

1 STATE OF WISCONSIN CIRCUIT COURT DOUGLAS COUNTY

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3 STATE OF WISCONSIN

JURY TRIAL

4 Plaintiff,

Case Nos. 24 TR 681

5 vs.

24 FO 163

6 IAN R. CUYPERS

7 Defendant,

8 -----

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10 The above-entitled matter came to be heard
11 before the **Honorable KELLY J. THIMM**, Circuit Court
12 Judge - Branch 1, on **July 16th, 2024**, at 8:32 a.m. in
13 the Douglas County Courthouse, Superior, Wisconsin.

14
15 APPEARANCES

16 HARLEY L. PRELL, City Attorney, 1316 North
17 14th Street, Suite 200, Superior, Wisconsin 54880,
18 appeared in person representing the plaintiff, THE CITY
19 OF SUPERIOR.

20 JOHN P. HOLEVOET, Attorney, 44 East Mifflin
21 Street, Suite 905, Madison, Wisconsin 53703, appeared
22 in person representing the defendant, IAN R. CUYPERS.

23 IAN R. CUYPERS, the defendant, appeared in
24 person with counsel.
25

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Entry of Judgment on the Verdict

By the Court

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EXHIBITS

MARKED RECEIVED

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1 THE COURT: We'll call case Nos. 2024 FO 163,
2 2024 TR 681. They're both City of Superior vs. Ian
3 Cuypers. I believe it's Mr. Cuypers with his attorney,
4 Mr. Holevoet. Mr. Prell appears present. It's
5 scheduled for jury trial today. There are a few
6 preliminary matters I wanted to go through, some of
7 them we talked about last week.

8 Anybody in the audience, you're going to need
9 to sit in the front row, because all of those spots are
10 going to be reserved for jurors. So everybody sitting
11 in the front row, if you need to move around, and
12 please spread the word if anybody else comes in before
13 the jury comes in.

14 As far as jurors go, do not interact with the
15 jurors. I'll try to keep them in the jury room during
16 breaks. The jury room is on the second floor. So this
17 third floor should be available for bathrooms, water,
18 et cetera.

19 There's already been a sequestration order.
20 The one exception was the officer with you,
21 Mr. Prell?

22 MR. PRELL: That's right, Your Honor.

23 THE COURT: All right. Make sure your
24 microphones are on -- that does remind me. We do have
25 one person who does have hearing impairment. She's got

1 hearing aids. We're going to see how it works. She
2 may need to have some closed captioning. So I may need
3 to hook up Zoom for her to use closed captioning for
4 her to be able pick up everything everybody is saying.

5 Please remind your witnesses when they come
6 to the witness stand to speak slowly and clearly into
7 the microphone, in particular, because we're
8 potentially having one juror who has some hearing
9 difficulties.

10 So as I indicated, I've ordered
11 sequestration.

12 As far as notes go, I think we talked about
13 it, but I just want to check it off my checklist.

14 Any objection to the jurors taking notes,
15 Mr. Prell?

16 MR. PRELL: None.

17 THE COURT: Mr. Holevoet?

18 MR. HOLEVOET: No.

19 THE COURT: All right. Then jurors will be
20 taking notes.

21 As far as objections go, state your grounds,
22 brief sentence or two for the objection. If we need to
23 make a further record, we can do that with the jury out
24 of the courtroom, sidebar, we can recreate it then when
25 we have the jury leave the courtroom, if we need to,

1 but as far as objections, I don't want a bunch of
2 arguing in front of the jury. Obviously, I'm the judge
3 of the law. They are the judge of the facts.

4 During voir dire, I'm going to take the
5 podium and put it up at -- use a microphone, and if you
6 would please use the podium to conduct your voir dire.
7 Obviously, there are only strikes for cause. You've
8 already used your peremptory challenges last week, and
9 make sure, again, you use the microphone. I'll keep
10 that up there for opening statements.

11 Don't ask questions of individual jurors
12 about their general interests or hobbies. Do not try
13 the case during voir dire. Do not ask hypothetical
14 questions. Do not ask conversational or visiting
15 questions designed to establish rapport with the jury.
16 Do not ask the jury of a pledge of any kind. I have my
17 standard through the Benchbook questions I'll be asking
18 the jurors.

19 And were there any specific questions you
20 wanted me to ask, other than standard questions,
21 Mr. Prell?

22 MR. PRELL: No, Your Honor.

23 THE COURT: Mr. Holevoet?

24 MR. HOLEVOET: No, thank you.

25 THE COURT: All right. And, Mr. Prell, I

1 don't know if your mic -- maybe you're just too far
2 away from the mic but it's not really picking up.

3 I did put a packet of instructions and
4 verdict forms on your tables. I left them last night.
5 Take a look at those. It's a one-day trial. So we're
6 going to need to go through that stuff fairly quickly.
7 Use your time wisely.

8 As far as that goes, we are assembling the
9 jury. I imagine we'll be ready to go right around
10 9:00.

11 So any other preliminary matters we need to
12 address today -- or at this time, Mr. Prell?

13 MR. PRELL: Just a housekeeping question,
14 Your Honor. If and when it comes time when to play
15 video that has an audio component, the City has
16 followed the local rule and has transcripts at the
17 ready and actually eFiled, but is the Court's
18 expectation then that a -- a copy of that transcript be
19 provided to each juror?

20 THE COURT: I leave that up to -- it's nice
21 for the jurors to have copies of the transcripts to go
22 with during the video. The instruction, obviously,
23 that I give to the jury tells them that they're to base
24 it on their memory, not necessarily what the transcript
25 says. Typically what I've seen parties do, is give

1 copies of transcripts to the bailiff. The bailiff then
2 will give them to the jurors. Once the video and audio
3 are played, then they'll take the transcripts away, and
4 those will then be given back to you, Mr. Prell, but
5 it's kind of up to -- if you want them to have a
6 transcript, I don't know that I see a problem with
7 that.

8 Mr. Holevoet, any preference how you want to
9 proceed?

10 MR. HOLEVOET: Not necessarily. I don't have
11 copies for all jurors but I did eFile four copies.
12 Also, I think some of those might be duplicative. I
13 think in some instances they may not be the same video,
14 but they've been eFiled as exhibits also.

15 THE COURT: Okay. So it sounds like, Mr.
16 Prell, you can do it however you want to do it. I
17 think it's best to get copies for the jurors, but,
18 again, I'll leave that up to the parties how to proceed
19 with it, and just -- what I'll do is, if you give me
20 the tip-off, Mr. Prell, before you do that, I'll give
21 one instruction about the audio video.

22 If, Mr. Holevoet, you think I should give it
23 more than the one time, depending on who is doing the
24 video, I'm happy to give that instruction multiple
25 times, but I tend to give it just one time. So I'll

1 leave it up to you guys, whatever you think.

2 Anything else, Mr. Prell?

3 MR. PRELL: No, Your Honor.

4 THE COURT: Mr. Holevoet?

5 MR. HOLEVOET: Judge, I did see something in
6 the jury instructions already, but we can take that up
7 later or we can deal with it now, whatever the Court's
8 pleasure is.

9 THE COURT: Typically, I wait unless it's a
10 preliminary jury instruction I'm going to be giving.
11 If it's something later on, we can wait later to deal
12 with it. If you want to give me a heads-up. Was there
13 just a problem with one of them?

14 MR. HOLEVOET: I think we're missing part of
15 element four of 1766.

16 THE COURT: Okay. And I think what I did, is
17 I just took what Mr. Prell gave me and put it on there.
18 Did you present a substantive instruction?

19 MR. HOLEVOET: Just as a list --

20 THE COURT: Okay.

21 MR. HOLEVOET: -- saying that I wanted 1766.
22 Element four of 1766 reads in the standard jury
23 instruction, "the defendant knew that, then parenthesis
24 officer, was an officer in an official capacity and
25 with lawful authority." That's there.

1 And then it continues, "and the defendant
2 knew, parenthesis, his or her conduct would obstruct
3 the officer." So that second part of the sentence is
4 missing.

5 THE COURT: Mr. Prell?

6 MR. PRELL: If he's reading from the jury
7 instruction, which I trust he is, that seems like it
8 would belong.

9 THE COURT: Okay. So I'll take a look at the
10 standard instruction and then try to add that here.
11 I'll have some time before we bring the jury in.

12 Anything else, Mr. Holevoet?

13 MR. HOLEVOET: No, thank you.

14 THE COURT: Okay. What I'll do is -- and
15 then I'll get you -- hopefully it won't run off, and
16 then I'll give that as a preliminary instruction to the
17 jurors, too. So I'll make sure I add that in there,
18 that extra part in the standard and compare the two.

19 Were there any other differences between that
20 and the standard?

21 MR. HOLEVOET: Not that I could see.

22 THE COURT: All right. Anything else, Mr.
23 Holevoet?

24 MR. HOLEVOET: No, thank you.

25 THE COURT: All right. Why don't we be ready

1 to go then at 9:00, and we'll start with voir dire and
2 then probably take a break and then give opening
3 instructions and statements. If we go fairly quickly,
4 we could even give opening instructions prior to the
5 jury taking a break, but we'll see how that goes.

6 All right. Thank you. We're adjourned until
7 9:00.

8 MR. PRELL: Your Honor?

9 THE COURT: Yep.

10 MR. PRELL: May I point one other thing in
11 the instructions real quick before I forget?

12 THE COURT: Oh, sure.

13 MR. PRELL: 2680, so it's the page after the
14 one we were just on. There's reference --

15 THE COURT: Hold tight. Just a second. I'm
16 just getting to it.

17 THE COURT REPORTER: Mr. Prell, could you
18 pull your microphone closer?

19 MR. PRELL: Sure.

20 THE COURT: Yes, sir.

21 MR. PRELL: There's reference to elements
22 that the State must prove, and I think that should
23 be -- I think City should be substituted for State.

24 THE COURT: What page is that on?

25 MR. PRELL: Five.

1 THE COURT: Where does it say State?

2 MR. PRELL: Mine says in bold -- there are

3 several bold categories -- statutory definition of the

4 offense, burden of proof, and then there is an elements

5 that the State must prove.

6 THE COURT: So that one spot should be City

7 then?

8 MR. PRELL: That's my opinion.

9 THE COURT: Okay. I'll make that change,

10 too.

11 Was there anyplace else in that instruction?

12 MR. PRELL: I don't see anything.

13 THE COURT: All right. Sounds good.

14 (Recess taken at 8:42 a.m.)

15 (Proceedings continued at 9:06 a.m.)

16 (Potential jurors enter the courtroom.)

17 THE COURT: Everybody can be seated.

18 All right. Before we get started, ladies and

19 gentlemen of the jury, I just want to do a few kind of

20 housekeeping matters, tell you how things are going to

21 go today, explain the process a little bit to you.

22 I'm Judge Thimm. I'm one of two of the

23 Douglas County Judges here, as seated. We really

24 appreciate your time here in this matter. I'll be

25 introducing the parties before long.

1 A few things. My questions are going to be
2 directed -- I'm going to be asking you guys questions
3 in the jury box, but they go for everybody also in the
4 jury back behind.

5 All the people back there, you don't have to
6 worry about raising your hands at this point, but
7 everybody in the box, if the answer is in the
8 affirmative, make sure you raise your hands real high
9 so we can see you.

10 The one thing I've been telling the
11 attorneys, too, is we're going to be speaking in the
12 microphones trying to speak slowly and clearly so
13 everybody can hear.

14 Anybody having a problem hearing me?

15 (No one raised their hand.)

16 THE COURT: All right. If anybody has a
17 problem hearing, also raise your hand, and I'll direct
18 either myself or the attorneys to speak into the mic
19 louder.

20 As far as the process goes, it's always
21 interesting, because the people in the back of the
22 courtroom you're going to have to be paying attention
23 to these questions because you may be called upon to
24 take the place of somebody in the jury box.

25 All of you were selected randomly

1 through either driver's license records or ID card
2 records, and then the six up here were randomly
3 selected to be up here. There's another random order
4 to take the place of any of the jurors that are in the
5 box.

6 That being said, the reason why a lot -- I
7 get asked the question, how come there are so many
8 people here, because you only need six jurors for this
9 case? And my comment is, if I ran out of jurors here
10 for some reason, then I send the Sheriff out to Big
11 Apple Bagels or on the street to pick some jurors for
12 me. It's much better, I think, to have people knowing
13 they're going to have a one-day jury trial today than
14 picking at random citizens just off the street. So
15 that's why we have more of you guys here than maybe we
16 need, but I would prefer it that way. That's kind of
17 how we've proceeded. So you guys are just as
18 important, and your time is just as valuable as anybody
19 else's. So we really appreciate that.

20 The other question is how come our juror pay
21 is so low? I have nothing to do with how much you get
22 paid as a juror. That's our County Board. The County
23 Board has determined and has not raised it in a long
24 time. So if you have a problem with the amount you get
25 paid as a juror, which I know is low and I apologize

1 for that. The County Board sets that. So please talk
2 to your County Board representative about raising it.

3 With that being said, I'm going to be asking
4 questions. This isn't the type of case that's a real
5 sensitive type case, but some of the questions may get
6 a little bit personal. We'll try not to be too
7 personal with you, but that being said, it's not meant
8 to pry into your business, but there are certain
9 questions I'm required by law to ask and the attorneys
10 are required to ask. So we'll go from there.

11 With that being said, the first thing I want
12 to do is tell you the name of the case. The case here
13 today is City of Superior vs. Ian Cuypers. As I
14 indicated, and as you all should know, we expect the
15 case to be a one-day jury trial. It may go into the
16 evening hours. It just kind of depends. I'm not sure
17 how all the evidence is going to come in, but you may
18 be in deliberations in the evening hours, but this is a
19 one-day jury trial.

20 This is a civil case, not a criminal case.
21 I'm going to read the citation allegations to you so
22 you know what the charges are. A citation is nothing
23 more than a written formal accusation against the
24 defendant charging the commission of one or more
25 non-criminal acts. You are not to consider the

1 citation as evidence against Mr. Cuypers in any way.
2 It does not raise any inference of guilt. The
3 citations allege, first, that Mr. Cuypers obstructed an
4 officer, and, second, that he drove the wrong way down
5 a one-way street.

6 Mr. Cuypers has entered a plea of not guilty
7 to both of these citations, which means the City of
8 Superior must prove every element of those offenses
9 charged by clear, satisfactory, and convincing
10 evidence. There is more I'll give you on the burden of
11 proof, but suffice to say, this isn't the highest
12 burden, beyond a reasonable doubt. This is clear,
13 satisfactory, and convincing evidence.

14 I'll now introduce the parties to you. The
15 first person, the defendant in today's case, is Ian
16 Cuypers.

17 Mr. Cuypers, if you'd please stand.

18 He's represented by John Holevoet.

19 Mr. Holevoet, if you'd please stand.

20 Thank you, gentlemen.

21 Representing the City of Superior is City
22 Attorney Harley Frog Prell.

23 Mr. Prell?

24 And, Mr. Prell, any witnesses that you're
25 going to be presenting today, if you could introduce

1 those to the jury.

2 MR. PRELL: Thank you, Your Honor.

3 Potential witnesses for the City include
4 Officer Justin Taylor, Patrol Officer Taylor Gaard,
5 Police Sergeant Matthew Brown, Police Chief Paul
6 Winterscheidt. Might be that some of these folks don't
7 testify today. These four are potential witnesses for
8 the City today.

9 THE COURT: Thank you, Mr. Prell.

10 Mr. Holevoet, any witnesses that you're
11 intending to call?

12 MR. HOLEVOET: None other than potentially
13 Mr. Cuypers.

14 THE COURT: Okay. That being said, anybody
15 -- you guys are all aware this is a one-day jury trial.

16 Any reason why any of you could not serve on
17 today's one-day jury trial?

18 All right. And that is Ms. -- is it Pattee?

19 POTENTIAL JUROR: Yes.

20 THE COURT: Okay. What's the situation?

21 POTENTIAL JUROR: I have a hard time
22 comprehending anything.

23 THE COURT: Okay. We haven't gotten there
24 yet, but as far as one-day jury trial, does the length
25 of time of the trial have any problem for you?

1 POTENTIAL JUROR: Yeah.

2 THE COURT: Okay. What's the problem with
3 today?

4 POTENTIAL JUROR: I don't understand.

5 THE COURT: Okay. So you can't sit for the
6 length of time that we're going to be here today and
7 listen to the evidence?

8 POTENTIAL JUROR: Yes.

9 THE COURT: And why is that?

10 POTENTIAL JUROR: Because I can't really
11 sit -- I can't sit too long.

12 THE COURT: Okay. If we take breaks about
13 every hour or so, and you can walk around, would that
14 help?

15 POTENTIAL JUROR: Yeah.

16 THE COURT: Could you then serve on the jury?

17 POTENTIAL JUROR: I have a hard comprehending
18 what you're saying though.

19 THE COURT: Okay.

20 POTENTIAL JUROR: I -- I can't understand.

21 THE COURT: Are there things we can do to
22 make it so you are better able to understand?

23 POTENTIAL JUROR: Probably not.

24 THE COURT: Okay. Have you understood what's
25 going on here today?

1 POTENTIAL JUROR: No.

2 THE COURT: Do you understand that you're one
3 of the six jurors selected for this trial?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Do you know what jurors do?

6 POTENTIAL JUROR: No.

7 THE COURT: Do you know what a trial is?

8 POTENTIAL JUROR: No.

9 THE COURT: Okay. Mr. Prell, any objection
10 to having Ms. Pattee sit in the back of the courtroom
11 and we'll see if we get to her?

12 MR. PRELL: No objection.

13 THE COURT: Mr. Holevoet?

14 MR. HOLEVOET: No, thank you.

15 THE COURT: All right. Ms. Pattee, if you
16 want to sit back with the jurors, and we'll see if we
17 need you or not, and we'll have somebody take your
18 place for the time being.

19 William Laurvick.

20 Mr. Laurvick, any problem serving on a
21 one-day trial?

22 POTENTIAL JUROR: Nope.

23 THE COURT: Anybody else, one-day trial, bad
24 for anybody?

25 Okay. I see no hands.

1 Now, anybody have a physical or medical
2 condition including sight or hearing disability that
3 makes it impossible or impractical to serve including
4 any difficulty hearing or understanding testimony?
5 Again, I see no hands. Oh. I'm sorry. Yes.
6 POTENTIAL JUROR: Sorry.
7 THE COURT: Ms. Gravening?
8 POTENTIAL JUROR: Yeah. I do wear a hearing
9 aid but so far I've been okay.
10 THE COURT: Okay. And --
11 POTENTIAL JUROR: {Inaudible/overlapping
12 voices}
13 THE COURT: -- yep. Thank you for making me
14 aware of that. And then as far as -- it's better, I'm
15 assuming, when I do this in the mic?
16 (Nonverbal response from potential juror.)
17 THE COURT: Okay. I've told the attorneys to
18 make sure they speak slowly and clearly into the
19 microphones so they can do that.
20 And actually, what I'll probably ask is, Mr.
21 Prell, until your voir dire, maybe you can switch with
22 the Officer so that you can use that microphone, and
23 you don't have to keep getting up. I don't know if it
24 can be brought over, if you just switch spots.
25 So I'll just remind -- it's a good reminder

1 to everybody, too, to speak slowly and clearly and
2 using those microphones.

3 My next question is: Anybody know Mr.
4 Cuypers, the defendant?

5 (No one raised their hand.)

6 THE COURT: Anybody acquainted with him, know
7 any of his relatives?

8 (No one raised their hand.)

9 THE COURT: Anybody seen him before?

10 (No one raised their hand.)

11 THE COURT: Okay. How about Mr. Holevoet.
12 Anybody know Mr. Holevoet?

13 (No one raised their hand.)

14 THE COURT: Anybody know Mr. Prell?

15 (No one raised their hand.)

16 THE COURT: Anybody related to anybody
17 mentioned so far?

18 (No one raised their hand.)

19 THE COURT: Next, regarding the attorney --
20 or the witnesses. Anybody know the witnesses that were
21 mentioned?

22 (No one raised their hand.)

23 THE COURT: Anybody related to either
24 witnesses or the parties or the attorneys?

25 Okay. Again, no hands for any of those

1 questions.

2 Anybody heard anything about this case?

3 Okay. Again, I see no hands.

4 Anybody have prior jury service? Anybody

5 been on a jury before?

6 All right. I see Ms. Wallin. How long ago?

7 POTENTIAL JUROR: Maybe ten years ago --

8 maybe 15.

9 THE COURT: Was it in Douglas County or

10 somewhere else?

11 POTENTIAL JUROR: It was Douglas County.

12 THE COURT: This branch or the other one?

13 POTENTIAL JUROR: Either one of them.

14 THE COURT: Okay. Was I here or was it my

15 predecessor?

16 POTENTIAL JUROR: I don't know.

17 THE COURT: Okay. What kind of case?

18 POTENTIAL JUROR: Police brutality.

19 THE COURT: Okay. And did you -- was it

20 criminal or was it a civil case?

21 POTENTIAL JUROR: I believe it was criminal.

22 THE COURT: Okay. You remember the outcome,

23 what happened?

24 POTENTIAL JUROR: Guilty.

25 THE COURT: Okay. Did you serve on any other

1 trials?

2 POTENTIAL JUROR: In Hennepin County I have.

3 THE COURT: Okay. And how long ago was that?

4 POTENTIAL JUROR: The '90s.

5 THE COURT: Okay. What kind of case or

6 cases?

7 POTENTIAL JUROR: Statutory rape.

8 THE COURT: Okay. Anything about those

9 experiences that would make it impossible or difficult

10 for you to serve as a juror?

11 POTENTIAL JUROR: No.

12 THE COURT: Okay. Didn't leave any bad taste

13 in your mouth or anything?

14 POTENTIAL JUROR: No.

15 THE COURT: Okay. Anybody else, prior jury

16 service?

17 (No one raised their hand.)

18 THE COURT: Now, this is always the very

19 interesting -- now, there are only six of you, so it's

20 probably not going to be quite as interesting, but any

21 of the six of you know one another?

22 All right. I see no hands.

23 I will tell you the story of a lifetime. I

24 had a husband and wife in the jury. There were 12 of

25 them but a husband and wife. One of them ended up

1 getting picked. It was a civil case, multi-day. The
2 wife got picked. The husband got struck, and he
3 actually sat and watched the trial, which brings me to
4 the next.

5 If anybody wants to sit and watch, these are
6 all open to the public. We rarely have much of an
7 audience, but you are welcome to stick around and watch
8 the trial if you're so interested.

9 Anybody -- I know this involves the City of
10 Superior Police Department. Anybody know any officers
11 on the Superior Police Department -- know related to,
12 anything?

13 Ms. Wallin, who do you know?

14 POTENTIAL JUROR: Hillary.

15 THE COURT: Okay. And would what -- knowing
16 she was on -- or is on the City of Superior Police
17 Department, affect your ability to be fair and
18 impartial?

19 POTENTIAL JUROR: No.

20 THE COURT: You don't know any of the
21 officers mentioned?

22 POTENTIAL JUROR: No.

23 THE COURT: She hasn't talked about them or
24 anything?

25 POTENTIAL JUROR: No.

1 THE COURT: Okay. Anybody else know City of
2 Superior Police Officers?

3 All right. Again, I see no hands.

4 Anybody have a feeling of bias or prejudice
5 against either the City of Superior or Mr. Cuypers?

6 (No one raised their hand.)

7 THE COURT: Anybody feel like just because
8 Mr. Cuypers is here, he must have done something wrong?

9 All right. I see no hands.

10 Anybody expressed an opinion about whether
11 Mr. Cuypers has done anything wrong at this point?

12 (No one raised their hand.)

13 THE COURT: Anybody researched this case?
14 Looked up what you guys were going to be serving here
15 today for?

16 All right. Again, no hands for any of those
17 questions.

18 Now, I am the judge of the law, and you
19 jurors are the judges of the facts. I'm going to be
20 giving you opening instructions. Throughout the trial
21 I might be giving you some legal instructions, and at
22 the end, I'm going to be giving you legal instructions.
23 Even if it is against your belief system, you're going
24 to be duty-bound to follow my instructions no matter
25 what you believe. Is anybody going to have a problem

1 with that?

2 Again, I see so hands.

3 Anyone have a philosophical or religious
4 problem with serving on a jury?

5 All right. Again, I see no hands.

6 And this is my final question before I turn
7 it over to the attorneys. Anybody for any reason feel
8 like you could not be a fair and impartial juror on
9 today's case?

10 All right. No hands

11 Mr. Prell, go ahead.

12 MR. PRELL: Thank you, Your Honor.

13 As the Judge indicated, I'm the City
14 Attorney. My name is Frog Prell. I've gone by Frog my
15 whole life. I represent the City and the officers
16 you've been introduced to earlier.

17 I won't have a lot of questions for you. I
18 think the Judge covered most of what I would like to
19 hear. A couple questions, though, I have. I know the
20 Judge asked you about police officers you may know
21 locally. My question might be little more broad than
22 that.

23 Do any of you have -- do any of you know
24 police officers from other jurisdictions?

25 Lots of hands.

1 Mr. Collins, is your relationship with police
2 officers from other areas, is it cordial?

3 POTENTIAL JUROR: Mm-hmm.

4 MR. PRELL: That's a yes?

5 POTENTIAL JUROR: Yes. Yes.

6 MR. PRELL: Okay. Ms. -- I'm sorry. Ms
7 Wallin, I think you raised your hand. The police
8 officers with whom you're associated with from other
9 jurisdictions, are those relationships cordial,
10 strained?

11 POTENTIAL JUROR: Yes. It's my brother.

12 MR. PRELL: Okay.

13 POTENTIAL JUROR: It's good.

14 MR. PRELL: What jurisdiction does he
15 represent?

16 POTENTIAL JUROR: St. Paul.

17 MR. PRELL: Okay. And I think, Ms.
18 Gravening, you raised your hand?

19 POTENTIAL JUROR: Yeah.

20 MR. PRELL: Do you have -- are your
21 relationships with other officers from other areas or
22 other parts of the state or country, are they -- are
23 they good ones? Bad ones?

24 POTENTIAL JUROR: Good ones.

25 MR. PRELL: Okay. I'm interested in your

1 contacts with police, whether you ultimately -- oh.
2 I'm sorry.

3 Ma'am?

4 POTENTIAL JUROR: I have an uncle.

5 MR. PRELL: You have an uncle that serves as
6 a peace officer?

7 POTENTIAL JUROR: Yeah.

8 MR. PRELL: Okay. What jurisdiction was that
9 in?

10 POTENTIAL JUROR: Los Angeles.

11 MR. PRELL: Okay. Decent relationship with
12 your uncle?

13 POTENTIAL JUROR: Certainly.

14 MR. PRELL: Okay. In terms of contacts with
15 police officers, whether you ultimately got to know
16 that officer or not, have any of you experienced
17 contacts with police officers that left a strong
18 impression on you one way or the other?

19 Yes, ma'am? You've had a contact -- you've
20 had at least one contact with law enforcement that left
21 a strong impression on you?

22 (Nonverbal response from potential juror.)

23 THE COURT: And that's Ms. Wittkopf speaking.

24 MR. PRELL: Thank you.

25 THE COURT REPORTER: She's got to answer out

1 loud. I can't take nods of the head.

2 MR. PRELL: Yes. That -- that -- just a
3 reminder to all of us that we have to communicate with
4 words. There's a record being made of this process and
5 head nods and any nonverbal cues won't be picked up.

6 But, Ms. Wittkopf, thank you. You indicated
7 that you've had at least one contact with law
8 enforcement?

9 POTENTIAL JUROR: Yes.

10 MR. PRELL: And would you describe that as
11 something that went well or was civil in nature or more
12 something that you found distasteful?

13 POTENTIAL JUROR: Distasteful.

14 THE COURT: Okay. Not in the City of
15 Superior?

16 POTENTIAL JUROR: No.

17 MR. PRELL: Where was it?

18 POTENTIAL JUROR: New Orleans.

19 MR. PRELL: Okay. Was it an encounter
20 wherein a -- an uniformed police officer approached you
21 about something that was going on?

22 POTENTIAL JUROR: Pulled me over.

23 MR. PRELL: Okay. In a vehicle?

24 POTENTIAL JUROR: Yes.

25 MR. PRELL: Okay. Did that experience with

1 that officer in New Orleans -- how long ago did that
2 take place?

3 POTENTIAL JUROR: Twenty years ago.

4 MR. PRELL: Okay. Obviously memorable.
5 You're recalling it right now. Did -- did that
6 experience leave you with a particular impression of
7 law enforcement in general?

8 POTENTIAL JUROR: No. In that area.

9 MR. PRELL: Okay. Excluding that one
10 encounter with that one peace officer in New Orleans,
11 you can't think of any other contacts you've had with
12 law enforcement that's left a -- an impression on you
13 one way or the other?

14 POTENTIAL JUROR: There was one other time.

15 MR. PRELL: Okay. Approximately, how long
16 was that one other time?

17 POTENTIAL JUROR: 2021.

18 MR. PRELL: The -- the year 2021?

19 (Nonverbal response from potential juror.)

20 MR. PRELL: What jurisdiction was that in?

21 POTENTIAL JUROR: That was here.

22 MR. PRELL: Here in Superior?

23 POTENTIAL JUROR: Mm-hmm.

24 MR. PRELL: Okay. Was -- was that another
25 traffic matter?

1 (Nonverbal response from potential juror.)
2 MR. PRELL: Okay.
3 THE COURT REPORTER: She --
4 MR. PRELL: That's a no?
5 POTENTIAL JUROR: No.
6 MR. PRELL: Okay. That incident in 2021
7 involving a more local peace officer, did that
8 experience -- what impression did that experience leave
9 on you? Was it -- was it negative or positive or
10 somewhere in-between?
11 POTENTIAL JUROR: Started negative.
12 MR. PRELL: Okay. So you -- as you sit here
13 today, you can think of two contacts you've had with
14 law enforcement officers. One very negative in New
15 Orleans. One that started out somewhat negative here
16 locally but ended on a more positive note. Is that an
17 accurate summary?
18 POTENTIAL JUROR: Sure.
19 MR. PRELL: Have those experiences, the
20 combination of those experiences, left you with -- with
21 an impression of law enforcement in general?
22 POTENTIAL JUROR: I think {inaudible} --
23 MR. PRELL: Okay. Are you confident that you
24 could hear testimony from one or more peace officers
25 representing this jurisdiction without any sort of bias

1 or pre-inclination to doubt them or hold something
2 against them for some reason?

3 POTENTIAL JUROR: When I look at the memories
4 of police, I see no connection between my past and
5 here.

6 MR. PRELL: Sure. But in general, simply the
7 process of hearing a story told by a police officer,
8 one or more police officers, about an arrest that they
9 were involved with here, is that something you can hear
10 impartially without locking in, perhaps, on those
11 contacts that you've had previously in a way that has
12 you sort of jaded or biased in any way?

13 POTENTIAL JUROR: No. I don't think so.

14 MR. PRELL: Okay. Thanks. You're -- you're
15 -- do you have a high degree of confidence about that?

16 POTENTIAL JUROR: Yes. I believe I can.

17 MR. PRELL: Thank you.

18 POTENTIAL JUROR: No bias.

19 MR. PRELL: Whether you've had firsthand
20 personal contacts with law enforcement or not, have any
21 of you formed opinions about law enforcement through
22 the study or the participation of social media?

23 Yes, sir. You are Mr. Sullivan. What --
24 what's -- what -- what impression have you taken from
25 law enforcement from various layers of social media?

1 POTENTIAL JUROR: Well, I have an issue with
2 the idea of getting my information off of social media,
3 but social media often leads to other news media
4 sources, and I've certainly formed opinions based off
5 of those media sources that I've gotten online.

6 MR. PRELL: Okay. So you might dabble in
7 social media but for a more -- for a closer look or a
8 deeper read about the things that you're interested in,
9 you will go more towards the traditional media and
10 you'll look into the articles that trip your interest?

11 POTENTIAL JUROR: Absolutely.

12 MR. PRELL: And some of those articles, some
13 of that information, some of those links have had to do
14 with law enforcement?

15 POTENTIAL JUROR: Absolutely.

16 MR. PRELL: Okay. And as you have navigated
17 those articles or links, have you formed a particular
18 opinion as to how law enforcement does its work in this
19 country?

20 POTENTIAL JUROR: Yes.

21 MR. PRELL: Okay. What is that opinion?

22 POTENTIAL JUROR: It's not favorable.

23 MR. PRELL: Okay. So you, as you sit here
24 right now, it's fair to say that you have an
25 unfavorable view toward law enforcement in general?

1 POTENTIAL JUROR: Yes. Absolutely.

2 MR. PRELL: And you understand that every

3 single one of the witnesses for the City of Superior

4 will be professional peace officers, correct?

5 POTENTIAL JUROR: Yes. I did hear that.

6 MR. PRELL: Okay. I'm guessing then that's

7 something that has you maybe rubbed the wrong way

8 already?

9 POTENTIAL JUROR: I don't know about that.

10 MR. PRELL: What is it about the articles

11 that you've read, that you've become familiar with,

12 that drives some of this angst about law enforcement?

13 POTENTIAL JUROR: I don't agree with the word

14 angst, first of all. Second of all, I don't think it's

15 being influenced by these links. I think I'm seeing

16 real-world cases. For example, Derek Chauvin literally

17 killed someone, and that has left a very unpleasant

18 taste in my mouth.

19 MR. PRELL: Sure. Are you able, though, to

20 take that matter, that matter from -- from Minnesota

21 and distinguish it from other law enforcement endeavors

22 in other parts of the country?

23 POTENTIAL JUROR: Absolutely.

24 MR. PRELL: Are -- are you -- can you

25 recognize that, for example, that sometimes things

1 break very, very badly with very bad judgment through a
2 number of professions. In other words --

3 POTENTIAL JUROR: Yeah. I'm sorry. I don't
4 understand what you're asking me.

5 MR. PRELL: Can -- is it easy for you to --
6 to consider that some of those cases that you've read
7 that have left a bad taste in your mouth, don't
8 represent the everyday life of a peace officer in this
9 country?

10 POTENTIAL JUROR: Well, every case is on an
11 individual basis. I don't assign blame on one person
12 for the other people.

13 MR. PRELL: Sure. Okay. And with -- sorry.
14 You --

15 POTENTIAL JUROR: That --

16 MR. PRELL: -- look --

17 POTENTIAL JUROR: -- being --

18 MR. PRELL: -- you --

19 POTENTIAL JUROR: -- said --

20 MR. PRELL: -- want --

21 POTENTIAL JUROR: -- I do believe that the
22 police in America have a systemic issue.

23 MR. PRELL: This case does hinge
24 significantly on authority. Authority that officers
25 have in their interactions with members of the public,

1 specifically in the matter of -- of a traffic stop.

2 Are you of the opinion that law enforcement
3 in this country generally has too much of it? Too much
4 authority?

5 POTENTIAL JUROR: I think -- no, I don't
6 think I would say that. I think that laws are meant to
7 be followed, and there should be people enforcing laws,
8 and I very much believe that there should be a police
9 force that is in charge of doing that. However, I do
10 believe that there are individuals who have taken
11 advantage of that authority and that is systemic issue.

12 MR. PRELL: Okay. I appreciate your candor.

13 As you're sitting here right now this morning
14 in a courtroom where it -- it's possible that the only
15 witnesses you hear from will be peace officers, does
16 that give you some misgiving of any kind?

17 THE COURT: I --

18 POTENTIAL JUROR: Yes.

19 THE COURT: I'm going to just stop you there.
20 Misgiving isn't the standard.

21 The standard really is and this is the
22 question, Mr. Sullivan, can you be a fair and impartial
23 juror and base your decision only on the evidence
24 presented here today?

25 POTENTIAL JUROR: Yes.

1 THE COURT: Okay. And the things you've
2 talked about, everybody has background, those things.
3 You will set aside your personal beliefs and only base
4 your decision based upon what you see; is that true?

5 POTENTIAL JUROR: Absolutely.

6 THE COURT: That's really the standard. The
7 misgivings, things like that, I totally understand, but
8 that's not the standard.

9 So go ahead, Mr. Prell.

10 MR. PRELL: Have any of you done what's
11 referred to as -- sometimes as gig work, food delivery,
12 that sort of thing?

13 Mr. Laurvick, that's a yes?

14 POTENTIAL JUROR: Yes.

15 MR. PRELL: Okay. How has that gone for you?

16 POTENTIAL JUROR: Good.

17 MR. PRELL: Do you still do it?

18 POTENTIAL JUROR: Absolutely.

19 MR. PRELL: So there is some element of your
20 life that involves being a driver for commerce?

21 POTENTIAL JUROR: Yep.

22 MR. PRELL: Which company do you work with?

23 POTENTIAL JUROR: DoorDash.

24 MR. PRELL: Okay. And as you navigate
25 through food delivery in the DoorDash context, have you

1 formed any opinions as to, you know, law enforcement
2 should be more forgiving when it comes to drivers who
3 are trying to make a living, anything of that nature?
4 POTENTIAL JUROR: If you don't break the law,
5 they have no reason to pull you over. They have no
6 reason to give you trouble if you follow the law.
7 That's why the laws are there.
8 MR. PRELL: Okay. Thank you.
9 Anyone else have a hand to raise for that
10 one?
11 (No one raised their hand.)
12 MR. PRELL: And let's go beyond that sort of
13 work and talk about professional driving generally,
14 whether it has to do with that sort of delivery
15 protocol or context or not. Are any of you currently
16 or former professional drivers?
17 Yes, sir. Mr. Collins?
18 POTENTIAL JUROR: Yep.
19 MR. PRELL: Did you still drive for a living?
20 POTENTIAL JUROR: I do.
21 MR. PRELL: Okay. In a delivery context?
22 POTENTIAL JUROR: I deliver building
23 materials through building houses.
24 MR. PRELL: Okay. Driving is obviously a key
25 element to how you make your living?

1 POTENTIAL JUROR: My life for many years.
2 I've done three million miles over the road Class A.
3 I've done it all my life.

4 MR. PRELL: Okay. Having done it all your
5 life, having that be your bread and butter, so to
6 speak, is -- have you formed any opinions as to drivers
7 ought to be accommodated some different standard or
8 maybe some leniency when it comes to the rules of the
9 road?

10 POTENTIAL JUROR: The rules of the road are
11 the --

12 MR. PRELL: Okay.

13 POTENTIAL JUROR: -- law. You don't
14 {inaudible} from that. Yes. Sometimes it takes a big
15 truck a little longer to get going, but, you know,
16 people gotta be patient.

17 MR. PRELL: Okay. Thank you.

18 Ms. Wittkopf, I believe you raised your hand
19 for that question?

20 POTENTIAL JUROR: Yes.

21 MR. PRELL: Do you do some driving to
22 supplement your income?

23 POTENTIAL JUROR: I used to.

24 MR. PRELL: Okay.

25 POTENTIAL JUROR: Not delivers.

1 MR. PRELL: Never in a delivery context.

2 Okay. Have you formed any opinion as to the
3 relationship between law enforcement and someone who
4 drives as a living or a partial living in terms of any
5 leniencies that ought to be applied in those contexts?

6 POTENTIAL JUROR: No. Follow the law. If
7 anything, my opinion would be to consider the public a
8 bit more.

9 MR. PRELL: Thank you. I don't think I saw
10 another hand. If I did, please remind me.

11 We've talked about your knowledge of -- or
12 familiarity with police officers here locally.
13 Certainly the ones here in the room. The City of
14 Superior affects a wide range of work relevant to
15 quality of life here.

16 Have -- have any of you formed an opinion
17 about the City of Superior through your interactions
18 with its employees or officials other than law
19 enforcement?

20 (No one raised their hand.)

21 MR. PRELL: The City fills potholes. They
22 tax people. They tend to parks and trails. Can you
23 think of any element of city business, city endeavors
24 that you've interacted with that has made an
25 impression on -- impression on you one way or the

1 other?

2 (No one raised their hand.)

3 MR. PRELL: Okay. Have any of you had any
4 experience, firsthand, in a system like this as a -- as
5 a defendant?

6 (No one raised their hand.)

7 MR. PRELL: The Judge mentioned the two
8 citations that are at play today that will be the focus
9 of the conversation, and he mentioned the burden of
10 proof, and he promised he would get into that later
11 with you.

12 Is anyone so mesmerized by TV and the
13 criminal court system that we see so much on those
14 programs that they're just locked into proof that is
15 beyond a reasonable doubt and would maybe have
16 difficulties distinguishing the application of various
17 burdens of proof?

18 (No one raised their hand.)

19 MR. PRELL: You could sift through what --
20 what that means and apply that to a case that is not
21 criminal in nature?

22 (No one raised their hand.)

23 MR. PRELL: Thank you.

24 THE COURT: Thank you, Mr. Prell.

25 Mr. Holevoet?

1 MR. HOLEVOET: Good morning.
2 Does anybody know anybody else who works for
3 the City Attorney's Office besides Attorney Prell?
4 Yes. Mr. Sullivan.
5 POTENTIAL JUROR: I -- I know Mark Fruehauf.
6 MR. HOLEVOET: Okay. Anything about your
7 relationship with knowing someone else in the office
8 that would make it difficult to you -- for you to be a
9 fair and impartial juror in this case?
10 POTENTIAL JUROR: No.
11 THE COURT: And I just want to set the record
12 straight, Mark Fruehauf is the District Attorney.
13 POTENTIAL JUROR: Oh. Okay.
14 MR. HOLEVOET: Oh.
15 POTENTIAL JUROR: See -- I don't --
16 THE COURT: Yep.
17 POTENTIAL JUROR: Sorry.
18 THE COURT: No worries --
19 POTENTIAL JUROR: Ha, ha, ha.
20 THE COURT: -- Mr. Sullivan. I get it but I
21 just want to make sure everybody knows that they're not
22 in the same office.
23 MR. HOLEVOET: Different office, same
24 building. Yeah. Okay.
25 How about other people who work, family or

1 close friends, that work for the City of Superior?

2 (No one raised their hand.)

3 MR. HOLEVOET: Anyone have business dealings

4 at all with the City of Superior?

5 (No one raised their hand.)

6 MR. HOLEVOET: Anyone else know other

7 prosecutors except Attorney Fruehauf?

8 (No one raised their hand.)

9 MR. HOLEVOET: District attorneys,

10 prosecutors in other jurisdictions?

11 (No one raised their hand.)

12 MR. HOLEVOET: Anyone have any formal legal

13 training?

14 (No one raised their hand.)

15 MR. HOLEVOET: Anybody really hate lawyers or

16 the legal system?

17 (No one raised their hand.)

18 MR. HOLEVOET: You're doing well. Some days

19 my hand might go up, but anyone know any judges or

20 court staff either here in Douglas County or elsewhere?

21 Yes. Ms. -- is it Gravening?

22 POTENTIAL JUROR: Yeah.

23 MR. HOLEVOET: Do you know somebody here?

24 POTENTIAL JUROR: Not here. St. Louis

25 County. I worked with a lot of judges and attorneys

1 over there in 20 years.

2 MR. HOLEVOET: Anything about your work with
3 those folks across the bridge that would make it hard
4 for you to be objective here?

5 POTENTIAL JUROR: No.

6 MR. HOLEVOET: Now, we haven't heard any --

7 THE COURT: Wait. Wait.

8 I think you --

9 MR. HOLEVOET: Sorry.

10 THE COURT: -- might have missed Mr.
11 Sullivan.

12 MR. HOLEVOET: Oh, I'm sorry, Mr. Sullivan, I
13 didn't catch that.

14 POTENTIAL JUROR: Yeah. I -- I did mock
15 trial in high school. Judge Thimm was my coach.

16 MR. HOLEVOET: Oh. All right. Very good.
17 All right. Anything about that experience,
18 particularly harsh critique of your --

19 POTENTIAL JUROR: No.

20 MR. HOLEVOET: -- whatever, it would make it
21 hard for you to be impartial here?

22 POTENTIAL JUROR: No.

23 MR. HOLEVOET: Okay. We haven't heard any
24 evidence or heard from any witnesses yet. Knowing
25 that, who right now would vote guilty for Mr. Cuypers?

1 (No one raised their hand.)

2 MR. HOLEVOET: Who here would vote not guilty
3 for Mr. Cuypers?

4 (No one raised their hand.)

5 MR. HOLEVOET: That means none of you have
6 formed an opinion. By the way, again, remember, Mr.
7 Cuypers is presumed innocent, so at least now, there is
8 no reason not to think that he's innocent.

9 Anyone have any problem with that presumption
10 or that idea in our justice system?

11 (No one raised their hand.)

12 MR. HOLEVOET: The burden here is upon the
13 City. Anyone think that's unfair and then Mr. Cuypers
14 has to -- should put on some evidence or try and prove
15 his innocence?

16 (No one raised their hand.)

17 MR. HOLEVOET: Now, being a juror is a -- a
18 civic duty. I think actually Ms. Wittkopf might have
19 referred to it as her duty already this morning, but
20 it's also our duty just to serve on juries where we
21 think we can be fair, and that's the point, in theory,
22 of this exercise that we're doing right now.

23 If there was a pie judging contest, and as
24 you can look at me, you probably see I don't turn down
25 too many pieces of pie, but if there was a pie judging

1 contest and the last three were rhubarb, rhubarb, and
2 black raspberry, and I was offered the job to do it. I
3 hate rhubarb. I'd probably say no. Even though I want
4 to judge some pies, I can't be objective, right?
5 Because even if those are technically perfect rhubarb
6 pies, I'm going to pick the black raspberry because
7 it's my favorite. That might seem like a silly
8 example.

9 Let's take it to something more serious. My
10 uncle was a veteran, was always very civically minded,
11 had served on juries, but he had also been burglarized
12 once. Now, maybe he could not have served on a jury
13 about burglary, right? Because it was just too
14 personal for him.

15 Anything about a case involving the police,
16 and potentially obstructing a police officer, that hits
17 like that, that's too personal for you where you feel
18 like you couldn't be fair and impartial?

19 (No one raised their hand.)

20 MR. HOLEVOET: I think Ms. Wittkopf already
21 alluded to this a little bit. Anyone here ever been
22 pulled over by law enforcement for a traffic violation?

23 Okay. Everybody's hands. All right. Me --
24 me too.

25 Okay. Anyone ever been stopped for going the

1 wrong way on a one-way?

2 (No one raised their hand.)

3 MR. HOLEVOET: Okay. You're up to -- up to

4 other things then that means.

5 Anyone ever gone the wrong way on a one-way

6 before but not been stopped for it?

7 Okay. Again, me too.

8 Anyone have that interaction in -- with

9 police drawing guns on you or tasing you?

10 Okay. Ms. Wittkopf, right?

11 (Nonverbal response from potential juror.)

12 THE COURT REPORTER: She's got to answer out

13 loud.

14 POTENTIAL JUROR: Yes.

15 MR. HOLEVOET: Sorry.

16 POTENTIAL JUROR: Yes.

17 MR. HOLEVOET: Any -- anyone here nervous

18 around police officers?

19 (No one raised their hand.)

20 MR. HOLEVOET: Anyone think there's anything

21 wrong with being nervous around a police officer? That

22 it necessarily means you did something wrong?

23 (No one raised their hand.)

24 MR. HOLEVOET: Anyone think you might be

25 nervous around police officers if they did have their

1 guns out?

2 (Several jurors raised their hands.)

3 MR. HOLEVOET: Yeah. Okay. In some cases,
4 we require jurors to think about a person's state of
5 mind. Certain crimes require -- or certain offenses
6 require a certain state of mind. You can probably
7 think of examples in some case. In a murder case, they
8 might have to intend to kill somebody.

9 Now, we're not talking about anything that
10 serious, but in this case there is, for one of the
11 charges, for the going the wrong way on a one-way,
12 there is no state of mind. You don't have to mean to
13 do it. You don't have to really even know it at the
14 time you're doing it. You just have to do it.

15 Anyone think that's unfair or there should be
16 a state of mind? You should have to be held only if
17 you meant to do it or if you intended to do it?

18 (No one raised their hand.)

19 MR. HOLEVOET: The other charge, that
20 obstructing charge, it does have a state of mind
21 requirement. It's not intending but it's knowing. You
22 have to know that your actions are obstructing an
23 officer. You have to know that the officer is an
24 officer, and they're acting in a way that they're
25 legally allowed to do.

1 Anyone have any problem with that standard,
2 that there is a state of mind requirement in one of
3 these charges and not the other?

4 (No one raised their hand.)

5 MR. HOLEVOET: Anyone have a hard time
6 admitting they were wrong about something?

7 All right.

8 POTENTIAL JUROR: Only one.

9 MR. HOLEVOET: Yeah.

10 THE COURT: Mr. Sullivan.

11 MR. HOLEVOET: Mr. Sullivan raised his hand.

12 Mr. Sullivan is, I think the only person with that
13 character flaw or he's the most honest guy up there. I
14 don't know which.

15 Anyone disagree that sometimes it's
16 important, still even it's hard, to admit when you did
17 something wrong?

18 Okay. More hands there. I think I see both
19 Mr. Collins and Ms. Wallin raised their hand.

20 Have any of you ever been a part of something
21 that sort of got out of hand and you needed to -- it
22 was hard to backtrack or unwind it once it got out of
23 hand?

24 I see some people raising their hands. All
25 right. It's sort of a general -- I see Ms. Wittkopf

1 and Mr. Sullivan.

2 POTENTIAL JUROR: Oh. Sorry. Was that a
3 question?

4 MR. HOLEVOET: Nope. That's okay. I'm just
5 --

6 POTENTIAL JUROR: Oh.

7 MR. HOLEVOET: I'm just making sure that he
8 takes note of it, too. So thank you.

9 Finally, the Judge asked you about whether
10 you had heard anything about this case. Normally, I
11 think the answer is often no, and I wouldn't say this
12 is a high-profile case by any means, and you may not
13 remember or ever heard Mr. Cuypers' name, but just to
14 be clear about media attention, because it was a little
15 bit in the news some. I think there was a radio show
16 and maybe one of the TV channels here covered it and it
17 was on YouTube, about a DoorDash driver in February
18 getting tased.

19 Anyone remember seeing that report here in
20 town?

21 Okay. I see Mr. Sullivan raising his hand.

22 The fact that you saw that report, does that
23 mean you can't sit here objectively and listen to
24 everything and just consider the evidence that you're
25 presented here in court?

1 POTENTIAL JUROR: No. I can be fair.

2 MR. HOLEVOET: Anyone else, that strike a --
3 a memory for you? Again, not major news, but it
4 probably was a little blip in the news cycle back in
5 February of this year.

6 (No one raised their hand.)

7 MR. HOLEVOET: Attorney Prell had talked to
8 you a little bit and so did Judge Thimm about the
9 burden of proof and they're right, it's a lower
10 standard. It is often what we call the middle burden.
11 Clear, satisfactory, convincing and reasonable -- to a
12 reasonable certainty, that's the level of evidence you
13 need. He had asked you if anyone thought that was --
14 that anyone thought maybe that you couldn't distinguish
15 that from the criminal burden.

16 Anyone think it is somehow inherently unfair
17 that there are different burdens or you would have a
18 hard time applying that burden because of that
19 unfairness?

20 (No one raised their hand.)

21 MR. HOLEVOET: Anyone knowing that that's not
22 that highest burden, have a hard time taking this case
23 less seriously?

24 (No one raised their hand.)

25 MR. HOLEVOET: Thank you very much.

1 THE COURT: Thank you, Mr. Holevoet.
2 Mr. Prell, satisfied with the jury?
3 MR. PRELL: Yes, Your Honor.
4 THE COURT: And, Mr. Holevoet, satisfied with
5 the jury?
6 MR. HOLEVOET: Yes. Thank you.
7 THE COURT: All right. Those of you in the
8 back have survived this cut. I'll remind you that
9 there's still another trial scheduled for the end of
10 the month. Keep checking your messages, et cetera. As
11 soon as we get updates on things, we update you guys,
12 too, but as it stands right now, we still have at least
13 two trials on for the end of the month.
14 Otherwise, everybody in the back of the
15 courtroom, you are excused. Again, thank you very much
16 for your time and attention.
17 (The excused potential jurors exited the courtroom.)
18 Please be seated, but ladies and gentlemen of
19 the jury, I need you to stand and raise your right
20 hands to be sworn.
21 (The clerk swore in the jury.)
22 THE COURT: All right. You can all be
23 seated.
24 Ladies and gentlemen of the jury, before this
25 trial begins, there are certain instructions you should

1 have to better understand your functions as a juror and
2 how you should conduct yourself during this trial.

3 Your duty is to decide the case based only on the
4 evidence presented at trial and the law given to you by
5 me.

6 Anything you may see or hear or have seen or
7 heard outside the courtroom is not evidence. All
8 people deserve fair treatment in our system of justice
9 regardless of their race, national origin, religion,
10 age, disability, gender identity, sexual orientation,
11 education, income level, or any other personal
12 characteristic.

13 People make assumptions and form opinions
14 from their own personal backgrounds and experiences.
15 Generally, we are aware of these things, but you should
16 consider the possibility that you have biases of which
17 you may not be aware, which can affect how you evaluate
18 information and make decisions. You must carefully
19 evaluate the evidence and resist any urge to reach a
20 verdict that is influenced by any bias for or against
21 any party, witness, or attorney.

22 Personal opinions, preferences, or biases
23 have no place in a courtroom where our goal is to treat
24 all parties equally and to arrive at a just and proper
25 verdict based on the evidence. Do not begin your

1 deliberations and discussion of this case until all the
2 evidence is presented and I have instructed you on the
3 law.

4 Do not discuss this case among yourselves or
5 with anyone else until your final deliberations in the
6 jury room. This order is not limited to face-to-face
7 conversation. It also extends to all forms of
8 electronic communications. Do not use any electronic
9 devices such as a mobile phone or computer, text,
10 instant messaging or social networking sites, to send
11 or receive any information about this case or your
12 experience as a juror.

13 We will stop or recess from time to time
14 during the trial. You may be excused from the
15 courtroom when it is necessary for me to hear legal
16 arguments from the lawyers.

17 If you come in contact with the parties,
18 lawyers, or witnesses, do not speak with them. For
19 their part, the parties, lawyers, and witnesses will
20 not contact or speak with you, the jurors.

21 Do not listen to any conversation about this
22 case. Do not research any information that you
23 personally think might be helpful to you in
24 understanding the issues presented. Do not investigate
25 this case on your own or visit the scene either in

1 person or by any electronic means.

2 Do not read any newspaper reports or listen
3 to any news reports on the radio, television reports,
4 over the Internet, or any other electronic application
5 or tool about this trial. Do not consult dictionaries,
6 computers, electronic applications, social media, the
7 Internet, or any other reference material for
8 additional information.

9 Do not seek public information regarding the
10 public records of any party or witness in this case.
11 Any information you obtain outside the courtroom could
12 be misleading, inaccurate, or incomplete. Relying on
13 this information is unfair because the parties would
14 not have the opportunity to refute, explain or correct
15 it.

16 Do not communicate with anyone about this
17 trial or your experience as a juror while you are
18 serving on this jury. Do not use a computer, cell
19 phone, or other electronic device, including personal
20 wearable electronics, applications or tools with
21 communication capabilities to share any information
22 about this case. For example, do not communicate by
23 telephone, blog post, email, text message, instant
24 message, social media post, or in any other way on or
25 off the computer. Do not permit anyone to communicate

1 with you about this matter either in person,
2 electronically, or by any other means. If anyone does
3 so, despite you telling them not to, you should report
4 that to me.

5 I appreciate that it is tempting to discuss
6 this case with another member of your household but you
7 may not do so. This case must be decided by you, the
8 jurors, based on the evidence presented in the
9 courtroom. People not serving on the jury have not
10 heard the evidence and it is improper for them to
11 influence your deliberations and discussions in this
12 case. After the trial is completed, you are free to
13 communicate with anyone in any manner.

14 These rules are intended to assure that the
15 jurors remain impartial throughout the trial. If any
16 juror has any reason to believe that another juror has
17 violated these rules, you should report that to me. If
18 jurors do not comply with these rules, it could result
19 in a new trial involving significant time, resources,
20 and expenses to both the parties and the taxpayers.

21 You are to decide the case solely on the
22 evidence offered and received at trial.

23 Evidence is, first, the sworn testimony of
24 witnesses both on direct and cross-examination,
25 regardless of who called the witness.

1 Second, the exhibits the Court has received,
2 whether or not an exhibit goes to you in the jury room.

3 Third, facts to which the lawyers have agreed
4 or stipulated or which I have directed you to find.

5 You will not receive a copy of the written
6 transcript of the trial testimony available for your
7 deliberations. You should pay careful attention to all
8 of the testimony because you must rely primarily on
9 your memory of the evidence and the testimony
10 introduced during trial.

11 Attorneys for each side have the right and
12 the duty to object to what they consider are improper
13 questions asked of witnesses and to the admission of
14 evidence which they believe is not properly admissible.
15 You should not draw any conclusions from the fact an
16 objection was made. By allowing testimony or other
17 evidence over objection of counsel, I am not indicating
18 any opinion about the evidence.

19 You jurors are the judges of the credibility
20 of the witnesses and the weight of the evidence. It is
21 the duty of the jury to scrutinize and to weigh the
22 testimony of witnesses and to determine the effect of
23 the evidence as a whole.

24 You are the sole judges of the credibility,
25 that is the believability of the witnesses and the

1 weight to be given to their testimony.

2 In determining the credibility of each
3 witness and the weight you give to the testimony of
4 each witness, consider these factors. Whether the
5 witness has an interest or lack of interest in the
6 result of the trial. The witness's conduct,
7 appearance, and demeanor on the witness stand. The
8 clearness or lack of clearness of the witness's
9 recollections. The opportunity the witness had for
10 observing and for knowing the matters the witness
11 testified about. The reasonableness of the witness's
12 testimony. The apparent intelligence of the witness,
13 bias or prejudice, if any has been shown; possible
14 motives for falsifying testimony; and all other facts
15 and circumstances during the trial that either tend to
16 support or discredit the testimony.

17 Then give to the testimony of each witness
18 the weight you believe it should receive. There is no
19 magic way for you to evaluate the testimony. Instead,
20 you should use your common sense and experience. In
21 everyday life, you determine for yourselves the
22 reliability of things people say. You should do the
23 same here.

24 Obstructing an officer is committed by one
25 who knowingly obstructs an officer while the officer is

1 doing an act in an official capacity and with lawful
2 authority. Before you may find the defendant guilty of
3 this City of Superior ordinance offense, the City must
4 prove by evidence which is clear, satisfactory, and
5 convincing that the following four elements were
6 present.

7 First, the defendant obstructed an officer.
8 A City of Superior Police Officer is an officer. To
9 obstruct an officer means that the conduct of the
10 defendant prevents or makes more difficult the
11 performance of the officer's duties.

12 Second, the officer was doing an act in an
13 official capacity. Officers act in an official
14 capacity when they perform duties that they are
15 employed to perform. The duties of an officer include
16 the enforcement of traffic laws and the arrest of
17 persons suspected of violating laws or ordinances.

18 Third, the officer was acting with lawful
19 authority. Officers act with lawful authority if their
20 acts are conducted in accordance with the law. In this
21 case, it is alleged that officers from the City of
22 Superior Police Department first stopped the defendant
23 for the violation of a traffic law then took him into
24 custody after he failed to comply with their verbal
25 commands.

1 Fourth, the defendant knew that any of the
2 officers present during his arrest was an officer
3 acting in an official capacity and with lawful
4 authority and the defendant knew his conduct would
5 obstruct the officer.

6 You cannot look into a person's mind to find
7 knowledge. Knowledge must be found, if found at all,
8 from the defendant's acts, words, and statements, if
9 any, and from all of the facts and circumstances in
10 this case bearing upon knowledge.

11 If you are satisfied by clear, satisfactory,
12 and convincing evidence that all four elements of this
13 offense have been proved, you should find the defendant
14 guilty. If you are not so satisfied, you must find the
15 defendant not guilty.

16 Section 346.04(2) of the Wisconsin Statutes
17 provides that no operator of a vehicle shall disobey
18 the instruction of any official traffic sign or signal
19 unless otherwise directed by a traffic officer. Before
20 you may find the defendant guilty of this offense, the
21 City of Superior must satisfy you to a reasonable
22 certainty by evidence which is clear, satisfactory, and
23 convincing that the following two elements were
24 present:

25 First, the defendant operated a motor vehicle

1 on a street that is open to the public for travel, and,
2 second, the defendant disobeyed one more or traffic
3 signs designed for traffic control on the street the
4 defendant traveled on.

5 If you are satisfied beyond a reasonable --
6 I'm sorry -- if you are satisfied to a reasonable
7 certainty by evidence which is clear, satisfactory, and
8 convincing that the two elements of this offense have
9 been proved, you should find the defendant guilty. If
10 you are not so satisfied, you must find the defendant
11 not guilty.

12 You are not required to, but you may take
13 notes of the evidence during this trial. We will
14 provide you with those materials. In taking notes, you
15 must be careful that it does not distract you from
16 carefully listening to and observing the witnesses.
17 You may rely on your notes to refresh your memory
18 during your deliberations. Otherwise, keep them
19 confidential.

20 In reaching your verdict, examine the
21 evidence with care and caution. Act with judgment,
22 reason, and prudence. The burden of establishing every
23 fact necessary to constitute guilt is upon the City of
24 Superior. Before you can return a verdict of guilty,
25 you must be satisfied to a reasonable certainty by

1 evidence which is clear, satisfactory, and convincing
2 that the defendant is guilty.

3 Clear, satisfactory, and convincing evidence
4 is evidence, which, when weighed against that opposed
5 to it, clearly has more convincing power. It is
6 evidence which satisfies and convinces you that the
7 defendant is guilty because of its greater weight and
8 clear, convincing power.

9 Reasonable certainty means that you are
10 persuaded based upon a rational consideration of the
11 evidence. Absolute certainty is not required, but a
12 guess is not enough to meet the burden of proof.

13 We will now break until 10:30, and you can
14 call people, let them know you're on jury duty, and
15 then we'll proceed with opening statements by the
16 parties.

17 So we'll retire then and reconvene at 10:30.

18 Thank you for your attention thus far.

19 (The jury exits the courtroom.)

20 THE COURT: Please be seated.

21 We are outside the presence of the jury.

22 Mr. Prell, anything else we need to address
23 before we break and then do opening statements?

24 MR. PRELL: No, Your Honor.

25 THE COURT: Mr. Holevoet?

1 MR. HOLEVOET: No, thank you.

2 THE COURT: All right. Then be ready to go
3 with openings at 10:30.

4 Thank you.

5 (Recess taken at 10:12 a.m.)

6 (Proceedings continued at 10:32 a.m.)

7 (The jury enters the courtroom.)

8 THE COURT: Please be seated.

9 We are back on the record.

10 The parties, attorneys are present. The jury
11 has been seated.

12 Ladies and gentlemen of the jury, we've
13 reached the stage of the proceedings at which each of
14 the attorneys will be given the opportunity to address
15 you in what is called an opening statement. The
16 opening statement is not evidence but rather a
17 statement of counsel as to what they believe the
18 evidence will prove.

19 You don't have your note-taking stuff yet
20 because it's not evidence. We'll give you that
21 evidence -- or those notes after the opening
22 statements.

23 The City will address you first followed by
24 the defense.

25 Go ahead, Mr. Prell.

1 MR. PRELL: Thank you, Your Honor.
2 Your Honor, ladies and gentlemen of the jury,
3 Mr. Cuypers, Mr. Holevoet, good morning.
4 May it please the Court, this case is about
5 two things, and you've heard mention of it already.
6 It's about bad driving, and it's about defying law
7 enforcement. The defendant was issued two noncriminal
8 city ordinance tickets back on February 28th of this
9 year. One for the driving and one for the other
10 behavior.
11 The traffic ticket, as you can surmise,
12 concerns whether or not the defendant obeyed traffic
13 control signs that are designed to direct the flow or
14 the direction of motor vehicle traffic.
15 The second ticket, the obstruction ticket,
16 has everything to do with whether or not the defendant
17 obeyed police officers. And I intend to show you
18 evidence today that when it came to obeying permanently
19 fixed signs, traffic signs, on February the 28th, the
20 defendant failed, but also, I intend to show you
21 evidence that when it came to following instructions by
22 law enforcement, who had authority to give those
23 instructions, he knowingly failed that, defied that,
24 and failed that ordinance as well.
25 We're going to talk some about authority.

1 The use of authority, on one hand, by officers from the
2 Superior Police Department. The defiance of that
3 authority, on the other hand, by the gentleman who got
4 pulled over for the bad driving.

5 Authority is important in an ordered society.
6 It's given to a wide range of people in a -- in myriad
7 positions to, in some part, maintain good order, and a
8 couple of these examples might sound a little campy to
9 you, but I -- I consider the matter of a schoolteacher.

10 Schoolteachers are tasked with teaching our
11 kids and preserving an environment that is hospitable
12 for that endeavor, and some of the tools are given to
13 accomplish that is the ability to impose rules to
14 maintain good order in that classroom. Further,
15 they're given the authority to enforce those rules when
16 those rules are broken.

17 Flight personnel are tasked with assisting
18 passengers through a safe and orderly flight experience
19 from one city to another, and to preserve an
20 environment that is safe for that endeavor, they have
21 the authority to require passengers to do certain
22 things. It sounds mundane, perhaps, but they have the
23 authority to require people to do certain things, be
24 seated during takeoff and landing, be seat belted
25 during takeoff and landing, stow your gear.

1 Sworn peace officers like Officer Taylor are
2 tasked with a very important job of protecting the
3 public. In this case, Officer Taylor's public is the
4 City of Superior, and to be in position to effectively
5 safeguard the health, safety, and welfare of the
6 citizens in his jurisdiction, he has been given certain
7 authority as has his associates, his friends in the --
8 on the force. He has the authority to stop and
9 approach -- approach drivers when they're suspected of
10 violating one or more laws.

11 Additionally he has the authority to use
12 certain protocol or techniques when necessary to secure
13 that driver, that person, that suspect. That, again,
14 is to ensure the health and the safety and the welfare
15 of everyone who might be associated with that event,
16 the suspect for sure, the officers, clearly, and anyone
17 else that might be in -- in the area, pedestrians,
18 other motorists.

19 Patrol officers make traffic stops. It's not
20 all that they do, but it's a steady diet of their
21 patrol shift life, and a traffic stop is a perfect
22 example of something that can go haywire. Traffic
23 stops can turn on a dime. They can become violent.
24 They can become fatal. Mercifully, in this case,
25 clearly not.

1 An officer who properly uses his or her
2 authority to lay hands on to control a motorist under
3 certain circumstances takes strong steps towards
4 ensuring good order and minimizing risk to all
5 involved.

6 So later this morning you're going to hear
7 from Officer Taylor, a patrol officer who worked his
8 usual night shift back on February 28th of this year.
9 You're going to hear him describe the moment at which
10 his attention was first drawn to Mr. Cuypers' vehicle
11 as it traveled at a high rate of speed here in the
12 city.

13 You'll hear about his efforts, Officer
14 Taylor's efforts, to further study that driving conduct
15 to make sure there wasn't going to be a safety issue.
16 And you'll hear him describe a route that was taken
17 that he thought was somewhat interesting, perhaps
18 suspicious, in regards to what exactly the driver was
19 out to do that night. This is a little after 10:00 at
20 night. You'll hear -- as you can imagine, you'll hear
21 about Officer Taylor's decision to stop the driver as
22 he observed him driving the wrong way on a street
23 designated one-way.

24 And Mr. Cuypers' reaction, initially, to that
25 event was appropriate, pulled over timely, not an

1 issue, but within seconds of stopping that vehicle, the
2 driver began to display behavior that put this officer
3 on a different level of alert than most of the traffic
4 stops he engages in, and I urge you to listen
5 carefully -- I know you will -- as he describes that
6 series of events.

7 He will describe furtive movements displayed
8 by the driver after being stopped. Furtive, it's an
9 interesting word. It means nervousness or something
10 designed to be secretive. You will hear Officer Taylor
11 describe how that particular conduct put into motion an
12 entirely different approach to communicating with this
13 driver that what otherwise may have been employed in
14 your ho-hum garden variety traffic stop. It's dark.
15 It's after 10:00 in February, 10:00 p.m. Officer
16 Taylor has an extreme disadvantage. He has the
17 disadvantage of not knowing one thing about the driver
18 he is duty-bound to consult with about his driving
19 behavior. He knows not one thing about other occupants
20 that might -- that might be in that car. It turns out
21 there wasn't.

22 Importantly, Officer Taylor doesn't know one
23 thing about what else is in that car by way of drugs,
24 contraband, importantly weapons -- something that can
25 be used to cause harm. He is reacting in realtime to a

1 scene that is devolving -- devolving before his very
2 eyes, and he has to make that adjustment in the field.

3 With support of other officers who arrive to
4 assist this one, he begins to use a protocol that he's
5 been to -- that he's been taught to effect what's
6 called a high-risk traffic stop. You'll hear much
7 about that. He begins to give clear, loud, simple
8 orders to the driver. All of these orders designed to
9 put law enforcement in touch with that driver in a safe
10 and controlled environment. He's been observed
11 breaking at least one traffic law. More importantly,
12 he has exhibited precisely the kind of behavior
13 post-stop that officers are trained to be wary of, and
14 this is where things take a very concerning turn.

15 Despite the presence of several uniformed
16 officers in marked squads with logos and lights
17 activated, despite the issuance of repeat loud, short,
18 clear commands to Mr. Cuypers, he openly defies them.
19 Just flat-out defies them. He shows flashes of
20 compliance. Certainly makes it clear to officers that
21 he understands exactly what is going on.

22 There's a dialogue exchange. We're all on
23 the same sheet of music. Everyone is speaking the same
24 language, but by and large, he ignores the repeat
25 commands from this officer and later from another

1 supervising officer on the scene, and when he ignores
2 those commands from those officers, he leaves those
3 officers only to guess at what's next. That's the crux
4 of the matter. The officers can only guess what is
5 next terms of the defendant's -- the driver's move,
6 because he's not complying with the simple commands
7 that would restore order to that scene in seconds if
8 followed.

9 Now, you heard it suggested already, due to
10 Mr. Cuypers' defiance, he was tased. Another officer
11 on the scene discharged probes into his skin to deliver
12 an electric current to immobilize him so that law
13 enforcement could restrain him.

14 And after finally controlling him, as they
15 had been trying to do with the use of words,
16 unsuccessfully, they actually didn't find anything
17 interesting on his person or in his car. This stop did
18 not result in the finding of drugs or contraband or
19 weapons.

20 What was interesting, though, was the
21 defendant's behavior. He, for some reason, was
22 completely dedicated to extending that contact with
23 police that night. Repeatedly defied -- defied
24 commands. He moved his body in a manner that was the
25 exact opposite of what the officers needed to see to be

1 assured that everyone was going to be able to go home
2 safe that night. The defendant amped up the danger
3 level in that scene, and he infused unpredictability
4 and stress where it ought not to have been.

5 The authority that I mentioned before, the
6 authority of flight personnel to require that
7 passengers be seated and seat belted during takeoff and
8 landing, that's shaped by myriad things that could go
9 wrong during portions of that flight, not by how
10 smoothly it might play out in real life. That's
11 important to keep in mind as you navigate the scenario
12 that includes no finding of anything that was of
13 evidentiary interest. That's a lawyer's way of
14 describing anything like drugs and weapons. Those
15 things were missing. No question about it but everyone
16 is running through this scene, with the clear -- clear
17 lack of a crystal ball. Authority to preserve good
18 order doesn't work that way. You take what the
19 situation gives you. You make adjustments in the field
20 if you're an officer like this gentleman, and you hope
21 for the best, and you employ the training that you've
22 undergone to be effective in that situation.

23 I have nothing to suggest that Mr. Cuypers
24 might be a bad guy, not a thing, but he was playing a
25 real dangerous game in a situation on February 28th

1 that called for just some semblance of seriousness,
2 some inclination to take heed of what was going on and
3 to act accordingly. It's unfortunate that those
4 chances were missed.

5 At the end of the day, I'm going to ask you
6 to hold Mr. Cuypers responsible for those two tickets.

7 Thank you for your time.

8 THE COURT: Thank you, Mr. Prell.

9 Mr. Holevoet.

10 MR. HOLEVOET: Good morning.

11 Around about 9:00 on February 28th of 2024, a
12 few people in the city of -- of Superior got a little
13 hungry, and they ordered some food. And it turns out
14 that Mr. Cuypers that day, having worked at his normal
15 job, he was also earning a little bit of money by doing
16 DoorDash. And so he goes to the restaurant that
17 prepared that food and then he goes to deliver it.

18 Now, he's following a route that's displayed
19 for him on his phone, just like in a lot of those apps,
20 whether it's Uber or DoorDash, it's telling him where
21 to go to deliver those things, and he's going north on
22 Tower Street here in Superior, and he turns right onto
23 23rd and then takes a left onto Ogden and turns right
24 onto 21st, and it is sort of not the normal route. It
25 seems a little bit funny, but, again, he's following

1 what is on his phone, and he gets confused at the
2 intersection of 21st and John. He almost comes to a
3 complete stop, and he turns on John and John is a
4 one-way in the opposite direction.

5 By that time Officer Taylor is already
6 following him. He sees him turn on the wrong one --
7 wrong way on the one-way, and he turns on his overhead
8 lights and he stops him. And then we hear about these
9 furtive movements. I think you'll hear from Mr.
10 Cuypers, just like the officers did that night, that
11 when he's stopped, he reaches over to his glove box to
12 try to get his registration and his insurance car
13 {sic}.

14 And Mr. Cuypers has a kind of disorganized
15 car. There's some stuff around and he probably digs
16 around to get those two things because he thinks he's
17 going to need them for when the law enforcement officer
18 comes up to him to talk about turning on that runway --
19 wrong on that one-way and giving him a ticket.

20 Now, no officer approaches the car
21 initially -- or frankly, not for a long time until Mr.
22 Cuypers is in handcuffs. Officer Taylor sees him lean
23 over and thinks he needs to call for backup. So he
24 does that, and his sergeant, who is nearby, drives over
25 and joins him there, Sergeant Brown, and two other

1 officers, Officer Taylor Graff {sic} and Officer
2 Moen -- M-O-E-N -- I'll spell that for him because I
3 don't think he's on the witness list. They're
4 basically right around the corner doing some other work
5 but they actually run over. They run around the corner
6 to where this is all playing out and they join them,
7 too.

8 At this point, Officer Taylor is on the
9 passenger's side of his squad. He's joined over there
10 by Officer Moen and at least initially by Officer Graff
11 {sic}. His sergeant is on the other side, on the
12 driver's side, of his squad.

13 No one has tried to approach the car. No one
14 has said anything to Mr. Cuypers. No one checks the
15 registration of the vehicle. No one tries to find out
16 anything about the driver -- although they could
17 have -- or at least the registered owner. No one runs
18 the car to find that out. No one runs anything about
19 the registered owner because they never even find out
20 who the registered owner is.

21 Instead, I think the evidence will show, is
22 the police made every bad assumption, the most possible
23 negative assumption you could possibly make about
24 somebody, they made it over and over and over again
25 about Mr. Cuypers, and I also think, as the evidence

1 will show, for no good reason.

2 But we're already down that path. We've
3 stopped him. We're going to see that the path he takes
4 because of the DoorDash app makes him suspicious.
5 We're going to see that the fact that he tries to be
6 compliant and get his registration and insurance card
7 out fast, makes him dangerous, potentially.

8 And by the way, I think we'll also hear that
9 they never know what's in any car, right? They don't
10 know if there are guns or drugs in any car they pull
11 over. That's part of the inherent danger of the work
12 they do, and it's important that we appreciate them for
13 that inherent danger in the work that they do, but
14 that's the situation every single time, and this
15 traffic stop, the evidence will show, does not play out
16 like a normal traffic stop.

17 At that point in the interaction, still not
18 trying to obtain any information about Mr. Cuypers or
19 asking any of the other officers on the scene, and by
20 the way one more shows up. So now we've got five
21 police officers behind, all looking at Mr. Cuypers'
22 vehicle. Mr. Cuypers, of course, is seeing all this in
23 his rearview mirror, not really understanding what's
24 going on. He knows he turned the wrong way on a
25 one-way, but he doesn't understand why that would

1 require five police officers. He can also see that
2 some of them have their guns unholstered, and he's not
3 sure why that's happening either, but then the police
4 start to yell orders at Mr. Cuypers.

5 They tell him, put your hands up, and he
6 does. He puts them actually outside of his car window,
7 so they can see them. Then he's told by Officer
8 Taylor, with your left hand, reach down and open up the
9 door, and he does reach down with his left hand, and he
10 tries to open up the door and it doesn't open. He
11 yells back to law enforcement that the car door is
12 locked.

13 By this time, Officer Moen also starts to
14 yell instructions. Maybe just one or two, but he does
15 it, too, adding to the overall confusion of everything
16 that's happening.

17 Now, on the other side of the vehicle,
18 Sergeant Brown decides to start yelling instructions to
19 Mr. Cuypers, too. In fact, the very first thing he
20 says on scene, is something to the effect of, get your
21 hands up, right? Which he's got them up. They're out
22 of the car window. Mr. Cuypers is trying to
23 communicate back to them that the car door is locked,
24 and he's confused and probably scared because he can't
25 unlock his car door without taking one of his hands

1 that he's been told to keep up and show where they are,
2 without taking it back and putting it in his car to
3 unlock the unlocking mechanism so he can open the car
4 door.

5 He's yelling this. No one can either hear
6 him initially or nobody is listening to him, but then
7 Officer Graff {sic}, she hears him and she actually
8 goes back over and tells them, he's saying it's locked.
9 Then they tell him unlock it. Seems like an obvious
10 thing to do. Sure. But, again, he's a little freaked
11 out. I think the evidence will show justifiably so and
12 he does. He unlocks it, and then he takes his left
13 hand like he was instructed, and he opens his car door,
14 and then they tell him to get out of the car, face away
15 from them, and put your hands up.

16 And he gets out of the car, he faces away
17 from them, and he puts his hands up. The one thing
18 that he does do, is sometimes he tries to turn around
19 because he wants to ask them a question. He wants to
20 know what maybe many of us would want to know in that
21 situation, what's happening? Why is it happening?
22 What do you guys think I did wrong, right? No answers
23 come to any of those questions -- more orders do from
24 the police.

25 Now, this time he's outside of his car. His

1 hands are up. There are five police officers, all with
2 guns, not all of them drawn, but a couple of them
3 drawn. He's -- I think we heard from Attorney Prell
4 that the officer is in a vulnerable situation. I don't
5 think so anymore, not anymore he's not.

6 He's out of that car. He's got a bunch of
7 officers with him, and Mr. Cuypers is standing in the
8 middle of the street with his hands up, looking away
9 from them as instructed. Again, occasionally you will
10 see him. He does kind of turn back because he's trying
11 to talk to them to figure out what's going on, but they
12 say, no, come on back. You need to walk backwards,
13 towards us, facing forward, hands up, all that stuff,
14 and he does that. And they say slowly. I think they
15 think he goes a little too fast. Of course, he's
16 probably nervous and scared, but he walks backwards,
17 and as he's walking backwards, he's still trying to
18 talk to them, because again, he's trying to understand
19 how what he did warrants this kind of response.

20 He's trying to understand if they think they
21 have -- maybe they have the wrong guy, right? But he
22 goes back and he gets within a few feet of the
23 officers, and by this point, at least two of them have
24 active guns drawn and at least one, maybe two, have
25 nonlethal weapons, Tasers, pointed at him.

1 And at that point, he stops. He's wearing an
2 American flag, I think, or some kind of bandana on his
3 head. And he's got his hands up like he's supposed to.
4 Sometimes they say interlaced, he does. He pulls his
5 hands back apart because he's trying to talk to them
6 again, and at one point the thumb catches the bandana,
7 and he takes the bandana off. And you'll hear from
8 him, I think, why he takes the bandana off, and it
9 falls to the ground.

10 They tell him to stop moving, and then
11 Sergeant Brown says, "get on your knees." They want
12 him to kneel in the street. Presumably so they can --
13 again -- I don't even -- I don't even know why. Again,
14 all they have so far is they're supposed to give him a
15 ticket. A ticket they could mail to him and don't even
16 have to fill out. By the way, the evidence will show,
17 that's exactly what they did. They never gave him any
18 tickets that night. They mail it to him because they
19 can.

20 So they say, "get on your knees."
21 Presumably, again, because they're going to put him in
22 handcuffs. I have no idea why nor what law he's
23 broken. I'm not sure they do either and I think the
24 evidence will show that. And he hesitates and he tries
25 to ask them a question, again, about what is happening,

1 what he might have done wrong that warrants all of
2 this. And he's told, again, to get on his knees, and
3 he's still trying to ask that question. And all of
4 this happens pretty fast. It probably happens quicker
5 than I'm explaining it to you, a matter of minutes.

6 But Officer Graff {sic} is over by Sergeant
7 Brown, and she yells out at him, "get on your knees or
8 you're going to get tased." And she does. She tases
9 him, and he falls to the ground and he yells out in
10 pain. And they all swarm around him to tackle him and
11 make sure he's secure. And they do what they could
12 have easily done up by his car, which is they pat him
13 down. First on the floor -- well, not the floor but
14 the pavement of the street, and then later when they
15 get him up.

16 And, amazingly, the evidence will show that
17 Mr. Cuypers remains calm, compliant, and surprisingly
18 polite to law enforcement after having all this done to
19 him. They tell him -- of course, he thinks he's been
20 shot, and he's going to die. In fact, he thought when
21 they were getting him on his knees, he was going to get
22 shot and he was going to die. And in fact he's saying,
23 when he's screaming out in pain, "I'm going to die
24 here." But they want to get him up. They want to see
25 if he needs medical attention. He, of course, says

1 that he's not so sure because he doesn't have much
2 money and he's worried if he can afford any medical
3 attention, but they take that as not being cooperative,
4 I guess, in answering their questions. In fact,
5 Officer Graff {sic} even criticizes him later for not
6 answering her question. Of course, sometimes questions
7 are complicated. They are not always yes and no. He
8 kind of wants to know, am I going to have to pay for
9 that? How am I going to pay for that? I'm working
10 DoorDash at night to earn extra money to live.

11 They want to get him up. He says he can't
12 feel his legs. He says to them, though, again, being
13 cooperative, because that's basically what he was the
14 entire interaction, confused sometimes, but
15 cooperative, nonthreatening. He says, do whatever you
16 want to me to get me up, and then when they manhandle
17 him up to his feet after tasing him and throwing him on
18 the ground, he says thank you to them and they take him
19 back behind their squad car -- or Taylor's squad
20 vehicle, and Officer Taylor pats him down again to make
21 sure there's nothing on him. Of course, as we've
22 already heard, there is not anything.

23 And then there's a discussion about whether
24 he's under arrest, and what we'll hear, what the
25 evidence will show, is that Mr. Cuypers still totally

1 confused by everything that has just played out in the
2 last five or six minutes and how one wrong turn could
3 have ended him up there, he asks, "am I under arrest?"
4 And it's Officer Graff {sic} who answers first, and her
5 answer is telling. She answers to him, "well, you're
6 not free to go," because they haven't really figured
7 out yet what to do.

8 We'll hear, probably, I think from Sergeant
9 Brown. Sergeant Brown, after the Taser is discharged,
10 which he hasn't called for -- though Officer Graff
11 {sic} does anyway -- he says -- he calls into dispatch
12 saying, "code Taser, figuring things out."

13 Understatement of the year. They are actively figuring
14 things out. Officer Graff {sic} doesn't know if he's
15 under arrest or what he would be under arrest for, but
16 Officer Taylor says, "yes, you're under arrest." He
17 doesn't say what for, but he tells him that he's under
18 arrest.

19 Now, we'll hear later and I think the
20 evidence will show, Officer Graff {sic} does that in
21 part because Officer Graff {sic} is under the incorrect
22 assumption that if they use force, like they just did,
23 they have to arrest the person. At the same time
24 they're still having a conversation.

25 Mr. Cuypers still does not understand what

1 happened. He asked about what happened. Officer Graff
2 {sic} tells him something to the effect of, you were
3 stopped for this traffic violation, and then you
4 weren't listening to us, so that's how you ended up
5 here, and he does push back a little there. He says, I
6 think I was listening, right? Like he says, I think I
7 was doing what you were telling me to do because he's
8 confused still what they think he was doing that was so
9 dangerous or wrong other than hesitating sometimes to
10 try to ask questions to understand what the hell was
11 going on.

12 But he's patted down. He's in handcuffs now.
13 He's been told he's under arrest, but not for what, in
14 part because they have not really decided necessarily
15 for what. They ask him if they want -- if he needs
16 anything out of his car, okay? And he wants his ID,
17 okay? And he gets permission. Again, being
18 cooperative. When he asks -- tries asking questions
19 there, too, no, they're not -- they're not in a
20 question-answering mode ever, right? They're in the
21 giving-orders mode, sure, but not question-answer.
22 They don't -- they don't excel at that.

23 So when he asks a question about that, he's
24 yelled at, and basically that's a yes or no question,
25 and he says, yes. So he gives permission for them to

1 go into his vehicle, and that's when they search it a
2 little bit trying to find his license. They do find
3 it. His wallet. They take his whole wallet because he
4 asks for that after they clarify that he would like the
5 whole wallet, and that's not the first time they get a
6 peek in there, though, because as they're -- as they're
7 tasing him, they've got him back at the back of the
8 squad car and they're having that whole interaction,
9 Officer Crist, that's the last officer who showed up.
10 I didn't give you his name earlier, but that's who --
11 that's a fifth guy who shows up and Sergeant Brown.
12 They have to figure out is there a passenger in the
13 car? And they're doing that while Mr. Cuypers is still
14 writhing on the pavement in pain.

15 And they go up, and they're giving -- they're
16 shouting orders again. This time, though, to nobody
17 because there is no passenger. Telling the passenger
18 to get his hands up. Telling him to -- that they know
19 he's there and he needs to be -- make his presence
20 known, but they do what they could have always done,
21 which is they approached the car, not knowing what was
22 inside of it. And they look inside of it and they see
23 no one is in there. And they open up the car door, and
24 they pop the trunk so they can look in the trunk in
25 case, I guess, there's somebody hiding in the trunk,

1 maybe, and they find nobody in there. And, again, as
2 you've already heard, they find nothing of evidentiary
3 value ever, right? Because he wasn't doing anything
4 wrong.

5 And then once they have the wallet, that's
6 the first time, and it's Officer Moen that does it.
7 Somebody thinks maybe we should find out who this
8 person is, if they've got a warrant, if they're
9 dangerous, if they've got a record, if there's some
10 reason why I should be afraid of them? Again, by this
11 time, he's been tased. He's been handcuffed and
12 arrested.

13 They transport him down to the jail. Before
14 that, they have to discuss a couple of things. They
15 discuss, one, what are we charging him with? He's
16 asked that question -- Officer Taylor is asked that
17 question by Officer Graff {sic} and he kind of shrugs
18 and says, resisting. I guess, right? Because from
19 their perspective, now he has, right? He didn't listen
20 to them.

21 Although, again, I think the evidence will
22 show we're really talking about sort of a
23 self-fulfilling prophecy, right? They create the
24 entire circumstance for Mr. Cuypers to be in, and then
25 when Mr. Cuypers, who doesn't understand the rules or

1 the circumstances or all the expectations and has no
2 idea why this is even happening to him, when he just
3 wants to understand what's going on, that's when things
4 go south. It's not his resistance that does that.
5 It's the fact that he's like a rational human being
6 asking a few questions, trying to tap a pause button on
7 some situation that's gotten horribly out of control.
8 And no one in law enforcement as you'll see from the
9 evidence, decides to jump in and maybe join him in that
10 effort to try to stop, question some things,
11 de-escalate at any point.

12 Then they also have to discuss the DoorDash,
13 right? Somebody is waiting -- remember at my very
14 beginning -- somebody is waiting for food in Superior,
15 and the officers get to joke with each other about
16 maybe how they can be TikTok famous if they go and
17 deliver the food order that's sitting on his passenger
18 floorboard, but Mr. Cuypers says they can just get a
19 refund and that that's what he'd prefer they do, and so
20 that's what they do, and they take him down to the
21 jail.

22 And Sergeant Brown joins Officer Taylor at
23 the jail and has a discussion with him about how
24 maybe -- maybe we shouldn't charge him criminally.
25 Maybe we should issue him some citations. After all,

1 it turns out he has no criminal record at all, and I
2 think he was just maybe confused. I think Sergeant
3 Brown's words are, I don't think he sees the world the
4 way we do.

5 Officer Taylor, that's when we learn he was
6 confused that he had to arrest. He says, well, I
7 thought we kind of had to if we -- we use a Taser, we
8 had to. And Sergeant Brown explains, nope, that's
9 not -- that's not true. You could arrest him and
10 un-arrest him. You don't have to arrest him at all.
11 You don't have to put him in -- book him into the jail.
12 You could issue him citations. You've got all kinds of
13 things you could do other than what you've chosen to do
14 to this point, and that's when Sergeant -- excuse me --
15 Officer Taylor agrees and says those same words back to
16 him, his sergeant. Yeah. I think he does see the
17 world a little differently than we do.

18 And they take him back -- I think into the
19 jail still maybe to spook him a little, maybe so they
20 can explain to him what he did wrong -- there's a whole
21 discussion about that -- so he understands. We want
22 this to be an educational experience for Mr. Cuypers.
23 No educational experience for law enforcement, but we
24 want Mr. Cuypers to learn something here from this but
25 they release him. They don't issue him the tickets.

1 Again, they mail those to him because they could have
2 always done that. They could have done that without
3 getting him out of the car at all for the wrong way in
4 the one-way, which they still had him do.

5 And then somebody has to drive him back to
6 his car, which has been secured and locked up by the
7 side of the road and that falls on Officer Taylor. He
8 does that, and he's joined there by Officer Collins.
9 Again, worried about officer safety, all, which makes
10 sense. Of course, he's done nothing to suggest he's a
11 danger to anyone. And, in fact, even when he's going
12 to be transported to the jail, one of the officers
13 asked Officer Taylor, way earlier on, right -- he
14 hasn't even left the scene yet -- do you need someone
15 to go with you for safety? And he says, nah, because
16 he thinks he's going to be fine. Yeah. Because now he
17 understands, I am going to be fine, but someone needs
18 him there just in case. It's Officer Collins.

19 And Officer Collins has a body cam and all
20 that stuff. I think you'll even see some of the
21 body-cam footage. As it turns out, Officer Taylor's
22 body cam had some sort of problem, and we don't have
23 any of his body cam, but we see Officer Collins' body
24 cam. And there's a whole interchange there about, what
25 do I do here? We never totally searched the car. I

1 don't think we're going to find any weapons in it,
2 though. Because, again, he kind of understands now,
3 nothing is going on here, and Officer Collins, maybe
4 with having the most insight of any of the police
5 officers involved here, says, just let him go and let's
6 get out of here. And that's what they do. They turn
7 him loose. They un-handcuff him. They let him go back
8 to his car.

9 And I don't know if he keeps making order
10 deliveries that night so he can earn the money that
11 he's lost by all of this nonsense that happened to him
12 or if he goes home, but that's the end of the night.
13 And that's what the evidence is going to show. I think
14 when you see all that, you're going to conclude that
15 he's not guilty of obstructing an officer.

16 Thank you.

17 THE COURT: Thank you.

18 Mr. Prell, you can call your first witness.

19 MR. PRELL: Thank you, Your Honor.

20 The City calls Officer Justin Taylor.

21 JUSTIN TAYLOR

22 Was called as a witness, and having been

23 first duly sworn, testified as follows: can

24 THE CLERK: Please be seated. State your
25 full name and spell your last name.

1 THE WITNESS: Justin Taylor, T-A-Y-L-O-R.

2 THE COURT: Go ahead, Mr. Prell.

3 MR. PRELL: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MR. PRELL

6 Q. Just a couple of reminders, Officer Taylor,
7 to use words instead of gestures or head nods and
8 whatnot. Also please try to speak slowly and clearly
9 into the microphone. I've breached that --

10 MR. HOLEVOET: Judge --

11 MR. PRELL: -- already --

12 MR. HOLEVOET: -- I'm sorry to interrupt. I
13 think one of the jurors is reminding that he would
14 like --

15 THE COURT: Notes?

16 MR. HOLEVOET: -- notes.

17 THE COURT: Thank you.

18 MR. HOLEVOET: Sorry about that.

19 THE COURT: No. I appreciate it.

20 All right. Go ahead.

21 BY MR. PRELL

22 Q. Just a reminder, Officer Taylor, that we have
23 to use words and speak slowly and clearly into the
24 microphone. There's a record being made of this
25 proceeding.

1 Officer, tell us a little bit about yourself,
2 where you grew up, where you went to school, that sort
3 of thing.

4 A. I grew up in Solon Springs, Wisconsin, just
5 south of the city here. I went to high school there at
6 Solon Springs High School, and after that I went to
7 Wisconsin Indianhead Technical College where I obtained
8 my Criminal Justice Studies Degree, an Associate's
9 Degree. And then later on, after I was hired by the
10 City of Superior Police Department, I went to Chippewa
11 Valley Technical College where I attended the police
12 academy.

13 THE COURT: And make sure -- yeah. You've
14 got to speak in the mic. You're a little soft-spoken.

15 BY MR. PRELL

16 Q. Officer, you are 26 years old. Do I have
17 that right?

18 A. You do.

19 Q. And you're in your second year of employment
20 with the Superior Police Department -- first?

21 A. Just over one year.

22 Q. Okay. And, obviously, you're employed by the
23 Superior Police Department?

24 A. I am.

25 Q. What is your current rank?

1 A. Probationary police officer.

2 Q. And can you describe for this jury your
3 training and experience relevant to police work?

4 A. I attended -- upon my employment with the
5 City of Superior, I attended the police academy, which
6 is 720 hours of academy training with a wide range of
7 law enforcement instructors and training material
8 that's given to us, practical and academic.

9 Q. What if --

10 A. I'm --

11 Q. I'm sorry. Did I interrupt you?

12 A. I'm certified by the Law Enforcement
13 Standards Board through Wisconsin to be a police
14 officer.

15 Q. That was my next question. That's a
16 certificate that you hold relevant to law enforcement?

17 A. It is.

18 Q. Is that a certificate that you held back on
19 February 28th during the shift that we're about to talk
20 about?

21 A. It is.

22 Q. Okay. I'm guessing, sir, that as a patrol
23 officer, making traffic stops is a very common
24 occurrence for you; am I right?

25 A. You are.

1 Q. Can you approximate how many traffic stops
2 you've made thus far in your young career?

3 A. Approximately 300.

4 Q. Okay. Walk us through what sort of hazards,
5 if any, are presented to law enforcement with traffic
6 stops.

7 A. Stops can vary from, as you said earlier,
8 garden-variety mundane stops where I initiate a traffic
9 stop. I make contact with the occupants of the
10 vehicle, the driver, identify them, explain the reason
11 for the stop, and most of those times, that's where it
12 ends. There is no law enforcement action taken other
13 than a conversation. That can range up until where
14 we're having violent or noncompliant contact with the
15 occupants or driver of the vehicle, and there is danger
16 associated with that as well with the noncompliance
17 portion of that.

18 Q. So given that range of scenarios that may or
19 may not evolve for a traffic stop, what sorts of
20 protocols do you employ based on what you face for
21 certain stops?

22 A. So there are three general protocols that we
23 employ with traffic stops. The first one is, as I
24 explained, the garden-variety mundane traffic stop,
25 where we stop the driver, we identify them, we explain

1 the reason for our contact, and that's usually the end
2 of it. There is no citation issued, generally.

3 The -- the next step would be doing the same
4 thing as the first, where I approach the vehicle, I
5 identify the driver, but then I observe, or officers
6 observe, something that is out of the ordinary such as
7 contrabands, sign of intoxication or impairment on the
8 driver. With that stop, we'll return -- generally
9 return to our patrol vehicle, request a second officer
10 to respond to our location, and then we'll continue
11 from there, usually having the driver step out of the
12 vehicle.

13 The third is what's considered a felony stop
14 or a high-risk traffic stop within law enforcement.
15 That is when either prior to even initiating the
16 traffic stop, we are observing something that is
17 suspicious or indicative of dangerous behavior or
18 furtive movements that they may be trying to access or
19 conceal items within the vehicle. And then -- and then
20 after the traffic stop is initiated, that behavior
21 continues or is exacerbated. And with that, what we do
22 is we give very loud verbal commands to the driver
23 without approaching the vehicle, to exit the vehicle,
24 and we enter what we consider in law enforcement a
25 submission ritual. With that, generally what we do, is

1 we'll have the driver keep their hands up, raised high
2 so we can see that they're empty and clear of any --
3 anything at all, and then we'll have the driver walk
4 backwards towards us, and that helps us effectuate safe
5 detainment of the driver or occupants of the vehicle.

6 Q. Do you have a sense at this point in your
7 career for how many of your stops fall within those
8 categories, generally?

9 A. I've only been a part of two high-risk
10 traffic stops within my just over a year of employment
11 with the City of Superior.

12 Q. So in the approximately 300 traffic stops
13 that you've been a part of, two of those have been at a
14 high-risk level?

15 A. Correct.

16 Q. And, obviously, you would consider the one
17 we're going to talk about today a high-risk traffic
18 stop?

19 A. Correct.

20 Q. Now, I just want to make sure I understand
21 what you said about the -- the categories, if you will,
22 of -- of traffic stop and the protocols that you use.
23 One is just an approach. Do I have -- did I hear you
24 right?

25 A. You do.

1 Q. The -- the mid-level one, is it fair to
2 describe the second one as a mid-level risk stop?

3 A. Yes.

4 Q. That involves you approaching the car,
5 initially, but making an observation once there that
6 causes you to elevate it?

7 A. Correct.

8 Q. But the third one, the high-risk one that
9 you've discussed, you don't approach the car at all; is
10 that accurate?

11 A. That is accurate.

12 Q. And the reason for that is?

13 A. Officers when -- generally when they're
14 initiating that level of traffic stop, the high-risk
15 stop, we believe that the occupant or driver of the
16 vehicle is attempting to conceal or access something
17 within that vehicle, which is displayed by their
18 movements or they're failure to stop on a time --
19 timely manner. And for the reason for not approaching
20 the vehicle right away, is because we do not
21 understand -- or understand is not a correct word.

22 We are not aware of what the driver has
23 access or is attempting to access or may have in their
24 hand currently.

25 Q. How do traffic stops stack up as dangerous in

1 your profession compared to other endeavors you pursue?

2 A. They're one of -- this isn't an exact
3 statistic, but they're one of the most dangerous things
4 that a law enforcement officer can go into. It's a
5 self-initiated activity with our traffic stops.

6 Q. What do you attribute to, as factors, to that
7 danger level?

8 A. That's the -- we don't know who the occupant
9 is of the vehicle or occupants of the vehicle are. We
10 don't know what their intentions are. After we've
11 attempted -- or we are going to make contact with them,
12 we don't know if they have some sort of weapon or any
13 other kind of inclination towards fighting with law
14 enforcement or resisting our efforts to peaceably
15 communicate with the occupants or driver of the
16 vehicle.

17 Q. Fair to say that those vehicles are perfect
18 ambush sites?

19 A. They are.

20 Q. Were you employed by the City of Superior
21 back on Wednesday, February 28th of this year?

22 A. I was.

23 Q. Did you work a shift for the City as a patrol
24 officer that night?

25 A. I did.

1 Q. About what time would your shift have
2 started?

3 A. The shift was scheduled to start at 6:00 p.m.

4 Q. And you would've ended when?

5 A. 6:00 a.m.

6 Q. The next morning?

7 A. Yes.

8 Q. When you began your shift on February 28th,
9 were you in uniform?

10 A. I was.

11 Q. Obviously, much different than the way you're
12 dressed now?

13 A. Correct.

14 Q. Did you keep that uniform on throughout the
15 shift?

16 A. Yes.

17 Q. Did you patrol in a marked squad or an
18 unmarked squad?

19 A. I was in a fully marked police squad.

20 Q. What does a fully marked mean?

21 A. There's a -- my squad, in particular, that I
22 was driving that night has police written across both
23 sides of the vehicle in very large letters and it says
24 City of Superior underneath.

25 Q. And during that shift on February 28th, did

1 you have the occasion to stop and then ultimately
2 arrest Mr. Cuypers?

3 A. I did.

4 Q. And about what time did you first come into
5 contact -- I'm going to say with his vehicle because I
6 know there's a difference between having come into
7 contact with his vehicle and coming -- having come into
8 contact with him.

9 Now, what -- about what time during that
10 shift did you come into contact with Mr. Cuypers in --
11 in any context?

12 A. It was about 10:13 at night.

13 Q. Okay. And, obviously, your interaction with
14 Mr. Cuypers during that shift resulted in the two
15 charges that we're talking about right now?

16 A. Correct.

17 Q. Okay. When you go out on patrol, is there a
18 mechanism through which some of your work is recorded?

19 A. There is.

20 Q. How is that done?

21 A. Officers are required per department policy
22 to wear body-worn cameras when interacting with the
23 public as well as there are interior cameras, a dash
24 camera, and also within our squad cars.

25 Q. Now, the dash camera that you've mentioned

1 just now, was your squad that you operated during your
2 shift on February 28th equipped with a dash cam?

3 A. It was.

4 Q. And are you trained in the use of that
5 equipment?

6 A. I am.

7 Q. Did that dash cam in your squad on
8 February 28th function properly?

9 A. It did.

10 Q. And walk us through -- because I know there's
11 a -- that dash cam isn't recording at all times. Do I
12 have that right?

13 A. It does record at all times, but it is not
14 actively storing the footage at all times --

15 Q. Okay.

16 A. -- until it is activated.

17 Q. Thank you for that correction. So what is
18 it, if anything, that activates the storage of images
19 captured in that dash cam?

20 A. The cameras are through a company called
21 Axon. The control system in the squad that I was using
22 that night in particular, has three switches, three
23 toggles -- or three switches -- like positions. The
24 third switch position activates all of the lights
25 within the squad car and also automatically activates

1 my body-worn camera, the dash camera, and anybody
2 within a -- I don't know the exact number -- within a
3 certain radiance of that vehicle as well.

4 Q. So when you activate your lights, that's the
5 mechanism through which the image starts to be burned
6 into a database, but the camera, the system goes back
7 and captures 30 seconds prior to the activation of
8 those lights?

9 A. Correct. There's a 30-second buffer of
10 active recording prior to the activation of our lights
11 or the activation of the camera. There's just not any
12 audio associated with that 30-second buffer.

13 Q. Where was the position of the defendant's
14 vehicle in relation to yours when it -- when it first
15 became something you started to pay attention to?

16 A. It was traveling northbound on Tower -- Tower
17 Avenue, and I was traveling southbound on Tower Avenue.

18 Q. And what about the defendant's driving
19 behavior, if anything at that point, caught your
20 attention?

21 A. It appeared to be traveling at a higher rate
22 of speed than other vehicles that I've witnessed on the
23 roadway with my training and experience.

24 Q. So did that observation cause you to further
25 study his driving conduct?

1 A. It did.

2 Q. Walk us through that.

3 A. I then -- after I witnessed that vehicle, I
4 executed a U-turn within the roadway and attempted to
5 catch up to it to gain further evidence of a speeding
6 violation.

7 Q. And this was all on Tower Avenue?

8 A. Correct.

9 Q. Okay. And did you -- did you gather further
10 evidence of speed?

11 A. I was not able to.

12 Q. Okay. Why not?

13 A. The vehicle then turned eastbound on North
14 23rd Street before I was able to do any kind of proper
15 pacing of the vehicle.

16 Q. Okay. Did you try to make further
17 observations after that vehicle turned onto 23rd
18 Street?

19 A. I did.

20 Q. Walk us through that.

21 A. I then observed the taillights of the vehicle
22 turning northbound on Tower Avenue into the 2200 block
23 and continue northbound on Ogden Avenue -- I
24 apologize -- Ogden Avenue. I followed the vehicle onto
25 Ogden Avenue where I then observed its taillights

1 making an eastbound turn, a right turn, onto North 21st
2 Street and I -- I was continuously attempting to catch
3 up.

4 Q. Did you catch up?

5 A. I did eventually.

6 Q. How?

7 A. I -- as I was sitting at the stop sign on
8 Ogden Avenue at the junction of North 21st Street
9 preparing to take a right turn after the vehicle, I
10 observed the vehicle come to either a complete stop or
11 almost complete stop at the junction of John Avenue and
12 North 21st Street where there is not a posted speed --
13 or stop sign.

14 There was another vehicle that was between
15 myself and that vehicle -- and the -- the defendant's
16 vehicle, and that vehicle, also, had to come to almost
17 a complete stop -- or a complete stop behind the
18 defendant's vehicle.

19 Q. And then once you made that observation, what
20 happened?

21 A. I got behind -- or I turned onto North 21st
22 Street eastbound, and I observed the defendant vehicle
23 turning northbound on John Avenue.

24 Q. And was there a problem with turning
25 northbound on John Avenue in that particular section of

1 the street?

2 A. There was. John Avenue in that particular
3 section of the street is a one-way southbound.

4 Q. How is that indicated, that one-way
5 southbound?

6 A. There are two official traffic signs
7 indicating no left turn at the mouth of John Avenue on
8 North 21st Street facing where we were coming from as
9 well as once I initiated my traffic stop, the defendant
10 vehicle partially passed a sign -- another -- another
11 official traffic sign that said wrong way.

12 Q. So you're saying at the mouth of. Is that --
13 is that the same as the intersection of North 21st and
14 John Avenue?

15 A. It is.

16 Q. And you said there were two signs that
17 indicated one-way travel on that section of John?

18 A. I did.

19 Q. And what were they -- where were they posted?
20 Was it one on the north side and one on the south side
21 of 21st?

22 A. Correct. One was on the northeast side of
23 21st and the intersection of John Avenue, and one was
24 on the southwest side of North 21st and John Avenue.

25 Q. And would Mr. Cuypers have driven past those

1 two signs?

2 A. He drove past one of the signs and then
3 continued onwards northbound onto John Avenue.

4 Q. Past the other sign, which was a wrong-way
5 sign?

6 A. Correct.

7 Q. Okay. Now, you understand that your dashcam
8 is -- is going to be played -- or portions of your
9 dashcam are going to be played for this jury today?

10 A. I do.

11 Q. When -- when that dashcam starts, it's my
12 recollection that your position in your squad is as
13 you're about to effect a right-hand turn onto North
14 21st. Do I have right?

15 A. You do.

16 Q. So what will this dashcam have missed that
17 you have described already in terms of Mr. Cuypers'
18 driving conduct?

19 A. The dash camera will have missed the driving
20 conduct on Tower Avenue, which is what originally
21 brought my attention to the defendant vehicle as well
22 as the turns onto North 23rd Street and the turn onto
23 Ogden Avenue.

24 Q. Okay. I assume that you have no opportunity
25 once these video images are burned and stored to

1 manipulate them?

2 A. That is a correct assumption.

3 Q. Same with the audio?

4 A. That is correct.

5 MR. PRELL: Your Honor, may I approach?

6 THE COURT: Yes.

7 THE CLERK: Exhibit No. 1 is marked.

8 MR. PRELL: With the Court's blessing, the

9 City proposes to play a portion of the dashcam video

10 that was captured during Officer Taylor's shift on

11 February 28th.

12 THE COURT: Any objection, Mr. Holevoet?

13 MR. HOLEVOET: No, thank you.

14 THE COURT: All right. Go ahead.

15 And does the -- there's the transcript, and

16 is that transcript for Exhibit 1?

17 MR. PRELL: That's correct, Your Honor.

18 THE COURT: Okay. And what do we have that

19 in the queue as exhibit number?

20 THE CLERK: I will mark that as Exhibit 1A.

21 THE COURT: All right. So that will be 1A,

22 and we'll pass that out to the jury then.

23 All right. Go ahead, Mr. Prell.

24 MR. PRELL: Just wonder how Your Honor would

25 feel about me dimming the lights in the courtroom?

1 THE COURT: Let's see how it comes up.

2 MR. PRELL: Okay.

3 (The video is played)

4 BY MR. PRELL

5 Q. Now, the defendant -- you would take no issue
6 with the manner in which Mr. Cuypers stopped? Do I
7 have that right?

8 A. You do.

9 Q. He -- he stopped appropriately, timing-wise
10 and direction-wise when you activated your emergency
11 lights?

12 A. Correct.

13 Q. And I -- there was much said earlier about
14 your department not running registration or something
15 of that nature. I thought I heard you communicate to
16 dispatch, Nora Lincoln Nora, four three five?

17 THE COURT: Okay. Just a second. Can you
18 just turn off the sound on that?

19 MS. BOWERS: I'm trying to. I'm so sorry.

20 THE COURT: Okay.

21 MS. BOWERS: I thought I turned it off.

22 THE COURT: No worries.

23 Go ahead, Mr. Prell.

24 BY MR. PRELL

25 Q. I'll reask that question. Did -- did -- when

1 you indicated or when we can hear on that recording,
2 Nora Lincoln Nora, four three five, is that your voice?

3 A. That is.

4 Q. Is that you running the plate?

5 A. That is.

6 Q. The plate on the vehicle, obviously, that you
7 just stopped?

8 A. Correct.

9 Q. And within seconds of stopping it?

10 A. Correct.

11 Q. Yet I think, though, that I heard something
12 after that, something like hold the plate. Does that
13 ring a bell?

14 A. That does.

15 Q. Was that you?

16 A. That was me.

17 Q. What does hold the plate in that context
18 mean?

19 A. It's a jargon word that law enforcement,
20 especially within this department, uses that if we
21 don't need the -- or we don't want the registration
22 returned immediately, we say hold the plate. That's
23 generally we'll make the approach, identify the driver,
24 and then verify if the driver that is identified is the
25 registered owner and then we'll get the plate returned.

1 Q. Okay. Now, obviously, you did not approach
2 the defendant's vehicle after he came to a stop. In
3 fact, in that video, you don't approach the defendant's
4 vehicle at all, agree?

5 A. Agreed.

6 Q. Why is this?

7 A. Immediately upon the defendant vehicle coming
8 to a halt, promptly, after I initiated my traffic stop,
9 the interior dome light was turned on, and I observed
10 the defendant through a partial -- partially obstructed
11 back windshield, I observed the defendant seemed to be
12 lunging very quickly to the passenger compartment of
13 the vehicle, and I briefly lost sight of the driver or
14 the occupant.

15 Q. And as you're making this observation, the
16 lunging across the vehicle towards the passenger side,
17 you're by yourself, correct?

18 A. Correct.

19 Q. And by yourself I mean not only no other
20 squad in the immediate vicinity, but no one else in
21 your squad with you?

22 A. Correct.

23 Q. Okay. And it appears in this video that you
24 don't engage with the driver at all until after other
25 officers have arrived; is that true?

1 A. That is true.

2 Q. Was that deliberate?

3 A. It was.

4 Q. Can you explain to this jury why that was?

5 A. So as you could most likely hear from the
6 video after I ran the registration, I immediately
7 exited my vehicle, which is why my voice is no longer
8 clearly heard through the dash camera. I exited my
9 vehicle and went to the passenger side of the vehicle,
10 which creates a better position of advantage for
11 myself -- be able to use my vehicle as concealment or
12 cover.

13 And I did not approach -- or make any
14 approach to the vehicle or make any kind of verbal
15 commands to the vehicle until other officers arrived
16 because I did not want to -- to a potentially hostile
17 person that I just stopped, I did not want to signify
18 or indicate where I was relative to the vehicle.

19 Q. So going back to those three categories of
20 stop that you described earlier in your testimony.
21 This wasn't that mid-level one where you've approached
22 and you've seen something suspicious, now you want
23 backup, correct?

24 A. Correct.

25 Q. You -- you identified suspicious behavior

1 before you approached and so you continued to not
2 approach; is that accurate?

3 A. That is accurate.

4 Q. And is that consistent with the training that
5 you received at the academy?

6 A. It is.

7 Q. Were there -- would there be any factors that
8 you were taught at the academy to contemplate that
9 would maybe cancel out the need for that protocol you
10 ultimately employed? In other words, once you've made
11 the observations you've described with the furtive
12 movement and whatnot, was there any opportunity to go
13 back to a lower level for you as you see it?

14 A. Not at that time, no.

15 Q. Okay. So, obviously, we can -- we can see
16 and hear in the video, but walk us through the tactics
17 that you employed with Mr. Cuypers that night for this
18 high-risk traffic stop.

19 A. Okay. So the very first tactic that I
20 employed was my presence, that is the very first level.
21 It's signifying my authority as a law enforcement
22 officer with my patrol vehicle with red and blue lights
23 activated. The next tactic is using loud, clear, short
24 verbal commands to the occupant or occupants of the
25 vehicle in order to test compliance as well as safely

1 effectuate a detainment.

2 Q. Did you use those verbal commands with Mr.
3 Cuypers in this instance?

4 A. I did.

5 Q. And I think we can -- we can see, generally,
6 the lay of the land through that dashcam video, but
7 could you approximate the distance between you and the
8 driver when you began to give these commands?

9 A. Approximately 20 to 25 feet.

10 Q. And can you describe the noise levels in that
11 area, generally, at that time?

12 A. There was no significant ambient noise level
13 in that residential neighborhood at 10:00 -- just after
14 10:00 at night.

15 Q. Did Mr. Cuypers appear to understand your
16 commands?

17 A. He did.

18 Q. Did he appear to understand them?

19 A. He did.

20 Q. Obviously, some struggle, initially, with
21 the -- or some back and forth with the opening of the
22 door. Did you hold that against him in any capacity?
23 In other words, did you count that in any manner as any
24 layer or variety of noncompliance on his part?

25 A. I did not.

1 Q. You accepted the inability to initially, at
2 least, open that door as being locked, and that struck
3 you as reasonable?

4 A. It did.

5 Q. And that's when you had the dialogue, the
6 back and forth about unlocking the door?

7 A. Correct.

8 Q. So as you embarked upon the use of these
9 commands, what was the defendant's response? Did he
10 comply?

11 A. Initially, upon the very first initiation of
12 my traffic stop, yes. He pulled over promptly and
13 appropriately. The driver listened to my initial
14 commands to keep his hands raised and where we could
15 see them, as well as opening the door and stepping out
16 of the vehicle and initially facing away from us.

17 Q. I need to hear again, maybe for the first
18 time, remind us in this high-risk traffic stop, the
19 importance in keeping a suspect facing away from you.

20 A. The importance of keeping a suspect facing
21 away from us in an instance such as this, is the
22 suspect is not able to see us, to, again, as I
23 explained earlier, to see where exactly I am or other
24 officers are, and it also deters them from being able
25 to look around for any access or escape routes, if they

1 were to choose to flee or other way -- otherwise resist
2 our efforts.

3 Q. Remind us then, too, of the significance in a
4 high-risk traffic stop in the positioning of a
5 suspect's hands, if you could.

6 A. It's significant to keep our suspect's hands
7 raised, preferably with their fingers interlaced on top
8 of their head, that puts them at a vantage of -- or
9 pardon me -- a position of disadvantage. That way we
10 can ensure that their hands stay clear of any weapons
11 or the ability to physically resist with officers as
12 well as testing compliance continuously so we can
13 adjust to that.

14 Q. Obviously, Officer, throughout the course of
15 this contact with the -- with the suspect, you're not
16 able to see what's on his person other than basic
17 elements of clothing?

18 A. Correct.

19 Q. And what -- what -- strike that.

20 I want to show you a couple of segments of
21 the same video that we just watched, an abridged
22 version if you will, and ask you to drill in a little
23 deeper about some of the things that you faced that
24 night with this suspect that drove your stop or you're
25 handling of that stop, and I would ask we play the

1 second video, please.

2 THE COURT: Is that Exhibit No. 2?

3 MR. PRELL: It's on the same drive, Your
4 Honor. It's a -- it's a second file in the same drive.
5 So I don't know if we want to call it 1B?

6 THE COURT: I would prefer to do the videos
7 separate, that they're each their own exhibit, and the
8 transcript being A. So we'll call it Exhibit No. 2,
9 and the transcript 2A.

10 MR. PRELL: Your Honor, my overly qualified
11 staff reminds me we're traveling with a separate thumb
12 drive for that video, if we want to do that right now.
13 If you want to house it on an entirely separate
14 exhibit, we can do that right now.

15 THE COURT: Yeah. Whatever. Just so it's
16 differentiated. It should be considered the second
17 video or something.

18 MR. PRELL: I defer to the Court, obviously.

19 THE COURT: Whatever is the quickest.

20 MR. PRELL: Okay. I think the quickest is
21 just to keep the drive that's in, in the machine and
22 play it --

23 THE COURT: Perfect.

24 MR. PRELL: -- please.

25 THE COURT: Okay. And no objection, Mr.

1 Holevoet?

2 MR. HOLEVOET: No.

3 THE COURT: Okay.

4 MR. PRELL: And, Your Honor, kindly remind me
5 what we call this. Is it Exhibit 1B?

6 THE COURT: Exhibit 1 is the first video you
7 showed. 1A is the transcript. The next one is --
8 Exhibit 2 is the video, 2A is the transcript.

9 MR. PRELL: Thank you.

10 BY MR. PRELL

11 Q. All right. Just so there are no surprises,
12 Officer, the video you're about to watch is, in
13 essence, the same as we've already viewed, and it's
14 sequential but have just removed portions in the middle
15 to highlight certain aspects of the stop.

16 MR. PRELL: If you'd play it, please.

17 (The video is played)

18 BY MR. PRELL

19 Q. All right. Officer, you saw that segment of
20 that video. What about that contact with the
21 defendant, that element of your contact with the
22 defendant, if anything, was problematic?

23 THE COURT: We should make sure that it's --
24 you started it from the beginning, and at what point
25 did you stop Exhibit 2 at?

1 MR. PRELL: For the record, the first segment
2 of Exhibit 2 began at 00:00 and stops at 00:15.

3 THE COURT: Okay. Go ahead.

4 BY MR. PRELL

5 Q. What about that -- that segment of that
6 video, as you saw it there in the field, if anything,
7 was problematic for you as a peace officer?

8 A. This specific segment is problematic as I had
9 already given loud verbal commands to keep the
10 defendant's -- to the defendant to keep his hands on
11 top of his head with his fingers interlaced and to face
12 away from us. The defendant directly defied those
13 orders and turned almost completely to face officers,
14 at least myself, and dropped his hands down from the
15 top of his head.

16 Q. And, obviously, you don't know the reason for
17 the turn; is that correct?

18 A. That is correct.

19 Q. But were you convinced that he heard you as
20 you gave the commands to face away and remain facing
21 away?

22 A. I was.

23 (The video is played)

24 BY MR. PRELL

25 Q. The second segment, Officer Taylor, started

1 at 00:15 and ended at 00:26. Can you explain for the
2 jury, what, if anything, about that scene was
3 problematic for you, as you faced in the field, on
4 February 28th?

5 A. First, I would like to apologize. I misspoke
6 with that first segment. I had not given him the loud
7 verbal commands to interlace his fingers, but I had
8 told him to face away.

9 This next segment is after I -- I had given
10 the loud verbal commands to put his hands on top of his
11 head with his fingers interlaced and continue to face
12 away from us. This is problematic as, again, as you
13 can see, turned towards the sound of my voice and did
14 drop his hands slightly from his head.

15 Q. I want to play a third segment for you,
16 Officer.

17 (The video is played)

18 MR. PRELL: Oh. I'm sorry. That was the end
19 of -- of the second segment.

20 Now I'm going to play the third segment for
21 you that starts at 00:37 on the video.

22 (The video is played)

23 BY MR. PRELL

24 Q. All right. With regards to that segment,
25 what about that scene, if anything, presented any

1 problems for you as a peace officer that night?

2 A. The defendant, again, dropped their {sic}
3 hands from on top of their {sic} head in direct
4 defiance to my very loud verbal commands to remain with
5 his hands on top of his head.

6 Q. And, again, this causes you concern from a
7 perspective of potential access to weapons?

8 A. It did.

9 Q. And fair to say that by then, you're still
10 not aware of -- or you still haven't had any meaningful
11 opportunity to study anything that might be on his
12 person?

13 A. Correct.

14 MR. PRELL: Can we play the next segment,
15 please?

16 (The video is played)

17 MR. PRELL: That segment, for the record,
18 started at 00:51 and ended at 00:56.

19 BY MR. PRELL

20 Q. Did you see that segment?

21 A. I did.

22 Q. What about that scene, if anything, presented
23 a problem for you in the field that night?

24 A. It was problematic as the -- or the defendant
25 was about as close as they had been up to this point.

1 They're {sic} far -- within a far closer range to us,
2 and, again, removed their {sic} hands from the top of
3 their {sic} head, and turned to face towards the sound
4 of my voice on the passenger's side of my vehicle.

5 Q. But what about it that -- is -- what is --
6 what is it about being in close proximity to you and --
7 and moving those hands around that presents any
8 particular danger?

9 A. It was problematic as being in such a close
10 proximity, there's a higher chance or danger of the
11 defendant becoming -- or the suspect in this case,
12 defending -- becoming verbally or physically resistive
13 with us as he's much closer and able to access -- or
14 close the distance much more effectively as well as
15 continuously looking around as they {sic} were, that
16 could -- is referred to as target glancing within law
17 enforcement. And target glancing is looking around for
18 possible escape routes or creating targets or marking
19 where officers are if they were to choose to physically
20 resist or evade detainment.

21 Q. I've heard you reference that term a couple
22 of times now, target glancing. Obviously, a reference
23 to a suspect potentially assessing the position of
24 another person for purposes of causing harm; is that
25 accurate?

1 A. Correct.

2 Q. And it's also fair to say, though, that you
3 don't know that that's a target glance, right? I mean,
4 you don't know the meaning or the purpose behind the
5 person looking at you; is that fair to say?

6 A. It is fair to say I didn't -- I wasn't aware
7 of the exact intent of why the defendant was looking
8 around, yes.

9 Q. But your training doesn't make or attempt to
10 make a distinguishment between those scenarios?

11 A. Correct.

12 MR. PRELL: Can we play the next segment,
13 please?

14 (The video is played)

15 MR. PRELL: For the record, we just played a
16 segment of the video from 00:58 to 01:12.

17 BY MR. PRELL

18 Q. Did you have a chance to see that segment?

19 A. I did.

20 Q. What, if anything, about that scene as it
21 unfolded for you on the 28th presented any problems?

22 A. So at that point, my sergeant, Sergeant
23 Brown, had taken over command as he was on the driver's
24 side of my vehicle directly behind the defendant and as
25 such was able to be more clearly heard. Sergeant Brown

1 said, you know, gave verbal -- or loud verbal orders to
2 keep his hands on top of his head, and that's all we
3 were asking him to do. And the defendant, again,
4 dropped their {sic} hands from on top of their {sic}
5 head until they {sic} were told a second time to keep
6 their {sic} hands on top of their {sic} head.

7 Q. By now are you forming any opinion as to the
8 compliance of this gentleman?

9 A. I was.

10 Q. And what was that?

11 A. That the suspect in this incident was
12 noncompliant with officers' loud verbal commands.

13 Q. And what does that do to your decision-making
14 in the field, the repeat defiance of the commands?

15 A. That indicates an added danger or potential
16 danger of such that the suspect or defendant was to
17 resist or attempt or evade officers.

18 MR. PRELL: I want to play the last segment,
19 please. I think it's the last.

20 (The video is played)

21 MR. PRELL: For the record, we -- that last
22 segment started at 01:15 on the video and ended at
23 01:28.

24 BY MR. PRELL

25 Q. Did you have a chance to -- to see that

1 segment of the video just now, Officer?

2 A. I did.

3 Q. How many times was the defendant ordered to
4 the left knee?

5 A. I don't have an exact number but
6 approximately -- at least two times he was given very
7 loud verbal commands.

8 Q. And was there also then another command from
9 another officer with a warning about the Taser?

10 A. There was.

11 Q. Did he ever drop to the left knee?

12 A. He did not.

13 Q. What about that scene as it unfolded for you
14 on the 28th, if anything, was problematic?

15 A. It was problematic as, again, the defendant
16 turned to look towards officers and attempted to ask
17 questions despite being told multiple times to face
18 away from us. And then once he was given the first
19 command to go to his left knee, he took a small step
20 forward with his right foot and -- or his left foot,
21 and then took another small step forward with his right
22 foot. That's problematic as it could indicate that the
23 defendant in this incident is looking at officers and
24 taking those steps to either flee or prepare to
25 physically resist with officers.

1 Q. There was much given earlier to the notion
2 that Mr. Cuypers simply wants to ask what's going on,
3 what is the problem here. Do you -- are you trained to
4 allow for a dialogue with a suspect in these
5 situations?

6 A. Dialogue is always the goal with law
7 enforcement contacts. With these situations we want to
8 safely and effectively effectuate a detainment without
9 anybody coming into any kind of harm or anything like
10 that. Dialogue is the first step of that, having an
11 open communication. However, the defendant has
12 displayed multiple times that they are unwilling to
13 listen to our very loud lawful orders, and as such, we
14 need to take that defendant in detainment as quickly as
15 possible without having a dialogue.

16 Q. So his repeat questions, what's going on, can
17 I get an explanation, that wasn't something that was
18 going to alter your approach at that time?

19 A. It was not.

20 THE COURT: It's about 12:07.

21 Is this a good time to break, Mr. Prell?

22 MR. PRELL: Yeah. I think so.

23 THE COURT: Okay. So we're going to break,
24 ladies and gentlemen of the jury.

25 You're reminded you can't start talking about

1 the case, deliberating yet. You can keep your notepads
2 on your chairs, if you want to.

3 We'll lock up during the lunch break, and
4 we'll reconvene promptly at 1:15. So see everybody --
5 meet in the jury room shortly before 1:15 so you can
6 come up and be ready to go at 1:15.

7 Thank you for your attention thus far.

8 (The jury exits the courtroom.)

9 THE COURT: Please be seated.

10 We are now outside the presence of the jury.

11 Anything else we need to address prior to the
12 jury coming in at 1:15, Mr. Prell?

13 MR. PRELL: I don't think so, Your Honor.

14 THE COURT: Mr. Holevoet?

15 MR. HOLEVOET: Not from my perspective.

16 Thank you.

17 THE COURT: All right. Be ready to go at
18 1:15.

19 Thank you.

20 MR. HOLEVOET: Thank you.

21 (Recess taken at 12:09 p.m.)

22 (Proceedings continued at 1:15 p.m.)

23 (The jury enters the courtroom.)

24 THE COURT: Please be seated.

25 We are back on the record.

1 The defendant is present with his attorney.
2 Mr. Prell is present. The jury is present.

3 Let's see. The witness -- Mr. Taylor, if you
4 want to regain the witness stand. You are reminded you
5 are still under oath.

6 And then, Mr. Prell, once he's set up there,
7 you can continue your questioning.

8 BY MR. PRELL

9 Q. All set?

10 A. Yes, sir.

11 Q. So, Officer Taylor, last time we were
12 speaking, I think you were describing for the jury the
13 various aspects and ways that the defendant's
14 compliance or lack thereof was a -- a problem for you
15 in the field.

16 Did the -- did the defendant's defiance of
17 your commands affect your ability to do your job that
18 night?

19 A. It did.

20 Q. How so?

21 A. This prolongs our contact far longer than a
22 normal traffic stop would normally be as well as using
23 up resources -- the other officers that were present
24 there where the City was no longer protected by those
25 officers being dispersed through other areas as they

1 were with me.

2 Q. Did that scene change at all in terms of the
3 presence of other people, be them motorists or
4 pedestrians, throughout the course of your contact with
5 the defendant?

6 A. It did.

7 Q. How so?

8 A. At least two vehicles drove -- or attempted
9 to drive down John Avenue where I was conducting my
10 traffic stop, and there was at least one pedestrian on
11 the west side of the street who attempted to walk past
12 our traffic stop.

13 Q. And that's a problem how?

14 A. At the time we were not aware of the
15 defendant's intentions or behaviors as well as us --
16 especially when we're initially conducting our
17 high-risk stop before we had him in custody. We did
18 have our -- some of us officers had our
19 department-issued firearms drawn and pointed in the
20 direction of the defendant, and that is an issue
21 because of crossfire -- that's over-penetration or
22 anything like that -- there are innocent people
23 directly behind or in the area of the defendant.

24 Q. Have you had a chance -- no -- strike that.

25 There was -- there was mention, I think

1 earlier, to the notion that you may not have had a
2 functioning body camera on you during that shift. Do
3 you recall that?

4 A. I do.

5 Q. Is that true?

6 A. That is true.

7 Q. What -- what's the explanation for that?

8 A. At some point after we had already put our
9 hands on the defendant to take him into custody or to
10 detain him, my body-cam mount became disengaged from my
11 vest where it was placed. That caused the body camera
12 to fall down to the pavement at some point and it
13 interfered -- I'm not a technical person -- but it
14 interfered with the recording and storage capability of
15 the body camera up -- at that point and -- and going
16 forward. It still indicated to me that it was
17 recording, but it was not storing that recording for
18 some reason.

19 Q. Did you take the defendant to jail that
20 night?

21 A. I did.

22 Q. Did you book him?

23 A. I did not.

24 Q. Why not?

25 A. So once we arrived to the sally port, which

1 is the entrance area to the jail -- it's a secure
2 area -- my sergeant, Sergeant Brown, arrived on scene.
3 And we had a discussion about the defendant's lack of
4 criminal history, at least in terms of Wisconsin, and
5 lack of criminal -- or at least recorded contact with
6 him thus far with the Superior Police Department or
7 Douglas County.

8 And he, as a senior officer, gave more
9 perspective to me as to if we wanted to place him into
10 the criminal realm of things by putting him into jail
11 and starting a criminal record or going the route of
12 issuing a citation, which is what I, ultimately, ended
13 up doing, and those were kind of the options that were
14 presented to me by Sergeant Brown at the jail.

15 Q. Obviously, you can't make a criminal record
16 for him at arrest night. He would have to first be
17 found guilty of a crime, correct?

18 A. Correct. To begin the process of a criminal
19 record.

20 Q. So you were -- you were at a crossroads in
21 terms of whether or not to pursue a charge at the city
22 ordinance level or a charge at the criminal level?

23 A. Correct.

24 Q. And you -- you endeavored to make sure that
25 he -- it wasn't referred as a criminal matter?

1 A. Correct.

2 Q. There -- there was reference to you taking
3 him to the jail as some sort of scare tactic. Was that
4 -- was that part of that for -- from your vantage
5 point, anyway?

6 A. Not at all.

7 Q. Have you had a chance to reflect on your
8 handling of Mr. Cuypers in the past five months or so
9 since this incident occurred?

10 A. I have.

11 Q. Could you concede to this jury that there
12 are -- there could be reasons for defying a command
13 like the command to face away that -- basically, the
14 turning around might not be within the intent of the
15 person doing it, an attempt to scan for targets? Can
16 you concede that?

17 A. I can.

18 Q. Could you also concede then that someone
19 engaged in that behavior might not actually be
20 assessing the lay of the land for an escape route?

21 A. I can.

22 Q. Can you accept that dropping one's hands
23 after repeatedly being told to keep them up on his head
24 isn't necessarily an attempt to access a weapon?

25 A. I can.

1 Q. Can you accept that refusing to drop to a
2 knee might not actually be the beginning of taking a
3 fighting stance?

4 A. I can.

5 Q. Can you accept that refusing to drop to a
6 knee might not actually be the front end of an attempt
7 to flee?

8 A. I can.

9 Q. The -- you mentioned at the front end of your
10 testimony the partial -- the partially obscured back
11 window. Can you describe that more? Was that due to
12 the presence of some clothing or something?

13 A. It was due to the presence of clothing.
14 There was a small amount of clothing piled up in the
15 back window of the vehicle that partially obscured --
16 or obstructed my view inside of the vehicle.

17 Q. It obstructed your view, but you could still,
18 obviously, see those movements you described earlier?

19 A. Correct.

20 Q. Was that -- was the presence of that
21 obstruction in that window ever provided -- was -- was
22 that ever explained to you?

23 A. It was.

24 Q. As what?

25 A. At some point during the detainment when we

1 were in the back of the -- or the backside of my squad
2 car still standing with the defendant, he explained
3 that the clothing had been there as kind of a barrier
4 or a curtain because he had been having sex in the back
5 of his vehicle.

6 Q. And you can accept that that might, in fact,
7 have been the reason for that partial obscurity in that
8 window?

9 A. I can.

10 Q. Rather than, for example, an attempt to mask
11 or hide something more sinister like drugs or weapons?

12 A. Correct.

13 Q. And, obviously, you know that the search of
14 Mr. Cuypers and his vehicle revealed nothing of any
15 particular evidentiary nature?

16 A. Correct. I did not search the vehicle. That
17 was other officers that were on scene that did so, but
18 none of the officers that did so indicated to me that
19 anything of -- to note was located within the vehicle
20 other than his identification.

21 Q. So with the benefit of hindsight, would you
22 agree now that it doesn't look like Mr. Cuypers was
23 actually going to position himself to affect damage?

24 A. In hindsight, yes.

25 Q. Okay. Will that change how you approach your

1 stops in the future?

2 A. It will not.

3 Q. Why?

4 A. Because every situation is different and
5 dynamic where the defendant here wasn't intentionally
6 trying to -- or at this point didn't try to pull a
7 weapon or run from us or anything like that, that could
8 very well happen the very next time. So I'm still
9 going to approach it in the same manner.

10 Q. With regard to the traffic matter, is that
11 section of John Avenue that you saw the defendant
12 travel on, is that designated for use by the public?

13 A. It is.

14 Q. Did he travel the wrong way on that street?

15 A. He did.

16 Q. Against signs that indicated he wasn't to
17 travel that way?

18 A. Yes.

19 Q. Did you ever direct him to travel that way?

20 A. I did not.

21 Q. Did you see any other peace officers in the
22 area that may have directed him to travel that way?

23 A. I did not.

24 Q. Were there any other signs or indicators that
25 he should travel that way? For example, for a detour

1 or some other reason like that?

2 A. There was not.

3 MR. PRELL: I have no further questions at
4 this time.

5 THE COURT: And just -- I did forget, ladies
6 and gentlemen of the jury, you saw and heard an
7 audiovisual recording. Recordings are evidence and you
8 may consider them just as any other evidence.
9 Hopefully, you listened carefully, and if there are any
10 more in the future, please listen carefully. Some
11 parts may be hard to understand. You may consider the
12 actions of a person, facial expressions, and lip
13 movements that you can observe on the videotapes to
14 help you to determine what was actually said and who
15 said it.

16 You were provided and may be provided with
17 transcripts in the future to help you listen to the
18 recording. If you notice any difference between what
19 you heard on the recordings and what you read in the
20 transcripts, you must rely on what you heard, not what
21 you read.

22 I should have given that before the first
23 recording. There may be more recordings but keep that
24 in mind as you're viewing audiovisual recordings.

25 Cross.

1 MR. PRELL: Speaking of recordings, however,
2 Your Honor. City offers Exhibits 1 and 2.

3 THE COURT: Any objection to 1 and 2, Mr.
4 Holevoet?

5 MR. HOLEVOET: No, thank you.

6 THE COURT: One and 2 are received.

7 How about the transcripts 1A and 2A?

8 MR. PRELL: Same.

9 THE COURT: Any objection, Mr. Holevoet?

10 MR. HOLEVOET: No.

11 THE COURT: Received.

12 Go ahead.

13 **CROSS-EXAMINATION**

14 BY MR. HOLEVOET

15 Q. Officer Taylor, you said you've had about 300
16 traffic stops; is that right?

17 A. That's an approximate, yes.

18 Q. How about back on February 28th? How many
19 had you had at that point?

20 A. I would estimate 30 to 40.

21 Q. So it's fair to say that most of your
22 experience with traffic stops has all happened since
23 this incident?

24 A. That's fair.

25 Q. And I think you said you had two high --

1 sometimes you called them high risk. In one case you
2 called them a felony traffic stop, right?

3 A. Correct.

4 Q. And this was, according to you, at least one
5 of them?

6 A. Correct.

7 Q. That other one, did that happen before or
8 after this?

9 A. Before.

10 Q. Okay. And what were the circumstances that
11 gave rise to that?

12 A. I was just a backup officer. I was -- I
13 heard it over the radio -- one of my sergeants
14 initiating a high-risk traffic stop on a suspect within
15 the city and requested more officers to respond to his
16 location. With that one, I assisted officers by
17 maintaining lethal coverage of the suspect of that
18 vehicle who was then eventually placed into custody for
19 driving while intoxicated, and I -- and some other
20 unrelated drug charges that were located -- narcotics
21 were located within his vehicle afterward.

22 Q. When you arrived on scene and what you saw
23 from that stop, why do you think your sergeant called
24 it in as a high-risk traffic stop?

25 A. From what I remember, because, obviously,

1 I've not reviewed that incident, it was because this
2 person of that -- that stop had been called in as a
3 possibly intoxicated driver and then was making a lot
4 of evasive maneuvers away from my sergeant as he was
5 attempting to get closer to him. And then I believe he
6 was displaying furtive movement in that as well, which
7 is why the high-risk stop was initiated.

8 Q. I'm sorry. I didn't catch that last part.
9 He did what?

10 A. I -- you just want me to restart from the --

11 Q. Sure.

12 A. Okay. So I -- I was not able to review that
13 incident prior to this because that's not what this is
14 about, but from what I was told and gathered from
15 observing the high-risk stop from that incident, the
16 suspect driver of that vehicle was called in as a
17 possibly intoxicated driver at one of the elementary
18 schools here in town, and my sergeant located him
19 within the city and was trying to get closer to him to
20 gain further evidence and was continuously being evaded
21 by the suspect. And once he got him stopped, he was
22 displaying a lot of furtive movement, which was why the
23 traffic stop was a high-risk traffic stop -- was
24 initiated.

25 Q. Okay. The driving behavior you talked about

1 from Mr. Cuypers, it sounds like he -- he turns
2 repeatedly, right, before you stop him?

3 A. Correct.

4 Q. And I think it -- maybe you're thinking he's
5 trying to get away from you or evading you somehow; is
6 that right?

7 A. I did not think so at that point, no.

8 Q. Okay. And, in fact, it wouldn't make a whole
9 lot of sense because it sounds like later he stops --
10 dead stops and lets you catch up to him, right?

11 A. Correct.

12 Q. Once he pulls over -- when he pulls over, you
13 said you had no problem with the way he pulled over
14 either, right?

15 A. Correct.

16 Q. Once he pulls over, he turns on his dome
17 light, right?

18 A. Correct.

19 Q. And I think you described some furtive
20 movements. You think he might be concealing something
21 or I don't know, grabbing for a gun or who knows what,
22 right?

23 A. Correct.

24 Q. If he's trying to conceal something, did that
25 really jive with someone who turned on their dome

1 light?

2 A. I said he could be concealing something or
3 accessing something. It's dark and you presumably need
4 light to be able to properly access something within
5 your vehicle.

6 Q. Yeah. Furtive is sort of a weird word. I
7 don't know why we always pick words that normal people
8 don't use but I think -- excuse me -- Attorney Prell
9 defined it as something where you're trying to secret
10 something, right? Do you remember him doing that?

11 A. I remember that being part of the
12 description, yes.

13 Q. Okay. Does it make sense that you're trying
14 to be obstructionist or hiding something if you turn on
15 your light so the law enforcement officer behind you
16 can see better into your car?

17 A. I'm sorry. Was that a question?

18 Q. Yeah. Does that make any sense?

19 A. So as I've explained, the back windshield was
20 partially obstructed by clothing, which was later
21 explained by the defendant. However, in order -- a
22 reasonable person also would not lunge across to the
23 passenger compartment of a vehicle immediately upon
24 coming to a stop.

25 Q. I understand that that's your viewpoint. I'm

1 saying, if someone is trying to hide something from law
2 enforcement, which I think is what you're claiming you
3 were afraid of, why would they turn on their dome light
4 of their car to give you a better view of everything
5 they're doing? Does that -- is that consistent with
6 trying to hide from law enforcement?

7 A. I can't speak on what the defendant's thought
8 process was at that time, no.

9 Q. I'm not asking you to. I'm asking you, based
10 on your training and experience -- I realize at that
11 time we had 30 stops or so. Now it sounds like you
12 have 300. I'm asking you if someone is trying to hide
13 something from law enforcement, does it make any sense
14 to make their actions more visible to law enforcement?

15 A. It would not make sense, no. But based on my
16 training and experience, I have experienced that
17 several times where suspects have done exactly that.

18 Q. And every instance you pull them out, you
19 make them get on their knees and somebody tases them?

20 A. Not every instance, no.

21 Q. In fact, in no other instance it sounds like,
22 right? The only other instance you've ever had this
23 happen, you're with another officer, you're assisting
24 somebody else?

25 A. Correct.

1 Q. And you learned later -- it's only later that
2 you learned he's DoorDashing, right?

3 A. Correct.

4 Q. And I think it's Sergeant Brown who tells you
5 that; is that right?

6 A. I don't remember the exact officer that told
7 me that, but, yes, I remember being informed of that by
8 another officer.

9 Q. The app is still up on his phone even. They
10 talk about where to deliver the food and stuff like
11 that, right?

12 A. I did not see the app on his phone, no.

13 Q. You remember the whole discussion about
14 delivering the food, though?

15 A. I do.

16 Q. You remember the reference to TikTok during
17 that discussion?

18 A. Yes.

19 Q. When you stopped his vehicle -- why do you
20 stop it?

21 A. I stopped the vehicle for the traffic
22 infraction of driving against one-way traffic.

23 Q. So what is your goal when you do that?

24 A. To stop the behavior.

25 Q. Okay. And that's happened already. He's

1 pulled over, right?

2 A. Correct.

3 Q. Any other goals?

4 A. To address that behavior and identify the

5 driver and investigate why this had occurred.

6 Q. Okay. Did you try and ask him any of that?

7 A. At that time, no.

8 Q. But that's, in theory, one of your goals,

9 right?

10 A. Right.

11 Q. You could have asked him any of that?

12 A. I could have.

13 Q. Are you trying to give him a ticket?

14 A. That is usually the intent of a stop -- is to

15 address -- stop the behavior, address it, and then

16 proceed from there.

17 Q. And when we watched the video, did you try

18 and give him a ticket during any of that?

19 A. Not at that time.

20 Q. You had talked about sort of other officers

21 being pulled away from their duties, things like that,

22 right?

23 A. Correct.

24 Q. But you called them, right?

25 A. I asked for another squad. Another officer

1 responded to my location.

2 Q. Right. And so then it just -- all the people
3 start showing up, right?

4 A. Correct.

5 Q. And this shift is -- from when to when do you
6 work again?

7 A. 6:00 p.m. until 6:00 a.m. the following
8 morning.

9 Q. And are all those other officers on the same
10 shift or no?

11 A. Not all of the other officers are on the same
12 shift.

13 Q. About -- it's 10:16, I think, when you
14 stopped the car, right?

15 A. I believe it was around that time, yes.

16 Q. Okay. So around 10:16, give or take, how
17 many officers are on duty, typically, in Superior?

18 A. Generally, there are five patrol officers and
19 a supervising sergeant.

20 Q. So you're telling me that everyone but one is
21 there at this point?

22 A. One of the officers, Officer Moen, was in
23 training at that time with Officer Gaard, and so that's
24 the reason he was there with her.

25 Q. So there might have even been two extra

1 officers out there? We don't know?

2 A. Correct.

3 Q. Okay. But it's not -- I mean, Mr. Cuypers
4 didn't say, you better get a lot of other cops. I'm
5 going to cause problems, right?

6 A. Correct.

7 Q. Even from his behavior, he didn't -- really
8 didn't indicate that. He's not -- you said to the
9 other guy, he's actively evading the law enforcement.
10 He's driving away. He's resisting stopping, right? He
11 didn't do any of that?

12 A. He pulled over promptly once I initiated my
13 traffic stop, yes.

14 Q. So that's a no, right? He didn't do any of
15 that?

16 A. I guess -- can you reask the question? I --

17 Q. I'm saying he didn't try to run away. He
18 didn't flee and elude, right?

19 A. That is correct.

20 Q. In fact, that's one of the felonies that
21 often would result in a felony traffic stop, right?

22 A. Correct.

23 Q. But there was no observation of felonies
24 anywhere in this, right?

25 A. Correct.

1 Q. Or observations of a crime in any of this,
2 let alone a felony?

3 A. Correct.

4 Q. You also talked about how people could have
5 been shot, right? Bystanders could have been shot?

6 A. Correct.

7 Q. You're on a busy street. It sounds like
8 people are driving by, someone is walking by, right?

9 A. Correct.

10 Q. There are houses on both sides of John
11 Avenue, right?

12 A. Yes.

13 Q. But, again, Mr. Cuypers doesn't have a gun,
14 does he?

15 A. Not that we were aware of at that time.

16 Q. And, ultimately, you find out, he does not
17 have a gun?

18 A. Correct.

19 Q. The only people who have pulled out their
20 guns and might accidentally shoot somebody are you all,
21 right?

22 A. Correct.

23 Q. Did you think when you saw him reaching over,
24 to say to him, stop moving?

25 A. I did but I was also communicating with my

1 other officers at that time.

2 Q. Here's a question for you: Were you in a
3 hurry to get this over with or -- or what?

4 A. I was not.

5 Q. Okay. So you don't think it's maybe okay to
6 have some verbal command to him before you call these
7 other officers taking basically the entire police force
8 for the City of Superior to an incident that apparently
9 none of them had to be at?

10 A. Can you reask that question?

11 Q. Sure. You're not in a rush it sounds like.
12 You could have maybe tried to talk to Mr. Cuypers, even
13 from a distance before you call for backup, which ends
14 up being darn near every officer that's on duty, right?

15 A. Correct.

16 Q. But you choose not to do that, right?

17 A. Correct.

18 Q. Then you could try to learn more about Mr.
19 Cuypers, right?

20 A. Correct. But I would much rather be able to
21 observe what's going on inside the vehicle than
22 distracting myself by trying to communicate on the
23 radio or listen to input of information other than
24 what's coming from that vehicle.

25 Q. Fair enough. Now, it looks like people,

1 though, they show up very quick. I'm almost amazed how
2 quick they show up, right?

3 A. Correct.

4 Q. It's seconds, basically, and Sergeant Brown
5 is there, right?

6 A. Correct.

7 Q. And then he's followed very shortly by
8 Officer Gaard and Officer Moen, who are running around
9 the corner already?

10 A. Correct.

11 Q. And Officer Crist, he's not far behind
12 either, right? He's there last but pretty quick.

13 A. Correct.

14 Q. Why not ask any of them to try and find out
15 more about Mr. Cuypers?

16 A. Because, again, our focus is the vehicle and
17 what is occurring within that vehicle. We're not going
18 to distract ourselves at that time by trying to gain
19 further information about who this person is. We would
20 much rather be watching exactly what is occurring.

21 Q. You familiar with those like jokes about how
22 many people it takes to screw in a lightbulb? You ever
23 heard a joke like that?

24 A. I believe so.

25 Q. Okay. So how many law enforcement officers

1 are necessary to watch Mr. Cuypers in his car?

2 MR. PRELL: Objection. Argumentative.

3 THE COURT: I couldn't hear you.

4 MR. PRELL: My objection is based on the
5 question being argumentative.

6 THE COURT: Well, I don't think the question
7 is, but when there's a preface to it that isn't a
8 question but a statement -- I'm just going to caution
9 you, Mr. Holevoet, you're asking some prefacing
10 comments -- you're making prefacing comments, and
11 you're making those as comments, and then you ask a
12 question. The jury is going to get confused what's the
13 question versus what's the prefacing comment. The
14 question is appropriate, but just be aware, don't be
15 giving your own views and then asking a question.

16 MR. HOLEVOET: Thank you, Judge. I'll be
17 more careful with it.

18 THE COURT: Thank you. Go ahead.

19 Overruled.

20 BY MR. HOLEVOET

21 Q. So the question is, it takes five people to
22 watch every movement he makes? No one could possibly
23 radio in about the plate, who he is, anything?

24 A. We were also unaware of how many occupants
25 were inside the vehicle due to the partial obstruction.

1 Q. So is that a no? No one can else {sic} -- no
2 one can do anything else?

3 A. Not at that time. It was not appropriate.

4 Q. In theory, the people there are supposed to
5 be like defending the entire city, right, from crime at
6 that same time, basically? Maybe with the exception of
7 one person who is missing.

8 A. In theory, yes.

9 Q. But they're -- it's still your testimony that
10 they're incapable of dividing job duties to do two
11 things at the same time?

12 A. I'm not going to speak on other officer's
13 capabilities.

14 Q. You said that you don't hold anything about
15 the -- opening the door against him now; is that right?

16 A. Correct.

17 Q. So just to be clear, what are you holding
18 against him? What did he do wrong? He sometimes took
19 his hands down to try and ask you questions?

20 A. Correct. In direct defiance of our lawful
21 commands to keep his hands on top of his head and face
22 away from us. He directly defied those orders multiple
23 times.

24 Q. Let's talk about your lawful commands. Are
25 you able to command anyone on the street to get down on

1 their knees?

2 A. No.

3 Q. All right. Are you able to stop anybody and
4 seize them and stop them from doing what they want to
5 do with their lives?

6 A. No.

7 Q. Why is that?

8 A. The Constitution.

9 Q. Right. Okay. So to stop Mr. Cuypers, you
10 needed reasonable suspicion or probable cause of
11 something, right?

12 A. Correct.

13 Q. And you have that of a traffic violation,
14 right?

15 A. Correct.

16 Q. And that's why you stop him, right?

17 A. Correct.

18 Q. Now, you don't have the lawful ability to
19 prolong a traffic stop indefinitely, right?

20 A. Correct.

21 Q. In fact, normally to expand the scope of a
22 traffic stop, you would need probable cause of some new
23 crime, right?

24 A. It can raise to that level, yes.

25 Q. I mean, that's -- that's the law, right? You

1 have to have that. You can't just search somebody's
2 car after you've stopped them for speeding without
3 something more, right?

4 A. Correct.

5 Q. So you can't do like a drug investigation
6 after you stop him for speeding, unless you have
7 probable cause they are -- they have drugs?

8 MR. PRELL: Your Honor, I'm going to raise an
9 objection at this point. The -- these would be
10 appropriate for a -- a suppression hearing where we
11 crawl through the very layered and complicated aspects
12 of the Fourth Amendment. They're not particularly
13 relevant to the matters of -- of resisting -- or
14 obstructing, rather.

15 MR. HOLEVOET: May I respond?

16 THE COURT: Well, sustained.

17 That's a motion before trial. You've already
18 -- if there was going to be motions, they should have
19 been done. I'm the judge of the law. This Officer
20 isn't the judge of the law. This jury isn't the judge
21 of the law. I am.

22 So I think you're -- if you were going to
23 file a motion on the Fourth Amendment violation, that
24 should have been done outside the jury's presence.

25 So objection sustained.

1 MR. HOLEVOET: Unfortunately, Judge, I think
2 I probably need to make a record on that.

3 THE COURT: You can later. That's fine.

4 MR. HOLEVOET: Thank --

5 THE COURT: Finish --

6 MR. HOLEVOET: -- you.

7 THE COURT: -- your cross.

8 BY MR. HOLEVOET

9 Q. What was your lawful authority to continue to
10 detain Mr. Cuypers?

11 A. My lawful authority to detain Mr. Cuypers?

12 Q. Yes.

13 A. That stemmed from us giving him a lawful
14 order to step out of the vehicle, which is case law, as
15 well as we were trying to detain him as quickly as
16 possible, but that was being prolonged by the
17 defendant's behaviors.

18 Q. We talked a little about -- you were asked
19 some questions about hindsight, right, earlier from
20 Attorney Prell?

21 A. Correct.

22 Q. In hindsight, you could have just issued him
23 a ticket, right?

24 A. In hindsight.

25 Q. That's right?

1 A. Correct.

2 Q. So is it Mr. Cuypers who is prolonging his
3 detention or is it you and other law enforcement that's
4 prolonging the detention?

5 A. It was Mr. -- or it was the defendant's
6 behaviors that began this process of conducting a
7 high-risk traffic stop.

8 Q. Because he reached over for something and you
9 couldn't see?

10 A. Correct.

11 Q. To be clear, did that give you a reasonable
12 suspicion or probable cause of a new crime or something
13 else --

14 MR. PRELL: Same objection as earlier. We're
15 crawling through Fourth Amendment issues that end up
16 being motions to suppress relevant, not in trial time.

17 THE COURT: Sustained.

18 BY MR. HOLEVOET

19 Q. You had testified on direct that the goal of
20 this high-risk maneuver, like the -- the protocol. I
21 think you said something like either peaceful or
22 peaceable communication -- to get to peaceful or
23 peaceable communication. Do you remember saying that?

24 A. I do.

25 Q. Did you try to have peaceful or peaceable

1 communication with Mr. Cuypers before he was tased?

2 A. Not before then, no.

3 Q. When he asked you some questions, you don't
4 try to answer that -- no one tries to answer them,
5 right?

6 A. Correct.

7 Q. If that was your goal, why not?

8 A. I don't understand the question, I suppose.

9 Q. I think you had said the -- the goal of this
10 whole process, this elaborate process of getting him
11 out, walking him backwards, all those things, is for
12 peaceable communication. If you could have obtained
13 peaceable communication before that, why didn't you?

14 A. We are reacting to the behaviors displayed by
15 the defendant at the time of the traffic stop.

16 Q. And, again, just because he reached over?

17 A. It wasn't just reaching over but yes.

18 Q. What else was it?

19 A. It was certainly a lunge towards the
20 passenger compartment of the vehicle where then due to
21 the clothing that was in the back of the window
22 partially obstructing the back windshield, he became
23 out of view or went out of view.

24 Q. And are you -- is the goal there to
25 eventually handcuff them or what is the goal once

1 you're trying to get him on his knees and all that
2 stuff?

3 A. That is the goal, yes, is the detainment.
4 The parts where we are ordering them onto their knees
5 is part of what is considered a submission ritual
6 within law enforcement. That is a whole -- that's the
7 whole process of ordering out of the vehicle up until
8 we get them to their knees, which puts the person at a
9 position of disadvantage where then we would detain
10 them in handcuffs, yes.

11 Q. You also said you wanted to make sure he --
12 he does not have a weapon in his hands or anything like
13 that, right?

14 A. Correct.

15 Q. But you knew at that time, at least, he did
16 not? You could see his hands?

17 A. Correct.

18 Q. Is Mr. Cuypers ever belligerent or shouting
19 or anything like that?

20 A. He was not belligerent, no.

21 Q. He's actually, I think, fairly -- fairly
22 polite or compliant for the rest of the -- your time
23 with him after he's tased, right?

24 A. Afterward, yes.

25 Q. Was he -- he wasn't necessarily actively rude

1 before then, right?

2 A. Correct.

3 Q. Do you deal sometimes with people who are
4 being rude or cursing at you, screaming at you, things
5 like that?

6 A. I do.

7 Q. He never tries to run or provide any active
8 physical resistance?

9 A. He did not attempt to do so, no.

10 Q. You talked a little bit about this discussion
11 with Sergeant Brown at the jail. Do you remember that
12 discussion?

13 A. I do.

14 Q. And do you remember a discussion about him
15 not seeing the world the same way?

16 A. Correct.

17 Q. You remember saying that fact, that you
18 agreed with Sergeant Brown that you didn't think he
19 did?

20 A. I do.

21 Q. And as part of your training, are you trained
22 to deal with all kinds of different people?

23 A. Yes.

24 Q. All right. Some people might have a mental
25 illness, right?

1 A. Yes.

2 Q. Some people might be drunk?

3 A. Yes.

4 Q. Sometimes people will just be really upset
5 because they're dealing with some difficult situation
6 in their lives, right?

7 A. Right.

8 Q. In fact, that's kind of when you guys
9 normally are involved often is a situation like that,
10 right?

11 A. Correct.

12 Q. Could you explain all the expectations to Mr.
13 Cuypers before you got him out of the car?

14 A. No.

15 Q. Did you have any reason to think that Mr.
16 Cuypers understood all the rules as you saw them?

17 A. You are asking if I had a reason to -- that
18 he was able to understand what I was expecting of him?

19 Q. Yeah. I think you said that, I'm trained not
20 to answer any questions. I'm not going to answer any
21 questions, right?

22 A. I don't think I said I was trained to not
23 answer questions.

24 Q. All right. You just elected not to answer
25 any questions?

1 A. Correct.

2 Q. I'm asking did you think he understood
3 that -- the scanning behavior, for example, right? You
4 have no idea if he knows what that is or why you
5 would -- it would make you nervous that he wants to
6 look at you in the face when he talks to you?

7 A. I can't speak for what he might understand.

8 Q. After Mr. Cuypers is tased, what do you do?

9 A. I approached where he was lying on the ground
10 and placed him into handcuffs with another officer's
11 assistance -- or other officers' assistance.

12 Q. And right prior to his being tased, you could
13 hear he was trying to ask another question?

14 A. Yes.

15 Q. And you recall watching that video together
16 with us just, I think, before lunch, right?

17 A. Yes.

18 Q. He's asking like for an explanation or can he
19 get an explanation. Do you remember that?

20 A. Something to the effect, yes.

21 Q. And after he's tased, do you remember him
22 asking sort of what did he do, that kind of thing,
23 again?

24 A. I believe it was something to that effect,
25 yes.

1 Q. Were you there assisting him to his feet
2 after he was tased?

3 A. I was.

4 Q. And was he resisting in any way?

5 A. He was not.

6 Q. In fact, he basically tells you to do
7 whatever you need to do?

8 A. Something to that effect, yes.

9 Q. And then when he gets up, he does thank you
10 for it, right?

11 A. I don't recall that currently, but that
12 sounds consistent with his behavior afterward, yes.

13 Q. Do you ask him who he is?

14 A. I believe I did afterward.

15 Q. Do you try and find out more information
16 about him at that point?

17 A. Yes. We began to learn who -- what his
18 identity was and everything else, yes.

19 Q. Yeah. You personally or somebody else?

20 A. When I was later in the jail, I asked him all
21 those questions again including his address and
22 everything like that with the intention of giving
23 citations.

24 Q. Right. On the scene, though, does somebody
25 try and determine who he is?

1 A. I believe another officer located his
2 identification card, yes.

3 Q. Do you recall him asking you at the back of
4 your squad if he was under arrest?

5 A. I recall something to that effect, yes.

6 Q. And I think you said yes; is that right?

7 A. Sounds consistent, yes.

8 Q. And is it true that at the time you thought
9 you had to arrest him?

10 A. Correct.

11 Q. And later at the jail, your conversation with
12 Sergeant Brown, you learned that that's actually not
13 the case; is that right?

14 A. Correct.

15 Q. Do you remember discussion with Sergeant
16 Brown at the jail where he talks about you could take
17 him back there, meaning back into the jail, and discuss
18 with him what he did, right?

19 A. Yep.

20 Q. And that's sort of, again, I guess probably
21 to be instructive to him about what he did wrong?

22 A. It was to have discourse between each other,
23 yes.

24 Q. And that was to -- I think Sergeant Brown
25 says to rebuild the relationship, do you remember him

1 saying that to you?

2 A. Something to that effect.

3 Q. Was that your viewpoint, too, that somehow
4 the relationship had been harmed between him and law
5 enforcement?

6 A. After Sergeant Brown had explained it to me
7 and his point of view, because, obviously, he's another
8 person, has different perspectives on incidents and a
9 lot more experience than I do in law enforcement.

10 Q. Do you recall declining offers from another
11 officer to join you at the jail?

12 A. Yes.

13 Q. Why did you do that?

14 A. Because the defendant was already detained --
15 or he was already in handcuffs in the back of my police
16 cruiser and we were en route to a secure sally port in
17 the jail, where, if need be, I can just sit and wait if
18 there were to become issues -- as like physically
19 combative or resistance, I can just wait for other
20 officers or jail staff to assist me.

21 Q. Is that not the case when you have four other
22 law enforcement officers right by you with your guns?

23 A. I don't understand your question.

24 Q. I think you're drawing, and I -- correct me
25 if I'm wrong, I think you're drawing a distinction

1 between when you're back at the jail and when you're
2 out on the street, right?

3 A. Yes.

4 Q. And you said you made the conscious choice,
5 it sounds like, to go to the jail alone, right?

6 A. Correct.

7 Q. I'm asking -- and you said that's because
8 someone could come and help you at the jail, right?

9 A. Correct.

10 Q. But you weren't alone on the street. You had
11 four other officers with their guns and all that other
12 stuff right there with you?

13 A. Correct.

14 Q. But you saw a difference somehow?

15 A. Yes.

16 Q. And it's Sergeant Brown who suggests doing a
17 citation; is that right?

18 A. I believe it was him, yes.

19 Q. And, ultimately, you agree with that
20 assessment?

21 A. Correct.

22 Q. And in part, you're at least motivated by the
23 lack of criminal history; is that right?

24 A. That is correct. That was based on Sergeant
25 Brown's recommendations.

1 Q. Why do you decide not to give him tickets
2 that night?

3 A. You mean in -- in person? Like handing the
4 tickets to him in person?

5 Q. Right.

6 A. So the reason I had brought him into the
7 prebooking room, which is just within -- or just past
8 the sally port -- it's not within the actual jail
9 itself. It's a prebooking room where we complete our
10 paperwork for the arrest, if an arrest is made, and
11 it's also where we conduct interviews or anything like
12 that prior to being booked into the jail's custody.

13 There is a computer in there we use to
14 document our arrest report for the jail's records. I
15 was intending to write citations on that computer that
16 night and give them to him in person, but the computer
17 was not functioning that night in terms of the
18 application that we use to write our traffic tickets,
19 which is called TraCS.

20 Q. Okay. So then you end up mailing him the
21 tickets, right?

22 A. Correct.

23 Q. And all you do the rest of the night is you
24 take him back to his car, at least as it relates to Mr.
25 Cuypers; is that right?

1 A. Correct.

2 Q. And so when you get back to Mr. Cuypers'
3 vehicle, there is another officer there, right, Officer
4 Collins?

5 A. Correct.

6 Q. Do you recall mentioning to him that you
7 didn't think there was anything in the vehicle or any
8 weapons in the car, things like that?

9 A. Yes.

10 Q. And do you recall Officer Collins just
11 telling you, let's just let him go, basically, right?

12 A. Something to that effect, yes.

13 MR. HOLEVOET: I have no other questions.

14 THE COURT: Redirect?

15 MR. PRELL: Thank you, Your Honor.

16 THE COURT: Make sure you use your mic,
17 please.

18 **REDIRECT EXAMINATION**

19 BY MR. PRELL

20 Q. Does furtive to you mean more than hiding
21 something?

22 A. Yes. So furtive within the law enforcement
23 profession or community, that's a generalized term to
24 refer to odd behavior or behavior that could be
25 concealing or accessing something. It's behavior out

1 of the ordinary when -- during our interactions with
2 somebody.

3 Q. Is it fair to say that accessing something
4 would be enhanced through the use of a light?

5 A. Yes.

6 Q. So hindsight seems to be part of our
7 conversation right now. Having the hindsight of
8 looking back now and -- and, of course, I don't think
9 you were ever confused about the light, but looking
10 back now at the -- at the positioning and the use of
11 the light in the interior of the car, does that change
12 your assessment of how that stop should have gone that
13 night?

14 A. No.

15 Q. Okay. Mr. Holevoet asked you a couple of
16 questions about the felony stop. Felony stop is one of
17 the terms that's used to describe a high-risk stop,
18 correct?

19 A. Correct.

20 Q. Have you been taught, though, that you have
21 to observe the violation before the commitment of a
22 felony in order to effect that stop?

23 A. No. Felony stop is interchangeable with
24 high-risk stop depending on the generation of law
25 enforcement that you speak to.

1 Q. Okay. You could have done, to Mr. Holevoet's
2 point, lots of different things with that stop,
3 correct?

4 A. Correct.

5 Q. You could have simply approached the vehicle
6 straight to the front -- straight to the driver's side
7 door, and asked for a conversation?

8 A. I could have, yes.

9 Q. You could have done so after leaving your
10 equipment belt behind, correct?

11 A. Yes.

12 Q. You could have never gotten out of your squad
13 and just driven away, correct?

14 A. Yes.

15 Q. You could have maybe given him some
16 indication that he should turn around, watch him leave,
17 and then leave the area yourself, correct?

18 A. I could have, yes.

19 Q. I mean, there's no number -- there's no end
20 of the scenarios you could have done, right?

21 A. Correct.

22 Q. Are any of those consistent with what you've
23 been trained to do in that situation, though?

24 A. With that situation -- obviously, situations
25 are dynamic with everything with everyone, but with

1 that situation, no.

2 Q. There was some discussion between you and Mr.
3 Holevoet about your goal for a peaceful communication
4 with the driver about his driving conduct. Do you
5 remember that?

6 A. I do.

7 Q. Do you think you could have met that goal for
8 a peaceful conversation with him under the
9 circumstances that were presented you that night?

10 A. Not under those circumstances, no.

11 Q. Why?

12 A. Due to the -- again, the phrase I used is
13 furtive. The furtive behavior, furtive movement within
14 the vehicle indicating something is occurring out of
15 the ordinary within that vehicle.

16 Q. You mentioned, I think, more than once how
17 fluid things are in the field and how the scene changes
18 on a dime, in essence. Is it fair to say then that
19 your goals and objective -- or objectives, plural, as a
20 law enforcement officer changes with the development of
21 those scenes?

22 A. Correct.

23 Q. What changed your objective in -- in this
24 case?

25 A. My objective changed after I observed the

1 defendant within the vehicle making these lunging
2 movements -- the passenger compartment of the vehicle
3 -- briefly becoming -- going out of sight -- out of my
4 sight.

5 Q. There was a conversation with you moments ago
6 about you and Sergeant Brown conceding something at
7 some point along the lines of, maybe this guy just
8 doesn't view the world the same way as others,
9 something along that -- those lines. Do you recall
10 that?

11 A. I do. Something to that effect.

12 Q. And it's also fair to say then that at a
13 certain point in your contact with the defendant, you
14 began to feel like he wasn't a threat; is that true?

15 (No audible response from the witness.)

16 Q. You must have felt, for example, that he
17 wasn't a threat when you declined assistance to go to
18 the jail with him?

19 A. Correct.

20 Q. Okay. Is that an example of your -- of your
21 perception of the scene changing based on the
22 circumstances as they evolved?

23 A. It is.

24 Q. Some chatter between you and Mr. Holevoet
25 about relationship building. Is relationship building

1 something that you pursue as a peace officer from time
2 to time in this jurisdiction?

3 A. In terms of positive community relations,
4 yes.

5 Q. Well, describe them, please. You used the
6 word -- the words positive community communications
7 {sic}. What -- what does that mean to you?

8 A. Interacting with the public at public events.
9 Several times I've spoken to children at the parks,
10 especially during the holiday -- this previous 4th of
11 July. Talked to them, given them stickers, things like
12 that, building communication -- or relationships with
13 that. Helping people cross the road. Just community
14 caretaker-type things.

15 Q. It doesn't sound to me like you think of Mr.
16 Cuypers as a real bad guy?

17 A. I do not.

18 Q. Is there a problem in your view with
19 relationship building with people even with those whom
20 you have arrested or cited?

21 A. No.

22 Q. Does your effort with regards to Mr. Cuypers
23 after he was detained, to have a conversation with him,
24 does that change your convictions about the legitimacy
25 of the ticket for obstructing an officer?

1 A. No.

2 Q. Is Mr. Cuypers in the courtroom right now?

3 A. He is.

4 Q. Could you indicate his position in the
5 courtroom and just briefly describe his appearance?

6 A. He's seated beside Mr. Holevoet. Long hair,
7 dark suit, with a bolo tie.

8 MR. PRELL: Your Honor, I don't think there's
9 any suggestion that -- there's any question about the
10 identity of the defendant in this matter, but I'd
11 simply ask that the record reflect that this officer
12 has identified Mr. Cuypers as the gentleman with whom
13 he interacted and ultimately cited February 28th.

14 THE COURT: The record will so reflect.

15 MR. PRELL: Nothing further, Your Honor.

16 THE COURT: Recross.

17 **RECROSS-EXAMINATION**

18 BY MR. HOLEVOET

19 Q. I just want to get it -- so you said that, on
20 direct, that the goal of this whole high-risk process
21 was peaceable communication. So how -- how did that
22 goal change? I mean, is that -- if that was the goal
23 by doing the high-risk process, are you now saying that
24 wasn't the goal of that whole process?

25 A. The goal was to safely detain the occupant or

1 driver of the vehicle -- the occupants or driver of the
2 vehicle, and, then therefore, afterward -- after the
3 detainment and we were at -- we made sure that there
4 were no weapons or any intent to physically resist or
5 anything like that, then have a conversation.

6 Q. All right. And you talked a lot about
7 dynamic or fluid situations. Attorney Prell asked you
8 a couple questions about the fluidity of things in the
9 field, right?

10 A. Correct.

11 Q. But you also testified that while you're
12 going through that process, you're never going to stop
13 just going through that process of the high-risk stop,
14 right?

15 A. I react on the situation at hand at the
16 information that I'm given at that moment.

17 Q. You feel you did that here?

18 A. Yes.

19 Q. So -- so it's not true that once you start
20 that process, you have to just keep going? There's no
21 room for any de-escalation or a different path? You
22 could have done that.

23 A. One of the steps of de-escalation is loud
24 verbal commands and command presence.

25 Q. Right. So you're expecting Mr. Cuypers, who

1 doesn't know what's going on, to be the person who
2 de-escalates the situation, right?

3 A. No.

4 Q. But he's supposed to follow your
5 instructions. That's what allows de-escalation to
6 occur, right? Wouldn't that be on him?

7 A. To listen to the instructions, yes. We can't
8 force somebody to listen to us. We can -- in terms of
9 like actual active listening, we can't force somebody
10 to hear us.

11 Q. Right. What could you have done to
12 de-escalate? Nothing?

13 A. As I said, my presence, and then the command
14 presence and my loud verbal commands are the first
15 steps of de-escalation.

16 Q. After he's tased, something about the
17 fluidity changes the dynamics though?

18 A. Was that a question?

19 Q. Yes.

20 A. Yes.

21 Q. And then you're able to have positive
22 community communication, right?

23 A. Correct.

24 Q. Are most of your duties handing out stickers
25 at 4th of July?

1 A. No.

2 Q. Are most of your duties stopping people to
3 cite them for something or intervening when someone
4 thinks there's a problem?

5 A. That is not my primary duty, no.

6 Q. Okay. What is your primary duty?

7 A. My primary duty is to serve the people of
8 Superior.

9 Q. And you think that's what you're doing to Mr.
10 Cuypers?

11 A. Yes.

12 Q. But you do agree that positive community
13 communication is one of your goals?

14 A. Yes.

15 Q. And that includes during traffic stops,
16 arrests, things like that?

17 A. Any interaction yes.

18 MR. HOLEVOET: I have no other questions.

19 THE COURT: Re-redirect?

20 **REDIRECT EXAMINATION**

21 BY MR. PRELL

22 Q. This notion of de-escalation -- I -- I
23 remember you indicating to Mr. Holevoet you didn't hold
24 the matter of getting the car door open against Mr.
25 Cuypers, correct?

1 A. Correct.

2 Q. You accepted the it's locked problem as
3 reasonable and you worked through that with him?

4 A. I did.

5 Q. What were the categories though of defiance
6 then that put you on high alert?

7 A. The threats or active resistance or the
8 threat thereof by continuously physically defying our
9 orders to face away from us and keep his hands on top
10 of his head.

11 Q. What about the knee? I know that you didn't
12 give that order, but you were there when that order was
13 given -- those orders were given, correct?

14 A. I was there, yes.

15 Q. Did the refusal of the defendant to take the
16 knee factor into what may have been an escalation?

17 A. I would say so, yes.

18 Q. So in the process from first getting Mr.
19 Cuypers out of the car, to where you're actually laying
20 hands on him after the use of the Taser, where, if
21 anywhere, was there a softening in your view of things
22 to be alert for?

23 A. I don't think that at any point following him
24 exiting the vehicle there was any softening of the
25 approach.

1 Q. Do folks like you in the law enforcement
2 business see those repeat defiances as building on each
3 other or do you look at them in vacuums?

4 A. It's situational. It's very situational
5 based on how they are reacting to our commands and to
6 our orders and to our presence, but I would say it is
7 taken as a whole. It is the entirety of the
8 circumstances.

9 Q. In this instance, would you describe that as
10 a build up of noncompliance?

11 A. I would say so.

12 MR. PRELL: Nothing further.

13 THE COURT: Re-recross?

14 MR. HOLEVOET: No, thank you.

15 THE COURT: All right. You can step down,
16 sir. Thank you.

17 (The witness was excused)

18 THE COURT: We're going to take a ten-minute
19 recess.

20 We'll reconvene, ladies and gentlemen of the
21 jury, let's say at 2:30.

22 Again, you can't start deliberating,
23 discussing the case at all with anyone. So please --
24 you can keep your notebooks here. We'll keep them
25 under -- if you want to put them in the envelopes,

1 that's fine, too.

2 Thank you.

3 (The jury exits the courtroom.)

4 THE COURT: All right. Please be seated.

5 We are outside the presence of the jury. The
6 defendant and his attorney, Mr. Holevoet, are here.
7 Mr. Prell is also here. I know that Mr. Holevoet
8 wanted to make a record.

9 The other concern I'll quite frankly say is,
10 we're at a snail's pace. I've got the jury for a day.
11 You guys have the jury for the day, and we're not going
12 until midnight. So you guys better figure out if we're
13 going to finish today. If we're not going to finish
14 today, then is it a mistrial and then we've got to
15 start all over, but I've the jury for a day. That's
16 it. So if somebody would have given me the heads-up
17 that we needed a two-day trial, you know, I could've
18 done that, but these jurors have plans tomorrow. We
19 can't just take up their day tomorrow, too. Quite
20 frankly, I've got a calendar tomorrow. You guys
21 probably have stuff tomorrow. So you guys better talk
22 about that, how we're going to go a little bit more
23 quickly.

24 I can say that I've been very uninvolved as
25 far as some of the things that I'm hearing with

1 evidence that I think we're getting a little bit --
2 rehashing things too many times, and I don't want to
3 get more involved than I already am, but you guys
4 better think about this because we need to finish today
5 or like I said, my alternative, I guess, is mistrial
6 because the jury is not coming back tomorrow.

7 That being said, as far as the record, Mr.
8 Holevoet, you wanted to make a record?

9 MR. HOLEVOET: Just briefly on two issues.

10 First of all, I don't disagree with Mr. Prell
11 that Fourth Amendment issues are best for a -- a motion
12 prior to trial. I think it's important a record is
13 made about discovery issues in this case. Now, I
14 understand that I'm not entitled to discovery in the TR
15 case. All right. That's governed by 345.421, but in
16 the forfeiture case, I am entitled to discovery, and I
17 filed a timely motion back in April under 804.09, which
18 applies to forfeiture cases, and I received video and
19 police reports the day we were last in court, a week
20 ago. So one of the reasons maybe we don't have a
21 motion is because I never had access to materials, but,
22 furthermore, that's not really the point of those
23 questions.

24 The point of those questions, from my
25 perspective, knowing that that ship has sailed on the

1 discovery issue and on the motion issue, is because the
2 jury is tasked with determining two things among
3 others. One, is that the officer was acting with
4 lawful authority, which I think is an open question,
5 unfortunately.

6 And two, that Mr. Cuypers understood that,
7 that he knew that. And so for those reasons, I was
8 asking those questions. And for those reasons, I
9 believe them to be relevant to those two elements

10 THE COURT: Mr. Prell?

11 MR. PRELL: I don't know what to say with
12 regards to the discovery. I can't recall one instance
13 in which my office was asked to produce anything
14 relevant to this case until last Monday, the date of
15 the pretrial hearing.

16 With regards to the instruction or I -- I
17 guess I'm -- I'm having a difficult time tracking Mr.
18 Holevoet's thoughts on that element of the obstruction.

19 Could you -- could you --

20 THE COURT: I mean, I will tell you, I know
21 where I'm going with that one.

22 Anything else you want to be heard on,
23 Mr. Prell?

24 MR. PRELL: No.

25 THE COURT: So I get the, "knew his conduct

1 would obstruct the officer." We hashed that out this
2 morning. That's part of the elements, but as far as
3 lawful authority, I guess I'm curious. Under 345.22,
4 the officer has the ability to arrest somebody on a
5 traffic violation.

6 I don't see where -- this isn't something --
7 that's why it got me a little bit disturbed because
8 we're talking about prolonging the stop. They can
9 arrest. They can book and release. Then it goes on to
10 talk about what they can do.

11 I don't think this is an issue of lawful
12 authority. I really think it's an issue, and I think
13 Mr. Holevoet brought it up by having that element in
14 it, it's the knowledge part, but I don't think there's
15 any -- and, quite frankly, looking at the jury
16 instruction, and it might be something that we should
17 be giving the jury, the instruction, now it's been
18 opened up, and I could read 345 to the jury, that the
19 officer has the right to arrest if they so choose.

20 And I don't know, Mr. Holevoet, unless I'm
21 missing the boat -- like I said, I didn't think that
22 was an issue at all. The discovery thing was just
23 brought up to me today. I had no idea that there was
24 an issue, but am I reading something wrong?

25 MR. HOLEVOET: Not necessarily, Judge, but I

1 still do think that where it comes to his knowledge of
2 lawful authority, that's different than whether the
3 officer actually can do things. All right. He needs
4 to understand what he could be -- why this is being
5 prolonged, what else is going on.

6 And so I think it is still relevant for those
7 reasons, but I understand the Court's ruling.

8 THE COURT: Yeah. I mean, I think his
9 knowledge knowing that he's obstructing is one thing,
10 but if there is any suggestion that the officer didn't
11 have the ability to perform an arrest and have that
12 stop, the length it hit, I think the law is very
13 crystal-clear. The officer's authority is without --
14 as far as question, what they can do.

15 You know, what they choose to do in their
16 discretion is another issue, but as far as their
17 authority to do that, they have the authority, you
18 know, this statute, and I also think they have the
19 authority under the Constitution to do other things,
20 too, but I just -- I get nervous when there is
21 something told to the jury, like the Fourth Amendment
22 this and that. I think that that goes to your client's
23 knowledge. It doesn't go to this issue and talking to
24 a jury about that part of it, I don't see it being
25 relevant, and I'm even more convinced that we shouldn't

1 have got in as far as we got into with regards to what
2 the -- because there were questions about the officer.

3 This wasn't questions about what your client
4 knew, this is about questions about the officer. What
5 authority did you have to do this and that? That
6 concerns me.

7 But that being said, we should take -- I'll
8 get a brief break here, but talk amongst yourselves how
9 we're going to get this done today and how much time
10 you guys need to do things or streamline it because I
11 just don't see us -- I don't see how the jury can come
12 back tomorrow, and that's kind of where it's at.

13 Anything else, Mr. Prell?

14 MR. PRELL: No, Your Honor.

15 THE COURT: Mr. Holevoet?

16 MR. HOLEVOET: No, thank you.

17 THE COURT: All right. Thank you.

18 (Recess taken at 2:22 p.m.)

19 (Proceedings continued at 2:31 p.m.)

20 (The jury enters the courtroom.)

21 THE COURT: We are back on the record.

22 Mr. Cuypers and his attorney are present.

23 Mr. Prell is here on behalf of the City. The jury has
24 been seated.

25 Mr. Prell, you can proceed.

1 MR. PRELL: Thank you, Your Honor.

2 The City calls Officer Taylor Gaard.

3 TAYLOR GAARD

4 Was called as a witness, and having been
5 first duly sworn, testified as follows:

6 THE CLERK: Please be seated. State your
7 full name and spell your last name.

8 THE WITNESS: My full name is Taylor Gaard,
9 G-A-A-R-D. Louder?

10 THE COURT REPORTER: Speak closer --

11 THE WITNESS: Sure.

12 THE COURT REPORTER: -- to the microphone.

13 THE COURT: Go ahead, Mr. Prell.

14 MR. PRELL: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. PRELL

17 Q. Good afternoon, Officer. Tell the jury just
18 a little bit about where you're from and your
19 educational background, please.

20 A. Oh. I grew up in northern Minnesota, just on
21 the border of Canada. I moved to Duluth in 2015. For
22 college, I went to UMD. I got a degree in Criminology
23 and Psychology and then I attended -- I partially
24 attended the Minnesota Police Academy and then changed
25 my mind -- came and worked in Wisconsin and then I

1 attended the Wisconsin Police Academy in Eau Claire.

2 Q. And how are you employed right now?

3 A. As a police officer.

4 Q. And how long have you been a police officer
5 for the City of Superior?

6 A. About three years.

7 Q. And does that represent your entire law
8 enforcement career?

9 A. Yes.

10 Q. Were you on duty as a police officer for the
11 City of Superior on Wednesday, February the 28th, this
12 year?

13 A. Yes.

14 Q. Did you assist Officer Taylor and other
15 officers with the arrest of Mr. Cuypers, the gentleman
16 seated at the defense table, that night?

17 A. Yes.

18 Q. And was that because you -- you were asked to
19 arrive at that scene, you were called in as a backup?

20 A. I heard Officer Taylor request another squad,
21 and I was in very close proximity, so I responded.

22 Q. And when you responded to the scene, were you
23 in police uniform?

24 A. Yes.

25 Q. Were you in a marked squad?

1 A. Yes.

2 Q. Are you the officer who deployed the Taser
3 during that event -- that arrest?

4 A. Yes, I am.

5 Q. There's been multiple references to Officer
6 Graff. Do we have a Graff on the -- on the force?

7 A. No.

8 Q. Okay. You're -- you're the only one that
9 deployed a Taser during the arrest of Mr. Cuypers; is
10 that correct?

11 A. Yes.

12 Q. Are you trained in the use of force?

13 A. Yes.

14 Q. I suspect that every contact with someone
15 suspected of breaking the law is -- is a unique
16 contact, no fact pattern is repeated exactly?

17 A. Yes.

18 Q. Is it fair to say that you are trained for
19 scenarios you might encounter when you're in the field
20 doing police work?

21 A. Yes.

22 Q. Walk this jury, if you could, through your
23 training and experience as -- as it involves traffic
24 stops. I would like to hear in particular if you view
25 traffic stops as having different protocols, if you

1 will, or techniques based on the situation that an
2 officer faces at that moment.

3 A. Okay. Traffic stops can be either very
4 uneventful or they can be very dangerous. I generally
5 like to think of them in three different categories.
6 One being, I make the traffic stop. I make contact
7 with the driver and I either issue a citation or a
8 verbal warning. Nothing exciting happens on the stop.

9 The second one is, I make a traffic stop. I
10 make my initial approach. I'm speaking with, you know,
11 the occupant or occupants of the vehicle, and I observe
12 something where I believe I -- I could probably use
13 another officer, whether that be impairment of the
14 driver or contraband within the vehicle that's in plain
15 view or multiple occupants. Sometimes they are
16 hesitant to speak with us or something -- something to
17 that effect, and so I'll return to my patrol vehicle,
18 and then I'll request a second officer as a backup. A
19 routine response meaning I don't need them to respond
20 to my location urgently.

21 The third is a high-risk traffic stop. These
22 are typically the most dangerous. In my experience, I
23 have been a part of multiple high-risk traffic stops,
24 some of which are because the vehicle was reported
25 stolen. Some of which they've fled from other

1 agencies. Some are because of observations that the
2 primary officer who conducted the stop saw prior to
3 their approach that gave them enough concern that they
4 weren't going to approach the vehicle. It was going to
5 be what we call a non-approach traffic stop where we
6 have the driver come back to us for safety reasons.

7 Q. Can you approximate in your three-or-so-year
8 career how many traffic stops you've been associated
9 with as a law enforcement officer?

10 A. I know I have initiated myself just under
11 200. I've been a part of several hundred traffic stops
12 in a backup capacity as well.

13 Q. You've initiated at least 200 but you've
14 assisted on several hundred. Is that what you just
15 said?

16 A. That's true. Yeah.

17 Q. Okay. And can you approximate how many of
18 those have been high risk?

19 A. I would approximate around maybe 15 or 20.

20 Q. Okay. Now, when you first responded to this
21 scene where Mr. Cuypers was, what was happening when
22 you got there?

23 A. When I arrived on scene, I was coming from a
24 residence just across the street. I am a field
25 training officer, and I had a probationary officer with

1 me that I was training. We were across the street from
2 where Officer Taylor was stopped, so we approached on
3 foot. Our squad car was just a little ways away from
4 Officer Taylor's squad car.

5 As we approached, Officer Taylor was already
6 around his vehicle on the passenger's side near the
7 front of his vehicle. He had his department-issued
8 firearm drawn and he stated that he observed many
9 furtive movements, which are movements that generally
10 indicate to us that someone is either attempting to
11 access something or attempting to hide something,
12 whether that be contraband or weapons, what have you.

13 So I arrived on scene and Officer Taylor was
14 around on that side of his vehicle and I then drew my
15 firearm as well, so Officer Taylor could begin giving
16 verbal commands to the driver.

17 Q. So when you arrived on the scene, Mr. Cuypers
18 was still seated in his own vehicle?

19 A. Yes.

20 Q. And Officer Taylor had not started to issue
21 commands to him yet?

22 A. Correct.

23 Q. So fair to say you were there for the entire
24 -- well, not the entire contact. Obviously, you
25 weren't involved in the pullover, correct?

1 A. Correct.

2 Q. But you were there from prior to Mr. Cuypers
3 emerging from the car to the point in time at which Mr.
4 Cuypers was in custody?

5 A. Yes.

6 Q. Okay. And describe the efforts that were
7 made to bring Mr. Cuypers into control that night.

8 A. So each contact for us, we're continually
9 gauging someone's compliance. The compliance seemed to
10 be there at the beginning of the stop, meaning he
11 pulled over when the lights were activated, and then
12 Officer Taylor began giving commands for him to open
13 his door and he responded by saying, it's locked, I
14 can't.

15 I advised Officer Taylor of that information.
16 Officer Taylor told him to unlock the car and then to
17 step out of the vehicle and face away from us. The
18 driver stepped out of the vehicle but he faced toward
19 us. So he was instructed again to face away from
20 officers, which he did, and then was instructed to put
21 his hands on top of his head interlacing his fingers.

22 Officer Taylor was continuing to give verbal
23 commands then for the driver to walk backwards to the
24 sound of his voice, which he did, but while he was
25 doing this, he continued to glance backwards at

1 officers and remove his hands from his head despite
2 being commanded to, A, stay facing forward, and, B,
3 keep his hands on top of his head.

4 As he backed toward our vehicles, he was --
5 he was being directed to the other side of the patrol
6 vehicle where my sergeant was at that time. So I moved
7 away from Officer Taylor on the passenger's side and
8 then moved to the driver's side in order to provide my
9 sergeant with more coverage so that he wasn't alone
10 dealing with the driver of the vehicle.

11 Sergeant Brown then took over command and
12 told the driver, again, to keep his hands on top of his
13 head, which he continually removed from his head and
14 would turn to look at us as we were speaking. Sergeant
15 Brown then told him to get down on his left knee. He
16 told him two times. I advised him that if he didn't
17 comply with our commands, he would be tased. And then
18 he was given one more command, which he did not comply
19 with, so then I deployed my department-issued Taser.

20 Q. Do you -- do you have a -- you described
21 the -- the matter of getting the door open. Obviously,
22 that took a few moments and some back and forth between
23 Officer Taylor and the driver. You helped him
24 understand that a little bit.

25 Did -- was that something that you viewed as

1 obstructive behavior by Mr. Cuypers?

2 A. At that point, it appeared as though he was
3 attempting to comply with us. He -- he verified to me
4 that he was hearing the commands. He understood the
5 commands. I watched him attempt to open the door from
6 the outside as I saw that he was unable to do so
7 because it was locked. And then I advised Officer
8 Taylor that the door was locked, and he couldn't open
9 it from the outside.

10 Q. Ultimately, you're the officer that
11 discharged the Taser?

12 A. Yes.

13 Q. And it was a hit, for lack of a better
14 description. In other words, it -- it worked. It --
15 it penetrated his skin and it deployed the current or
16 whatever it's designed to do.

17 A. Yes. All four probes made contact with
18 either his clothing or his skin.

19 Q. Did you -- had you formed an opinion by then
20 as to the level of Mr. Cuypers' compliance with orders
21 from other officers on the scene?

22 A. Yes.

23 Q. What was it?

24 A. My opinion at that point was that the level
25 of compliance in order for us to do our job safely was

1 not there. I have had experience in other traffic
2 stops where it was very similar level of compliance at
3 that point and when someone would look back at us -- we
4 call that target glancing. It's essentially what
5 people do to gauge our location, and, in my experience,
6 that's done when they're either going to physically
7 fight with us or attempt to flee from us.

8 So with the -- the target glancing, with
9 removing his hands from his head and reaching more
10 toward center mass, which is a place that people often
11 keep weapons and then the -- the failing to comply with
12 our commands throughout the -- the incident, I felt
13 that that was the best option in order to be able to
14 bring him into custody -- safety for us and for him as
15 well.

16 Q. You mentioned center mass. Lowering his
17 hands from time to time towards center mass. What does
18 that mean?

19 A. Like your torso area.

20 Q. And that's where weapons are most likely to
21 be secreted?

22 A. In my experience, I have found weapons in
23 that area on people that we've dealt with, yes.

24 Q. There's been much made of this matter
25 involving Mr. Cuypers in the fact that he wasn't armed

1 during this event. Do you agree with that assessment?

2 A. Yes, I do.

3 Q. And, in fact, no contraband or weapons of any
4 kind were found on his person or his car. Do you agree
5 with that assessment?

6 A. Yes.

7 Q. Do you agree that people can turn around and
8 face an officer even in defiance of an order not to do
9 that without the intent to harm that officer?

10 A. Yes. That's true.

11 Q. Do you agree with the notion that a person
12 can lower his or her hands toward, as you had
13 described, center mass even despite orders not to do
14 that but without intending to hurt anyone?

15 A. Yes.

16 Q. Or access weapons?

17 A. Yes.

18 Q. Would you agree then also that suspects can
19 defy orders to go to their knee but do so without the
20 intent to flee?

21 A. Yes.

22 Q. Or without the intent to take a fighting
23 position with officers or anyone else who might be in
24 the area?

25 A. Yes.

1 Q. Having had the benefit of -- of hindsight
2 with regards to Mr. Cuypers and knowing all these
3 things now, does that change your assessment of the
4 scene as it devolved on the 28th?

5 A. No, it doesn't. At -- at that time, we -- we
6 didn't know whether or not he had a weapon on his
7 person. We didn't know what his intentions were. The
8 level of compliance at that point was -- was low, and
9 things can change so quickly that we didn't know
10 whether or not we were going to be safe or he was going
11 to be safe or bystanders were going to be safe.

12 Q. You say -- or you approximate that of the
13 several hundred -- maybe upwards more of five -- 500 or
14 so traffic stops that you've been involved with as a
15 peace officer, 15 or 20 of those have been high risk?

16 A. Yes.

17 Q. And have you had an experience with those
18 high-risk traffic stops where things did devolve to the
19 point of things getting physical?

20 MR. HOLEVOET: Objection. Relevance.

21 THE COURT: Mr. Prell?

22 MR. PRELL: Well, we spent a lot of time with
23 Mr. Taylor talking about his experience with Mr.
24 Cuypers and having that gone smoothly. It's relevant
25 to an officer's training and experience what protocols

1 are used.

2 THE COURT: Mr. Holevoet?

3 MR. HOLEVOET: While it's true that we might
4 have discussed this already, that actually I think,
5 diminishes the overall relevance now to hear it again
6 from a whole second officer.

7 THE COURT: I mean, it becomes a little bit
8 cumulative.

9 If you want to explore it a little bit, Mr.
10 Prell, but I think we're getting into cumulative nature
11 of this evidence.

12 MR. PRELL: I'll try to -- I'll try to -- a
13 different angle.

14 BY MR. PRELL

15 Q. Have -- with -- with the stops that you've
16 participated in, that you would consider to be
17 high-risk stops, have those all concluded peacefully?

18 A. No.

19 Q. Of the high-risk stops that you've
20 participated in as a peace officer, how many didn't
21 resolve peacefully?

22 MR. HOLEVOET: Objection. Relevance.

23 THE COURT: Mr. Prell?

24 MR. PRELL: It just goes to her experience as
25 a patrol officer in this exact kind of high-risk stop.

1 THE COURT: Again, a little latitude to going
2 to her state of mind and how she approached the
3 situation.

4 So overruled for the time being.

5 THE WITNESS: I -- I would approximate that
6 we had to use some type of force to take someone into
7 custody on a high-risk traffic stop maybe ten times.

8 BY MR. PRELL

9 Q. So you would describe those ten times as ones
10 that didn't resolve peacefully?

11 A. Correct.

12 Q. Okay. And would you -- would you describe
13 the one involving Mr. Cuypers as something that is a
14 stop that didn't resolve peacefully?

15 A. Yes.

16 Q. The -- the use of force cancels out the
17 peacefully?

18 A. Correct.

19 Q. Okay. Just wanted to -- that's -- that's
20 probably real obvious to you. I wanted to understand
21 that a little bit more.

22 Would you agree that there are any number of
23 ways that an officer can treat a traffic stop like that
24 one? For example, an officer could simply let the
25 driver go? I'm not talking about ideal. I'm just

1 talking about things that could -- the -- the kind of
2 discretion that could be used in the field.

3 MR. HOLEVOET: Objection. Relevance. Again,
4 doesn't have anything to do with whether or not Mr.
5 Cuypers obstructed.

6 THE COURT: I think we're getting into -- we
7 went through this with Officer Taylor.

8 Mr. Prell, unless you're going to make a
9 different point with this officer. I think he
10 testified there are a number of ways. In fact, I think
11 he went through a litany of ways with him that could
12 have been addressed with the stop. So unless I'm
13 missing something?

14 MR. PRELL: Okay.

15 BY MR. PRELL

16 Q. Do you and other sworn officers in this
17 jurisdiction have the authority to effect arrests for
18 violations of traffic statutes?

19 A. Yes.

20 MR. PRELL: No further questions.

21 THE COURT: Cross.

22 **CROSS-EXAMINATION**

23 BY MR. HOLEVOET

24 Q. Officer Gaard, you don't see any of the
25 furtive movements, right? You arrive on scene after

1 that?

2 A. Correct.

3 Q. And so your reactions are based entirely on
4 what Officer Taylor radios out when he needs help for a
5 high-risk stop, right?

6 A. My response was based on his request for
7 help, yes.

8 Q. And you had testified on direct that --
9 actually, I'll take that -- strike that.

10 You have body-worn cameras that you all use;
11 is that right?

12 A. Yes.

13 Q. And you had one that night, right?

14 A. Yes, I did.

15 Q. And you might have a squad camera, too?

16 A. My squad car was parked just down the block,
17 so likely it wasn't -- it wasn't turned on.

18 Q. So it doesn't capture any of this because of
19 where you were parked --

20 A. Right.

21 Q. -- right? But your body camera would have
22 captured all of this, at --

23 A. Yes.

24 Q. -- least from when you arrived?

25 A. Yes.

1 Q. And you would recognize that if you were
2 showed that now?

3 A. Yes.

4 THE CLERK: The transcript is Exhibit 3. The
5 transcript of the flash drive is 3A.

6 THE COURT: All right. All right. Mr.
7 Prell, any objection to the transcript and the playing
8 of her body cam?

9 MR. PRELL: Well, I -- I can tell by the
10 transcript that we're poised to play a significant
11 duration of video, and I think it's going to go well,
12 well beyond the time at which Mr. Cuypers had been
13 taken into custody. So I think there's potential for
14 some irrelevance once that -- once that time passes. I
15 think -- I think we're going about 18 minutes here.

16 MR. HOLEVOET: {Inaudible}

17 THE COURT REPORTER: Microphone.

18 THE COURT: Yeah. Just use the mic. I'm
19 sorry.

20 MR. HOLEVOET: Judge, I have no intention of
21 playing the entire video.

22 THE COURT: Okay. All right. Sounds good.

23 Okay. So once that's played, if, Mr. Prell,
24 then he's gone further than you're asking or you think
25 it should be, then you can make your objection.

1 Otherwise, we'll just have the jury follow along with
2 the transcript, and then we can take the transcript
3 away.

4 I'm thinking, Mr. Holevoet, that makes the
5 most sense?

6 MR. HOLEVOET: That would be fine.

7 THE COURT: All right. Let's do it that way,
8 then. Go ahead.

9 So, ladies and gentlemen of the jury, again,
10 you'll be showed a video, and make sure you don't go
11 beyond what's being played here in the transcript
12 because we may be taking the transcript away once we
13 complete that portion of the video.

14 So you're about to hear and view an
15 audiovisual recording. Recordings are evidence and you
16 may consider them just like any other evidence. Listen
17 carefully. Some parts may be hard to understand. You
18 may consider the actions of a person, facial
19 expressions, and lip movements that you can observe on
20 videotapes to help you determine what was actually said
21 and who said it.

22 Again, you'll be provided with a transcript
23 to help you listen to the recording. If you notice any
24 difference between what you heard on the recordings and
25 what you read in the transcript, you must rely on what

1 you heard, not what you read.

2 Go ahead

3 MR. HOLEVOET: Thank you. And just so the
4 record is clear, I'm playing from a folder on Exhibit
5 3. It's marked. It contains four video files, and I'm
6 playing the one that starts with Axon Body, underscore
7 3.

8 THE COURT: All right. Thank you.

9 (The video is played)

10 BY MR. HOLEVOET

11 Q. And I've begun playing here, Officer Gaard.
12 I'm going to pause here at eight seconds in. Does this
13 appear to be your body camera from that night?

14 A. Yes.

15 Q. And, in fact, we can see, looks like Officer
16 Moan {sic} right in front of you, exiting the building
17 you said you were in with him?

18 A. Officer Moen, yes.

19 Q. Yep. Sorry. Moen. Thank you. All right.

20 MR. HOLEVOET: I'm skipping ahead to 2:36.

21 THE COURT: All right. And we should
22 probably --

23 MR. HOLEVOET: Sorry, Judge.

24 THE COURT: Nope. Go ahead. You're fine.

25 MR. HOLEVOET: I don't think we have audio

1 for some reason.

2 THE COURT: There we go.

3 MR. HOLEVOET: That's my mistake.

4 Backtracking a little bit to 2:31 on the timestamp.

5 (The video is played)

6 MR. HOLEVOET: I'm just pausing briefly at

7 2:35.

8 BY MR. HOLEVOET

9 Q. Officer Gaard, to be clear, this appears to
10 be the point where we hear Sergeant Brown asking him to
11 get down on his knee; is that right?

12 A. Yes.

13 Q. So that's where we're picking up.

14 (The video is played)

15 MR. HOLEVOET: Pausing at 4:42.

16 BY MR. HOLEVOET

17 Q. There's some discussion about other
18 passengers, right? And he's basically saying there's
19 nobody in there. In fact, he's yelling out there's
20 nobody in there because he can hear other officers
21 asking about the passenger, right?

22 A. Yes.

23 Q. Because at this point, Sergeant Brown and I
24 think Officer Crist, they're trying to find this other
25 passenger --

1 A. Yes.

2 Q. -- who also doesn't exist, right?

3 A. Ultimately, yes.

4 (The video is played)

5 MR. HOLEVOET: Pausing at 6:42 in.

6 BY MR. HOLEVOET

7 Q. It looks like there you're removing the
8 probes from the Taser; is that right?

9 A. Yes.

10 Q. Some from his clothing, and I think
11 eventually some from his body; is that right?

12 A. Yes.

13 Q. And he's cooperative throughout all of that,
14 right?

15 A. Yep.

16 (The video is played)

17 MR. HOLEVOET: Pausing at 8:36.

18 BY MR. HOLEVOET

19 Q. After you removed those probes, you had to
20 try and take some photos of where they've gone into his
21 flesh, right?

22 A. Personally, the ones being -- the one
23 being -- that I deployed the Taser?

24 Q. I mean, someone has to take those photos --
25 or you guys take photos of them, right?

1 A. Correct.

2 Q. Including, I think, you kind of pull up his
3 shirt and stuff like that, and he's cooperative through
4 all of that, too?

5 A. Correct.

6 Q. I think there was even some discussion about
7 maybe pulling down his pants and pulling down his
8 boxers because one of them had gone in too low, but it
9 sounds like Sergeant Brown suggested not doing that; is
10 that right?

11 A. Correct. He wanted us to take photos of
12 those at the jail.

13 Q. But Mr. Cuypers, just to be clear, was good
14 with all of that? He was going to cooperate with any
15 of that?

16 A. Yes.

17 MR. PRELL: Your Honor, before we press play
18 again, I'm just wondering, you know, the City certainly
19 hasn't suggested that Mr. Cuypers wasn't tased that
20 night, but we're now so far beyond the incident that is
21 relevant to two charges, that I'm wondering -- I think
22 we're getting into irrelevant land.

23 THE COURT: Mr. Holevoet?

24 MR. HOLEVOET: Well, Judge, some of this has
25 to do with whether or not, A, he's still obstructing or

1 not.

2 THE COURT: I don't think there's any -- his
3 point is: There is no obstructing anymore.

4 MR. HOLEVOET: And, B, whether he knew or
5 should have known that they were acting with lawful
6 authority and that his actions had obstructed.

7 THE COURT: So what evidence is being
8 presented about his state of mind after?

9 MR. HOLEVOET: Well, he made some comments --
10 I'll fast-forward to the most pertinent bits.

11 THE COURT: Okay. Just --

12 MR. PRELL: But --

13 THE COURT: I mean, there could be his
14 knowledge later, unless there's another objection, Mr.
15 Prell?

16 MR. PRELL: Well --

17 THE COURT: I have never watched the video.
18 So I have no idea what's happening. You guys are the
19 only two maybe in the room that do. So I'm blind
20 because I've never seen it. So you're going to -- if
21 he's made comments later about it that might go to his
22 state of mind, I think that's relevant. I just don't
23 know what they are.

24 MR. PRELL: I think that might be relevant
25 but it's also hearsay.

1 THE COURT: Okay. So why isn't it hearsay,
2 Mr. Holevoet?

3 MR. HOLEVOET: Judge, his comments would be.
4 Comments made by law enforcement that might impact his
5 understanding of that, including comments made by
6 Officer Gaard, are not hearsay.

7 THE COURT: I mean, after-the-fact statements
8 that would go to his state of mind later wouldn't be
9 relevant. His comments later would be hearsay. So
10 objection regarding relevancy to what they would tell
11 him later that would go to state of mind, and then as
12 far as the statements that would be his, that would be
13 hearsay.

14 So the objection is sustained.

15 BY MR. HOLEVOET

16 Q. Officer Gaard, do you at some point --

17 THE COURT: Make sure you speak in the mic,
18 please.

19 BY MR. HOLEVOET

20 Q. At some point after this, do you ask Officer
21 Taylor if he's under arrest?

22 THE COURT: Do you ask Officer Taylor if he's
23 under arrest?

24 BY MR. HOLEVOET

25 Q. If Mr. Cuypers is under arrest?

1 THE COURT: Okay. Now I understand.

2 THE WITNESS: I -- I don't recall.

3 BY MR. HOLEVOET

4 Q. Would viewing a video recording of your
5 interaction with Officer Taylor refresh your
6 recollection about that?

7 A. Yes.

8 MR. PRELL: Well, again the -- there's -- the
9 matter of whether or not someone was under arrest
10 doesn't have bearing on the committing or not of an
11 obstruction of an officer.

12 MR. HOLEVOET: It goes to --

13 MR. PRELL: One could be cited for
14 obstructing an officer without being arrested.

15 THE COURT: All right. Mr. Holevoet?

16 MR. HOLEVOET: This discussion goes directly
17 to whether or not Mr. Cuypers would have understood
18 that he was being arrested or what was going on. In
19 part because it goes to whether or not the officers
20 understood what was going on.

21 THE COURT: The objection is sustained.

22 His knowledge afterward doesn't go to his
23 state of mind during the obstructing part. My
24 understanding of the obstructing part is the pulling
25 over and the allegations between being pulled over and

1 then being tased.

2 So objection sustained.

3 BY MR. HOLEVOET

4 Q. Do you remember having a discussion with him
5 about his charging decision?

6 A. Yes.

7 Q. And was it unclear to you quite then what was
8 going to be charged, and that's why you asked him about
9 it?

10 A. I -- I knew what I would have charged him
11 with. I was asking Officer Taylor what he was charging
12 him with.

13 Q. Did it lead you to not know whether he was
14 under arrest? In fact, your answer to the question
15 was, "you're not free to leave," meaning he is detained
16 but not necessarily arrested, right?

17 THE COURT: And just remember to make sure to
18 use the mic. We do have one person --

19 MR. HOLEVOET: Sorry.

20 THE COURT: -- on the jury who has difficulty
21 hearing.

22 MR. HOLEVOET: I apologize.

23 THE COURT: Go ahead.

24 BY MR. HOLEVOET

25 Q. Do you want me to repeat the question?

1 A. Yes, please.

2 Q. So in addition to that, basically not knowing
3 what he's going to charge, earlier when Mr. Cuypers
4 asks you if he's under arrest, your response is,
5 "you're not free to leave," right?

6 A. Correct.

7 Q. Because at that point, you didn't know if he
8 was under arrest or not or if he would be under arrest?
9 It was not your call?

10 A. Correct.

11 Q. On direct you talked about how in some
12 instances when you're having a high-risk stop, you have
13 to use force to arrest somebody; is that right?

14 A. Yes.

15 Q. And I know that you used force against Mr.
16 Cuypers to arrest him. Was it necessary to use force
17 --

18 THE COURT: I'm just -- I reminded you, you
19 remember, about the prefacing. "I know you used force"
20 when -- just ask the question, please.

21 BY MR. HOLEVOET

22 Q. You used force against Mr. Cuypers to arrest
23 him?

24 A. Yes.

25 Q. Was it necessary to use force against Mr.

1 Cuypers to arrest him as it turned out?

2 A. At the time I believe it was, yes.

3 Q. I understand that. I'm asking was it
4 necessary to use force to arrest Mr. Cuypers?

5 A. Knowing what we know now, the hindsight, I --
6 I can't say. I don't know that he would have
7 attempted to fight with us, but I -- I can't say.

8 MR. HOLEVOET: I have no other questions.

9 THE COURT: And are you asking Exhibit 3 and
10 3A be offered and entered?

11 MR. HOLEVOET: Yes.

12 THE COURT: Any objection, Mr. Prell?

13 MR. PRELL: No, Your Honor.

14 THE COURT: 3, 3A are received.

15 Mr. Prell, cross -- I'm sorry -- redirect?

16 **REDIRECT EXAMINATION**

17 BY MR. PRELL

18 Q. Has the contemplation of how calmly things
19 may have gone in -- after the fact, ever been factored
20 as your training in how to conduct these stops?

21 A. No.

22 MR. PRELL: No further questions.

23 THE COURT: Any recross?

24 MR. HOLEVOET: No, thank you.

25 THE COURT: All right. You can step down,

1 ma'am. Thank you.

2 (The witness was excused)

3 THE COURT: Mr. Prell, anything else?

4 MR. PRELL: No, Your Honor.

5 THE COURT: City rests?

6 MR. PRELL: Oh, I'm sorry. Not for this

7 witness.

8 THE COURT: Okay.

9 MR. PRELL: I have another witness.

10 THE COURT: Go ahead.

11 MR. PRELL: Okay.

12 THE COURT: Who are you calling, Mr. Prell?

13 MR. PRELL: Sergeant Matthew Brown.

14 THE COURT: Mr. Prell, did you have any more

15 video?

16 MR. PRELL: Yes, I do.

17 THE COURT: Do you want to switch things up

18 as long as we're at a break here?

19 MR. PRELL: Yep.

20 THE COURT: All right. Let's go.

21 MR. PRELL: City calls Sergeant Matthew

22 Brown.

23 MATTHEW BROWN

24 Was called as a witness, and having been

25 first duly sworn, testified as follows:

1 THE CLERK: Please be seated. State your
2 full name and spell your last name.

3 THE WITNESS: Matthew Suchy Brown, B-R-O-W-N.

4 THE COURT REPORTER: You have to speak closer
5 to the microphone and spell your middle name.

6 THE WITNESS: You want me to spell it?

7 THE COURT REPORTER: Spell your middle name.

8 THE WITNESS: S-U-C-H-Y.

9 THE COURT: All right. Go ahead, Mr. Prell.

10 **DIRECT EXAMINATION**

11 BY MR. PRELL

12 Q. Good afternoon, Sergeant Brown. How are you
13 employed, please?

14 A. As a patrol sergeant with the City of
15 Superior Police Department.

16 Q. And can you briefly describe your training
17 and experience relevant to police work here?

18 A. Yeah. I have a four-year degree from the
19 University of Minnesota-Duluth, Political Science with
20 a minor in Foreign Studies. I went to Fond du Lac
21 Tribal & Community College for their law enforcement
22 program. Upon being hired by the City of Superior
23 Police Department, I was sent to their basic recruit
24 school program that the State offers. And since then
25 I've had -- and I have no idea how many hours of

1 training in various subjects and topics.

2 Q. How long have you been a peace officer in
3 Wisconsin?

4 A. Since May of 2013.

5 Q. Okay. Eleven years --

6 A. Yeah.

7 Q. -- plus? And what are your duties as a
8 sergeant?

9 A. A lot of it is pretty boring stuff. A lot of
10 it is scheduling, and -- and reviewing reports and
11 coordinating different stuff. I like to joke that I'm
12 a fixer. It's my job to just kind of be the Swiss Army
13 Knife. A main component is having an idea of what's
14 going on call-wise, what's going on on the street,
15 where our officers are, what they're dealing with, and
16 what -- what kind of resources they need.

17 Q. And is a sergeant a supervisor in your
18 department?

19 A. Yes.

20 Q. Okay. And did you supervise a shift of
21 Superior Police patrol officers on the night of
22 February 28th this year?

23 A. I did.

24 Q. Did you assist a -- did you assist Officer
25 Justin Taylor with a traffic stop that night?

1 A. Yes.

2 Q. Ultimately resulting in the arrest of Mr.

3 Cuypers?

4 A. Correct.

5 Q. Were you in uniform during that shift?

6 A. I was.

7 Q. Were you in a marked squad?

8 A. One of our trucks, yes.

9 Q. And it's marked?

10 A. Yes.

11 Q. Okay. You didn't make the traffic stop,

12 obviously, correct?

13 A. Correct.

14 Q. But you were there to observe the entirety of

15 the process wherein Mr. Cuypers was taking in -- taken

16 into custody?

17 A. Yes. I saw the whole thing.

18 Q. Just to be clear, "the whole thing," is from

19 him stepping out of his car to the point at which he

20 was in -- in restraints?

21 A. Yes.

22 Q. Okay. Are you familiar with the protocols

23 that officers are trained to follow in certain

24 situations they encounter when they make traffic stops?

25 A. Yes, I am.

1 Q. Can you describe those protocols?

2 A. Well, there are three that I typically think

3 of. The first is --

4 MR. HOLEVOET: Objection.

5 THE WITNESS: -- going to be --

6 MR. HOLEVOET: Cumulative and relevance.

7 THE COURT: I don't know what he's going to

8 say yet, but I'm assuming once he just describes the

9 three, we can move on, Mr. Prell, if that's what's

10 happening?

11 MR. PRELL: Yes.

12 THE COURT: Okay. I don't know if it's

13 cumulative yet, but when he says it, it may be. So

14 once he finishes that, I'll be more in tune to know

15 what's going on.

16 Go ahead.

17 BY MR. PRELL

18 Q. You were describing your training and

19 experience, particularly with the different protocols

20 that -- that apply to traffic stops?

21 A. The first type that I would have been trained

22 in, is what -- what I -- be normally considered a

23 routine traffic stop, although there is no such thing.

24 It's generally where an offense is observed, officer

25 makes the traffic stop, makes contact with the vehicle,

1 and it's resolved without any further investigation
2 needed or any other forks in the road taken.

3 The second starts off generally the same, but
4 upon approach, something -- I'll use the example of a
5 drunk driver. We may have stopped the vehicle for
6 headlights out, make contact with the driver, and it
7 turns out that there's actually something different
8 that we're going to be investigating, and it would
9 probably be a return to the car and -- and wait for
10 other officers to show up before we make contact again.

11 And the last would be what we call a
12 high-risk traffic stop, and that's the type of traffic
13 stop that's specifically --

14 THE COURT: And I'm going to sustain the
15 objection to cumulative after the high risk. We've
16 already heard two officers testify to that.

17 So please move on, Mr. Prell.

18 BY MR. PRELL

19 Q. When you arrived at the scene where Mr.
20 Cuypers was stopped, you, obviously, had a chance to
21 observe the high-risk traffic stop as it was evolving,
22 correct?

23 A. Yes.

24 Q. Did you, yourself, get involved at any time
25 in an attempt to control Mr. Cuypers?

1 A. I did.

2 Q. And is that -- was that at the time at which
3 he was backed up in close proximity to the officers and
4 you took over to command him to drop to his left knee?
5 Is that an accurate statement?

6 A. Yes. That's an accurate statement.

7 Q. Why is it that you decided to take over that
8 element of the contact with Mr. Cuypers?

9 A. Honestly, it's because we weren't really
10 making any progress, and I wanted to try something
11 different. I was in a different position, which -- I
12 wear hearing aids, and it -- it greatly influences how
13 I view certain situations. So I was kind of hoping
14 that by taking a different approach with me being in
15 different a location, a different voice giving louder,
16 different commands, that I might get a different
17 response.

18 Q. Did you give commands?

19 A. I did.

20 Q. You were the one that gave the commands to
21 drop to the left knee, correct?

22 A. I don't know --

23 Q. Among --

24 A. -- which knee, but to a knee, yes.

25 Q. Okay. Amongst other commands?

1 A. Yes.

2 Q. Did he follow your commands?

3 A. No.

4 Q. Did he appear to hear you as you gave the
5 commands?

6 A. I believe so, yes.

7 Q. Based on his reactions to some of them?

8 A. He was -- I remember him responding that he
9 wanted me to explain what was going on, but it wasn't
10 him speaking over me. It was after I had been saying
11 things.

12 Q. Obviously, you were there when -- when Mr.
13 Cuypers was tased?

14 A. Yes.

15 Q. Did you view that as a necessary component to
16 taking him into custody that night?

17 A. Yes.

18 Q. Why?

19 A. At that point we had already had multiple
20 exhibitions of behavior that was noncompliant. When
21 we're executing a high-risk traffic stop like this,
22 what we're doing is testing compliance and trying to
23 maintain control of the situation. We don't know
24 anything about what's going on. We don't have the
25 benefit of after the fact at that point in time. So

1 all we have is what we know up until that very moment.

2 And at that point, based off of the DAAT
3 Continuum, we had active resistance or threats to
4 continue, which the use of an electronic control device
5 is absolutely an appropriate tool.

6 Q. You mentioned a moment ago DAAT Continuum.
7 What does DAAT refer to?

8 A. The DAAT Continuum -- DAAT is short for
9 defensive and arrest tactics. It's a system of -- of
10 verbalization skills and control alternatives --
11 physical alternatives that is taught by the Wisconsin
12 Department of Justice and actually created by them, and
13 it's taught uniformly across the state to law
14 enforcement officers.

15 Q. And as a -- switching gears here. As a -- as
16 a supervisor of -- of patrol officers, do you have a
17 sense for what their duties and responsibilities are?

18 MR. HOLEVOET: Objection. Relevance.

19 THE COURT: Mr. Prell?

20 MR. PRELL: Well, he's a supervisor. So if
21 one of the elements of the offense for obstructing is
22 whether officers are acting in the scope of their
23 employment, this fellow should know that.

24 THE COURT: I think we start getting into,
25 quote, expert testimony and we've kind of had a motion

1 on that. I think he can talk about some generalities,
2 but, otherwise, I think that it's getting into expert
3 testimony, which we haven't had a motion nor ruling on.
4 So tread lightly.

5 And objection to that question sustained.

6 BY MR. PRELL

7 Q. Do you ever play a role in disciplining an
8 officer?

9 MR. HOLEVOET: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. PRELL

12 Q. Does the Superior Police Department have a
13 policy regarding the use of force?

14 A. Yes.

15 Q. Are you familiar with --

16 THE COURT: Make sure you speak in the mic.

17 I don't think -- we have somebody that also has a
18 hearing issue. So you didn't speak in the mic on that
19 one. So make sure you do it. Okay?

20 Did they have a policy on use of force, the
21 police department?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MR. PRELL

25 Q. Is the use of a Taser considered the use of

1 force?

2 A. Yes, it is.

3 Q. Have you -- have you reviewed these policies
4 since the arrest of Mr. Cuypers?

5 A. I have.

6 Q. Have you analyzed the performance of the
7 officers in the field who participated in his arrest
8 that night?

9 A. Yes, I have.

10 Q. And what, if anything, have you concluded?

11 A. My conclusion is that they followed policy.

12 Q. Which --

13 A. The use of force policy.

14 Q. Okay. You understand that Mr. Cuypers was
15 searched after officers took control of him and took
16 him into custody?

17 MR. HOLEVOET: Objection. Cumulative.

18 THE COURT: Sustained.

19 MR. PRELL: No further questions for Sergeant
20 Brown, and I'm not going to play that video. It's just
21 a segment of the first one.

22 THE COURT: All right. Sounds good.

23 Cross.

24

25

CROSS-EXAMINATION

BY MR. HOLEVOET

Q. Sergeant Brown, on direct you said you took over commands because you weren't making any progress, right?

A. Yes.

Q. Now, at that point, he had pulled over, right?

A. Yes.

Q. He had got out of his vehicle exactly as instructed?

A. He had gotten out of the vehicle, yes.

Q. He had walked back towards you just as instructed?

A. He had walked back towards us, yes.

Q. At times, he pauses and tries to engage in conversation with you and other officers; is that right?

A. Correct.

Q. And you guys don't engage?

A. We're giving instructions to him and asking him to follow our instructions.

Q. But at that point, he's back by you guys like you requested, too?

A. Is that a question?

1 Q. Yes.

2 A. Yes. He's back by us.

3 Q. So the only thing he hadn't made progress on

4 is that you asked him twice to get on a knee? He

5 didn't get on his knee?

6 A. We also had him continuing to turn and look

7 at officers, and taking his hands off the top of his

8 head.

9 Q. Yeah. And you could see he had no weapons in

10 his hand?

11 A. Correct. Not in his hands.

12 Q. All right. And even when he took it off of

13 his head, at that point when he's close to you, it's

14 still near his head, right?

15 A. Generally speaking, yes.

16 Q. After he's tased, you go up and search the

17 vehicle at least for another passenger. You kind of

18 look through it, at least, with a light and things like

19 that?

20 A. Correct. That's part of how we would do

21 high-risk traffic stops.

22 Q. And you call in first to say -- sounds like

23 maybe to dispatch -- saying, code taser, figuring

24 things out?

25 A. I don't recall if it was me who had called

1 that part it in.

2 Q. Does that sound possible?

3 A. It sounds possible that might -- that it was
4 me, but I -- I just don't recall, specifically, and I
5 don't want to testify yes or no to that.

6 Q. Understood. And so it's Officer Crist who's
7 helping you determine whether there's a passenger in
8 there or not; is that right?

9 A. I believe so.

10 Q. Why not -- I mean, it's still high risk,
11 right? We're still in a high-risk situation; is that
12 fair?

13 A. It's being reduced as we gain more
14 understanding of what's going on. So we have one
15 person in control at that point. It is still high risk
16 but being reduced.

17 Q. And the whole point of this is we didn't want
18 to approach the car in the first place, right?

19 A. Correct.

20 Q. So why not -- I don't know -- riddle the car
21 with bullets to make sure that if there's somebody in
22 there, they're dead?

23 A. I don't believe that our use of force policy
24 would find that justifiable or state law.

25 Q. But you guys approach the car without

1 incident, basically, by sort of coordinated effort to
2 approach with multiple officers in a very consisted and
3 planned way, right?

4 A. Yes. As we're trained by the State for
5 high-risk traffic stops.

6 Q. And that works just fine for you here, right?

7 A. That portion did.

8 Q. And you're the one who sees, I think, his
9 DoorDash order in his phone and stuff like that; is
10 that right?

11 A. I don't remember at which point I became
12 aware of that. Whether somebody told me or whether it
13 was me who had seen that.

14 Q. And there's some discussion about maybe the
15 officers delivering the DoorDash; is that right?

16 A. Yeah. I think -- I recall there was somebody
17 down the street that had been calling to us at the
18 conclusion of the stop and had said something to the
19 effect of, I think that's my food or something like
20 that.

21 Q. And you ultimately discussed with Mr. Cuypers
22 about them just getting a refund or something like
23 that; is that right?

24 A. Correct. I believe that's a conversation
25 that took place.

1 Q. Now, after Mr. Cuypers is transported to the
2 jail, you also go to the jail; is that right?

3 A. Correct.

4 Q. And it's there that you have a discussion
5 with Officer Taylor; is that right?

6 A. Correct.

7 Q. And you suggested to him that maybe criminal
8 charges aren't appropriate here; is that right?

9 MR. PRELL: I'm going to object on relevance
10 and cumulation.

11 THE COURT: I think it's cumulative, Mr.
12 Holevoet. I think we've gone through it before.

13 MR. PRELL: Withdrawn and no further
14 questions.

15 THE COURT: All right. Mr. Prell, any
16 redirect?

17 **REDIRECT EXAMINATION**

18 BY MR. PRELL

19 Q. You ordered Mr. Cuypers to drop to a left
20 knee three times, correct?

21 A. I recall ordering him to drop to his knee. I
22 don't remember which one it was.

23 Q. Did you give that order three times?

24 A. It was multiple. It was more than one. I
25 don't remember exactly how many times I gave that

1 direction.

2 Q. Did he ever do it?

3 A. No.

4 Q. Did that affect your ability to do your job
5 as a patrol sergeant that night?

6 A. Yes.

7 Q. How?

8 A. It means that we have somebody that we don't
9 have control of. We can see his hands, but we still
10 don't know that he doesn't have a weapon in his
11 waistband, in his pockets, or what the situation is.

12 Q. So how -- this is at a time at which you're
13 -- you're nearest him, basically, before -- at least
14 before the -- the arrest is made?

15 A. Yes.

16 Q. Can you approximate how close you were to him
17 when you were making these commands to drop to the
18 knee?

19 A. I would estimate 7 to 10 feet, something like
20 that.

21 MR. PRELL: Okay. Nothing further.

22 THE COURT: Any recross?

23 **RECROSS-EXAMINATION**

24 BY MR. HOLEVOET

25 Q. Have you ever had to arrest somebody without

1 getting them to drop to their knees?

2 A. Yes.

3 Q. Including someone who you thought might

4 really be armed or maybe even knew was armed?

5 A. Yes.

6 MR. HOLEVOET: Nothing else.

7 THE COURT: Any re-redirect?

8 MR. PRELL: Nothing, Your Honor.

9 THE COURT: All right. You can step down,

10 sir. Thank you.

11 (The witness was excused)

12 THE COURT: Mr. Prell, any additional

13 witnesses or evidence?

14 MR. PRELL: No, Your Honor.

15 THE COURT: City rests?

16 MR. PRELL: Yes.

17 THE COURT: Mr. Holevoet, witnesses or

18 evidence?

19 MR. HOLEVOET: Yes. We'd call Ian Cuypers to

20 the stand.

21 THE COURT: All right. Sir, if you want to

22 step forward.

23 MR. HOLEVOET: He's going to swear you in

24 first, Ian. Yeah.

25 IAN CUYPERS

1 Was called as a witness, and having been
2 first duly sworn, testified as follows:

3 THE CLERK: Please be seated. State your
4 full name and spell your last name.

5 THE WITNESS: My name is Ian Richard Cuypers,
6 C-U-Y-P-E-R-S.

7 THE COURT: Thank you.
8 Go ahead, Mr. Holevoet.

9 **DIRECT EXAMINATION**

10 BY MR. HOLEVOET

11 Q. Mr. Cuypers, do you remember the events of
12 February 28th, 2024?

13 A. I do.

14 Q. And what were you doing that day?

15 A. So what I was doing that day, I worked --
16 before I ended up moving because of this incident -- I
17 worked for Peace of Mind, Duluth. And so that day, I
18 was working with one of my disabled adults through the
19 entire work shift -- that's eight hours. And I had to
20 take him, I think, to the skywalk where I just sort of
21 supervised him while he did his thing. He liked to
22 play with brooms.

23 And anyways, after that, I went home, had a
24 dinner, and then I -- and then I got on DoorDash, and I
25 started DoorDashing around maybe 8:00 p.m.

1 Q. For those of us who don't know, how does
2 DoorDash work or how do you know you have a job for
3 them? Describe the process for us.

4 A. So DoorDash, it's really simple. It's just
5 -- it's an app that -- you can download the driver app.
6 And then you can give those people your make and model
7 of your car and your insurance information. I think
8 they verify that you have a license, of course. And
9 then once you're signed up, they just send you -- just
10 on the app, they send you notifications that say a Taco
11 Bell or Wendy's or whatever, your order is ready to
12 pick up. And then it gives you a map that you follow
13 to go to that Wendy's. You pick up the food, press the
14 button, follow the map to deliver it, press a button,
15 take a picture of the food, and then that's how you
16 deliver the food.

17 Q. After you had picked up the food for
18 delivery, do you recall being stopped by a police
19 officer?

20 A. Yes. I do recall being pulled over. Yes.

21 Q. And after you pulled over, what do you do?

22 A. So immediately after seeing the lights, I, of
23 course, went to the side of the road, as you're
24 supposed to do. And as I've done every single time, I
25 grabbed my license and my -- I was looking for my ID --

1 or yeah. I grabbed my license and my insurance and
2 then I just waited. I think I -- I checked my visor up
3 here on the passenger's side because I thought my
4 insurance card might have been in there, so I reached
5 up there, but for the most part, I just went into my
6 glove box, sat still, reached up to my visor, sat
7 still. Yeah.

8 Q. And why were you trying to get those things?

9 A. Well, because that's what you do when you get
10 pulled over, you get your license and your registration
11 ready for the officer.

12 Q. Now, while you're -- what do you expect to
13 happen next?

14 A. Well, I expected what happens most every time
15 you get pulled over for something simple. I was
16 expecting for him to walk over to the passenger's side
17 window or my driver's side window. Either way. I
18 actually had my driver's side window down already
19 because I was expecting someone to come up, and I was
20 expecting him to maybe poke his head in, ask me if I
21 knew why I was pulled over. Then I was expecting him
22 to tell me to be on my way because all I did was -- at
23 that point, I knew what I had done. I made a wrong
24 turn and I expected him to tell me to be on my way.

25 Q. And what happens instead?

1 A. Instead -- instead, you know, a -- a truck
2 pulls up in front of me, and I see even more lights,
3 and, I mean, at first, I don't have any idea what's
4 going on. I -- I hardly even notice that the truck
5 pulls up. I figure every time someone gets pulled
6 over, usually the officers call for backup. That's
7 just, you know, pretty standard. And so I wasn't -- I
8 wasn't really caught off guard until I heard, hands up,
9 which has never, ever happened to me before. So, of
10 course, I put my hands and then my head out of -- out
11 of my car window so that I could show them, hello. I'm
12 here. I'm not a threat. These are my hands. This is
13 my face. How can I help?

14 Q. And, eventually, you do get out of the car.
15 I think there's this whole business about the car being
16 locked but eventually, you got out of the car, right?

17 A. I get out of my car when I'm instructed to
18 get out of my car, yes.

19 Q. And from your perspective, are you listening
20 to the officers or trying to do what they ask?

21 A. Every single command that I heard the
22 officers give me, I followed to the very best of my
23 ability.

24 Q. Do you have any reason why it might be hard
25 for you to follow certain instructions?

1 A. Well, I do have a learning disability. It's
2 ADHD, ADD. And it does impair my ability to directly
3 follow instructions, yes.

4 Q. Now, you might have -- you were here when we
5 watched this video earlier, right -- or several videos?

6 A. I was present.

7 Q. And you can see that sometimes you would take
8 your hands down or you stop or you look back; is that
9 right?

10 A. Yes.

11 Q. Why are you doing that?

12 A. I felt like I was in grave danger and just my
13 human reaction as I am a human being, an animal that
14 God made, my human reaction is to face the threat which
15 is presented to me, and to try and understand where I
16 stand.

17 Q. And were you asked any questions during that
18 time period?

19 A. Yes. As I recall from that night, I asked
20 what is going on? I asked can I have an explanation,
21 please? I asked what did I do wrong. Things to that
22 effect.

23 Q. Did you get any answers to those questions
24 prior to being tased?

25 A. Oh. Zero -- zero answers prior to being

1 tased and for, you know, a good portion of time after I
2 was tased, you know, I wasn't being treated like a
3 human. I got no answers to my questions.

4 Q. And you said after this incident you moved;
5 is that right?

6 A. After this incident, I moved back to Denver.

7 Q. After you were tased, did you understand that
8 you were arrested or did you know what was going on
9 still?

10 A. No. At the time I was still very confused.
11 My impression is that if you're under arrest, they tell
12 you first, and I, of course, didn't hear anything about
13 being under arrest. All I heard was, hands up, back
14 up, hands over your head. The way things were going, I
15 didn't think I was about to be arrested.

16 Q. Do you remember being taken back to your car?

17 A. Yes.

18 Q. And when that happens, do you recall asking
19 Officer Taylor about like his name and things like
20 that?

21 A. I do remember that after -- well, I remember,
22 you know, I tried to break the ice. I asked Officer
23 Taylor what kind of music he likes to listen to. And
24 then just a -- just a second after that, the backup
25 officer arrived and he let me out of the car at -- at

1 which point he put me up against the car to take off my
2 cuffs. And then I felt it necessary to ask for his
3 name and ask if he has a card that I could perhaps have
4 so that I could, you know, just do my civic duties and
5 follow up with the event.

6 Q. Did you believe you had obstructed the
7 officers?

8 A. Absolutely, I do not believe that I had
9 obstructed anything, no.

10 MR. HOLEVOET: I have no other questions.

11 THE COURT: Mr. Prell, cross.

12 **CROSS-EXAMINATION**

13 BY MR. PRELL

14 Q. Obviously, you were stopped by a police
15 officer?

16 A. Correct.

17 Q. Why did you pull over?

18 A. Because I saw the cherries behind me.

19 Q. So you understand what it means to be pulled
20 over by someone who has authority to do that?

21 A. Absolutely.

22 Q. Okay. And you would agree then that those
23 officers have the right to stop people like you driving
24 the wrong way on a one-way street?

25 A. In a traffic violation, I agree an officer

1 can pull any vehicle over for any traffic violation.

2 Q. And -- and you might not know this, but I'm

3 guessing you wouldn't disagree that there is statutory

4 authority for people --

5 MR. HOLEVOET: Objection.

6 MR. PRELL: -- for --

7 MR. HOLEVOET: Lack of --

8 MR. PRELL: -- peace --

9 MR. HOLEVOET: -- foundation.

10 THE COURT: Yeah. I mean, sustained, and the

11 form of the question.

12 BY MR. PRELL

13 Q. Do you take issue with police officers having

14 authority to arrest people if necessary at a traffic

15 stop?

16 A. That's their job. I have no quarrel with --

17 with that.

18 Q. Okay. At some point after stopping your car,

19 you were instructed to step out of it, correct?

20 A. This is correct.

21 Q. And you did that?

22 A. That is correct.

23 Q. You did it because you knew they wanted you

24 to do it. You were told to do it.

25 A. This is correct.

1 Q. Okay. But almost immediately after getting
2 out of your car, you were told to face away from the
3 officers, weren't you?

4 A. Yes. This is correct.

5 Q. Okay. You were here earlier, Mr. Cuypers,
6 when we played this video while Officer Taylor was on
7 the stand?

8 A. Yes. This is correct.

9 Q. All this looks familiar?

10 A. I've seen it many times.

11 (The video is played)

12 THE COURT: And the record should reflect
13 that the witness is being shown -- I believe Exhibit 1?

14 MR. PRELL: Exhibit 1, Your Honor.

15 (The video is played)

16 MR. PRELL: For the record I have stopped
17 this recording marked as Exhibit 1 at the 2:55 mark.

18 BY MR. PRELL

19 Q. Mr. Cuypers, would you agree that at this
20 point in your contact with law enforcement, you've been
21 told to face away from them twice?

22 A. This is correct.

23 Q. You pivot nearly 180 degrees and you face the
24 officers, correct?

25 A. Yes. This is correct.

1 Q. We can see that in this image?

2 A. Yes. This is correct.

3 Q. That's the exact opposite of facing away from

4 someone, isn't it?

5 A. This is correct.

6 Q. Okay.

7 (The video is played)

8 BY MR. PRELL

9 Q. By now how many times have you been told to

10 face away from those --

11 THE COURT: Where --

12 MR. PRELL: -- officers?

13 THE COURT: Where did you stop?

14 MR. PRELL: I'm sorry. I stopped at 3:07

15 into Exhibit No. 1.

16 BY MR. PRELL

17 Q. Yet again you've been told to face away from

18 the officers, correct?

19 A. This is correct.

20 Q. And here you are again, pivoting nearly 180

21 degrees to face the officers, agreed?

22 A. Yes.

23 Q. And that is in direct defiance of the

24 previous several orders now to face away, agreed?

25 A. This is something I agree -- agree with,

1 correct.

2 Q. Okay.

3 (The video is played)

4 MR. PRELL: Pausing Exhibit No. 1 at 3:18.

5 BY MR. PRELL

6 Q. Where are your hands?

7 A. They're up here.

8 Q. They're not on top of your head, correct?

9 A. My hands are up here.

10 Q. Yes. And you would agree they're not --

11 A. Above --

12 Q. -- on --

13 A. -- my head I would say, actually.

14 Q. While you were ordered to keep your hands on

15 top of your head, correct?

16 A. Oh. That is correct.

17 Q. And you were ordered to do so before the time

18 at which we see this image, correct?

19 A. We know this to be correct.

20 Q. Okay. Yet your hands are nowhere near the

21 top of your head. They're -- they're starting to drop

22 towards the middle of your body, correct?

23 A. Incorrect.

24 Q. How am I incorrect?

25 A. Because they are actually still above my

1 head.

2 Q. They're above your head in this image?

3 A. The top of my hands is above the top of my
4 head. To me, that is above my head. That is my
5 understanding, actually.

6 Q. But you understand and you agreed earlier
7 that the command was to keep the hands on top of your
8 head --

9 A. That --

10 Q. -- remember?

11 A. -- was the command, correct.

12 Q. Okay. So if the command specifically to the
13 position of your hands is to keep them on top of your
14 head -- and you know this because they've -- they've
15 articulated it, why does it make sense to you to start
16 to take those hands down towards the center of your
17 body?

18 A. Is this a question you would like me to
19 answer?

20 Q. Yes.

21 A. Okay. So as the jury can see, there are
22 lasers all around my vehicle. Actually, there is a gun
23 pointed -- there are bullets pointed at my heart there,
24 and that made me actually very scared for my life.
25 Anyone put in that position would be nervous. So that

1 is what was getting in the way along with my mental --
2 my learning disability, those things were actually
3 preventing me from satisfying the officers as well as
4 maybe I could have.

5 Q. Don't you think that by failing to comply
6 with the officers, you're elevating the tense -- the
7 tenseness at this scene?

8 A. Do I think so? In hindsight, maybe. But do
9 I think so? At the time, absolutely not, and do I
10 think so now, is still -- I don't know.

11 (The video is played)

12 BY MR. PRELL

13 Q. So now I think you've probably been told four
14 times to face away. Here we are again not quite the
15 same 180-degree turn, but you must agree that you're,
16 again, turning to face the officers?

17 THE COURT: Where did you stop?

18 MR. PRELL: I stopped at 3:28.

19 BY MR. PRELL

20 Q. Mr. Cuypers, my -- my question is: You must
21 agree looking at this image that now, having been told
22 at least three or four times to face away, you're
23 continuing to violate that order -- to defy that order?

24 A. Is your question whether or not I'm willingly
25 violating their order or just whether or not I'm

1 violating the order?

2 Q. I'm just asking you if you're violating the
3 order.

4 A. Gosh. That's up for debate, I think.

5 Q. It's up for debate whether or not you're
6 facing the officers?

7 A. Whether or not I'm violating their orders.

8 Q. You can see that the orders were to face
9 away.

10 A. Yeah. But it wasn't my intention to violate
11 their orders. I wasn't trying to be aggressive. I
12 wasn't trying to be defensive. I was just merely
13 trying to see what was going on. I mean, hell, I
14 didn't even know if I was dreaming or not at this
15 point. I mean, I do remember very specifically looking
16 around this street here thinking to myself how surreal
17 this situation is.

18 Q. You seemed clear early on that you understood
19 the commands as it concerned getting out of the car and
20 facing away, because you did it several times, agreed?

21 A. I followed their orders, agreed.

22 Q. Well, you didn't follow their orders when you
23 turned -- when you continually faced the officers,
24 right? That's not --

25 A. I turned right back around --

1 Q. {Inaudible/overlapping voices}
2 A. -- when they asked.
3 Q. Sorry?
4 A. I turned right back around when they asked.
5 Did I make a mistake? Probably, yeah.
6 (The video is played)
7 BY MR. PRELL
8 Q. The hands, again, Mr. Cuypers.
9 THE COURT: You've got to say when --
10 MR. PRELL: I'm --
11 THE COURT: -- you --
12 MR. PRELL: -- sorry.
13 THE COURT: -- stopped.
14 MR. PRELL: I've done that most of the time.
15 I've just stopped the video at 3:36.
16 BY MR. PRELL
17 Q. Mr. Cuypers, your --
18 A. Yes.
19 Q. -- hands again -- you can't possibly suggest
20 to this jury right now that your hands are above your
21 head.
22 A. No. Jury, I will not lie to you. My hands
23 are obviously below my head.
24 Q. And by now you've been told multiple times to
25 keep your hands on top of your head, correct?

1 A. Those are the facts.

2 Q. And that's a simple order, correct? There's

3 -- that's not a convoluted series of commands, keeping

4 your hands on top of your head?

5 A. Would you like me to answer that?

6 Q. It's a yes or no question.

7 A. It was actually very convoluted with all of

8 the gun sights on me. It seemed quite difficult for me

9 to actually pay attention to -- to where my lens are.

10 You know, when my life is in danger, it -- it really is

11 difficult to keep track of some things.

12 Q. But how does dropping your hands in defiance

13 of these officers make your life less in danger, if

14 that's what you believe?

15 A. I was not dropping my hands in defiance of

16 the officers. I was just confused.

17 Q. You said you understood the directions to

18 keep your hands on your head?

19 A. Exactly. So why would I take them off my

20 head? It was an accident.

21 Q. Over and over again it was an accident?

22 A. Because there were bullets on my -- on my --

23 being aimed at me, yeah.

24 (The video is played)

25 MR. PRELL: Stopped the video, for the

1 record, at 4:11.

2 BY MR. PRELL

3 Q. How many times did that sergeant now just
4 tell you to get down on your left knee?

5 A. I wasn't paying attention.

6 Q. Would you like to hear it again?

7 A. Sure.

8 THE COURT: I mean, I'm not going to listen
9 to it again. I heard, the jury heard how many times.
10 What difference does it make what he says now? It
11 becomes cumulative. This is -- I don't know how many
12 times we've watched the video.

13 BY MR. PRELL

14 Q. You agree, Mr. Cuypers, you're not dropping
15 to your left knee?

16 A. I had -- I had attempted to drop to my left
17 knee, actually. I get confused between right and left,
18 and anyone watching the video, they'll see me take that
19 step where I was thinking about it.

20 Q. But you never dropped to the left knee,
21 correct?

22 A. Correct. I was not given enough time.

23 Q. In fact, whatever it is that you were
24 thinking about, the officers have no way of
25 ascertaining what that is, correct?

1 A. Incorrect. Body language.

2 Q. Body language?

3 A. It's a language.

4 Q. So if an officer suggests that the body

5 language that you exhibited that night, are --

6 presented danger for them -- but you wouldn't dispute

7 that, right?

8 A. Incorrect.

9 Q. Well, dropping your hands away from your head

10 was a defiance of the order that they felt very

11 strongly about, obviously, correct?

12 A. Yes. And we've been over this. I didn't do

13 it on purpose.

14 Q. Okay.

15 A. So it was not in defiance.

16 MR. PRELL: I may have frozen the system

17 temporarily. Oh. Right there.

18 (The video is played)

19 MR. PRELL: Okay. I've ended -- in an effort

20 to recombobulate here, we're back to 3:56 and I'm going

21 to keep playing.

22 (The video is played)

23 BY MR. PRELL

24 Q. Three times told {sic} to get down on your

25 left knee. You indicated a minute ago to the jury that

1 you were thinking about it?

2 A. Yes. And I believe they saw that.

3 Q. Others in that situation might be thinking
4 about doing something bad, right?

5 A. Like who?

6 Q. Anyone. You -- you don't know what someone
7 is thinking, correct?

8 MR. HOLEVOET: Objection. Lack of
9 foundation, relevance.

10 THE COURT: I mean, I think we've gone a
11 little bit down this road already with other questions.

12 So I'll allow it for a brief period of time.

13 THE WITNESS: So what was the question?

14 BY MR. PRELL

15 Q. If officers have no way to know that you were
16 thinking about dropping to a knee, how would they have
17 no -- how would they have reason to know that you
18 weren't thinking about trying to cause them harm?

19 A. If officers have ears and eyes, they have the
20 ability to communicate. I have a mouth, and I was
21 attempting to let them know I wasn't a threat.

22 Q. Okay. They have ears and mouths, and they
23 were attempting to tell you to do things, correct?

24 A. Correct. But my ears were actually impaired
25 by the bullets that were being aimed at my heart.

1 Q. Your ears were?

2 A. Correct. Because of the adrenaline which was
3 pumping through my brain which was making it difficult
4 for me to even hold still.

5 MR. PRELL: Okay. No further questions.

6 THE COURT: Redirect?

7 **REDIRECT EXAMINATION**

8 BY MR. HOLEVOET

9 Q. You said that you understood that officers
10 could arrest people, right?

11 A. Correct.

12 Q. Did you understand that you could be
13 arrested, forced to your knees, moved back, given all
14 these orders just for going the wrong way on a one-way
15 street? Did you know that was even a thing?

16 A. I didn't think that was a thing. I -- I was
17 pretty certain, actually, that that -- that the whole
18 situation was illegal while it was happening. I
19 thought that, you know, this is ridiculous. Like I
20 thought that, you know, using force at a traffic stop,
21 you know, for something so -- so menial, I -- I was
22 thinking that, yeah, that just shouldn't have happened.

23 Q. When we see you turning around in the video,
24 it seems like you're trying to talk to the officers; is
25 that right?

1 A. This is correct.

2 Q. How are you feeling in the moment?

3 A. I'm scared. I'm just genuinely in terror.

4 MR. HOLEVOET: I have no other questions.

5 THE COURT: Recross?

6 **RECROSS-EXAMINATION**

7 BY MR. PRELL

8 Q. You said consistently -- you have stated
9 consistently today that you just didn't know what was
10 going on, right?

11 A. I didn't know why they had their guns drawn.
12 I didn't know why there were so many of them. I didn't
13 know why I got put in handcuffs or taken to the police
14 station. There are a good deal of things that I didn't
15 know why they were happening.

16 Q. But you've just described a very layered
17 analysis of why you thought this whole thing was
18 unlawful. You've particularly referenced the use of
19 force at a traffic stop. So you must have given that
20 significant thought.

21 A. Would you like me to answer this question?

22 Q. I'm just -- here's what I want to know: How
23 are you trying -- how are you convincing this jury --
24 or how are you -- how are you suggesting that you
25 didn't know what was going on, while at the same time

1 explaining that you had done a use of -- basically, a
2 use of force analysis?

3 A. Okay. So this is a pretty easy question to
4 answer. Basically, I made a wrong turn -- sure. I get
5 pulled over. This -- this makes sense. The second
6 that guns were involved, it stopped making sense.

7 Q. Yes.

8 A. Yeah.

9 Q. To you, it stopped making sense?

10 A. Correct.

11 Q. But you knew they were police officers? They
12 never stopped being police officers that night?

13 A. Correct.

14 Q. Throughout the contact -- the entire contact
15 they remained officers?

16 (No audible response from the witness.)

17 Q. Okay. And those commands always came from
18 police officers, correct?

19 (No audible response from the witness.)

20 Q. It was not anyone else making the commands
21 other than police officers?

22 A. Come on. Philosophically, I could -- I could
23 debate that, you know, because they're people. They're
24 not just officers, they are people, actually, but they
25 were people who were officers, yes.

1 Q. You're just evading. What about the
2 uniforms? They never changed uniforms, right?

3 A. What I'm saying is that, yes, they were --
4 they were officers, but they were people. So, you know
5 human -- humans -- humans have faults, and so I'm not
6 saying that maybe they didn't make some mistakes.

7 Q. Not asking about humans and faults. I'm
8 asking you to acknowledge that they were police
9 officers and --

10 MR. HOLEVOET: Objection.

11 MR. PRELL: -- they --

12 MR. HOLEVOET: Asked --

13 MR. PRELL: -- were --

14 MR. HOLEVOET: -- and --

15 MR. PRELL: -- in --

16 MR. HOLEVOET: -- answered.

17 MR. PRELL: -- uniform and such.

18 THE COURT: He hasn't answered it. It's been
19 asked but not answered.

20 THE WITNESS: Well, I -- I -- yes. They --
21 they remained police officers. Yes.

22 MR. PRELL: Nothing further.

23 THE COURT: Any re-redirect?

24 MR. HOLEVOET: No, thank you.

25 THE COURT: All right. You can step down,

1 sir. Thank you.

2 THE WITNESS: Thank --

3 THE COURT: Mr. --

4 THE WITNESS: -- you --

5 THE COURT: -- Holevoet --

6 THE WITNESS: -- Your --

7 THE COURT: -- any --

8 THE WITNESS: -- Honor.

9 (The witness was excused)

10 THE COURT: -- additional witnesses or

11 evidence?

12 MR. HOLEVOET: No. The defense rests.

13 THE COURT: Any rebuttal, Mr. Prell?

14 MR. PRELL: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen

16 of the jury, we're going to collect your notebooks.

17 The evidence has been presented. The next stage is

18 closing arguments and instructions. I'm going to need

19 some time with the attorneys before we get to that. So

20 you can retire into the jury room.

21 We haven't concluded my instructions yet, so

22 you can't start deliberating, discussing the case or

23 anything until we've concluded my instructions and the

24 closing arguments. So make sure nobody talks about

25 what's going on yet or deliberates yet. That'll come

1 soon enough.

2 So you're excused. I'll let you know a time
3 frame as soon as I know something.

4 Thank you for your attention thus far.

5 (The jury exits the courtroom.)

6 THE COURT: All right. Please be seated.

7 All right. We are outside the presence of
8 the jury.

9 Mr. Prell, anything we need to address before
10 we have an instruction conference?

11 MR. PRELL: I would like {inaudible}

12 THE COURT REPORTER: Microphone.

13 MR. PRELL: I think it's appropriate to move
14 for a directed verdict at this time on the traffic
15 matter.

16 THE COURT: Mr. Holevoet?

17 MR. HOLEVOET: I don't have a problem with
18 that.

19 I would move for a directed verdict on the
20 obstructing.

21 THE COURT: All right. So with regards to
22 the traffic violation, I mean, I agree with the City.
23 There doesn't seem to be any issue. The defendant
24 admitted to it on the stand. I mean, the video was
25 proof beyond a doubt regarding the traffic violation.

1 So based upon the statements and the evidence, I will
2 grant the City's motion for directed verdict on 24 TR
3 681. That's a wrong way on a one-way.

4 Mr. Holevoet, the forfeiture ordinarily, and
5 quite frankly, all of our forfeitures in Wisconsin are
6 pretty high, but it's 175.30. Does your client need
7 some time to pay that?

8 MR. HOLEVOET: He might. I'd also ask the
9 Court to consider imposing \$20 plus costs -- I think
10 that's \$30 plus costs.

11 THE COURT: I mean, and I'll tell you that
12 the reality is there's been no defense to that charge
13 today otherwise. I would have considered maybe
14 something lesser, but the reality is, you know, he
15 didn't have any defense to the citation. And it's not,
16 of course, a Fifth Amendment privilege issue. I mean,
17 he fully admitted to it, but he could have done that
18 any time, and we wouldn't be here, so I hesitate to go
19 lower than the standard fine when somebody isn't
20 accepting of responsibility except after we've already
21 had to have evidence on it.

22 I understand there is a lot overlap. We
23 would have had a lot of the evidence anyway, but
24 acceptance of responsibility didn't necessarily happen
25 until the, I guess, twelfth hour.

1 So as far as time to pay, I can either give
2 him 60 days or does he need longer than that? What
3 should I do?

4 MR. HOLEVOET: If you could give him both the
5 60 days and the option to call to set up a payment
6 plan, if necessary.

7 THE COURT: Sounds good. So I'll order 60
8 days to pay.

9 Mr. Cuypers, if you can't make payment within
10 60 days or you want to set up a payment plan, please
11 contact the Clerk of Courts Office to do that. We do
12 need your current address so that we can communicate
13 with you about that forfeiture. What's your current
14 address?

15 THE DEFENDANT: Yes. Yes, Your Honor. My
16 address is -- should I just say it? It's 715 Arapahoe
17 Street.

18 THE COURT REPORTER: Spell that.

19 THE DEFENDANT: A-R-A-P-A-H-O-E, I believe.
20 Yes. A-R-A-P-A-H-O-E, Street. 715 Arapahoe Street and
21 that is in Golden, G-O-L-D-E-N, Colorado 80403.

22 THE COURT: Thank you, sir. And if you do
23 have problems or you want to set up a payment plan, you
24 can contact the Clerk of Courts anytime.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: With regards to the obstructing
2 the officer directed verdict, Mr. Prell, your response?

3 MR. PRELL: Well, the -- the verdict -- the
4 standard there is there must be no legally sufficient
5 evidence to support a reasonable jury reaching a
6 different -- you know, a conclusion other than
7 dismissal. And in this instance there's -- there's
8 ample evidence to at least make it an interesting
9 analysis.

10 I don't think there's any question as to the
11 lion's share of the elements of the offense. That the
12 officers engaged in that stop were peace officers.
13 That they were doing an act in their official capacity,
14 and that they have the authority to do that, but we
15 talked about that when the Court made an actual direct
16 reference to the statutory authority that officers have
17 to make arrests.

18 I think the only thing that's even a little
19 bit interesting is the knowledge component. And as the
20 jury instructions will indicate, knowledge can be
21 gleaned from a whole host of -- of observations
22 because, after all, it's rare that someone will
23 actually reveal that intent component when accused of
24 something like that.

25 So I -- I think this is not even in the

1 vicinity of appropriate for a directed verdict.

2 THE COURT: Mr. Holevoet?

3 MR. HOLEVOET: I don't agree that -- I don't
4 disagree that elements two and three are something the
5 jury probably could find. I think there are real
6 questions about them finding element one, and,
7 actually, I think, there is little to no evidence of
8 element four whatsoever.

9 In fact, the evidence we've heard is pretty
10 clear from Mr. Cuypers that he didn't understand what
11 was going on. He didn't understand that this was even
12 a thing that could be happening for what he had done.
13 And more importantly, that he didn't understand that
14 what he was doing was obstruction.

15 And, furthermore, not only is that borne out
16 by what he testified today, which the Court could find
17 somewhat self-serving, but it's borne out by the video
18 evidence we have from the day of and the testimony of
19 law enforcement officers.

20 THE COURT: All right. What I'm going to do,
21 is I'm going to take the obstructing under advisement.
22 I'm going to still give it to the jury, and I'll
23 contemplate it as the jury contemplates the case.

24 As far as instructions then, I'm going to
25 have to make a few changes to the instructions

1 regarding -- because now we'll be down to one count.

2 Other than that, Mr. Prell, were there any
3 other instructions I should be looking at, changing, or
4 adding?

5 MR. PRELL: Well, I -- I do think it's
6 appropriate to add to element three that officers in
7 Wisconsin have -- sworn peace officers in Wisconsin
8 have lawful authority to arrest for violation of a
9 traffic law. That -- that -- that's just a legal fact
10 just as much so as the facts stated under -- under
11 element one, which states that a City of Superior
12 Police Officer is an officer. I -- I don't know why we
13 would -- we would bring such clarity to that element
14 without also doing the same to the authority piece.

15 THE COURT: Any other additions or
16 subtractions to the instruction you're asking for,
17 Mr. Prell?

18 MR. PRELL: No, Your Honor.

19 THE COURT: Mr. Holevoet, with regards to Mr.
20 Prell's comment regarding the arrest and the statute
21 regarding their authority to arrest on a traffic
22 violation?

23 MR. HOLEVOET: I don't think it matters,
24 frankly, and I think the evidence has been clear on
25 that. We heard that testified to directly by Officer

1 Gaard, but I don't know that I really care that much.
2 I don't have any other changes besides those that we've
3 already addressed prior to the opening.

4 THE COURT: Okay. So what I'm going to do is
5 I'll then add that change, since, as much as I loathe
6 to add any more words for me to say, I'll add it based
7 upon the request and being really no objection to it.

8 And then with regards to the verdict,
9 obviously, I've got to change 484 to reflect one count,
10 and then I'll give those changes to the parties. I
11 should have those ready in about ten minutes, and then
12 we can maybe do a formal instruction conference, and
13 maybe by quarter to 5:00 or so, we can give
14 instructions and verdict -- or instructions.

15 I'll let you guys argue first, and then I'll
16 give instructions. I'm going to limit the amount of
17 time you're going to spend on closing arguments. We
18 are approaching 4:15.

19 How much time do you think you need for both
20 your closing and a rebuttal, Mr. Prell?

21 MR. PRELL: Fifteen minutes.

22 THE COURT: Mr. Holevoet, can you do your
23 closing in 15 minutes?

24 MR. HOLEVOET: I would think so.

25 THE COURT: All right. So I'll hold you guys

1 to it.

2 Mr. Prell, you have 15 minutes for your
3 closing and a rebuttal.

4 And, Mr. Holevoet, you have 15 minutes.

5 I will tell you I rarely do it, but when I
6 limit closing arguments, I'm a clock-watcher. So make
7 sure that you also limit it to 15 minutes a piece, and
8 I'll keep track.

9 Mr. Prell, I'll break up your time, and if
10 you go over, I'm going to cut you off. So that's how I
11 do it.

12 Anything else before I get you new copies,
13 Mr. Prell?

14 MR. PRELL: No, Your Honor.

15 THE COURT: Mr. Holevoet?

16 MR. HOLEVOET: No, thank you.

17 THE COURT: All right. Sounds good.

18 (Recess taken at 4:13 p.m.)

19 (Proceedings continued at 4:31 p.m.)

20 THE COURT: We are back on the record.

21 Mr. Cuypers and Mr. Holevoet are here. Mr.
22 Prell is here on behalf of the City.

23 I did give the new instruction, the ones that
24 were changed, to the parties. The other thing I
25 noticed in the caption, I should probably take the TR

1 citation out of it also.

2 Did you -- Mr. Prell, did you look at those
3 changes?

4 MR. PRELL: I did, Your Honor.

5 THE COURT: Are there any other changes we
6 should look at or should we just go through the
7 instruction and verdict form?

8 MR. PRELL: No. I think -- I think we're
9 good to go.

10 THE COURT: Mr. Holevoet, did everything look
11 okay or is there anything else I should look at before
12 we go formally and do the instruction conference?

13 MR. HOLEVOET: I think it looked fine.

14 THE COURT: All right. So then as far as the
15 verdict form goes on the obstructing, Mr. Prell, were
16 you fine with the verdict form?

17 MR. HOLEVOET: Sorry. It was at the end of
18 the original packet.

19 MR. PRELL: The end of the original?

20 THE COURT: Yeah.

21 MR. PRELL: Okay.

22 THE COURT: Should have been right at the
23 back.

24 MR. PRELL: Okay. I see it. Yeah. It makes
25 sense to me. Straightforward.

1 THE COURT: All right. Mr. Holevoet, what do
2 you think of the verdict form?

3 MR. HOLEVOET: I think it looks fine.

4 THE COURT: All right. Then I'll go through
5 each. I know the numbers are a little messed up for
6 you guys now because of the change, but we'll go
7 through the instruction numbers then. If there's an
8 objection to an instruction, let me know. If at the
9 end you want me to add any instructions that aren't
10 included, you can let me know. If I hear nothing, then
11 I assume the instructions are fine. 100, 145, 103, 766
12 {sic}, 140A, 115, 147, 130 -- did we have anything
13 stricken?

14 MR. PRELL: No. I don't recall any.

15 MR. HOLEVOET: I don't think that's
16 necessary.

17 THE COURT: Okay. So I'll just get rid of
18 that because, as I've indicated, I'm happy to speak
19 less. I think that brings us to 147, 148, 155, 157,
20 160, 190, 195, 215, 484, 515A, 525.

21 Mr. Prell, was the City satisfied with those
22 instructions?

23 MR. PRELL: Yes, Your Honor.

24 THE COURT: Mr. Holevoet, satisfied with
25 those instructions?

1 MR. HOLEVOET: Yes.

2 THE COURT: Mr. Prell, any additional
3 instructions you're asking me to give?

4 MR. PRELL: No.

5 THE COURT: Mr. Holevoet, any additional
6 instructions you're asking me to give?

7 MR. HOLEVOET: No, thank you.

8 THE COURT: All right. Then why don't we do
9 this: I'll have the jury up here then at 4:45 and you
10 guys can do your closing arguments and then after
11 you've concluded closing arguments, I will give
12 instructions. I'll get the podium set up then in the
13 interim.

14 Anything else we should address, Mr. Prell?

15 MR. PRELL: No, Your Honor.

16 THE COURT: Mr. Holevoet?

17 MR. HOLEVOET: No, thank you.

18 THE COURT: All right. I think concludes it.
19 We'll see you guys at 4:45.

20 (Recess taken at 4:35 p.m.)

21 (Proceedings continued at 4:47 p.m.)

22 (The jury enters the courtroom.)

23 THE COURT: Please be seated.

24 We are back on the record. Mr. Cuypers is
25 present with his attorney, Mr. Holevoet. Mr. Prell is

1 present. The jury is present here.

2 We've reached the stage of the proceedings,
3 ladies and gentlemen, for closing arguments. Once the
4 attorneys give their close arguments, then I'll be
5 giving instructions.

6 Mr. Prell, you can proceed.

7 MR. PRELL: Thank you, Your Honor.

8 I'm just bringing the phone to keep a timer.
9 No disrespect meant.

10 Folks, law enforcement has one chance, they
11 have one chance in their interaction with a suspect or
12 even a non-suspect for that matter, when they're on
13 patrol and doing their job particularly when they meet
14 someone they've not met ever before, with whom they're
15 completely unfamiliar, who is engaged in the violation
16 of -- of a law, even as minor as a traffic law, our
17 officers have one chance. One chance to have that
18 interaction in a manner that allows everyone to go
19 home, suspects, officers, bystanders. That's why these
20 stakes are so high.

21 I get it, Mr. Cuypers at the end of the day
22 ends up looking not particularly menacing, doesn't he?
23 He -- we don't find weapons in his car. We don't find
24 knives or clubs or guns tucked in his waistband. We
25 don't find that stuff. We can concede that, but his

1 behavior put this officer on notice that something
2 different than almost all the other stops he effects
3 was going on and he had to look into it. And to do
4 that, he has to get contact with that defendant, that
5 suspect, and he has to do it in a way that's hands-off,
6 that's the training. We can disagree with it, but
7 that's the training. That's the expectation of his
8 supervisors.

9 I trust you and your memory of the video that
10 was played more than my own memory, but to the extent
11 you may have kept score, how many times was he told to
12 put his hands on his head? I submit eight. How many
13 times was he told to face away or face forward from the
14 officers? Six. How many times was he told to drop to
15 his left knee? Three, a fourth if you count Officer
16 Gaard saying, do it now or you're going to be tased.
17 Three commands, drop to your left knee, a fourth from
18 another officer, do it now. And then the consequence
19 was provided, the actual consequence for not doing so
20 was made clear.

21 These officers have to read that scene best
22 they can. They have to adjust to everything that's
23 thrown at them. We spent a lot of time talking about
24 hindsight today. Yes, no weapons were found. No drugs
25 were found, but when does anyone ever have the benefit

1 of hindsight in anything we've ever done? When have
2 you ever had a chance to see the outcome before the
3 scene ends, before the situation comes to a conclusion?
4 We don't. And those officers run through the highest
5 stakes imaginable, and they can't take that risk. They
6 just can't. They can't sit there and assume or wonder
7 or hazard a guess as to how meek or mild Mr. Cuypers or
8 anyone else might be in real life.

9 You'll see the elements -- you'll be
10 instructed as to the elements of the offense for
11 obstructing an officer because there are several of
12 them. One, there has to be an officer involved. No
13 question he's a peace officer, so is everyone else in
14 uniform that night.

15 Acting in an official capacity. No question
16 he's a -- he's a peace officer acting as a peace
17 officer. He was the entire shift. Acting with lawful
18 authority. No question. We have empowered him with
19 licensure, certificates, a badge and the green light to
20 go out and help make this a safer community. He was
21 empowered with that and he acted in that capacity
22 throughout his entire shift.

23 Fourth element, one Mr. Holevoet is going to
24 tell you we swung and missed with. The defendant knew
25 that the officers present, at least one of the officers

1 present there, was an officer acting in -- in an
2 official capacity with lawful authority and that he
3 knew his conduct would obstruct that officer.

4 Mr. Cuypers knew it. He knew exactly what
5 was going on. He complies when he wants to. He
6 complies when he wants to. He picks and chooses and he
7 shows flashes of compliance and then when he doesn't,
8 he really doesn't. Eight times, "hands on top of your
9 head," defied. Six times, "face away from us," defied.
10 Three times, "drop to the left knee," never -- hasn't
11 still -- still hasn't done that.

12 He was never going to come out and tell you
13 that he was obstructing an officer. That was never
14 going to happen today. You have to rely on his acts
15 and words and statements as you've seen them both in
16 the evidence that was presented and his own
17 presentation with you today.

18 He was asked about these officers being
19 police officers. It was a very simple question. He
20 was asked about police officers being police officers
21 during his stop and remaining police officers. His
22 response? I think that's philosophically debatable or
23 something along those lines. They're humans. I don't
24 know if he's suggesting they morphed into something
25 other than an officer? It doesn't make sense.

1 You know, one of the things that's so
2 critical about law enforcement work is the
3 unpredictability of everything. He was asked about
4 that step forward, step away from the officers, when he
5 was told to drop to a knee. He said, well, I was
6 thinking about it. I was thinking about it. How --
7 how is that supposed to be understood by the law
8 enforcement officers who are trying to restore order
9 that night? How is that -- how is that supposed to be
10 understood?

11 The -- the alternative is that he's thinking
12 about something nefarious. That's what we have to be
13 gauged and programmed to anticipate, and that's what
14 these officers tried to do that night. They don't know
15 if a step forward means, I'm outta here, or if a step
16 forward means, I'm taking a fighting position because
17 I'm tired of this and I want to take an officer. The
18 officers did what they could that night to take the
19 guesswork out of a situation that they couldn't
20 control.

21 Yes, he was tased. Ian Cuypers was tased by
22 our -- one of our officers, and no way could that have
23 been pleasant. I get it but look at the table that was
24 set prior to that element or prior to that incident.
25 Every opportunity to comply with the officer and bring

1 that stop to a close peacefully -- fade to black, roll
2 the credits on that whole interaction and everyone goes
3 home -- all the chances to do that by Mr. Cuypers, he
4 took a pass on that.

5 He -- he taunted, to a degree -- he really
6 did. He -- he -- his -- some of his behavior was --
7 was taunting. Some confusion? Sure. Absolutely.
8 There was a show of force that night. Some
9 bewilderment? Sure. Absolutely. But at the end of
10 the day, he knew what the commands were. He knew that
11 he had to comply. He was told he had to comply. He
12 was told, follow the directions -- follow the
13 directions. He was told, take that knee or you're
14 going to be tased.

15 That's how people share knowledge. That's
16 how people impart knowledge with other people. They
17 say things in short, loud, simple commands -- like that
18 environment -- they say things to someone to make them
19 familiar with, to make them know what has to be done
20 and all of that was done to a T. That was done
21 perfectly by law enforcement that night. Those
22 commands were clear, crisp, loud, unambiguous.

23 He follows those commands, we're not watching
24 him writhe in pain on the blacktop, not for a second.
25 He follows those commands and that's a -- that's a much

1 shorter encounter and no one has to bear the burden or
2 the pain of -- of the use of force at any level.

3 I am asking you to stand behind the charging
4 decision by an officer who was faced with something
5 that night that, hopefully, none of us will ever be
6 confronted with, and he did the very best he could, and
7 he employed all the training that he had at his
8 disposal to do it.

9 You heard from an 11-year veteran, who is his
10 supervisor, say, I studied the stop, I was there. I --
11 I applied the policies to that situation, and we
12 acted -- he acted, in strict accord with all of our
13 policies and all of our expectations. He can't do it
14 any other way. He can't leave it to chance. He has
15 that one chance.

16 Thank you.

17 THE COURT: Thank you, Mr. Prell.

18 Mr. Holevoet?

19 MR. HOLEVOET: Thank you on behalf of me and
20 Mr. Cuypers for your attention and time today.

21 We've talked a lot about what should be a
22 high-risk traffic stop, what's not a high-risk traffic
23 stop. In some ways, it does matter to some of these
24 elements. In some ways, it's a bit of a sideshow, and
25 I apologize if that drug things out a little bit

1 longer, too.

2 But I can tell you this: I've seen the
3 high-risk stops. I'm a criminal defense attorney. I
4 watch these videos all the time. Last client of mine
5 that got a high-risk stop, he drove 120 down the
6 interstate for about 20 miles. His car literally
7 catches on fire. He has to leap from it. And he has
8 to walk past -- backwards and they make him throw his
9 keys.

10 And there's room in between that and some
11 much more minor things, but we're a long ways away from
12 that situation, a felony traffic stop. He says -- they
13 -- they use those interchangeably. It depends on where
14 you were trained. The older police called those
15 felony -- probably because they were trained that that
16 sort of involves a felony. We're miles, miles away
17 from that.

18 And something perverse -- I don't -- I can't
19 think of a different word for it -- that's happening
20 here, which is they keep turning this around on Mr.
21 Cuypers. This would have all been over quicker if Mr.
22 Cuypers had just complied.

23 It would have all been over quickly if you
24 had just talked to Mr. Cuypers. I don't think there's
25 anyone -- and you saw him up here. I don't think

1 there's anyone -- I honestly believe that -- I don't
2 think there's anyone that can talk to Ian Cuypers and
3 not think he's just a simple, nice guy, and he's
4 desperately trying to understand what's happening to
5 him, and he keeps trying to ask what's happening to
6 him, and they won't engage even though they have all
7 this flowery language about how we're meant to serve,
8 right? We're trying to help. He's putting everyone at
9 risk. He's taking all these cops away from their
10 important duties. No, he's not. The cops are. He's
11 putting people at risk. Someone could have been
12 shot -- by the police.

13 It's not Mr. Cuypers' fault, and why that
14 matters and why that's not a sideshow is the first
15 element you have to decide about is whether he actually
16 obstructed. To obstruct an officer means that the
17 conduct of the defendant prevents or makes more
18 difficult the performance of the officer's duty. I
19 think the only evidence we have to that is them
20 claiming it.

21 And you might have heard Attorney Prell ask
22 them all that question because he knows it's an
23 element. I would argue that Officer Taylor did more to
24 obstruct here and make his own job and the job of other
25 law enforcement more difficult than Mr. Cuypers ever

1 did.

2 Their job is -- he says he's supposed to stop
3 him, which he does. His actions don't in any way
4 obstruct that. Then he's supposed to try and get to
5 the bottom of what's going on. Mr. Cuypers' actions in
6 no way obstruct that. He could have been asked.

7 Then maybe he's supposed to give him a
8 ticket. I would argue that Mr. Cuypers' actions don't
9 interfere with that. He could have mailed him the
10 ticket, like he did anyway. He could have handed him
11 the ticket. He could have gotten out of the car, saw
12 there were no guns in his hands. Had all four officers
13 approach with a gun, pat him down, and cite him, talk
14 to him, de-escalate. So I don't think it's clear that
15 Mr. Cuypers obstructed anything.

16 But more importantly, the last element is
17 that Mr. Cuypers needed to know that law enforcement --
18 first, that they were acting as a law enforcement --
19 they were acting with lawful authority. I don't think
20 he knew that. It's not the philosophical question that
21 Attorney Prell pokes fun at where basically Mr. Cuypers
22 is trying to appeal to our common humanity. It's not
23 about that. He gets they're cops. I get it. He gets
24 it. Everyone gets it.

25 Do I think he understood they had lawful

1 authority to pull him out and do all that? No, I do
2 not. I don't think most of us do, and I think he's
3 constantly asking questions. Now, Attorney Prell says,
4 well, he testified today and maybe you can't believe
5 him because he's self-serving. How about when he's
6 talking in the moment asking what's going on? Do you
7 guys have guns on me? Why? What did I do, as he's on
8 the floor.

9 And then afterward, even after he's been
10 tased, and, again, he's very polite and compliant, I
11 would argue, throughout but certainly afterward, he
12 still says, I really don't understand how I didn't
13 follow what you were asking of me. All he's trying to
14 do is talk to them and they don't. And that's their
15 choice, I guess, because, again, maybe we all have to
16 do to whatever police tell us to do under any
17 circumstances or maybe we don't.

18 One thing that makes us different from other
19 democracies is we have a jury system. There are only a
20 handful of places on the globe that do it this way.
21 The government has a lot of authority over us. You
22 guys get to be the check on that authority. I don't
23 think they've shown, A, that he obstructed. B, that he
24 knew they were acting with lawful authority or the end
25 of that last element, which I assure you they clearly

1 did not show, which is he needs to have known that what
2 he was doing was obstructing them. Do you think we
3 have evidence to show that? Absolutely not we don't.

4 Mr. Cuypers sees the world differently. They
5 even acknowledge that. They're even undermining that
6 he understands everything that was going on. Both
7 Officer Taylor and his supervising officer agree on
8 that, and I agree on that, too. Mr. Cuypers sees
9 people as fundamentally good in a positive way. He
10 assumes the best about people. So, yes, he does see
11 the world differently than the officers involved here.

12 The question is: What do we do next? What
13 do we do next when maybe we overreacted, we did
14 something wrong? We have to admit that maybe we were
15 wrong. Well, I think one of the answers here is
16 sometimes you close ranks and you get dumped, but if
17 his job is to serve the people of Superior, that is not
18 what we watched when we watched those videos.

19 And the good news is, as much as they tell us
20 this is all for your own good, trust us, we're in
21 charge. We're here to protect you and often they are
22 but not always. The good news is because of our jury
23 system, you all get to make that decision now. You get
24 to be the final decision-makers, and I ask that when
25 you do, you consider those elements, particularly one

1 and four and you find that they did not meet their
2 burden, frankly even come close. He didn't obstruct.
3 He didn't understand they were acting in lawful
4 authority or what they were doing was okay. And he
5 didn't know that what he was doing, which was,
6 basically, trying to ask what was going on and trying
7 to understand {inaudible/courtroom noise} obstructing
8 them.

9 Thank you.

10 THE COURT: Thank you, Mr. Holevoet.

11 Mr. Prell.

12 MR. PRELL: Offer Taylor wasn't on trial
13 today. None of the officers were on trial today.
14 Obviously, we're going to explore their veracity as
15 police officers, some of their training and experience
16 as such, but they weren't on trial today. If Mr.
17 Holevoet wants to have a situation where they are, it's
18 going to be a much different setting than this one.
19 This trial involves allegations of misconduct by Mr.
20 Holevoet {sic}-- not Mr. Holevoet, obviously -- Mr.
21 Cuypers. Mr. Cuypers.

22 Now, I congratulate Mr. Holevoet on his
23 familiarity with officer traffic stops through other
24 defense work that he has done that are much sexier than
25 this one. The high-speed chases. The -- but that's

1 not the opportunity that law enforcement has in the
2 field. You heard them describe their training as it
3 concerns the implementation of these high-risk
4 protocols, and you never heard them say they're trained
5 to wait for something off the charts, something
6 undeniably violent. Officer Taylor saw movements that
7 can be explained, but they can also trigger suspicion
8 and that's exactly what happened here.

9 Cuypers -- Mr. Cuypers knew this. He said on
10 the stand that his inclination, his human reaction, is
11 to face my threats. Face my threats. If you know
12 you're dealing with police officers and you're a
13 reasonable person, you do what they ask, you comply,
14 you get out of there, not face them and defy eight
15 orders to do exactly the opposite. Not drop your hands
16 and defy six orders to do exactly the opposite and go
17 to a knee instead of defying three orders to do just
18 that.

19 He suggests -- Mr. Cuypers -- that he was
20 processing that whole scene and thinking to himself,
21 boy, the use of this force in a traffic stop, as menial
22 as this one just doesn't make any sense to me, but all
23 the while pitching you on how confused he was, which
24 one was it? Was he doing a deep Fourth Amendment
25 analysis or was he really a rabbit in headlights?

1 I suggest to you that he knew what he was
2 doing. You can see it in his partial compliance. You
3 can see it in his treatment of officers and the
4 dialogue back and forth. You can see it in his
5 unwillingness, at the end of the day, to actually fully
6 comply and allow them to do their job.

7 Thank you.

8 THE COURT: Thank you, Mr. Prell.

9 Members of the jury, I will now instruct you
10 upon the principles of law which you are to follow in
11 considering the evidence and in reaching your verdict.

12 It is your duty to follow all of these
13 instructions. Regardless of any opinion you may have
14 about what the law is or ought to be, you must base
15 your verdict on the law I give you in these
16 instructions. Apply that law to the facts in the case
17 which have been properly proven by the evidence.
18 Consider only the evidence received during this trial
19 and the law as given to you by -- by these
20 instructions, and, from these alone, guided by your
21 soundest reason and best judgment, reach your verdict.

22 If any member of the jury has an impression
23 of my opinion as to whether the defendant is guilty or
24 not guilty, disregard that impression entirely and
25 decide the issues of fact solely as you view the

1 evidence. You, the jury, are the sole judges of the
2 facts, and the Court is the judge of the law only.

3 A citation is nothing more than a formal,
4 written accusation against a defendant charging the
5 commission of one or more non-criminal violations of
6 the law. You are not to consider it as evidence
7 against the defendant in any way. It does not raise
8 any inference of guilt.

9 Evidence is, first, the sworn testimony of
10 witnesses, both on direct or cross-examination,
11 regardless of who called the witness.

12 Second, the exhibits the Court has received,
13 whether or not the exhibit goes to you in the jury
14 room.

15 Third, any facts to which the lawyers have
16 agreed or stipulated or which the Court has directed
17 you to find.

18 Anything you may have seen or heard outside
19 of the courtroom is not evidence. You are to decide
20 the case solely on the evidence offered and received at
21 trial.

22 Obstructing an officer is committed by one
23 who knowingly obstructs an officer while the officer is
24 doing an act in an official capacity and with lawful
25 authority.

1 Before you may find the defendant guilty of
2 this City of Superior ordinance offense, the City must
3 prove by evidence which is clear, satisfactory, and
4 convincing that the following four elements were
5 present.

6 First, the defendant obstructed an officer.

7 A City of Superior Police Officer is an
8 officer.

9 To obstruct an officer means that the conduct
10 of the defendant prevents or makes more difficult the
11 performance of the officer's duties.

12 Second, the officer was doing an act in an
13 official capacity.

14 Officers act in an official capacity when
15 they perform duties that they are employed to perform.
16 The duties of an officer include the enforcement of
17 traffic laws and the arrest of persons suspected of
18 violating laws or ordinances. Section 345.22 of the
19 Wisconsin Statutes provides that officers can arrest
20 people without a warrant for a violation of a traffic
21 regulation if the officer has reasonable grounds to
22 believe that the person has violated a traffic
23 regulation.

24 Third, the officer was acting with lawful
25 authority.

1 Officers act with lawful authority if their
2 acts are conducted in accordance with the law. In this
3 case, it is alleged that officers from the City of
4 Superior Police Department first stopped the defendant
5 for a violation of a traffic law, then took him into
6 custody after he failed to comply with their verbal
7 commands.

8 Fourth, the defendant knew that any of the
9 officers present during his arrest was an officer
10 acting in an official capacity and with lawful
11 authority and the defendant knew his conduct would
12 obstruct the officer.

13 You cannot look into a person's mind to find
14 knowledge. Knowledge must be found, if found at all,
15 from the defendant's acts, words, and statements, if
16 any, and from all of the facts and circumstances in
17 this case bearing upon knowledge.

18 If you are satisfied by clear, satisfactory,
19 and convincing evidence that all four elements of this
20 offense have been proved, you should find the defendant
21 guilty.

22 If you are not so satisfied, you must find
23 the defendant not guilty.

24 In reaching your verdict, examine the
25 evidence with care and caution. Act with judgment,

1 reason, and prudence.

2 The burden of establishing every fact
3 necessary to constitute guilt is upon the City of
4 Superior. Before you can return a verdict of guilty,
5 you must be satisfied to a reasonable certainty by
6 evidence which is clear, satisfactory, and convincing
7 that the defendant is guilty.

8 Clear, satisfactory, and convincing evidence
9 is evidence, which when weighed against that opposed to
10 it, clearly has more convincing power. It is evidence
11 which satisfies and convinces you that the defendant is
12 guilty because of its greater weight and clear,
13 convincing power.

14 Reasonable certainty means that you are
15 persuaded based upon a rational consideration of the
16 evidence. Absolute certainty is not required, but a
17 guess is not enough to meet the burden of proof.

18 The lawyers for the parties have a duty to
19 object to what they feel are improper questions. Do
20 not draw any conclusion for either side if an objection
21 was made to a question and the witness was not
22 permitted to answer.

23 Disregard entirely any question that the
24 Court did not allow to be answered. Do not guess what
25 the witness' answer might have been. If the question

1 itself suggested that certain information might be
2 true, ignore the suggestion and do not consider it as
3 evidence.

4 Attorneys for each side have the right and
5 the duty to object to what they consider are improper
6 questions asked of witnesses and to the admission of
7 other evidence, which they believe is not properly
8 admissible. You should not draw any conclusions from
9 the fact an objection was made.

10 By allowing testimony or other evidence to be
11 received over the objection of counsel, I'm not
12 indicating any opinion about the evidence. You, the
13 jurors, are the sole judges of the credibility of
14 witnesses and of the weight of the evidence.

15 An exhibit becomes evidence only when
16 received by the Court. An exhibit marked for
17 identification and not received is not evidence. Any
18 exhibit received is evidence whether or not it goes to
19 you in the jury room.

20 Remarks of the attorneys are not evidence.
21 If the remarks suggested certain facts not in evidence,
22 disregard that suggestion.

23 Consider carefully the closing arguments of
24 the attorneys, but their arguments and conclusions and
25 opinions are not evidence. Draw your own conclusions

1 from the evidence, and decide upon your verdict
2 according to the evidence, under the instructions given
3 you by the Court.

4 The weight of evidence does not depend on
5 the number of witnesses on each side. You may find
6 that the testimony of one witness is entitled to
7 greater weight than that of another witness or even of
8 several other witnesses.

9 In weighing the evidence, you may take into
10 account matters of your common knowledge and your
11 observations and experience in the affairs of life.

12 It is the duty of the jury to scrutinize and
13 to weigh the testimony of witnesses and to determine
14 the effect of the evidence as a whole. You are the
15 sole judges of the credibility, that is, the
16 believability of the witnesses and the weight of the
17 evidence given to their testimony.

18 In determining the credibility of each
19 witness and the weight you give to the testimony of
20 each witness, consider these factors:

21 Whether the witness has an interest or lack
22 of interest in the result of this trial.

23 The witness's conduct, demeanor, and
24 appearance on the witness stand.

25 The clearness or lack of clearness of the

1 witness's recollections.

2 The opportunity the witness had for observing
3 and for knowing the matters the witness testified
4 about.

5 The reasonableness of the witness's
6 testimony.

7 The apparent intelligence of the witness.

8 Bias or prejudice, if any has been shown.

9 Possible motives for falsifying testimony,
10 and all other facts and circumstances during this trial
11 which tend either to support or to discredit the
12 testimony.

13 Then give to the testimony of each witness
14 the weight you believe it should receive.

15 There is no magic way for you to evaluate the
16 testimony. Instead, you should use your common sense
17 and experience. In everyday life, you determine for
18 yourselves the reliability of things people say to you.
19 You should do the same thing here.

20 The weight of evidence does not depend on the
21 number of witnesses on each side. You may find that
22 the testimony of one witness is entitled to greater
23 weight than another witness or even of several other
24 witnesses.

25 The following two verdict forms will be

1 submitted to you concerning the citation against Ian
2 Richard Cuypers.

3 One reading: "We, the jury, find the
4 defendant, Ian Richard Cuypers, guilty of obstructing
5 an officer."

6 Another reading, "We, the jury, find the
7 defendant, Ian Richard Cuypers, not guilty of
8 obstructing an officer."

9 It is for you to determine whether the
10 defendant is guilty or not guilty of the offense
11 charged.

12 In this case, the law provides that the
13 verdict must be agreed to by five-sixths or more of the
14 jury. Any verdict returned by the jury shall be agreed
15 to by at least five of the jurors. I ask you to try to
16 be unanimous if you can.

17 When you retire to the jury room, select one
18 of your members to preside over your deliberations.
19 That person's vote is entitled to no greater weight
20 than the vote of any other juror.

21 When you have agreed upon your verdict, have
22 it signed and dated by the person you have selected to
23 preside. At the foot of the verdict, you will find a
24 place provided where dissenting jurors, if there be
25 any, will sign their names. Either the blank lines or

1 the space below them may be used for that purpose.

2 Mr. Clerk, you can swear the bailiff.

3 (The clerk swore in the bailiff.)

4 THE COURT: All right, ladies and gentlemen

5 of the jury, you may retire to deliberate.

6 (The jury exits the courtroom.)

7 THE COURT: All right. Please be seated.

8 It's 5:24. The jury has been given

9 instructions and verdict. They are retiring to

10 deliberate.

11 Mr. Prell, anything we need to address

12 outside the jury's presence?

13 MR. PRELL: No, Your Honor.

14 THE COURT: Mr. Holevoet?

15 MR. HOLEVOET: No, thank you.

16 THE COURT: All right. Then I would say

17 stick around at least for a while, and if you leave

18 anywhere, just give the clerk your number so we can get

19 ahold of you ASAP. It's been a long day for everybody.

20 We don't want the jurors waiting around for somebody

21 when they reach a verdict.

22 So thank you.

23 MR. PRELL: Thank you.

24 MR. HOLEVOET: Thank you.

25 (Recess taken at 5:24 p.m.)

1 (Proceedings continued at 6:09 p.m.)
2 (The jury enters the courtroom.)
3 THE COURT: Please be seated.
4 We are back on the record. It is about 6:09.
5 The jury is here. The attorneys and the
6 defendant are all present.
7 I've been informed the jury may have reached
8 a verdict.
9 Mr. Foreperson, has the jury reached a
10 verdict?
11 JURY FOREPERSON: Yes, we have.
12 THE COURT: The verdict reads as follows:
13 We, the jury, hereby find the defendant, Ian Richard
14 Cuypers, not guilty of obstructing an officer, on or
15 about February 28th, 2024, contrary to City of
16 Superior, Wisconsin, 102-1. Dated today by the
17 foreperson.
18 We do have one dissenting juror.
19 Mr. Sullivan, is that the jury's verdict?
20 JURY FOREPERSON: Yes, it is.
21 THE COURT: And anybody disagree with that
22 verdict? If so, say yes.
23 (No response from the jury.)
24 THE COURT: I think that covers it. The
25 dissenting juror -- just trying to read the name. Who

1 was the dissenting juror?

2 All right. And, ma'am, your last name?

3 JUROR WALLIN: Wallin.

4 THE COURT: Ms. Wallin was the dissenting
5 juror. I think that concludes it.

6 Anything else from the jury, Mr. Prell?

7 MR. PRELL: No, Your Honor. Thank you.

8 THE COURT: Mr. Holevoet, anything else?

9 MR. HOLEVOET: No, thank you.

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, last instruction for this trial.

12 Your service in this case is completed.

13 You do not have to answer questions about the
14 case from anyone other than from me. There is no
15 requirement that you maintain secrecy concerning what
16 happened the jury room, but you do not have to discuss
17 this case with anyone or answer any question about it.

18 So, ladies and gentlemen of the jury, you are
19 excused. I will make myself available. In about
20 three, four minutes, I'll come down. If you guys have
21 any questions or anything, I'm happy to sit as long as
22 you want to answer questions. Although it's beautiful
23 outside, I can understand if you don't want to.

24 So in the future, if you don't want to hang
25 around, shoot me an email, contact my office, stop by

1 the office. If I'm not busy, I'm happy to discuss with
2 you any questions you may have about the case or how
3 the process is.

4 There is still one trial on the calendar for
5 the end of the month here. Unfortunately, you only
6 served one day. I think the max days are five, so you
7 can still technically could serve on the jury at the
8 end of the month but keep checking. I don't want to
9 jinx it, but if I had to bet, I think it might come off
10 the calendar, but we might not know anything until the
11 day before. So just to let you know.

12 Thank you again for your attention. I should
13 be down there in three, four minutes to talk to you
14 guys -- anybody that wants to stick around.

15 Thank you again. You're excused.

16 (The excused jurors exit the courtroom.)

17 THE COURT: Please be seated.

18 Mr. Holevoet, motion?

19 MR. HOLEVOET: Yes. I move for entry of
20 judgment on the verdict.

21 THE COURT: All right. I will move for
22 judgment of acquittal based on the jury's verdict.

23 Anything else we need to address today, Mr.
24 Prell?

25 MR. PRELL: No, Your Honor. Thank you.

1 THE COURT: Mr. Holevoet?
2 MR. HOLEVOET: No, thank you.
3 THE COURT: All right. I think that covers
4 it.
5 Thank you.
6 MR. HOLEVOET: Thank you. Have a good day.
7 THE COURT: You too. Drive safe.
8 MR. HOLEVOET: Thanks very much.
9 (Proceedings concluded at 6:12 p.m.)
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STATE OF WISCONSIN)
) SS. CERTIFICATE
DOUGLAS COUNTY)

I, Adam Graupe, Official Court Reporter for
the County of Douglas, State of Wisconsin, do hereby
certify that I reported the above matter on June 16th,
2024, and that the foregoing transcript, consisting of
293 pages, has been transcribed by me by means of
computer-aided transcription, and that it is a true and
correct transcript of the proceedings had in said
matter, to the best of my ability.

Dated this 30th day of August 2024.

Adam Graupe
Adam Graupe
Court Reporter
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