whether the State -- we have a motion to keep the knife
4 out of evidence, and I don't know if the State plans on
5 bringing that up, because it was in the co-defendant's
6 pocket. The knife was never shown on the video at all.

7 MR. DuTREMBLE: That's actually not true. We
8 have body cam footage of the knife recovered by one of
9 the officers who will be testifying. The State does
10 intend to bring the knife into evidence under the res
11 gestae theory of the case because but for the defendants
12 being armed and the officers not knowing which of them
13 was armed, the use of the Taser probably wouldn't have
14 been necessary, and that's kind of a linchpin of this
15 case is all they knew when they responded at that time
16 was that Target loss prevention and asset protection had
17 told them that we have two people with knives and cutting
18 instruments shoplifting. We need assistance.

19 THE COURT: All right.

20 MR. BOWDEN: Your Honor, the report on video
21 to the police is that the individual shoplifting had
22 taken some razor blades off a shelf. They had taken
23 maybe some pliers or wire cutters off the shelf as well
24 to assist in the shoplifting. There was never an
25 allegation that there was a knife. They found the knife

1 after the fact, and maybe if they had said box cutter I
2 would understand the State's position, but the allegation
3 is loose razor blades, and a knife coming in is simply
4 going to -- that was found on the co-defendant is going
5 to prejudice Mark Day, who, again, maybe didn't even know
6 that the co-defendant had the knife, wasn't helping him
7 use the knife, and there is evidence from the video that
8 the co-defendant might not even have known he had the
9 knife.

10 So it's not probative of any issues in this
11 case, and it's highly prejudicial because it proves,
12 supposedly proves, a fact that the police were never told
13 in the first place.

14 MR. DuTREMBLE: Your Honor, it says in the
15 police report that armed with --

16 THE COURT: Well, the police report was
17 written afterwards. What are the police officers going
18 to say about the knife at the time of the incident?

19 MR. DuTREMBLE: He will testify to retrieving
20 it from the co-defendant after this defendant was chased
21 down.

22 THE COURT: But did they see the knife before
23 they Tased anybody?

24 MR. DuTREMBLE: No.

25 MS. PROCTOR: No.

1 MR. DuTREMBLE: No, Judge.

2 THE COURT: So how did that have anything to
3 do with why they Tased anybody?

4 MR. DuTREMBLE: Because when the Target loss
5 prevention called the police, they reported they had box
6 cutters and a knife on them, which is part of the reason
7 that Target called the police initially, and we have a
8 witness that will testify about Target's procedures and
9 policies regarding suspects that are shoplifting that
10 have instruments that could be used to inflict bodily
11 injury.

12 THE COURT: So who from Target called -- they
13 called 911?

14 MR. DuTREMBLE: Yes.

15 THE COURT: And it says on there that they
16 have the knife?

17 MR. DuTREMBLE: I have the CAD report if
18 you'd like to see it, Judge, and it says razor blades and
19 wire cutters at one point. What I have in the CAD
20 reports doesn't specifically say knife. It says razor
21 blades and wire cutters, but the police report does
22 indicate --

23 THE COURT: Well, if it didn't tell the
24 police officers that there was a knife involved, and the
25 police didn't see a knife before they Tased them, and

1 they only found it after the fact, how is it relevant?

2 MR. DuTREMBLE: Beg the Court's indulgence.

3 MR. WARING: Your Honor, it says razor
4 blades. I mean, we would argue that's a deadly weapon as
5 well. It still corroborates the fact that he had some --

6 THE COURT: Did they find any razor blades on
7 him?

8 MR. DuTREMBLE: I don't believe so.

9 MR. WARING: But they did find a knife, which
10 is a cutting --

11 THE COURT: A lot different.

12 MR. WARING: Yes, Your Honor.

13 THE COURT: I mean, razor blades don't look
14 like knives. They can be used for the same thing, but
15 they typically aren't mistaken for one or the other.

16 MR. DuTREMBLE: Right, and I think the
17 discrepancy in that, from the police report and the 911
18 call, is that the surveillance video in Target actually
19 shows the defendant and Brett Davis, who's now deceased,
20 in the home improvement section of the store, selecting
21 cutting tools from the shelf of the home improvement
22 section of the store. So I don't think that they were
23 entirely clear on what exactly they picked up because the
24 video doesn't show precisely what it is, but they know
25 it's cutting instruments.

1 THE COURT: You want to say something?

2 MR. BOWDEN: Your Honor, if I may, Chris
3 Gravely, who will be here to testify, specifically told
4 police at the scene razor blades. He did not say cutting
5 instrument; he did not say box cutter. He specifically
6 said razor blades, which, as you mentioned, is completely
7 different in time from a razor blade this big to a knife
8 this big (indicating). It's just not -- you can't make
9 that mistake, and, indeed, they did not make that
10 mistake. Police were fully aware they had razor blades,
11 potentially either pliers or wire cutters, but there was
12 never any mention of a flip-out pocket knife.

13 THE COURT: So if there was nothing to
14 indicate to the police, from Target or anyone else, that
15 there was a knife to be on the lookout for and the police
16 didn't see it during the altercation, that can't be used
17 as justification for Tasing somebody.

18 So, one, they didn't know that there was a
19 knife, from what I'm hearing; and, two, they didn't see a
20 knife until after the Tasing was over; and, three, it was
21 found on a co-defendant. The prejudice to this defendant
22 substantially outweighs the probative value, so I won't
23 allow that in.

24 MR. WARING: Judge, regarding the information
25 that cutting tools were used, we think we should still be

1 able to ask him about that because that does -- I think
2 that's still factored into their decision to use that use
3 of force, Your Honor.

4 May we still get into that? Not necessarily
5 the knife, but the fact that they responded and had the
6 information that there were razor blades or cutting tools
7 used.

8 THE COURT: You can ask them, but I'm going
9 to presume that his answer was no. I mean, unless he's
10 lying. What I'm hearing, they didn't know that there was
11 a knife and they didn't see the knife.

12 MR. WARING: I guess we would ask them is
13 what information did you have when you were responding.
14 Based on the CAD, it says wire -- what does it say? Wire
15 cutters and razor blades.

16 THE COURT: You can ask did somebody tell you
17 wire cutters or razor blades.

18 MR. WARING: Okay. And we would ask
19 follow-up questions, did that have any effect on your --

20 THE COURT: Did you find any wire cutters or
21 razor blades, but no mention of the knife because they
22 weren't asked about a knife. They weren't told about a
23 knife.

24 Anything else? I don't typically ask would
25 you believe a police officer over another witness.

1 MR. DuTREMBLE: Judge, since we have
2 basically already stipulated to the 911 call, can we
3 admit the CAD report for the 911 call at this time?

4 THE COURT: Amend the CAD report?

5 MR. DuTREMBLE: Admit for evidence.

6 MS. PROCTOR: One second. I think so. No
7 objection.

8 (State's Exhibit 2 was marked for
9 identification and admitted into evidence.)

10 THE COURT: Okay.

11 MR. DuTREMBLE: With regard to the Target
12 surveillance footage, there really are not a lot of
13 videos that we intend to play. There are two angles of
14 the altercation that takes place between the defendant
15 and law enforcement in the vestibule area, and there's
16 also a video snippet from the Target home environment
17 where this defendant and Brett Davis select some items
18 from the shelving, so I think that's the only video the
19 State would offer.

20 MS. PROCTOR: I don't know which snippet
21 they're using.

22 MR. DuTREMBLE: The time stamps for that are
23 19:36:04 through 19:37:25, and that's pretty much limited
24 to what occurs in the vestibule at the time.

25 (In open court, jury present.)

1 THE COURT: Welcome back, folks. We are
2 going to draw a jury now for our last case of the week.
3 Those of you who haven't had an opportunity to serve on a
4 jury will get one last chance, and this will only be a
5 one-day trial, so by the end of today, you will have
6 accomplished your week of jury service, one way or the
7 other: Either you got picked or you didn't get picked,
8 but this is the last one we're doing this week.

9 Now, you probably have set through this at
10 least once. I'm not sure I know how far you got the
11 other day with Judge Maddox, those of you who weren't
12 actually on my panel, whether they actually drew a jury
13 or not, but what we're doing now is asking some questions
14 that are just designed to find out if you know anything
15 about this case and know any of the parties that are
16 involved such that would affect your ability to be fair
17 and impartial.

18 It's not necessary that you don't know
19 anybody at all. You might happen to know somebody
20 casually or something like that, but the real question
21 is, which will be my follow-up question if you respond,
22 is will it affect your ability to be fair and impartial?

23 In a county this big, most of the time nobody
24 knows anybody involved, but you get some of these small
25 counties around the state, sometimes it gets hard to find

1 a jury that doesn't know somebody in the case. So, you
2 know, we're not trying to pry, we're just trying to pick
3 12 jurors who can help us out, hear the testimony, listen
4 to the charge that I give you on what the law is on this
5 kind of case, and then go back and deliberate and come
6 back with a verdict. Nothing more complicated than that.

7 So I'm going to tell you what the charges
8 are, give you a list of the parties, ask you a bunch of
9 names, and ask you a bunch of questions. Again, I'm not
10 trying to pry into your personal affairs or embarrass you
11 in any way. If you feel like you should respond to a
12 question but you don't want to stand up in front of a
13 bunch of people and tell whatever it is out loud, you are
14 welcome to come down here and speak a little more
15 privately, but please don't just set there if you need to
16 respond to a question.

17 All right. This is the case of the State of
18 South Carolina versus Mark Emil Day. There are four
19 charges against Mr. Day, and I'll tell you what they are
20 in just a minute, but these are indictments, and I'm
21 going to be telling you what these are.

22 Indictments are charges that have been voted
23 upon by the grand jury. The sole purpose of issuing
24 these indictments is to give this Court jurisdiction to
25 hear the case and to let Mr. Day know what he is to stand

1 trial for. The fact that Mr. Day was arrested or
2 indicted for these charges raises no presumption of
3 guilt. He is not required to prove that he is innocent
4 of these charges. He pled not guilty of these charges,
5 and so it is incumbent upon the State to prove to 12 of
6 you that he is guilty beyond a reasonable doubt.

7 He doesn't have to do anything but show up,
8 and that's what he's done, and if he wants to testify, he
9 can, but if he doesn't testify, you are not to hold that
10 against him while you are deliberating your verdict.
11 That is an important constitutional right that he has and
12 that I have and that you have as citizens of the United
13 States and South Carolina.

14 The fact that he is indicted does not create
15 a presumption of guilt, and he doesn't have to prove that
16 he is innocent. The State has to prove that he is
17 guilty. All right?

18 There are four indictments. There are two
19 separate charges with two counts of each indictment.
20 Indictment 2016-GS-10-6620 and 6619 are for unlawful
21 taking of a firearm or weapon from a law enforcement
22 officer, and it basically alleges on or about July 25,
23 2016 Mr. Day took away either a firearm, stun gun, or
24 Taser device from Officer Stewart for one indictment and
25 Sergeant Talbott for the other indictment and that he

1 knew or had reason to know that they were law enforcement
2 officers and that these were law enforcement officers
3 that were performing duties as law enforcement officers
4 and that taking away of these weapons were directly
5 related to these officers in the performance of their
6 professional duties.

7 They took weapons away without their consent
8 and that the officers were authorized to carry these
9 weapons, and that the officers were authorized to carry
10 them while off duty. That is two of the charges. All
11 right?

12 The other two charges are indictments
13 2016-GS-10-6622 and 6621, and they are indictments for
14 assaulting a police officer while resisting arrest, and,
15 again, they allege that on or about July 25, 2016,
16 Mr. Day unlawfully did assault, beat, or wound Officer
17 Stewart in one indictment, Sergeant Talbott in the other
18 indictment, while they were engaged in serving or
19 executing or attempting to serve or execute a legal writ
20 or process or while resisting the efforts of the officers
21 to make a lawful arrest of the defendant when the
22 defendant knew or reasonably should have known the
23 officers were law enforcement officers.

24 Again, these are the charge instruments.
25 They're not evidence. They are the only documents or

1 articles that will go back in the jury room with you
2 while you are deliberating, and that's solely for the
3 purpose of the foreman of the jury to write the verdict
4 on the back of it, but these are not evidence, and the
5 fact, again, that he was charged with these does not
6 create any kind of inference or presumption of guilt. He
7 is presumed to be innocent of these charges and remains
8 so throughout the trial unless and until the State
9 convinces of you his guilt beyond a reasonable doubt.

10 Now, when somebody is charged in this state,
11 we have our prosecuting -- our chief prosecuting officers
12 are known as the solicitors, and the solicitor for the
13 Ninth Circuit is Ms. Scarlett Wilson, and she has
14 designated these two gentlemen right over here to
15 prosecute this case on behalf of her office.

16 Mr. DuTremble and Mr. Waring, would you stand
17 and face the jury panel and introduce yourself, please.

18 MR. DuTREMBLE: Good morning. I'm Assistant
19 Solicitor David DuTremble, and trying this case with me
20 is Assistant Solicitor Richard Waring.

21 THE COURT: Is there any member of the jury
22 panel who's related by blood or marriage or acquainted in
23 any way with Ms. Scarlett Wilson, the solicitor, or with
24 either of these two gentlemen that work for the
25 solicitor's office or Ms. Wilson? If so, would you

1 please stand.

2 Yes, your name and number, please.

3 A PROSPECTIVE JUROR: Elizabeth Bowles, 27.

4 THE COURT: And who do you know?

5 A PROSPECTIVE JUROR: Mr. Waring. I'm
6 friends with his parents.

7 THE COURT: All right. And how long have you
8 known them?

9 A PROSPECTIVE JUROR: Seventy-three years.

10 THE COURT: Well, do you think that would
11 affect your ability to be fair and impartial in this
12 case, either for or against the State or for or against
13 the defendant?

14 A PROSPECTIVE JUROR: No, sir.

15 THE COURT: All right. Thank you. Your
16 number was 27?

17 A PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Anyone else?

19 Yes, ma'am. Your name and number?

20 A PROSPECTIVE JUROR: 186, Meredith Moore.

21 THE COURT: Who do you know?

22 A PROSPECTIVE JUROR: May I approach?

23 THE COURT: Yes.

24 (The following discussion was held at
25 sidebar):

1 A PROSPECTIVE JUROR: I'm a physician, and
2 one of the attorneys is a patient of my practice. One of
3 the attorneys is a patient of my practice, so I'm
4 somewhat bounded by HIPAA. I just wanted to make sure
5 it's as private as possible.

6 THE COURT: Do you think that would affect
7 your ability to be fair and impartial in this case for or
8 against the State or for or against the defense.

9 A PROSPECTIVE JUROR: Yes, I should be.

10 THE COURT: You could be?

11 A PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: Okay. Thank you.

13 (End of sidebar.)

14 All right. Now, the defendant in this case,
15 as I said, is Mr. Mark Emil Day. Will you stand,
16 Mr. Day, and face the jury panel.

17 This is Mark Emil Day. Is any member of the
18 jury panel related by blood or marriage or acquainted in
19 any way with Mr. Mark Emil Day? If so, would you please
20 stand. I find none.

21 He is represented by Ms. Proctor and
22 Mr. Bowden. Would you all stand and introduce yourself,
23 please.

24 MS. PROCTOR: I'm Lori Proctor, the public
25 defender from Charleston County.

1 MR. BOWDEN: I'm Stephen Bowden, assistant
2 public defender.

3 THE COURT: Any member of the jury panel
4 related by blood or marriage or acquainted in any way
5 with any of these individuals? If so, would you please
6 stand. Okay. I find none. Be seated.

7 Now, I'm going to call out the names of some
8 people that might be called as witnesses in this case.
9 We don't necessarily intend to probably have all of them
10 testify, but we give you all these names out of an
11 abundance of caution because if we don't put them out
12 there and don't call them, invariably somebody says yes,
13 I have a problem, and then we have a problem, okay?

14 So I'll call these names out. When I call
15 the name out, if you're related by blood or marriage or
16 acquainted with these individuals in any way, would you
17 please stand.

18 First is Chris Gravley, who is a loss
19 prevention officer with Target? I find none. Tonia
20 Mallette, who is dispatch, 911 dispatch officer with the
21 sheriff's office? I find none. Amber Rossillo, who used
22 to be with North Charleston police? I find none.
23 Sergeant Christopher Talbott with North Charleston police
24 department?

25 Yes, your name and number?

1 A PROSPECTIVE JUROR: Beth Salter, 228.

2 THE COURT: And you know Officer Talbott?

3 A PROSPECTIVE JUROR: Yes. He goes to my
4 church.

5 THE COURT: All right. The fact that you
6 know him through church, would that affect your ability
7 to be fair and impartial for or against the State or for
8 or against the defendant if he were called as a witness?

9 A PROSPECTIVE JUROR: No, sir.

10 THE COURT: All right. Anyone else?

11 Officer Braden Reid of North Charleston
12 police department? I find none. Officer James Stewart,
13 North Charleston police department? I find none. Darius
14 Goss, used to work with Target, loss prevention officer?
15 I find none. Hannah Wethington, North Charleston police?
16 I find none. Officer Mark Nix of North Charleston
17 police? I find none, and then I have Officer Malone with
18 North Charleston police.

19 Officer Malone, do you know Officer Malone's
20 first name, Ms. Proctor?

21 MR. DuTREMBLE: I believe it's Adam, Judge.

22 THE COURT: Anyone know Officer Adam Malone,
23 North Charleston police? Okay.

24 Is any member of the jury panel a former
25 member of law enforcement or any department of

1 corrections in any capacity? Could be South Carolina or
2 any other state.

3 Yes, please stand. All right. Let's start
4 with you, your name and number.

5 A PROSPECTIVE JUROR: Jake Brawley, 32. My
6 brother used to work for New Orleans.

7 THE COURT: Which department?

8 A PROSPECTIVE JUROR: Police department.

9 THE COURT: What was your number again?

10 A PROSPECTIVE JUROR: 32.

11 THE COURT: Would that affect your ability to
12 be fair and impartial in this case either for or against
13 the State or for or against the defense?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: All right. Thank you. Yes, your
16 name and number?

17 A PROSPECTIVE JUROR: Mary Cornell, number
18 65. My husband is a former police officer from Ohio, and
19 I have a cousin that is in the penitentiary system in
20 Georgia for 30 years.

21 THE COURT: Okay. Would that affect your
22 ability to be fair and impartial in this case, for or
23 against the State or for or against the defense?

24 A PROSPECTIVE JUROR: No, sir.

25 THE COURT: Thank you. Your name and number?

1 A PROSPECTIVE JUROR: Vashon Mack, 154. May
2 I approach?

3 THE COURT: Oh, sure.

4 (The following discussion was held at
5 sidebar):

6 THE COURT: Okay. What would you like to
7 tell me?

8 A PROSPECTIVE JUROR: I have an auntie named
9 Jacquetta Glover. She passed away about 15 years ago
10 from Atlanta, Fulton County police department. She was
11 serving and someone shot her.

12 THE COURT: And this was who?

13 A PROSPECTIVE JUROR: Jacquetta Glover.

14 THE COURT: You're related to her?

15 A PROSPECTIVE JUROR: That's my auntie.

16 THE COURT: Do you think that would affect
17 your ability to be fair and impartial in this case?

18 A PROSPECTIVE JUROR: I'm not sure because as
19 long as it's the same thing, what she did, she was
20 protecting and serve in the line of duty, doing her
21 thing, so I'm not sure.

22 THE COURT: Okay. Well, thank you. And what
23 was your number again?

24 A PROSPECTIVE JUROR: 154.

25 (End of sidebar.)

1 Anyone else? Any member of the jury panel,
2 either you or your immediate family or any close personal
3 friends, employed with the Charleston solicitor's office?

4 Yes, your name and number?

5 A PROSPECTIVE JUROR: 83, Cara Earhart.
6 Shawn Barfield is one of my dear friends.

7 THE COURT: What was your number again?

8 A PROSPECTIVE JUROR: 83.

9 THE COURT: All right. Have you spoken with
10 him about this case?

11 A PROSPECTIVE JUROR: It's a she. No, I have
12 not.

13 THE COURT: Would that affect your ability to
14 be fair and impartial in this case, either for or against
15 the State or for or against the defense?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: Thank you. Anyone else?

18 All right. Any member of the jury panel,
19 either you or your immediate family members, ever had any
20 charges, criminal charges, that were adjudicated or
21 currently pending with the Charleston County solicitor's
22 office? I find none.

23 Any member of the jury panel or your
24 immediate family members ever been represented by the
25 public defender's office here in Charleston? I find

1 none.

2 Has any member of the jury panel or any of
3 your immediate family or close personal friends ever been
4 employed at Target?

5 Yes, your name and number?

6 A PROSPECTIVE JUROR: Michelle Woodhull, 292.
7 My son is employed at Target.

8 THE COURT: Which one?

9 A PROSPECTIVE JUROR: Mount Pleasant.

10 THE COURT: Would that affect your ability to
11 be fair and impartial in this case for or against the
12 State or for or against the defense?

13 A PROSPECTIVE JUROR: No, sir.

14 THE COURT: All right. Thank you. Anyone
15 else? Yes, your name and number?

16 A PROSPECTIVE JUROR: Buck McCall, 166. I
17 have a good friend from school who worked at Target. Not
18 anymore.

19 THE COURT: How long ago was that?

20 A PROSPECTIVE JUROR: Three years ago.

21 THE COURT: Would that affect your ability to
22 be fair and impartial in this case for or against the
23 State or for or against the defense?

24 A PROSPECTIVE JUROR: No, sir.

25 THE COURT: All right. Thank you. Anyone

1 else?

2 Any member of the jury panel, either you or
3 an immediate family member or close personal friends,
4 ever been the victim of a crime and you haven't already
5 disclosed that to me? No?

6 Any member of the jury panel have any
7 feelings or opinions or experiences about the crime of
8 resisting arrest or taking a weapon from a law
9 enforcement officer which would make it difficult for you
10 to serve on a jury where the defendant is charged with
11 this crime? I find none.

12 Any member of the jury a supporter of a
13 police booster organization, honorary law enforcement
14 organization, or similar group? That includes things
15 like the South Carolina Troopers Association, South
16 Carolina Law Enforcement Association, Sheriffs Office
17 Association, Fraternal Order of Police, that sort of
18 thing? Okay.

19 Any member of the jury panel give any money
20 to any group that has as its primary purpose the
21 promotion of law enforcement or victims' rights groups?

22 Yes, your name and number, please.

23 A PROSPECTIVE JUROR: Elizabeth Bowles,
24 number 27. I've made donations.

25 THE COURT: Things like sheriff 's office,

1 troopers organizations, that sort of thing?

2 A PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Anyone else?

4 Any member of the jury panel ever seen any
5 kind of publicity about this case or recall any news,
6 television, newspaper publicity about this case? Any
7 member of the jury panel form an opinion about this case?

8 Any member of the jury panel know of any
9 reason why they don't think they could be a fair and
10 impartial juror in this case? For instance -- and I'm
11 just giving you examples, but there's all kinds of groups
12 that are out there, and I'm not trying to convince you to
13 change your politics or your beliefs or philosophies
14 about anything or your religious beliefs, but there are
15 different groups out in America.

16 You can find a group in just about every area
17 of the spectrum, but sometimes we have people that say,
18 well, my religious beliefs, there are verses in the Bible
19 that say I don't think you should be on the jury. There
20 are folks that belong to organizations that say both ends
21 of the spectrum: They think there's stuff going on wrong
22 with the government, and they'll say, you know, I believe
23 if a person is on trial, they're automatically guilty,
24 and I'm going to vote them guilty no matter what. There
25 are people on the other end of the spectrum that say if

1 somebody gets arrested, I'm never going to convict
2 anybody. It could go any way or anywhere in the middle.

3 There are folks that say just about anything,
4 that I don't believe that I could listen to what a judge
5 says because I have my own ideas of what the law ought to
6 be. All I'm looking for is 12 people that can take an
7 oath that says I will make my decision on the evidence
8 that I hear in this courtroom, and I will apply the law
9 that you, the judge, tells me applies to this kind of
10 case, and that's all. It may not be the law you think it
11 is or ought to be, but you can take an oath that says
12 this is what I will follow.

13 Those are just some examples of different
14 things that I've heard over the years. There are lots of
15 things out there, and I'm not asking you to stand and
16 tell me if you have any of those. I'm just saying, if
17 you have any reason at all that you don't think you could
18 be a fair juror to either party, the state of South
19 Carolina or the defendant in this case, in fairness to
20 them, this is their day in court. Takes a while to get
21 here.

22 It's their day in court. They deserve 12
23 people who can put aside their differences, their
24 beliefs, and take an oath and abide by that oath that
25 says I will make my decision based on what I hear in this

1 courtroom. I won't make it on philosophical, religious
2 beliefs, or political beliefs or whatever. I'll make it
3 based on what I hear in the courtroom, and I can apply
4 the law that you, the judge, says to apply, even if I
5 don't think that's what the law ought to be.

6 If anyone has any reason at all why they
7 don't think they can be a fair and impartial juror, I'd
8 ask that you stand and you come up. In fact, I prefer
9 that you come up and tell me about it, and then the
10 parties can decide whether or not they want to have you
11 on the jury. It's that simple. Okay? Anybody? I find
12 none.

13 I think I covered everything that everybody
14 asked. Anything else from the State?

15 MR. DuTREMBLE: No, Your Honor.

16 THE COURT: From the defense?

17 MS. PROCTOR: No, Your Honor.

18 THE COURT: All right, folks. This is what
19 we do now in the state court. The clerk is now
20 processing a list of names -- hang on a second. Let me
21 get you all up here.

22 (Following discussion was held at sidebar):

23 THE COURT: I'm going to strike number 154.
24 He's the gentleman with the aunt that died. Was there
25 any other challenges for cause? Everybody else said they

1 could be fair and impartial.

2 MR. DuTREMBLE: I have none.

3 MS. PROCTOR: One second.

4 Is the one that -- well, I think she stood up
5 and says she goes to church with one of the officers.
6 That's the main officer in this case.

7 First of all, I think she probably tainted
8 the whole jury panel knowing that he's a big Christian.

9 THE COURT: Do you know which number that
10 was? I can't read my handwriting right now.

11 MS. PROCTOR: 228.

12 THE COURT: Okay. So she went to church with
13 who?

14 MR. DuTREMBLE: Talbott.

15 THE COURT: Well, she did say that she could
16 be fair and impartial.

17 MS. PROCTOR: Well, our problem is that she
18 basically said that she goes to church with him, so it
19 sounds like he's a good, solid, Christian guy. It's
20 whether they believe him or our guy.

21 THE COURT: Are you asking me to strike him?

22 MS. PROCTOR: Strike her, and we want to put
23 on the record that we think the whole panel is tainted.

24 THE COURT: So you're asking for a mistrial?

25 MS. PROCTOR: Yes.

1 THE COURT: I'm not going to grant a
2 mistrial, but I will excuse her from service on the jury,
3 so 228 is out and 154 is out. Okay?

4 (4.)

5 If she calls your number out, come through
6 the doors, turn around, and face the back, and each side
7 will have the opportunity to state whether or not they
8 have you on the jury or strike. Each side on this case
9 will get five strikes, and we'll draw one alternate.

10 If you get picked, then you'll bring your
11 belongings and just come on and set over here in the jury
12 box. If you're not picked, then you just return to your
13 seat.

14 So when she gets that finished, we'll
15 proceed.

16 THE CLERK: Strikes will be five and five and
17 two and two for the alternate. We'll pick one alternate.

18 Ladies and gentlemen: When I call your name
19 and your juror number, if you could, gather your
20 belongings, step forward through the gate, come up to the
21 podium, turn and face the attorneys, please.

22 Juror number 93, Thomas Forrester.

23 (The prospective juror, a white male,
24 approaches.)

25 What say you for the State?

1 MR. DuTREMBLE: Please seat this juror.

2 THE CLERK: What say you for the defendant?

3 MS. PROCTOR: Please seat the juror.

4 THE CLERK: Sir, if you could, take a seat in
5 the jury box, please.

6 Juror number 8, Diane Annand.

7 (The prospective juror, a white female,
8 approaches.)

9 What say you for the State?

10 MR. DuTREMBLE: Please excuse this juror.

11 THE CLERK: Ma'am, you've been excused. You
12 may return to your seat.

13 Juror number 145, Bernard Krafzig.

14 (The prospective juror, a white male,
15 approaches.)

16 What say you for the State?

17 MR. DuTREMBLE: Seat this juror.

18 THE CLERK: What say you for the defendant?

19 MS. PROCTOR: Court's indulgence.

20 Please seat the juror.

21 THE CLERK: Sir, you may take a seat in the
22 jury box, please.

23 Juror number 117, Aimee Guillotte.

24 (The prospective juror, a white female,
25 approaches.)

1 THE BAILIFF: Judge Young, excuse me.

2 (The following discussion was held at sidebar
3):

4 THE BAILIFF: He says he needs to go to the
5 restroom.

6 THE COURT: Yeah, go ahead. We can draw the
7 rest of the jury..

8 (End of sidebar.)

9 THE CLERK: This is juror number 117.

10 (The prospective juror, a white female,
11 approaches.)

12 What say you for the State?

13 MR. DuTREMBLE: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MS. PROCTOR: Court's indulgence.

16 Please seat this juror.

17 THE CLERK: Ma'am, take a seat in the jury
18 box, please.

19 Juror number 274, Laura Wall.

20 (The prospective juror, a white female,
21 approaches.)

22 What say you for the State?

23 MR. DuTREMBLE: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MS. PROCTOR: Please excuse this juror.

1 THE CLERK: Ma'am, you've been excused.
2 Please return to your seat.

3 Juror number 96, Veronica Foster.

4 (The prospective juror, a black female,
5 approaches.)

6 What say you for the State?

7 MR. DuTREMBLE: Court's indulgence, please.

8 Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MS. PROCTOR: Please seat this juror.

11 THE CLERK: Ma'am, take a seat in the jury
12 box, please.

13 Juror 59, William Coatsworth.

14 (The prospective juror, a white male,
15 approaches.)

16 THE BAILIFF: Judge, we have another one who
17 needs to use the restroom.

18 THE COURT: Go ahead.

19 THE CLERK: What say you for the State?

20 MR. DuTREMBLE: Please seat this juror.

21 MS. PROCTOR: Please seat this juror.

22 THE CLERK: Sir, you may take a seat in the
23 jury box, please.

24 Juror number 83, Cara Earhart.

25 (The prospective juror, a white female,

1 approaches.)

2 What say you for the State?

3 MR. DuTREMBLE: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MS. PROCTOR: Court's indulgence.

6 Please excuse this juror.

7 THE CLERK: Ma'am, you may return to your

8 seat.

9 Juror number 27, Elizabeth Bowles.

10 (The prospective juror, a white female,

11 approaches.)

12 What say you for the State?

13 MR. DuTREMBLE: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MS. PROCTOR: Please excuse this juror.

16 THE CLERK: Ma'am, please return to your

17 seat. The defendant has exhausted three of its strikes.

18 Juror number juror number 249, Jenna

19 Steingress.

20 (The prospective juror, a white female,

21 approaches.)

22 What say you for the State?

23 MR. DuTREMBLE: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MS. PROCTOR: Please seat this juror.

1 THE CLERK: Ma'am, you may take a seat in the
2 jury box, please.

3 Juror number 180, Patricia Mitchell.

4 (The prospective juror, a black female,
5 approaches.)

6 What say you for the State?

7 MR. DuTREMBLE: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MS. PROCTOR: Please seat this juror.

10 THE CLERK: Ma'am, you may take a seat in the
11 jury box, please.

12 Juror 263, Jessica Turner.

13 (The prospective juror, a white female,
14 approaches.)

15 What say you for the State?

16 MR. DuTREMBLE: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MS. PROCTOR: Please seat this juror.

19 THE CLERK: Ma'am, you may take a seat in the
20 jury box, please.

21 Juror number 186, Meredith Moore.

22 (The prospective juror, a white female,
23 approaches.)

24 What say you for the State?

25 MR. DuTREMBLE: Please seat this juror.

1 THE CLERK: What say you for the defendant?

2 MS. PROCTOR: Court's indulgence.

3 Please seat the juror.

4 THE CLERK: Ma'am, take a seat in the jury
5 box, please.

6 Juror 166, Buckley McCall.

7 (The prospective juror, a white male,
8 approaches.)

9 What say you for the State?

10 MR. DuTREMBLE: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MS. PROCTOR: Please seat the juror.

13 THE CLERK: Sir, you may have a seat in the
14 jury box, please.

15 Juror number 130, Amy Hill.

16 (The prospective juror, a white female,
17 approaches.)

18 What say you for the State?

19 MR. DuTREMBLE: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MS. PROCTOR: Please seat this juror.

22 THE CLERK: Ma'am, have a seat in the jury
23 box, please.

24 Juror 101, Nathan Gabriel.

25 (The prospective juror, a white male,

1 approaches.)

2 What say you for the State?

3 MR. DuTREMBLE: Please excuse this juror.

4 THE CLERK: Sir, you've been excused. You
5 may return to your seat.

6 Juror number 292, Michelle Woodhull.

7 (The prospective juror, a white female,
8 approaches.)

9 What say you for the State?

10 MR. DuTREMBLE: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MS. PROCTOR: Please excuse this juror.

13 THE CLERK: You've been excused. You may
14 return to your seat. Defense has exhausted four of their
15 strikes.

16 Juror number 33, George Breaker.

17 (The prospective juror, a white male,
18 approaches.)

19 What say you for the State?

20 MR. DuTREMBLE: Court's indulgence.

21 Please excuse this juror.

22 THE CLERK: Sir, you're excused. You can
23 return to your seat. State has exhausted three of their
24 strikes.

25 Juror number 3, Casey Adams.

1 (The prospective juror, a white male,
2 approaches.)

3 What say you for the State?

4. MR. DuTREMBLE: Please excuse this juror.

5 THE CLERK: Sir, you've been excused. You
6 may return to your seat. State has exhausted four of
7 their strikes.

8 Juror number 211, Carrie Pearson.

9 (The prospective juror, a white female,
10 approaches.)

11 What say you for the State?

12 MR. DuTREMBLE: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MS. PROCTOR: Please seat this juror.

15 THE CLERK: Ma'am, take a seat in the jury
16 box, please.

17 Now choosing for the alternate, each side
18 gets two strikes. Juror number 134, Christopher Hoffman.

19 (The prospective juror, a white male,
20 approaches.)

21 What say you for the State?

22 MR. DuTREMBLE: Please seat this juror.

23 THE CLERK: What say you for the State?

24 MS. PROCTOR: Please excuse this juror.

25 THE CLERK: Sir, you've been excused. You

1 may return to your seat.

2 Juror 210, Helen Patton.

3 (The prospective juror, a white female,
4 approaches.)

5 What say you for the State?

6 MR. DuTREMBLE: Please seat this juror.

7 THE CLERK: What say you for the defendant?

8 MS. PROCTOR: Please seat this juror.

9 THE CLERK: Ma'am, if you'll take a seat in
10 the jury box, please.

11 THE COURT: All right. You want to go down
12 and make sure you've got the same ones?

13 THE CLERK: Juror number 93, Thomas
14 Forrester; juror number 145, Bernard Krafzig; juror
15 number 117, Aimee Guillotte; juror number 96, Veronica
16 Foster; juror number 59, William Coatsworth; juror number
17 249, Jenna Steingress; juror number 180, Patricia
18 Mitchell; juror number 263, Jessica Turner; juror number
19 186, Meredith Moore; juror number 166, Buckley McCall;
20 juror number 130, Amy Hill; juror number 211, Carrie
21 Pearson; juror number 210, Helen Patton.

22 THE COURT: Anything from the State?

23 MR. DuTREMBLE: Not at this time.

24 THE COURT: Defense?

25 MS. PROCTOR: Not at this time, Your Honor.

1 THE COURT: All right.

2 Well, folks, you are our jury now for the
3 case, and we're going to start in a few minutes. I'm
4 going to send you back into the jury room. The bailiffs
5 will show you where that's at. Don't begin deliberations
6 or discussions about the case. I'll give you the
7 opportunity to use the restroom, because when we come
8 back, we'll go to probably close to 12:30 and take a
9 lunch break at that time.

10 I had the clerk's office order some pizza for
11 you for lunch, but we'll come back and get started with
12 the case in about ten minutes or so. While you're back
13 there, if you -- I know y'all don't know each other, but
14 you can spend a few minutes introducing yourself, and if
15 you can come up with a jury foreperson, somebody willing
16 to do that, that would be great; otherwise, I'll appoint
17 somebody when we come back.

18 All right? So I'll see you back in about ten
19 minutes.

20 (In open court, jury not present.)

21 The rest of you, thank you for coming and
22 helping us out this week, but you are concluded now with
23 your jury service for the week, so you are free to go.
24 You don't have to come back. You don't have to call
25 after 6:00. You can stay and watch the trial, if you

1 want to, but you have free parking, and you can stay
2 around downtown, go to lunch or whatever you want, if you
3 want to go back to work, but we thank you for your
4 service and for helping us out.

5 Thank you.

6 (Jury panel excused.)

7 THE COURT: That one juror who -- you excused
8 her, but you said she stood up and vouched, basically,
9 for the one officer.

10 What I propose is when they come back I'll
11 say, look, one of the people in the jury panel indicated
12 that she knew a guy and went to church and made comments
13 which might speak favorably to his character, and if
14 anybody thinks that they couldn't put that aside and are
15 influenced by that in any way, let me know and see where
16 we go from there. Okay?

17 So re you ready to go?

18 MS. PROCTOR: No.

19 MR. DuTREMBLE: Additionally, my investigator
20 has said some personnel files have started to come into
21 our office, so if we could take a brief break to look
22 over those and see if they need to be turned over.

23 THE COURT: All right.

24 MR. DuTREMBLE: Thank you, Judge.

25 MS. PROCTOR: Your Honor, we have a motion.

1 THE COURT: And what would that be?

2 MS. PROCTOR: Your Honor, at this time we're
3 asking for a mistrial. The only witnesses in this
4 case -- it's all about police officers and deploying
5 their Tasers, and one of the charges is him taking a
6 Taser away from the officers. I think that is the
7 unlawful taking of the firearm, which is the Taser with
8 both officers, and the other charge is assaulting a
9 police officer while resisting arrest, and this all has
10 to do with Tasers.

11 And we've just received all these reports,
12 and we're trying to read real fast, that have to do with
13 these officers, and I think it totally changes the case,
14 mainly because he's been going through them as fast as he
15 can. A lot of these are the exact same fact pattern that
16 happened to Mr. Day, and we're skimming them in, like,
17 five minutes, but the only witnesses are them, the
18 officers, and, I guess, the loss prevention.

19 THE COURT: Why don't we just start after
20 lunch, and I'll give you, you know, a couple hours to
21 look at it.

22 MS. PROCTOR: We'll do our best. I think
23 there's video -- there might be videos involved in these.
24 They're quite lengthy, but they're just -- exactly seem
25 to be like this case, and so we make a motion for a

1 mistrial.

2 THE COURT: Well, I won't grant a mistrial at
3 this time. What I will do is -- it's 11:19, according to
4 my official judge watch here, so why don't I -- I've
5 ordered them lunch. It should be here around 12:30.

6 I'll tell them they can go take a break, walk
7 around, do whatever they want, come back and eat pizza at
8 12:30, and then we'll come back at 1:30, and that will
9 give you two hours, see where we're at at that point in
10 time.

11 Okay? Bring the jury back in.

12 (In open court, jury present.)

13 THE COURT: Be seated.

14 Okay, folks. Two things: Back when I was
15 asking you a bunch of questions a few minutes ago, one
16 lady, in response to asking if you knew any of the police
17 officers or witnesses involved, stood up and said she
18 went to church with one of the officers and basically
19 vouched for his character by saying he's a good guy and
20 went to church.

21 It's unfortunate when somebody says something
22 like that because I don't want it to influence you, but I
23 need to know if a comment like that did influence you. I
24 know you've heard it. I can't make you unhear it, but is
25 there anybody that doesn't feel like they could put that

1 aside and basically -- you're the judge of credibility.
2 We don't let people come in and say what they think about
3 other witnesses and whether or not they're truthful or
4 untruthful.

5 In other words, I'm asking, do you think you
6 could put that aside, having heard that, and base your
7 judgment on the evidence that you hear in this courtroom
8 and the testimony of the witnesses as you hear them? You
9 judge their credibility, not what other people may have
10 said about some witness' credibility. Does anybody think
11 they couldn't do that? Okay. Thank you.

12 Let the record reflect nobody answered, which
13 I'm going to take is you're okay with going forward as a
14 juror then.

15 Now, the second thing is, we called this case
16 kind of last minute after the other one ended a little
17 bit quicker than we thought, and so we've run into a
18 little bit of an evidence problem that I'm going to give
19 the parties the lunch hour to work on. So rather than
20 start right now, I'm going to -- we'll take an early
21 lunch break. I've ordered you pizza, but it's not
22 supposed to be here until 12:30.

23 So it's 11:30 now. I'm going to let you
24 go -- you can go hang out in the jury room if you want
25 to, but it's a nice day. If you want to go walk around

1 and see the sites and set in the park, do whatever you
2 want to, you're welcome to do that. You're welcome to
3 come back at 12:30 and have pizza.

4 We're going to resume at 1:30, and so I'll
5 send you out with the instructions don't talk to anybody
6 about the case. If anybody approaches you about the
7 case, please report that back. Don't post anything on
8 social media about the case. You can post social media
9 stuff after the trial is over with all you want, but that
10 would be the same as you talking to somebody about the
11 case.

12 Invariably, if somebody started posting stuff
13 on social media, somebody is going to react, and the
14 whole point of having you not talk to anybody about the
15 case gets defeated. The reason I say that is sometimes
16 things sound silly and crazy. It's because somebody has
17 done it, all right? So that causes a problem.

18 So go enjoy a little bit of time, come back
19 at 12:30, eat some pizza. You can take some out; you can
20 eat back in the jury room; do whatever you want.
21 Hopefully enjoy it, but whatever you do, be back in the
22 jury room at 1:30, and hopefully we'll get started
23 shortly thereafter.

24 Thank you for your patience, and we'll see
25 you at 1:30.

1 (In open court, jury not present.)

2 THE COURT: Well, based on the juror's
3 response, or nonresponse, I'll deny your motion for a
4 mistrial based on the one juror's, I think her number was
5 228, comments about Officer Talbott, knowing him at
6 church.

7 As for your other request for a mistrial, I
8 don't see any reason to grant one at this point. I'm
9 giving you a couple hours to look through that stuff, and
10 we'll come back at 1:30 and see what you got as a result
11 of your thorough examination of the documents.

12 All right?

13 MS. PROCTOR: Judge, I have one more
14 question. Mr. Day has been out of jail for two years.
15 This happened two years ago. Can he stay out for lunch?
16 His father is here. I told his father if he didn't show
17 up --

18 THE COURT: That will be fine. Remember, if
19 you don't show back up, we're going to try the case
20 without you.

21 MS. PROCTOR: Yes, Judge. He always does.

22 THE COURT: All right.

23 (Recess taken.)

24 A F T E R N O O N S E S S I O N

25 (In open court, jury not present.)

1 MR. BOWDEN: After having the time to review
2 the materials that were given to us after jury selection,
3 we would just renew our motion for a mistrial.

4 While we certainly had time to read through
5 the materials we were given, they all raise additional
6 issues, particularly whether there's video available to
7 corroborate what's in the written reports. That's
8 something that very well may be an issue in this case, so
9 it may be an issue in other cases.

10 THE COURT: What are these issues?

11 MR. BOWDEN: Without kind of declaring what
12 our defense is right off the bat, it's discrepancies in
13 what the video shows and the way the report is written.
14 I can only assume that testimony will closely match the
15 way the reports are written, so there's certainly
16 credibility issues in this trial, just like in most
17 trials, but --

18 THE COURT: How is it relevant, what happened
19 in other cases?

20 MR. BOWDEN: It goes to --

21 THE COURT: I mean, if every time we have a
22 trial you're going to subpoena files of the police and
23 say, well, in one case, they assert something and in
24 another case which has nothing to do with this case?

25 MR. BOWDEN: I think it's impeachment

1 evidence that the Giglio case envisioned, that we can get
2 into an officer's past. It's certainly verbal ground.
3 Mistakes made in the past may reflect on the way they
4 currently make decisions, and if -- just like the jury is
5 going to be told that if they hear a lie, they can
6 disbelieve any of it, if they choose to, so it's just --
7 it's fertile ground for impeachment that we should have
8 gotten well in advance of being here today.

9 THE COURT: How would you be able to impeach
10 them with something that they said or did in this trial
11 with something that they did in another case, did or
12 didn't do?

13 MR. BOWDEN: It's hard to answer that without
14 seeing what the other evidence is.

15 THE COURT: Give me the legal theory.

16 MR. BOWDEN: I guess the legal theory is that
17 the officer tends to act the same way from incident to
18 incident. Previous credibility issues are -- would still
19 be present today if there were clear credibility issues
20 in a previous case.

21 We just don't have time to determine that,
22 based on the timing of when this information was
23 provided, and we might have if it was provided when we
24 asked for it or pursuant to the initial Rule 5 request,
25 which we also include impeachment evidence.

1 THE COURT: What's the State's position?

2 MR. DuTREMBLE: Judge, the State's position
3 is that these prior incidents are irrelevant to whatever
4 impeachment value they might have because the defense is
5 simply asking us to try all of these separate cases and
6 put the officers on trial for those separate cases in
7 this case.

8 Additionally, there's nothing exculpatory in
9 that evidence. It's not evidence that we normally
10 receive from law enforcement, to begin with, and,
11 additionally, it's going to confuse and mislead the jury
12 because of its irrelevance because it's going to take us
13 down so many rabbit holes about how officers could have,
14 should have, or did act in a particular prior case.

15 The reports we turned over are from 2016
16 through today's date, so, I mean, I don't see how
17 something that happened three years ago, which is
18 potentially an already closed and decided case, is going
19 to be brought in today.

20 MR. BOWDEN: I think the key is we're sort of
21 arguing about something that is -- it's almost illusory
22 because we don't know what else is out there that might
23 be -- that might be somewhat related to the information
24 we've been given, and if we had had time, review it, run
25 down any leads it created for us, we might have something

1 more concrete to argue about. We just don't know, and
2 that's exactly the problem with not being provided
3 impeachment evidence or Rule 5 evidence on the timeline
4 that they should have provided.

5 THE COURT: Well, I got a jury that's drawn,
6 and it's only Wednesday. I'll see you at 9:30 tomorrow
7 morning, and you can read through it, come back tomorrow
8 morning at 9:30, and see if you can convince me if there
9 is anything that you can use that's relevant.

10 Bring the jury in.

11 MS. PROCTOR: Your Honor, we feel we're
12 ready. We'll just keep on going.

13 THE COURT: You're waiving?

14 MS. PROCTOR: Yes.

15 THE COURT: I want to hear that from him.

16 MR. BOWDEN: Yes, Your Honor. We've got the
17 jury here. We've got the defendant here.

18 THE COURT: You want to withdraw your request
19 for more time and for a mistrial?

20 MR. BOWDEN: Yes, yes, yes. I'll withdraw
21 both motions.

22 THE COURT: Okay.

23 (1:34 p.m., in open court, jury present.)

24 Have y'all picked a jury foreperson? No?

25 All right. Well, juror number 93, Thomas Forrester, is

1 that you? You're the foreman. Congratulations. There's
2 no extra pay. You just write the verdict down on the
3 back of the indictment when we're finished.

4 All right, folks. Before we begin, I need to
5 have the clerk administer the oath to you, so, if you
6 would, please stand and raise your right hand.

7 (Jury duly sworn.)

8 All right, folks. Well, we're going to begin
9 this trial here in just a minute. I just want to tell
10 you a little bit about what we do. This, as I said, is a
11 criminal trial, and the state of South Carolina has
12 charged Mr. Day with four indictments which I read to you
13 earlier. He pled not guilty to those charges, and so
14 it's incumbent upon the State to provide him a jury trial
15 and convince 12 people unanimously that he is guilty of
16 this charge beyond a reasonable doubt. He is not
17 required to prove that he is innocent. He is presumed in
18 the eyes of the law to be innocent of the charges and is
19 innocent of these charges unless and until the State
20 presents enough evidence to convince all 12 of you that
21 he is guilty beyond a reasonable doubt.

22 Now, because the State has the burden of
23 proof, they will present their evidence first. They can
24 call witnesses; there will be, perhaps, photographs,
25 videos, documents; those sorts of things. Those kinds of

1 things are evidence. Evidence is when somebody gets up
2 on the witness stand and tells you what they heard, saw,
3 touched, felt, smelt. That's testimony. That's
4 evidence, but when the lawyers are talking, that's not
5 evidence because you're going to hear from the lawyers a
6 lot.

7 And I want to make sure you understand that,
8 because in a minute we're going to start with opening
9 statements, and the lawyers will get up and give you kind
10 of a brief overview of this case, and what they have to
11 say is not to be considered by you as evidence. It's
12 simply to help you understand what the case is about.
13 Once we've heard all of the evidence in the case, then I
14 will charge you on the law that applies to this type of
15 case, and then you will retire to consider what your
16 verdict will be.

17 Now, burden of proof, I said the State has
18 the burden of proving that he is guilty beyond a
19 reasonable doubt. So what does guilt beyond a reasonable
20 doubt mean? It's at the end of the trial has the State
21 presented enough evidence to leave you firmly convinced
22 that the defendant is guilty of these charges. They
23 don't have to prove it beyond any doubt. That is not
24 human nature. That's not possible, but it's whether or
25 not it's beyond a reasonable doubt.

1 So after all the evidence has been presented,
2 if you're firmly convinced of the defendant's guilt of
3 these charges, then you are under a duty to convict him.
4 On the other hand, if you do not feel like the State has
5 met its burden of proof and has not left you firmly
6 convinced of his guilt of these charges, then you are
7 under duty to acquit him of these charges, or find him
8 not guilty. Okay?

9 Now, both lawyers in a minute will have an
10 opportunity to give you these opening statements, but
11 because the State has the burden of proof, they call
12 their witnesses first. They will get to ask questions of
13 the witness first. That's called direct examination, but
14 the other side will have the opportunity to ask questions
15 too. That's known as cross-examination.

16 So we have direct and cross exam, and then I
17 usually let them have one followup round. So we have
18 direct, cross, redirect, recross, and then we move on to
19 the next witness. So the thing that's important to
20 remember about this -- there's a couple of things: Keep
21 an open mind about this, because you're going to hear one
22 set of questions first, one witness first, and that's
23 going to leave an impression on you, maybe a good
24 impression, maybe a bad impression, but the course of
25 human nature and the fact that you all have lived for as

1 long as you have, you've probably found out that there
2 are usually more than one side to every story, and your
3 first impressions are sometimes correct, but they're also
4 sometimes changed by things that you learn along the way,
5 and trials are often like that.

6 It's entirely possible you'll end up with
7 your first impression being your last impression, but
8 it's also entirely possible that you'll change your mind
9 along the way, so remember that and keep an open mind,
10 which is why I say whenever we take a break, don't begin
11 deliberations about the case, don't discuss the case
12 because until you've heard all of the evidence, then it's
13 not proper for you to begin deliberations.

14 So you'll hear from the State. Then, if the
15 defense wants to call any witnesses, they can. They're
16 not required to because, again, the defendant has no
17 burden of proof at all in this case. The only thing he
18 has to do is show up, and he's done that. So if he wants
19 to call witnesses, he can. If he wants to testify, he
20 can, but if he chooses not to testify, you are not to
21 hold that against him in any way. It is an important
22 constitutional right that we have in this country that a
23 person cannot be compelled to provide evidence against
24 themselves. They cannot be required to testify, and if
25 they don't want to testify, you are not to consider that

1 in any way while you are deliberating the verdict. All
2 right?

3 So after they have had the opportunity to
4 present a defense if they want to or call any witnesses
5 if they want to, I will then charge you on what the law
6 is that -- actually, we'll have closing arguments after
7 that, and then I will charge you on the law, and then you
8 will retire to consider what your verdict will be.

9 So that's it in a nutshell, what we'll be
10 doing the rest of this afternoon. Got a little bit of a
11 late start. I'm still hoping that we can maybe complete
12 this today, but we'll do our best, and we won't get
13 anything done if I keep talking. So I will turn it over
14 to the lawyers to begin with their opening statements.

15 Mr. Solicitor?

16 MR. DuTREMBLE: Thank you, Your Honor. May
17 it please the Court: Good afternoon, ladies and
18 gentlemen.

19 It has been said that the unknown sometimes
20 passes for the marvelous, and in some instances this may
21 be true, unless your job requires you to face the unknown
22 every day, be thrown headlong into it and with each
23 unknown that you face on a daily basis comes the great
24 potential for personal risk, injury, and sometimes even
25 death because that's what law enforcement officers face

1 on a daily basis.

2 With each call, each incident they respond
3 to, every time they put on their uniforms, go on duty,
4 they face the unknown and walk into a situation where
5 they don't know the players, they don't know the playing
6 field, and they most certainly don't know the outcome of
7 any particular incident.

8 And it's true and unfortunate that at this
9 point in time we live in a situation where there is kind
10 of a deep-seated public mistrust of law enforcement and
11 other officials at this point, and police brutality is
12 kind of a common trope, and it's said a lot that officers
13 quite frequently, all too often, use too much force. And
14 we see it on the Internet, we see it on Facebook, and we
15 see it on the news, but, quite frankly, that's not this
16 case, because what we will show is on July 25, 2016,
17 officers with the North Charleston police department
18 responded to the Target on Rivers Avenue in reference to
19 a 911 call where they were informed there were multiple
20 subjects who had cutting tools of some sort, and they
21 were in a busy store at the time.

22 Officers arrive. They find a woman outside
23 who they determine pretty quickly is the getaway driver.
24 They get a description of the suspects from loss
25 prevention, asset protection team, and they come up with

1 a plan where they decide they're going to wait and
2 confront the subjects between the entry doors by the cash
3 registers and the entry doors by the street, because by
4 doing so, they can avoid any possible risk to the
5 shoppers inside the store as well as everyone out in the
6 parking lot, self-contained area.

7 And so when police got word from Target loss
8 prevention, they entered the vestibule, made contact with
9 the subjects, and attempted to effectuate an arrest for
10 shoplifting, where is where everything that happened.

11 So you heard that there was a 911 call
12 officers responded to. You'll also hear from Officer
13 Braden Reid who is part of the team that was dispatched
14 that day to try to arrest these two subjects. You'll
15 hear how as he was attempting to arrest one of them he
16 had him face the wall and started putting handcuffs on
17 him, and at that point the subject started resisting and
18 pulling away from Officer Reid.

19 So Officer Reid drew his Taser, did not fire
20 his Taser, and that subject consented, got down on the
21 floor, and Officer Reid was finally able to handcuff him.
22 But while he was handcuffing him, behind him, he heard a
23 struggle ensue between the defendant, Mark Emil Day, and
24 Officer James Stewart and Sergeant Christopher Talbott.

25 You'll also hear from Officers Stewart and

1 Talbott, and they'll tell you as they were trying to
2 arrest the defendant he began resisting and he began
3 throwing punches, trying to land kicks, and so they drew
4 their Tasers and they used their Tasers.

5 While they were using their Tasers, the
6 defendant continued to resist and continued to fight,
7 continued kicking them and managed to disarm both of them
8 and get the Tasers out of both officers' hands. At that
9 point the defendant jumped up, ran into the crowded
10 parking lot, collided with a stationary police car, and
11 kept running.

12 In addition to all of this live eyewitness
13 testimony from the officers that were involved, you will
14 see surveillance video from the Target store. You'll
15 hear from the Target loss prevention officer who was
16 actually in the vestibule in the entryway and observed at
17 close range exactly what happened. Finally, you'll see
18 photographs of Officer Stewart and Sergeant Talbott, and,
19 perhaps most importantly, most viscerally, you'll be able
20 to see the body cam footage from Officer Amber Rossillo
21 which gives you the opportunity to see exactly what the
22 officers saw at that moment.

23 Now, as the judge has already stated, every
24 crime has elements, and throughout this trial Mr. Waring
25 and I have the burden of proving each element of each

1 crime scene beyond a reasonable doubt. Judge Young has
2 already told you that the defendant is charged with
3 assault on a police while resisting arrest and disarming
4 a police officer --

5 MR. BOWDEN: Objection. May we approach,
6 Your Honor?

7 THE COURT: Yes. Overruled.

8 (Discussion held at sidebar.)

9 MR. DuTREMBLE: So, as I was saying, with
10 respect to the defense's objection, the defendant is
11 charged with unlawful taking of a weapon from law
12 enforcement as well as assault on police while resisting
13 arrest, two counts of each, one for Sergeant Talbott and
14 one for Officer Stewart.

15 So with respect to disarming an officer or
16 unlawful taking of a weapon, we must prove that the
17 defendant knew or should have known that the person from
18 whom the weapon was taken was law enforcement. The
19 officer was performing his duty. The individual took the
20 weapon without consent, that the officer was authorized
21 to carry the weapon, both while on and off duty, and the
22 officer was authorized by their employer to carry the
23 weapon off duty and on duty and was identifiable as a law
24 enforcement officer.

25 With respect to assault on police while

1 resisting arrest, we have to prove to you that the
2 defendant assaulted, wounded, or beat a person the
3 defendant knew or should have known was a police officer
4 while that officer was attempting to effectuate a lawful
5 arrest on the defendant.

6 With respect to beyond a reasonable doubt,
7 the judge has already told you that it is a doubt that
8 leaves you firmly convinced. Another way of looking at
9 it is that doubt that would cause an ordinary person to
10 hesitate to act, but today, ladies and gentlemen, you
11 already have the benefit of knowing the players, of
12 knowing the playing field, and of knowing the outcome of
13 this case. The officers involved that day didn't have
14 that luxury, but at the close of all the evidence, there
15 will not be room for unknowns in this case because we
16 think that you will agree with us that all of the
17 evidence that we present today will show to you that the
18 defendant did indeed commit all of the crimes charged,
19 and at that time, ladies and gentlemen, we simply ask you
20 to apply your common sense, look at the facts in
21 evidence, apply them to the law as the judge charges you,
22 and at that point the only thing that will be left to do
23 is return a verdict of guilty.

24 Thank you.

25 MS. PROCTOR: May it please the Court?

1 THE COURT: Ms. Proctor.

2 MS. PROCTOR: Good afternoon.

3 The police get a call from Target, and it's
4 someone from loss prevention, and they're saying that
5 they see somebody in there, they see two people in there
6 that are looking through some things, look suspicious,
7 like they're going to steal, and so they call the police
8 officers. They say that they saw them -- one person says
9 it might have been -- they might have taken some pliers
10 off the shelf or some wire cutters, that that's what
11 they're using, so three or four officers arrive.

12 Now, they are waiting outside of Target. The
13 officers never go inside of Target. They are waiting for
14 these people to walk outside, and so what they're doing
15 is the officers are outside, just standing there in wait,
16 and there's quite a few of them. And as soon as they
17 walk out the door, they maybe take two steps out the
18 door: Bam. Officers are there.

19 They walk in, they push them back inside, and
20 they're, like, put your hands up, do this, and Mr. Day
21 does what anybody would do: You put your hands up. He
22 tried to put his hands up. What does that mean? Don't
23 shoot, don't shoot. I got my hands up, and you'll see a
24 picture of him on the wall.

25 What happens? He starts getting Tased,

1 Tased, and Tased. He is on the ground, and he is
2 trying -- as he's being Tased -- and you'll hear all
3 about how Tasers work and what happens to your body when
4 you're being Tased. But he is laying on the ground,
5 trying to pull out the prongs of his Taser, and when he
6 sees another one, he bats the Taser away. He never takes
7 it from the officer.

8 What he is doing is saying, I don't want to
9 be Tased again. I'm not going to -- I just want this off
10 of me, because he's pulling prongs off, and he pulls it
11 and throws it on the ground. He never picked it up, and
12 he never used it on the officers.

13 They also -- one of the charges is assaulting
14 a police officer, and assaulting a police officer while
15 resisting arrest. As I said, he never assaulted any
16 police officer at all. All he was doing was trying to
17 get away, and you'll hear the officer's testimony and
18 that the main thing is this one time that you actually
19 get to see what happened. You will see it. You will
20 hear all the noise. You will hear all the Tasing, and
21 you'll see it, hopefully, from different angles.

22 Now, he put his hands up and was, like, quit
23 Tasing. He gets Tased again, so finally he thinks he's
24 going to be Tased again, so what does he do? Yes, he
25 takes off running. He is running to get away because

1 he's, like, I can't take this anymore. So he's running
2 away, and that's when the officers catch him. I think
3 that there might be another Tase there, throws it, but he
4 never takes the Taser off of an officer that hasn't been
5 Tasing him, and he's getting the Taser away from his
6 body.

7 Now, we'll just tell you right up front,
8 we'll be honest, he was shoplifting, and he pled to
9 shoplifting. He went to magistrate's court and said I
10 was shoplifting, and he pled guilty to that, but he is
11 not guilty of these two charges they are bringing against
12 him, which are unlawful taking of a firearm or weapon
13 from a law enforcement officer. There was no taking of
14 it. It was knocking the Taser away, and they also
15 charged him with assaulting a police officer while
16 resisting arrest.

17 Now, the officers got hurt when they were
18 chasing him. They're chasing him down the street, and
19 that's when they get hurt. He never intentionally hurt
20 anybody. He never touched the officers. He's trying to
21 get away from the Tasers. We just ask you pay close
22 attention. Listen to everything you can, especially
23 about the Tasers, and just remember it's what most people
24 do? Hands up, do not shoot.

25 THE COURT: Call your first witness.

CHRISTOPHER GRAVELY - DIRECT EXAMINATION

1 MR. DuTREMBLE: State calls Chris gravely.

2 CHRISTOPHER GRAVELY,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DuTREMBLE:

7 Q. Good afternoon, Mr. Gravelly. Where are you from?

8 A. Summerville, South Carolina.

9 Q. Where did you go to school?

10 A. Berkeley High School, Moncks Corner.

11 Q. Where are you currently employed?

12 A. Currently employed for the city of Charleston
13 during the day, and I work for Target in the evenings.

14 Q. How long have you been with Target?

15 A. It will be 15 years next month.

16 Q. And what is your present position with Target?

17 A. Target detection specialist and asset protection
18 department.

19 Q. And what are some of the duties that come along
20 with those items?

21 A. Target detection specialist are mainly involved
22 with the protection of the building and the occupants,
23 and we also assist the asset protections with prevention
24 of fraud and theft.

25 Q. Okay. Do you have to have any particular training

1 for that position?

2 A. They have their own inhouse training that they
3 provide to you.

4 Q. Okay. What are some of the trainings that get
5 provided to you inhouse?

6 A. Inhouse training is computer-based learning
7 modules, and then they have an eight-hour on-hands;
8 basically, it teaches you how to deescalate situations,
9 proper handcuffing techniques in the cases you use wrist
10 restraints, and team stopping of an individual at the
11 exit.

12 Q. Do you personally have any law enforcement
13 background?

14 A. I was a deputy sheriff with the Berkeley County
15 sheriff's department for -- back in the late '80's, early
16 '90's.

17 Q. Do you ever work with law enforcement in
18 conjunction with your present position?

19 A. With Target?

20 Q. Yes, sir.

21 A. When we have an apprehension, yes.

22 Q. So is it a situation where you always have to call
23 law enforcement?

24 A. Not always, no.

25 Q. Okay. What are some of the instances that you

1 would have to call them?

2 A. We have a set of criteria that we use; a large
3 group, if you're by yourself, and then if there's a
4 weapon involved.

5 Q. Okay. And who sets out those guidelines?

6 A. Target corporation.

7 Q. All right. At any given day, how many loss
8 prevention staff would you say you have on duty?

9 A. We attempt to have two all the time, but there's
10 some incidences of myself -- on occasion I'm by myself.

11 Q. And how are suspicious activities usually noticed?

12 A. We have a reporting system, computer-based
13 reporting system, that we use.

14 Q. Do you have surveillance in Target stores?

15 A. We have cameras as well as physical surveillance.

16 Q. So between floor staff and cameras, surveillance
17 is pretty much ongoing?

18 A. Yes.

19 Q. So with respect to video recordings that are made
20 by Target, when law enforcement is contacted, do you guys
21 turn that surveillance over to them?

22 A. If they request a copy of the surveillance tapes,
23 we will. All we need is to have to queue it up, and they
24 can see what happened.

25 Q. And those recordings are made at or near the time

1 an incident is noticed?

2 A. That's correct.

3 Q. And it's a regularly conducted business activity
4 for Target to record and surveil that?

5 A. Yes.

6 Q. What happens after the video is recorded?

7 A. It is saved, for at a minimum, for seven years.

8 Q. And they're kept and stored also in the normal
9 course of business?

10 A. They are kept in the store as well as we can
11 upload them to the IC.

12 Q. What's the IC?

13 A. The IC is the information control center for
14 Target.

15 Q. And after that happens, can the recordings be
16 altered in any way?

17 A. No.

18 Q. I'm going to show you what has been marked for
19 identification purposes as State's Exhibit 1.

20 MR. DuTREMBLE: May I approach the witness?

21 THE COURT: You may.

22 BY MR. DuTREMBLE:

23 Q. Mr. Gravely, what is this?

24 A. This is a copy of the video that I initialed of
25 the Target surveillance from that day.

1 Q. And have you had an opportunity to watch this
2 video?

3 A. Yes.

4 Q. Is it a fair and accurate representation of the
5 events involved in this case?

6 A. Yes, it is.

7 MR. DuTREMBLE: Your Honor, at this time the
8 State moves to admit State's 1 into evidence.

9 MS. PROCTOR: No objection.

10 THE COURT: Admitted.

11 (State's Exhibit 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. DuTREMBLE:

14 Q. So, generally speaking, how long does it take for
15 you to turn surveillance videos over to law enforcement?

16 A. When they call and ask for it, a matter of ten or
17 fifteen minutes to burn it to a disk and then hand it to
18 them.

19 Q. So it's a pretty quick process?

20 A. Oh, yes.

21 Q. Well, turning your attention to the surveillance
22 footage, were you on duty on July 25, 2016?

23 A. Yes, I was.

24 Q. Do you recall whether your store contacted police
25 that evening?

1 A. Yes, we did.

2 Q. Okay. And you did say that you watched this
3 surveillance video?

4 A. That's correct, yes.

5 Q. All right. Before this footage starts,
6 Mr. Gravely, do you recognize this as being your store?

7 A. This is our home improvement department.

8 Q. Okay. Now, with respect to that video clip, what
9 is happening in that?

10 A. Well, subject selected a razor knife.

11 Q. So that is footage of this defendant?

12 A. Defendant, yes.

13 Q. And how do you know that for certain?

14 A. I just looked at him.

15 Q. And is it because also you were on duty that day?

16 A. Yeah.

17 Q. And is the defendant in the courtroom today?

18 A. Yes.

19 Q. Could you point him out by what he's wearing.

20 A. Right over there with the black button-up shirt.

21 MR. DuTREMBLE: Your Honor, let the record
22 reflect the witness has identified the defendant's in the
23 courtroom today.

24 THE COURT: So ordered.

25 BY MR. DuTREMBLE:

CHRISTOPHER GRAVLEY - DIRECT EXAMINATION

1 Q. All right. Did you personally call 911,
2 Mr. Gravely?

3 A. I called, and I believe there was another call
4 made by another officer, Darius.

5 Q. Okay. And he was one of the loss prevention team
6 at Target?

7 A. Uh-huh, yes.

8 Q. Is he still employed at Target?

9 A. No, he's not.

10 Q. Okay. Turning back to the evening of July 26,
11 2016, what happened after they selected that razor?

12 A. At that point, I dialled 911 and informed them
13 about the situation that was in progress, requested
14 officer presence.

15 Q. And what did you observe next on the surveillance?

16 A. They moved from the home improvement department
17 into the electronics department and selected two
18 computers.

19 Q. And then what did they do?

20 A. They went back behind the end cap, removed the --
21 using the knife, the razor knife, they opened it up,
22 removed the contents, placed it in that shoulder bag,
23 which was recently selected from the floor, and then
24 proceeded to the front.

25 Q. So they were heading toward the exit at that

1 point?

2 A. Yes.

3 Q. Okay. Now, do you recognize this part of the
4 store?

5 A. After the officers made initial contact and I went
6 out, I just walked into the vestibule.

7 Q. And is that the altercation between officers and
8 the defendant?

9 A. Yes. It's going on at this point right now.

10 Q. And were you the person with the white stripe
11 across the back of your shirt that just exited?

12 A. I'm wearing a polo shirt that says security across
13 the back. I had my arm extended out to keep the door
14 shut so no guests would walk out into it.

15 Q. And so that's you that we can see in the video
16 right now?

17 A. That's my back, yes, sir.

18 Q. Okay. Now, was there another camera that's inside
19 the vestibule where this happened?

20 A. The exit shot was, yes.

21 Q. Are those the doors to the cash registers?

22 A. Those are the doors to the cash registers,
23 correct.

24 Q. Is that who you previously identified as the
25 defendant?

CHRISTOPHER GRAVLEY - DIRECT EXAMINATION

1 A. With the sunglasses, yes.

2 Q. And that's you in the vestibule?

3 A. That's me.

4 Q. So it's safe to say you had a pretty clear view of
5 what happened at that time, right?

6 A. That's correct, yes.

7 Q. And those North Charleston police officers, were
8 they in uniform?

9 A. They were.

10 Q. Were they clearly identifiable as police?

11 A. They were.

12 Q. Was it obvious at the time they were putting the
13 defendant under arrest?

14 A. Yes.

15 Q. All tolled between Target loss prevention and
16 North Charleston, how many people were in there trying to
17 stop these two?

18 A. Three, four officers, myself; Darius came in
19 behind me, and Matthew was still outside.

20 Q. Okay. And with respect to the altercation itself,
21 could you tell us what you saw.

22 A. I saw the defendant attempting to -- the officers
23 were spread as far as the doors were wide, so there were
24 three or four officers right there, and they were trying
25 to control them, and he was fighting with them.

1 At one point, he was up in the air, like he was
2 trying to climb over them, and when he did finally break
3 free is when he took off running, but it was arms and
4 legs kicking and punching and --

5 Q. So did any of that look like it was accidentally?

6 A. No.

7 MR. DuTREMBLE: Mr. Gravely, please answer
8 any questions the defense may have for you.

9 THE COURT: Cross?

10 MS. PROCTOR: Yes, Your Honor. One moment.

11 CROSS-EXAMINATION

12 BY MS. PROCTOR:

13 Q. You said that you're loss prevention. Loss
14 prevention for that Target?

15 A. Yes.

16 Q. And there's videos, as you say, all around Target,
17 correct?

18 A. Yes.

19 Q. And when something goes on, or happens at Target,
20 or there's an event of somebody stealing or something, a
21 report is written?

22 A. That is correct, yes.

23 Q. And you said that they took -- that you saw them
24 take some razor knives?

25 A. Yes.

1 MS. PROCTOR: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 BY MS. PROCTOR:

5 Q. This is a report that came from that incident.
6 This is how you write up the reports from the scene at
7 Target?

8 A. That appears to be like a 1-R, yes.

9 Q. And in this report, you write what was taken from
10 Target, correct, what was stolen?

11 A. That is correct, yes.

12 Q. And what this says is a notebook, I assume one of
13 those -- it's a 299 computer notebook because it just
14 says notebook and some numbers, so I assume that's a
15 computer. Then they took \$6 -- they took -- pliers were
16 stolen, another Cloud Book for 169, and then one back of
17 knife -- utility blades for \$1.34.

18 A. Uh-huh.

19 Q. So this is all that they had? This is all they
20 took, correct, that I just read off to you?

21 A. If that's what it is, yes.

22 Q. You testified that you saw them taking razor
23 knives, correct?

24 A. It's all on there, the razor blades, yes, ma'am.

25 Q. It says five blades.

AMBER ROSSILLO - DIRECT EXAMINATION

1 A. Yeah. It's a little pack, that is correct. Yes.

2 Q. Just a pack of blades. Okay.

3 MS. PROCTOR: Thank you.

4 THE COURT: Are you done?

5 MS. PROCTOR: Oh, yes. I'm sorry.

6 MR. DuTREMBLE: I have no further questions,
7 Your Honor.

8 THE COURT: You may step down. Thank you.

9 THE WITNESS: Thank you.

10 AMBER ROSSILLO,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DuTREMBLE:

15 Q. Good afternoon, Ms. Rossillo.

16 A. Good afternoon.

17 Q. Where are you from?

18 A. Charleston, South Carolina.

19 Q. Where did you go to high school?

20 A. Forth Dorchester High School.

21 Q. Where are you currently employed?

22 A. Bosch.

23 Q. Where were you employed before Bosch?

24 A. North Charleston police department.

25 Q. How long did you work for North Charleston police

1 department?

2 A. Three years.

3 Q. Do you have any prior law enforcement experience?

4 A. I do.

5 Q. And where was that?

6 A. Charleston County sheriff's office detention
7 center.

8 Q. And during your time with North Charleston, what
9 were some of the various assignments you had?

10 A. I was on patrol for my first year, and then the
11 remainder of my time at North Charleston I was an SRO.

12 Q. For the jury, what is an SRO?

13 A. School resource officer.

14 Q. Was that your final assignment for North
15 Charleston?

16 A. It was.

17 Q. When did you leave the North Charleston police
18 department?

19 A. About five months ago.

20 Q. So were all of your assignments in the city and
21 county of Charleston?

22 A. Yes.

23 Q. Were you a police officer on July 26th of 2016?

24 A. Yes, I was.

25 Q. Do you recall responding to the Target on Rivers

1 Avenue that day?

2 A. I do.

3 Q. Okay. What happened there?

4 A. We responded to a call at the Target on -- in
5 response to shoplifters -- cutting off with bolt cutters
6 or wire cutters tags of clothing, trying to steal them,
7 shoplifting from Target.

8 Q. Did you personally respond to it?

9 A. I did.

10 Q. Were you in uniform at that time?

11 A. Yes, I was.

12 Q. And you were obviously police?

13 A. Yes.

14 Q. And you were authorized to carry weapons?

15 A. I was.

16 Q. Was your body camera also activated when you went
17 to Target?

18 A. It was.

19 Q. Can you explain a little bit about what body
20 camera is to the jury.

21 A. Body-worn camera is a camera we wear to record
22 interactions with the public, and we always activate
23 it -- usually before, right before, we have an
24 interaction with the public, usually. If it's an
25 incident that is severe enough, we submit it into

1 evidence.

2 Q. And so any interaction in general is recorded when
3 you respond to a call?

4 A. Yes.

5 Q. And are those recordings made at or near the time
6 you respond?

7 A. Yes.

8 Q. And it's a regularly conducted business activity
9 for the police department to record these?

10 A. It is.

11 Q. And what did you say happens after the video is
12 recorded?

13 A. It gets submitted into our evidence section.

14 Q. And are those recordings kept and stored in the
15 ordinary course of business?

16 A. They are.

17 Q. Can the recordings be altered after they're made?

18 A. No.

19 Q. Ms. Rossillo, I'm going to show you what has been
20 marked for identification purposes as State's Exhibit 3.
21 Would you please take a look at this.

22 A. Sure.

23 Q. And can you tell us what it is?

24 A. My body worn camera evidence, the DVD of that day.

25 Q. And have you had a chance to watch that individual

1 footage?

2 A. Yes, I have.

3 Q. Was it in same or substantially the same condition
4 as it was the day it was recorded?

5 A. Yes, it was.

6 MR. DuTREMBLE: Your Honor, at this time,
7 State moves to admit Exhibit 3 into evidence.

8 MS. PROCTOR: No objection, Your Honor.

9 THE COURT: Admitted.

10 (State's Exhibit 3 was marked for
11 identification and admitted into evidence.)

12 BY MR. DuTREMBLE:

13 Q. So when you got to Target that day, what happened?

14 A. I responded, met with Officer Reid, Stewart, and
15 Sergeant Talbott. We met with the loss prevention
16 officers at Target. They stated the subjects were
17 inside, so we met at the vestibule, and we were all were
18 waiting for them to come out. The loss prevention stated
19 they were on their way out, and that's when we attempted
20 to detain them.

21 Q. And that was in the breezeway that you attempted
22 to detain them?

23 A. Yes.

24 Q. And how many of them were you trying to detain?

25 A. Two.

AMBER ROSSILLO - DIRECT EXAMINATION

1 Q. Is one of them here today?

2 A. Yes.

3 Q. Could you identify him by something that he's
4 wearing?

5 A. At the time?

6 Q. Currently.

7 A. Yes. No, I didn't identify him by his appearance.

8 Q. Can you describe something that he's wearing?

9 A. Yes, a black shirt. I'm sorry.

10 MR. DuTREMBLE: Let the record reflect that
11 the witness has identified the defendant in the
12 courtroom.

13 THE COURT: So ordered.

14 BY MR. DuTREMBLE:

15 Q. So how did you know who to detain?

16 A. I was notified by dispatch and also the LP.

17 Q. And how many officers did you say were with you at
18 the time?

19 A. Myself, Sergeant Talbott and Stewart and Reid,
20 Officer Reid.

21 Q. So when you asked them to face the wall, did they
22 comply?

23 A. No.

24 Q. What happened?

25 A. When we asked them to face the wall so we could

1 detain them, they started fighting back with us, and one
2 of them me and Officer Reid attempted to detain while the
3 other was Sergeant Talbott and Stewart.

4 Q. But it was obvious at the time you were trying to
5 place them under arrest?

6 A. Yes.

7 Q. And did Reid manage to detain one of them?

8 A. Yes.

9 Q. Did he use his Taser in that detainment?

10 A. Yes.

11 Q. Did he discharge it?

12 A. No.

13 Q. Did you happen to see an altercation, a physical
14 fight, between the defendant and the Officers Talbott and
15 Stewart?

16 A. I did.

17 Q. How would you describe that?

18 A. They were -- it was an intense struggle, kicking
19 and obviously hitting. They were struggling on the
20 ground with them. I didn't see anything else, just the
21 struggle on the ground.

22 Q. Okay. Did you see any blows make contact with
23 Officers Talbott and Stewart?

24 A. Not that I recall, but I did see hands and feet.

25 Q. Did the defendant get Tased that day?

~~AMBER ROSSILLO - CROSS-EXAMINATION~~

1 A. He did.

2 Q. And what happened after he got Tased and fought
3 with the officers?

4 A. I believe he tried to run from Officer Reid, or
5 officer -- I'm sorry, Stewart and Sergeant Talbott.

6 Q. Did you follow them?

7 A. I did not. I was with the other suspect at the
8 time.

9 Q. Okay.

10 MR. DuTREMBLE: Thank you, Ms. Rossillo.
11 Please answer any questions the defense has.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. BOWDEN:

15 Q. Good afternoon, Ms. Rossillo.

16 A. Good afternoon.

17 Q. Let's talk a little bit about the training that
18 you had when you were a police officer. So you went to
19 the criminal justice academy, and that's a 12-week
20 program?

21 A. Yes, it is.

22 Q. And learned the basics of police work?

23 A. Yes.

24 Q. Certainly how to deal with suspects during the
25 job, recognizing threats and responding appropriately,

1 and then somewhat boring things like report writing.

2 A. Yes.

3 Q. But report writing, while it same seem boring, is
4 very important, right?

5 A. Uh-huh.

6 Q. And there are various kinds of reports you might
7 have to write. I need you to --

8 A. I'm sorry. There are, yes.

9 Q. And the common thread between all of the different
10 reports that you may have to write is that they need to
11 be thorough and they need to be accurate and they need to
12 capture details -- I'm sorry. I still want you to give
13 verbal answers.

14 A. Yes.

15 Q. And they need to -- again, they need to capture
16 the relevant details?

17 A. Yes.

18 Q. To the type of incident that we're responding to?

19 A. That's correct.

20 Q. And so if you pull somebody over for speeding,
21 your report is going to include the speed they were
22 doing?

23 A. Yes.

24 Q. And the speed limit in the area they were
25 traveling.

1 A. Yes.

2 Q. And in addition to capturing the details at the
3 time, reports are very important because your memory
4 fades over time?

5 A. Yes.

6 Q. And police officers deal with hundreds, maybe
7 thousands, of suspects in the time -- and people in
8 general, in the time between an arrest and when a case
9 goes to trial.

10 A. Yes.

11 Q. So it's impossible to hold somebody to the
12 standard of remembering every detail without referring
13 back to their report.

14 A. Yes.

15 Q. And so when you wrote reports, they were thorough.

16 A. Yes.

17 Q. And they were accurate.

18 A. Yes.

19 Q. And the solicitor can rely on them?

20 A. Yes.

21 Q. And the jury can rely on them to some extent?

22 A. Yes.

23 Q. Let's talk a little more specifically -- well,
24 actually, did you review your incident report from this
25 case --

1 A. Yes.

2 Q. -- prior to coming in today? Let's shift
3 specifically to particularly this incident.

4 When you made contact with Mark Day and Brett
5 Davis, you were trying to detain Mark Day?

6 A. No, it was Brett Davis.

7 Q. Let's put a pin in that for now. So ultimately
8 Officer Reid detained Brett Davis?

9 A. Yes. I was with him.

10 Q. And prior to detaining Brett Davis, Brett Davis
11 tried to run?

12 A. Yes.

13 Q. And Officer Reid lost control of him.

14 A. Yes. It was a struggle.

15 Q. And it was a loss prevention officer for Target
16 that bear hugged him?

17 A. I'm not too sure about that.

18 Q. But you do recall Brett Davis actively resisting?

19 A. Yes.

20 Q. And ultimately Officer Reid got Brett Davis on the
21 ground?

22 A. Yes.

23 Q. Threatened to Tase him?

24 A. Yes.

25 Q. And ultimately took him into custody?

1 A. Yes.

2 Q. And you grabbed Mark Day's left hand.

3 A. Not that I can recall. I believe Sergeant Talbott
4 and Stewart were basically in the struggle with Mark Day,
5 and I was with Brett Davis, along with Officer Reid, and
6 I stayed with him when Officer Reid went to help them.

7 Q. Did you review your body-worn camera in
8 preparation for this trial?

9 A. Yes, I did.

10 Q. Would reviewing that help you refresh your memory
11 as to who you were helping detain?

12 A. Yes.

13 Q. While this is loading, do you recall talking with
14 the solicitor what color shirt Mark Day was wearing that
15 day?

16 A. A blue polo.

17 Q. Were you able to tell from that clip whose arm you
18 were trying to handcuff?

19 A. I could not.

20 Q. Okay. Can you see from the still right now? Can
21 you tell which defendant is which?

22 A. I believe Sergeant Talbott has Day, and the loss
23 prevention officer possibly in the back hugging the other
24 one.

25 Q. So the gentleman who is being bear hugged and not

1 wearing sleeves is Brett Davis?

2 A. Okay.

3 Q. Is that your recollection?

4 A. Yes.

5 Q. Okay. And so the other gentleman on this picture
6 on the right, is that Mark Day?

7 A. Yes.

8 Q. Okay. And at the beginning of this video when you
9 are trying to grab someone's arm and put the handcuff on,
10 are you able to tell who that was?

11 A. I could not.

12 Q. But at some point during the struggle, after
13 Officer Reid has successfully detained Brett Davis, you
14 are not actively dealing with a suspect?

15 A. I believe I stayed with the suspect Officer Reid
16 had and Sergeant Talbott -- I think I had Brett Davis at
17 the time they went to get Mark Day, so I stayed with
18 Brett Davis.

19 Q. But at the point that's shown in this video,
20 nobody's been Tased yet, and you are standing in the exit
21 vestibule?

22 A. Yes.

23 Q. Mark Day is being controlled by Sergeant Talbott?

24 A. Yes.

25 Q. And Brett Davis is being controlled by the Target

1 loss prevention officer for the time being, and so you
2 are not directly responsible for controlling either
3 subject?

4 A. No.

5 Q. And you weren't directly responsible for
6 controlling either subject until there was a foot chase
7 in the parking lot?

8 A. I believe so.

9 Q. And so with your training to recognize details
10 that ordinary people might miss, you had an opportunity
11 to witness the entire incident take place?

12 A. Not the entire incident, but the majority of it.

13 Q. Everything that happened in the exit vestibule?

14 A. Yes.

15 Q. To include both times that Mark Day was Tased?

16 A. No. When I was with Brett Davis and I was holding
17 him down when Officer Reid went to help Officer Talbott,
18 I did not -- I wasn't directly looking at him, so I
19 didn't see necessarily everything that was happening at
20 the moment, but I did see arms flailing.

21 Q. Have you seen the Target surveillance footage in
22 this case?

23 A. No, I have not.

24 Q. But you saw a struggle between Officer Stewart,
25 Sergeant Talbott, and Mark Day?

1 A. Yes.

2 Q. Until Mark Day ran into the parking lot, you
3 witnessed all of that?

4 A. Yes.

5 Q. And you didn't see an assault.

6 A. I did not.

7 Q. And that would have been a significant detail in a
8 case that involves assaulting a police officer while
9 resisting arrest?

10 A. Yes.

11 Q. So if you had seen that, it would be in your
12 report?

13 A. Yes.

14 Q. And you would testify about it today?

15 A. Yes.

16 MR. BOWDEN: Thank you.

17 THE COURT: Redirect?

18 MR. DuTREMBLE: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. DuTREMBLE:

21 Q. Ms. Rossillo, the defense made a big deal of
22 report writing.

23 A. Yes.

24 Q. And in this case your body camera was activated?

25 A. Yes.

AMBER ROSSILLO - RECROSS-EXAMINATION

1 Q. And it recorded everything via live video?

2 A. Yes.

3 Q. And loss prevention officer Chris Gravely said
4 there were about six people in there. Is it possible
5 that your view may have been blocked at some pertinent
6 points in this?

7 A. Yes, uh-huh.

8 Q. And that you didn't see everything precisely as it
9 happened?

10 A. Yes.

11 Q. Because the body camera can only record what
12 you're pointed toward, right?

13 A. Yes.

14 Q. It's not a piece of cinema where each blow was
15 recorded in detail?

16 A. No.

17 MR. DuTREMBLE: No further questions, Judge.

18 THE COURT: Recross?

19 * RECROSS-EXAMINATION

20 BY MR. BOWDEN:

21 Q. When we were just talking about what is -- what
22 you recorded in your report and what you testified to
23 earlier, we were talking about what you saw with your
24 eyes?

25 A. Yes.

CHRISTOPHER TALBOTT - DIRECT EXAMINATION

1 Q. Not your body-worn camera?

2 A. No.

3 MR. BOWDEN: No further questions.

4 THE COURT: Thank you. You may step down.

5 MR. WARING: State calls Sergeant Talbott.

6 CHRISTOPHER TALBOTT,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WARING:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. How are we doing today?

14 A. Good, sir. How are you?

15 Q. Pretty good.

16 Would you tell the jury where you work.

17 A. I work for the North Charleston police department.

18 Q. All right, and now you're a sergeant. How long
19 have you been working there?

20 A. I've been employed there for approximately
21 15 years, was promoted to sergeant in 2013.

22 Q. Okay. And what does a sergeant do?

23 A. We oversee the patrol squad. The city is split
24 into three different sections: The central, south, and
25 north bureaus of the city, and a sergeant will oversee

1 one area during a given shift.

2 Q. All right. Were you involved in this case back on
3 July 25, 2016?

4 A. I was.

5 Q. And how did you initially get brought into this
6 case?

7 A. We have a computer -- or mobile data terminal in
8 our laptop in our car and then saw the officer start to
9 populate at the incident location, and I saw that it
10 was potentially -- could be what we consider a hot call,
11 so I began to respond to the area.

12 Q. And where was the incident location?

13 A. It was at the Target on Rivers Avenue, I believe
14 it's in the 2700 block.

15 Q. Is that in Charleston County?

16 A. Yes.

17 Q. I'm going to put on the overhead what has already
18 been admitted into evidence as State's Exhibit 2. When
19 you respond to calls, do you get information beforehand?

20 A. We do.

21 Q. And what device do you get that on?

22 A. The device, our radios, emitting over laptop, or
23 it's also called an MDT, or mobile data terminal.

24 Q. Is that what they refer to as the radio?

25 A. We also get information verbally over the radio,

1 both.

2 Q. Can you tell the jury what a 911 call is.

3 A. So a call comes into the 911 consolidated dispatch
4 center, and then the call starts to populate, and the
5 comments that you see in here are actual comments that
6 pop up on our mobile data terminal in our vehicle. This
7 would be the CAD, computer-aided dispatch. This would be
8 the CAD entry from that specific call.

9 Q. Okay. So is what we're looking at commonly called
10 a CAD report?

11 A. Yes.

12 Q. All right. Now, I'm going to zoom in here just
13 slightly. I'm going to point to a couple different
14 spots. Would you mind reading lines five and six,
15 please.

16 A. Subjects in the store stealing, using a cutting
17 tool.

18 Q. All right. And then I'll scroll down to right
19 about there, if you'd mind reading a couple of those
20 lines, please.

21 A. So within the CAD, we have something called ProQA.
22 It's pro question/answer. You'll see line nine says
23 ProQA D questions. These are questions that are
24 automatically generated that the dispatcher has to ask,
25 or the call taker has to ask. So this would indicate,

1 below line nine, weapons were involved or mentioned, and
2 it listed the type of weapon as razor blades and wire
3 cutters.

4 Q. Okay. And how about the line directly after that?

5 A. The weapon is in the suspect's possession.

6 Q. On the way to this location, was it your
7 understanding the suspects had weapons?

8 A. Yes, sir.

9 Q. Now, in your mind does the information that a
10 suspect may have a weapon factor in to how you proceed,
11 how you approach them?

12 A. Yes.

13 Q. How so?

14 A. It elevates the level of risk and level of
15 resistance. We have a use of force matrix, and we also
16 have a level of -- resistance levels that the subject we
17 are encountering would rise to, so it just decreases the
18 level of resistance and the level of risk of the
19 interaction.

20 Q. All right. And on that day, July 25, 2016 -- I
21 notice you're wearing your uniform today. Were you
22 wearing it then at that time?

23 A. Yes, sir.

24 Q. And had the badge, had stripes, everything?

25 A. Yes, sir.

1 Q. All right. What happened when you got there?

2 A. When we arrived on scene, we met with a female
3 party outside, and we met with a loss prevention officer
4 who came outside to meet us.

5 Q. And other officers were there?

6 A. Yes. There were some other officers on scene.

7 Q. So at that point are y'all just waiting outside?

8 A. Correct.

9 Q. What happened next?

10 A. We were briefed on what was going on, and I
11 instructed -- as the sergeant is the supervisor, I
12 instructed my subordinates that were there with me that
13 since we were aware that a weapon was involved, if there
14 was any type of flight through the parking lot that I was
15 fine with them utilizing their Taser.

16 Q. Okay.

17 A. We got word that they were coming out through the
18 exit door, and then there's, like, a lobby area, and then
19 the exterior exit door. We got word that they were
20 coming through there, and we all walked in together to
21 confront them and, hopefully, take them into custody
22 without incident.

23 Q. Now, did you attempt at that time to arrest this
24 defendant?

25 A. Yes.

1 Q. Now, did you just come up right from the get-go,
2 Tasers out, ready to Tase somebody?

3 A. No.

4 Q. Do you have a procedure?

5 A. We do. We look for little things. It's easy to
6 tell whether you have a compliant person right from the
7 get-go. We'll do little things like tell them to take a
8 step to the right or put their hands up in the air, or,
9 in this case, it was face the wall. Initially, they
10 faced the wall so we thought we were going to have a
11 compliant subject, but shortly thereafter, he began to
12 resist.

13 Q. So you mentioned you attempted to arrest them, and
14 you mentioned the wall. Is that how you approached it
15 for this specific defendant? You had him against the
16 wall initially?

17 A. Yes. We instructed him to turn and face the wall.

18 Q. But did he comply?

19 A. Initially, he began to comply but then turned
20 around and tried to flee.

21 Q. Was he -- essentially, for all intents and
22 purposes, was he under arrest at that time?

23 A. Yes.

24 Q. All right. Was he free to leave?

25 A. No.

1 Q. There's been some mention of shoplifting. Is
2 shoplifting a crime that allows you as a police officer
3 to arrest somebody?

4 A. Yes.

5 Q. All right. Can you go into detail initially about
6 how he started to resist?

7 A. As we approached him and told him to put his hands
8 up against the wall, he initially turned, put his hands
9 up against the wall. Then we went to handcuff and he
10 immediately started to pull away and just swing his arms
11 at us, and somehow we ended up on the ground.

12 Q. Okay. So he started swinging. He was resisting,
13 right?

14 A. He was resisting, yes.

15 Q. As that moment was he trying to assault you when
16 he was swinging when he ended up on the ground?

17 A. His arms were swinging at both of us.

18 Q. I guess what I'm getting at is, was he having a
19 muscle spasm?

20 A. No. Our assumption was we were in the midst of a
21 fight, a physical altercation, and we were being
22 assaulted.

23 Q. All right. So he's on the ground. What happens
24 when he's on the ground?

25 A. We went to the ground, and having a mention of

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1 some type of cutting instrument, we -- I instructed one
2 of my subordinates, while I was trying to detain him, to
3 just go ahead and Tase him.

4 So he pulled out his Taser, deployed it, and two
5 prongs made contact with him but had no effect, and he
6 continued to resist. While he was resisting, he was
7 continuing to swing his arms. He swung his arm at
8 another officer's -- who was with me, can I say his name?

9 Q. Sure.

10 A. Stewart, he swung his arm at Officer Stewart's
11 hand, and the Taser fell out of his hand on to the
12 ground. While he was doing that, he was also kicking,
13 and he kicked me in the arm, on my left arm.

14 That continued, and since I saw the Taser had no
15 effect, it got knocked out of his hand, I decided to
16 deploy my Taser, again, deployed it, two prongs come out,
17 make contact. The defendant rolled over, which is
18 commonly used as a technique to pull the wires out. They
19 just go into a roll, and that also had no effect. He
20 continued to swing his arms and then managed to push up
21 off the ground and fled out the door.

22 Q. Who was the other officer who deployed his Taser?

23 A. Officer James Stewart.

24 Q. The same one that you saw get assaulted?

25 A. Yes.

1 Q. Okay. Now, you mentioned getting kicked. Was the
2 defendant gently trying to tap you or was this a forceful
3 kick?

4 A. It was a forceful kick.

5 Q. Can you tell the jury what his demeanor was like
6 during this.

7 A. I'd categorize it as violent. I've been in a few
8 fights, and I've been doing it a long time, so I've been
9 in a few fights, and this would rank in the top five, as
10 far as somebody aggressing towards me. It was not a
11 little fight. It was a big scuffle.

12 Q. All righty. Now, are North Charleston police
13 department officers allowed to carry Tasers?

14 A. We are.

15 Q. Are you allowed to deploy them?

16 A. We are.

17 Q. Let's go into a little bit of discussions under
18 what circumstances you're allowed to pull out your Taser
19 and actually Tase somebody. Would you like to go into
20 that a little bit?

21 A. We have a use of force matrix which coordinates
22 with the level of resistance that we face. Level of
23 resistance we were facing is considered a level five.
24 It's beyond active physical resistance, which is level
25 four.

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1 At level four, physical resistance, use of a Taser
2 is authorized. This was beyond that. This was level
3 five, aggressive physical resistance, so the offender is
4 aggressively -- or they are actively resisting, and they
5 are aggressively coming at you, trying to assault you.
6 You're allowed, per policy, to meet that with equal or
7 one greater force. So this was the level four use of
8 force, which is a Taser, which we are authorized to do
9 when somebody is active, or aggressively resisting.

10 Q. Now, you mentioned levels of force. In this case,
11 was your use of force compliant with North Charleston's
12 policy?

13 A. Yes. We have an internal review that gets
14 completed by another supervisor, and he found there were
15 no policy violations, and it was subsequently signed off
16 on by the chain of command.

17 Q. So there were no reprimands, anything of that
18 nature to this?

19 A. None.

20 Q. How many times was the defendant Tased, do you
21 know?

22 A. It was deployed twice.

23 Q. Okay. And I think you briefly mentioned the
24 rolling tactic or technique. Did these Tasers have any
25 effect on him?

1 A. They had no effect. Gained no compliance, which
2 is unusual.

3 Q. Now, you mentioned that your Tasers were pretty
4 much taken from y'all. Can you describe the manner in
5 which your Taser and Officer Stewart's Taser were taken
6 from y'all?

7 A. Officer Stewart's -- while the defendant was on
8 his back and kicking and swinging at us, his was hit out
9 of his hand, and then when I deployed mine -- we can also
10 go in for what's called a drive stun, so the probes are
11 shot out and deployed and make contact. If you don't
12 gain compliance, you can do what's called a subsequent
13 drive stun where you establish another point of contact,
14 which is also called a three-point hookup.

15 So I tried to do a three-point hookup to gain
16 compliance, and the closer I got, he swung and hit at me,
17 and the Taser was also knocked out of my hand.

18 Q. Okay. So not only did you experience your own
19 Taser being taken away, you also observed Officer
20 Stewart's Taser taken away too?

21 A. Correct.

22 Q. Did either you or Officer Stewart provide the
23 defendant with consent to do that?

24 A. No.

25 Q. Now, after all this went down, did he run?

CHRISTOPHER TALBOTT - DIRECT EXAMINATION

1 A. Yes.

2 Q. And did y'all give chase?

3 A. Yes.

4 Q. Ultimately, was he apprehended?

5 A. Yes.

6 Q. Approximately how far do you think he ran?

7 A. 200 yards.

8 Q. All right.

9 A. Maybe less.

10 Q. Were there any barriers in which he ran into?

11 A. He ran into a police car.

12 Q. Did he immediately stop after running into that
13 cop car?

14 A. I didn't witness -- I heard that collision. To my
15 best recollection, I didn't really witness it. He hit
16 it, and then he was taken into custody within 25 yards of
17 the rear of the car that he struck.

18 Q. Okay. Now, you mentioned the assaults. Did you
19 sustain any injuries?

20 A. I did.

21 Q. Can you tell the jury what kind of injuries?

22 A. I had an abrasion and a cut to my knee, and I had
23 an abrasion to my left arm.

24 Q. All right. Now, were any photographs taken,
25 Sergeant?

1 A. Yes.

2 Q. And do you know who took those photographs?

3 A. I did.

4 Q. And what were they taken of?

5 A. They were taken of the injuries.

6 Q. Okay. Sergeant, I'm going to show you what's been
7 marked for identification purposes only as State's
8 Exhibits 4 through 7. Would you mind taking a look at
9 these?

10 Do you recognize those?

11 A. I do.

12 Q. And can you tell the jury what they are.

13 A. These are photographs of my and Officer Stewart's
14 injuries.

15 Q. Did you take those photos?

16 A. I did.

17 Q. And do those photos fairly and accurately depict
18 not only your injuries from the defendant, but also
19 Officer Stewart's?

20 A. Yes, sir.

21 MR. WARING: Your Honor, the State moves to
22 have Exhibits 4 through 7 admitted into evidence.

23 MR. BOWDEN: No objection.

24 THE COURT: Admitted.

25 (State's Exhibits 4, 5, 6, and 7 were marked

CHRISTOPHER TALBOTT - DIRECT EXAMINATION

1 for identification and admitted into evidence.)

2 BY MR. WARING:

3 Q. I'm going to put these on the overhead, if you
4 would please tell the jury what we're looking at,
5 starting with State's Exhibit 4.

6 A. That is Officer Stewart's knee. That is my knee.

7 Q. That was Exhibit 5. Now I'm going to put on
8 Exhibit 6.

9 A. That's Officer Stewart's knee.

10 Q. And were these all generated from the scuffle in
11 the breezeway?

12 A. Yes.

13 Q. Showing you State's Exhibit 7.

14 A. That's my left arm.

15 Q. And what is that from?

16 A. That is from being kicked.

17 Q. Okay. Did you take any photos of anything else?

18 A. The unmarked Impala that the defendant ran into.

19 Q. All right. I'm now going to show you what has
20 been marked for identification purposes as State's
21 Exhibits 8 and 9, if you don't mind taking a look at
22 those.

23 Do you recognize those?

24 A. I do.

25 Q. Could you tell us what they are?

1 A. They are the gray unmarked Impala that was owned
2 by the city of North Charleston at the time.

3 Q. Is that the one that the defendant ran into?

4 A. Yes, sir.

5 Q. Are these two of the photos you took as well?

6 A. Yes, sir.

7 MR. WARING: State moves to have Exhibits 8
8 and 9 moved into evidence.

9 MR. BOWDEN: No objection.

10 THE COURT: Admitted.

11 (State's Exhibits 8 and 9 were marked for
12 identification and admitted into evidence.)

13 BY MR. WARING:

14 Q. Showing you State's Exhibit 8, what are we looking
15 at here, Sergeant?

16 A. The dent on the rear driver's side door was not
17 there prior to this incident, and that's from the
18 defendant running across the parking lot into the car.

19 Q. State's Exhibit 9?

20 A. Just another picture of the same thing.

21 Q. And you said how far away from this car after he
22 ran into it was he apprehended?

23 A. Approximately 25 yards to the rear of it.

24 Q. So despite running into a car at full speed, did
25 he comply at that point? Did he keep running or did he

CHRISTOPHER TALBOTT - DIRECT EXAMINATION

1 stop --

2 A. I think he briefly tried to keep running and then
3 complied.

4 Q. All right. Sergeant, I'm going to play the rest
5 of that video of Officer Rossillo's body camera, which
6 has already been admitted as State's Exhibit 3.

7 All right. Who's the individual on the right?

8 A. That would be the defendant.

9 Q. Okay. Is that the wall you were referring to
10 earlier when you said initially you tried to get them
11 against the wall?

12 A. Yes, sir.

13 Q. At that moment you're doing this, is he under
14 arrest, for all intents and purposes?

15 A. Yes.

16 Q. What's going on right now?

17 A. They're both beginning to resist.

18 Q. How about right now?

19 A. I had ahold of one arm and was trying to detain
20 him and he was resisting and about to fall to the ground.

21 Q. What was that right there?

22 A. That was me pulling a Taser.

23 Q. And I'll play it back in a second. Did he just
24 try to kick y'all at that moment again? Is that -- is he
25 complying when he's on the ground at that point?

1 A. No.

2 Q. Is that when you were kicked?

3 A. Right.

4 Q. Okay.

5 A. Stewart --

6 Q. Sergeant, did you do a report for this case?

7 A. I did a supplement to it, a narrative.

8 Q. And did you put from what you recall happened in
9 that report?

10 A. Yes.

11 Q. Do you see the defendant in the courtroom today?

12 A. I do.

13 Q. And would you pick him out, please.

14 A. Sitting in the left there in the black shirt.

15 MR. WARING: Your Honor, let the record
16 reflect the witness has identified the defendant.

17 THE COURT: So ordered.

18 BY MR. WARING:

19 Q. Sergeant, just to be clear, were you kicked?

20 A. Yes.

21 Q. Did you see Officer Stewart get assaulted as well?

22 A. Yes.

23 Q. And were you all actively trying to arrest the
24 defendant?

25 A. Yes.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 MR. WARING: Please answer any questions the
2 defense has.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. BOWDEN:

6 Q. Good afternoon, Sergeant. How are you today?

7 A. Good.

8 Q. Let's start off by talking about the kind of
9 training you have. You started off like any other
10 officer. You went to the criminal justice academy.

11 A. Right, where I graduated top of my class.

12 Q. Congratulations. And you learn the basics of
13 police work there?

14 A. Correct.

15 Q. And you learned, specifically relevant to this
16 case, recognizing threats and responding with appropriate
17 force?

18 A. Sure.

19 Q. So that would include, you mentioned, the use of
20 force matrix. You mention -- or, well, it would also
21 include the use of physical controls?

22 A. Physical control would be part of the use of force
23 matrix.

24 Q. Right, but you learned at the criminal justice
25 academy physical controls?

1 A. Yes.

2 Q. Which are a lesser use of force than a Taser?

3 A. Correct.

4 Q. You learned the use of batons?

5 A. Correct.

6 Q. Chemical agents?

7 A. Yes.

8 Q. Tasers?

9 A. Yes.

10 Q. And, ultimately, guns?

11 A. Correct.

12 Q. And then you transitioned from the police academy
13 to the jurisdiction that you're going to work in?

14 A. Uh-huh.

15 Q. And you received some additional training?

16 A. Uh-huh.

17 Q. I'm sorry. Is that a yes?

18 A. Yes.

19 Q. And that includes additional training on the use
20 of force?

21 A. Yes.

22 Q. And since then, you've even annual certifications
23 on the use of force?

24 A. Yes.

25 Q. Is it more often than annual?

1 A. No.

2 Q. And in these types of -- or in these
3 certifications -- well, from time to time, you switched
4 the model of weapon that you're using.

5 A. I don't understand the question.

6 Q. So, for example, is the Taser used at the time of
7 this incident the same Taser that you carry today?

8 A. I don't know. I have an X26, and I now have an
9 X26-P, which is a newer version.

10 Q. Okay. So it is a different model?

11 A. Yes, but it functions the same.

12 Q. Did you receive some additional training once you
13 got a newer model?

14 A. Yes.

15 Q. And they're going to -- and they tell you about
16 how the Taser worked?

17 A. Yes.

18 Q. About its potential effects on a subject?

19 A. Yes.

20 Q. So potentially a Taser could be lethal?

21 A. I can't say that.

22 Q. None of your training ever told you that a Taser
23 could be -- could kill somebody?

24 A. No.

25 Q. Did they tell you about the warnings that the

1 Taser manufacturer provides?

2 A. Yes.

3 Q. So you're very familiar with the Taser that you
4 carried at the time of this incident?

5 A. Yes.

6 Q. Let's talk a little bit about the Taser that you
7 carried at the time.

8 A. Okay.

9 Q. The Taser that you were using at the time, you
10 said it was a Taser X26?

11 A. Correct.

12 Q. And it's the model specifically made for law
13 enforcement?

14 A. Yes.

15 Q. So you know how many volts the Taser that you were
16 carrying was capable of producing?

17 A. 50,000.

18 Q. And you said they introduce you to the
19 manufacturer's information about the product.

20 A. Yes.

21 Q. Did you ever see the user manual from the Taser
22 manufacturer?

23 A. I've seen a PDF version of the manual.

24 Q. So -- okay. So you've read that manual for the
25 Taser that you were carrying in 2016?

1 A. I wouldn't say I've read the whole manual, but I'm
2 familiar with the manual.

3 Q. Okay. You know the purpose of a Taser, to
4 neutralize a suspect, specifically how it works on a
5 human being's body?

6 A. Neuromuscular incapacitation, also abbreviated
7 NMI.

8 Q. And NMI affects -- uses electrical pulses to
9 affect the sensory and motor functions of the nervous
10 system?

11 A. Yes.

12 Q. And Tasers have two modes. You alluded to this
13 earlier, but I'm going to draw it out a little more. A
14 Taser can shoot probes out.

15 A. Yes.

16 Q. And in that mode, ideally, the probes go into a
17 subject's skin?

18 A. Yes.

19 Q. And those two probes complete an electrical
20 current?

21 A. Correct.

22 Q. Or electrical circuit, excuse me, and in that
23 circuit, a current can pass through a person's body?

24 A. Correct.

25 Q. And that electrical current so overwhelms the

1 motor functions of a person that the brain cannot
2 communicate to control a person's legs?

3 A. It has the ability to completely incapacitate a
4 person.

5 Q. So ideally, NMI is the ideal result for the use of
6 a Taser?

7 A. Yes.

8 Q. But NMI isn't always achieved?

9 A. No.

10 Q. And even when it is, it has side effects, can have
11 side effects?

12 A. I don't understand.

13 Q. So even when neuromuscular incapacitation is
14 achieved, a subject does not always drop to the ground?

15 A. Definitely not.

16 Q. Right? So one of those side effects might be
17 involuntary muscle contractions.

18 A. I have not seen that, and I did not experience
19 that when I was Tased myself.

20 Q. But that is a side effect?

21 A. I can't testify to that.

22 Q. All right. But they told you in your training
23 that it's possible that even if NMI is achieved, people's
24 limbs will move involuntarily?

25 A. I've never heard that.

1 Q. All right. There's a second mode that a Taser can
2 be set to.

3 A. That's only one mode. There's two ways to utilize
4 it, but it's only one mode.

5 Q. Matter of semantics, and the second mode is called
6 drive stun.

7 A. Correct.

8 Q. And that's where you push the end of the Taser
9 directly against the subject?

10 A. Correct.

11 Q. And a way of using a drive stun where the probes
12 are already in where there's three connections?

13 A. Correct.

14 Q. And many times when drive stun is used there will
15 not be the probes with the connection.

16 A. There are times when that occurs, when you remove
17 the cartridge so the probes are no longer in there, and
18 you can do a drive stun that way. That was used more for
19 pain compliance, and we really don't do that much
20 anymore.

21 Q. And that's because it does not cause neuromuscular
22 incapacitation?

23 A. A drive stun alone without any probes will not
24 cause neuromuscular incapacitation.

25 Q. And the Taser manufacturer warns that it's a

1 reflex for a person to try to get away from a drive 'stun?

2 A. I'm not familiar with that warning.

3 Q. But you've seen the PDF before.

4 A. I'm familiar with a manual with, you know,
5 pictures and instructions and details of the Taser.

6 Q. Would you recognize the document you've seen if I
7 showed you it?

8 A. Potentially.

9 (Defendant's Exhibit 1 was marked for
10 identification.)

11 MR. BOWDEN: I'm going to mark for
12 identification -- it's called Taser X-26E ECD user
13 manual, and it's been marked as Defendant's Exhibit 1.

14 May I approach the witness, Your Honor?

15 THE COURT: Go ahead.

16 BY MR. BOWDEN:

17 Q. Sergeant Talbott, do you recognize this document?

18 A. It looks familiar, yes.

19 Q. Okay. And you've seen the section on drive stun
20 backup?

21 A. I may have.

22 Q. Okay. Can you read starting there --

23 MR. WARING: Objection, Your Honor. May we
24 approach?

25 THE COURT: Sure.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 (Discussion held at sidebar.)

2 THE COURT: Tell you what: It's time for a
3 break. Don't begin deliberations or discussions about
4 the case. See you back in ten minutes.

5 (In open court, jury not present.)

6 MR. WARING: Improper foundation, hearsay.
7 He's not the custodian of the record. I don't think he
8 should be able to read that unless it's necessarily put
9 into evidence through our --

10 THE COURT: What is the record you want him
11 to read from?

12 MR. BOWDEN: It's the user manual for the
13 Taser he carried in 2016 that he testified he is familiar
14 with.

15 THE COURT: It's true. He said he hadn't
16 read it entirely, but he's familiar with it.

17 MR. BOWDEN: It's not offered for the truth
18 of the matter asserted. It's offered for whether he
19 knows about it.

20 THE COURT: Okay. Well, you can ask him
21 about it.

22 Anything else?

23 MR. BOWDEN: No, Your Honor.

24 THE COURT: Let's take ten minutes.

25 (Recess taken.)

1 (In open court, jury present.)

2 THE COURT: All right. We will resume with
3 cross-examination.

4 BY MR. BOWDEN:

5 Q. All right. Sergeant Talbott, before the break we
6 were discussing the user manual for the Taser that you
7 carried in 2016, and during the break you had a chance to
8 review some of that manual?

9 A. Yes.

10 Q. And you had seen it before in the past?

11 A. Yes.

12 Q. And so I was asking specifically about the drive
13 stun function, and the Taser manual, or the manufacturer,
14 warns through its manual that drive stun is likely to
15 cause a subject to try to separate from the Taser out of
16 automatic reflex.

17 A. Would you like me to read exactly what it says?

18 Q. Sure.

19 A. The subject is likely to recoil and try to get
20 away from the electrodes. It is necessary to
21 aggressively drive the front of the X26 ECD, electronic
22 control device, into the subject for maximum effect.
23 Drive stuns are typically used for pain compliance, which
24 we also use pressure points for which people also try to
25 recoil from, but the object is to gain compliance.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 Q. But, again, it's not only possible that a subject
2 will recoil from the drive stun, they will try to pull
3 away. It is likely that they will try to pull away.

4 A. I'd say that's a fair statement.

5 Q. So more often than not, they will try to pull
6 away?

7 A. I guess they're either going to pull away or
8 they're going to comply. It's their choice.

9 Q. And so the effects that a Taser might cause on
10 drive stun are going to be similar to the effects that it
11 might cause if both probes don't enter the skin causing
12 NMI?

13 A. I don't think that's an accurate statement.

14 Q. But it's primarily going to cause pain. Let me
15 put it this way: It will not cause NMI?

16 A. What won't?

17 Q. One probe inside a person's skin will not cause
18 NMI under any circumstances?

19 A. It won't cause NMI. In theory, no.

20 Q. And so when -- again, NMI is what knocks a subject
21 to the ground and causes them to be unable to further
22 resist.

23 A. Yes.

24 Q. So one probe going in will not incapacitate a
25 subject?

1 A. It won't, but it still -- I've seen it gain
2 compliance.

3 Q. It can, but a person will still reflexively
4 struggle to get away, just like the drive stun?

5 A. The same way they do for a pressure point, pain
6 compliance.

7 Q. And when neuromuscular incapacitation is
8 achieved -- again, we talked about strong muscle
9 contractions, potential involuntary movement, but a
10 person can also feel dazed after being Tased?

11 A. I did not experience that.

12 Q. But people can.

13 A. I can't testify to that.

14 Q. Would you agree this section contains warnings of
15 common effects of neuromuscular incapacitation?

16 A. Yes.

17 Q. And one of the listed effects is a dazed feeling
18 for seconds or minutes following being Tased?

19 A. Can you give me a second to look at it?

20 Q. Sure. It's the sixth item on the list.

21 A. Yes. It says dazed feelings for several seconds
22 or minutes.

23 Q. And it also says involuntary strong muscle
24 contractions as a side effect of neuromuscular
25 incapacitation.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 A. It lists them. Some of these effects may include.

2 Q. Sure, but it's under a section that says common
3 effects of NMI?

4 A. Yes.

5 Q. Thank you.

6 A. It says common effect of NMI.

7 Q. Sure.

8 A. Which was not achieved.

9 Q. So at no point during this interaction did two
10 probes go into --

11 A. Oh, no, they did.

12 Q. Okay. And, again, NMI can only result by two
13 probes going into the skin?

14 A. Correct, but it doesn't always result.

15 Q. Let's talk about report writing a little bit.
16 Part of your training in the academy was to write
17 reports.

18 A. Yes.

19 Q. And you write a lot of reports.

20 A. Yes.

21 Q. You probably feel like you're in report writing
22 hell sometimes.

23 A. It's a lot of paperwork.

24 Q. But they're important.

25 A. Yes.

1 Q. They're important for your superiors. They're
2 important for you when you come here to testify.

3 A. Yes.

4 Q. You reviewed your report prior to testifying
5 today, didn't you?

6 A. I did.

7 Q. And so when you're writing the report, you have
8 that in mind.

9 A. Yes.

10 Q. That your bosses or a Court or yourself may rely
11 on?

12 A. Yes.

13 Q. So it needs to be accurate?

14 A. Yes.

15 Q. It needs to capture the important things that
16 happen, but it also needs to capture some details that an
17 ordinary person wouldn't notice things, that you're
18 specifically trained to notice.

19 A. True, yeah.

20 Q. And you interact with -- you can probably give me
21 a better number, but at least hundreds of people over the
22 span of two years.

23 A. Thousands, yes.

24 Q. Thousands. I thought that might be more accurate,
25 and this case was two years ago, so it's safe to say you

1 have dealt with thousands of individuals between the time
2 that you dealt with Mark Day and the time that you're
3 sitting here right now?

4 A. Yes.

5 Q. And memory fades over time?

6 A. Absolutely.

7 Q. And so it would be -- it wouldn't make any sense
8 to ask you to remember every detail of an incident for
9 two years.

10 A. Okay.

11 Q. Well?

12 A. Repeat your question.

13 Q. It wouldn't make sense to expect you to remember
14 every single detail of an incident for two years.

15 A. No.

16 Q. So an accurate incident report is going to be
17 critical for, ultimately, the jury to understand what
18 happened in this case?

19 A. It's part of the puzzle.

20 Q. I'm going to switch gears on you a little bit.

21 Let's talk about the use of force. We've briefly touched
22 on the use of force matrix, and the use of force matrix
23 is a policy of North Charleston's.

24 A. We have a use of force matrix.

25 Q. Certainly every police jurisdiction has some

1 variant of a use of force matrix?

2 A. Right.

3 Q. But North Charleston has one?

4 A. We have our own use of force matrix, yes.

5 Q. And you received continuing training on that?

6 A. Yes.

7 Q. Because we don't -- because the value of human
8 life is above all else?

9 A. Yes.

10 Q. Officer's safety, certainly, as well as people
11 that officers deal with.

12 A. Yes.

13 Q. And so you need to know when you are allowed to
14 use force to protect yourself.

15 A. Yes.

16 Q. The policy strives to make sure that the force
17 used is reasonable and necessary.

18 A. Yes.

19 Q. So the matrix helps officers make a proper choice
20 of the level of force necessary in an incident?

21 A. Yes.

22 Q. And it's specifically a case-by-case analysis?

23 A. I would say it's a more of a force-by-force
24 analysis because a case could have multiple uses of
25 force, so each one is judged individually.

1 Q. Absolutely, and I think we were saying the same
2 thing.

3 A. Okay.

4 Q. So you can't strictly define what every incident
5 is going to call. You mentioned in this incident, in
6 fact, you could go the level of force you used or even
7 higher, one higher.

8 A. Yes.

9 Q. Based on the level of risk that you perceived.

10 A. Right.

11 Q. And so the policy defines level of resistance an
12 officer might face in the field?

13 A. Yes.

14 Q. And then it defines levels of response that an
15 officer might use?

16 A. Correct.

17 Q. So it goes from the minimal, which is a simple
18 conversation?

19 A. Presence, officer presence, yes.

20 Q. And it goes up through physical control, all the
21 way up to the use of deadly force.

22 A. Correct.

23 Q. The one hard and fast rule in the use of force
24 matrix, maybe not one, but a hard and fast rule in the
25 use of force matrix is that a Taser cannot be used unless

1 you are met with active physical resistance or higher?

2 A. That's correct, active physical resistance or
3 higher.

4 Q. And the officers -- the use of force matrix lays
5 out a set of factors that officers should consider when
6 deciding which of the levels of resistance they're
7 facing, for example, how many suspects there are, and, on
8 the other side of the coin, officers are also required to
9 consider the number of officers present at a scene.
10 Correct?

11 A. Yes, sir.

12 Q. So if we're thinking about this as a scale, if
13 there's -- if there's 100 suspects, one officer,
14 certainly the highest level of force is going to be
15 called for. Just saying, if there's 100 officers one
16 suspect, probably no force is going to be called for.

17 A. Right.

18 Q. So it's inappropriate for an officer to decide the
19 level of force without knowing all the facts.

20 A. Okay.

21 Q. That's not an answer.

22 A. Are you asking me a question or are you making a
23 statement?

24 Q. I'm asking a question. It is inappropriate for an
25 officer to decide the level of force required under the

1 circumstances without first ascertaining the
2 circumstances?

3 A. I would agree with that.

4 Q. So, hypothetically, if you responded to a scene
5 where you were told there were weapons and you saw the
6 suspect's hands and there weren't weapons, you would
7 downgrade the level of use of force that you would have
8 otherwise used?

9 A. Not necessarily. I think the continuing actions
10 of the defendant would dictate -- or the subject would
11 dictate the use of force. Just because it's not in his
12 hands doesn't mean he's not armed.

13 Q. There may be other circumstances that would change
14 that, but you would recognize the threat is less
15 immediate.

16 A. No. If we have information they're armed, they're
17 armed.

18 Q. But if they present their hands to you and show
19 you that they are not armed, are they still armed?

20 A. Our assumption is yes.

21 Q. All right. I'm going to wrap this all up. We'll
22 just get to the specifics of this case.

23 Earlier you testified that you instructed Officer
24 Stewart to Tase Mark Day because he tried to pull his arm
25 away.

1 A. I advised him to Tase him because we were dealing
2 with a subject who was actively and aggressively
3 physically resisting, who was potentially armed with a
4 cutting instrument. Those are the exact facts.

5 Q. Sure.

6 A. And I believe I indicated that in our report.

7 Q. But the immediate cause was Mark Day trying to
8 pull his arm away from you and run past you, is what you
9 testified to earlier.

10 A. I don't know exactly what I said, but I can tell
11 you what I put in my report, and I can tell you what I
12 would testify to now, was that it was because he was
13 aggressively physically resisting a lawful arrest and we
14 had information that he was armed with a cutting
15 instrument.

16 Q. Let's talk about your report. Earlier you
17 testified that Mark Day merely knocks the Taser out of
18 Officer Stewart's hand; is that correct?

19 A. Yes.

20 Q. And that's an important detail in a case where the
21 charge is assaulting a police officer while resisting
22 arrest; is that correct?

23 A. I think that would go to the charge -- a different
24 charge, disarming. I don't know if that's important for
25 assaulting.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 Q. It's certainly the most important detail in a case
2 where the charge is taking a weapon from a police
3 officer?

4 A. I would agree with that.

5 Q. Okay. And so that is the exact kind of detail
6 that you would put in your report.

7 A. You would put the elements of the crime.

8 Q. Right. But if the charge is taking a weapon from
9 a police officer, you would put in your report how the
10 weapon left the officer's possession.

11 A. Yes.

12 Q. That's arguably the critical factor in the case.

13 A. Yes.

14 Q. Okay. And, again, you reviewed your report before
15 you came here today.

16 A. Yes.

17 Q. But you didn't put in your report that Officer
18 Stewart had the Taser knocked from his hand, did you?

19 A. Can I look at it?

20 Q. If it will refresh your recollection.

21 A. It will refresh my recollection.

22 Q. I'm going to mark your supplemental narrative in
23 this case as Defense Exhibit No. 2 for identification.

24 (Defendant's Exhibit 2 marked for
25 identification.)

1 BY MR. BOWDEN:

2 Q. Is this the report that you wrote in this case?

3 A. Yes.

4 Q. In that report -- I'm sorry.

5 A. Okay.

6 Q. And that report says that Mark Day took the Taser
7 and threw it from Officer Stewart's hand.

8 A. Okay.

9 Q. That's what it says.

10 A. It does say that.

11 Q. And you wrote that?

12 A. It says he grabbed that and threw it to the
13 ground.

14 Q. And you wrote that?

15 A. I did.

16 Q. What's changed?

17 A. Either he grabbed it or he slapped it. Either
18 way, his hand made contact with Officer Stewart's hand
19 and it ended up on the ground.

20 Q. But you don't know?

21 A. I know that his hand, the defendant's hand, made
22 contact with Officer Stewart's hand, and the Taser ended
23 up on the ground.

24 Q. But there were two different stories on the tape,
25 and you do not know which one was accurate.

CHRISTOPHER TALBOTT - CROSS-EXAMINATION

1 A. I believe my report is accurate. In the body-worn
2 camera we just looked at, you could see Officer Stewart
3 picking it up from the ground.

4 Q. So you testified falsely today.

5 A. I didn't say that.

6 Q. You said you reviewed the report.

7 A. Whether he grabbed it or hit it, his hand made
8 contact with Officer Stewart's hand, and his Taser ended
9 up on the ground.

10 Q. But we don't know how?

11 A. His hand made contact with Officer Stewart's hand,
12 and the Taser ended up on the ground.

13 Q. And, again, this was after Officer Stewart had
14 Tased him?

15 A. Yes.

16 Q. Which, as we've discussed, can cause involuntary
17 muscle contractions?

18 A. Yes.

19 Q. And, as we've discussed, can cause confusion?

20 A. Yes.

21 Q. Correct? And, as we've discussed, it will
22 reflexively cause a subject to pull away from the Taser?

23 A. Yes.

24 Q. You've been Tased.

25 A. Yes.

1 Q. It wasn't fun, was it?

2 A. It wasn't fun.

3 Q. Did you want it to stop?

4 A. Yes. It also achieved neuromuscular
5 incapacitation with me. It did not with the defendant.

6 Q. But you're not Mark Day?

7 A. No, but I've seen a lot of people Tased.

8 Q. You don't know what effect he was feeling?

9 A. No, but I've seen a lot of people Tased.

10 MR. BOWDEN: No further questions.

11 REDIRECT EXAMINATION

12 BY MR. WARING:

13 Q. Now, Mr. Bowden was talking about how important it
14 is to ascertain the circumstances prior to just waltzing
15 in and Tasing somebody; is that correct?

16 A. Yes.

17 Q. Did you ascertain the circumstances prior to
18 Tasing the defendant?

19 A. Yes.

20 Q. Do you remember this incident fairly clearly?

21 A. Yes. It was one of those ones where the
22 adrenaline gets pumping, and it's cemented in your mind
23 forever.

24 Q. Did you memorize your report verbatim, word for
25 word?

1 A. I did not.

2 Q. Okay. Do you have lots of cases that you deal
3 with?

4 A. Tons.

5 Q. Do you memorize those reports?

6 A. No, we do not.

7 Q. Did you have information that the defendants had
8 weapons?

9 A. Yes.

10 Q. Did that factor into your approach?

11 A. Yes, absolutely.

12 Q. At the time you got there, were they under arrest
13 for shoplifting?

14 A. Yes.

15 Q. Were you allowed to arrest them due to that?

16 A. Yes.

17 Q. Was your use of force compliant with North
18 Charleston police department policy?

19 A. It was.

20 Q. Were you deemed justified in your use of force by
21 higher up authority?

22 A. All the way up the chain of command.

23 Q. Did any authority ever deem that you messed up in
24 this case with your use of force?

25 A. No.

1 Q. Did the first Taser deployment have any effect on
2 the defendant?

3 A. None.

4 Q. Did he kick and assault you and Officer Stewart?

5 A. Yes, he did.

6 Q. Did he take away your Tasers without permission?

7 A. Yes, he did.

8 Q. Was that involuntary?

9 A. No.

10 Q. Now, did you mention earlier that you used one
11 level of force lower than what you could have used?

12 A. That's correct.

13 Q. So, in other words, did you use the most harsh
14 amount of force that you could, based on these
15 circumstances?

16 A. No.

17 Q. Did the defendant pull the prongs out, do you
18 recall?

19 A. I don't recall.

20 Q. Did he run?

21 A. He ran away.

22 Q. Was that involuntary?

23 A. No.

24 Q. Now, you mentioned you were Tased as well. Did
25 you, when you were Tased, involuntary have a spasm and

1 kick somebody?

2 A. I did not.

3 Q. Did you voluntarily disarm the person who Tased
4 you?

5 A. I did not.

6 Q. Now, about the drive stun, did you actually make
7 contact with that?

8 A. No.

9 Q. Now, Mr. Bowden was having you read off some
10 instructions from the manual with drive stuns. Do those
11 instructions apply to your attempted drive stun? Did you
12 complete the drive stun?

13 A. I did not complete the drive stun.

14 Q. Okay.

15 MR. WARING: No further questions, Your
16 Honor.

17 THE COURT: Recross?

18 MR. BOWDEN: Briefly.

19 RECROSS-EXAMINATION

20 BY MR. BOWDEN:

21 Q. You just testified the Taser had no effect on Mark
22 Day?

23 A. Correct.

24 Q. But that's not accurate.

25 A. In my experience, that's accurate.

1 Q. After -- but no effect and NMI are different?

2 A. Yes.

3 Q. So it certainly had an effect?

4 A. It did not achieve compliance.

5 Q. But when Mark Day was begging you to stop, begging
6 you not to Tase him again, can you say that's no effect?

7 A. I don't recall him saying to stop Tasing him. It
8 was chaotic, and there was a bunch of screaming. Every
9 technique we use has some level of pain compliance where
10 any human being is going to -- that's the whole point of
11 pain compliance, apply the pain to gain compliance. Once
12 the compliance is gained, you stop the pain.

13 Q. Sure. And you told Mr. Waring that Mr. Day
14 running away was not an involuntary response.

15 A. Yes, I told him that.

16 Q. But as he was running away, he ran into a parked
17 car; is that correct?

18 A. That's correct. No, I'm sorry. It was not
19 parked.

20 Q. It was not parked?

21 A. It was not parked.

22 Q. It was not parked, and the officer driving it was
23 not out of the vehicle?

24 A. That's correct. He was driving across the parking
25 lot.

~~JAMES STEWART - DIRECT EXAMINATION~~

1 Q. So he hit Mr. Day with the car?

2 A. Clearly from the picture you can see that he ran
3 into the side of it.

4 Q. And interaction between a moving vehicle and a
5 pedestrian is typically described as the vehicle hitting
6 the pedestrian, correct?

7 A. Not when somebody runs into the side of you.

8 Q. Even when it's the pedestrian's fault, the vehicle
9 hits the pedestrian?

10 A. No.

11 MR. BOWDEN: Beg the Court's indulgence. No
12 further questions, Your Honor.

13 THE COURT: You may step down. Thank you.
14 Next witness.

15 MR. DuTREMBLE: State calls Officer James
16 Stewart.

17 JAMES STEWART,
18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. DuTREMBLE:

22 Q. Good afternoon, Officer Stewart. Could you tell
23 the jury where you're employed?

24 A. North Charleston police department.

25 Q. How long have you been with North Charleston?

1 A. A little over three years.

2 Q. Any prior law enforcement experience?

3 A. I do not.

4 Q. During your time with North Charleston, what are
5 some of the various assignments you've had?

6 A. I worked with central, which is the central part
7 of the city, patrolling, do some SWAT exercises also, the
8 support team.

9 Q. And what is your present assignment?

10 A. Central evenings.

11 Q. Have you ever been a patrol officer?

12 A. This is the first time.

13 Q. And what are some of the duties you now have as a
14 patrol officer?

15 A. Patrol the streets, answer calls, traffic stops if
16 need be.

17 Q. Were you on duty on July 26th of 2016?

18 A. I was.

19 Q. Do you recall responding to the Target on Rivers
20 Avenue that day?

21 A. I do.

22 Q. What happened?

23 A. We were called for a shoplifting incident with two
24 suspects inside the store and possibly outside the store.
25 One possibly had some cutting instruments on them to

JAMES STEWART - DIRECT EXAMINATION

1 remove tags. When we got there, we were advised that
2 that was the accurate -- what we were told is what was
3 going on.

4 Q. Okay. And is that Target in the city and county
5 of Charleston?

6 A. It is.

7 Q. And was Sergeant Talbott the supervising officer
8 on scene that day?

9 A. He was.

10 Q. What did you do when you got to Target?

11 A. Suspects were still inside the store. We were
12 informed by loss prevention that they were still inside,
13 and we were waiting for them to come past the point of
14 last sale.

15 Q. All right. And when you responded, were you in
16 uniform?

17 A. I was.

18 Q. It was obvious that you were a police officer?

19 A. Yes.

20 Q. And what did you do next?

21 A. When the suspects come to the vestibule, which
22 was -- there's two sets of doors coming out of Target.
23 We told both of them to get up against the wall. We were
24 placing them under arrest at that time.

25 Q. How many subjects were there at that time?

1 A. There were two males.

2 Q. And did they comply with your requests?

3 A. To start with, yes.

4 Q. What happened after?

5 A. As we went to go put handcuffs and hands on them
6 to arrest them, they started to struggle and resist.

7 Q. Okay. And which one of these subjects were you
8 trying to detain at that time?

9 A. At this time I was trying to detain Mr. Davis.

10 Q. Okay. And did you have any interaction with the
11 defendant in this case, Mark Day?

12 A. Not initially I did not.

13 Q. How did you become involved with the defendant in
14 this case?

15 A. Once we were detained, Mr. Davis -- I was helping
16 another officer detain Mr. Davis, we had him up against
17 the wall. There was a struggle that started behind me a
18 little bit, and when we -- I thought we had Mr. Davis
19 totally in cuffs. The second one did not latch. I went
20 to help the other officers who were in a physical
21 altercation.

22 Q. How would you describe that physical altercation?

23 A. It was loud. It was very heated.

24 Q. Were blows being thrown at that point?

25 A. Yes.

1 Q. What sort of blows?

2 A. Just wild -- just kicking and slinging arms and
3 all that.

4 Q. Did any of these blows make contact with you?

5 A. I was kicked a few moments later when I went to
6 help the other officers detain Mr. Day.

7 Q. Were those kicks involuntary or intentional?

8 A. They were intentional, just to get away.

9 Q. Okay. Did you use a Taser at that point?

10 A. Yes. Before I was kicked and knocked to the
11 ground, yes.

12 Q. So you deployed your Taser after you had been
13 kicked?

14 A. Before.

15 Q. Before. Was the Taser still actively giving
16 charge at the point you were kicked?

17 A. I do not believe so.

18 Q. Had the Taser been taken out of your hand at that
19 point?

20 A. Yes.

21 Q. How would you describe that taking?

22 A. I believe it was just while swinging it got
23 knocked out of my hand.

24 Q. When you were in the vestibule, how would you
25 describe the defendant's demeanor at the time you

1 interacted with him?

2 A. Just like he was on a rampage. It was just wild
3 swinging and kicking and anything to get away.

4 Q. Did you give him permission to knock the Taser out
5 of your hand?

6 A. No, I did not.

7 Q. What are some of the reasons that would prevent
8 you giving permission to somebody for taking a weapon?

9 A. I would not.

10 Q. Under any circumstances?

11 A. No, sir. Not a suspect or anything; no, sir.

12 Q. And at the time that this stop and detention took
13 place, you were authorized by North Charleston to carry a
14 weapon?

15 A. I was.

16 Q. On and off duty?

17 A. Yes.

18 Q. Okay. Once the defendant managed to knock the
19 Taser out of you and the other officer's hands, what
20 happened?

21 A. The altercation went to the ground. I remember
22 him pulling Taser prongs out, and then he somehow got
23 away from us, went running out the door. We pursued
24 after him.

25 Q. How would you describe the injuries that you

JAMES STEWART - DIRECT EXAMINATION

1 sustained?

2 A. Abrasion and bruising to the knee.

3 Q. Would you recognize those if I showed them to you?

4 A. Yes.

5 Q. I'll put a couple photos on the overhead, Officer.

6 Showing you what has been introduced into evidence

7 as State's Exhibit 6, is this a photograph of you?

8 A. Yes.

9 Q. And what is this?

10 A. That is my knee.

11 Q. And is that as a result of a blow from the
12 defendant?

13 A. I do not know if that's a blow. It's actually
14 being kicked or going to the ground or possibly scraping
15 my knee on the ground.

16 Q. But it's subsequent to a blow that made contact
17 with you?

18 A. Yes, sir.

19 Q. Also going to show you what has been marked and
20 introduced into evidence as State's 4. Is this also a
21 photograph of you?

22 A. Yes, sir.

23 Q. Can you describe what that is?

24 A. It's like an abrasion to the knee.

25 Q. Is that an abrasion or a scar?

1 A. I believe -- I'm not sure what that is.

2 Q. All right. But both of these you sustained after
3 the altercation with the defendant?

4 A. Yes, sir.

5 Q. Just a few more questions for you, Officer. Do
6 you see the defendant in the courtroom today?

7 A. Yes, sir.

8 Q. Can you describe him by something that he's
9 wearing?

10 A. Yes, sir. He's wearing the boots and the khaki
11 pants.

12 MR. DuTREMBLE: Your Honor, let the record
13 reflect that the witness has identified the defendant as
14 present in the courtroom.

15 THE COURT: So ordered.

16 BY MR. DuTREMBLE:

17 Q. Just one more question for you, Officer.

18 A. Yes, sir.

19 Q. Did you happen to see the defendant take a Taser
20 out of Sergeant Talbott's hands?

21 A. I saw it being knocked out of his hands, yes, sir.

22 MR. DuTREMBLE: At this time please answer
23 any questions the defense has.

24 THE COURT: Cross?

25 CROSS-EXAMINATION

JAMES STEWART - CROSS-EXAMINATION

1 BY MR. BOWDEN:

2 Q. Good afternoon, Officer Stewart. How are you?

3 A. Good. How are you?

4 Q. Good. So you just testified you saw Mark Day
5 knock the Taser out of Sergeant Talbott's hand.

6 A. Yes, sir.

7 Q. And he also knocked the Taser out of your hand.

8 A. Yes, sir.

9 Q. It was after you had deployed the Taser?

10 A. Yes, sir.

11 Q. And it was -- and you can't be sure whether there
12 was still an electrical charge at the time that he
13 knocked it out of your hand?

14 A. There was not one that I can be sure of, yes, sir.

15 Q. But you're familiar with the effects of a Taser on
16 a human being?

17 A. Yes, sir.

18 Q. So even when there's not an electrical impulse,
19 there are some lingering effects from having just been
20 Tased?

21 A. Yes.

22 Q. All right. Let's talk about something real
23 boring. We're going to talk about your report in this
24 case.

25 A. Okay.

1 Q. You wrote specifically that Mark Day knocks the
2 Taser out of your hand.

3 A. Yes.

4 Q. And you're taught to write reports. You have to
5 take classes on it.

6 A. Okay.

7 Q. Right? You do training on it?

8 A. Yes.

9 Q. And you obviously put important details in there.

10 A. Okay.

11 Q. Well, I'm sorry. I need you to answer.

12 A. I mean, is that a question?

13 Q. Yes.

14 A. I wasn't sure you were asking a question.

15 Q. Yes, you're taught to put important details in
16 your report?

17 A. Yes.

18 Q. And in a case where the charge is unlawfully
19 taking a police weapon, it's important to note how the
20 weapon was taken from the officer's possession, but you
21 use the word knock. You don't use the word take. Why is
22 that?

23 A. That's just what I wrote and put in my report.

24 Q. Right, but those are different concepts.

25 A. Well, knock can be knocked out. It can be like he

JAMES STEWART - REDIRECT EXAMINATION

1 was grabbing for it. It was just a general, just --
2 because he did not specifically just, from what I can
3 remember, grab and throw it on the ground. That's why I
4 did not put grabbed or whatever.

5 Q. Right. And so you would agree that take and knock
6 are different concepts?

7 A. No, not really. I mean, it's two different
8 things, but it doesn't mean that it's still taken away.

9 Q. Right, but if it had been taken from you, you
10 would have written that?

11 A. Yes. Physically grabbed, and, yes, taken, yes.

12 Q. But instead it was knocked from your hands.

13 A. Correct.

14 MR. BOWDEN: Beg the Court's indulgence. No
15 further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. DuTREMBLE: Very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. DuTREMBLE:

20 Q. Officer Stewart --

21 A. Yes, sir.

22 Q. I believe your testimony just now was that taking
23 implies removing something from your possession?

24 A. Yes.

25 Q. And that's the context in which you used knock in

1 your report?

2 A. Yes, sir.

3 Q. Okay. And you also testified to Mr. Bowden that
4 you were sure at the time that the Taser was knocked out
5 of your hand there was no electrical charge flowing out
6 of it?

7 A. Yes.

8 Q. And you said you had Tased him prior to being
9 assaulted, correct?

10 A. Yes.

11 Q. Were those gentle or forceful blows that you
12 received?

13 A. It was forceful because it knocked me to the
14 ground pretty hard.

15 MR. DuTREMBLE: No further questions, Your
16 Honor.

17 THE COURT: Recross?

18 MR. BOWDEN: No further questions, Your
19 Honor.

20 THE COURT: You may step down. Next witness?

21 MR. DuTREMBLE: Your Honor, at this time the
22 State rests.

23 THE COURT: Okay.

24 Folks, I had hoped we would finish up today,
25 but it doesn't look like we're going to. We've got to

1 determine if we're going to hear any defense testimony,
2 and then we've got motions and arguments and all of that,
3 so we're just going to bring you back tomorrow morning at
4 9:30.

5 I know when we started today I said we would
6 probably finish today and avoid that, be a problem with
7 anybody coming back tomorrow. I didn't think I would
8 have the rest of week, but I'm not going to take you past
9 tomorrow, I promise you, but I just want to make sure
10 that nobody had any problems, because I know earlier in
11 the week sometimes people were saying they had doctors'
12 appointments and things like that.

13 I can't remember who that was that said that,
14 but I want to make sure that everybody can come back
15 tomorrow, so if that's not a problem, go home this
16 evening, and we will resume tomorrow morning at 9:30.
17 Don't talk to anybody about the case, including other
18 members of the jury. Don't post anything on social
19 media, don't talk to anybody about the case, and if you
20 do talk -- or anybody does approach you about the case,
21 please report that to me tomorrow.

22 So enjoy your evening, and we'll see you
23 tomorrow morning at 9:30.

24 (In open court, jury not present.) Any
25 motions?

1 MR. BOWDEN: The defense would make a motion
2 for a directed verdict, one on the two unlawfully taking
3 a police weapon charge.

4 Your Honor, the State has presented no
5 evidence whatsoever that the weapons were taken from the
6 officers. Taken implies a change in possession. The
7 taking clause of the constitution provides that the
8 government can take -- property and make it its own, so
9 we know the legal meaning of taken.

10 This officer just testified that if it had
11 been taken from his hands, he would have written that.
12 Instead, it's not from his hands, so we would argue that
13 there has been no evidence whatsoever on the central
14 element of the crime of unlawfully taking a police
15 weapon.

16 MR. DuTREMBLE: Your Honor, viewed in light
17 most favorable to the nonmoving party, the State submits
18 we have presented enough evidence to proceed to the jury
19 on all charges. I know we've had a lot talk about
20 semantics in this case, and Officer Stewart has testified
21 that taking implies removing something from someone's
22 possession, so if we're going to go down the semantic
23 path then, I think we have by and large submitted
24 sufficient evidence to survive a motion for directed
25 verdict.

1 THE COURT: I agree. I do believe that
2 knocking the Taser out of the hand does encompass taking,
3 so motion's denied.

4 Do you have something else?

5 MR. BOWDEN: Yes, Your Honor. I make a
6 directed motion to two assaulting police officer while
7 resisting arrest indictments. The State has failed to
8 present any evidence that the actions that caused harm to
9 the officers in this case were a voluntary act as is
10 required for any criminal charge.

11 The Taser causes clear effects. They are
12 common. That's what the testimony has been here today.
13 There's no way to say whatsoever that the Taser in this
14 case did not cause involuntary muscle contractions that
15 resulted in these actions. The Taser manual recognizes
16 that it will be an automatic reflex for individuals to
17 try to separate from a Taser when it does not cause
18 neuromuscular incapacitation.

19 They testified that it did not cause
20 neuromuscular incapacitation, so there is essentially no
21 way in this case that the Taser's being knocked out of
22 their hands or them being kicked or hit in the wrist were
23 a voluntary act that's subject to criminal liability.

24 THE COURT: Well, he has arguably assaulted
25 him before they even Tased him in the struggle, so I

1 think there is direct evidence and substantial
2 circumstantial evidence, and your motion's denied.

3 Anything else?

4 MR. BOWDEN: Not from the defense, Your
5 Honor.

6 THE COURT: All right.

7 Mr. Day, stand up a second. All right.
8 State's presented enough evidence to allow this case to
9 go forward with the jury. We're going to start at 9:30,
10 and you have to decide if you want to put up a defense.
11 That includes you testifying and telling the jury your
12 side of the story.

13 If you recall, I told the jury you are not
14 required to prove you are innocent of the charge. The
15 State has the burden of proving beyond a reasonable doubt
16 that you are guilty, and I have determined that there is
17 enough evidence for the jury to consider that question.
18 So you have to decide if you want to put up a defense,
19 and you have to decide if you want to testify.

20 If you want to testify, you're placed under
21 oath. You can tell the jury your side of the story, and
22 the defense -- or the State would have the right to
23 cross-examine you after your lawyer asks you questions.
24 If, on the other hand, you don't want to testify, I'm
25 going to tell the jury they are not to hold that against

1 you while they are deliberating. That's a constitutional
2 right that you have to testify or not testify, and only
3 you can make the ultimate decision.

4 You don't have to tell me right now what you
5 intend to do, but I am telling you tomorrow morning at
6 9:30 that you've got to make a decision. I suggest you
7 consult with your lawyers. I'm sure you have already
8 talked about it, but you have to make a final decision,
9 talk with your lawyers, any family members you want to
10 talk to about it, but ultimately, tomorrow morning, it's
11 your decision and your decision alone, and you have to
12 tell me what you want to do in that regard.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir, I understand.

15 THE COURT: Okay. So we will see you all
16 tomorrow morning at 9:30. I have some proposed jury
17 instructions. We'll give you those, and you can take
18 them home tonight and look at them, and if you have
19 anything that you want to add, email them to my law
20 clerk. All right? See y'all tomorrow morning.

21 (Recess taken.)

22 (October 18, 2018.)

23 (In open court, jury not present.)

24 THE COURT: Got everybody in the courtroom.
25 What's your plans for today?

1 MS. PROCTOR: The defense rests, Your Honor,
2 at this time, and I have a motion for directed verdict.

3 THE COURT: Okay. Go ahead.

4 MS. PROCTOR: Thank you.

5 I think, Your Honor, taking the evidence in
6 the light most favorable to the State, there isn't any
7 evidence, I don't believe, to convict him on the two
8 charges. As far as assaulting a police officer while
9 under arrest, I think the only evidence that they've
10 shown of the injuries are the ones that the officers
11 received while they were chasing him, and they either
12 fell down -- none of them were because he hit or touched
13 any of them, and I think, at the most, I would ask that
14 you charge -- directed verdict on assaulting police
15 officer while resisting arrest and just go forward on a
16 simple resisting arrest.

17 And as far as the unlawful taking of a
18 firearm or a weapon, I think the evidence shows that he
19 never actually took the weapon. He was knocking it away
20 while he is being Tased, never picked up the Taser off
21 the ground, never picked up the weapon. The video shows
22 he is trying to get it out of him, pulling out prongs and
23 getting out of him, and I would ask that that case not go
24 to the jury -- that charge, I'm sorry.

25 MR. DuTREMBLE: The State submits that there

1 was testimony from both officers involved. Officer
2 Stewart testified that a kick received from the defendant
3 knocked him to the ground. Officer Talbott, or Sergeant
4 Talbott, testified that one of the marks on his arm in
5 the photograph was from a kick from the defendant.

6 With respect to the disarming or unlawful
7 taking of a weapon, both officers testified that -- well,
8 especially Officer Stewart's testimony indicated that the
9 current was no longer flowing through the Taser at the
10 point the defendant knocked it out of his hands. He
11 testified that, his written report, that it was knocked
12 out of his hands, indicated that he was dispossessed,
13 which is what, in terms of the semantics, the defense has
14 argued yesterday, amounts to the same thing,
15 dispossessing someone of something that is under their
16 control.

17 Additionally, that is a factual determination
18 for the jury to make, and I feel the State has indeed
19 presented enough evidence for that to proceed to the jury
20 as indicted.

21 THE COURT: I agree. There's direct evidence
22 to support both. There's substantial circumstantial
23 evidence to support both, so your motions are denied.

24 So, Mr. Day, we talked yesterday before we
25 left. I told you, you have to make a decision as to

1 whether or not you want to testify, put up a defense.
2 Your lawyer tells me you do not want to testify or
3 present any evidence; is that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand now I will charge
6 the jury they are not to hold that against you while they
7 are deliberating, but, again, you do have the right to
8 testify and tell your side of the story, and you do not
9 want to do that; is that correct?

10 THE DEFENDANT: Correct.

11 THE COURT: How old are you?

12 THE DEFENDANT: Twenty-nine.

13 THE COURT: How far did you get in school?

14 THE DEFENDANT: Eighth grade.

15 THE COURT: Do you work?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What do you do?

18 THE DEFENDANT: Film production.

19 THE COURT: I find your decision is freely,
20 voluntarily, and intelligently made. You can be seated.

21 Let's go over the jury charges then. Other
22 than you guys want a charge of evidence of flight, which
23 I'll address in a minute, did anybody have any changes
24 with what we had sent you home with?

25 MR. DuTREMBLE: I was going to say no

1 objections to the existing charges.

2 MS. PROCTOR: He sent us a copy of his jury
3 charges, and my paralegal is stuck in traffic and I ran
4 out the door and left it in the copier, if I could just
5 see it for a minute.

6 THE COURT: Other than that. Didn't I give
7 it to you yesterday when I left?

8 MS. PROCTOR: Oh your jury charges, yes, sir.

9 THE COURT: Mine were okay?

10 MS. PROCTOR: Yes.

11 THE COURT: Well, as far as evidence of
12 flight goes, you don't actually send a proposed jury
13 charge. You send a case that is relevant under the issue
14 of the admissibility of the evidence, and our courts, or
15 most courts, are very unfavorable about a charge on
16 evidence of flight. It's often deemed to be a comment on
17 the evidence. It doesn't mean you can't argue it.

18 Traditionally, evidence of flight would
19 probably be, if I were to even consider it, would be even
20 more appropriate if a question of the shoplifting charge
21 were being adjudicated by this jury, but, actually, it
22 came in because it's part of res gestae of the crimes
23 charged here, but for me to comment on it, I think, would
24 be an improper comment on the evidence, so I won't charge
25 that, but it's in evidence. You can argue it if you want

1 to.

2 MR. WARING: I understand, Judge. Thank you.

3 THE COURT: Okay.

4 So then we are ready to go forward on
5 arguments. They presented no evidence, so you will
6 charge and -- or you will argue in full, and then you
7 will argue in full. How long do you think you'll need?

8 MR. DuTREMBLE: I'd say maybe 15.

9 MR. BOWDEN: Probably less than 15.

10 THE COURT: Anything else we need to take up
11 before the jury is brought back in?

12 MR. DuTREMBLE: Nothing from the State, Your
13 Honor.

14 MR. BOWDEN: Nothing from the defense.

15 MS. PROCTOR: We would request a charge of
16 resisting arrest without the assault because it does show
17 he was resisting, so --

18 THE COURT: You're asking that as a lesser
19 included?

20 MS. PROCTOR: Yes.

21 THE COURT: Because that's not what he's
22 charged with.

23 MS. PROCTOR: Correct. He's charged with
24 assaulting a police officer while resisting arrest, and I
25 would think the jury could possibly think, well, he was

1 just resisting being arrested, that he was not assaulting
2 the police officers.

3 THE COURT: Do y'all want to address that?

4 MR. WARING: Judge, there hasn't really been
5 any evidence that, I guess, he didn't assault. Your
6 Honor, we think the facts meet the charges, and we ask
7 you just stick with the charges that are charged, Your
8 Honor.

9 THE COURT: Yeah. I don't see where there's
10 any evidence that there was not what could be deemed to
11 be an assault under these circumstances, under the
12 evidence that came in.

13 I mean, it wasn't like he was there passively
14 resisting, he was, according to all the evidence that
15 came in and the videos, it looked to me, and I think to
16 the jury, that there was an active resistance to the form
17 of knocking out of his hands. It might have been a
18 reaction to being Tased, but it goes both ways to support
19 the charge, and you can certainly argue it wasn't an
20 assault, but I don't think there's any evidence that
21 there wasn't some active hitting at the police officers
22 which would, I think, support your argument of it being
23 just resisting arrest.

24 MR. BOWDEN: Your Honor, if I may, just
25 briefly, I think that a jury could find that it was

1 simple resisting arrest, and then whatever actions that
2 the State is alleging amounted to an assault were not
3 willful, so they don't fulfill all of the elements of the
4 assaulting of an officer while resisting arrest, but the
5 actions that led to being Tased the jury might find were
6 normal, simple resisting arrest, and everything that
7 happened afterwards was a direct result of the voltage
8 from the Taser. Additionally, the jury may find that the
9 running afterwards was a simple resisting arrest.

10 THE COURT: Well, I disagree. Based on the
11 facts that were heard, that came into evidence, there was
12 no evidence of just merely resisting the arrest. From
13 the moment that they tried to put handcuffs on him, there
14 were actions on his behalf that rose to the level of at
15 least assault, and that was prior to getting Tased, so
16 I'll deny your request.

17 Anything else?

18 MR. DuTREMBLE: None from the State, Your
19 Honor.

20 MR. BOWDEN: Nothing from the defense.

21 THE COURT: All right. I'm going to ask you
22 when the jury comes in if you intend to call any
23 witnesses, and you can rest in front of the jury.

24 MS. PROCTOR: Thank you, Your Honor.

25 THE COURT: Everybody's here? Okay. Well,

1 bring them on in then.

2 (In open court, jury present.)

3 All right. Welcome back, folks. We will
4 resume now with the defense. Do you have any witnesses
5 you intend to call?

6 MS. PROCTOR: No, Your Honor. At this time,
7 the defense rests.

8 THE COURT: Okay.

9 Well, folks, you have now heard all the
10 evidence that you will hear in this case, and we will
11 move then to the final phase of the trial before you
12 retire to consider your verdict, and that is the final
13 closing arguments of the lawyers, and then I will charge
14 you on the law.

15 The lawyers will now be reviewing the
16 evidence that you heard and that you saw, giving you a
17 little preview of the law that I'll be charging you, and
18 attempting to persuade you to render a verdict on their
19 behalf. Now, I want to remind you the lawyers weren't
20 witnesses. They're not testifying. What they say is not
21 to be considered by you as evidence. It is simply
22 arguments they make.

23 The rule provides the State open with their
24 closing argument, and then that will be followed by the
25 defendant's closing argument, so, Mr. Solicitor, if

1 you're ready, you may begin.

2 MR. DuTREMBLE: Thank you, Your Honor. May
3 it please the Court:

4 Good morning, ladies and gentlemen. I told
5 you yesterday that the unknown always passes for the
6 marvelous until the truth has been laid in front of you
7 and there is no longer any room for the unknown.

8 You've been introduced to the players, to the
9 playing field, and the ultimate outcome of this case.
10 The evidence before you today leaves no room for
11 unknowns.

12 You heard Chris Gravely from Target about
13 seeing the defendant in the surveillance videos. You saw
14 the defendant yourself in the surveillance videos. You
15 saw him and his friend go pick up razor blades from the
16 home improvement aisle. You saw the defendant assault
17 the officers in the vestibule from two angles. You saw
18 Chris Gravely with his arms like this looking directly at
19 the scuffle in the vestibule, and you heard him testify
20 about witnessing the fight and how the defendant almost
21 climbed over the officers, and that's one perspective in
22 this case that dispels the unknowns.

23 You also heard Amber Rossillo, former North
24 Charleston police officer, talk about responding to the
25 scene that day. You saw her body-worn camera footage and

1 the chaos the officers faced and, admittedly, it's not a
2 wonderful piece of cinema. It's not an action video that
3 records each and every blow, each and every punch with
4 clear, gory detail, but it does put you in the middle of
5 the action with the officers, and it lets you see just
6 how quick and explosive this was when it happened.

7 You also heard from Sergeant Talbott and
8 Officer Stewart with regards to the struggle of trying to
9 detain this defendant, putting him in handcuffs, and how
10 he immediately started to resist and pull away. You've
11 heard them tell you about the violent kicking, swinging
12 his arms, how he was being Tased at the time he continued
13 fighting, knocked the Tasers out of their hands, and ran
14 into the parking lot. You've heard that they estimated
15 he ran about 200 yards before he ran into a car and then
16 continued to run for about 25 more after all this
17 happened.

18 Officer Stewart told you that he was on a
19 rampage that day, that he was going to do anything it
20 took not to go to jail that day, and you even heard
21 Sergeant Talbott testify how odd it was that the Tasers
22 had no effects. You heard him say that this incident
23 ranked in the top five fights that he's ever been in, and
24 this was an incident cemented in his mind, and this is a
25 man with 13 years of law enforcement experience with some

1 of the worst areas of the city under his patrol.

2 You heard how all officers were in uniform at
3 the time. They were all on duty. They were all
4 authorized to carry Tasers and firearms, both on and off
5 duty, and you saw how obvious it was the defendant was
6 under arrest at the time this happened.

7 Yesterday I spoke to you about the fact that
8 we live in a time where there's a great deal of public
9 mistrust of the police, and rightfully so at times, but
10 you heard yesterday Sergeant Talbott talk about the North
11 Charleston police department use of force matrix. You
12 have to remember when officers arrived at Target that
13 day, the only thing they knew for certain was that there
14 were two individuals who had some sort of cutting
15 implement.

16 They didn't know which one of them it was.
17 They didn't know what exactly the nature of the cutting
18 implement was, and they didn't know whether or not there
19 was going to be a danger to the public that was shopping
20 at the Target that day or in the parking lot, but they
21 could certainly anticipate that they, themselves, might
22 be in danger when they made contact.

23 What you heard, though, is Sergeant Talbott
24 as the supervising officer made a decision, and all the
25 officers present acted professionally, responsibly, and

1 within the established procedures and protocols
2 established by the North Charleston police department,
3 and they mitigated very effectively the situation that
4 could have been much more dangerous than it turned out to
5 be. And you also heard Sergeant Talbott agree with the
6 defense's cross-examination question that the value of
7 human life exceeds everything else, and they took that
8 into account when they tried to detain the subjects in a
9 contained vestibule, an entryway that there was only one
10 way in and out of, and we do know they did value human
11 life in the way they responded to both of the subjects at
12 the time.

13 They used pain compliance, not deadly force,
14 and he told you that under the matrix, they were
15 responding to a situation with one level of force less
16 than they were authorized to use. You saw the officers'
17 injuries, and at this point we all know that we are lucky
18 none of those wounds were stabs, gashes, or slashes.
19 Remember that the injuries that the officers actually
20 sustained don't have to be extensive or egregious. All
21 that the statute requires to satisfy it is that an
22 officer was assaulted, beaten, or wounded while trying to
23 effectuate a lawful arrest, and the photographs that you
24 see prove that they were, and the testimony that Officer
25 Stewart and Talbott give tells you the same information

1 right from their own mouths, and Chris Gravely, who is an
2 eyewitness mere feet away, told you the same thing.

3 The defense has been playing the semantics
4 game throughout most of this trial. You even heard
5 Mr. Bowden make that quip to Sergeant Talbott on his
6 cross-examination. What they wanted to quibble about the
7 most was the semantics of the taking aspects of the
8 unlawful taking of a weapon from a law enforcement
9 officer. They said that knocking something out of
10 someone's hand isn't the same as taking because to take
11 requires you to remove something from someone's
12 possession, but Officer Stewart clearly testified that by
13 knock, that's what he meant, that he was dispossessed of
14 his Taser at the time that this happened. That equates
15 to a taking.

16 The defense also made a big deal about report
17 writing. They did it in great detail with each and every
18 officer that was on the stand, that reports have to be
19 complete, that they have to be accurate, that they have
20 to contain detail, and they're written at a time close to
21 when the incident happened when it's still fresh in your
22 mind. And then after making all the fuss about the
23 report writing element with Sergeant Talbott, they
24 suggested that his report, which he already testified was
25 an incident that was still, to this day, firmly cemented

1 in his mind, was somehow inaccurate when they read to you
2 the phrase from his report: The defendant took the Taser
3 from Officer Stewart and threw it on the ground.

4 Ladies and gentlemen: We heard a lot about
5 what North Charleston officers did that day, but I want
6 to be crystal clear about one thing: This trial is not
7 now, nor has it ever been, about how the North Charleston
8 officers responded to the incident that day. That
9 happened when the interdepartmental reports and
10 investigation occurred, and all the officers involved,
11 including Sergeant Talbott as the supervising officer,
12 were cleared of any wrongdoing.

13 The only thing that this trial today in this
14 courtroom is about is whether the defendant assaulted
15 police while resisting arrest and whether he unlawfully
16 took a weapon from law enforcement officers. The defense
17 wants you to believe that the electricity from the Tasers
18 somehow turned the defendant into one of those inflatable
19 tube men that you see in a used car parking lot.

20 Officer Stewart said the current of his Taser
21 was off at the time he was assaulted. Sergeant Talbott
22 told you how odd it was for the Taser to have no effect
23 on someone, and the last thing that Officer Stewart told
24 you from that chair yesterday was that the last kick that
25 he received from the defendant was intentional, it was

1 hard, and it knocked him to the ground.

2 Ladies and gentlemen: The evidence that
3 Mr. Waring and I have presented leaves no room for the
4 unknown. At this point you know that the defendant
5 assaulted officers while he was resisting arrest. You
6 know that he took a weapon from their possession.
7 There's no question about any of that, and so the only
8 thing that is left for you to do today is to take all of
9 the evidence that Mr. Waring and I have presented, take
10 the law as Judge Young will instruct you, and at that
11 time, the only thing left is to return a verdict of
12 guilty on all counts.

13 Thank you.

14 THE COURT: Okay. Closing?

15 MR. BOWDEN: Good morning. The State just
16 told you what I did up here yesterday was made a fuss
17 over trivial things. I'm not going to apologize for
18 making a fuss when somebody's liberty is at stake.
19 That's what we're doing here. You're here to determine
20 whether the State proved each and every element of the
21 crimes charged beyond a reasonable doubt.

22 Now, at the beginning of this trial, we
23 mentioned the phrase hands up, don't shoot, and I think
24 we all know that phrase has taken on a political meaning
25 in the last few years, but I want you to ignore that. I

1 want you to think about a TV show, movie you watched, Law
2 and Order, maybe, where the police are surrounding a
3 building. There's a suspect inside trying to figure out
4 his next move. We've got police with their guns trained
5 on the entrance. There's a guy with a bullhorn who yells
6 come out with your hands up.

7 Why does he yell that? Because if that
8 person walks out with their hands up, he will not be
9 harmed. They know when he shows them his hands that
10 there's no weapons there, that if they thought he had a
11 weapon previously, now they know he doesn't. The
12 calculus changed: Less force is required. No force is
13 required. They can simply take that person into custody
14 and take him to jail.

15 You note they say a picture is worth a
16 thousand words. The police officers that you heard from
17 yesterday determined that this picture is worth 50,000
18 volts. The State is here today asking you to find Mark
19 Day guilty of two counts of assaulting and officer while
20 resisting arrest and two counts of unlawfully taking a
21 police officer's weapon, but you've seen the footage.
22 You've seen the body cameras.

23 Brett Davis certainly resisted arrest. When
24 Chris Gravely testified that Mark Day was the one jumping
25 over officers, kicking and screaming, you actually know

1 from the video, you saw that that was Brett Davis. Chris
2 Gravely didn't even know what person we were talking
3 about.

4 So what other evidence has the State given
5 you? Well, you heard from Officer Rossillo. She's a
6 trained report writer. Again, report writing is
7 apparently trivial to the State. I think it's important.
8 She thought it was important. Every officer you heard
9 from testified that it is important. Those details
10 matter, and in a case where the charge is assaulting a
11 police officer while resisting arrest, she didn't report
12 assault. She saw every bit of it. Look where she's
13 standing in this picture. She's right there
14 (indicating). While everyone else was involved in the
15 fray, she had a clear view, unobstructed, not what her
16 body cam saw, what her eyes saw. No assault.

17 Then you heard from Sergeant Talbott. He was
18 one of the officers responsible for Tasing Mark Day. He
19 told you Mark Day's first act of resisting arrest was to
20 pull away, pull his arm away, and try to push past him.
21 At the bottom of this picture, that's Sergeant Talbott.
22 He has Mark Day's hand under control, not pulling away.
23 Behind Mark Day is Officer Stewart. His Taser's already
24 deployed. Remember that Sergeant Talbott instructed the
25 other officers on scene that if they try to run, Tase

1 them, and when they saw the hands open without a
2 weapon -- and, remember, they never found any weapons --
3 the -- didn't change the calculus: Move full speed
4 ahead, Tase.

5 He instructs Officer Stewart to Tase him
6 before Mark Day tried to pull his arm away, but he tried
7 to run, and Tase him he did. Then you heard Sergeant
8 Talbott testify about how the weapon left Officer
9 Stewart's hand. He testified that it was knocked out,
10 and then he agreed that his report said that Mark Day
11 took the Taser out of Officer Stewart's hand and threw
12 it. He said he would refer to his report. He said his
13 testimony was correct. He doesn't know what happened.
14 From his testimony you can't tell what happened. I
15 certainly can't tell what happened.

16 And besides the fact that Officer Stewart
17 stays that certainly didn't happen, Mark Day did not take
18 his Taser and throw it. Obviously, he would be in a
19 position to know. We know that a person's response to
20 being electrocuted by a Taser is involuntary, not only
21 when the probes are in, not only when the electrical
22 current is running, but afterwards. It causes you to be
23 dazed. It caused involuntary muscle movements.

24 Finally, Sergeant Talbott testified that he
25 used -- he went to use his Taser to drive stun Mark Day,

1 and Mark Day knocked it right out of his hand while the
2 probes from the previous deployment were still in him,
3 the electrical current may have still been running, and
4 the State pulled this up as evidence of a crime, while
5 the Taser manufacturer itself says that it is a mere
6 automatic reflex.

7 Finally, you heard from Officer Stewart who,
8 again, disputed Sergeant Talbott's account, but he does
9 claim Mark Day kicked him, which caused him to fall and
10 scrape his knee, but that is only after Mark Day had been
11 Tased the first time, so we have no idea what caused that
12 movement. You had officers saying it was voluntary, but
13 they don't know what's going on inside another person's
14 body. That is entirely speculation.

15 Please don't think that I've spent the last
16 few minutes up here bashing police. That's the farthest
17 from the truth. I work with police every day in this
18 job. They're hardworking public servants who do a
19 necessary and thankless job, and they show up every day
20 and they do it to the best of their ability, and that's
21 commendable and they deserve our respect. There is no
22 excuse, none, for intentionally hurting a police officer
23 while they're doing their job, but that's not what we
24 have here.

25 In a few minutes, Judge Young is going to

1 instruct you on the law that you're to apply during your
2 deliberations, and I want to talk goes that for a couple
3 minutes. Let's talk first about the charge of unlawfully
4 taking a police officer's weapon.

5 You heard from Officer Stewart who said --
6 and he knows how to write reports. He takes classes on
7 it. He needs to be accurate. He needs to be precise.
8 If he thought a weapon was taken from his hand, he would
9 have written that. That's exactly what he said on the
10 stand. You know the difference between taking and
11 knocking. It's not trivial. If the legislature wanted
12 to criminalize knocking a weapon out of an officer's
13 hand, they could have said that. They didn't.

14 During the State's opening, they said the
15 charge was disarming an officer. If that was a charge,
16 Mark Day would be guilty. That is not the charge here.
17 The charge is unlawfully taking a police officer's
18 weapon, leaving the possession of one person and going to
19 the possession of another. That's what we know taking to
20 mean.

21 Turn to the assaulting an officer while
22 resisting arrest charge. The State left out a key detail
23 in that charge. It's not merely that while someone is
24 resisting arrest they hit an officer, it's that they
25 assaulted an officer willfully. That means purposely,

1 intentionally. How can that happen if somebody is
2 subject to involuntary muscle movements in the State
3 didn't call an expert to say these actions were
4 voluntary. The State called police to speculate.

5 Folks, you can't convict on speculation. You
6 have to convict on evidence. In order to convict Mark
7 Day of these offenses, you would have to find that Mark
8 Day kicked Officer Stewart and knocked the Taser out of
9 his hand voluntarily, on purpose, even though he was
10 feeling the effects of a device that creates up to 50,000
11 volts of electricity.

12 For you to convict Mark Day, you would have
13 to find that he hit the Taser out of Sergeant Talbott's
14 hand voluntarily, despite the Taser's manufacturer's
15 warning that it's an automatic reflex. So based on the
16 evidence that the State has put in front of you -- and
17 always keep in mind that the State bears the burden --
18 you have no choice but to find Mark Day not guilty.

19 Thank you.

20 THE COURT: All right. Well, folks, you've
21 now heard the arguments of the lawyers. It is then my
22 duty to now charge you on what the law that applies to
23 this type of case.

24 I told you at the beginning of the trial we
25 have different roles, but we're both judges. You're the

1 judges of the facts; I'm the judge of the law. My job is
2 to preside over the case, make sure both sides get a fair
3 trial, rule on admissibility of evidence, things like
4 that, but it is your job to consider the evidence that's
5 in the trial, and you can consider only the evidence that
6 was presented in this courtroom from the witness stand
7 and from any documents, photos, videos, that sort of
8 thing that was presented during the trial in this
9 courtroom.

10 But in addition to presiding over the trial,
11 I also have the duty to charge you on the law that is
12 applicable to this case. It is your duty as jurors to
13 accept this law and apply it as I now state it to you.
14 If you think you have some idea as to what the law is or
15 what it ought to be and it doesn't agree with you, or
16 what I now tell you the law is, then you are obligated to
17 forget those ideas and accept the law and apply it
18 exactly as I now state it to you.

19 You're the judges of the facts. You are the
20 sole judges of the facts. I, as the trial judge, am not
21 allowed to comment or make any kind of statement or
22 exhibit any kind of feeling that I have about the facts
23 of this case. The law doesn't permit me to have an
24 opinion about the facts of the case. You, the jury, are
25 the sole judges of the facts, and you're not to infer

1 from anything that I said during the trial in ruling on
2 admissibility or otherwise, anything that I said during
3 the trial or during these instructions that I have any
4 kind of opinion about the facts of this case. The facts
5 of this case are solely for you, the jury, to determine.
6 It is your duty to determine the effect, the value, the
7 weight and the truthful evidence that was presented
8 during the trial.

9 I want to remind you that the fact that the
10 defendant was arrested, charged, and indicted in this
11 case is not evidence in this case, and it cannot be
12 considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.
14 The indictments are simply formal written notices which
15 contain the charges made against the defendant.

16 It is the formal document that gives this
17 Court jurisdiction over the case, and, again, there are
18 four different indictments in this case. Two of them are
19 for unlawful taking of a firearm or weapon from a law
20 enforcement officer, and two of them are for assault on
21 police while resisting arrest, and I'll go over the
22 individual elements of those crimes in just a moment.

23 Each indictment, though, charges a separate
24 and a distinct offense. You must decide each indictment
25 separately on the evidence and the law applicable by it

1 uninfluenced by your decision as to any other indictment.
2 The defendant may be convicted or acquitted on any or all
3 of the offenses charged. You will be asked to write a
4 separate verdict of guilty or not guilty for each
5 indictment.

6 Now, the defendant pled not guilty to those
7 indictments, and that plea put the burden on the State to
8 prove the defendant guilty beyond a reasonable doubt. A
9 person charged with committing a criminal offense in
10 South Carolina is never required to prove himself
11 innocent. This is an important rule of law in this
12 country, that a defendant in a criminal trial will always
13 be presumed to be innocent of the crime for which he is
14 indicted unless and until his guilt has been proven by
15 evidence of the crime for which he is indicted -- or will
16 always be presumed to be innocent for the crimes which he
17 is indicted unless and until his guilt has been proven by
18 evidence satisfying you of that guilt beyond a reasonable
19 doubt.

20 This presumption of innocence is not a mere
21 legal theory. It's not just some legal phrase that we
22 throw around. This is a substantial, constitutional
23 right that every defendant is entitled to. This
24 presumption of innocence accompanies the defendant from
25 the time that he is charged throughout the trial and

1 unless and until you reach a verdict of guilt based on
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt.

4 I've said many times beyond a reasonable
5 doubt, and that is the State's burden of proof. I think
6 we talked about at the beginning of the trial, some of
7 you may have served as a juror in a civil case where you
8 were told it was only necessary to prove that a fact is
9 more likely true than not true, which is also called the
10 greater weight of the evidence or a preponderance of the
11 evidence, but in criminal cases, the State's proof must
12 be more powerful than that. It must be beyond a
13 reasonable doubt.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt.
16 Reasonable doubt has also been defined as the kind of
17 doubt that would cause a reasonable person to hesitate to
18 act. There are very few things in this world that we
19 know with absolute certainty, and in criminal cases, the
20 law does not require proof that overcomes every possible
21 doubt. Based on your consideration of the evidence, if
22 you are firmly convinced that the defendant is guilty of
23 the crime charged, then you must find the defendant
24 guilty. On the other hand, if you think there is a real
25 possibility that the defendant is not guilty, then you

1 must give the defendant the benefit of the doubt and find
2 him not guilty.

3 I also want to instruct and emphasize the
4 fact that the defendant did not testify is not a factor
5 to be considered by you in any way in your deliberation
6 and your consideration on the question of the guilt or
7 innocence of the defendant. It must not be considered by
8 you in any manner whatsoever. The defendant has a
9 constitutional right to remain silent, and his assertion
10 of this right must not be considered by you in your
11 deliberations. I repeat: Under the oath that you took,
12 you are to draw no conclusion whatsoever from the fact
13 that the defendant in this case did not testify.

14 The fact that that defendant did not testify
15 should not even be discussed in the jury room. The
16 burden of proof, as I said to you, is on the State. The
17 defendant is not required to prove his innocence. The
18 burden of proof remains on the State to prove guilt
19 beyond a reasonable doubt.

20 During the trial, we have two types of
21 evidence which are generally presented: There's direct
22 evidence, and there's circumstantial evidence. Direct
23 evidence directly proves the existence of a fact and
24 doesn't require deduction. Circumstantial evidence is
25 proof of a chain of facts and circumstances that indicate

1 the existence of a fact. Crimes can be proven by
2 circumstantial evidence, and the law makes no distinction
3 between the weight or value to be given either direct or
4 circumstantial evidence; however, to the extent the State
5 relies on circumstantial evidence, all of the
6 circumstances must be consistent with each other and,
7 when taken together, point conclusively to the guilt of
8 the accused beyond a reasonable doubt. If these
9 circumstances merely portray the defendant's behavior as
10 suspicious, then the proof has failed. The State has the
11 burden of proving the defendant guilty beyond a
12 reasonable doubt.

13 This burden rests with the State regardless
14 of whether the State relies on direct evidence,
15 circumstantial evidence, or some combination of the two.
16 You must determine the credibility of witnesses who
17 testified in this trial, and credibility simply means
18 believability. It's your duty as jurors to analyze and
19 evaluate the evidence and determine which evidence
20 convinces you of its truthfulness.

21 In determining believability of witnesses who
22 testified in this case, you can believe one witness over
23 several witnesses or several witnesses over one witness.
24 You can believe the testimony of a witness in its
25 entirety or reject the testimony of a witness in its

1 entirety. You may believe part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. If you reject part, you can still
4 accept the remainder of the witness's testimony. You can
5 consider whether any witness exhibited to you any
6 interest, bias, prejudice, or other motive in this case,
7 and you can consider the appearance and demeanor of a
8 witness while on the witness stand. You are not bound to
9 decide this case based on the number of witnesses a side
10 produces.

11 I'm going to go over the elements of the two
12 charges here, and, again, you don't have to write any of
13 this down. I'm going to give you a copy of the jury
14 instructions to take back with you, but there are two
15 charges for each of the two different offenses, so the
16 first offense I'm going to go over with you is assaulting
17 a police officer while resisting arrest.

18 Again, there are two indictments, two
19 separate charges. You consider them independently of
20 each other. So the defendant is charged with assaulting
21 a police officer while making an arrest. The State must
22 prove beyond a reasonable doubt that the defendant
23 knowingly and willfully assaulted, wounded, or beat one
24 who the defendant knows or reasonably should know to be a
25 law enforcement officer while the officer is executing or

1 attempting to serve any legal writ or process or making
2 or attempting to make any lawful arrest. Now, the other
3 charge is taking a firearm or other weapon from a law
4 enforcement officer, and, again, there were two separate
5 indictments for that charge.

6 Now, in order to prove the charge of taking a
7 firearm or other weapon from a law enforcement officer,
8 the State must prove beyond a reasonable doubt that the
9 defendant knew or had reason to believe from whom the
10 weapon taken was a law enforcement officer or a
11 corrections officer, that the law enforcement officer or
12 corrections officer was performing his duties as a law
13 enforcement officer or corrections officer, or the
14 individual's taking of the weapon was directly related to
15 the law enforcement officer or correction officer's
16 professional responsibilities, the individual took the
17 weapon without the consent of the law enforcement officer
18 or corrections officer, the law enforcement officer was
19 authorized by his employer to carry the weapon in the
20 line of duty, and the law enforcement officer or
21 corrections officer was authorized by his employer to
22 carry the weapon while off duty and identified himself to
23 the defendant as a law enforcement officer.

24 Now, in determining your verdict of guilty or
25 not guilty, you cannot consider any possible penalty for

1 any particular crime. The punishment is a matter for me
2 to determine and should never be considered by you in any
3 way whatsoever in arriving at your verdict of guilty or
4 not guilty. Your verdict must be unanimous. That means
5 all 12 of you need to agree.

6 Each indictment is a separate charge. You
7 must consider whether the State has met the burden of
8 proving guilt beyond a reasonable doubt as to each charge
9 separately. In other words, just because you find the
10 defendant guilty or not guilty as to one charge has no
11 bearing on the other charges.

12 Now, I'm going to send you back to the jury
13 room here. Don't begin deliberations until I send word
14 back with the bailiff. I have to give the lawyers the
15 opportunity to tell me if I misspoke in some way, and
16 we'll then send the evidence back with the bailiff along
17 with a copy of the jury charges and the indictments.

18 Now, Mr. Foreman, as to the indictments, you
19 will see each of them are separate. On the back of each
20 of them, down below where there is this red stamp that
21 said true bill is the word verdict. You will write what
22 the verdict is as to each one, and your choices are
23 guilty or not guilty as to each charge. Once you have
24 reached a verdict on all four charges, then you let the
25 bailiffs know you have reached a verdict.

1 Please don't begin deliberations until I send
2 word back with the bailiff.

3 (At 10:16 a.m., jury leaves courtroom.)

4 THE COURT: I caught it when I was reading
5 it, but on page six, it says defendant was charged with
6 assault on police while arresting arrest, is what is
7 written here. I think I caught it and said resisting
8 arrest, which is what I scratched through and marked.

9 Anything from the State?

10 MR. DuTREMBLE: Nothing, Your Honor.

11 THE COURT: From the defense?

12 MS. PROCTOR: Nothing, Your Honor.

13 THE COURT: Okay. Make sure we've got all
14 the evidence, and we'll send it back. Let the record
15 reflect I discharged the alternate.

16 (10:18, jury begins deliberations.) All
17 right. We got everybody here?

18 (11:01 a.m., in open court, jury present.)

19 THE COURT: Mr. Foreperson: I understand the
20 jury has reached a verdict; is that correct?

21 THE FOREPERSON: We have.

22 THE COURT: Is it unanimous as to all four
23 charges?

24 THE FOREPERSON: It is.

25 THE COURT: All right. Will you give it to

1 the bailiff, please.

2 All right. The defendant will rise. All
3 right. As to indictments 2016-GS-10-6622 and 6621, those
4 were for assaulting a police officer while resisting
5 arrest, both of those are guilty. As to 2016-GS-10-6619
6 and 6620 for unlawful taking of a firearm or a weapon
7 from a law enforcement officer, both of those are not
8 guilty.

9 All right. Ladies and gentlemen: Would you
10 please raise your hands if that is indeed your verdict on
11 each of those?

12 (Jury complies.)

13 Let the record reflect the jury has all
14 indicated they have raised their hand if that is their
15 verdict. Do you wish to have the jury polled?

16 MS. PROCTOR: No, Your Honor.

17 THE COURT: Okay. All right. You may be
18 seated.

19 All right. Well, thank you, ladies and
20 gentlemen, for helping us resolve this case this week.
21 We can't do it without you. It wasn't that long of a
22 case, but nevertheless, as you can see, it was a very
23 important case, and sometimes we can work them out and
24 sometimes we can't, but at the times we can't, we need
25 you folks to come in and help us, and we cannot do this.

1 This is your government, and you participated this week,
2 and I hope you feel good about your jury service.

3 It's not easy, what we ask you to do, to come
4 in and pass judgment on somebody, but somebody's got to
5 do it, and it takes people like you who are members of
6 the community who are willing to give up some of their
7 time and come in here and help us out, and so you should
8 be, I hope, proud of your jury service this week.

9 You heard an interesting case. A lot of
10 these have varying difficulties of how hard they are, but
11 you all took the time and deliberated. This wasn't a
12 rush to judgment back there. It's clear by your verdict
13 and by the amount of time you took for your verdict that
14 you took your job seriously, and that's all any of us can
15 ask, so we thank you for your service this week, and I
16 hope that you enjoyed it and that you go back out and
17 tell other people that you not only got to serve on a
18 jury, but you enjoyed your jury service.

19 If you didn't enjoy your jury service for
20 some reason, please let me know what we can do to improve
21 it, because we're always looking for ways to improve what
22 we do, and sometimes people call jurors and ask them, you
23 know, about their service. It's perfectly fine if you
24 hear from one of the lawyers in the case; for instance,
25 they might call you to say can you tell us how you

1 arrived at your decision on something because it helps
2 them to do their job better in the future.

3 There's nothing wrong with that, and if you
4 want to talk to anybody, you can. You're not doing
5 anything wrong, but if you don't want to, just tell them
6 you would rather not, and if it persists, just contact
7 the Court and we'll make sure it stops, but I don't think
8 you'll have any problem with that.

9 I've been telling you all week long don't
10 talk to anybody, don't post anything on social media.
11 You're not restricted to talk to anyone about anything.
12 Go back and be good citizens. My advice is stay off
13 Twitter anyway, but, you know, some people can't resist
14 and some people love it, but whatever you want to write
15 on social media you can do. You're not restricted in any
16 way talking to anyone about anything, including your jury
17 service this week.

18 So I appreciate very much your helping us out
19 this week, but you're also finished with your jury
20 service this week. We concluded all the cases that we
21 were going to try this week, so you can leave, go back to
22 work, go home. You got free parking for the rest of the
23 day. You can go, you know, do whatever you want to do
24 downtown if you want. Feel free to take your time, and I
25 appreciate your service and you're free to go.

1 (Jury dismissed.)

2 THE COURT: All right. So we will move into
3 sentencing. Is there anything the State would like to
4 tell me?

5 MR. DuTREMBLE: Yes, Judge. So in addition
6 to the underlying shoplifting, which led to these
7 arrests, there is a conviction for an aggravated breach
8 of peace, and there are some pending carjackings and four
9 assault and battery seconds out of Lexington County.

10 MS. PROCTOR: And, Your Honor. I object. I
11 would ask you not consider those. Those are pending
12 charges. He knows nothing about those carjackings. They
13 gave him a bond.

14 THE COURT: I don't.

15 MS. PROCTOR: Thank you.

16 THE COURT: Okay. Is there anything y'all
17 would like to say?

18 MS. PROCTOR: Yes, Your Honor. Mr. Day is
19 29 years old. This happened two years ago. He has been
20 working. As you see, he always showed up for everything
21 that he's supposed to, and I will tell the Court, in
22 February of this Court in Berkeley, he was convicted and
23 received five years suspended on three years' probation,
24 so he's been on probation. He's been doing fine on
25 probation.

1 He's got family support that have been here
2 every day. He's been showing up for all his client
3 meetings for the past two years. Because he's on
4 probation, I would ask that that just continue because I
5 think in the last two years he has been doing well, and,
6 again, I'm just asking that you please consider
7 probation.

8 He spent -- when he was arrested for this, he
9 was in jail for 37 days before he was able to bond out,
10 so he has, before this, no prior record.

11 THE COURT: All right.. Mr. Day, would you
12 like to say anything?

13 THE DEFENDANT: I have completed a drug rehab
14 program. I've been doing very well. I still have a long
15 way to go, but I am trying to change my life.

16 THE COURT: So what was this whole incident
17 about?

18 THE DEFENDANT: I was at the wrong place at
19 the wrong time.

20 THE COURT: Well, I'm always trying to get my
21 head around why people do the things they do, people go
22 in and steal for various reasons. Usually it's drugs,
23 alcohol.

24 THE DEFENDANT: It was drugs, yes, sir.

25 THE COURT: But I'm curious. When you walk

1 out of there and you see four police officers waiting on
2 you and they put you in -- you're put under arrest,
3 clearly, you decide, well, I like my chances, and I'm
4 going to get out of here, I don't understand what you're
5 thinking.

6 THE DEFENDANT: Sir, I put my hands on the
7 wall, and I've shoulder pain. I just recently had a
8 shoulder injury. I separated my shoulder, and the
9 officer grabbed my arm, and I said my arm doesn't bend
10 that way. And you can't hear it on the video because
11 Brett was kicking and screaming and all, carrying on.

12 But I said, Please, just let me put my arm
13 down, and they said, Quit resisting. And I said, I'm not
14 resisting. My arm don't bend that way, and then they
15 Tased me, and it went south from there. I was trying to
16 get away from him.

17 MS. PROCTOR: Your Honor, I think in the
18 picture it does show his arm is only going up that far
19 (indicating). That's as far as --

20 THE DEFENDANT: You can see the top of my
21 shoulder blades. My rotator cuff was in pain.

22 MS. PROCTOR: They took him to EMS -- the
23 police officers took him to EMS afterwards.

24 THE DEFENDANT: I was 100 percent
25 cooperating.

1 THE COURT: Anything else?

2 MS. PROCTOR: No, Your Honor.

3 THE DEFENDANT: I just hope the Court has
4 mercy on me, sir, and I do respect authority. I have
5 authority in my family.

6 THE COURT: Well, I don't know what you were
7 thinking. Clearly, who's at fault, you're certainly
8 responsible for your own actions. You can't blame
9 anything on anybody else. From what I understand, the
10 other gentleman isn't alive. I don't know what happened
11 to him.

12 You're facing up to ten years on this. What
13 I'm going to do is give you five years suspended on the
14 successful completion of three years of active time,
15 follow it up with two more years of probation. You'll
16 get credit for the 37 days that you have served.

17 Good luck to you. They'll run concurrent.

18 - - -

19 (Whereupon, the proceedings were concluded.)

20 - - -

21

22

23

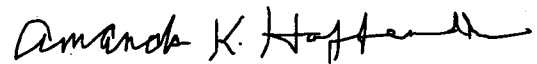
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25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 18th of October 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 22, 2019



Circuit Court Reporter

TRW/0319974
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2016-022504

ARREST WARRANT NUMBER

2016A1010203457

DATE OF ARREST

07/26/2016

ACTION OF GRAND JURY

Ch...
TRUE BILL ED 13 2016
Foreperson of Grand Jury Date:

VERDICT

Not Guilty

Thur...
Foreperson of Petit Jury

Date: 10/12/18

DOCKET NO. 2016-GS-10-06620

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

DECEMBER TERM 2016

THE STATE

VS.

MARK EMIL DAY
W/M DOB: [REDACTED]

Indictment for

WEAPONS / UNLAWFUL TAKING OF
FIREARM OR WEAPON FROM A LAW
ENFORCEMENT OFFICER

SC Code: § 16-23-0415
CDR Code: 3202

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

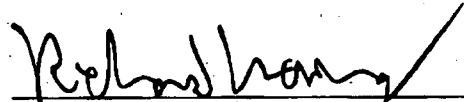
INDICTMENT

At a Court of General Sessions, convened December 2016, the Grand Jurors of Charleston County present upon their oath:

**WEAPONS / UNLAWFUL TAKING OF FIREARM OR WEAPON FROM A LAW
ENFORCEMENT OFFICER**

That in Charleston County on or about July 25, 2016, the defendant, Mark Emil Day, did take away a firearm, stun gun, or taser device from the person of Sgt. Talbott, a law enforcement or corrections officer. That, in addition, (1) the Defendant knew or had reason to believe the person from whom the weapon was taken was a law enforcement officer or a corrections officer; and (2) the law enforcement officer or corrections officer was performing duties as a law enforcement officer or a corrections officer, or the Defendant's taking of the weapon was directly related to the law enforcement officer's or corrections officer's professional responsibilities; and (3) the Defendant took the weapon without consent of the law enforcement officer or corrections officer; and (4) the law enforcement officer was authorized by his employer to carry the weapon in the line of duty; and (5) the law enforcement officer or corrections officer was authorized by his employer to carry the weapon while off duty and had identified himself as a law enforcement officer. This is in violation of Section 16-23-415 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



T. RICHARD WARING
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D. Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

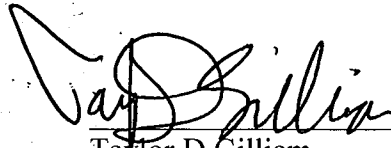
ATTORNEY FOR APPELLANT

This 27th day of August, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of August, 2019.

RECEIVED
AUG 27 2019
SC Court of Appeals