

STATE OF MISSOURI

vs.

ED100807

JEFFREY WEINHAUS

VOLUME 3
BEFORE THE HONORABLE JUDGE KEITH SUTHERLAND
TRANSCRIPT OF TRIAL TESTIMONY
TAKEN OCTOBER 10TH, 2013

REPORTED BY KIM WROCKLAGE, CCR



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1 IN THE CIRCUIT COURT OF FRANKLIN COUNTY

2 STATE OF MISSOURI

3

4 STATE OF MISSOURI,

5 PLAINTIFF, ED100807

6 vs. No. 12AB-CR02409-01

7 JEFFREY WEINHAUS,

8 DEFENDANT.

9

10 Volume 3, 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 10th day of October, 2013, before Kim
14 Wrocklage, CCR.

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1 JUDGE SUTHERLAND: Please be seated. Ready
2 for evidence for the defendant. Call your first
3 witness.

4 MR. EASTWOOD: Yes, Your Honor, I'm ready to
5 call my first witness.

6 JUDGE SUTHERLAND: Sir, if you come on up
7 front, up here, sir, raise your right hand and be
8 sworn by the clerk, please.

9 (WHEREUPON MARTY LEACH WAS SWORN IN)

10 JUDGE SUTHERLAND: Before you start your
11 direct examination, Mr. Eastwood, I neglected to
12 make the announcement to the jury that I should
13 have. After you left yesterday afternoon, there was
14 what's called a Motion for Judgment of Acquittal
15 that was filed, and I did grant that motion and
16 acquit the defendant on Count 2, the tampering with
17 a judicial officer charge, and Count 8, the
18 resisting arrest charge. So those two counts are no
19 longer an issue in the case. It's not appropriate
20 for me to explain why right now. When the case is
21 all over with, I'll come back to the jury room and
22 be glad to talk to you about it, explain it to you
23 and answer any questions that you may have, but for
24 right now we're down from eight counts to six. I
25 just don't want you to be confused later on when you

1 get the instructions because there will be nothing
2 in the instructions about Count 2 or Count 8.
3 Proceed with your examination.

4 **DIRECT EXAMINATION OF MARTY LEACH**

5 **QUESTIONS BY MR. EASTWOOD:**

6 Q Thank you very much, Your Honor. Mr. Leach,
7 Marty, what would you prefer I call you?

8 A Marty is fine.

9 Q Marty, could you please introduce yourself
10 to the jury. State your name.

11 A Martin Junior Leach. How are you all doing
12 today.

13 Q Where do you live, Marty?

14 A 4079 Yellow Dog Road.

15 Q Where is that?

16 A Lonedell, Missouri.

17 Q Is that here in Franklin County?

18 A Yes, it is.

19 Q How long have you been a member of this
20 community?

21 A About 18 years.

22 Q And what do you do for a living, sir?

23 A I'm a laborer.

24 Q Are you familiar with the MFA gas station on
25 Highway K in St. Clair?

1 A Yes, I am.

2 Q Are you a regular there?

3 A Yes, I am.

4 Q Were you there on September 11th, 2012?

5 A Yes, I was.

6 Q And why were you there, sir?

7 A To replace a gutter that I tore up
8 previously when I pulled in the parking lot.

9 Q When did you tear it up?

10 A About two weeks before the shooting.

11 Q Why did you decide to repair it instead
12 of --

13 A Because it was -- I tore it up, it was my
14 responsibility to take care of it. I tore it up
15 with the top of a dump truck.

16 Q Were you there with anyone?

17 A Yeah.

18 Q Who were you there with?

19 A My coworker, Steve Everhart.

20 Q Do you know Steve well?

21 A Yes, worked with him about 11 years now.

22 Q Are you friends as well as coworkers?

23 A Yes.

24 Q Now I want to show you a diagram, sir, and
25 I'm going to ask you some questions. Sir, this is a

1 diagram of the MFA station. This is the MFA sign.
2 This is Highway K along there. I want everyone to
3 be able to see it. This is Highway K along there.
4 This is the MFA building. This is the gas pump.
5 Where on this diagram was the gutter?

6 A That piece of overhang that sticks out to
7 the left of the gas pumps, at the outer edge right
8 there.

9 Q Before September 11th of last year, did you
10 know Jeff Weinhaus, the defendant?

11 A No, sir.

12 Q When you arrived at the gas station on
13 September 11th, did you notice anything unusual?

14 A Well, there was a vehicle parked at the end
15 of that overhang that we had to ask to move.

16 Q I want to slow down, okay?

17 A Okay.

18 Q Do you mean the vehicle was parked here?

19 A It was parked right at the back edge of it.

20 Q Right here?

21 A Right in that area, yes.

22 Q Did you notice anything else?

23 A No, nothing in particular. When we pulled
24 in the parking lot, I was coming from St. Clair. I
25 had to swing wide with the truck that I was driving,

1 so I swung wide in the parking lot to get parallel
2 with the building in between the gas pump and the
3 building.

4 Q Were there other people or cars in the
5 parking lot?

6 A Not at the time we arrived. There was
7 another vehicle parked back over this way, but I
8 don't have no idea who it was.

9 Q Down here?

10 A Yeah, towards that general area.

11 Q What type of automobile?

12 A It was an automobile, I didn't pay much
13 attention because I had no reason to.

14 Q Were you able to start working on the gutter
15 when you arrived?

16 A No.

17 Q Why was that?

18 A Because the vehicle that was parked down at
19 the edge was sticking out past the edge of the
20 overhang, and we had to ask him to move because we
21 were going to work off the back of the truck. We
22 didn't have ladders, we were going to get on the
23 back of the flat-bed and work off of that.

24 Q Did you know who was in that car?

25 A No.

1 Q Did you go into the gas station building and
2 talk to anyone inside the store?

3 A Not until afterwards.

4 Q Did you notice any customers going in and
5 out?

6 A The one person in that vehicle that I
7 mentioned parked over this way, he walked out.

8 Q Did you ask the driver of the car to move?

9 A No, I didn't. My partner that was with me
10 Steve did.

11 Q Did you hear that conversation?

12 A No, but I could see him. The driver of the
13 automobile rolled down the window approximately a
14 couple inches, and I could see Steve with his hands
15 motioning explaining to the guy would you back up so
16 we can work on the gutter.

17 Q Did the driver respond to you?

18 A Not to me, to Steve, I'm assuming he did to
19 Steve because the guy did start to move his vehicle.

20 Q How much did he move it?

21 A He backed it up 10, 12 feet and swung out
22 this way out towards the front and pulled forward a
23 little bit and stopped.

24 Q Is this car here a fair representation of
25 where he moved to?

1 A Pretty close, yeah.

2 Q Did you see Jeff Weinhaus pull into the
3 parking lot?

4 A No.

5 Q Did you hear Jeff Weinhaus pull into the
6 parking lot?

7 A No.

8 Q Did you hear a car engine revving or
9 accelerating?

10 A No.

11 Q Did you notice Jeff Weinhaus getting out of
12 his car?

13 A No.

14 Q At any point did anything direct your
15 attention to Jeff Weinhaus?

16 A No, the shooting.

17 Q Okay. So tell me about that. What
18 happened?

19 A Well, I was standing between -- on the
20 driver's side of the truck and Steve was up in the
21 back of the truck handing me out stuff laying in the
22 back of the truck so we could get up in it and work
23 without stomping all over it, and he handed me the
24 first piece of gutter, I sat it down on the ground,
25 went up to get the second piece of gutter, set it

1 down on the ground, and as I was turning around is
2 when I heard the first shot. I turned to my right
3 and there was Mr. Weinhaus.

4 Q Stop there. So you heard a shot, you turned
5 and you looked at Mr. Weinhaus. What did you see?

6 A Mr. Weinhaus was facing me falling.

7 Q So you were over here?

8 A Yes.

9 Q And Mr. Weinhaus, where was he?

10 A From the front, from the gas pumps he was
11 towards you.

12 Q Up over here?

13 A Yeah, in that area except towards the right.

14 Q And was he facing you or was his back to
15 you?

16 A He was facing me when I made eye contact or
17 contact with him.

18 Q He was facing towards you?

19 A Yes.

20 Q Did you see Jeff's arms and his hands?

21 A No. Oh, yes, I saw his arms and his hands.

22 Q What were they doing?

23 A Hanging down to his side.

24 Q Did you see a gun in Jeff's hand?

25 A No.

1 Q Did you see Jeff's hand on a gun?

2 A No.

3 Q What happened next once you turned around
4 and saw Jeff Weinhaus looking at you?

5 A Jeff was falling towards me. After the
6 first shot there was a hesitation and there were
7 three more shots, and it was boom, boom, boom, boom
8 as he was falling and he hit the ground, shooting
9 was over.

10 Q Are you saying the shots happened as he was
11 facing towards you, facing that way?

12 A After the first shot, yes.

13 Q Where were the shooters relative to Jeff?

14 A As Jeff was falling, the officer that was
15 doing the shooting come into my view somewhere after
16 the second shot I'm assuming, somewhere in that
17 general area, and he was standing -- Jeff was
18 between me and the officer who was shooting.

19 Q So the officer was passed Jeff?

20 A Yeah, behind Jeff.

21 Q Jeff was between you and the officer?

22 A Yes.

23 Q Did you see Jeff fall?

24 A Yes.

25 Q How did he fall?

1 A Fell stiff legged and hit the ground. First
2 thing that hit the ground was his face.

3 Q Were you in the line of fire of the shooter?

4 A Yes.

5 Q Were you looking down the barrel of the gun?

6 A Yes.

7 Q Do you know, did you know at that time who
8 the shooter was?

9 A No.

10 Q Were you fearful for your safety?

11 A Yeah, everything happened so fast I guess I
12 got fearful for my safety after everything happened.
13 I didn't have enough sense to get out of the way.

14 Q After Jeff Weinhaus fell to the ground, what
15 did the shooter do next?

16 A The shooter holstered his weapon.

17 Q And then what did he do?

18 A Nothing basically, nothing, he holstered his
19 weapon immediately afterwards and the other two
20 agents that were down in this car that we asked to
21 move, that's when they come running passed us.

22 Q This car down here?

23 A Yeah, yes, sir.

24 Q Did those agents say anything to you?

25 A No, sir.

1 Q Did you see the shooter or anyone else do
2 anything to Jeff?

3 A Yeah, a short time after he was on the
4 ground, I looked over and the officer that did the
5 shooting was letting go of Jeff's arm, that's when
6 he rolled back over on his back, and that's when I
7 seen a holster appear on the ground.

8 Q Where was the holster relative to Jeff's
9 body?

10 A 10 or 12 feet away from him to my right.

11 Q At any time did any of the men identify
12 themselves as law enforcement?

13 A After the second time I asked them.

14 Q You asked them?

15 A Yeah.

16 Q And what did they say?

17 A They said, "yes, we're police officers."
18 One of the agents that was in the red car that we
19 asked to move when we pulled in the parking lot is
20 the one that identified them.

21 Q Did you see anything that justified the
22 shooting?

23 A No, sir.

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

1 JUDGE SUTHERLAND: Sustained.

2 Q (By Mr. Eastwood) Withdrawn. Has the
3 incident affected how much you trust law
4 enforcement?

5 MR. PARKS: Objection.

6 JUDGE SUTHERLAND: Sustained.

7 Q (By Mr. Eastwood) Do you fear retribution
8 for giving your testimony?

9 MR. PARKS: Objection.

10 JUDGE SUTHERLAND: Sustained.

11 Q (By Mr. Eastwood) Do you have any stake in
12 the outcome?

13 A No.

14 Q Do you have anything to win?

15 A No.

16 Q Anything to lose?

17 A No.

18 MR. EASTWOOD: Thank you very much.

19 JUDGE SUTHERLAND: Cross examination.

20 **CROSS EXAMINATION OF MARTY LEACH**

21 **QUESTIONS BY MR. PARKS:**

22 Q Now Mr. Leach, on the day of this incident,
23 do you remember making a statement to an officer --

24 A Yes.

25 Q -- about what happened?

1 A Yes, sir. I believe it was a St. Clair
2 officer.

3 Q That is correct. And I'm going to show you
4 what has been marked as State's Exhibit No. 32.

5 A Okay.

6 Q Do you recognize this as the statement that
7 you gave to the officer?

8 A Yes, sir, that's my writing.

9 Q Could you please read that for the Court.

10 A "Standing in parking lot facing away from
11 officers and person that got shot, heard five or six
12 shots, quick shots, turned around, seen man facing
13 me going down to ground. Officers behind him."

14 Can't read my own writing. "Facing me guns drawn."

15 Q And is that a fair and accurate statement --

16 A Uh-huh.

17 Q -- of what happened that day?

18 A Yes.

19 MR. PARKS: No further questions, Your
20 Honor.

21 JUDGE SUTHERLAND: Any redirect?

22 MR. EASTWOOD: Can I see that statement
23 again, Bob? No, Your Honor.

24 MR. PARKS: State would ask that State's
25 Exhibit No. 32 be admitted into evidence.

1 MR. EASTWOOD: I object.

2 (BENCH CONFERENCE BEGINS)

3 JUDGE SUTHERLAND: On what grounds?

4 MR. EASTWOOD: I think his testimony is the
5 best evidence. I don't see that this impeached
6 anything. I don't know what this goes to.

7 MR. PARKS: It's just a written statement
8 that he gave to the officer on the day of the
9 shooting, and it's different than what he's saying
10 here now.

11 MR. EASTWOOD: I don't see how it's
12 different except as to the number of shots. He said
13 four more shots, here he says five or six.

14 MR. PARKS: He said in direct examination
15 that he heard a shot, turned around and he heard
16 four or five more shots. He says in this statement
17 the person got shot, heard five or six shots, turned
18 around. So here he's saying he's hearing -- in the
19 statement he's saying he hears five or six shots, on
20 the witness stand he's saying he heard the shots
21 later, so it's a contradiction of what he said.

22 (BENCH CONFERENCE ENDS)

23 JUDGE SUTHERLAND: Objection is overruled.
24 It's been marked, State's Exhibit 32 is admitted.

25 MR. EASTWOOD: May I redirect?

1 JUDGE SUTHERLAND: Yes.

2 **REDIRECT EXAMINATION OF MARTY LEACH**

3 **QUESTIONS BY MR. EASTWOOD:**

4 Q Marty, did I meet with you last month?

5 A Excuse me?

6 Q Did I meet with you last month, sir?

7 A Yes, sir.

8 Q And did I meet with you with the private
9 investigator?

10 A Yes, sir.

11 Q And we met you out at McDonalds by Six
12 Flags; right?

13 A Yes, sir.

14 Q And did you make a statement to me at that
15 time?

16 A Yes, sir.

17 Q And did you make it in writing?

18 A Yes, sir.

19 Q And is this the statement you made to me?

20 MR. PARKS: Your Honor, I object to this
21 statement at this time. It's improper recross or
22 redirect examination because it was never brought up
23 in his direct examination.

24 JUDGE SUTHERLAND: Yeah, objection is
25 sustained.

1 MR. EASTWOOD: Your Honor, may I approach?

2 JUDGE SUTHERLAND: Yes.

3 (BENCH CONFERENCE BEGINS)

4 MR. EASTWOOD: May I make an offer of proof
5 on this later on, please, sir?

6 JUDGE SUTHERLAND: Well, I don't know that
7 that's necessary. I think I'm going to change my
8 mind.

9 (BENCH CONFERENCE ENDS)

10 JUDGE SUTHERLAND: Let's mark it, I am going
11 to admit it. I'm going to change my mind, the
12 objection is overruled. Mark that as Defendant's
13 Exhibit B and it is admitted.

14 (MARKED DEFENDANT'S EXHIBIT B)

15 Q (By Mr. Eastwood) So when I met with you at
16 the McDonalds by Six Flags, I think it was in early
17 September, you and I spoke; right?

18 A Yes.

19 Q And you -- I wrote down what you were
20 saying; right?

21 A Yes.

22 Q And there was another man there; right?

23 A Yes.

24 Q And he notarized it?

25 A Yes.

1 Q And do you want to review that statement
2 real quick?

3 A Do you want me to read this?

4 Q Don't read it out loud, read it to yourself.

5 A Okay.

6 Q Are you changing anything in that statement?

7 A No.

8 Q Stand by it?

9 A Yes.

10 Q Is that statement consistent with what you
11 told this jury here today?

12 A Yes.

13 MR. EASTWOOD: Thank you, sir. No further
14 questions.

15 JUDGE SUTHERLAND: Recross.

16 **RECROSS EXAMINATION OF MARTY LEACH**

17 **QUESTIONS BY MR. PARKS:**

18 Q But this statement is not what you told the
19 police on the day of the shooting, is it?

20 A Yeah, pretty much.

21 Q Let me go back. In the statement that you
22 gave to the police, which you read for the jury.

23 A Yes.

24 Q You said, "the person got shot, heard five
25 or six quick shots, I turned around, seen man facing

1 me going down." So when the day of the shooting you
2 told the police that you didn't see anything until
3 after the shots and that's when you turned around
4 and saw the defendant falling. That's what you told
5 the police on the day of the shooting; correct?

6 A If that's the way it's worded, I guess I
7 did, but as I was turning around to set the second
8 piece of guttering on the ground is when I turned to
9 look.

10 Q I'm just asking you, is that the statement
11 you gave to the police?

12 A Yes, that's my writing.

13 Q When did the fire trucks arrive?

14 A Fire trucks?

15 Q When did the fire trucks arrive?

16 A I didn't see any fire trucks. Fire trucks?

17 Q Fire trucks.

18 A Like pumper trucks?

19 Q Did you see an ambulance arrive?

20 A Yes.

21 Q Did the fire trucks --

22 MR. EASTWOOD: I object to the line of
23 questioning as beyond the scope of the direct.

24 JUDGE SUTHERLAND: Overruled. Go ahead.

25 Q (By Mr. Parks) You never saw the fire

1 trucks?

2 A Fire trucks like pumper trucks?

3 Q The emergency vehicles.

4 A Yeah, I seen an ambulance.

5 Q Did you see the fire trucks come in before
6 then?

7 A No.

8 MR. PARKS: Thank you very much.

9 THE WITNESS: I never seen any fire trucks.

10 JUDGE SUTHERLAND: Further redirect.

11 **FURTHER DIRECT EXAMINATION OF MARTY LEACH**

12 **QUESTIONS BY MR. EASTWOOD:**

13 Q Marty, did you hear gunshots on September
14 11th?

15 A Yes.

16 Q Did you turn around?

17 A Yes.

18 Q Did you see Jeff Weinhaus staring at you?

19 A Yes.

20 Q Did you see his hands out?

21 A Yes.

22 Q Did you see a gun in those hands?

23 A No.

24 Q Did you hear more gunshots?

25 A Yes.

1 Q Did you see him fall flat on his face?

2 A Yes.

3 MR. EASTWOOD: Thank you, sir.

4 JUDGE SUTHERLAND: May this witness be
5 finally excused?

6 MR. PARKS: As far as the State is
7 concerned.

8 MR. EASTWOOD: Yes, Your Honor.

9 JUDGE SUTHERLAND: You may step down and
10 you're free to go. Call your next witness.

11 MR. COMBS: We're going to call
12 Mr. Everhart, Steve Everhart.

13 (WHEREUPON STEVE EVERHART WAS SWORN IN)

14 **DIRECT EXAMINATION OF STEVE EVERHART**

15 **QUESTIONS BY MR. COMBS:**

16 Q Good morning, Mr. Everhart.

17 A Good morning.

18 Q Could you please speak up so the jury can
19 hear you.

20 A Sure.

21 Q Do you want to introduce yourself to the
22 jury?

23 A Steve Everhart.

24 Q And Mr. Everhart, where do you live?

25 A Franklin County.

1 Q You live in Franklin County?

2 A Yes.

3 Q What do you do for a living?

4 A Small excavating, Bobcat work, stuff like
5 that.

6 Q How long have you been a member of this
7 community and lived in Franklin County?

8 A Since '82.

9 Q And are you familiar with the MFA gas
10 station?

11 A Yes.

12 Q On Highway K in St. Clair?

13 A Yes.

14 Q And are you a regular or do you frequent the
15 store beyond the work you were doing there that
16 day --

17 A Sure, yes.

18 Q -- of the incident. And you just go there
19 as a customer to get gas?

20 A Yes.

21 Q And on September 11th of 2012, why were you
22 there at the MFA gas station?

23 A To repair a gutter.

24 Q And who were you there with?

25 A With Marty Leach.

1 Q And do you guys typically do jobs together?

2 A Yeah, we've been working together for the
3 last 10 years.

4 Q So would it be fair to say he's a friend of
5 yours?

6 A Yes, sure.

7 Q And can you show me, does this look like a
8 fair depiction of the gas station that you were at
9 that day, September 11th, 2012?

10 A Yes, it does.

11 Q And could you give me an idea, this is the
12 building obviously, where the gutter was that you
13 all were repairing?

14 A The green extension in the front, the porch.

15 Q Right here?

16 A No, on the overhang, there you go.

17 Q And why were you repairing the gutter?

18 A I believe Marty bumped into it with a truck
19 before, days before.

20 Q Sure, so you were there to fix it?

21 A Yeah, he asked me to give him a hand, so I
22 went to give him a hand.

23 Q And before that day, the day of the
24 incident, the reason we're all here today, did you
25 know Mr. Weinhaus?

1 A No.

2 Q You never seen him before or met him before?

3 A No.

4 Q And when you arrived that day to repair the
5 gutter, did you notice anything unusual? You said
6 you'd been there before as a customer, so you're
7 familiar with what it's like to go in there?

8 A No, nothing unusual. There was one vehicle
9 parked in our line of work there.

10 Q And can you give me an idea on the diagram
11 where it was parked, is this the vehicle, roughly?

12 A Probably a little closer out to the four
13 dots on the edge of the overhang there.

14 Q And were you able to start working
15 immediately to repair the gutter when you first
16 arrived?

17 A No, we waited in the truck because the
18 vehicle was in our way to where we were going to
19 work out of the back of the truck, so I got out to
20 ask them to move, and they were kind of reluctant
21 and backed up just a little bit, just far enough for
22 us to get in there, so we kind of squeezed in there
23 and got the truck where we needed it. So I got out,
24 jumped in the back of the truck and started handing
25 parts out to Marty, and then behind me I heard

1 shooting.

2 Q Let's back up. So why would you say -- you
3 used the word reluctant. What makes you think they
4 were reluctant to move, could you explain that a
5 little further?

6 A I knocked on the window of the car, and the
7 window come down. I couldn't see in there, it
8 didn't come down but a couple of inches.

9 Q And what did you say?

10 A I said, "we're trying to repair this gutter,
11 could I get you to back up 10 feet." And the car
12 moved back a few feet, not quite far enough to get
13 what we needed. I didn't think much of it, so I
14 pulled Marty up close to the front of their car and
15 got him backed in.

16 Q Did the gentleman in the car say sure?

17 A Didn't say anything.

18 Q Just rolled the window back up and pulled
19 back. Is there anything unusual about this car
20 beyond the fact that the gentleman just rolled the
21 window down a crack, didn't say anything to you and
22 slowly moved back?

23 A I wasn't -- didn't really recognize anything
24 unusual. It was just a car with tinted windows,
25 couldn't really see in.

1 Q You just thought maybe the guy was being
2 rude or something like that?

3 A Yeah.

4 Q And did you notice what was going on in the
5 parking lot when you were there to repair the
6 gutter, did you see delivery men or customers or was
7 the store opened?

8 A Yes, the store was open.

9 Q Was there anyone getting gas or do you
10 remember?

11 A Not that I recall.

12 Q So I'm going to turn your attention to the
13 day of the incident. You said you never seen or met
14 Mr. Weinhaus before. Did you hear him pull into the
15 parking lot?

16 A No, I didn't.

17 Q Did you hear any screeching tires or revving
18 engines or anything?

19 A No, nothing caught my attention.

20 Q Did you notice him get out of his car?

21 A No.

22 Q Did anything direct you to -- direct your
23 attention to Mr. Weinhaus? Did you hear any loud
24 talking or any sort of interaction or conversation
25 that would direct your attention to Mr. Weinhaus?

1 A I didn't hear anything that caught my
2 attention.

3 Q So what was the first thing that caught your
4 attention?

5 A Gunshots.

6 Q And when you heard the gunshots, what did
7 you do?

8 A Well, I had a piece of gutter in my hand,
9 Marty was on the ground and I was handing stuff to
10 him, and when the gunshots happened, I started
11 looking around, and Marty, his hands dropped, so I
12 had to take what I had and put it back in the truck.
13 And I looked all around, and when I looked to my
14 left it was already over.

15 Q So when you turned around, Mr. Weinhaus
16 was --

17 A -- on the ground.

18 Q And how many shots did you hear?

19 A Probably four or five.

20 Q So by the time you turned around and saw
21 Mr. Weinhaus, he was already on the ground?

22 A Yes.

23 Q Was he motionless?

24 A Yeah, motionless.

25 Q So you didn't see Mr. Weinhaus until he was

1 on the ground entirely motionless?

2 A Correct.

3 Q And what happened to Mr. Weinhaus, you
4 didn't see him fall or anything, when you saw him he
5 was on the ground?

6 A Right.

7 Q So were you scared at this point?

8 MR. PARKS: Objection, Your Honor, calls for
9 speculation as to relevance.

10 JUDGE SUTHERLAND: Overruled. He can
11 answer.

12 Q (By Mr. Combs) Were you nervous or scared at
13 this point?

14 A Yeah, a little, a little concerned wondering
15 what was happening.

16 Q Of course. And what happened to
17 Mr. Weinhaus after he was on the ground. I'm sure
18 you turned, obviously your attention has now been
19 directed to Mr. Weinhaus on the ground; correct?

20 A Well, for a second and because there were
21 shots fired and someone just got shot, I got out of
22 the truck, didn't know if I was going to have to
23 take cover, or I didn't know what was going on but
24 when I got out of the truck, Marty started asking if
25 they were police or whatever and then the girl come

1 out of the store that worked at the store and she
2 was totally hysterical, so I tried to calm her down.

3 Q So did you know who fired the gun, did you
4 see the shooter?

5 A No.

6 Q So you don't know who fired the gun?

7 A No.

8 Q Did you see any of the people involved in
9 the altercation do anything to the defendant when he
10 was lying on the ground?

11 A No.

12 Q So they weren't standing around him?

13 A They were just standing there, two guys
14 standing there and he was on the ground.

15 Q To your knowledge of first aid or medical,
16 were they trying to help him did it appear?

17 A Not that I seen.

18 Q They were just standing there essentially?

19 A Like I said, it kind of got really crazy
20 there real fast with the girl coming out of the
21 store.

22 Q So you didn't -- obviously this happened,
23 I'm sure, in a blink of an eye when you were there?

24 A Right.

25 Q Did you know who these men were that were

1 standing around this motionless body in the parking
2 lot?

3 A No.

4 Q So did you think they were law enforcement
5 or what were you thinking at this point?

6 A It happened so fast, I really didn't have
7 time to think about it until my friend Marty asked
8 them if they were police, and then it just kind of
9 all fell together like that.

10 Q So you eventually found out they were law
11 enforcement?

12 A Yeah.

13 Q And just lastly, you testified here today
14 that you never met Mr. Weinhaus before?

15 A Correct.

16 Q And you don't have any outcome or stake in
17 this case, you're not going to get any money, you're
18 not here to help out Mr. Weinhaus?

19 A No.

20 Q You're not going to gain anything or lose
21 anything no matter what happens in this case?

22 A Nope.

23 Q You're just here to tell what you saw?

24 A Yeah.

25 MR. COMBS: Thank you, sir. Your witness.

1 JUDGE SUTHERLAND: Cross.

2 **CROSS EXAMINATION OF STEVE EVERHART**

3 **QUESTIONS BY MR. PARKS:**

4 Q Mr. Everhart, do you remember giving a
5 statement to the police the day of the shooting?

6 A Yes, sir.

7 Q And I show you what has been marked as
8 State's Exhibit No. 33. Do you recognize this as
9 your statement?

10 A Yes, sir.

11 Q And do you stand by this statement here
12 today?

13 A Yes, sir.

14 MR. PARKS: Your Honor, I'd ask that State's
15 Exhibit No. 33 be admitted into evidence.

16 (BENCH CONFERENCE BEGINS)

17 MR. EASTWOOD: This is the same issue. Are
18 you going to argue it's inconsistent? I don't think
19 it is inconsistent, so I'm not sure --

20 MR. COMBS: It's not inconsistent.

21 MR. PARKS: It's the statement that he gave
22 at the scene, and I want to show that it is
23 consistent with what he's saying and inconsistent
24 with what the last witness said.

25 MR. COMBS: Two different people that said

1 two different things that saw two different things,
2 that happens.

3 JUDGE SUTHERLAND: Well, it doesn't really
4 impeach anything.

5 (BENCH CONFERENCE ENDS)

6 JUDGE SUTHERLAND: Objection is sustained.
7 State's Exhibit 33 is denied.

8 Q (By Mr. Parks) Mr. Everhart, do you remember
9 seeing the St. Clair fire and rescue truck pull in
10 from the fire department?

11 A I didn't see it pull in.

12 Q But you saw it there?

13 A Yeah.

14 Q Was it there before or after the ambulance?

15 A I really don't know.

16 MR. PARKS: Thank you. No further
17 questions.

18 JUDGE SUTHERLAND: Redirect.

19 **REDIRECT EXAMINATION OF STEVE EVERHART**

20 **QUESTIONS BY MR. COMBS:**

21 Q So when you heard the gunshots, you turned
22 around and saw Mr. Weinhaus on the ground. Did he
23 have a gun?

24 MR. PARKS: Objection, Your Honor, beyond
25 the scope.

1 JUDGE SUTHERLAND: Sustained.

2 Q (By Mr. Combs) What drew your attention to
3 Mr. Weinhaus?

4 MR. PARKS: Objection, Your Honor, beyond
5 the scope of cross examination.

6 JUDGE SUTHERLAND: Sustained.

7 MR. COMBS: That's fine. Nothing further.

8 JUDGE SUTHERLAND: May this witness be
9 excused?

10 MR. PARKS: As far as the State is
11 concerned.

12 MR. COMBS: Yes, Your Honor.

13 JUDGE SUTHERLAND: Thank you, you may step
14 down. You're free to stay or go as you wish. Call
15 your next witness.

16 MR. EASTWOOD: I call Heather Clark, Your
17 Honor.

18 MR. COMBS: Your Honor, she's not feeling
19 well. Can I give her a glass of water?

20 JUDGE SUTHERLAND: Sure.

21 (WHEREUPON HEATHER CLARK WAS SWORN IN)

22 **DIRECT EXAMINATION OF HEATHER CLARK**

23 **QUESTIONS BY MR. EASTWOOD:**

24 Q Are you ready? Heather, can you please
25 introduce yourself to the jury and tell the jury

1 your name.

2 A My name is Heather Clark.

3 Q And do you know the defendant Jeff Weinhaus?

4 A Just as a customer.

5 Q And you say as a customer, do you mean as a
6 customer at the MFA gas station?

7 A Yes.

8 Q And how long have you worked at that MFA gas
9 station?

10 A Four years.

11 Q And was Mr. Weinhaus a habitual customer at
12 the gas station?

13 A Yes.

14 Q And what was his custom and habit of being a
15 customer?

16 A He'd come in for five dollars of gas, a pack
17 of Marlboro Reds in the box and a 99 cent fountain
18 soda.

19 Q How often did he do that?

20 A Every day that I worked, and we work like
21 three or four days a week.

22 Q Did you ever find him to be aggressive or
23 unpleasant?

24 A No, his final words every day were, "God
25 bless, Heather, have a great day."

1 Q I want to take you back to September 11th,
2 2012. Did you see Jeff Weinhaus on September 11th
3 before he was shot earlier that day?

4 A Yes, I did.

5 Q Did he come into the store?

6 A Yes, he did.

7 Q What was his demeanor, how was he acting?

8 A He was in a very good mood. He was stating
9 that he was getting his computers back and it was a
10 good day, and I got busy and he said what he always
11 said, God bless, Heather, have a good day."

12 I said, "you too, Jeff," and he left.

13 Q And do you remember approximately what time
14 this was?

15 A I'm thinking it was before noon.

16 Q That's fine, that's fine. Now, after Jeff
17 left, did you notice anything unusual at the gas
18 station that day?

19 A About 10 minutes after he left, two vehicles
20 pulled into my parking lot and one set on one far
21 end and the other one set right up by the building.

22 Q Heather, do you recognize this diagram?

23 A Yes.

24 Q This is a diagram of the MFA station, this
25 is Highway K, this is the MFA sign, these are the

1 gas pumps, that's the store, does that look about
2 right to you?

3 A Yes.

4 Q And where did these cars that came in, where
5 did they park?

6 A One was over where there's a drawing there.

7 Q Over here?

8 A Yes.

9 Q Was that about right, that was one of the
10 cars and where was the other car?

11 A Right up against the building beside my
12 vehicle.

13 Q About right there?

14 A Yes.

15 Q Did you talk to any of the people in either
16 of these cars?

17 A No, they never did get out of their
18 vehicles. The one across the parking lot kept
19 looking at the store, but they never got out of
20 their vehicles. I was starting to get concerned
21 about them because they was sitting there for so
22 long and not getting out, and I didn't know what to
23 do about it. I wanted -- they just made me nervous.

24 Q Fair enough. Did you see Jeff when he
25 returned to the store?

1 A Yes, I did.

2 Q When was the first time you saw him?

3 A He was pulling into the parking lot and he
4 was pulling over by the white car that was --

5 Q Do you mean over here?

6 A Yes.

7 Q And then what were you doing when Jeff
8 pulled into the parking lot?

9 A I was counting my cigarettes, taking
10 inventory of cigarettes.

11 Q And were you inside or outside the building?

12 A Inside.

13 Q And were you sitting in a particular part of
14 the building?

15 A I was right up front.

16 Q You mean the front being this side of the
17 building?

18 A Yes.

19 Q And where along the front were you?

20 A Up by the vehicle.

21 Q Down here?

22 A Yeah.

23 Q Was there a window there?

24 A Yes, I have three giant windows.

25 Q Did you have an obstructed view or an

1 unobstructed view of Jeff Weinhaus?

2 A Unobstructed.

3 Q Were you sitting or standing?

4 A Standing.

5 Q Did you see Jeff exit the car?

6 A Yes, I did.

7 Q And what way was Jeff facing when he first
8 exited the car?

9 A He just got out and then I just went back to
10 counting my cigarettes. I didn't think nothing of
11 it.

12 Q You looked away?

13 A I looked back away.

14 Q Went back to your job?

15 A Yes.

16 Q What happened next?

17 A I bent down to count the cartons and I heard
18 a pop, and I jumped up and I watched Jeff fall.

19 Q Let me stop you there for a second. So you
20 looked up, did you see Jeff?

21 A (Witness nodded)

22 Q What way was he facing, with his back to you
23 or front to you?

24 A He was standing with his hands in the air
25 pointing towards the store, looking at the store.

1 Q And he had his hands in the air?

2 A Yes.

3 Q Did he have anything in his hands?

4 A No.

5 Q Did you see his left hand?

6 A Yes.

7 Q Did you see his right hand?

8 A Yes.

9 Q Did he have a gun in his hands?

10 A No.

11 Q What happened next?

12 A He fell and I thought he was dead because he
13 never moved after that and blood was just pouring
14 out of him, and then the officer took a couple of
15 steps and shot him six more times while he was
16 laying there, and I freaked out because I didn't
17 know it was a cop. I thought it was another
18 civilian. So I run around my counter and tried to
19 lock the door, and I noticed I had customers out
20 there, I was telling them to get into the store, get
21 in here, you know, and they told me it was okay,
22 it's the cops, it's okay, Heather, it's okay. And I
23 didn't feel that that was okay, and so I went
24 outside and I was thinking what did he do to get
25 shot like that, he had to have a gun. So I'm

1 looking everywhere and I didn't see a gun still, and
2 he's just laying there and he's bleeding. I
3 couldn't believe it.

4 Q Did any of the shooters or the other men
5 ever identify themselves to you as law enforcement?

6 A No, they did not.

7 Q Did you see any of those men give emergency
8 first aid to Jeff?

9 A No, they walked away.

10 Q Did you see a holster anywhere?

11 A No.

12 Q What did the men over here do, do you
13 remember?

14 A No, my main focus was on Jeff and what was
15 going on over there.

16 Q Ma'am, do you have any stake in the outcome
17 of this case?

18 A Pardon?

19 Q Are you going to get any money or lose any
20 money or do anything like that?

21 A No.

22 Q Are you going to win anything or lose
23 anything by testifying here today?

24 A No.

25 MR. EASTWOOD: Thank you very much for your

1 testimony.

2 JUDGE SUTHERLAND: Cross examination.

3 **CROSS EXAMINATION OF HEATHER CLARK**

4 **QUESTIONS BY MR. PARKS:**

5 Q Ma'am, is it a fair statement to say that
6 you were hysterical at this time?

7 MR. EASTWOOD: Objection.

8 JUDGE SUTHERLAND: Overruled.

9 THE WITNESS: I wouldn't say hysterical, I
10 was distraught but it was --

11 Q (By Mr. Parks) It was upsetting to you?

12 A It was very upsetting.

13 Q And the two men that were working on the
14 gutters said that they had to come in and help
15 comfort you, is that correct, to help calm you down?

16 A They told me it was the cops, that
17 everything would be okay.

18 Q And did that relieve you, did you settle
19 down at that time or were you still distressed?

20 A I was still distressed because I didn't
21 understand why the cops would shoot him like that
22 when he's laying there dead.

23 MR. PARKS: No further questions, Your
24 Honor.

25 JUDGE SUTHERLAND: Redirect?

1 MR. EASTWOOD: No, Your Honor.

2 JUDGE SUTHERLAND: May this witness be
3 finally excused?

4 MR. EASTWOOD: Yes, Your Honor. Thank you.

5 JUDGE SUTHERLAND: Thank you, you may step
6 down. You're free to go as you wish. Do you have
7 another witness?

8 MR. EASTWOOD: May I have a moment to confer
9 with my client, sir?

10 JUDGE SUTHERLAND: Yes.

11 MR. EASTWOOD: Your Honor, at this time the
12 defense rests.

13 JUDGE SUTHERLAND: Rebuttal from the State?

14 MR. PARKS: May I have one moment, Your
15 Honor?

16 JUDGE SUTHERLAND: Yes.

17 MR. PARKS: No rebuttal, Your Honor.

18 JUDGE SUTHERLAND: Evidence is closed.

19 Ladies and gentlemen, we're going to have to recess
20 for a little bit. I'm hoping we can do it in less
21 than 30 minutes to finish getting final instructions
22 organized for you. We've been working on that last
23 night and this morning, so hopefully it won't take
24 too long, but one more time I need to read you your
25 favorite instruction here. The Court again reminds

1 you what you were told at the first recess of the
2 Court. Until you retire to consider your verdict,
3 you must not discuss this case among yourselves or
4 with others or permit anyone to discuss it in your
5 hearing. You should not form or express any opinion
6 about the case until it is finally given to you to
7 decide. Do not do any research or investigation on
8 your own about any matter regarding this case or
9 anyone involved with the trial. Do not communicate
10 with others about the case by any means. Do not
11 read, view or listen to any newspaper, radio,
12 electronic communication from the Internet or
13 television report of the trial. We're in recess.
14 You may go out with the bailiff.

15 (WHEREUPON A BRIEF RECESS TOOK PLACE)

16 JUDGE SUTHERLAND: On the record for the
17 instruction conference.

18 MR. EASTWOOD: Do you also want to make a
19 record on the renewed Motion for Judgment of
20 Acquittal?

21 JUDGE SUTHERLAND: Additional argument on
22 that?

23 MR. EASTWOOD: No, sir.

24 JUDGE SUTHERLAND: Other than the two counts
25 I dismissed yesterday, I'm not going to dismiss any

1 other counts or acquit the defendant on those, so
2 the renewed motion is denied, I guess. The
3 instruction conference then, I have been tendered by
4 the State and have either already given or intend to
5 give instructions numbered 1 through 5, excuse me, 1
6 through 4 inclusive, 6 through 11 inclusive and 13
7 and 14. Any objection to any of those instructions?

8 MR. PARKS: No, sir, not from the State,
9 Your Honor.

10 MR. EASTWOOD: No, sir.

11 JUDGE SUTHERLAND: I have been tendered and
12 intend to give -- tendered by defendant and intend
13 to give instructions No. 5 and 12, no objection?

14 MR. PARKS: No objection from the State,
15 Your Honor.

16 JUDGE SUTHERLAND: How much time do you
17 want?

18 MR. PARKS: Your Honor, the verdict forms
19 have blanks in them which need to be filled in.

20 JUDGE SUTHERLAND: We'll get those, I want
21 to start these out so the clerk can get copies made
22 here. Okay, anybody want a copy of the
23 instructions?

24 (WHEREUPON A DISCUSSION WAS HELD OFF THE RECORD)

25 JUDGE SUTHERLAND: How much time for

1 arguments?

2 MR. PARKS: 30 minutes. We can go shorter.

3 JUDGE SUTHERLAND: How do you want to split
4 it?

5 MR. PARKS: 12 and eight. And I'd like to
6 reserve, if I don't use my whole 12 minutes, be able
7 to use it in my second half.

8 JUDGE SUTHERLAND: Yeah, up to 10 in the
9 second half. What kind of warning?

10 MR. PARKS: Two minute on each.

11 JUDGE SUTHERLAND: How much of a warning do
12 you want?

13 MR. EASTWOOD: I think I'll take a
14 four-minute warning, sir.

15 JUDGE SUTHERLAND: Just four or four and
16 one?

17 MR. EASTWOOD: Sure, four and one, I'd
18 appreciate that. Thank you, Your Honor.

19 JUDGE SUTHERLAND: It will take them a few
20 minutes to get that organized and stapled together.
21 I want to let the audience know that in any event
22 the jury requests to see any videos, we'll have to
23 clear the courtroom and show it to them in here with
24 no one present except whoever is operating the
25 equipment and myself. There's no good means to take

1 all this equipment and set it up in the jury room
2 for them, okay. We'll be in recess for a few
3 minutes.

4 (WHEREUPON A BRIEF RECESS TOOK PLACE)

5 (WHEREUPON THE JURY ENTERED THE COURTROOM)

6 JUDGE SUTHERLAND: Please be seated. Ladies
7 and gentlemen of the jury, you'll each find on your
8 seats a complete set of all the instructions of the
9 Court. Those are to assist you, and as I read the
10 instructions to you, if you want to follow along on
11 your copy there and to take with you to the jury
12 room, which helps with your deliberations. You
13 don't have to pass around one set of the
14 instructions. However, in the event there is any
15 discrepancy between any of the copies that you have
16 and the official set of instructions, which are the
17 ones I'm going to read to you, please be guided by
18 the official set. We've never had any problem with
19 the copy collator putting them together, but if
20 there is a problem, please be guided by the original
21 instructions. I've already read instructions
22 numbered 1 and 2, so I'm not going to reread those.
23 We'll begin with instruction No. 3, the third page
24 in the packet that you have.

25 Instruction No. 3, the law applicable to this

1 case is stated in these instructions and the two
2 which the Court read to you immediately after you
3 were sworn as jurors. All of the instructions will
4 be given to you to take to the jury room for your
5 use during your deliberations. You must not single
6 out certain instructions and disregard others or
7 question the wisdom of any rule of law. The Court
8 does not mean to assume as true any fact referred to
9 in these instructions but leaves it to you to
10 determine what the facts are.

11 Instruction No. 4, the charge of any offense is
12 not evidence, and it creates no inference that any
13 offense was committed or that the defendant is
14 guilty of an offense. The defendant is presumed to
15 be innocent unless and until your deliberations upon
16 your verdict you find him guilty. This presumption
17 of innocence places upon the State the burden of
18 proving beyond a reasonable doubt that the defendant
19 is guilty. A reasonable doubt is a doubt based upon
20 reason and common sense after careful and impartial
21 consideration of all the evidence in the case.
22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. The
24 law does not require proof that overcomes every
25 possible doubt. If after your consideration of all

1 the evidence you are firmly convinced that the
2 defendant is guilty of the crimes charged, you will
3 find him guilty. If you are not so convinced, you
4 must give him the benefit of the doubt and find him
5 not guilty.

6 Instruction No. 5, under the law the defendant
7 has the right not to testify. No presumption of
8 guilt may be raised and no inference of any kind may
9 be drawn from the fact that the defendant did not
10 testify. Under the law the wife of the defendant
11 has the right not to testify. No inference of any
12 kind may be drawn from the fact that the wife did
13 not testify.

14 Instruction No. 6, as to Count 1, if you find
15 and believe from the evidence beyond a reasonable
16 doubt; first, that on or about August 22, 2012 in
17 the County of Franklin, State of Missouri the
18 defendant possessed Morphine, a controlled
19 substance; and second, that the defendant was aware
20 of its presence and nature, then you would find the
21 defendant guilty under Count 1 of possession of a
22 controlled substance. However, unless you find or
23 believe from the evidence beyond a reasonable doubt
24 each and all of these propositions, you must find
25 the defendant not guilty of that offense.

1 Instruction No. 7, as to Count 3, if you find
2 and believe from the evidence beyond a reasonable
3 doubt; first, that on or about August 22, 2012 in
4 the County of Franklin, State of Missouri, the
5 defendant possessed marijuana, a controlled
6 substance; and second, the defendant was aware of
7 its presence and nature, then you will find the
8 defendant guilty under Count 3 of possessing
9 marijuana. However, unless you find and believe
10 from the evidence beyond a reasonable doubt each and
11 all of these propositions, you must find the
12 defendant not guilty of that offense.

13 Instruction No. 8, as to Count 4, if you find
14 and believe from the evidence beyond a reasonable
15 doubt; first, that on or about September 11th, 2012
16 in the County of Franklin, State of Missouri, the
17 defendant attempted to cause serious physical injury
18 to Sergeant Folsom by trying to draw a weapon to
19 shoot Sergeant Folsom; and second, that Sergeant
20 Folsom was a law enforcement officer; and third,
21 that the defendant was aware that Sergeant Folsom
22 was a law enforcement officer, then you will find
23 the defendant guilty under Count 4 of assault of a
24 law enforcement officer in the first degree under
25 this instruction. However, unless you find or

1 believe from the evidence beyond a reasonable doubt
2 each and all of these propositions, you must find
3 the defendant not guilty of that offense under this
4 instruction.

5 Instruction No. 9, as to Count 5, if you find
6 and believe from the evidence beyond a reasonable
7 doubt; first, that defendant committed the offense
8 of assault of a law enforcement officer in the first
9 degree as submitted in instruction No. 8; and
10 second, that defendant committed that offense with
11 the knowing use of a deadly weapon, then you will
12 find the defendant guilty under Count 5 of armed
13 criminal action. However, unless you find and
14 believe from the evidence beyond a reasonable doubt
15 each and all of these propositions, you must find
16 the defendant not guilty of that offense.

17 Instruction No. 10, as to Count 6, if you find
18 and believe from the evidence beyond a reasonable
19 doubt; first, that on or about September 11th, 2012
20 in the County of Franklin, State of Missouri, the
21 defendant attempted to cause serious physical injury
22 to Corporal Mertens by trying to draw a weapon to
23 shoot at Corporal Mertens; and second, that Corporal
24 Mertens was a law enforcement officer; and third,
25 that the defendant was aware Corporal Mertens was a

1 law enforcement officer, then you will find the
2 defendant guilty under Count 6 of assault of a law
3 enforcement officer in the first degree under this
4 instruction. However, unless you find and believe
5 from the evidence beyond a reasonable doubt each and
6 all of these propositions, you must find the
7 defendant not guilty of that offense under this
8 instruction.

9 Instruction No. 11, as to Count 7, if you find
10 and believe from the evidence beyond a reasonable
11 doubt; first, that defendant committed the offense
12 of assault of a law enforcement officer in the first
13 degree as submitted in instruction No. 10; and
14 second, that defendant committed that offense with
15 the knowing use of a deadly weapon, then you will
16 find the defendant guilty under Count 7 of armed
17 criminal action. However, unless you find and
18 believe from the evidence beyond a reasonable doubt
19 each and all of these propositions, you must find
20 the defendant not guilty of that offense.

21 Instruction No. 12, the following terms used in
22 these instructions are defined as follows: Attempt,
23 to commit an offense, the doing of any act with the
24 purpose of committing an offense, which act is a
25 substantial step towards the commission of the

1 offense. A substantial step means conduct which is
2 strongly corroborative of the firmness of the
3 actor's purpose to complete commission of the
4 offense.

5 Possess, possessed or possession means either
6 actual or constructed possession of the substance.
7 A person has actual possession if the person has the
8 substance on his or her person or within easy reach
9 and convenient control. A person who although not
10 in actual possession has the power and intention at
11 a given time to exercise dominion or control over
12 the substance either directly or through another
13 person or persons is in constructive possession of
14 it. Possession may also be sole or joint. If one
15 person alone has possession, possession is sole. If
16 two or more persons share possession of a substance,
17 possession is joint.

18 Serious physical injury means physical injury
19 that creates a substantial risk of death or that
20 causes serious disfigurement or protracted loss or
21 impairment of the function of any part of the body.

22 Instruction No. 13, the defendant is charged
23 with a separate offense in each of the six counts
24 submitted to you. Each count must be considered
25 separately. You should return a separate verdict

1 for each count, and you can return only one verdict
2 for each count.

3 Instruction No. 14, when you retire to your
4 jury room, you will first select one of your number
5 to act as your foreperson and to preside over your
6 deliberations. You will then discuss the case with
7 your fellow jurors. Each of you must decide the
8 case for yourself, but you should do so only after
9 you have considered all the evidence, discussed it
10 fully with the other jurors and listened to the
11 views of your fellow jurors. Your verdict, whether
12 guilty or not guilty, must be agreed to by each
13 juror. Although the verdict must be unanimous, the
14 verdict should be signed by your foreperson alone.
15 When you have concluded your deliberations, you will
16 complete the applicable forms to which you
17 unanimously agree and return them with all unused
18 forms and the written instructions of the Court.

19 Instruction No. 15, the attorneys will now have
20 the opportunity of arguing the case to you. Their
21 arguments are intended to help you in understanding
22 the evidence and applying the law but they are not
23 evidence. You will bear in mind that it is your
24 duty to be governed in your deliberations by the
25 evidence as you remember it, the reasonable

1 inferences which you believe should be drawn
2 therefrom and the law as given in these
3 instructions. It is your duty and yours alone to
4 render such verdict under the law and the evidence
5 as in your reason and conscious is true and just.
6 The State's attorney must open the argument. The
7 defendant's attorney may then argue the case. The
8 State's attorney may then reply. No further
9 argument is permitted by either side.

10 Closing argument on behalf of the State.

11 **(CLOSING ARGUMENT ON BEHALF OF THE STATE)**

12 MR. PARKS: "You're going to have to shoot
13 me, man," are the words that the defendant said
14 which brought this episode to a tragic end, but how
15 did it all start. It all started with a pod cast in
16 which the defendant made and posted on You Tube
17 which contained threats to judicial officers, and
18 Judge Kelly Parker called Sergeant Folsom, who he
19 knew, and asked him to do an investigation into this
20 matter. And Sergeant Folsom did. He checked with
21 Crawford County, and you remember him testifying up
22 here that he checked with the 911 center, they put
23 an extra guard on it because the defendant had
24 walked into the 911 center, that there had been
25 extra security put on the courthouses so that they

1 could know if the defendant was there or not. They
2 took this threat seriously. And so Sergeant Folsom,
3 when asked to investigate, investigated to find out
4 what was really going on. And you remember Sergeant
5 Folsom told you they first looked for the defendant
6 in Crawford County because he was running for
7 coroner, and when you run for an office in that
8 county, you're supposed to live in that county, but
9 they couldn't find him at the address that was
10 listed. And so they got a license plate number off
11 a car that the defendant had been driving and that
12 led him to Piney Park just outside of St. Clair.

13 You remember Sergeant Folsom testified that
14 they went up to the door at the Piney Park address
15 and the defendant came to the door. He opened the
16 door, he shut the door and Sergeant Folsom testified
17 that it was a narrow sidewalk with bushes. You saw
18 the picture that was attached to the search warrant.
19 There wasn't much room but when he opened and closed
20 that door, Sergeant Folsom who's been trained to
21 detect marijuana smelled the odor of marijuana
22 coming out of that house. As they stepped down and
23 around to the area to talk to the defendant, they
24 also smelled marijuana on his person.

25 You'll remember that Corporal Mertens testified

1 that the defendant's wife came out and told him when
2 he asked if there was anything illegal in the house,
3 "I have nothing illegal in the house." So a search
4 warrant was obtained. But they wouldn't let the
5 defendant go back into the house, standard police
6 procedure, you don't want somebody going into a
7 scene that you want to search and destroy evidence.
8 This upset the defendant. Sergeant Folsom testified
9 there was only the two of them, so they put the
10 defendant in handcuffs, he complied, and when the
11 other officers arrived, he was removed from the
12 handcuffs and a search warrant was obtained. And
13 during that search warrant, in the basement they
14 found the same background that they had seen on the
15 You Tube, what the defendant had told them was his
16 command center, the place that the defendant went to
17 make his broadcasts, the defendant's room. As the
18 defendant's attorney said, the man cave, the bear
19 pit, this was the domain of the defendant. And what
20 did they find in that area. They found a tin or a
21 plastic container with items. They opened that item
22 and they found a small thing of marijuana. They
23 found drug paraphernalia. They found a grinder to
24 grind up the marijuana to smoke. They found the
25 smoking pipe. They found the scales. They also

1 found a blue tin. And what did they find in that
2 blue tin, they found a pill and a half and a blue
3 pill. What are those pills? Well, the lab
4 technician testified that they tested them. He told
5 you that he made a report on those and on the
6 marijuana that was found in the house, and that it
7 came back positive for Morphine, Morphine being a
8 controlled substance. Morphine that you have to
9 have a prescription for. And as it was discussed in
10 voir dire, you don't have to have the physical
11 prescription. Heck, nowadays the doctors call those
12 things in, you never even see them, but you're going
13 to have a bottle, you're going to have a bottle with
14 that prescription on it, with your name and
15 everything on it. You do not hide illegal drugs in
16 a tin with marijuana and other drug paraphernalia.

17 What did they find next? Just outside the
18 command center they found another bag with marijuana
19 in it, and the officers testified that through their
20 experience and training, they knew that this was
21 marijuana. Now they told you they didn't arrest
22 defendant at that time, they were doing an
23 investigation, and it's standard procedure when you
24 have drugs that are going to have to be sent to the
25 lab like these were, that you don't apply for arrest

1 warrants until such time as the lab tests come back.
2 But this was an unusual situation. This was a
3 situation where the defendant had made threats and
4 put a specific date on those threats, September
5 17th. He and his Army were going to come down and
6 remove these people by force. And so you've got
7 Crawford County on lock down, you've got special
8 security precautions being taken. Nobody knows at
9 this time what the defendant might do. And you
10 heard Sergeant Folsom testify that it was decided
11 that they were either going to apply for an arrest
12 warrant and put him under arrest so that they would
13 have some control over him on September 17th, or
14 they were going to have to get a warrant and put a
15 GPS tracking device on his car so that they would
16 have some idea of where he was because they did not
17 know what kind of a threat defendant would be on
18 September 17th. And everybody knows that when you
19 have a threat, you act aggressively on it. We
20 don't, in law enforcement, sit back and let things
21 happen if we could. We try to prevent these kind of
22 actions and that's what they were doing.

23 So they obtained an arrest warrant for the
24 defendant, and you remember Sergeant Folsom and
25 Corporal Mertens both testified they had taken the

1 defendant's computers because he had been using
2 computers, he'd done pod casts, they didn't know
3 what else was on there and they wanted to check, and
4 you heard them testify that the defendant had kept
5 calling and emailing or emailing Sergeant Folsom,
6 because he'd given him his card when asked, which is
7 standard procedure, and it had his email address on
8 it. So the defendant had his email address and he
9 kept emailing him saying, "I want my computers back,
10 I want my computers back." And so they used the
11 computers as a ruse. Now they didn't want to go to
12 the house because defendant had been saying he was
13 on Def-Con 4, he was locking down, he was ready to
14 go. He should have shot Sergeant Folsom the first
15 time he came. So they wanted some place that was
16 not going to be a problem, if for some reason they
17 had to use force to take down the defendant.

18 And they'll tell you, you heard Sergeant Folsom
19 say he called the defendant. The defendant said, "I
20 want to meet in a public place."

21 And he said, "Well, what about the MFA station
22 just down from your house?"

23 And he said, "Fine, let's meet there." And so
24 Sergeant Folsom and Corporal Mertens asked for
25 back-up from the Highway Patrol. They got two

1 uniformed officers from this zone here in Franklin
2 County. They set the two officers up on the end of
3 the road, and they came in and positioned their car
4 here on the parking lot a long way from anybody
5 else, because when they pulled in, there was nothing
6 there. The FBI was set up here, as they said, where
7 the truck was because they thought this was an
8 exclusionary place. But what happened, everybody
9 came in and you saw on the video what happened. You
10 saw the defendant, you heard the exchange, and I'm
11 not going to play the video for you, you've seen it
12 enough and you can remember what's on that video but
13 you can ask the Court for it. And as the defendant
14 got out of the car, the officers asked him, they saw
15 the gun, "Hey, what are you doing with a gun?"

16 "What are you doing with a gun?"

17 "Well, I'm authorized."

18 "Well, I'm authorized to do that."

19 "All right, get on the ground," and you hear
20 Sergeant Folsom and you hear Corporal Mertens
21 telling him to get down.

22 And you hear the defendant said, "you're going
23 to have to shoot me, man," and the shots rang out.
24 How do we know besides the tape played that was made
25 by the defendant, how do we know that that's what he

1 said, because in open court in this courtroom at a
2 hearing on February 21st of 2013 the defendant got
3 up and told the Court, "you will also note that as
4 soon as I said you're going to have to shoot me,
5 they did." The defendant admitted that that's what
6 he said on the tape.

7 Ladies and gentlemen, I submit to you that we
8 as a society do not allow or want our law
9 enforcement officers to put themselves in anymore
10 danger than they have. They were there to serve a
11 legal warrant. They gave the defendant commands,
12 and you heard Corporal White from the Highway Patrol
13 testify that when the defendant's hands undid that
14 flap of the gun (sic), they had every right to shoot
15 him but they didn't. When that hand went under the
16 flap of the gun, Corporal White said they had every
17 right to shoot him. When his hand went on the
18 handle of the gun and started to bring it out,
19 Corporal White said they were behind the eight ball
20 at that point.

21 JUDGE SUTHERLAND: You're just over time.

22 MR. PARKS: They had nothing to do but shoot
23 him. Thank you.

24 JUDGE SUTHERLAND: Closing argument on
25 behalf of the defendant.

1 MR. EASTWOOD: Thank you, Your Honor.

2 JUDGE SUTHERLAND: You have a minute to get
3 your technology set up here.

4 **(CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT)**

5 MR. EASTWOOD: Ladies and gentlemen of the
6 jury, it's been a long two and a half days, and I'm
7 not going to speak to you to try to change your
8 minds. I'm here to try to give you a road map to
9 reasonable doubt. A road map so that when you go
10 back there and you deliberate with each other, that
11 you have a path to follow to get to not guilty.
12 You've already heard that the Judge has acquitted
13 Jeff on the You Tube video, on the judicial threat
14 charge, and so you saw those You Tube videos and
15 they probably made you dislike Jeff Weinhaus or at
16 least what he was saying or how he talks, but this
17 is not a popularity contest. It's not a personality
18 contest. This is not a TV show where you get to
19 vote who you like or not, this is a criminal trial.
20 So I ask you to put your thoughts on that video out
21 of your mind, okay.

22 Let's talk about the drugs because there's two
23 cases here, there's a drugs case and police shooting
24 case, the police shooting Jeff. The drugs, the
25 testimony showed that the troopers recover one and a

1 half tablets of Morphine and a small amount of weed
2 from the basement. You heard that Jeff lives in
3 that house with his wife and his 19 year old teenage
4 son, Levi. You heard there was a bedroom in the
5 basement, and it looked like a teenage boy's
6 bedroom, and there was also a common area that
7 Sergeant Folsom called Jeff's command center, but
8 you heard Sergeant Folsom admit and you know this
9 from your common sense that people often use their
10 basements as a common area, and men and teenage boys
11 often have all sorts of goofy names for those areas,
12 command center, bunker, bear pit, man cave,
13 whatever. There's a separate bedroom in the area,
14 that's a private area. There was also a bedroom
15 upstairs, Jeff's bedroom with his wife, that's where
16 they found the gun and green holster. They didn't
17 seize it that day. It wasn't illegal. But there
18 was a common area. Jeff made videos in that common
19 area, so what. There's a computer on a desk in a
20 common area. These are not wealthy people. You
21 know from experience that families have a family
22 computer that members of the family use and share.
23 They seized multiple computers. They share that
24 desk area, they share communal things. There are
25 perfectly innocent explanations for many of the

1 things found there. There's an old postage scale.
2 It was not an electronic scale or a computer scale,
3 this is not Breaking Bad, this was not a drug lab or
4 a high tech drug dealer operation. They found a
5 tiny amount of drugs for personal use and not very
6 much at that.

7 So let's look at the verdict director. You
8 have to find Jeff and not someone else that
9 possessed those drugs, both the tablets and the
10 weed. You have to find that Jeff was aware of their
11 presence. The problem is you've got three people in
12 the house and one of them is a teenage boy, and you
13 know teenage boys do naughty things in basements
14 sometimes. You heard that Jeff yelled at his wife
15 something about the drugs, does that mean that their
16 Jeff's, no, it doesn't. He could have been covering
17 for his son. Sergeant Perry Smith who did the
18 investigation into the shooting said that he found
19 Jeff's cell phone and sent it to forensics. There
20 was a text message involving a Levi Weinhaus and it
21 mentioned a weed plant.

22 MR. PARKS: Objection, that was objected to
23 and sustained.

24 JUDGE SUTHERLAND: Disregard that last
25 comment.

1 MR. EASTWOOD: The chemist said that he
2 could run fingerprints on the tablet, on the
3 container. Did he? No. Same thing for DNA. Did
4 he? No. You've seen no fingerprint or DNA
5 evidence. How hard would it be to get from three
6 people. You've watched CSI. You know it's not that
7 hard to gather forensic evidence to bring it to a
8 jury and make you firmly convinced that someone was
9 guilty of possessing drugs. So can you honestly say
10 you are firmly convinced beyond a reasonable doubt
11 that those drugs were Jeff's and not someone else's
12 in the house.

13 Let's turn to the gas station, guns, we're
14 talking about guns here. They're controversial to
15 some people in our society. An open carry gun is
16 legal in Missouri. If you don't like it, and I know
17 some people don't, go to Jeff City, change the law.
18 If you want to overturn the Second Amendment, call
19 your member of congress. I know they're closed but
20 you get the point. It's the law whether we like it
21 or not. It's a policy debate and issue we talk
22 about in our society. You may question Jeff's
23 judgment in bringing a gun to the gas station, but
24 he did nothing wrong and nothing illegal, and every
25 single law enforcement officer agreed with that.

1 Think about why he brought a gun. Maybe he was
2 frightened. Two weeks before they came to his
3 house, questioned him at length, ransacked his house
4 and kept him out of his house for hours. Maybe he
5 was scared. They seized his computers. Jeff is
6 kind of a pest who makes You Tube videos in his
7 basement. That was a big deal to him. It was a big
8 deal.

9 Now let's turn to what happened. Corporal
10 Mertens was the first to tell you it all happened so
11 fast. You heard the police reports that were made
12 before the watch video was discovered. The watch
13 video wasn't discovered until March of this year
14 after Sergeant Smith's investigation was closed. So
15 you heard the troopers giving somewhat contradictory
16 testimony at times because they're trying to massage
17 those facts to make it fit with the video. There
18 are so many holes in Sergeant Folsom's and Corporal
19 Mertens' testimony, if it was a canoe, it would
20 sink, it wouldn't float down the river. They
21 described Jeff as a man of God, a religious
22 philosophical man, non-violent. They said he made
23 these over-the-top, tv talking head type videos and
24 newsletters for a long time, at least 16 years,
25 demanding various judges or officials resign, but he

1 never did anything. Did he ever harm anyone, was
2 there any evidence of that? No way. He was a guy
3 making home movies in his basement and posting them
4 on You Tube. They were rude, they were obnoxious,
5 they were offensive, but it's America, we have free
6 speech and we don't have to like it but we respect
7 each others' rights. That's why we're not rioting
8 in the streets. We have free speech.

9 So on 9/11 of last year, Sergeant Folsom and
10 Corporal Mertens all of a sudden say they were too
11 scared to go to the very house that they had
12 searched two weeks before, ransacked for several
13 hours. Does that make sense? Did anything happen
14 in the interim, did Jeff hurt anyone? No, he made a
15 bunch of movies making fun of Sergeant Folsom,
16 called the Highway Patrol and made fun of him to his
17 boss. He filed some papers with the Supreme Court.
18 How did they get him to the gas station, they lied
19 to him. Sergeant Folsom tells you it's okay to lie,
20 okay for policeman to lie to you as long as they
21 document it. And then you hear that they took him
22 to the gas station because it was a secluded place,
23 but it wasn't a secluded place. You heard from at
24 least three civilians, innocent civilians that were
25 there. Was that really a secluded place? Why

1 didn't they say hey, Jeff, come on down to the
2 police station and get your computers, wouldn't that
3 be a lot easier and safer? You heard that Jeff
4 accelerated into the parking lot and that made them
5 alarmed, but you watched the video, did you hear an
6 acceleration? Did anyone notice this car flying in?
7 I mean where Jeff parked was on a gravel incline.
8 It is reasonable if you are going to come in, do a
9 u-turn that you might tap the gas a little. You all
10 drive, you have common sense about driving. The
11 troopers said they feared Jeff would ram them. Did
12 he, no, he parked his car thinking he was going to
13 get the computers and load them into it. The
14 troopers also said they feared Jeff would bring an
15 Army of supporters. Did he, no, and were the
16 troopers so afraid they put on their bullet proof
17 vests? No. Did they bring their heavy weapons out
18 of the car? No. And here's where you start to get
19 contradictory testimony. Sergeant Folsom thought
20 the guttermen, Marty and Steve, you heard from them
21 this morning, were part of Jeff's Army. You heard
22 they didn't know Jeff from Adam. Corporal Mertens
23 thought they were just workers doing their job,
24 which they were.

25 If Jeff was so dangerous, why did they have the

1 FBI all the way down here with gas pumps, propane
2 tanks, civilians, a building in between, is that
3 safe, does that make sense? Sergeant Folsom said
4 that not wearing a vest was a mistake, that he was
5 being lazy. Well, there were other mistakes made
6 that day, let's go through them. Sergeant Folsom
7 acknowledged that under Missouri Law he was required
8 to notify the sheriff of Franklin County about the
9 search warrant two weeks before, but he had not
10 because he had bad cell phone reception. Is that a
11 really good enough reason not to follow the law,
12 particularly for a law enforcement officer? You
13 watched that video, gosh, we watched that video a
14 lot, and you heard and saw Jeff exiting the car, you
15 heard the tone and cadence of his voice. You heard
16 him be a smartalick, that's consistent with Jeff's
17 personality, but you heard the exchange before that.
18 You heard the exchange between the troopers and
19 Jeff. And you know that the exchange was different
20 on the video than Sergeant Folsom had described it
21 in his written reports before he knew of the
22 existence of the video. Jeff said, "You don't have
23 to shoot me, man, you're going to have to shoot me,
24 man," I don't know, you decide. The point is he
25 said it in a soft voice, and either way you heard

1 from both the troopers, as well as Perry Smith, as
2 well as Corporal White, the firearms expert, that
3 saying that is not enough to shoot someone. It
4 might be dumb, but it certainly is not enough to
5 justify lethal force. So Jeff has to have gone for
6 his gun if they were justified to shoot him. But
7 does that make sense? If Jeff really had bad
8 intent, why didn't he pull into the parking lot and
9 jump out of the car with a shotgun or come out guns
10 blazing? Why did he do what he did? Does it really
11 make sense that he had this bad motive or intent?

12 Sergeant Folsom was five to seven feet away.
13 He recognized that green holster from his military
14 training. He knew this holster at best for a
15 well-trained man in the military who was a quick
16 draw, a good shot would take at least three seconds
17 to pull down, to open, then to grab the grip, then
18 to take it out, then to point, then to shoot. Why
19 didn't he tackle him. You saw him, he's a big man.
20 He's a lot bigger than scrawny Jeff Weinhaus. He
21 knew that Jeff had no gun skills, no training, no
22 military experience. So why did Sergeant Folsom
23 shoot Jeff? Jeff had personally attacked and
24 criticized him. Sergeant Folsom did not want to be
25 there. His boss, Lieutenant Satterfield who was

1 also criticized in the You Tube video, made him be
2 there. I think his adrenaline rushed in. Corporal
3 White, the expert, told you what happens when
4 adrenaline rushes in, it alters perception, sight,
5 sound, memory distortion, memory loss, tunnel
6 vision, temporary paralysis. In extreme cases you
7 lose control of your bladder or bowels. You are
8 seriously altered. It depends on how much you're
9 stressed out, how much adrenaline comes in.
10 Sergeant Folsom was more stressed than your average
11 law enforcement officer. Jeff had criticized him to
12 his colleagues, to his boss. He didn't want to be
13 there. He admitted he had a problem with tremors,
14 with shakes, that he was partially disabled. That
15 kicked in at the shooting. He had a cut finger. He
16 was shooting with one hand at first. That's not
17 optimal, you heard from their expert who said you're
18 supposed to use two hands on the gun, that is
19 optimal, so why did he shoot? Did he overreact, was
20 it an accident, was it intentional, I'm not sure. I
21 don't know if you need to be sure, but Sergeant
22 Folsom had to justify what he did. He shot Jeff
23 Weinhaus when he didn't need to. So, he said that
24 Jeff had opened and started to draw out his
25 complicated military holster in less than three

1 seconds. And what do we have to prove that fact, we
2 have only the testimony of Sergeant Folsom and
3 Corporal Mertens. What's Corporal Mertens' motive
4 for backing up his boss, his mentor, his friend of
5 six years? I think that speaks for itself.

6 Does the video support the version of events
7 you heard? Less than one second before you see the
8 bullet flying out you see the left hand going up,
9 you can infer that, you have common sense, you know
10 where that hand was. You heard that Jeff was in a
11 crouched position. You saw that angle. Does it
12 really make sense that someone is pulling a gun out
13 when they're going down like this? Does that really
14 make sense? I'm not an expert on guns but that
15 doesn't make sense to me.

16 You heard his explanation about the entry and
17 exit wounds on Jeff's body, that they entered high
18 and exited low. Is that just the difference in
19 height or does that show that Jeff was complying
20 with the order to get down on the ground. His left
21 hand seems to be.

22 Corporal White, the expert, conceded that the
23 shooting was justified only if we go on the
24 assumption that their testimony was true. Sergeant
25 Smith investigated that shooting, he did not make

1 conclusions but he did say out of the 15 police
2 shootings he investigated, all 15 were cleared. I
3 don't know if that's a truly independent
4 investigation.

5 You heard from Marty and Steve, the guttermen.
6 You heard from Heather, the store clerk. Are they
7 credible people, do they have a stake in this case?
8 No. They saw what they saw. Was it upsetting to
9 them? Sure. Can you believe them? You bet.

10 What about the FBI? They were there, they were
11 the back-up. Where is the FBI? How come you didn't
12 hear from them? I know why you didn't hear from
13 them, but it's the State's burden to prove up these
14 charges and they did not want you to hear from them.
15 The back-up did not back up the story here and
16 that's a really critical fact, remember that. The
17 back-up did not back up the story. Those FBI agents
18 would not come in here and testify. I think that's
19 a big red flag. That's a big question mark.

20 Are you sure that because of the angle that
21 Corporal Mertens was really able to see what Jeff
22 was doing on his right side if he was standing in a
23 bladed position as they say? Again he's backing up
24 his boss for shooting him.

25 I talked a lot about burden of proof. I

1 probably spoke badly about it when we were picking
2 this jury. I hope you got my point when I said what
3 do you do if I sit in my chair and do nothing. My
4 burden, Chris Combs' burden, Jeff Weinhaus' burden,
5 the defendant's burden is zilch, nothing, nada. He
6 has the burden of proving up every element of the
7 offense beyond a reasonable doubt. If you have
8 questions, it's not my job to answer them. It's the
9 State's job to answer them. Remember that, remember
10 that. He has the burden of answering those
11 questions.

12 The elements of the charge attempted to cause
13 serious physical injury. There's a lot of evidence
14 to undercut the troopers' testimony. Mertens makes
15 the case that there was no attempt against Mertens.
16 Mertens said Jeff's eyes never left Sergeant Folsom,
17 that he shot Jeff because he was going for Sergeant
18 Folsom. There was no attempt on Mertens. He shot
19 Jeff not to protect himself but to protect his boss.
20 Jeff was shot four times, twice in the chest, twice
21 in the head. He was cuffed, left for dead for nine
22 minutes before the emergency services got there.
23 They thought he was dead, J-4, you heard that on the
24 tape. You know these men were trained in first aid.
25 You heard Corporal White say proper procedure is

1 once they're cuffed and secured, you give first aid.
2 Did they? No. Corporal Mertens said I looked at
3 him, observed him and then I left him, radioed an
4 ambulance and called my father. Why would a man
5 call his father after shooting someone, a law
6 enforcement officer, a professional, it's because
7 something bad happened, something not right. You
8 saw how these men were on the stand. They were
9 shaken, they looked upset at times. These are not
10 people who felt they did the right thing defending
11 their lives. These are people who knew at the
12 bottom of their hearts that the shooting was not
13 justified, that Jeff Weinhaus had not attempted to
14 harm them. Nothing corroborates the story of Jeff
15 going for his gun except their testimony, not the
16 video, not the witnesses. You never heard from the
17 FBI. You know that police do a dangerous job, but I
18 have to tell you that you heard from Corporal White
19 who got an award after he was involved in an
20 officer-involved shooting and who is now the head
21 instructor, Sergeant Folsom has not worked since,
22 cannot wear the uniform. You can infer something
23 from that about this shooting, you can infer
24 something about that whether this was a proper
25 shooting.

1 It is credible to think that there is but one
2 victim here, Jeff Weinhaus, the victim of a police
3 shooting and two officers desperately trying to find
4 an explanation for why they shot him. If there
5 is -- if you look at the crimes for which he is
6 charged, assaulting a law enforcement officer, there
7 are no victims, you heard from no victims. My job
8 is not to change your minds, it is to help you with
9 these talking points so that when you go back there,
10 you can talk to one another and find that roadmap to
11 reasonable doubt. Remember it's not whether or not
12 he did it 50/50, it's not yeah kind of, maybe, sort
13 of I think he did it, I'm pretty sure he did it, it
14 is reasonable doubt firmly convinced. That is a
15 high, high standard. It's a tough standard. I
16 don't get to come back to you to talk to you
17 anymore, I wish I could. I thank you so much. I'm
18 confident you can follow this roadmap. You can get
19 to not guilty. You have enough questions that the
20 State did not make its case. Thank you very, very
21 much.

22 JUDGE SUTHERLAND: Mr. Parks.

23 MR. EASTWOOD: And by Jeff and his family.

24 JUDGE SUTHERLAND: You may conclude your
25 argument on behalf of the State. You have a little

1 less than eight minutes left.

2 **(CONTINUED CLOSING ARGUMENT ON BEHALF OF THE STATE)**

3 MR. PARKS: That was the best story since
4 Alice in Wonderland and the Cheshire Cat because it
5 distorted everything that happened there. Defendant
6 put three witnesses on. They thought the FBI was
7 going to have a different story, why didn't they put
8 them on? They can put them on as easy as I. They
9 didn't put them on because everything that the
10 troopers said was the truth.

11 And what about those witnesses. Well, they
12 were what they all said, they didn't hear anything
13 or see anything until they heard the shots and they
14 turned around and saw the defendant on the ground,
15 except for the store clerk and she was so distraught
16 she told you that she saw him on the ground and then
17 had the officers go up and fire six shots at him
18 while he was laying on the ground. Now we all know
19 that's not true because we saw the watch video. And
20 the defendant was making a big deal that he was
21 going down on the ground, he was complying, he had
22 his arms up in the air. Well, we saw that watch
23 video, and you saw those stills and you saw them
24 over and over again, and remember the still of the
25 Subaru, when the defendant got out of the Subaru and

1 the watch was pointing down here and it saw the MFA
2 sign, and then Sergeant Folsom told you he came
3 around the car and the defendant was going this way.
4 We know the watch was on his left hand. So let's
5 suppose for a minute that he's got his hand up.
6 Where is that watch? Where is that watch pointing?
7 It's pointing back over his shoulder. The defendant
8 is standing here. He's got the watch up in the air.
9 What are you going to see? You're going to see the
10 MFA sign. What did you see in the video? You saw
11 Corporal Mertens and Sergeant Folsom. He had his
12 hands down here. He was going for his gun. You
13 heard both officers testify to that. He undid the
14 flap.

15 During that conversation, that exchange with
16 Sergeant Folsom, three seconds. Anybody going to
17 rush a man with a gun in three seconds? You heard
18 him say in that conversation he pulled the flap down
19 and let it go. He put his hand up underneath the
20 flap. He put his hand on the handle of the gun and
21 started to bring that gun out, all this while the
22 officers are talking to him, all this while Sergeant
23 Folsom is moving because he tells you he can see
24 that he doesn't have a good shot pattern. He wants
25 to get over here so he's shooting over here. This

1 isn't blame the officers. The officers are not on
2 trial here. What the officers did was to defend
3 themselves, and that's what you heard Sergeant White
4 say. And when it came down to the very end with him
5 manipulating the holster, with him putting his hand
6 under the flap, with him starting to draw the gun
7 and the defendant saying to the officers, "You're
8 going to have to shoot me, man," it is now your job
9 to decide whether or not -- whether or not you want
10 these officers shot. Officers are law enforcement,
11 they're trained, we don't send law enforcement
12 officers out to get shot. We train them to react
13 and take the necessary steps.

14 You heard Corporal White talk about the wagon
15 wheel. They were faced with a life and death
16 situation. They had a man who was wide eyed, who
17 was crouching down, who was focused on them, who was
18 going for his weapon and they fired, and they hit
19 him and he went down.

20 All this stuff, "Well, they didn't render first
21 aid." Well, the defendant looks pretty good to me
22 for being shot four times

23 MR. EASTWOOD: I object to that, Your Honor.

24 JUDGE SUTHERLAND: Overruled.

25 MR. PARKS: The law enforcement officers did

1 what they did. The defendant tried to assault the
2 law enforcement officers, that's the two criminal
3 action charges that you have. He went for his gun
4 and they defended themselves. You have to find the
5 defendant guilty of assault of a law enforcement
6 officer and armed criminal action. We know that the
7 drugs were in his cave, his command center, his
8 room, he had control of that because if there was
9 anybody else that had control of that, they could
10 have called them to say hey, those were my drugs,
11 but they didn't. They can ask for DNA testing, they
12 could have asked for fingerprint testing but they
13 didn't want to do that because they knew that it
14 would come up as to the defendant. He is guilty of
15 having the marijuana. He is guilty of having the
16 Morphine, a prescribed drug in a tin. Drug dealers,
17 drug addicts have drugs in a tin. Normal citizens
18 have them in a prescription bottle or as it was said
19 before, one of those little cases where you go
20 either daily or weekly, something, but you got the
21 bottle there, you fill it out of the bottle with the
22 prescription. The defendant is guilty of all six
23 counts, and the State and the people of Franklin
24 County are asking you to find the defendant guilty.
25 Thank you.

1 JUDGE SUTHERLAND: Ladies and gentlemen --
2 well, first Mr. Loepker, you are our insurance
3 policy, our alternate. So you're not going to be
4 able to deliberate here. If you want to stick
5 around and see what transpires, that's fine. If
6 somebody gets sick in the next couple of hours we
7 might need you after all, but you will not be able
8 to go back to the jury room, but I want to express
9 my appreciation for your service. For the rest of
10 you it's time to retire to the jury room, select
11 your foreperson, deliberate and arrive at your
12 verdict. The sheriff will direct you to the jury
13 room and will deliver to you your instructions and
14 verdict form, six of which will be proper for your
15 verdicts and should be signed and returned as your
16 verdicts. The others should be returned not signed.
17 When you have arrived at your verdicts, notify the
18 sheriff by knocking on the door and you will be told
19 when to return to the jury box. I ask the clerk to
20 swear the bailiffs to keep the jury together during
21 deliberation.

22 (WHEREUPON THE BAILIFFS WERE SWORN)

23 JUDGE SUTHERLAND: You may retire to the
24 jury room at this time. Note the jury retired at
25 10:52 a.m. We're in recess.

1 (COURT IN RECESS FROM 10:52 AM TO 11:36 AM)

2 JUDGE SUTHERLAND: Bailiff brought me a note
3 from the jury five to ten minutes ago. It was a
4 little ambiguous, so I asked him to take it back and
5 ask them to clarify. So I now have a request that
6 reads as follows, and I'll show it to you because
7 you can see where the original was in pencil and the
8 additions are in pen. "Still photos of video from
9 defendant's attorney showed." The grammar is
10 terrible because of the additions here, "from
11 watch," they put from watch in there, and then a
12 separate line, "see video," which is watch video,
13 and then, "read transcript from Folsom and Mertens
14 testimony regarding gun (Jeff's) placement before
15 and after the shooting." It's signed by --

16 MR. COMBS: Do you know who the foreman is?

17 JUDGE SUTHERLAND: It's No. 4, Krista Sieve.
18 She doesn't identify herself as foreman but she's
19 the one that signed it. You didn't actually have
20 any still photos from the video, it was showing the
21 freeze frame?

22 MR. EASTWOOD: They are still photos.
23 They're in a folder on a drive, and the Microsoft
24 picture viewer you just hit back and forth and the
25 pictures are in sequential order. It's broken down

1 into 29 stills.

2 JUDGE SUTHERLAND: That wasn't introduced
3 into evidence.

4 MR. PARKS: No, Your Honor, so it can't be
5 shown to the jury.

6 MR. EASTWOOD: I believe that it is a still
7 from a video that is in evidence. It is
8 demonstrative evidence of a piece of evidence.
9 There was no objection during trial, during the
10 evidence.

11 MR. PARKS: It was never introduced.

12 JUDGE SUTHERLAND: It was never introduced
13 into evidence is the problem with it.

14 MR. COMBS: It was as the tape recording was
15 though.

16 MR. PARKS: I have no problem with the watch
17 video, it was admitted into evidence. So them
18 looking at the watch video, I have no problems with.

19 JUDGE SUTHERLAND: What we need to do is
20 clear the courtroom, show the watch video and if
21 they want to go through it frame by frame, are you
22 the expert on that?

23 MR. EASTWOOD: Do you want to do it off the
24 computer?

25 MR. PARKS: There is no transcript.

1 JUDGE SUTHERLAND: No. All I can tell them
2 is we do not have a transcript at this time. I'll
3 clear the courtroom, let's get the video set up to
4 watch video. We'll clear the courtroom, bring them
5 in, show them the video. I'll explain to them that
6 the still photographs were not admitted into
7 evidence but we can show them frame by frame.

8 MR. EASTWOOD: I don't mean to be difficult
9 but for the record can I make an objection simply
10 that the stills are demonstrative?

11 JUDGE SUTHERLAND: You can make the
12 objection but it is overruled.

13 MR. EASTWOOD: I make the objection that the
14 stills are demonstrative of the video.

15 JUDGE SUTHERLAND: Overruled and I'll
16 explain to them that we don't have the transcript of
17 the testimony.

18 MR. EASTWOOD: The action starts around 4:30
19 maybe, 4:45.

20 JUDGE SUTHERLAND: Move it up shortly before
21 that, 4:25 or so.

22 MR. EASTWOOD: The shots are between 5:00
23 and 5:10.

24 (COURTROOM IS CLEARED EXCEPT FOR JUDGE, JURY, VIDEO
25 OPERATOR AND COURT REPORTER)

1 MS. SIEVE: Since it's just you, are we
2 allowed to communicate?

3 JUDGE SUTHERLAND: It might be better if you
4 do not. That might constitute deliberations and
5 none of us should be with you when you do that.

6 MR. STRAATMANN: It's a clarification
7 question.

8 JUDGE SUTHERLAND: I'm required to tell the
9 attorneys about this but I can do that later. The
10 question is what is the definition of assault in the
11 first degree. I can't tell you anymore than what is
12 in the instructions, okay, and I believe it's
13 essentially defined in there as part of the
14 instruction. It doesn't say this is the definition
15 but it's in there. As far as your original request
16 as revised, there is no transcript at this point of
17 Sergeant Folsom's or Corporal Mertens' testimony, so
18 I can't read that or provide that for you in any
19 respect. The still photographs of the video that
20 Mr. Eastwood used were not admitted into evidence,
21 so I can't pass them to you in the jury room or show
22 them to you now. However, we can go through the
23 video, and since you requested to see the video, I'm
24 going to go ahead and play the video and we can back
25 it up and go through it a small section at a time,

1 and I think that might take care of the problem with
2 not being able to use the actual still photos that
3 were taken off of the video. I was told by the
4 attorneys before you were brought back in here that
5 the action starts around the four minute and 30
6 second mark. So we've set the video around 4:25
7 just before that, is that okay?

8 THE JURY: Yes.

9 JUDGE SUTHERLAND: So we'll go through the
10 whole thing and back it up and go through it section
11 by section, and if you see a section that you'd like
12 to stop and take a look at it, let me know, okay.
13 Let's play it then.

14 (WHEREUPON THE VIDEO WAS PLAYED)

15 JUDGE SUTHERLAND: Is that enough?

16 MR. STRAATMANN: The prosecuting attorney
17 has pictures afterwards, the pictures that were put
18 into evidence.

19 JUDGE SUTHERLAND: Of the site?

20 MR. STRAATMANN: Yes.

21 JUDGE SUTHERLAND: You can see any of the
22 exhibits. We don't pass weapons to the jury room,
23 but all of the documentary exhibits, photographs.

24 MR. STRAATMANN: I think the actual crime
25 scene photos of the scene.

1 JUDGE SUTHERLAND: You can see those, well
2 there's a number of them.

3 MR. STRAATMANN: We're really wanting to try
4 to see the actual weapon in the case or out of the
5 case or however it was, I don't know which one that
6 was.

7 JUDGE SUTHERLAND: Did you want to see any
8 of the other pictures as well?

9 MR. STRAATMANN: If we can.

10 JUDGE SUTHERLAND: All of the photographs of
11 the scene?

12 MR. STRAATMANN: Yes.

13 JUDGE SUTHERLAND: I'm looking at my exhibit
14 list here. That would be State's Exhibits 16
15 through 22, I believe. That would be the pistol,
16 holster and the scene location of cars and so forth
17 afterwards. Do you want to see those?

18 MR. STRAATMANN: Yeah.

19 JUDGE SUTHERLAND: Let me make a note
20 because I want to let the attorneys know as well.

21 MR. STRAATMANN: Can we watch the video one
22 more time, just from when he gets out of the car.

23 (WHEREUPON THE VIDEO WAS PLAYED)

24 JUDGE SUTHERLAND: Is that enough?

25 MR. STRAATMANN: Yeah.

1 JUDGE SUTHERLAND: Okay, why don't you go on
2 back to the jury room. Your lunch will be here in
3 five to ten minutes. I would suggest just take a
4 little break when you eat lunch, 20, 30 minutes,
5 however long it takes, and don't even talk about the
6 case, talk about the weather, Cardinals last night
7 or something else and just relax for a few minutes
8 and come back to it. Sometimes that works out and
9 we'll get those pictures to you.

10 (LUNCHEON RECESS TAKEN FROM 11:56 AM TO 12:56 AM)

11 JUDGE SUTHERLAND: Right after we handled
12 the first jury question, of course we brought the
13 jury in the courtroom, it was cleared, I explained
14 to them that we didn't have any transcript either of
15 Sergeant Folsom's testimony or Corporal Mertens', so
16 we couldn't provide that for them, neither could we
17 provide still photographs from the video but let
18 them view the video and if they wanted to go through
19 it slowly, we could do that. What we ended up doing
20 was just listening to the video starting maybe five,
21 ten seconds before your client got out of the car
22 and through the shooting until the video basically
23 went white. Watched that twice. They did not ask
24 for any slow ways through it. They asked if they
25 could discuss among themselves while they were in

1 here watching the video and I told them no, that's
2 deliberations, they'll have to do that back in the
3 jury room. They wanted to know if they could take
4 notes, I indicated they could since it was part of
5 deliberations, and then they handed me a note that
6 reads as follows: "What is the definition of
7 assault in the first degree." And I told them that
8 I could not give them a definition but basically
9 there was a definition in the instructions if they
10 just read the instructions. It didn't say
11 definition but it explained what it was, and they
12 seemed to be satisfied with that. Then they asked
13 for the photographs of the scene. They were
14 stumbling around for the name but they got Smith in
15 there right, that were taken afterwards, just to
16 show where everything was. So at that point I sent
17 them back to the jury room, and we sent State's
18 Exhibits 14 and 16 through 22 inclusive with them.
19 14 and 16 through 22 inclusive. They wanted the
20 photographs of the holster and pistol and all that
21 stuff, so I went through 22.

22 MR. EASTWOOD: So that does not include the
23 weapons in the car?

24 JUDGE SUTHERLAND: No, I already told them
25 we're not sending any weapons.

1 MR. EASTWOOD: Thank you, Your Honor.

2 JUDGE SUTHERLAND: So there we are. Off the
3 record.

4 (COURT IN RECESS FROM 1:01 PM TO 2:17 PM)

5 JUDGE SUTHERLAND: It's my understanding
6 that we have a verdict on Phase 1, the guilt phase
7 of the trial and we'll bring the jury in in just a
8 minute to see if we do or not. I have one caution.
9 There's a lot of people here on behalf of
10 Mr. Weinhaus, I understand that, as well as some
11 people here on behalf of the State. I would ask
12 that there be no outbursts of any kind when the
13 verdicts are read. I have no idea what they are but
14 it's not appropriate. Let's bring them in and see
15 what we got.

16 (WHEREUPON THE JURY ENTERED THE COURTROOM)

17 **(WHEREUPON THE VERDICT WAS READ)**

18 JUDGE SUTHERLAND: Ms. Sieve, you are the
19 foreperson of the jury?

20 MS. SIEVE: Yes, sir.

21 JUDGE SUTHERLAND: Has the jury reached a
22 verdict?

23 MS. SIEVE: Yes, sir.

24 JUDGE SUTHERLAND: Would you hand it to the
25 bailiff, please. At this time I will read the

1 verdict of the jury. As to Count 1, we the jury
2 find the defendant Jeffrey R. Weinhaus guilty of
3 possessing a controlled substance as submitted in
4 instruction No. 6 signed K. Sieve, foreperson.
5 Ladies and gentlemen, is that your verdict for all
6 of you.

7 (ALL YESES WERE HEARD)

8 JUDGE SUTHERLAND: As to Count 3, we the
9 jury find the defendant Jeffrey R. Weinhaus guilty
10 of possessing marijuana as submitted in instruction
11 No. 7, also signed K. Sieve, foreperson. Is that
12 the verdict of all of you.

13 (ALL YESES WERE HEARD)

14 JUDGE SUTHERLAND: As to Count 4, we the
15 jury find the defendant Jeffrey R. Weinhaus guilty
16 of assault of a law enforcement officer in the first
17 degree as submitted in instruction No. 8, signed K.
18 Sieve, foreperson. Is that the verdict of all of
19 you.

20 (ALL YESES WERE HEARD)

21 JUDGE SUTHERLAND: As to Count 5, we the
22 jury find the defendant Jeffrey R. Weinhaus guilty
23 of armed criminal action as submitted in instruction
24 No. 9, signed K. Sieve, foreperson. Is that the
25 verdict of all of you?

1 (ALL YESES WERE HEARD)

2 JUDGE SUTHERLAND: As to Count 6, we the
3 jury find the defendant Jeffrey R. Weinhaus not
4 guilty, signed K. Sieve, foreperson. Is that the
5 verdict of all of you.

6 (ALL YESES WERE HEARD)

7 JUDGE SUTHERLAND: And finally as to Count
8 7, we the jury find the defendant Jeffrey R.
9 Weinhaus not guilty, again signed K. Sieve,
10 foreperson. Is that the verdict of all of you?

11 (ALL YESES WERE HEARD)

12 JUDGE SUTHERLAND: Thank you. Does anyone
13 want the jury polled?

14 MR. EASTWOOD: Your Honor, at this time I
15 would ask that the jury be polled.

16 JUDGE SUTHERLAND: Ladies and gentlemen, I'm
17 going to ask each of you individually as to each
18 verdict one at a time whether it is your verdict or
19 not. So first as to Count 1, the possession of a
20 controlled substance charge, that was the Morphine
21 charge. Ms. Craig, was that your verdict?

22 MS. CRAIG: Yes.

23 JUDGE SUTHERLAND: Mr. Click?

24 MR. CLICK: Yes.

25 JUDGE SUTHERLAND: Mr. Coleman?

1 MS. COLEMAN: Yes.

2 JUDGE SUTHERLAND: Ms. Sieve?

3 MS. SIEVE: Yes.

4 JUDGE SUTHERLAND: Ms. Hoffmann?

5 MS. HOFFMANN: Yes.

6 JUDGE SUTHERLAND: Ms. Hardester?

7 MS. HARDESTER: Yes.

8 JUDGE SUTHERLAND: Ms. Davis?

9 MS. DAVIS: Yes.

10 JUDGE SUTHERLAND: Mr. Rutherford?

11 MR. RUTHERFORD: Yes.

12 JUDGE SUTHERLAND: Ms. Stack?

13 MS. STACK: Yes.

14 JUDGE SUTHERLAND: Ms. Cooper?

15 MS. COOPER: Yes.

16 JUDGE SUTHERLAND: Mr. Straatmann?

17 MR. STRAATMANN: Yes.

18 JUDGE SUTHERLAND: Ms. Tyree?

19 MS. TYREE: Yes.

20 JUDGE SUTHERLAND: Then as to Count 3 which
21 is the possession of marijuana charge, the guilty
22 verdict there, Ms. Craig, was that your verdict?

23 MS. CRAIG: Yes.

24 JUDGE SUTHERLAND: Mr. Click?

25 MR. CLICK: Yes.

1 JUDGE SUTHERLAND: Ms. Coleman?

2 MS. COLEMAN: Yes.

3 JUDGE SUTHERLAND: Ms. Sieve?

4 MS. SIEVE: Yes.

5 JUDGE SUTHERLAND: Ms. Hoffmann?

6 MS. HOFFMANN: Yes.

7 JUDGE SUTHERLAND: Ms. Hardester?

8 MS. HARDESTER: Yes.

9 JUDGE SUTHERLAND: Ms. Davis?

10 MS. DAVIS: Yes.

11 JUDGE SUTHERLAND: Mr. Rutherford?

12 MR. RUTHERFORD: Yes.

13 JUDGE SUTHERLAND: Ms. Stack?

14 MS. STACK: Yes.

15 JUDGE SUTHERLAND: Ms. Cooper?

16 MS. COOPER: Yes.

17 JUDGE SUTHERLAND: Mr. Straatmann?

18 MR. STRAATMANN: Yes.

19 JUDGE SUTHERLAND: And Ms. Tyree?

20 MS. TYREE: Yes.

21 JUDGE SUTHERLAND: And then as to Count 4,
22 guilty verdict there of the assault of a law
23 enforcement officer first degree, and that's the
24 assault on Sergeant Folsom. Ms. Craig, is that your
25 verdict?

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MS. CRAIG: Yes.

JUDGE SUTHERLAND: Mr. Click?

MR. CLICK: Yes.

JUDGE SUTHERLAND: Ms. Coleman?

MS. COLEMAN: Yes.

JUDGE SUTHERLAND: Ms. Sieve?

MS. SIEVE: Yes.

JUDGE SUTHERLAND: Ms. Hoffmann?

MS. HOFFMANN: Yes.

JUDGE SUTHERLAND: Ms. Hardester?

MS. HARDESTER: Yes.

JUDGE SUTHERLAND: Ms. Davis?

MS. DAVIS: Yes.

JUDGE SUTHERLAND: Mr. Rutherford?

MR. RUTHERFORD: Yes.

JUDGE SUTHERLAND: Ms. Stack?

MS. STACK: Yes.

JUDGE SUTHERLAND: Ms. Cooper?

MS. COOPER: Yes.

JUDGE SUTHERLAND: Mr. Straatmann?

MR. STRAATMANN: Yes.

JUDGE SUTHERLAND: And Ms. Tyree?

MS. TYREE: Yes.

JUDGE SUTHERLAND: Then as to Count 5, the

1 armed criminal action guilty verdict regarding again
2 Sergeant Folsom, I believe. Ms. Craig, is that your
3 verdict?

4 MS. CRAIG: Yes.

5 JUDGE SUTHERLAND: Mr. Click?

6 MR. CLICK: Yes.

7 JUDGE SUTHERLAND: Ms. Coleman?

8 MS. COLEMAN: Yes.

9 JUDGE SUTHERLAND: Ms. Sieve?

10 MS. SIEVE: Yes.

11 JUDGE SUTHERLAND: Ms. Hoffmann?

12 MS. HOFFMANN: Yes.

13 JUDGE SUTHERLAND: Ms. Hardester?

14 MS. HARDESTER: Yes.

15 JUDGE SUTHERLAND: Ms. Davis?

16 MS. DAVIS: Yes.

17 JUDGE SUTHERLAND: Mr. Rutherford?

18 MR. RUTHERFORD: Yes.

19 JUDGE SUTHERLAND: Ms. Stack?

20 MS. STACK: Yes.

21 JUDGE SUTHERLAND: Ms. Cooper?

22 MS. COOPER: Yes.

23 JUDGE SUTHERLAND: Mr. Straatmann?

24 MR. STRAATMANN: Yes.

25 JUDGE SUTHERLAND: And Ms. Tyree?

1 MS. TYREE: Yes.

2 JUDGE SUTHERLAND: As to the not guilty
3 verdict in the Count 6, which is the assault of a
4 law enforcement officer against Corporal Mertens.
5 Ms. Craig, is that your verdict?

6 MS. CRAIG: Yes.

7 JUDGE SUTHERLAND: Mr. Click?

8 MR. CLICK: Yes.

9 JUDGE SUTHERLAND: Ms. Coleman?

10 MS. COLEMAN: Yes.

11 JUDGE SUTHERLAND: Ms. Sieve?

12 MS. SIEVE: Yes.

13 JUDGE SUTHERLAND: Ms. Hoffmann?

14 MS. HOFFMANN: Yes.

15 JUDGE SUTHERLAND: Ms. Hardester?

16 MS. HARDESTER: Yes.

17 JUDGE SUTHERLAND: Ms. Davis?

18 MS. DAVIS: Yes.

19 JUDGE SUTHERLAND: Mr. Rutherford?

20 MR. RUTHERFORD: Yes.

21 JUDGE SUTHERLAND: Ms. Stack?

22 MS. STACK: Yes.

23 JUDGE SUTHERLAND: Ms. Cooper?

24 MS. COOPER: Yes.

25 JUDGE SUTHERLAND: Mr. Straatmann?

1 MR. STRAATMANN: Yes.

2 JUDGE SUTHERLAND: And Ms. Tyree?

3 MS. TYREE: Yes.

4 JUDGE SUTHERLAND: And finally as to Count
5 7, the not guilty verdict regarding the armed
6 criminal action on Corporal Mertens. Ms. Craig, is
7 that your verdict?

8 MS. CRAIG: Yes.

9 JUDGE SUTHERLAND: Mr. Click?

10 MR. CLICK: Yes.

11 JUDGE SUTHERLAND: Ms. Coleman?

12 MS. COLEMAN: Yes.

13 JUDGE SUTHERLAND: Ms. Sieve?

14 MS. SIEVE: Yes.

15 JUDGE SUTHERLAND: Ms. Hoffmann?

16 MS. HOFFMANN: Yes.

17 JUDGE SUTHERLAND: Ms. Hardester?

18 MS. HARDESTER: Yes.

19 JUDGE SUTHERLAND: Ms. Davis?

20 MS. DAVIS: Yes.

21 JUDGE SUTHERLAND: Mr. Rutherford?

22 MR. RUTHERFORD: Yes.

23 JUDGE SUTHERLAND: Ms. Stack?

24 MS. STACK: Yes.

25 JUDGE SUTHERLAND: Ms. Cooper?

1 MS. COOPER: Yes.

2 JUDGE SUTHERLAND: Mr. Straatmann?

3 MR. STRAATMANN: Yes.

4 JUDGE SUTHERLAND: And Ms. Tyree?

5 MS. TYREE: Yes.

6 JUDGE SUTHERLAND: I think I have your names
7 memorized in order. Ladies and gentlemen of the
8 jury, we need a few minutes, there's a couple of
9 instructions we need to get straightened out for
10 this, it won't take but a few minutes to get them
11 organized and get them copied for you to have a
12 copy, but it may take us perhaps 15 minutes,
13 something like that. So we're going to recess for a
14 few minutes before we begin the second phase. The
15 reason we can't go straight into the second phase of
16 the instructions at this point is because it depends
17 on what counts you find the defendant guilty of, if
18 any, and we didn't know that until you brought in
19 the verdict.

20 Until you retire to consider your verdict as to
21 punishment, you must not discuss this case among
22 yourselves or with others or permit anyone to
23 discuss it in your hearing. Do not do any research
24 or investigation on your own about any matter
25 regarding this case or anyone involved with the

1 trial. Do not communicate with others about the
2 case by any means. Do not read, view or listen to
3 any newspaper, radio, electronic communication from
4 the Internet or television report of the trial.
5 We're in recess. We'll get you back in here as
6 quickly as we can.

7 (WHEREUPON THE JURY LEFT THE COURTROOM)

8 JUDGE SUTHERLAND: I have been tendered by
9 the State and intend to give instructions numbered
10 16 through 22 inclusive in the second phase;
11 instructions numbered 21 and 22 will be after
12 evidence and argument. Any objection to any of
13 those instructions?

14 MR. EASTWOOD: No, sir.

15 MR. PARKS: No, Your Honor.

16 JUDGE SUTHERLAND: Good, because objections
17 are impossible, there's nothing to object to. How
18 much time do you want for argument, 10 minutes?

19 MR. EASTWOOD: I don't know if I need that
20 much.

21 MR. PARKS: That's fine. 10 minutes, 6 and
22 4.

23 JUDGE SUTHERLAND: Warn at one, one minute
24 warnings?

25 MR. EASTWOOD: Two minutes, if you don't

1 mind, Your Honor.

2 (WHEREUPON A BRIEF RECESS TOOK PLACE)

3 (WHEREUPON THE JURY ENTERED THE COURTROOM)

4 JUDGE SUTHERLAND: Please be seated. You
5 have found some more instructions on your seats
6 there again. That's to assist you in following
7 along as I read some additional instructions of the
8 Court. Instruction No. 16, as to Count 1, you have
9 found the defendant guilty of possessing a
10 controlled substance. At this stage of the trial it
11 will be your duty to determine within the limits
12 prescribed by law the punishment that must be
13 imposed for these offenses. The punishment
14 prescribed by law for possessing a controlled
15 substance is one, imprisonment for a term of years
16 fixed by you but not less than two years and not to
17 exceed seven years. Two, imprisonment in the county
18 jail for a term fixed by you but not to exceed one
19 year. Three, imprisonment for a term of years fixed
20 by you but not less than two years and not to exceed
21 seven years and in addition a fine, the amount to be
22 determined by the Court. Four, imprisonment in the
23 county jail for a term fixed by you but not to
24 exceed one year and in addition a fine, the amount
25 to be determined by the Court. Five, no

1 imprisonment but a fine in an amount to be
2 determined by the Court. The maximum fine that the
3 Court may impose is \$5,000.00.

4 Instruction No. 17, as to Count 3, you have
5 found the defendant guilty of possessing marijuana.
6 At this stage of the trial it will be your duty to
7 determine within the limits prescribed by law the
8 punishment that must be imposed for these offenses.
9 The punishment prescribed by law for possessing
10 marijuana is one, imprisonment in the county jail
11 for a term fixed by you but not to exceed one year.
12 Two, imprisonment in the county jail for a term
13 fixed by you but not to exceed one year and in
14 addition a fine, the amount to be determined by the
15 Court. I noticed on the previous line where it says
16 not to exceed one year there's a period, it should
17 be a comma, you can figure that out. Three, no
18 imprisonment but a fine in an amount to be
19 determined by the Court. The maximum fine that the
20 Court may impose is \$1,000.00.

21 Instruction No. 18, as to Count 7, you have
22 found the defendant guilty of assault of a law
23 enforcement officer in the first degree. At this
24 stage of the trial it will be your duty to determine
25 within the limits prescribed by law the punishment

1 that must be imposed for those offenses. The
2 punishment prescribed by law for assault of a law
3 enforcement -- I'm sorry, that word is missing, I'm
4 going to add it. It should be law enforcement
5 officer. I'm going to add the word officer in
6 there, so you may want to look at the official
7 instruction. Let me start that sentence over. The
8 punishment prescribed by law for assault of a law
9 enforcement officer in the first degree is one, life
10 imprisonment. Two, imprisonment for a term of years
11 fixed by you but not less than 10 years and not to
12 exceed 30 years.

13 Instruction No. 19, as to Count 5, you have
14 found the defendant guilty of armed criminal action.
15 At this stage of the trial it will be your duty to
16 determine within the limits prescribed by law the
17 punishment that must be imposed for these offenses.
18 The punishment prescribed by law for armed criminal
19 action is one, imprisonment for a term of years
20 fixed by you but not less than three years.

21 Instruction No. 20, at this stage of the trial
22 we will proceed as follow. First the attorneys will
23 have an opportunity to make a statement outlining
24 any additional evidence to be presented. Such
25 evidence may then be introduced. After that, the

1 Court will provide you with additional instructions.
2 Then the attorneys may make their arguments. You
3 will then go to the jury room, deliberate and arrive
4 at your verdicts. Opening statement for the State.

5 **(OPENING STATEMENT/PUNISHMENT PHASE BEHALF OF STATE)**

6 MR. PARKS: Thank you, Your Honor. Ladies
7 and gentlemen, as the Court has said, this is the
8 penalty phase. This is the phase of the trial where
9 you will decide the punishment that Mr. Weinhaus
10 should receive for the four counts of guilty that
11 you have rendered. I want you to remember the
12 evidence from the first phase. The State is going
13 to present evidence from Sergeant Folsom who is
14 going to talk to you about how this incident has
15 affected his life. At the end of Sergeant Folsom's
16 statement, we're going to ask you to consider his
17 statement, his feelings in this case and the
18 evidence that you heard in the first part of the
19 trial to come up with your verdict.

20 JUDGE SUTHERLAND: Opening statement now?

21 **(OPENING STATEMENT/PUNISHMENT PHASE BY DEFENDANT)**

22 MR. EASTWOOD: Yes, Your Honor. Ladies and
23 gentlemen, you'll also hear at this phase of the
24 trial from Judy Kropf Weinhaus, that's Jeff's wife,
25 now ex-wife. You'll hear about Jeff's character as

1 a husband, as a father and also about the injuries
2 he suffered the day of the shooting. Thank you.

3 JUDGE SUTHERLAND: Evidence for the State.

4 MR. PARKS: Sergeant Folsom.

5 JUDGE SUTHERLAND: He's still under oath.

6 **DIRECT EXAMINATION OF SERGEANT FOLSOM**

7 **QUESTIONS BY MR. PARKS:**

8 Q Again, please state your name for the Court
9 for the record.

10 A Henry James Folsom.

11 Q And you are a Sergeant with the Missouri
12 State Highway Patrol?

13 A Yes, I am.

14 Q And you are the witness that testified in
15 the guilt phase of this trial; is that correct?

16 A Yes, I am, sir.

17 Q And Sergeant Folsom, could you tell the jury
18 how this incident has affected your life.

19 A Yes, sir. I'd like to start out to say that
20 I bear no ill feelings toward Mr. Weinhaus, his
21 family or his friends. I believe in freedom of
22 speech. I believe in the Second Amendment. I
23 believe in all the amendments. I fought for my
24 country so that everyone would have their rights to
25 those amendments. There is no better place than

1 America for freedom of speech, but one thing people
2 mistake commonly is freedom of speech is not free.
3 Every word that comes out of your mouth can hurt
4 someone, can take something away from someone, can
5 change someone's life forever, and my life has been
6 changed forever. Scott Mertens' life has been
7 changed forever. It's not only changed my life but
8 it's affected my family, his family, our ability for
9 our children to even go outside and play.

10 And we'll start off by saying after I arrested
11 Jeff or tried to arrest him, we all know about the
12 incident, you made your decision, Jeff's friends on
13 the Internet on a thing called Copblock.org began
14 posting all these stories of how I lied and things
15 about my personal life. They put my picture up. If
16 you Google my name right now, there's a picture of
17 me shooting Mr. Weinhaus that my family and friends,
18 that's what they see when they Google my name. And
19 there's been threats, there's been people from that
20 group come to my job in Troop I and Troop C, they've
21 been on national radio shows talking about what a
22 liar I am. I've been a police officer for 24 years.
23 I've served my country. Not in any of that time has
24 any person ever come forward and said James Folsom
25 lied. Not one person has ever filed a complaint

1 against me or anything, but these people on the
2 Internet put all these things on to the point of
3 where I had to have a camera in my one year old
4 boy's room to look outside my house because people
5 were coming by. Scott Mertens had to have cameras
6 at his house, and his four boys couldn't even go
7 outside and play. You know what it's like to tell
8 your children they can't go outside and play because
9 of something you did that was, in your opinion, was
10 right? But now my family is punished. My wife is
11 four months pregnant. This stress has been really
12 bad on my wife, and I'm not ashamed to admit it, my
13 family life is devastated because of this.

14 Scott Mertens, he crashed his car the other
15 night when he left here. He wrecked his patrol car.
16 The man is one of the best drivers I've ever seen on
17 the Highway Patrol. He left from here and was so
18 distracted by all this that he crashed his patrol
19 car the other night. And this event has been
20 stressful for all of us.

21 I will say this: As far as my employer is
22 concerned, my employer has turned their backs on me.
23 I don't have a job anymore because of Mr. Weinhaus
24 because he decided rather than just put his hands up
25 in the air and surrender and beat half the charges

1 anyway, he was going to draw that gun out of the
2 holster and gun me down on the same day that his
3 father died, September 11th before, because his wife
4 had left him and he was having problems. I
5 appreciate that, I still bear no ill will against
6 him, but he wanted what happened that day to happen.
7 I had no control over it. The only thing I could do
8 is react to save my life.

9 Unfortunately in my job I've had other people
10 try to kill me, and it does have a traumatic effect
11 on you forever. I will tell you that after I shot
12 Mr. Weinhaus, I complained -- my employer made us go
13 back to work one day after we shot Mr. Weinhaus. We
14 had to go back to work the next day. We got to take
15 one day off and then we were deemed to be fit to
16 come back to work. And when I complained that I
17 needed some more time off, my employer said it would
18 be at my own expense. I had a big vacation planned,
19 which I always do around hunting season, and I said
20 well, I'll just work a few days and then I'll go on
21 vacation. When I came back, my employer was nice
22 enough to relieve me of my duty and send me to a
23 doctor because I'd asked for extra time off, and
24 they said I couldn't work until after this trial was
25 done. So this cost me all my sick leave just to

1 keep my family fed. I'm not allowed to go out and
2 get another job, and I'll be honest with you, my
3 employer was nice enough to inform me that they're
4 going to file charges against me if I do come back
5 to work for insubordination, because I was upset
6 when my employer didn't arrest Mr. Weinhaus when he
7 got out of the hospital, because my employer didn't
8 do their jobs. My employer, they didn't go and get
9 his medical records and actually find out what his
10 status was when it was time for him to get released,
11 so he got out and was free. And it upset me, and I
12 complained about it to my boss, who basically rubbed
13 me off the map. Everyone knows here, I don't hide
14 it, I didn't want to go and arrest him. He should
15 have been able to go to Court and appear when it was
16 time, but because he called the wrong person on the
17 Highway Patrol a mother fucker, here I sit with no
18 job. When my sick leave runs out, they're not
19 bringing me back to the Highway Patrol. In five or
20 six months I won't have a job. There's been no
21 investigation. I've offered to take polygraphs, do
22 whatever I can do. I'm eight years from my
23 retirement. I'm a disabled veteran. No one will
24 hire me. I suffer from PTSD as well. No one is
25 going to hire me in what I do now. So I lost the

1 ability to feed my son, my children, because one man
2 decided he was going to cause a revolution and take
3 over the United States of America. And one man had
4 that power to devastate my life and to devastate the
5 life of my family and change Scott Mertens' family
6 forever, one man. And I would hope that you would
7 understand my side. It was never anything personal
8 to me. I developed the ruse because I did not want
9 to send a SWAT team to his house and cause a big
10 shootout. I've been called every bad name in the
11 book here. His attorney has taken every cheap shot
12 that he could take against me, talking about me
13 being paralyzed and a disabled veteran. I don't
14 know how much lower you can go. But I just want to
15 explain to you that freedom of speech isn't free,
16 and whether you hurt someone's feelings or people
17 die to give you those rights, we all have those
18 rights, and I hope that you use your rights to
19 sentence him to whatever you feel is appropriate,
20 but I will tell you that my family and my kids still
21 won't be able to play outside. Maybe it is crap,
22 Jeff, but you did this

23 MR. WEINHAUS: No, I didn't.

24 THE WITNESS: Yes, you did.

25 JUDGE SUTHERLAND: No back and forth on the

1 record. Go ahead.

2 THE WITNESS: Out of respect for the Courts
3 and your privilege serving as the jury, I thank you
4 for what you've done, and I've concluded what I had
5 to say, and God bless you all.

6 JUDGE SUTHERLAND: Cross.

7 MR. EASTWOOD: No cross examination, sir.

8 JUDGE SUTHERLAND: Thank you, you may step
9 down.

10 MR. PARKS: Your Honor, the State will not
11 be calling Corporal Mertens, he's too distraught to
12 testify at this time. State has no further
13 evidence.

14 JUDGE SUTHERLAND: Evidence for the
15 defendant.

16 MR. EASTWOOD: Yes, Your Honor. I call Judy
17 Kropf Weinhaus.

18 (WHEREUPON JUDY KROPF WEINHAUS WAS SWORN IN)

19 **DIRECT EXAMINATION OF JUDY KROPF WEINHAUS**

20 **QUESTIONS BY MR. EASTWOOD:**

21 Q Judy, can you please introduce yourself to
22 the jury.

23 A My name is Judy Kropf, it was Weinhaus at
24 the time.

25 Q And were you married to Jeff Weinhaus?

1 A Yes.

2 Q What period of time were you married to
3 Jeff?

4 A Until May of this year.

5 Q When did you get married?

6 A December 26 of 2007.

7 Q Did you live with him together as a family?

8 A Yes.

9 Q Is he a violent man?

10 A No.

11 Q Did he -- was he a verbally abusive man?

12 A In a roundabout way sometimes.

13 Q Toward you or towards people outside the
14 home?

15 A Towards me sometimes in his writings and
16 papers but most people didn't take him seriously.

17 Q What type of father was he to his children?

18 A He was good, he was concerned. He tried to,
19 his son, when he wasn't living with him, he would
20 talk to him on a daily basis, and he was a good dad
21 when he was living with us. His younger kids were
22 not as close by and easy to keep in touch with, but
23 he tried to keep in touch with all his kids.

24 Q He had an ex-wife too, didn't he?

25 A Yes.

1 Q He paid child support to her?

2 A Yes.

3 Q After the day of the incident at the gas
4 station, was Jeff taken to St. John's Mercy
5 Hospital?

6 A Yes.

7 Q And how long was he in the hospital?

8 A For a month.

9 Q I know you're not a doctor, I'm not going to
10 ask you for medical testimony, but generally
11 speaking what do you know in laymen's terms of his
12 injury?

13 A He had brain damage, I can't remember the
14 term, I think it was anorexic brain damage, and it
15 was because he bled out so heavily and because all
16 the oxygen was out of his lungs. What they
17 explained to me was that he didn't have enough blood
18 pressure to get the blood and oxygen to his brain,
19 so he was without oxygen, which caused the brain
20 damage, which caused memory loss.

21 Q And do you know if his physical condition
22 has changed? I'm not asking you for medical
23 opinion, just what you noticed as his wife.

24 A We were still together until I filed for
25 divorce in March of this year, though he was in jail

1 obviously, but when I would visit him and I would
2 tell him things, even serious things and we
3 mentioned it the next day, he wouldn't remember that
4 I even said it to him. So he still has memory loss.

5 Q I know obviously you're divorced from him.
6 Do you still support him?

7 A Not financially, no.

8 Q But do you support him as a person?

9 A Yes, oh, yes.

10 Q Do you care about him?

11 A Yes.

12 Q Despite your differences?

13 A Right, that's correct.

14 Q Do you think generally that he's a good and
15 decent man?

16 A Yes.

17 Q Is what happened at this gas station in
18 character for Jeff Weinhaus?

19 A No.

20 MR. EASTWOOD: Thank you very much.

21 JUDGE SUTHERLAND: I'm sorry, any cross?

22 MR. PARKS: No, Your Honor.

23 JUDGE SUTHERLAND: Thank you, you may step
24 down. Any additional evidence for the defendant?

25 MR. EASTWOOD: Your Honor, I have no further

1 evidence.

2 JUDGE SUTHERLAND: Any rebuttal?

3 MR. PARKS: No, Your Honor.

4 JUDGE SUTHERLAND: Ladies and gentlemen, I
5 have a couple more instructions, the last two you'll
6 see. There should be 12 there, I think I counted.
7 Starts with No. 21, the law applicable to this stage
8 of the trial as stated in these instructions and
9 instructions numbered one and two that the Court
10 read to you at the first stage of the trial. In
11 assessing and declaring the defendant's punishment,
12 you should consider the evidence presented to you in
13 this case, the argument of counsel and the
14 instructions of the Court. You may consider the
15 evidence presented in either stage of the trial.
16 You will be provided with forms of verdict for your
17 convenience. You cannot return any verdict as a
18 verdict of the jury unless all 12 jurors agree to
19 it, but it should be signed by your foreperson
20 alone. When you have concluded your deliberations,
21 you will complete the applicable forms to which you
22 unanimously agree and return it, it says it but it
23 should say them, together with all unused forms and
24 the written instructions of the Court.

25 Instruction No. 22, the attorneys will now have

1 the opportunity of arguing the case to you regarding
2 the punishment to be imposed. Their arguments are
3 not evidence. You will bear in mind that it is your
4 duty to be governed in your deliberations by the
5 evidence as you remember it, the reasonable
6 inferences that you believe should be drawn
7 therefrom, and the law as given in these
8 instructions. It is your duty, and yours alone, to
9 render such verdict under the law and the evidence
10 concerning the punishment to be imposed as in your
11 reason and conscience is true and just. The State's
12 attorney must open the argument. The defendant's
13 attorney may then argue the case. The State's
14 attorney may then reply. No further argument is
15 permitted by either side. Argument on behalf of the
16 State.

17 **(CLOSING ARGUMENT/PUNISHMENT PHASE BY STATE)**

18 MR. PARKS: Thank you, Your Honor. Sergeant
19 Folsom said it better than anyone else could,
20 freedom is not free. There is responsibility that
21 goes along with everyone's actions, and Jeff
22 Weinhaus has no remorse for his actions. Jeff
23 Weinhaus would come out and do this again if he had
24 the same situation. Jeff Weinhaus has no respect
25 for the law. Jeff Weinhaus has no respect for

1 anyone except himself. He would have shot those two
2 officers down in the street if he would have gotten
3 the chance. And after he got out, what did Sergeant
4 Folsom (sic) do, he started harassing him and he had
5 his friends harass him and his family and Corporal
6 Mertens' family, all because he has no respect for
7 the law. This man does not deserve to be in our
8 society. This man needs to be locked up and that's
9 what you need to consider. You heard Sergeant
10 Folsom, you heard what had happened to him. If he
11 would have just complied with the order to get down
12 on the ground, he would have been facing three
13 charges, one the Judge has thrown out, and he would
14 have been facing nothing more than a possession of
15 Morphine and a misdemeanor marijuana charge, but he
16 came there armed to the teeth. He came with a gun
17 on his side, he came with a shotgun in the back of
18 his car and he came with another pistol in the
19 driver's seat. He came looking for a fight, and he
20 found it, and he found it by two trained officers
21 who defended themselves, and now we must ask you to
22 protect the rest of us from this man because this
23 man doesn't care. You can see him over there
24 smirking. You can see what he's thinking right now.
25 He could care less. I'm asking you not to let him

1 out among us again, and we will talk about the
2 specific punishment that I'm going to ask when I get
3 back up here and address you again.

4 JUDGE SUTHERLAND: Argument on behalf of
5 defendant.

6 **(CLOSING ARGUMENT/PUNISHMENT PHASE BY DEFENDANT)**

7 MR. EASTWOOD: Ladies and gentlemen, this
8 shooting is a tragedy. It is a tragedy that has
9 destroyed three families, Sergeant Folsom's,
10 Corporal Mertens' and Jeff Weinhaus's. There are no
11 winners out of what occurred at the gas station that
12 day, there are only losers. You have heard,
13 however, that Jeff Weinhaus for many years engaged
14 in extremist political speech but never harmed
15 anyone. You've heard that he was a pest and an
16 annoyance to many in this community with his speech
17 but that he did not hurt them. The violence that
18 occurred that day was out of character. You've
19 heard from his ex-wife that although they are
20 divorced, she doesn't have ill will towards him.
21 She still supports him as a man. That he was a good
22 father, he pays his child support to his ex-wife.
23 You've also heard as a result of this shooting that
24 he is not the same and has not been the same. So,
25 there are no winners here today, there are only

1 losers. The man you see right there is not the man
2 who went to the gas station on September 11th, 2012.
3 He's just not there. And so you've done your jobs,
4 you've done the toughest part of your job in some
5 ways. I hope you don't hold it against me that I
6 was advocating for my client just as you don't hold
7 it against Mr. Parks, that's how the system works,
8 it's an adversarial system, that's how the system
9 gets to the truth. It's not about him, it's not
10 about him, not about Chris Combs, it's about the
11 facts and the evidence and your judgment. This is a
12 tough one, folks. This is a tough one. This is not
13 a predator, this is not a man who was a lifetime
14 threat to the community. This is about something
15 terrible that happened at a gas station. It wasn't
16 necessary, it wasn't right but it also does not pose
17 a current threat to the community, and therefore I'm
18 asking you for leniency, because extreme punishment
19 in this instance does not send a message, it doesn't
20 achieve anything, it doesn't heal anything, it
21 serves no purpose. Thank you.

22 JUDGE SUTHERLAND: Concluding argument on
23 behalf of the State. You have five minutes
24 remaining.

25 **(CONCLUDING ARGUMENT/PUNISHMENT PHASE BY STATE)**

1 MR. PARKS: Thank you. Ladies and
2 gentlemen, I'm asking you to sentence the defendant
3 in Count 1, which is the possession of the Morphine,
4 to four years in the Department of Corrections. I'm
5 asking you to sentence the defendant on Count 3,
6 which is the misdemeanor possession of marijuana, to
7 12 months in a county jail because these are the
8 normal range of punishments that a first-time
9 offender would normally get in Franklin County. And
10 for those charges, four years and 12 months is a
11 reasonable time. But now we're looking at the
12 assault of a law enforcement officer, and we're
13 looking at the armed criminal action, the use of a
14 weapon against our law enforcement officers. They
15 ask you to mitigate because he was shot, but he
16 would have shot those officers. He would do that
17 again. Jeffrey Weinhaus has no remorse for his
18 actions. He sits there today smirking at you,
19 laughing at all of us because he thinks that he is
20 above the law. Now I'm not asking for vengeance,
21 I'm not asking for retribution, I am asking you to
22 keep this man out of society. How do we do that?
23 We put them in prison. Ladies and gentlemen, I'm
24 asking you to sentence the defendant to 30 years in
25 the Department of Corrections on Count 4, the

1 assault of a law enforcement officer. I'm asking
2 you to also give him 30 years for using that gun.
3 I'm asking you to send a message to everyone. I'm
4 asking you to send a message to his followers who
5 have harassed these two law enforcement officers
6 that this is not proper. And I'm asking you to send
7 a message to him that all rights have
8 responsibilities. All of our constitutional rights
9 come not as a privilege but as a right with a
10 corresponding responsibility to use those rights
11 properly. And this man did not do that. This man
12 is a danger to society and I'm asking you for the
13 people of Franklin County, for the people of the
14 State of Missouri, don't put him back among us, put
15 him in jail, put him in the Department of
16 Corrections for 30 years on both counts because he
17 does not need to be among us. Thank you.

18 JUDGE SUTHERLAND: Ladies and gentlemen,
19 it's now time for you to retire again, deliberate
20 and arrive at your verdict. The sheriff will
21 deliver to you instructions and verdict forms. When
22 you arrive at your verdicts, notify the sheriff by
23 knocking on the door. You will be told when to
24 return to the jury box.

25 (WHEREUPON THE JURY EXITED THE COURTROOM)

1 JUDGE SUTHERLAND: We're in recess until we
2 hear the knock on the door.

3 (COURT IN RECESS FROM 3:20 PM TO 4:43 PM)

4 JUDGE SUTHERLAND: I understand the jury has
5 arrived at a verdict. Let's bring them in and find
6 out.

7 (WHEREUPON THE JURY ENTERED THE COURTROOM)

8 **(WHEREUPON THE SENTENCING VERDICT WAS READ)**

9 JUDGE SUTHERLAND: Ms. Sieve, the jury has
10 reached a verdict as to punishment?

11 MS. SIEVE: Yes, sir.

12 JUDGE SUTHERLAND: I'll read the verdicts at
13 this time. As to Count 1, we the jury having found
14 the defendant Jeffrey R. Weinhaus guilty of
15 possessing a controlled substance, assess and
16 declare the punishment for possessing a controlled
17 substance an imprisonment for a term of two years,
18 signed K. Sieve, foreperson. Also in the numbered
19 lines below that they filled in two years on the
20 line No. 1 imprisonment for a term of two years. Is
21 that the verdict of all of you?

22 (ALL YESES WERE HEARD)

23 JUDGE SUTHERLAND: As to Count 3, we the
24 jury having found the defendant Jeffrey R. Weinhaus
25 guilty of possessing marijuana assess and declare

1 the punishment for possessing marijuana an
2 imprisonment in the county jail for a term of one
3 year, again signed K. Sieve, foreperson. And in
4 Paragraph 1 below that one is filled in for
5 imprisonment in the county jail. Is that the
6 verdict of all of you?

7 (ALL YESES WERE HEARD)

8 JUDGE SUTHERLAND: As to Count 4, we the
9 jury having found the defendant Jeffrey R. Weinhaus
10 guilty of assault of a law enforcement officer in
11 the first degree assess and declare the punishment
12 for assault of a law enforcement officer in the
13 first degree an imprisonment for a term of 30 years,
14 signed K. Sieve, foreperson. And 30 years is also
15 filled in in the imprisonment blank in paragraph No.
16 2. Is that the verdict of all of you?

17 (ALL YESES WERE HEARD)

18 JUDGE SUTHERLAND: Finally as to Count 5, we
19 the jury having found the defendant Jeffrey R.
20 Weinhaus guilty of armed criminal action assess and
21 declare the punishment for armed criminal action an
22 imprisonment for a term of 30 years, signed K.
23 Sieve, foreperson. And the 30 years is filled in in
24 Paragraph 1 below that as well. Is that the verdict
25 of all of you?

1 (ALL YESES WERE HEARD)

2 JUDGE SUTHERLAND: Verdicts, guilty verdicts
3 and the not guilty verdicts as well as the
4 punishment verdicts are ordered filed. It's
5 impossible for me on behalf of everybody to thank
6 you for your time, your effort in sitting on this
7 case. It was a very interesting case and a
8 difficult case. We certainly appreciate that.
9 They'll be taken off the jury panel for the rest of
10 the term, I assume. I hope the answer is yes.
11 Yeah, they should be taken off for the rest of the
12 term and I'll tell you why, because they're not
13 going to tell you this when they send you out that
14 questionnaire and cover letter but there's a
15 Missouri statute that provides that if you serve on
16 a trial jury, not just come in for the jury to be
17 selected from but if you actually serve on a trial
18 jury, you are entitled to be excused from jury
19 service for the next two years, okay. It's not
20 mandatory if you just love this stuff and you're
21 having fun and get called again and you want to come
22 in, that's fine, I don't see a whole lot of takers
23 there, but it's a random computer selection whenever
24 they select a new term every few months, it's a
25 random selection, it doesn't -- the program does not

1 permit us to say hey, these people were on a jury,
2 don't select them. It's possible that some of you
3 might be selected again within the next couple of
4 years. So if you get another one of those letters
5 that says you've been selected for jury service, if
6 it's within two years of today, call the clerk's
7 office and say hey, I was on a jury in October of
8 2013, I'd like to be excused. It will take me a
9 minute or two in the courtroom, but I'll come back
10 in the jury room shortly to answer any questions you
11 may have and explain why I dismissed those other two
12 counts. But with that you are discharged. I am
13 going to ask anybody that's in the courtroom, other
14 than the jury at this time, to remain in the
15 courtroom, be kept in the courtroom until the jury
16 has had a chance to clear the courthouse, and that
17 will be a few minutes. With that, ladies and
18 gentlemen, you are discharged. We have excuses for
19 anybody that needs them for work.

20 (WHEREUPON THE JURY EXITED THE COURTROOM)

21 JUDGE SUTHERLAND: Mr. Eastwood, do you want
22 an additional 10 days for filing a motion for a new
23 trial?

24 MR. EASTWOOD: Yes, Your Honor.

25 JUDGE SUTHERLAND: The defendant is granted

1 an additional 10 days for a total of 25 days to file
2 a motion for new trial. We'll set the argument on
3 the motion for new trial and the sentencing, if the
4 motion for new trial is not granted, for November
5 25, 2013 at 9:00 a.m. As I understand it, looking
6 at the schedule, we will probably be in Division 7,
7 the courtroom down at the other end on this floor,
8 but that's subject to change, so you may want to
9 check with the clerk's office ahead of time, okay.

10 MR. EASTWOOD: Thank you, Your Honor.

11 JUDGE SUTHERLAND: Defendant is remanded
12 into the custody of the sheriff. We're in recess.

13 MR. PARKS: Thank you, Your Honor.

14 (TRIAL CONCLUDED)
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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 Franklin County Justice Center, 401 E. Main Street,
12 Union, in the County of Franklin, State of Missouri
13 on the 10th 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.

5
6 _____/s/ Kim Wrocklage, CCR No. 885_____
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