

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 [REDACTED] N,

7 Defendant

8 -----

9 303 Court Street  
10 Little Valley, NY 14755  
11 June 7, 2017  
JURY TRIAL

12 B E F O R E :

13 HONORABLE RONALD D. PLOETZ  
14 County Court Judge

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

16 ELIZABETH ENSELL, ESQ.  
17 Assistant District Attorney  
and  
18 LORI P. RIEMAN, ESQ.  
19 District Attorney  
Appearing on behalf of the People

20 MATT ALBERT, ESQ.  
21 Appearing on behalf of the Defendant

22

23

24

25

Kathleen M. Trost,  
Official Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX TO WITNESSES

FOR THE PEOPLE:

DIRECT CROSS REDIRECT RECROSS

Cori Kowalski 47 76, 90 85, 97

FOR THE DEFENDANT:

Chris [REDACTED] [REDACTED] 116 144 158

INDEX TO EXHIBITS

FOR THE PEOPLE:

ID EVIDENCE

33 - Website article 148

FOR THE DEFENDANT:

B - Photo 139 140

\* \* \* \* \*

Mr. Albert's Closing Argument - Pg. 165

Ms. Ensell's Closing Argument - Pg. 177

1 (The following occurred without the jury present:)

2 THE COURT: Let's go on the record. The jury  
3 is not present. I've had some preliminary discussions  
4 with counsel, and at this point it would be the Court's  
5 intent to bring in jurors individually and voir dire  
6 them in regards to whether or not they have any  
7 knowledge of the reason that we have been adjourned for  
8 several days, and if so, what that knowledge is and  
9 then determine if they are able to disregard any such  
10 knowledge in their deliberations. All right?

11 Just for the record we also have one juror who's  
12 indicated that this adjournment has created a  
13 substantial hardship. I believe that is Juror No. 12,  
14 Karen Miller. I would intend to discuss the matter  
15 with her first. Any objection to this procedure?

16 MS. ENSELL: I don't have any, Judge, not at  
17 this point at least.

18 THE COURT: Mr. Albert?

19 MR. ALBERT: No, Your Honor. I would only I  
20 guess in terms of the, you know, whether they could  
21 disregard any knowledge of the reason for the  
22 adjournment in their deliberations, I think maybe a  
23 follow-up question just to whether they could assure  
24 the Court that they could remain completely impartial  
25 related to the charges that are pending against my

1 client.

2 THE COURT: All right. I'll incorporate  
3 that. I'll also allow counsel to ask any questions  
4 that they wish.

5 THE COURT: Could we have Miss Miller brought  
6 in first.

7 (Ms. Miller entered the courtroom and the  
8 following occurred:)

9 THE COURT: Miss Miller, why don't you come  
10 right up here. Miss Miller, I apologize for the delay  
11 this morning. We had to get everyone here in the  
12 courtroom first. You indicated to some of the court  
13 staff that you now have a hardship because the case was  
14 adjourned; is that correct?

15 JUROR: That's correct. Well, I wasn't  
16 planning on it going into this week. I have inventory  
17 on Sunday. I had to pay someone to come in and do my  
18 cash office this morning. I have to be at work. I  
19 have three days before my yearly inventory and I need  
20 to be there.

21 THE COURT: So we can make a record, what  
22 exactly do do?

23 JUROR: I'm the general manager at J.C.  
24 Penney's in Olean, New York.

25 THE COURT: So, this is an issue creating a

1 hardship because you have an end of year inventory?

2 JUROR: Correct.

3 THE COURT: Counsel have any questions?

4 MS. ENSELL: I think I'm just gonna ask a  
5 question so that we can have a substantial record.

6 THE COURT: Go ahead.

7 MS. ENSELL: I'm just gonna ask you quickly,  
8 your duties as a general manager, this isn't something  
9 somebody else can fulfill?

10 JUROR: No, it's not.

11 MS. ENSELL: It's not possible for J.C.  
12 Penney to bring somebody from another store?

13 JUROR: No, it's not.

14 MS. ENSELL: And you said it has something to  
15 do with your inventory?

16 JUROR: Yearly inventory.

17 MS. ENSELL: It began Sunday?

18 JUROR: No. It begins Sunday. I have to  
19 prepare my store.

20 MS. ENSELL: Can you elaborate on something  
21 you have to do?

22 JUROR: Clean up my upstairs back room, make  
23 sure that we're ready. We have to go through every  
24 piece of inventory, make sure it's tagged, make sure  
25 it's scannable. There's a lot involved and I have very

1 limited payroll.

2 MS. KERLING: Do you think your mind set --  
3 would you be able to focus on what's presented in the  
4 courtroom?

5 JUROR: No.

6 MS. KERLING: I mean, I'm cutting to the  
7 chase. Do you think you would rush to a verdict just  
8 to get out of here?

9 JUROR: I'm sure I would. I would agree with  
10 whatever is going on because I just can't be here.  
11 It's my first year in my position there. It's my only  
12 inventory this year. If it was a -- this is a one time  
13 thing and it affects my entire year's business and it's  
14 got to be done correctly.

15 THE COURT: Mr. Albert?

16 MR. ALBERT: No questions from me, Your  
17 Honor.

18 THE COURT: All right. Counsel's position  
19 regarding this matter?

20 MS. ENSELL: Judge, I think, just based on  
21 what this juror's representing and unfortunately, I  
22 think it does disqualify her as a juror would be our  
23 position.

24 THE COURT: Do you agree, Mr. Albert?

25 MS. RIEMAN: It meets the level of gross

1           disqualification.

2                   MR. ALBERT: I would concur, Your Honor.

3                   THE COURT: All right. Miss Miller, what  
4 we'll do is excuse you at this point and thank you for  
5 your service.

6                   JUROR: Thank you.

7                   THE COURT: I'll also point out if there's  
8 any issues with your employer, the Court will be happy  
9 to have a conversation or provide any proof that you  
10 were here and had to be here.

11                   JUROR: Yeah. I e-mailed them all the slips  
12 and everything but it's just crunch time now. If it  
13 would have ended the beginning of the week, I probably  
14 would have been okay with it.

15                   THE COURT: Understood.

16                   JUROR: Thank you.

17                   THE COURT: You are excused.

18                   (Ms. Miller left the courtroom and the following  
19 occurred:)

20                   THE COURT: All right. And we will  
21 substitute alternate number one into Miss Miller's  
22 seat. I guess I would start right with Juror No. 1 and  
23 bring them in then.

24                   (Ms. Faulkner entered the courtroom and the  
25 following occurred:)

1 THE COURT: Miss Faulkner, we're gonna have  
2 you come right up here to the microphone. You're not  
3 in trouble. Don't worry. We just need to ask a few  
4 questions of the jurors at this point. First of all,  
5 as you're aware this matter was adjourned from last  
6 Friday. Do you have a personal knowledge or idea of  
7 why it was adjourned?

8 JUROR: No.

9 THE COURT: All right. Have you heard or  
10 read anything about any of the parties involved here  
11 including the Court, the District Attorney, the  
12 Assistant District Attorney, the defendant, the defense  
13 attorney, defense attorney staff, anything at this  
14 point?

15 JUROR: No.

16 THE COURT: Okay, all right. Any questions  
17 for this juror?

18 MS. ENSELL: No, Judge.

19 MR. ALBERT: Well, just very briefly, Your  
20 Honor.

21 THE COURT: Go ahead.

22 MR. ALBERT: And then obviously, I'm sure  
23 your mind's kind of worrying in terms of what's going  
24 on, why was it adjourned. Could you assure all parties  
25 that you're not going to play detective and figure out



1 or try to figure out?

2 JUROR: No.

3 MR. ALBERT: Okay. You can focus strictly on  
4 what we're here for last week which is to hear the  
5 charges against my client and determine his guilt or  
6 lack thereof?

7 JUROR: Correct.

8 MR. ALBERT: No questions.

9 THE COURT: I'll remind you what we discussed  
10 before, do not discuss this conversation with any of  
11 your fellow jurors.

12 JUROR: Okay.

13 THE COURT: Thank you very much.

14 (Ms. Faulkner left the courtroom, Mr. Baldwin  
15 entered and the following occurred:)

16 THE COURT: Mr. Baldwin, good morning. A  
17 little unusual but we have to ask a few questions of  
18 the jurors at this point. First of all, as you know,  
19 this matter was adjourned since last Friday.

20 JUROR: Right.

21 THE COURT: All right. Do you have any  
22 knowledge or any suspicion as to why it may have been  
23 adjourned?

24 JUROR: No.

25 THE COURT: And also, since we last met, have

1           you heard anything regarding this case or any of the  
2           parties including myself, the People's attorney, the  
3           prosecution, the defense attorney, the defendant or any  
4           of the staff of either of the attorneys?

5                     JUROR: I've heard nothing at all.

6                     THE COURT: You've heard nothing. All right.

7                     JUROR: No.

8                     THE COURT: So, can I get your assurance that  
9           you will not do any further investigation in regards to  
10          these questions?

11                    JUROR: Absolutely.

12                    THE COURT: And if you do happen to hear  
13          something, that it will not influence your  
14          deliberations in any way here?

15                    JUROR: Yes.

16                    THE COURT: All right. Anything from the  
17          People?

18                    MS. ENSELL: No, Your Honor.

19                    MR. ALBERT: No, Your Honor.

20                    THE COURT: All right. Thank you, sir.

21                    (Mr. Baldwin left the courtroom, Mr. Lecceardone  
22          entered and the following occurred:)

23                    THE COURT: Mr. Lecceardone, we'll make this  
24          easy. We have a couple questions that we have to ask  
25          the jurors. As you know, this matter was adjourned

1 since last Friday. Do you have any idea why or  
2 suspicion why the matter may have been adjourned?

3 JUROR: No, I don't.

4 THE COURT: Okay. Have you heard anything  
5 about this case or about any of the parties including  
6 the prosecutor, anyone on the prosecutor's staff,  
7 anyone on the defense attorney's staff, the defense  
8 attorney, the defendant or about the judge?

9 JUROR: No, sir.

10 THE COURT: Okay. You haven't heard  
11 anything?

12 JUROR: Not pertaining to this case. I did  
13 in Brooks' Supermarket, I believe it was Thursday.

14 THE COURT: What did you hear, sir?

15 JUROR: Just something about another case  
16 about a kid I went to high school with. I seen his  
17 brother and he told me some things that were going on  
18 in the Catt County court system. Your name was  
19 mentioned.

20 THE COURT: Okay. Give me some details.

21 JUROR: I have to be truthful. I said I was  
22 on the jury duty. I never said nothing about what case  
23 or what.

24 THE COURT: So, it was just about the judge  
25 then?

1 JUROR: Yes, sir. Yes, Your Honor.

2 THE COURT: In any event, I'll just ask you:  
3 Are you going to be able to put that out of your mind?

4 JUROR: Actually, it was out of my mind until  
5 you just asked me.

6 THE COURT: All right. Any questions from  
7 counsel?

8 MS. ENSELL: No, Your Honor.

9 THE COURT: Mr. Albert?

10 MR. ALBERT: No, Your Honor.

11 THE COURT: All right. Mr. Lecceardone,  
12 thank you for your honesty. I'm going to ask you to  
13 not discuss what we discussed here with your fellow  
14 jurors.

15 JUROR: Yes, sir.

16 THE COURT: All right, thank you.

17 (Mr. Lecceardone left the courtroom, Mr. Pihlblad  
18 entered and the following occurred:)

19 THE COURT: Good morning, Mr. Pihlblad.

20 JUROR: Morning.

21 THE COURT: At this point nothing you've done  
22 wrong, so don't feel you're being --

23 JUROR: Okay. I wasn't first, so I felt I  
24 was okay.

25 THE COURT: Okay. We're just at the point,

1           because of the adjournment, we have to ask a few  
2           questions of the jurors.

3                         JUROR:   Okay.

4                         THE COURT:  First of all, do you know or do  
5           you have any suspicion why this matter was adjourned  
6           for several days?

7                         JUROR:   I do.

8                         THE COURT:  And can you tell us what that is?

9                         JUROR:   On Friday night I actually fell  
10          asleep on the couch and I woke up and the 11:00 news  
11          was on, and right after the weather they had -- it's  
12          probably ten, 15 second little clip, but Mr. Albert was  
13          arrested for a domestic incident that happened Thursday  
14          night.

15                        THE COURT:  All right.  Now, do you  
16          understand that there is a distinction between an  
17          arrest and any type of conviction?

18                        JUROR:   Absolutely.

19                        THE COURT:  I guess my next question is:  Are  
20          you going to be able to confine your deliberations on  
21          this to what you hear in court and totally disregard  
22          what you may have heard on the news regarding the  
23          defense attorney?

24                        JUROR:   I believe I will.

25                        THE COURT:  You believe you will --

1 JUROR: I'll be able to, yeah.

2 THE COURT: And can you still be impartial  
3 about this?

4 JUROR: I can be.

5 THE COURT: All right. Questions from  
6 counsel?

7 MS. ENSELL: Yes. You haven't talked about  
8 this with any of the other jurors, have you?

9 JUROR: I have not.

10 MS. ENSELL: And you understand that you  
11 cannot talk about this to any of the other jurors?

12 JUROR: I understand that.

13 THE COURT: All right. Mr. Albert?

14 MR. ALBERT: Yeah, thank you, Your Honor.  
15 Very briefly, I guess just to follow up, it's obviously  
16 not a situation any of us thought we'd be in, but I  
17 guess does it do anything in terms of -- I know you're  
18 saying you could be impartial, but I'm going to be  
19 making arguments on my client's behalf. Are you going  
20 to be able to basically give them the same  
21 consideration as if you hadn't seen the news on Friday  
22 for instance?

23 JUROR: Yeah. Honestly, I don't see --  
24 really, there's no connection between the two.  
25 Anything that happened in your personal life and

1 anything that's happened with your client, I don't  
2 really see any relevance between that and the case at  
3 all.

4 MR. ALBERT: Okay. So, in other words, you  
5 can assure both me and my client that whatever you saw  
6 on the news and whatever your thoughts about it are  
7 will not influence your decision in any way, shape or  
8 form relating to the charges that he is facing?

9 JUROR: Absolutely not.

10 MR. ALBERT: Thank you.

11 THE COURT: Thank you. And I'll remind you,  
12 do not discuss this conversation or anything that  
13 you've heard with your fellow jurors, sir.

14 JUROR: Okay. Thank you.

15 (Mr. Pihlblad left the courtroom and the following  
16 occurred:)

17 DEPUTY: Judge, Miss Cardamone is in the  
18 restroom. Can we take them out of order?

19 THE COURT: We'll take Mr. Westfall next.

20 (Mr. Westfall entered the courtroom and the  
21 following occurred:)

22 THE COURT: Good morning, Mr. Westfall.

23 JUROR: Good morning.

24 THE COURT: You're not being singled out. We  
25 are asking this of all the jurors. All right? We just

1 have to ask you a few questions at this point. As you  
2 know this was adjourned since last Friday. Do you know  
3 or do you have any suspicion as to why it was, may have  
4 been adjourned?

5 JUROR: No.

6 THE COURT: All right. Have you heard  
7 anything about this case or about any of the parties in  
8 this case including the District Attorney or anyone  
9 from the District Attorney's staff or the defense  
10 attorney or the defendant or anyone from their staff or  
11 the judge? Have you heard anything about any of us?

12 JUROR: No, sir. In fact, most of them I  
13 don't even know their names.

14 THE COURT: All right. Will you still be  
15 able, because of the adjournment, be able to put your  
16 full attention on this and not be swayed in any way by  
17 the fact that it was adjourned for a few days?

18 JUROR: Yes, sir.

19 THE COURT: All right. Any questions from  
20 counsel?

21 MS. ENSELL: No questions, Judge.

22 MR. ALBERT: No questions, Your Honor.

23 THE COURT: All right. Mr. Westfall, I'll  
24 thank you and I will remind you, please do not discuss  
25 our conversations with your fellow jurors.



1 JUROR: No problem. Thank you.

2 THE COURT: All right, thank you.

3 (Mr. Westfall left the courtroom, Ms. Cardamone  
4 entered and the following occurred:)

5 THE COURT: Miss Cardamone, welcome back.

6 JUROR: Good morning.

7 THE COURT: We do have just a few matters, a  
8 couple things. I have to ask you some questions mainly  
9 because of the adjournment we had for several days.

10 JUROR: Yes, sir.

11 THE COURT: First of all, do you have any  
12 knowledge or suspicion as to why we had to adjourn it  
13 for a few days?

14 JUROR: No, sir.

15 THE COURT: Okay. And have you heard in the  
16 meantime about anyone involved in this case or about  
17 this case, and when I say anyone involved, have you  
18 heard anything about the District Attorney or the  
19 Assistant District Attorney or the defendant, the  
20 defense attorney, the staff of the defense attorney or  
21 of the court, of the judge? Have you heard anything  
22 about any of us?

23 JUROR: No, sir.

24 THE COURT: Okay. So, despite the fact that  
25 we had to adjourn this for a few days, can you assure

1 us that you will still base your decision solely on the  
2 evidence that you hear here in court?

3 JUROR: Most definitely, yes, sir.

4 THE COURT: Okay. Questions from counsel?

5 MS. ENSELL: No questions.

6 MR. ALBERT: No, Your Honor.

7 THE COURT: All right. Miss Cardamone, thank  
8 you and I remind you, do not discuss what we've  
9 discussed here with your fellow jurors.

10 JUROR: Yes, sir.

11 THE COURT: All right. Thank you.

12 JUROR: You're very welcome.

13 (Ms. Cardamone left the courtroom, Ms. Smith  
14 entered and the following occurred:)

15 THE COURT: Good morning, Miss Smith.

16 JUROR: Good morning.

17 THE COURT: All right. As you know, we've  
18 been adjourned for a few days which means I have to ask  
19 you a few follow-up questions before we can proceed on  
20 this. First of all, do you have any knowledge or  
21 suspicion as to why we've been delayed for a few days?

22 JUROR: Yes.

23 THE COURT: Can you tell us what that might  
24 be?

25 JUROR: I watched the news.

1 THE COURT: All right. What did you hear on  
2 the news?

3 JUROR: That the attorney had gotten  
4 arrested.

5 THE COURT: All right, all right. And on the  
6 news, what, the television stations I take it?

7 JUROR: Yes, Channel 2.

8 THE COURT: Can you tell us quickly what you  
9 heard. Was it just a short thing?

10 JUROR: It was just a short thing.

11 THE COURT: All right. Now -- and when you  
12 said the attorney, was it the defense attorney?

13 JUROR: Yes.

14 THE COURT: All right. Now, my next question  
15 is: Are you going to be able to put that out of your  
16 mind and still base your decision solely on the  
17 testimony here?

18 JUROR: Yes.

19 THE COURT: Can you assure me that you're not  
20 gonna be partial towards either side because of that?

21 JUROR: I can assure you, yes.

22 THE COURT: Okay. And I do remind you, there  
23 may have been an arrest here, but there's been no  
24 conviction of any kind.

25 JUROR: Exactly.

1 THE COURT: All right. Questions from  
2 counsel?

3 MS. ENSELL: Just briefly. Have you  
4 discussed what you heard with any of the other jurors?

5 JUROR: No.

6 MS. ENSELL: And you understand that you  
7 can't discuss what you've heard with any of the other  
8 jurors?

9 JUROR: Yes.

10 THE COURT: Mr. Albert.

11 MR. ALBERT: Yes, thank you, Your Honor.  
12 Ma'am, briefly, I know -- I appreciate that you're able  
13 to, you know, obviously, just focus upon the facts of  
14 this case, but obviously, with me representing my  
15 client, I'm gonna be making arguments on his behalf,  
16 asking you to adopt my positions or my arguments and  
17 things to that effect. In any way, shape or form do  
18 you think that you'd be less likely to do that just  
19 based solely upon what you saw and the fact that I was,  
20 in fact, arrested?

21 JUROR: I don't think that has anything to do  
22 with this case.

23 MR. ALBERT: Right. So, in other words,  
24 we're on the same footing that we were on last  
25 Thursday?

1 JUROR: Ah-huh, yes.

2 MR. ALBERT: All right. Thank you, Ma'am.

3 THE COURT: And again, I'll just remind you,  
4 do not discuss anything we've talked about here with  
5 your fellow jurors or anything that you have seen on  
6 television.

7 JUROR: Okay.

8 THE COURT: Thank you very much.

9 JUROR: Thank you.

10 (Ms. Smith left the courtroom, Ms. Kaydos entered  
11 and the following occurred:)

12 THE COURT: Good morning, Miss Kaydos.

13 JUROR: Good morning.

14 THE COURT: You how are you this morning?

15 JUROR: Good.

16 THE COURT: As you know, we've been adjourned  
17 for a few days. Now I have to always ask a few  
18 questions when there's been an adjournment like this,  
19 so that's the reason you're in here. All right. First  
20 of all, do you have any knowledge or any suspicion even  
21 as to why we had to be adjourned?

22 JUROR: No.

23 THE COURT: Okay. And as I asked you before  
24 when we did the initial jury questioning, do you know  
25 or have you heard anything about this case since we

1           were last here?

2                         JUROR:  No.

3                         THE COURT:  Have you heard anything about any  
4           of the parties that are here including the District  
5           Attorney, the Assistant District Attorney, the  
6           defendant, the defense attorney, any of their staff or  
7           of me?

8                         JUROR:  No.

9                         THE COURT:  Okay.  Now, despite the  
10          adjournment here, can you assure us that you will make  
11          your decision solely on the testimony that you hear  
12          here in court?

13                        JUROR:  Yes.

14                        THE COURT:  All right.  Any questions from  
15          counsel?

16                        MS. ENSELL:  No, Your Honor.

17                        THE COURT:  Mr. Albert?

18                        MR. ALBERT:  No, Your Honor.

19                        THE COURT:  All right, thank you.  Again,  
20          I'll remind you to not discuss anything you've heard  
21          here or outside, if you hear anything, with your fellow  
22          jurors.

23                        JUROR:  Okay.

24                        THE COURT:  All right, thank you.

25

1           (Ms. Kaydos left the courtroom, Ms. Sosnowski  
2 entered and the following occurred:)

3           THE COURT: Good morning.

4           JUROR: Good morning.

5           THE COURT: Miss Sosnowski, correct?

6           JUROR: Yes.

7           THE COURT: All right. As you know, we've  
8 been adjourned for a few days here which requires that  
9 I ask some follow-up questions of the jurors before we  
10 can proceed. First of all, do you have any knowledge  
11 or even a suspicion as to why we were adjourned?

12          JUROR: No.

13          THE COURT: Okay. Have you heard anything  
14 about this case since the last adjournment?

15          JUROR: No.

16          THE COURT: Have you heard anything about any  
17 of the parties that are participating in this case  
18 including the District Attorney or the Assistant  
19 District Attorney or the defendant, defense attorney or  
20 me, the judge?

21          JUROR: No.

22          THE COURT: You've heard nothing?

23          JUROR: No.

24          THE COURT: All right. Can you assure us  
25 that you will base your deliberations and your ultimate

1 decision on this solely on the proof that you hear  
2 while here in court?

3 JUROR: Yes.

4 THE COURT: All right. Counsel, questions?

5 MS. ENSELL: No questions.

6 THE COURT: Mr. Albert?

7 MR. ALBERT: No.

8 THE COURT: All right. I'll thank you again  
9 about being honest about this and I'll remind you not  
10 to discuss our conversation or anything else you may  
11 hear with any of your fellow jurors.

12 JUROR: Okay.

13 THE COURT: Thank you.

14 JUROR: Thank you.

15 (Ms. Sosnowski left the courtroom, Mr. Ratzel  
16 entered and the following occurred:)

17 THE COURT: Good morning, Mr. Ratzel.

18 JUROR: Good morning.

19 THE COURT: All right. The reason you've  
20 been brought in here is because we've had to adjourn  
21 this for a few days.

22 JUROR: Yes, sir.

23 THE COURT: And that means I have to go  
24 through and ask follow-up questions of each of the  
25 jurors. First of all, do you have any knowledge or



1 even a suspicion as to why we had to adjourn this?

2 JUROR: No.

3 THE COURT: Okay. Since you were here last  
4 Thursday, have you heard anything about this case?

5 JUROR: No.

6 THE COURT: Have you heard anything about any  
7 of the parties involved in this case including the  
8 District Attorney, Assistant District Attorney, the  
9 defense attorney, the defendant or any of their staff  
10 or the judge? Have you heard anything?

11 JUROR: No.

12 THE COURT: Okay. And can you still assure  
13 us that you will base your decisions solely on the  
14 proof that you hear here in court?

15 JUROR: Yes.

16 THE COURT: Okay. Questions from counsel?

17 MS. ENSELL: No questions.

18 THE COURT: Mr. Albert?

19 MR. ALBERT: No questions, Your Honor.

20 THE COURT: I'll just remind you that you're  
21 not allowed to discuss this conversation with your  
22 fellow jurors or anything that you do hear outside of  
23 the courtroom.

24 JUROR: Okay.

25 THE COURT: Thank you, sir.

1           (Mr. Ratzel left the courtroom, Mr. Haase entered  
2 and the following occurred:)

3           THE COURT: Good morning.

4           JUROR: Good morning.

5           THE COURT: Mr. Haase, right?

6           JUROR: Yes.

7           THE COURT: I was not quite sure of the  
8 pronunciation. As you know, we've been adjourned for a  
9 few days, so that requires me to again ask a few  
10 questions of the jurors individually. First of all, do  
11 you have any reason or suspicion as to why we had to  
12 adjourn for a few days?

13          JUROR: I have no idea.

14          THE COURT: Okay. And then I need to ask  
15 you, have you heard anything about the case in the last  
16 few days?

17          JUROR: I have not.

18          THE COURT: Have you heard anything about any  
19 of the parties involved in the case including the  
20 District Attorney or the Assistant District Attorney or  
21 the defendant, the defense attorney, any of his staff  
22 or of the judge?

23          JUROR: I have not.

24          THE COURT: You've heard nothing?

25          JUROR: No.

1           THE COURT: Can you assure us still that you  
2 will confine your decision solely to the proof that  
3 you'll hear while we're here in court?

4           JUROR: Absolutely.

5           THE COURT: Any questions from counsel?

6           MS. ENSELL: No, Your Honor.

7           MR. ALBERT: None from me, Your Honor.

8           THE COURT: Then Mr. Haase, I will remind you  
9 that you are not allowed to discuss this conversation  
10 or anything that you hear outside of court with any of  
11 your fellow jurors.

12          JUROR: Okay.

13          THE COURT: All right, thank you.

14          JUROR: Thank you.

15                 (Mr. Haase left the courtroom, Mr. Wende entered  
16 and the following occurred:)

17          THE COURT: Good morning, Mr. Wende.

18          JUROR: Good morning, sir.

19          THE COURT: How are you today?

20          JUROR: A little tired but we're all right.

21          THE COURT: Well, we've been adjourned for a  
22 few days as you know. That requires me to ask a few  
23 questions of the jurors before we can proceed. First  
24 of all, do you have any knowledge or even a suspicion  
25 as to why we had to adjourn for a few days?

1                   JUROR: No knowledge at all. I just assumed  
2 somebody was ill.

3                   THE COURT: All right. Have you heard  
4 anything about anyone being ill or other reasons for  
5 the adjournment?

6                   JUROR: I've heard nothing.

7                   THE COURT: Have you heard anything about  
8 this case?

9                   JUROR: No, no, I haven't.

10                  THE COURT: Have you heard anything regarding  
11 any of the parties including the District Attorney or  
12 Assistant District Attorney or the defendant or the  
13 defense attorney or any of the staff of either of the  
14 attorneys or the judge?

15                  JUROR: No, sir.

16                  THE COURT: Can you still assure all of us  
17 that you will base your deliberations and your ultimate  
18 decisions on this solely on the proof that you hear  
19 while you're here in court?

20                  JUROR: Yes, sir.

21                  THE COURT: Okay. Questions from counsel?

22                  MS. ENSELL: No questions, Your Honor.

23                  MR. ALBERT: None, Your Honor.

24                  THE COURT: Thank you. Mr. Wende, I'll again  
25 remind you to not discuss at all with any of your

1           fellow jurors anything we've discussed here or anything  
2           that you hear outside the courtroom.

3                        JUROR: Absolutely.

4                        THE COURT: Thank you.

5                        (Mr. Wende left the courtroom, Mr. Hoeckh entered  
6           and the following occurred:)

7                        THE COURT: Good morning.

8                        JUROR: Good morning.

9                        THE COURT: Mr. Hoeckh?

10                      JUROR: Yes.

11                      THE COURT: I wasn't quite sure on the  
12           pronunciation. The reason I have to ask some questions  
13           of the jurors is because we had to adjourn for a few  
14           days. All right? So, do you know or do you have any  
15           suspicion as to why we had to adjourn for a few days?

16                      JUROR: No.

17                      THE COURT: All right. Have you heard  
18           anything about this case since you were last here in  
19           court?

20                      JUROR: No.

21                      THE COURT: Have you heard anything about any  
22           of the parties since we were last in court and that  
23           would include the District Attorney, the Assistant  
24           District Attorney, the defendant, the defense attorney,  
25           any of the staff of the lawyers or of the judge?

1 JUROR: No.

2 THE COURT: You've heard nothing, all right.  
3 Can you assure us that you will be able to confine to  
4 the proof in this case just what you hear in court and  
5 use only that in making your decision and ultimately  
6 the verdict?

7 JUROR: Yes.

8 THE COURT: All right. Questions from  
9 counsel?

10 MS. ENSELL: No questions, Your Honor.

11 THE COURT: Mr. Albert?

12 MR. ALBERT: None, Your Honor.

13 THE COURT: All right. Sir, then you can  
14 return to the courtroom. I'll remind you that you're  
15 not allowed to discuss this conversation or anything  
16 that you may hear outside the courtroom with your  
17 fellow jurors.

18 JUROR: Yes, sir.

19 THE COURT: Thank you very much.

20 (Mr. Hoeckh left the courtroom and the following  
21 occurred:)

22 THE COURT: I think the record should reflect  
23 we've voir dired each of the jurors. Any comments from  
24 counsel?

25 MS. ENSELL: Judge, at this time, no, I have

1 no reason to believe that this particular jury cannot  
2 remain impartial for the remainder of the trial.

3 THE COURT: Mr. Albert?

4 MR. ALBERT: I would concur, Your Honor.

5 THE COURT: All right. Do we need to take a  
6 short break before we bring the jurors in?

7 MS. ENSELL: That's up to you, Judge. I do  
8 also -- I am going to note that it's likely that we'll  
9 be making just a brief motion in limine. I didn't put  
10 it in writing. I don't know if that's what the Court  
11 wants me to do, but in reference to if the defendant  
12 does indeed to testify, we were provided a disc with  
13 several items on them, items that we would probably be  
14 seeking to make the motion to preclude or preclude  
15 reference to prior to him giving that testimony, based  
16 on the relevance and their material to this case. I  
17 don't know when we want to address that, but I think  
18 it's appropriate just to note to the Court that it is  
19 something we intend to do.

20 THE COURT: All right. So, this will be  
21 based on something with the defendant's testimony?

22 MS. ENSELL: Yes, Judge. If you want me to  
23 just clarify now, I will.

24 THE COURT: First of all, perhaps this is a  
25 good time for me to clarify something. It sounds like

1 we are going to be proceeding with probably the last  
2 witness of the People's proof which means it will then  
3 roll over to the defense side. Mr. [REDACTED] one thing  
4 that I need to remind you is the ultimate decision on  
5 whether you will testify is yours.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It is not your attorney's.

8 THE DEFENDANT: Correct.

9 THE COURT: I always expect and tell a  
10 defendant they should discuss it with their attorney in  
11 making that decision.

12 THE DEFENDANT: Correct.

13 THE COURT: So, if you are called to testify,  
14 I will go on the assumption that that is your decision,  
15 not your attorney's.

16 THE DEFENDANT: Right.

17 THE COURT: And if you're not called to  
18 testify, again, I'll go on the assumption, unless I  
19 hear otherwise, that that is your decision.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Any questions on  
22 that?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Would this be a good  
25 time then to discuss these issues involving this disc?



1                   MS. ENSELL: I can if the court is ready to  
2 hear.

3                   THE COURT: Well, let's proceed now with  
4 this.

5                   MS. ENSELL: Judge, we were presented with  
6 several items on a disc which presumably would be  
7 Rosario material. The majority of the items that we  
8 were presented were newspaper articles, references from  
9 the website in which Mr. [REDACTED] the proprietor, items  
10 that really particularly -- it is our position have no  
11 relevance to this particular trial. They're really  
12 based on his personal feelings about the District  
13 Attorney's Office, which he's entitled to have, but  
14 they're not relevant to the facts in this particular  
15 case. There's really been no foundation laid that say  
16 an Assistant District Attorney was a witness at the  
17 time of the incident.

18                   I just -- why we're making a motion in limine is  
19 because I have the suspicion, based on this disc, that  
20 there will be some attempt to place these matters into  
21 evidence by the defense. I don't see the relevance. I  
22 would like a ruling from the Court before it happens  
23 that there really is no connection to the facts of the  
24 case or the issues that are material in this particular  
25 case.

1           THE COURT: All right. So, this would be  
2 information regarding members of the District  
3 Attorney's staff?

4           MS. ENSELL: It's newspaper clippings  
5 referencing members of the District Attorney's staff.  
6 They're not newspaper clippings involving in this case.  
7 It would also be articles that the defendant has  
8 himself published. Now, obviously, he's going to  
9 testify, but again, I don't see what reference to  
10 members of our staff who were not eyewitnesses of the  
11 incident have to do or would be relevant to the  
12 particular issues in this trial. There are also  
13 several references or at least one reference on there  
14 to an article published on the website referencing the  
15 judge and the court.

16           So, again, you know, these are the defendant's  
17 personal opinions and he's put them out there, but I'm  
18 not exactly sure how they would be relevant or how even  
19 their suggestion would provide any probative value on  
20 the jury that would outweigh how inflammatory his  
21 opinions are. So, that's why we're making the motion.

22           THE COURT: All right. What I think I'll  
23 need to do at this point. I'll hear from Mr. Albert.  
24 I may need to review some of these. What's your  
25 position on this?

1                   MR. ALBERT: Judge, I don't believe -- I  
2 think what we did was we turned over an abundance of  
3 material out of an abundance of caution in the sense  
4 that my client formulated a list of materials that he  
5 thinks could conceivably be relevant at some point. We  
6 don't plan having trials within trials, did the DA do  
7 this, did the judge do this. That's not what we're  
8 planning on eliciting. However, Catt County Corruption  
9 is something invoked by the People from jury selection  
10 onwards.

11                   THE COURT: And I believe by the defense.

12                   MR. ALBERT: Absolutely, and I think from a  
13 general standpoint we're gonna maybe put forward some  
14 of his beliefs, some of his experiences to at least  
15 allow the jury to draw an inference that this  
16 particular prosecution could be motivated by something  
17 other than justice. I think that's something that  
18 we're entitled to do. The jury could, obviously,  
19 accept that proposition, reject that proposition, but  
20 it's a theory or a line of deference in facts. This is  
21 common place. Obviously, if we say hey, everything is  
22 great with this prosecution, we're sort of rolling over  
23 to a certain extent.

24                   My client and I do have the belief that to a  
25 certain extent this is retaliatory in nature in the

1 sense that Mr. [REDACTED] has been probably as vocal and  
2 critical about individuals within police departments,  
3 law enforcement, DA's office as I've come across in  
4 Catt County, and the jury could draw the inference that  
5 these charges don't really make sense in this  
6 particular instance, in fact, they're probably  
7 motivated due to Mr. [REDACTED] feelings towards Catt  
8 County and their officials, and Catt County and their  
9 officials in return. That's a fair inference to be  
10 drawn and they can accept it or reject it, but it's not  
11 something that should be precluded.

12 THE COURT: Is there any intent to say  
13 anything specific about members that are participating  
14 in this trial?

15 MR. ALBERT: I don't believe so, Your Honor,  
16 aside from factual issues except, obviously, my  
17 client's state of mind is paramount. It's an element  
18 of the crime and through the standpoint of through this  
19 whole -- while he was arrested on February 27<sup>th</sup>,  
20 there was a pending, ongoing prosecution on an  
21 unrelated matter, but he was a defendant, same  
22 jurisdiction, same DA, same things to that effect. For  
23 over a one year period that encompasses  
24 February 27<sup>th</sup> and goes all the way up to April 6th of  
25 the same year, 2016, they said he was incapacitated.

1 That's relevant because incapacitated people --

2 THE COURT: Counselor, it's not  
3 incapacitated. That's not the basis for a 730  
4 determination.

5 MR. ALBERT: He's not competent to stand  
6 trial, he's not competent.

7 THE COURT: To assist in his trial. That's a  
8 different standard.

9 MR. ALBERT: But people who are not competent  
10 are certainly less liable to be able to formulate the  
11 conscious object of intent. That's certainly  
12 something -- his mind set, again, is paramount to our  
13 theory of defense, that he did not intend in any way,  
14 shape or form to pervert governmental administration.  
15 So, the only evidence that we plan inducing would be  
16 that relates to anyone, for that matter any officials  
17 or anything like that, is not for the sake of  
18 embarrassment or to inflame, but rather to go to my  
19 client's mind set, mens rea of the alleged intent that  
20 they're saying he possessed on February 27<sup>th</sup>.

21 THE COURT: All right.

22 MS. ENSELL: Can I address a couple of those  
23 things because there are several issues that he just  
24 raised that are very important for the Court to know.

25 THE COURT: Go ahead.

1                   MS. ENSELL: Number one, whether or not  
2 they're suggesting that somehow his mental state, he  
3 was incapable of forming the requisite intent based on  
4 his 730 finding, which again I agree with the judge are  
5 completely different, which requires notice and expert  
6 testimony. It's essentially not guilty by reason of  
7 insanity is almost what's being suggested to me.  
8 That's a problem because that is a defense that  
9 requires notice to the People. I mean, I understand  
10 they can kind of dance around what they're dancing  
11 around but that's a problem.

12                   I am also going to note that, again, our office  
13 was not a witness to this. They have the police  
14 officers that were either present that day or involved  
15 in the immediate investigation. They've had an  
16 opportunity to cross examine those police officers on  
17 these issues. To make us an unsworn witness in a  
18 prosecution, again -- and there's actually case law on  
19 this -- unless they can point to something pretrial,  
20 that would be something they need to discuss as  
21 potentially an element of the crime, maybe. But the  
22 case that I'm taking that from -- and I can find the  
23 site if the Court needs -- the case I'm taking that  
24 from is an instance in which somebody was charged with  
25 contempt with the Grand Jury in which the Assistant

1 District Attorney was the one getting testimony from  
2 the defendant at the time.

3 So, it's -- to place our office at issue in this  
4 case is essentially making us a witness in this case.  
5 Again, something that we weren't provided notice with.  
6 To my knowledge, none of our staff has been subpoenaed  
7 to talk about any potential issues, so it's not  
8 relevant. I guess I really don't know how else to put  
9 it.

10 Going back to the 730, I will also note for the  
11 Court, they fought us every step of the way with the  
12 finding. The finding was made. There was presumably  
13 another finding when he was placed into that facility.  
14 At this point we haven't been provided those records.  
15 We haven't asked for those records because the issue  
16 hasn't been raised, and presumably, it would have to be  
17 raised before we actually have access to that, and  
18 promptly after that filed a notice of claim against our  
19 county for doing that.

20 So, these are all ancillary issues to whether or  
21 not he obstructed justice on February 27<sup>th</sup>, 2016.  
22 These are not issues that are material. We have the  
23 officers. They have the opportunity to cross examine  
24 them about the conversations or whether or not they  
25 talked to our office, what was the purpose of being

1 charged? That's up to them to do during cross  
2 examination. I think that it's completely  
3 inflammatory, unrelated, confuses issues in the case  
4 for the jury to be exposed to all of these collateral  
5 matters that aren't material.

6 THE COURT: All right.

7 MR. ALBERT: Judge --

8 THE COURT: Go ahead.

9 MR. ALBERT: Very briefly in response, we're  
10 not necessarily intending to adduce evidence of notices  
11 of claim or anything else. What's not ancillary in any  
12 way, shape or form --

13 THE COURT: Wouldn't that be opening the door  
14 for that type of cross examination?

15 MR. ALBERT: Theoretically, sure, and we're  
16 not necessarily running away from that either because  
17 it goes to our theory of the case, if my client didn't  
18 stop right away, it wasn't because he was intending to  
19 prevent governmental administration but because he was  
20 looking for a more well lit area, he was fearful of  
21 actors from Catt County. And again, that would negate  
22 the element of intent and it would require the jury to  
23 find him not guilty of obstructing governmental  
24 administration.

25 We're entitled to put forth anything that have



1           weakens their theory that my client obstructed  
2           governmental administration. They want the trial. Did  
3           he stop right away? No, he didn't. That's not intent,  
4           that's not obstruction.

5                    THE COURT: I understand your argument, but  
6           I'm saying this is really gonna open up some cross  
7           examination, that you may want to reconsider your  
8           position on this. And also, it would seem that if you  
9           are getting to the point where you're trying to raise  
10          for the jury's consideration a psychiatric defense  
11          here, there's been no notice of that and it doesn't  
12          seem like you're really claiming that.

13                   MR. ALBERT: No, we're not.

14                   THE COURT: And it may be to the point where  
15          I may have to instruct the jury to that effect, that  
16          there is no claim being made that your client has the  
17          inability --

18                   MR. ALBERT: Not at all, sorry.

19                   THE COURT: Wouldn't you feel that would be  
20          appropriate?

21                   MR. ALBERT: Judge, we're not raising a  
22          psychiatric defense saying our client is insane.  
23          That's separate from did he intend to do what they're  
24          saying he intended to do, pervert governmental  
25          administration. From our standpoint, I think it's

1 highly relevant that for years they were saying oh,  
2 he's incompetent and all of a sudden, somehow on the  
3 night of February 27<sup>th</sup>, oh, he intended to do this.  
4 Now, the jury can say those are different standards and  
5 just because someone is supposed to be incompetent for  
6 a year by the DA's office doesn't mean they can also  
7 intend to do something.

8 THE COURT: Counsel, again, you're confusing  
9 those standards.

10 MR. ALBERT: I understand but incompetent  
11 people, I would believe, are less liable to be able to  
12 intend to have a conscious objective because  
13 incompetent people typically don't know what they're  
14 doing. A jury could accept or reject it. It's for a  
15 jury to decide. We think showing they believed him to  
16 be incompetent for years makes it less liable --

17 THE COURT: I've heard that but let me ask  
18 you this: If you're intending on showing whatever, and  
19 I don't even know what it is yet, can't you accomplish  
20 that same thing by questioning your client?

21 MR. ALBERT: Yes. That's the whole --

22 THE COURT: Then why do you want to put up  
23 his own website?

24 MR. ALBERT: No, I don't, Your Honor. I'm  
25 sorry. So, I mean, that's sort of what I stated from

1 the beginning, that that's not -- we don't plan on  
2 putting up those articles as evidence or anything to  
3 that effect.

4 THE COURT: All right.

5 MR. ALBERT: We don't want trials within  
6 trials about testing the veracity of this article or  
7 that article. That's not what we're here to do in any  
8 way, shape or form.

9 THE COURT: I think what I'm going to do at  
10 this point then, I'm obviously going to reserve on  
11 this, but if there are attempts to put in websites or  
12 other matters, newspaper articles which are not  
13 relevant to this matter, I will probably be very  
14 amenable to an objection on relevance and an  
15 instruction to the jury that they are to disregard  
16 that. I think your standard may be fairly high here.  
17 I mean, unless you can show that one of the officers  
18 had some knowledge who he even was -- I mean, I'm not  
19 gonna allow conspiracy theory here.

20 MR. ALBERT: Yes, Your Honor. I guess in  
21 terms of a conspiracy theory, that's a loaded term.

22 THE COURT: You're not alleging that in this  
23 trial, are you?

24 MR. ALBERT: No. Conspiracy theory is  
25 somewhat of a loaded term.

1 THE COURT: But it's a common sense term.

2 MR. ALBERT: Yes, but we're not saying  
3 something like the DA's conspired with the police  
4 department to charge Mr. [REDACTED] we're not saying  
5 something so outlandish. We're saying let's let -- I  
6 think what we can fairly say and I think is  
7 indisputable is that the cops didn't know who  
8 Mr. [REDACTED] was on February 27<sup>th</sup> and he was not  
9 charged with obstruction at that time, and obviously,  
10 his identity became well known amongst both the police  
11 officers as well as the DA's office and two months  
12 later he was charged with obstruction.

13 Let the jury draw the conclusion whether that's  
14 because of any personal animosity towards Mr. [REDACTED] or  
15 not, but it's certainly relevant as to -- I think we  
16 can present that to the jury and ask them to draw the  
17 conclusion that he wasn't charged originally despite  
18 the fact this all happened right in front of the  
19 officer's face because he did not commit the crime of  
20 obstruction. It was trumped up, for lack of a better  
21 term, afterwards because the blood results came back  
22 and they couldn't get him on DWI but they wanted to get  
23 him on something. I don't think that's outlandish  
24 given the sequence of events.

25 THE COURT: I think I've heard enough on

1 this. Anything to wrap up?

2 MS. ENSELL: Yes. There is a concern that's  
3 being raised to me specifically, again going back to  
4 this inability to form the mens rea of intent. It's  
5 the confusion of a 730 found unable to assist at trial  
6 versus whether or not they're capable of informing an  
7 intent. That is a psychiatric defense. We're entitled  
8 to notice on this. You literally just said to the  
9 judge, Mr. Albert, that your intention was to suggest  
10 to the jury that he's not capable of forming the  
11 requisite intent because we conducted a 730 exam on him  
12 and found him incompetent.

13 THE COURT: Mr. Albert, I'll let you know up  
14 front if you start making that argument and there's an  
15 objection, it probably will be sustained.

16 MR. ALBERT: I understand that.

17 THE COURT: The law is the law on intent, and  
18 in fact, it's already set out in the proposed jury  
19 instructions I've provided to counsel. I'm not gonna  
20 change the law on that.

21 MR. ALBERT: No, I know. Your Honor, it's  
22 not a psychiatric defense for us to argue that my  
23 client did not intend to do what they say he intended  
24 to do. That's what they have to prove beyond a  
25 reasonable doubt. We're not saying he's insane. We're

1 not trying to put forth a psychiatric defense. We're  
2 trying to raise doubt as to whether or not he intended  
3 to do what he intended to do.

4 THE COURT: Then I've heard enough on this.  
5 We will consider it as the evidence comes in. I think  
6 both sides know the Court's feelings at this point.  
7 So, let's tailor our questioning and testimony in that  
8 regard. Anything else before we get some jurors, other  
9 than a short break?

10 MR. ALBERT: Your Honor, during this short  
11 break we would just ask permission -- obviously, the  
12 video is what was -- the whole sum and substance of the  
13 officer's testimony. So, we would possibly want to  
14 show clips of the video possibly. So, we'd like  
15 permission to get this figured out during the short  
16 break.

17 THE COURT: All right. Let's take ten  
18 minutes.

19 (Short recess.)

20 THE COURT: Are we ready for some jurors?

21 (No response.)

22 THE COURT: Bring them in.

23 (The jury returned to the courtroom and the  
24 following occurred:)

25 THE CLERK: Your Honor, the jury, counsel and

## ALBERT - CROSS - KOWALSKI

1 defendant are present and ready to proceed.

2 THE COURT: A couple quick matters before we  
3 get back to testimony. You may notice that Miss Miller  
4 is not with us. She had a personal emergency and she's  
5 been excused from the jury. Mr. Wende, that means you  
6 are now Juror No. 12, move up in line. You can keep  
7 your same seat and we'll figure that out.

8 One other thing, we have a new person sitting at  
9 the defense table. It's Miss Morrell who is  
10 Mr. Albert's paralegal, and I just wanted to introduce  
11 her so everyone knows who the parties are here.  
12 Anything else before we resume testimony?

13 MS. ENSELL: Not from us.

14 JUROR: I ran out of paper.

15 (Officer Cori Kowalski resumed the witness stand.)

16 THE COURT: Officer, you can take a seat  
17 and I will remind you that you are still under  
18 oath. Mr. Albert, you may -- Mr. Albert, you may  
19 proceed.

20 MR. ALBERT: Thank you, Your Honor.

21 CROSS EXAMINATION BY MR. ALBERT:

22 Q Good morning, Officer Kowalski.

23 A Good morning, sir.

24 Q Morning. Now, Officer, you remember way back when  
25 we were here last, you watched a video that depicted the

## ALBERT - CROSS - KOWALSKI

1 events from the early morning hours in question, on  
2 February 27<sup>th</sup>, 2016; correct?

3 A Yes, sir.

4 Q Okay. And there was obviously a lot of footage of  
5 my client in that timeframe as well?

6 A Yes, sir.

7 Q Once he was out of the vehicle and so forth?

8 A Yes, sir.

9 Q And clearly, he was upset, fair to say?

10 A Yes, sir.

11 Q And he wasn't being pleasant to you in any way,  
12 shape or form; is that fair to say?

13 A Yes, sir.

14 Q And obviously, people sometimes aren't at their  
15 best when they're in traumatic situations; fair to say?

16 A Based on my experience, I think it varies.

17 Q Right. So, sometimes people aren't at their best  
18 when in traumatic situations; correct?

19 A Yes.

20 Q He was in handcuffs?

21 A Yes, sir.

22 Q Glass had shattered, his driver's side window had  
23 shattered into his face essentially; correct?

24 A Yes, sir.

25 Q All right. And you stated very clearly you did



## ALBERT - CROSS - KOWALSKI

1 not know who my client was when you first activated your  
2 lights on 242 attempting to pull him over; right?

3 A No, I did not.

4 Q Fair to say no way he would have known who you  
5 were once you activated those lights?

6 A That's correct.

7 Q Evidently, it would appear that you would be an  
8 officer; right?

9 A Yes.

10 Q Based upon the lights and sirens, correct?

11 A Yes, sir.

12 Q He didn't know whether you were stopping him for a  
13 traffic violation or whether you meant him harm? He had no  
14 idea what you intended, correct?

15 A I don't know what he was thinking, sir. I know  
16 that based on my experience, typically people pull over when  
17 they see lights.

18 Q That I guess -- but as you said, that's been your  
19 experience. But as you just stated, you have no idea what  
20 my client was thinking at that time; correct?

21 A I don't.

22 Q And as you sit here, you don't have any idea as to  
23 his prior history with other officers; correct?

24 A No, sir, I don't.

25 Q And you don't know whether those encounters have

## ALBERT - CROSS - KOWALSKI

1     been pleasant or not?

2           A     That's correct.

3           Q     And you don't know whether he's encountered some  
4     rogue officers who have harmed him in the past?

5           A     That's correct.

6           Q     You don't know.  The same way you didn't know is  
7     this an individual who meant you harm or not?  You had no  
8     idea?

9           A     That's correct.

10          Q     And sometimes the nature of these traffic stops  
11     are tenuous because no one knows who the other person is and  
12     what they're intending to do; correct?

13          A     Well, I would say the majority of people that I  
14     encounter when activating my emergency lights do know who we  
15     are.

16          Q     That you're a police officer, I get that.  But no  
17     one knows if you're going to treat them with dignity and  
18     respect; correct?

19          A     That's correct.

20          Q     You're a police officer and there's thousands or  
21     hundreds of thousands of police officers around the country;  
22     fair to say?

23          A     There are.

24          Q     And fair to say they all do their job slightly  
25     differently, correct?

## ALBERT - CROSS - KOWALSKI

1 A Yes.

2 Q Right. So now, on that night there was also  
3 another officer in the vicinity as well and that was Deputy  
4 Hunt?

5 A That's correct, sir.

6 Q From the Cattaraugus County Sheriff's Department?

7 A That's correct.

8 Q And obviously, it's a different agency than the  
9 one you're employed by?

10 A That's correct.

11 Q And in fact, Officer Hunt was stationary at the  
12 mouth of 242, I guess, when you first turned around to see  
13 my client -- you first turned around after seeing my client?

14 A Yes, he was.

15 Q He was stationary, and correct me if I'm wrong,  
16 but my client had just driven by Officer Hunt?

17 A I believe he did.

18 Q And Officer Hunt was stationary doing some sort of  
19 patrol, looking for individuals that are committing Vehicle  
20 & Traffic Law violations; right?

21 MS. ENSELL: Objection, Judge. He can't know  
22 what Officer Hunt was doing. He's not Officer Hunt.

23 THE COURT: I would sustain that objection.  
24 I think you're asking him to make some big assumptions  
25 here.

## ALBERT - CROSS - KOWALSKI

1 MR. ALBERT: Okay.

2 Q Officer Hunt was stationary at the time, right?

3 A Yes, he was.

4 Q And my client drove by him, correct?

5 A Yes.

6 Q And you stated on your direct testimony that you  
7 underwent training in recognizing Vehicle & Traffic Law  
8 violations and then enforcing them; right?

9 A That's correct, sir.

10 Q You're also aware that all officers undergo  
11 training in Vehicle & Traffic Law violations while they're  
12 in the academy and how to enforce such violations?

13 MS. ENSELL: Judge, I have to object. Again,  
14 we have a line of questioning relating to what this  
15 officer does or does not know about other people.

16 THE COURT: I'll sustain that. Perhaps you  
17 can rephrase your question.

18 Q It's standard procedure, as part of any officer's  
19 training, to undergo the training in detecting Vehicle &  
20 Traffic Law violations?

21 A I hope so.

22 Q And a very blatant and obvious one is driving  
23 without their lights on; correct?

24 A Yes, sir, at night time.

25 Q Anyone with eyes could see whether a car has its

## ALBERT - CROSS - KOWALSKI

1 lights on?

2 A If they're facing that vehicle, they should be  
3 able to.

4 Q And my client drove by Deputy Hunt, correct?

5 A He did.

6 Q All right. So, Deputy Hunt would have seen my  
7 client coming, correct, based on his vantage point?

8 A Based on his vantage point, sir, he was facing in  
9 a westerly direction. Your client was coming from behind  
10 him at the time. I'd assume that he was driving facing a  
11 westerly direction and not looking behind him. I can't make  
12 that assumption because I don't know what he was doing, but  
13 assuming the direction of his vehicle, it is probable he had  
14 no idea that the vehicle was behind him and he had no idea  
15 if there were lights on.

16 Q Okay. So, regardless, you're saying though,  
17 obviously as my client's driving, his position is shifting  
18 in relation to Deputy Hunt; correct?

19 A That's correct. He would have passed him heading  
20 in a westerly direction.

21 Q Sure. And when he would have passed him, Deputy  
22 Hunt sees a car -- let me take that back, rephrase it. He  
23 passed him in a multi thousand pound vehicle, correct?

24 A Yes.

25 Q And he went right by that deputy?

## ALBERT - CROSS - KOWALSKI

1 A Yes.

2 Q And Deputy Hunt did not activate his lights to try  
3 and execute a traffic stop upon my client that you saw;  
4 correct?

5 A He did not.

6 Q But you made a sharp u-turn to pursue my client,  
7 fair to say?

8 A I did.

9 Q All right. And in that sharp u-turn you actually  
10 came close to hitting Deputy Hunt, correct?

11 A No, sir.

12 Q Well, in that sharp u-turn, put it this way, did  
13 you signal when you made that u-turn or no?

14 A I don't recall, sir.

15 Q But if you didn't make that signal, that would be  
16 a -- strike that. Well, yeah, if you didn't signal, that  
17 would be a violation of the Vehicle & Traffic Law violations  
18 themselves; correct?

19 A If I didn't signal?

20 Q Right.

21 A Or if someone else didn't?

22 Q No. You didn't?

23 A That's correct.

24 Q Did you cite yourself for failing to signal?

25 MS. ENSELL: Objection, Judge. He just

## ALBERT - CROSS - KOWALSKI

1 testified he doesn't remember if he signaled or not.

2 I'm not sure what this line of questioning is intended  
3 to show.

4 THE COURT: I'll sustain it, Counselor.

5 Q And you made a quick turn and began to pursue my  
6 client down 242, right?

7 A I performed a u-turn, sir, so that I could follow  
8 the vehicle in question.

9 Q Understood. And at which point you activated your  
10 lights soon thereafter?

11 A Yes, sir.

12 Q And you also activated your sirens, right?

13 A I did multiple times.

14 Q And the sirens are loud, right?

15 A That they are.

16 Q They have a high decibel?

17 A I believe they are.

18 Q And at some point you also shined a spotlight into  
19 my client's vehicle, right?

20 A I did, sir.

21 Q So, there's lights, sirens and spotlights in that  
22 short 1.7 mile stretch that you pursued my client; right?

23 A I'm sorry, you said seven miles, sir?

24 Q 1.7 mile stretch.

25 A Okay, yeah, yeah.

## ALBERT - CROSS - KOWALSKI

1 Q And lights, sirens, spotlights could at times be  
2 disorienting to an individual; correct?

3 A Possibly.

4 Q All right. And other than that, other than it is  
5 dark and desolate on that stretch of highway -- fair to say?

6 A It was nighttime.

7 Q That's a yes?

8 A Yes.

9 Q It's not like yes, it's nighttime, but on major  
10 drags or thoroughfares there's billboards, lights, things  
11 like that. There's none of that on that stretch of the 242,  
12 right?

13 A No.

14 Q In fact, some of that stretch doesn't even have a  
15 shoulder, right?

16 A I recall it has a shoulder, yes, sir, all of it.

17 Q Okay. That stretch does have a shoulder?

18 A Yes, sir.

19 Q Fair enough. And we saw footage of that shoulder  
20 on the video that was just shown to the jury last Thursday,  
21 right?

22 A Yes, sir.

23 Q The shoulder was very narrow, correct?

24 A I would say at times it was narrow.

25 Q It's not a big, wide, inviting shoulder, fair to



## ALBERT - CROSS - KOWALSKI

1 say?

2 A I think that's up to my perspective. I believe he  
3 had ample shoulder space throughout, from the time that I  
4 initiated my lights to the time he was stopped.

5 Q But as you just stated, it's a narrow shoulder.  
6 Whether one could fit a vehicle there or not, it's a narrow  
7 shoulder compared to other shoulders on other highways;  
8 right?

9 A I would agree with you, at some point the shoulder  
10 does become narrow.

11 Q And if one were to keep going down the 242, we  
12 actually get to Little Valley, right?

13 A Heading in a westerly direction you would.

14 Q And eventually, if one were to keep going, one  
15 gets to open businesses such as gas stations, things to that  
16 effect?

17 A I don't know if they would be open at 3:00 in the  
18 morning, sir. I'm not familiar with that area.

19 Q But there are at least businesses and more well  
20 lit areas if one were to keep going down that stretch of  
21 242?

22 A Presumably, yes.

23 Q Okay, okay. And as we stated, it wasn't one  
24 vehicle pursuing my client, it was two; correct?

25 A That's correct, sir.

## ALBERT - CROSS - KOWALSKI

1 Q And typically, it just happened that you and  
2 Deputy Hunt were in the same area at the same time at the  
3 same place when you executed a traffic stop?

4 A Yes.

5 Q Typically, when one's executing a traffic stop,  
6 it's one police car?

7 A No.

8 Q For a traffic stop?

9 A That's correct.

10 Q You generally have multiple vehicles with you when  
11 you're executing a traffic stop?

12 A In the Town of Hamburg we do.

13 Q Really?

14 A That's correct.

15 Q But obviously, to an individual two police cars  
16 could be more intimidating than one police car pulling them  
17 over, right, possibly?

18 A I don't believe that that would be the case, sir.

19 Q In your mind maybe, but again, you don't know what  
20 my client's thinking?

21 A I don't know what he's thinking.

22 Q You know he wasn't pulling over when you expected  
23 him to pull over, that's for sure?

24 A I have no idea what he was thinking, sir.

25 Q I get that. And you had no idea whether he meant

## ALBERT - CROSS - KOWALSKI

1 you harm or otherwise, correct?

2 A That's correct.

3 Q You have no idea whether he intended you from  
4 executing a traffic stop or whether he intended to make that  
5 traffic stop down the road a ways; correct?

6 A I, at the time, thought his intentions were to  
7 possibly cause harm to myself or the officer because he was  
8 failing to yield.

9 Q He was failing to yield, right. And Vehicle &  
10 Traffic Law violations -- obviously, you're familiar the  
11 Vehicle & Traffic Law as well as the Penal Law?

12 A Yes, sir.

13 Q And you're also aware that different violations  
14 have different elements to them that must be proven correct  
15 or that must be met before you can charge somebody  
16 accordingly?

17 A That's correct.

18 Q And if somebody is speeding, they don't intend to  
19 be speeding, they're speeding, they get a ticket?

20 A That's correct.

21 Q And if someone's failing to yield, they're failing  
22 to yield and they get that ticket?

23 A That's correct.

24 Q All right. Obstruction of governmental  
25 administration, do you know the elements for that particular

## ALBERT - CROSS - KOWALSKI

1 crime?

2 A Ah-huh.

3 Q Yes?

4 A Yes.

5 Q Okay.

6 A Sorry.

7 Q And what are they, for the jury?

8 A Obstruction of governmental -- excuse me, I'm  
9 trying to recite this -- perverts a police officer from  
10 performing his duty. There are other elements as well.

11 Q Intent would be one of them, correct?

12 A That's correct, that's right.

13 Q And again, we don't know -- well, let me ask you  
14 this, when you're -- you've been in pursuits before, have  
15 you?

16 A This is -- this was my first one.

17 Q This was your first. The speed limit in that  
18 location is 55 miles per hour; is that accurate?

19 A I can't recall.

20 Q Okay. You do recall my client wasn't speeding in  
21 any way, shape or form; correct?

22 A No, sir. I recall that he was traveling at  
23 50 miles per hour.

24 Q Obviously, if that were exceeding the speed limit,  
25 he would have been hit with a speeding ticket?

## ALBERT - CROSS - KOWALSKI

1 A Yes.

2 Q And he wasn't. So, I guess my question is:  
3 Someone's evading the police, they typically would drive  
4 fast to get away from them; correct?

5 A Not necessarily.

6 Q Well, if you're -- let me rephrase that a little  
7 bit. He can't out race you going under the speed limit,  
8 correct?

9 A We weren't racing though.

10 Q I understand that. But if someone's trying to  
11 avoid you and evade you, they would be speeding away from  
12 you; correct?

13 A Not necessarily, sir.

14 Q Okay. Do you think they'd be going in a straight  
15 line, 50 miles per hour, under the speed limit without  
16 turning, would that be a way to get away from you?

17 A I think in the past we've seen that, O.J. Simpson  
18 case.

19 Q Right, and then O.J. eventually pulled over,  
20 correct?

21 A Yes.

22 Q We don't know what O.J. was thinking at that time  
23 either necessarily, right?

24 A That's correct.

25 Q And that wasn't a traffic stop either, correct?

## ALBERT - CROSS - KOWALSKI

1 A Are you referring to O.J. Simpson?

2 Q Yeah.

3 A That's correct. Well, they were trying to perform  
4 a traffic stop, I believe, upon O.J.

5 Q Who was being arrested at the time for murder,  
6 right?

7 A Presumably.

8 Q And as far as you know, my client didn't murder  
9 anybody and he wasn't fleeing you to avoid a murder arrest?

10 A I had no idea if he had committed a murder at the  
11 time or not.

12 Q Exactly. And that's why you were concerned for  
13 your safety when you drew your firearm as soon as you got  
14 out of the police car; right?

15 A There was other components associated with that  
16 but that was one of them.

17 Q Sure. Certainly, one of the reasons you produced  
18 your firearm was for your safety. You didn't know what he  
19 was thinking and you wanted to make sure he didn't mean you  
20 violence, he didn't intend violence towards you?

21 A Yes, sir.

22 Q So, you pulled your gun out, right?

23 A Ah-huh.

24 Q And you don't know whether one of my client's  
25 concerns was safety when trying to get to a more well lit

## ALBERT - CROSS - KOWALSKI

1 area for the traffic stop, you don't know?

2 A I had no idea what he was thinking, sir.

3 Q Okay. Certainly didn't pull over right when you  
4 wanted him to pull over?

5 A No, sir.

6 Q Far from it. And he failed to yield?

7 A That's correct.

8 Q But we don't know what he intended to do in terms  
9 of whether he intended you from ever executing that traffic  
10 stop or not, right?

11 A That's correct.

12 Q Now, watching that video from Thursday, there were  
13 times when -- well, I'm sorry. As you approached the  
14 vehicle, there was music on his radio was playing; correct?

15 A I don't recall the music. I believe Officer Hunt  
16 did.

17 Q Did what? Recall the music?

18 A Yeah.

19 Q You personally don't recall whether there was  
20 music playing?

21 A That wasn't a concern at the time.

22 Q I understand you didn't want to jam out to the  
23 radio.

24 A Right.

25 Q But you did hear, see the video and you don't

## ALBERT - CROSS - KOWALSKI

1 recall music emitting from my client's radio?

2 A I don't.

3 Q Fair enough. There were sirens on, correct?

4 A Yes.

5 Q And obviously, sirens and music could make it  
6 difficult to hear some things; right?

7 A Yes, sir.

8 Q Okay. And if there was sirens and music on and  
9 also my client's window was up obviously, right?

10 A Yes, sir.

11 Q And you never actually sat inside my client's car  
12 to determine what one could hear from the outside, correct,  
13 like how well it muffled sound or anything?

14 A That's correct.

15 Q But having sirens and music on might make it  
16 difficult to hear one's instructions; correct?

17 A It may.

18 Q Okay. But you're stating that with sirens going,  
19 with music going, you still heard my client say the word  
20 "no" when you asked him to open the door?

21 A I don't recall hearing the music, sir. However, I  
22 can tell you that he shook his head twice, acknowledged,  
23 stating "no." I was very close to the window. I heard him  
24 state that. I saw him acknowledge what I was saying. He  
25 responded to that, yes.



## ALBERT - CROSS - KOWALSKI

1 Q And the guns were out at that point, right?

2 A My gun was unholstered at that time, that's  
3 correct.

4 Q And you don't know whether he was scared out of  
5 his mind at the time or whether he was just intending to  
6 defy you; correct?

7 A He didn't appear to be scared.

8 Q Well, you're seeing him through a window at what,  
9 2:40 in the morning, and you've never met him before?

10 A Never met him before.

11 Q He didn't make some crazy facial expression; is  
12 that what you're saying?

13 A He wasn't trembling, he didn't show mannerisms of  
14 being scared. He was being defiant.

15 Q So, at 2:40 in the morning, as you're approaching  
16 my client's vehicle with your gun drawn, you detected the  
17 fact that there were no trembles; is that your testimony?

18 A That's correct. I didn't see him shaking.

19 Q So, you don't remember whether there was music  
20 playing, but you know that he didn't tremble at all?

21 A Well, that's an important facet of trying to  
22 protect myself is looking at the hands because I was taught  
23 that the hands will kill you.

24 Q Where were his hands?

25 A Initially, when I got out of the vehicle, they

## ALBERT - CROSS - KOWALSKI

1 were on the steering wheel, and then I asked him to  
2 remove -- he heard me because I stated to him, "show me your  
3 hands," and he placed both of them off the steering wheel,  
4 at which point I was actually further away from the vehicle  
5 than I was when I approached the vehicle and told him to  
6 unlock his vehicle and step out.

7 Q So, he did comply with you when you asked him to  
8 place his hands on the wheel?

9 A No. I told him to take his hands off the wheel.  
10 I said show me his hands, at which point he lifted his hands  
11 off the steering wheel and showed me his hands.

12 Q So, he complied with you at that point?

13 A That's correct.

14 Q And ultimately, my client did go to the hospital  
15 based upon the events that occurred that evening; correct?

16 A Yes, he did go to the hospital, sir.

17 Q Okay. And he didn't open the door right away.  
18 You don't know if he was scared he was gonna get hurt or  
19 not; right?

20 A He did not open the door upon request.

21 Q That's what I'm saying, he did not open the door  
22 right away?

23 A That's correct.

24 Q You don't know why he did not do that?

25 A That's correct.

## ALBERT - CROSS - KOWALSKI

1 Q You don't know if he was thinking I really don't  
2 want to get my butt kicked?

3 A I didn't ask him why he didn't open up. I just  
4 asked him to open. I don't know what his train of thought  
5 was at the time.

6 Q What his intentions were?

7 A Yes, his train of thought.

8 Q And ultimately, you did detect the odor of alcohol  
9 on his breath?

10 A That's correct.

11 Q And as you know, the odor of alcohol on one's  
12 breath might be proof that he had something to drink?

13 A It gives me probable cause to further investigate  
14 as to whether that individual had consumed a copious amount  
15 of an alcoholic beverage thus leading to them being  
16 intoxicated.

17 Q Correct. But it doesn't show whether someone had  
18 one drink or intoxicated, correct, just the odor?

19 A I would beg to differ. Once it becomes pungent, I  
20 would safely say the pungency differentiates the amount of  
21 alcohol he had, and he had a rather pungent odor of alcohol  
22 from his breath at the time.

23 Q Well, you know he was coming from Buffalo,  
24 correct?

25 A No, sir. I had no idea where your client was

## ALBERT - CROSS - KOWALSKI

1 coming from.

2 Q Fine. Later on you were made aware that he was  
3 coming from Buffalo, correct?

4 A I was not. I asked him where he was coming from  
5 and he stated "where I was traveling from" or a similar  
6 statement. So, he never acknowledged where he was traveling  
7 from, sir.

8 Q And certainly, you thought his behavior was  
9 strange in that he didn't pull over when you first attempted  
10 to get him to pull over, there was an odor of an alcoholic  
11 beverage on his breath -- correct?

12 A There was.

13 Q And he was obviously upset, maybe distraught at  
14 some points during that video; correct?

15 A He appeared to be angry and agitated.

16 Q Angry might be a word as well, sure. And he  
17 mentioned a couple of times something about you guys were  
18 gonna arrest him for shooting Air Force One or something  
19 along those lines?

20 A He did mention that.

21 Q So, there were certainly some incoherent thoughts?

22 A I didn't have knowledge that Air Force One was  
23 shot down at that time, so it didn't make sense to me.

24 Q A lot of what he was saying didn't make sense?

25 A I was trying to logically explain why he was

## ALBERT - CROSS - KOWALSKI

1 making these statements, and the only logical thing was he  
2 was possibly intoxicated.

3 Q Or is it possible he was incompetent or he didn't  
4 know what he was doing at the time?

5 A I'm not a psychologist. I can't determine the  
6 incompetence of someone's psychological state.

7 Q And you didn't know Mr. [REDACTED] before and you  
8 don't know Mr. [REDACTED] on a personal behavior?

9 A I do not know him.

10 Q And while his behaviors were strange, you had no  
11 idea what he was intending on that date and time?

12 A I'm not sure what he was thinking.

13 Q You're taught at the academy if someone commits --  
14 strike that. You've been a police officer how many years  
15 now, Officer Kowalski?

16 A Going on six years now.

17 Q And as part of your training, when someone commits  
18 a crime in your presence, you're trained to charge them  
19 accordingly, lock them up and charge them; correct?

20 A I would yes, yeah.

21 Q If someone commits an assault here, one juror hits  
22 another, you're gonna get off that stand and charge them  
23 with assault?

24 A No.

25 Q You wouldn't?

## ALBERT - CROSS - KOWALSKI

1 A It's not my municipality, sir.

2 Q But by and large if you witness a crime taking  
3 place right in front of you, you charge them with it; right?

4 A Not necessarily, sir. I mean, as in the example  
5 you just gave me, I can't charge someone outside my  
6 municipality.

7 Q Assuming you had jurisdiction?

8 A Assuming, yes, sir.

9 Q And if someone commits a traffic violation in  
10 front of you, you charge them, right?

11 A Yes.

12 Q In fact, Mr. [REDACTED] in your mind wasn't driving  
13 with his lights on, you're alleging?

14 A Yes, sir.

15 Q And you charged him with that?

16 A I did.

17 Q And you thought, based on some of your  
18 investigation -- strike that, I'm sorry. You came to the  
19 belief that my client was driving while intoxicated on the  
20 night in question; correct?

21 A Yes, sir.

22 Q Morning in question?

23 A Yes, sir.

24 Q And you charged him with that?

25 A I did.

## ALBERT - CROSS - KOWALSKI

1 Q And you didn't charge him with obstruction of  
2 governmental administration that evening, did you?

3 A It's on the police report. I did not charge him  
4 at that time.

5 Q Okay, right. On the police report, as what he --  
6 you put it on the police report but the police report is not  
7 an accusatory instrument, correct?

8 A No, sir, it is not.

9 Q Police report might be thoughts you had, things  
10 you had; correct?

11 A Yes, sir.

12 Q And you also put DWI and things like that on the  
13 police report; correct?

14 A Among other charges, yes.

15 Q Exactly, but then ultimately you consider a lot of  
16 behaviors and a lot of charges. It's not always when you're  
17 actually filing charges -- let me rephrase that completely.  
18 Once an event happens, you have to step back, sort it out  
19 and then figure out what to charge; correct?

20 A Within the circumstances like this, yes.

21 Q And that night you came to the conclusion my  
22 client committed some Vehicle & Traffic Law violations and  
23 was driving while intoxicated; correct?

24 A Yes, sir.

25 Q And you charged him with those incidents, right?

## ALBERT - CROSS - KOWALSKI

1 A Yes, sir.

2 Q You did not charge him with obstruction of  
3 governmental administration, correct? Yes or no?

4 A No.

5 Q All right. Another charge on your police report  
6 was unlawfully fleeing a police officer, correct?

7 A Yes, sir.

8 Q And he wasn't charged with that either, correct?

9 A He was not.

10 Q And one has to be exceeding the speed limit by, I  
11 believe, 20 or 25 miles per hour to be liable for unlawfully  
12 fleeing a police officer; right?

13 A I don't remember the specifics of that charge,  
14 sir, but it sounds about right.

15 Q Sure. And you said my client wasn't speeding,  
16 correct?

17 A He was not.

18 Q So, he wasn't unlawfully fleeing a police officer  
19 as defined by statute, correct?

20 A I believe so.

21 Q And he wasn't charged with that crime, right?

22 A No.

23 Q And he also, while obstruction of governmental  
24 administration was on the police report, he wasn't charged  
25 with that crime either; correct?



## ALBERT - CROSS - KOWALSKI

1 A Not when I was filling out that police report.

2 Q You never charged him with obstructing government  
3 administration; correct?

4 A No, me, no.

5 Q You did not, right?

6 A That's correct.

7 Q And you were the lead witness? I mean, you were  
8 the officer that first attempted to pull over my client,  
9 correct?

10 A I was.

11 Q And you saw everything from that whole 1.7 mile  
12 stretch of highway on the 242 until my client was, in fact,  
13 pulled over and his window was shattered; correct?

14 A That's correct.

15 Q And all that took place in your presence?

16 A Ah-huh, yes.

17 Q And yet, you never charged him with obstructing  
18 governmental administration?

19 A No.

20 Q Not on February 27<sup>th</sup> when this event occurred,  
21 right?

22 A No.

23 Q And in fact, you filed new charges on  
24 February 28<sup>th</sup> of some sort, correct?

25 A Yes.

## ALBERT - CROSS - KOWALSKI

1 Q Due to, I don't know, was it a clerical error --  
2 let me ask you, why did you file new charges on  
3 February 28<sup>th</sup>?

4 A I believe there was a clerical error on the UTT,  
5 if I recall, because I also provided a memo to the Court.

6 Q Sure. Did you file additional charges on  
7 February 28<sup>th</sup> that weren't filed on February 27<sup>th</sup>?

8 A No. I think at that time I was just concerned  
9 about the error on the original UTT.

10 Q Sure. But that does go to show that on  
11 February 28<sup>th</sup>, obviously a new day, but you wanted to make  
12 sure that my client was charged correctly; right?

13 A With those, correct.

14 Q And that's why you went back and fixed whatever  
15 was lacking in the original paperwork, right?

16 A That's correct.

17 Q All right. But you didn't charge him with  
18 obstruction of governmental administration on  
19 February 28<sup>th</sup>, right?

20 A I was just worried that upon --

21 Q Well --

22 A I'm sorry.

23 MS. ENSELL: If he's not going to let him  
24 answer -- I think it's an asked and answered question.

25 THE COURT: I think it's been asked and

## ALBERT - CROSS - KOWALSKI

1 answered, Counselor.

2 Q February 29<sup>th</sup> you didn't charge him with  
3 obstruction of governmental administration -- that's a trick  
4 one. There is no February 29<sup>th</sup>. But at no point did you  
5 charge him with obstruction of governmental administration?

6 A That's correct.

7 Q Okay. You heard my client call you something like  
8 Mr. Video in the video you watched on Thursday. Did you  
9 hear him reference you as Mr. Video?

10 A I remember watching him make numerous comments. I  
11 have no idea who he was directing these comments to.

12 Q Sure. As far as in your interpretation, those  
13 weren't necessarily rational, coherent thoughts?

14 A Yeah. I was trying to piece together this  
15 investigation and some of it didn't make sense to me.

16 Q Got it. A lot of it didn't make sense in terms of  
17 what my client was saying, what he was thinking, what he was  
18 intending?

19 A That's correct.

20 MR. ALBERT: If I could just have a moment to  
21 consult my client.

22 THE COURT: Go ahead.

23 (Discussion off the record.)

24 MR. ALBERT: I have no further questions,  
25 Your Honor.

## ENSELL - REDIRECT - KOWALSKI

1 THE COURT: Redirect?

2 MS. ENSELL: Yes, Judge. Thank you.

3 REDIRECT EXAMINATION BY MS. ENSELL:

4 Q All right, Officer, I have a couple of clarifying  
5 points for you.

6 A Yes, Ma'am.

7 Q One of them being as a police officer, are you  
8 familiar with a procedure that allows you to take somebody  
9 to a psychiatric hospital?

10 A Yes, Ma'am.

11 Q Okay. And do you know what that procedure is  
12 called?

13 A It's a 941 criteria.

14 Q And part of your -- within your duties as a police  
15 officer, to make some inferences about interacting with an  
16 individual and making a determination as to whether or not  
17 they need to be taken to behavioral hall?

18 A Yes, Ma'am.

19 Q Okay. And as part of those duties, I guess, are  
20 you always making those observations when you encounter a  
21 situation?

22 A Concerning psychiatric health of an individual?

23 Q Yes.

24 A Yeah, if they make statements.

25 Q And you said on cross examination it's fair to say

## ENSELL - REDIRECT - KOWALSKI

1 that you're not an expert by any means?

2 A No.

3 Q But part of your duties involve making some  
4 inferences from people's behavior on whether or not they go  
5 to the hospital; is that correct?

6 A Yes, Ma'am.

7 Q And you had an opportunity to observe the  
8 defendant in this case?

9 A Yes, I did.

10 Q Did he make any of those -- did you observe any of  
11 those things that you would normally look for in your  
12 standard duties?

13 MR. ALBERT: Judge, I would -- and a 941 is  
14 if somebody means serious harm to themselves or  
15 another. 941 was never brought up on cross. I never  
16 spoke up about a 941.

17 MS. ENSELL: He is implying on his cross  
18 examination that the individual was in such a state,  
19 and I'm asking whether or not the officer has any  
20 experience in observing individuals in that state. You  
21 opened the door.

22 THE COURT: You brought it up on cross  
23 examination about competency to form intent, but I'm  
24 gonna limit it, so let's not go too far.

25 Q I'll reask my question. In your observations of

## ENSELL - REDIRECT - KOWALSKI

1 the defendant, did he appear to be in such a heightened  
2 state that it caused you concern?

3 A (No response.)

4 Q Such a state of psychological distress?

5 MR. ALBERT: Judge, I object. Psychological  
6 distress is asking for a medical conclusion.

7 MS. ENSELL: I don't think it is.

8 THE COURT: I'll allow it, go ahead.

9 A I just want to briefly try to explain what you're  
10 asking me. Are you asking me did I feel that he met the 941  
11 criteria at the time of the stop?

12 Q I'm asking you -- suggestion was made on cross  
13 examination -- do you remember?

14 A Ah-huh.

15 Q -- that the individual was in such a state that he  
16 was essentially, I guess, out of control or highly agitated  
17 to the point where he potentially was having an issue that  
18 he could not comprehend what was going on. Was that your  
19 observation?

20 A No, absolutely not.

21 Q Officer, a lot of questions were asked about  
22 intent on cross examination. Generally speaking, would you  
23 agree that we often make inferences about what people are  
24 doing and what their mental state is based on their actions?

25 A That's correct.

## ENSELL - REDIRECT - KOWALSKI

1 Q Because you can't mind read, correct?

2 A Not yet.

3 Q So, you have to go off of what you are observing?

4 A Yes, Ma'am.

5 Q All right. And in this particular case were you  
6 able to make some inferences about what you thought was  
7 occurring in this case based on the actions of the  
8 defendant?

9 A I did.

10 Q Okay. And what were those inferences?

11 A That he was fully acknowledged that I was a police  
12 officer, that it was an emergency vehicle, that I pulled up  
13 next to him. He realized that I was trying to perform a  
14 traffic stop. He neglected to pull his vehicle over based  
15 on whatever personal agenda he had. Upon stopping that  
16 vehicle, I got out, gave clear and concise instructions to  
17 which he decided that sometimes he was going to comply with  
18 and at other times he was not.

19 Q And some mention was -- again, some attention was  
20 drawn to your weapon, whether or not it was holstered or not  
21 holstered, but again, do you recall the point in time in  
22 which you placed your gun back into its gun belt?

23 A Yes, Ma'am.

24 Q And when was that?

25 A I placed my gun into my gun belt when I withdrew

## ENSELL - REDIRECT - KOWALSKI

1 my asp from its holster.

2 Q And again, to remind the jury, were commands made  
3 after your asp was withdrawn?

4 A One additional command was made.

5 Q And was that complied with?

6 A No.

7 Q And how did he answer that?

8 A He shook his head and said no.

9 Q All right. Now, there were also some questions  
10 regarding evading police. Now, in your experience are there  
11 other things a vehicle can do in order to try and evade  
12 detection from you?

13 MR. ALBERT: Judge, I'll object. For one, he  
14 stated this was his only pursuit; and secondly, his  
15 other experiences, even if he had them, which he  
16 indicated he didn't, wouldn't be relevant.

17 MS. ENSELL: He asked on cross.

18 THE COURT: I agree. It was brought up on  
19 cross. You can continue.

20 Q Are there other things that vehicles potentially  
21 do to evade detection by the police?

22 A Yes.

23 Q Like what would those be?

24 A Turn their headlights off, pull over, park.

25 Q Travel on side streets, would that be one of them?



## ENSELL - REDIRECT - KOWALSKI

1 A Yes.

2 Q There were also some questions on cross  
3 examination about your smell of alcohol. Did you make any  
4 other observations of the defendant?

5 A I did.

6 Q What were those?

7 A I observed that his eyes were bloodshot, glossy,  
8 watery, that his speech was not smooth. It was kind of  
9 slurred at times.

10 Q Okay. You did see a video of him. Did you feel  
11 that that was being displayed on the video?

12 A His glossy eyes?

13 Q No, the speech?

14 A I think on the video he articulated his speech  
15 quite well.

16 Q Okay. So, based on the observations that you were  
17 making at that point, was it safe to say that you felt you  
18 were probably engaged in a DWI investigation?

19 A Yes.

20 Q Okay, all right. Now, there were also some  
21 questions about a particular report. I'm gonna show you  
22 what has been marked as People's Exhibit 32 for  
23 identification. Can you tell me what this is?

24 A Yes, Ma'am, it's a police report.

25 Q And this particular police report, who prepared

## ENSELL - REDIRECT - KOWALSKI

1 this?

2 A I did.

3 Q And do you recall when you prepared this report?

4 A The night of.

5 Q And this report lists several different charges;  
6 is that correct?

7 A Yes, Ma'am.

8 Q Okay. And let me know if you need to refer to it,  
9 but when you filled this out, that was on the date you just  
10 mentioned, February 27<sup>th</sup>?

11 A Yes, Ma'am.

12 Q And can you explain to the jury, was there a  
13 reason why at that point you hadn't filed these additional  
14 charges?

15 A I had no idea that I could charge an individual  
16 outside my municipality, that being the Town of  
17 Ellicottville. I assumed it was a possibility, that's why I  
18 added it to there. However, I figured it would be best to  
19 charge him with the Vehicle & Traffic Law violations that I  
20 observed within the Town of Ellicottville and then go from  
21 there.

22 Q Okay. So, it's safe to say you were not  
23 conclusively sure whether or not these were charges that you  
24 as the arresting officer would be able to file?

25 A That's correct.

## ENSELL - REDIRECT - KOWALSKI

1 Q And now, did there come a point in time in which  
2 you were summoned to appear in front of a particular body in  
3 reference to this?

4 A Yes, Ma'am.

5 Q And do you recall which body that was?

6 A It was Grand Jury.

7 Q And to the best of your understanding, when a case  
8 is presented to the Grand Jury, who is the one who's making  
9 the determination on whether or not there will be charges  
10 moving forward?

11 A The Grand Jury of the People.

12 Q Okay. And -- one second, Your Honor. I  
13 apologize. Let me just collect my thoughts. There was some  
14 suggestion on cross examination, I believe, in the form of a  
15 question that this particular incident spanned about  
16 1.7 miles. Is that 1.7 mile figure correct in your mind  
17 or --

18 A I'd approximate that the distance would be  
19 two miles, give or take a tenth of a mile or so. I haven't  
20 specifically walked the distance and calculated how many  
21 miles it was, Ma'am.

22 Q And there was also some mention of the area being  
23 desolate. I think desolate carries with it a particular  
24 connotation.

25 MR. ALBERT: Judge, I object to counsel

## ENSELL - REDIRECT - KOWALSKI

1           testifying about what she thinks about desolate and  
2           things like that. He said it was a dark and desolate  
3           area.

4                       MS. ENSELL: He said dark, he said it was  
5           nighttime.

6                       THE COURT: I'll allow the question. You can  
7           recross if you wish on that.

8           Q       Officer, and again, those areas that we're talking  
9           about, are those outside of your patrol area?

10          A       Yes, Ma'am.

11          Q       But have you ever driven that road before?

12          A       Yes.

13          Q       Okay. Are there residences on that road?

14          A       Yes, Ma'am.

15          Q       Okay. And from what you can recall, those  
16         residences, they abut the road, they're up close or are they  
17         far away?

18          A       Some of them are.

19          Q       And there was some mention of sound. Did you use  
20         any other device besides the siren?

21          A       A horn, automated horn.

22          Q       And is that a quiet -- can you describe what that  
23         horn is like?

24          A       I would say it's a typical car horn. I believe it  
25         possibly might be amplified.

## ALBERT - RECROSS - KOWALSKI

1 Q Okay. And once you were able to stop your patrol  
2 vehicle, did you continue to use your sirens? Did you leave  
3 them on? What did you do?

4 A No, they were not on. I turned them off.

5 MS. ENSELL: Turn them off, okay. All right.

6 Thank you, no further questions.

7 THE COURT: Mr. Albert.

8 MR. ALBERT: Yeah, thank you, Your Honor.

9 RECROSS EXAMINATION BY MR. ALBERT:

10 Q You mentioned on redirect that my client was  
11 sometimes compliant with your instructions and sometimes  
12 not; correct?

13 A That's correct.

14 Q So, he was emitting signals from that standpoint;  
15 correct?

16 A Ah-huh, yes.

17 Q And again -- so, in other words, you had no idea  
18 what his intentions were? Sometimes he was being compliant,  
19 sometimes he wasn't; right?

20 A Yes, sir.

21 Q All right. And you mentioned, you said something  
22 like you didn't think you had jurisdiction to file an  
23 obstruction charge that evening; right?

24 A That's correct. I was uncertain as to whether I  
25 could charge outside of my municipality.

## ALBERT - RECROSS - KOWALSKI

1 Q Okay. Well, you certainly weren't uncertain that  
2 you could pursue outside the municipality as you did pursue  
3 my client through a couple jurisdictions?

4 A Yes, sir.

5 Q So, you thought I can pursue, I can pursue, I just  
6 can't charge him; is that what you were thinking?

7 A At that time I was thinking it was a DWI  
8 investigation and I didn't know why he was driving down the  
9 road without his lights on. It's unusual behavior.

10 Q So, you thought you could pursue, pursue, pursue  
11 but not charge on some of these things?

12 A Yes, sir.

13 Q And you mention some, a numerous of things outside  
14 of obstruction of governmental administration?

15 A Correct.

16 Q And you mentioned reckless driving?

17 A I did.

18 Q And you didn't charge him with reckless driving?

19 MS. ENSELL: Objection, Judge. He's not on  
20 trial here -- he's on trial for what he's charged with.

21 THE COURT: I will allow it.

22 Q And unlawfully fleeing a police officer?

23 A That's correct.

24 Q And you did not charge him?

25 A Correct.

## ALBERT - RECROSS - KOWALSKI

1 Q And reckless endangering?

2 A I did.

3 Q And that's not charged?

4 A Yes.

5 Q So, you have multiple charges here that ultimately  
6 weren't applicable, right?

7 A Yes.

8 Q So, you listed all these charges and that night  
9 you went with the charges that were what you thought would  
10 be applicable; right?

11 A Yes. At that time I needed to charge your client  
12 with something.

13 Q Why is that?

14 A Because based on what I saw within my  
15 municipality, not -- operating the vehicle without lights.  
16 Once I got him stopped, I observed -- well, his breath, it  
17 was emitting an alcoholic beverage. I felt that I had  
18 probable cause for a DWI investigation which I did, and  
19 ultimately he was charged with such because he was operating  
20 at one time in that municipality under the influence.

21 Q Now, you wrote a fairly -- actually a very lengthy  
22 police report about that 1.7 to two mile pursuit; correct?

23 A I did, sir.

24 Q And you spoke about pretty much everything from  
25 the time you first saw my client till the time you pursued

## ALBERT - RECROSS - KOWALSKI

1 him till the time he pulled over, to all those different  
2 things; correct?

3 A Yes, sir.

4 Q All right. Nowhere in that entire report did you  
5 mention anything about not having the jurisdiction to charge  
6 him with these other charges; correct?

7 A It's not stated in the report, no.

8 Q And if you thought you couldn't charge him with  
9 these things but he still did them, that would be a pretty  
10 important detail; correct?

11 A It was still pending an investigation at the time,  
12 sir.

13 Q Right. But you thought that you weren't allowed  
14 to charge him with these crimes that you thought he had  
15 committed; correct?

16 A At the time, yes, but that narrative was completed  
17 after.

18 Q But what I'm saying is nowhere did you put  
19 anything about jurisdiction in your report?

20 A No.

21 MR. ALBERT: If I could just consult my notes  
22 for one second, Your Honor.

23 Q And you are aware that at some point a blood  
24 sample was given by my client, correct?

25 A Yes, I was.



## ALBERT - RECROSS - KOWALSKI

1 Q And that blood sample came back below the legal  
2 limit, correct?

3 A After several hours.

4 Q So the answer is yes?

5 A Yes.

6 Q So, it was at that point that this obstruction  
7 charge manufactured itself, correct?

8 A After the investigation had concluded?

9 Q Sure. He was charged with obstruction after the  
10 blood results had come back exonerating him from the crime  
11 of DWI; correct?

12 MS. ENSELL: Judge, objection. He's not  
13 exonerated.

14 THE COURT: Counsel approach.

15 MS. ENSELL: This is an inappropriate line of  
16 questioning.

17 THE COURT: Counsel approach, Mr. [REDACTED]

18 (Discussion off the record.)

19 THE COURT: At this point I'm gonna strike  
20 the question regarding exoneration of the charge.  
21 Mr. Albert, if you'd like to rephrase the question.

22 MR. ALBERT: Okay.

23 Q Quite simply, the blood results came back and they  
24 were below the legal limit; correct, right?

25 A I believe so.

## ENSELL - REDIRECT - KOWALSKI

1 Q All right. So, it was at that point the DWI  
2 charge was eventually dismissed, fair to say?

3 A Yes, sir.

4 Q And it was at that point that the obstruction  
5 charge manufactured itself, correct?

6 MS. ENSELL: Objection, Judge. This is  
7 like -- manufacturing itself?

8 THE COURT: It's been asked and answered a  
9 dozen times.

10 MR. ALBERT: That has not been answered.  
11 That time line has not been answered yet, it hasn't.

12 THE COURT: Go ahead and ask it again.

13 Q After the DWI charge was dismissed against my  
14 client, that is when the obstruction charge manufactured,  
15 came about?

16 A I believe so.

17 MR. ALBERT: Thank you. No further  
18 questions.

19 THE COURT: Miss Ensell, go ahead.

20 REDIRECT EXAMINATION BY MS. ENSELL:

21 Q Okay. A little bit more and then we're done.  
22 Okay? Now, about this blood test, where did that occur?

23 A Olean General Hospital, Ma'am.

24 Q Okay. And when that was done -- okay. So, there  
25 was no test administered at the scene?

## ENSELL - REDIRECT - KOWALSKI

1 A Blood draw test?

2 Q Any sort of test administered at the scene of the  
3 stop?

4 A He refused to provide standardized field sobriety  
5 testing at the scene.

6 Q Okay. And he didn't submit to a portable breath  
7 test?

8 MR. ALBERT: Judge, I'm gonna object and I  
9 know what the Court's thinking.

10 THE COURT: I think you're right. Go ahead  
11 though.

12 MR. ALBERT: The only relevance from the DWI  
13 is the time line and that's why it was brought up. Not  
14 whether -- what she's trying to do and it's highly  
15 prejudicial and highly inflammatory. Even though he  
16 beat it and he got lucky and he beat it, maybe he was  
17 committing a DWI.

18 THE COURT: Counselor, you're right in that I  
19 think you know what the Court was thinking. This is  
20 totally appropriate. You brought it up on cross  
21 examination.

22 Q Did he submit to any sort of breath blood or urine  
23 at the scene?

24 A No, Ma'am.

25 Q Eventually he did submit to one of those forms.

## ENSELL - REDIRECT - KOWALSKI

1 Again, I think you might have testified to which one but  
2 which one?

3 A He provided a blood sample.

4 Q Okay. And do you know approximately when that was  
5 provided?

6 A I believe approximately it was around five a.m.

7 Q Okay. And the stop itself or when you observed  
8 him, do you recall when you made your initial observation  
9 and approximately what time?

10 A Approximately 2:43, 2:44.

11 Q Okay. So, I guess I can get into this a little  
12 bit, but did you receive training at the academy for  
13 observing people consuming alcohol?

14 A Yes, Ma'am.

15 MR. ALBERT: Judge, objection. This is  
16 highly prejudicial and it's not relevant to the charge  
17 my client's facing. Its only relevance is it gives  
18 them motive to fabricate the obstruction charge.

19 MS. ENSELL: Excuse me?

20 THE COURT: I've already ruled on this. I  
21 totally disagree with you on this. I believe this is  
22 legal. Haven't you opened the door on it, Counselor,  
23 as part of your strategy or tactics, whatever? Go  
24 ahead.

25 Q You've had training when it comes to DWI

## ENSELL - REDIRECT - KOWALSKI

1 investigations; is that correct?

2 A Yes, Ma'am.

3 Q Okay. And have you also had any training as it  
4 relates to administering chemical tests of any type?

5 A Yes.

6 Q And what is that training?

7 A I believe it was a three day course. I took it  
8 last year in May with the Erie County Police Academy,  
9 instruction on how to operate the chemical test, the Data  
10 Master specifically.

11 Q Okay. During that training are you instructed on  
12 whether or not timelines in which the test is administered,  
13 are you instructed on whether or not that is important?

14 A It is very important.

15 Q And why is that?

16 A Because the body metabolizes approximately one  
17 drink or .02 percent of someone's BAC per hour. It's a  
18 general statistic. So, the timeline yield would be very  
19 important, being that once time elapses, that person could  
20 either be going up or going down.

21 Q Okay. So -- and again, this is generally speaking  
22 obviously. I'll make it clear that we're just talking  
23 generally from your training.

24 A Yes, Ma'am.

25 Q Generally again, as you were trained, what are you

## ENSELL - REDIRECT - KOWALSKI

1 looking for when you make these kind of stops which will  
2 assist you in determining whether or not somebody has  
3 recently consumed alcohol?

4 A The operation of that motor vehicle is going to be  
5 an investigative part.

6 Q I apologize. I don't think I asked this  
7 correctly. You stated in your testimony just now that your  
8 concern would either be that alcohol was going up or coming  
9 down. What would you be looking for to see whether or not  
10 your concern is that it's going up?

11 A I would ask the individual if he had recently  
12 consumed an alcoholic beverage which would indicate that his  
13 body's metabolizing alcohol and thus increasing his BAC  
14 level.

15 Q And is there anything you would be looking for,  
16 other observations about the vehicle or the content  
17 contained therein?

18 A Sure. I would observe that the vehicle would be  
19 operated in a fashion that would be --

20 Q I apologize. I think I'm confusing the witness.

21 MR. ALBERT: I object. It is so far outside  
22 the scope of my one question on recross. Nonetheless,  
23 this is the third or fourth bite at the apple.

24 THE COURT: Well, Counselor --

25 MR. ALBERT: Are we going to have a DWI trial

## ENSELL - REDIRECT - KOWALSKI

1 because I mentioned one thing about a timeline, Judge?  
2 It's way outside the scope.

3 THE COURT: Counselor, the basis for my  
4 ruling I think is rather obvious. You are bringing up  
5 why there was not a DWI charge, and I believe the  
6 People have every right to question this witness about  
7 this.

8 MR. ALBERT: My point --

9 THE COURT: Did you not --

10 MR. ALBERT: There was a DWI charge. My only  
11 point, it was after that charge was dismissed. Rightly  
12 or not, that's when the obstruction charge came about.  
13 That's my only question.

14 MS. ENSELL: Judge, he's made several  
15 inflammatory statements about us essentially recruiting  
16 a charge because we opted not to present a charge to  
17 the Grand Jury and the Grand Jury exercised --

18 MR. ALBERT: Objection. She's testifying and  
19 everything else.

20 MS. ENSELL: You are too.

21 THE COURT: All right. I've ruled on it,  
22 Counselor. I'll note your continuing objection but you  
23 opened the door on this. Go ahead.

24 MS. ENSELL: Okay.

25 Q So, in this particular case, to your understanding

## ENSELL - REDIRECT - KOWALSKI

1 some results were returned?

2 A Yes, Ma'am.

3 Q At some point?

4 A Yes, Ma'am.

5 Q And then do you recall -- do you recall  
6 approximately when they were returned?

7 A From the lab?

8 Q Yeah.

9 A I think it was weeks. I can't specifically state.  
10 That was an approximation, I don't know.

11 Q Not instantaneously?

12 A No.

13 Q Okay. And those results, they did, in fact, yield  
14 a positive for alcohol?

15 MR. ALBERT: Objection, Your Honor. It's a  
16 leading question for one.

17 THE COURT: Counsel, rephrase.

18 Q Did they yield a positive result for alcohol?

19 A Yes, Ma'am.

20 Q Okay. And at that particular point --

21 MS. ENSELL: Hold on one second, Judge. One  
22 second, Judge, I just have a lot of notes right here.

23 Q Okay. And based on, as you stated, your  
24 experience with DWI investigations and the timing in which  
25 that test was taken, were those results indicative of what



## ALBERT - RECROSS - KOWALSKI

1 the defendant's alcohol level would have been at the time  
2 you stopped him?

3 A No.

4 Q Would they have been indicative then of an alcohol  
5 result then at the time he was in the hospital?

6 A Yes.

7 Q When the test was taken?

8 A That's correct.

9 MS. ENSELL: I have no further questions.  
10 Judge.

11 THE COURT: Mr. Albert.

12 MR. ALBERT: Just very, briefly, Your Honor.  
13 I promise.

14 RECROSS EXAMINATION BY MR. ALBERT:

15 Q Just so we're clear, Breathalyzer are always done  
16 after the traffic stop; correct? They're never done --  
17 there's roadside test which is inadmissible on DWI?

18 A That's correct, sir.

19 Q And oftentimes there's a lapse or a gap in time  
20 between when the Breathalyzer is administered and the time  
21 that the actual traffic stop occurred; correct?

22 A Yes, sir.

23 Q And this was a two hour lapse of time, give or  
24 take; correct?

25 A Give or take, sir.

## ALBERT - RECROSS - KOWALSKI

1 Q And that's a little on the long end. It's not  
2 completely outlandish, correct?

3 A Typically, I like to have a defendant produce a  
4 breath sample within 20 minutes. We give them an  
5 observation time of 20 minutes.

6 Q That's the observation when they get back to the  
7 station, correct?

8 A Well, yes. We prefer that it happens at the  
9 station so they can stay in continual observation.

10 Q Okay. And when this came back, it was .04 in  
11 terms of the reading?

12 A I believe the reading was around .04, .05.

13 Q And if someone were to stop drinking for two  
14 hours, it's not like it goes from .20 to .04. It drops  
15 about .01 to .02 per hour?

16 A The general consensus based on that is a .02.  
17 However, I'm not a forensic chemist.

18 Q Which is another way of saying we don't know what  
19 his BAC was or wasn't at the time he was pulled over two  
20 hours earlier; right?

21 A I don't specifically know what his blood/alcohol  
22 content was. I just determined that he was intoxicated  
23 based on my investigation.

24 Q That's what you thought, okay, fair enough. And  
25 the blood test shows otherwise, correct?

## ALBERT - RECROSS - KOWALSKI

1 A Two hours later they do.

2 Q I understand, but even if you said .02 from two  
3 hours, we'd be at .08; correct?

4 A (No response.)

5 Q You know what -- okay. I guess he's not charged  
6 with DWI, correct?

7 A He was not, sir.

8 Q We don't know if he was committing the crime of  
9 DWI or not? We don't know, right?

10 A Based on my observation, he was that night.

11 Q You think he was?

12 A Okay.

13 Q And however, these breath results or these blood  
14 results, I should say, negated the filing of such a charge,  
15 correct?

16 A Yes, sir.

17 Q And it was then that the charge of Obstruction of  
18 Governmental Administration itself, correct?

19 A Yes.

20 MR. ALBERT: Okay. No further questions.

21 THE COURT: Are we done Miss Ensell?

22 MS. ENSELL: Yes. No further questions,  
23 Judge.

24 THE COURT: All right. Thank you, Officer.  
25 You may step down. Next witness.

1                   MS. ENSELL: Judge, the People have no other  
2 witnesses to call. So we would rest.

3                   THE COURT: All right. Members of the jury,  
4 the People have now rested which means there are some  
5 matters that we have to discuss with the attorneys and  
6 it looks like it's an appropriate time for our lunch  
7 break anyway. So, let's be back in the jury room,  
8 let's say, quarter after one. Thank you.

9                   (The jury left the courtroom and the following  
10 occurred:)

11                   THE COURT: Any defense motions at this time?

12                   MR. ALBERT: Yes, Judge. I would move to  
13 dismiss stating that at least on the Obstruction of  
14 Governmental Administration charge the People have not  
15 made out a prima facie case, obviously, in that even a  
16 reasonable juror could not find my client guilty for  
17 that crime under the evidence that was adduced.

18                   The big thing is for Obstruction of Governmental  
19 Administration case law is very clear. It's not just  
20 doing exactly what the officer says at the exact time  
21 at the exact place. It's an intentional act of  
22 physical interference in this case and that would be to  
23 prevent the officer from performing an official  
24 function.

25                   One, the officers performed their official

1 function, there's no prevention or even an attempt to  
2 prevent. There was a delay in a traffic stop, an ill  
3 advised one maybe and that would be Failure to Yield,  
4 Your Honor, and that happens all the time, people don't  
5 pull over right away. It's not obstruction.

6 To take the People's theory to its legal limit one  
7 would say, well, the officer intended you to stop here  
8 and you stopped there, you are attempting to prevent an  
9 official function. Such is lunacy. In this particular  
10 instance, the officer -- every single witness got up  
11 there and couldn't be more abundantly clear that they  
12 didn't know what my client was intending to do or not  
13 intending to do period.

14 They did not know what he was thinking. They did  
15 not know whether he intended to stop in a safer, more  
16 well lit area or whether he intended to flee them  
17 forever. There's no way of knowing. But the evidence,  
18 the fact that he was not speeding, the fact he did not  
19 try to peel off or make any sudden turns to avoid the  
20 officers or anything along those lines is highly  
21 consistent with the fact that he was not intending to  
22 prevent the official function from happening but simply  
23 allowing it to happen in a safe, more well lit area.  
24 Such is not a crime, Judge.

25 One can question the judgment involved and one can

1 question the fact that it leads to a heck of a lot more  
2 traffic tickets. One could certainly say it leads to  
3 you being pulled out of a car, you, and put in the  
4 hospital, and if you don't stop, maybe that's what  
5 happens. But it's a huge leap to state that is a crime  
6 because as everyone said, one would have to know what  
7 my client is thinking and certainly all the evidence is  
8 highly consistent with the fact that he just intended  
9 to allow that official function to happen in a well lit  
10 area, to allow this to continue since I think it sets  
11 an awful precedent where someone pulls two streets down  
12 and go into a gas station where the officer says I  
13 wanted you to pull over back there, I'm putting you in  
14 handcuffs and and you're going to jail. That's an  
15 appropriate charge.

16 I think the traffic motions -- by and large I  
17 won't make a motion to dismiss. I think they made a  
18 prima facie case in all of those. But this isn't  
19 traffic court; this is criminal court and I would state  
20 from the People's own testimony and their own witnesses  
21 they cannot sustain that my client intended to prevent  
22 the officers from performing an official function  
23 beyond a reasonable doubt in any way, shape or form.  
24 That's all from the officers who said we had no idea  
25 what this guy was thinking, what he was intending.

1                   THE COURT: Thank you, Mr. Albert. Miss  
2                   Ensell.

3                   MS. ENSELL: We oppose that motion.  
4                   Obviously, there's a pretty strict legal standard for  
5                   what the Court needs to considerate that point in order  
6                   to grant a trial motion for dismissal. Obviously, our  
7                   evidence wasn't just limited to him not pulling over.  
8                   There were several other actions that the officers  
9                   testified to and I think the officers probably rather  
10                  appropriately testified that they can't be inside the  
11                  minds of a defendant. They can only make their  
12                  inferences based on the actions they're observing. So,  
13                  we would oppose the motion.

14                  THE COURT: Based on the standards applicable  
15                  at this time, I will deny the motion.

16                  THE COURT: Next, we've heard your client  
17                  intends to testify. We'll start that after lunch, but  
18                  I think this may be an appropriate time or later during  
19                  our lunch break to talk about the jury charges. What's  
20                  counsel's preference?

21                  MR. ALBERT: Well, I defer to the Court.

22                  MS. ENSELL: Judge, I just noted in a  
23                  couple -- when they were provided to us -- I think  
24                  there were some things that were in parenthesis, in  
25                  questioning. I notice it was mostly on the traffic

1           infractions and it was also for the obstruction,  
2           whether or not we were putting out bells, whistles,  
3           etcetera. I didn't know if that's something we want to  
4           go over at one point because the Court had questions  
5           about language coming in or out. There are a couple of  
6           traffic instructions that were specifically missing  
7           language that I had a little concern about. Maybe we  
8           can regroup on it later.

9                         THE COURT: We'll regroup at quarter after  
10           and do our charge conference at that time.

11                        (Recess for lunch.)

12                        (The following occurred without the jury present:)

13                        THE COURT: Let's go on the record. The jury  
14           is not present. The parties are present with counsel  
15           and at this point would like to review some potential  
16           jury instructions. The Court has distributed them but  
17           there are a few options we need to see how counsel  
18           wishes to proceed. Maybe if I just go through by  
19           section to see if there's any changes or additions?

20                        (No response.)

21                        THE COURT: All right. As far as the  
22           introduction, role of the Court and jury, sentence or  
23           evidence -- one thing, I've heard no stipulations. If  
24           there are none as part of the defense case, probably  
25           would not read that. Any objections?



1 MS. ENSELL: That's fine, Judge. I know that  
2 they stipulated a couple of photos in but I don't think  
3 that that's what that's referring to.

4 THE COURT: Mr. Albert, any opinion?

5 MR. ALBERT: I'm sorry, this is -- I'm  
6 looking for it as you speak.

7 THE COURT: It's under the evidence section.

8 MR. ALBERT: Right, right, right. No, no  
9 opinion on that.

10 THE COURT: All right. I would delete that  
11 then, just that paragraph. Evidentiary inferences or  
12 presumption of evidence. There's a question mark at  
13 the last paragraph of that page. Assuming that  
14 Mr. [REDACTED] does testify, of course, I would leave that  
15 in, and correspondingly delete the next paragraph on  
16 the next page.

17 Standard charge as far as reasonable doubt and  
18 credibility of witnesses. Under credibility of  
19 witnesses, there's a subsection regarding previous  
20 criminal conduct. I'm not sure that applies in this  
21 case. Do you want that left out?

22 MR. ALBERT: Yes, Your Honor.

23 MS. ENSELL: Yes.

24 THE COURT: Okay. Inconsistent statements,  
25 I'm not sure I've heard any testimony in that regard.

1 Do you still want that included?

2 MR. ALBERT: I'd say yes. I mean, it can't  
3 hurt to have it.

4 MS. ENSELL: Yeah, there hasn't been any  
5 testimony to this point. I guess that may be a  
6 question depending on the defendant.

7 THE COURT: Perhaps let's leave it in and be  
8 on the safe side in this case. Consistency in police  
9 testimony, I believe that's standard. Witness pretrial  
10 preparation, I don't recall any testimony regarding  
11 that. Do you want it still read?

12 MR. ALBERT: I don't have an opinion  
13 necessarily, Your Honor.

14 MS. ENSELL: I don't think it's necessary.

15 THE COURT: The only thought I have, there  
16 was some testimony about viewing the CD's ahead of  
17 time. It was really foundation issues. Do you want it  
18 left in?

19 MR. ALBERT: Yeah, might as well, Your Honor.

20 THE COURT: All right. Expert witness, I  
21 haven't heard anyone ask to be certified as an expert.  
22 Shall we delete that?

23 MS. ENSELL: Yeah.

24 MR. ALBERT: Yes.

25 THE COURT: Okay. Indictment not evidence I

1 would leave in. Now we're at the charged offenses. As  
2 far as Obstructing Governmental Administration,  
3 suggestions or objections?

4 MS. ENSELL: I thought on this one there was  
5 some question as to whether or not you wanted to read  
6 in -- no, never mind. No, I don't think so. Never  
7 mind. I was thinking of something else.

8 THE COURT: That's acceptable to both sides  
9 then?

10 MR. ALBERT: Yes, Your Honor.

11 THE COURT: All right. Obstruction of  
12 Windshield -- on almost all of the remaining charges,  
13 an element is on a public highway. I'm not sure that's  
14 really at issue here. Do you still want that read?

15 MR. ALBERT: Not necessarily, Judge -- well,  
16 yes, Your Honor, actually.

17 THE COURT: You want it left in, okay. Now  
18 as far as the Obstruction of Windshield, I believe all  
19 the evidence is talking about windshield and not side  
20 windows.

21 MS. ENSELL: Correct.

22 THE COURT: Any objection to deleting that?

23 MS. ENSELL: No.

24 MR. ALBERT: No.

25 THE COURT: Driver's View Obstructed, I had

1           questioned whether or not you wanted it to also read  
2           the statutory language "except for required or  
3           permitted equipment of the vehicle." I'd probably  
4           defer to your opinion on that.

5                   MS. ENSELL: Is there a particular place that  
6           that's coming from?

7                   THE COURT: Right in the introductory  
8           paragraph.

9                   MS. ENSELL: No, no, I know. I'm saying is  
10          that a -- it's not a portion of the statute?

11                  THE COURT: It's actually in the statute more  
12          or less referring to inspection stickers and  
13          registration stickers.

14                  MS. ENSELL: Okay.

15                  THE COURT: Leave it in or take it out?

16                  MR. ALBERT: Either/or, Your Honor.

17                  THE COURT: Any opinion, Miss Ensell?

18                  MS. ENSELL: I'm gonna say take it out. I  
19          think it's kind of confusing.

20                  THE COURT: Okay. Failure to Keep Right, any  
21          changes?

22                  MS. ENSELL: No.

23                  THE COURT: Failure to Signal.

24                  MS. ENSELL: No changes for me.

25                  THE COURT: Mr. Albert, anything?

1 MR. ALBERT: No, Your Honor.

2 THE COURT: And Failure to Signal again under  
3 a different charge.

4 MS. ENSELL: No changes, fine with the public  
5 highway.

6 MR. ALBERT: No changes.

7 THE COURT: Failure to Yield Emergency  
8 Vehicle, my thought is, as far as in the count, to read  
9 siren or horn or electronic equivalent. I'm not sure  
10 where an exhaust whistle or bell would come into play  
11 here. Any objection, I would delete those?

12 MS. ENSELL: That's fine. I think they come  
13 from either motorcycles or police bikes.

14 THE COURT: Or fire trucks.

15 MS. ENSELL: But that's not an issue in this  
16 case. I would note, Judge, in this one I think the  
17 actual language at the end reads, "remain in such a  
18 position until the authorized emergency vehicle has  
19 passed or otherwise directed by the police," is how  
20 that actually reads.

21 THE COURT: What's your thoughts, Mr. Albert?

22 MR. ALBERT: This would be to the --

23 MS. ENSELL: Failing to yield to emergency.

24 MR. ALBERT: And I'm sorry, the proposed  
25 change is what exactly here?

1 MS. ENSELL: At the end where it says "remain  
2 in such a position until the authorized emergency  
3 vehicle has passed or otherwise" -- the statute is "or  
4 otherwise directed by the police." I think it's a  
5 police officer. I don't think it says the police.

6 MR. ALBERT: I think in this instance, I  
7 think it would actually help. No objection to that  
8 edification, Your Honor.

9 THE COURT: All right. So, I will read  
10 "until the authorized emergency vehicle has passed or  
11 the driver is otherwise directed -- "or as otherwise  
12 directed by a police officer"?

13 MR. ALBERT: Yeah. I would have no objection  
14 to the language of the statute being read in full.

15 THE COURT: Okay.

16 MS. ENSELL: Unless otherwise directed by a  
17 police officer.

18 MR. ALBERT: Okay, that's fine.

19 MS. ENSELL: I think you're gonna verify that  
20 right?

21 MS. WIDGER: Yes.

22 THE COURT: All right. No Headlights, any  
23 changes?

24 MS. ENSELL: No, Your Honor.

25 MR. ALBERT: No.

1 THE COURT: All right. Back to the general  
2 charges, any changes or proposals regarding motive not  
3 an element of the charged crime? I would specify that  
4 intent is an element of governmental administration.  
5 That will be in the third, fourth paragraph.  
6 Acceptable?

7 MS. ENSELL: Yes.

8 MR. ALBERT: Yes, Your Honor.

9 THE COURT: All right. Deliberations, jury  
10 note taking. Any changes?

11 (No response.)

12 THE COURT: Juror expertise, I didn't recall  
13 anything that might really apply here, but I'll defer  
14 to counsel if they want it read.

15 MS. ENSELL: Yeah, it can't hurt.

16 MR. ALBERT: I see no reason for it but I  
17 wouldn't strongly object.

18 THE COURT: I'll leave it in. Exhibits, read  
19 backs and legal questions and foreperson's role.

20 MS. ENSELL: Not necessarily anything about  
21 the instruction itself, but I know that we had  
22 initially had some questions about if they need play  
23 back, are we gonna have them do it here or --

24 THE COURT: I think in all likelihood we  
25 would, yes, just because of the technology here.

1 MS. ENSELL: I probably would just ask that  
2 when we say "read back" or "play back" so that they're  
3 aware. They're allowed to review exhibits that are not  
4 given to them in the deliberation room as far as that  
5 are in evidence.

6 THE COURT: Okay. Regarding foreperson's  
7 role or jury sheet, any objection? An jury  
8 deliberations, any changes?

9 (No response.)

10 THE COURT: All right. Now, I always ask  
11 when I've completed reading them, if there's any  
12 corrections that counsel wants to point out mainly in  
13 case I misread something.

14 MR. ALBERT: Judge, I have no corrections. I  
15 would have an additional request I guess.

16 THE COURT: Okay.

17 MR. ALBERT: That would be on the issue of my  
18 client's statements, confession, and citing People v.  
19 Huntley, 15 NY2d 72 Court of Appeal, the procedure  
20 seems to be relatively black letter law. Certainly,  
21 the Court has held a Huntley Hearing and made a ruling  
22 accordingly that the statement was given on a voluntary  
23 basis, namely, while my client was evidently not in  
24 custody as according to the Court's determination as he  
25 had not been Mirandized.



1           The procedure seems to state pretty clearly,  
2 pursuant to this case, that the jury then gets to pass  
3 on the issue of voluntariness after the judge has fully  
4 and independently resolved the issue against the  
5 accused and that is now adopted for New York State.  
6 That is what People v. Huntley did. So, I would  
7 basically, obviously ask the court to instruct the jury  
8 where my client obviously had a lengthy interaction and  
9 they would first have to consider because they saw what  
10 they saw, but reality and to make a determination as to  
11 whether or not that was a voluntary statement given,  
12 and only if they come to the determination that it was,  
13 can they then use it in their deliberations. Should  
14 they come to the conclusion that it was not voluntary,  
15 they would essentially have to strike everything that  
16 came out of my client's mouth.

17           THE COURT: What's the People's position on  
18 that?

19           MS. ENSELL: It's my understanding on the  
20 voluntariness verdict, number one, I'm not entirely  
21 convinced that has been properly raised in this case  
22 yet for the jury. There was some questioning on it as  
23 to whether or not the exhibit was going to be  
24 admissible. Whether or not the statement itself is  
25 admissible, that is pretrial determination which was a

1 question of law for the judge. Of course, yes, the  
2 jury is allowed to take into consideration some facts  
3 that are presented to them and make a false factual  
4 determination, and I believe that's how the instruction  
5 reads, if I'm not mistaken, is that they can take into  
6 consideration the facts that have been presented to  
7 them.

8 Again, I'm gonna just note for the Judge, I  
9 question whether or not the issue's been properly  
10 raised in this particular case. It was referenced  
11 during voir dire on the admissibility of the exhibit.

12 THE COURT: Right.

13 MS. ENSELL: But you know, ultimately if it  
14 comes down to a narrow question, I'd rather err on the  
15 side of caution than --

16 THE COURT: All right. Did you happen to  
17 have a proposed instruction?

18 MR. ALBERT: To be totally honest, I haven't  
19 drafted the actual instruction yet. I don't know, in  
20 terms of scheduling purposes -- I know my client is  
21 gonna take the stand. That's gonna take a while. The  
22 standard New York State jury instruction, I would have  
23 no objection just to that being read in its entirety  
24 and I could read that out loud or --

25 THE COURT: Why don't we do this if it does

1           become an issue after your client's case and this will  
2           be something we will revisit?

3                     MR. ALBERT:  Yes.

4                     THE COURT:  Then we can do that.  Miss  
5           Widger, can you pull that one out for us?

6                     MS. WIDGER:  Yes.

7                     THE COURT:  Okay.  And the potential verdict  
8           sheet, any additions that you would want on that?

9                     MR. ALBERT:  No objections.

10                    MS. ENSELL:  No objections.

11                    THE COURT:  Acceptable, okay.

12                    MR. ALBERT:  Can I just have a very, very  
13           brief recess?

14                    THE COURT:  Go ahead.

15                    MR. ALBERT:  I'm sorry.  Were we done?

16                    THE COURT:  I was just going to ask if  
17           there's anything else before we bring in the jury.  
18           Okay, you need a couple minutes, go ahead.

19                    (Short recess.)

20                    THE COURT:  All right, are we ready for some  
21           jurors?

22                    MR. ALBERT:  Yes.

23                    THE COURT:  Get them in here.

24                    (The jury returned to the courtroom and the  
25           following occurred:)

ALBERT - DIRECT - [REDACTED]

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

3 THE COURT: All right. Mr. Albert, you may  
4 call your first witness.

5 MR. ALBERT: Thank you, Your Honor. Defense  
6 calls Mr. [REDACTED].

7 C H R I S [REDACTED] [REDACTED] having been first duly  
8 sworn according to law, was examined and testified as  
9 follows:

10 THE COURT: I would ask you, sir, just place  
11 on the record your full name and address.

12 THE WITNESS: [REDACTED]  
13 [REDACTED] Valley, New York.

14 DIRECT EXAMINATION BY MR. ALBERT:

15 Q Thank you, Mr. [REDACTED] Mr. [REDACTED], we've  
16 obviously heard a lot about the brief snippet on Route 242,  
17 but first of all, how old are you?

18 A I'm 52 years old.

19 Q And do you have any siblings, brothers, sisters?

20 A Two brothers and two sisters.

21 Q And what's your highest level of education?

22 A College.

23 Q Are you employed?

24 A Self-employed.

25 Q And what's the nature of your business?

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1           A     Natural health products and I assist in other  
2 matters like legal now and then too.

3           Q     Natural health products?

4           A     I'm a certified health professional also.

5           Q     Okay. And any military service, anything like  
6 that?

7           A     Yes. Honorably discharged.

8           Q     So, you served in what branch of the service?

9           A     Navy.

10          Q     Okay. And spare time hobbies, do you do any  
11 freelance activities?

12          A     Yes, journalism. I have numerous websites,  
13 basically kind of like a watchdog on local government  
14 issues, and I maintain a lot of websites specifically  
15 related to my self-employed also.

16          Q     Understood. And focusing -- and we're not gonna  
17 get into all the criteria, all the stories on Catt County  
18 Corruption, but you run a site called Catt County  
19 Corruption?

20          A     Yes.

21          Q     And is the gist of it a government watchdog, is  
22 it?

23          A     Yes.

24          Q     Police, judges and law enforcement personnel are  
25 often subjects of the articles?

ALBERT - DIRECT - [REDACTED]

1 A Yes. I use their own documentation, let the  
2 people decide who are reviewing it.

3 Q You write articles?

4 A Correct, credibility using their own videos and  
5 documentation.

6 Q Fair enough. So, I will now -- I'm gonna direct  
7 your attention to the evening of February 26<sup>th</sup>, 2016.  
8 First of all, where were you at that time?

9 A I had traveled to Buffalo to meet up with another  
10 victim of the corruption in the county, to pick up --

11 MS. ENSELL: Objection, Judge.

12 MR. ALBERT: Well, it's his testimony. It's  
13 subject to cross but I would ask specifically --

14 THE COURT: I'll allow it.

15 Q You were with a friend, yes?

16 A Picking up important documentation on an appeal,  
17 certified copies of an appeal brief that was in the Fourth  
18 Department and also some other documentation.

19 Q So, it was a business and personal meeting I  
20 guess?

21 A Yes, relating to the website.

22 Q And the name of this individual, first name?

23 A John.

24 Q You were with John and you said you were in  
25 Buffalo?

ALBERT - DIRECT - K [REDACTED]

1 A Yes.

2 Q Where in Buffalo were you?

3 A We met up at the Lennox or Lexington, I can't  
4 remember exactly the name of the location.

5 Q Is that a bar or a restaurant?

6 A It was a restaurant/bar.

7 Q Did you eat there?

8 A No, I did not.

9 Q You didn't?

10 A I did not know.

11 Q Did you drink there?

12 A Yes.

13 Q How many drinks did you have there?

14 A I had two beers.

15 Q And did you go anywhere else?

16 A After that we had -- that was -- I had gone to  
17 have dinner after that. John and I split up thereafter.

18 Q I see, okay. So, when you say "after that," about  
19 what time did you and John depart?

20 A It was I think between 9:30, 10:00, somewhere. I  
21 just got to the location I had wanted to eat right before  
22 closing basically.

23 Q Where did you go eat?

24 A I went down to the southtowns. It was a Longhorn  
25 Steakhouse, I believe off Mile Strip.

ALBERT - DIRECT - [REDACTED]

1 Q Fair enough. So, you ordered food at this  
2 location?

3 A Yes.

4 Q And it was about 10:00?

5 A Somewhere in that area. I can't give you the  
6 exact time.

7 Q Did you have any drinks?

8 A No, water only.

9 Q So, you ate at this Longhorn establishment?

10 A Yes.

11 Q How long were you there for about?

12 A I would say maybe 45 minutes, about an hour -- 45  
13 minutes.

14 Q Where did you go after that?

15 A I went back up into Buffalo. I wanted to go have  
16 dessert somewhere.

17 Q Where did you go?

18 A I went to -- originally -- first, I went to, I  
19 think it was called the Chocolate Bar. I had placed an  
20 order, standing right in front of the video camera the whole  
21 time, and I was waiting for like, I don't know, 15  
22 minutes -- I'd say more like 20 to half an hour, and I never  
23 got it and I asked where is it, we're out of it, I want my  
24 money back, and I went and found another location which I  
25 believe is the Towne Restaurant. It's right on the corner



ALBERT - DIRECT - [REDACTED]

1 off --

2 Q Elmwood and Allen?

3 A Exactly.

4 Q You went to Towne. Did you eat more food there?

5 A Yes. I had a chocolate cake.

6 Q Okay. Anything to drink?

7 A Water.

8 Q Just water?

9 A Yes.

10 Q And incidentally, what night of the week are we  
11 talking about?

12 A That would have been the 26<sup>th</sup>.

13 Q I understand that but do you know what night of  
14 the week it was, what week day or what day of the week it  
15 was?

16 A It would have either been a Friday or Saturday,  
17 one of those. I'm thinking -- it's either Friday or  
18 Saturday. The 27<sup>th</sup> is when everything happened.

19 Q A weekend night, correct?

20 A It was a weekend night, yes, sir.

21 Q And just before we get yelled at, I'm gonna ask  
22 you to do the same thing I'm guilty of, just wait till I'm  
23 done with my questions.

24 A Okay, I'm following you. I apologize.

25 Q No, no, I did the same thing. So, you went to

ALBERT - DIRECT - [REDACTED]

1 these different establishments just having a night on the  
2 town?

3 A Yes, yes. After what I had been through, yes.

4 Q We're just talking about a night on the town.  
5 Where did you go after that?

6 A After the dessert I think I walked around for a  
7 little bit and got in the car and drove around for a little  
8 bit that I remember.

9 Q And at that point did you decide to make your way  
10 back to Cattaraugus County?

11 A Somewhere in that area, yes, I did.

12 Q And what municipality do you actually reside in?

13 A Little Valley.

14 Q Okay. Where we are now?

15 A Yes.

16 Q So, you're driving from Buffalo to Little Valley,  
17 correct?

18 A Correct.

19 Q Did you have anything to drink in the car?

20 A No.

21 Q And did you take the typical route on the 219?

22 A Yes.

23 Q Where did that take you I guess?

24 A That basically took me down past Springville on  
25 the 219, got off the 219 and went onto the, you know, the

ALBERT - DIRECT - [REDACTED]

1 old 219. I noticed a newer sheriff's deputy or SUV, black  
2 one, parked in an area I've never seen before, and then I  
3 proceeded into Ellicottville.

4 Q Okay. And describe where you went next or what  
5 you observed as you were driving through Ellicottville?

6 A I just took a loop around and I decided to go  
7 home. As I'm going up, I think it's Martha, I turned onto  
8 Adams. I see a police car cross in front of me and he does  
9 a loop and waits in the Salt Cave, like he's waiting for --  
10 I don't know, possibly me. Because of what's been going on,  
11 I've been worried about it.

12 Q Just say what you did basically.

13 A I get up to Adams Street, following all the rules  
14 and regulations, and I -- you know, I'm just following it.  
15 I go past him and I keep an eye in my rear view mirror  
16 immediately because I wanted to see if he's going to be  
17 following me. With the documents I'm carrying, I started  
18 getting worried. And sure enough, there's a truck and that  
19 police car is coming up behind me and that's what scared me,  
20 again based on what happened to me in the past.

21 Q When you say "they," are you referring to these  
22 exact same officers?

23 A The Ellicottville Police Department.

24 Q Well, let's back up. Obviously, we're not -- you  
25 know, we don't have to have trials within trials, but I

ALBERT - DIRECT - [REDACTED]

1 guess are you saying that you've had negative experiences  
2 with police officers, correct, in the past?

3 A Correct. I was handcuffed to a chair and knocked  
4 out.

5 Q You've sustained beatings?

6 A Yes, with no medical attention.

7 Q And you understand that not every police officer  
8 beats people while they're handcuffed?

9 A Yes. I have a couple that are friends back down  
10 in PA.

11 Q But what was your state of mind -- let me back up.  
12 How many police cars did you encounter from the time you got  
13 off the 219 until I guess the time you were actually stopped  
14 on the 242?

15 A The ones I saw -- there was one on the 219, the  
16 SUV, then the one in the Salt Cave parking lot. Then when I  
17 pulled back onto 242, there was the one right there and one  
18 coming in the opposite direction.

19 Q And it's fair to say -- are there a lot of cars on  
20 the road at 2:40 a.m.?

21 A Not really.

22 Q What's the lighting like at that time?

23 A You can't see anything in the dark, especially a  
24 black SUV.

25 Q What's your state of mind as you're seeing

ALBERT - DIRECT - [REDACTED]

1 numerous police cars either pass you or in the vicinity?

2 A Well, I immediately -- I start to worry that with  
3 the documentation and stuff I'm carrying and prior conduct  
4 of the police officers, they're targeting me again.

5 Q Is it fair to say you're fearful at this point?

6 A Yes, very fearful.

7 Q And in your mind you think you might be being  
8 targeted?

9 A Right.

10 Q And going back to Catt County Corruption  
11 briefly -- we're not getting into the substance or articles.  
12 Is it a relatively prominent website in that if one were to  
13 type in Catt County on Google --

14 A Well, you type in Lori Rieman --

15 Q I'm not asking if you type in Lori Rieman. If you  
16 type in Catt County, what pops up?

17 A I'm not a hundred percent sure on that one, but if  
18 you type in Catt County Corruption, it's almost the whole  
19 first page of Google.

20 Q Is it a prominent website -- do you know how much  
21 volume?

22 A When the article on ADA Elizabeth Ensell --

23 MS. ENSELL: Objection.

24 Q Hold on, focus on the questions I ask.

25 A I apologize.

ALBERT - DIRECT - [REDACTED]

1 Q And answer the specific questions. Is it a high  
2 volume website as far as you know?

3 A When it comes to local, I believe so, yes.

4 Q And the other office law enforcement personnel in  
5 any capacity, have they referenced the website to you?

6 A Not to my knowledge, no.

7 Q Do you know whether or not other officers and  
8 things to that effect are aware of this website?

9 A I'm sure they are.

10 Q Why are you sure they are?

11 A Because take a look at the search engine results  
12 in Google. I use Google analytics and there's specific  
13 names that come up that people type in to search for, one of  
14 them being Brian H. Schwabenbauer, sheriff's deputy.

15 Q We don't have to get into the specifics. In other  
16 words, you're fearful?

17 A Yes.

18 Q Going back to operating your vehicle on  
19 February 27<sup>th</sup> --

20 A Correct.

21 Q 2016?

22 A Yes.

23 Q And take us through what happens. You said you  
24 were on Adams Street?

25 A It was Adams Street and I turned back on I

ALBERT - DIRECT - [REDACTED]

1 think -- I turned onto Washington.

2 Q And what happens when you're on Washington Street?

3 A It goes past the Salt Cave which is off to the  
4 left and it comes together with I think Martha and that's  
5 where it basically turns into 242.

6 Q And what happens when you're driving down the 242?

7 A What happened to me are you referring to?

8 Q What did you observe?

9 A Well, I just constantly keeping an eye in my rear  
10 view mirror to see if he's gonna start following me.

11 Q "He" being who?

12 A The police car parked in the Salt Cave.

13 Q So, there's a police vehicle that was parked in  
14 the Salt Cave?

15 A Yes.

16 Q Do you know what department that belonged to?

17 A It looked like Ellicottville Police Department.  
18 It was white and it looked like an Ellicottville Police  
19 Department car.

20 Q Did that car pursue you?

21 A He did not pull out right behind me immediately,  
22 no.

23 Q Okay. So what happened next?

24 A Well, there was a truck that came behind me and  
25 then that's where the police car -- that truck was coming

ALBERT - DIRECT - [REDACTED]

1 down Martha, turned onto Martha from 242 and the police car  
2 came up behind him.

3 Q Okay. What happened next?

4 A I immediately started to worry, fearing I wanted  
5 to try and get home safely. [REDACTED]

6 [REDACTED]  
7 very slow. [REDACTED]

8 [REDACTED]  
9 [REDACTED] -- it  
10 runs parallel -- I don't know the name of the street, and I  
11 came back on 242. I came to a couple of stops because  
12 there's one or two more stop signs there. I can't remember  
13 how many there are, and then I wait till the road looks  
14 clear, and as I turn back onto 242, [REDACTED]

15 Q Okay. So, you're admitting to the jury --

16 A Yes, I know.

17 Q Hold on.

18 A I'm sorry.

19 Q [REDACTED]  
20 [REDACTED]

21 A Correct, yes, I did.

22 Q And fair to say you were driving to avoid police  
23 contact at this time?

24 A Correct.

25 Q But you're not doing anything illegal, just taking



ALBERT - DIRECT - [REDACTED]

1 side streets?

2 A Correct.

3 Q What happens next?

4 A Well, when I turn, this car flies by me and at the  
5 time I didn't recognize what it was, and I'm just going up  
6 the road and I see it looked like another car pulled off to  
7 the right, and I go by the car and it's a sheriff's car.

8 I had seen the other car do a u-turn, and I'm like -- I  
9 had really started getting scared, very, very scared, and  
10 I'm watching through the rear view mirror, and all of a  
11 sudden that car that I just passed cuts right in front of  
12 the other car coming up and I could see the car veer to the  
13 right and the headlights go down, like indicating they  
14 almost collided, and I'm like I'm dealing with these guys,  
15 are looking psycho, this is not gonna end right. I just got  
16 immediately scared at that point.

17 I did not see any lights turn on at that point. I  
18 looked straight forward. I'm gonna try to get home. Within  
19 ten seconds, maybe 15, next thing I know there's a blaring  
20 light shining through my rear view mirror and I'm being  
21 blinded. I've got a hundred thousand things going through  
22 my head, what they've done to me in the past, what is going  
23 on at that point in time, and I just wanted to get home. I  
24 just tried to get home, and at that point it's like I want  
25 to get to a safe location.

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1 Q All right. There was a lot there, but let's start  
2 with a fact there. Your senses are heightened and you're  
3 very fearful?

4 A Right. I think they call it hypervigilance.

5 Q But at some point you do see that lights are  
6 activated, correct?

7 A I really didn't see anything except the spotlight  
8 in the rear view mirror.

9 Q At some point you become aware that the police  
10 officer was following you?

11 A Yes, yes, right. When he came up to me, he hit me  
12 with it.

13 Q You have to wait till I finish the question.

14 A I apologize.

15 Q That's okay. It's just so everyone can fully  
16 understand you. With all that in mind, you're aware that an  
17 officer who you came to know as Officer Kowalski --

18 A Yes.

19 Q -- wanted you to pull over?

20 A Yes.

21 Q What did you -- and originally, you wanted to go  
22 home and not have any police interaction?

23 A Originally, but when he came up to me, I wanted to  
24 get to a safe interaction.

25 Q Again, slow down and let me finish.

ALBERT - DIRECT - [REDACTED]

1 A Okay.

2 Q Obviously, probably everybody going home wants to  
3 avoid police interaction, but when the lights were on, was  
4 it your intent to drive all the way home?

5 A When I was aware of something going on behind me.

6 Q When you were aware that the officers wanted you  
7 to stop, was it your intent to drive all the way home?

8 A It was my intent to get to a safe place where  
9 video cameras who were not in charge of, the DA or police  
10 officers could be used.

11 Q You wanted to get to a place with lights?

12 A There was a place I wanted to go with lights.

13 Q Did you have some places in mind?

14 A The main one was Crosby's in the center of  
15 Little Valley, it's lit and there's a number of video  
16 cameras there.

17 Q Okay. And did you try to speed or drive away from  
18 the police at any point?

19 A No. I mean, I still maintained still going  
20 forward, but I did not try to speed up and escape or flee.

21 Q Were you trying to prevent a traffic stop from  
22 taking place at all?

23 A No, I was not.

24 Q What was your intent, relating to the traffic stop  
25 that the officers were trying to exercise upon you?

ALBERT - DIRECT - [REDACTED]

1           A     I wanted to get to a safe location because I was  
2 in fear of my life.

3           Q     You weren't trying to prevent it from happening;  
4 you just wanted to have it happen in a safer location?

5           A     Exactly.

6           Q     And you saw the video?

7           A     Correct.

8           Q     And fair to say the estimations were between 1.7  
9 and two miles in terms of how far you drove?

10          A     I did -- it was about 1.7.

11          Q     Between the times when the officer first activated  
12 his lights and you came to a stop?

13          A     No, from the time he was right behind me and I  
14 realized he was chasing me down and attacking me.

15          Q     Hold on. These are your own perceptions, correct?

16          A     Well, the term attacking, no. That's actually in  
17 the court order of March 22nd where I -- it was the judge  
18 stated -- I was parroting the police which means you were  
19 trying to ward off an attack.

20          Q     So, obviously -- you know, tell me if I'm wrong --  
21 you have a deep mistrust of authority, police?

22          A     Correct, based on these --

23          Q     Okay, based on your own experiences?

24          A     Correct.

25          Q     But my question is simply: Were you trying to

ALBERT - DIRECT - [REDACTED]

1 prevent a traffic stop from taking place on February 27<sup>th</sup>,  
2 2016?

3 A No, I was not.

4 Q Did you speed away from a traffic stop?

5 A No, I did not.

6 Q Did you make any sharp turns to try to elude the  
7 police?

8 A No, I did not.

9 Q Did you stop your car and run from the police?

10 A No, I did not.

11 Q Did you, upon being stopped, fight with a police  
12 officer?

13 A I had guns drawn on me in two seconds.

14 Q So, what's the answer to my question?

15 A No, I did not.

16 Q 242, it's already been testified to, it's a two  
17 lane highway; correct?

18 A Correct.

19 Q Describe the shoulders on the sides of the road.

20 A Depending, when you're coming out of  
21 Ellicottville, there's some where's if you're a foot off the  
22 road, you're in a ditch, but where I was stopped at, I had  
23 one car coming up beside me, I thought I was gonna be  
24 knocked off the road, and one behind me, so I'm not really  
25 paying attention to the side of the road. I just don't want

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1 those cars to hit me. When the one pulls in front of me,  
2 I'm more concerned about hitting the car in front of me, so  
3 I come to a stop. I don't see how failure to signal stop --  
4 when you're forced to a stop and brake lights are working,  
5 fine.

6 Q But you didn't try to drive around the car once --

7 A No -- well, when the one came in front of me, I  
8 wanted to see if he would let me pass, and when he started  
9 doing -- I said, that's it, I'm putting it in God's hands,  
10 what happens, happens.

11 Q I guess my question is: You didn't try to run  
12 over a police officer or anything?

13 A No, I did not.

14 Q Once the car was sort of slowing down in front of  
15 you, you didn't try to shoot by it?

16 A No, I did not.

17 Q You didn't accelerate and go by that car?

18 A No, I did not.

19 Q Did there come a point where you became aware that  
20 driving to a more well lit location with videotapes didn't  
21 seem to be the plan, wasn't gonna happen?

22 A When he pulled in front of me.

23 Q So, at that point you realized you couldn't get to  
24 a more well lit place?

25 A At that point I was hoping I could, and once he

ALBERT - DIRECT - [REDACTED]

1 started following me, I knew it wasn't gonna happen. So I  
2 just stopped.

3 Q Okay. At that point you knew you couldn't get to  
4 a more well lit place?

5 A Correct.

6 Q At least not in a safe manner?

7 A Correct.

8 Q And you stopped there?

9 A Correct.

10 Q And you saw the video. Guns were drawn upon you?

11 A Correct.

12 Q And did you have music in your car?

13 A Yes, I did.

14 Q Did you draw the music loud when you saw the  
15 cops --

16 A No.

17 Q Let me finish. The music, was that something you  
18 were listening to on your whole ride home?

19 A Yes. I was listening -- kind of the fact what  
20 they did to me about three weeks earlier, yeah, I was trying  
21 to relax.

22 Q You're trying to listen to music?

23 A Yes.

24 Q And obviously, there was different sound sources  
25 during that 1.7 mile stretch you were driving?

ALBERT - DIRECT - [REDACTED]

1           A     The only thing I was listening to was the stereo.  
2 I didn't hear anything else.

3           Q     You didn't hear sirens?

4           A     No, I did not.

5           Q     You saw lights?

6           A     Yes, yes.

7           Q     Fair enough. And as soon as your car came to a  
8 stop, the officers exited their vehicles and pulled their  
9 guns on you?

10          A     Correct.

11          Q     Where were your hands at this point?

12          A     As soon as those guns came out, they were right up  
13 in the air.

14          Q     You didn't run?

15          A     No.

16          Q     And why at that point did you not see the officers  
17 walk towards you with loaded guns, presumably loaded guns,  
18 why didn't you roll the window down?

19          A     One, I got guns pointed at me. Two, I didn't want  
20 to make any decisions to give them an excuse to shoot me.

21          Q     So, you wanted to keep your hands up?

22          A     Exactly.

23          Q     Was that your thought process, you wanted to keep  
24 your hands where they could see you?

25          A     I saw them yelling something but I couldn't hear



ALBERT - DIRECT - [REDACTED]

1 it, and I'm like I gotta hear what they're saying because  
2 they got guns on me. So, I'm looking at them and I didn't  
3 want to put my hands below the sight of the officer. And as  
4 I'm looking back, I hear a loud bang and glass is flying  
5 everywhere.

6 Q There's music going on. Did you hear anything?

7 A I didn't hear a thing except the music.

8 Q Okay. Now, once you were outside of -- well,  
9 okay. At some point your window was broken, correct?

10 A Correct.

11 Q What happened next?

12 A I just remember the window breaking. I'm just  
13 like -- and someone pulling on me, and I look over and  
14 there's someone coming through my passenger door, and the  
15 next thing I know I'm pulled up, I'm kind of standing up and  
16 I kind of see the ground coming towards me. And when I wake  
17 up, my hands -- my whole right side, there's someone  
18 stepping on me. I see a big, tall figure and I got my hands  
19 cuffed behind my back, and my whole right side is absolutely  
20 killing me. I don't know if I was shot or what was going  
21 on.

22 Q Okay. Well, as far as you know, you think you  
23 were shot or not?

24 A Well, originally I didn't think I was, but when  
25 the People through ADA Elizabeth Ensell --

ALBERT - DIRECT - [REDACTED]

1 Q Well -- go ahead.

2 A -- basically would not give me my car back in  
3 violation of Article --

4 MS. ENSELL: Objection, Judge.

5 THE COURT: Go ahead.

6 MS. ENSELL: May we approach?

7 THE COURT: Please, sir, if you'd like to  
8 join us, you can come around.

9 (Discussion off the record.)

10 THE COURT: I'm gonna instruct the jury at  
11 this point to disregard the last response. Mr. Albert,  
12 you may continue.

13 MR. ALBERT: Thank you, Your Honor.

14 Q Going back to -- you stated that the right side of  
15 your body was in pain?

16 A Very, very, yes.

17 Q Did you ever see any indication of that pain that  
18 you were in, any bruising of that matter?

19 A It wasn't until later on that day when I woke up  
20 and my ears started itching and what's this and I look in  
21 the mirror and there's dry blood coming down it. Well, my  
22 whole side was working. I couldn't take a deep breath for  
23 about a week. It just was very, very painful.

24 Q The question was: Did you ever see any bruising  
25 or any indication of that pain?

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1           A     It was only when I looked over my body, my back,  
2 right side had like a big, big bruise on it and my ear and I  
3 had a -- my right knee was a little like hurting really bad  
4 and sore all around basically, but my whole right side was  
5 absolutely killing me.

6           Q     I'm going to show you Defense B for identification  
7 purposes. Do you recognize what's depicted in that  
8 photograph?

9           A     That is the black and blue mark on the back that  
10 was taken that same day, later on that day.

11          Q     And does that -- let me ask you this: Was this a  
12 mark that pre-existed prior to that traffic stop?

13          A     No, no.

14          Q     Does this fairly and accurately reflect a bruise  
15 that you sustained during the execution of that traffic  
16 stop?

17          A     I would assume so, yes. I was knocked out, I  
18 don't know.

19          Q     How long were you knocked out if you know?

20          A     I'm assuming -- I can only make an assumption  
21 there.

22          Q     Well, we don't want you to do that necessarily.  
23 You don't know?

24          A     I don't know. The video evidence shows probably  
25 no more than 30 seconds, something like that -- suggests, I

ALBERT - DIRECT - [REDACTED]

1 should say, I apologize.

2 MR. ALBERT: Judge, I would offer Defense B  
3 into evidence.

4 THE COURT: Miss Ensell.

5 MS. ENSELL: No objection, Judge.

6 THE COURT: All right. Defendant's B in  
7 evidence.

8 Q Mr. [REDACTED] you testified to what your thought  
9 process was as to why you weren't pulling over right away?

10 A Correct.

11 Q And obviously you paid a price for not pulling  
12 over right away?

13 A Correct. I ended up in the hospital.

14 Q Hold on. So, you went to the hospital?

15 A Yes, and the Attorney General's Office is now  
16 investigating it.

17 MS. ENSELL: Objection, Judge. He's  
18 making --

19 THE COURT: Do you have an objection?

20 MS. ENSELL: Yes, I do.

21 THE COURT: Do you want to approach again?

22 MS. ENSELL: Yes.

23 THE COURT: Come forward, Counselor.

24 Mr. [REDACTED] you can join us.

25 (Discussion off the record.)

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1 THE COURT: All right. I will once again  
2 instruct the jury to disregard the last response.

3 Q Okay. And then, obviously, at some point other  
4 officers arrived to the scene; correct?

5 A It was almost immediately from what I saw, I mean,  
6 when I became aware of what was going on.

7 Q So, other officers arrived at the scene? Yes?

8 A Yes.

9 Q And you observed video footage at that point,  
10 correct?

11 A Excuse me?

12 Q I'm sorry.

13 A Well, when I was stood up, I was looking, staring  
14 right at a body cam of the officer who started this whole  
15 thing and that -- I don't know where that went.

16 Q Okay. So, when you're saying "the officer that  
17 started this whole thing," are you referring to --

18 A Officer Kowalski.

19 Q You think he had a camera?

20 A I'm looking and I got -- you got a body cam, you  
21 recorded this whole thing and he takes one step back.

22 Q And other officers came to the scene?

23 A Yes.

24 Q And you watched video footage once other officers  
25 came to the scene?

ALBERT - DIRECT - [REDACTED]

1 A Yes.

2 Q And you made numerous statements that were -- I'm  
3 sorry, you made numerous statements at that point in time;  
4 correct?

5 A Yes, I did.

6 Q And were you handcuffed during this?

7 A I was handcuffed when I was on the ground.

8 Q So, it's a yes?

9 A Yes, yes.

10 Q And you stated you had just been injured; is that  
11 fair to say?

12 A I was hurting very badly on my right side, yes.

13 Q And guns had been drawn upon you?

14 A Correct.

15 Q And officers began to question you, correct?

16 A Yes.

17 Q They asked where you were coming from?

18 A Correct.

19 Q Where you were going?

20 A Correct.

21 Q They asked if you would submit to roadside tests,  
22 correct?

23 A They did, a couple.

24 Q They asked why didn't you pull over?

25 A Correct.

CATTARAUGUS COUNTY COURT

ALBERT - DIRECT - [REDACTED]

1 Q And that's just an example of some of the  
2 questions you were posed as you were standing on the side of  
3 242. And there were about -- well, give or take, six  
4 officers present?

5 A I think I counted five or six officers, somewhere  
6 in that area.

7 Q And were you Mirandized at that point?

8 A No.

9 Q And you know that means read your Miranda  
10 warnings?

11 A Yes.

12 Q Was it your understanding you were free to leave,  
13 that you could slip out of those handcuffs and go into the  
14 sunset?

15 A I wish. I wish none of this were here now.

16 Q So, you were not Mirandized at that point?

17 A Correct.

18 Q And you were in handcuffs at that point?

19 A Correct.

20 Q And is it fair to say you were distressed?

21 A Very much. I was in extreme pain, my right side.

22 Q You were upset?

23 A Very upset, yes. I do apologize for the words I  
24 said but --

25 Q And obviously, you don't know, maybe things could

ENSELL - CROSS - [REDACTED]

1 have gone real smooth had you pulled over right away? You  
2 don't know?

3 A Not based on my last experience.

4 Q You don't know what would have happened, but  
5 because of your last experience, you were trying to get to a  
6 more well lit area?

7 A Correct, all right.

8 MR. ALBERT: Could I just have one moment,  
9 Judge?

10 (Discussion off the record.)

11 MR. ALBERT: Judge, I have no further  
12 questions subject to redirect at this time.

13 THE COURT: Miss Ensell.

14 MS. ENSELL: Yes, Judge.

15 CROSS EXAMINATION BY MS. ENSELL:

16 Q Mr. [REDACTED] I have some clarifying questions for  
17 you.

18 A Yes, Ma'am.

19 Q Let's start with, obviously, at this point I think  
20 you've conceded that it was not your intention to pull over;  
21 is that correct?

22 A Excuse me?

23 Q It was not your intention at that point to pull  
24 over; is that correct?

25 MR. ALBERT: I'm gonna object as to



ENSELL - CROSS - [REDACTED]

1           vagueness.  At what point are we referencing here?

2                   MS. ENSELL:  The point of the entire duration  
3           of his time from when he saw the car behind him to when  
4           he was stopped.

5           A     It was my intent to get to a safe location.

6           Q     It was not your intention to pull over, correct?

7           A     It was my intention to get to a safe location.

8           Q     And you testified that at that point you were  
9           considering Crosby's; is that correct?

10          A     Yes.

11          Q     Okay.  And let's say, for argument's sake,  
12          Crosby's is not open at that point in night?

13          A     I did not know that.  I don't travel into Little  
14          Valley much at that time of evening.

15          Q     Let's say, for argument's sake, it is not open at  
16          that time in night and not lit.  Did you have any idea where  
17          you were going?

18          A     You still had the street lights and video cameras.

19          Q     What video cameras?

20          A     At Crosby's.

21          Q     Let's say if Crosby's was not open and not lit,  
22          where were you going to go next?

23          A     I was actually considering the sheriff's  
24          department because I know there are video cameras there, but  
25          after the Hutchison investigation, I did not want to go

1 there.

2 Q What is your actual address, physical location in  
3 Little Valley?

4 A 5286 Route 353.

5 Q And that would be in the Town of Little Valley?

6 A Right at the outskirts of it. It is in the Town  
7 of Little Valley but right, I believe, on the lip somewhere.

8 Q And the direction in which you were traveling, and  
9 I believe you did testify to this, would also be the  
10 direction towards home?

11 A Correct.

12 Q All right. And I believe we've covered it, but  
13 you're the proprietor of a website called Catt County  
14 Corruption dot com?

15 A Yes, Ma'am.

16 Q And you are the individual generally who is  
17 posting articles on that, being the proprietor?

18 A Yes.

19 Q And do you recall posting any articles that would  
20 have been a summary of the particular events of the night  
21 of -- I should say morning of February 27<sup>th</sup>, 2016?

22 A Yes, but I constantly update them based on new  
23 evidence.

24 Q But again, you were actually present, so the  
25 summary would be somewhat based on your own personal

ENSELL - CROSS - [REDACTED]

1 observations; is that correct?

2 A Well, somewhat, but when I do discover things,  
3 evidence wise, I make sure it's updated to that when it  
4 comes to criminal conduct by public officers.

5 Q Okay. So, in any event, you did give a summary at  
6 some point; is that correct?

7 A I believe so, yes.

8 Q Okay. And do you recall some information in that  
9 summary that is potentially different from what you've  
10 testified to here today?

11 A That possibly could be, but my memory, I was  
12 missing chunks of my memory. That's why I'm up at ECMC  
13 being checked out, and as my memory -- if I recalled  
14 something, possibly yes. What is the date on the article,  
15 Ma'am?

16 Q I'd like to know. How many different stories do  
17 you think you have on the website?

18 A What are you claiming?

19 Q I'm asking you. You're testifying that your  
20 recollection of that night has potentially changed?

21 A When did you print out that article, Ma'am?

22 Q Mr. [REDACTED] let me ask you again. Okay? You're  
23 testifying that your recollection of that event has  
24 potentially changed; is that correct?

25 MR. ALBERT: I'm gonna object, Your Honor.

ENSELL - CROSS - [REDACTED]

1 That's a mischaracterization of my client's testimony.

2 MS. ENSELL: I don't think it is.

3 MR. ALBERT: The attorney questioned my  
4 client something along the lines of is it possible that  
5 your recollection changed? He never stated it, my  
6 memory is changed. If she wants to impeach him, read  
7 his prior testimony.

8 THE COURT: Ask him that again and maybe  
9 clarify it to the witness.

10 MS. ENSELL: Thank you, Judge, I will go  
11 ahead and do that. I'm going to first show the witness  
12 this article to verify the fact that this is an article  
13 that came from his website.

14 MR. ALBERT: Judge, I'd ask for it to be  
15 marked for the record.

16 MS. ENSELL: We can mark it.

17 THE COURT: Let's get it marked.

18 THE WITNESS: What part are you referring to,  
19 Ma'am?

20 MS. ENSELL: I will let you know. At this  
21 point I guess we're on 33. Judge, I think I want to  
22 ask if we can approach real quick just because of the  
23 way inconsistent statements work.

24 THE COURT: Okay.

25 (Discussion off the record.)

ENSELL - CROSS - ██████████

1 Q So, Mr. ██████████ you acknowledge that this article  
2 did come from your website?

3 A It does appear, yes, Ma'am.

4 Q Okay. As a portion of this article, do you recall  
5 stating what it is that you did when you initially noticed  
6 what the car behind you was doing -- excuse me, the car that  
7 you had passed at the salt barn?

8 A Could you repeat that question?

9 Q In this particular article -- I'll withdraw and  
10 ask it a different way. In this particular article you  
11 stated "Mr. ██████████ pulls to the side of the street and turns  
12 his lights off. He was about to turn on his running lights  
13 when the truck goes by but there is no cop car behind that  
14 truck, so he turns on his lights, puts -- proceeds to the  
15 stop sign on Hencoop and stops on Route 242 up the first  
16 hill into Little Valley." Do you recall writing that?

17 A That's quite possible, Ma'am, but you have to look  
18 at the length of the article and it may have been something  
19 I overlooked until I got hold of video, as it changed from  
20 the beginning. Remember, I told you I have memory problems.

21 Q And those memory problems, they affect you day to  
22 day?

23 A Yes, in some ways, yes, they do.

24 Q So, it would be -- okay. So, Mr. ██████████ is it  
25 safe to say what was put in this article is not what you're

ENSELL - CROSS - ██████████

1     testifying to today?

2                   MR. ALBERT: I'm gonna object, Your Honor.

3                   It's a broad question obviously. It's too broad.

4                   She's saying everything in the article --

5                   MS. ENSELL: What I just read then?

6                   THE COURT: I'll allow you to rephrase it.

7           Q     The portion of the article I read, is it safe to  
8     say you're not testifying to that today?

9           A     No, Ma'am, I'm not because probably that was one  
10    of the original articles when the evidence showed up and I  
11    may have missed it. That's got to be a ten, 15 page  
12    article, isn't it?

13          Q     It's several pages, that's correct, but the point  
14    being that you did, in fact, draft this article; correct?

15          A     Correct.

16          Q     And this article apparently, what you're saying,  
17    was drafted relatively close in time to the event?

18          A     Well, Ma'am, when I was talking about the car  
19    passing me, I was talking about the one going down the  
20    opposite direction, not the direction I was traveling on.

21          Q     Okay. But again, Mr. ██████████ I will remind you  
22    that in this particular article you stated that you pulled  
23    off to the side of the street, turned your lights back on or  
24    turned your lights off, waited, put your car in drive,  
25    turned the lights back on and continued on. That's not what

1 you're testifying to today, correct?

2 A Ma'am, I told you I did not know what was going on  
3 at the time. You had confiscated everything from me. My  
4 memory was not --

5 Q So, when you wrote this article, it would have  
6 been shortly after the incident?

7 A Excuse me?

8 Q It would have been shortly after the incident,  
9 correct?

10 A When I was having problems even remembering what  
11 happened that night, yes.

12 Q And your memory problems, they still affect you  
13 today, correct?

14 A Yes, they have.

15 Q Okay. You had also provided some testimony about  
16 being hurt very badly. You were in here when we played the  
17 video, correct?

18 A Yes.

19 Q And do you recall a person in the video in which  
20 an officer asked how you were feeling and you gave a  
21 particular number answer? Do you recall that?

22 A Yes, it's five. I don't take pain killers. I'm  
23 used to pain.

24 Q Would it surprise you if you actually answered  
25 four on the video?

ENSELL - CROSS - [REDACTED]

1 A Was it four?

2 Q It was four.

3 A Okay.

4 Q And that's what you qualified as hurting very  
5 badly; is that correct?

6 A Well, I was outside in the cold. It wasn't until  
7 I entered the ambulance when everything started warming up  
8 when I started feeling the pain.

9 Q So, you weren't feeling pain then on the side of  
10 the road; correct?

11 A I was feeling pain but not to the extent when the  
12 warmth started hitting me in the ambulance.

13 Q All right. And it would be correct to say that at  
14 this point you have also considered that you did have some  
15 alcoholic beverages that evening; correct?

16 A Yes, Ma'am.

17 Q And now, I want to go back to this article you  
18 stated you published shortly after the incident.

19 A Yes.

20 Q There is another portion in here in which you made  
21 some statements about what you were doing at the time the  
22 officers approached the car. Does that sound like something  
23 that would potentially be in this article?

24 A I haven't looked at that article probably -- I'd  
25 have to look at the last time I actually edited it. That



ENSELL - CROSS - [REDACTED]

1 was the first one actually in 2016.

2 Q Okay. But again, this was one that was written  
3 relatively close in time to the incident?

4 A Correct.

5 Q Okay. In this article you stated, let's see, "The  
6 cops were yelling something at Mr. [REDACTED] but he could not  
7 hear them because of the music, so he decided to take  
8 another chance and using his right hand, slowly used it to  
9 turn off his stereo"?

10 A Correct.

11 Q Do you recall stating that?

12 A Yes. The body cam -- you can hear the stereo. I  
13 never got a chance to do that.

14 Q But obviously, this statement is a little bit  
15 different than what you're testifying to here today?

16 A Right, exactly.

17 Q Okay. So, essentially what you're saying is you  
18 made a recollection of the event and then later made a  
19 decision that your recollection was not entirely accurate?

20 A Correct. The video evidence proved it. I don't  
21 think I've updated that since, you know -- I don't -- well,  
22 I can't really remember to be honest. I'd have to look at  
23 my log.

24 Q And going back to this same article, you also  
25 stated "From the unlawful stop to being slammed to the

ENSELL - CROSS - [REDACTED]

1 pavement and handcuffed was maybe about 15 to 30 seconds.  
2 He basically did not have time to react to anything else,  
3 then yanked up off the ground and handcuffed and placed in  
4 front of his car." Obviously, a little bit different than  
5 your testimony here today?

6 A Well, it was about 62 seconds, after I got the  
7 videos back.

8 Q But you testified here today that you were knocked  
9 unconscious?

10 A Yes, I was.

11 Q But in this particular article, correct, that's  
12 not what you're saying?

13 A Could you repeat the article again please?

14 Q "From the unlawful stop to being slammed to the  
15 pavement and handcuffed was maybe about 15 to 30 seconds.  
16 He basically did not have time to react to anything else.  
17 He is then yanked from the ground and handcuffed and placed  
18 in front of his car."

19 A I just remember my hands being cuffed behind my  
20 back when I woke up.

21 Q But again, no mention of loss of consciousness in  
22 this article?

23 A Well, there's no --

24 Q I read it to you.

25 MR. ALBERT: Objection. She read it. I

ENSELL - CROSS - [REDACTED]

1 don't know what the whole article said.

2 A The video shows close to about a minute and a half  
3 or 62 seconds when I was pulled out of the car, and about  
4 within three minutes I'm in front between the two cars. I  
5 was knocked out.

6 Q Okay. So, your testimony here today is that you  
7 lost consciousness?

8 A Yes, I did.

9 Q Okay. And that's something that you reported to  
10 anybody?

11 A Yes. The one video of me going to the hospital, I  
12 did report that to the first person. She was in a pink  
13 dress, the video shows, and she runs off. And after that,  
14 the three hours of missing videotape from the hospital body  
15 cam video, there's three hours missing.

16 Q Is that contained in your medical records, sir,  
17 that you lost consciousness?

18 A The medical records also show I walked in.

19 Q So, was it contained in your medical records?

20 A No, it was not, I don't think.

21 Q So, you were not diagnosed with a head injury to  
22 the best of your memory?

23 A They said I walked in. I was in handcuffs and on  
24 a gurney.

25 Q Again, to the question of what's being asked of

1 you --

2 MR. ALBERT: Judge, again, I object as being  
3 outside the scope of what my client would have  
4 knowledge of. There's no foundation that he reviewed  
5 every medical record relating to his treatment. He can  
6 only speak --

7 MS. ENSELL: We just referenced the medical  
8 records.

9 MR. ALBERT: You can put a doctor up there.

10 THE COURT: Hang on, let me rule on this.  
11 I'm gonna overrule it. If he doesn't know an answer,  
12 he can respond that way. Go ahead.

13 Q So, to the best of your understanding, sir, were  
14 you diagnosed with a head injury by the Olean General  
15 Hospital?

16 A No. They also said my auditory canals were  
17 cleared --

18 Q Were you diagnosed with a head injury by the Olean  
19 General Hospital?

20 A No, I wasn't.

21 Q And the timeframe for the loss of consciousness,  
22 you're testifying that you got that timeframe from the  
23 video; is that correct?

24 A I'm figuring it's anywhere from up to 30 seconds  
25 I'm figuring.

ENSELL - CROSS - [REDACTED]

1 Q So, it's not something that's on the video, you're  
2 just using the timeframe from the video; is that correct?

3 A Correct.

4 Q All right. And you stated that it was your  
5 intention to continue on 242; is that correct?

6 A Correct, to a safe place.

7 Q Now, did you ever turn on your hazard --

8 A I wasn't thinking about that at the time. I just  
9 didn't want to get knocked off the road and I wanted to make  
10 it to a safe location.

11 Q Did you ever make any gestures to the officers  
12 that you let them know you were there and you were  
13 continuing on?

14 A My head was straight forward and indicated --

15 Q You had some mobile devices in your car?

16 A Correct.

17 Q And you did not call 911 or anybody to let them  
18 know that you were continuing on?

19 A No, Ma'am, and my hands were on the wheel.

20 Q The answer is -- a yes or no question?

21 A It's a no.

22 Q So, you did not contact anyone to let them know  
23 that you were continuing, correct?

24 A Correct.

25 MS. ENSELL: One moment, Judge.

ALBERT - REDIRECT - [REDACTED]

1 (Discussion off the record.)

2 MS. ENSELL: Judge, I think at this point I  
3 have no further questions.

4 THE COURT: Redirect, Mr. Albert.

5 MR. ALBERT: Just very briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. ALBERT:

7 Q So, you didn't use a cell phone while you were  
8 driving?

9 A Correct. I didn't want to get charged with that  
10 either.

11 Q That would be -- you are aware that that is a  
12 violation of the Vehicle & Traffic Law?

13 A Correct, the same with opening a door quickly.

14 Q And in terms of -- obviously, you stated you were  
15 unconscious?

16 A Correct.

17 Q And being in that state is it sometimes difficult  
18 to keep track of exact time?

19 A Exactly. That's why I'm at ECMC now.

20 Q And were you disoriented, not through a state of  
21 unconsciousness at that point but through all the bright  
22 lights, sirens, guns being drawn?

23 A Yes.

24 Q So, you weren't counting one, two, three?

25 A No, I was not.

ALBERT - REDIRECT - [REDACTED]

1 Q And I guess from what I can gather, that article,  
2 you misspoke regarding some turn that was made?

3 A Yeah, exactly. It's a pretty big article.

4 Q But did you intend --

5 A No.

6 Q -- to deceive the viewership of Catt County based  
7 on where you made a turn?

8 A No, not at all. That was originally of what I  
9 thought happened.

10 Q From where you --

11 A Right, based on what I was able to pull out of my  
12 memory.

13 Q And fair to say, you tell me, but given where we  
14 now stand, where you sit, would you maybe have done things a  
15 little differently on that evening in question?

16 A Well, I would never have gone to Buffalo to begin  
17 with, if none of this occurred. I mean, what occurred to me  
18 in 2014, I never would have been in Buffalo.

19 Q Okay. But did you intend to prevent a traffic  
20 stop from happening?

21 A No, I did not.

22 Q Okay. Did you use any physical force to an  
23 officer?

24 A No, I did not.

25 Q Did you punch him?

ALBERT - REDIRECT - [REDACTED]

1 A No.

2 Q No physical force?

3 A No, nothing.

4 Q Did you intimidate the officer in any way, shape  
5 or form?

6 A They've got guns drawn on me in bullet proof  
7 vests.

8 Q Were you intimidated throughout this proceeding?

9 A Very much so, yes.

10 Q And did you physically interfere with the officers  
11 in any way, shape or form?

12 A No, I did not.

13 Q No more than a deer in headlights?

14 A Right. I did not have time to do anything.

15 MR. ALBERT: No further questions.

16 THE COURT: Recross?

17 MS. ENSELL: No, Judge, no recross.

18 THE COURT: All right. Sir, you may step  
19 down. Thank you. Next witness.

20 MR. ALBERT: Defense will rest, Your Honor.

21 THE COURT: All right. Members of the jury,  
22 that means that the proof in this trial is concluded.  
23 I think it's an appropriate time to take a short  
24 afternoon break. Let's be ready to come back in about  
25 quarter to three. All right. Thank you.



1           (The jury left the courtroom and the following  
2 occurred:)

3           THE COURT: The jury is no longer present.  
4 Miss Ensell, are you okay?

5           MS. ENSELL: Yeah, I'm fine. I just wanted  
6 the let you know, in case I'm going like this --

7           MR. ALBERT: Kidney stones?

8           MS. ENSELL: Yeah. They're the worst.

9           THE COURT: All right. If you have any  
10 issues, please let me know. With the clock saying  
11 quarter to three, I propose we do closings and jury  
12 instructions.

13           MR. ALBERT: Yeah. I'd say we go as far as  
14 we can. There's no way we'll get to verdict.

15           THE COURT: What's that?

16           MR. ALBERT: I don't see where we can get to  
17 verdict.

18           THE COURT: Let's see where we're at. We may  
19 give it to them.

20           (Short recess.)

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

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

25           THE COURT: All right. I had forwarned you

1 that sometimes there would be some delays. We had a  
2 couple legal issues that we had to get resolved, but  
3 members of the jury, at this point you'll next be  
4 hearing the summations of the lawyers. Now, following  
5 the summations I will instruct you on the law and then  
6 you will begin your deliberations.

7 Now, under our law, defense counsel must sum up  
8 first and the prosecutor must follow. The lawyers will  
9 not be permitted to speak to you after that. Now,  
10 summations will provide each lawyer an opportunity to  
11 review the evidence and submit for your consideration  
12 the facts, inferences and conclusions that they contend  
13 may properly be drawn from the evidence.

14 If you find that a lawyer has accurately  
15 summarized and analyzed the evidence and if you find  
16 that the inferences and conclusions the lawyer asks you  
17 to draw from the evidence are reasonable, logical and  
18 consistent with the evidence, then you may adopt those  
19 inferences and conclusions.

20 Members of the jury, bear in mind the following  
21 points: First, you are the finders of fact and it is  
22 for you and you alone to determine the facts from the  
23 evidence that you find to be truthful and accurate.  
24 Thus, you should remember that whatever the lawyers say  
25 and however they say it is simply arguments submitted

1 for your consideration.

2 Second, remember the lawyers are not witnesses in  
3 this case. So, if a lawyer asserts as facts something  
4 that is not based on the evidence, you must disregard  
5 it. Remember, nothing the lawyers say at any time is  
6 evidence. So, nothing the lawyers say in their  
7 summations is evidence. You have heard the evidence  
8 and you must decide the case on the evidence as you  
9 find it and the law as I will explain it to you.

10 Third, during the summations one lawyer's  
11 recollection of the evidence may in good faith differ  
12 from the recollection of the other lawyer's or from  
13 your own recollection, and the lawyers will undoubtedly  
14 differ with each other on the conclusions to be drawn  
15 from the evidence. It is your own recollection,  
16 understanding and evaluation of the evidence, however,  
17 that controls, regardless of what the lawyers may have  
18 said or will say about the evidence.

19 You and you alone are the judges of the facts in  
20 this case. If, during your deliberations, you need to  
21 have your recollection of the testimony refreshed, you  
22 may have all or any portion of the testimony read back  
23 to you or any evidence replayed for you.

24 Fourth, remember, under our law I'm responsible  
25 for explaining the law and not the lawyers. Now, prior

1 to these summations, the lawyers were permitted to read  
2 my proposed instructions on the law that I will deliver  
3 you after the summations, and the lawyers are permitted  
4 to refer briefly to a portion of those instructions in  
5 their summations if they wish to do so. However, even  
6 though a lawyer may refer to portions of those  
7 instructions, you must listen carefully to all of the  
8 instructions that I will give you after the summations.  
9 If you think there is any difference between what the  
10 lawyers may have said and what I say the law is, your  
11 sworn duty as jurors is to follow my instructions on  
12 the law.

13 Finally, if during the summations I sustain an  
14 objection to a comment of a lawyer, that comment will  
15 be stricken from the record and you must disregard it  
16 as if it was never said. If I overrule the objection,  
17 the comment will stand.

18 Again, whether I sustain or overrule an objection  
19 or on my own indicate that a comment must be  
20 disregarded, my ruling indicates only that the comment  
21 does or does not violate one of the rules of law set  
22 down for lawyers to follow during a summation. It is  
23 not an attempt to indicate that I have any opinion on  
24 what was said or of the facts of the case or of whether  
25 the defendant is guilty or not guilty.

## MR. ALBERT'S CLOSING ARGUMENT

1           We will now turn to the summations. Mr. Albert,  
2 go ahead.

3           MR. ALBERT: Yes, thank you, Your Honor.  
4 Good afternoon, everybody. On behalf of my client,  
5 we'd like to thank every one of you for your service,  
6 your attention, your patience to detail in this matter  
7 because this was a traffic stop. This should have been  
8 just a traffic stop, but obviously, it's something far  
9 bigger in this particular instance, and I would hope  
10 that if any of you ever have the misfortune of being  
11 charged with a crime as my client has, that you obtain  
12 a jury as attentive to detail and as up to the task as  
13 you have been.

14           The prosecution wants to make this very simple.  
15 The prosecution wants to say hey, they just wanted him  
16 to stop for a traffic violation, they wanted him to  
17 stop; he didn't, he's guilty. But you're gonna hear a  
18 whole slew of instructions from the judge starting with  
19 that first big count, the crime why we're here,  
20 Obstructing Governmental Administration in the Second  
21 Degree and it's a whole lot more complex than he didn't  
22 stop when he was supposed to stop. Namely, that there  
23 was an official function taking place.

24           Sure, the lights were off. Bad judgment? Yes.  
25 Bad judgment is not a crime. Not stopping right away

## MR. ALBERT'S CLOSING ARGUMENT

1 is not a crime and that's what we're talking about  
2 here, that an individual who, based upon his own  
3 experiences -- and all we have are our own  
4 experiences -- made a decision, wise or otherwise. And  
5 I think given that he's sitting here and all that's  
6 transpired since, many could come to a conclusion that  
7 it was an unwise decision, but he made the decision to  
8 get to a more well lit area before actually stopping.

9 Again, you could sit here and say I would have  
10 never done that, but that does not come close to  
11 allowing you to render a verdict of guilty relating to  
12 the crime of obstructing governmental administration  
13 against my client. That's why there's traffic laws.  
14 That's why there's failure to yield, but to say one's  
15 obstructing governmental administration, one has to  
16 come to a conclusion beyond any and all reasonable  
17 doubt that he intended to prevent the officers from  
18 executing the traffic stop.

19 He did not. In fact, the contrary is true. He  
20 didn't intend to prevent them from executing a stop.  
21 He intended to very briefly delay it. He intended to  
22 allow them to execute the stop, deal with him, cite  
23 him, his tickets in an area safer than the one that is  
24 was involved.

25 You heard from all the other officers before

## MR. ALBERT'S CLOSING ARGUMENT

1 Officer Kowalski and they candidly admitted we were  
2 worried about safety, it's dark, it's narrow, the  
3 shoulders are narrow, we're worried about upcoming  
4 vehicles. The same the officers were scared for their  
5 safety, bringing out their guns, clearing traffic and  
6 everything else, my client was scared for his safety  
7 and it's understandable based upon his past  
8 experiences.

9 If my client was a 20 year old younger lady, 20  
10 year old blonde or whatever and she didn't want to stop  
11 and she wanted to get to a well lit area, she would,  
12 but he didn't because he's [REDACTED] and he operates  
13 a website, Catt County Corruption. They thought he was  
14 a DWI. So, they went with a square peg, round hole,  
15 throw out obstructing governmental administration. Not  
16 the case because the key element, key elements of that  
17 crime are that by means of intimidation, physical force  
18 or interference that my client intended to prevent  
19 them, prevent the officers involved from performing an  
20 official function, namely a traffic stop. Okay?

21 First of all, first of all, did you hear anything  
22 about my client intimidating anybody? No. Okay. He  
23 was scared out of his mind. He was the intimidatee not  
24 the intimidator. Did he use physical force in any way,  
25 shape or form? No. Did he use physical interference

## MR. ALBERT'S CLOSING ARGUMENT

1 in any way, shape or form? No. And what did he intend  
2 to do? He told you a hundred times, he meant to stop  
3 just a little further down the road, just where it's a  
4 little more safer, just where it's more well light and  
5 where there's cameras.

6 Cameras seem to be his comfort zone because  
7 cameras don't lie. People do. He wanted comfort and  
8 safety and he didn't get it. But he did not intend for  
9 any of this to happen and he certainly didn't intend --  
10 if you're looking at it and take the People's position  
11 at face value, he intended to prevent the stop from  
12 taking place. That would sort of basically ask you to  
13 infer he intended all of this because he wasn't getting  
14 away, not driving under 50 miles an hour, not driving  
15 under the speed limit. He's not getting away from  
16 anyone when he's not trying to turn or evade the  
17 police. He's not getting away when he's sitting in his  
18 car with guns drawn on him, scared out of his mind.  
19 He's not trying to prevent anything from happening.

20 He froze, if anything, bright lights, horns,  
21 sirens and his fear is coming from lots of officers  
22 after him. It's a scary situation. People respond  
23 sometimes by using good judgment, bad judgment,  
24 whatever it is, but he did not intend and that's where  
25 we're at. That's where we're at: Did he intend to



## MR. ALBERT'S CLOSING ARGUMENT

1 prevent them from stopping him? No, he didn't intend  
2 anything except getting to safety.

3 The officer said I wanted you to pull over there,  
4 but you pulled over here and you're guilty of a crime.  
5 That's essentially the position that the People want  
6 you to take. You didn't pull over right where I wanted  
7 you to, you're guilty of a crime. No, maybe you're  
8 guilty of a traffic violation.

9 We're not sitting here and I'm not sitting here  
10 saying Mr. [REDACTED] would have done what you or I did or  
11 exercised good judgment. This isn't a popularity  
12 contest. Do you agree that he did -- maybe he  
13 shouldn't have had any beers instead of one or two.  
14 This is a legal question. That's why we need a jury  
15 like you to filter out all that extracurricular stuff  
16 and that's not for me to tell you, it's not for the  
17 judge.

18 But the question is: Did my client intend, by  
19 means of intimidation, physical force or interference  
20 to prevent a traffic stop from happening? Absolutely  
21 not. He was submitting to a traffic stop. He intended  
22 to submit to the traffic stop. The entire time he just  
23 wanted it in a slightly safer area. Not a crime.

24 He didn't yield when he should have. If you want  
25 to convict him on a failure to yield, go right ahead.

## MR. ALBERT'S CLOSING ARGUMENT

1 That's what happened. We're not sitting here saying it  
2 was anything else. Don't ask me, the officers all said  
3 the same thing. That's why they didn't charge him with  
4 that, that's why they didn't hit him with an  
5 obstruction charge that night. And Officer Kowalski  
6 came up with a jurisdictional thing, but it didn't make  
7 sense. He said I thought I had jurisdiction to pursue  
8 him and pursue him and pull my gun but not file a  
9 charge. Does that make any sense?

10 In the police report does it say why he didn't try  
11 to charge him with obstruction? No. That didn't make  
12 any sense. The timeline fits to our theory. They  
13 thought there was a DWI. There wasn't one, by law  
14 there wasn't one. They can say we don't know what his  
15 BAC is --

16 MS. ENSELL: Judge, objection. It's a  
17 mischaracterization of testimony. It's a  
18 mischaracterization of what actually occurred. You  
19 gotta stay within the confines of what actually  
20 happened in the courtroom.

21 MR. ALBERT: It's a closing argument, Judge.

22 MS. ENSELL: There are limitations, Judge.

23 MR. ALBERT: Judge -- I just ask not to be  
24 interrupted but they can make a determination as to  
25 what the testimony said, I mean, or what the testimony

## MR. ALBERT'S CLOSING ARGUMENT

1 elicited or not.

2 THE COURT: Well, I'll remind the jury, you  
3 have to make your determination based on the evidence.  
4 I'm not gonna strike this, but I'm gonna ask all  
5 parties to stay within the evidence in this matter.  
6 Let's proceed.

7 MR. ALBERT: Okay. The timeline was this,  
8 originally he was charged with DWI. That charge was  
9 dismissed, and then all of a sudden, out of nowhere,  
10 came an obstruction charge.

11 MS. ENSELL: Judge --

12 MR. ALBERT: They may disagree.

13 MS. ENSELL: This is stricken evidence that  
14 he's referring to. He cannot refer to that.

15 MR. ALBERT: It was not stricken.

16 THE COURT: Counsel, approach please.

17 (Discussion off the record.)

18 THE COURT: All right. I'm going to instruct  
19 the jury to disregard the comment made that the DWI  
20 charges were dismissed. If you'd like to rephrase,  
21 proceed.

22 MR. ALBERT: Sure, yes, Your Honor. Okay.  
23 He was charged with DWI. As the evidence showed, he no  
24 longer is, as we all know, but the obstruction charged  
25 popped up in that interval. So, make of that what you

## MR. ALBERT'S CLOSING ARGUMENT

1 will. That's what you're here to do, but again, I  
2 think you can certainly draw the inference that they  
3 wanted to get him on DWI, that they couldn't, and so  
4 therefore they tried to come up with something such as  
5 a vague Obstruction of Governmental Administration  
6 charge hoping you guys would take the narrow view, you  
7 didn't listen to the officers, so you're guilty when,  
8 in fact, the charge itself requires far more than that.

9 They're trying to put a square peg into a round  
10 hole with this obstruction charge, trying to take my  
11 client's delayed reactions during a vehicle and traffic  
12 stop and make it into a crime. It simply isn't.

13 In terms of the remaining violations -- and again,  
14 these are traffic violations. I don't want to belabor  
15 the point, but obstruction on the windshield,  
16 non-transparent material required to be displayed by  
17 law upon the front windshield. I didn't hear any  
18 testimony of that. You could obviously draw from your  
19 own recollection. That's what you're here to do.

20 We saw maybe a video from the car on March 3rd  
21 which showed some sort of contraption in the window. I  
22 didn't hear any testimony about that contraption being  
23 present in front of that window, the windshield -- I  
24 should say on February 27<sup>th</sup>. So, that's six days  
25 where God knows who's going through my client's

## MR. ALBERT'S CLOSING ARGUMENT

1 vehicle, numerous officers, the tow company and  
2 whatever.

3 We'll get -- as I'm going through these, there  
4 might be some. And yeah, he admitted to you he drove  
5 with his lights off. May not been the best idea. Find  
6 him guilty of that. We're not here to pull the wool  
7 over your eyes. Find him guilty for what he did.  
8 Assess him as if this is a traffic stop not a crime.

9 Driving something -- operates a motor vehicle  
10 where something is hung upon the vehicle in such a  
11 manner as to obstruct or interfere with the view of the  
12 operator through the windshield. Where did we hear  
13 anything about that? No one said they sat in my  
14 client's vehicle the way it was on February 27<sup>th</sup>. No  
15 one said it obscured anything. I think there's nothing  
16 to support the inference, that he could not see clearly  
17 through that windshield.

18 Failure to keep right. The video speaks for  
19 itself. I believe there might have been one instance  
20 where he did not do that possibly. I think if you look  
21 at the video, I think it was one not two. If it  
22 happens within two seconds of one another, as that may  
23 have done at the very end of the traffic stop, then  
24 we're talking about one violation as opposed to two,  
25 but they're gonna pile on. I do think there was only

## MR. ALBERT'S CLOSING ARGUMENT

1 one.

2 In terms of failure to signal, someone talks about  
3 him decreasing the speed of a motor vehicle. They  
4 wanted him to stop. They can't have it both ways. And  
5 not giving appropriate signal to the driver of another  
6 vehicle he was stopping and slowing down, I don't  
7 believe there was any evidence to support especially  
8 beyond a reasonable doubt a verdict of guilty on that  
9 particular count.

10 Failure to signal. Failed to continuously signal  
11 his intentions to turn right or left during not less  
12 than the last 100 feet. That's what you need to render  
13 a verdict. I don't think there was any testimony or  
14 measurement of those 100 feet. Again, the judge will  
15 give you the law. I'm giving you a preview. These are  
16 things you have to consider.

17 Think back to all the testimony, films, high tech  
18 gadgets and videos and it doesn't show much except for  
19 an individual trying to get to a better lit area, not  
20 just for his own benefit but for the officers too. The  
21 officers told you they were also concerned about safety  
22 just like my client, but it's my client charged with  
23 crimes.

24 Eighth and ninth, failure to yield to emergency  
25 vehicle. Again, I think that's duplicitous. He didn't

## MR. ALBERT'S CLOSING ARGUMENT

1 stop right away. So, as we said, you know, that's what  
2 we're talking about here, a traffic stop where,  
3 granted, to give the officers every single benefit of  
4 the doubt, you can understand that they're concerned.  
5 They don't know what he's thinking. As they told you,  
6 they don't know what he's thinking or intending. They  
7 don't know if he's intending harm, but that's another  
8 way -- that's why they pull their guns on him and so on  
9 and so forth, and that's another way of saying they  
10 don't know what he intended. They don't know him.  
11 They don't know what he was thinking. They don't know  
12 whether he was looking to do them harm or simply  
13 looking for a well lit area, and again, that goes to  
14 the obstruction charge.

15 Failure to yield. You don't need a mental state  
16 for that. You don't have to intend for failure to  
17 yield or speed. If you do it, you do it. But for  
18 crimes you have to. You need a lot more. The People  
19 will say maybe that's yes, you know.

20 Obviously, you've got an instance in which if I  
21 were to run up to Mr. [REDACTED] and throw him to the  
22 ground and take his wallet from him, I'm intending to  
23 deprive him of his property. That's when you can say,  
24 yeah, his actions, his actions showed him he was trying  
25 to deprive you of your property but not someone is

## MR. ALBERT'S CLOSING ARGUMENT

1 driving in a straight line, not speeding, not getting  
2 out and fighting the cops but driving a straight line.  
3 You can't say from that he's trying to prevent a  
4 traffic stop from happening, far from it. He's trying  
5 to find a safer place to allow that traffic stop to  
6 happen.

7 No headlights, they got us there. Okay? So, no  
8 headlights.

9 Those are the charges. Okay? And again, I want  
10 you to take your time with them, as much as you have  
11 to, but as I said, it's not a simple question. If it's  
12 the officer said to do this and do it here and he  
13 didn't, we're setting an extremely dangerous precedent  
14 in society.

15 What my client did, you can say it was a mistake  
16 in judgment. You can say you wouldn't have done the  
17 same thing, and you can say you haven't had the same  
18 experiences as Mr. [REDACTED] and you don't perform the  
19 duties as a government watchdog, but you can't say he  
20 committed a crime as a result of that traffic stop. He  
21 was just trying to find a safer place to do it. Thank  
22 you very much.

23 THE COURT: Miss Ensell.

24 MS. ENSELL: Yes, Judge. Thank you. Judge,  
25 and if it pleases the Court, I actually have prepared



## MS. ENSELL'S CLOSING ARGUMENT

1 some slides that I would like to use for my closing  
2 statement. I'm just gonna make room real quick.

3 Before I start on this version, Judge, I am just  
4 going to thank everybody for being patient with us. I  
5 know it's been probably a little bit longer than  
6 everyone expected to be here to hear the evidence, and  
7 we do appreciate you remaining vigilant and conscious  
8 and bearing with us as we have made it through this  
9 process.

10 I am also going to note that I did prepare some  
11 slides that I want to go over. Again, I am not the one  
12 who gets to tell you what the law is on anything. So,  
13 insure that when you are instructed on the law, you are  
14 listening to what the judge says. If you feel  
15 something I'm showing you is in disagreement with what  
16 the judge says, it's what the judge says that rules the  
17 day. I have this queued on mine.

18 THE CLERK: It's trying to come up.

19 MS. ENSELL: All right. I'm just going to go  
20 through the vehicle and traffic offenses first. Now,  
21 again, on February 27<sup>th</sup>, 2016, we, at this point, the  
22 People have presented you with evidence both through  
23 the testimony of Officer Kowalski and Officer Hunt as  
24 well as some video evidence and some photographic  
25 evidence concerning some infractions that happened on

## MS. ENSELL'S CLOSING ARGUMENT

1 that day. With the no headlights, it doesn't -- it  
2 sounds at this point it's pretty much an uncontroverted  
3 fact that nobody is disputing the headlights were off.  
4 You heard testimony from Officer Kowalski and you saw a  
5 video.

6 I have at this point taken some stills in  
7 reference to the video just to remind you at this point  
8 what you saw. At this point it's again a demonstration  
9 of the no headlights on 242, a demonstration of the no  
10 headlights on Hencoop, and then this one shows when the  
11 headlights were turned back on.

12 For the failure to signal, again, you heard  
13 testimony in reference to some of the live ones here on  
14 this. Officer Kowalski and Officer Hunt gave you some  
15 testimony in reference to Hencoop and 242 being public  
16 highways. Officer Kowalski gave testimony to you  
17 referencing his observations that the defendant did not  
18 signal at all. So, it wasn't as if he signaled but it  
19 was less than a hundred feet. Officer Kowalski  
20 testified that he did not observe a turn signal.

21 For the failures to yield, again, as noted to you  
22 by defense and by the judge in the beginning, that  
23 involves two counts. The counts can be considered by  
24 also the fact that there were two officers that were  
25 involved eventually in this pursuit. Initially, it was

## MS. ENSELL'S CLOSING ARGUMENT

1 Officer Kowalski, as you heard, testimony given from  
2 Officer Kowalski who saw evidence from the video and  
3 then it was also Officer Hunt, though initially not  
4 involved, did eventually also testify to the fact that  
5 he activated his emergency lights, used his siren to  
6 also assist in attempting to get the vehicle to stop.  
7 Both gave testimony about using their sirens. Officer  
8 Kowalski, as you may recall, also gave some testimony  
9 about using a horn.

10 Again, on the failure to yield, obviously you saw  
11 some video evidence about the individual not pulling  
12 over. Again, I don't think quite at this point this  
13 has even been something that the defense has disputed,  
14 that, in fact, the defendant did not pull over. So,  
15 again, these are some stills from the video, and in  
16 this particular one, again, I'll just draw your  
17 attention to the visibility of two cars.

18 The failure to keep right, also again, as  
19 discussed by defense and as I'll tell you, was a two  
20 count charge. I don't -- an offense, when it occurs,  
21 if it's two distinct offenses, it occurs twice, and in  
22 this particular case you may recall watching the video  
23 when Officer Kowalski was in front of the defendant in  
24 the vehicle, the defendant left the lane twice to go  
25 around. Now, the first time a little more pronounced

## MS. ENSELL'S CLOSING ARGUMENT

1 entering of the oncoming traffic lane, the second time  
2 was a little more subtle, but two times the defendant  
3 did attempt to navigate his car around Officer  
4 Kowalski's car. So, this would be an image that again  
5 I took from the video. Ultimately, again, up to your  
6 factual determination on what you see out of this.

7 This would be a still immediately following that.  
8 Here's a still, again, whether or not you can make a  
9 factual determination on the vehicle returning to the  
10 lane and again navigating towards the oncoming lane.

11 The failure to signal, you did hear testimony that  
12 at the point in time in which defendant came to a stop  
13 Officer Hunt was traveling behind him. That was  
14 Officer Hunt's testimony. Officer Hunt testified to  
15 the fact that the vehicle essentially came to a stop  
16 without any indication that it was going to do so. So,  
17 as you may recall from Officer Hunt's observations, the  
18 vehicle again did twice appear to go around the patrol  
19 car that was in front of it and then came to a stop  
20 without any indication.

21 The obstruction on windshield, you heard some  
22 testimony regarding some photographs about some items  
23 that were contained on the defendant's windshield. You  
24 heard testimony from Officer Kowalski regarding  
25 observations that he made on the morning of

## MS. ENSELL'S CLOSING ARGUMENT

1 February 27<sup>th</sup> in regards to those photographs, and  
2 you heard testimony from Officer Bouchard on some  
3 observations he made a few days later when he also  
4 observed the vehicle.

5 So, for the obstruction on windshield, I will note  
6 that we did provide you with exhibits that went into  
7 evidence in reference to some photographs of a camera  
8 that was attached to the defendant's windshield, again  
9 based on the observation of Officer Kowalski on the  
10 27<sup>th</sup> and Officer Bouchard a few days later. These  
11 are not to confuse but side by side -- they're two  
12 separate exhibits that you were shown of the camera.

13 Driver's view obstructed, again, you heard  
14 testimony from both from Officer Kowalski from  
15 February 27<sup>th</sup> and from Officer Bouchard from when he  
16 observed the vehicle a few days later in reference to  
17 an object that was attached to the defendant's  
18 windshield, and a photograph was entered into evidence  
19 for your consideration, and that would be this object.  
20 All right.

21 Getting to the Obstruction of Governmental  
22 Administration in the Second Degree, obviously, the  
23 bulk of the testimony and the evidence that you were  
24 provided went to the question of the Obstructing of  
25 Governmental Administration in the Second Degree.

## MS. ENSELL'S CLOSING ARGUMENT

1 Let's first talk about some of the proof that you were  
2 given by the People. You heard testimony from both  
3 police officers that they were on duty at the time the  
4 offense occurred. Both our police officers, one  
5 testified to being a police officer with the  
6 Ellicottville Police Department and the other with the  
7 Cattaraugus County Sheriff's Department at the time.

8 That they were -- Officer Kowalski was in the  
9 process of trying to perform a vehicle and traffic stop  
10 and that Officer Hunt testified that he was attempting  
11 to assist an agency that had called for his assistance.  
12 These are, in fact, part of their duties as police  
13 officers for those respective departments.

14 By means of interference, again, there was a lot  
15 of testimony and some video evidence provided to you.  
16 Now, I don't believe that it's as simple as the  
17 defendant did not pull over. There was a lot of  
18 testimony given in reference to a lot of actions that  
19 were taken in this particular case. He did pull over.  
20 He did twice attempt to pass a police car, but let's  
21 talk about what he did, when that car finally stopped.

22 He was given several commands from the police  
23 officer, no less than five, in which he was asked to  
24 unlock his door and to get out of the vehicle. As  
25 testified by Officer Kowalski and Officer Hunt, did not

## MS. ENSELL'S CLOSING ARGUMENT

1 follow any of those commands, and as testified to by  
2 Officer Kowalski, he, in fact, indicate "no" to those  
3 commands. So, between not getting -- again, as you may  
4 recall, you heard testimony from Officer Kowalski that  
5 Officer Kowalski had to go as far as entering the  
6 defendant's vehicle to unbuckle him from his seat belt  
7 because he refused to do that. He had to go as far as  
8 guiding the defendant out of the vehicle because he  
9 wouldn't get out. And again, throughout this, there  
10 were commands being made of the defendant. It wasn't  
11 as simple as he didn't pull over.

12 Yeah, again, uncontroverted. The defense is not  
13 arguing that. He's clear, he didn't pull over, but  
14 there were also several actions that happened after he  
15 didn't pull over. It's not that there was some sort of  
16 evidence provided by the defense. He didn't pull over.  
17 He realized he wasn't going to go where he decided he  
18 wanted to go, and he cooperatively got out of the car  
19 and talked to the officers. And as you may recall from  
20 the testimony of Officer Kowalski, his gun was  
21 holstered when he made that command to unlock the car  
22 or the window was going to break. Officer Hunt also  
23 re-holstered his weapon.

24 So, understandably, these officers, on their  
25 initial stop of the vehicle, don't know what they're

## MS. ENSELL'S CLOSING ARGUMENT

1           confronting, as they testified. As Officer Kowalski  
2           testified to you, his concern was, was the car going to  
3           drive at me? Is this individual armed with any weapon?  
4           As soon as they got up there and they were making  
5           demands of him, the weapons went away.

6           So, again, you may recall hearing testimony from  
7           Officer Kowalski as far as trying to handcuff the  
8           defendant. He indicated that he was not initially able  
9           to handcuff the defendant and there was resistance. I  
10          believe he described it as he stiff-armed. And then  
11          again, ladies and gentlemen, you had an opportunity to  
12          review some video evidence shortly after, once Officer  
13          Graham arrived with a body camera attached.

14          And going to intent, I think contrary to what  
15          defense is arguing, I think it is a rather simple  
16          story. You heard testimony from the defendant. He had  
17          the opportunity to tell you his side of the story, and  
18          I'd like to talk about a couple of the things the  
19          defendant knew.

20          He knew and conceded that he had consumed alcohol  
21          that night. He was driving and he states he had -- he  
22          viewed a cop car when he was driving through  
23          Ellicottville. I don't think the story is as complex  
24          as it's being made out to be. I think that you have an  
25          individual who had some concerns, that had been



## MS. ENSELL'S CLOSING ARGUMENT

1 consuming alcohol. He decided to take a turn on a side  
2 street, turn off his lights which, as you may remember,  
3 Officer Kowalski testified sometimes indicates to them  
4 evading. He, for some reason, decides not to turn his  
5 lights back on when he enters the back road that he  
6 admittedly knows this police car is on and the police  
7 car inevitably tries to stop him. I don't think it's  
8 as complicated as it's being made out to be.

9 Now, ladies and gentlemen, again, these are facts  
10 for you to make a determination on, not me. But you  
11 have a cumulative effect of somebody who admittedly had  
12 consumed alcohol, admittedly was driving and refuses to  
13 comply, not only with the initial stop but with several  
14 of the commands that are made after.

15 Now, there was a lot of talk about video and  
16 wanting to get to a place with video, but as you may  
17 recall, ladies and gentlemen, as testified to by  
18 Officer Bouchard, there were four devices contained in  
19 the defendant's vehicle that had capability of  
20 recording video. Officer Kowalski also had an  
21 opportunity to give you some indication as to what his  
22 observations of the defendant were that evening when he  
23 was stopping him, as you may recall.

24 Officer Kowalski did not observe the fear that  
25 defendant testified to. He observed, I believe what he

## MS. ENSELL'S CLOSING ARGUMENT

1       said was defiance. I also am -- and again, this is for  
2       you to decide, but the defendant testified that he has  
3       this overwhelming fear of police which was driving him  
4       not to obey the law and stop for the police. But if  
5       you may recall, I asked him on cross examination if he  
6       weren't able to stop at Crosby's, say it was closed or  
7       not lit, his next stop was going to be the sheriff's  
8       department. I guess I'm relatively confused.

9               Ladies and gentlemen, ultimately it will be up to  
10       you to weigh the evidence that you were provided today.  
11       It will be up to you to make a determination on which  
12       of the many variations defendant has given you to  
13       consider.

14               What I will submit to you at this point is the  
15       People have provided you with evidence. They have  
16       provided you with indication on what the defendant was  
17       doing prior to driving through Ellicottville, that the  
18       defendant had consumed alcohol, that he was driving his  
19       vehicle and that he did not stop his vehicle when the  
20       police attempted to stop him nor would he open his  
21       doors or get out of his car. The intent and the  
22       interference in this case isn't based on one single act  
23       by the defendant. It's based on a series of acts.

24               I don't think, again, that it's as complicated as  
25       it's being made out to be. I think what we have is an

## MS. ENSELL'S CLOSING ARGUMENT

1 individual who did not want a DWI and decided that he  
2 was going to do what he needed to do to stall that  
3 investigation. Thank you.

4 THE COURT: All right. The next stage in the  
5 proceedings will be the Court's instructions on the  
6 law. Now, as you may have guessed and have heard,  
7 because of the number of charges here, they are lengthy  
8 and somewhat tedious, and I'll point out that at this  
9 point in the day it would be impossible for us to get  
10 through all of them and get to the point where you  
11 could start your deliberations. So, that is going to  
12 occur tomorrow morning at 9:30.

13 I intend to get going promptly. I don't expect  
14 we'll have any business we have to conduct before  
15 giving you the instructions on the law. So, at this  
16 point we're gonna ask you -- yes, sir?

17 JUROR: When we get to go into deliberations,  
18 do we have all of your instructions in writing as well?

19 THE COURT: Unfortunately. That is not  
20 allowed. Part of the instructions will tell you if  
21 there is anything that you do not understand or need  
22 read back, you send the Court a note and we'll be happy  
23 to go through them again. But the law does not permit  
24 me to actually give you the written instructions. So,  
25 that's one of the reasons why I want to do this in the

1 morning so that you have plenty of time. It will be  
2 fresh in your memory. Everyone will be bright and  
3 bushy tailed and ready to go on this. All right? So,  
4 we will adjourn till 9:30 in the morning. I'll see you  
5 then and I can assure you you'll get to do your job, at  
6 least get it started tomorrow.

7 (Whereupon, proceedings concluded.)

8 \* \* \* \* \*

9 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE  
10 ABOVE-ENTITLED ACTION.

11

*Kathleen M. Trost*

12 Dated: July 10, 2017

Kathleen M. Trost,  
Court Reporter

13

14

15

16

17

18

19

20

21

22

23

24

25