

STATE OF MISSOURI

ED100807

vs.

JEFFREY WEINHAUS

VOLUME 2

**BEFORE THE HONORABLE JUDGE KEITH SUTHERLAND
TRANSCRIPT OF TRIAL TESTIMONY
TAKEN OCTOBER 9TH, 2013**

REPORTED BY KIM WROCKLAGE, CCR



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1 IN THE CIRCUIT COURT OF FRANKLIN COUNTY

2 STATE OF MISSOURI

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4 STATE OF MISSOURI,

5 PLAINTIFF, ED100807

6 vs. No. 12AB-CR02409-01

7 JEFFREY WEINHAUS,

8 DEFENDANT.

9

10 Volume 2, Trial Testimony taken at the
11 Franklin County Justice Center, 401 E. Main Street,
12 Union, in the County of Franklin, State of Missouri,
13 on the 9th day of October, 2013, before Kim
14 Wrocklage, CCR.

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1 JUDGE SUTHERLAND: Is Sergeant Folsom ready
2 to take the stand again. We concluded your direct
3 examination yesterday afternoon. This will begin
4 cross examination.

5 **CROSS EXAMINATION OF SERGEANT FOLSOM**
6 **QUESTIONS BY MR. EASTWOOD:**

7 Q Thank you, Your Honor. Good morning,
8 Sergeant Folsom.

9 A Good morning, sir.

10 Q What did you do today or yesterday or the
11 days before this trial to prepare for your testimony
12 for this trial?

13 A I read the reports that were written, as
14 well as some of my deposition, and reviewed the
15 videos again.

16 Q This was the deposition that I took of you?

17 A Yes, sir.

18 Q And you've been deposed before, have you?

19 A Yes, sir.

20 Q So you're familiar with the process and how
21 it works?

22 A Yes, sir.

23 Q And that you were under oath when you take a
24 deposition?

25 A Yes, sir.

1 Q And when I took your deposition, we reviewed
2 some of the reports in this case. We reviewed the
3 report that you made; is that right?

4 A I believe so, yes, sir.

5 Q And you also reviewed a report that Perry
6 Smith made, he's a Highway Patrolman who was the
7 investigator into the shooting of Jeff Weinhaus; is
8 that correct?

9 A Yes, sir.

10 Q And you had a chance to review those
11 reports?

12 A Yes, sir.

13 Q And you told me at the time that you thought
14 they were pretty accurate and complete; is that fair
15 to say?

16 A Yes, sir.

17 Q And you also told me that you wouldn't
18 change anything, at least to your mind; is that
19 correct?

20 A Yes, sir.

21 Q And you also told me that you didn't think
22 there were any omissions, glaring omissions from the
23 reports; is that correct?

24 A I don't remember us using the word
25 omissions, but I said that I wouldn't change

1 anything, that they seemed to be a fair and accurate
2 representation of what was said.

3 Q Well, let me ask you now then. To your mind
4 was anything missing?

5 A Not that I recall, no, sir.

6 Q Nothing big?

7 A No, sir.

8 Q Nothing important, okay. Did you talk with
9 Mr. Parks before you gave your testimony yesterday?

10 A Yesterday, yes, sir.

11 Q What did you talk about?

12 A We talked about the case and the order of
13 the witnesses and basically how the trial was going
14 to go and some things about the courthouse. And we
15 had a meeting before that about my testimony.

16 Q Did you talk about the strategy for the
17 prosecution of Jeff Weinhaus?

18 MR. PARKS: Objection, Your Honor, that
19 calls for conclusion based upon the witness and gets
20 into the trial strategy of the prosecutor.

21 JUDGE SUTHERLAND: Sustained.

22 Q (By Mr. Eastwood) Did you talk with
23 Mr. Parks about what testimony you gave yesterday
24 before you gave that testimony?

25 A We talked about the investigation and what

1 happened yesterday, yes, sir.

2 Q Sergeant Folsom, how long have you been with
3 the Highway Patrol?

4 A I came on in January of 1997, so 16 plus
5 years.

6 Q And before that I think you testified
7 yesterday you were in the military?

8 A Yes, sir.

9 Q You were a military police officer?

10 A Yes, I had three basic positions while I was
11 in the military, three different positions.

12 Q And I think you also yesterday, correct me
13 if I'm wrong, you also termed yourself to be a body
14 guard; is that fair to say?

15 A I was assigned to another Department of
16 Defense agency for a year. I was also on the
17 personal security detail for the Secretary of
18 Defense, as well as the Joint Chairman Chief of
19 Staff, Colin Powell, during my time in the military.
20 I served a little over a year on that detail.

21 Q What type of training did you have for that
22 type of work as a body guard for those officials?

23 A Mostly close interpersonal security
24 training, different types of formations, convoys,
25 movements, advanced driving techniques, often to

1 where we took -- the people that we protected were
2 in hostile regions, so we had a lot of specific
3 training on driving as well as hand-to-hand
4 interpersonal type skills and combat, if you will.

5 Q What type of hand to hand stuff?

6 A Mostly in our job we did a lot of disarming
7 techniques. We also did a lot of practice drills
8 and moving the protected person or basically
9 stepping in front of a person with a weapon.

10 Q And presumably because sometimes people want
11 to kill these U.S. Government officials; is that
12 fair to say?

13 A Yes, sir.

14 Q What's your current rank with the Highway
15 Patrol?

16 A I'm a sergeant.

17 Q How long have you had that position?

18 A I believe since 2005.

19 Q Is it fair to say you are Corporal Mertens'
20 supervisor?

21 A Yes, sir.

22 Q How long have you been his supervisor?

23 A I think -- I believe my partner retired
24 January 1 of 2006, and I became his supervisor then.

25 Q So when you say your partner, were you

1 working with Corporal Mertens before then as well?

2 A No, I worked with an individual named
3 Sergeant Ralph O'Rourke, who was my supervisor.

4 Q How long have you been with Corporal
5 Mertens?

6 A I believe, and you'd have to check with him,
7 but I believe we've been together five or six years
8 now.

9 Q Are you currently on active duty with the
10 Highway Patrol?

11 A I'm currently employed by the Highway
12 Patrol; however, I'm on extended medical leave at
13 the moment.

14 Q How long have you been on extended medical
15 leave?

16 A Basically since this incident.

17 Q Are you working a desk job at all?

18 A No, there has been no job provided for me.

19 Q Are you allowed to wear a Highway Patrol
20 uniform when you're on leave?

21 A No, sir, I'm not.

22 Q Are you allowed to carry a gun?

23 A I do not carry a gun.

24 Q And that's ever since you shot Jeff
25 Weinhaus?

1 A Yes, sir.

2 Q Have you ever been disciplined by the
3 Highway Patrol?

4 A I received a written reprimand from Captain
5 Replogle at the time, yes, sir.

6 Q Do you have any discipline on your law
7 enforcement license from the State of Missouri?

8 A No, sir.

9 Q And you're not still carrying a gun?

10 A I do not carry a gun, no, sir.

11 Q I want to turn now to the case that we're
12 here for today, which is it fair to say it's almost
13 three cases, there's a You Tube case, there's the
14 house visit case and there's the MFA gas station
15 case?

16 A Yes, sir.

17 Q Let's start in time, we'll start first with
18 the You Tube video. I know the jury saw that video
19 yesterday, they saw two versions of it. They saw
20 one with captions or what You Tube technically calls
21 annotations and one without captions. And what
22 version did you review of that video?

23 A Initially?

24 Q Yes, sir.

25 A Initially I reviewed the first version with

1 no captions after I received the call from Judge
2 Parker.

3 Q And when you reviewed that video, did you
4 ever hear Jeff Weinhaus state Judge Kelly Parker's
5 name on that video?

6 A No, sir, I did not.

7 Q No mention of Judge Parker by name?

8 A No, sir, not to my knowledge.

9 Q Who gave you that pod cast or we would call
10 it a pod cast, is that fair to say we'll call it a
11 pod cast?

12 A Yes, sir.

13 Q Who gave you that pod cast?

14 A I found it on You Tube where they told me I
15 could find it.

16 Q You just went online and it was there?

17 A Yes, sir.

18 Q Do you recall how many views it had?

19 A No, sir.

20 Q I think the one we saw yesterday had over
21 7,000 views, do you disagree with that?

22 A I do not disagree with it but I do not
23 recall any number.

24 Q And then when did you see the pod cast with
25 captions?

1 A On Saturday, which I believe was the 18th, I
2 reviewed the pod cast Monday morning with the FBI
3 and it was probably Monday around 9:30 a.m., which
4 would be the 20th, and I saw the captions then.

5 Q And these dates, could you refer, let the
6 jury know what month and year we're talking about?

7 A August.

8 Q Of?

9 A 2012, sorry.

10 Q Just so we're all clear. And when you saw
11 the video that had captions, did you make any
12 investigation into why one video had captions and
13 one did not?

14 A No, I didn't make any investigation into why
15 one had them or not. I just made sure we had copies
16 of both. I contacted our forensic computer unit and
17 I had them download from the Internet copies of both
18 so we could receive them and hold them for evidence.

19 Q Did you make any investigation into who put
20 those captions on the video?

21 A No, sir, I did not. We just saved the
22 videos as they were.

23 Q You don't know who put the captions on the
24 video, do you?

25 A No, sir, I do not.

1 Q Did you make any investigation into who had
2 access or privileges to post to the Bulletinman
3 account on You Tube?

4 A No, sir.

5 Q Do you know if anyone else from the Highway
6 Patrol did?

7 A I know that Sergeant J. Pragman documented
8 the things on the website and accessed the website,
9 but he'd probably have to answer that. I know he
10 did some investigating into the website itself but I
11 did not.

12 Q That's Sergeant J. Pragman?

13 A Yes, sir, he's with the Missouri State
14 Highway Patrol forensic computer unit.

15 JUDGE SUTHERLAND: How do you spell that?

16 THE WITNESS: P-R-A-G-M-A-N OR M-E-N, I
17 believe, sir.

18 Q (By Mr. Eastwood) Is he in Jeff City or
19 Rolla?

20 A He's in Jeff City.

21 Q That's kind of the headquarters?

22 A Yes, sir, and he's mentioned in the reports.

23 Q Did you make any investigation into how many
24 versions of the You Tube video, and I guess when I
25 say versions, the two versions, the one with the

1 captions and one without the captions, were posted
2 online at that time in August of 2012?

3 A No, sir, I did not.

4 Q Now, based on just your experience and
5 common sense, do you agree that You Tube is a public
6 website that basically anyone with an Internet
7 connection can go to?

8 MR. PARKS: Objection, Your Honor, we're
9 getting into our motion in limine, I believe.

10 JUDGE SUTHERLAND: Overruled, he can answer.

11 THE WITNESS: I do believe a You Tube site
12 can be accessed by anyone with an Internet access
13 anywhere.

14 Q (By Mr. Eastwood) From home, the library,
15 anywhere?

16 A Yes, sir, to my knowledge.

17 Q It's kind of a public place online?

18 A Yes, sir.

19 Q Did you make any investigation into whether
20 either version of the pod cast, the one with the
21 captions, the one without the captions, was ever
22 sent by Jeff to Judge Parker in any form?

23 A To my knowledge Judge Parker never received
24 anything from Mr. Weinhaus.

25 Q So he never, to your knowledge, Jeff never

1 mailed a CD-Rom or printed out a transcript or
2 anything like that and sent it directly to the
3 Judge?

4 A To my knowledge he did nothing of that
5 nature.

6 Q And nothing in the Highway Patrol
7 investigation would show that to your knowledge?

8 A No, there was nothing that showed that.

9 Q Did you investigate whether Jeff Weinhaus
10 had any cases or proceedings in front of Judge Kelly
11 Parker?

12 A As part of my investigation I accessed
13 Casenet and I looked at past and previous cases
14 involving Jeff Weinhaus and I did not see any active
15 cases.

16 Q So did you investigate -- so no cases in
17 front of Judge Parker?

18 A To my knowledge there were no cases in front
19 of Judge Parker.

20 Q Did you investigate whether anyone in Jeff's
21 family or his friends or associates or people in his
22 life had a case or proceeding in front of Judge
23 Parker?

24 A No, sir, I did not.

25 Q Do you know or did you investigate whether

1 any case in front of Judge Parker, whether Jeff had
2 a stake in the outcome, and if you want me to
3 clarify that question, I can.

4 A Please do so.

5 Q Do you know of any case in front of Judge
6 Parker in August of 2012 where Jeff might get money
7 from the case if it went one way or the other?

8 A No, I did not know of any such agreement or
9 motivation or anything of that nature.

10 Q Do you know of any case before Judge Parker
11 where someone that Jeff knew might lose their
12 liberty, might go to jail?

13 A No, I did not know anything about any of the
14 cases that Judge Parker had before him.

15 Q Did you know if Jeff ever posted online a
16 map of Judge Parker's home or his courthouse?

17 A Not to my knowledge.

18 Q Do you know if he ever posted even an
19 address for that online?

20 A Not to my knowledge, I didn't see any type
21 of address or anything.

22 Q Now you've watched the video a few times;
23 right?

24 A Yes, sir.

25 Q And so I'm not going to play it for the jury

1 again right now, if we can avoid it, just because I
2 think we've seen it a couple of times and I want to
3 move things along here, but as I watched the video,
4 Jeff Weinhaus never actually states that he would
5 execute Judge Parker; is that correct?

6 A I do not recall that he stated he would
7 execute anyone.

8 Q I think he said a jury of Judge Parker's
9 peers would try and execute him; is that fair to
10 say?

11 A That would be fair to say.

12 Q So not Jeff, a jury of his peers?

13 A That is the way I recall it being stated in
14 the video, yes, sir.

15 Q In the course of your investigation --
16 strike that.

17 Sergeant Folsom, do you think that context
18 matters in speech?

19 MR. PARKS: Objection, Your Honor, calls for
20 speculation on the part of the witness.

21 JUDGE SUTHERLAND: Sustained.

22 Q (By Mr. Eastwood) Well, when you were
23 investigating Jeff Weinhaus' You Tube video, did you
24 think it mattered where the statement was made,
25 whether it was made online or whether it was made

1 say to Judge Parker's face?

2 A I did not think it mattered where the
3 statement occurred, as Judge Parker felt threatened
4 by it.

5 MR. EASTWOOD: Move to strike the last
6 portion of that testimony. I think that's hearsay?

7 JUDGE SUTHERLAND: Motion to strike is
8 denied, go ahead.

9 Q (By Mr. Eastwood) Do you know if Jeff ever
10 did make the statement directly to Judge Parker?

11 A I have no knowledge that Jeff ever spoke to
12 anyone.

13 Q Do you know if Jeff ever had knowledge that
14 Judge Parker heard his You Tube broadcast?

15 A I know that I talked to him during the time
16 that some judicial officials, I did mention Judge
17 Parker by name, felt threatened, and we talked about
18 the video when I was at his house.

19 Q So you told Jeff that Judge Parker had heard
20 the video?

21 A Yeah, as well as some other people.

22 Q To your mind is there a difference between
23 Jeff sending Judge Parker an email that says I'm
24 going to execute you versus making a public video
25 that says if you don't resign in a month, you'll be

1 put on trial by a jury of your peers and executed in
2 terms of your evaluation of the threat?

3 A Yes, there is a difference in my opinion.

4 Q And would you agree that it's a lot more
5 serious for Jeff to send an email directly to Judge
6 Parker and say I'm going to execute you?

7 A Yes, sir.

8 Q A lot more threatening?

9 A Yes, sir.

10 Q The video doesn't say how or when anyone
11 would actually execute Judge Parker; right?

12 A The only date referred to is the September
13 17th date in the video.

14 Q But it's pretty vague on the details of this
15 threat, is that fair to say, other than the date?

16 A Yes, sir, it is very vague.

17 Q And normally in your custom and practice as
18 a law enforcement officer, when you make an
19 investigation, you look into things like means,
20 motive, opportunity; right?

21 A Yes, sir.

22 Q And did you know of any means or motive or
23 opportunity that Jeff Weinhaus personally had to
24 execute Judge Parker?

25 A I did not know what his motivation was or

1 his actual means. I just saw what I saw on the You
2 Tube video and was asked to investigate it.

3 Q And normally means, motive and opportunity,
4 those things are really important in a criminal
5 investigation; right?

6 A Yes.

7 Q Did you ever hear the joke what do you call
8 100,000 lawyers at the bottom of the sea, answer, a
9 good start?

10 A Yes, my wife is an attorney, so I've heard a
11 lot of lawyer jokes.

12 Q Do you think that's a threat?

13 A No, sir.

14 Q Why not?

15 A It's a comedy, a joke that everyone has
16 heard lots of times.

17 Q Do you think that some people could think
18 that Jeff's video was a joke?

19 A I think there probably are some people who
20 would think it was a joke; however, I think the
21 majority of people who view that people were
22 offended.

23 Q When you say the majority, how many people
24 did you talk to about this video?

25 A Several, more than 20.

1 Q Let's turn next to the day that you visited
2 Jeff's home in Piney Park. Who lives in that house?

3 A To my knowledge, sir, Judy Kropf, which was
4 Jeff's wife, and I believe he had another family
5 member, a son, that maybe stayed there off and on as
6 well as Jeff.

7 Q So three people?

8 A Three people, yes, sir.

9 Q I think his son's name is Levi, does that
10 sound right?

11 A It could possibly be.

12 Q And when you went to his house that day, his
13 wife was home; is that correct?

14 A Yes, sir, she was.

15 Q Was his son there?

16 A No, there was no one else home except for
17 Judy Kropf and Mr. Weinhaus.

18 Q And when you searched the house, do you
19 recall how many bedrooms there were?

20 A I do not recall from memory. There were
21 multiple rooms that weren't being used as bedrooms
22 that could be, I guess, classified as a bedroom.

23 Q So how many, do you remember anything?

24 A I know there's at least one bedroom
25 downstairs and maybe two upstairs. There were some

1 rooms that had clutter pretty heavily in them that
2 possibly could have been bedrooms, but to me they
3 just looked like storage.

4 Q This was in the basement?

5 A Upstairs.

6 Q And you said there was also a bedroom in the
7 basement?

8 A Yes, sir. There appeared to be a bedroom in
9 the basement on the far left side.

10 Q Did you look inside that bedroom?

11 A Yes, sir.

12 Q Was it cluttered too?

13 A It contained a small bed and some tennis
14 shoes and a dresser. Looked more like a teenager's
15 room.

16 Q Teenage boy's bedroom?

17 A Yes, sir.

18 Q And that was in the basement?

19 A Yes, sir.

20 Q Now I want to talk about this basement for a
21 minute. When you go out to the house, was the
22 door -- was there a door to the basement?

23 A I don't recall there being a door. There
24 was just a set of stairs that went down into the
25 basement from my knowledge.

1 Q And was the basement locked or secured in
2 some way from the rest of the house?

3 A No, I do not believe that it was secured in
4 any manner.

5 Q And I know yesterday you were calling the
6 basement the command center; is that correct?

7 A Yesterday I called a portion of the basement
8 the command center.

9 Q And in your custom and experience, it's not
10 uncommon for people to have different names for
11 their basement or at least part of their basement;
12 right?

13 A In my experience I guess no, people call
14 their basement what they want to.

15 Q Some guys call it a man cave?

16 A Yes, sir.

17 Q Bear pit?

18 A Yes, sir.

19 Q Or they call it a bunker?

20 A Right.

21 Q People have a lot of funny names for their
22 basement or part of their basement?

23 A Right.

24 Q It's not uncommon to have a rec room or den
25 down there?

1 A No, sir, it's not.

2 Q Place to hang out?

3 A Yes.

4 Q With friends and family?

5 A Yes.

6 Q So in your experience basements are really
7 part of the common area of the house; right?

8 A I guess in my opinion it depends on what
9 kind of basement it is. Some are finished or
10 unfinished, but I'd say a finished basement would
11 definitely be some type of a common area.

12 Q In this basement there was a bedroom, maybe
13 that's not a common area but maybe the rest of the
14 area is a common area?

15 A Yes, sir.

16 Q Now, I believe you testified yesterday that
17 you found computer equipment both upstairs and
18 downstairs in the house, the main floor and the
19 basement level; is that correct?

20 A Yes, sir, I did.

21 Q And did you seize all of that equipment?

22 A Yes, sir, I did.

23 Q In your experience as a law enforcement
24 officer and just as a human being, are computers at
25 home often shared by family members?

1 A I believe they are, yes, sir.

2 Q Multiple people can use one computer; right?

3 A Yes, sir.

4 Q And you don't know who used the computers
5 that you -- who else in Jeff's family uses the
6 computers that you seized; right?

7 A No, sir, I do not.

8 Q There was no investigation whether his wife
9 or teenage son also uses this; right?

10 A No, there was no investigation into who used
11 what computer.

12 Q It's also pretty common to store things in a
13 basement in your experience?

14 A Yes, sir, very common.

15 Q Now I want to turn to some of the drug
16 paraphernalia that was found.

17 MR. EASTWOOD: Bob, are the photos up there
18 from yesterday? May I approach, Your Honor?

19 JUDGE SUTHERLAND: Sure.

20 Q (By Mr. Eastwood) I want to hand you what is
21 Exhibit 6, I'll show the jury that. And this is a
22 picture, as you'll see in a minute, of what I
23 believe you called drug paraphernalia; is that
24 correct to say?

25 A Yes, sir.

1 Q And then they have a postage scale there;
2 right?

3 A I'm not sure what kind of scale it is. It
4 just appears to be a scale.

5 Q Is it a modern scale or an old fashioned
6 scale?

7 A I would have no idea, sir. It's just a
8 scale to me.

9 Q It doesn't appear to be an electronic scale,
10 does it?

11 A No, sir, it is not.

12 Q In your experience drug dealers use
13 electronic scales?

14 A In my experience they use whatever they
15 have.

16 Q But this could be a scale for measuring
17 postage?

18 A A scale for measuring anything.

19 Q Could be a scale for measuring flour; right?

20 A Yes, sir.

21 Q It's not a digital scale; right?

22 A To my knowledge, no.

23 Q It's not an electronic scale?

24 A To my knowledge, no, it is not.

25 Q The technology is old enough here this could

1 have been Jeff's grandmother's scale; right?

2 A Possibly, yes, sir.

3 Q And is a postage scale an unusual thing to
4 have next to a desk in a home office?

5 A A postage scale?

6 Q Yes.

7 A I would say more than likely not.

8 Q Not unusual?

9 A Not unusual.

10 Q You might use it to weigh a piece of mail so
11 you know how many stamps to put on it?

12 A Yes, sir.

13 Q I want to turn next to September 11th, 2012,
14 the day at the gas station. Before that day, you
15 knew Jeff was upset by the seizure of your
16 computers; right?

17 A By the seizure of his computers, yes, sir, I
18 knew he was upset.

19 Q When I say his computers, for all we know
20 they could be his family's computers; right?

21 A Yes.

22 Q Jeff threatened to sue you; right?

23 A Yes, sir.

24 Q He emailed you directly and asked who your
25 lawyer was and said he was going to sue you for

1 violating his civil rights for free speech?

2 A I don't remember the free speech part. I
3 just remember he said he was going to sue me.

4 Q Sue you for money?

5 A He just said sue.

6 Q Well, you didn't think he was going to try
7 to get you locked up; right?

8 A He later called my work and accused me of
9 stealing items from his home, so I don't know what
10 his motivation was.

11 Q So he did call your work and denounced you
12 by name to your colleagues; right?

13 A Yes, sir.

14 Q Denounced you to your boss; right?

15 A Yes, sir.

16 Q And somehow, without the computer equipment,
17 he also managed to make a You Tube video and upload
18 it to the Internet and mentioned you by name?

19 A Yes, he mentioned he rented a computer on
20 those videos.

21 Q And in those videos, in some of them he's
22 actually calling the Highway Patrol and denouncing
23 you by name; right?

24 A Yes, sir.

25 Q Talking about you're attacking his free

1 speech rights?

2 A Yes, sir.

3 Q By seizing his computers?

4 A Yes, sir.

5 Q So whose idea then was it for you, of all
6 people from the Highway Patrol, to serve the arrest
7 warrant?

8 A It was not my idea. I made it very, very
9 clear to my chain of command that I wanted to be
10 removed from the investigation because of the
11 threats that Jeffrey had made towards me and because
12 I felt that he was personally agitated with me for
13 taking his computers; however, the members of my
14 chain of command had a meeting and they decided that
15 I would follow their orders and that I would bring
16 Jeffrey in by the 17th. It was absolutely not my
17 idea and I believe it was not an appropriate thing
18 to do.

19 Q So which of your commanding officers told
20 you that you had to serve that arrest warrant?

21 A On September 10th?

22 Q Yes, sir.

23 A Lieutenant Sean Satterfield was in charge of
24 our division, and he made the decision with my
25 supervisor, Lieutenant George Nolls, that I would

1 either take Weinhaus into custody before the 17th or
2 that I would make arrangements to put a device on
3 him or his wife's car. We even made arrangements to
4 find out where his wife worked, and we had actually
5 made some plans to start surveillance on Jeff until
6 the 17th if I was not able to get him arrested.

7 Q Is it legal to put a tracking device on a
8 car?

9 A They were going to obtain a warrant and put
10 one on there, yes, sir.

11 Q What were they going to go after his wife
12 for, what crime or potential crime?

13 A I just believe they wanted to monitor every
14 vehicle that he had access to in case they went near
15 the courthouse.

16 Q When you say Lieutenant Sean Satterfield was
17 your superior, wasn't the Satterfield family one of
18 the people criticized by Jeff on the You Tube video?

19 A Yes, sir, he was.

20 Q Do you think it's fair to say the
21 Satterfields had a personal bone to pick with Jeff?

22 MR. PARKS: Objection, calls for
23 speculation.

24 JUDGE SUTHERLAND: Yeah, sustained.

25 Q (By Mr. Eastwood) But the Satterfields were

1 in the video?

2 A Yes, sir, he was, and his family.

3 Q And he's the one that made you go serve the
4 arrest warrant?

5 A Yes, sir, he did.

6 Q Someone who threatened you personally?

7 A Yes, sir, he did.

8 Q You've been with the Highway Patrol
9 obviously for a while now. Is it normal procedure
10 for a trooper who is the subject of personal
11 criticism and attack by a suspect to be the one to
12 go serve the arrest warrant?

13 A No, it is absolutely not policy to do that.

14 Q That would put you in an unusual position;
15 right?

16 A It placed me in a grave situation where I
17 was the one that was going to have to take him into
18 custody knowing that he was personally upset with
19 me, whereas a neutral person probably could have
20 talked to him better without agitating him, in my
21 opinion.

22 Q Jeff didn't apparently have a bone to pick
23 with Corporal Mertens; right?

24 A No, sir, he did not, to my knowledge.

25 Q Why didn't he have Mertens serve the arrest

1 warrant?

2 A I was told that I would take care of this
3 personally and that I was the one who started this
4 investigation and that I would be the one to take
5 care of this.

6 Q You were going to take care of this?

7 A Yes, sir.

8 Q You also had back-up at the scene though;
9 right?

10 A I had back-up from two FBI agents. I had no
11 other back-up.

12 Q Not Highway Patrol back-up?

13 A I had two marked units; however, I was told
14 specifically prior to that not to involve the
15 members from the DDCC unit from Troop C.

16 Q So you had the FBI as the back-up. Why
17 didn't you have the FBI serve the arrest warrant?

18 A It was a state warrant that I had applied
19 for and that I filled out the affidavit, and
20 therefore I was directed to serve the warrant, so I
21 served the warrant.

22 Q So the FBI could not serve the warrant?

23 A I do not know their technical procedures. I
24 do not believe that they're in the habit of serving
25 state warrants. They would normally serve a federal

1 warrant.

2 Q Why were they providing back-up to a state
3 warrant service?

4 A They had been involved in the Weinhaus
5 investigation from the beginning, and I'm stationed
6 in Rolla. It is not unusual for them to back me up
7 as mutual aid law enforcement request or for me to
8 back them up on an investigation. So you're talking
9 about a relationship of working with the FBI that
10 dates back 10, 15 years.

11 Q In fact we went through this yesterday, you
12 don't normally serve warrants in Franklin County;
13 right?

14 A I've never served a warrant in Franklin
15 County other than this warrant.

16 Q This is the first time?

17 A Yes, sir.

18 Q And in fact these FBI agents, they also are
19 out of Rolla; right?

20 A Yes, sir.

21 Q So they're also not, to your knowledge,
22 providing back-up in Franklin County?

23 A I believe that their area does cover
24 Franklin County. They're stationed in a substation,
25 if you will, out of the St. Louis office, and I

1 believe that they do cover from Rolla, from the
2 Phelps County line, which is the eastern district of
3 the FBI, all the way into the inner City of St.
4 Louis where the regular FBI office covers.

5 Q Now Sergeant, are you aware of a statutory
6 requirement in Missouri that members of the Highway
7 Patrol notify the sheriff of the county --

8 MR. PARKS: Objection. Your Honor, may we
9 approach?

10 JUDGE SUTHERLAND: Yes.

11 (BENCH CONFERENCE BEGINS)

12 MR. PARKS: Judge, this has been covered in
13 the Motion to Suppress and the Court has ruled in
14 the State's favor. I feel that this would just be
15 irrelevant to get into it now because it has no
16 bearing on the case.

17 MR. EASTWOOD: It goes to the witness's
18 credibility because he testified in his deposition
19 that he contacted the sheriff's office, and I have a
20 letter from Sheriff Toelke saying my office was
21 never contacted. I think it's a matter fair for
22 impeachment.

23 JUDGE SUTHERLAND: It was brought up
24 yesterday on direct. He did testify that he
25 contacted the sheriff's office, so it's a fair

1 subject.

2 MR. EASTWOOD: He opened the door.

3 JUDGE SUTHERLAND: Of cross, yeah.

4 (BENCH CONFERENCE ENDS)

5 JUDGE SUTHERLAND: Overruled.

6 Q (By Mr. Eastwood) Sergeant, are you aware of
7 a statutory requirement in Missouri that the sheriff
8 of the county be notified when you serve a search
9 warrant.

10 A Yes, sir, I am.

11 Q And when you served the search warrant to --
12 on Jeff Weinhaus' house, did you notify the sheriff
13 for Franklin County?

14 A I did not notify him prior to me serving the
15 warrant, and that was my fault.

16 Q So you did not follow Missouri Law?

17 A I did not notify him prior to serving the
18 warrant. I had no cell phone reception when I got
19 back to Jeffrey's house. When I received the
20 warrant, I called members of my chain of command and
21 let them know a local officer was driving the car,
22 and when we got back to the house, I had no cell
23 signal and I didn't have any of the numbers of
24 anyone in Franklin County because I don't normally
25 work here. Once I served the warrant and we got

1 back to where we had cell signal, it was then that I
2 contacted Mike Maruschak from the FBI, who he had
3 been in contact with the Franklin County Sheriff's
4 Department earlier in the day and let him know.

5 Q Didn't you testify yesterday that you did
6 contact the sheriff?

7 A I contacted the sheriff's office immediately
8 when I received the arrest warrant, not the search
9 warrant.

10 Q Who did you talk to in the sheriff's office?

11 A When I received the search or the arrest
12 warrant, sir? When I received the search warrant
13 later, I talked to the sheriff and apologized to him
14 and Subke for not notifying him in a timely manner,
15 and then when I received the search warrant, I
16 talked to a major in their department.

17 Q Do you remember the major's name?

18 A I don't remember from memory but it's in the
19 case file.

20 Q Did you notify them prior to serving the
21 arrest warrant?

22 A Yes, sir. When I left this courthouse, I
23 went right downstairs where I had full signal out
24 front, Scott Mertens was with me. I contacted the
25 sheriff's department, explained who I was and what I

1 needed assistance with, and they informed me that
2 they were too busy and had too many calls pending to
3 assist me, and they felt like I could serve the
4 warrant myself.

5 Q So to your mind you followed Missouri Law
6 with the arrest warrant but not with the search
7 warrant?

8 A With the search warrant I did fail to notify
9 the sheriff in a timely manner. Now he knew we were
10 here looking for Jeff, but he did not know that I
11 had applied for the warrant.

12 Q He knew that you were looking for Jeff the
13 day of the search warrant?

14 A Yes, the day of the search warrant he knew
15 that -- the FBI had spoken with him as well as other
16 folks. I hadn't spoke with him directly.

17 MR. EASTWOOD: Permission to approach, Your
18 Honor?

19 JUDGE SUTHERLAND: Yes.

20 Q (By Mr. Eastwood) I have a letter here --

21 MR. PARKS: I'm going to object at this
22 time. May we approach?

23 JUDGE SUTHERLAND: Yes.

24 (BENCH CONFERENCE BEGINS)

25 MR. EASTWOOD: This goes to the witness's

1 credibility. It's a letter from the sheriffs saying
2 we were not aware a search warrant was issued.

3 MR. PARKS: It's from the sheriff and the
4 sheriff isn't here to testify as to the foundation
5 of the letter. It's not a letter addressed to him.

6 MR. EASTWOOD: It's addressed to the
7 defendant and it's absolutely fair for impeachment.
8 Foundation has been laid.

9 MR. PARKS: There's no foundation laid for a
10 letter written by the sheriff.

11 MR. EASTWOOD: The sheriff is in the back, I
12 can have him come up and do a foundation right now.

13 JUDGE SUTHERLAND: Objection is sustained.

14 MR. EASTWOOD: So I can't impeach him with
15 this? May I make an Offer of Proof later?

16 JUDGE SUTHERLAND: Yes.

17 MR. EASTWOOD: Thank you, Your Honor.

18 (BENCH CONFERENCE ENDS)

19 Q (By Mr. Eastwood) Whose idea was it to meet
20 Jeff at the MFA gas station?

21 A It was my idea, sir.

22 Q And why did you not pick him up at his house
23 earlier that day when you noticed his car there?

24 A I did not want to go back to his house. It
25 was tactically not a good -- you had to come in a

1 long driveway, it was isolated, there was only one
2 way in and one way out, and I knew how his front
3 door situation was with the bushes and no easy way
4 to move from the door, and Jeff had put a You Tube
5 video on You Tube stating that he -- after I
6 searched his home, he put a You Tube video on
7 stating he should have shot me in the head when I
8 was there and that if he'd have been 10 years
9 younger, that's what he would have done. So in
10 addition to him calling my employer and other
11 things, I just felt like if I contacted him at home,
12 especially with him saying he was on Def-Con 4 with
13 his guns loaded, that that would provoke some type
14 of confrontation and I didn't feel safe going there.

15 Q I didn't see this video where he said he'd
16 put a bullet in your head, but are you aware of any
17 investigation into Jeff for threatening you?

18 A There was none.

19 Q No charges ever filed for threatening you?

20 A No, sir.

21 Q So you say that Jeff said he was going to
22 put a bullet in your head, but no one in law
23 enforcement ever decided to do anything about that?

24 A Not in the law enforcement agency that I
25 work for, no, sir.

1 Q Now you said you didn't want to go to his
2 house because it was too secluded, were you scared?

3 A I was nervous about going back to his house
4 because I did not know his mental status at that
5 moment, and I knew that he was severely agitated at
6 me and I felt like if I went back to his house and
7 knocked on the door, there was going to instantly be
8 a confrontation.

9 Q Why didn't you have Jeff come to a police
10 station?

11 A Me not being from the area and only knowing
12 where the courthouse was, I wanted to pick an area
13 that was secluded where there weren't a lot of
14 people, and the gas station was like a mile away
15 from his house and it was a rural gas station and
16 parking lot, and if anything bad happened, I didn't
17 think there would be anybody there.

18 Q But you spoke to the Franklin County
19 Sheriff's Office before then; right?

20 A Yes, sir.

21 Q Why didn't you have him come up to the
22 Franklin County Sheriff's Department?

23 A I did not think he would meet me here. I
24 felt he would be more likely to meet me in a
25 non-threatening law enforcement place that he was

1 familiar with closer to his home.

2 Q I'm a little confused here because you also
3 told me when I took your deposition that you didn't
4 think Jeff was dangerous before you saw his gun?

5 A I did not think that Jeff was a dangerous
6 person, but I did not want to go back to his house
7 where he said he had his guns loaded.

8 Q You told me that when you saw Jeff, that he
9 was armed at the gas station, that you were shocked
10 because he was a man of God; right?

11 A I was shocked that he was armed and what
12 happened because he claimed to be a man of God, yes,
13 sir.

14 Q And you told Perry Smith that you were
15 shocked to see that Jeff was armed when he came to
16 the gas station because he was, quote, "a
17 non-confrontational philosophical religious man"?

18 A That's what I believed, yes, sir.

19 Q Then how could you have been too scared?

20 A I was not too scared, I just did not feel it
21 would be appropriate. To be honest, I felt like
22 Mr. Weinhaus has some mental issues, and to go to
23 his house and instigate something, which is what I
24 felt would have happened, I felt like I needed to
25 take the high road and not do that. I still to this

1 day believe that Mr. Weinhaus has mental issues and
2 that there were other options available than what
3 happened.

4 Q You have no education in mental health
5 assessment; right?

6 A No, sir.

7 Q But you do know Jeff's character pretty
8 well; right? You've known him for a long time;
9 right?

10 A I had only met him from this incident, but I
11 had actually seen some of his videos and postings
12 from Bulletinman for several years.

13 Q So you were familiar with him; right?

14 A Yes, sir.

15 Q And you know that a lot of people that he
16 criticized got a kick or laugh out of some of his
17 commentary; right?

18 MR. PARKS: Objection, calls for
19 speculation.

20 JUDGE SUTHERLAND: Sustained.

21 Q (By Mr. Eastwood) And you told Perry Smith
22 at one point that you didn't mind Jeff even though
23 he told you that you were going to hell; right?

24 A Yeah, that's what he told me the first day I
25 met him when I talked to him and we talked about our

1 Lord Jesus Christ. Even though I told him I was
2 saved, he still told me I was going to hell.

3 Q You didn't hold it against him?

4 A I didn't hold it against him.

5 Q Let's talk about the MFA gas station because
6 that's the place where you chose to meet Jeff and
7 arrest him. You said it was secluded and rural;
8 right?

9 A Yes, sir, it was.

10 Q But in fact the day you went there it wasn't
11 that secluded; right?

12 A No, the day that I went there for some
13 reason it was not secluded.

14 Q There were two repairmen working on the
15 gutter in front of the store; right?

16 A Yes, sir.

17 Q You had a deliveryman there delivering
18 sodas?

19 A Yes, sir.

20 Q And you had a store clerk inside?

21 A Yes, sir.

22 Q And customers coming back and forth?

23 A I believe so, yes, sir.

24 Q And then you also had the two FBI agents;
25 right?

1 A Yes, sir.

2 Q And you had propane tanks?

3 A Yes, sir.

4 Q And gas dispensing equipment?

5 A Yes, sir.

6 Q So this wasn't exactly an empty parking lot,
7 was it?

8 A The portion where we parked our vehicle was
9 an empty parking lot away from the store, and when
10 we set up everyone in position, there was no one
11 there 15 minutes prior.

12 Q No one there but there were guttermen there;
13 right?

14 A They weren't there then.

15 Q But the gutter repairmen were certainly
16 there by the time Jeff got there; right?

17 A Yes, sir.

18 Q And the soda deliveryman was there by the
19 time Jeff got there; right?

20 A Yes, sir, he pulled in.

21 Q So you basically had a lot of innocent
22 civilians standing between you and Jeff; right?

23 A No, sir.

24 Q Well, the guttermen weren't innocent
25 civilians?

1 A They weren't standing between me and Jeff.
2 Jeff and me were on the other side of them.

3 Q I apologize, let me rephrase. Jeff was
4 between you and the guttermen; right?

5 A Yes, sir.

6 Q Jeff was between you and the deliveryman;
7 right?

8 A Yes, sir, he was.

9 Q Jeff was between you and the window of the
10 store; right?

11 A Yes, sir, he was.

12 Q And behind that window was the store clerk;
13 right?

14 A I believe so, yes, sir.

15 Q And also Jeff was between you and the
16 propane tanks; right?

17 A Yes, sir.

18 Q And the gas dispensing tanks?

19 A Yes, sir.

20 Q Now you never told Jeff he was going to be
21 arrested before he got there; right?

22 A No, sir, I did not.

23 Q I think the word you used was a ruse; right?

24 A Yes, sir, that is the word that I used.

25 Q So you lied to Jeff; right?

1 A Yes, sir, I did.

2 Q You didn't tell him any facts that to his
3 knowledge Jeff was going to be arrested?

4 A No, I did not tell him anything that
5 indicated he was going to be arrested.

6 Q How frequently do you use lies in your work
7 as a trooper?

8 A Sometimes quite frequently. They're used in
9 interview or interrogation techniques. Sometimes
10 they're used to motivate someone to do something. I
11 felt if I used Jeff computers, that's what he wanted
12 back the most, that he would appear.

13 Q When do you think it's acceptable to lie to
14 civilians?

15 A In the course of my duties, if I have to
16 tell someone a lie to do my duty, I do so, but I
17 document that I've lied. I don't try to pretend
18 that I haven't lied. I wrote in the report that I
19 lied to him on purpose to get him to the parking lot
20 to meet us.

21 Q So if I hear you right, it's okay if you lie
22 as long as you fess up to it later?

23 A I document it to make sure that there's no
24 discrepancy.

25 Q Do you document all your lies?

1 A If I use some type of an interrogation
2 technique, it's normally taped.

3 Q Now Jeff's house is also on Highway K;
4 right?

5 A Yes, sir, it is.

6 Q About three miles to the south of the gas
7 station?

8 A I'm not sure on the measurement. I wasn't
9 driving but I thought it was closer to a mile.

10 Q And you testified yesterday that you were
11 concerned about Jeff bringing an army of supporters?

12 A That is what he told me, yes, sir.

13 Q But you also watched that wrist watch video
14 yesterday; right?

15 A Yes, sir.

16 Q Does he mention an army of supporters
17 anywhere there on the tape?

18 A He mentioned -- not during that tape, no.
19 He mentioned it to me during his phone call that he
20 was going to have a lot of people show up with him.

21 Q And you have no recording of that phone
22 call; right?

23 A No, sir.

24 Q In fact you heard that tape yesterday, the
25 only person I hear Jeff talking about bringing is a

1 preacher; right?

2 A I believe there might have been more than
3 one but yes.

4 Q He said, "I'm trying to find a preacher to
5 come with me," or words to that effect?

6 A Yes, sir.

7 Q In your experience as a law enforcement
8 officer, are preachers usually violent?

9 A I haven't met too many that are violent, no.

10 Q So you were concerned about an army of
11 supporters nevertheless?

12 A I was concerned because he told me he was
13 bringing supporters with him.

14 Q Then why didn't you put on a bullet proof
15 vest before he got there?

16 A I still did not believe that Jeff was a
17 violent person. I believed that he was a blow hard
18 on the Internet and trying to draw attention to his
19 cause. I underestimated him. I did not think that
20 he would ever bring a weapon. Jeff had a history of
21 doing these types of things for 16 years, setting
22 ultimatums and dates, and he always appeared at
23 every court appearance he had. He never, to my
24 knowledge, had ever been a violent person.

25 Q He was a jester then, he wasn't a threat?

1 A I don't know if I would classify him as a
2 jester.

3 Q But you just said he had a long history of
4 making these outrageous statements; right?

5 A He has a history of making these types of
6 ultimatums for people to leave office or he's going
7 to file paperwork or do what he can to remove them
8 from office.

9 Q And he's never, never used violent means
10 against any of these people, to your knowledge?

11 A To my knowledge he never had.

12 Q Some people kind of think Jeff was a bit of
13 a joke?

14 MR. PARKS: Objection, calls for
15 speculation.

16 JUDGE SUTHERLAND: Sustained.

17 Q (By Mr. Eastwood) So you were concerned
18 about an army coming but you didn't put on your
19 vest. How come you didn't take any rifles or heavy
20 firepower out of your vehicle?

21 A We had them in the back seat, and when I
22 spoke to Jeff, he sounded like he was going to come,
23 and when the gutter people pulled up, honestly I
24 thought they were with Jeff. I didn't suspect that
25 anyone would get out of an abandoned gas station and

1 start cleaning the gutters. I thought that he was
2 familiar with the store, he went in there, maybe he
3 knew those people, knew the clerk. When the soda
4 man came, I honestly thought he was a soda man, but
5 I did not think that Jeff was the type of person
6 that would show up with a weapon and try to resolve
7 things by force.

8 Q The guttermen got there before Jeff did;
9 right?

10 A Yes, sir.

11 Q And you thought they might be with him?

12 A Yes, sir.

13 Q By you still didn't go put on a vest?

14 A At that point we would have had to get out
15 of the car -- Corporal Mertens and I had a
16 conversation. I actually said we should probably
17 put on our vests, and at that point we had a
18 discussion well, if we get out of the car now to put
19 on the vests, then if those people are with him,
20 they're going to call him and tell him and say they
21 saw us get out of our car and put on bullet proof
22 vests. So we thought that would spook him. My
23 final resort was going to have some type of SWAT
24 team encounter Jeff at his home. So we did not, we
25 made a poor decision. We believed Jeffrey was not

1 that much of a threat, so we left the vests in the
2 back seat.

3 Q Did you think the guttermen were a threat?

4 A I didn't know who they were.

5 Q This conversation you had with Corporal
6 Mertens, you never mentioned that to me in your
7 deposition, did you?

8 A I believe I did, sir.

9 Q Really, the part about the guttermen being
10 dangerous and whether or not to put on your vest?

11 A Yes, I read it in the deposition. If you
12 hand it to me, I can show you. I didn't have a
13 conversation about the guttermen but there was an
14 excerpt in there about us making the decision not to
15 put on our vests.

16 Q I know you testified that you weren't going
17 to put on your vest, but that wasn't my question.
18 My question was whether because the guttermen got
19 there before Jeff did and you thought they might be
20 with Jeff, that you still didn't put on your vest?

21 A If you can refer to the deposition, there's
22 some conversation in there about that.

23 Q Really?

24 A Yes, sir.

25 Q Did the presence of these guttermen elevate

1 your concern for your safety?

2 A Are you reading from the deposition?

3 Q No I'm not, I'm asking you?

4 A I just felt that they were probably
5 supporters of Jeff, and I went and briefed the FBI
6 guys that there may be more people showing up than
7 Jeffrey, so it just kind of heightened our security.

8 Q You were more concerned for your safety;
9 right?

10 A I still did not believe he was a physical
11 threat. I believe that we would have a crowd, maybe
12 protests, maybe people verbally protesting the
13 arrest of Jeff.

14 Q Yesterday you said you made a tactical
15 mistake in not putting on your vest?

16 A Yes, sir.

17 Q What other -- did you make other tactical
18 mistakes that day?

19 A Yes, sir, I did.

20 Q And what were they?

21 A I obviously didn't bring better firearm. I
22 didn't have my vest on. I had other equipment that
23 I could have had. I just underestimated Jeffrey and
24 I thought he was a peaceful person and I made those
25 mistakes. I was complacent.

1 Q You haven't always thought you made
2 mistakes, though, have you, that day?

3 A That day, I make mistakes every day, sir.

4 Q But you did tell Perry Smith when he
5 interviewed you that you would not have done
6 anything different that day; right?

7 A As far as my use of force once the firearm
8 was introduced, no.

9 Q So that wasn't a mistake to your mind?

10 A No.

11 Q Now, let's turn to the car that Jeff was
12 driving. That's a -- that was a Subaru hatchback
13 registered to his wife; right?

14 A Yes, sir, I believe that is correct.

15 Q And those hatchbacks, they have a station
16 wagon type door in the back; right?

17 A I believe they do.

18 Q And they're a little higher than a normal
19 sedan, is that fair to say?

20 A Yes, sir, I believe they are. They are
21 taller than the car we had.

22 Q In the area where you parked in the gas
23 station, that's on a slight -- I think we have a
24 diagram back here. I'm going to bring it out and
25 show it to you and the jury. Can you see that, sir?

1 A Yes, sir, I can.

2 Q So this area up here, this is where you were
3 parked; right?

4 A Yes, sir.

5 Q And was that area on a slight incline?

6 A Yes, sir, it was.

7 Q And was the surface of the parking lot in
8 this area gravelly?

9 A Yes, sir, it was.

10 Q It wasn't smooth asphalt or anything like
11 that?

12 A No, it was gravel.

13 Q So you testified yesterday that Jeff drove
14 in here?

15 A Yes, sir.

16 Q And then he came in, circled around and
17 parked there; right?

18 A Yes, sir.

19 Q And you also testified that Jeff kind of
20 sped up when he pulled in; right?

21 A Yes, sir.

22 Q But we don't really hear that on the tape,
23 do we?

24 A I don't know if you can or can't hear it. I
25 was outside the car and I heard the engine speed up.

1 Q Well, we'll review the tape in a minute and
2 see whether or not you can hear that, but before we
3 listen to the tape, I want to ask you this. Just on
4 your common experience, if you're going to go up a
5 hill, an incline and turn around, you might need to
6 tap your accelerator a little bit?

7 A If you were going to go up a hill, yes, but
8 that was a slight incline in a parking lot.

9 Q But presumably a car coming down here, it's
10 going to slow down a little bit to make a turn;
11 right?

12 A Yes.

13 Q So it slows down, it turns in and then it
14 needs to go up an incline. So you're probably going
15 to have to tap the accelerator some to turn around,
16 go up the incline; right?

17 A Where I heard the accelerator tapped was
18 after he had gone up the incline and had turned his
19 vehicle coming back towards our vehicle.

20 Q When he was around here?

21 A He went way around and back there.

22 Q And you in fact testified that you thought
23 he was going to ram you?

24 A Yes, I was sitting there with the passenger
25 door open, and when I heard the engine accelerate

1 and he turned so quickly in the parking lot, I
2 thought maybe he was going to run into the back of
3 the vehicle.

4 Q But he didn't ram you?

5 A No, sir, he did not.

6 Q And the FBI agents didn't jump out of the
7 car?

8 A They did jump out of the car when they saw
9 him pull into the parking lot.

10 Q Oh, really?

11 A As far as I know.

12 Q Not after you shot him?

13 A I believe when they saw him pull in the
14 parking lot they were already heading towards us.

15 Q What kind of car were you and Corporal
16 Mertens driving?

17 A A white Chevrolet Impala.

18 Q Now I want to talk to you about where and
19 how Jeff parked. This is a fair representation of
20 how Jeff parked, this is the Subaru?

21 A Yes, sir.

22 Q Does it make sense that if someone was going
23 to load computer equipment from the back of that car
24 to the back of that car, that might be a somewhat
25 logical place to park?

1 MR. PARKS: Objection, Your Honor, calls for
2 speculation on the part of the witness.

3 JUDGE SUTHERLAND: Overruled, you may
4 answer.

5 THE WITNESS: I believe that a position
6 close to that would be -- he pulled a little far
7 down, that's quite a distance to carry, but if he
8 would have pulled right up next to us like that,
9 that would have been a very common position.

10 Q (By Mr. Eastwood) When you say quite a
11 distance, it's only about 10 or 15 feet?

12 A About 15 feet, yes.

13 Q Now, I want to go over what you spoke with
14 Jeff about when you got -- when Jeff got out of the
15 car, because I have some confusion over that. You
16 told Perry Smith when he took your recorded
17 interview, the statement the day after the shooting,
18 that you told Jeff, "Jeff, I got your computers
19 right here"; is that correct?

20 A Yes, sir.

21 Q And you wrote in your report that you said,
22 "I got the papers right here"?

23 A When I exited the vehicle, and that was
24 something that there might be a bit of confusion on
25 on my part. Before Jeff arrived, my partner and I,

1 Scott Mertens, we always role play things. So we
2 had developed a conversation about what we were
3 going to do to delay Jeff until the FBI came over
4 and we would have our guys there, and I talked about
5 maybe we'll go to the trunk, open the trunk, I'll
6 tell him I got the papers right here, and I know
7 that when I exited I believe I said something to the
8 effect of I have the papers right here and I held
9 the folder up, but I don't know if Jeff was close
10 enough to hear me when I said that. I had already
11 started talking once I got out of the car.

12 Q It's fair to say you can't hear it on the
13 video?

14 A I did not hear it, no, sir.

15 Q And although you wrote it in your report,
16 I've got the papers right here, you didn't mention
17 in your report that you were role playing with your
18 partner before Jeff arrived, did you?

19 A No, that's just something common that we do.
20 Before we go talk to anyone, we kind of talk about
21 what we're going to talk about and what strategies
22 we might use and what information we need to obtain.
23 That's just something common that Corporal Mertens
24 and I have done for years.

25 Q And you didn't mention to Sergeant Bauer

1 that you were role playing and having this
2 conversation with Corporal Mertens before Jeff got
3 there; right?

4 A No.

5 Q Not during your scene walk through. And you
6 didn't mention to Sergeant Perry Smith, the
7 investigating trooper, that you were role playing;
8 right?

9 A No.

10 Q So that appears nowhere in any of the police
11 reports; right?

12 A No, I don't believe it does.

13 Q It doesn't appear in your deposition either,
14 does it?

15 A I don't believe it was brought up, no, sir.

16 Q So this is the first time we're learning of
17 the role playing, okay. Now, Jeff had an open carry
18 handgun, right; is that fair to say?

19 A Yes, sir.

20 Q Generally speaking, unless a citizen is a
21 felon or something, that's legal conduct; right?

22 A Yes, sir.

23 Q And in fact it was legal for Jeff to do that
24 day; right?

25 A As far as I know he was legally carrying a

1 firearm that day.

2 Q No one else from the Highway Patrol ever
3 charged him with unlawful possession of a weapon;
4 right?

5 A Not to my knowledge.

6 Q And that weapon was in a holster; right?

7 A Yes, sir, it was.

8 Q This is the holster right here; right?

9 A I believe so, yes, sir.

10 Q You served in the Army for seven years;
11 right?

12 A Yes, sir, six years, 11 months and 29 days,
13 just a shade shy of seven years.

14 Q And you saw some rough times and events when
15 you were in the Army?

16 A Yes, sir.

17 Q Some violent interactions?

18 A Yes, sir.

19 Q Where you shoot to kill because you're
20 dealing with the enemy?

21 A We shoot to incapacitate, yes, sir.

22 Q It's not law enforcement, it's war; right?

23 A Yes, sir.

24 Q So you recognized this type of holster;
25 right?

1 A Yes, sir, I own one.

2 Q And you recognize it not just because you're
3 a state trooper but also because you served in the
4 military and this holster is used in the military;
5 right?

6 A Yes, sir.

7 Q And you'd seen this holster, a similar one,
8 when you searched Jeff's house a few weeks earlier;
9 right?

10 A Yes, sir, I did.

11 Q Mr. Parks introduced into evidence a
12 photograph of that holster in Jeff's bedroom, and
13 you testified that that holster belonged to Judy
14 Kropf Weinhaus?

15 A I believe the gun.

16 Q Oh, the gun?

17 A Yes.

18 Q You might infer that the holster was hers
19 too but who knows. And you told Perry Smith that
20 these holsters are very hard to open; right?

21 A Yes, sir, they are.

22 Q And you know these holsters, they are very
23 hard to open; right?

24 A Yes, sir, they are.

25 Q It requires force to pull down on it?

1 A Yes, sir, and they're even harder to open
2 with a gun in them.

3 Q Even harder with a gun in them?

4 A Yes, sir.

5 Q And you've been investigating Jeff for a
6 while before you went to arrest him on September
7 11th; right?

8 A Yes, sir.

9 Q And you knew that he had no military
10 training or experience; right?

11 A I did not believe he did, no, sir.

12 Q There's nothing to suggest he did in
13 anything that came up in the investigation?

14 A No, sir, there was not.

15 Q And no police training, right, he's not ex
16 law enforcement?

17 A Not to my knowledge, no.

18 Q And in itself -- let me back up. If the
19 weapon that Jeff had was in this holster, could the
20 weapon be taken out of the holster without opening
21 the holster?

22 A I don't know if that particular weapon,
23 because it was a little small for the holster, could
24 be taken out, but normally no, that is why the
25 holster is made that way, it is virtually 100

1 percent retention of weapon. I've never heard of
2 one coming out.

3 Q You never heard of one coming out?

4 A No, sir.

5 Q So you've got to pull down with a lot of
6 force, flip up, sweep it over and put your hand down
7 on the gun?

8 A Yes, sir.

9 Q In fact at one point you told Perry Smith
10 that it would be impossible to have your hand on
11 both the holster and the butt of the gun; right?

12 A Yes. Normally you can't reach that far to
13 get the ring open. It's pretty hard to do with two
14 hands.

15 Q You've got to do one before the other?

16 A Yes.

17 Q Do you consider yourself a pretty quick
18 shot, pretty good shot?

19 A Yes, sir.

20 Q And how long would it take you, as a man
21 with military experience, law enforcement
22 experience, to open this holster, sweep it open and
23 then grab a gun and then withdraw it from the
24 holster?

25 MR. PARKS: Objection, Your Honor, calls for

1 speculation on the part of the witness.

2 JUDGE SUTHERLAND: Overruled, you can
3 answer, if you can.

4 THE WITNESS: With practice I could probably
5 do it in under a second.

6 Q (By Mr. Eastwood) Under a second?

7 A But normally I could probably do it in 1.5
8 to 2 seconds. I've trained with that holster.

9 Q You've trained with that holster, 1.5, seven
10 years military, 16 years Highway Patrol?

11 A Yes, sir. I know that because we engage
12 targets that turn and stay stationary for three
13 seconds. During that time you have to draw that
14 weapon, fire and hit the target before it turns
15 back.

16 Q So you can get it open, you can sweep it
17 up -- you can pull it down, sweep it open, you can
18 withdraw the gun and then shoot in about three
19 seconds?

20 A Yes.

21 Q With all of your experience?

22 A Yes, sir.

23 Q Now in itself Jeff having a gun in a
24 holster, a holster that is difficult to open, was
25 not a danger to you; right?

1 A I did not think that he would use the gun.
2 He was open carrying the gun. I was alarmed at the
3 presence of the gun, but I wasn't threatened by the
4 gun in the holster, specifically my life being in
5 danger.

6 Q In your training you're taught in Missouri
7 citizens are allowed to open carry guns and you're
8 going to encounter citizens with open carry guns?

9 A Yes, sir.

10 Q There's nothing illegal about it?

11 A Not to my knowledge.

12 Q Nothing inherently dangerous about it?

13 A No, sir.

14 Q And of course although you do have military
15 experience, when you were confronted with Jeff, you
16 were confronted with a law enforcement policing
17 situation; right, not a military situation?

18 A Yes, sir.

19 Q Did you ever scream at Jeff, "what are you
20 doing with that gun"?

21 A I believe I did yell something to that
22 effect very loud.

23 Q Scream, yell?

24 A Yes, sir.

25 Q Now Sergeant Folsom, you received training

1 from the Highway Patrol on the use of force and
2 firearms; right?

3 A Yes, sir, I have.

4 Q And that includes training on what to do
5 interacting with a member of the public who happens
6 to have a gun; right?

7 A Yes, sir.

8 Q And generally speaking does your training
9 teach you to escalate or deescalate a potential
10 threat?

11 A My training teaches me to assess the
12 situation and choose an option of force
13 appropriately.

14 Q So your training does not teach you to
15 deescalate the situation before using force?

16 A It depends on the situation.

17 Q What type of situations where would you not
18 try to deescalate the threat before using force?

19 A If someone had a firearm and was going to
20 shoot me, I'm not going to try to deescalate, I'm
21 going to fire and defend myself and the people with
22 me. That's too far to deescalate from.

23 Q Now if you are about to issue a warrant, do
24 they teach you to use certain words or gestures to
25 get citizens to comply with the arrest warrant?

1 A They don't teach us specifically to use
2 words or gestures for arrest warrants. We have
3 specific training on how to talk to people in
4 general when we deal with the public.

5 Q And what type of training is that, is this
6 training about the reasonableness of force?

7 A No, we just have training to remain polite
8 and courteous, and we have some training they call
9 verbal judo, which I participated in when I came on.

10 Q Can you tell the jury what verbal judo is?

11 A Verbal judo is a technique of deescalating a
12 situation. A lot of times a person may be agitated,
13 so they may call you a bad name, so you would say
14 something to the effect, "well, I appreciate that
15 but the reason why I stopped you is you didn't stop
16 at the stop sign." Instead of being offended or
17 coming at them for calling you a bad name, you try
18 to deescalate the situation.

19 Q Is part of verbal judo trying to distract
20 the suspect?

21 A I don't believe verbal judo involves
22 distracting, it just involves trying to deescalate
23 the situation so there isn't an argument or
24 something to that effect.

25 Q Deescalate the threat and achieve

1 compliance, is that fair to say?

2 A It just is a technique used to prevent an
3 argument.

4 Q Have you been taught about the use of force
5 continuum?

6 A I have received some training about use of
7 force continuums, but we do not use a continuum in
8 our organization at this time.

9 Q At this time. When you were taught use of
10 force continuum, were you taught that by the Highway
11 Patrol or by another organization?

12 A I was taught that in the military as well as
13 the Highway Patrol.

14 Q So it has been part of your training and
15 experience; right?

16 A Yes, it has.

17 Q It perhaps affects you when your instincts
18 kick in in a dangerous situation?

19 A I believe it can.

20 Q Can you tell the jury what it is?

21 A We do not presently use the use of force
22 continuum, but any use of force continuum involves a
23 list of options. Perhaps you encounter someone, you
24 can use a verbal command, you can use officer
25 presence by having more officers present. You can

1 use pepper spray. You can use unarmed self defense.
2 You can use an ASP baton, a canine dog if he was
3 present or you can use deadly force.

4 Q I took the deposition of a use in force
5 instructor for the Highway Patrol, a man named Jeff
6 White, are you familiar with him?

7 A Yes, sir, I am.

8 Q And I anticipate we may hear from him in
9 this trial. Were you trained by Jeff White?

10 A I've been to one or two of his training
11 classes. I believe I participated in a program that
12 he taught called Active Shooter.

13 Q What is Active Shooter?

14 A Active Shooter is a situation involving --
15 after the Columbine shooting, it was kind of derived
16 from that that law enforcement officers instead of
17 securing perimeter and waiting when there was an
18 active shooter on site, because it takes a while to
19 get a SWAT team or tactical unit in place, we
20 develop small groups and enter into a building when
21 they could actively hear someone shooting and try to
22 engage that person to save lives until the SWAT team
23 could arrive.

24 Q That was not the situation you were
25 confronted with in September?

1 A No, it was not.

2 Q Now going back to the use of force
3 continuum, which I understand the Highway Patrol
4 does not use but you say it's nevertheless been part
5 of your training and experience in the Army, early
6 on in the Highway Patrol, have you ever heard use of
7 force described as a series of steps?

8 A Yes, I have.

9 Q And the idea is the lowest step is a very
10 low level use of force, it might not even be force
11 itself, it could just be the mere presence of a
12 uniformed law enforcement officer?

13 A I've seen something similar to that, yes.

14 Q Then up a few steps to open hand combat?

15 A Yes, sir.

16 Q Up a few steps to closed hand combat?

17 A Yes, sir.

18 Q Could be tackling someone?

19 A Yes, sir.

20 Q Using a baton?

21 A Yes, sir.

22 Q And then at the top deadly lethal force?

23 A Yes, sir.

24 Q Could you stand up for me, sir, just for a
25 minute. How tall of a man are you?

1 A I'm 6'2".

2 Q How much do you weigh?

3 A Right now I weigh a little more than usual,
4 265, 270.

5 Q You can have a seat, thank you very much.
6 How much did you weigh on September 11th, 2012?

7 A I weighed exactly 222, 225 on September
8 11th.

9 Q You were in pretty good shape then?

10 A I had been in a good exercise program and
11 was exercising, yes, sir.

12 Q Mr. Weinhaus, could you stand up for a
13 minute. Thank you. Okay, you can have a seat.
14 You're a lot taller than Jeff Weinhaus; right?

15 A Yes, sir.

16 Q You're a lot bigger than Jeff Weinhaus;
17 right?

18 A Yes, sir.

19 Q And when you were confronted with Jeff
20 Weinhaus, did you use verbal judo to deal with the
21 fact that he had a gun?

22 A I didn't. I did not have the opportunity.

23 Q You did not have the opportunity. So you
24 did not use verbal commands to achieve compliance?

25 A The only thing I did was I announced that he

1 had a gun at the same time I began to give him
2 verbal orders to get down on the ground.

3 Q And does verbal judo normally teach you, or
4 any of your training for that matter, teach you to
5 draw attention to a gun when someone has a gun or
6 does it teach you to use verbal commands to distract
7 from a gun?

8 A Verbal judo is argumentative people. It has
9 nothing to do with a gun. If someone has a gun, I'm
10 not going to employ a verbal judo tactic.

11 Q But we talked about this in your deposition,
12 Jeff was a little argumentative when he got out of
13 that car; right?

14 A Yes, sir.

15 Q You had an exchange and you said, I'm
16 paraphrasing here, we'll watch the video in a
17 minute, but something like "What do you got a gun
18 for, Jeff?"

19 And he said, "What do you got a gun for";
20 right?

21 A Yes, something to that effect.

22 Q And you said, "I'm authorized to have a
23 gun," and that's true; right?

24 A Yes, sir.

25 Q And he said, "I'm authorized to have a gun"?

1 A Yes, sir.

2 Q And you agreed with me that he was being a
3 smartalick; right?

4 A Yes, sir.

5 Q So is that not an argumentative situation in
6 which verbal judo is an appropriate response?

7 A At the time I did what I was trained to do.
8 I announced that he had a weapon to the other
9 officers to let them know that he had a weapon. I
10 also did not know his intention with that weapon, so
11 by asking him a question, I've been trained when you
12 encounter someone that's armed, a lot of times if I
13 ask you a question like why are the lights on, that
14 will delay your reaction or anything until I can
15 step closer, move away, take cover. So at the same
16 time when I said what are you doing with that gun, I
17 was able to achieve two techniques with one. That's
18 something I was trained on as a bodyguard, because
19 if someone pulled a gun in a crowd, we would yell
20 "gun", or if we saw a gun we would say "gun". At
21 the same time those are the techniques that I used.
22 When he started manipulating the holster, that's
23 when I told him to get down.

24 Q Let's break it down into smaller chunks. So
25 you didn't say why is the sky blue or any type of

1 statement to distract from the gun; right?

2 A No. At the present time I had to let
3 everyone know there was a gun, and I asked him the
4 question the best I could doing both at the same
5 time.

6 Q You drew everyone's attention, including
7 Jeff's, to the gun?

8 A Yes.

9 Q And you testified, you told several people,
10 I think including me in your deposition, that you
11 were about five to seven feet away from Jeff; is
12 that right?

13 A Yes. Initially when I first saw the gun, I
14 was about seven, I'd say seven feet away. I made
15 some steps during the altercation that brought me to
16 within five feet.

17 Q And when you first saw the gun, he did not
18 have his hand on the gun or the holster; right?

19 A No, he did not.

20 Q So if you were concerned for your safety,
21 and you're a lot bigger than him, why didn't you do
22 something like charge him, tackle him, try to take
23 him out in a way that did not involve the use of
24 lethal force?

25 A I have done those things before. As a

1 matter of fact as we discussed, I was in a shooting
2 where I did charge someone and ruptured my testicle.
3 I have disarmed people with knives and while on the
4 Highway Patrol been cut with a knife. I was not
5 close enough to engage any type of tactic like that.
6 Seven feet on a gravel surface, I was not close
7 enough to engage him or tackle him. I did not know
8 what his intention was.

9 Q Even a scrawny guy like Jeff Weinhaus?

10 A That scrawny guy had a gun.

11 Q As did you?

12 A Yes, I did.

13 Q Seven feet is less than a full car length,
14 isn't it?

15 A Yes, sir.

16 Q Now you also said in your report that
17 Weinhaus broke into a cold sweat or chill and did
18 not respond to your conversation; is that correct?

19 A Yes.

20 Q And when was it that he broke into this cold
21 sweat and non-responsive state. Was it before you
22 had the interchange "how are you doing, Jeff, what
23 do you got a gun for, what do you got a gun for,"
24 was it before that?

25 A It was after, I believe I said it looked

1 like he had a cold chill that came over him. He
2 started to shake a little bit.

3 Q So had you already drawn your weapon when he
4 started to shake?

5 A My weapon was at the low ready and he had
6 opened his holster.

7 Q And Corporal Mertens, did he have his weapon
8 at a low ready?

9 A I could not see him, he was behind me and to
10 the right, but I obviously seen the video and it
11 appears that he does, but I could not see Corporal
12 Mertens when that was going on.

13 Q Now you also testified that Jeff's eyes
14 never left your face?

15 A No, they did not.

16 Q So you must have been staring right into his
17 eyes to know that; right?

18 A I was staring at his face as I came around
19 the car, and then I saw the gun, and every time I
20 looked at him he was staring me right in my face.

21 Q So you might have looked away but when you
22 looked back he was looking at you?

23 A I never noticed him look anywhere else but
24 my face.

25 Q Now at seven feet away, how were you able to

1 look into Jeff's eyes, to look at his left hand, to
2 look at his right hand, to look at his holster and
3 to look at your back sight at the people and gas
4 tanks and everything else behind Jeff, how were you
5 able to do all that in a short period of time?

6 A The best way I can explain that, sir, is I
7 can see your hands. I can see your eyes. I can see
8 the people behind you and what's there, instantly.

9 Q Instantly?

10 A If I look at these people, I can see their
11 hands, I can see what's behind them on the wall, I
12 can see everything. I mean images are in 3D, I can
13 see what's behind you, where your hands are, where
14 your face is pointed.

15 Q Sure but you gave some detailed testimony as
16 to where Jeff's eyes were looking and located, is
17 that fair to say?

18 A Yes, it is, and I believe they were focused
19 on me and looking at me every time I saw him.

20 Q And you also gave detailed testimony as to
21 what he was doing with his left hand standing seven
22 feet away?

23 A I believe I said that I could not see -- at
24 some point during that my vision started to focus in
25 on his right hand.

1 Q Not his eyes?

2 A No, my vision started to tunnel in on his
3 right hand when he opened the holster.

4 Q So you looked away from his left hand or
5 eyes?

6 A I do not recall seeing him, I just remember
7 my vision tunneled in on the right hand and the gun.

8 Q Is it fair to say in a very short period of
9 time it's hard to look at all three things at once,
10 plus behind me?

11 A I guess I don't understand your line of
12 questioning. I can always see what's behind you
13 standing here talking to you.

14 Q But in the space of a second or two or
15 three, can you really see into my eyes, what my
16 right hand is doing and what the left hand is doing
17 and what the people behind me are doing?

18 A In the span of a second, two or three, of
19 course I can.

20 Q Now at some point you told Jeff to get down
21 on the ground; is that right?

22 A Yes, sir.

23 Q Did Jeff start to comply with your order?

24 A No, he did not.

25 Q In no way?

1 A In no way did he ever motion towards the
2 ground, comply with my order. When I told him to
3 get down on the ground, he was opening the holster
4 and he did not comply at all.

5 Q Did not comply at all. Then why did you
6 tell me under oath in your deposition that Jeff
7 crouched down in a defensive position?

8 A What I stated was that he shifted his body
9 from a bladed position to a front on position with
10 me and he crouched down with his knees. When he
11 said man, you're going to have to shoot me, he
12 crouched down and began to draw the gun.

13 Q So he was crouching before you told him to
14 get down on the ground?

15 A I already told him to get down on the
16 ground. He said, "Man, you're going to have to
17 shoot me," and then as part of him trying to draw
18 his gun, he lowered his center of gravity and began
19 to pull the gun out.

20 Q Did you consider the crouching to be part of
21 compliance with your order to get down?

22 A No, I considered it to be he was squaring up
23 on his target like I'm trained to do, and typically
24 when we draw a weapon, we're going to square
25 ourselves to the target, simultaneously crouch our

1 body down and fire. That's how I'm trained to go
2 into a firing position.

3 Q How come you didn't tell Jeff hands up or
4 get your hands off the gun?

5 A The only thing I could think of was get down
6 on the ground. I don't know, I didn't have -- I had
7 a short amount of time. I felt if he was on the
8 ground, that would be the safest place.

9 Q Have you ever said hands up as a trained
10 officer?

11 A I believe I probably have.

12 Q Or said get your hands off the gun, hands
13 away from the gun?

14 A Yes.

15 Q But you didn't do this here?

16 A I didn't have time.

17 Q Didn't have time. So instead you said get
18 down on the ground. What did Jeff do with his left
19 hand after you said get down on the ground?

20 A Like I said, my vision began to tunnel in
21 and I didn't really -- I can't tell you what
22 happened with his left hand. When I said get down
23 on the ground and he said man you're going to have
24 to shoot me and he started pulling that gun out, all
25 I could see was the gun in his hand.

1 Q So he didn't start to lower himself?

2 A No, he said man, you're going to have to
3 shoot me and he crouched down.

4 Q So he did crouch?

5 A I believe you're exaggerating.

6 Q And you don't know what he did with his left
7 hand?

8 A I couldn't focus on the left hand, only the
9 right hand and the weapon.

10 Q Why couldn't you focus in on the left hand?

11 A It's part of a phenomenon being threatened
12 and being in a deadly force situation, it's usual in
13 my training to have tunnel vision.

14 Q So you had tunnel vision and in fact you
15 couldn't see his right hand, eyes and left hand and
16 behind him?

17 A At that moment, no.

18 Q Now Jeff made a statement and you say it was
19 "you're going to have to shoot me man"?

20 A Yes, sir.

21 Q Could it be "you don't have to shoot me
22 man"?

23 A Absolutely not.

24 Q Absolutely not?

25 A Absolutely not.

1 Q No way that could be objectively true?

2 A No.

3 Q It's fair to say you didn't hear it that
4 way?

5 A Right, no, I didn't hear it that way. I've
6 listened to the audio recording and I don't believe
7 that's what was said. I heard him say "you're going
8 to have to shoot me man" as he began to draw the
9 weapon from the holster.

10 Q Putting aside his right hand and holster and
11 what you say he did, is a citizen stating "you're
12 going to have to shoot me" sufficient grounds to
13 shoot them, to use deadly force?

14 A No, sir, it would not be in itself.

15 Q In fact what might be an appropriate
16 response to a citizen saying "you're going to have
17 to shoot me"?

18 A I guess there could be dozens of responses.

19 Q Verbal judo?

20 A Yes, sir.

21 Q Some non-lethal force?

22 A Yes, sir, in certain situations I believe
23 you could.

24 MR. EASTWOOD: Your Honor, I want to now
25 turn to the video itself. I don't know if the Court

1 wants to keep going or take a break?

2 JUDGE SUTHERLAND: Let's go for a few more
3 minutes.

4 MR. EASTWOOD: I'm not playing the whole
5 video at this time.

6 JUDGE SUTHERLAND: We probably saw as much
7 of the roof of the car as we need to see.

8 Q (By Mr. Eastwood) I'm going to stick with
9 the phase of the tape that deals with Jeff pulling
10 into the parking lot and the interaction with you,
11 okay?

12 A Yes, sir.

13 (VIDEO BEING PLAYED)

14 Q (By Mr. Eastwood) And I suggest to you, you
15 see the car traveling down there, he's pulling in.
16 Is it fair to say the door just opened there?

17 A I believe so, sir.

18 Q So in your recollection did he open the door
19 only once the car had stopped?

20 A I don't remember when exactly the door come
21 open, if it come open while he was coming to a stop
22 or came to a stop. I was getting out of our car
23 then.

24 Q In that taped section of the tape there, I
25 didn't hear an engine rev, did you?

1 A I didn't hear anything.

2 Q I didn't hear the car speed up, did you?

3 A I did not.

4 Q I heard Jeff's voice sound relatively calm,
5 would you agree with that characterization as he was
6 talking on the phone or talking to himself?

7 A Initially I thought he sounded agitated.

8 Q You thought he sounded agitated. Do you
9 think he sounded agitated just now on the phone or
10 to himself?

11 A Initially he was agitated.

12 Q When he was talking about the pastors and
13 preachers not coming with him?

14 A Yes, sir.

15 Q He doesn't mention an Army; right?

16 A Excuse me?

17 Q He doesn't mention an Army on this tape;
18 right?

19 A No, I don't believe he does.

20 Q That's Sergeant Mertens there?

21 A Corporal Mertens, yes, sir.

22 Q I apologize. How would you characterize
23 Jeff's tone of voice in that interchange there, calm
24 or agitated?

25 A He's just kind of in a way being a

1 smartalic, I think.

2 Q And that's consistent with your experience
3 of Jeff previously; right?

4 A Yes, sir.

5 Q He's a smartalic, argumentative guy; right?

6 A Yes, sir.

7 Q Now you just said get down on the ground;
8 right?

9 A I believe we both said it. I think I hear
10 Corporal Mertens saying it as well.

11 Q And that's you; right?

12 A Yes, sir.

13 Q And is that at or about the time you first
14 shot?

15 A I believe it's pretty close. I've already
16 dropped the folder that's in my right hand and I'm
17 beginning to bring my right hand up to my left hand
18 to what we call marry up our grip. I know I fired
19 before I had my grip all the way because the slide
20 cut my hand.

21 Q I remember that, I remember that.

22 A But I'd say you're within a fraction of a
23 second of me firing the weapon.

24 Q How long a period of time do you think
25 passed between the first time you stated "get down

1 on the ground" and when the first shot rang out?

2 A It wasn't very long, a few seconds.

3 Q If I submit to you that it was less than --
4 it was somewhere around three seconds, would that
5 sound accurate?

6 A I believe it would, sir.

7 Q Now, you've been with the Highway Patrol a
8 long time. How many times have you arrested
9 middle-aged men about the size of Jeff Weinhaus?

10 A I've arrested hundreds of people.

11 Q Hundreds?

12 A I couldn't classify middle-aged people.

13 Q How many of them have been armed out of the
14 hundred?

15 A I've arrested several armed people.

16 Q And how many times have you ordered people
17 to get down on the ground?

18 A Several times.

19 Q And in your experience as a law enforcement
20 officer, how long would it take a middle-aged guy
21 the size of Jeff Weinhaus to comply with the order
22 to get down on the ground, being as you were on a
23 gravel incline parking lot?

24 MR. PARKS: Objection, Your Honor, calls for
25 speculation on the part of the witness.

1 JUDGE SUTHERLAND: Sustained.

2 Q (By Mr. Eastwood) You have no opinion, sir?

3 MR. PARKS: Objection.

4 JUDGE SUTHERLAND: Objection is sustained.

5 Q (By Mr. Eastwood) So we heard about four
6 shots there and you testified yesterday you did two
7 in the chest and two to the head?

8 A Initially I fired two to the chest, one to
9 the head and then I fired one additional round
10 towards the head.

11 Q And do you know the angles of entry and of
12 exit of those bullets that went through Jeff's
13 chest?

14 A I saw the impact areas, of course when I did
15 fire and of course when we rendered medical aid, but
16 I've never seen the report that details any angles.
17 I've never seen any of his medical records.

18 Q Would it surprise you if the entrance wounds
19 were up high and the exit wounds were lower on his
20 body?

21 A No, I'm taller than he is, that wouldn't
22 surprise me at all.

23 Q The angle could also be consistent with
24 someone who was getting down on the ground; right?

25 A I don't believe so, sir.

1 Q Why not, because if it goes in high and
2 exits lower, the person is lower than you; right?

3 A That doesn't mean that the person shooting
4 isn't taller and in this case I am.

5 Q How much taller are you than him?

6 A I don't know how tall he is.

7 Q But your height difference explains any
8 difference between the height difference of the
9 entry and exit wounds?

10 A If a person is standing here and the other
11 person is standing here and they're taller and above
12 this person, when they fire, the rounds are going to
13 come in high and exit lower unless there's a
14 different type of incline.

15 Q How far away were you from Jeff?

16 A About seven feet.

17 Q And that height difference is going to make
18 such a difference that it's going to be noticeably
19 higher and noticeably lower for the entry and exit
20 wounds?

21 A I don't know how noticeably higher or lower
22 it is, sir, but that's my explanation. I would
23 anticipate that if the person who fired was taller
24 than the person, vice versa if the person was
25 shorter I would anticipate the round to enter lower

1 and exit higher.

2 Q We'll get to that in a second then.

3 JUDGE SUTHERLAND: It's about time for
4 morning recess. If you want to finish up with the
5 video first, that's fine.

6 MR. EASTWOOD: Judge, I'm going to have to
7 spend more time with the video and stills with the
8 video as we go forward. So if you want to do the
9 break now, Your Honor.

10 JUDGE SUTHERLAND: All right. Ladies and
11 gentlemen, the Court again reminds you of what you
12 were told at the first recess of the Court. Until
13 you retire to consider your verdict, you must not
14 discuss this case among yourselves or with others or
15 permit anyone to discuss it in your hearing. You
16 should not form or express any opinion about the
17 case until it is finally given to you to decide. Do
18 not do any research or investigation on your own
19 about any matter regarding this case or anyone
20 involved with the trial. Do not communicate with
21 others. Do not read, view or listen to any
22 newspaper, radio, electronic communication from the
23 Internet or television report of the trial. We'll
24 be in recess for 15 minutes.

25 (WHEREUPON A RECESS WAS TAKEN)

(BENCH CONFERENCE BEGINS)

MR. EASTWOOD: Your Honor, I would like to make a record, I plan to call upon defendant not to testify but to remove his shirt and tie and jacket to show the bullet wound scars on his body. I believe that this will impeach Folsom's testimony as to the entry and exit wounds because the scars speak for themselves and are obvious to any layperson as to the location of they entered the body high and left the back low. I realize this is a somewhat dramatic thing to do. I do not believe this is a violation of the defendant's Fifth Amendment right. I believe he is still not testifying by doing so and that the prosecution has adequate opportunity to cross examine this evidence by simply also pointing to the body of the person. By analogy the defendant has already stood up. On the other hand I realize that the prosecutor probably objects to this No. 1; and No. 2, if the Court does not sustain or overrules my motion to do this, then I would in the alternative wish to make an Offer of Proof to the jury or to the Court when the jury is not in the presence.

MR. PARKS: And Your Honor, I object to this. If the defendant is going to make this

1 demonstrative exhibit of his body, he's testifying,
2 and I do not have any way of cross examining about
3 this, plus the defendant is not offering any medical
4 testimony about the trajectory of the bullets or
5 anything like that, so all we would be doing would
6 be speculating about entry and exit wounds, and I
7 believe that would be misleading to the jury, and I
8 would object to any use of these wounds without me
9 being able to cross examine the defendant.

10 MR. EASTWOOD: My response is I do not think
11 that expert and medical testimony is necessary to
12 make a scar readily visible to a juror. I think out
13 of their ordinary life experience they can see a
14 scar is up high in the chest and much lower in the
15 back of the chest. That is not testimony, it is
16 simply showing the presence of wounds on the
17 defendant's person. There's ample evidence already
18 in the record that the defendant was shot by
19 Sergeant Folsom and medevaced to the hospital, so
20 this is not something that is speculative in any
21 way.

22 JUDGE SUTHERLAND: Even if the defendant
23 does not say a word, I still believe such a
24 demonstration is testimonial in nature. I frankly
25 don't think it impeaches Sergeant Folsom's testimony

1 for a couple of reasons. No. 1, he hasn't disputed
2 the fact that the entry wounds on the front of
3 defendant's chest or body are higher than the exit
4 wounds on the back. Secondly, that's consistent
5 with his testimony that the defendant, he believes,
6 was starting to crouch down as he was drawing the
7 gun or attempting to draw the gun out of his
8 holster, so it really doesn't impeach anything, but
9 since I believe it to be testimonial in nature, even
10 though the defendant is not necessarily saying a
11 word, I believe he's going to have to take the
12 witness stand and testify before he can do that, so
13 the request is denied, let's put it that way.

14 MR. EASTWOOD: May I inquire of the Court
15 this: If I make an Offer of Proof, will the Court
16 still consider that to be a waiver of the Fifth
17 Amendment privilege?

18 JUDGE SUTHERLAND: No, no, not for an Offer
19 of Proof.

20 MR. PARKS: I believe this could be
21 construed as an Offer of Proof.

22 JUDGE SUTHERLAND: Since it's just take your
23 shirt off and let's look at it, I'd certainly
24 consider this an Offer of Proof.

25 MR. EASTWOOD: I think that's right.

1 JUDGE SUTHERLAND: And I think that will be
2 acceptable.

3 MR. PARKS: I'm not objecting to an offer,
4 this being used as an offer.

5 MR. EASTWOOD: To further supplement the
6 record as to the Offer of Proof, I take the Court's
7 position and I agree with it. The idea of the
8 impeachment was the dramatic difference between the
9 height of what I allege to be the entry wound and
10 the exit wound, so therefore given the testimony
11 that he was seven feet away yet there is a height
12 difference that he may have been crouching
13 nevertheless that is a dramatic difference and that
14 would be consistent with the defendant's compliance
15 with the order to get on the ground.

16 JUDGE SUTHERLAND: It's also consistent with
17 the witness's testimony that he was crouching down.
18 So I don't think it impeaches the officer's
19 testimony in any way, so.

20 MR. EASTWOOD: Thank you, Your Honor.

21 (BENCH CONFERENCE ENDS)

22 (WHEREUPON THE JURY ENTERED THE COURTROOM)

23 JUDGE SUTHERLAND: Please be seated.

24 Mr. Eastwood, you may continue your cross
25 examination.

1 MR. EASTWOOD: Thank you very much, Your
2 Honor.

3 Q (By Mr. Eastwood) Sergeant Folsom, before
4 the break I was inquiring of you with the video and
5 the brief time period between when Jeff Weinhaus
6 exited the car and when you fired your first shot.
7 I submitted to you and you did not dispute that it
8 was approximately three seconds on the tape from
9 when you first stated "get down on the ground" and
10 when the first shot was fired by you; is that fair
11 to say?

12 A Yes, sir, I believe that was accurate.

13 Q And then you also testified that based on
14 your experience in the military, in law enforcement,
15 seven years Army, 16 years Highway Patrol; is that
16 right?

17 A Yes, sir.

18 Q That you could open one of these, pull out
19 the weapon and shoot in three seconds?

20 A Yes, sir.

21 Q And you knew Jeff Weinhaus had no military
22 training; right?

23 A Yes, sir.

24 Q No law enforcement experience?

25 A Yes, sir.

1 Q In fact were there any facts that made you
2 think Jeff Weinhaus could undo this particular Army
3 type holster, pull out a gun and shoot you in three
4 seconds?

5 MR. PARKS: Objection, Your Honor, calls for
6 speculation on the part of the witness.

7 MR. EASTWOOD: I'm asking what he knows.

8 JUDGE SUTHERLAND: Sustained.

9 Q (By Mr. Eastwood) You also testified
10 yesterday that, and I think this morning as well,
11 that you didn't know what Jeff Weinhaus did with his
12 left hand once you got the tunnel vision; is that
13 fair to say?

14 A Yes, sir, I lost track of his hand.

15 Q Is it possible that he could have put his
16 left hand up in the air?

17 A I don't recall that but anything is
18 possible. I could only really see his right hand on
19 the gun.

20 Q Well, I want to show you, and can everyone
21 see this on their screen. This is a still, and
22 although I think as the Court noted yesterday, as
23 the Judge noted yesterday, the date sure is wrong,
24 we do have an hour, minute and secondhand timer;
25 right?

1 A Yes, sir, I see it there.

2 Q So I don't think the time is 1:42:03 but you
3 do have a second timer; right?

4 A Yes, sir.

5 Q And is it fair to say you've already
6 discharged your weapon there?

7 A Yes, sir, it looks like there's a shell
8 casing exiting.

9 Q And a shell casing doesn't come out of the
10 gun until after you squeezed the trigger; right?

11 A Yes, sir.

12 Q And the bullet has left the gun?

13 A Yes, sir.

14 Q And this is all recorded on Jeff's left
15 hand; right?

16 A Yes, sir.

17 Q On his wrist watch?

18 A Yes, sir.

19 Q So if we go back in time very slowly, these
20 stills, I submit to you, are one still for each
21 1/29th of a second. The hand, the angle of this
22 shot would suggest the hand was then facing at least
23 outward towards Corporal Mertens; right, the left
24 hand?

25 A Yes, I believe it had to have been somehow

1 pointed at Corporal Mertens to get his picture.

2 Q Corporal Mertens is not pointing his gun at
3 Jeff; right?

4 A I can't tell, it looks like he's pointing
5 his gun to the ground, to me.

6 Q In fact isn't that a position called a low
7 ready?

8 A Yes.

9 Q And that is a defensive position; correct?

10 A It's just a position.

11 Q It's a position, that's fair to say. It's
12 not a position you're going to be in when you're
13 about to take a shot?

14 A It is a position in preparation to make a
15 shot.

16 Q But in fact in a potentially dangerous
17 situation, it's not uncommon for them to walk around
18 in a low ready?

19 A No, it's faster to achieve a shot from the
20 low ready than from the holster or lower.

21 Q When a gun is in a low ready, it's pointed
22 toward the ground; right?

23 A Yes, sir, usually.

24 Q Is one of the reasons for that is that if
25 the gun accidentally discharges, the bullet will hit

1 the ground?

2 A I don't know if that's one of the reasons,
3 I've just been trained on the position.

4 Q But it's fair to say as a matter of common
5 sense that if the gun was pointed higher, that it
6 could do a lot more damage if it accidentally went
7 off; right?

8 A I would agree with that, sir.

9 Q So let's continue going back in time on
10 these stills after Corporal Mertens is in the low
11 ready. I just want to remind you the secondhand is
12 here and it says 03 when you're firing your weapon;
13 right? There's the shell casing coming out, so
14 we're in second 03 when that bullet is coming out;
15 right?

16 A Yes, sir.

17 Q What's that, is that Jeff's car, Subaru?

18 A Yes.

19 Q Is that the front of the Subaru?

20 A No, it looks like the side, maybe the rail
21 that goes along the roof there.

22 Q Is that the roof along there, right there?

23 A Looks like it.

24 Q And that's the MFA oil station sign in the
25 background?

1 A Yes, sir.

2 Q Roughly speaking around here is when he
3 drove in before he made his loop around?

4 A Yes, sir.

5 Q And the secondhand here says two; right?

6 A Yes, sir.

7 Q And when you were firing your weapon, in
8 fact when the shell casing was coming out of the
9 weapon, the secondhand said three; right?

10 A Yes, it still said three.

11 Q So if we go up there, would it suggest to
12 you that Jeff's left hand was in the air based on
13 the angle of the video?

14 A No, it would not.

15 Q What would it suggest to you?

16 A It could be at any angle here. It's just
17 capturing the -- to me up in the air would be like
18 this. It could be here at his mid section or torso
19 to capture that video.

20 Q But that's the roof of the Subaru; right?

21 A It's the side of the pillar, not the roof.

22 Q Is it going upwards towards the sky that
23 direction?

24 A Looks like it has that angle, yes sir.

25 Q And if you assume the watch was worn as one

1 normally wears a watch on the left hand in this
2 position, so the hand was at least as high as the
3 roof of the Subaru; right?

4 A No, sir.

5 MR. PARKS: Objection, Your Honor, that
6 calls for speculation on the part of the witness.

7 JUDGE SUTHERLAND: Sustained.

8 Q (By Mr. Eastwood) Let me ask you this. You
9 testified earlier that the roof of a Subaru is
10 higher than the roof of a normal sedan car; right?

11 A It's higher than the roof of our car, yes,
12 sir.

13 Q And in this picture it's fair to say you can
14 start to see most of the roof rack of the Subaru;
15 right?

16 A I can see some of it, sir.

17 Q So that wouldn't suggest to you that the
18 wrist watch video recorder was in such a place that
19 it could -- was high enough to record most of that
20 roof; right?

21 MR. PARKS: Objection, calls for speculation
22 on the part of the witness.

23 JUDGE SUTHERLAND: Sustained.

24 Q (By Mr. Eastwood) Do you have any opinion
25 based on what you're looking at, not speculation,

1 any opinion on where Jeff's left hand was?

2 MR. PARKS: Objection, Your Honor, that's
3 calling for speculation.

4 JUDGE SUTHERLAND: Sustained.

5 Q (By Mr. Eastwood) Secondhand here is at 02;
6 right?

7 A Yes, sir.

8 Q And we just went over how by secondhand 03
9 the video image sweeps around, captures you, kind of
10 captures the under side of your arm there; right?

11 A Yes.

12 Q Under side of your hand; right?

13 A Yes, it appears to.

14 Q You're left-handed?

15 A Yes, sir, I am.

16 Q And you shoot normally with your left hand,
17 at least that's what you hold the grip of the gun
18 with?

19 A I can shoot with either had, I prefer to
20 draw with my left hand.

21 Q It captures the underside of the barrel;
22 right?

23 A Captures the under side of the gun.

24 Q So the camera is in a low enough position it
25 can show all these things; right?

1 MR. PARKS: Objection, calls for speculation
2 on the part of the witness.

3 MR. EASTWOOD: I'm asking the witness to
4 acknowledge what he sees.

5 JUDGE SUTHERLAND: Overruled, you may
6 answer.

7 THE WITNESS: Could you repeat the question,
8 sir.

9 Q (By Mr. Eastwood) The camera accurately
10 captures the lower level of your arm, your hand, the
11 lower level of your gun; right?

12 A Yes, sir.

13 Q The camera is in a low enough position to
14 capture all that; right?

15 A Yes, sir.

16 Q And you've already shot there and it's one
17 second, approximately, one second or less than that
18 approximately from when the camera was showing the
19 top of the Subaru; right?

20 A I don't know that I've already shot there.

21 Q Oh, sure, we can back up. There it is. In
22 fact do you see a little white smoke or powder in
23 that still, it's a little hard to detect, I don't
24 know if you see it?

25 A I do see some haze.

1 Q Is that consistent with a bullet exiting a
2 gun?

3 A I wouldn't know, sir.

4 Q Are you a firearms expert?

5 A I'm a firearms instructor, not an expert.

6 Q You've seen a gunshot before many times;
7 right?

8 A Yes, sir.

9 Q Now, you testified yesterday to Mr. Parks
10 that you fired four shots; is that right?

11 A Yes, sir.

12 Q And you said two in the chest, two in the
13 head?

14 A Yes, sir.

15 Q Do you remember approximately where the --
16 where you shot him in the chest?

17 A I remember I saw -- he was wearing a dress
18 shirt and I saw the round hit him somewhere in here.
19 It looked just right on his heart or slightly above,
20 and I saw the round hit but what I mostly saw was
21 the blood coming out almost instantly out on his
22 shirt staining that area.

23 Q Did you see the blood before you shot him in
24 the head?

25 A I think I saw it while I was shooting.

1 You're talking about fractions of a second.

2 Q And then you fired a third bullet into his
3 head; right?

4 A Yes.

5 Q And then you testified yesterday that after
6 the third bullet you saw the whites in his eyes?

7 A Yes, sir, I did.

8 Q Based on your training and experience, what
9 does it indicate, if anything, when after someone is
10 shot you see the whites of their eyes?

11 A In my opinion it indicated that he was
12 perhaps deceased or knocked out. I never seen
13 anyone's eyes roll up in their head like that.

14 Q When you shot Jeff Weinhaus, you intended to
15 kill him?

16 A I intended to stop the threat and
17 incapacitate him. If he died, that's what happened.

18 Q Where were you taught to shoot?

19 A Center mass.

20 Q Cardiothoracic area?

21 A Yes, sir.

22 Q And the effect of that is to kill someone?

23 A The effect is whatever the effect is. We're
24 taught to shoot center mass.

25 Q Did you intend to kill Jeff when you shot

1 him?

2 A No.

3 Q If you saw the whites of his eyes after the
4 third bullet, why did you keep shooting?

5 A I'm taught to scan for additional targets.
6 I heard this screaming towards the gas station, and
7 when I heard a gun go off on my right side, I
8 thought perhaps he had fired a round into the gun, I
9 didn't realize Corporal Mertens possibly could have
10 been behind me and fired, and he was still standing,
11 still had his hand on the gun. At that point he
12 started to rotate, he was moving, and I shot one
13 last shot to his head and he dropped instantly.

14 Q In fact he turned around before he fell on
15 the ground; right?

16 A After I fired the last shot he continued to
17 rotate and fell down.

18 Q Do you know where the last shot you fired
19 hit him?

20 A I didn't see it hit. The whole front sight
21 of my gun was covering his face and head, but I
22 believe it hit him somewhere in the neck or head
23 region.

24 Q Do you know if it went into the front or
25 back of his head?

1 A I have no idea. Like I said, my sight was
2 covering his head and he was turning at the same
3 time.

4 Q Because after you fired the fourth shot,
5 Jeff was facing away from you and fell flat on his
6 face; right?

7 A He was facing at an angle from me. He was
8 not facing a perfect 180 degrees from me. I had
9 stepped left again, so he fell the direction I was
10 facing.

11 Q What happened next when Jeff went down?

12 A When Jeff went down, I scanned again for
13 other targets. I still heard screaming at the gas
14 station. At that point I advanced closer to him. I
15 could see Mike Maruschak, the FBI agent, running in
16 my direction. Once Mike had advanced closer, I was
17 yelling for him to cover the set perimeter. I still
18 did not know where the other shot came from. I
19 thought there might be other people at the gas
20 station involved. At that point I went up and
21 rolled Mr. Weinhaus on his left side and I could see
22 the gun underneath him.

23 Q You testified yesterday that he still had
24 his fingers on the gun; right?

25 A The gun, his fingers were on the ground and

1 his gun was laying on top of his fingers pinned
2 between him and his body.

3 Q So it's your testimony that he started to
4 pull a gun out, had his hands on the gun, you shot
5 him three times, he spun around, he fell flat on his
6 face and his fingers never left that gun?

7 A I don't know if they never left it, I could
8 just tell you what his final resting position was
9 when I found him.

10 Q Do you have an opinion on why he spun
11 around, was it the force of being shot?

12 A I do not know. Often people who are shot do
13 rotate if they're shot off to one side or another.
14 I've worked several shootings. People do rotate
15 during a shooting, but he could have rotated when he
16 fell, I don't know. I just know that he began to
17 rotate.

18 Q Let's look at the camera again, the video.
19 So the watch camera moves around a lot in that
20 sequence of time; right?

21 A It looks like it, yes, sir.

22 Q And his body spun around; right?

23 A Yes, sir, I saw his body spin.

24 Q But his hands were on the gun, he spun
25 around, he fell over and then when you found his

1 hands again they were still on the gun or his
2 fingers were still on the gun?

3 A Yes. I described, when I rolled him over,
4 his hand was on the ground, the gun was laying on
5 top of his fingers and his body had the gun pinned
6 in between his fingers and his abdomen.

7 Q And then you put the gun back in the holster
8 and tossed the holster away?

9 A I put the gun back in the holster and then I
10 yelled for Mike Maruschak to cover me. When he had
11 a good cover position, that's when I reached in and
12 undid the holster and tossed it. I didn't try to
13 undo the holster while I still had my gun pointed at
14 Mr. Weinhaus.

15 Q When you shoved the gun back in the holster
16 and reclipped it, did you reclip it?

17 A Yes.

18 Q Did Corporal Mertens see you do that?

19 A I don't know what he saw, he was behind me.

20 Q Did the FBI agent see you do that?

21 A I don't know what he saw, he was standing to
22 my left, you'll have to ask him.

23 Q Did Corporal Mertens see you detach the
24 holster and toss it away?

25 A You'd have to ask him, sir.

1 Q You don't have any knowledge of whether he
2 knows?

3 A I'll say I have knowledge that he saw me
4 toss the gun away because we talked about the
5 incident, but I don't know what he saw exactly like
6 if he saw me unclip it and then do this. We did
7 have a conversation that he saw me throw the gun and
8 the holster behind me.

9 Q You guys talked before you gave your
10 testimony today and yesterday; right?

11 A Yes.

12 Q Compared notes?

13 A No, I didn't prepare notes.

14 Q Did you compare notes?

15 A No, we just talked about the case. We
16 didn't have notes to compare, we just read the case
17 file.

18 Q Did you compare what you were prepared to
19 tell the jury?

20 A We talked about the incident. I guess you
21 could say we talked about what happened.

22 Q Were you concerned that you might not be on
23 the same page?

24 A No, I'm not.

25 Q In terms of your recollection of what

1 happened?

2 A I was never concerned.

3 Q Did you cuff Jeff?

4 A Yes, sir, I did.

5 Q How long did you cuff him, after he went
6 down, how long did it take for you to cuff him?

7 A It was just a few seconds when Mike came and
8 covered me, and I was able to toss the gun, and then
9 I immediately pulled his right hand behind his back
10 and handcuffed him and pulled his left hand behind
11 his back and handcuffed him and rolled him onto his
12 left side.

13 Q Based on your training, once you cuff a
14 suspect, do you consider the suspect to be in your
15 custody?

16 A Not always. In this particular case I
17 handcuffed Mr. Weinhaus but he was not under arrest.
18 I handcuffed him for safekeeping, but I deemed that
19 once I handcuffed Mr. Weinhaus in this situation
20 that he was under arrest.

21 Q So in this instance did you think Jeff was
22 in your custody?

23 A Yes, sir.

24 Q Did you think Jeff was dead?

25 A Yes, sir, I did.

1 Q What factors, what information made you
2 think Jeff was dead?

3 A Because his body was lifeless. He turned
4 gray. There was no blood that could be visible in
5 his limbs, and he was bleeding profusely from the
6 wounds. I rolled him over onto his side, Corporal
7 Mertens came up and we started applying pressure to
8 the areas where he'd been shot and he was just
9 lifeless. There was no doubt that he was 100
10 percent unconscious or he was deceased.

11 Q Is it normal procedure still to cuff a dead
12 person if you just shot him?

13 A I cuffed him, regardless it is procedure, I
14 did not know. Later he sat up, so, we always cuff
15 everyone.

16 Q The day of the shooting you did a walk
17 through of the scene with Sergeant D.C. Bauer;
18 right?

19 A Yes, sir.

20 Q Why did you tell Sergeant Bauer that Jeff
21 was still struggling when he went down on the
22 ground?

23 A He struggled after we rolled him over onto
24 his side. He woke up and he was kind of kicking his
25 leg and struggling, and you can hear that on the

1 tape, people asking him to hold still and he was
2 struggling at that point.

3 Q So why did you think he was dead if he was
4 struggling?

5 A I thought he was dead initially but my
6 opinion now is that he was just knocked out, and at
7 some point he became conscious and began to
8 struggle.

9 Q How long a period went by between you
10 shooting Jeff, him going down -- strike that.

11 How long a period went by between Jeff being
12 cuffed and you thinking he's dead and Jeff starting
13 to struggle. How long of a time period, I'm not
14 going to hold you to an exact --

15 MR. PARKS: I object to that, it's
16 irrelevant to the case in chief here.

17 JUDGE SUTHERLAND: Overruled, you may
18 answer.

19 THE WITNESS: Could you repeat the question.

20 Q (By Mr. Eastwood) How long a time period
21 went between you cuffing Jeff and Jeff struggling?

22 A When I rolled him onto his side, I
23 handcuffed him and rolled him onto his side, he was
24 still unconscious. Corporal Mertens took over the
25 medical aid and was talking to him. I stepped away

1 to make sure Pat, Mike and no one was shot at the
2 gas station, and when I came back he was struggling
3 and moving. And later I looked over again and he
4 was sitting up, so I don't know exactly what time he
5 started struggling. I just know when I looked over
6 maybe two minutes later, he was struggling and
7 kicking.

8 Q Was he struggling when you removed the gun
9 from him?

10 A No, he was out cold.

11 Q Was he struggling when you removed the
12 holster from him?

13 A No, sir.

14 Q Do you recognize -- may I approach, Your
15 Honor?

16 JUDGE SUTHERLAND: Yes.

17 Q (By Mr. Eastwood) Do you recognize this
18 document?

19 A Yes, sir.

20 Q That's the scene walk through that Detective
21 Bauer did with you?

22 A Yes, sir.

23 Q And we spoke, when I took your deposition, I
24 asked you if you reviewed the police reports; right?

25 A Yes, sir.

1 Q And you said you stood by them; right?

2 A I said that I believed they were an accurate
3 description.

4 Q Could you read the highlighted portion of
5 that police report.

6 A "Weinhaus spun around and fell to the ground
7 face first. Sergeant Folsom immediately went to
8 Weinhaus and removed the pistol and holster from
9 Weinhaus' hip area and threw Weinhaus' holster and
10 pistol away to a safe distance. Weinhaus was still
11 struggling with Folsom as Folsom removed the pistol
12 from him. Sergeant Folsom placed handcuffs on
13 Weinhaus with Weinhaus' arms behind his back."

14 Q So which is accurate, sir, what it says on
15 the report that you told me was all right or what
16 you just said now on the stand?

17 A What I said in my initial statements is
18 accurate. You'd have to ask Mr. Bauer why he wrote
19 that. I didn't write that.

20 Q Do you think he made a boo boo, wrote down
21 what you said wrong?

22 A You'd have to ask him, sir.

23 Q When I took your deposition, you told me
24 under oath that you wouldn't change anything. I
25 guess you don't stand by that statement anymore;

1 right?

2 A No, I hadn't noticed that, so I wouldn't
3 change anything.

4 Q Do you know how long passed between your
5 cuffing -- strike that.

6 Do you know how long passed between your
7 shooting Jeff and when the ambulance arrived?

8 MR. PARKS: Objection, Your Honor,
9 irrelevant.

10 JUDGE SUTHERLAND: Overruled, you may
11 answer, if you know.

12 THE WITNESS: I do not know the exact time.
13 I never timed it, but I heard something close to
14 seven minutes, but I heard that from other people.

15 Q (By Mr. Eastwood) Sergeant Smith's report
16 indicates that it's nine minutes, does that sound
17 accurate?

18 A If that's what he wrote, I guess.

19 Q And you told Perry Smith, the investigating
20 trooper, that Jeff was bleeding out of his head
21 during that time; right?

22 A Yes, I saw blood -- I saw blood all over his
23 face and torso, and there was a pool of blood on the
24 ground. The ground was pretty heavily soaked with
25 blood, and he was laying on his side in the blood.

1 Q Did you provide first aid to Jeff Weinhaus?

2 A I rolled him over onto his side, which is
3 recovery position. I immediately got down to talk
4 to him and apply pressure. I pointed out where I
5 had struck him with the rounds so Corporal Mertens
6 could apply appropriate techniques, and I went to
7 check on everyone.

8 Q You went to check on?

9 A I went to check on the people at the gas
10 station, Agent Cunningham and make sure no one else
11 was injured or shot.

12 Q So you did not provide first aid?

13 A Other than rolling him onto the recovery
14 side and coming back and checking on Corporal
15 Mertens who was doing aid and talking to him, I
16 didn't do any further medical aid. I made sure the
17 ambulance was on the way.

18 Q Would your training and experience suggest
19 that it's important to administer first aid to
20 someone who has been shot four times at close range?

21 A Yes, sir.

22 Q Can you administer adequate first aid while
23 the suspect is still handcuffed?

24 A I guess it depends on his injuries, sir.

25 Q Let's talk about Jeff Weinhaus' injuries,

1 two shots to the chest, two shots to the head.

2 Could you give him adequate first aid while he's
3 still handcuffed?

4 MR. PARKS: Objection, calls for
5 speculation.

6 MR. EASTWOOD: Training and experience.

7 JUDGE SUTHERLAND: Overruled, answer if
8 you're able.

9 THE WITNESS: We were applying pressure to
10 the wounds. Scott Mertens started applying pressure
11 to the wounds, and I think that can be done in any
12 position, handcuffed or unhandcuffed.

13 Q (By Mr. Eastwood) Did you treat for shock?

14 A When I rolled him over onto his side, that's
15 what's known as the recovery position, so that was
16 the best position to place him in being wounded in
17 the head and torso.

18 Q This was on a gravel incline; right?

19 A It was on -- well part that was slightly
20 elevated, yes.

21 Q And it was gravelly?

22 A Yeah.

23 Q Did you do anything to protect his head or
24 did anyone do anything underneath his head?

25 MR. PARKS: Objection, irrelevant.

1 JUDGE SUTHERLAND: Overruled.

2 THE WITNESS: We don't have anything to put
3 under his head.

4 Q (By Mr. Eastwood) Didn't have any clothes to
5 put under his head?

6 A I don't think anyone was thinking that. We
7 rolled him over to his side and applied pressure to
8 the wounds. We could have done a lot of things.

9 Q Sometimes treating for shock is to cover the
10 patient to warm the patient up; is that correct?

11 A Yes, sir.

12 Q That was not done here?

13 A Like I said, we didn't have anything to put
14 over him to warm him.

15 Q You testified that you didn't give first
16 aid. Do you know if anyone else treated for
17 breathing?

18 A You'd have to ask Corporal Mertens. I know
19 he had him in the recovery position and he began to
20 struggle not long after that.

21 Q Struggle, he was still cuffed; right?

22 A Yeah, he began kicking his feet.

23 Q He was still in your custody; right?

24 A Yes, sir.

25 Q Did anyone check heart rate and pulse to

1 your knowledge?

2 A You'd have to ask Corporal Mertens if he
3 did, sir.

4 Q Did you search Jeff's person, his clothes,
5 for weapons, contraband or anything like that?

6 A When I handcuffed him and rolled him over on
7 that side, I searched his side and I briefly
8 searched the other side and rolled him over into the
9 position, I didn't see anything.

10 Q Were you particularly concerned about
11 weapons or contraband at that point in time?

12 A Once I had him handcuffed behind his back
13 and I swept his waistband and other areas reachable
14 and I didn't see any weapons, I wasn't that
15 concerned.

16 Q Sergeant Folsom, I think you testified
17 earlier you're a pretty good shot; right?

18 A I think a decent shot, yes, sir.

19 Q You're a pretty quick shot; right?

20 A Yes, I'm very fast.

21 Q And in fact you know how to use your weapons
22 almost instinctively based on your military training
23 and law enforcement training; right?

24 A Yes, sir.

25 Q But you also have a nerve injury, don't you?

1 A Yes, sir, I do.

2 Q And you have a condition in your nerves that
3 makes you partially paralyzed; is that not correct?

4 A Yes, sir, I do.

5 Q And it also gives you tremors and shakes; is
6 that not correct?

7 A Yes, sir, it does.

8 Q It affects your arms?

9 A It affects both my arms and legs.

10 Q Does it affect your hands?

11 A Yes, it does.

12 Q So it affects your arms and your hands?

13 A Yes, sir.

14 Q And it impairs your fine motor skills,
15 doesn't it, sir?

16 A At times it does.

17 Q In fact you get disability compensation for
18 these tremors, don't you?

19 A Yes, I am a disabled veteran.

20 Q And these tremors, these shakes, they're
21 made worse by the presence of adrenaline, aren't
22 they?

23 A In my case, when the adrenaline jumps, my
24 tremors are worse. I know that from previous
25 experiences, it's just something I can't control but

1 my tremors are worse with adrenaline. It's normal
2 for people to have tremors after something like that
3 or a dump of adrenaline, so in my case having
4 already being partially paralyzed in my nerves and
5 having the added adrenaline, my hands do shake.

6 Q And in fact on the day and time that you
7 shot Jeff Weinhaus, those shakes and tremors kicked
8 in, didn't they?

9 A Yes. When I began to secure the weapon from
10 Mr. Weinhaus and put it in the holster, my hands
11 began to shake.

12 Q And your training teaches you that when you
13 see a gun, your adrenaline automatically rushes in,
14 and they teach you that in the Highway Patrol;
15 right?

16 A I think when anyone sees a gun their
17 adrenaline starts to elevate.

18 Q Fair statement, I think that's a matter of
19 common sense, sure. And so when you saw Jeff
20 Weinhaus had a gun, your adrenaline kicked in;
21 right?

22 A Yes, sir.

23 Q And you also told Perry Smith, and I think
24 you just told us earlier, that you had cut your hand
25 just before you shot Jeff; is that also correct?

1 A No, sir, that's not correct.

2 Q Did you cut your hand?

3 A My thumb was cut after I fired the first
4 round by the slide coming back.

5 Q Which hand was it cut?

6 A On my right thumb, it's still scarred today.

7 Q How did you cut it?

8 A When I fired my weapon with the left hand, I
9 had not met my grip yet, and when I went to put my
10 grip in, the slide came back from me firing the
11 round, and when the slide came forward, it sliced
12 open my thumb as I met my grip prior to firing the
13 second round.

14 Q Did it hurt you?

15 A Yes, sir, it was painful.

16 Q Did the pain bother you?

17 A Now?

18 Q No, at the time.

19 A No, I didn't even notice it until after it
20 was over.

21 Q Are you taught that you are a better shot
22 when you have both hands on a gun than one hand on a
23 gun?

24 A Yes, sir.

25 Q And when you first started shooting Jeff

1 Weinhaus, you only had one hand on the gun; right?

2 A When I fired the first round, I only had one
3 hand on the weapon, sir.

4 Q And you moved as you shot Jeff Weinhaus;
5 right?

6 A Yes, sir.

7 Q You moved in I think you said a counter
8 crescent position; right?

9 A I moved to the left, yes, sir.

10 Q And you moved because in your back sight you
11 had innocent civilians, FBI, propane tanks and gas
12 tanks; right?

13 A Yes, sir.

14 Q But you started shooting when those things
15 were still in your back sight; right?

16 A No, sir.

17 Q You've reviewed Perry Smith's report on this
18 investigation; right?

19 A Yes, sir.

20 Q And you told me under oath when I took your
21 deposition that you thought it was substantially
22 accurate; right?

23 A Yes, sir.

24 Q And you wouldn't change anything?

25 A Yes, sir.

1 Q Perry Smith seems to suggest that you fired
2 and then that you were trying to get a safe backdrop
3 as you moved; is that correct?

4 A I think he probably miswrote that. I moved
5 trying to get a safe backdrop.

6 Q Do you want to look at it?

7 A I believe you, sir. You'd have to ask Perry
8 Smith why he wrote that.

9 Q You didn't catch that when you reviewed
10 this?

11 A No, sir.

12 Q Did you tell him something different?

13 A I don't believe that I did. As a matter of
14 fact, I was audio recorded, so I don't believe that
15 I did.

16 Q You don't believe that you told him
17 something different?

18 A No.

19 Q You think he wrote it down wrong?

20 A You'd have to ask him.

21 Q Didn't you also tell Perry Smith, though,
22 when you spoke to him and he recorded your
23 conversation that you were nervous that you may have
24 fired at the guttermen?

25 A It happened so fast I was nervous when I

1 heard the screaming. When I heard the screaming, I
2 was nervous that maybe I hadn't cleared the backdrop
3 as well as I thought I had.

4 Q And you also told Perry Smith that at the
5 time you suspected the guttermen might somehow be
6 affiliated with Jeff; right?

7 A I did, in my opinion, they just showed up at
8 the half abandoned store and started cleaning out
9 the gutters. There were minimal gutters, I just
10 wasn't sure why they were there.

11 Q So you could have been shooting at the enemy
12 for all you know; right?

13 A I did not fire at them.

14 Q But you did tell Perry Smith that you may
15 have fired at them; right?

16 A I told him when I heard the screaming, I was
17 not sure that maybe I hadn't cleared the backdrop
18 completely but in my opinion I had.

19 Q And as you moved in this circular fashion,
20 were you concerned that you were getting into the
21 line of fire of Corporal Mertens?

22 A No. Corporal Mertens was, I believe, to my
23 right and rear, and so I was stepping at the same
24 time and I was increasing my distance away from him,
25 but I wasn't even aware that he had fired until

1 after the incident was over and I asked him if he
2 fired his weapon and he said he thought he had.

3 Q Sergeant Folsom, you testified earlier that
4 you killed a man earlier in the line of duty as a
5 law enforcement officer; is that correct?

6 A Yes.

7 Q In fact you shot a man in his home after you
8 said he had a gun; right?

9 MR. PARKS: I object to the relevance of
10 this.

11 MR. COMBS: Approach, Your Honor.

12 JUDGE SUTHERLAND: Yes, come on up.

13 (BENCH CONFERENCE BEGINS)

14 MR. EASTWOOD: I think this is relevant for
15 a couple of reasons; common scheme or plan in his
16 shooting of other civilians with a gun. I think it
17 also goes to the fact that the way that both events
18 were reported is strikingly similar. I think that
19 that goes to its intent for shooting Mr. Weinhaus,
20 and I think it's fair impeachment. He opened the
21 door by testifying to it.

22 MR. PARKS: What's the relevance of it to
23 here? It doesn't have anything to do with this
24 case, and it doesn't go to any impeachment of him.
25 He was on duty, it was ruled a clean shoot. What's

1 the relevance?

2 JUDGE SUTHERLAND: I don't think it's very
3 relevant and it's remote in time as well. The
4 objection is sustained.

5 MR. EASTWOOD: I would like to make an Offer
6 of Proof of that at the appropriate time. Thank
7 you, sir.

8 (BENCH CONFERENCE ENDS)

9 Q (By Mr. Eastwood) Do you dislike
10 Mr. Weinhaus?

11 A No, I do not dislike him. I feel sorry for
12 him.

13 Q That day you went to the gas station, had he
14 gotten under your skin?

15 A No, sir.

16 Q But you were kind of scared of him; right?

17 A No, sir, I was not afraid of him.

18 Q You weren't afraid of him but you were
19 alarmed by him once he drove into the parking lot;
20 right?

21 A I was alarmed by his actions.

22 Q Who uncuffed Jeff when the paramedics
23 arrived, was it you?

24 A I don't believe that I did. At some point
25 later I found out that my handcuffs were on the

1 trunk of Corporal Mertens' car. I don't believe it
2 was me.

3 Q But you were the one that cuffed him though?

4 A I cuffed him initially but I don't believe I
5 unhandcuffed him.

6 Q Just to review, since you shot Jeff
7 Weinhaus, you have been on leave from the Highway
8 Patrol?

9 A Right after I shot Mr. Weinhaus, I was off
10 for a few days, I came back to work for a few days,
11 then I've been off on extended leave, I believe,
12 since November 11th, I believe it is. I've never
13 worked again, other than my Court testimony.

14 Q You turned your gun over at the scene;
15 right?

16 A Yes, I turned over my small subcompact gun.

17 Q Have you ever been issued a gun since by the
18 Highway Patrol?

19 A I still have guns issued by the Highway
20 Patrol. They asked me if I wanted that gun replaced
21 and I said no.

22 Q But you can't use them in the line of duty
23 right now; right?

24 A I am not on active duty. I'm not supposed
25 to take any enforcement actions, so I do not carry a

1 weapon.

2 Q Are you allowed to wear the uniform of the
3 Highway Patrol right now?

4 A No, sir.

5 MR. EASTWOOD: I have no further questions
6 at this time, Your Honor.

7 JUDGE SUTHERLAND: Redirect?

8 MR. PARKS: I have no redirect, Your Honor.

9 JUDGE SUTHERLAND: May this witness be
10 finally excused?

11 MR. PARKS: He's more than welcome to stay
12 or he can leave as far as I'm concerned.

13 JUDGE SUTHERLAND: Thank you. You are
14 excused and free to stay or go as you wish.

15 MR. PARKS: This might be a good time for a
16 lunch break or do you want me to start on the next
17 one?

18 JUDGE SUTHERLAND: Yes, we have lunch set up
19 for about noon. Call your next witness.

20 MR. PARKS: I call Corporal Mertens.

21 (WHEREUPON CORPORAL MERTENS WAS SWORN IN)

22 **DIRECT EXAMINATION OF CORPORAL MERTENS**

23 **QUESTIONS BY MR. PARKS:**

24 Q Please state your name for the Court.

25 A My name is Scott, middle initial E, last

1 name is Mertens.

2 Q And you are a corporal with the Missouri
3 State Highway Patrol; is that correct?

4 A That is correct.

5 Q How long have you been with the Highway
6 Patrol?

7 A Since January 1st of 1996.

8 Q And have you had any special training in the
9 detection of drugs or marijuana?

10 A Yes, I have.

11 Q What training have you had?

12 A I've had training in the academy. I also
13 served as the Troop I eradication officer for a year
14 and also zone eradication for several years in the
15 zone that I was assigned in prior to coming into the
16 Criminal Investigation Unit.

17 Q And I direct your attention to August 22nd.
18 Did you and Sergeant Folsom do a non-custodial
19 interview with Mr. Jeff Weinhaus?

20 A Yes, we did.

21 Q And do you see Mr. Weinhaus in the courtroom
22 today?

23 A The podium is blocking him.

24 Q You may stand.

25 A But yes, he's there with the glasses on the

1 right side of the defense table.

2 MR. PARKS: Your Honor, would the record so
3 reflect the witness has identified the defendant.

4 JUDGE SUTHERLAND: The record will so
5 reflect.

6 Q (By Mr. Parks) When you went to the
7 defendant's home, why did you go there?

8 A It was Sergeant Folsom's investigation. I
9 hadn't been involved in the investigation until that
10 time, and he requested I go with him to contact
11 Mr. Weinhaus referencing a threat on a judicial
12 officer.

13 Q Did you initially go to the house or did you
14 have to find the house?

15 A We had to find the house. We looked in
16 Crawford County first and we had some information
17 that he was at Piney Park, I think from a webcast or
18 something that he had done, so we ended up at Piney
19 Park at the residence he was at.

20 Q When you got to the residence, what
21 happened?

22 A There was several residences, two or three
23 residences up there, we weren't sure which one was
24 his, and the first one that was up the road, we
25 decided we'd start with that one. So we walked to

1 that residence, knocked on the door and Mr. Weinhaus
2 answered the door.

3 Q Where were you standing when Mr. Weinhaus
4 came to the door?

5 A Probably three or four steps, maybe five
6 steps down because it was a small walkway, and for
7 officer safety reasons when you walk up on the
8 house, you don't want to put both people right up
9 there next to the door in case something happens.

10 Q When Mr. Weinhaus came to the door, did you
11 recognize him?

12 A Absolutely.

13 Q How did you recognize him?

14 A From the video that I had previously seen.

15 Q When he came to the door, what happened?

16 A Mr. Weinhaus stepped out of the doorway,
17 shut the door behind him. Sergeant Folsom engaged
18 him in conversation, asked if we could move off the
19 porch area there and into the grassy area kind of
20 down below, and Jeff ultimately led us over to the
21 carport area, passed the carport area to his truck
22 to give us a pamphlet that he had.

23 Q Was there a conversation then between
24 Sergeant Folsom and the defendant?

25 A Yes.

1 Q And were you a part of that conversation?

2 A Off and on.

3 Q Was there anyone else in the house?

4 A Yes. At the time we did not know that but
5 eventually we found out that his wife Judy was in
6 the house.

7 Q And did she come out of the house?

8 A Yes, eventually.

9 Q Did you contact her?

10 A Yes, I did.

11 Q Did you ask her for permission to search the
12 house?

13 A Yes, I did. No, I'm sorry, I asked her if
14 there was anything illegal in the house.

15 Q And what happened?

16 A She said that she did not have anything
17 illegal in the house.

18 Q So when you searched the house, were you
19 looking for anything illegal that she might have
20 had?

21 A We were looking for anything that was
22 included in on the warrant once the warrant was
23 issued.

24 Q And after the conversation ended with you
25 and Sergeant Folsom and the defendant, what happened

1 next?

2 A Sergeant Folsom had placed him in handcuffs
3 and he went to go apply for a search warrant for the
4 residence. He left me behind to have conversation
5 and keep the Weinhauses from entering their
6 residence, to secure the residence so they didn't go
7 in and destroy any type of evidence. So I stayed
8 behind with another trooper that we called for
9 back-up, and he also arrived there to help me so I
10 wasn't stuck there by myself with people.

11 Q After the search warrant was obtained, what
12 did you and Sergeant Folsom do next?

13 A Sergeant Folsom returned, we left two or
14 three of the officers outside with Mr. Weinhaus to
15 make sure he didn't come in during the search and we
16 conducted a search of the residence.

17 Q When you searched the residence, did you
18 start in the upstairs area?

19 A Yes.

20 Q What did you find there?

21 A Sergeant Folsom seized some computers there
22 just at the top of or as you come into the front
23 door, there was like a computer desk there and
24 explained that that was for the judicial threats.
25 We have a computer forensic lab that would look at

1 the hard drives and anything that was on the
2 computer.

3 Q And did you find anything else in the
4 upstairs?

5 A There was also a gun located in the back
6 bedroom, I would call it, probably the master
7 bedroom.

8 Q And I show you what has been marked as
9 State's Exhibit No. 27. Does this look like the gun
10 and holster that you found in the house?

11 A Yes.

12 Q And did you seize this gun and holster at
13 that time?

14 A No, we did not. We determined it belonged
15 to someone other than Mr. Weinhaus, and there was
16 nothing else packaged with it, no drugs in the
17 drawer with it or anything illegal, so we decided
18 that the gun would not be seized.

19 Q What did you do next?

20 A The basement was also searched while we were
21 there.

22 Q The basement area?

23 A Yes, the basement area.

24 Q And did you notice anything unusual about
25 the basement area?

1 A If you compare it to my basement, no,
2 because I have a lot of clutter, newly built house
3 and many boxes still unpacked in there, but it was
4 just a big storage area, and then off to one corner
5 on the -- if you're looking at the front, it would
6 have been on the right side of the house was kind of
7 a room partitioned off with -- that you saw in the
8 video.

9 Q During your conversation, had the defendant
10 talked about this being his command center?

11 A I believe he did but to say that's his exact
12 words, I do not know.

13 Q When you got into this room, did you
14 recognize the background from the video?

15 A Yes, the background was the same as what we
16 saw in the video.

17 Q Did you commence to search this area of the
18 house?

19 A Yes, we did.

20 Q What did you find there?

21 A Actually to clarify that, Sergeant Folsom
22 searched that area, I was standing in the background
23 because there's not really enough room for two
24 people in there, it was a very small area. I did a
25 secondary search after Sergeant Folsom did his

1 preliminary search just to make sure. We try to do
2 that in case an officer misses something or doesn't
3 see something, a second officer at least has an
4 opportunity to put eyes on it.

5 Q I show you what has been marked as State's
6 Exhibit No. 6. Do you recognize this photo?

7 A Yes, I do.

8 Q What do you recognize this photo to be?

9 A That is some of the evidence that Sergeant
10 Folsom discovered in the area of Mr. Weinhaus' back
11 room.

12 Q I show you what's been marked as State's
13 Exhibit No. 7. Do you recognize this photo?

14 A Yeah, it's the same evidence, just spread
15 out.

16 Q And all of this evidence was taken from the
17 container, with the exception of the large bottle,
18 all came out of that case?

19 A That is correct.

20 Q And what are the items that are in that
21 case?

22 A I didn't bring my glasses, so it's hard for
23 me to see. There was some -- two marijuana smoke
24 pipes or what we'd call marijuana smoke pipes, a
25 crusher, it crushes marijuana, you put marijuana

1 inside it and you kind of spin it and crush it. It
2 even has the marijuana leaf on top of the crusher,
3 and you just asked for the ones inside, right?

4 Q Yes. And then the items on the outside, the
5 jar?

6 A The glass jar and the Camel tin.

7 Q And the glass jar contained what?

8 A I believe it contained marijuana.

9 Q And the tin is where you found the -- where
10 the pills were found?

11 A Yes, Sergeant Folsom found the pills inside
12 the container.

13 Q And also the scale was found inside this
14 container?

15 A Yes, I believe so, yes.

16 Q And looking at six, we can see, you can see
17 the scale inside that with all the marijuana and the
18 drugs and the drug paraphernalia, that was all
19 packaged together?

20 A Yes.

21 Q Did you search any place else in the house?

22 A We just searched the entire house.

23 Q And did you find anything else of
24 evidentiary value?

25 A Not of evidentiary value, I don't believe.

1 Q Did you find a bag of marijuana?

2 A Oh, yeah, I'm sorry, yes, we did find a bag
3 of marijuana just off to the left of the place where
4 Mr. Weinhaus had -- if you're looking at the front
5 of the house, it would have been to the left of the
6 place where Mr. Weinhaus had his little office set
7 up.

8 Q I show you what has been marked as State's
9 Exhibit No. 11. Do you recognize this photo?

10 A Yes, that's the bag that contained the
11 marijuana on the top of the shelf.

12 Q Did you seize that?

13 A Yes, I did.

14 Q And where was that located?

15 A That was located -- you can kind of see a
16 doorway in the lower left and that goes to the
17 laundry room, and this laundry room, the laundry
18 room and the office were kind of separating or that
19 was in between the laundry room and the little
20 office area where he had the backdrop for his pod
21 cast.

22 Q After you had searched and seized these
23 items, what did you do next?

24 A I was responsible for filling out the search
25 warrant return, so I began filling out the search

1 warrant return of everything to include the serial
2 numbers of the computer, things like that, list of
3 what we seized. We have to do that within a certain
4 amount of time and get it back to the Court so the
5 Court knows what we seized from the residence.

6 Q And these items were sent to the Missouri
7 State Highway Patrol for analysis?

8 A Yes, they were.

9 Q I direct your attention now to September
10 11th, 2012.

11 A Yes.

12 Q Did you and Sergeant Folsom execute an
13 arrest warrant on the defendant?

14 A Yes, we did.

15 Q On September 11th, what were your plans for
16 executing this arrest?

17 A Sergeant Folsom and I discussed what we were
18 going to do that day and tried to figure out how to
19 get Jeff to meet us without a huge confrontation or
20 anything like that. So we decided to do the ruse of
21 returning his computers, and we came up with the
22 ruse to call him and say hey, we're here to return
23 your computers. We wanted to do it before the 17th,
24 the day that he called Constitution Day, so he could
25 be arrested prior to that day of his day that he

1 said he was going to occupy the courthouse.

2 Q And you had seen the videotape of
3 Mr. Weinhaus where he said that he -- September 17th
4 was the day when these county officials or
5 officials, state officials should remove themselves
6 from office?

7 A Yes, I had seen that.

8 Q And when you got to the scene, what did you
9 do?

10 A When we got to the scene, we -- to the scene
11 at the?

12 Q At the gas station, the MFA station.

13 A When we got to the MFA station, we kind
14 of -- the first time we went there or later? I'm
15 not sure what you're asking me there.

16 Q When you set up to effect the arrest of
17 Mr. Weinhaus, what did you do?

18 A We met with the FBI agents there, kind of
19 came up with a plan of how we were going to take
20 Mr. Weinhaus into -- under arrest, and then Sergeant
21 Folsom ended up calling Mr. Weinhaus on the
22 telephone who said he was going to bring additional
23 people, so at that time we decided to have the FBI
24 stage across the parking lot so in case someone else
25 did come, they could approach from behind and

1 provide kind of security from behind the other
2 people so they didn't know that they were there.

3 Q And I show you what has been marked as
4 State's Exhibit No. 14. Do you recognize this?

5 A Yes.

6 Q What do you recognize this to be?

7 A I recognize that as the parking lot of the
8 MFA Oil Station on Route K.

9 Q And the white car here, is that your car?

10 A That was my issued patrol car at the time.

11 Q And the blue Subaru, what car is that?

12 A The Subaru is Mr. Weinhaus' car.

13 Q And now this photo was taken after the
14 shooting; is that correct?

15 A That is correct.

16 Q And so there are other cars, we see a white
17 Highway Patrol car and a wagon, several other
18 Highway Patrol and county vehicles there that were
19 not there during the incident; is that correct?

20 A That is correct.

21 Q I show you what has been marked as State's
22 Exhibit No. 19. Do you recognize this?

23 A Yes, that is just another angle of the MFA
24 parking lot.

25 Q And I show you what has been marked as

1 State's Exhibit No. 16. Do you recognize that?

2 A Yes.

3 Q Now this is the angle of the car where --
4 this is where Jeff's car, the defendant's car ended
5 up; is that correct?

6 A That is correct.

7 Q When the defendant's car pulled in, and you
8 all were sitting here in your white car prior to the
9 defendant pulling in; is that correct?

10 A Yes.

11 Q How were you dressed?

12 A I was dressed in khaki cargo style pants,
13 they're like a 511 style pant, and a Highway Patrol
14 emblemed polo shirt.

15 Q How were you armed?

16 A I was armed with an issued Glock 27, it's a
17 subcompact pistol.

18 Q Now that is what you normally carry in your
19 role as a detective; is that correct?

20 A They give us the option of carrying the
21 larger Glock 22, it's a larger model, it has more
22 capacity and a magazine for more rounds, but I
23 usually chose to carry the subcompact just because
24 you can conceal it a little better from people.

25 Q It's easier to ride in the car with that

1 one, isn't it?

2 A Easier all the way around.

3 Q Did you have your larger capacity Glock with
4 you?

5 A Yes, it was inside the car.

6 Q What other weapons did you have?

7 A I had an AR15, and I also had a shotgun
8 inside the car.

9 Q Did you have a ballistic vest?

10 A Yes, I did.

11 Q Do you have that on at the time?

12 A No, I did not.

13 Q Why not?

14 A We're not required to wear our ballistic
15 vests as investigators, the road guys are because
16 they deal with people on a regular basis. When we
17 usually go somewhere that we think is going to be a
18 major threat or something like that, we'll put the
19 vests on. That day Sergeant Folsom and I even
20 discussed in the car, I think he brought it up to
21 me, and I said "well, Jeff is not going to do
22 anything. If he thinks he's getting his computers
23 back, it's just going to be an easy arrest", and so
24 we chose not to put the vests on.

25 Q And so you were at the driver's door and got

1 out of the driver's door of the car when
2 Mr. Weinhaus arrived?

3 A That is correct.

4 Q And Sergeant Folsom got out of the passenger
5 side seat of the white car; is that correct?

6 A That is correct.

7 Q And where did you take up position?

8 A I started to go toward Mr. Weinhaus' vehicle
9 and Sergeant Folsom stopped me and requested that I
10 go to the trunk and pop the trunk to support the
11 ruse that we were returning his computer.

12 Q And had you all planned to do this ruse?

13 A Yes.

14 Q And I show you what's been marked as State's
15 Exhibit No. 17. Do you recognize this?

16 A Yes.

17 Q And in this photo, where would you have been
18 when Mr. Weinhaus got out of his vehicle?

19 A As I was approaching, when he got out of the
20 vehicle, I think I actually had turned around to
21 push the trunk release inside the car. We had had
22 the windows down, it was a nice day, we were sitting
23 there in the parking lot with the car off, so we had
24 rolled down the windows, and I reached into the car
25 to push the trunk release and then walked back to

1 the trunk. So somewhere in that period of time is
2 when he would have gotten out of the car.

3 Q What happened next?

4 A I lifted the trunk, opened the trunk and
5 heard him and Sergeant Folsom start to engage in
6 conversation, and I heard Sergeant Folsom say, "what
7 are you doing with that gun".

8 Q What do you do at this time?

9 A Drew my gun, brought it to the high ready.
10 I was on the SWAT team, and we're taught that to
11 keep it up high because it's a lot quicker to push
12 it out and take control of the firearm than it is to
13 keep it low all the time.

14 Q Did you see the defendant at this time?

15 A Yes, I did. I had a clear view of
16 Mr. Weinhaus.

17 Q What was the defendant doing at this time?

18 A The defendant was engaged in conversation
19 with Sergeant Folsom and I was approaching him.

20 Q What did you see?

21 A As I was approaching Mr. Weinhaus, I saw him
22 reach down and he pulled on the flap of the green
23 holster, which released it. Mr. Weinhaus stuck his
24 hands back down to his side and gave a, I would call
25 it a cold chill or something like that, where he did

1 like a tremor, and immediately I thought this is
2 bad.

3 Q And is this the holster that he had on or is
4 this the type?

5 A It is similar.

6 Q So you saw him go down and release?

7 A I did not see him grab the strap. I just
8 saw him reach up in front of it and pull it down and
9 release it, and I saw the front of it pop up
10 slightly.

11 Q And what did his hand do next?

12 A His hand went down to his sides and you
13 could even hear me stutter in the video because my
14 adrenaline is going, I'm starting to get really
15 nervous and keep telling myself I've got to breathe,
16 I've got to breathe, I've got to breathe.

17 Q What happened next? Do you need a glass of
18 water?

19 A No, I'll be all right. Mr. Weinhaus stuck
20 his hand underneath the holster and grabbed the butt
21 of the gun, and I brought my gun straight out
22 immediately and took a sight picture on his head.

23 Q Were you yelling for him to get down on the
24 ground?

25 A I was telling him to get down on the ground.

1 Q What happened next?

2 A He was not complying and as soon as he stuck
3 his hand under the flap and started to pull the
4 weapon out of the holster, I fired my service
5 pistol.

6 Q Did you hear Sergeant Folsom fire?

7 A Yes, I did. I never heard mine go off, so I
8 wasn't even sure I fired. I felt the recoil of my
9 gun, but I did hear Sergeant Folsom's rounds going
10 off. I never heard my round. I actually had to
11 take my magazine out to make sure I did fire because
12 I knew I could feel the recoil, so.

13 Q What did you do after you had shot at the
14 defendant?

15 A We're taught to immediately go and cover the
16 officer that -- Sergeant Folsom was ahead of me and
17 he had already started to engage Mr. Weinhaus on the
18 ground, so I went up and provided cover until he was
19 able to secure the weapon. Sergeant Folsom told me
20 he still has his hand on the gun or something to
21 that effect, and he struggled with him for a little
22 while trying to get the holster undone from the belt
23 it looked like, and then he tossed the holster, he
24 tossed the holster behind Mr. Weinhaus, and I saw
25 the gun was inside the holster, and I also saw Agent

1 Maruschak from the FBI coming our direction. So I
2 immediately left where I was standing. And because
3 I saw Agent Maruschak started to take cover of
4 Mr. Weinhaus, I immediately went to the car and
5 contacted Troop C headquarters and requested an
6 ambulance and additional people.

7 Q When you saw the defendant go down, what did
8 you think had happened?

9 A I thought he died. I can remember thinking
10 in my head going it looked like an MMA fight when
11 somebody gets knocked out, it was just a timber, he
12 went straight down and his muscles all tensed up and
13 I thought he died.

14 Q What did you do after Sergeant Folsom had
15 removed the gun from the defendant?

16 A I went to the car to --

17 Q After you came back, did you apply first aid
18 to the defendant?

19 A I tried to keep -- no, not immediately.
20 There was -- the two cars that we stationed on
21 either end of where our position was in case
22 Mr. Weinhaus ran or tried to flee in his vehicle, we
23 had them stationed on either side of us so we would
24 have them available to stop him before he got too
25 far. Whenever I called for help, I could hear one

1 of the cars coming our way with his siren and engine
2 coming, I could hear him coming, so I stepped over
3 to actually park him, which we're taught to do in
4 accident scenes and other scenes to make sure that
5 nobody damages any of the physical evidence, and I
6 was taught to block the position that Mr. Weinhaus
7 was in because we didn't want anything to be tainted
8 or anything like that. So I parked his car kind of
9 where it blocked Mr. Weinhaus' position from the
10 rest of the parking lot. And you can kind of see
11 that in this picture here, the silver car out in
12 front of Mr. Weinhaus' car is where I had him park.
13 And then when I was talking to him, Mr. Weinhaus
14 started to move and I said he's not J4, which is
15 he's not dead.

16 Q And you heard that on the video or on the
17 watch video?

18 A I don't think we got that far in the watch
19 video at that time.

20 Q What did you do next?

21 A I went to my trunk and got some personal
22 protective equipment, gloves, and then I went and
23 started to deal with Mr. Weinhaus.

24 Q Was Mr. Weinhaus moving?

25 A Yes, he was trying to sit up and I kept

1 trying to tell him just to lay still, and I kept
2 him -- I tried to keep him on his side for the
3 longest time but then he kept trying to sit up. And
4 I thought he's causing himself more damage by trying
5 to sit up, so I let him go ahead, and I said
6 Jeffrey, I'm going to let you sit up but don't move
7 after that, and I kept him like that until the
8 ambulance got there.

9 Q What kind of first aid were you applying?

10 A Keeping him calm. There was no blood coming
11 out of his chest at the time. There was blood
12 dripping from his face but it had kind of stopped,
13 it wasn't like it was just running out of his face
14 or anything like that. I think he hurt his nose
15 when he fell forward.

16 Q And prior to this time, had you ever had any
17 contact with the defendant?

18 A Yes, on August 22nd.

19 Q But besides the going and doing the search
20 warrant at his home, had you ever had any contact
21 prior to that?

22 A No, I had not.

23 Q This investigation?

24 A No.

25 Q Did you have any animosity toward the

1 defendant?

2 A No, Jeff and I got along very well on the
3 22nd, and in fact when he called our headquarters,
4 he referred to me as a very professional officer.

5 Q So as you testified, you did not expect any
6 trouble from the defendant?

7 A No, I did not. And Sergeant Folsom and I
8 had discussed that and I figured as long as I was
9 there, everything was going to be fine with
10 Mr. Weinhaus.

11 MR. PARKS: I have no further questions of
12 this witness, Your Honor.

13 JUDGE SUTHERLAND: We'll start on cross.
14 Cross examination.

15 MR. EASTWOOD: Thank you very much, Your
16 Honor.

17 **CROSS EXAMINATION OF CORPORAL MERTENS**

18 **QUESTIONS BY MR. EASTWOOD:**

19 Q Good morning, Corporal Mertens.

20 A Good morning.

21 Q What are your current duties and rank with
22 the Highway Patrol?

23 A I'm a corporal with the Missouri State
24 Highway Patrol, and my duties are a criminal
25 investigator assigned to the Division of Drug and

1 Crime Control within the Highway Patrol.

2 Q That's where you were assigned at the time,
3 that's where you were assigned at the time of the
4 shooting?

5 A Yes.

6 Q And are you still working there today?

7 A Yes, I am.

8 Q Still wearing the uniform?

9 A I do not wear a uniform very often. I dress
10 like this most days.

11 Q You're entitled to wear a uniform and carry
12 a gun and use it in the line of duty?

13 A Yes, absolutely.

14 Q How long was Sergeant Folsom your partner or
15 supervisor?

16 A I came into the unit I think it was March of
17 2006, and he was the supervisor of the unit at that
18 time.

19 Q And was he your partner at that time too?

20 A He was my supervisor. Since there was only
21 two of us at the time, I'd say yeah, he would be my
22 partner.

23 Q Partner and supervisor?

24 A Yeah.

25 Q And was he your partner and supervisor up to

1 the time of the shooting?

2 A Yes.

3 Q And then who was your partner or supervisor
4 since the shooting, someone else?

5 A Yes.

6 Q Who is that person?

7 A Sergeant Dottie Taylor, and I also have
8 another person that works in the unit named Sergeant
9 Greg Dubuois.

10 Q None of those individuals had any
11 involvement in the Weinhaus investigation or
12 shooting?

13 A That is correct.

14 Q Were you aware -- well let me ask you this,
15 first of all. Why didn't you -- did you think at
16 any time that you ought to serve the warrant on Jeff
17 at his house earlier in the day of the shooting
18 other than another location?

19 A We discussed that and we -- that was not a
20 viable option.

21 Q You and Sergeant Folsom?

22 A That is correct.

23 Q And Sergeant Folsom had been your partner,
24 your supervisor, your mentor for about six years at
25 this point?

1 A I would say close to six, yes.

2 Q You trusted him and respected his opinion?

3 A Yes.

4 Q Trusted his judgment?

5 A Yes.

6 Q You had his back?

7 A Yes.

8 Q And you concurred in his judgment that it
9 was not advisable to serve the warrant at Jeff's
10 house?

11 A I don't think it was just his decision, it
12 was something we discussed and our training tells us
13 both that's not a good idea.

14 Q But you sat in this courtroom when Sergeant
15 Folsom testified; right?

16 A That is correct.

17 Q And you also heard that he wasn't too happy
18 in some ways about having to go serve this arrest
19 warrant?

20 A He expressed that at the time also.

21 Q He was anxious because Jeff had really gone
22 after him?

23 A He wasn't anxious about Jeff going after
24 him, he was more anxious that someone else didn't
25 take over the investigation.

1 Q Oh, okay. You mean so he'd be relieved of
2 his responsibilities for the investigation and
3 someone else put on it?

4 A Yes.

5 Q Did he resent Lieutenant Satterfield for
6 making him serve this warrant?

7 A That's something you'll have to ask
8 Mr. Folsom, not me.

9 Q Did he ever say anything to you about
10 Mr. Satterfield?

11 A Not that I recall.

12 Q Now Sergeant Folsom testified at some length
13 about his experience with Jeff Weinhaus. Is it fair
14 to say this wasn't his first rodeo with Jeff
15 Weinhaus, he was pretty familiar with him. Were you
16 pretty familiar with him?

17 A I think Sergeant Folsom testified that this
18 was an investigation but he had heard of Jeff
19 previously. I don't think he had any other
20 investigations with Jeff, to my knowledge.

21 Q But Sergeant Folsom did say that he was
22 aware, maybe he hadn't heard directly but he was
23 aware that Jeff Weinhaus had said that he was going
24 to occupy courthouses on many dates before?

25 A Yes, but I don't think he was assigned that

1 investigation is what I'm saying.

2 Q And he'd been publishing the Bulletinman for
3 16 years at least and making these threats off and
4 on?

5 A I'm not sure how long he's been publishing
6 his stuff.

7 Q Were you aware that Jeff had made these
8 threats to remove people from office and to occupy
9 the courthouses?

10 A During the investigation that came up, yes.

11 Q And he had made them many times before?

12 A I do not know how many times he had made
13 them before.

14 Q But to your knowledge he never actually did
15 that, occupied a courthouse?

16 A Not that I know of.

17 Q He never actually had done anything directly
18 to an elected official or judge, right?

19 A Not that I'm aware of.

20 Q In fact, did you think that Jeff was
21 somewhat harmless before you got to the MFA station?

22 A To me, yes.

23 Q Is that part of the thinking behind your --
24 the fact that you did not wear a bullet proof vest?

25 A Sure.

1 Q And in fact I think you told Perry Smith,
2 the investigating trooper, that he, when he got out
3 of the car, he appeared nicely dressed; right?

4 A I said he was nicely dressed, yes.

5 Q So he was wearing a shirt and tie; right?

6 A Yes.

7 Q I also took your deposition; right?

8 A Yes.

9 Q You were under oath?

10 A Yes.

11 Q You knew about depositions, you'd been
12 deposed before, there was a court reporter and
13 Mr. Parks there?

14 A Yes.

15 Q It was a fair proceeding?

16 A Yes.

17 Q And you also told me that after Jeff got out
18 of the car, this all happened so fast; right?

19 A It happened very fast.

20 Q And you've seen that video, you've seen it
21 here in Court, in your deposition, you probably saw
22 it when you were getting ready for trial; right?

23 A Yes.

24 Q You watched it together with Sergeant
25 Folsom?

1 A No.

2 Q At no time?

3 A I don't believe so, no.

4 Q Now do you have any knowledge or opinion as
5 to how long it took Jeff to undue his holster and
6 remove the gun?

7 A All I know is from what I saw.

8 Q And you can't put a number of seconds on
9 that?

10 A Not and be accurate. It happened very fast.
11 Like I said, I turned from my trunk, started to walk
12 toward him and that's when I saw him start to undue
13 the holster.

14 Q In fact when Jeff got into the -- Jeff first
15 got out of his car, Sergeant Folsom, your partner,
16 your supervisor, had directed you to go and stand
17 behind the trunk of your car; right?

18 A No, he did not.

19 Q When did he direct you to do that?

20 A He didn't direct me to do that, to stand
21 behind my trunk, he directed me to open my trunk.

22 Q So to open your trunk, did you go behind the
23 car?

24 A I went behind the car and opened the trunk,
25 that's correct.

1 Q And Jeff was standing by the driver's side
2 of his car when he first got out?

3 A No. When he first got out, yes.

4 Q That would be logical, right, he would have
5 to be standing by it at some point. And did Jeff
6 move towards the back of his car or sideways away
7 from his car?

8 A Toward the -- not toward the back but kind
9 of straight north.

10 Q Like there?

11 A Straight north from where the circle is that
12 you're pointing at.

13 Q Towards the X?

14 A Towards the X.

15 Q Towards Sergeant Folsom?

16 A Towards Sergeant Folsom.

17 Q Could you see Jeff when you were standing
18 over here behind the car?

19 A Yes, you could even see that in the vehicle
20 because you have a full view of me and I have a full
21 view of Jeff.

22 Q At what point in time during the
23 conversation, during the interchange were you able
24 to see Jeff?

25 A As soon as I turned from the trunk I could

1 see Jeff.

2 Q The Subaru at least partially blocked him at
3 some point in time; right?

4 A I was not looking at him at that time
5 apparently because the time that I saw him was when
6 I turned from the trunk and saw the -- saw him
7 standing there.

8 Q And he was facing north; right?

9 A He was facing towards Sergeant Folsom.

10 Q And the holster was on his right-hand side;
11 right?

12 A It was in the right front.

13 Q And Sergeant Folsom earlier testified that
14 Jeff was standing in the bladed position with his
15 left foot forward; right?

16 A Yes, he did testify to that.

17 Q So if Jeff is standing facing north in a
18 bladed position with his left foot facing forward,
19 how are you able to see the holster standing over
20 there?

21 A I'm standing behind the vehicle, and you can
22 see in the video that I have a full view of Jeff's
23 body, and Jeff's head squared up to Sergeant Folsom,
24 as he testified, and I could see the holster, and I
25 could see him pull the holster flap down and release

1 the holster flap.

2 Q I heard you say that before but my question
3 is in the video you can certainly see the wrist
4 catch camera on the left-hand side of Jeff, you can
5 see you standing over here, but if Jeff's left foot
6 is forward and the wrist watch camera video can see
7 you out to the side, how could you see his holster
8 on his right-hand side?

9 A Because in my position I did not see him
10 bladed.

11 Q It was just Sergeant Folsom that saw him
12 bladed?

13 A Yes.

14 Q So you saw something different than Sergeant
15 Folsom?

16 A Absolutely.

17 Q So you have a different recollection of
18 that. Now Jeff's hand, at any point after Sergeant
19 Folsom, and I think you chimed in "get down on the
20 ground", did you ever see it go up in the air?

21 A No, I did not.

22 Q In fact you told me in your deposition that
23 it absolutely did not go up?

24 A Absolutely did not go up.

25 Q After you said get down on the ground?

1 A That is correct.

2 JUDGE SUTHERLAND: We need to break for
3 lunch pretty soon.

4 MR. EASTWOOD: I want to play a brief clip
5 from the camera and it would be a good point in the
6 cross examination to take a break.

7 JUDGE SUTHERLAND: A captive lunch for you
8 today. I remind you what you were told at the first
9 recess. Until you retire to consider your verdict,
10 you must not discuss this case among yourselves or
11 with others or permit anyone to discuss it in your
12 hearing. You should not form or express any opinion
13 about the case until it is finally given to you to
14 decide. Do not do any research or investigation on
15 your own about any matter regarding this case or
16 anyone involved with the trial. Do not communicate
17 with others about the case by any means. Do not
18 read, view or listen to any newspaper, radio,
19 electronic communication from the Internet or
20 television report of the trial. We'll be in recess
21 until 1:10 p.m.

22 (WHEREUPON A LUNCHEON RECESS TOOK PLACE)

23 JUDGE SUTHERLAND: Was lunch okay? Okay,
24 you may take the stand, you're still under oath.
25 Mr. Eastwood, you may continue your cross

1 examination.

2 MR. EASTWOOD: Thank you, Your Honor.

3 **CONTINUED CROSS EXAMINATION OF CORPORAL MERTENS**

4 **QUESTIONS BY MR. EASTWOOD:**

5 Q Good afternoon. I believe before we broke
6 for lunch we were talking about what happened in the
7 very few seconds before Sergeant Folsom started
8 shooting, is that your recollection too?

9 A Yes.

10 Q I think we're on the same page as to where
11 we left off. And you testified that although Jeff's
12 right side was away from you, nevertheless you had a
13 good view of his holster?

14 A Yes, it was on the right front instead of
15 the right side.

16 Q So even though he was bladed with his left
17 foot, you could see that from where you were?

18 A I didn't say he was bladed, I said he was
19 squared with Sergeant Folsom.

20 Q Sergeant Folsom said he was bladed?

21 A That's correct.

22 Q And crouched?

23 A I think you guys discussed him crouching
24 down to draw the weapon, but he was not crouched as
25 in crouched down to the ground.

1 Q What's the distinction?

2 A What Sergeant Folsom was saying was pure
3 speculation that he leaned forward with his
4 shoulders. A lot of times when someone draws a gun,
5 they will lean forward. We're taught to do that.

6 Q You're taught to do that in law enforcement
7 training?

8 A Yes.

9 Q Jeff has no law enforcement training?

10 A Not that I'm aware of.

11 Q He's not a veteran either?

12 A I have no idea.

13 Q But to your knowledge he never served in the
14 military and wasn't trained in military tactics;
15 right?

16 A I never was given that information, no.

17 Q And which hand did Jeff use to undo this
18 holster?

19 A He used his right hand.

20 Q So were you looking at his right-hand the
21 whole time -- strike that.

22 Were you looking at his right hand in the two
23 to three seconds prior to Sergeant Folsom shooting
24 his first shot?

25 A I wasn't only looking at his right hand, no,

1 I was looking at his entire body. I had a view of
2 his entire body.

3 Q When Sergeant Folsom said, "why do you have
4 a gun, Jeff", where did you look first?

5 A I looked at Jeff Weinhaus.

6 Q Where on his body?

7 A I looked at Jeff Weinhaus, I'm not sure if I
8 looked at any particular part of his body but I
9 could see his entire body.

10 Q How far away from him were you?

11 A From the map over there I would hate to
12 guesstimate.

13 Q I'll bring it over, helps you, helps the
14 jury, helps everyone. Where were you, were you
15 here?

16 A I was behind the car, yes.

17 Q By the trunk?

18 A That's right.

19 MR. EASTWOOD: Your Honor, I'll move it back
20 so you can see.

21 JUDGE SUTHERLAND: I can see fine.

22 Q (By Mr. Eastwood) You were here because you
23 were pretending to get computers out of the trunk?

24 A Yes.

25 Q And Jeff got out of the car?

1 A Yeah.

2 Q And then you said he moved due north?

3 A Yes.

4 Q And where did he stop around, the X?

5 A I'm not sure exactly where he stopped at.
6 All I know is I could have the full view of his
7 body.

8 Q So if you're standing here, presumably he
9 was at least up to about there; right?

10 A That would be correct.

11 Q Because the Subaru otherwise would be --

12 A Blocking my view, yeah.

13 Q Because it's higher than a regular sedan?

14 A That's correct.

15 Q And in this position walking north with his
16 left foot forward, at least what Sergeant Folsom
17 said, you were able to see his holster?

18 A Jeff was not walking at the time that I saw
19 him. Jeff was standing still.

20 Q So at some point he walked from the car door
21 to about there?

22 A Correct.

23 Q And what did he say during that time period?

24 A I heard Sergeant Folsom and him talking.
25 Sergeant Folsom said, "What are you doing with that

1 gun?"

2 Jeff said, "What are you doing with your gun?"

3 And Sergeant Folsom replied, "I'm authorized."

4 He said, "Well, I'm authorized too," and the
5 conversation carried on. He told him to get on the
6 ground. Jeff said, "You're going to have to shoot
7 me man" or "You're going to have to shoot me,"
8 something to that effect, and that's when the firing
9 started.

10 Q Now, we're going to watch the video in a
11 second but you had your gun out?

12 A Absolutely.

13 Q At some point in the video before Jeff said
14 you don't have to shoot me or you don't have to
15 shoot me man or you're going to have to shoot me
16 man, you had your gun out before that?

17 A To clarify that, he didn't say you don't
18 have to shoot me.

19 Q In your opinion?

20 A No, he never said that.

21 Q No room for doubt?

22 A No room for doubt.

23 Q We'll let the jury listen to the tape but
24 you had your gun out at a low ready?

25 A No, I had mine out at a high ready.

1 Q But at a high ready is it pointed out or is
2 it pointed towards the ground?

3 A Usually it's pointed straight ahead. It's
4 here where you just point straight out.

5 Q And do you normally take a shot from that
6 position?

7 A You can take a shot, that's the whole
8 purpose of having it here, that you can shoot as
9 you're extending it out.

10 Q You shoot during the extension?

11 A Yes.

12 Q And you said you were able to see all of
13 Jeff at this time?

14 A Absolutely.

15 Q You can see a little legend down here, are
16 you able to read that, sir?

17 A Yes, I am.

18 Q So were you about 10, 15 feet away from him?

19 A Judging by the legend, I would say anywhere
20 from 10 to 20, maybe 25.

21 Q And when Sergeant Folsom said, "Get down on
22 the ground," you echoed back, "Get down on the
23 ground," didn't you, didn't you also say that?

24 A I think I said, "Get down, get down, get on
25 the ground," something to that effect.

1 Q Something to that effect fair to say?

2 A Yes.

3 Q You were both giving a similar order?

4 A Yes, we're taught to give similar orders so
5 you don't have somebody doing opposite things. You
6 don't want somebody saying get down and the other
7 person saying raise your hands and then you have a
8 problem with they don't know what to do.

9 Q What would you have said if Sergeant Folsom
10 hadn't said something first?

11 A We're trained to say get down.

12 Q Not hands up?

13 A Not hands up.

14 Q Not hands off the gun?

15 A Not hands off the gun.

16 Q And you say that Jeff's hand went to his
17 holster?

18 A Yes.

19 Q Right hand?

20 A His right hand went to his holster.

21 Q And Jeff's left hand, what happened to it?

22 A I do not know.

23 Q You do not know?

24 A Nope. I was not concentrated on his left
25 hand.

1 Q But I did take your depo; right?

2 A That is correct.

3 Q And you were under oath?

4 A Yes.

5 Q And you've been to that rodeo before, you
6 know how depos work?

7 A Yes, we discussed that earlier.

8 Q Good. You told me in your depo that his
9 left hand never went in the air; right?

10 A Right.

11 Q And now you're not sure; right?

12 A You'll have to repeat that.

13 Q You're not sure now what happened to his
14 left hand?

15 A I said I did not see where his hand went.

16 Q Well, you did not see, you also told me in
17 your depo that his left hand was absolutely with his
18 right hand; isn't that true?

19 A I don't recall that.

20 Q Let's turn to your deposition.

21 A I'm pretty sure I didn't say that, so.

22 Q Well, I guess I'm a little confused reading
23 your testimony because -- are you okay with me
24 reading it to you?

25 A Absolutely.

1 MR. PARKS: Where are we?

2 Q (By Mr. Eastwood) Page 48. "Question:"
3 That would be me. "Okay, let me stop you there.
4 When you said he reached, with which hand did he
5 reach?"

6 "Answer: With the right hand, I believe."

7 "Question: Okay, and what was his left hand
8 doing at the time?"

9 "Answer: I don't recall."

10 "Question: Okay, could it have been with the
11 right hand?"

12 "Answer: I just said it was with the right
13 hand."

14 "Question: Oh, did you?"

15 "Answer: Yes."

16 "Question: Okay."

17 "Answer: That he reached down with the right
18 hand."

19 "Question: But could his left hand been
20 reaching over toward his right hand?"

21 "Answer: Oh, absolutely."

22 "Question: But you're not sure?"

23 "Answer: I'm not sure."

24 A Okay, you asked me could it have been there,
25 it could have been there, absolutely, it could have

1 been there, if that's what you were asking me and
2 what I understood from the deposition. I never said
3 that his left hand was over in front of himself or
4 reaching with the right hand. You asked me if it
5 was possible, I said it was possible.

6 Q Because you weren't paying attention to his
7 left hand; right?

8 A I was paying attention to Mr. Weinhaus,
9 whether his left hand moved in front of him, I have
10 no idea.

11 Q So you're 20, 25 feet away and you were
12 paying attention to Mr. Weinhaus but you didn't know
13 what his left hand was doing?

14 A That is correct.

15 Q After Sergeant Folsom said, "Get down on the
16 ground," you don't know whether Jeff put his left
17 hand up in the air or not, do you?

18 A Jeff Weinhaus never put his left hand up in
19 the air.

20 Q I want to turn your direction to the screen
21 in front of you. Can you see that?

22 A I can.

23 Q And the Court can and the jurors can. You
24 were here when I ran through these stills with
25 Sergeant Folsom; right?

1 A Yes, I was.

2 Q And we know the date is wrong on this and we
3 know the clock is not at the right hour and minute,
4 but it's functioning and it's at second three of
5 minute 42, and you can see a shell coming out of
6 Sergeant Folsom's gun; right?

7 A That is correct.

8 Q And the angle of the wrist watch camera is
9 sort of below Sergeant Folsom; right?

10 A Excuse me?

11 Q The angle of the wrist watch camera is at a
12 low angle to Sergeant Folsom?

13 A That is correct.

14 Q And when we go back, there we have the white
15 smoke, it's tricky to see but I think Sergeant
16 Folsom saw it if we go back, these stills are 1/29th
17 of a second, that's you?

18 A That's correct.

19 Q You're at your high ready?

20 A Correct.

21 Q So the gun is not quite aiming at Weinhaus;
22 right?

23 A Right.

24 Q And then we're no longer at second 03, we're
25 at second 02 on the clock, and the clock is taking a

1 picture there and you can see the roof of the
2 Subaru; right?

3 A You don't see the whole roof, you see the
4 side of the car.

5 Q And you see the oil station, that was --
6 that sign, that sign, sir, is probably down around
7 there; right?

8 A It's labeled on your thing there.

9 Q So it's right there; right? So you're
10 seeing that part of the Subaru; right?

11 A Yes.

12 Q And you're seeing the sign there; right?

13 A That's correct.

14 Q And you're seeing it on a wrist watch camera
15 that was on Jeff Weinhaus' left wrist; right?

16 A Yes.

17 Q And this is one second before the first
18 bullet comes flying out of Sergeant Folsom's gun;
19 right, roughly one second?

20 A Is that a question? I'm sorry.

21 Q Yes, it is, sir.

22 A Yes.

23 Q Did you see the butt of the gun?

24 A Excuse me?

25 Q The handle, the grip of Jeff Weinhaus' gun?

1 A No, I just saw him reach underneath the
2 holster to pull out the gun.

3 Q Did you ever see the pistol, his handgun
4 come free and clear from the holster?

5 A To my knowledge it never came free of the
6 holster.

7 Q And you fired; right?

8 A Absolutely.

9 Q And do you know how many shots?

10 A I originally thought just one, but after the
11 investigation was complete, it was determined I
12 fired twice.

13 Q And we talked about that in your depo and
14 you said gee, that was an honest mistake and we got
15 that all on the record; right?

16 A I think so, I don't recall.

17 Q I think that's right. And when you fired --
18 strike that.

19 Later on during the investigation, a bullet
20 strike was found here on the wall; right?

21 A That is correct.

22 Q Do you have an opinion on whether or not
23 that came from your gun?

24 A It most likely came from my gun.

25 Q And what is the basis for that opinion?

1 A Just from where I was standing and the
2 direction of where the bullet strike was at, I would
3 say that was probably my round.

4 Q Did you have this building, this area in
5 your back sight when you were shooting?

6 A Yes, I did.

7 Q Do you know if any of the bullets you fired,
8 I'm not asking for speculation, do you have
9 knowledge of whether any of the bullets you fired
10 hit Jeff Weinhaus?

11 A I've been told that it was the one that went
12 across the back of his neck, but I'm not sure if
13 that's correct.

14 Q The one that went through?

15 A I'm not sure.

16 Q You don't know. And while you were
17 shooting, was Sergeant Folsom moving?

18 A I was not looking at Sergeant Folsom, I
19 could not say.

20 Q Were you concerned that Sergeant Folsom
21 could enter your line of fire?

22 A No, I was not.

23 Q Because you're standing here; right?

24 A Right.

25 Q And Sergeant Folsom indicated that he was

1 standing there, I submit to you, when he fired;
2 right?

3 A Yeah, but I believe he was standing a little
4 further back from where he has the X because
5 Mr. Weinhaus would have been up higher north from
6 the vehicle, otherwise my line of sight would not
7 have been able to be where I saw him.

8 Q So it's consistent with you being there and
9 the bullet being there for you to fire in that
10 direction; right?

11 A Well, I did not fire from the trunk of my
12 car.

13 Q Where did you fire from, farther north?

14 A No, I was toward Mr. Weinhaus.

15 Q Farther east?

16 A Yes.

17 Q Farther south maybe?

18 A Yes, I was looking at his vehicle for cover
19 as I was approaching.

20 Q And based on these markings that Sergeant
21 Folsom put on the map, you think they're inaccurate
22 because they don't make sense in terms of the lines
23 of fire?

24 A Absolutely.

25 Q Did you have concerns when you were firing

1 that there were propane tanks and gas dispensing
2 machinery in your back sight?

3 A No, I had more vision of the side of the
4 building that was old cannibalized gas pumps. It
5 looks like they had been the old ones that were at
6 the store. I could see those but I could see the
7 whole side of the building, and then I also had a
8 wooded area behind -- we were kind of on an upper
9 thing that went down an incline and then a real
10 steep incline and then there was trees and stuff in
11 the background from behind that.

12 Q Were you concerned about potentially hitting
13 the gutter repairmen that were working on the MFA
14 station?

15 A They were not in my line of sight, no.

16 Q Were you concerned about them nevertheless
17 that they could potentially be in your line of
18 sight?

19 A They were not in my line of sight, so I did
20 not give them concern.

21 Q Where on this map were the guttermen?

22 A They were working on the --

23 Q Here?

24 A Yes, over in that area.

25 Q And you're standing over here and firing

1 there?

2 A I'm not firing there, I'm firing at
3 Mr. Weinhaus.

4 Q And that's in your line of sight?

5 A Yes, that and probably further north was my
6 line of sight.

7 Q And the propane tanks were here?

8 A No.

9 Q Here?

10 A Yes, on the front of the building. It was
11 the small -- like you go in and do an exchange for
12 your barbecue or anything like that, it was just a
13 cage with those in there.

14 Q Do you recall if the front of the MFA
15 building has glass windows?

16 A It might have a glass door or glass window,
17 I do not recall.

18 Q And you had no concern that your bullets
19 could enter into the MFA building at any time?

20 A No.

21 Q No concern they could hit the fuel pumps?

22 A No.

23 Q No concern they could hit the propane tanks?

24 A None.

25 Q No concern they could hit the guttermen?

1 A None.

2 Q No concern they could hit the FBI?

3 A No.

4 Q No concern they could hit the delivery guy
5 delivering his sodas?

6 A No.

7 Q In fact, sir, it's your testimony that you
8 were focused on Jeffrey Weinhaus; right?

9 A Absolutely.

10 Q And so you really thought that perhaps your
11 back-up, the FBI, might take care of problems over
12 toward the MFA building; right?

13 A I did not see anybody else there that caused
14 me alarm at the time, so I was not worried about
15 other people at the time, I was worried about
16 Mr. Weinhaus.

17 Q Were you concerned that the gutter repairmen
18 might possibly be accomplices or somehow affiliates
19 of Mr. Weinhaus?

20 A No, I was not.

21 Q Sergeant Folsom had that concern, did he
22 not?

23 A He said he did.

24 Q But you did not?

25 A I did not.

1 Q You thought it was a safe location, other
2 than Jeff himself?

3 A I'm sorry?

4 Q You thought the MFA station with the other
5 people there was a safe location, except for Jeff;
6 right?

7 A I'm not sure what you're asking me there.

8 Q Did you feel threatened by the guttermen?

9 A No.

10 Q Did you feel threatened by customers in the
11 store?

12 A No.

13 Q Did you feel threatened by the store clerk?

14 A No.

15 Q Did you feel threatened by the deliveryman
16 delivering Dr. Pepper sodas?

17 A No.

18 Q The only threat to you was Jeff Weinhaus;
19 right?

20 A No.

21 Q He wasn't a threat?

22 A Not to me he was not.

23 Q But you shot at him; right?

24 A Yes.

25 Q And why did you shoot at him?

1 A Because he started to draw his pistol out
2 and Sergeant Folsom was in line. Jeff Weinhaus
3 never looked at me the whole time the conversation
4 was going on. Jeff Weinhaus was concentrated on
5 Sergeant Folsom the whole time, and I knew Sergeant
6 Folsom had no cover whatsoever once he stepped out
7 from the area behind the car. He had no cover.
8 There was a tree that was pretty far back but he
9 would have had to travel 30, 40 feet, maybe yards, I
10 don't know, to get to a tree.

11 Q These trees?

12 A Yes. So I was more concerned at the threat
13 that was posed to Sergeant Folsom by Mr. Weinhaus
14 than I was to me.

15 Q You thought Jeff was a threat to Sergeant
16 Folsom, your partner, your supervisor, your mentor
17 of six years; right?

18 A I thought he was a threat to Sergeant
19 Folsom, yes.

20 Q And you shot at Jeff to protect Sergeant
21 Folsom; right?

22 A That is correct.

23 Q You did not think he was a threat to you?

24 A He was not a threat to me at that time.

25 Q Thank you. Did you see Sergeant Folsom

1 handcuff Jeff?

2 A Yes, I did.

3 Q How long was that after Jeff went down?

4 A Immediately.

5 Q And just to review, is your observation
6 consistent with Sergeant Folsom's that after Jeff
7 was shot, he was spun around and fell flat on his
8 face?

9 A That's correct.

10 Q Do you remember if it was clockwise or
11 counter clockwise?

12 A If I remember correctly, I think he faced
13 away from me, so he would have been moving
14 clockwise, I believe, not positive on that, but I
15 think he rotated clockwise and then fell straight
16 down.

17 Q Let me return to the video for a second. I
18 think your testimony is consistent with the video.

19 (VIDEO WAS PLAYED)

20 Q (By Mr. Eastwood) It's hard to tell which
21 way he spun. Looks like he's spinning to the left
22 or back to the right now, at least from what the
23 camera appears to tell us. It appears from that
24 sequence that perhaps he spun to the left and then
25 to the right. The camera goes to the left and

1 right?

2 A Like I said, in my mind I picture him
3 spinning to the right clockwise away from me.

4 Q It all happened so fast?

5 A That's correct.

6 Q And I'm sure as a human being and as a
7 trained officer, your adrenaline kicked in too;
8 right?

9 A Absolutely.

10 Q And that changes your perception of events;
11 right?

12 A I don't know if it changes the perception.

13 Q Do they teach you that it changes your
14 perception or recollection of events when they train
15 you with the Highway Patrol?

16 A Not the perception I don't believe.

17 Q Time doesn't slow down or speed up?

18 A Oh, yes, it changes things like that.
19 Everything slowed down for me. I could feel myself
20 walking. I could feel the gravel under my feet. My
21 senses got really heightened just prior to firing
22 the gun, and like I said, I didn't even feel -- I
23 felt the recoil but did not hear the gunshots. My
24 hearing shut down for the loud noises, so things
25 like that does happen but it doesn't change your --

1 of what happened, if that's what you're asking me.

2 Q Sure. It changes hearing and sight but not
3 in the sense that it makes them unreliable?

4 A Correct.

5 Q It changes your perception of what you
6 heard, your perception of what you saw?

7 A I wouldn't agree with the word perception.

8 Q Now, you did see Sergeant Folsom handcuff
9 Jeff; right?

10 A Yes.

11 Q And after that Sergeant Folsom testified
12 that he removed the gun and the holster from Jeff's
13 waist band?

14 A That is incorrect.

15 Q Incorrect that he testified as to that?

16 A Yes.

17 Q Okay. What is your recollection?

18 A He testified that he removed the gun first
19 and then he handcuffed him.

20 Q Did you observe Sergeant Folsom put the gun
21 back into the holster?

22 A No, I was standing -- where Jeffrey was
23 laying down, Sergeant Folsom rolled his back toward
24 me as he was trying to get the gun out, and I was at
25 a cover position watching for any movement of

1 Mr. Weinhaus. We're taught not only in the academy
2 but through continued training that one person stays
3 back to cover the suspect while the other person
4 goes up to handcuff. So when he went up to
5 handcuff, he told me, "he's still got his hand on
6 the gun, Scott," and that's when he took the gun out
7 and threw the gun backwards, and once he started
8 handcuffing him, Agent Maruschak came up, so I
9 didn't see him reaching underneath him. I was more
10 concentrating on any movement from Mr. Weinhaus at
11 that time if he would happen to roll up on Sergeant
12 Folsom. Because that's a very dangerous position if
13 you have to go up and confront somebody with a gun
14 that's laying on the ground. They could have it
15 tucked up underneath them. We practice that in the
16 academy and do that where a person will have the gun
17 underneath them and you have to control their body
18 and keep their body down, and that's what Sergeant
19 Folsom was trying to do. My strict job was just in
20 case he was to roll up and try to shoot, I was there
21 for any type of back-up or anything that I needed to
22 do at that point.

23 Q Now here you had seen Jeff get shot four
24 times; right?

25 A That is correct.

1 Q Twice to the chest, twice in the head?

2 A That's correct.

3 Q And you were still concerned he was a
4 threat?

5 A Absolutely.

6 Q You didn't think he was dead?

7 A I did think he was dead.

8 Q You did think he was dead, but you thought
9 he was a threat still even though he was dead?

10 A Just because I thought he was dead doesn't
11 mean he was dead.

12 Q Evidently that turned out to be the case.

13 A That is the case.

14 Q But you thought he was dead at the time?

15 A I did think he died at the time.

16 Q But nevertheless you provided cover to your
17 partner?

18 A That's what you're trained to do.

19 Q While he cuffed the body of someone you
20 thought was dead?

21 A Yes.

22 Q And you did not see him put the gun back in
23 the holster?

24 A By the angle I was at, I could not see that.

25 Q And you did not observe Sergeant Folsom toss

1 the holster with the gun in it some distance away
2 from Jeff Weinhaus?

3 A Yes, I did observe that.

4 Q You did observe it?

5 A Yes.

6 Q Did you actually see him toss it or did you
7 see it once it landed some distance away on the
8 ground?

9 A I watched him toss it out.

10 Q And was the flap of the holster closed?

11 A I don't believe so, I don't remember. I
12 don't think it was closed because I remember looking
13 at it later, and I think the gun was partially out
14 of the holster on the ground for some reason, but
15 that's just what I'm recalling in my mind.

16 Q We just talked about Sergeant Folsom putting
17 the gun back in the holster.

18 A Yes.

19 Q So when you say the gun was partially out of
20 the holster on the ground, it's conceivable the gun,
21 if the holster was not latched, the gun could have
22 come out when Sergeant Folsom tossed it; right?

23 A That's what I just said, yes.

24 Q So the gun could be sitting partially out of
25 the holster from Sergeant Folsom?

1 A Yes, and like I said, that's what I remember
2 seeing on the ground, but I don't know if it was
3 latched or what it was, it's what I see in my mind.

4 Q Is it a blur, a little bit, your memory?

5 A Yes, on certain aspects of it, yes.

6 Q Now, you told -- at some point on the tape
7 you told Jeff "stay with us", right, words to that
8 effect, "stay with us, Jeff", there's a voice on the
9 tape that says that, is that yours, sir?

10 A I think so, something like that.

11 Q If it was you, why did you say that?

12 A To keep him calm, try to calm him down, stay
13 with us, that's a normal thing you would say to
14 somebody who has been seriously injured. I don't
15 really have a reason other than that.

16 Q You probably wouldn't say that to someone
17 you thought was dead; right?

18 A Well, at that time I knew he was not dead.
19 At that time that's whenever I noticed that he had
20 started to move, and I had gone, like I said
21 earlier, gone to my trunk and got personal
22 protective gloves and went back, and whenever you
23 hear me saying that on tape "stay with us, stay with
24 us", I'm trying to keep him calm so he knows
25 somebody is there trying to help him. That way he

1 doesn't sit there and try to fight and continue.

2 Q Now, did someone provide first aid to Jeff
3 while he was handcuffed?

4 A The only thing that I did was keep him calm.
5 I assessed his injuries, like I said, there was not
6 a lot of blood coming out of his chest. Even if you
7 were to put something on his chest, if it's a
8 sucking chest wound, we have very little first
9 responder training, you don't want to close that off
10 because if it's a lung injury, it might be something
11 that would damage that. So on the chest I just
12 assessed it, there was not a lot of blood coming out
13 of it, I knew the ambulance was close, I knew we
14 were close to St. Clair, and by the time he started
15 moving, it was no time until the ambulance got there
16 once I started to assess his injuries.

17 Q I'm confused. I think we established from
18 Perry Smith's report there's nine minutes between
19 him getting shot and the ambulance getting there,
20 right, so he's bleeding out for nine minutes; right?

21 A He was not bleeding profusely where it was
22 just coming out of him, no.

23 Q You didn't see blood coming out of his head?

24 A There was dripping but it was not like a
25 large amount was just coming out of his face. There

1 was drips off his nose and things likes that.

2 Q There was blood coming out of his chest?

3 A Yes, there was blood on his shirt, but as I
4 was assessing him it wasn't pouring out of his
5 chest.

6 Q If you observe his shirt today, do you think
7 it would be blood soaked?

8 A Oh, yes, I'm sure it would over time.

9 Q Holes where the bullets went in and out?

10 A I would imagine.

11 Q When you said you assessed him, what aid did
12 you provide him in the nine minutes before the
13 ambulance --

14 A It wasn't nine minutes because there was a
15 time between where he was still unconscious that we
16 thought he was dead. I had actually gone and made a
17 phone call and came back and that was after I
18 directed the guy in, and then as I came back from
19 making a phone call, I noticed that Jeff started to
20 move and that's when I started to render aid to
21 Jeff.

22 Q So you and your partner shot a guy four
23 times, you handcuffed him, you think he's dead and
24 you leave to go make a phone call. How long did it
25 take for you to leave and go make a phone call?

1 A Just a few seconds.

2 Q Who did you call?

3 A I called my father.

4 Q Why did you not call an ambulance?

5 A I had already called an ambulance.

6 Q So you called an ambulance and you then
7 called your father?

8 A I didn't use my phone to call an ambulance,
9 I used my patrol radio.

10 Q You did a walk through with D.C. Bauer;
11 right?

12 A I do not recall who it was, it may have been
13 Mr. Bauer.

14 Q In that walk through -- have you reviewed
15 that report?

16 A I have not.

17 Q Never?

18 A Never.

19 Q You never reviewed it with me when I took
20 your deposition?

21 A No, I did not.

22 Q You never reviewed it in your preparation
23 for your testimony here today?

24 A No, I did not.

25 Q Did you review the report that Perry Smith

1 made on you?

2 A Yes, I did.

3 Q And you reviewed your own report?

4 A Yes.

5 Q But you did not review D.C. Bauer's report?

6 A No, I did not.

7 Q And when I took your deposition and asked
8 you about the reports you reviewed, you told me that
9 they were accurate; right?

10 A You asked me if I reviewed the statement
11 that I had made and the report that Perry had
12 prepared, and I said that they were accurate, except
13 for the one shot we talked about.

14 Q And we talked about that, right, because
15 later on you looked in the clip and it was a
16 different number of bullets that had been expended
17 from your weapon?

18 A No, that's not when I realized it. The
19 Glock 27 has a small capacity magazine, and you can
20 get an extension on those, and I forgot, whenever I
21 counted my bullets, I forgot to allow for the
22 extension. So I thought I only fired one round at
23 Mr. Weinhaus and later whenever Mr. Smith, Sergeant
24 Smith came to interview me, he asked if I could have
25 fired twice, and I said I wasn't sure, I could have.

1 He said, "Well, we found two of your shell casings
2 that match your pistol," so that's how I knew I had
3 fired two rounds.

4 Q If you look at the tape, let's agree the
5 shooting occurs around -- can you see the numbers at
6 the bottom left of your screen?

7 A I can only see the 1:41 and partial five.

8 Q Do you see it says 5:10, is that visible?

9 A No.

10 Q There are the first bullets going off, I
11 submit to you that it's about 5:18 on this counter
12 in the bottom left corner.

13 A It's blurry on my screen, I can't see it.

14 Q Let's go about two minutes and 30 seconds
15 later, we're going to go up to about 7:00, just
16 before 7:46 on the tape, so from 5:15 to 7:46.

17 (PLAYING VIDEO)

18 Q (By Mr. Eastwood) "He's not J4", is that
19 your voice?

20 A Yes.

21 Q What does J4 mean?

22 A Death, fatal, dead.

23 Q Is that when you first realized that Jeff
24 Weinhaus wasn't dead?

25 A Yes.

1 Q So two and a half minutes after you shot him
2 and he was cuffed after he was shot, then you
3 realized he wasn't dead?

4 A Yes.

5 Q How long until the ambulance got there in
6 your mind?

7 A It wasn't very long because I started
8 assessing him. I think I even had one of the
9 troopers that was there, Corporal Keithly or Trooper
10 Servais, I'm not familiar with them, they're in a
11 different troop than I am, but they were there
12 standing with me while I was crouched down trying to
13 assess Mr. Weinhaus.

14 Q When you say assess, what particular exact
15 tasks were you doing in this assessment?

16 A Looking at his injuries. I had very basic
17 first aid skills, so I was just trying to assess his
18 injuries at that time and keep him calm.

19 Q So besides looking at him, were you doing
20 anything else with your hands for instance?

21 A No. Well, yeah, because I'm trying to hold
22 him down from sitting up for a while, if that's what
23 you're asking, hold him down from sitting up from
24 his prone position.

25 Q Why were you trying to hold him down?

1 A Try to keep them calm, keep them laying
2 down, you don't want them to sit up and cause
3 themselves further injury.

4 Q Did you release the restraints?

5 A No, I did not.

6 Q Why not?

7 A We were not taught to do that, we're taught
8 to keep the restraints on.

9 Q Even if the guy has no weapons?

10 A Just because you don't have a weapon doesn't
11 mean you can't fight.

12 Q Even if you've been shot four times?

13 A Even if you've been shot four times.

14 Q Twice in the head and twice in the chest?

15 A Yes, and I was told he also struck an EMT
16 during transport.

17 Q Who told you that?

18 A Either Sergeant Smith or somebody in the
19 investigation.

20 MR. EASTWOOD: Move to strike as hearsay.

21 JUDGE SUTHERLAND: Overruled, it's a proper
22 response to the question, ask the next question.

23 Q (By Mr. Eastwood) At one point when I took
24 your deposition you said that Jeff gave you a cold
25 chill or he had experienced a cold chill?

1 A Yeah, he did not give me a cold chill, he
2 experienced a cold chill or a tremor.

3 Q What did you mean by that?

4 A Just his whole body kind of gave a shake,
5 like if you get a cold chill. He was standing there
6 and when he stuck his hand down to his side after he
7 unlatched it, he just had this tremor across his
8 body.

9 Q Is a cold chill a technical term?

10 A I have no idea, that's just what I described
11 it as.

12 Q Is it a term that you are taught in your
13 training as a law enforcement officer?

14 A No, it's my word that I used that he had
15 this tremor.

16 Q Is it a term that the Highway Patrol
17 commonly uses in describing suspects?

18 A Not that I know of.

19 Q Did you and Sergeant Folsom collaborate when
20 you wrote your police reports?

21 A No, we did not.

22 Q Is it just a coincidence that you both used
23 this description of a cold chill?

24 A I think that's a known term. I wouldn't
25 think it was anything major.

1 Q Not a technical term?

2 A I'm sure we discussed the cold chill prior
3 to writing the reports, but I don't think it was a
4 corroboration in writing the reports.

5 Q So you did discuss what you were going to
6 write in your reports?

7 A We discussed the incident.

8 Q Sir, Sergeant Folsom was your mentor,
9 friend, supervisor for six years. Are you upset
10 that he is no longer serving along side you?

11 MR. PARKS: Objection, Your Honor,
12 irrelevant.

13 JUDGE SUTHERLAND: Sustained.

14 Q (By Mr. Eastwood) Have you made any efforts
15 to help Sergeant Folsom return to duty?

16 A No, I have not.

17 MR. PARKS: Same objection.

18 JUDGE SUTHERLAND: Sustained.

19 Q (By Mr. Eastwood) Do you still feel a sense
20 of loyalty to Sergeant Folsom?

21 MR. PARKS: Objection again, Your Honor.

22 JUDGE SUTHERLAND: Sustained.

23 Q (By Mr. Eastwood) So again, just to make
24 clear, any similarities and certain phrases or words
25 in your police reports is just a coincidence?

1 A I wouldn't say it's just a coincidence. I
2 would say we had discussed the incident. We did not
3 sit down -- and in fact whenever I wrote my
4 statement out, Sergeant Folsom was in an interview
5 with I think it was Sergeant Smith and a Corporal
6 Scott, I can't think of his last name right now, but
7 he was in there whenever I was writing out my
8 statement.

9 MR. EASTWOOD: I have no further questions
10 for this witness at this time. Thank you.

11 JUDGE SUTHERLAND: Redirect.

12 **REDIRECT EXAMINATION OF CORPORAL MERTENS**

13 **QUESTIONS BY MR. PARKS:**

14 Q Corporal Mertens, you were asked if you were
15 positive that the defendant said, "You're going to
16 have to shoot me man"; is that correct?

17 A That is correct.

18 Q And is that what he said to you?

19 A That is what he said to Sergeant Folsom.

20 Q And I direct your attention to February 21st
21 of 2013. Were you in this courtroom for a motion
22 hearing in which the defendant addressed the Court?

23 A Yes, I was.

24 Q And did you hear the defendant tell the
25 Judge at that time, "You will also note that as soon

1 as I said you're going to have to shoot me, they
2 did"?

3 MR. EASTWOOD: Objection, Your Honor, may we
4 approach?

5 JUDGE SUTHERLAND: Yes.

6 (BENCH CONFERENCE BEGINS)

7 MR. EASTWOOD: Your Honor, I can tell what
8 Mr. Parks is trying to do, but this is not the
9 proper way to do it, though. If he's trying to
10 impugn another Court statement by the defendant that
11 was happening in Court, you can use a transcript or
12 do something else, but I think this is kind of an
13 odd and improper way to introduce statements of the
14 defendant.

15 JUDGE SUTHERLAND: Well, the defendant made
16 the statement even though he was in custody.

17 MR. PARKS: He was in open court.

18 JUDGE SUTHERLAND: He was in custody but not
19 being interrogated. He simply made the statement
20 and the witness heard it. I think it's appropriate.

21 (BENCH CONFERENCE ENDS)

22 JUDGE SUTHERLAND: The objection is
23 overruled. I'm not sure if the question was
24 answered.

25 Q (By Mr. Parks) Do you need me to restate

1 that question?

2 A Please.

3 Q On February 21st, 2013, were you in the
4 courtroom for a motion hearing in which the
5 defendant addressed the Court?

6 A Yes, I was.

7 Q And did you hear the defendant say to the
8 Court, "You will also note that as soon as I said
9 you're going to have to shoot me, they did." Is
10 that a fair and accurate statement that the
11 defendant made?

12 A Yes, the defendant did say, "I said you're
13 going to have to shoot me."

14 MR. PARKS: No further questions, Your
15 Honor.

16 JUDGE SUTHERLAND: Recross.

17 **RECROSS EXAMINATION OF CORPORAL MERTENS**

18 **QUESTIONS BY MR. EASTWOOD:**

19 Q Do you know what brain damage, if any, Jeff
20 Weinhaus had from the shooting?

21 A Excuse me?

22 Q What brain damage, if any?

23 A I have no idea.

24 Q Were you involved in his arrest, eventual
25 arrest?

1 A No, I was not.

2 Q Have you ever reviewed the medical records
3 from St. John's Mercy?

4 A No, I have not.

5 Q So you have no knowledge of his state of
6 mind on the day that he made that statement to you
7 in your presence in Court, "You'll have to shoot me
8 man"?

9 A I'm sorry?

10 Q You have no knowledge of his state of mind
11 on the day that he made this statement, "You're
12 going to have to shoot me, man"?

13 A On the date in Court?

14 JUDGE SUTHERLAND: Yeah, the date in Court.

15 THE WITNESS: I thought you were talking
16 about on September 11th. No, I do not know his
17 state of mind either time.

18 Q (By Mr. Eastwood) No knowledge of his mental
19 capabilities either time?

20 A No, I do not.

21 Q And further, Corporal Mertens, is it your
22 opinion that in an of itself the statement, "you're
23 going to have to shoot me man," is not sufficient
24 grounds to use lethal force against a suspect?

25 A Could you say that again.

1 Q "You're going to have to shoot me man", is
2 that reason enough in itself to shoot a suspect?

3 A Not in itself, no.

4 Q You'd have to have something else; right?

5 A You'd have to have something such as this
6 incident where he undoes the holster and starts to
7 draw the pistol out.

8 Q And let's go back one more time to this tape
9 and we'll listen to that conversation one more time.

10 (VIDEO WAS PLAYED)

11 Q (By Mr. Eastwood) Does Jeff's tone when he
12 says, "You're going to have to shoot me man", or
13 "You don't have to shoot me man", whatever you hear
14 on the tape and that's really a question for the
15 jury to decide, is his tone threatening?

16 MR. PARKS: Objection, Your Honor, improper
17 question for recross examination.

18 JUDGE SUTHERLAND: Sustained.

19 Q (By Mr. Eastwood) Was his voice loud?

20 MR. PARKS: Same objection.

21 JUDGE SUTHERLAND: Sustained. This all
22 could have been covered on cross. Objection is
23 sustained.

24 MR. EASTWOOD: No further questions.

25 MR. PARKS: No further questions, Your

1 Honor.

2 JUDGE SUTHERLAND: May this witness be
3 finally excused?

4 MR. PARKS: Yes.

5 MR. EASTWOOD: Yes.

6 JUDGE SUTHERLAND: You may step down. Call
7 your next witness.

8 MR. PARKS: The State will call Sergeant
9 Perry Smith.

10 (WHEREUPON SERGEANT PERRY SMITH WAS SWORN IN)

11 **DIRECT EXAMINATION OF PERRY SMITH**

12 **QUESTIONS BY MR. PARKS:**

13 Q Please state your name for the Court.

14 A Perry Smith.

15 Q Sergeant Smith, you are with the Missouri
16 State Highway Patrol; is that correct?

17 A Yes, sir, I am.

18 Q I direct your attention to September 11th of
19 2012. Were you the officer that collected evidence
20 at the scene of the shooting at the MFA gas station
21 on Highway K?

22 A Yes, sir, I was.

23 Q And I'm going to show you what has been
24 marked as State's Exhibit No. 20. Do you recognize
25 that?

1 A Yes, sir, I do.

2 Q And what do you recognize that to be?

3 A This appears to be the scene of the
4 shooting, and it appears to be Mr. Weinhaus'
5 vehicle, patrol vehicle as well as evidence markers
6 that have been placed in the area.

7 Q Is this a fair and accurate representation
8 of the scene as you -- you took this photo; is that
9 correct?

10 A Yes, I did.

11 Q Is this a fair and accurate representation
12 of the scene?

13 A Yes, sir, it is.

14 Q I show you what's been marked as State's
15 Exhibit No. 20. Do you recognize this photo?

16 A Yes, sir, I do.

17 Q Or 22, I'm sorry, State's Exhibit 22. And
18 do you recognize this photo?

19 A Yes, sir, I do.

20 Q Is this a fair and accurate representation
21 of the scene?

22 A Yes, sir, it is.

23 Q And then after the scene I'll show you what
24 has been marked as State's Exhibit No. 22 (sic). Do
25 you recognize this photo?

1 A Yes, sir, I do.

2 Q And this is a photo of the defendant's car;
3 is that correct?

4 A That's correct.

5 Q Did you search that car?

6 A Yes, sir, I did.

7 Q And I show you what's been marked as State's
8 Exhibit No. 23, 24, 25 and 26. Did you take these
9 photographs of the interior of the car?

10 A Yes, sir, I did.

11 Q And are these photographs fair and accurate
12 representations of what you found in the car?

13 A Yes, sir, they are.

14 MR. PARKS: Your Honor, at this time I would
15 ask that State's Exhibit No. 20, 21, 22, 23, 24, 25
16 and 26 be admitted into evidence.

17 MR. EASTWOOD: May I review the photographs
18 briefly, Your Honor?

19 JUDGE SUTHERLAND: Yes.

20 (BENCH CONFERENCE BEGINS)

21 MR. EASTWOOD: Your Honor, for the record
22 and for the reasons already discussed in the motion
23 in limine, I believe it's defendant's second motion
24 in limine, I would object to the introduction of
25 evidence of weapons found in the car. I believe

1 it's prejudicial, irrelevant to the charges against
2 the defendant or to what was in the officer's mind
3 at the time of the shooting. It has nothing to show
4 to resisting arrest or to his attempted assault on a
5 law enforcement officer.

6 JUDGE SUTHERLAND: That's State's Exhibits
7 24, 25 and 26?

8 MR. EASTWOOD: Yeah, 23 through 26.

9 JUDGE SUTHERLAND: Objection to those
10 exhibits is overruled. State's Exhibits 20 through
11 26 conclusive are admitted.

12 MR. EASTWOOD: Thank you, Your Honor.

13 (BENCH CONFERENCE ENDS)

14 Q (By Mr. Parks) And Sergeant Smith, I direct
15 you to what's been marked as State's Exhibit 20, do
16 you recognize this photo?

17 A Yes, sir, I do.

18 Q What is this a photo of?

19 A That's a photo taken of Mr. Weinhaus'
20 vehicle, Corporal Mertens' vehicle as well as
21 evidence markers on the ground.

22 Q What do those evidence markers indicate?

23 A Pieces of evidence on the ground.

24 Q And I show you what has been marked as
25 State's Exhibit No. 21. Do you recognize this?

1 A Yes, sir, I do.

2 Q And do you recognize this item as the gun in
3 the holster that was found at the scene?

4 A Yes, sir, I do.

5 Q Did you seize that gun and holster?

6 A Yes, sir, I did.

7 Q And 22 is just a close-up of the gun and
8 holster; is that correct?

9 A Yes, sir.

10 Q And then did you do a search of the interior
11 of the car?

12 A Yes, sir, I did.

13 Q What did you find in the interior of the
14 car?

15 A On the interior of the car I found a 22
16 caliber black and white pistol loaded with six
17 rounds, also an A T & T slider type cell phone, a 12
18 gauge shotgun and an Ion video camera.

19 Q And I show you what's been marked as State's
20 Exhibit No. 23. Do you recognize this?

21 A Yes, sir, I do.

22 Q And what do you recognize this to be?

23 A That's the Rome 22 caliber pistol.

24 Q This is the gearshift here, and then over
25 here would be the driver's side. So this is sitting

1 in the floor board of the passenger seat; is that
2 correct?

3 A That's correct.

4 Q And I show you what has been marked as
5 State's Exhibit No. 24, do you recognize this?

6 A Yes, sir, I do.

7 Q What do you recognize this to be?

8 A That's the right rear passenger door. The
9 photo was taken of the interior. It shows the Ion
10 video camera as well as the barrel of the 12 gauge
11 shotgun.

12 Q This is the barrel right here; is that
13 correct?

14 A Yes, sir, that's correct.

15 Q And was that shotgun loaded?

16 A Yes, sir, it was.

17 Q What was it loaded with?

18 A Six rounds of 12 gauge ammunition.

19 Q And again State's Exhibit No. 25, this is
20 the stock of the weapon; is that correct?

21 A Yes, sir, it is.

22 Q And No. 26, what is this?

23 A That's a photograph of the shotgun after I
24 pulled it from behind the seat and laid it up on the
25 back seat with the evidence marker.

1 Q And I show you now what has been marked as
2 State's Exhibit No. 27. Do you recognize this?

3 A Yes, sir, I do.

4 Q And inside of it is a military type holster,
5 a black nine millimeter pistol, some rounds and a
6 magazine. Did you seize these from the scene?

7 A Yes, sir, I did.

8 Q And are these the same items that were shown
9 in State's Exhibit 21 and 22?

10 A Yes, sir, they are.

11 Q The photos of the pistol. I show you now
12 what has been marked as State's Exhibit No. 28. Do
13 you recognize this?

14 A Yes, sir, I do.

15 Q And what do you recognize this to be?

16 A This is the box containing the 22 caliber
17 Rome pistol.

18 Q Did you seize this and box this up?

19 A Yes, sir, I did.

20 Q Is this in the same condition as it was when
21 you sealed it?

22 A Yes, sir, except that it has been sent to
23 the lab and it has laboratory tape on it.

24 MR. PARKS: Your Honor, I would ask that
25 State's Exhibit 28 be admitted into evidence.

1 MR. EASTWOOD: I object for the same
2 reasons.

3 JUDGE SUTHERLAND: Objection is overruled.
4 State's Exhibit 28 is admitted.

5 Q (By Mr. Parks) Could you open Exhibit 28,
6 please?

7 A Yes, sir.

8 Q And again what is inside of State's Exhibit
9 No. 28?

10 A It's a Rome 22 caliber pistol.

11 Q Could you hold that up for the jury to see,
12 please. And this is the weapon that you found in
13 the interior of the car?

14 A Yes, sir.

15 Q And that gun was loaded?

16 A Yes, sir, it was.

17 Q And that was in this holster clipped to the
18 box in the car?

19 A Yes, sir, it was.

20 Q And I show you now what has been marked as
21 State's Exhibit 29. Do you recognize this?

22 A Yes, sir, I do.

23 Q And what do you recognize this to be?

24 A This is the 12 gauge shotgun that I seized
25 from Mr. Weinhaus' vehicle.

1 Q And was this packaged by you also?

2 A Yes, sir, it was.

3 Q And with the exception of the laboratory
4 blue tape, is this in the same condition as when you
5 seized it and sealed it?

6 A Yes, sir, it is.

7 MR. PARKS: Your Honor, I would ask that
8 State's Exhibit 29 be admitted into evidence.

9 MR. EASTWOOD: I object for the same reasons
10 stated in my motion in limine.

11 JUDGE SUTHERLAND: Objection overruled.
12 State's Exhibit 29 is admitted.

13 Q (By Mr. Parks) Could you open this, please?

14 A Yes, sir.

15 Q And could you take this out and show it to
16 the jury, please. And what is this?

17 A A 12 gauge shotgun that I seized from
18 Mr. Weinhaus' vehicle.

19 Q And inside this box are six shells, were
20 these shells found in this weapon?

21 A Yes, sir, they were.

22 Q And I show you what has been marked as
23 State's Exhibit No. 30. Do you recognize this?

24 A Yes, I do.

25 Q What do you recognize this to be?

1 A This is the packaging containing the watch
2 Mr. Weinhaus was wearing. Along with it also had
3 his wedding ring.

4 Q And the wedding ring has been returned to
5 him or his family; is that correct?

6 A Yes, sir, that's correct.

7 MR. PARKS: Your Honor, I would ask that
8 State's Exhibit No. 30 be admitted into evidence.

9 MR. EASTWOOD: No objection, Your Honor.

10 JUDGE SUTHERLAND: 30 is admitted.

11 Q (By Mr. Parks) Could you open State's
12 Exhibit No. 30, please?

13 A Yes, sir.

14 Q And could you open the bag on the inside,
15 please. And this contains a plastic container in
16 which the watch is contained?

17 A Yes, sir.

18 Q And this is the video watch that
19 Mr. Weinhaus was wearing on his left wrist?

20 A Yes, sir, it is.

21 MR. PARKS: Your Honor, may we approach?

22 JUDGE SUTHERLAND: Yes.

23 (BENCH CONFERENCE BEGINS)

24 MR. PARKS: Your Honor, at this time I
25 believe all of the State's exhibits have been

1 admitted except for Exhibit No. 12.

2 JUDGE SUTHERLAND: That's what I show.

3 MR. EASTWOOD: And that is the actual
4 marijuana?

5 MR. PARKS: Well, the marijuana was actually
6 in the same bag as the Morphine. I didn't realize
7 it was packaged there, so it came in with Exhibit
8 No. 9.

9 JUDGE SUTHERLAND: Okay.

10 MR. PARKS: So I'm not asking because it was
11 packaged with another exhibit.

12 MR. EASTWOOD: So just for the record,
13 everything is in, in other words?

14 JUDGE SUTHERLAND: Yeah.

15 MR. EASTWOOD: I take the same position.

16 (BENCH CONFERENCE ENDS)

17 MR. PARKS: I have no further questions of
18 this witness at this time, Your Honor.

19 JUDGE SUTHERLAND: Cross examination.

20 MR. EASTWOOD: Thank you, Your Honor.

21 **CROSS EXAMINATION OF PERRY SMITH**

22 **QUESTIONS BY MR. EASTWOOD:**

23 Q Good afternoon.

24 A Good afternoon, sir.

25 Q I don't think we met before, have we?

1 A No, sir, we have not.

2 Q And I didn't take your deposition or
3 anything like that?

4 A No, sir, you didn't.

5 Q How long have you been with the Highway
6 Patrol, sir?

7 A 19 years.

8 Q And do you have any discipline on your
9 license?

10 A No, sir.

11 Q Ever had a serious reprimand or discipline
12 from the Highway Patrol?

13 A No, sir.

14 Q Good record?

15 A Yes, sir.

16 Q Thank you, sir. How many police officer
17 involved shootings have you investigated?

18 A 15, 20.

19 Q Has the officer been cleared in every single
20 one of those investigations of wrong doing?

21 A Yes, sir, they have.

22 Q 15 for 15. Is it customary for the Highway
23 Patrol to investigate its own officer-involved
24 shootings?

25 A Yes, sir, it is.

1 Q Did you ever ask the FBI to investigate or
2 some other law enforcement agency to investigate?

3 A No, sir.

4 Q I turn your attention -- I received from
5 Mr. Parks in the course of discovery in this case a
6 large packet of police reports into the
7 officer-involved shooting. Have you reviewed all of
8 those reports?

9 A Yes, sir.

10 Q Is it fair to say -- I don't know if there's
11 a technical term but you were the lead investigator
12 or chief investigator into this officer-involved
13 shooting?

14 A That's fair.

15 Q And so you have knowledge of all of these
16 reports, you reviewed them. You might need to
17 refresh yourself obviously.

18 A Yes, sir.

19 Q I couldn't remember them all but...

20 A Yes, sir.

21 Q And do you have concerns about any of them
22 being inaccurate or incomplete?

23 A No, sir.

24 Q You weren't in Court over the last two days
25 when Sergeant Folsom and Corporal Mertens have been

1 testifying, were you?

2 A No, sir, I was not.

3 Q Did you review their depositions?

4 A No, sir, I did not.

5 Q You just reviewed the reports, the reports
6 from the shooting?

7 A Yes, sir.

8 Q And did you talk with Mr. Parks before you
9 gave -- before you started testifying today?

10 A Pardon me?

11 Q Did you talk with the prosecutor, Mr. Parks,
12 before you started testifying today?

13 A Yes, I did.

14 Q What did you talk about?

15 A He -- we discussed the evidence, we
16 discussed how long he thought I was going to testify
17 and he apologized for taking so long.

18 Q Did you review your testimony in advance
19 with Mr. Parks?

20 A I'm sorry, what?

21 Q Did you review your testimony in advance
22 with Mr. Parks?

23 A I reviewed for my Court testimony today.

24 Q With Mr. Parks?

25 A On the evidence portion and the watch

1 portion.

2 Q Did you make any investigation into the
3 drug-related charges against Jeff Weinhaus?

4 A No, sir, I didn't.

5 Q Did you make any investigation into the You
6 Tube video-related charges against Jeff Weinhaus?

7 A No, sir, I didn't.

8 Q Did you ever see it?

9 A I'm not sure which ones you're talking
10 about. I've seen several portions.

11 Q Did it have captions in it or no?

12 A I don't recall.

13 Q Within the package of reports, there is a
14 packet with your name on it as the reporting officer
15 entitled -- it's Report 31 Examination of Cell Phone
16 and Video Camera. Did you conduct an examination
17 into Jeff Weinhaus' cell phone?

18 A No, sir, I didn't.

19 Q But you reported on it; right?

20 A Yes, sir, I did.

21 Q And where did you obtain the information
22 from your report from?

23 A Missouri State Highway Patrol's Computer
24 Forensic Unit.

25 Q This is out in Jeff City?

1 A Yes, sir, it is.

2 Q You got a proper search warrant to go
3 through the cell phone?

4 A Yes, sir, I did.

5 Q And so did you prepare this report?

6 A Yes, sir, I did.

7 Q And among the reports there is a -- there
8 are text messages; right?

9 A Yes.

10 Q Among the data that you reported on there
11 was a text message?

12 A Yes, there were text messages on the phone.

13 Q A series of text messages?

14 A Yes.

15 Q And they're from different people with the
16 last name Weinhaus?

17 A Yes.

18 Q There's a Judy Weinhaus, do you know who
19 that is?

20 A Yes, sir, I do.

21 Q Who is that?

22 A I believe it's his wife.

23 Q And she goes by Judy Kropf Weinhaus?

24 A Yes, that's my understanding.

25 Q And then there's a Grant Weinhaus, do you

1 know who that is?

2 A Mr. Weinhaus' son; is that correct?

3 Q I think it's his brother, and there's also a
4 Levi Weinhaus.

5 A I believe that may be his son and Grant is
6 the brother.

7 Q Do you know if he's the one who lives in the
8 house with Mr. Weinhaus and his wife in Piney Park?

9 A No, sir, I do not know that.

10 Q You don't know, okay. Did you make and did
11 you read the contents of these text messages?

12 A Yes, sir, I did.

13 Q And there's a text message with Levi
14 Weinhaus that says, "Pick my weed plant"; right?

15 A Yes, sir.

16 Q And in your custom and training, experience
17 and training in law enforcement, what is a weed
18 plant?

19 MR. PARKS: I object to this line of
20 questioning, Your Honor. He doesn't have any
21 firsthand knowledge of the -- who made these texts
22 or who sent them or anything like this, so it's all
23 hearsay.

24 JUDGE SUTHERLAND: Sustained.

25 Q (By Mr. Eastwood) Let me ask you this. Did

1 you ever share this report with any of the other
2 officers investigating the search of Mr. Weinhaus'
3 house?

4 A No, sir, I didn't.

5 Q And you have no knowledge whether Sergeant
6 Folsom or Corporal Mertens reviewed this report, do
7 you?

8 A That report was conducted after the search
9 of Mr. Weinhaus' residence.

10 Q So you don't know if they reviewed this
11 report; right?

12 A I'm not sure.

13 Q You don't know if they're aware of its
14 contents; right?

15 A That's correct.

16 Q Thank you. You also -- there was also a
17 report made -- are you from Troop C originally?

18 A Yes, sir, I am.

19 Q And can you just tell the jury what area
20 Troop C is?

21 A Troop C is as far south on 55 as Perry
22 County, runs up into St. Louis County, runs north
23 all the way up into Pike County, west out to Warren,
24 and if you're traveling down 44 it runs all the way
25 out to Franklin County.

1 Q And we're in the Troop C area here?

2 A Bordered by the Mississippi River, yes, sir.

3 Q And Troop C, did you review the -- it has a
4 radio frequency or perhaps several, right, that the
5 troopers communicate over?

6 A Yes, sir, that's correct.

7 Q And as part of your investigation into this
8 officer-involved shooting, you reviewed the Troop C
9 communication reportings; right?

10 A That's correct.

11 Q And you prepared a report on it, didn't you?

12 A That's correct.

13 Q And at one point on that recording there's
14 an officer who says, "they're messing with Weinhaus
15 again." No. 1, do you know what that means?

16 A No, sir, I don't.

17 Q Did you pass that information on to any
18 other officers investigating this shooting?

19 A No, sir, I didn't.

20 Q Did you pass it on to Sergeant Folsom or
21 Corporal Mertens?

22 A They probably have a copy of that report in
23 the stack of reports they got, sir.

24 Q Sure. And then after someone says they're
25 messing with Weinhaus again, another person says,

1 "Not over the radio." Do you know who said that?

2 A The one that said "not over the radio" was
3 Lieutenant Seales.

4 Q Do you know why Lieutenant Seales might say
5 "not over the radio"?

6 A He wasn't -- I don't believe he was
7 specifically speaking about your prior sentence
8 there.

9 Q So what was he speaking about when he said
10 "not over the radio"?

11 A I'd have to review my report to see exactly
12 what he's speaking about.

13 Q Do you mind if I read this to you?

14 A No, sir, that's fine.

15 Q On Page 2 of this report on the Troop C
16 communications you write, I believe, on Page 2, "in
17 the background another Troop C communications
18 operator was asking 251 if 557", these numbers refer
19 to officers; is that correct?

20 A Yes, sir, that's correct.

21 Q Do you know who 251 is?

22 A Corporal Keithly.

23 Q And 557?

24 A I believe that may be Sergeant Folsom.

25 Q 557 advised if it was self inflicted or

1 officer inflicted. Lieutenant Seales can be heard
2 saying not over the radio.

3 A That's correct.

4 Q Is there a police practice why you would not
5 discuss the issue whether it was self inflicted or
6 officer inflicted over the radio?

7 A Because people have access to scanners and
8 can scan that information, and that's not
9 information that we typically like to release to the
10 public because they have access to it, sometimes for
11 notification of family members.

12 Q When you say you don't want the public to
13 have that information, do you mean during the short
14 term during the investigation or ever have the
15 information?

16 A In the short term.

17 Q The holster that was on Jeff Weinhaus, did
18 you review this holster as part of your
19 investigation?

20 A No, sir, I didn't.

21 Q Did Jeff Weinhaus' weapon or holster form
22 any part of your investigation or reporting in this
23 matter?

24 A Did it what?

25 Q Did this holster or the weapon that was in

1 it, was that any part of your investigation?

2 A Yes, sir, it was.

3 Q In what respects?

4 A I seized it as evidence and submitted it to
5 the lab for test firing.

6 Q And what did you find from the lab?

7 A That the weapon was capable of firing.

8 Q And had it been fired?

9 A Not that I was aware of.

10 Q So it wasn't -- no one shot a bullet out of
11 it on September 11th to your knowledge?

12 A That's correct.

13 Q Are you familiar with this type of holster?

14 A No, sir, I'm not.

15 Q Did you investigate what type of holster it
16 was as part of your investigation?

17 A No, sir, I didn't.

18 Q You just seized it as evidence?

19 A Yes, sir.

20 Q Did you note in any of your reports that it
21 is a somewhat difficult holster to open?

22 A No, sir, I didn't.

23 Q And you are not here today to give an
24 opinion on whether or not Sergeant Folsom and
25 Corporal Mertens' use of force was appropriate or

1 not, are you?

2 A No, sir, I'm not.

3 Q Is that ever your job as part of an
4 investigation into an officer-involved shooting?

5 A No, sir.

6 Q You're really there more to gather the
7 evidence in a clean manner?

8 A Yes, sir.

9 Q Clean I mean make sure of chain of custody
10 is done right, not contaminated and all that?

11 A Yes, sir.

12 Q How long have you been with Troop C?

13 A 19 years.

14 Q How long in that time have you been out in
15 the field?

16 A I spent 12 years on the road in Jefferson
17 County, two years in narcotics and the last six
18 years in criminal investigations.

19 Q Do you do a lot of traffic stops at times in
20 that?

21 A In my current position?

22 Q No, in your past position?

23 A Yes, sir, I did.

24 Q Guesstimate number of traffic stops?

25 A I don't think I could guesstimate, sir.

1 Q A lot, hundreds, thousands?

2 A A lot.

3 Q So it's fair to say you have experience --
4 I'll ask you the next follow-up question. In many
5 of those traffic stops or some of them did you
6 search the car?

7 A Yes, sir, I did.

8 Q And in your experience, was it common to
9 find firearms inside a car?

10 A No, sir, it wasn't.

11 Q No? Really? So in Jefferson County it
12 would be unusual for someone to drive around with
13 say a shotgun in their car?

14 A It's possible, people do it. As far as
15 unusual, I don't know what your operational
16 definition is exactly.

17 Q I'm saying, you said you did many, hundreds,
18 thousands of traffic stops.

19 A I did not say that.

20 Q Well, I put words in your mouth, I'll take
21 that back, but you did many, many traffic stops, you
22 couldn't put a number on it but you testified you
23 did a lot?

24 A That's correct.

25 Q And in some of those cases you searched the

1 cars?

2 A Yes, sir, that's correct.

3 Q Or the truck or whatever it is?

4 A Yes, sir, that's correct.

5 Q And in some of those cases you found
6 firearms; right?

7 A Yes, sir, that's correct.

8 Q And having a firearm is not illegal; right?

9 A Correct.

10 Q You're not a danger to the public or fellow
11 drivers just because you have a firearm in your car?

12 A Yes, sir, you are correct.

13 Q Are you here to give testimony on Jeff
14 Weinhaus' state of mind or intentions on September
15 11th?

16 A No, sir, I'm not.

17 Q In the course of your investigation, did you
18 discover whether Sergeant Folsom or Corporal Mertens
19 knew of the gun, the holstered gun and the shotgun
20 in the car at the time of the shooting?

21 A No, sir.

22 Q They did not know or you don't know?

23 A They did not know.

24 Q They did not know?

25 A I had no evidence that they did know.

1 Q They were totally unaware that these weapons
2 were in the car?

3 A From my understanding, yes, that's correct.

4 Q And during the course of your investigation,
5 you discovered no evidence that Jeff Weinhaus said
6 anything about these weapons in the car to the
7 troopers?

8 A That's correct.

9 Q Can you find any evidence that he ever
10 attempted to use these weapons in any respect at the
11 gas station, any evidence that he tried to use these
12 weapons?

13 A Witness statements from Sergeant Folsom
14 indicated that he did. Corporal Mertens indicated
15 that he did, and the cell phone watch that he was
16 wearing turned to the right right before the shots
17 were fired capturing the shooting. So you asked for
18 evidence, I think those would be parts.

19 Q You are absolutely right, and the jury has
20 heard testimony from both those troopers and they
21 have seen that weapon. But that's not my question.
22 My question is about the weapons, not the gun, not
23 the height point and holster, everyone concedes that
24 was on Jeff Weinhaus' person. I'm talking about the
25 weapons that were in the car. Sergeant Folsom and

1 Corporal Mertens didn't know about those weapons
2 when they shot Jeff; right?

3 MR. PARKS: Objection, calls for
4 speculation.

5 MR. EASTWOOD: I'm asking for his knowledge
6 on what evidence he uncovered in his investigation.

7 JUDGE SUTHERLAND: Overruled. You may
8 answer.

9 THE WITNESS: From information I had they
10 were not aware of those weapons.

11 Q (By Mr. Eastwood) Did you find any evidence
12 that Jeff made any statements about those weapons
13 that were in the car?

14 MR. PARKS: Objection, Your Honor, hearsay.

15 JUDGE SUTHERLAND: And it's repetitive as
16 well, sustained.

17 Q (By Mr. Eastwood) Did you find any evidence
18 that Jeff attempted to use or go for the weapons
19 that were in the car?

20 A No, sir, I did not.

21 Q Now both troopers had the same type of Glock
22 weapon; is that correct, sir?

23 A Yes, sir, that's correct.

24 Q And in fact you oversaw as part of your
25 investigation, Highway Patrol Forensics examining

1 those guns and also bullets they recovered; right?

2 A I submitted those to the lab, sir.

3 Q And is it fair to say that forensics
4 couldn't tell whether the bullet that was recovered
5 from Jeff Weinhaus' body came from Folsom or
6 Mertens, they could not tell which gun it came from?

7 A That's correct.

8 Q Did you also recover a bullet from the side
9 of the MFA building, around there?

10 A No, sir, I did not.

11 Q Did you uncover evidence of a bullet strike
12 on the wall?

13 A Yes, sir, I did.

14 Q Did you make any conclusions in your
15 investigation about where that bullet strike -- how
16 it occurred?

17 A Yes, sir, I did.

18 Q What was your conclusion?

19 A It appeared that that round was probably
20 fired from Corporal Mertens.

21 Q Did your investigation include any
22 recommendations or conclusions on whether Corporal
23 Mertens' or Sergeant Folsom's use of force was
24 appropriate or justified?

25 A No, sir, it did not.

1 Q And does it include any recommendations or
2 conclusions on whether the fact that Corporal
3 Mertens' bullet struck the building was an issue
4 that needed to be investigated further?

5 A No, sir.

6 Q The watch, just so we can be clear, the
7 wrist watch, did you make any conclusions as to
8 where the camera lens was inside this watch?

9 A I believe it was in the six hole or the six
10 spot. If I could look at it again.

11 Q Absolutely, sir. I'll walk around.

12 A Yes, sir, it appears to be down by the six,
13 where the six clock is.

14 Q It's quite concealed, isn't it?

15 A Yes, sir, it is.

16 Q I don't think anyone from the Highway Patrol
17 was aware that this watch was also a camera in the
18 early days of your investigation, were they?

19 A No, sir, we were not.

20 Q In fact the day of when a walk through of
21 the scene was done with Sergeant Folsom and Corporal
22 Mertens, no one at the Highway Patrol was aware that
23 this watch existed as a recording device or that
24 there was a recording; right?

25 A Yes, sir, you're correct.

1 Q And in fact the next day you took -- you
2 interviewed both Sergeant Folsom and Corporal
3 Mertens and you recorded that interview; right?

4 A Yes, sir, we did.

5 Q And was that at Troop I or C?

6 A Troop I.

7 Q Down in Rolla?

8 A Yes, sir.

9 Q And at that time neither you nor Corporal
10 Mertens or Sergeant Folsom was aware of the
11 existence of the wrist watch camera; right?

12 A Yes, sir, you're correct.

13 Q And when Sergeant Folsom and Corporal
14 Mertens made written statements as part of your
15 investigation and part of your reporting, they were
16 not aware of the existence of the wrist watch
17 camera?

18 A That's correct.

19 Q When did you find out about the fact that
20 this was a recording device?

21 A In March.

22 Q Of this year?

23 A Of 2013, yes, sir, that's correct.

24 Q So that was some six months, seven months
25 after the shooting; right?

1 A Yes, sir, you're correct.

2 Q Had your investigation otherwise concluded
3 by that point?

4 A Yes, sir, it had.

5 Q And when you reviewed that footage, did you
6 first see it in March?

7 A Yes, sir, I did.

8 Q You got a warrant, opened it up?

9 A Yes, sir.

10 Q Were you concerned that the video footage
11 itself contradicted any of the other reporting or
12 evidence in your investigation?

13 A No, sir, I was not.

14 Q I want to go back just to the weapons as a
15 whole that were seized. Jeff was never charged with
16 unlawful possession of these weapons as part of your
17 investigation; right?

18 A As far as I know.

19 Q As far as you know, all these guns are
20 legal, right, these particular guns; right?

21 A Yes, sir.

22 Q None of them have been come by improperly or
23 illegally?

24 A No, sir.

25 Q The handgun and the shotgun in the car or

1 rifle, whatever went to call it, was it concealed or
2 readily apparent when you searched the car?

3 A Readily apparent.

4 Q It was not hidden somewhere?

5 A No, sir.

6 Q How long have you known Sergeant Folsom,
7 sir?

8 A I really didn't know him, sir.

9 Q And how long have you known Corporal
10 Mertens?

11 A I really didn't know Corporal Mertens
12 either, sir.

13 Q Different troop?

14 A Yes, sir.

15 Q Have you been concerned about any conflict
16 of interest by yourself or anyone else in conducting
17 this investigation?

18 A No, sir, I have not.

19 Q Do you have any opinion on why Jeff did not
20 exit his vehicle with the other two weapons in his
21 car as part of your investigation?

22 MR. PARKS: Objection, calls for speculation
23 on the part of the witness.

24 JUDGE SUTHERLAND: Sustained.

25 MR. EASTWOOD: Nothing further.

1 JUDGE SUTHERLAND: May this witness be
2 excused as well?

3 MR. PARKS: Yes, Your Honor.

4 JUDGE SUTHERLAND: Thank you. You may step
5 down. Let's take a recess now. The Court again
6 reminds you of what you were told at the first
7 recess of the Court. Until you retire to consider
8 your verdict, you must not discuss this case among
9 yourselves or with others or permit anyone to
10 discuss it in your hearing. You should not form or
11 express any opinion about the case until it is
12 finally given to you to decide. Do not do any
13 research or investigation on your own about any
14 matter regarding this case or anyone involved in the
15 trial. Do not communicate with others about the
16 case by any means. Do not read, view or listen to
17 any newspaper, radio, electronic communication from
18 the Internet or television report of the trial.
19 We're in recess for 15 minutes.

20 (WHEREUPON A BRIEF RECESS TOOK PLACE)

21 JUDGE SUTHERLAND: Call your next witness.

22 MR. PARKS: State calls Corporal Jeff White.

23 (WHEREUPON CORPORAL JEFF WHITE WAS SWORN IN)

24 **DIRECT EXAMINATION OF CORPORAL JEFF WHITE**

25 **QUESTIONS BY MR. PARKS:**

1 Q Please state your name for the record.

2 A Jeffrey L. White.

3 Q And Corporal White, you are a corporal with
4 the Missouri State Highway Patrol; is that correct?

5 A That's correct.

6 Q And how long have you been with the Highway
7 Patrol?

8 A 17 years, sir.

9 Q And during those 17 years, have you had
10 special training in firearms and firearms
11 instruction?

12 A Yes, sir.

13 Q What have you done?

14 A I've been certified as a firearm, police
15 firearms instructor by both the National Rifle
16 Association, the FBI and through the Missouri State
17 Highway Patrol.

18 Q And since 2007, what have your duties
19 included with the Highway Patrol?

20 A My primary duty is the chief firearms
21 instructor for the Missouri State Highway Patrol at
22 our training academy in Jefferson City.

23 Q And you train all the recruits on firearms
24 and firearm safety; is that correct?

25 A That is correct.

1 Q And you teach them situational -- how to
2 handle themselves in certain situations handling
3 firearms?

4 A Yes, sir.

5 Q And you have instructed them in the use of
6 deadly force; is that correct?

7 A Yes, sir.

8 Q And is this your primary function now with
9 the Highway Patrol as a firearms instructor with the
10 academy with the Highway Patrol?

11 A Yes, sir.

12 Q And I direct your attention to September
13 11th, 2012 and the shooting incident that we are
14 here about today. You were not involved in that
15 shooting; is that correct?

16 A That is correct.

17 Q And you were not present at the scene or
18 after the scene for that?

19 A No, sir.

20 Q Is that correct?

21 A That is correct.

22 Q Can you explain to the jury what you
23 instruct or how you instruct new troopers in the use
24 of their firearms in deadly situations?

25 A It's a wide range of instruction involving

1 those types of situations. It starts with a
2 foundation of firearms safety, firearms handling,
3 proper use, carry, wear of the firearm. Then we
4 start introducing live fire training on static
5 targets. As we build through their training, we
6 start introducing what we call force-on-force
7 training or where they're working against other
8 students and at times civilian role players that we
9 bring in that portray the part of the bad guy or
10 potentially innocent bystander or victim. They then
11 have to decide what the situation is, what's going
12 on, decide whether or not force needs to be used,
13 what level of force needs to be used and then
14 properly apply that force.

15 Q There has been some talk here today about
16 the force continuum, are you familiar with that
17 instructional method?

18 A Yes, sir.

19 Q Does the Highway Patrol teach that method
20 anymore?

21 A No, sir.

22 Q Why not?

23 A What we have found is the force continuum,
24 the diagram of the force continuum is a stair step,
25 and what we have found is students would be

1 reluctant to utilize the force that was required
2 because they would be locked into a stair step
3 thought process. The bad guy is here, I'm here, so
4 I can go to here. So we moved away from that model,
5 and we now use what we call the force options.

6 Q What is the force option?

7 A To diagram it for our students, we tell them
8 to picture themselves in the middle of the wagon
9 wheel, they're at the hub and they have the spokes
10 that are out supporting the wheel. The spokes are
11 then their force options, and then depending upon
12 the situation, they can dry upon any of those force
13 options at any time without having to worry about a
14 stair step arrangement, having to think where
15 they're at in relation. They can respond with what
16 they feel is the appropriate level of force based on
17 their training and experience and what the situation
18 dictates.

19 Q Is this also called action reaction
20 training?

21 A No, the action reaction training is a
22 specific training that we do that really brings
23 these force options to light, and it's really all
24 part of our force on force training.

25 Q Can you give us an example.

1 A Our action reaction training is, and we do
2 it with the recruits, where for example I'll be
3 standing there and I'll have one of our training
4 weapons, it shoots a non-lethal projectile with a
5 significant pain penalty, and they will have a
6 similar weapon. I'll tell them to go ahead and put
7 their weapon towards me, finger on the trigger if
8 they want, and whenever they perceive me as a
9 threat, to go ahead and press the trigger and try
10 and shoot me. I tell them they can't do anything
11 until they perceive me as a threat. I may be having
12 my weapon holstered. I may have it in my hand down
13 at my side. I may have my hands in the air with the
14 weapon. I may be sometimes holding it to my head.
15 Whenever they perceive me as a threat, they're
16 allowed to shoot. The thing that we're pointing out
17 with them and the reason we do it as demonstration
18 training is every single time I do this training, I
19 beat them.

20 Q Why is that?

21 A It demonstrates the principle that action is
22 always going to be faster than reaction. They're
23 having to react to my movement; therefore, they have
24 to wait until they see my movement, perceive it,
25 process it and then send a signal back to their

1 trigger finger to make that action happen, and
2 that's again I beat them every time with them
3 knowing and telling them up front that I am going to
4 become a threat to them.

5 Q Who decides how much force should be used in
6 any given situation?

7 A The officer on the scene ultimately has to
8 decide how much force they're going to apply based
9 on whatever it is the suspect presents to them.

10 Q So it's the perception of the suspect that
11 causes the officer to react?

12 A Yes, sir.

13 Q It's not the reaction of the officer to the
14 defendant?

15 A No. There has to be some kind of
16 circumstance that's causing the officer to perceive
17 a danger. Lethal force can be used when the officer
18 perceives a threat to their life, the life of
19 another or serious bodily injury to themselves or
20 another.

21 Q And in these situations, what happens to the
22 officer as the situation escalates to the point
23 where he's going to have to fire his weapon
24 psychologically?

25 A This area has been studied extensively. We

1 teach a four-hour block of instruction on this
2 portion alone, it's called survival mentality, and
3 what happens is the officer, upon perception of
4 danger, would -- will go through several
5 physiological changes. They will have a large
6 adrenaline dump, their heart rate can increase from
7 resting heart rate to up to 200 beats per minute in
8 just seconds. There are certain physiological
9 changes that happen within a person during the time
10 that this heart rate increases, things such as they
11 can have diminished auditory capacity, they will
12 have auditory exclusion, sounds will no longer be
13 important to the body based on its perception of
14 survival, so the body shuts that down. Digestive
15 system will shut down. Other non-essential areas
16 will cease to function, so to speak. The officer
17 will have a narrowing of their field of vision, a
18 tunnel vision is what it's typically termed as. The
19 officer will also have -- at times there can be a
20 distortion of time. They can either perceive things
21 happening in fast motion, typically it turns into a
22 slow motion time. The officer can perceive that
23 they've frozen, they're unable to move or that
24 events are transpiring very, very slowly like
25 everything is moving through some kind of oil or

1 something where it's really, really slow.

2 Q When you talk about the auditory senses
3 shutting down, would somebody be able to fire their
4 weapon and not hear the weapon discharge?

5 A There have been reported cases of that, yes,
6 sir.

7 Q Do you teach troopers how to react to a
8 situation of an armed individual?

9 A Yes, sir.

10 Q What do you teach them?

11 A A lot of -- we give them several options.
12 There's no one specific way to handle all
13 situations, so we try to make it situational
14 dependent and give them multiple situations in which
15 to tryout the various tools that we give them. It
16 can be anything from having the person stop where
17 they are, possibly turn away from them, put them on
18 the ground, just any number of things.

19 Q What do you teach your officers or when do
20 you teach your officers to use lethal force?

21 A When they perceive a threat to themselves or
22 others, either a threat to their life or the threat
23 of serious physical injury.

24 Q If you were teaching a class of troopers and
25 you gave them an example of someone who had a pistol

1 in a holster on their side, would that be enough to
2 use lethal force with nothing else going on?

3 A With no other elements, no, sir, that would
4 not be sufficient reason.

5 Q If that holster had a flap on it and the
6 suspect opened that flap, what would you teach your
7 officers to do at that point?

8 A I would teach the officers that that greatly
9 elevates the danger to them. The fact that the
10 person is operating in proximity to the weapon to
11 where they can remove the flap or undue the flap
12 puts them in a position at that moment where the gun
13 can be put into play instantly and utilized against
14 them.

15 Q Would this be a situation where they would
16 be authorized to use lethal force?

17 A Yes, sir.

18 Q If that person took his hand and put the
19 hand under the flap of the holster, what would you
20 teach them, how would you teach them to handle that
21 situation?

22 A That is actually one of the elements that we
23 talk about when the person is in proximity with
24 their weapon with the use of that action versus
25 reaction drill. This is obviously, at that point,

1 the person has their hand on the weapon, they are in
2 a position where they would be able to beat the
3 officer.

4 Q Would that be a situation in which the
5 officer would be allowed to use deadly force?

6 A Yes, sir.

7 Q If the suspect started to draw his pistol
8 out of the holster, what would you teach your
9 troopers?

10 A At that point deadly force or deadly threat
11 against them is imminent and they should be
12 utilizing deadly force at that point.

13 Q Would the officer be behind the curve if he
14 allowed the suspect to start to draw his gun before
15 he fired?

16 A Very much so.

17 Q And this is something that you would teach
18 them not to try to get into that situation?

19 A Yes, sir.

20 Q If the defendant had his hand on the gun and
21 yelled, "you're going to have to shoot me man,"
22 would this be a situation in which you would teach
23 your troopers to use lethal force?

24 A Yes, sir.

25 Q Why?

1 A The person has already given an indication
2 of what -- that they're anticipating the use of
3 deadly force by the officer, and they are making
4 motions by placing their hand on the weapon that is
5 going to have to force the officer to have to do
6 that.

7 Q So in other words your training to the
8 officer is to perceive the threat, and when they
9 perceive the threat, to take the appropriate action?

10 A Yes, sir. As I said, if we get to the point
11 where we are trying to play catch-up with the
12 suspect, absolutely the best we can hope for is a
13 tie, which for us is a loss.

14 MR. PARKS: Thank you very much. No more
15 questions.

16 JUDGE SUTHERLAND: Cross examination.

17 MR. EASTWOOD: Thank you, Your Honor.

18 **CROSS EXAMINATION OF CORPORAL JEFF WHITE**

19 **QUESTIONS BY MR. EASTWOOD:**

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q It's good to see you again. We met last
23 week so I could take your deposition; is that
24 correct?

25 A That is correct.

1 Q And I apologize, your title is Corporal
2 White; is that correct?

3 A Yes, sir.

4 Q Corporal White, how long have you been
5 teaching use of force for the Missouri Highway
6 Patrol?

7 A I started as an adjunct instructor for the
8 academy in 2000, been teaching full-time since 2007.

9 Q When was it that you got your certifications
10 from the NRA and some of these other agencies?

11 A My first certification was when I was still
12 with the sheriff's department in Boone County. The
13 certification with the NRA was in 1986.

14 Q And did you ever compare -- strike that.
15 Did you ever train Sergeant Folsom in the use of
16 force for firearms?

17 A As I said during our deposition, the only
18 opportunity I would have had to have trained him
19 would have been both 2007 and 2008 when all troopers
20 came through the academy for in-service training for
21 active shooter training.

22 Q I'm going to ask you some questions I asked
23 you in your deposition because I need the jury to
24 hear your answers, okay, sir, but to your knowledge
25 you have no personal knowledge of whether or not you

1 trained Sergeant Folsom; right?

2 A No, sir.

3 Q And at least in preparation for your
4 deposition, I don't know if it's changed since then,
5 you did not review what training Sergeant Folsom
6 had; is that correct?

7 A That's correct.

8 Q So you don't know what training he's had?

9 A No, sir.

10 Q And if I told you that Sergeant Folsom had
11 served in the Army, is it possible that he had had
12 different training in use of force than that which
13 he might receive from you in the Highway Patrol?

14 A Would the Army have taught him differently
15 than what the patrol would be teaching?

16 Q Yes, sir.

17 A Yes.

18 Q Do you know what the Army would teach him?

19 A Not specifically, no, sir.

20 Q But you know it would be different perhaps?

21 A Yes, there's a good possibility.

22 Q And have you trained Corporal Mertens?

23 A Yes.

24 Q And when was that?

25 A It would have been during the time that both

1 of us were on the Troop F SWAT team.

2 Q How long a period was that when you were on
3 the SWAT team together?

4 A To the best of my recollection it would have
5 been a six-year period.

6 Q You were together for six years?

7 A Yes, sir.

8 Q Doing SWAT the whole time?

9 A It was an additional duty. We only have a
10 part-time SWAT team, we had four part-time for the
11 state.

12 Q So you weren't regularly serving along side
13 him, it was only when the SWAT team was activated?

14 A The trainings were two days a month and then
15 during any activations.

16 Q Were you training Corporal Mertens then or
17 serving along side him?

18 A I was in charge of training for the SWAT
19 team during the time we were doing that since I was
20 a firearms instructor.

21 Q Was the use of firearms instruction any
22 different for the SWAT team situation than it would
23 be for an ordinary situation interacting with a
24 civilian? If that was too big, I can restate.

25 A I can say the basic training is the same as

1 far as when we're authorized to utilize weapons.

2 The only difference would be in tactics and the fact
3 that we would have multiple people available to
4 respond to a situation at that point.

5 Q SWATs are pretty serious extreme situations;
6 right?

7 A Yes, sir.

8 Q Very high threat level?

9 A Yes, sir.

10 Q Extreme use of force required, highest level
11 of force required in many cases?

12 A The potential is always there, yes, sir.

13 Q The type of weaponry and tactical maneuvers
14 are anticipating very, very dangerous situations?

15 A Yes, sir.

16 Q And to be clear, the situation from your
17 knowledge, your review of the Jeff Weinhaus matter
18 was not a SWAT team type situation; right?

19 A No, sir.

20 Q Did you talk to Sergeant Folsom before
21 testifying here today about this incident, about the
22 shooting incident?

23 A No, sir.

24 Q Did you talk to Corporal Mertens about the
25 shooting incident?

1 A No, sir.

2 Q Did you review the investigative reports
3 that Perry Smith prepared?

4 A No, sir.

5 Q What materials did you review in preparation
6 for your testimony today?

7 A I viewed the videotape as it was presented
8 by the prosecutor's office.

9 Q This is the wrist watch videotape?

10 A Yes, sir.

11 Q And you reached -- did you reach any
12 conclusions based on your review of that tape?

13 A Yes, sir.

14 Q And what was your conclusion?

15 A My conclusion was that the use of force was
16 within reason for the situation that was presented.

17 Q Now is that based solely on what you saw and
18 heard in the video or also based on certain
19 assumptions?

20 A Based on what I saw and heard on the video,
21 sir.

22 Q Let's walk through it one by one. In the
23 video you don't see the holster; right?

24 A No, sir.

25 Q You don't see the gun in the holster; right?

1 A No, sir.

2 Q You see footage that is taken by a camera
3 that is on Jeff Weinhaus' left wrist; correct?

4 A Yes, sir.

5 Q You cannot see his right hand at any time in
6 the video; right?

7 A Correct.

8 Q You cannot -- you can only at best see what
9 the camera depicts and hear what Jeff, Sergeant
10 Folsom, Corporal Mertens each say, and in brief
11 periods of time you see Sergeant Folsom and you see
12 Corporal Mertens; right?

13 A Yes, sir.

14 Q And so your testimony that the use of force
15 was justified here is based then on an assumption
16 that Jeff's hand did what Sergeant Folsom and
17 Corporal Mertens testified it did; right?

18 A Yes, sir.

19 Q You can't tell that from the video alone?

20 A No, sir.

21 Q And I assume you learned of this testimony,
22 I guess it was Mr. Parks or someone told you that
23 this is what it would be; right?

24 A Yes, sir.

25 Q Now, when I met with you, you kindly brought

1 some of the training materials that you use in
2 teaching use of force?

3 A Yes, sir.

4 Q And I think before that. And I know you
5 already went over this with Mr. Parks that you no
6 longer teach the force continuum, that you have this
7 hub and spoke system almost of force options?

8 A Yes, sir.

9 Q And the key really is reasonableness; right?

10 A Yes, sir.

11 Q It's sort of like Goldilocks, not too hot,
12 not too cold. One is extreme force, excessive
13 force, and that would be inappropriate; is that
14 correct?

15 A That's correct.

16 Q And at the other end is too little force,
17 and that results in a law enforcement officer
18 potentially being shot or wounded, killed; right?

19 A Yes, sir.

20 Q And it seems to me that your critique of the
21 force continuum was that perhaps it encouraged too
22 little force, too little reactive force by the
23 officer, and that left the officer vulnerable, is
24 that fair to say?

25 A It was more of a concern over it causing

1 delays in deciding to use higher levels of force.

2 Q They couldn't get up those steps, couldn't
3 get to a higher level fast enough in order to act
4 appropriately given the level of threat they were
5 confronted with?

6 A Yes, sir.

7 Q They were sort of thinking I have to keep on
8 going up. And you also in these training materials
9 teach something called the universal human phobia;
10 is that correct?

11 A Yes, sir.

12 Q And what is the universal human phobia?

13 A Interpersonal, I'm sorry, interpersonal
14 human aggression.

15 Q In other words fighting, two individuals
16 fighting; right?

17 A That is an example of it, yes.

18 Q And when confronted with interpersonal human
19 aggression, what are some of the conditions that the
20 body experiences?

21 A As I spoke about before, there are things
22 that will occur; the heart rate will go up,
23 adrenaline dump will occur, non-essential systems
24 will start shutting down based on the body's
25 perception of the threat.

1 Q And as these stress hormones come in or are
2 dumped into the body, it's also correct that fine
3 motor skills deteriorate; isn't that true?

4 A Yes, sir.

5 Q That visual reaction time changes?

6 A Yes.

7 Q That cognitive reaction time changes?

8 A Yes, sir.

9 Q That as the heart rate elevates, as the
10 stress level goes up, complex motor skills
11 deteriorate?

12 A Yes, sir.

13 Q In fact if your heart rate gets high enough,
14 you may freeze or seize up?

15 A Yes, sir.

16 Q You may uncontrollably void your bladder or
17 bowels?

18 A Yes, sir.

19 Q You lose gross motor skills, you lose
20 control of much of your body?

21 A At different stages different functions will
22 be affected, yes, sir.

23 Q In your training experience on the Highway
24 Patrol, have you dealt with individuals who have had
25 nerve damage?

1 A Not that I'm aware of, no, sir.

2 Q Have you dealt with individuals who have
3 tremors or shakes in their hands that are abnormal
4 for a healthy law enforcement officer?

5 A Yes, sir.

6 Q Tell me about that. How do you train
7 someone who has a tremor or shake or motor skills
8 issue, how do you train them to correctly respond
9 with the right level of force?

10 A Just the physical ailment itself won't
11 preclude their proper judgment. What it becomes
12 then is mechanical function as far as being able to
13 utilize their firearm in a proper method and get
14 shot placement where they intend.

15 Q So it's the firing of the gun that's a
16 concern?

17 A Yes, sir.

18 Q You also teach that in such situations there
19 are what's called perceptual distortions; is that
20 correct?

21 A Yes, sir.

22 Q And that can be diminished or intensified
23 sound?

24 A Yes, sir.

25 Q So it's completely foreseeable that an

1 officer might not remember the sound of a bullet;
2 right?

3 A Yes, sir.

4 Q And you can have heightened visual clarity
5 or less visual clarity, both are normal responses;
6 is that correct?

7 A Yes, sir.

8 Q And you can have temporary paralysis?

9 A Yes, sir.

10 Q You can also have memory loss for parts of
11 the event; is that correct?

12 A Yes, sir.

13 Q You can also have memory distortion for your
14 memories of some of the event; is that true?

15 A Yes, sir.

16 Q You can have intrusive or distracting
17 thoughts; right?

18 A Yes.

19 Q You can have disassociation?

20 A Yes.

21 Q Can you explain what disassociation is?

22 A Disassociation is the feeling that this is
23 happening to someone else, this isn't happening to
24 me, you're seeing it from like a third person
25 perspective.

1 Q You can have memory loss for some of your
2 actions; right?

3 A Yes, sir.

4 Q So in other words your perception, it is
5 entirely normal, foreseeable and indeed part of the
6 body's response to have significant changes to
7 vision, to hearing, to perception of time, to
8 perception, to recollection of memory?

9 A These are potential things that can happen.
10 It's not a guarantee that it will happen to any
11 specific individual, they may suffer one of them or
12 all of them, but it is very both case and officer
13 specific.

14 Q And it certainly is something that you teach
15 and that because it's foreseeable that officers
16 could be in these situations; right?

17 A That is correct.

18 Q You also have a color code system of mental
19 physical awareness; is that correct?

20 A Yes, sir.

21 Q It goes from white, yellow, orange, red to
22 black; right?

23 A That is correct.

24 Q And in the white, that's one extreme of the
25 color continuum, you're really not -- a person is

1 not in a combative state of mind, if they were
2 attacked, they'd probably die; right?

3 A That is correct.

4 Q Condition black, you're in mortal combat;
5 right?

6 A Yes, sir.

7 Q Fighting for your life, flight or fight, you
8 have to defend yourself or you will be killed?

9 A That is correct.

10 Q Have you ever taught, as an instructor,
11 whether or not it is appropriate for an officer to
12 confront a suspect who has personally threatened him
13 before as opposed to his peer officers?

14 A I'm sorry, I'm not sure I understand your
15 question.

16 Q Do you ever teach situations in which an
17 officer has to confront a suspect when that suspect
18 has made personal attacks, personal threats against
19 that officer in particular?

20 A No, sir.

21 Q There's not really training for that?

22 A There isn't any that we provide.

23 Q There's no training. So if a suspect, if
24 you feel for some reason, at least in your mind, is
25 out to get you, there's no use of training in force

1 or firearms?

2 A No, sir.

3 Q Is it foreseeable, however, in such a
4 situation, based on your skills and you're an
5 expert; right?

6 A Yes.

7 Q Is it foreseeable that an officer confronted
8 with a suspect who had personally threatened him,
9 personally attacked him, personally criticized him,
10 would have an elevated stress level than an officer
11 who had no previous interaction with that suspect?

12 A Potentially.

13 Q And would that change the officer, the
14 officer who has the elevated stress levels who is
15 dealing with this suspect in a particularly
16 stressful situation, could that change his
17 perception of the event?

18 A It would change definitely his perception of
19 the potential danger that was there.

20 Q It would change his perception of the threat
21 level?

22 A It very well could.

23 Q And with the heightened stress, it could
24 also change his memory of the event?

25 A Potentially, yes.

1 Q It could distort his memory of the event?

2 A Potentially.

3 Q It could change his perception of sound, of
4 vision?

5 A Potentially, yes.

6 Q Now, when you teach use of firearms --
7 strike that.

8 Obviously we're talking about reasonable use of
9 force here, that's part of your expertise; right?

10 A Yes, sir.

11 Q The reasonable and appropriate reactive use
12 of force to a threat?

13 A Yes, sir.

14 Q And in some situations it is appropriate for
15 the officer to draw his weapon and potentially fire
16 it; right?

17 A Yes, sir.

18 Q And you talked about that some with
19 Mr. Parks. And in your training, do you teach the
20 officer to hold the gun with both hands?

21 A We teach both one handed and two handed
22 hold.

23 Q Is there a preferred stance and grip that
24 you teach?

25 A Preferred would be two hands.

1 Q Why is that?

2 A It allows steadier hold. Generally it
3 allows for greater control over shot placement.

4 Q And that helps protect the officer and
5 protect those around him, the shot placement; right?

6 A Yes, sir.

7 Q Prevents an innocent civilian from being hit
8 by a stray bullet?

9 A Yes, sir.

10 Q So one hand is less preferable to two hands?

11 A Yes, sir.

12 Q Now sometimes an officer can have an injury
13 to his hand; is that correct?

14 A Yes, sir.

15 Q What do you teach in those circumstances?

16 A Are you referring to an injury sustained
17 during the needed use of the firearm?

18 Q Correct, yes, specifically, yes. If one of
19 the officer's hand, for example, has a cut on it,
20 would that affect how the officer would grab or use
21 the gun?

22 A Depending on the severity of the cut, it
23 could, yes.

24 Q What would you advise, say if the cut was
25 severe enough that it hurt enough that the

1 officer -- it was distracting to the officer?

2 A At that point potentially a one-handed grip
3 would be preferable.

4 Q Do you teach troopers about the law. I know
5 you're not a lawyer, I don't think you are, are you,
6 sir?

7 A No, sir.

8 Q But do you teach the troopers about the law,
9 as you understand it, on use of force?

10 A To an extent, yes, sir.

11 Q You have teaching materials that cite cases
12 about appropriate use of force?

13 A Yes, sir.

14 Q And you also teach or in the course of
15 teaching this you also teach officers about
16 excessive use of force; is that correct?

17 A Yes, sir.

18 Q In fact excessive use of force is illegal;
19 right?

20 A Correct.

21 Q Unconstitutional?

22 A Yes, sir.

23 Q Now you also teach something called the
24 fleeing felon doctrine; right?

25 A Yes, sir.

1 Q And can you briefly tell the Court what the
2 fleeing felon doctrine is, tell the jury rather?

3 A The fleeing felon doctrine is doctrines
4 established to where an officer -- the courts have
5 stated that a fleeing felon can be brought under
6 apprehension by whatever means necessary. We teach,
7 though, that it only can be -- they can only utilize
8 that force which is reasonable to bring that person
9 under control. That does not give them carte
10 blanche to use deadly force to bring the person
11 under control.

12 Q Do you have an opinion in this matter
13 whether Jeff Weinhaus was a fleeing felon?

14 A I do.

15 Q And what is that opinion?

16 A He was not.

17 Q He was not a fleeing felon. So this was not
18 a situation where force was necessarily appropriate
19 because of -- because he was a fleeing felon. Your
20 conclusion is based rather on the video and the
21 assumption that Jeff's right hand did what it did;
22 right?

23 A Yes, sir.

24 Q By the way, do you have an opinion or do you
25 have an assumption, in your opinion, as to what

1 Jeff's last hand was doing?

2 A No, sir.

3 Q In fact I think we talked about this
4 earlier, what Jeff's hand was doing is irrelevant to
5 you; right, to your opinion?

6 A Based on the circumstances you described
7 when the question was asked previously, yes, sir.

8 Q And we spoke about this, in fact your
9 opinions about use of force are based on what's
10 called the totality of the circumstances; right?

11 A Yes, sir.

12 Q It's really difficult to say just because
13 someone said this or just because someone did that,
14 that automatically requires the use of deadly force,
15 it's really the whole picture; right?

16 A That is correct.

17 Q And so it's possible, I guess, that Jeff,
18 this is a hypothetical, but it's possible that Jeff
19 could have been crouching down, could have had his
20 left hand in the air, but your opinion is based
21 solely on what his right hand was doing; is that
22 correct?

23 A That is correct.

24 Q Are you familiar with this particular
25 holster?

1 A Not that particular one but you did mention
2 the style, sir.

3 Q And do you have personal experience or
4 experience in training troopers with the use of
5 holsters such as this?

6 A I have personal experience but not from
7 training troopers.

8 Q Just in your private life?

9 A Yes, sir.

10 Q And do you have an opinion whether these
11 holsters require additional effort or time to open?

12 A Just to open?

13 Q Yes, just to open?

14 A No, it's a pull down and lift away.

15 Q Are there sort of expected response times
16 when you're training troopers for a trooper to
17 remove his weapon from a holster and then bring it
18 up and shoot?

19 A There are no set criteria. We strive hard
20 to get them to be able to do it in the quickest
21 manner possible.

22 Q Is there an approximate time range of
23 seconds that you have as a goal or expectation?

24 A Ideally we want to be able to, on signal,
25 draw and get an accurate round on target within two

1 seconds.

2 Q So in your mind an officer who was properly
3 trained in the use of firearms could draw and then
4 raise and shoot his weapon in about two seconds?

5 A If they were using the standard issue
6 holster that we have, that's what we train from the
7 recruit status.

8 Q Based on your personal knowledge of that
9 type of holster, do they take longer to open and
10 withdraw than the standard?

11 A Yes, sir.

12 Q How much longer?

13 A I haven't worked with one in quite some
14 time, I couldn't give you a time frame.

15 Q Would you be impressed if a well-trained
16 trooper could do it in three seconds, unlatch, lift,
17 withdraw, aim, shoot, three seconds, would that be
18 an impressive time period for you?

19 A I would imagine with training and practice a
20 person could do it in a time less than that.

21 Q Less than that?

22 A Yes, sir.

23 Q Do you have any knowledge of what training
24 Jeff Weinhaus had in the use of firearms?

25 A No, sir.

1 Q In the use of holsters like this?

2 A No, sir.

3 Q And you didn't make any inquiry into that as
4 part of your opinion here today?

5 A No, sir.

6 Q I asked you during your deposition on
7 whether the type of holster mattered, didn't I?

8 A Yes, sir.

9 Q And you told me it didn't really, right, in
10 terms of the standard training, that the response is
11 the same, that use of force is justified regardless
12 of holster type if the guy reaches for his holster?

13 A Again based on the totality of the
14 circumstances involved, yes, sir.

15 Q Sergeant Folsom, however, testified earlier
16 today that he was familiar with this type of
17 holster, that he had served in the military and was
18 familiar with this type of particular holster.

19 Would that change your opinion on the
20 appropriateness of force based on whether the
21 holster was closed, whether it had begun to open,
22 whether it had -- whether the suspect's hand was
23 touching the holster as all, the fact that this
24 takes longer to open if Sergeant Folsom knew what
25 type of holster this was, would that alter your

1 opinion?

2 A I'm sorry, you lost me with the question in
3 there.

4 Q I'll rephrase. Your opinion you said was
5 that the use of force was justified based on the
6 video and based on the testimony about the right
7 hand was made without regard to the holster type; is
8 that correct?

9 A That's correct.

10 Q But Sergeant Folsom testified that he
11 recognized this particular type of holster, and we
12 just talked about the fact that this holster takes
13 longer to open; right?

14 A Yes, sir.

15 Q So would that change your opinion if the
16 trooper recognized and knew what type of holster
17 this was, would that change your opinion as to when
18 deadly force was appropriate?

19 A Based on that circumstance alone?

20 Q Yes, sir.

21 A No, sir.

22 Q And is it your opinion that if he's even
23 reaching for it, it's okay to shoot him?

24 A If he's reaching for his weapon?

25 Q Just reaching for his holster.

1 A The holster with a weapon contained within
2 it?

3 Q Presumably, but you don't know.

4 A I would say yes.

5 Q How far away would the hand have to be?

6 A It would have to start towards the holster.

7 Q From wherever it was?

8 A Yes, sir.

9 Q So if his hand was up in the air and it
10 started to come here, would that be considered a
11 reach?

12 A It would depend, once again, on the totality
13 of the circumstances. What were his instructions,
14 what should he be doing, what are my actions at that
15 time, all of those things, all of those factors come
16 into play.

17 Q You also teach what to do when confronted
18 with appropriate responses, and you do teach verbal
19 judo; right?

20 A I do not, no.

21 Q But you do consider that an appropriate
22 response under certain circumstances; right?

23 A To respond verbally to a threat?

24 Q Yes, sir.

25 A If there's time and circumstances warrant

1 it, yes, sir.

2 Q So here we're confronted with a situation
3 where two troopers are executing an arrest warrant.
4 Jeff Weinhaus didn't know that. There's nothing to
5 suggest he knew that, but my question is this: What
6 would you teach, assuming Jeff was not reaching for
7 the gun, what types of things might you teach a
8 trooper to say or command in order to get the
9 suspect to comply?

10 A As we said before with our training, we try
11 to give them a variety of options so they have
12 several things to draw from. One of those could be
13 given the command of don't move. Another could be
14 get on the ground. Another could be put your hands
15 away from the weapon.

16 Q In fact we spoke about hands during your
17 deposition; right?

18 A Yes, sir.

19 Q And I think you said that you told me that
20 talking about the hands, keeping the hands away from
21 the weapon was something important to do when you
22 have a person who is armed; right?

23 A Yes, sir.

24 Q And you reviewed the videotape here, neither
25 Sergeant Folsom nor Corporal Mertens said anything

1 about hands; right?

2 A No, sir.

3 Q In fact they said get down on the ground;
4 right?

5 A Yes, sir.

6 Q And there's some contradicting testimony but
7 there is an indication that Jeff may have crouched
8 down some, and so my question is if Jeff crouched
9 down and put his hands in the air, would you
10 consider that complying with get down on the ground?

11 A As you just demonstrated?

12 Q Sure.

13 A Potentially, yes.

14 Q And do you have an opinion on a reasonable
15 amount of time that it would take for a suspect to
16 get down on the ground?

17 A As we spoke of before, it's hard to put a
18 time frame on it, depends on the circumstances, the
19 situation, the location, the subject's physical
20 condition. The main thing that we'd be looking for
21 would be compliance.

22 Q Middle-aged white man on a gravel incline,
23 how long would it take him, what's reasonable, if
24 you could ballpark at all, based on the
25 circumstances you've seen on the video, what would

1 be a reasonable amount of time to comply, raise his
2 hands in the air and get down on the ground?

3 A Reasonable, anywhere from two to five
4 seconds.

5 Q I don't know if you've reviewed this video
6 but it appears that between Sergeant Folsom saying
7 first time get down on the ground and first shot
8 fired is three seconds, do you have an opinion on
9 that or no?

10 A That seems appropriate, yes.

11 Q Do you have an opinion whether or not Jeff
12 was complying with the order of get down on the
13 ground?

14 A My opinion is that he was not.

15 Q And again that's based on the assumption
16 from the testimony that the right hand was going to
17 the gun or based on other factors?

18 A That plus the viewing of the videotape.

19 Q I'd like to show the video, the freeze frame
20 again, and I have to do this because I understand
21 you have not been in the courtroom, and so although
22 the jury has seen this a number of times at this
23 point, I need to show it again to you.

24 (WHEREUPON THE VIDEO WAS PLAYED IN FREEZE FRAME)

25 Q (By Mr. Eastwood) Obviously the date, hour

1 and minute are incorrect, but I submit to you that
2 this is a still from the video. Is this sort of
3 recognizable to you, sir, from your review of the
4 video?

5 A Yes.

6 Q And this appears to be Sergeant Folsom and
7 it appears that a cartridge is coming out of his
8 gun; right?

9 A Yes, sir.

10 Q So one can presume or infer that he's
11 already fired a shot because of the shell casing?

12 A Yes, sir.

13 Q If you look at the secondhand it says 03, so
14 we're going to go back in time. If you go here, you
15 can see maybe a white plume of smoke or something
16 coming out of the barrel of the gun, and you go back
17 and the hand appears, or excuse me, the camera,
18 which is on the hand, sweeps left, you see Corporal
19 Mertens there at a high ready, is that what it's
20 called?

21 A Yes, sir.

22 Q And then we see the secondhand goes back to
23 two?

24 A At this point you're scrolling backwards; is
25 that correct?

1 Q Yes, sir, I'm going back in time. I've gone
2 back approximately a second in time, and the wrist
3 watch is now showing the roof of the defendant's
4 car, actually his wife's car, a Subaru and gas
5 station sign, and I mean you kind of recognize where
6 that is, right, you've seen a map of the scene
7 before; right?

8 A Yes, sir.

9 Q So you know that if the defendant is
10 standing about there somewhere, that it's showing
11 the roof of his car and it's showing the sign down
12 there; right?

13 A Yes, sir.

14 Q And assuming it's in the six hand of the
15 watch, the hand is somewhat suggesting it's somewhat
16 elevated; right?

17 MR. PARKS: Objection, calls for speculation
18 on the part of the witness.

19 JUDGE SUTHERLAND: Sustained to the form of
20 that question.

21 Q (By Mr. Eastwood) If Jeff Weinhaus had both
22 his left hand and his right hand in the air a second
23 before he was shot, would you say that the shooting
24 was appropriate?

25 A No.

1 Q Thank you. And to be clear, your opinion
2 that the shooting was justified is based on the
3 assumption that the right hand was reaching for the
4 gun or touching the gun or reaching for the holster
5 or touching the holster; correct?

6 A That is one of the circumstances, yes.

7 Q Is there any other circumstance other than
8 that assumption that would suggest the use of force
9 was justified?

10 A The statement made by the defendant prior
11 to, the "you're going to have to kill me, man," his
12 demeanor, other factors.

13 Q Demeanor, when you say demeanor, how do you
14 infer the defendant's demeanor from this video?

15 A In his responses to Sergeant Folsom.

16 Q Do you have an opinion as to the tone and
17 cadence of the defendant's speech?

18 A You described it best in the deposition as
19 smartalicy.

20 Q Was the defendant shouting?

21 A No, sir.

22 Q Did it have a hostile tone?

23 A No, sir.

24 Q When Sergeant Folsom and Corporal Mertens
25 ordered him to get down on the ground and the

1 defendant makes a statement in response, is it in a
2 softer volume, softer tone than that which the order
3 given by Sergeant Folsom and Corporal Mertens?

4 A Yes, sir.

5 Q Now, do you also teach first aid?

6 A Yes, sir.

7 Q Do you teach first aid as an appropriate
8 response potentially to an officer-involved
9 shooting; correct?

10 A That is correct.

11 Q You shoot a member of the public, and
12 perhaps there very well may be a reason or not, but
13 if you shoot a member of the public, you have an
14 obligation to administer first aid; right?

15 A Yes.

16 Q And obviously an officer first needs to
17 secure the scene; right?

18 A Yes, sir.

19 Q An officer first needs perhaps to cuff the
20 person so the person is no longer a threat to the
21 officer?

22 A Yes, sir.

23 Q Perhaps search them for weapons?

24 A Yes, sir.

25 Q But once someone has been shot and cuffed

1 and the scene has been secured, then you have an
2 obligation to administer first aid, isn't that fair
3 to say?

4 A Yes, sir.

5 Q Is it appropriate instead of administering
6 first aid to simply call an ambulance?

7 A I'm sorry?

8 Q Say the guy is in cuffs, scene is secure,
9 the guy has been shot, cuffed, shot down, cuffed,
10 scene secured, instead of administering first aid,
11 is it appropriate for a trooper to instead call an
12 ambulance instead of administering first aid?

13 A It would not be inappropriate, it would be
14 imperative that an ambulance be called.

15 Q Fair enough but would calling an ambulance
16 in itself relieve the trooper of the obligation to
17 provide first aid?

18 A If the injuries were within the scope of
19 training that the officer has in order or the
20 ability to deal with, they would be in a position
21 they need to render that aid, yes.

22 Q So let's talk about what type of things they
23 can do. Can officers treat for shock?

24 A Yes, sir.

25 Q Can officers check breathing?

1 A Yes, sir.

2 Q Can officers administer CPR?

3 A Yes, sir.

4 Q Can officers stop bleeding?

5 A Yes, sir.

6 Q Can officers -- and they do, officers are
7 equipped with gloves and pocket masks and other
8 types of health and safety type things to protect
9 themselves in the administering of the first aid;
10 right?

11 A Yes, sir.

12 Q Do you know whether or not Sergeant Folsom
13 or Corporal Mertens administered first aid in this
14 shooting?

15 A No, sir.

16 Q And you have no opinion on the first aid or
17 lack of first aid given to Jeff Weinhaus?

18 A No, sir.

19 Q Now Sergeant Smith (sic), you are a
20 decorated trooper, is that not true, you received an
21 award of merit from the Highway Patrol?

22 A Yes, sir, I'm Corporal White.

23 Q Excuse me, I'm sorry, did I use the wrong
24 rank?

25 A You called me Sergeant Smith.

1 Q It's been a long day for us all.

2 A I understand.

3 Q Corporal White. You are a decorated
4 trooper; is that correct?

5 A Yes, sir.

6 Q And you received an award of merit from the
7 Highway Patrol; is that correct, sir?

8 A Yes, I did.

9 Q And that's a prestigious thing, right, it
10 recognizes bravery, recognizes doing the correct
11 thing; right?

12 A Yes, sir.

13 Q And you received that award for an
14 officer-involved shooting; is that correct?

15 A Yes, sir.

16 Q And you were the officer involved in the
17 shooting?

18 A That is correct.

19 Q And in fact it occurred during a routine
20 traffic stop; is that not correct?

21 A Not a routine stop, sir.

22 Q I apologize but it did occur during a
23 traffic stop; is that correct?

24 A Yes, sir.

25 Q And at that point the suspect went for a

1 gun, is that not true, the driver that you pulled
2 over?

3 A He exited the vehicle as soon as I stopped
4 behind him. He exited the vehicle with a gun in
5 hand.

6 Q Gun in hand?

7 A Yes, sir.

8 Q And you took evasive maneuvers, you used
9 tactics to evade him?

10 A I began shooting at him.

11 Q And after you shot him, at some point did
12 you cuff him?

13 A No, sir.

14 Q Why not?

15 A There was a delay in time between him being
16 shot and being able to approach his vehicle and then
17 actually dealing with the subject.

18 Q Was cuffing not necessary?

19 A No, sir.

20 Q It was not necessary?

21 A That's correct.

22 Q And why was it not necessary?

23 A One of the injuries that the suspect
24 sustained was a shot to his head right above his
25 right eye.

1 Q How many shots did he receive?

2 A Two rounds hit him.

3 Q Two rounds?

4 A Yes.

5 Q So only two bullets, I shouldn't say only
6 two bullets hit him?

7 A That's correct.

8 Q Where did they hit him?

9 A The first round that struck him went through
10 his rib cage on his right side.

11 Q So medium level chest?

12 A It went between two of the ribs, hit a
13 portion of the liver, lower portion of the lung and
14 lodged up against his spine.

15 Q So one shot to the chest, one shot to the
16 head?

17 A Yes, sir.

18 Q And based on that you determined that
19 cuffing him was not necessary?

20 A Based on the fact that EMS arrived on the
21 scene very shortly afterwards and were able to
22 determine that he was dead.

23 Q Did you administer first aid to the suspect?

24 A I was prepared to.

25 Q You were prepared to. At any time did you

1 assume the suspect was dead and that he did not need
2 either first aid or EMS?

3 A Not until he was declared dead by the EMS
4 who arrived on the scene.

5 Q But you never made an assumption he was dead
6 and did not need medical attention?

7 A No, sir.

8 Q So you received the award of merit for your
9 actions that day; is that correct, sir?

10 A That is correct.

11 Q And you have continued to work for the
12 Highway Patrol ever since; is that correct?

13 A That is correct.

14 Q And at no time -- did you surrender your
15 weapon that you shot the suspect with?

16 A Yes, sir.

17 Q And there was an officer-involved shooting
18 investigation?

19 A There was.

20 Q And you got your weapon back?

21 A Yes, sir.

22 Q And at all times you were able to wear the
23 Highway Patrol uniform?

24 A Yes, sir.

25 Q And at no time did you take a leave of

1 absence for any reason?

2 A No, sir.

3 MR. EASTWOOD: Thank you very much.

4 JUDGE SUTHERLAND: Redirect.

5 **REDIRECT EXAMINATION OF CORPORAL JEFF WHITE**

6 **QUESTIONS BY MR. PARKS:**

7 Q Sergeant White, during your shooting
8 incident when the shooting had stopped, how long was
9 it before you broke cover to go to where the suspect
10 was lying?

11 A It was seven minutes while I was waiting the
12 arrival of back-up officers.

13 Q Why didn't you run up to him immediately?

14 A It would have been tactically unsound to do
15 so. There were two large shapes -- one of my shots
16 shattered the back window of the car rendering it
17 impossible to see through. There were two large
18 dark shapes invisible through the shattered window.
19 The traffic going by was causing the car to move.
20 At that point I was under the assumption that there
21 were additional subjects in the car, so tactically
22 it was most sound to remain at the back of my car
23 where I had hard cover and wait for back-up officers
24 to clear the car.

25 Q So is it a fair statement to say that every

1 shooting is different?

2 A Oh, absolutely.

3 Q And every response to that shooting is
4 different?

5 A Absolutely.

6 Q And the response given to any such shooting
7 depends upon the circumstances?

8 A The circumstances, the prior training the
9 officer has received, prior experiences, just any
10 number of things.

11 MR. PARKS: I have no further questions,
12 Your Honor.

13 JUDGE SUTHERLAND: Recross.

14 **RECROSS EXAMINATION OF CORPORAL JEFF WHITE**
15 **QUESTIONS BY MR. EASTWOOD:**

16 Q The shooting for which you won an award,
17 seven minutes for the EMS to arrive, you were by
18 yourself, sir; right?

19 A Yes, sir.

20 Q You didn't have a partner with you?

21 A That is correct.

22 Q You didn't have two FBI agents as back-up?

23 A No, sir.

24 Q You weren't in a parking lot?

25 A No, sir.

1 Q You were along the side of a highway;
2 correct?

3 A Yes, sir.

4 Q And you believed that there were other
5 shooters in the car?

6 A Potentially.

7 Q Potentially, yes, but it was a legitimate
8 and rational fear?

9 A Yes, sir.

10 Q So it's safe to say the scene was not
11 secure?

12 A In my mind no, sir, not at all.

13 Q The suspect was not in custody?

14 A No.

15 Q He was not cuffed?

16 A No.

17 Q The danger or potential danger, reasonable
18 potential danger was still out there?

19 A Yes, sir.

20 MR. EASTWOOD: No further questions.

21 JUDGE SUTHERLAND: May this witness be
22 excused?

23 MR. PARKS: Yes, Your Honor.

24 JUDGE SUTHERLAND: Thank you. You may step
25 down.

1 MR. PARKS: I would like to reverify that
2 all exhibits, except for Exhibit 12 offered by the
3 State, have been admitted into evidence.

4 JUDGE SUTHERLAND: That is correct.

5 MR. PARKS: State rests, Your Honor.

6 (BENCH CONFERENCE BEGINS)

7 JUDGE SUTHERLAND: I've been handed
8 Defendant's Motion for Judgment of Acquittal. If
9 it's all right with both of you or all of you, I
10 would like to hold the argument on this until we
11 recess and let the jury go this evening, is that all
12 right?

13 MR. EASTWOOD: That's fine.

14 MR. PARKS: That's fine.

15 JUDGE SUTHERLAND: So we can get some of
16 your evidence out of the way.

17 MR. EASTWOOD: The offers of proof are you
18 talking about as well?

19 JUDGE SUTHERLAND: Yeah, I think so, we'll
20 hold the offers of proof and argument for defense's
21 Motion for Judgment of Acquittal until the jury is
22 recessed and gone for the day because it's now five
23 after 4:00. We'll only go for about another hour or
24 thereabouts.

25 MR. EASTWOOD: The defense is not ready to

1 proceed at this time with its case. We will be
2 ready at 8:30 in the morning. We have three
3 witnesses and they will take 45 minutes total.

4 MR. COMBS: The way the case is going, we
5 called and canceled them because we didn't know.
6 They had to work.

7 JUDGE SUTHERLAND: You guys don't have
8 anybody for this afternoon?

9 MR. EASTWOOD: Three witnesses, they're all
10 working people. I made a bad judgment call that the
11 State would not rest this afternoon based on where
12 we were.

13 JUDGE SUTHERLAND: In those circumstances
14 we'll take care of all the stuff now, let the jury
15 go now.

16 MR. COMBS: We didn't know if the FBI agents
17 were testifying too. It's our mistake.

18 MR. EASTWOOD: The FBI agents are here too,
19 so I anticipated they'd be called.

20 (BENCH CONFERENCE ENDS)

21 JUDGE SUTHERLAND: Looks like we're going to
22 get out a little earlier than anticipated today
23 because we've run out of witnesses today. May we
24 start at 8:30 tomorrow morning, is that okay? To
25 get this done tomorrow, it's possible, I have no way

1 of knowing right now, but it's possible we might
2 have to run a little late tomorrow, okay. I've only
3 tried two cases past midnight in 35 years. I hope I
4 don't have to do that. It gets real tiring. We
5 won't do that. If we can't get done at a reasonable
6 hour by tomorrow evening, sometime after 5 o'clock
7 though, it's possible we might have to go Friday. I
8 don't really anticipate that right now, but I don't
9 want to, if things take longer than anticipated, I
10 don't want to shock you, but if we can start at
11 8:30, that will be of assistance.

12 So for the last time today, the Court again
13 reminds you of what you were told at the first
14 recess of the Court. Until you retire to consider
15 your verdict, you must not discuss this case among
16 yourselves or with others or permit anyone to
17 discuss it in your hearing. You should not form or
18 express any opinion about the case until it is
19 finally given to you to decide. Do not do any
20 research or investigation on your own about any
21 matter regarding this case or anyone involved with
22 the trial. Do not communicate with others. Do not
23 read, view or listen to any newspaper, radio,
24 electronic communication from the Internet or
25 television report of the trial. If you can get to

1 the jury room by 8:15, hopefully everybody on time
2 tomorrow so we can get a head count and get going at
3 8:30, I would greatly appreciate it. We are in
4 recess and you are free to go today.

5 (WHEREUPON THE JURY EXITED THE COURTROOM)

6 JUDGE SUTHERLAND: We'll proceed with the
7 offers of proof, Motions of Summary Judgment for
8 Acquittal. There were at least two offers of proof
9 the defendant was talking about.

10 MR. PARKS: Did you want more on the offers
11 of proof or just let the oral arguments stand.

12 MR. EASTWOOD: We have the letter from the
13 sheriff.

14 JUDGE SUTHERLAND: I have that marked as an
15 exhibit. Are you going to have any exhibits?

16 MR. EASTWOOD: I don't believe so.

17 JUDGE SUTHERLAND: Even tomorrow?

18 MR. EASTWOOD: No, I only intend to
19 introduce testimony.

20 JUDGE SUTHERLAND: Let's mark it as
21 Defendant's Exhibit A then.

22 MR. COMBS: The letter?

23 JUDGE SUTHERLAND: The letter. We did the
24 one Offer of Proof by the argument about taking the
25 shirt off and showing the wound, so that one is

1 done, and then we have the sheriff's letter and I
2 think there was one other.

3 MR. EASTWOOD: We can mark it Defendant's
4 Exhibit A.

5 JUDGE SUTHERLAND: Proceed with your Offer
6 of Proof.

7 MR. EASTWOOD: This is an Offer of Proof.

8 (MARKED DEFENDANT'S EXHIBIT A)

9 MR. EASTWOOD: This is a letter or an
10 original letter from Franklin County Sheriff Gary
11 Toelke to the defendant Jeffrey Weinhaus. It is
12 relevant, I believe, because the third paragraph
13 says, "my deputies were not with the Highway Patrol
14 on the day they obtained the search warrant or the
15 day of the shooting. We were not aware that a
16 search warrant had been issued. My office was aware
17 that the Highway Patrol was going to be looking for
18 you prior to the search warrant being issued, but we
19 were not with them." I wanted to impeach Sergeant
20 Folsom on this because I believe there was
21 contradictory testimony in prior statements by him
22 on the issue of notification of the sheriff.

23 JUDGE SUTHERLAND: Okay.

24 MR. PARKS: No argument, Your Honor.

25 JUDGE SUTHERLAND: Defendant's Exhibit A is

1 admitted for purposes of the Offer of Proof, not
2 admitted in front of the jury and my ruling still
3 stands but we've got that. Was there one other
4 matter?

5 MR. EASTWOOD: Yes, Your Honor, and I
6 apologize. The other Offer of Proof goes to
7 eliciting testimony from Sergeant Folsom as to
8 his -- the other shooting. The theory here is
9 common scheme or plan. There are a lot of
10 similarities between the other shooting that
11 Sergeant Folsom was involved in and this particular
12 shooting in the sense that both involved shooting
13 the individual at a close range. It's someone that
14 Sergeant Folsom by, on inference, on reasonable
15 inference and belief, had antagonistic personal
16 feelings toward, and in both there was an
17 officer-involved shooting, and there is not an exact
18 similarity but in that instance the victim or the
19 suspect was shot and killed and there were no
20 witnesses. In this one the suspect was shot, was
21 not killed but almost killed, and there is only one
22 corroborating witness, the partner. So for that
23 reason I wish to inquire to Sergeant Folsom the
24 details on the other shooting which I elicited in
25 his deposition.

1 MR. PARKS: Your Honor, I believe in this
2 instance they were searching a house for a suspect
3 who was accused of either a homicide or a serious
4 felony. Sergeant Folsom cornered him, Sergeant
5 Folsom was disarmed, the suspect was armed, a
6 scuffle and a fight pursued, at which point Sergeant
7 Folsom was able to get the suspect's weapon away
8 from him and shot him. There's no similarities here
9 whatsoever, and I believe this was -- this incident
10 happened within an eight or 10 year period prior to
11 this incident.

12 MR. EASTWOOD: My response is I believe that
13 the incident was not a serious felony, it was
14 domestic violence, which is serious, but it was not
15 a homicide, and here the person who was shot had
16 ruptured Sergeant Folsom's left testicle thereby
17 giving him perhaps a motive to shoot him, and I was
18 going to analogize that here to the conduct of Jeff
19 Weinhaus giving motive for Sergeant Folsom to shoot
20 him. So that's the basis of the Offer of Proof.

21 JUDGE SUTHERLAND: Offer of Proof is
22 accepted. The ruling is the same, the State's
23 objection is sustained. Did they take Mr. Weinhaus
24 back?

25 MR. EASTWOOD: They did. Did you want to

1 inquire of him?

2 MR. PARKS: Did you want to argue this
3 motion or submit it the motion?

4 MR. EASTWOOD: I could argue it now.

5 JUDGE SUTHERLAND: I'd just as soon argue it
6 now while we've got time.

7 MR. EASTWOOD: You wish the attorneys to
8 retain the exhibits; is that correct, Your Honor?

9 JUDGE SUTHERLAND: Yeah. Motion for
10 Judgment of Acquittal.

11 MR. EASTWOOD: Your Honor, on the first
12 charge, the possession of a controlled substance,
13 this is the Morphine tablet, I believe the State has
14 failed to make a submissible case on the element of
15 possession. The testimony showed that the Morphine
16 tablet was recovered from the basement, which the
17 officers admitted is normally a common area of the
18 house. Although there is evidence that the
19 defendant did record videos there, the evidence also
20 shows that he shared this house with his wife and
21 his son, that the son had a bedroom or someone in
22 the family had a bedroom in the basement and then
23 outside of it was this common area. I just do not
24 believe there is sufficient evidence for a
25 reasonable juror to find either actual or

1 constructive possession attributable only to the
2 defendant.

3 MR. PARKS: It was found in what the
4 defendant described as the command center. The
5 officers testified that they had smelled marijuana
6 in the house and on the person. They testified that
7 the defendant yelled into his wife, "they're looking
8 for the drugs, they're looking for the drugs." And
9 they also testified that the wife stated that there
10 was nothing illegal in the house that belonged to
11 her. I believe the State has made a submissible
12 case to submit this to the jury.

13 MR. EASTWOOD: The wife's statement is
14 hearsay, and more importantly even if you take the
15 wife out of it, you still have the son, and the
16 officer also testified that there was nothing
17 special about command center, that basements have
18 all sorts of names, man cave, bear pit, whatever you
19 want to call it, that it's very common to have a rec
20 room, den or place, and further he also testified
21 that the computer is often a family asset used by
22 multiple members of the family, so the mere
23 proximity of the drugs to the computer does not
24 imply actual constructive possession by the
25 defendant alone.

1 JUDGE SUTHERLAND: I have mixed feelings
2 about the two controlled substance charges. I got
3 reversed by the Court of Appeals a number of years
4 ago on a case where officers went into a motel room
5 where the defendant we were trying, that we did try,
6 and his girlfriend were, and as soon as they entered
7 the door the defendant is diving over to conceal
8 something, and the Court of Appeals said joint
9 possession, you don't know whose it was. I couldn't
10 quite believe it. This is a little different. I'm
11 going to deny it as to the marijuana charge, deny
12 the Motion for Judgment of Acquittal. The fact that
13 the officer testified that there was an odor of
14 marijuana about defendant's person is sufficient to
15 establish some use or at least constructive
16 possession of marijuana. The Morphine, however, is
17 a little --

18 MR. PARKS: Of course the Morphine was found
19 with the marijuana, Your Honor.

20 MR. EASTWOOD: Was found proximate to the
21 marijuana in a common area of the house.

22 JUDGE SUTHERLAND: That's weak but I'm going
23 to deny the Motion for Judgment of Acquittal on that
24 as well. I don't want to argue the tampering with a
25 judicial officer portion of the motion for the

1 defendant, but I've got some problems with that.
2 You kind of argued this on your prior motions to
3 dismiss that count, but I -- the pod cast was
4 certainly offensive, rude and a lot of other things,
5 but I've heard no evidence despite some testimony
6 that he apparently showed up to Crawford County
7 Courthouse, a public place, where he has a right to
8 be, and the 911 center, which is not really a public
9 place, but there's no evidence that he took any
10 steps to actually put in motion his thoughts of
11 executing people or whatever, maybe throw them out
12 of office, whatever the case may be, and I think
13 he's still under his First Amendment rights under
14 that.

15 MR. PARKS: That one in the pod cast with
16 the subtitles, he specifically said Judge Kelly
17 Parker is one of the people that he was going to
18 come and get, and you don't have to wait for the
19 defendant to act.

20 JUDGE SUTHERLAND: No, you don't have to
21 wait for him to show up at the courthouse with a
22 shotgun, that's true, but he's got to do something.

23 MR. COMBS: There's been plenty of testimony
24 of him making these threats all the time and making
25 these radical political speeches and not following

1 through.

2 JUDGE SUTHERLAND: I'm rather fond of judges
3 not being threatened, I have this little thing about
4 that.

5 MR. EASTWOOD: The other thing, Judge, is
6 that there was no evidence of anything for him to
7 interfere with in the course of his judicial duties.
8 I understand the general threat resigned but there's
9 not a case or controversy.

10 JUDGE SUTHERLAND: There were names in those
11 annotations, as you referred to them. I don't do
12 any of those websites, I stay off of those things,
13 although my granddaughters live on them, that's
14 another problem. I just -- there just isn't
15 anything there to support that charge. I don't want
16 to say there's nothing, the pod cast is a start but
17 there's go to be something more than just the pod
18 cast. So I'm going to grant defendant's Motion for
19 Judgment of Acquittal as to Count 2, the charge of
20 tampering with a judicial officer. Are we having an
21 argument on the assault or attempted assault?

22 MR. EASTWOOD: I'd like to take them one at
23 a time, if I may, Your Honor. There's obviously two
24 sets of charges here, two troopers. As a threshold
25 matter, it's not clear to me whether the State is

1 trying to submit an assault or attempted assault
2 case. Maybe I'm fast forwarding to jury
3 instructions and the jury needing to be instructed
4 on attempt. My argument here is that I think the
5 only thing to support the element of a substantial
6 step is the testimony of Folsom and Mertens
7 themselves, there's nothing else. Certainly none of
8 the investigators, use of force experts, anyone like
9 that, it all depends on the assumption of the
10 testimony. So that very thin -- maybe that thin
11 piece of evidence gets them home because there's
12 nothing else to corroborate it, but perhaps that
13 does make it submissible, but then we go back to the
14 testimony itself. The testimony indicates that at
15 no time did the defendant ever look at Mertens, did
16 he ever act towards Mertens, in fact Mertens said,
17 "I shot him because he was going for Sergeant
18 Folsom, I did not feel threatened by him." And I
19 think that's critical because even if we take the
20 testimony as they say it is, under that construction
21 there was no assault or attempted assault on
22 Mertens. In fact Mertens shot only to stop an
23 attempted assault on Folsom, and what the State has
24 done by doubling up on the charges here is really
25 taking one act, if we take Sergeant Folsom and

1 Corporal Mertens' version of the events, which is an
2 attempt on Folsom and replicate it as to Mertens but
3 the evidence isn't there. And Mertens is the first
4 person to tell you that, and Folsom's testimony also
5 corroborates that story, and there's no other
6 evidence to support evidence of an assault or
7 attempted assault on Mertens.

8 MR. PARKS: Your Honor, they've got two
9 officers both ordering the defendant to go to the
10 ground. Defendant yells you're going to have to
11 shoot him. Who knows whether if he would have got
12 that gun out whether he would have shot Mertens
13 first or Folsom first. I think it's a submissible
14 case that the jury can decide.

15 JUDGE SUTHERLAND: I have to agree with the
16 State on that one. The motion as to counts --
17 actually that essentially would cover the armed
18 criminal action counts as well, four, five, six and
19 seven.

20 MR. EASTWOOD: And as an aside, Your Honor,
21 I think that it's important that the jury receive
22 proper instructions on attempt and that sort of
23 thing here because -- or substantial step. I know
24 we're not doing instructions now.

25 JUDGE SUTHERLAND: Maybe in a few minutes.

1 MR. PARKS: There is no substantial step in
2 an assault of a law enforcement officer, it's this
3 or that.

4 MR. EASTWOOD: I think attempt has to be
5 defined. The last one is resisting and interfering
6 with arrest for a felony. I just think No. 1,
7 obviously the defendant was not arrested. I realize
8 that's not the test, it's whether he was being
9 detained or arrested. I think there isn't
10 sufficient evidence to show the defendant was not
11 complying with the officers' orders. There's
12 nothing -- there's no affirmative step.

13 MR. COMBS: He didn't have time. He got
14 shot four times.

15 JUDGE SUTHERLAND: If there's no shooting,
16 officer says get on the ground, he doesn't get on
17 the ground, he can be charged with failing to comply
18 with a reasonable request.

19 MR. EASTWOOD: Correct but not with --

20 JUDGE SUTHERLAND: What I didn't hear, tell
21 me if I'm wrong, I didn't hear anyone say, "I have a
22 warrant for you, you're under arrest, we're taking
23 you into custody," anything like that.

24 MR. PARKS: I don't think you have to do
25 that when you're in a situation in which a gun is

1 being drawn, Your Honor. I mean you can only do so
2 much.

3 JUDGE SUTHERLAND: I understand.

4 MR. PARKS: There was the testimony that he
5 was under arrest by the officers.

6 JUDGE SUTHERLAND: He was arrested later but
7 my question is how can you resist something that you
8 don't know somebody is doing.

9 MR. COMBS: He thought he was getting his
10 computers, he didn't know.

11 JUDGE SUTHERLAND: Maybe he came to hunt
12 bear, you know, in more ways than one, but seems to
13 me somebody -- before you can be charged with
14 resisting arrest, you've got to -- even if he
15 whipped out the handcuffs and he tried to grab his
16 wrists and put them on and hadn't said anything,
17 that might have been enough, but I haven't heard any
18 evidence of any of that. So I do grant the Motion
19 for Judgment of Acquittal as to Count 8, the
20 resisting or interfering with arrest for a felony
21 charge. Obviously I'll have to say something to the
22 jurors tomorrow morning about that. I think what
23 I'll tell them is I've acquitted defendant on both
24 of those counts as a matter of law, and if they want
25 to know why, I'll talk to them after the trial is

1 over with.

2 MR. EASTWOOD: Your Honor, as a procedural
3 matter, obviously I will re-raise this motion at the
4 close of defense evidence as to those aspects we're
5 not trying.

6 JUDGE SUTHERLAND: I understand, we just
7 won't need to argue them so long. Mr. Parks has
8 given me a set of instructions a long time ago and
9 another set here. I'd like to take a look at those
10 right now since we've got a little time.

11 (TRIAL ADJOURNED FOR THE DAY)

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1 State of Missouri

2 SS.

3 County of Franklin

4 I, Kim Wrocklage, duly commissioned, qualified
5 and authorized to administer oaths and to certify to
6 depositions, do hereby certify that pursuant to
7 agreement in the civil cause now pending and
8 undetermined in the Circuit Court of Franklin
9 County, State of Missouri, to be used in the trial
10 of said cause in said court, I was attended at the
11 offices of Franklin County Justice Center, 401 E.
12 Main Street, Union, in the County of Franklin, State
13 of Missouri on the 9th day of October, 2013.

14 The said witnesses were sworn to testify the
15 truth, the whole truth, and nothing but the truth in
16 the case aforesaid and thereupon testified as is
17 shown in the foregoing transcript. Said testimony
18 was reported by me in shorthand and caused to be
19 transcribed into typewriting, and the foregoing
20 pages correctly set forth the testimony of the
21 aforementioned witnesses, together with the
22 questions propounded by counsel and remarks and
23 objections of counsel thereto, and is in all
24 respects a full, true, correct and complete
25 transcript.

1 I further certify that I am not of counsel or
2 attorney for either of the parties to said suit, not
3 related to nor interested in any of the parties or
4 their attorneys.

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6 _____/s/ Kim Wrocklage, CCR No. 885_____
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