

1 STATE OF NEW YORK  
2 COUNTY COURT : COUNTY OF CATTARAUGUS

3 -----

4 THE PEOPLE OF THE STATE OF NEW YORK

5 - vs - INDICTMENT NO. 16-116

6 C [REDACTED] N,

7 Defendant

8 -----

9 303 Court Street  
10 Little Valley, NY 14755  
11 June 1 & 2, 2017  
12 JURY TRIAL

13 B E F O R E:

14 HONORABLE RONALD D. PLOETZ  
15 County Court Judge

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

17 ELIZABETH ENSELL, ESQ.  
18 Assistant District Attorney  
19 and  
20 AMBER KERLING, ESQ.  
21 Assistant District Attorney  
22 Appearing on behalf of the People

23 MATT ALBERT, ESQ.  
24 Appearing on behalf of the Defendant

25 Kathleen M. Trost,  
Official Court Reporter

1

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1           (The following occurred without the jury present:)

2           THE COURT: Miss Ensell, Mr. Albert, are we  
3 ready to go on the record?

4           MR. ALBERT: I'm ready.

5           MS. ENSELL: Yes, Judge.

6           THE COURT: Let's go on the record then. The  
7 jury is not yet present. Are there any matters that  
8 need be discussed before we bring in the jurors?

9           MS. ENSELL: Preliminarily, Judge, there was  
10 an issue that had come up yesterday about opening the  
11 door in opening statements. I think we're going to  
12 kind of wait and see. The case law says it's a case by  
13 case basis determination to be made by the trial judge  
14 when it's occurred.

15          THE COURT: Ah-huh.

16          MS. ENSELL: So, I think at this point, the  
17 People are content with waiting to see what actually  
18 starts to happen on cross examination before renewing  
19 our motion or adjusting our motion, depending on what  
20 comes up on cross examination. I think the issue --  
21 what I would suggest for the Court is on the record  
22 they be cautioned again about the fact that particular  
23 evidence that they may choose to elicit on cross  
24 examination could potentially open a door to a change  
25 in the Sandoval ruling or could potentially result in

1           our filing an additional Molineux application or  
2           renewing our Sandoval application.

3                   THE COURT: Well, I've reviewed the case  
4           law -- Mr. Albert, do you want to respond?

5                   MR. ALBERT: Just briefly, Judge. In terms  
6           of Molineux, when we talk about prior bad acts, we're  
7           generally talking about convictions, things like that.  
8           They noticed two instances, one in '97. The only thing  
9           that could conceivably open a door, to open the door to  
10          the 1997, would be if my client said I've never been  
11          arrested in my life, for instance. That would be about  
12          the only example where it would have any sort of  
13          probative value that goes to his credibility. So,  
14          there's nothing that we could say or do that brings a  
15          1997 impaired instance of -- impaired instance into  
16          play.

17                   In terms of the 2014, we're not overly concerned  
18          whatever comes out about that necessarily. I mean, I  
19          think -- obviously, this isn't a DWI trial about a case  
20          from 2014. So, specific field tests and things like  
21          that I think would be completely irrelevant, but I  
22          mean, ultimately those charges against my client were  
23          dismissed. So, I don't know.

24                   Obviously, my client hasn't taken the stand yet.  
25          The People haven't put forth witnesses yet but I guess,

1           you know, we'll obviously address these situations as  
2           they arise, but at this point, we'd rather the jury  
3           hear what we believe to be relevant. We're not overly  
4           concerned I guess at this point about him being  
5           questioned about the 2014 incident. I guess that's  
6           where we stand at this point.

7                         THE COURT: All right. Well --

8                         MR. ALBERT: I mean, bad acts are generally  
9           convictions.

10                        THE COURT: I, again, reviewed the case law  
11           on this matter and I agree and I think both of you  
12           agree with what I'm going to say, that this is an issue  
13           that we can't do a blanket ruling at this time. We've  
14           got to see what the proposed evidence is and what the  
15           possible responses are. I think there may well be some  
16           issues about opening the door here, but we're gonna  
17           have to rule on them as they come along. All right?  
18           So, that's the way I would intend to proceed on this.  
19           It sounds like everyone is in agreement. Anything else  
20           before we get jurors in here?

21                        MR. ALBERT: Not from us, Your Honor.

22                        THE COURT: Miss Ensell, anything?

23                        MS. ENSELL: One second, Judge. I apologize.  
24           I think we're all set, Judge, thank you.

25                        THE COURT: All right.

1                   MR. ALBERT:  Actually, very briefly.  There's  
2                   a different second chair today which is fine except for  
3                   the fact that the jury wasn't vetted as to whether or  
4                   not they know of Miss Kerling in any way, shape or  
5                   form.  Hopefully, there isn't any issues, but if Juror  
6                   No. 3 or whoever is best friends or whatever -- I'd  
7                   make some sort of inquiry that no one that's impaneled  
8                   is friends with her because now there's a different  
9                   second chair, namely, Amber Kerling.  I don't  
10                  anticipate an issue.

11                  THE COURT:  I'll bring it up and introduce  
12                  her.

13                  MS. ENSELL:  Judge, I'm fine with it.  I  
14                  would note for the Court's record, each and every one  
15                  of them was asked whether or not they knew anybody who  
16                  was employed by the District Attorney's Office.

17                  THE COURT:  I know they were, so it would  
18                  only be if there was some facial recognition.

19                  MR. ALBERT:  Exactly.

20                  THE COURT:  All right.  Bring them in.

21                  (The jury entered the courtroom and the following  
22                  occurred:)

23                  THE CLERK:  Your Honor, the jury, counsel and  
24                  defendant are present and ready to proceed.

25                  THE COURT:  All right.  Good morning.  Just a

1 couple preliminary matters here. First of all, we have  
2 placed some notebooks on the front rail. Anyone that  
3 would like one, I'd ask you to pass them around, and  
4 again, if you are going to use them, please make sure  
5 that you put your name on the first page. Anyone in  
6 the back row need one? Let's get those passed out.

7 A second thing is that we have a new party sitting  
8 at the People's table, Amber Kerling. She's a member  
9 of the District Attorney's staff. Since she wasn't  
10 physically in here yesterday, I'll just ask you, do any  
11 of you know Miss Kerling?

12 (No response.)

13 THE COURT: All right. I'll mention one last  
14 thing. We're going to be starting with the testimony  
15 of witnesses at this time, and if any of you, you know,  
16 need a break before I call for a break here, please  
17 raise your hand. And also, if any of you are having  
18 difficulty hearing or seeing anything that's going on,  
19 simply raise your hand, get the attention of the court  
20 officer and we'll make sure that's remedied for you.  
21 All right? Anything else before we start?

22 (No response.)

23 THE COURT: Okay, the People may call their  
24 first witness.

25 MS. ENSELL: Thank you, Judge.



## ENSELL - DIRECT - HUNT

1 MS. ENSELL: The People will call former  
2 deputy William Hunt.

3 W I L L I A M H U N T, having been first duly sworn  
4 according to law, was examined and testified as follows:

5 DEPUTY: Please have a seat. State your name  
6 and business address for the record.

7 THE WITNESS: My name is William Hunt.  
8 Business address is One Barrett Drive, Salamanca,  
9 New York, Salamanca Police Department.

10 DIRECT EXAMINATION BY MS. ENSELL:

11 Q Deputy Hunt, I think you -- excuse me. Officer  
12 Hunt, I think you just said it, but where are you currently  
13 employed?

14 A Salamanca Police Department.

15 Q How long have you been employed there?

16 A Oh, about two years.

17 Q And were you previously employed anywhere else?

18 A Yes, I was.

19 Q Where was that?

20 A The Cattaraugus County Sheriff's Office.

21 Q How long were you employed there?

22 A Four months.

23 Q And were you full time or part time?

24 A I was full time.

25 Q Full time with the county?

## ENSELL - DIRECT - HUNT

1 A Yes, I was.

2 Q And are you currently full time or part time in  
3 Salamanca?

4 A I am full time in Salamanca.

5 Q Do you recall approximately when you left the  
6 sheriff's department?

7 A It was in April.

8 Q Of?

9 A Of 2016.

10 Q And under what circumstances did you leave the  
11 sheriff's department?

12 A I was laid off due to budget cuts.

13 Q Okay. And at that time is that when you became a  
14 full time employed at Salamanca?

15 A I was previously employed full time at Salamanca  
16 before I was at the sheriff's office.

17 Q Okay. And how long have you been a police officer  
18 all together?

19 A Two years.

20 Q And -- I'm sorry, did you say two years?

21 A Two years total, yes.

22 Q And did you receive any training to become a  
23 police officer?

24 A Yes, I have.

25 Q Okay. What did that training consist of?

## ENSELL - DIRECT - HUNT

1           A     It consists of the Chautauqua County Sheriff's  
2 Academy.

3           Q     Can you just explain a little bit about what the  
4 sheriff's academy is?

5           A     It covered multiple subjects in law enforcement,  
6 physical fitness.

7           Q     And did you receive any particular academic  
8 training as it involves law enforcement?

9           A     Yes, I have.

10          Q     What is that training?

11          A     Traffic stops, DWI arrests.

12          Q     And does any of your training involve enforcing  
13 the Penal Law?

14          A     Yes, it does.

15          Q     And you had training at the academy.

16          A     Approximately how long was that?

17          A     Six months.

18          Q     Did you successfully complete that program?

19          A     Yes, I did.

20          Q     All right. Those two places of employment, were  
21 you also field trained?

22          A     Yes, I was.

23          Q     And you were field trained both at the sheriff's  
24 department and at Salamanca?

25          A     Yes, I was.

## ENSELL - DIRECT - HUNT

1 Q Could you just explain a little bit about what  
2 field training is?

3 A I ride along with another officer, field training  
4 officer, and perform the job with him supervising my duties.

5 Q Okay. And generally speaking, either at the  
6 academy or during these two jobs, did you ever have an  
7 opportunity to be involved in a simulated pursuit?

8 A Yes, I was.

9 Q What was that? Can you explain that to the jury?

10 A Yeah. I was involved in a pursuit while I was  
11 involved at the Salamanca Police Department.

12 Q And what was your involvement in that?

13 A I was a lead car in the pursuit.

14 Q Okay. Was that while you were still field  
15 training?

16 A No. It was when I was off of field training.

17 Q Okay. And can you just briefly describe to the  
18 jury what your duties are when you were a deputy with the  
19 Cattaraugus County Sheriff's Office?

20 A My duties were to answer calls for patrol, enforce  
21 Vehicle & Traffic Law and assist any other police agencies  
22 within the county.

23 MR. ALBERT: Judge, I'm sorry, I'm having  
24 difficulty hearing. Would you mind instructing him --  
25 I'm sorry.

ENSELL - DIRECT - HUNT

1 THE WITNESS: Is that better?

2 MR. ALBERT: Yes, thank you.

3 Q Okay. And going back to your previous answer,  
4 Salamanca incident that you described, how did that end?

5 A With the pursuit?

6 Q Yeah.

7 A The pursuit was called off and suspect was never  
8 placed in custody.

9 Q I want to draw your attention to February 27<sup>th</sup>,  
10 2016. Were you on duty on that date?

11 A Yes, I was.

12 Q With what agency?

13 A With the Cattaraugus County Sheriff's Office.

14 Q And what was your shift on that date?

15 A It was twelve a.m. to eight a.m.

16 Q Were you working alone or with a partner?

17 A I was alone.

18 Q And at that time were you driving a marked patrol  
19 vehicle?

20 A Yes, I was.

21 Q Is that vehicle equipped with lights and sirens?

22 A Yes, it is.

23 Q Were you wearing a uniform on that date?

24 A Yes, I was.

25 Q Did that uniform clearly display that you were a

## ENSELL - DIRECT - HUNT

1 police officer?

2 A Yes, it did.

3 Q All right. And on that date, February 27, 2016,  
4 were your duties substantially the same as you just  
5 described?

6 A Yes.

7 Q Drawing your attention to approximately 2:48 a.m.  
8 on February 27, 2016, were you on Route 242 at that time?

9 A Yes, I was.

10 Q Do you recall approximately where?

11 A I was leaving the Town of Ellicottville, entering  
12 the Town of Mansfield.

13 Q In what direction were you traveling?

14 A I was traveling westbound.

15 Q All right. And around the time, February 2016,  
16 did you have a particular designation for patrol area as a  
17 sheriff's deputy?

18 A I had the entire county.

19 Q So, on that date, February 27<sup>th</sup>, 2016, that was  
20 your designated patrol area?

21 A Yes, it was.

22 Q Are you particularly familiar with Route 242?

23 A Yes, I am.

24 Q Is it an area that you patrolled on often?

25 A Yeah.

## ENSELL - DIRECT - HUNT

1 Q Have you also had the opportunity in your personal  
2 life to drive that route?

3 A Yes, I have.

4 Q How often would you say you've driven Route 242?

5 A Several times.

6 Q Okay. How often would you say you've traveled  
7 Route 242 specifically between Ellicottville and Little  
8 Valley?

9 A I'm not quite sure.

10 Q What do you mean you are not quite sure?

11 A Do you mean how many times I traveled the route?

12 Q Yeah.

13 A I couldn't tell you a specific time. I've  
14 traveled it many times.

15 Q Is it because it's so many?

16 A Yes, it is.

17 Q I'm not asking you for a specific number.

18 A Yeah, it's been many times, yes.

19 Q Would it be safe, Officer, that you were familiar  
20 with Route 242 and the surrounding areas?

21 A Yes.

22 MS. ENSELL: Judge, at this point I want to  
23 show the witness what has been marked as People's  
24 Exhibit A1 for identification. I'll show defense too.

25 THE COURT: Go ahead.

## ENSELL - DIRECT - HUNT

1 Q I'm gonna show you what's been marked for  
2 identification as People's Exhibit A1 for identification.  
3 Can you tell me what that is?

4 A Yes, it's an aerial photo of Route 242.

5 MS. ENSELL: Judge, I think at this point we  
6 want to show Your Honor, defense counsel and the  
7 witness the exhibit from the projectors.

8 THE COURT: All right. Any objection?

9 MR. ALBERT: Well, just so I understand, is  
10 it being offered into evidence?

11 MS. ENSELL: Not yet because it will only be  
12 you three.

13 MR. ALBERT: Okay.

14 THE COURT: Go ahead.

15 Q Now, Officer, that's the exhibit i just showed  
16 you; correct?

17 A Yes, that is correct.

18 Q And based on your familiarity with traveling  
19 Route 242 and the surrounding areas as a portion of your  
20 patrol, does this fairly and accurately represent 242 and  
21 surrounding locations?

22 A Yes.

23 Q And would it have fairly and accurately  
24 represented 242 as they existed in 2006?

25 A Yes.



ENSELL - DIRECT - HUNT

1 MS. ENSELL: Judge, at this point I would ask  
2 to move in People's Exhibit 1A.

3 THE COURT: Any objection?

4 MR. ALBERT: No, Your Honor.

5 THE COURT: All right. People's Exhibit 1A  
6 is in evidence.

7 MS. ENSELL: Judge, I am at this point asking  
8 it be published to the jury.

9 THE COURT: All right. I take it you want to  
10 do that by putting it on the screen. For the jury's  
11 information, much of this technology, this is the first  
12 time it's being used. So, if we're fumbling around a  
13 bit, bear with us.

14 MR. ALBERT: Or a lot.

15 THE COURT: Or a lot.

16 MS. ENSELL: Judge, I am also going to be  
17 asking the witness to mark the exhibit. I know that's  
18 a different situation.

19 THE COURT: Okay.

20 Q Officer, you see the exhibit we're talking about  
21 in the front of you; correct?

22 A That is correct.

23 Q At this point I'm going to ask if you can  
24 mark where you were at or about the time we were describing  
25 on Route 242?

CATTARAUGUS COUNTY COURT

## ENSELL - DIRECT - HUNT

1 A Okay. How do I mark it?

2 Q You just touch it.

3 A I was about there (indicating).

4 THE CLERK: I think you have to use the  
5 little pencil.

6 MS. ENSELL: Okay.

7 Q And that location that you just marked on the  
8 exhibit, what jurisdiction is that in?

9 A Can you rephrase the question? Is it --

10 Q Where you just marked, where you were located --

11 A It was the Town of Ellicottville line.

12 Q So, when you say the Town of Ellicottville line  
13 then, what two jurisdictions?

14 A It was the Town of Mansfield and Ellicottville.

15 MS. ENSELL: Judge, at this point, this is in  
16 evidence. I know there's something particular we want  
17 to do with the marked ones but I think we're saving  
18 them. Judge, if not, if at this point it will be  
19 easier for him to physically mark exhibits instead of  
20 doing it on the screen. I can do it that way. I do  
21 physically have the exhibits.

22 THE COURT: All right. Let's physically  
23 mark the exhibit.

24 MS. ENSELL: I have three that are going to  
25 be this way. So, at this point, instead of publishing

## ENSELL - DIRECT - HUNT

1 it up there, would you like me to just do the picture?

2 THE COURT: Let's try doing both. It's good  
3 to publish it this way, but as far as marking it, let's  
4 physically mark --

5 MS. ENSELL: All right, Judge, we'll do that.  
6 We just need a second to get something to mark it with.  
7 Judge, I'm gonna go back and give the physical exhibit  
8 to the witness and just have him --

9 THE COURT: Go ahead. You don't have to ask  
10 each time. Go ahead.

11 MS. ENSELL: I'm going to note for the  
12 Court's record that the witness is marking what's been  
13 moved into evidence as People's Exhibit 1A.

14 Q Officer, at that time, about 2:40 a.m., did  
15 something attract your attention while you were at that  
16 location?

17 A Yes, it did.

18 Q Can you describe what attracted your attention?

19 A As I was traveling westbound, I observed an  
20 Ellicottville patrol unit traveling eastbound and he hit his  
21 break lights and I pulled over to the shoulder of the road.

22 Q And why did you do that?

23 A I believed he was attempting to turn around to  
24 talk to me.

25 Q And why would you think that?

## ENSELL - DIRECT - HUNT

1           A     The way that he was stopping, the location that he  
2 was stopping at.

3           Q     Okay. And had you had any other previous  
4 conversations with -- who was that officer?

5           A     I'm sorry. The officer was Cori Kowalski, and  
6 yes, I did speak with him earlier that evening while on my  
7 duty shift.

8           Q     Okay. And what did you do once you noticed he was  
9 turning around?

10          A     I pulled over to the shoulder of the road to  
11 attempt to do a u-turn.

12          Q     Okay. And what happened after that?

13          A     A vehicle was approaching behind me. I let it  
14 pass and Officer Kowalski turned his patrol vehicle around  
15 and continued westbound behind that vehicle.

16          Q     Okay. What did you do after that?

17          A     I turned back around and went -- continued  
18 westbound on 242.

19          Q     And did you notice anything particular about  
20 Officer Kowalski's car?

21          A     Yes. He did activate his emergency lights.

22          Q     And what did you do next?

23          A     I continued west on 242, following the  
24 Ellicottville patrol unit.

25          Q     Okay. Did there come a point in time where you

## ENSELL - DIRECT - HUNT

1 received a dispatch concerning this incident?

2 A Yes, there was.

3 Q And how did you respond to that dispatch?

4 A Officer Kowalski called to Little Valley dispatch  
5 that he had a vehicle refusing to pull over, and I was asked  
6 where my location was and I stated I was on 242 behind the  
7 Ellicottville patrol unit.

8 Q So, once you received that dispatch, what did you  
9 do?

10 A I activated my lights and siren and continued  
11 behind the Ellicottville unit.

12 Q Okay. And did there come a point in time where  
13 you observed Officer Kowalski's vehicle do something else?

14 A Yes, I did.

15 Q Can you describe what you observed?

16 A Officer Kowalski pulled beside the defendant's  
17 vehicle with a spotlight on, attempting to get the attention  
18 of the driver.

19 Q And what occurred after that?

20 A Shortly afterwards Officer Kowalski continued in  
21 front of the defendant's vehicle.

22 Q Okay. And when that occurred, where were you?  
23 Where did you go?

24 A My vehicle was positioned behind the defendant's  
25 vehicle.

## ENSELL - DIRECT - HUNT

1 Q Okay. And once Officer Kowalski was in front of  
2 the vehicle that he was attempting to pull over, did you  
3 make any observations about what that vehicle was doing?

4 A Yes, I did.

5 Q Okay.

6 A I observed that vehicle cross the double solid  
7 yellow line two times.

8 Q Okay. And once it had done that, did there come a  
9 point in time where the vehicle became stopped?

10 A Yes, there was.

11 Q How did that occur?

12 A Officer Kowalski was in front of the vehicle  
13 applying brakes to slow the vehicle down and it eventually  
14 came to a stop.

15 Q And when the vehicle came to a stop, did the  
16 vehicle pull over to the side of the road?

17 A No, it did not.

18 Q And did it use any sort of indication that it was  
19 coming to a stop or slowing down?

20 A No.

21 Q Where ultimately did that stop occur?

22 A It occurred on Route 242 west of Whig Street.

23 Q I want to show you now what has been marked as  
24 People's Exhibit 1B for identification. I'm now showing you  
25 what's been marked as People's Exhibit 1B for

## ENSELL - DIRECT - HUNT

1 identification. Can you tell me what that is?

2 A It is an aerial photo of Route 242 near Whig  
3 Street.

4 Q And I guess you can hang onto it.

5 MS. ENSELL: Are we gonna try to do it this  
6 way again?

7 THE COURT: Let's give it a try, sure.

8 MR. ALBERT: Judge, we'll stip that into  
9 evidence.

10 MS. ENSELL: Okay.

11 THE COURT: All right, 1B in evidence.

12 MS. ENSELL: Judge, at this point I am going  
13 to request that that be published for the jury.

14 THE COURT: Looks like it is.

15 Q I am also going to ask the defendant to mark-- I  
16 keep saying defendant, I apologize -- the witness to  
17 mark the exhibit. I was working on cross examination today.  
18 Make sure you change it back to pencil. Did you already  
19 mark it?

20 A Yes, I did.

21 Q Well, the question would be if you could please  
22 mark approximately where the vehicle came to a stop, just in  
23 your approximation, that mark that you made?

24 A That's the approximation.

25 Q One step ahead of us, okay.

ENSELL - DIRECT - HUNT

1 MS. ENSELL: Judge, at this point normally  
2 what we would request is the Court save that marked  
3 exhibit. I'm not sure that's happening, so what I will  
4 request is that the witness also mark--

5 THE COURT: Yes, let's mark it also on the  
6 physical exhibit.

7 MS. ENSELL: I'm just going to ask that the  
8 record reflect that the witness is now marking on  
9 People's Exhibit 1B approximately where the vehicle  
10 came to a stop.

11 THE COURT: All right. So noted.

12 Q And based on that exhibit, which if you need to  
13 refer to it, is still on the screen, do you recall  
14 approximately the jurisdiction that you were in at that  
15 point?

16 A Yes. It was the Town of Little Valley.

17 MS. ENSELL: Judge, I'm now at this point  
18 going to show the witness what's been marked as  
19 People's Exhibit 1 for identification.

20 Q Can you tell me what that is?

21 A Yes. This is an aerial photo of Route 242 in the  
22 jurisdictions of the Town of Ellicottville, Mansfield and  
23 Little Valley.

24 Q Okay. And does that fairly and accurately  
25 represent those roads in those approximate locations as they

CATTARAUGUS COUNTY COURT



## ENSELL - DIRECT - HUNT

1 would have been in February 2016?

2 A Yes, they do.

3 MS. ENSELL: Judge, at this point I am going  
4 to move in People's Exhibit 1.

5 THE COURT: Any objection?

6 MR. ALBERT: No objection. Okay, so this is  
7 A and B combined essentially?

8 MS. ENSELL: Pretty much.

9 MR. ALBERT: All right, I understand. No  
10 objection.

11 MS. ENSELL: It's hard to get them all in one  
12 with the streets.

13 THE COURT: People's 1 in evidence.

14 MS. ENSELL: Similar to the first two, I'm  
15 going to have him mark this exhibit as well, so I'll  
16 leave it there with him.

17 Q Officer, if you could please first mark for the  
18 jury where on that map you would have been approximately  
19 when you observed Officer Kowalski and that vehicle pass  
20 you. Again, it's just an approximation. And I'm also going  
21 to ask you --

22 MS. KERLING: Madam Clerk, can we have the  
23 annotation put back on?

24 Q Okay. I am also going to ask you to mark, in your  
25 approximation, where the vehicle finally came to a stop.

## ENSELL - DIRECT - HUNT

1 A (Witness does as directed.)

2 Q Now, Officer, I'm going to ask you, based on what  
3 you recall from that evening and your travels between these  
4 two locations, do you recall approximately how far these two  
5 locations are from each other?

6 A Approximately two miles.

7 Q Okay. And do you recall the approximate amount of  
8 time that you were behind the vehicle for the two miles?

9 A Approximately three minutes.

10 Q And I think you've already stated this when you  
11 were describing the exhibit, but what jurisdictions did you  
12 travel through at that point?

13 A We traveled through the Town of Ellicottville, the  
14 Town of Mansfield and the Town of Little Valley.

15 Q Did you actually travel through the Town of  
16 Ellicottville or --

17 A No, between Mansfield and Ellicottville -- or  
18 Mansfield and Little Valley. It was the Town of  
19 Ellicottville line.

20 MS. ENSELL: Okay, I'm all set with the  
21 publication.

22 Q Did you physically mark that as well? I'm going  
23 to ask him to physically mark the exhibit too since we're  
24 having some technical difficulties.

25 A The marker appears not to be working.

## ENSELL - DIRECT - HUNT

1 Q More technical difficulties here. Try and see if  
2 that will write -- yeah. Officer, what happened after the  
3 vehicle slowed to a stop?

4 A Officer Kowalski and I exited our patrol vehicles  
5 and attempted to get the driver to exit the vehicle.

6 Q Okay. What were you doing specifically?

7 A I was positioned near the rear of the defendant's  
8 vehicle.

9 Q Okay. And why did you make that decision?

10 A So, I wasn't standing in the roadway of 242 and I  
11 was at a safe angle away from Officer Kowalski.

12 Q And what was your main concern at that point when  
13 you were exiting your patrol vehicle?

14 A I was concerned with who the defendant was in the  
15 vehicle and the other traffic that could be traveling on  
16 Route 242 at the time.

17 Q And at that point did you have any information  
18 about the driver?

19 A No, I did not. I had no information about who the  
20 driver was.

21 Q Did you have any understanding as to, at that  
22 point, why the vehicle had continued on?

23 A No.

24 Q And at that point, based on your positioning, had  
25 you even seen the driver of the vehicle?

## ENSELL - DIRECT - HUNT

1 A No.

2 Q Now, at some point was your service weapon drawn?

3 A Yes, it was.

4 Q Okay. And what would be the purpose of drawing  
5 your service weapon in that situation?

6 A We did not know who was in the vehicle, how many  
7 people were in the vehicle or if anybody in the vehicle was  
8 armed.

9 Q Okay. And did there come a point in time where  
10 you re-holstered your weapon?

11 A Yes, there was.

12 Q Do you recall when that occurred?

13 A Before the door was opened on the defendant's  
14 vehicle.

15 Q Okay. And did you yourself make any commands of  
16 the driver?

17 A Not that I can remember.

18 Q And did you observe Officer Kowalski making any  
19 commands?

20 A Yes, I did.

21 Q And where you were located -- I'll withdraw that,  
22 Judge. Did there come a point in time where the driver's  
23 window was opened?

24 A Yes, there was.

25 Q How was it opened?

## ENSELL - DIRECT - HUNT

1           A     It was opened by Officer Kowalski's asp that was  
2 used. It was used to smash out the window.

3           Q     What is an asp?

4           A     It's a small baton.

5           Q     And once that occurred, did Officer Kowalski make  
6 any additional commands?

7           A     Yes, he did.

8           Q     And did you hear anything that the defendant said  
9 in response?

10          A     Not that I can remember.

11          Q     And did there come a point in time where you  
12 observed -- again, at that point in time -- I'm sorry, I'll  
13 go back. At that point in time when the window became  
14 broken, where were you standing?

15          A     I was still standing behind Officer Kowalski, near  
16 the rear of the vehicle.

17          Q     Okay. And at that point in time were you in a  
18 position still to see who the driver of the vehicle was  
19 or --

20          A     Not at that time.

21          Q     Okay. And did there come a point in time where  
22 you observed Officer Kowalski change positions?

23          A     Yes.

24          Q     Can you describe that?

25          A     While he was asking the defendant to exit the

## ENSELL - DIRECT - HUNT

1 vehicle, he went around to the passenger's side and opened  
2 the passenger door to undo his seat belt and I did step to  
3 the driver's door.

4 Q At that point?

5 A At that point, yes.

6 Q Okay. And what occurred after that?

7 A The seat belt was unbuckled and Officer Kowalski  
8 walked around the vehicle again to the driver's side and  
9 asked him to exit the vehicle again.

10 Q And did you hear any of the defendant's response  
11 at that point?

12 A He stated no.

13 Q And what happened after that?

14 A Officer Kowalski removed him from the vehicle and  
15 he stated his vehicle was not in park. So, I entered the  
16 defendant's vehicle, put my foot on the brake so it would  
17 not roll into Officer Kowalski's vehicle and the vehicle was  
18 already in park.

19 Q I'm gonna note you're saying defendant, but at  
20 that point were you able to observe the driver of the  
21 vehicle?

22 A Well, yeah, when Officer Kowalski was removing him  
23 from the vehicle.

24 Q Okay. And you also spent considerable time after  
25 he was removed?

## ENSELL - DIRECT - HUNT

1 A That's correct.

2 Q Do you see the driver of the vehicle in the  
3 courtroom today?

4 A Yes, I do.

5 Q And can you identify him by an article of  
6 clothing?

7 A He has a white checkered shirt on.

8 MS. ENSELL: Judge, I'm gonna note for the  
9 record that the witness has identified the defendant.

10 THE COURT: So noted.

11 Q How would you at that point, once -- okay. So, I  
12 think where we left off is you had entered the vehicle to  
13 put it in park?

14 A That is correct.

15 Q And did you say what gear it was actually in?

16 A It was actually in park.

17 Q Once the defendant was out of the vehicle, what  
18 did you do besides -- once you observed the vehicle in park,  
19 what did you do next?

20 A I exited his vehicle and Officer Kowalski was  
21 placing him in handcuffs.

22 Q Okay. And how would you at that point describe  
23 the demeanor of the defendant?

24 A He appeared angry.

25 MR. ALBERT: Judge -- just in terms of

## ENSELL - DIRECT - HUNT

1           determining my client's state of mind, I think what he  
2           says is relevant, but what his face looks like, I don't  
3           know if the witness is qualified to answer what his  
4           demeanor was like. It goes to a state of mind.

5                        THE COURT: I'll allow it at this point. Go  
6           ahead.

7           Q     I guess then what we'll ask is: What do you mean  
8           by angry? Can you describe how he was angry?

9           A     He was yelling multiple things.

10          Q     Yelling?

11          A     Yeah, he was just yelling. I mean, that's what I  
12         heard, I heard him yelling.

13          Q     And at that point where was the defendant located?

14          A     When he was being handcuffed?

15          Q     Yeah.

16          A     He was on the shoulder of the road on Route 242.

17          Q     All right, hold on a second.

18          A     Okay.

19          Q     Where was his physical, his person located? Was  
20         he standing up?

21          A     No. He was laying on the roadway.

22          Q     And at any point during that time in which you  
23         were outside of the defendant's vehicle, did you observe the  
24         defendant lose consciousness?

25          A     No, I did not.



## ENSELL - DIRECT - HUNT

1 Q Did he stop speaking?

2 A No.

3 Q And did you yourself have any physical contact  
4 with the defendant?

5 A No.

6 Q I guess I mean during the course of the placing  
7 him in handcuffs?

8 A No, I did not.

9 Q Now, once the driver was out, did any other patrol  
10 officers respond to the location?

11 A Yes, they did.

12 Q Do you recall how many?

13 A Two Ellicottville patrols and another the  
14 Cattaraugus County sheriff's vehicle.

15 Q And approximately how soon would you say those  
16 additional units arrived?

17 A Within a couple minutes.

18 Q Now, when you were on scene, did you have some  
19 opportunity to make some observations about the defendant's  
20 vehicle?

21 A Yes, I did.

22 MS. ENSELL: Judge, at this point I am going  
23 to show the witness what's marked as People's Exhibit  
24 No. 8 for identification.

25 Q I'm gonna show the witness what's been marked as

## ENSELL - DIRECT - HUNT

1 People's Exhibit 8 for identification. Can you tell me what  
2 that is?

3 A That is an inside photo of the defendant's  
4 vehicle.

5 Q And based on the observations that you made on  
6 February 27<sup>th</sup>, 2016, does that fairly and accurately  
7 represent what the front of the interior of the defendant's  
8 vehicle looked like?

9 A Yes it does.

10 MS. ENSELL: Judge, at this point I am going  
11 to move in People's Exhibit 8.

12 THE COURT: Any objection?

13 MR. ALBERT: Just very quick voir dire.

14 THE COURT: Go ahead.

15 VOIR DIRE BY MR. ALBERT:

16 Q Officer, briefly, just to be clear, was this a  
17 photograph that was taken on site at the incident that  
18 you've been speaking about?

19 A I'm not sure if the photo was taken on site -- I  
20 mean, it was taken on site of Route 242. I don't know who  
21 took the photo.

22 Q I understand, but it does reflect how the vehicle  
23 appeared at that time?

24 A At that time, yes.

25 MR. ALBERT: That's all I have.

ENSELL - DIRECT - HUNT

1 THE COURT: Any objection to admission?

2 MR. ALBERT: No objection.

3 THE COURT: All right. People's 8 in  
4 evidence.

5 MS. ENSELL: All right. And Judge, I am  
6 going to show what's been marked as People's Exhibit 9  
7 for identification.

8 Q Judge, I'm now showing the witness what's been  
9 marked as People's Exhibit 9 for identification. Having  
10 looked at that and having been present as you testified on  
11 February 27<sup>th</sup> 2016, does that photo -- first, tell us what  
12 that photo is?

13 A It's a photo of the rear of the vehicle.

14 Q And does that photo fairly and accurately  
15 represent the rear of the defendant's vehicle as it was on  
16 February 27<sup>th</sup>, 2016?

17 A Yes, it does.

18 MS. ENSELL: I guess we'll show it briefly.  
19 I'm not gonna ask additional questions.

20 THE COURT: Any objection to admission? Are  
21 you moving it into evidence?

22 MS. ENSELL: I am going to move it into  
23 evidence?

24 MR. ALBERT: I'm not sure of the relevance  
25 but I don't have any objection.

CATTARAUGUS COUNTY COURT

ENSELL - DIRECT - HUNT

1 THE COURT: People's 9 in evidence. Do you  
2 want that put on the screen?

3 MS. ENSELL: Yeah, if they want to briefly  
4 see so they know what we're talking about.

5 THE COURT: All right.

6 MS. ENSELL: Judge, at this point I am going  
7 to show what's been marked as People's Exhibit 10 for  
8 identification.

9 Q Can you tell me what that is?

10 A It's a picture of the window of the defendant's  
11 vehicle.

12 Q Okay. And it's not just -- there more in the  
13 picture?

14 A Yeah. It's the vehicle along with the door and  
15 the window.

16 Q Okay. And does that picture fairly and accurately  
17 represent the defendant's vehicle as it was and where it was  
18 located on the road on February 27<sup>th</sup>, 2016?

19 A Yes, it does.

20 MS. ENSELL: I am going to move in People's  
21 Exhibit 10.

22 THE COURT: Mr. Albert, any objection?

23 MR. ALBERT: I do not, Your Honor, no  
24 objection.

25 THE COURT: People's 10 in evidence.

CATTARAUGUS COUNTY COURT

ENSELL - DIRECT - HUNT

1 MS. ENSELL: Go ahead and show them please.

2 Q Now, at any point when you were observing the  
3 defendant's vehicle, did you happen to notice any equipment  
4 that was located within the vehicle?

5 A Yes, I did.

6 Q What did you notice?

7 A I noticed a recording device attached to the  
8 windshield, the front windshield.

9 MS. ENSELL: Okay. Judge, I apologize, I may  
10 need to take a second just to grab something from our  
11 office, a couple of our exhibits.

12 THE COURT: All right.

13 Q And Officer, I'm gonna show you now what's been  
14 marked as People's Exhibit 29 for identification. Can you  
15 tell me what this is?

16 A Yes. That is a video of the front and rear camera  
17 of the vehicle.

18 Q Okay. So, at some point -- did there come a point  
19 in time where you were asked to review this exhibit prior to  
20 testifying today?

21 A Yes, there was.

22 Q And when you reviewed this exhibit, was it the  
23 video that was contained thereon, was it a fair and accurate  
24 representation of the events as they occurred, as you  
25 remember?

CATTARAUGUS COUNTY COURT

## ENSELL - DIRECT - HUNT

1 A Yes, they were.

2 Q I'm assuming there are maybe portions of this that  
3 you were not present, so you can't testify to those  
4 portions; correct?

5 A That is correct.

6 Q And those other officers that arrived, do you  
7 recall who they were?

8 A Yes. It was Officer Spry and Officer Graham from  
9 the Ellicottville Police Department.

10 Q Okay. And when Officer Graham arrived, did you  
11 happen to notice whether or not she was wearing any  
12 particular device?

13 A Yes. She was wearing a body worn camera.

14 Q And I am now going to show you what's been  
15 marked --

16 MS. ENSELL: Judge, this is one -- can  
17 counsel and I approach really quick on this?

18 THE COURT: Of course.

19 (Discussion off the record.)

20 Q At this point, Judge, I am going to show the  
21 witness what has been marked as People's Exhibit 27, 27A and  
22 27B. Starting with 27, Officer, can you tell me what this  
23 exhibit is?

24 A It's a video of a body cam, footage from that  
25 evening.

## ENSELL - DIRECT - HUNT

1 Q Okay. And is it the whole thing or --

2 A It's disc one.

3 Q And did you have an opportunity to review this  
4 exhibit prior to testifying today?

5 A Yes, I did.

6 Q Okay. And did you make any notation on it somehow  
7 to show?

8 A Yes, I did.

9 Q And on this portion, what you reviewed for the  
10 parts you were actually present, does it fairly and  
11 accurately represent the events as you remember them?

12 A Yes, it does.

13 Q And does it fairly depict the scene as you  
14 remember it?

15 A Yes.

16 Q I am now going to show you what's been marked as  
17 People's Exhibit 27A for identification. Can you tell me  
18 what this is?

19 A That is a second disc of the body cam footage.

20 Q So, it's the rest of it?

21 A Yes.

22 Q And you had an opportunity to review the footage  
23 from that date?

24 A No, I did not.

25 Q And why didn't you review this one?

## ENSELL - DIRECT - HUNT

1           A     Because I wasn't involved in this part of the body  
2 cam.

3           Q     So, you wouldn't be able to testify as to whether  
4 or not it's fair and accurate?

5           A     That is correct.

6           Q     Okay. And I'm going to show you now what's been  
7 marked as People's Exhibit 27B, can you tell me what this  
8 is?

9           A     This is the body cam footage before the defendant  
10 entered the ambulance.

11          Q     Okay. Did you have an opportunity to review this  
12 exhibit prior to testifying today?

13          A     Yes, I did.

14          Q     And to be clear, it says "pre-ambulance" but is  
15 there a portion of it, a little tail end where he is  
16 actually in the ambulance?

17          A     Yes.

18          Q     And did you make any notation on this that  
19 indicates that you reviewed it prior to testifying today?

20          A     Yes.

21          Q     And were you involved in this portion of it?

22          A     Yes, I was.

23          Q     And is it a fair and accurate representation of  
24 the events as you remember them?

25          A     Yes.



## ALBERT - CROSS - HUNT

1 Q Okay. And officer, what did you do -- so, at some  
2 point did the defendant leave the scene at 242?

3 A Yes, he did.

4 Q Okay. And what did you do at that point?

5 MR. ALBERT: Objection as to vagueness.

6 What's the scene exactly?

7 MS. ENSELL: The scene of the stop. Let me  
8 reask it, Judge.

9 THE COURT: Go ahead.

10 Q Did the defendant at some point leave the scene of  
11 where the vehicles were stopped on 242?

12 A Yes, he did.

13 Q And what did you do at that point?

14 A I cleared the scene and continued my shift.

15 MS. ENSELL: All right. I have no further  
16 questions.

17 THE COURT: All right. Mr. Albert.

18 MR. ALBERT: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. ALBERT:

20 Q Good morning.

21 A Good morning.

22 Q Officer, originally you were stationary on 242  
23 going to the events in question on February 26<sup>th</sup>, correct,  
24 26th or 27<sup>th</sup>?

25 MS. ENSELL: 27th.

## ALBERT - CROSS - HUNT

1 Q 27th, I'm sorry. So, your shift that day was from  
2 twelve to eight a.m.; is that correct?

3 A That is correct.

4 Q And you were working as a sheriff at that time,  
5 correct?

6 A Correct.

7 Q But also as a Salamanca police officer?

8 A I was not employed by the Salamanca Police  
9 Department at that time.

10 Q Understood. So, that was your sole detail, place  
11 of employment?

12 A Yes.

13 Q And you obviously started your shift at twelve.  
14 What were you doing prior to that, if you could recall?

15 A I was traveling west on 242.

16 Q No, I mean prior to starting your shift on that  
17 morning? Do you know what your activities were prior to  
18 that?

19 A Prior to coming on duty?

20 Q Yeah.

21 MS. ENSELL: Objection. I'm not exactly sure  
22 of the relevance of what he was doing before he started  
23 working.

24 THE COURT: I'm not sure either but I'll  
25 allow you to ask a couple of questions here.

## ALBERT - CROSS - HUNT

1           A     I do not recall what I was doing before I went to  
2 work that night.

3           Q     So, you don't know whether you were sleep deprived  
4 or anything like that?

5           A     No.

6           Q     You don't know what my client was doing prior to  
7 2:40 a.m. when you came around him, correct?

8           A     That is correct.

9           Q     You don't know whether he was sleep deprived or  
10 anything, anything like that; correct?

11          A     Correct.

12          Q     Now, you were stationary when my client's vehicle  
13 first passed you going westbound on 242; correct?

14          A     That is correct.

15          Q     All right. When my client's vehicle passed you,  
16 you didn't activate your lights or anything like that;  
17 correct?

18          A     That is correct.

19          Q     And how far -- and then as he passed you, Officer  
20 Kowalski passed him, heading towards you; is that correct?

21          A     Passed -- who did Officer Kowalski pass?

22          Q     As my client drove past your vehicle on the town  
23 lines, Officer Kowalski's vehicle passed my client's vehicle  
24 too?

25          A     That is incorrect.

## ALBERT - CROSS - HUNT

1 Q My client's vehicle was going westbound?

2 A Correct.

3 Q Officer Kowalski flipped a u-y or u-turn at some  
4 point?

5 A He was traveling east.

6 Q He was traveling east?

7 A That is correct.

8 Q My client was traveling west, Officer Kowalski  
9 passed my client going east and turned around to pursue my  
10 client; correct?

11 A Correct.

12 Q So, he did pass my client, correct?

13 A Yes.

14 Q Okay. And with that in mind, when my client  
15 passed you, you were stationed there -- and correct me if  
16 I'm wrong, but you were looking for people that were in  
17 violation of any vehicle and traffic laws and that's why you  
18 were sitting there in a stationary manner, correct, as part  
19 of your patrol?

20 A That is not correct.

21 Q Why were you just sitting there at that time?

22 A I was driving, traveling westbound, moving. I  
23 seen Officer Kowalski and I was pulled over to do a u-turn.

24 Q Oh, okay. So, you were driving, you said,  
25 westbound?

## ALBERT - CROSS - HUNT

1 A Yes.

2 Q Okay. And then you pulled over because you saw  
3 Officer Kowalski heading in your direction, right?

4 A He was heading eastbound.

5 Q Well, heading towards you is what I'm saying?

6 A Yes.

7 Q And when my client's vehicle passed you, you did  
8 not detect any Vehicle & Traffic Law violations or anything  
9 along those lines; correct? Correct, yes or no?

10 A When I was sitting stationary?

11 Q Yes, exactly.

12 A No, there was no Vehicle & Traffic Law that I  
13 witnessed.

14 Q You did not notice him driving with his lights off  
15 or anything along those lines, correct?

16 A That is correct.

17 Q But Officer Kowalski immediately flipped a u-turn  
18 in pursuit of my client, correct?

19 A That is correct.

20 Q And he had his lights activated and evidently was  
21 attempting to pull my client over, correct?

22 A That is correct.

23 Q All right. And it's your understanding that while  
24 you didn't see my client committing any Vehicle & Traffic  
25 Law violations at the time he passed you, Officer Kowalski

## ALBERT - CROSS - HUNT

1 did, fair to say?

2 A That's fair to say, correct.

3 Q And did you and Officer Kowalski undergo the same  
4 training in materials of detecting Vehicle & Traffic Law  
5 violations? Did you guys go to the same academy?

6 A No, we did not.

7 Q Any reason -- but you were trained in detecting  
8 Vehicle & Traffic Law violations?

9 A That is correct.

10 Q And that was a fairly major, substantial part of  
11 your training, correct?

12 A That's correct.

13 Q And out here in Catt County or in Salamanca, is it  
14 fair to say it's a major portion of your occupation is to  
15 enforce the vehicle and traffic laws of this state?

16 A That's correct.

17 Q And all that training experience and so on, when  
18 my client passed you, you did not detect him committing any  
19 Vehicle & Traffic Law violations; correct?

20 A That's correct.

21 Q And you stated that this pursuit was, you said,  
22 approximately two miles from the time my client passed you  
23 until the time he ultimately stopped; is that correct?

24 A That's correct.

25 Q Would it surprise you to know the exact number,

## ALBERT - CROSS - HUNT

1 the exact distance was 1.7 miles? Does that sound accurate?

2 A That would be accurate.

3 Q Okay. And with that in mind, you stated that  
4 you're familiar with that stretch of the 242; correct?

5 A Correct.

6 Q And is it fair to say that it's rural, there's no  
7 businesses along the side of the road or anything along  
8 those lines; correct?

9 A Correct.

10 Q And in fact, in that whole stretch of 1.7 miles  
11 there wasn't one business or exterior light or anything  
12 along those lines that you -- or that was on that route;  
13 fair to say?

14 A That would be fair to say, that's correct.

15 Q All right. Stating the obvious, 2:40 a.m., it's  
16 really dark; correct?

17 A Yes.

18 Q And that's dark without any open businesses,  
19 without any houses, without any sense of illumination.  
20 That's a dark stretch of highway, fair to say?

21 A Yes.

22 Q And the -- it's a two lane highway, correct, east  
23 and west?

24 A Correct.

25 Q One lane going east and one lane going west,

## ALBERT - CROSS - HUNT

1 correct?

2 A Correct.

3 Q There's many patches of that stretch of 242 that  
4 do not have a shoulder or anything, correct?

5 A Not that I'm aware of.

6 Q You don't know whether -- do you know whether  
7 there's shoulders, you know, throughout that stretch?

8 A Yeah, there's a shoulder to the road throughout  
9 that stretch.

10 Q That's your testimony?

11 A As far as I can recall, there is a shoulder on  
12 there.

13 Q As far as you can recall, okay. Not a wide  
14 shoulder?

15 A Not as wide as a lane of travel.

16 Q So, in a lane of travel generally -- well, my  
17 client was driving, what was it, a Ford Edge; right?

18 A It was a Ford SUV.

19 Q An SUV which is a wide vehicle, bigger than a  
20 sub-compact?

21 A That's correct.

22 Q And as you stated, the shoulders were not wide  
23 shoulders; right?

24 A Well, yeah. I mean, there's a shoulder there if  
25 that's what you're asking.



## ALBERT - CROSS - HUNT

1 Q You're saying there's a shoulder throughout that  
2 1.7 stretch of the highway?

3 A Yes.

4 Q All right. But no lights, right?

5 A Right.

6 Q And there's nothing in your mind that it's not  
7 like a big -- all I'm asking is, it's not an exceptionally  
8 wide shoulder, fair to say?

9 A Sure, yeah.

10 Q That you know -- I guess what you're saying is --  
11 is that still part of your detail? If you're in Salamanca,  
12 you're not driving that 242 all the time?

13 A Right.

14 Q And I don't want to force this. So, it's fair to  
15 say you can't really testify to the state of the shoulder,  
16 whether it's narrow or wider than other shoulders?

17 A Yeah.

18 MS. ENSELL: Judge, I'm not too sure. First  
19 of all, the testimony wouldn't be what he knows now but  
20 what he knew at the time in 2016 and what he observed.  
21 I think he's answered the question a few times.

22 THE COURT: I think it's been answered.  
23 Let's move along.

24 Q I think this is the final part of it. You're not  
25 sure of the nature of the shoulder, correct, how big or

## ALBERT - CROSS - HUNT

1 small it is; is that fair to say?

2 A That's fair to say.

3 Q All right. So, you stated that it was about  
4 three miles -- I'm sorry, three minutes that you and Officer  
5 Kowalski were in pursuit of my client, correct, before the  
6 time he actually stopped?

7 A That's correct.

8 Q And you stated it was established that it was  
9 about a 1.7 mile stretch of highway that he was traveling?

10 A That's correct.

11 Q So, if you're doing the math, my client was going  
12 30 miles per hour throughout this -- I guess whatever you  
13 want to call, pursuit; correct?

14 A That is not correct.

15 Q Well, if you look at -- if you're going 60 miles  
16 per hour, you're going one mile a minute, right?

17 A Sure, yeah.

18 Q What do you mean sure? I mean, it's simple. How  
19 many minutes are in an hour? 60?

20 A Right.

21 Q So, if you're going 60 miles per hour, you're  
22 going one mile per minute; right?

23 A Yeah.

24 Q Okay. Here we're talking about 1.5 miles that  
25 took three minutes to drive. That would be 30 miles per

## ALBERT - CROSS - HUNT

1 hour that my client was going, correct, based on your  
2 math --

3 MS. ENSELL: Objection.

4 MR. ALBERT: What?

5 THE COURT: Counselor, she's objecting.  
6 We'll allow it. All right, go ahead.

7 MS. ENSELL: Judge, the officer testified to  
8 two miles in three minutes. He has a right to question  
9 him on whether or not these are accurate. He doesn't  
10 have a right to badger him on math or ask him questions  
11 about math, but also it's a mischaracterization of what  
12 his cross examination question, is it fair to say it's  
13 1.7 miles which we're gonna talk about on redirect, but  
14 he can't continue to mischaracterize the witness'  
15 testimony.

16 THE COURT: Please clarify that the 1.5 is  
17 not what was testified to. I believe you're using that  
18 for purposes of a mathematical calculation.

19 MR. ALBERT: Yes, exactly.

20 THE COURT: All right, if the officer knows.

21 MR. ALBERT: Right.

22 THE COURT: I'll allow it.

23 Q Based on your testimony that the pursuit went on  
24 for about three minutes and it was about a 1.7 mile pursuit,  
25 that would mean my client was going approximately 30 miles

## ALBERT - CROSS - HUNT

1 per hour; correct?

2 A What's the question? I mean --

3 Q Was my client going approximately 30 miles per  
4 hour? That's the question.

5 A I believe your client was doing 50 miles an hour  
6 at the time.

7 Q You graduated high school?

8 A That's correct.

9 Q And you took classes in math?

10 A That's correct.

11 Q And you would agree with me that your testimony of  
12 50 miles per hour is not consistent with going 1.7 miles in  
13 a three minute span? You would agree with me that those  
14 numbers don't add up?

15 A That is correct.

16 Q Okay, that is correct. It's still your testimony,  
17 even though those numbers aren't making any sense, that my  
18 client was going 50 miles an hour?

19 A (No response.)

20 Q Yes, that is your testimony?

21 A Yeah, that's my testimony.

22 Q Fair enough. And what is the speed limit in that  
23 stretch of road on 242 going west?

24 A I believe it's 55 miles an hour.

25 Q Fifty-five. So, that means my client was going

## ALBERT - CROSS - HUNT

1 under the speed limit, correct?

2 A Correct.

3 Q You mentioned before that you've been involved in  
4 chases?

5 A That is correct.

6 Q You were involved in a chase in Salamanca?

7 A That's correct.

8 Q And it was called off?

9 A That is correct.

10 Q In that chase was the driver exceeding the speed  
11 limit?

12 A That is correct.

13 Q And in this case my client wasn't?

14 A That is correct.

15 Q You would agree that if someone is trying to get  
16 away from the police, they generally would go over the speed  
17 limit as opposed to under it; correct?

18 A That's correct.

19 Q Okay. And going back to something that you stated  
20 on direct is you said you drew your gun as soon as my client  
21 did stop; correct?

22 A Yes, that's correct.

23 Q Okay. And part of why you did that is because you  
24 had no understanding -- these were your words -- that you  
25 had no understanding as to why the vehicle, why my client

## ALBERT - CROSS - HUNT

1 continued on when the lights were activated; right?

2 A That is correct.

3 Q So, you had no idea who he was at that time,  
4 correct?

5 A That's correct.

6 Q You had no idea what he was thinking at that time,  
7 correct?

8 A That is correct.

9 Q You had no idea whether he was intending to harm  
10 you, correct?

11 A That's correct.

12 Q So you drew your gun, fair to say?

13 A That is correct.

14 Q You had no idea whether he was just trying to go  
15 to a more lit area for everyone's safety?

16 A That is correct.

17 Q You had no idea what my client's intent was during  
18 that 1.7 mile stretch where he was driving and not pulling  
19 over, correct?

20 A That is correct.

21 Q All right. And you didn't charge him with  
22 obstruction of governmental administration that night,  
23 correct?

24 A I did not do any of the charges or paperwork from  
25 that night.

## ALBERT - CROSS - HUNT

1 Q Fair to say. And no one charged him with  
2 obstruction of governmental administration that night,  
3 correct?

4 A I'm not sure.

5 Q And you stated my client had a recording device on  
6 his front window, correct?

7 A That is correct.

8 Q And obviously, recording devices in and of  
9 themselves are not illegal at all; correct?

10 A That is correct.

11 Q And in fact, Officer Graham from the Ellicottville  
12 Police Department showed up with a recording device of sorts  
13 in a body cam; right?

14 A Yes.

15 Q And she was not part of this pursuit. She came  
16 after my client was in custody; is that accurate?

17 A That is accurate.

18 Q And she's an Ellicottville police officer?

19 A That is correct.

20 Q As is Officer Kowalski?

21 A That is correct.

22 Q Was Officer Kowalski armed with a body cam at that  
23 time?

24 A Not that I'm aware of.

25 Q Not that you know?

## ALBERT - CROSS - HUNT

1 A Not that I know of.

2 Q Fair enough. But they're both from the same  
3 department for sure?

4 A Yes, that's correct.

5 Q All right. Any of your departments that you've  
6 worked for, whether it's Catt County sheriffs or Salamanca  
7 PD, are any of your departments issued body cams?

8 A No, we're not.

9 Q But the Ellicottville Police Department is?

10 A Yes.

11 Q You stated ultimately that my client was removed  
12 from his vehicle, correct?

13 A That is correct.

14 Q Do you know, could you state the manner in which  
15 my client was removed from his vehicle?

16 A Officer Kowalski grabbed him and pulled, removed  
17 him from the vehicle. I stepped in the vehicle shortly  
18 after that to make sure the vehicle was in park.

19 Q Which it was, correct?

20 A Yes, it was.

21 Q It wasn't in drive or anything?

22 A That is correct.

23 Q My client might have been confused as to whether  
24 it was in drive or park?

25 A That's correct.



## ALBERT - CROSS - HUNT

1 Q Is it fair to say, as you've already stated, you  
2 have no idea what he was thinking at that point in time?

3 A That's correct.

4 Q All right. In some sense he did seem confused as  
5 to -- well, at least as to that detail, whether the vehicle  
6 was in drive or park?

7 MS. ENSELL: Judge, I have to object. This  
8 is the objection he made on ours. He stated multiple  
9 times he had no idea what the defendant was thinking,  
10 so whether or not he was confused --

11 THE COURT: I would agree with that. I'll  
12 sustain the objection.

13 MS. ENSELL: That's fine, Your Honor.

14 Q When one doesn't pull over for an emergency  
15 vehicle, that's a traffic violation; correct?

16 A That is correct.

17 Q And that's failure to yield, correct?

18 A That's correct.

19 Q And traffic violations don't require a specific  
20 intent, correct? For speeding you don't have to intend to  
21 be speeding; it's enough that you're speeding to be issued a  
22 ticket?

23 A That's correct.

24 Q My client didn't yield that night when the lights  
25 were activated?

## ENSELL - REDIRECT - HUNT

1           A     That's correct.

2                     MR. ALBERT:  Can I just have one moment to  
3     consult with my client, Your Honor?

4                     THE COURT:  Go ahead.

5                     MR. ALBERT:  No further questions, Your  
6     Honor.

7                     THE COURT:  All right.  Redirect.

8     REDIRECT EXAMINATION BY MS. ENSELL:

9           Q     I just have a couple of clarifying questions if  
10    you don't mind.  Officer, you stated on direct  
11    examination -- you gave some numbers.  Okay?  And at the  
12    time when they were asked, do you recall whether or not I  
13    asked if they were approximations?  Is that correct?

14           A     That is correct.

15           Q     And were the numbers that you gave me when I asked  
16    those questions approximations?

17           A     Yes, they were.

18           Q     And how were you able to determine the speed the  
19    vehicle was going?

20           A     That was the speed that Officer Kowalski called  
21    out over the dispatch that the vehicle was going and that  
22    was about the speed our patrol vehicles were going at the  
23    time.

24           Q     So, it's fair you were making some basic  
25    observations about speed?

## ALBERT - RECROSS - HUNT

1 A That is correct.

2 Q Would it also be fair to say that the speed  
3 changed throughout -- is it possible it wasn't consistently  
4 50 miles an hour; it sped up, slowed down?

5 A That is correct.

6 MS. ENSELL: All right. I have no further  
7 questions, Your Honor. Thank you.

8 THE COURT: Recross?

9 MR. ALBERT: Just very briefly.

10 RECROSS EXAMINATION BY MR. ALBERT:

11 Q The official function that you and Officer  
12 Kowalski were performing that night was executing a traffic  
13 stop on my client; correct?

14 A Yes, that's correct.

15 Q And within 1.7 miles he did stop, correct?

16 A Yes, that is correct.

17 MR. ALBERT: Okay. No further questions,  
18 Your Honor.

19 THE COURT: All right. Officer, you may step  
20 down. Thank you. Counselor, your next witness, is  
21 that going to be short or --

22 MS. ENSELL: It is, Judge, going to be a  
23 fairly short witness.

24 THE COURT: Why don't we start and then we'll  
25 take our break then.

## ENSELL - DIRECT - SPRY

1 MS. ENSELL: The People would at this  
2 point -- Judge, the People at this point would call  
3 Officer Larry Spry. Judge, while we're waiting, I'm  
4 gonna ask if defense has any objection to us releasing  
5 Officer Hunt? I believe he worked an overnight.

6 MR. ALBERT: No.

7 THE COURT: All right.

8 L A R R Y S P R Y, having been first duly sworn according  
9 to law, was examined and testified as follows:

10 DEPUTY: Can you please have a seat. State  
11 your name and business address for the record.

12 THE WITNESS: Larry Spry, I work for  
13 Ellicottville PD, One west Washington Street,  
14 Ellicottville.

15 DIRECT EXAMINATION BY MS. ENSELL:

16 Q Good afternoon, Officer.

17 A Morning.

18 Q You just stated you worked for the Ellicottville  
19 Police Department?

20 A Yes.

21 Q Are you full time or part time there?

22 A Part time.

23 Q And what is your rank?

24 A Patrolman.

25 Q And how long have you been with the Ellicottville

## ENSELL - DIRECT - SPRY

1 Police Department?

2 A Thirty-one years.

3 Q Okay. And what are your duties as a patrolman for  
4 the Ellicottville Police Department?

5 A Road patrol, criminal investigations.

6 Q All right. And were you employed anywhere else  
7 previously to Ellicottville Police Department?

8 A Eight years with the Cattaraugus County Sheriff's  
9 And I was the chief of Carrollton.

10 Q And at any point in time when you were with the  
11 Ellicottville Police Department, were you full time?

12 A No.

13 Q Always part time?

14 A Always part time.

15 Q How long all together have you been a police  
16 officer?

17 A Thirty-one years.

18 Q And when you originally became a police officer,  
19 did you attend an academy?

20 A Yes, I did.

21 Q And did you successfully complete that program?

22 A Yes, I did.

23 Q And over the course of your time as a police  
24 officer, did you participate in any in-service training?

25 A Yes.

## ENSELL - DIRECT - SPRY

1 Q Okay. And I want to draw your attention  
2 specifically to February 27<sup>th</sup>, 2016. Were you working on  
3 that date?

4 A Yes, I was.

5 Q And do you recall your shift?

6 A It was five to three.

7 Q And that was -- where were you working on that  
8 date?

9 A Ellicottville road patrol.

10 Q And on that date did there come a point in time --  
11 actually, let me back up. On that date when you were  
12 working, were you wearing a uniform?

13 A Yes, I was.

14 Q Was the uniform much like the uniform you're  
15 wearing today?

16 A Yes, other than my vest.

17 Q And does your vest identify you as a police  
18 officer?

19 A Yes. Front and back it says "police officer."

20 Q But the patches and all, that was the same?

21 A Yes.

22 Q And on that date were you in a marked patrol  
23 vehicle?

24 A Yes, I was.

25 Q And were you working alone or with a partner in

## ENSELL - DIRECT - SPRY

1 your vehicle?

2 A I was alone in my vehicle. We had three people  
3 working that night.

4 Q Who are the People who were working?

5 A Officer Kowalski, Officer Graham and myself.

6 Q And the duties that you just described, are  
7 those -- on February 27<sup>th</sup>, 2016, were your duties  
8 substantially the same?

9 A Yes.

10 Q At approximately 2:45 a.m. did you respond to a  
11 particular location on Route 242?

12 A Yes, I do.

13 Q Do you recall which jurisdiction that location was  
14 in?

15 A I think it's the Town of Mansfield, right there.  
16 I'm not sure.

17 Q You're not sure?

18 A Ah-huh.

19 Q But you did respond to a location on 242?

20 A Yeah, just above Whig Street.

21 Q And what was the nature of the incident you were  
22 responding to?

23 A Officer Kowalski and one of the sheriff's deputy  
24 had a car pulled over and they were calling for assistance.

25 Q Okay. Excuse me, did you say a call for

## ENSELL - DIRECT - SPRY

1 assistance?

2 A Yes.

3 Q Okay. And would it be within your duties that you  
4 described to respond to assist of an officer in your  
5 department?

6 A Of course, yes.

7 Q What did you observe once you arrived at the  
8 scene?

9 A They had a black SUV pulled over alongside the  
10 road in a westbound lane -- actually, his car was in the  
11 middle of the road, still in the westbound lane.

12 Q Okay. And when you say "his car," can you  
13 describe the car you were referring to?

14 A Black SUV.

15 Q Okay, continue please.

16 A And they had the individual out of the car. There  
17 was glass in the road from a broken window and they had him  
18 in handcuffs in front of the car.

19 Q And did you ever get an opportunity to observe  
20 that person that was handcuffed in the front of the car?

21 A Yes.

22 Q And do you see that person in the courtroom today?

23 A Yes.

24 Q Can you identify him by an article of clothing?

25 A Right over there, white shirt (indicating).



ENSELL - DIRECT - SPRY

1 MS. ENSELL: Please let the record reflect  
2 that the witness has identified the defendant.

3 THE COURT: So noted.

4 Q Did there come a point in time when you were --  
5 first of all, let's say, what were you doing when you got on  
6 the scene? Was there anything in particular you were doing?

7 A Well, I was trying to keep everybody out of the  
8 roadway, make sure nobody got hit, and I was asked to hold  
9 the camera because they were doing an investigation.

10 Q And when you say "the camera," what are you  
11 referring to?

12 A Body camera.

13 Q That would be a body camera that was issued to the  
14 Ellicottville Police Department?

15 A Yes, it was.

16 Q But you weren't actually wearing one?

17 A No, I wasn't. We only had one that was working  
18 that night.

19 Q Okay. And do you typically at any point wear a  
20 body camera?

21 A No.

22 Q At this point I'm going to show the witness what  
23 has been marked as Exhibit 27, 27B and 27A. We're gonna  
24 start with 27. Can you tell me what this is?

25 A It's my initials on the tape.

CATTARAUGUS COUNTY COURT

## ENSELL - DIRECT - SPRY

1 Q I wasn't pointing to your initials, but can you  
2 tell me what the exhibit itself is?

3 A A CD.

4 Q And do you know what's contained on the CD?

5 A Yes.

6 Q What is it?

7 A Camera footage.

8 Q From the body camera you just testified about?

9 A Yes.

10 Q And I believe you already referred to it, but did  
11 you have an opportunity to review this exhibit prior to  
12 testifying today?

13 A Yes, I did.

14 Q And did you note that somehow?

15 A Yes. I initialed it.

16 Q And when you reviewed it for the portions that you  
17 were actually present, was it a fair and accurate  
18 presentation of the events as you remember them on  
19 February 27<sup>th</sup>, 2016?

20 A Yes, it was.

21 Q Okay. I'm going to show you what has been marked  
22 as People's Exhibit 27A. Can you tell me what this is?

23 A A CD.

24 Q And what is contained on that CD?

25 A The body cam.

## ENSELL - DIRECT - SPRY

1 Q And did you have an opportunity to review this  
2 exhibit?

3 A Yes, I did.

4 Q Prior to testifying today and on this particular  
5 one, were you actually present for any of the footage that  
6 is contained on that one?

7 A Yes. I held the camera.

8 Q On this disc, not the first one?

9 A No.

10 Q I'm gonna show you what's been marked as People's  
11 Exhibit 27B for identification. Can you tell me what this  
12 is?

13 A It's a body cam.

14 Q And I'm sorry, it's not the body cam itself,  
15 correct?

16 A Body cam pre-ambulance.

17 Q But what is this physically, this object?

18 A A CD.

19 Q And what's contained on the CD?

20 A It's the body cam.

21 Q And on this particular exhibit, did you have an  
22 opportunity to review this exhibit prior to testifying  
23 today?

24 A Yes.

25 Q And on this particular CD were you present for

## ENSELL - DIRECT - SPRY

1 some of that footage?

2 A Yes.

3 Q Okay. And the portions of which you were present,  
4 is it a fair and accurate representation of the events that  
5 were recorded as you remember them?

6 A Yes, it is.

7 Q And any of those exhibits as you reviewed them,  
8 did they appear to be altered, adulterated in any way?

9 A No.

10 Q And the portions that you were present, did they  
11 appear -- were there any deletions of the portions that you  
12 were present or anything like that?

13 A No. They were accurate.

14 Q Okay. Now, prior to this incident, did you know  
15 who the defendant was?

16 A I've seen him walking around town but I didn't  
17 know him by name.

18 Q So, you didn't know him by name or anything like  
19 that?

20 A No.

21 Q And prior to the incident, did you have any  
22 meaningful interaction with the defendant, anything like  
23 that?

24 A No, never.

25 Q And just to remind you, she's got to record the

## ALBERT - CROSS - SPRY

1 answer, but I think you said no?

2 A Yeah, no.

3 MS. ENSELL: All right. I have no further  
4 questions, Your Honor.

5 THE COURT: Counselor, is it --

6 MR. ALBERT: Brief.

7 THE COURT: Should we take a break now?

8 MR. ALBERT: It's a five minute cross.

9 THE COURT: All right. Why don't we take a  
10 ten minute break at this point.

11 MR. ALBERT: That's fine.

12 (Short recess.)

13 (The jury returned to the courtroom and the  
14 following occurred:)

15 THE CLERK: Your Honor, the jury, counsel and  
16 defendant are present and ready to proceed.

17 THE COURT: All right. Mr. Albert, you may  
18 proceed with cross examination.

19 CROSS EXAMINATION BY MR. ALBERT:

20 Q Good morning, Officer.

21 A Good morning.

22 Q Officer, just briefly. For one thing, on the  
23 issue of body cameras, you mentioned that you had one that  
24 night --

25 A No, I did not have one.

## ALBERT - CROSS - SPRY

1 Q I apologize. Who was issued the body cam that  
2 particular evening?

3 A Officer Graham.

4 Q Officer Graham, okay. And then she gave you the  
5 camera?

6 A To hold.

7 Q Do you know why she herself, since she had the  
8 camera, why she didn't record things?

9 A Why she what?

10 Q Why she gave it to as opposed to recording  
11 herself?

12 A Because I was standing next to Mr. [REDACTED] and the  
13 ambulance had pulled up and she was talking to the ambulance  
14 people.

15 Q And you had mentioned that the point of  
16 documenting the surrounding scene, Mr. [REDACTED] was -- you  
17 were performing an investigation. What was the nature of  
18 the investigation at that time?

19 A I was there at the time to make sure my patrolmen  
20 were all safe and everyone was safe.

21 Q So, the nature of your investigation was to keep  
22 the patrolmen safe?

23 A It was. There were cars going by, they already  
24 had the scene, doing what they were doing.

25 Q Okay, right. So, safety was a primary concern?

## ALBERT - CROSS - SPRY

1 A Definitely.

2 Q Fair enough. And that's a dark stretch of  
3 highway, correct?

4 A It is.

5 Q There's no businesses right there or anything like  
6 that or any street lights or anything along those lights  
7 right there?

8 A That's correct.

9 Q So, obviously, your concerns about driver safety  
10 and things like that are heightened by the darkness?

11 A That's correct.

12 Q You don't want someone whizzing along in the dark  
13 and next thing, he runs over your patrol officers?

14 A Correct.

15 Q Fair to say?

16 A Fair to say.

17 Q You were concerned about safety that evening, and  
18 is it fair to say that others at the scene could have also  
19 been concerned about safety?

20 A Yes.

21 Q And obviously, traffic stops are safer if they  
22 take place in a well lit, say, business or gas station or  
23 something like that than if it's on the side of a narrow  
24 road where it's pitch black; correct?

25 A We don't have that option.

## ENSELL - REDIRECT - SPRY

1 Q Well, I guess -- obviously, if someone pulls over,  
2 okay, if you execute your lights and someone pulls over at a  
3 nearby gas station where it's lit, that's safer?

4 A Yes, yes.

5 Q Right?

6 A Yes.

7 Q Okay. Do any officers have their own body cams or  
8 anything like that? Their own personal body cams that they  
9 carry?

10 A Not in our department.

11 Q Not in your department, okay. Last thing, you  
12 mentioned that when you arrived, my client's vehicle was in  
13 the middle of the road. By that do you mean in the middle  
14 of his lane going westbound?

15 A Yes.

16 MR. ALBERT: Okay. No further questions,  
17 Your Honor.

18 THE COURT: All right. Redirect?

19 MS. ENSELL: Just briefly, Judge.

20 REDIRECT EXAMINATION BY MS. ENSELL:

21 Q Officer Spry, I just wanted to cover quickly one  
22 thing you said on cross examination. You mentioned, when  
23 asked if it would be safer to pull over, you said "we don't  
24 have that option." What did you mean by that?

25 A Where they stop, we don't have the option, where,



## ENSELL - REDIRECT - SPRY

1 if it's lit or unlit. It depends on where we're at when  
2 they pull over.

3 Q Okay, okay. So -- all right. So in that  
4 particular situation on that stretch, if you were to observe  
5 a vehicle and traffic violation, you're saying that it's not  
6 an option to pull over in a lit area?

7 MR. ALBERT: Objection, Your Honor. That is  
8 absolutely not what he said. He said he doesn't know  
9 where -- he's gonna stop where the individual pulls  
10 over. He doesn't have the option, he can't pick the  
11 spot where they pull over. That's what he just said,  
12 not what Miss Ensell said.

13 THE COURT: All right.

14 MS. ENSELL: I was asking a clarifying  
15 question, but if the witness was elaborate --

16 MR. ALBERT: It's asked and answered because  
17 he answered the question.

18 THE COURT: Could you rephrase the question?  
19 I think I know where you were going on this.

20 Q Okay. So, what I'm asking is, when -- let me  
21 gather my train of thought a little bit. So, what you're  
22 saying is when -- why don't you just further elaborate based  
23 on what you've heard?

24 A Where that car was stopped is where he stopped at.

25 MR. ALBERT: Objection.

## ENSELL - REDIRECT - SPRY

1 THE COURT: One second.

2 Q So --

3 A He didn't have a place where it was lit to stop  
4 him. Where he stopped, he stopped.

5 Q So, you're saying the police officer didn't have a  
6 place to stop where it was lit?

7 MR. ALBERT: Judge, objection.

8 A Exactly.

9 MR. ALBERT: She wants him to say something  
10 different.

11 THE WITNESS: There's no light in that area.

12 MR. ALBERT: Thank you.

13 MS. ENSELL: I don't think --

14 MR. ALBERT: That's for the jury to decide.  
15 She can't testify for them, Judge.

16 THE COURT: All right. Again, why don't you  
17 repeat your question because I'm not sure this is the  
18 same question. Go ahead.

19 Q Okay. So, Officer, by "he," because you're using  
20 the word "he," who do you mean doesn't have the option?

21 A The police officer does not have the option where  
22 the car is gonna stop. We can turn our red lights on and  
23 we're not gonna pull over right there. It usually takes a  
24 few seconds for that car to stop where they stop. When they  
25 see us, there's a lag time there, a little bit, to get

## ALBERT - RECROSS - SPRY

1 pulled over.

2 Q Okay. So, in your experience, is it particularly  
3 reasonable to continue on for several miles?

4 MR. ALBERT: Objection.

5 THE COURT: Basis for that? What's the  
6 basis?

7 MR. ALBERT: In his experience is it  
8 reasonable? That's not for -- it's irrelevant about  
9 past experiences and everything else. Is it reasonable  
10 for people to -- I don't understand. He's not here to  
11 decide what's reasonable, Judge.

12 THE COURT: I understand. I'll overrule it.

13 Q Is it reasonable to continue on for several miles  
14 to find a lit area?

15 A No.

16 Q And in your experience as a police officer on your  
17 vehicle and traffic stops, has that occurred?

18 A No.

19 MS. ENSELL: Thank you. I have no further  
20 questions, Judge.

21 THE COURT: Cross.

22 RECROSS EXAMINATION BY MR. ALBERT:

23 Q And I understand generally people will pull over  
24 in a dark area even if it's more dangerous than to continue  
25 on to a more lit area; correct?

## ALBERT - RECROSS - SPRY

1 A Correct.

2 Q That's just based upon your experience?

3 A Yes.

4 Q But you have no idea if someone does continue to  
5 go to a more well lit area, you don't know what he's  
6 thinking when he's doing it; correct? He's not thinking I  
7 want to prevent this stop; I want to go to a more lit area?

8 A Well, when the red lights are on the car, he has  
9 to pull over.

10 Q I understand that. Otherwise, it's failure to  
11 yield?

12 A Correct.

13 Q And it's a traffic violation?

14 A Correct.

15 Q So, if someone doesn't obey the command properly,  
16 there is a violation and that's failure to leave?

17 A Yes.

18 Q And you've issued tickets for failure to yield for  
19 people who don't pull over properly?

20 A Yes.

21 Q But what I'm saying, it doesn't mean they're  
22 trying to prevent the stop necessarily? We don't know what  
23 they're doing?

24 A No. I'm not them.

25 Q Exactly. You're not in their heads?

## ALBERT - RECROSS - SPRY

1 A Correct.

2 Q And you don't know what they're thinking?

3 A Correct.

4 Q And if they're thinking I just want to go down the  
5 road where it's a little more lit, you don't know what  
6 they're thinking?

7 A No.

8 Q But you do know that 242 where the car was, was  
9 actually pitch black, 2:40 a.m. and dangerous based on those  
10 circumstances and the narrow road; correct?

11 A It was dark, yes.

12 MR. ALBERT: All right. Thank you.

13 THE COURT: Anything further?

14 MS. ENSELL: No, Judge.

15 THE COURT: All right. You may step down.  
16 Thank you. Next witness.

17 MS. ENSELL: Judge, the People would call  
18 Officer Amber Graham, and I am gonna ask, Judge, while  
19 we're waiting, if there's any objection to releasing  
20 Officer Spry?

21 MR. ALBERT: Not at all, Your Honor.

22 THE COURT: All right.

23 A M B E R G R A H A M, having been first duly sworn  
24 according to law, was examined and testified as follows:

25 DEPUTY: Please have a seat. State your name

## ENSELL - DIRECT - GRAHAM

1 and business address for the record.

2 THE WITNESS: Name is Amber Graham. I work  
3 for the Ellicottville Police Department, One West  
4 Washington Street, Ellicottville, New York, 14731.

5 DIRECT EXAMINATION BY MS. ENSELL:

6 Q And you just stated you work for Ellicottville  
7 Police Department, correct?

8 A Yes.

9 Q Okay. And are you full time or part time there?

10 A Part time or -- sorry, full time.

11 Q Well, now you've got me confused. And how long  
12 have you been employed at the Ellicottville Police  
13 Department?

14 A Just under five years.

15 Q And what is your rank?

16 A Patrolman.

17 Q What are your duties?

18 A Basic patrol officer. Duties, road patrol, I  
19 answer complaints.

20 Q Okay. And were you previously employed with any  
21 other police agency?

22 A Yes.

23 Q Where at?

24 A I worked full time to the Dansville Police  
25 Department for about a year and then I worked at the Arcade

## ENSELL - DIRECT - GRAHAM

1 Police Department full time for about five years.

2 Q Okay. And so, while you were employed at  
3 Ellicottville, did you also work at any of those places?

4 A No.

5 Q How long have you been a police officer all  
6 together?

7 A Just over ten years.

8 Q Okay. And in order to become a police officer,  
9 did you receive any academic training?

10 A Yes. I went to the basic police training course  
11 for police in Batavia, New York.

12 Q And do you recall approximately how long that  
13 training was, like how long you were involved in it?

14 A I believe it was just under a year.

15 Q And did you successfully complete that program?

16 A Yes.

17 Q All right. And have you had any in-service  
18 training since you've been a police officer?

19 A Yes.

20 Q And what does that usually involve?

21 A Usually it's taser recertification, basic  
22 shooting, qualifying with my pistol, DWI breath test  
23 operator school, radar, lidar.

24 Q So, it's safe to say it's generally continuing  
25 education?

## ENSELL - DIRECT - GRAHAM

1 A Yes.

2 Q I want to draw your attention to February 27<sup>th</sup>,  
3 2016. Were you working on that date?

4 A Yes.

5 Q Do you recall what your shift was?

6 A I believe it was six p.m. till four a.m.

7 Q Okay. So, I guess to clarify, when you say six  
8 p.m., would that have been February 26<sup>th</sup> -- what date --

9 A I believe it's the 26<sup>th</sup> until the 27<sup>th</sup>.

10 Q Okay. And were your duties on that date the same  
11 as you just described?

12 A Yes.

13 Q Okay. And when you were working, were you in  
14 uniform?

15 A Yes.

16 Q Much like the uniform you're wearing right now?

17 A Yes.

18 Q And does your uniform that you wear when you're  
19 working identify you as a police officer?

20 A Yes, it does.

21 Q And on that date were you operating a marked  
22 patrol vehicle?

23 A Yes.

24 Q And in your vehicle were you working alone or with  
25 a partner?



## ENSELL - DIRECT - GRAHAM

1           A     I was driving my own vehicle.  I was working with  
2 two other officers.  They were in their own vehicles.

3           Q     Who were those officers?

4           A     Officer Larry Spry and Officer Cori Kowalski.

5           Q     I want to draw your attention to approximately  
6 2:45 a.m. on that date, did you respond to a location on  
7 Route 242?

8           A     Yes.

9           Q     The location that you responded to, was that in  
10 the Town of Little Valley?

11          A     I believe so.

12          Q     Generally speaking, Little Valley, is that in your  
13 patrol area?

14          A     No.  It is outside.

15          Q     Would it be within your duties though -- well  
16 actually -- I'm sorry, I'll withdraw that one, Judge.  I'm  
17 gonna ask a different question.  Why were you responding to  
18 that location?

19          A     We had an officer in pursuit of a vehicle and I  
20 was assisting him.

21          Q     Okay.  And the officer that was in the pursuit of  
22 that vehicle, which officer was that?

23          A     That was Officer Cori Kowalski.

24          Q     And again, that's a member of your department?

25          A     Yes.

## ENSELL - DIRECT - GRAHAM

1 Q And it's within your duties to respond to calls  
2 for assistance from officers?

3 A Yes, especially for officer safety reasons.

4 Q Now, I'm gonna switch gears a little bit. Did  
5 there come a point in time where the Ellicottville Police  
6 Department started a body camera program?

7 A Yes.

8 Q And do you participate in that program?

9 A Yes.

10 Q Okay. And now, just for clarifying, was there a  
11 time in 2015 into 2016 in which you were off, in which you  
12 were not working?

13 A Yes. I was off on maternity medical leave.

14 Q And when you returned, did you begin participating  
15 in that program?

16 A Yes.

17 Q And on February 27<sup>th</sup>, 2016, were you  
18 participating in that program?

19 A Yes.

20 Q Okay. And on February 27<sup>th</sup>, 2016, were you  
21 wearing a body camera?

22 A Yes, I was.

23 Q And do you recall in February of 2016 how many  
24 body cameras the Ellicottville Police Department had?

25 A At that point in time our department only had one

## ENSELL - DIRECT - GRAHAM

1 body camera which I wore.

2 Q Okay. Now, can you just describe to the jury what  
3 you observed when you arrived at that location on 242?

4 A When I arrived, I observed our car with its  
5 emergency lights on and the sheriff's vehicle with their  
6 emergency lights on and a black SUV with its window, it's  
7 driver's side window broken out and a large white male  
8 standing in front of the black SUV, handcuffed, speaking  
9 with Officer Kowalski.

10 Q And when you arrived on scene, did you turn on  
11 your body camera?

12 A Yes.

13 Q Okay. And when you -- as you observed this male,  
14 did you recognize him?

15 A Yes.

16 Q And do you see that individual that you described  
17 in handcuffs in the courtroom today?

18 A Yes, in the plaid shirt with the glasses.

19 MS. ENSELL: Please let the record reflect  
20 that the witness has identified the defendant.

21 THE COURT: Record will so reflect.

22 Q And did you at the point in which you -- did you  
23 at some point move towards where the officers and the  
24 defendant were located?

25 A Yes, I did.

## ENSELL - DIRECT - GRAHAM

1 Q Okay. And did you make a decision about -- what  
2 were you were going to do with the body camera on that  
3 night?

4 A I did. Because of a previous incident with the  
5 defendant, I thought that it would be best that the body  
6 camera stay with him at every step of the way so that  
7 everything was on camera.

8 Q Okay. I am at this point, Judge, going to show  
9 what's been marked as People's Exhibit 27, 27A and 27B.  
10 I'm going to now show you what's been marked as People's  
11 Exhibit 27. Can you tell me what this is?

12 A This is a disc of my body cam footage that  
13 evening.

14 Q Okay. And prior to testifying today, did you have  
15 the opportunity to review this exhibit?

16 A Yes, I did. My initials are signed and dated.

17 Q And when you reviewed this exhibit, did you find  
18 it to be a fair and accurate representation of the events  
19 recorded for the portions in which you were present for  
20 those events?

21 A Yes.

22 Q Okay. And I will ask, when you reviewed this  
23 exhibit, did it appear to be altered or adulterated in any  
24 way or were there any deletions?

25 A No.

## ENSELL - DIRECT - GRAHAM

1 Q I'm gonna show you what's been marked as People's  
2 Exhibit 27A for identification. Can you tell me what this  
3 is?

4 A This is disc two of my body camera footage from  
5 that evening and it has my initials signed and dated.

6 Q And did you also have an opportunity -- I think  
7 you're answering that by that, but did you you also have an  
8 opportunity to review this exhibit prior to today?

9 A Yes, I did.

10 Q And is it a fair and accurate representation of  
11 the events that were recorded as you remembered them to be?

12 A Yes.

13 Q And was it adulterated, altered or were there any  
14 deletions?

15 A No.

16 Q And I am going to now show you what's been marked  
17 as People's Exhibit 27B for identification. Can you tell me  
18 what that is?

19 A This is body camera footage pre-ambulance and this  
20 also has my initials and date on it.

21 Q And did you have an opportunity to review this  
22 prior to testifying today?

23 A Yes, I did.

24 Q And aside from it only being a portion of the  
25 video, was it a fair and accurate representation of the

## ENSELL - DIRECT - GRAHAM

1 events recorded as you remember them to be?

2 A Yes.

3 Q And aside from it only being a portion, was it  
4 altered, adulterated or were there any deletions?

5 A No.

6 Q Okay. And when you did approach that scene with  
7 the officers and the defendant as you described, did you  
8 observe any sort of injury on the defendant?

9 A Yes. He had a small cut, I believe on the left  
10 side of his head just above his ear.

11 Q Okay. And did there come a point in time where  
12 somebody radioed for an ambulance?

13 A Yes.

14 Q Who was that?

15 A I believe it was me.

16 Q Okay. And what reason did you radio for that?

17 A He had a small amount of blood from the cut and he  
18 was complaining that he was hurt.

19 Q Okay. So, you made a decision to call for the  
20 ambulance at that point?

21 A Yes.

22 Q Okay. And once the ambulance arrived, did you  
23 accompany the defendant after that?

24 A Yes, I did.

25 MS. ENSELL: I have no further questions,

## ALBERT - CROSS - GRAHAM

1 Your Honor.

2 THE COURT: Mr. Albert.

3 MR. ALBERT: Thank you Your Honor.

4 CROSS EXAMINATION BY MR. ALBERT:

5 Q Good morning, Officer.

6 A Good morning.

7 Q Officer, you kind of talked about some previous  
8 incident with my client that made you want to body cam him  
9 or video him; is that correct?

10 A Well, I participate in the body camera program  
11 which means I wear the body camera every time it's available  
12 to me.

13 Q What I'm saying is you, on your direct testimony  
14 you said, well, I had a previous experience with this  
15 individual, so it made me want to keep the body cam on him  
16 at all times; correct?

17 A That is correct.

18 Q This previous incident, it didn't involve him  
19 being violent towards anybody; correct?

20 A No.

21 Q And it was an instance in which he was criminally  
22 charged of some sort; correct?

23 A Yes.

24 Q And you're aware that those charges were  
25 dismissed; correct?

## ALBERT - CROSS - GRAHAM

1 A Yes.

2 Q And you're aware that as a result of those  
3 dismissed charges and arrest, there's a federal lawsuit  
4 filed against some members of your department; correct?

5 A Yes, I am.

6 Q All right. But I guess what I'm saying is, you  
7 know, in terms of videotaping my client -- I'm confused, I  
8 guess, as to why you thought you should video him because  
9 he's never been violent or aggressive towards anybody as far  
10 as you know; right?

11 A Not that I know of.

12 Q But still -- okay, so fine. So, no is the answer?

13 A I said not that I know of.

14 Q But you still felt you wanted to videotape him,  
15 right?

16 A It's called a body camera. I was not videotaping.

17 Q So you wanted to body cam, right?

18 A That is correct.

19 Q And --

20 MR. ALBERT: Permission to approach, Your  
21 Honor?

22 THE COURT: Of course.

23 Q So, Officer, showing you Defendant's Exhibit C for  
24 identification purposes, does this fairly -- you were taking  
25 body cam footage of my client that evening; correct?



## ALBERT - CROSS - GRAHAM

1 A Yes.

2 Q Does this fairly and accurately reflect the blood  
3 coming from his ear that evening?

4 A Yes.

5 Q Okay. It's a fair and accurate representation of  
6 his -- I guess it would be left ear, on the morning in  
7 question, correct?

8 A Yes.

9 MR. ALBERT: All right. I'd offer C into  
10 evidence.

11 MS. ENSELL: No objection, Judge.

12 THE COURT: All right. C in evidence.

13 MR. ALBERT: Can I just do it old school and  
14 publish it in that manner?

15 THE COURT: Go ahead.

16 Q And no officers were injured that you know of,  
17 correct?

18 A Not that I'm aware of, sir.

19 Q And showing you now Defendant's A for  
20 identification, did you have an opportunity to observe the  
21 driver's side window of my client?

22 A Yes, I did.

23 Q Does this fairly and accurately reflect the state  
24 of that window on the morning in question on Route 242  
25 around 2:40?

## ALBERT - CROSS - GRAHAM

1           A     Yes.

2                     MR. ALBERT:  I'd offer A into evidence.

3                     THE COURT:  All right.  A into evidence.

4           Q     And you stated you went to the hospital where my  
5 client was?

6           A     Yes, I did.

7           Q     What was the point of accompanying my client to  
8 the hospital?

9           A     Well, at that point he was under arrest.

10          Q     He was in custody?

11          A     Yes.

12          Q     Okay.  And did you have an opportunity to observe  
13 his left arm -- right arm, excuse me, on the morning in  
14 question?

15          A     I don't particularly recall his arm but at the  
16 scene he had like a shirt and coat on because it was  
17 February, so I don't recall.  My main concern was his head.

18          Q     Okay, fair enough.  But what I'm stating is at the  
19 hospital you don't know whether you saw his arm or not?  I'm  
20 asking?

21          A     He was talking to the doctor and the nurses and  
22 stuff.  I don't recall his arm but --

23          Q     Okay, all right.  And when he was initially pulled  
24 over or when the lights were first activated, you don't know  
25 whether Officer Kowalski was saying oh, that's [REDACTED]

## ALBERT - CROSS - GRAHAM

1 or not? You don't know if they recognized him in any way,  
2 shape or form?

3 A No.

4 Q But once you arrived on scene, you knew who [REDACTED]  
5 [REDACTED] was; correct?

6 A Yes.

7 Q All right. And did you convey that you were aware  
8 of my client's identity to the other law enforcement  
9 officers there?

10 A I don't believe so. I just know that I made the  
11 decision to keep the camera on him the whole time.

12 Q Okay. So, you did that without saying to the  
13 other individuals I know [REDACTED] this is [REDACTED]  
14 You didn't say that to them?

15 A I don't believe so.

16 Q So, even though you knew the identity of my  
17 client, you didn't disclose that to your fellow officers?

18 A It really wasn't the time or place for it.

19 Q It wasn't the time or place to say this is [REDACTED]  
20 [REDACTED]

21 A I don't even think at that point they would have  
22 known who he was just by saying his name.

23 Q But at that point had he even given that pedigree  
24 information to Officer Kowalski?

25 A I have no idea.

## ALBERT - CROSS - GRAHAM

1 Q You don't know. Did you speak with Officer  
2 Kowalski about the incident in question?

3 A When we were there?

4 Q Yeah.

5 A Well, I mean, you can see from my body camera  
6 footage what I said to him.

7 Q Okay, but that's obviously not in evidence yet and  
8 I'm asking, what did you say to him? What was the nature of  
9 the conversation that you had with Officer Kowalski?

10 A I don't recall. I remember calling for the  
11 ambulance and discussing a tow and assessing the scene.  
12 Those were my duties.

13 Q Okay. So, did you talk to Officer Kowalski about  
14 what charges would be filed against my client?

15 A No. I was not the arresting officer. I was  
16 simply the assisting officer.

17 Q Fair enough. But you knew he was under arrest  
18 though, correct?

19 A Well, he had handcuffs on, so --

20 Q But what I'm saying -- that's a yes, I take it?

21 A I would assume so at that point.

22 Q But you didn't know what he was under arrest for?

23 A No.

24 Q You didn't know what he did or what he didn't do;  
25 correct?

## ALBERT - CROSS - GRAHAM

1 A Correct.

2 Q And you sure don't know what he was thinking at  
3 that point in time; correct?

4 A No, sir.

5 Q And you certainly don't know what he was thinking  
6 some five, ten minutes earlier; correct?

7 A No because I wasn't there at that point.

8 Q Okay. Let me ask you: Officer, I notice you're  
9 in uniform. Are you on duty as of now?

10 A I'm testifying in court right now.

11 Q So, it's standard procedure for you to wear your  
12 uniform when you testify in court?

13 A Yes, it is.

14 Q And you're getting paid to testify, right?

15 A Yes.

16 Q And in fact, all the officers that are testifying  
17 against my client are getting paid for testifying against my  
18 client?

19 MS. ENSELL: Judge, I would object. I don't  
20 know how she would know that at all. She knows she's  
21 getting paid. I happen to know one wasn't.

22 MR. ALBERT: Fine.

23 THE COURT: Please restructure it.

24 Q You don't know?

25 A I can't speak for anybody else but myself.

## ALBERT - CROSS - GRAHAM

1 Q And you're getting paid to testify against my  
2 client?

3 A Typically when I'm testifying, yes.

4 Q But this is not part of your base salary; this is  
5 extra pay?

6 A Because this does not fall on my shift, yes,  
7 you're correct.

8 Q And obviously, if your lawyer wants you to explain  
9 everything, then you can, but my question is pretty sure.  
10 This is extra pay -- every time you make an arrest and you  
11 come into court and it's not on your shift, you get extra  
12 pay; correct?

13 A That is correct.

14 Q And this isn't the first time that -- you've also  
15 met with the DAs about testifying against my client;  
16 correct?

17 A Yes. That was on my regular shift though.

18 Q Okay. How many times -- how many court  
19 appearances have you had based upon this two mile pursuit  
20 where Mr. [REDACTED] didn't pull over right away? How many  
21 court appearances have you had about?

22 A This is the only court appearance I've had for  
23 this.

24 Q This is the only one?

25 A Yes, sir, it is.

## ALBERT - CROSS - GRAHAM

1 Q In this case you had a minor role in that you were  
2 the assisting officer?

3 A That is correct.

4 Q Do you know how many appearances Officer Kowalski  
5 has had?

6 A I'm not Officer Kowalski, so I can't testify to  
7 that.

8 Q I know you're not Officer Kowalski, but you know  
9 some things about him. You know that he works for  
10 Ellicottville police?

11 A Yes but --

12 Q Just you don't know?

13 A No, I do not know.

14 Q How much are you getting paid, Officer?

15 A That's irrelevant.

16 Q Well, that's for someone else to decide. But  
17 basically there's a financial incentive for charges to be  
18 filed --

19 MS. ENSELL: Judge --

20 THE COURT: We have an objection, Counselor.

21 MS. ENSELL: Judge, I'm not really sure what  
22 the basis is for this. I understand that in some  
23 circumstances counsel is allowed to question an expert  
24 that is here specifically, not who is a witness to the  
25 incident but was here specifically to testify to an

## ALBERT - CROSS - GRAHAM

1 expert purpose on what potentially they were paid, but  
2 I don't think it applies in a situation like this with  
3 an officer. She stated yes, she's on overtime. I  
4 think we've got --

5 MR. ALBERT: I have bias and motive, Your  
6 Honor, are always --

7 THE COURT: Well, Counselor, you've  
8 established that she is being paid while she's sitting  
9 here.

10 MR. ALBERT: All right.

11 THE COURT: I don't know how that would  
12 extend for the typical questioning of one for an expert  
13 witness.

14 MR. ALBERT: Fair enough.

15 Q You don't want to tell the jury how much you're  
16 getting paid for testifying against my client?

17 A I didn't say that.

18 MS. ENSELL: Judge, I object.

19 THE COURT: I'll strike that question.

20 MR. ALBERT: No further questions, Your  
21 Honor.

22 MS. ENSELL: Brief redirect, Judge.

23 MS. ENSELL: Judge, I actually do think that  
24 I need to approach with counsel briefly.

25 (Discussion off the record.)



## ENSELL - REDIRECT - GRAHAM

1 REDIRECT EXAMINATION BY MS. ENSELL:

2 Q All right. I just have a couple of clarifying  
3 questions. There was an incident that was referred to and  
4 elaborated a little bit on cross examination. Now, do you  
5 recall ever attending a hearing or a trial in that  
6 particular incident?

7 A No.

8 Q Okay. And so, based on that and your knowledge of  
9 the case, are you aware as to whether or not it was ever  
10 dismissed on the facts of the case, on the merits?

11 A No, I don't believe so.

12 Q Okay. And you had also stated or, excuse me, been  
13 asked on cross examination why you made the decision to keep  
14 the camera on him. Is there a particular -- first of all,  
15 you were asked about violence and your answer was no. Why  
16 did you then make that decision? What was the reason?

17 A The reason was to avoid further allegations and to  
18 protect all the officers and the integrity of the scene.

19 Q Okay. And is it -- first of all, appearing here  
20 today, were you issued any sort of service to appear here  
21 today such as a subpoena?

22 A Yes.

23 Q And is it in your normal course of duties to  
24 answer subpoenas on cases in which you were involved?

25 A Yes.

## ALBERT - RECROSS - GRAHAM

1 Q And are you fulfilling your normal course of  
2 duties of a police officer by being here today and answering  
3 that subpoena?

4 A Yes.

5 MS. ENSELL: No further questions, Judge.

6 THE COURT: Mr. Albert.

7 MR. ALBERT: Just very briefly.

8 RECROSS EXAMINATION BY MR. ALBERT:

9 Q So, you weren't body camming my client because --  
10 as far as you know, my client has no criminal convictions  
11 whatsoever, correct?

12 A I have no idea.

13 Q Okay. But it's not like you were thinking oh,  
14 this is a dangerous criminal, I'm gonna film it?

15 A Every incident I respond to I turn my body camera  
16 on when I have it, period.

17 Q So, you film all defendants, not just my clients?

18 A Correct.

19 Q Okay. So, the fact that there's absolutely no  
20 significance about the fact that you were, in fact, body  
21 camming my client as opposed to any other person that you  
22 guys come into as part of your business as an Ellicottville  
23 police officer -- right?

24 A I made the decision for the camera to stay on him  
25 because we only had one.

## ALBERT - RECROSS - GRAHAM

1           Q     Okay.  What I'm saying is you body cam defendants  
2     in your course of business as an Ellicottville police  
3     officer; right?

4           A     Yes, I do.

5                     MR. ALBERT:  Okay, thank you.  No further  
6     questions.

7                     THE COURT:  Anything further?

8                     MS. ENSELL:  Nothing further, Judge.

9                     THE COURT:  All right.  You may step down,  
10    Officer.  Thank you.

11                    MS. ENSELL:  Judge, I have a question.  My  
12    next officer, he's not going to be that brief.  There  
13    are several exhibits attached to him, so I don't know  
14    if at some point when we want to discuss lunch.  I hate  
15    to break --

16                    MR. ALBERT:  I'm always ready to discuss  
17    lunch, Your Honor.

18                    THE COURT:  We could start if you wanted to.  
19    Typically, we were thinking of 12:30-ish.

20                    MS. ENSELL:  I anticipate this is not going  
21    to be as quick as those other two.

22                    THE COURT:  You'd rather keep his testimony  
23    together then?

24                    MS. ENSELL:  I don't know.  That's up to  
25    defense counsel.  I guess it's possible we won't get

ENSELL - DIRECT - BOUCHARD

1 through ours before 12:30 and it's definite they won't  
2 get to cross examine him immediately either.

3 MR. ALBERT: I'll defer to the Court,  
4 whatever the Court wants to do.

5 THE COURT: Why don't we do this, why don't  
6 we start his testimony. He is available now?

7 MS. ENSELL: Yeah.

8 THE COURT: Let's start his testimony.

9 MS. ENSELL: And again, I am gonna ask what I  
10 asked with the last one. At this point can we release  
11 Officer Graham?

12 MR. ALBERT: Yes, Your Honor.

13 THE COURT: All right.

14 MS. ENSELL: Judge, at this point the People  
15 are going to call Deputy Officer-in-Charge James  
16 Bouchard.

17 J A M E S B O U C H A R D, having been first duly sworn  
18 according to law, was examined and testified as follows:

19 DEPUTY: Please have a seat. State your name  
20 and business address for the record.

21 THE WITNESS: James Bouchard, One West  
22 Washington Street, Ellicottville, New York, 14731.

23 DIRECT EXAMINATION BY MS. ENSELL:

24 Q You're currently employed with the Ellicottville  
25 Police Department, is that what you said?

CATTARAUGUS COUNTY COURT

## ENSELL - DIRECT - BOUCHARD

1 A That is correct.

2 Q And are you full time or part time?

3 A Full time.

4 Q What is your rank?

5 A Deputy Officer-in-Charge.

6 Q And what are your duties as Deputy

7 Officer-in-Charge?

8 A Oversee the patrol division, check paperwork,  
9 normal patrol, V & T functions, things along that nature.

10 Q How long have you been the deputy in charge at  
11 Ellicottville?

12 A Approximately three years.

13 Q And how long have you worked for the Ellicottville  
14 Police Department?

15 A Approximately ten years.

16 Q And did you work at any prior law enforcement  
17 agency prior to that?

18 A Yes.

19 Q What agencies were those?

20 A Chautauqua County Sheriff's Office previously.

21 Q How long were you there?

22 A A year and a half.

23 Q And do you currently work for any law enforcement  
24 agencies?

25 A Yes, that is correct.

## ENSELL - DIRECT - BOUCHARD

1 Q Where?

2 A The Town of Evans.

3 Q And are you full time or part time there?

4 A Part time.

5 Q How long have you been with the Town of Evans?

6 A Two years.

7 Q Did you receive training to become a police  
8 officer?

9 A Yes.

10 Q Where did that training take place?

11 A Chautauqua County Sheriff's Academy.

12 Q Approximately how long was that program?

13 A Approximately six months.

14 Q And did you successfully complete that program?

15 A Yes.

16 Q Okay. And have you been field trained at each of  
17 the agencies that you work for?

18 A Yes.

19 Q And do you also participate in in-service  
20 training?

21 A Yes.

22 Q How often would you say you participate in  
23 in-service training?

24 A Approximately three times a year for various other  
25 things.

## ENSELL - DIRECT - BOUCHARD

1 Q I want to draw your attention to the night of  
2 February 26<sup>th</sup>, 2016. Were you working on that night?

3 A No, I was not.

4 Q And were you working in the early morning hours of  
5 February 27<sup>th</sup>, 2016?

6 A No, I was not.

7 Q Okay. Did there come a point in time in which you  
8 were contacted about an incident that occurred on  
9 February 27<sup>th</sup>, 2016?

10 A Yes.

11 Q All right. And were you at any point informed as  
12 to what that incident involved? Just the nature of it,  
13 don't go into what was actually said to you.

14 A Yes.

15 Q And did there come a point in time when you were  
16 asked to participate in the subsequent investigation of that  
17 incident?

18 A That is correct.

19 Q What is your role?

20 A Help obtaining and executing a search warrant.

21 Q And so -- did you -- who were you assisting?

22 A I was assisting Officer Kowalski.

23 Q Okay. And did you actually, yourself participate  
24 in the execution of the warrant?

25 A That is correct.

## ENSELL - DIRECT - BOUCHARD

1 Q And where was the -- well, what was the subject of  
2 the search warrant?

3 A It was the vehicle, search warrant on a vehicle.

4 Q And was there anything else included in the  
5 warrant?

6 A Audio and visual recording devices that were  
7 located inside the vehicle.

8 Q And where was that vehicle located?

9 A John's Collision in Little Valley, New York.

10 Q Is that a secure or unsecure location?

11 A It's a secure location.

12 Q Does the Ellicottville Police Department maintain  
13 their own lot for impounding vehicles?

14 A No, they do not.

15 Q And where do you typically impound vehicles that  
16 are involved in incidences?

17 A Typically, John's Collision is the normal place  
18 that we would use as first available.

19 Q Have you ever had any issues keeping vehicles  
20 there?

21 A No.

22 Q Now, once you had obtained the warrant, where did  
23 you go to execute it?

24 A To John's Collision.

25 Q And did you make any observations of the vehicle



## ENSELL - DIRECT - BOUCHARD

1 when you arrived?

2 A That it was inside still, in a stored, secure  
3 facility.

4 Q And when you entered John's Collision, did you  
5 make any other observations?

6 A It appeared that the vehicle had not been touched  
7 or tampered with. It was still on the wrecker that brought  
8 it in.

9 Q Okay. And can you just briefly describe how it  
10 was that you executed the search warrant?

11 A What we ended up doing was going inside. The  
12 owner let us in, went and checked the vehicle to make  
13 sure -- to see what was actually contained in the vehicle,  
14 and I took photographs of everything that was in the vehicle  
15 before, prior to removing some audio and visual recording  
16 devices that we found in the vehicle.

17 Q And I have several exhibits, but your  
18 observations, did they take place -- where were you located,  
19 I guess?

20 A Inside John's Collision, looking at a vehicle that  
21 was inside.

22 Q Okay. And did you ever enter the vehicle for a  
23 portion of the search warrant?

24 A Yes, I did.

25 Q Okay, all right.

## ENSELL - DIRECT - BOUCHARD

1 MS. ENSELL: At this point, Judge, we're  
2 going to go through several exhibits in relation to the  
3 execution of that warrant. So, I'm just gonna show  
4 defense counsel all of them right now. I'm gonna give  
5 them a minute.

6 Q I'm gonna start by showing you some exhibits. I'm  
7 gonna start with People's Exhibit 11 and People's Exhibit  
8 15. Can you tell me what those are?

9 A Those are interior video -- excuse me, interior  
10 pictures of a device that's mounted to the front windshield  
11 of the defendant's vehicle.

12 Q And when you observed -- first of all, I guess --  
13 let's back up a little bit. What was the date in which you  
14 executed that warrant?

15 A March 2nd, 2016.

16 Q Okay. And do these photos fairly and accurately  
17 represent the vehicle or the portions that you're saying  
18 are in the picture, the vehicle, as you observed them on  
19 March 2nd, 2016?

20 A Yes.

21 MS. ENSELL: Judge, at this point I'll move  
22 in People's Exhibit 11 and 15.

23 MR. ALBERT: If I could voir dire briefly,  
24 Your Honor.

25 THE COURT: Go ahead.

## ALBERT - VOIR DIRE - BOUCHARD

1 VOIR DIRE BY MR. ALBERT:

2 Q Good afternoon, Officer. Just a few questions.

3 The first time you came into contact with this vehicle, this  
4 evidence was on March 2nd; is that correct?

5 A That is correct.

6 Q At John's; is that correct?

7 A Yes.

8 Q You didn't transport it to John's or anything?

9 A No, I did not.

10 Q Do you know who did?

11 A Yes.

12 Q Okay. Do you know how many other people came  
13 into contact with the vehicle between February 27<sup>th</sup> and  
14 March 2nd?

15 A No, I do not.

16 Q And you didn't see the vehicle on February 27<sup>th</sup>,  
17 right?

18 A No, I did not.

19 Q All right. And so, while this camera or this  
20 whatever device is mounted in this manner on March 2nd, you  
21 have no idea if it was mounted this way on February 27<sup>th</sup>;  
22 correct?

23 A That's correct.

24 MR. ALBERT: Judge, I would object. There's  
25 absolutely no chain of custody to show that the vehicle

## ALBERT - VOIR DIRE - BOUCHARD

1 is in substantially the same condition at all from  
2 February 27<sup>th</sup> to March 2nd. It got towed. We have  
3 no idea how many people came into contact with it. The  
4 authenticity isn't there. I'm not certain of the  
5 relevance, but they need sufficient proof that this is  
6 what it purports to be, this is how the vehicle looks  
7 on March 2nd. There's absolutely nothing to establish  
8 this is how the vehicle appeared on February 27<sup>th</sup>.

9 MS. ENSELL: First of all, it's only a few  
10 days beyond, but that's not an objection to foundation.  
11 It's an objection to weight of the evidence I suppose.  
12 But foundation for a picture is to have the officer  
13 testify whether it's a fair and accurate representation  
14 of it at the time he observed it.

15 THE COURT: I agree.

16 MS. ENSELL: I'll note one more thing for  
17 you, Judge. We do have an additional witness that is  
18 planning on testifying who did an impound search who  
19 will state what his observations were in relation to  
20 these photographs.

21 MR. ALBERT: I guess I'm still -- in terms of  
22 March 2<sup>nd</sup> then, we're talking about relevance. What  
23 the vehicle looks like on March 2nd, I don't even know  
24 how relevant it is in materials of some of this stuff.  
25 I don't see the relevance of this weird contraption. I

## ENSELL - DIRECT - BOUCHARD

1 don't see the relevance.

2 THE COURT: Well, Counselor, I'm going to  
3 admit. We have a foundation. He's testifying this is  
4 this is how it looked when the photos were taken. You  
5 can make your argument --

6 MR. ALBERT: Evidence to be admitted, it has  
7 to be relevant.

8 THE COURT: I can see relevance. You can  
9 argue as to the weight of the evidence, but I can see  
10 relevance here.

11 MR. ALBERT: To what he's charged with, I  
12 don't see -- okay.

13 THE COURT: All right, Counselor. In  
14 evidence.

15 CONTINUED DIRECT EXAMINATION BY MS. ENSELL:

16 Q All right. Officer, I'm now going to show you  
17 what has been marked as People's Exhibit 16 and 17. Can you  
18 tell me what those are? Just describe them please.

19 A On 16 is an exterior view on the driver's side  
20 showing the vehicle that is located in John's Collision and  
21 a view of the devices located inside the vehicle.

22 Q And how about 17?

23 A It is showing a camera system mounted to the  
24 windshield of the vehicle. It's the front view of the  
25 defendant's vehicle.

## ENSELL - DIRECT - BOUCHARD

1 Q Okay. And these photos, again, when you were  
2 there on March 2<sup>nd</sup>, 2016, do these photos fairly and  
3 accurately represent the condition of the vehicle and the  
4 objects they're meant to depict as they were on March 2nd,  
5 2016?

6 A Yes.

7 Q Okay.

8 MS. ENSELL: Okay I'm going to move in  
9 People's Exhibits 16 and 17.

10 MR. ALBERT: Just for the record, same  
11 objection.

12 THE COURT: Same objection. All right, 16  
13 and 17 in evidence.

14 Q I'm now showing the witness what has been marked  
15 as People's Exhibit 18 for identification. Can you just  
16 quickly tell me what that is?

17 A That is the front license plate of the defendant's  
18 vehicle.

19 Q And does that fairly and accurately represent what  
20 you observed on March 2<sup>nd</sup>, 2016?

21 A Yes.

22 MS. ENSELL: I am now going to move in  
23 People's Exhibit 18.

24 THE COURT: Same objection?

25 MR. ALBERT: Yeah. Blanket objection for all

## ENSELL - DIRECT - BOUCHARD

1 those exhibits, Your Honor.

2 THE COURT: All right. In evidence.

3 MS. ENSELL: Judge, if this one makes it in,  
4 I am going to ask it be published. So, I'll kind of  
5 forewarn you on that one.

6 Q I'm going to show you what's been marked as  
7 People's Exhibit 19 for identification. Can you tell me  
8 what that's a photograph of?

9 A It appears to be a body camera that's mounted to  
10 the center console of the defendant's vehicle.

11 Q And does that fairly and accurately reflect what  
12 you observed on March 2<sup>nd</sup>, 2016?

13 A Yes.

14 MS. ENSELL: Judge, I am at this point going  
15 to move this in. I have some additional questions  
16 about this exhibit.

17 THE COURT: Same objection, Counselor?

18 MR. ALBERT: Yes.

19 THE COURT: All right. Nineteen in evidence.

20 MS. ENSELL: I'll request that 19 be shown.

21 Q All right, Officer, we've displayed for the jury  
22 what's been placed in evidence as People's Exhibit 19. Now,  
23 is this an item that, in terms of the warrant, you were to  
24 seize?

25 A Yes.

## ENSELL - DIRECT - BOUCHARD

1 Q And did you so take that into custody?

2 A Yes.

3 Q And was it you yourself that took it into custody  
4 or someone else?

5 A I took it into custody.

6 Q And who transported that item back to  
7 Ellicottville?

8 A I did.

9 Q Once it was back to Ellicottville, what did you do  
10 with it?

11 A I took the sim card out of the device, placed it  
12 into a sim card reader, and then I put it in inside my  
13 computer to put it -- to see files on that device.

14 Q And were you able to see if there was content  
15 relevant to they proceeding?

16 A The content was not relevant.

17 Q So, what did you do with it?

18 A Return to the owner eventually.

19 Q But were you able to determine what it was capable  
20 of doing?

21 A Yes.

22 Q And what was it capable of doing?

23 A Audio and visually recording.

24 MS. ENSELL: All right. We're all set with  
25 that one. Thank you.



## ENSELL - DIRECT - BOUCHARD

1 Q I'm now going to show the witness what has been  
2 marked as People's Exhibit 20 and 21 for identification.  
3 Can you tell me what these are? You can start with this  
4 one, it's 20.

5 A It is a cell phone and cell phone case contained  
6 in the center console of the defendant's vehicle.

7 Q And how about 21?

8 A It's an overview of the cell phone and the center  
9 console area of the defendant's vehicle.

10 Q And do these pictures again fairly and accurately  
11 represent items as you observed them on March 2nd, 2016?

12 A Yes.

13 Q And is there a difference between the two of them  
14 as to what happened with the cell phone?

15 A It was taken out of the case.

16 Q And do you know who removed it from the case?

17 A Officer Kowalski.

18 MS. ENSELL: Judge, I'm gonna ask that  
19 People's -- I don't know if I moved already but 20 and  
20 21 be put into evidence.

21 THE COURT: Same objection, Counselor?

22 MR. ALBERT: Yes, Your Honor, to relevancy.

23 THE COURT: 20 and 21 in evidence.

24 MS. ENSELL: And I am also going to ask that  
25 21 be placed on -- published for the jury because I

## ENSELL - DIRECT - BOUCHARD

1 have some additional questions.

2 Q Okay. Officer, again pursuant to the terms of the  
3 warrant, did you take this item into custody?

4 A Yes.

5 Q And did you personally take the item into custody?

6 A Yes.

7 Q And did you transport the item?

8 A Yes.

9 Q And again, what is it that you believed the item  
10 to be?

11 A A cell phone.

12 Q Okay. And was there -- what did you do with the  
13 item once you got it back to where you were going?

14 A I realized that it was not relevant to this  
15 proceeding.

16 Q So, I guess I just ask for clarification, were  
17 there specific limitations on your warrant?

18 A Yes, there were.

19 Q And so, based on your examination of the other  
20 devices, were you able to determine whether or not you had  
21 cause to examine the cell phone?

22 A That is correct, I did not have cause to examine  
23 it.

24 Q What did you do with that item?

25 A I returned it to the owner.

## ENSELL - DIRECT - BOUCHARD

1 Q Okay, I'm all set with that one. I'm sorry, one  
2 other follow-up question. Was the cell phone on? Did it  
3 appear to at least be on?

4 A It appeared to be off and I did not turn it on.

5 Q Okay. I'm now going to show the witness what is  
6 marked as People's Exhibit 22 and 23 for identification.  
7 Can you tell me what these are?

8 A The one is --

9 Q You're pointing to People's Exhibit 23?

10 A Twenty-three is a device that appeared to be a bug  
11 detector.

12 Q And 22, can you just briefly describe that?

13 A Is an overview of the area where the item was  
14 located in the center console there.

15 Q And do these photographs fairly and accurately  
16 represent the contents as you observed them on March 2nd,  
17 2016?

18 A Yes.

19 MS. ENSELL: I'll move in too Exhibit 22 and  
20 23.

21 MR. ALBERT: Judge, I don't have any idea  
22 what a bug detector has to do with any of the charges  
23 that my client is charged with.

24 THE COURT: Do you want to respond?

25 MS. ENSELL: Yes, Judge. There was a warrant

## ENSELL - DIRECT - BOUCHARD

1 in which he was directed to take into custody  
2 electronic and video recording devices. We're going to  
3 have an opportunity hopefully, once these pictures come  
4 in, because -- again, I understand as to relevance. We  
5 did do our foundation. These were photographs taken on  
6 March 2nd. We've already established that. The  
7 officer is going to be asked some questions on that,  
8 but if you want me to ask him a clarifying question as  
9 to what he believed the item to be at the time, whether  
10 or not it was part of the warrant --

11 MR. ALBERT: Judge, even if -- whatever the  
12 warrant authorized or didn't authorize, again, doesn't  
13 in any way, shape or form relate to any of these  
14 charges. So, right, the officer complied with the  
15 warrant, but again, what do bug detectors -- how are  
16 they remotely relevant to these charges that my client  
17 is now facing, traffic charges generally?

18 MS. ENSELL: Judge --

19 THE COURT: Go ahead.

20 MS. ENSELL: I'm going to note for the  
21 Court's record that these are photographs that were  
22 taken during the execution of a warrant on defendant's  
23 vehicle on March 2nd, 2016. It's not remote in time.  
24 It's related to the incident that's been charged.

25 MR. ALBERT: None of which makes it relevant.

## ENSELL - DIRECT - BOUCHARD

1           They can take a picture of his beach house and that's  
2           his beach house on March 2nd and that's not relevant  
3           either.

4                    THE COURT: All right. You're gonna have an  
5           opportunity to argue the relevance. I'll put this in,  
6           I'll allow this in. I'm not convinced of the relevance  
7           yet, but I'll allow it.

8                    MS. ENSELL: All right.

9           Q        Officer, I am going to an ask you some follow-up  
10          questions on this as well. We're gonna not worry about that  
11          importing of it. This item, was this also something that  
12          you took into custody pursuant to the terms of your warrant?

13          A        Yes.

14          Q        Okay. And at the time that you took that item  
15          into custody, did you know what it was? Did you know what  
16          its purpose was?

17          A        No, I did not know what it was.

18          Q        Did it appear to you to be some sort of device  
19          that could potentially be used for recording?

20          A        Yes.

21          Q        Okay. So, were you able to examine that device?

22          A        Yes.

23          Q        Okay. And how did you examine it? Can you  
24          explain?

25          A        I looked at it and I observed some numerics and

## ENSELL - DIRECT - BOUCHARD

1 characters on it. I ended up Googling just to see what it  
2 was, and that's when I found out that it was a bug detector.

3 Q What did you do at that point that you determined  
4 that it was not an audio or video recording device?

5 A I felt it wasn't relevant to the case and returned  
6 it to the owner.

7 Q Relevant to the case or relevant to the warrant?

8 A Relevant to the warrant.

9 THE COURT: Go ahead.

10 MR. ALBERT: The witness himself is saying it  
11 isn't relevant. They're trying to say it's relevant.  
12 The witness is saying it's not.

13 MS. ENSELL: It's an item the officer took  
14 into custody as part of this case. I don't understand  
15 how it's irrelevant to this case. It's a basis -- I  
16 understand it's something that we have to show that was  
17 examined of as a portion of what they did for their  
18 warrant and that's what we're showing.

19 MR. ALBERT: It's what did they eat before  
20 they investigated? Again, when they were on, but it's  
21 not relevant. It's only relevant if it goes to  
22 material issues of fact relating to the crimes charged.  
23 It's like did you go work out afterwards? None of that  
24 is relevant either. It's the same type of thing.

25 THE COURT: I can see a possibility of

## ENSELL - DIRECT - BOUCHARD

1 relevance here. I will allow it but you'll have full  
2 and fair opportunity to make your argument on it.

3 MR. ALBERT: Okay.

4 MS. ENSELL: That was it for that. I'm not  
5 done with my questioning. Okay. I'm sorry, Judge.

6 Q I'm gonna show the officer what's been marked as  
7 People's Exhibit 26 for identification. Don't get too much  
8 into what the contents are itself, but can you tell me what  
9 generally is in that photograph?

10 A It appears to be mail that's on the back seat of  
11 the defendant's vehicle.

12 Q And again, based on your observations on  
13 March 2nd, 2016, does this photo fairly and accurately  
14 represent what you observed in the defendant's vehicle as a  
15 portion of its contents?

16 A Yes.

17 MR. ALBERT: Hold on. Are you putting it in  
18 evidence?

19 MS. ENSELL: No.

20 MR. ALBERT: Okay, I'm sorry.

21 Q Now, I'm gonna show the officer what has been  
22 marked as People's Exhibits 12, 13, 14, 24 and 25. Just  
23 without getting too much into it, can you just briefly state  
24 what is in People's Exhibit 24, what it appears to be?

25 A The rear view hatch area of the defendant's

## ENSELL - DIRECT - BOUCHARD

1 vehicle.

2 Q And same question for People's Exhibit 25?

3 A Is a close up of the rear hatch area of the  
4 defendant's vehicle, depicting a camera that's affixed to  
5 the rear window.

6 Q And what is Exhibit 12?

7 A A view of the camera attached to the defendant's  
8 windshield.

9 Q And People's Exhibit 13?

10 A It is a view of the camera and interior view of  
11 the defendant's vehicle.

12 Q And the same question for People's Exhibit 14?

13 A It is also a front view of the camera affixed to  
14 the defendant's vehicle.

15 Q And is it a different side?

16 A It's a different side of the camera.

17 Q These exhibits that you reviewed, People's 24, 25,  
18 12, 13 and 14, do they fairly and accurately represent the  
19 defendant's vehicle and the contents contained therein as  
20 you observed them on March 2nd, 2016?

21 A Yes.

22 MS. ENSELL: Judge, at this point I am going  
23 to move these exhibits in. I know this was kind of a  
24 lot that I listed. So, if he wants to look at them  
25 real quick again. Judge, at this point I am going to



## ENSELL - DIRECT - BOUCHARD

1 ask that we publish People's Exhibit 24 and --

2 THE COURT: Was there an objection?

3 MR. ALBERT: Just the same one that was  
4 already voiced.

5 MS. ENSELL: I'm not even sure I physically  
6 said to move them in.

7 THE COURT: All right, 12, 13, 14, 24 and  
8 25 -- I believe?

9 MS. ENSELL: Yes.

10 THE COURT: -- are in evidence.

11 MS. ENSELL: Judge, I am going to ask that we  
12 be allowed to publish to the jury first People's  
13 Exhibit 25.

14 THE COURT: All right.

15 Q Officer, again, just for clarification, where in  
16 the defendant's vehicle is this?

17 A It's the rear hatch area of the defendant's  
18 vehicle.

19 Q And this particular item, were you at some point  
20 able to determine what it was?

21 A Yes.

22 Q And pursuant to the terms of your warrant, did you  
23 take this item into your custody?

24 A Yes.

25 Q And you personally took it into custody?

## ENSELL - DIRECT - BOUCHARD

1 A Yes.

2 Q And did you transport this item?

3 A Yes.

4 Q And did it remain in your custody the entire time?

5 A That is correct.

6 Q Okay. And this particular item, were you able  
7 to -- is it a piece of a bigger -- was this alone or was it  
8 connected to other items in the car?

9 A It was connected to other items in the vehicle.

10 MS. ENSELL: Judge, I'm now going to request  
11 that we be able to publish People's Exhibit --

12 Q And People's Exhibit 12 that's already into  
13 evidence, again with this item, were you able to take this  
14 item into your custody pursuant to the terms of the  
15 warrants?

16 A Yes.

17 Q Were you able to determine what it was?

18 A Yes.

19 Q And when it went into your custody, did you  
20 personally take it into your custody?

21 A Yes.

22 Q And did you transport the item?

23 A Yes.

24 Q And did it remain in your custody the entire time?

25 A Yes.

## ENSELL - DIRECT - BOUCHARD

1 Q And what did you do once you got -- was this --  
2 you testified previously that the other back hatch item was  
3 connected. Is this what it was connected to?

4 A That is correct.

5 Q So, that unit, were you able to take the whole  
6 thing into custody?

7 A Yes, I did.

8 Q And once you got that unit back to where -- where  
9 did you take it?

10 A I took it back to the Ellicottville Police  
11 Department.

12 Q And what did you do back there?

13 A I removed the simulator card from both the front  
14 and rear camera, put them into a sim card reader and put it  
15 into my computer to review the files contained on the sim  
16 cards.

17 Q And were you able to determine whether or not the  
18 files contained on those were relevant to this incident?

19 A Yes.

20 Q And what did you do at that point to preserve  
21 those items for later viewing?

22 A I burned them to a CD.

23 Q And you did all of this. There was no one else?

24 A No one else, just myself.

25 Q Okay. And I am going to just ask also that we

## ENSELL - DIRECT - BOUCHARD

1 briefly publish People's Exhibit 14. And the way that this  
2 is depicted on the windshield, on that mount, when you  
3 observed the item on March 2nd, 2016, is that how it was  
4 mounted?

5 A Yes, it was.

6 MS. ENSELL: All right. I'm all set with  
7 that. Thank you.

8 THE COURT: Counselor, would this be an  
9 appropriate time to take our lunch break or --

10 MS. ENSELL: Yeah. Sorry, I did say I was  
11 gonna take a while. I am almost done, Judge, but it's  
12 up to the Court if that's what you want to do. He has  
13 some additional stuff he has to get in. So we can  
14 break.

15 THE COURT: All right. Let's take our lunch  
16 break then. Let's be back to the jury room at 1:30.

17 (Recess for lunch.)

18 (The following occurred without the jury present:)

19 THE COURT: Anything before the jurors come  
20 in?

21 MS. ENSELL: I don't believe so.

22 THE COURT: Okay. Let's get them in here.

23 (The jury returned to the courtroom and the  
24 following occurred:)

25 THE CLERK: Your Honor, all jurors and

## ENSELL - DIRECT - BOUCHARD

1 parties are present and ready to proceed.

2 THE COURT: Miss Ensell, you may continue  
3 with your direct of Officer Bouchard.

4 MS. ENSELL: Thank you, Judge.

5 Q Officer, I believe when we left off, we were  
6 talking about some photographs of a camera that you took  
7 into custody; is that correct?

8 A That's correct.

9 Q Okay. And you had given testimony as to whether  
10 or not you examined that object?

11 A That's correct.

12 Q So, you did examine it?

13 A Yes.

14 Q And you had an opportunity to review those files?

15 A Yes.

16 Q And I think we also -- what did you do with those  
17 files once they were reviewed?

18 A Once they were reviewed, I burned them to a CD.

19 Q And did you secure that CD as evidence?

20 A Yes, I did.

21 Q Okay. I'm going to now show the witness what is  
22 marked as People's Exhibit 29 for identification. Can you  
23 tell me what this is?

24 A It is a CD depicting the front and rear camera of  
25 the defendant's vehicle that were affixed to his windshield.

## ENSELL - DIRECT - BOUCHARD

1           Q     When you observed the actual camera, both the  
2 front and back itself, did it appear to be damaged in any  
3 way?

4           A     No.

5           Q     Have any missing pieces, parts -- I'm gonna  
6 withdraw that question, Judge. I apologize. And when you  
7 removed the sim cards, did they appear to be damaged in any  
8 way?

9           A     No.

10          Q     And when you placed the sim cards into a sim  
11 reader, did the files appear to be, at least to you, damaged  
12 in any way?

13          A     No, they did not.

14          Q     And this exhibit, People's 29, did you have an  
15 opportunity to review this exhibit prior to testifying  
16 today?

17          A     Yes.

18          Q     And when you reviewed the exhibit, did anything on  
19 it appear to be altered or adulterated in any way as from  
20 when you originally viewed it?

21          A     No.

22          Q     Okay. Was there anything else -- obviously, these  
23 aren't your cameras, but was there anything else about them  
24 that appeared they weren't in proper working order when you  
25 took them down?

## ENSELL - DIRECT - BOUCHARD

1 A No.

2 Q Officer, the next thing I want to talk about is a  
3 portion of your duties, do they involve any particular  
4 camera program that the Ellicottville Police Department has?

5 A Yes.

6 Q And what program is that?

7 A The mobile audio/video program.

8 Q And the mobile audio and video program, do you  
9 have any particular device that the Ellicottville Police  
10 Department uses?

11 A Yes. It's a body camera.

12 Q And who is in charge of that program?

13 A I am.

14 Q And is that program voluntary or mandatory for  
15 your officers?

16 A It's voluntary.

17 Q And going back to February of 2016, how many  
18 cameras did your department have at that point?

19 A One.

20 Q And the footage that is downloaded from those  
21 cameras, how does that work?

22 A What you do is you place it into a docking station  
23 and you download the file to a hard drive to the computer  
24 and then I store them on the hard drive.

25 Q And who is in charge of those stored files?

## ENSELL - DIRECT - BOUCHARD

1 A I am.

2 Q Were you at any point asked to retrieve those  
3 files in response to an incident that occurred on  
4 February 27<sup>th</sup>, 2016?

5 A Yes.

6 Q And did you do that?

7 A Yes.

8 Q Did you at any point in February of 2016 observe  
9 the camera that was used?

10 A Yes.

11 Q Did it appear to be broken in any way?

12 A No, it was not.

13 Q Did it otherwise appear to be in proper working  
14 order?

15 A Yes.

16 Q Did you also use that camera when you were  
17 working?

18 A Yes.

19 Q During 2016?

20 A Yes.

21 Q Did you have any issues with it?

22 A No.

23 Q And when you retrieved the file, did there appear  
24 to be any issues retrieving them?

25 A No.



## ENSELL - DIRECT - BOUCHARD

1 Q All right. At this point I am going to show you  
2 what has been marked as People's Exhibit 27, 27A, and 27B  
3 for identification. Let's start with Exhibit 27. Can you  
4 tell me what that is?

5 A This is the first body camera disc.

6 Q Okay. And did you have an opportunity prior to  
7 testifying today to review that exhibit?

8 A Yes.

9 Q And did you note that anywhere?

10 A Yes. I initialed it.

11 Q And when you had initially retrieved these files,  
12 did you review them?

13 A Yes.

14 Q All right. And when you reviewed this exhibit,  
15 did it appear to look the same as the files that you  
16 retrieved?

17 A Yes.

18 Q And did there appear to be any additions,  
19 adulterations or deletions?

20 A No.

21 Q I'm going to show you what's been marked as  
22 People's Exhibit 27A. Can you tell me what this is?

23 A This is the second part of the body camera disc.

24 Q Again, did you review this prior to today?

25 A Yes.

## ENSELL - DIRECT - BOUCHARD

1 Q Did you also note that somewhere?

2 A Yes. I initialed it.

3 Q And same question: When you reviewed this  
4 initially to when you reviewed this exhibit, did there  
5 appear to be any adulterations, additions or deletions?

6 A No.

7 Q I show you what has been marked as People's  
8 exhibit 27B. Can you tell me what that is?

9 A It's a body camera disc prior to and just a little  
10 into the defendant getting into the ambulance.

11 Q And you had the opportunity to review this disc  
12 prior to testifying today?

13 A Yes.

14 Q And did you note that somewhere?

15 A Yes. I initialed it.

16 Q And did what you viewed originally to what you saw  
17 in this exhibit, did there appear to be any alterations,  
18 adulterations or deletions?

19 A No.

20 Q I guess aside from the fact that it's not the  
21 whole thing?

22 A Correct.

23 Q Is there another portion of this investigation  
24 that you were asked to participate in?

25 A At this point in time, no.

## ENSELL - DIRECT - BOUCHARD

1 Q I refer you to specifically about measuring  
2 distances?

3 A Yes.

4 Q Okay. And did you have an opportunity to measure  
5 the distance in some method from Hencoop Hollow Road to Whig  
6 Street?

7 A That's correct.

8 Q And how did you do that?

9 A I used the odometer on my vehicle.

10 Q And to the best of your knowledge is that odometer  
11 calibrated?

12 A It is.

13 Q And what did you determine the distance to be  
14 between Hencoop Hollow Road and Whig Street?

15 A Approximately two miles.

16 Q Are you familiar with the individual that was the  
17 subject of this investigation?

18 A Yes.

19 Q Okay. And what was -- without getting into  
20 detail, what was your familiarity with the defendant?

21 A I've observed him on numerous occasions and spoke  
22 to him a few times.

23 Q Do you see the individual that -- when did you  
24 learn the name -- did you learn the name of the individual?

25 A Yes.

## ENSELL - DIRECT - BOUCHARD

1 Q And you also observed him on the video?

2 A Yes.

3 Q And do you see that individual in the courtroom  
4 today?

5 A Yes.

6 Q Can you identify him by an article of clothing?

7 A He's wearing a plaid white shirt with black  
8 stripes on it, sitting next to defense counsel.

9 THE COURT: Record can reflect  
10 identification.

11 Q And prior to this incident on  
12 February 27<sup>th</sup>, 2016, did you have any non-criminal contact  
13 with this defendant?

14 A Yes.

15 Q Can you describe that contact?

16 A I do a lot of foot patrol and I spoke to him along  
17 the street, and he's come in to the station asking for  
18 documents and things along that nature.

19 Q And these contacts, were they while you were in  
20 uniform?

21 A That's correct.

22 Q And the defendant, was he with anyone?

23 A No.

24 MR. ALBERT: I just object. He knows who he  
25 is. I don't understand the relevance of this

## ENSELL - DIRECT - BOUCHARD

1           whatsoever.

2                       MS. ENSELL: Judge, if I may respond?

3                       MR. ALBERT: Prior bad acts is not relevant.

4           So they see each on the streets --

5                       MS. ENSELL: Judge, if I may respond?

6                       THE COURT: Go ahead.

7                       MS. ENSELL: Though it's not evidence but  
8           part of what the defense has stated in their opening  
9           statement, they intend to use as a defense is the  
10          defendant's fear of police as motivation for why he  
11          didn't pull over. I think I'm allowed, at least on  
12          direct, to ask some questions relating to that of my  
13          officers.

14                      MR. ALBERT: Well, I think every officer in  
15          the county would have to get up there. How this one  
16          individual and my client get along has absolutely no  
17          relevance as to whether my client has a legitimate fear  
18          of officers in general or some officers.

19                      THE COURT: Well, Counselor, I will note, as  
20          we discussed, I think you did open the door to this  
21          type of examination. You can argue how much weight  
22          should be placed on this testimony.

23                      MR. ALBERT: Okay.

24                      THE COURT: But it is relevant. So  
25          overruled.

## ALBERT - CROSS - BUCHARD

1 MS. ENSELL: I have no further questions,  
2 Judge.

3 THE COURT: Okay. Mr. Albert.

4 CROSS EXAMINATION BY MR. ALBERT:

5 Q Good afternoon, Officer. Now -- sorry, just going  
6 back to my before lunch notes and recapture my recollection  
7 of things. Obviously, to begin, you weren't present on  
8 February 27<sup>th</sup> when this traffic stop occurred; correct?

9 A Correct.

10 Q Okay. You've had prior encounters with my client;  
11 correct?

12 A Yes.

13 Q And everything has been civil in nature, right?

14 A Yes.

15 Q Now, I guess -- without going through every single  
16 number, there's a whole bunch of photos that you spent much  
17 time identifying that are now in evidence; correct?

18 A Correct.

19 Q Okay. And the gist -- the sum and substance of  
20 all these photographs, that my client has some cameras in  
21 his car; correct?

22 A Correct.

23 Q And I know some of them were -- this is the camera  
24 from this view, this is the camera from this view -- how  
25 many cameras total were in his vehicle?

## ALBERT - CROSS - BUCHARD

- 1           A     Three.
- 2           Q     Do you have cameras in your vehicle?
- 3           A     No.
- 4           Q     Somewhat rare?
- 5           A     Correct.
- 6           Q     In your experience as an officer you've seen them?
- 7           A     Yes.
- 8           Q     But most don't have three cameras in their  
9     vehicles?
- 10          A     No.
- 11          Q     But it isn't illegal to have three cameras?
- 12          A     No.
- 13          Q     Or 30 cameras?
- 14          A     No.
- 15          Q     It doesn't make one guilty of a crime because they  
16     have a lot of cameras?
- 17          A     Correct.
- 18          Q     Well, how many cameras has your department issued  
19     at this time, body cams?
- 20          A     Currently, two.
- 21          Q     And evidently your department sees value in having  
22     cameras because they capture what's happening; correct?
- 23          A     Correct.
- 24          Q     They capture -- cameras don't lie. You've heard  
25     the expression "the eye in the sky doesn't lie"; correct?

## ALBERT - CROSS - BUCHARD

1 A Correct.

2 Q And unless a camera is being altered or tampered  
3 or anything else, a camera is going to depict what is taking  
4 place by and large?

5 A Correct.

6 Q People lie sometimes, right?

7 A Correct.

8 Q Cameras generally don't?

9 A Right.

10 Q So, from the fact that my client has cameras,  
11 there's really not much you can say as to why he has them or  
12 what he uses them for or anything else; correct?

13 A I don't know what he uses them for.

14 Q To record things evidently, right? That would  
15 seem to be the case, right?

16 A Correct.

17 Q Now, there was some camera footage that depicts  
18 these incidents, the traffic -- you know, whatever happened,  
19 the traffic circumstances and so forth from  
20 February 27<sup>th</sup> at 2:40 a.m.; right?

21 A Correct.

22 Q Okay. Other than that, he can have -- other than  
23 that, as you said, whatever else was on those cameras or  
24 what wasn't has absolutely no relevance to really anything;  
25 right?



## ALBERT - CROSS - BUCHARD

1 A Correct.

2 Q Let me backtrack. If there was evidence of crimes  
3 on those cameras, other crimes, that would be an issue;  
4 correct?

5 A Not from my standpoint, if it didn't happen in my  
6 jurisdiction.

7 Q Well, I mean, if you saw a dead body on those  
8 cameras, you'd do something about it; right?

9 A Right.

10 Q So, if you saw evidence of crimes on those  
11 cameras, you're saying you wouldn't do anything about it?

12 A I would.

13 Q And obviously, you just gave everything back to my  
14 client; right?

15 A Right.

16 Q So, it's not like whatever was on it -- who knows,  
17 but not crimes, nothing that really matters. It's his own  
18 business, right?

19 A Well, I believe there was a crime at the end of  
20 the day on those videos.

21 Q What I'm talking about -- you're talking about  
22 February 27<sup>th</sup>, 2016?

23 A Correct.

24 Q What I'm saying is everything else, you know, had  
25 absolutely nothing else to do with February 27<sup>th</sup> at 2:40

## ALBERT - CROSS - BUCHARD

1 a.m.?

2 A Correct.

3 Q And what crime is it that you think the videos  
4 demonstrate?

5 A Obstruction of Governmental Administration and  
6 multiple Vehicle & Traffic Law violations.

7 Q And you know that's what my client's charged with,  
8 correct?

9 A Correct.

10 Q And you talked to Officer Kowalski. When is the  
11 first time you talk to Officer Kowalski?

12 A About the incident?

13 Q Yeah.

14 A He called me to tell me that there was an  
15 incident.

16 Q And he told you what occurred?

17 A Very briefly.

18 Q He didn't tell you that he's charging my client  
19 with Obstruction of Governmental Administration?

20 A Not at the present time.

21 Q And he did not, in fact, charge my client with  
22 Obstruction of Governmental Administration?

23 A He did later on.

24 Q He did?

25 A That's correct.

## ALBERT - CROSS - BUCHARD

1 Q When?

2 A I can't tell without looking at his incident  
3 report.

4 Q So, would it surprised you to know that he never  
5 charged my client with -- you think he did?

6 A I think he would.

7 Q You think he would?

8 A Yeah. Why wouldn't he?

9 Q Let me ask you this: You make many arrests?

10 A Correct.

11 Q You've made DWI arrests?

12 A Correct.

13 Q In fact, my client was charged with DWI that  
14 night?

15 A Correct.

16 Q So generally, crime takes place, you charge them?

17 A Correct.

18 Q You don't -- no value in waiting and waiting and  
19 waiting to charge someone with a crime when you saw it  
20 happen right in front of your face; right?

21 A There's different circumstances to every  
22 circumstance. You might not know something at that present  
23 time.

24 Q That's nice, but that's sort of -- I don't think  
25 you answered my question. You tell me, when an officer sees

## ALBERT - CROSS - BUCHARD

1 a crime take place -- you guys are trained in enforcing the  
2 Penal Law, right?

3 A Correct.

4 Q And sometimes -- you're right, sometimes  
5 investigations need to take place. If there's a burglary,  
6 you might want to interview neighbors, witnesses. So,  
7 sometimes -- I understand just because someone's a suspect  
8 doesn't mean you charge them?

9 A Correct.

10 Q But when something happens right in front of an  
11 officer's face and you see it happening, you're gonna make  
12 that charge; right?

13 A Most of the time.

14 Q So, for instance -- I don't know, just as a  
15 hypothetical, if I were to assault somebody right now,  
16 you're not gonna be like I'm gonna wait and talk and think,  
17 three months down the road I might charge him. You're gonna  
18 lock me up, right?

19 MS. ENSELL: Judge, I understand his line of  
20 questioning. One of my objections is he's not the  
21 arresting officer. So, if the question is why didn't  
22 the arresting officer decide not to do something --  
23 he's speculative on his part. I understand if he's  
24 saying he did it and what he would do, but he's not the  
25 arresting officer here.

## ALBERT - CROSS - BUCHARD

1 MR. ALBERT: Judge --

2 MS. ENSELL: So, I don't understand his line  
3 of questioning. He's not the arresting officer.

4 THE COURT: Counselor, don't say too much  
5 because I'll allow this, but I think you've already had  
6 your question answered.

7 MR. ALBERT: That was the last question.  
8 Where was I?

9 Q I think what it was was if -- you're trained --  
10 you're with the same department as Officer Kowalski;  
11 correct?

12 A Correct.

13 Q And you're trained when you witness a crime, you  
14 make an arrest for that crime; correct?

15 A Correct.

16 Q Okay. Now, Officer, was it you or Officer  
17 Kowalski that obtained a search warrant relating to this  
18 case?

19 A Officer Kowalski and myself but Officer Kowalski  
20 is on the paperwork.

21 Q Okay. Have you obtained search warrants before?

22 A Correct.

23 Q And this was originally a DWI arrest, right?

24 A Yes.

25 Q Have you obtained search warrants for DWI cases?

## ALBERT - CROSS - BUCHARD

1 A For blood.

2 Q For blood, not for whatever we have here?

3 A Correct.

4 Q All right. And showing you Defendant's Exhibit D  
5 just for identification at this point, if you could look  
6 through it and say whether it fairly and accurately reflects  
7 the search warrant that you presented to the Court in  
8 relation to this incident?

9 A Yes.

10 Q Okay. And it speaks to video footage within the  
11 vehicle or cameras, correct?

12 A Correct.

13 Q All right. It doesn't say anything about  
14 Obstruction of Governmental Administration in the search  
15 warrant?

16 A Correct.

17 Q And did you obtain a search warrant for blood in  
18 this instance or no?

19 A Not myself specifically.

20 Q Did someone?

21 A I don't believe so.

22 Q You're aware a blood sample was submitted?

23 A Yes.

24 Q And you're aware of the results?

25 A No, I'm not.

## ALBERT - CROSS - BUCHARD

1 Q You're aware he's not on trial for DWI right now,  
2 correct?

3 A Correct.

4 Q But originally, evidently he was charged with DWI  
5 by Officer Kowalski; correct?

6 A Correct.

7 Q All right. And as a part of that, Officer  
8 Kowalski filled out paperwork as a bill of particulars;  
9 correct?

10 A I believe he should if that was the case.

11 Q He was saying hey -- never mind, I'll leave that  
12 line of questioning for Officer Kowalski. Basically, he  
13 wasn't waiting on that charge, correct? He charged him that  
14 night with DWI, right?

15 MS. ENSELL: Judge, I think that's been asked  
16 and answered. I think we're well aware at this  
17 point --

18 MR. ALBERT: I don't think by this point.  
19 It's a simple question.

20 THE COURT: All right. It's a simple  
21 question and proceed.

22 A Could you re-ask it?

23 Q He charged my client with DWI that night?

24 A Correct.

25 Q He didn't say I'm gonna wait till I get the blood

## ALBERT - CROSS - BUCHARD

1 before I do that? He didn't wait, he charged my client;  
2 correct?

3 A Correct.

4 Q But he did not charge him with Obstruction of  
5 Governmental Administration; correct?

6 A I don't know about at that point in time.

7 Q Well, you said before that you know he didn't do  
8 it at that time?

9 A At that night, no.

10 Q Okay. Going back to these photographs, you're  
11 right in a sense that one of the videos in my client's car  
12 depicts the events that happened on 242, 2:40 a.m. that  
13 night; correct?

14 A Correct.

15 Q One of them did do that, okay. None of them have  
16 any relevance -- basically, it shows that my client didn't  
17 pull over when he was -- when cars were behind him and  
18 activating his lights, telling him to do so; right?

19 A Correct.

20 Q And that's not being -- but what I'm saying is --  
21 well, none of them saw him speeding, correct?

22 A I wouldn't know.

23 Q Well, you've reviewed the footage?

24 A I wouldn't know how fast he would be going at that  
25 point in time.



## ENSELL - REDIRECT - BOUCHARD

1 Q None of them can speak to what my client was  
2 thinking when he didn't pull over?

3 A Correct.

4 Q None of them could speak to if he was trying to  
5 prevent a traffic stop from happening or going somewhere  
6 where it would be lighter?

7 A I didn't know what he was thinking.

8 Q That's what I'm saying. All the photographs in  
9 the world aren't going to speak to what my client's state of  
10 mind was, what his intent was when those lights were first  
11 activated; correct?

12 A Correct.

13 MR. ALBERT: If I could just have one moment,  
14 Judge, to speak with my client.

15 (Discussion off the record.)

16 MR. ALBERT: I have no further questions,  
17 Judge.

18 THE COURT: Miss Ensell.

19 MS. ENSELL: Just a couple of questions for  
20 clarification, Judge.

21 REDIRECT EXAMINATION BY MS. ENSELL:

22 Q Officer, one question for you. Now, it has been  
23 stated that you have been contacted that evening or I think  
24 that's what you said in reference to this incident. Is that  
25 standard procedure?

## ENSELL - REDIRECT - BOUCHARD

1 A Yes, it is.

2 Q And for your patrolmen, that's standard procedure?

3 A Correct.

4 Q Okay. Now, if -- you were asked questions on  
5 cross examination concerning what charges were being  
6 considered by Officer Kowalski. If you were to be able to  
7 refer to an incident report -- I guess, first, I'll ask: As  
8 supervisor of your patrolmen, generally did you review  
9 incident reports?

10 A That is correct.

11 Q And if you were to refer to that incident report,  
12 would it refresh your recollection on what charges were  
13 being considered by Officer Kowalski?

14 A Yes, it would.

15 MR. ALBERT: Judge, I'll object in the sense  
16 that, number one, he's never said -- number one, he  
17 doesn't remember anything. So, there's no basis to  
18 refresh his recollection. He didn't say what was being  
19 considered or not but what was charged or not charged.  
20 He never said he doesn't remember anything is the  
21 point, Your Honor. He doesn't need his recollection  
22 refreshed.

23 THE COURT: I'm gonna allow it. I believe  
24 you opened the door on this one, Counselor.

25 MS. ENSELL: Judge, I am going to show the

## ENSELL - REDIRECT - BOUCHARD

1 witness what has been marked as People's Exhibit 32 for  
2 identification to refresh the witness' recollection.

3 If you can take a second to review that and I'm also  
4 gonna take a second to review.

5 Q There's a date on the bottom?

6 A That is correct.

7 Q Did reviewing this document refresh your  
8 recollection?

9 A Yes, it did.

10 Q Do you recall having your recollection refreshed  
11 when you reviewed the incident report whether Officer  
12 Kowalski was, in fact, considering an Obstruction of  
13 Governmental Administration charge?

14 A Yes, he was.

15 Q And based on your review of that document, what  
16 was the date on which this incident report was retrieved --  
17 I guess signed by you?

18 A The date that it was signed by me was 2-29 of  
19 2017.

20 Q '17?

21 A '16, I'm sorry.

22 MS. ENSELL: No further questions, Judge.

23 THE COURT: Mr. Albert.

24 MR. ALBERT: Yeah, briefly.

25

## ALBERT - RECROSS - BOUCHARD

1 RECROSS EXAMINATION BY MR. ALBERT:

2 Q So, evidently he was considering an Obstruction of  
3 Governmental Administration charge three days after the  
4 incident or two days after the incident; right?

5 A Correct.

6 Q And to arrest someone for a charge, a police  
7 officer only needs probable cause to make an arrest?

8 A Correct.

9 Q Okay. So, there's probable cause -- anyway,  
10 charges are considered all the time and then you make the  
11 charges appropriate based upon what happened with the  
12 person's conduct; right?

13 A Correct.

14 Q All right. Obstruction was considered but not  
15 charged on February 27<sup>th</sup>, right?

16 A Correct.

17 Q February 28<sup>th</sup>, right?

18 A Correct.

19 Q February 29<sup>th</sup>?

20 A That's when it was charged.

21 Q You think it was charged --

22 A Well, on his incident report.

23 Q Okay. Is an incident report, is that a complaint?  
24 Is that something that's filed with the Court as a  
25 complaint?

## ALBERT - RECROSS - BOUCHARD

1 A No, it is not.

2 Q So, an incident report is an internal police  
3 document of some sort; correct?

4 A Correct.

5 Q Like a police report, for instance?

6 A Correct.

7 Q But to file a charge with the Court you have to  
8 file a complaint?

9 A Correct.

10 Q So, he also said my client was unlawfully fleeing  
11 that night; correct?

12 A Yes.

13 Q And to be unlawfully fleeing, one has to be going  
14 20 miles over the speed limit?

15 A Correct.

16 Q So, charges were considered, obstruction,  
17 unlawfully fleeing, in an incident report, right?

18 A Right.

19 Q But they were not charged?

20 A Not at that time.

21 Q Well, not on February 29<sup>th</sup>, and you don't know  
22 when those were charged?

23 A I do not.

24 Q Or what was charged?

25 A I do not.

## ENSELL - REDIRECT - BOUCHARD

1 Q And again, the standard to charge someone is  
2 probable cause that a crime's committed?

3 A Right.

4 Q But to convict someone as a jury would do, it has  
5 to be guilt beyond any reasonable doubt?

6 A Correct.

7 MS. ENSELL: I do have one more clarifying  
8 question, Judge.

9 REDIRECT EXAMINATION BY MS. ENSELL:

10 Q Generally speaking, Officer, this particular case  
11 was a little bit outside of the normal; correct?

12 A That's correct.

13 MR. ALBERT: Objection, Judge, that's a  
14 leading question and what does it even mean and what's  
15 its relevance?

16 MS. ENSELL: I'll withdraw it, Judge, that's  
17 fine.

18 THE COURT: Rephrase it if you wish.

19 Q In this particular case how many jurisdictions did  
20 this occur in?

21 A Multiple jurisdictions.

22 Q And generally speaking, outside of certain  
23 circumstances, do you typically file charges in multiple  
24 jurisdictions?

25 A Typically, no.

## ALBERT - RECROSS - BOUCHARD

1 MS. ENSELL: Okay. No further questions,  
2 Judge.

3 RECROSS EXAMINATION BY MR. ALBERT:

4 Q It's not the first time someone has gone a mile or  
5 two miles and not pulled over right away; correct?

6 A Correct.

7 Q In any of those other cases that you're aware of  
8 ever ended up in county court?

9 A Not to my knowledge -- I don't know, I couldn't  
10 tell you.

11 Q Thank you. And in terms of jurisdiction, if an  
12 offense starts somewhere, then that municipality would have  
13 jurisdiction for the whole offense; correct?

14 A Correct.

15 MR. ALBERT: Okay, thank you. No further  
16 questions.

17 THE COURT: Miss Ensell, anything further?

18 MS. ENSELL: No, Judge.

19 THE COURT: All right. Officer, you may step  
20 down. Thank you. Next witness.

21 MS. ENSELL: That would be Officer Cori  
22 Kowalski, Judge. While we're awaiting, again I'll ask  
23 the same question, whether or not there's any objection  
24 to us releasing the witness?

25 MR. ALBERT: No.

## ENSELL - DIRECT - KOWALSKI

1 THE COURT: Okay.

2 C O R I K O W A L S K I, having been first duly sworn  
3 according to law, was examined and testified as follows:

4 DEPUTY: Please have a seat state your name  
5 and business address for the record.

6 THE WITNESS: Absolutely. My name is Cori,  
7 C-O-R-I, middle initial M., last name Kowalski,  
8 K-O-W-A-L-S-K-I, employed with the Town of  
9 Ellicottville Police Department located at One West  
10 Washington Street, Town of Ellicottville, New York.

11 MS. ENSELL: One moment, Judge.

12 DIRECT EXAMINATION BY MS. ENSELL:

13 Q Now, I believe you probably already stated, but  
14 are you currently employed with the Ellicottville Police  
15 Department?

16 A Yes, Ma'am.

17 Q Are you full time or part time there?

18 A Part time.

19 Q There you go, just make sure you're speaking loud.  
20 Is there anywhere else that you are also employed?

21 A I am.

22 Q Where?

23 A Full time with the Town of Hamburg police, part  
24 time with the Village of Franklinville, part time with the  
25 Village of Gowanda, and part time with the City of Salamanca



## ENSELL - DIRECT - KOWALSKI

1 currently.

2 Q Okay, that's a lot. Was there a point in your  
3 career in which you were also a full time officer in the  
4 Town of Ellicottville?

5 A Yes, Ma'am, there was.

6 Q Do you recall when you were hired at  
7 Ellicottville?

8 A I believe it was August of 2015.

9 Q And how long were you full time?

10 A Approximately eight months.

11 Q So now, obviously, you're still currently  
12 employed, but what was the reason you became part time?

13 A Part time at the Town of Ellicottville?

14 Q Yes.

15 A The reason for it?

16 Q Yes.

17 A I dropped down. I lateraled to the Town of  
18 Hamburg, a lateral employment.

19 Q And how long have you been a police officer all  
20 together?

21 A I started my employment with the Village of  
22 Franklinville in 2011, October of 2011.

23 Q Okay. And did you receive any training in order  
24 to become a police officer?

25 A I have.

## ENSELL - DIRECT - KOWALSKI

1 Q Where was that at?

2 A Erie County Police Academy.

3 Q And approximately how long was that program?

4 A Approximately six months.

5 Q And did you successfully complete that program?

6 A I did.

7 Q Can you describe some of the training that you got  
8 there?

9 A Yeah, basic police academy which -- academia which  
10 would basically go over the Penal Law, Vehicle & Traffic  
11 Law, Criminal Procedure Law, traffic stops, domestics, all  
12 kinds of sorts of situations.

13 Q And each of these respective places that you  
14 stated you were employed, did you also receive training with  
15 those police forces?

16 A I did.

17 Q I'm sorry, I cut you off.

18 A No. I did.

19 Q And specifically in Ellicottville, did you receive  
20 field training?

21 A I did.

22 Q Now, during your field training with any of these  
23 departments including Ellicottville, did you ever have an  
24 opportunity to go over pursuits?

25 A To go over pursuits?

## ENSELL - DIRECT - KOWALSKI

1 Q Yeah.

2 A No, I never went over pursuits with anyone.

3 Q So, was there ever a point in time in which you  
4 were involved in a pursuit with a supervising officer?

5 A No.

6 Q What are your duties as a patrolman for the Town  
7 of Ellicottville?

8 A Serve and protect the citizens of the Town of  
9 Ellicottville to the best of my ability within the confines  
10 of the Penal Law, Vehicle & Traffic Law and Criminal  
11 Procedure Law.

12 Q And is it also your duties to enforce those laws  
13 that you just stated?

14 A Yes, Ma'am.

15 Q I want to draw your attention specifically to  
16 February 27<sup>th</sup>, 2016. Were you working on that date?

17 A I was.

18 Q What was your shift?

19 A I was working from six p.m. till four a.m. the  
20 following morning.

21 Q So, six p.m., what date did that actually fall on?

22 A The 26<sup>th</sup>.

23 Q And into?

24 A The 27<sup>th</sup>.

25 Q When you were working, were you in uniform?

## ENSELL - DIRECT - KOWALSKI

1 A I was.

2 Q Okay. And did your uniform clearly identify you  
3 as a police officer?

4 A Yes, Ma'am.

5 Q Were you operating a marked patrol vehicle on that  
6 evening?

7 A Yes, I was.

8 Q Did your marked patrol vehicle come equipped with  
9 lights and sirens?

10 A Yes, it was.

11 Q And were you working alone or with a partner?

12 A I was working alone in my vehicle.

13 Q Were other officers working with you as well?

14 A Yes.

15 Q Which officers?

16 A Officer Graham and Officer Spry.

17 Q And your duties when you were working that date,  
18 were they substantially the same as you just described?

19 A Yes, they were.

20 Q Was your rank also the same as you described?

21 A Yes, Ma'am.

22 Q At approximately 2:40 a.m. on that date did  
23 something attract your attention specifically?

24 A Yes, Ma'am, it did.

25 Q Can you please describe what that was?

## ENSELL - DIRECT - KOWALSKI

1           A     Absolutely. I was in operation of my patrol  
2 vehicle traveling eastbound on State Route 242 when I  
3 observed a black SUV which was traveling southbound on  
4 Hencoop Hollow Road. That vehicle did not have any lights  
5 on.

6           Q     Okay. The location that you've just described,  
7 what jurisdiction is that in?

8           A     Town of Ellicottville.

9           Q     Okay. Is there another jurisdiction close by?

10          A     Yes, Ma'am.

11          Q     What jurisdiction is that?

12          A     Town of Mansfield.

13          Q     Judge, I'm gonna show the defendant what has been  
14 marked as People's Exhibit 2 through 7. I'm gonna start  
15 with People's Exhibit 2 for identification. Do you  
16 recognize that location?

17          A     Yes, Ma'am.

18          Q     And what is that a photograph of?

19          A     The intersection of Hencoop Hollow Road and State  
20 Route 242.

21          Q     And is that a fair and accurate representation of  
22 that location that you've just described as it would have  
23 been on February 27<sup>th</sup>, 2016, aside from it being light  
24 instead of dark?

25          A     Yes, Ma'am, it is.

## ENSELL - DIRECT - KOWALSKI

1 Q Okay. I'm gonna show you what's been marked as  
2 People's Exhibit 3 for identification. Can you tell me what  
3 this is?

4 A Once again, it's the same intersection, Hencoop  
5 Hollow at State Route 242 showing the stop sign and the  
6 road.

7 Q And once again, does that fairly and accurately  
8 represent what you've just described as it would have been  
9 on February 27, 2016, other than it's light out?

10 A Yes, Ma'am.

11 Q I'm gonna show you what's been marked as People's  
12 Exhibit 4 for identification. Can you tell me what that is?

13 A Yes, Ma'am. That is state Route 242. We've got a  
14 little intersection there of Hencoop Hollow.

15 Q And what direction is that facing?

16 A Eastbound.

17 Q And would this, again, fairly and accurately  
18 reflect what you observed on February 27<sup>th</sup>, what Route 242  
19 would have looked like on February 27, 2016, other than it's  
20 light instead of dark?

21 A Yes, Ma'am.

22 Q Now, showing you what has been marked as People's  
23 Exhibit 5 for identification, can you describe what that is?

24 A It's the same intersection. It's just got a  
25 better photograph of the Hencoop Hollow sign, the State

## ENSELL - DIRECT - KOWALSKI

1 Route 242 and Hencoop Hollow intersection.

2 Q Which direction is that facing?

3 A West.

4 Q And again, would that fairly and accurately  
5 represent what it's meant to depict on  
6 February 27<sup>th</sup>, 2016, other than it's daytime instead of  
7 night?

8 A Yes, Ma'am.

9 Q Showing you People's Exhibit No. 6 for  
10 identification, can you tell me what that is?

11 A Once again, it's a photograph of the intersection  
12 of State Route 242 and Hencoop Hollow Road.

13 Q And again, does this fairly and accurately depict  
14 how that would have been on February 27<sup>th</sup>, 2016, other  
15 than being daytime instead of nighttime?

16 A Yes, Ma'am.

17 MS. ENSELL: Judge, at this point, based  
18 on his testimony, I am going to move in People's  
19 Exhibits 2 through 6.

20 THE COURT: Any objection?

21 MR. ALBERT: No, Your Honor.

22 THE COURT: All right, 2 through 6 are in  
23 evidence.

24 MS. ENSELL: I am going to ask to publish  
25 some of these so I can ask questions. Let me just kind

## ENSELL - DIRECT - KOWALSKI

1 of -- okay.

2 Q I'm gonna first ask for People's Exhibit 3 to be  
3 published to the jury. Officer, at this point I'm gonna ask  
4 you -- you should be able to observe in front of you  
5 People's Exhibit 3.

6 A Yes, Ma'am.

7 Q Particularly important, there are three signs in  
8 this exhibit. First, what is the red one?

9 A That's a stop sign.

10 Q Okay. And again, for the jury's information, what  
11 intersection is this located at?

12 A At the intersection of Hencoop Hollow Road and  
13 State Route 242.

14 Q And there's another sign that depicts the name?

15 A Yes, Ma'am.

16 Q And the sign, what does it say?

17 A Hencoop Hollow Road.

18 Q No, the one behind it?

19 A Welcome to the Town of Ellicottville.

20 Q And does that match up to where the Ellicottville  
21 town line is?

22 A Yes, it does.

23 Q I'm now going to ask to have published People's  
24 Exhibit 6. Officer, in front of you, if you can refer to  
25 People's Exhibit 6, there's one sign that appears in the



## ENSELL - DIRECT - KOWALSKI

1 foreground of the picture that's clearly closer. It's where  
2 the picture was taken. What does that sign say?

3 A Welcome to the Town of Ellicottville.

4 Q And there's another sign in the background of the  
5 picture, if you can make out what it says -- you might have  
6 to get kind of close. Can you see what it says?

7 A It's going to say Welcome to the Town of  
8 Mansfield.

9 Q So, essentially, this picture depicts where those  
10 two jurisdictions meet?

11 A Yes, Ma'am.

12 Q And the road -- so, there's a road -- does it  
13 appear there's an intersection in that picture?

14 A Yes.

15 Q So, the road that's closer to where the picture  
16 was taken, which road is that?

17 A Route 242.

18 Q And on this picture do you see markings on that  
19 road? Is that road lined?

20 A Is it lined? Yes, Ma'am.

21 Q And Officer, those two roads that you described,  
22 both Hencoop and Route 242, are those roads that are open to  
23 the public?

24 A They are.

25 Q And Route 242, does that have clearly marked lanes

## ENSELL - DIRECT - KOWALSKI

1 of traffic?

2 A It does.

3 Q And how many lanes are there?

4 A Two.

5 Q And would those be two traveling in opposite  
6 directions?

7 A That they are.

8 Q Officer, going back to the incident, the incident  
9 you described, you say you made an observation; is that  
10 correct?

11 A Yes, Ma'am.

12 Q What do you do once that observation was made?

13 A I originally passed the vehicle. The vehicle came  
14 to a complete stop and then turned right onto -- westbound  
15 onto State Route 242 at which point I had passed the  
16 vehicle. I performed a u-turn with my patrol vehicle to get  
17 behind the vehicle at that time.

18 Q I want to show you what has been marked as  
19 People's Exhibit 29 for identification. Can you tell me  
20 what this is?

21 A It's the front and rear camera to the black SUV.

22 Q Okay. And at some point -- did there come a point  
23 in time during this incident where you had the opportunity  
24 to observe the interior of the black SUV?

25 A I did.

## ENSELL - DIRECT - KOWALSKI

1 Q And when you made those observations, did you view  
2 any sort of equipment that could have been used for  
3 recording?

4 A Yes, Ma'am.

5 Q And prior to testifying today, did you have an  
6 opportunity to view this exhibit that you just identified?

7 A Yes, Ma'am.

8 Q And did you note that in any way?

9 A I did.

10 Q How did you note it?

11 A I initialed on the CD. It is the date and my  
12 initials.

13 Q Okay. And having made those notations, did you  
14 have an opportunity, when reviewing this, to determine  
15 whether or not it was a fair and accurate depiction of the  
16 events that it was recording on February 27<sup>th</sup>, 2016?

17 A Yes, Ma'am.

18 Q Okay. And was it?

19 A Yes.

20 Q All right.

21 MS. ENSELL: Judge, I think at this point  
22 we're going to move in People's Exhibit 29.

23 THE COURT: Objections?

24 MR. ALBERT: That was the -- what was this?

25 MS. ENSELL: Front and rear camera. I'm

## ENSELL - DIRECT - KOWALSKI

1 moving it into evidence.

2 MR. ALBERT: Can I briefly voir dire, Your  
3 Honor?

4 THE COURT: Go ahead.

5 VOIR DIRE BY MR. ALBERT:

6 Q So, you said you viewed the contents of that  
7 footage?

8 A Yes, sir.

9 Q Good afternoon by the way.

10 A Good afternoon.

11 Q And you're saying that depicts the, I guess,  
12 entire pursuit, if you want to call it that?

13 A The whole incident, sir, yes.

14 Q The incident from my client's front camera; is  
15 that right?

16 A Front and rear camera, yes.

17 Q And so, basically, it picks up footage from when  
18 his car first came in the vicinity of your vehicle; correct?  
19 That's when the footage starts?

20 A Yeah.

21 Q And what ends the footage? Where does it end?

22 A It ends where the ambulance -- where he gets out  
23 of the vehicle or the window's broken and he gets out of the  
24 vehicle.

25 Q Is there a roadside conversation depicted on that

## ENSELL - DIRECT - KOWALSKI

1 video?

2 A Yes.

3 Q And does it show my client getting into an  
4 ambulance?

5 A I don't recall if it shows him getting into an  
6 ambulance.

7 Q But there's nothing that shows him in a hospital  
8 or anything?

9 A No.

10 Q His medical records or anything like that aren't  
11 divulged on that?

12 A No, not on that CD.

13 MR. ALBERT: I have no objection to it coming  
14 into evidence.

15 THE COURT: All right, People's 29 is in  
16 evidence.

17 MS. ENSELL: Judge, at this point, we're  
18 going to ask that this be published to the jury.

19 THE COURT: Okay. One question, does that  
20 podium block anyone's view?

21 JUROR: A little bit.

22 THE COURT: If anyone has trouble seeing or  
23 hearing, please let me know. Do you want the lights  
24 off, would that make it better? We've got jurors  
25 saying yes.

## ENSELL - DIRECT - KOWALSKI

1 THE COURT: Any objection from counsel?

2 MR. ALBERT: Not at all.

3 THE COURT: Go ahead.

4 MS. ENSELL: Judge, I am going to note and it  
5 was testified to, one of the things, we're going to  
6 play them in sequence front then back.

7 (Exhibit 29 was played to the jury.)

8 Q Now, Officer, before I finish the video, I'm gonna  
9 ask a clarifying question. At the time did you recognize  
10 the road that was being traveled on?

11 A Yeah. It was State Route 242.

12 Q And what was the direction of travel if you  
13 noticed?

14 A Of those two vehicles?

15 Q No, the camera -- the travel of the vehicle that  
16 the cameras were in?

17 A It's traveling westbound.

18 (People's Exhibit 29 continued to be played.)

19 Q Officer, going back to the footage we just  
20 played -- and stop the video here. Do you recognize the  
21 street that's being turned onto?

22 A Not off the top of my head, Ma'am.

23 Q And just based on the orientation of what you're  
24 looking at, is this the front facing or back facing camera?

25 A Appears to be the front facing.

## ENSELL - DIRECT - KOWALSKI

1 (People's Exhibit 29 continued to be played.)

2 Q Officer, I'm going to go back a little bit on this  
3 one. At this point, based on your review of the footage,  
4 were you able to determine what vehicle it is that we see in  
5 that frame?

6 A Yes, Ma'am, I could.

7 Q And what vehicle is it?

8 A That's my patrol vehicle.

9 Q So, based on the fact -- on your review of this  
10 footage, what location would this have been taken with at  
11 this point in the vehicle?

12 A It's at the location of Hencoop Hollow Road at  
13 State Route 242.

14 (People's Exhibit 29 continued to be played.)

15 Q Officer, again I'll stop the video. I just want  
16 to ask you a clarifying question. From what you're looking  
17 at, again, do you recognize the vehicle that's contained in  
18 this frame?

19 A Yes, Ma'am, I do.

20 Q And what vehicle is that?

21 A That's my patrol vehicle, Ma'am.

22 Q I also suppose for clarification we should note  
23 another thing. Do you observe a time stamp on this video?

24 A I do.

25 Q And does something appear to be incorrect about

## ENSELL - DIRECT - KOWALSKI

1 the time stamp?

2 A The time itself.

3 Q What appears to be wrong about it?

4 A The time stamp is indicating the correct date, the  
5 27th of February. However, it's indicating at 03:38 hours  
6 in the morning on the 27<sup>th</sup> which is incorrect.

7 Q Okay. I guess, just to ask that clarifying  
8 question before I got distracted, at what time approximately  
9 was this actually occurring?

10 A Approximately 02:40 hours, 2:40a.m.

11 (People's Exhibit 29 continued to be played.)

12 Q I'm again going to stop the video to ask a  
13 clarifying question for the jury. There's another vehicle  
14 that was just depicted in the frame. Maybe we can back it  
15 up a little bit. Do you recognize that vehicle?

16 A Yes, I do.

17 Q And which vehicle -- who was operating that  
18 vehicle?

19 A Officer William Hunt with the Cattaraugus County  
20 Sheriff's Office.

21 Q Officer, at this point do you notice anything  
22 about the video that changed about your patrol car?

23 A Yes, Ma'am.

24 Q What is that?

25 A I activated my emergency lights.



## ENSELL - DIRECT - KOWALSKI

1 (People's Exhibit 29 continued to be played.)

2 Q Officer, in reference to that particular video,  
3 I'm going to ask you, it appears you were using other source  
4 of light other than your emergency lights. What was that?

5 A A spot lamp.

6 Q What was your purpose in doing that?

7 A I assumed he was going to pull over and it helps  
8 me have a better view of the interior of the cabin and  
9 occupants of the vehicle as well as notifying oncoming  
10 traffic that a stop was being performed.

11 Q And what was the purpose of that?

12 A To gather the attention of the operator of the  
13 vehicle.

14 (People's Exhibit 29 continued to be played.)

15 Q Now, Officer Kowalski, at the end of that, and  
16 we'll see it more, but I observed something occur and I'll  
17 take it back for you so that you know what I'm referring to.  
18 In the corner of the frame I see something occurring and  
19 obviously some lights. What was going on at that point?  
20 Can you describe what was happening?

21 A Yes, Ma'am. At that point I pulled my patrol  
22 vehicle parallel with that vehicle, obviously in the same  
23 direction with that vehicle, to observe the interior of the  
24 vehicle along with the occupants and the operator.

25 Q And what was your purpose at that point of pulling

## ENSELL - DIRECT - KOWALSKI

1 parallel?

2 A To observe how many occupants were in the vehicle,  
3 also to gather the attention of the operator, to observe  
4 him, make sure that I didn't see any weapons, no one's being  
5 held hostage, to observe his demeanor, to see if he appeared  
6 to be sloshing, having a medical issue, all of that, a  
7 general synopsis of what was happening at that time.

8 Q Okay. And were you able to make any observations  
9 during that that weren't shown on this?

10 A Yes, I did.

11 Q What were those?

12 A I observe the vehicle was occupied by one male  
13 operator and at which point I observed he was a Caucasian  
14 male, appeared to be in his late forties, early fifties,  
15 facial hair. He was looking forward at the time, however,  
16 he did make eye contact with me twice by turning his head to  
17 the left side and we made eye contact.

18 Q And you said it happened how many times?

19 A Twice.

20 Q And when he made eye contact with you, did he stop  
21 at that point?

22 A No, he did not.

23 Q Did he make any other indication to you?

24 A He did not.

25 Q What did he do after he made eye contact with you?

## ENSELL - DIRECT - KOWALSKI

1           A     The first time he just looked forward again. A  
2 couple seconds passed, he looked over again, looked at me  
3 and then looked straight ahead again.

4                     (People's Exhibit 29 continued to be played.)

5           Q     Again, Officer, I'm just going to ask for a  
6 clarifying question. There is another vehicle in the frame  
7 of this photo. I'm not talking about the one closest to the  
8 camera but the one furthest away. Who was in that  
9 vehicle?

10          A     Officer William Hunt, Cattaraugus County Sheriff's  
11 Office.

12                     (People's Exhibit 29 continued to be played.)

13          Q     And Officer Kowalski, can you explain to me a  
14 little bit about what was going on at this point in the  
15 video?

16          A     Yes. I successfully passed the vehicle and  
17 proceeded into the westbound lane to which I applied the  
18 brakes gradually and that vehicle attempted to overtake my  
19 vehicle twice.

20                     (People's Exhibit 29 continued to be played.)

21          Q     Now, Officer, obviously at that point of the video  
22 you're in the frame. Can you describe to me a little bit  
23 about what was going through your mind at that time?

24          A     Absolutely. I was trying to evaluate the threat.  
25 The primary weapon in that picture is a 3,000 pound vehicle

## ENSELL - DIRECT - KOWALSKI

1 to which point the operator had both hands on the vehicle.  
2 The vehicle did come to a complete stop and also the  
3 engine -- the vehicle came to a complete stop, however the  
4 engine was on. My prime threat was if he would use that  
5 vehicle to injure me and pass me in that vehicle.

6 Q When you say primary concern, do you mean that was  
7 occurring during the course of this pursuit?

8 A Yes, Ma'am.

9 (People's Exhibit 29 continued to be played.)

10 Q Officer, obviously there's several other -- can  
11 we -- there are other, obviously several other videos  
12 contained on that. I assume you reviewed it and saw that as  
13 well?

14 A Yes, Ma'am.

15 Q Was there anything else of particular substance  
16 that occurred in these videos?

17 A These here?

18 Q No, no, the ones on the remainder of the file?

19 A I guess I'm trying to figure out what you're  
20 asking me.

21 Q We just watched a bunch of videos?

22 A We did.

23 Q There were more on that?

24 A Yes, there is.

25 Q Is there anything of particular substance that

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1 occurred on those?

2 A There is.

3 MR. ALBERT: I'm going to object, "anything  
4 of substance."

5 MS. ENSELL: I mean anything that we're  
6 publishing here.

7 THE COURT: I'll allow him to answer. I'm  
8 not sure what it's really telling us.

9 MS. ENSELL: I'm just gonna move on, Judge.

10 Q Okay. Now, Officer, reviewing the video, there  
11 appears to be some objects that fly through the frame. Is  
12 that accurate to say?

13 A Yes, Ma'am.

14 Q Okay. I want to take you back to when you exited  
15 the vehicle. Did you approach -- at that point on the  
16 video, you leave the frame; is that correct?

17 A That's correct.

18 Q And where did you go when you left the frame?

19 A I approached the driver's side door of that  
20 vehicle.

21 Q Okay. And what happened at that point?

22 A I verbally announced "get out of the vehicle." At  
23 the same point I grabbed the door and I found it locked.

24 Q And then what happened?

25 A I made contact with the male, eye contact, and I

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1 said "get out of your vehicle."

2 Q And when you said "get out of your vehicle," did  
3 the defendant respond to you?

4 A He said no -- he shook his head no.

5 Q He shook his head no?

6 A No. He verbally stated no as he shook his head.

7 Q And was the window up or down?

8 A It was up.

9 Q And did you make any other verbal command?

10 A Yes.

11 Q What was that?

12 A I verbally told him to unlock the door.

13 Q And what was his response to that?

14 A He said "I don't have to."

15 Q Did you make any other commands?

16 A At which point I holstered my service revolver,  
17 pulled my asp out and looked back and told Deputy Hunt that  
18 I was going to break the window. I once again told him to  
19 open the door. He did not and that's when I proceeded to  
20 smash the window.

21 Q Did he respond to you on that third command?

22 A I don't recall.

23 Q You don't recall if he shook his head or anything?

24 A I don't recall.

25 Q And once the window had been broken, what did you

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1 do?

2 A I cleared the glass with my hand. I reached  
3 inside, locked the automatic door -- unlocked and opened the  
4 door.

5 Q Okay. And then what occurred?

6 A I asked him to get out of the vehicle.

7 Q And what happened?

8 A He said no.

9 Q And at that point, verbal head shake? How did he  
10 state no to you?

11 A He stated verbally no.

12 Q And then what did you do?

13 A I observed that he had his belt buckle on,  
14 fastened across his lap belt and across his chest. I  
15 proceeded to walk all the way around the vehicle to the  
16 front passenger's side door. I opened that door, I reached  
17 across the cabin of the vehicle, unbuckled the seat belt and  
18 walked all the way back around to the driver's side door.

19 Q And then what did you do?

20 A Told him to get out of the vehicle.

21 Q And what did he say?

22 A He said no.

23 Q Then what happened?

24 A Then I grab him by the back of his shirt and  
25 shoulder and I pulled him out.

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1 Q When he was pulled out, ultimately where did the  
2 two of you end up?

3 A On the pavement.

4 Q Okay. And what occurred, what happened next?

5 A Once I got him on the pavement, I said "give me  
6 your hands," and he tensed up his body. He wouldn't give me  
7 his hands right away and I needed the assistance from Deputy  
8 Hunt to facilitate both his hands to go back on his back so  
9 I could secure his hands with cuffs.

10 Q And while this was occurring, ultimately what were  
11 your concerns?

12 A I didn't know if he had a weapon on his person, if  
13 there was a weapon in the vehicle, if there were multiple  
14 occupants in the vehicle. I didn't do a thorough search. I  
15 didn't know what his state of mind was. There was a ton of  
16 possibilities that threatened myself and Officer Hunt.

17 Q Okay. And at that point in time when you were  
18 getting him out of the vehicle, did you observe any loss of  
19 consciousness?

20 A I did not.

21 Q And when he was on the pavement, did you observe  
22 any loss of consciousness?

23 A No, Ma'am.

24 Q Okay. And when you were getting him out of the  
25 vehicle and he was on the pavement, can you describe his



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1 demeanor?

2 A He was irritated, agitated, was saying "Jesus  
3 Christ," "you fuckers," were his verbal utterances.

4 Q Okay. And did there come a point in time when you  
5 ended up being able to get handcuffs on him?

6 A Yes, Ma'am.

7 Q And do you recall approximately how much time  
8 passed between you coming back for your last command to get  
9 out and him being handcuffed?

10 A I would approximate 15 to 20 seconds.

11 Q Okay. So, the time in which you pulled him out of  
12 the vehicle and got him on the ground, that's what we're  
13 talking about and getting the handcuffs on?

14 A Yeah, I'd say ten seconds, ten to 15 seconds.

15 Q And how much time could you approximate -- what  
16 did you do after the handcuffs were put on the defendant?

17 A I hand searched his clothing real quick, pat down  
18 to make sure he didn't have anything in his pockets.

19 Q And the person you were interacting with on  
20 February 27<sup>th</sup>, 2016, do you see him in the courtroom  
21 today?

22 A Yes, Ma'am.

23 Q Can you identify him by an article of clothing?

24 A Yes. He's wearing jeans, button shirt, facial  
25 hair, Caucasian male.

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1 MS. ENSELL: Please let the record reflect  
2 the witness identified the defendant.

3 THE COURT: Record can so reflect.

4 Q And approximately how long between when you got  
5 the handcuffs on the defendant was he stood up?

6 A To his feet?

7 Q Yeah.

8 A Ten seconds. Wait, ten seconds -- I'm not sure.  
9 From --

10 Q Let me back up because I am asking these in a  
11 little bit of a confusing manner. From when you got the  
12 cuffs placed on the defendant --

13 A Yes, Ma'am.

14 Q -- to when he was brought to his feet, do you  
15 recall approximately how much time passed?

16 A Half a minute.

17 Q Okay. And once the defendant was on his feet,  
18 what was his demeanor at that point?

19 A Highly agitated.

20 Q Now, at any point were you able to -- when you had  
21 the car intercepted and you got the individual out, did you  
22 recognize him?

23 A I had no idea who he was.

24 Q And did you at that point know the individual's  
25 name?

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1 A No, Ma'am.

2 Q How were you able ultimately to at least determine  
3 the individual's name?

4 A By his New York State ID.

5 Q But other than learning the defendant's name from  
6 his driver's license, you didn't know him in any other way?

7 A No.

8 Q Never had any prior run-ins with him or anything  
9 like that?

10 A No, Ma'am.

11 Q Did there ever come a point in time when  
12 additional officers responded to your location?

13 A Yes, Ma'am.

14 Q And do you recall who responded?

15 A Yes, Officer Graham, Officer Spry, Deputy Kemp and  
16 Deputy Barber.

17 Q And so, out of those individuals you've just  
18 named, who are the ones working with you?

19 A Officer Graham and Officer Spry.

20 Q When Officer Graham arrived, did you happen to  
21 notice any particular type of device that was attached to  
22 her person?

23 A Yes, I did.

24 Q What was that?

25 A It was a recording device, both audio and video,

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1 affixed to her outer gear.

2 Q And on that night in question were you also  
3 wearing any sort of camera attached to your person?

4 A I was not.

5 Q Judge, I'm going to show the witness what has been  
6 marked as People's Exhibit 27, 27A and 27B. Officer, first,  
7 I'm going to show you what has been marked as People's  
8 Exhibit 27 for identification. Can you tell me what this  
9 is?

10 A It's the body camera that officer Graham was  
11 wearing at the time of the incident.

12 Q That's not the body camera itself?

13 A No. It's the footage.

14 Q And did you have the opportunity to review  
15 People's Exhibit 27 prior to testifying today?

16 A Yes, Ma'am.

17 Q And when you reviewed it, did you make any  
18 notation on the exhibit to show that you reviewed it?

19 A Yes, Ma'am.

20 Q And did it also fairly and accurately depict the  
21 events that it was meant to record, as you remember them,  
22 when you reviewed the exhibit?

23 A Yes, Ma'am.

24 Q Did there appear to be any additions,  
25 adulterations or deletions in any way?

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1 A No, Ma'am.

2 Q I'm going to show you what has been marked as  
3 People's Exhibit 27A for identification. Can you tell me  
4 what this is?

5 A A CD of the body camera fixed to Officer Graham.

6 Q And did you have the opportunity, prior to  
7 testifying today, to review this footage to check for its  
8 accuracy?

9 A Yes, I did.

10 Q And did you note that anywhere?

11 A Yes, I did.

12 Q On it?

13 A Yes, initials and date.

14 Q And when you reviewed this, did it appear to  
15 fairly and accurately represent portions of it on which you  
16 appeared on it of the events that were recorded?

17 A Yes, Ma'am.

18 Q That's confusing, I apologize. And when you  
19 reviewed it, did there appear to be any alterations? Was it  
20 adulterated, were there any deletions?

21 A No, Ma'am.

22 Q I'm going to show you what has been marked as  
23 People's Exhibit 27B. Can you tell me what that is?

24 A It says body cam pre-ambulance footage. It's the  
25 body cam that officer Graham was wearing.

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1 Q And did you review this prior to today?

2 A Yes, Ma'am.

3 Q And did you have a chance to review it to make  
4 sure it fairly and accurately reflected the events it was  
5 meant to record?

6 A Yes, Ma'am.

7 Q And aside from it being only a portion of the  
8 footage, did it appear to be otherwise accurate? Any  
9 adulterations, deletions, anything like that?

10 A No, Ma'am.

11 MS. ENSELL: Judge, I think based on  
12 everything that we talked about, I guess I'm moving all  
13 three in. We only intend to publish the one.

14 THE COURT: All right. Any objection?

15 MR. ALBERT: No, Your Honor.

16 THE COURT: All right. So that --

17 MR. ALBERT: Judge, I'm sorry.

18 THE COURT: Go ahead.

19 MR. ALBERT: I would renew my objection in  
20 terms of -- can I just voir dire very briefly?

21 THE COURT: Go ahead.

22 VOIR DIRE BY MR. ALBERT:

23 Q Officer, good afternoon again.

24 A Good afternoon.

25 Q Now, you stated that the body cam footage, body

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1 cam two, that shows a roadside conversation that you had  
2 with my client?

3 A I believe so.

4 Q And this came just after he was extracted from his  
5 vehicle, would it be fair to say?

6 A Yes, sir.

7 Q Would it be fair to say he was bleeding?

8 A He exhibited a laceration on his ear.

9 Q In that laceration -- was there some blood  
10 involved in that laceration?

11 A Yeah, yes.

12 Q And obviously, there was -- you stated he was in a  
13 highly agitated state at that point; correct?

14 A Yes.

15 MR. ALBERT: Judge, I would --

16 Q Let me ask you this: And there were questions  
17 posed during this conversation that you had with my client?

18 A There were.

19 Q You wanted to know why didn't you just pull over?

20 A Yes, sir.

21 Q And he responded in kind, right, or he answered  
22 those questions somewhat at least; correct?

23 A Yes, he did.

24 Q And he hadn't been Mirandized at any point,  
25 correct?

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1 A No, sir.

2 Q And he was in custody at that point?

3 MS. ENSELL: Objection, Judge. We had a  
4 Huntley Hearing on this. These were not suppressed.

5 MR. ALBERT: That's correct, but in order for  
6 it to become admissible at trial -- I can pull People  
7 v. Huntley. There was a hearing, but for admissibility  
8 to a jury, they have to determine --

9 MS. ENSELL: It's not admissibility, again  
10 and -- he's voir diring a foundation for the exhibits.

11 THE COURT: I think you've passed the  
12 foundation as far as admissibility. That's already  
13 been ruled on.

14 MR. ALBERT: I would renew my objection for  
15 the record, Your Honor, and also state that it could be  
16 inflammatory in the sense that, granted, my client is  
17 upset and agitated, and I think that could have a  
18 prejudicial effect upon him in that he could be looked  
19 upon as a not nice person or an angry person, and I  
20 think that's sort of really the only relevant value of  
21 this roadside conversation, that he's angry.

22 THE COURT: Well, I'm going to admit them  
23 into evidence. That would be 27, 27A and 27B.

24 MR. ALBERT: Thank you, Your Honor. I'm just  
25 voicing that for the record, of course. Thank you.



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1 THE COURT: Counselor, are you planning on  
2 publishing at this point?

3 MS. ENSELL: Yeah, I'm just making sure it's  
4 good before I say anything.

5 THE COURT: Approximately how long is this?

6 MS. ENSELL: Do you want to take a break?  
7 That's fine.

8 THE COURT: Well, it might be an appropriate  
9 time if it's more than just a couple of minutes. All  
10 right, let's take a ten minute break.

11 (Short recess.)

12 (The following occurred without the jury present:)

13 MR. ALBERT: For the record, she's unsure, if  
14 her direct goes to four or 4:10 or something, I don't  
15 know, it's up to the Court, but I have to be --

16 THE COURT: Yeah, I know. We'll get you out  
17 of here by 4:30.

18 MR. ALBERT: I appreciate it.

19 THE COURT: If it's well after four before  
20 you start the cross, you'd rather do it in the morning?

21 MR. ALBERT: Yes, Your Honor. My cross  
22 should be about 20, 25 minutes.

23 THE COURT: Are we ready for jurors?

24 MS. ENSELL: Judge, I also would not -- after  
25 we get done publishing, there are some exhibits that I

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1 want to refer to, but I just want to --

2 THE COURT: No objection there. Let's get  
3 some jurors in here.

4 MS. ENSELL: Okay.

5 (The jury returned to the courtroom and the  
6 following occurred:)

7 THE CLERK: Your Honor, the jury, counsel and  
8 defendant are present and ready to proceed.

9 THE COURT: All right. Miss Ensell, you may  
10 continue.

11 MS. ENSELL: Okay. Judge, at this point the  
12 People are going to renew their request to publish the  
13 video that we moved into evidence. What we're seeking  
14 to publish is People's Exhibit 27B.

15 THE COURT: All right. Go ahead.

16 (People's Exhibit 27B was played to the jury.)

17 MS. ENSELL: Judge, at this point we're going  
18 to stop the video. This is the best I could do without  
19 actually slicing the video, but I will stop the  
20 publication at this point.

21 THE COURT: All right.

22 MS. ENSELL: I think we're all set there too,  
23 but I would note what you're hearing is the approach of  
24 the EMT.

25 Q Officer, I did have a couple of clarifying

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1 questions from the video -- it's not a lot -- one of them  
2 being, there's a person referred to as "Buzz" in the video.  
3 Do you know who that is?

4 A That's Larry Spry, Officer Larry Spry.

5 Q And now, at the tail end of that video we heard  
6 reference made to an ambulance; is that correct?

7 A That's correct.

8 Q What did you do -- and I'm assuming the ambulance  
9 left with the defendant?

10 A That it did.

11 Q What did you do once the ambulance left? Were you  
12 in the ambulance too?

13 A I was not.

14 Q What did you do?

15 A I went back to the police department and started  
16 paperwork.

17 Q Pardon?

18 A I started my paperwork.

19 Q And when you -- so you did some paperwork. Is  
20 there anything you did after that?

21 A I believe I made a phone call to the  
22 Officer-in-Charge, Don Auge, advised him -- he was apprised  
23 of the circumstances surrounding this, at which point I  
24 initiated a police report and started on the uniform traffic  
25 tickets.

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1 Q And did at any point you travel to Olean General  
2 Hospital?

3 A Yes, Ma'am, I did.

4 Q For what?

5 A To pick up Mr. [REDACTED] and Officer Graham.

6 Q Okay. I also want to go back. I have some points  
7 to clarify from the initial video in which it displays your  
8 patrol cars and defendant's cameras. You had said you made  
9 an observation of the defendant at the intersection of  
10 Hencoop and Route 242?

11 A Yes, I did.

12 Q Did you make any other observations when he was  
13 there, aside from his headlights?

14 A He didn't use a proper turn signal, one turning  
15 right from Hencoop onto 242.

16 Q And once you picked the defendant and Officer  
17 Graham up, what did you do next?

18 A We proceeded back to the police department.

19 Q Okay. And did there come a point in time during  
20 your procedures, before you went home that day, that you  
21 actually went to John's Collision?

22 A We did, myself and Officer Graham did.

23 Q Was the defendant with you at that point?

24 A He was not.

25 Q And when you arrived at John's Collision, did you

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1 do anything in particular?

2 A Yes, we did.

3 Q What did you do?

4 A We performed an inventory of the vehicle and took  
5 photographs.

6 MS. ENSELL: Okay. I have a series of  
7 photographs with me. I would like to show the  
8 defendant or, excuse me, the witness, these  
9 photographs.

10 Q Officer, I'm going to show you what has been  
11 marked as People's Exhibit 21, People's Exhibit 19,  
12 People's Exhibit 18, People's Exhibit 17, People's  
13 Exhibit 16, People's Exhibit 15, People's Exhibit 11,  
14 People's Exhibit 12, People's Exhibit 25, People's exhibit  
15 14, People's Exhibit 13, People's Exhibit 24 -- sorry about  
16 not being in order -- People's Exhibit 23, People's Exhibit  
17 22 and People's Exhibit 20. I want you to just kind of take  
18 a second to look at these real quick because there's quite a  
19 few.

20 MS. ENSELL: Judge, I am gonna note that  
21 these are all exhibits in evidence at this point.

22 Q And these exhibits that I just mentioned that  
23 you've now had a opportunity to review, when you observed  
24 the vehicle and its contents on February 27<sup>th</sup>, 2016, at  
25 John's Collision, do these photos fairly and accurately

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1 depict both the vehicle itself, its condition and the  
2 contents thereof?

3 A Yes, they do.

4 Q And that would go for each and every exhibit  
5 that's in evidence?

6 A Yes, Ma'am.

7 Q And do you recall from your observations on  
8 February 27, 2016, that these again are accurate depictions?

9 A Yes, Ma'am.

10 Q Okay. I want to specifically ask you about -- and  
11 I suppose we can probably do this on the screen. I want to  
12 first specifically ask you about People's Exhibit 14. Can  
13 you describe what appears on the screen?

14 A Yes, Ma'am. That was an audio and video recording  
15 device affixed to the front windshield of that Ford SUV.

16 Q And you stated it was on the front windshield?

17 A Yes, Ma'am.

18 Q And I would next like to refer to People's  
19 Exhibit 13. Would that be the same item, a different angle?

20 A Yes, Ma'am.

21 Q Okay. And what area of the windshield -- which  
22 seat in the car is that located?

23 A Above the driver's.

24 Q Okay. So -- I'm sorry, you said where?

25 A Above the driver's seat.

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1 Q I'd like to next refer to People's Exhibit 11 that  
2 is in evidence. Can you describe what you see in that  
3 picture?

4 A As per equipment?

5 Q Yes.

6 A I'm also seeing additional objects affixed to the  
7 front windshield of that vehicle, and the driver's side  
8 window is also broken out.

9 Q And next one I'm referring to is People's  
10 Exhibit 15. And would this just be a close up of the object  
11 you just described from the last exhibit?

12 A Yes, it is.

13 Q Okay. And you said that was affixed where?

14 A It's affixed to the front windshield of that Ford  
15 SUV.

16 Q Okay. Now, obviously, that video, People's  
17 Exhibit 29, referring to the defendant's camera footage,  
18 there's no audio on that; correct?

19 A No.

20 Q And so, during when you had your lights activated,  
21 were you using any device that emitted sound?

22 A Yes, Ma'am, I did.

23 Q What device was that?

24 A My patrol vehicle siren.

25 Q And were you using the siren for the duration of

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1 the period and point in time in the video when you're  
2 overcoming the defendant's vehicle with your lights lit?

3 A Intermittently. I was changing frequencies and  
4 also using the horn.

5 Q Okay. All right, a couple of other questions.  
6 So, prior to this incident, did you ever meet the defendant?  
7 You may have already said but --

8 A No, Ma'am.

9 Q And you didn't know the defendant's name?

10 A No, Ma'am.

11 Q Okay. Now, after this incident took place, have  
12 you since had any non-criminal interactions with the  
13 defendant?

14 A Yes, I have.

15 Q Can you describe those interactions?

16 MR. ALBERT: Objection, Judge.

17 THE COURT: Counsel approach on that.

18 (Discussion off the record.)

19 MS. ENSELL: Judge, at this point we have no  
20 further questions for this witness. We are going to,  
21 based on that, reserve our right to present any  
22 rebuttal evidence if we need to.

23 THE COURT: All right. Mr. Albert, what do  
24 you think?

25 MR. ALBERT: Well, I think, obviously, with



1 cross and redirect, it's up to the Court. I don't mind  
2 starting, if that's what the Court wants me to do, or  
3 maybe it might be better for everyone to start fresh  
4 tomorrow morning. It's up to the Court.

5 THE COURT: All right. We have some time  
6 constraints as far as we have to be out of here by 4:30  
7 today. So, rather than breaking up Mr. Albert's cross  
8 examination, we'll call it a day at this point and I'll  
9 ask you to be back here at 9:30 as you did this  
10 morning. I want to thank you for all being prompt and  
11 on time. That makes it easier for us. Again, remember  
12 those rules that we set forth as far as no reading  
13 about this or trying to research anything.

14 (The jury left the courtroom and the following  
15 occurred:)

16 THE COURT: Anything else to go on the record  
17 today?

18 MR. ALBERT: Judge, I'd anticipate after  
19 cross, assuming the People rest, then we'd have  
20 defense, but obviously -- well, we should get  
21 everything done tomorrow.

22 THE COURT: Let's see where we're at but I  
23 would expect to. So, I would ask counsel to at least  
24 preliminary review the jury instructions that we  
25 provided to counsel. Of course, we will have to do



1 THE DEFENDANT: Okay. Thank you very much,  
2 Your Honor.

3 THE COURT: All right.

4 (Whereupon, June 2, 2017, proceedings concluded.)

5 \* \* \* \* \*

6

7 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE  
8 ABOVE-ENTITLED ACTION.

9 (People v. Christopher Kochan, Ind. 16-116, Jury Trial held  
10 June 1 & 2, 2017.)

10

*Kathleen M. Trost*

11

Kathleen M. Trost,  
Court Reporter

12 Dated: June 30, 2017

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