

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

[REDACTED]

Defendant.

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) 16-CF-15
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REPORT OF PROCEEDINGS in the above-captioned case
on November 29, 2016, before the Honorable Judge
STEVEN L. GARST, Judge of said Court.

APPEARANCES:

MR. MARK ISAF
EDGAR CO STATE'S ATTORNEY
115 West Court St.
Paris, IL 61944
Appearing on behalf of the
State,

MRS. JUDE M. REDWOOD
REDWOOD LAW OFFICE
P.O. Box 864
St. Josph, IL 61873
Appearing on behalf of the
Defendant.

SHARON L. WENTE
Official Court Reporter
CSR # 084-003251
Edgar County Courthouse
Paris, IL 61920

1 DIRECT EXAMINATION

2 BY MR. MARK ISAF:

3 Q. Would you state your name.

4 A. Dee Burgin.

5 Q. What's your current occupation?

6 A. Deputy sheriff.

7 Q. How long have you been so employed?

8 A. 13 years.

9 Q. Were you employed in that capacity on December 26,
10 2015?

11 A. Yes.

12 Q. And did you have an occasion to go to the
13 residence of [REDACTED]?

14 A. Yes.

15 Q. Why did you go to the residence?

16 A. I was in Hume serving a civil process paper, and I
17 observed [REDACTED] to be driving down the street headed out
18 toward 36, and I know him from my investigation that I had
19 been conducting on him, to be revoked to drive.

20 Q. Had you had prior dealings with Mr. [REDACTED]?

21 A. Yes.

22 Q. So did you recognize -- how did you recognize him
23 on sight?

24 A. I looked right through the window and seen him.

1 Q. How close was he at the closest point to you when
2 you recognized him?

3 A. Approximately 50 feet.

4 Q. You indicated then that you were completing civil
5 process?

6 A. Yes.

7 Q. That's when you first notified -- or noticed him.

8 A. Yes.

9 Q. What did you do after then noticing him in a motor
10 vehicle?

11 A. I got back to my car. I noted he was traveling
12 pretty fast, so I got in my car. I had to back out of the
13 driveway. It was raining, so I was making sure that there
14 was nothing coming because there was a little haze in the
15 air yet. Then I attempted to catch up with him. Well,
16 when I got backed out headed south, I noted that he turned
17 on 36 eastbound, which I know him to live just on the
18 outside of Hume.

19 Q. So, how far behind Mr. [REDACTED] would you have been
20 in your vehicle?

21 A. At that point quite a ways.

22 Q. What, if you could --

23 A. I would say probably --

24 Q. -- give the Court what "quite a ways" means?

1 A. I would estimate seven, eight blocks.

2 Q. And at this point that you lost sight of him,
3 where did you think he was going?

4 A. I figured that he was going to his house.

5 Q. So where did you go?

6 A. When I made it to 36 where I had seen him turn
7 east, I looked east, and I could see his brake lights. He
8 hit his brakes and was pulling into his driveway.

9 Q. What did you do?

10 A. I accelerated, trying to get there before he got
11 out of the car. When I got in the driveway, he had already
12 gotten out of the car and went in the house.

13 Q. And when did you next see Mr. [REDACTED]?

14 A. I got out of my car, and was walking towards the
15 house and the garage door started opening. And I seen him
16 coming out of his house toward the opening garage door.
17 Once it got high enough, I could see him.

18 Q. Could you describe then the garage in relation to
19 the house?

20 A. Yes, it's attached.

21 Q. So he could enter it from inside the house in the
22 garage?

23 A. Yes.

24 Q. And that's when you picked him up when the door

1 got to your eyesight or level?

2 A. Yes.

3 Q. What occurred at that point?

4 A. I stepped up to the break of the door so the door
5 could not be shut on me, and made contact with him.

6 Q. How did you make contact?

7 A. Well, first off, I asked his name to see if he was
8 going to be cooperative and give me his name.

9 Q. Did he?

10 A. Yes, he did.

11 Q. And what happened after that?

12 A. I told him I seen him driving in Hume, and I was
13 going to arrest him for driving while revoked.

14 Q. And what was his response?

15 A. He became aggressive toward me, told me to get out
16 of his garage. He came walking at me. When he reached me
17 within a few inches, he extended his hand like this
18 (indicating) and was going to push me. And I told him not
19 to touch me.

20 Q. What did you do in response to his presence near
21 you physically?

22 A. I withdrew my Taser, because he was approaching me
23 aggressively. He -- I stepped back. He stepped back. And
24 I did get my Taser out. He turned, and started walking

1 like he was going to go back into his residence, and I told
2 him he could not do that.

3 Q. And was -- what was it you did to prevent him from
4 walking away from you?

5 A. I pointed my Taser at him and advised him to stop,
6 that he was under arrest.

7 Q. Did he stop?

8 A. Yes.

9 Q. Does a Taser have a red dot?

10 A. Yes.

11 Q. Does a Taser have a bright yellow top or colored
12 top?

13 A. Yes.

14 Q. What did you -- what did you do once you advised
15 him to stop and he stopped?

16 A. Once he cooperated, I put the Taser away, and I
17 handcuffed him.

18 Q. Now, this is already after you had identified why
19 you were there?

20 A. Yes.

21 Q. And explained to him what you were going to do?

22 A. Yes.

23 Q. Now, once you indicated you cuffed him?

24 A. Uh-huh.

1 Q. What occurred at that point?

2 A. I told, you know, told him that he was under
3 arrest for driving on revoked. I advised him that I also
4 had drug information from a confidential informant that
5 there was drugs in the residence. I asked for consent to
6 search his residence. He denied. I said -- I believe he
7 said, "Take me to jail". So, I attempted to take him to
8 jail. He said, "Oh, no, don't do that. Don't do that. I
9 want to work out a deal."

10 Q. Let me ask you -- stop. Stop there. And did you
11 search him?

12 A. Yes.

13 Q. And that was after putting the cuffs on him?

14 A. Yes.

15 Q. And after telling him he was under arrest for
16 driving as you described?

17 A. Yes.

18 Q. What did you find on his person?

19 A. When I searched his person, I found the cash, his
20 cell phone. I found skittles. I found a little container
21 with white powder.

22 Q. Did you ask him what the white powder was?

23 A. Yes.

24 Q. Did he identify it?

1 A. Yes.

2 Q. What did he call it?

3 A. At first he didn't want to tell me what kind of
4 pill he crushed up, and then he told me it was Sudafed
5 crushed up.

6 Q. Did he indicate why he had crushed Sudafed?

7 A. I don't recall if he did right at that point, but
8 he did later.

9 Q. Now, with regard to the process you were -- in
10 the -- you were describing that I interrupted you, you
11 indicated that you and he were talking about whether or not
12 he was going to jail?

13 A. Yes.

14 Q. Did you end up taking him to jail immediately?

15 A. No.

16 Q. Why not?

17 A. Because every time I would get ready to take him
18 to jail, he would ask -- he would break down, ask me to cut
19 him a break, give him a deal. You know, please don't take
20 me to jail. He would start plea-like bargaining with me.

21 Q. Did you and he discuss search of his home?

22 A. Yes. Many times.

23 Q. When in the conversation did the search of his
24 home come up?

1 A. I don't recall exactly when it came up. Whether
2 it was after -- I don't know if it was before I cuffed him
3 or after I cuffed him.

4 Q. At the time you were involved with Mr. [REDACTED]
5 were you wearing a body camera?

6 A. Yes.

7 Q. Was it activated?

8 A. Yes.

9 Q. Did you advise the Court when it was that you
10 activated the body camera?

11 A. When I exited my car and I was walking up toward
12 the vehicle that I had seen him driving.

13 Q. With regard to the discussion about what I'm going
14 to refer to as Defendant's Exhibit Number 2 -- may I
15 approach, Your Honor?

16 THE COURT: You may.

17 Q. I am going to hand you what's been marked as
18 Defendant's Exhibit 2.

19 A. Okay.

20 Q. And ask you to identify what that is?

21 A. That's a search waiver and consent to search form.

22 Q. And how or when do you use this form?

23 A. I use this very commonly any time I'm asking to
24 search a vehicle or a house.

1 Q. Do you recognize the handwriting on the form?

2 A. Yes.

3 Q. How much of that handwriting is yours?

4 A. It is all mine, except for the signature.

5 Q. And the signature is where, the third line from
6 the bottom?

7 A. Yes.

8 Q. You heard the testimony from Mr. [REDACTED]
9 indicating that the third box checked was not on there when
10 he signed it?

11 A. Yes.

12 Q. Can you advise the Court how that form was filled
13 out and when?

14 A. I filled it all out, give it to Mr. [REDACTED] to
15 read. I don't even recall that he really even read it. He
16 was willing to consent quickly, and wanted to get it done
17 and over with so he didn't go to jail. I know he looked at
18 it, and I know he signed it.

19 Q. At the time he signed it, was the form complete as
20 it is now?

21 A. Yes.

22 Q. Was that third box where Miranda rights filled out
23 by you?

24 A. Yes. It's a standard. I do that on all the

1 consent forms.

2 Q. But was it on there prior to Mr. [REDACTED] signing
3 it?

4 A. Yes.

5 Q. What does that mean, that indication on the form?
6 What does that mean?

7 A. Well, it says "Miranda rights".

8 Q. What does that mean?

9 A. That's his right to remain silent.

10 Q. Was he given those rights?

11 A. I never read them out loud.

12 Q. Which means what?

13 A. Huh?

14 Q. What does that mean when you say, "You never read
15 them out loud"?

16 A. I never read his Miranda rights out loud to him.

17 Q. So was he given something to read?

18 A. He was just given this form.

19 Q. So when it says "Miranda rights", it's never
20 explained to him what those Miranda rights are?

21 A. No.

22 Q. So, in your time with Mr. [REDACTED] in the garage,
23 was he given his Miranda rights?

24 A. No.

1 Q. So when you say, we're talking about Miranda
2 rights, that's the right to remain silent?

3 A. Yes.

4 Q. And it's a right to seek counsel?

5 A. Yes.

6 Q. And he was never advised of that, correct?

7 A. Correct.

8 Q. So this is, for lack of a better term, a
9 preprinted form?

10 A. Yes. It's a standard form we use.

11 Q. So when you indicate that you those boxes were
12 checked, you just filled in the information related to his
13 vehicle?

14 A. Yes, his vehicle and his house.

15 Q. When in the confrontation with Mr. [REDACTED] in the
16 garage, and I'm talking lengths of time, because it should
17 be recorded on your body cam; is that correct?

18 A. Yes.

19 Q. How long into the time with Mr. [REDACTED] would we
20 expect to see this waiver consent form?

21 A. I was there quite a while, because I had to have
22 another officer come to assist me. I wasn't willing to
23 uncuff him due to the fact he did come toward me
24 aggressively. And I explained to him that I needed a

1 second officer. And I was the only one on duty, so they
2 had to call around and find somebody. So I would estimate
3 maybe 20, 25 minutes. While we were waiting, several times
4 I attempted to go ahead and take him to jail, but he would
5 plea bargain with me, no, don't do that. I'll cooperate.
6 And he would strike up conversation with me, which, in
7 return, would spark me to ask questions. We went back and
8 forth until the other officer got there.

9 Q. So while he was arrested with the driving
10 incident, you and he had a running conversation captured on
11 your body cam?

12 A. Yes.

13 Q. Have you reviewed the body cam video taken from
14 that day?

15 A. Yes.

16 Q. And you're fairly confident then that your entire
17 communication with Mr. [REDACTED] is on the recording?

18 A. Yes.

19 Q. And that would include then the circumstances
20 involving the waiver and consent?

21 A. Yes.

22 Q. It would include the handcuffing and arrest of
23 Mr. [REDACTED]?

24 A. Yes.

1 Q. It would include the search incident to that
2 arrest?

3 A. Yes.

4 Q. Did you wear it into the house?

5 A. Yes.

6 Q. It was on is what I meant?

7 A. Yes. Yes.

8 Q. Now, when you were in the garage, did you notice
9 any -- let me withdraw that.

10 When you were in the garage dealing with
11 Mr. [REDACTED], what did you notice in the garage?

12 A. I noticed materials consistent with meth
13 manufacturing.

14 Q. What would those materials have been?

15 A. I seen Coleman fuel. I believe I seen a mason jar
16 that had what appeared to be maybe salt in the bottom of
17 it. And it was bubbling. It had a clear liquid and was
18 bubbling. I just -- I know those kind of items to be
19 consistent with my past experience with methamphetamine
20 labs. I also seen liquid fire in the garage, which is
21 another component that fires the lab to make it bubble.

22 Q. Now, you have heard Mr. [REDACTED] testify with
23 regard to, I guess, a negotiation for probation or first
24 offender probation?

1 A. Yes.

2 Q. Do you recall that?

3 A. Yes.

4 Q. Did you have a conversation with him with regard
5 to the potential outcome?

6 A. Yes.

7 Q. How did that come about?

8 A. I told him that, you know, if he cooperated, I
9 would not take him to jail. I would not charge him for
10 driving while revoked. We would take the illegal items,
11 and I would do a report and forward to you, and then that
12 most of the time, I mean, you give first-time offender
13 probation for this kind of stuff.

14 Q. Was there any -- was that conversation again
15 recorded on the body cam?

16 A. Yes. I don't know if that's word for word, but
17 that was the gist of the conversation.

18 Q. Did you take him to jail?

19 A. No.

20 Q. How long did the -- I want to call it, the back
21 and forth between you and he with regard to whether he
22 would search -- allow the search or want to be taken to
23 jail occur?

24 A. How long did it last?

1 Q. Yeah, estimate time-wise?

2 A. 20 to 30 minutes.

3 Q. So the first -- so if the first 52 minutes on the
4 recording you believe that would fairly capture the
5 conversation between you and Mr. [REDACTED] with regard to
6 whether or not he wanted to be taken to jail or whether or
7 not he would consent to the search?

8 A. Yes.

9 Q. Who initiated the conversation about searching the
10 house after you -- well, let me withdraw the question.

11 During the time with Mr. [REDACTED] in the garage,
12 did he indicate that he wanted the services of a lawyer?

13 A. Yes.

14 Q. And what occurred at that point?

15 A. He said it maybe three different times. And then
16 after he would say it, I would get ready to take him to
17 jail, and he would say, no, I want to work out a deal. And
18 he would initiate more conversation about searching versus
19 a search warrant. I asked him if he had a lawyer, and he
20 said no. He never indicated that he had a lawyer; but he
21 did indicate, I believe it was three different times, that
22 he wanted a lawyer. So I would prepare to take him to
23 jail, and he would change his mind and try to plea bargain
24 not to go to jail.

1 Q. So who is it that you think then initiated the
2 conversations with regard to making a deal not to go to
3 jail?

4 A. At first I told him, I offered the deal of not
5 going to jail. And then after that, each time I would get
6 ready to take him to jail, then he would bring it back up,
7 and, you know, beg me not to take him to jail. He would
8 cooperate, that sort of thing.

9 Q. And, so, is it fair to say he vacillated or
10 waffled between cooperating and not cooperating?

11 A. Yes, numerous times.

12 Q. At any time during your conversation with
13 Mr. [REDACTED], did he indicate that he was going to waive
14 contacting a lawyer?

15 A. He never verbally stated that. Each time he would
16 just spark up conversation begging not to go to jail.

17 Q. Have you had prior law enforcement encounters with
18 Mr. [REDACTED]?

19 A. Yes.

20 Q. What did that involve?

21 A. I don't recall exactly the details. It's been
22 many years ago, but we were called there one night. I
23 believe it was for a domestic issue.

24 Q. How many years are we talking prior to December of

1 2015?

2 A. Probably three to five years.

3 Q. So do you recall any instance where you physically
4 put your hands on Mr. [REDACTED]?

5 A. No.

6 Q. Had you arrested him previously for marijuana
7 possession?

8 A. Yes.

9 Q. Was that at his house?

10 A. Yes.

11 Q. Do you know how long ago that was?

12 A. It was the same time we were there for this
13 domestic, so three to five years ago.

14 Q. No further questions, Your Honor.

15 THE COURT: Cross-examination?

16 MS. REDWOOD: Thank you.

17 CROSS-EXAMINATION

18 BY MS. JUDE REDWOOD:

19 Q. You testified that you knew Mr. [REDACTED] was,
20 license was revoked, right?

21 A. Yes.

22 Q. And you testified that on December 26th of 2015
23 you knew that?

24 A. Yes.

1 Q. And when was the last time you had checked the
2 status of Mr. [REDACTED] driver's license prior to that
3 date?

4 A. Just a few days.

5 Q. Why were you checking the status of his license?

6 A. Because I was receiving information about the drug
7 activity going on at his house. And the -- I also had
8 received information about the vehicle he had been driving.

9 Q. And you admitted that Mr. [REDACTED] initially told
10 you to get out of his garage, correct?

11 A. Yes.

12 Q. All right. And why didn't you leave?

13 A. Because he was -- had been driving revoked, and I
14 was going to arrest him.

15 Q. And did you feel that it was lawful for you to
16 arrest him for driving on a revoked within his home when
17 you had no permission to be in there?

18 A. Yes.

19 Q. And you agree you had no permission to be in
20 there; is that correct?

21 A. Yes.

22 Q. Isn't it true that Mr. [REDACTED] asked you five or
23 six times, just take me to jail, and you said no?

24 A. I don't recall ever saying no.

1 Q. Do you agree that the body cam video, which you
2 reviewed, is a fair and accurate representation of what
3 occurred on that date?

4 A. Yes.

5 Q. You testified today, "I activated my body cam when
6 I exited my car and was walking up the driveway." Do you
7 remember that testimony?

8 A. Yes.

9 Q. However, in your police report, you state, "He
10 opened the garage door and I stepped into the opening out
11 of the rain to speak to [REDACTED]. I activated my body
12 camera." So we have a discrepancy there. What's correct?

13 A. It was pouring down rain, and I had to run up
14 toward the garage trying to get out of the rain. I pushed
15 the button on my body cam. I don't know exactly where I
16 was when I pushed the button, and I don't know exactly
17 where it started recording.

18 Q. So if you activated the body cam when you exited
19 your car, it should show the driveway and the door of the
20 garage opening in the rain, correct?

21 A. It depends on where I pushed the button, and also
22 it depends on when I unzip my coat so the body camera would
23 be pointed out so it doesn't get wet.

24 Q. If you had your coat zipped up, would the body cam

1 just show black but be recording?

2 A. I have to unzip my coat to activate the body cam,
3 because it covers the body cam.

4 Q. So, is it your testimony you don't know if you
5 activated your body cam when you exited your car or when
6 you were already in the garage, you don't know?

7 A. I don't recall exactly where I activated it.

8 Q. I'm calling your attention to the Defendant's
9 Exhibit Number 2. You testified today that you did not
10 give Miranda rights to Mr. [REDACTED], correct?

11 A. Correct.

12 Q. So why didn't you cross that off the form before
13 you gave it to him?

14 A. Why did I what?

15 Q. What didn't you cross that off the form before you
16 gave it to him to sign?

17 A. This is a standard form, and it's on all the forms
18 that we carry. All the forms in my car have that on there.
19 It's just part of our consent that, we leave it on the
20 consent form.

21 Q. So you're saying it doesn't mean anything whether
22 you gave somebody Miranda rights or not you have got it
23 checked off on there?

24 A. It's on there so that they can read that.

1 Q. So they can read the words "Miranda rights"?

2 A. Yes.

3 Q. Doesn't that mean that you gave them Miranda
4 rights and there's a checkmark next to it?

5 A. It means that they can read that form and sign it.

6 Q. So, in other words, the words "Miranda rights" to
7 you where that's checked, that doesn't mean I gave this
8 person Miranda rights and they're signing verifying they
9 got this. That doesn't mean that to you?

10 A. What that means to me is, is that they can read
11 the form, and if they don't understand something, they can
12 ask about it. That's why that's on that form. If they
13 don't understand, they're welcome to ask questions about
14 that form before they sign it.

15 Q. But this is a search waiver and consent to search.
16 So the boxes are motor vehicle. You can search the
17 vehicle. Well, a residence. You can search the residence.
18 Well, electronic devices. They could give permission to
19 search those. Could get permission to obtain body fluid.
20 What is this about searching for Miranda rights? I don't
21 understand why that's there on a search consent?

22 A. Can you repeat the question?

23 Q. Yes.

24 I don't understand why Miranda rights is on a

1 search form. This isn't -- we're not searching for Miranda
2 rights, are we?

3 A. Miranda rights is on the form so when they read
4 the form, they can ask questions about anything that's on
5 the form.

6 Q. But you do agree that you never gave a Miranda
7 rights?

8 A. I never read him his Miranda rights.

9 Q. You testified that in Mr. [REDACTED] garage you saw
10 a substance bubbling with something that looked like it had
11 salt in it, and in your experience that could be something
12 to do with meth. You just testified to that, didn't you?

13 A. Yes.

14 Q. You didn't take that, did you?

15 A. No.

16 Q. You didn't test it, did you?

17 A. No.

18 Q. You left it there bubbling?

19 A. Yes, after I seen and investigated what it was.

20 Q. Well, if you thought that it could be meth,
21 couldn't it be very dangerous and possibly blow up?

22 A. It could, but it was not capped. And the only
23 time you get an explosion is when the container is capped
24 off.

1 Q. So when --

2 A. From the gasses.

3 Q. So when you left, and you left this bubbling
4 substance there, why is it that you left it?

5 A. Because Mr. [REDACTED] explained what it was, and it
6 had two electrodes from a battery charger going into it.
7 He explained it was salt and water, it was some kind of a
8 science experiment or something that he was doing. And I
9 know once I seen the electrodes going into it that it was
10 not anything related to meth manufacturing, so there was no
11 reason to take it as evidence.

12 Q. Thank you.

13 Now, you testified that you may have said
14 something to Mr. [REDACTED] about most of the time you get
15 first offender probation. Remember that testimony?

16 A. Yes.

17 Q. But isn't it true that in the first segment about
18 seven and a half minutes into the first segment, you stated
19 the following, "I talked to Mark Isaf. What the State's
20 Attorney is going to do is issue you a court date. Since
21 you are cooperative, you will get first-time offender
22 probation. If you keep your nose clean for the probation
23 period, the felony goes away." Isn't it true you said that
24 to Mr. [REDACTED]?

1 A. I don't recall exactly what I said without having
2 the video right in front of me.

3 Q. And would you agree, if that's what's on the
4 video, that you said that?

5 A. The video that I have is an exact occurrence of
6 what transpired that day and what the communication was.

7 Q. Okay. And did you make copies of that video to
8 provide to the State's Attorney and the defense attorney?

9 A. I copied my video, and I provided it to the
10 State's Attorney, along with my report.

11 Q. On December 26th, 2015, you did not have a search
12 warrant to search Mr. [REDACTED] house; is that correct?

13 A. What was the date again?

14 Q. December 26, 2015?

15 A. I did not have a search warrant, no.

16 Q. When you arrived at Mr. [REDACTED] house on
17 December 26, 2015, did you believe that you had probable
18 cause to arrest Mr. [REDACTED]?

19 A. Yes.

20 Q. And what was the charge for which you believed you
21 had probable cause to arrest Mr. [REDACTED]?

22 A. Driving while revoked.

23 Q. Is that a misdemeanor?

24 A. I'm not sure in his case. It would depend on how

1 many past charges for that he's had.

2 Q. You had just recently checked his status. You
3 didn't know that?

4 A. No, whenever we check their status, it does not
5 show how many times they have been arrested for it. You
6 have to pull a driver's abstract through the State of
7 Illinois to see that.

8 Q. You didn't check them on Judici since you were
9 checking him out before that?

10 A. No.

11 Q. You didn't pull him out over on the road, did you?

12 A. No.

13 Q. When you arrived at Mr. [REDACTED] home, he was
14 inside the house with the door closed, correct?

15 A. Yes.

16 Q. You admit you pointed your Taser at Mr. [REDACTED];
17 is that correct?

18 A. Yes, I pointed my Taser at Mr. [REDACTED].

19 Q. And did you laser paint Mr. [REDACTED] with your
20 Taser?

21 A. Can you repeat that?

22 Q. Did you laser paint Mr. [REDACTED] with your Taser?

23 A. I do not laser paint, laser paint anyone.

24 Q. Did you laser paint Mr. [REDACTED]?

1 A. I did not laser paint Mr. [REDACTED].

2 Q. And would you explain to the Court what laser
3 painting is?

4 A. That would be where you -- I assume that you would
5 paint something on Mr. [REDACTED]. I don't know what "laser
6 painting" means.

7 Q. Laser painting under the instructions from Taser
8 International is when a person points a Taser at the
9 subject and then activates a laser dot, which appears on
10 the subject, as a threat to the subject before the Taser is
11 actually deployed. So it's not an actual painting, it's
12 called "laser painting". Are you familiar with that
13 term?

14 A. I am familiar with putting the laser pointer on
15 the target.

16 Q. Did you put the laser pointer on Mr. [REDACTED]?

17 A. Yes.

18 Q. What part of his body did you put the laser
19 pointer on him?

20 A. In his chest area.

21 Q. And you admit that you kept that laser pointed at
22 Mr. [REDACTED] for several minutes?

23 A. I don't recall how long it was. It was a very
24 short time.

1 Q. Did you write a special police report stating that
2 you had drawn your Taser on that date and had pointed the
3 laser point at the subject?

4 A. No.

5 Q. Are you required to under your rules?

6 A. No.

7 Q. Have you been trained in the use of Taser?

8 A. Yes.

9 Q. What justification did you think that you had for
10 entering Mr. [REDACTED] home without a warrant and without
11 his consent?

12 A. I did not enter his home. I stood in the garage
13 way, garage door opening, because I remember my -- the
14 heels of my feet being on the ledge where the door seals
15 down.

16 Q. You were in the garage, weren't you?

17 A. I was in the entrance, the doorway of the garage.
18 The threshold.

19 Q. Okay. You crossed the threshold; isn't that
20 correct?

21 A. Whenever I cuffed him, yes.

22 Q. Okay. And what justification did you think you
23 had for entering his attached garage?

24 A. To take him into custody.

1 Q. You repeatedly interrogated Mr. [REDACTED] when he
2 was in custody; is that correct?

3 A. I had conversations with Mr. [REDACTED].

4 Q. You asked him questions, didn't you?

5 A. Yes.

6 Q. You asked him questions specifically about
7 methamphetamine and his use of drugs, didn't you?

8 A. Yes.

9 Q. That's an interrogation, isn't it?

10 A. I have a different meaning of interrogation.

11 Q. He was in custody, right?

12 A. Yes.

13 Q. You were asking questions trying to elicit
14 incriminating statements about drugs, correct?

15 A. I was asking him questions, yes.

16 Q. About drugs, correct?

17 A. Yes.

18 Q. You wanted him to incriminate himself or to tell
19 you there were drugs in his house, correct?

20 A. I already knew there were drugs in his house.

21 Q. You wanted him to tell you, didn't you?

22 A. Yes.

23 Q. And before you started asking those questions, you
24 did not give him any Miranda warnings; is that correct?

1 A. Correct.

2 Q. You kept asking Mr. [REDACTED] questions to elicit
3 incriminating statements even after he asserted his right
4 to have a lawyer, didn't you?

5 A. After he wanted a lawyer, he would always regain
6 conversation.

7 Q. Please answer the question. Did you continue to
8 ask him questions after he asserted his right to a lawyer?

9 A. Yes.

10 Q. Aren't you supposed to stop asking questions when
11 a subject asks for a lawyer?

12 A. Yes.

13 Q. Why did you tell Mr. [REDACTED] that the State's
14 Attorney would give him first offender probation and the
15 felony would just go away knowing that you had arrested him
16 and he was convicted before for violation of a cannabis
17 control act?

18 A. Because he would have to have had a felony drug
19 conviction is how I was under the understanding to not be
20 eligible for first-time offender probation.

21 Q. What?

22 A. That was not a felony arrest.

23 Q. And you're not authorized to make promises or plea
24 agreements, are you?

1 A. No.

2 Q. Do you now know that that was a lie?

3 A. It wasn't a lie because it's -- I was trying to
4 explain to Mr. [REDACTED] that is usually what transpires from
5 cooperation with the police.

6 Q. But you didn't say "usually", did you?

7 A. Huh?

8 Q. You didn't say, "usually that's what happens", did
9 you?

10 A. I don't recall how the conversation was stated.

11 Q. Why did you tell Mr. [REDACTED] when he said he has a
12 problem and his dad doesn't even know about it, why did you
13 say, "I know you have a problem and your dad's going to
14 know about it if you don't cooperate"?

15 MR. ISAF: Objection. That goes beyond the scope of
16 direct examination.

17 THE COURT: Overruled.

18 A. Okay. Can you repeat the question, please?

19 Q. (By Ms. Redwood) Yes. After Mr. [REDACTED] told you
20 that he has a problem, meaning a drug problem, and his dad
21 doesn't even know about it, why did you say, "I know you
22 have a problem and your dad's going to know about it if you
23 don't cooperate"?

24 MR. ISAF: Objection. Lack of foundation.

1 THE COURT: Sustained.

2 Q. (By Ms. Redwood) Do you remember making the
3 statement, "I know you have a problem and your dad's going
4 to know about it if you don't cooperate"?

5 A. I don't even recall making a statement.

6 Q. And if that statement is on the video, would you
7 recognize yourself making that statement?

8 A. Yes, if I reviewed my video and seen it on there.

9 Q. Do you think -- you think my video has you making
10 statements that you didn't make on your video?

11 A. I haven't seen your video.

12 Q. Will looking at the video then refresh your
13 recollection?

14 A. I guess so. I don't know if it's the video that I
15 provided or not.

16 Q. Well, I'm assuming that you would be able to
17 recognize yourself, officer?

18 MR. ISAF: Judge, I'm going to object as an improper
19 refreshing of recollection. It's not her witness. It's
20 cross-examination.

21 MS. REDWOOD: Your Honor, I don't see why the
22 witness's recollection can't be refreshed by watching a
23 video of himself. He's agreed that the video would depict
24 it if it's the same video. It is the same video I received

1 from the State, who received it from the deputy.

2 THE COURT: Where are you going with the fact he may
3 or may not have made this statement?

4 MS. REDWOOD: For an admission. For an admission that
5 he made the statement, Your Honor, that if the -- that if
6 my client cooperated, that his dad was not going to know
7 about it, which is just false.

8 MR. ISAF: It's improperly refreshing recollection on
9 cross-examination. I assume she's trying to impeach him,
10 but that's not refreshing recollection. And it was not
11 proper, and lacks foundation.

12 THE COURT: I'll sustain the objection. I'll be
13 watching the video, and I can see if it's on there or not.

14 MS. REDWOOD: Thank you, Your Honor.

15 Do you recall Mr. [REDACTED] saying, "I want a
16 lawyer. I want a lawyer," and you say, "All right. That's
17 fine. You can get one"?

18 A. Yes.

19 Q. And at that time he was handcuffed and you had his
20 phone, right?

21 A. Yes.

22 Q. And you wouldn't give him his phone back?

23 A. He never asked for his phone.

24 Q. You don't remember him asking for his phone back?

1 A. No.

2 Q. And you don't remember you telling him, "I'm going
3 to keep your phone, because I have to see who you've been
4 calling to see if you've been doing deals"?

5 A. I don't remember that.

6 Q. Okay. And would you agree that if that's in the
7 video you said that?

8 A. The video that I provided to the State's Attorney
9 is a recap of the complete incident. So if it's on there
10 that I said it in that video, then I said it.

11 Q. Do you recall that in -- in the second ten minutes
12 Mr. [REDACTED] said, "I want a lawyer. I want a lawyer," you
13 said, "Okay. You can get one", and then two seconds later
14 you said, "Where are you buying your meth from", and in
15 13 seconds "Whose vehicle is it"?

16 MR. ISAF: Judge, I'm going to object. It's beyond
17 the scope of direct. I never referenced the video. We've
18 already had testimony he doesn't know what's on the video,
19 and he would have to look at the video to answer the
20 questions, which, of course, he hasn't done. So I'm going
21 to object to the form of the question and its foundation.

22 THE COURT: I'll sustain the objection.

23 Again, if it's there, it's there.

24 MS. REDWOOD: I have no other questions.

1 THE COURT: Redirect.

2 MR. ISAF: No other questions, Your Honor. No other
3 witnesses.

4 THE COURT: You may step down.

5 Ms. Redwood, any rebuttal evidence?

6 MS. REDWOOD: No, Your Honor.

7 THE COURT: Before we go into chambers to see if I can
8 play the video on my computer, Mr. Isaf, how long do you
9 need to respond to the memorandum?

10 MR. ISAF: Judge, not knowing, but just looking at its
11 size and length, I would suggest two weeks.

12 That leads me to another question procedurally to
13 bring to Court and counsel. Is it -- allowing the Court to
14 review the video, allowing me to address the memorandum and
15 make subsequent date for close, or --

16 THE COURT: Well, if you want.

17 MS. REDWOOD: That would be fine.

18 MR. ISAF: So two weeks?

19 THE COURT: When you say two weeks, two weeks would be
20 December 13th. That's a Tuesday.

21 MS. REDWOOD: Two weeks from when?

22 THE COURT: Two weeks from today. So do you want to
23 go to Friday, December 16th or --

24 MR. ISAF: Yes. I forgot we have the reporter issue,

1 too. So yes, please, on Friday.

2 MS. REDWOOD: You've got the felony call -- I've got
3 call downstairs. I guess at 1:30. That's upstairs.

4 THE COURT: That would be upstairs. The morning is
5 the public defender. The afternoon is everybody else.

6 So we're saying you could have a reply on file by
7 4 o'clock on December 16th?

8 MR. ISAF: That's the end -- that's essentially three
9 Fridays from now?

10 THE COURT: Yeah.

11 MR. ISAF: And is the following week, that's our --
12 our pretrial hearing?

13 MS. REDWOOD: The pretrial --

14 THE COURT: Pretrial. That would be the day of the
15 pretrials.

16 MS. REDWOOD: Yes. Okay. What time?

17 THE COURT: End of the day.

18 MR. ISAF: That's when my brief would be due?

19 THE COURT: Correct.

20 MR. ISAF: Or my response, I guess. And look for a
21 hearing after that date to have counsel review everything
22 on file and then have a close week after that.

23 MS. REDWOOD: That's the 23rd. I will be out of town.

24 THE COURT: Julie, would you ask Marty to come in with

1 the books?

2 MS. REDWOOD: Back on the 29th. The 30th of December
3 is a Friday.

4 THE COURT: I have to remember. I have an all
5 afternoon contested matter on the afternoon, but I don't
6 know about the morning. Are you going to make -- want to
7 file a reply to the State's reply, or just --

8 MS. REDWOOD: I would. Seven days.

9 THE COURT: So you said you were going to be gone on
10 the 23rd, so do you want your reply by the 23rd, or do you
11 want it over?

12 MS. REDWOOD: How about the 28th?

13 THE COURT: Okay. Are you going to be gone until the
14 29th? Do you really want to do that while you're gone?

15 MS. REDWOOD: Not really. Not really. Well, if the
16 29th is fine, then the hearing the 30th or whatever.

17 THE COURT: Or do you want to have the 30th to do the
18 reply and do the argument the first week of January?

19 MS. REDWOOD: That's fine.

20 THE COURT: So we need time to have an argument first
21 week of January. We'll need a court reporter.

22 COURT ADMINISTRATOR: How much time do you think you
23 need?

24 THE COURT: An hour?

1 MS. REDWOOD: Yes.

2 MR. ISAF: That's fine.

3 MS. REDWOOD: An hour is fine just for arguments.

4 COURT ADMINISTRATOR: Tuesday, January 3rd, 10 or 11?

5 MS. REDWOOD: That's fine, 11.

6 THE COURT: Okay. So I am going to show that the
7 State has until December 16th at 4 o'clock to file a
8 response to the memorandum filed by the defendant. If the
9 defendant wants to do a reply, they have until
10 December 30th to file a reply. And argument on it will be
11 heard on January 3rd, 2017, at 11:00 a.m.

12 And I'll need the exhibits, and if possible, come
13 with me to see if I can play this on my computer.

14 HEARING CONCLUDED

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