

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

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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 8, 2017
12 JURY TRIAL

13 B E F O R E:

14 HONORABLE RONALD D. PLOETZ
15 County Court Judge

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

17 ELIZABETH ENSELL, ESQ.
18 Assistant District Attorney
19 Appearing on behalf of the People

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

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25 Kathleen M. Trost,
Official Court Reporter

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15 (The following occurred without the jury present:)

16 THE COURT: Let's go on the record. Our jury
17 is not yet present. Are there any last minute changes
18 or suggestions regarding the jury charges?

19 MS. ENSELL: Judge, we would note a couple of
20 things. Yesterday, as the Court may recall, we had
21 some questions about whether or not certain
22 instructions would be submitted to the jury in
23 reference to custody and essentially voluntariness. It
24 ultimately ends up amounting to the same question.

25 We did find pretty extensive case law on the

1 issue. It does state that essentially in order to
2 submit that instruction or having the Court be required
3 to submit that instruction needs to be based on, number
4 one, a proper objection at trial; and number two,
5 sufficient facts to raise a material issue.

6 I guess what our objection to the instruction
7 would be at this point is that there weren't sufficient
8 facts to raise a material issue in this case. There
9 was an objection. So, I acknowledge that, but I don't
10 recall there being any sufficient delving into this
11 issue on cross examination. The problem being, and
12 what the courts point out by saying, that this
13 instruction can be left out by the Court and properly
14 not submitted to the jury is that then they're being
15 required to make the determination in a factual vacuum.

16 So, I mean, we can cite our cases that we have. A
17 lot of them talk about voluntariness, but again,
18 ultimately whether you're talking about an instruction
19 on custody and random instruction on whatever, it's all
20 amounted to the same question of voluntariness.

21 One cite that we have would be People v. Hamms,
22 it's 55 AD3d 1142. Another is People versus White --
23 that one came out of the Third Department. Another one
24 is People v. White, 27 AD3d 884, also out of the Third
25 Department. People v. Clyburn-Dawson, 128 AD3d 1350.

1 That's out of the Fourth Department and references the
2 first two cases I just cited. And then People v.
3 Robert Cefaro, a Court of Appeal case, 23 NY2d 283. I
4 do have copies of all of those.

5 I mean, ultimately it is up to the trial Court's
6 discretion on which instructions to submit to the jury.
7 So --

8 THE COURT: All right. Mr. Albert, briefly.

9 MR. ALBERT: Yes. Judge, there was a line of
10 questioning designated specifically for the purpose of
11 eliciting from the officer that my client was in
12 custody or in the alternative a reasonable person could
13 find that my client was in custody which is all we need
14 to submit it to the jury. At the time questions were
15 being posed to my client, A, he wasn't Mirandized; B,
16 he was handcuffed; C, he was injured; D, there were
17 many officers on the side of the road; E, guns had just
18 been pointed at him.

19 Certainly, handcuffs should alone, I think, raise
20 the question as to whether or not an individual is in
21 custody. I said, what, was he free to leave? That's
22 something I thought Mr. [REDACTED] testified to as well.
23 Certainly, Judge, there is a whole host of factors that
24 I think could obviously raise the proposition at the
25 very, very least as to whether or not my client was in

1 custody at the time these questions were posed to him
2 and at the time that he didn't answer.

3 I would argue it's a question for the jury as to
4 whether or not they want to put weight to the fact that
5 the interrogation was borne from -- strike that last
6 sentence -- as to whether or not they should consider
7 the statements made by my client as to whether or not
8 they were elicited properly or whether they were not,
9 that they would have to find he was in custody and not
10 properly Mirandized.

11 THE COURT: All right. I'm aware of this
12 case law, but I am, under the circumstances of this
13 case, I am going to include the instructions as was
14 presented to counsel yesterday. I feel there's
15 sufficient reason do so under the facts of this case.
16 I'll note your objection.

17 MS. ENSELL: Thank you.

18 MR. ALBERT: Thank you.

19 THE COURT: Do we have all our jurors?

20 DEPUTY: I will go check.

21 THE COURT: Anything else before we bring the
22 jurors in?

23 MR. ALBERT: Not from us.

24 THE COURT: Miss Ensell?

25 MS. ENSELL: No, Judge. Thank you.

1 THE COURT: All right. Off the record.

2 (Discussion off the record.)

3 DEPUTY: Yes, they're all here.

4 THE COURT: All right. Bring them in.

5 (The jury entered the courtroom and the following
6 occurred:)

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

9 THE COURT: All right. Good morning. We're
10 now at the stage where I'll be providing the
11 instructions on the law that you must apply the facts
12 as you find them, and as I forwarned you yesterday,
13 these are rather long and can be somewhat tedious. And
14 also as mentioned yesterday, I am not allowed to
15 provide you with a written copy of these instructions.
16 So, it's very important that you pay close attention.

17 All right, members of the jury, I will be now
18 instructing you on the law. I'll first review the
19 general principles of law that apply to this case and
20 to all criminal cases. Next, I will be defining the
21 charges that are filed in this case, explain the law
22 that applies to those defined charges and spell out the
23 elements of each charged crime. Finally, I will be
24 outlining the process of jury deliberations.

25 Now, during these instructions I will not be

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1 summarizing the evidence. If necessary, I may refer to
2 portions of the evidence to explain the law that
3 relates to it. Now, my reference to evidence or my
4 failure to refer to evidence expresses no opinion about
5 the truthfulness, accuracy or importance of any
6 particular evidence. In fact, nothing I've said and no
7 questions I have asked in the course of this trial was
8 meant to suggest that I have any opinion about the
9 case. If you have formed an impression that I do have
10 an opinion, you must put it out of your mind and
11 disregard it.

12 Now, the level of my voice or intonation may vary
13 during these instructions. If I do that, it's done to
14 help you understand the instructions. It is not done
15 to communicate any opinion about the laws or the facts
16 of the case or whether the defendant is guilty or not
17 guilty because it is not my responsibility to judge the
18 evidence here. It is yours and you and you alone are
19 the judges of the facts, and you and you alone are
20 responsible for deciding whether the defendant is
21 guilty or not guilty.

22 In your deliberations you may not consider or
23 speculate about matters relating to sentence or
24 punishment. If there is a verdict of guilty on any
25 charge, it will be my responsibility to impose an

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1 appropriate sentence.

2 Now, when you judge the facts, you are considering
3 only the evidence which in this case includes the
4 testimony of witnesses as well as exhibits that were
5 received in evidence. Testimony which was stricken
6 from the record or to which an objection was sustained
7 must be disregarded by you.

8 Exhibits that were received in evidence are
9 available upon your request for your inspection,
10 consideration or play back. Exhibits that were just
11 seen during the trial or marked for identification but
12 not received in evidence are not evidence and thus are
13 not available for your inspection and consideration.
14 But any testimony that was based on evidence not
15 received in evidence may still be considered by you.
16 It is just that the exhibit itself is not available for
17 your consideration.

18 Now, in evaluating the evidence you may consider
19 any fact that is proven as well as any inference which
20 may be drawn from that fact. Now, to draw an inference
21 means to infer, find or conclude that a fact exists or
22 does not exist based upon the proof of some other fact
23 or facts.

24 Now, an inference must only be drawn from a proven
25 fact or facts and then only if the inference flows

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1 naturally, reasonably and logically from the proven
2 fact or facts, not if it is speculative. Therefore, in
3 deciding whether to draw an inference, you must look at
4 and consider all the facts in the light of reason,
5 common sense and experience.

6 I will now turn to the fundamental principles of
7 our law that apply in all criminal trials: The
8 presumption of innocence, the burden of proof and the
9 requirement of proof beyond a reasonable doubt.

10 Throughout these proceedings, the defendant is
11 presumed to be innocent. As a result, you must find
12 the defendant not guilty unless, on the evidence
13 presented at this trial, you conclude the People have
14 proven the defendant guilty beyond a reasonable doubt.
15 In determining whether the People, their burden of
16 proving a defendant's guilt beyond a reasonable doubt,
17 you may consider all of the evidence presented whether
18 by the People or by the defendant.

19 In doing so, however, remember that even though
20 the defendant introduced evidence, the burden of proof
21 remains on the People. The defendant is not required
22 to prove that he is not guilty. In fact, the defendant
23 is not required to prove or disprove anything. To the
24 contrary, the People have the burden of proving the
25 defendant guilty beyond a reasonable doubt.

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1 That means before you can find the defendant
2 guilty of any charge, the People must prove beyond a
3 reasonable doubt every element of the charge including
4 that the defendant is the person who committed that
5 charge. The burden of proof never shifts from the
6 People to the defendant. If the People fail to satisfy
7 their burden of proof, you must find the defendant not
8 guilty. But if the People do satisfy their burden of
9 proof, you must find the defendant guilty.

10 Now, what does our law mean when it requires proof
11 beyond a reasonable doubt? The law uses that term to
12 tell you how convincing the evidence of guilt must be
13 to permit a verdict of guilty. The law recognizes in
14 dealing with human affairs that there are very few
15 things in this world that we know with absolute
16 certainty. Therefore, the law does not require the
17 People to prove a defendant guilty beyond all possible
18 doubt. On the other hand, it is not sufficient to
19 prove that a defendant is probably guilty. In a
20 criminal case the proof of guilt must be stronger than
21 that. It must be beyond a reasonable doubt.

22 Now, a reasonable doubt is an honest doubt of the
23 defendant's guilt for which a reason exists based upon
24 the nature and quality of the evidence. It is an
25 actual doubt, not an imaginary doubt. It is a doubt

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1 that a reasonable person acting in a matter of this
2 importance would be likely to entertain because of the
3 evidence that was presented or because of the lack of
4 convincing evidence.

5 Proof of guilt beyond a reasonable doubt is proof
6 that leaves you so firmly convinced of the defendant's
7 guilt that you have no reasonable doubt of the
8 existence of any element of the charge or of the
9 defendant's identity as the person who committed the
10 charge.

11 In determining whether or not the People have
12 proven the defendant's guilt beyond a reasonable doubt,
13 you should be guided solely by a full and fair
14 evaluation of the evidence. After carefully evaluating
15 the evidence, each of you must decide whether or not
16 that evidence convinces you beyond a reasonable doubt
17 of the defendant's guilt.

18 Whatever your verdict may be, it must not rest
19 upon baseless speculation nor may it be influenced in
20 any way by bias, prejudice, sympathy or by a desire to
21 bring an end to your deliberations or to avoid an
22 unpleasant duty. If you are not convinced beyond a
23 reasonable doubt that the defendant is guilty of the
24 charge, you must find the defendant not guilty. If you
25 are convinced beyond a reasonable doubt that the

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1 defendant is guilty of the charge, you must find the
2 defendant guilty on that charge.

3 Now, as judges of the fact, you alone determine
4 the truthfulness and accuracy of the testimony of each
5 witness. You must decide whether a witness told the
6 truth and was accurate or instead testified falsely or
7 perhaps was mistaken. You must also decide what
8 importance to give to the testimony that you do accept
9 as truthful and accurate.

10 It is the quality of the testimony that is
11 controlling, not the number of witnesses who testify.
12 If you find that any witness has intentionally
13 testified falsely as to any material fact, you may
14 disregard that witness' entire testimony or you may
15 disregard so much of it as you find was untruthful and
16 accept so much of it as you find to have been truthful
17 and accurate.

18 Now, there's no particular formula for evaluating
19 the truthfulness and accuracy of another person's
20 statements or testimony. You bring to this process all
21 of your varied experiences in life, and you frequently
22 have to decide the truthfulness and accuracy of
23 statements made to you by other people. The same
24 factors used in those decisions should be used in this
25 case when evaluating the testimony.

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1 Now, in general some of the factors that you may
2 wish to consider in evaluating the testimony of a
3 witness are as follows: Did the witness have an
4 opportunity to see and hear the events upon which he or
5 she testified? Did the witness have the ability to
6 recall those events accurately? Was the testimony of
7 the witness plausible and likely to be true or was it
8 implausible and not likely to be true?

9 Was the testimony of the witness consistent or
10 inconsistent with other testimony or evidence in the
11 case? Did the manner in which the witness testified
12 reflect upon the truthfulness of that witness'
13 testimony? To what extent, if any, did the witness'
14 background, training, education or experience affect
15 the believability of that witness' testimony? Did the
16 witness have a bias, hostility or some other attitude
17 that affected the truthfulness of the witness'
18 testimony?

19 You may also consider whether a witness had or did
20 not have a motive to lie. If a witness had a motive to
21 lie, you may consider whether and to what extent, if
22 any, that motive affected the truthfulness of that
23 witness' testimony. If a witness did not have a motive
24 to lie, you may consider that as well in evaluating the
25 witness' truthfulness.

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1 You may consider whether a witness hopes for or
2 expects to receive a benefit for testifying. If so,
3 you may consider whether and to what extent it affected
4 the truthfulness of the witness' testimony. You may
5 consider whether a witness has any interest in the
6 outcome of the case or instead whether the witness has
7 no such interest. Now, a defendant who does testify is
8 a person who has an interest in the outcome of the
9 case.

10 Now, you are not required to reject the testimony
11 of an interested witness or to accept the testimony of
12 a witness who has no interest in the outcome of the
13 case. You may, however, consider whether an interest
14 in the outcome or the lack of such interest affected
15 the truthfulness of the witness' testimony.

16 You may consider whether a witness made statements
17 at this trial that are inconsistent with each other.
18 You may also consider whether a witness made previous
19 statements that are inconsistent with his testimony at
20 trial. You may consider whether a witness testified to
21 a fact here at trial that the witness omitted to state
22 at a prior time when it would have been reasonable and
23 logical for the witness to have stated the fact.

24 Now, in determining whether it would have been
25 reasonable and logical for the witness to have stated

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1 the omitted fact, you may consider whether the witness'
2 attention was called to the matter and whether the
3 witness was specifically asked about it.

4 Now, if a witness has made inconsistent statements
5 or omissions, you may consider whether and to what
6 extent they affect the truthfulness or accuracy of that
7 witness' testimony here at trial. The contents of a
8 prior inconsistent statement is not proof of what
9 happened. You may use evidence of a prior inconsistent
10 statement only to evaluate the truthfulness or accuracy
11 of the witness' testimony made here during the trial.

12 Now, you may consider whether a witness' testimony
13 is consistent with the testimony of other witnesses or
14 with other evidence in the case. Now, if there were
15 inconsistencies by or among the witnesses, you may
16 consider whether they were significant inconsistencies
17 related to important facts or instead were the kind of
18 minor inconsistencies that one might expect from
19 multiple witnesses to the same event.

20 Now, in this case you have heard testimony of
21 police officers. The testimony of a police officer
22 should not be believed solely and simply because the
23 witness is a police officer. At the same time a
24 witness' testimony should not be disbelieved solely and
25 simply because the witness is a police officer. You

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1 must evaluate a police officer's testimony in the same
2 way you would evaluate the testimony of any other
3 witness.

4 Now, we have heard testimony about pretrial
5 preparation, in other words, speaking to witnesses
6 about the case before the witness here is testifying at
7 trial. Now, the law does permit an attorney or an
8 investigator to speak to the witness about the case
9 before the witness testifies and permits the attorneys
10 or investigators to review with the witness questions
11 that will or may not be asked at trial including
12 questions that may be asked on cross examination.

13 You've also heard testimony that a witness heard
14 or reviewed certain materials pertaining to the case
15 before appearing as a witness at the trial. The law
16 also permits a witness to do so.

17 Now, speaking to a witness about his or her
18 testimony and permitting the witness to review material
19 pertaining to the case before the witness testifies is
20 a normal part of preparing for trial and is not
21 improper. Of course, in the process of trial
22 preparation, an attorney or investigator may not
23 suggest that a witness depart from the truth.

24 The charges in this case were set forth in a
25 document known as an indictment. The indictment simply

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1 states the charges, and neither the indictment itself
2 nor the fact that an indictment has been filed
3 constitutes any evidence. The defendant has pled not
4 guilty to the charges contained in the indictment. So,
5 this trial is to decide whether the defendant is guilty
6 or not guilty.

7 I'll now briefly discuss the law as it relates to
8 testimony concerning statements of the defendant made
9 to police officers. Our law does not require that a
10 statement by the defendant be in any particular form.
11 It may be oral, written or electronically recorded.
12 There is no requirement that a statement be made under
13 oath.

14 Under our law, before a person in custody may be
15 questioned by the police, that person must be advised
16 of his or her rights; and second, they must understand
17 those rights; and third, must voluntarily waive those
18 rights and agree to speak to police. On the other
19 hand, a defendant who is not in custody when questioned
20 by the police need not be advised of his or her rights
21 and any voluntary statement may be considered by the
22 jury.

23 Under our law, a person is in custody when he is
24 physically deprived of his freedom of action in any
25 significant way. In fact or the fact that a defendant

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1 was being questioned by a police officer does not
2 necessarily mean that the defendant was in custody.
3 Whether the defendant was in custody at the time of
4 questioning is not determined by what the defendant
5 himself believed or what the police believed.

6 In other words, the test is not whether the
7 defendant believed he was in custody or the police
8 believed he was in custody. The test is what a
9 reasonable person who is innocent of any crime in the
10 defendant's position would have believed. If that
11 reasonable person would have believed that he was in
12 custody, then the defendant was in custody. If that
13 reasonable person would have believed that he or she
14 was not in custody, then the defendant was not in
15 custody.

16 So, to decide whether a reasonable person who is
17 innocent of any crime in the defendant's position would
18 have believed he was in custody, you must examine all
19 of the following circumstances including but not
20 limited to the following: Number one, the reason the
21 defendant was speaking to the police or being
22 questioned by the police. Next, where the questioning
23 took place. How many police officers took part in the
24 questioning? Whether the questioning was investigative
25 or accusatory, whether the questioning took place in a

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1 coercive atmosphere. Whether the defendant was
2 handcuffed or physically restrained, whether the police
3 threatened the defendant or whether they treated the
4 defendant as if he were in custody. Whether the
5 defendant was offered any food or drink, whether the
6 defendant had been allowed to leave after the
7 questioning.

8 Now, if you find that the People have proven
9 beyond a reasonable doubt that the defendant was not in
10 custody when he made a statement to police, then you
11 may consider the statement as evidence and evaluate it
12 as you would any other evidence. If you find that the
13 People have not proven beyond a reasonable doubt that
14 the defendant was not in custody when he made the
15 statement to the police, then you must disregard the
16 statement and not consider it, provided, however, that
17 you may still consider that statement if it was made
18 spontaneously.

19 Now, if a defendant in custody spontaneously
20 volunteers a statement, that statement may be
21 considered by you, the jury, regardless of whether or
22 not the defendant was advised of his rights. Now, for
23 a statement to be spontaneously volunteered, the
24 spontaneity must be genuine and not the result of
25 questioning, inducement, provocation or encouragement

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1 by the police. Under our law, questioning includes
2 words or actions by the police which they should know
3 are reasonably likely to elicit an incriminating
4 statement.

5 If you find that the People have proven beyond a
6 reasonable doubt the custodial statement was
7 spontaneously volunteered, then you may consider that
8 statement as evidence and evaluate it as you would any
9 other evidence. If you find the People have not proven
10 beyond a reasonable doubt that a custodial statement
11 was made spontaneously and voluntarily, then you must
12 disregard the statement and not consider it. All
13 right.

14 I will now instruct you on the law that's
15 applicable to the charged offenses. The first count is
16 Obstructing Governmental Administration in the Second
17 Degree. Under our law a person is guilty of
18 Obstructing Governmental Administration in the Second
19 Degree when that person intentionally obstructs,
20 impairs or perverts the administration of law or other
21 governmental function or prevents or attempts to
22 prevent a public servant from performing an official
23 function by means of intimidation, physical force or
24 interference.

25 Under our law, the administration of law or other

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1 governmental function or the official function of the
2 defendant -- excuse me, I'll start that one over.
3 Under our law, the administration of law or other
4 governmental function or the official function that the
5 defendant is charged with having prevented or attempted
6 to prevent from performing must have been authorized.

7 Now, I'll explain briefly what constitutes an
8 authorized function in the context of this type of
9 case. All right? For example, a police officer's
10 arrest of a person is authorized if the officer has
11 probable cause to believe that an offense was committed
12 and that such person committed the offense. A police
13 officer's detention of a person is authorized if the
14 officer has reasonable suspicion to believe that the
15 person is involved in some type of criminal activity.

16 Now, the terms "intentionally" and "public
17 servant" used in this definition have their own special
18 meaning in our law. I will now give you the meaning of
19 those following terms. All right.

20 Intent means a conscious objective or purpose.
21 Thus, a person intentionally obstructs, impairs or
22 perverts the administration of law or other government
23 function or prevents or attempts to prevent a public
24 servant from performing an official function when that
25 person's conscious objective or purpose is to do so.

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1 Now, a public servant means any public officer or
2 employee of the state or of any political subdivision
3 thereof or any government instrumentality within the
4 state or any person exercising the functions of such
5 public officer or employee.

6 Accordingly, in order for you to find the
7 defendant guilty of this crime, the People are required
8 to prove from all of the evidence in this case beyond a
9 reasonable doubt each of the following three elements:
10 Number one, that on or about February 27th, 2016, in
11 the County of Cattaraugus, the defendant [REDACTED]
12 [REDACTED] obstructed, impaired or perverted the
13 administration of law or other government function or
14 prevented or attempted to prevent a public servant from
15 performing an official function; number two, that the
16 defendant did so intentionally and by means of
17 intimidation, physical force or interference; and
18 three, that the administration of law or other
19 governmental function or the official function was
20 authorized.

21 Therefore, if you find that the People have proven
22 beyond a reasonable doubt each of those elements, you
23 must find the defendant guilty of the crime of
24 Obstructing Governmental Administration in the Second
25 Degree as charged in the first count. On the other

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1 hand, if you find that the People have not proven
2 beyond a reasonable doubt any one or more of those
3 elements, you must find the defendant not guilty of the
4 crime of Obstructing Governmental Administration in the
5 Second Degree as charged in the first count.

6 The second count is Obstruction on Windshield.
7 Under our law, a person is guilty of Obstruction on
8 Windshield when he or she drives a motor vehicle on a
9 public highway with any nontransparent material other
10 than a certificate or paper required to be displayed by
11 law upon the front windshield.

12 So, in order for you to find the defendant guilty
13 on this charge, the People are required to prove from
14 all of the evidence in the case beyond a reasonable
15 doubt as follows: That on or about February 27th,
16 2016, in the County of Cattaraugus, the defendant
17 [REDACTED] drove a motor vehicle on a public
18 highway with a nontransparent material other than a
19 certificate or paper required to be displayed by law
20 upon the front windshield.

21 Therefore, if you find the People have proven this
22 charge beyond a reasonable doubt, you must find the
23 defendant guilty of Obstruction on Windshield as
24 charged in the second count. On the other hand, if you
25 find the People have not proven beyond a reasonable

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1 doubt each of those elements, you must find the
2 defendant not guilty of Obstruction on Windshield as
3 charged in the second count.

4 The third count is Driver's View Obstructed.
5 Under our law, a person is guilty of Driver's View
6 Obstructed when he or she operates a motor vehicle on a
7 public highway with any object placed or hung in or
8 upon the vehicle in such a manner as to obstruct or
9 interfere with the view of the operator through the
10 windshield or to prevent him from having a clear and
11 full view of the road and condition of traffic behind
12 the vehicle.

13 Now, under -- some of the terms used in that
14 definition again have their own special meaning in our
15 law and I will now give you the meaning of the term
16 "operate." To operate a motor vehicle means to drive
17 it. All right?

18 So, in order for you to find the defendant guilty
19 of this charge, the People are required to prove from
20 all of the evidence in the case beyond a reasonable
21 doubt that on or about February 27th, 2016, in the
22 County of Cattaraugus, the defendant [REDACTED]
23 operated a motor vehicle on a public highway with an
24 object placed or hung in or upon the vehicle in such a
25 manner as to obstruct or interfere with the view of the

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1 defendant through the windshield or to prevent him from
2 having a clear and full view of the road and the
3 condition of traffic behind the vehicle.

4 Therefore, if you find that the People have proven
5 the defendant on -- excuse me, proven the charge beyond
6 a reasonable doubt, you must find the defendant guilty
7 of Driver's View Obstructed as charged in the third
8 count. On the other hand, if you find that the People
9 have not proven this charge beyond a reasonable doubt,
10 you must find the defendant not guilty of Driver's View
11 Obstructed.

12 The fourth and fifth counts are Failure to Keep
13 Right. Now, under our law, a person is guilty of
14 Failure to Keep Right when he or she fails to drive a
15 motor vehicle on the right half of a public roadway
16 that is of sufficient width.

17 So, in order for you to find the defendant guilty
18 on the fourth count, the People are required to prove
19 from all of the evidence in the case beyond a
20 reasonable doubt that on or about
21 February 27th, 2016, in the County of Cattaraugus,
22 the defendant [REDACTED] failed to drive his
23 motor vehicle on the right half of a public roadway
24 that was of sufficient width.

25 Therefore, if you find the People have proven the

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1 charge beyond a reasonable doubt, you must find the
2 defendant guilty on Failure to Keep Right as charged in
3 the fourth count. On the other hand, if you find that
4 the People have not proven this charge beyond a
5 reasonable doubt, you must find the defendant not
6 guilty of Failure to Keep Right as charged in the
7 fourth count.

8 Now, in order for you to find the defendant guilty
9 of the fifth count which again is Failure to Keep
10 Right, the People are required to prove from all of the
11 evidence in the case beyond a reasonable doubt that at
12 a separate occurrence from the acts constituting the
13 fourth count, on or about February 27th, 2016, in the
14 County of Cattaraugus, the defendant [REDACTED]
15 failed to drive his motor vehicle on the right half of
16 a public roadway that was of sufficient width.

17 Therefore, if you find that the People have proven
18 this charge beyond a reasonable doubt, you must find
19 the defendant guilty of Failure to Keep Right as
20 charged in the fifth count. On the other hand, if you
21 find that the People have not proven the charge beyond
22 a reasonable doubt, you must find the defendant not
23 guilty of Failure to Keep Right as charged in the fifth
24 count. All right.

25 The sixth count is Failure to Signal. Under our

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1 law, a person is guilty of Failure to Signal when he or
2 she suddenly decreases the speed of a motor vehicle
3 being driven on a public highway without first giving
4 an appropriate signal to the driver of any vehicle
5 immediately to the rear when there is an opportunity to
6 give such a signal.

7 So, in order for you to find the defendant guilty
8 of this charge, the People are required to prove from
9 all the evidence in the case beyond a reasonable doubt
10 that on or about February 27th, 2016, in the County
11 of Cattaraugus, the defendant [REDACTED] drove
12 on a public highway and suddenly decreased the speed of
13 his motor vehicle without first giving an appropriate
14 signal to the driver to any vehicle immediately to the
15 rear when there was an opportunity to give such signal.

16 Therefore, if you find that the People have proven
17 the charge beyond a reasonable doubt, you must find the
18 defendant guilty of Failure to Signal as charged in the
19 sixth count. On the other hand, if you find the People
20 have not proven this charge beyond a reasonable doubt,
21 you must find the defendant not guilty of Failure to
22 Signal. All right.

23 The seventh count again is Failure to Signal but
24 it contains different elements. All right? Under our
25 law, a person is guilty of Failure to Signal under the

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1 this count when, on a public highway, he or she fails
2 to continuous signal their intention to turn right --
3 to intentionally turn right or left during not less
4 than 100 feet prior to turning.

5 So, in order for you to find the defendant guilty
6 of this charge, the People are required to prove from
7 all of the evidence in this case beyond a reasonable
8 doubt that on February 27th, 2016, in the County of
9 Cattaraugus, the defendant [REDACTED] while
10 driving on a public highway, failed to continuously
11 signal his intention to turn right or left during not
12 less than the 100 feet traveled by the vehicle before
13 turning.

14 Therefore, if you find the People have proven this
15 charge beyond a reasonable doubt, you must find the
16 defendant guilty of Failure to Signal as charged in the
17 seventh count. On the other hand, if you find that the
18 People have not proven this charge beyond a reasonable
19 doubt, you must find the defendant not guilty of
20 Failure to Signal as charged in the seventh count.

21 The eighth and ninth counts are Failure to Yield
22 to an Emergency Vehicle. Under our law, a person is
23 guilty of Failure to Yield to an Emergency Vehicle
24 when, upon the immediate approach of an authorized
25 emergency vehicle sounding its siren, horn or any

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1 electronic equivalent, the driver of the other motor
2 vehicle on a public roadway fails to yield the right of
3 way and fails to immediately drive to a position
4 parallel to and as close as possible to the right hand
5 edge or curb of the roadway and fails to stop and
6 remain in that position until the emergency vehicle
7 passes or is otherwise directed to proceed by a police
8 officer.

9 So, in order for you to find the defendant guilty
10 on the eighth count, the People are required to prove
11 from all of the evidence in the case beyond a
12 reasonable doubt that on or about February 27th,
13 2016, in the County of Cattaraugus, the defendant
14 [REDACTED], upon the immediate approach of an
15 authorized emergency vehicle sounding its siren, horn
16 or an electronic equivalent, the defendant failed to
17 yield the right of way on the public roadway and failed
18 to immediately drive to a position parallel to and as
19 close as possible to the right hand edge of the curb or
20 edge of the roadway and failed to stop and remain in
21 that position until the authorized emergency vehicle
22 has passed or was otherwise directed to proceed by a
23 police officer.

24 Therefore, if you find that the People have proven
25 the charge beyond a reasonable doubt, you must find the

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1 defendant guilty of Failure to Yield to an Emergency
2 Vehicle as charged in the eighth count. On the other
3 hand, if you find the People have not proven this
4 charge beyond a reasonable doubt, you must find the
5 defendant not guilty of Failure to Yield to an
6 Emergency Vehicle as charged in the eighth count.

7 Now, in order for you to find the defendant guilty
8 of the ninth count which again is Failure to Yield to
9 an Emergency Vehicle, the People are required to prove
10 from all of the evidence in the case beyond a
11 reasonable doubt that as a separate occurrence from the
12 conduct covered by the eighth count and on or about
13 February 27th, 2016, in the County of Cattaraugus,
14 the defendant [REDACTED], upon the immediate
15 approach of an authorized emergency vehicle sounding
16 its siren, horn or an electronic equivalent, the
17 defendant failed to yield the right of way on a public
18 roadway and failed to immediately drive to a position
19 parallel to and as close as possible to the right hand
20 edge or curb of the roadway and failed to stop and
21 remain in that position until the authorized emergency
22 vehicle passed or until he was directed to proceed by a
23 police officer.

24 Therefore, if you find the People have proven this
25 charge beyond a reasonable doubt, you must find the

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1 defendant guilty of Failure to Yield to an Emergency
2 Vehicle as charged in the ninth count. On the other
3 hand, if you find that the People have not proven this
4 charge beyond a reasonable doubt, you must find the
5 defendant not guilty of Failure to Yield to an
6 Emergency Vehicle as charged in the ninth count.

7 The tenth and final count is No Headlights. Under
8 our law, a person is guilty of No Headlights when he or
9 she drives a motor vehicle upon a public highway during
10 the period from one-half hour after sunset to one-half
11 hour before sunrise and fails to display at least two
12 lighted headlamps on the front, one on each side,
13 having light sources of equal power.

14 So, in order for you to find the defendant guilty
15 on this charge, the People are required to prove from
16 all of the evidence in the case, beyond a reasonable
17 doubt each of the following two elements: Number one,
18 that on February 27th, 2016, in the County of
19 Cattaraugus, the defendant [REDACTED] drove a
20 motor vehicle upon a public highway during the period
21 from one-half hour after sunset to one-half hour before
22 sunrise; and number two, that during that time period
23 the defendant failed to display at least two lighted
24 headlamps on the front, one on each side, having light
25 sources of equal power.

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1 Therefore, if you find that the People have proven
2 beyond a reasonable doubt both of those elements, you
3 must find the defendant guilty of No Headlights as
4 charged in the tenth count. On the other hand, if you
5 find that the People have not proven beyond a
6 reasonable doubt either one or both of those elements,
7 you must find the defendant not guilty of No Headlights
8 as charged tenth count.

9 Now, let me explain briefly motive and in
10 particular the difference between motive and intent.
11 Intent means a conscious objective or purpose. Thus, a
12 person commits an act with intent when that person's
13 conscious objective or purpose is to engage in the act
14 which the law forbids or to bring about an unlawful
15 result. Now, motive on the other hand is the reason
16 why a person chooses to engage in unlawful activity.

17 If intent is an element of a charged crime, that
18 element must be proven by the People beyond a
19 reasonable doubt; and in this case, intent is, as I
20 explained, an element of the crime of Obstruction of
21 Governmental Administration. Motive, however, is not
22 an element of the charged crime. Therefore, the People
23 are not required to prove the motive for the commission
24 of the charged crime.

25 Nevertheless, evidence of a motive or evidence of

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1 the lack of a motive may be considered by you, the
2 jury. For example, if you find that the evidence --
3 that there is evidence that the defendant had a motive
4 to commit the crime charged, that is a circumstance
5 that you may wish to consider as tending to support a
6 finding of guilt. On the other hand, if the proof
7 establishes that a defendant had no motive to commit
8 the crime charged, that is a circumstance that you may
9 wish to consider as tending to establish that the
10 defendant is not guilty of the crime charged. All
11 right.

12 Now, regarding deliberations, your verdict on each
13 count, whether guilty or not guilty, must be unanimous.
14 That is, each and every juror must agree to it. Now,
15 to reach a unanimous verdict, you must deliberate with
16 the other jurors. That means you should discuss the
17 evidence and consult with each other, listen to each
18 other, give other's views careful consideration and
19 reason together when considering the evidence.

20 And when you deliberate, you should do so with a
21 view towards reaching an agreement if that can be done
22 without surrendering your own individual judgment.
23 Each of you must decide the case for yourself but only
24 after a fair and impartial consideration of the
25 evidence with the other jurors.

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1 You should not surrender an honest view of the
2 evidence simply because you want the trial to end or
3 because you are outvoted. At the same time you should
4 not hesitate to reexamine your views and change your
5 mind if you become convinced that your initial position
6 was not correct.

7 Now, I have noted that some of you have been
8 taking notes. Now, any notes that have been taken are
9 only an aid to your memory and must not take precedence
10 over your individual recollection. Those jurors who
11 chose not to take notes must not rely or -- excuse me,
12 must rely on their own independent recollection and
13 must not be influenced by the notes taken by any other
14 juror. Any notes you take are only for your own
15 personal use in refreshing your recollection, and a
16 juror's notes are not a substitute for the recorded
17 transcript of the testimony or for any exhibit received
18 in evidence. If there is a discrepancy between your
19 recollection and your notes regarding evidence, you
20 should ask to have the relevant testimony read back or
21 the exhibit produced or played back for you.

22 In addition, a juror's notes are not a substitute
23 for the detailed explanation that I am now giving you
24 on the principles of law that govern the case, and if
25 there is a discrepancy between your recollection and

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1 your notes regarding these principles, you should ask
2 to have me explain the principles again and I'll be
3 happy to do so.

4 Any notes taken are confidential and shall not be
5 available for examination or review by any party or any
6 other person. After you have rendered your verdict,
7 your notes will be collected and we will make sure they
8 are destroyed. All right.

9 In evaluating the evidence and the issues
10 presented, you should use your common sense, knowledge
11 and experience just as you would in making decisions in
12 your daily life. Now, when I speak of knowledge and
13 experience in this context, I mean the sort of
14 knowledge and experience that an average person would
15 acquire in life.

16 Now, some of you may have something more than
17 ordinary knowledge or experience in certain areas.
18 Indeed, it may be that you developed a special
19 expertise in a special area, well beyond what an
20 average person would have. If you have such a special
21 expertise and if it relates to some material issue in
22 this case, it would be wrong for you to rely on that
23 special expertise to inject into your deliberations
24 either a fact that is not in evidence or inferable from
25 the evidence or an opinion which would not be drawn

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1 from the evidence by a person without your special
2 expertise. The reason it would be wrong to do so is
3 that you must decide the case only on the evidence
4 presented to you in this courtroom.

5 Therefore, with respect to any material issue in
6 this case, you must not use any special expertise that
7 you have to insert into the jury's deliberations
8 evidence that was not presented in the courtroom during
9 the trial. All right.

10 You may see any or all of the exhibits which were
11 received in evidence. Simply write me a note, tell me
12 which exhibits you want to see or have played back for
13 you. You may also have testimony of any witness read
14 back to you in whole or in part. Again, if you want
15 such a read back, write me a note telling me what
16 testimony you wish to hear. If you are interested in
17 hearing only a portion of a witness' testimony, please
18 specify in your note which witness and in as much
19 detail as possible, which part of the testimony you
20 want to have read back.

21 Now, of course, if testimony is read back,
22 questions to which an objection was sustained and
23 material otherwise struck from the record will not be
24 read back. Also, if you have any question on the law,
25 write me a note asking to have it again reviewed with

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1 you. All right.

2 Under our law, the first juror selected, Miss
3 Faulkner, you will serve as the foreperson. Now,
4 during the deliberations your opinion and vote is not
5 entitled to any more importance than that of any of the
6 other jurors. What we do ask you to do as the
7 foreperson is to sign any written note that you send
8 out to the Court. Now, you do not have to agree with
9 the note and your signature is only to indicate that
10 this is, in fact, a note coming from the jury.

11 Now, the foreperson may also serve as the chairman
12 during the jury's deliberations but that is not
13 required. You may conduct your deliberations in any
14 way that you see fit.

15 When the jury does reach a verdict of guilty or
16 not guilty on each charge, the entire jury will be
17 asked to come back into the courtroom. The foreperson
18 will then be asked whether the jury has reached a
19 verdict, and if the foreperson says yes, she will then
20 be asked what the verdict is for each of the ten
21 counts. After that, the entire jury will be asked
22 whether that is, in fact, the jury's verdict and you
23 will be asked to answer either yes or no. Finally,
24 upon the request of a party, each juror may be asked
25 individually whether the announced verdict is the

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1 verdict of the juror, and then upon being asked, each
2 juror will answer yes or no.

3 I will be giving you a form known as a verdict
4 sheet. The verdict sheet lists each of the ten counts
5 committed to your consideration and the possible
6 verdicts. Please use the form to record the verdict by
7 circling either guilty or not guilty for each count
8 that you will be considering in accordance with my
9 instructions. The verdict sheet will be in an envelope
10 and I'll ask you to keep the verdict sheet in the
11 envelope except when you're marking the verdict for
12 each count. All right.

13 Finally, there are a few remaining rules which
14 must be observed during your deliberations. Number
15 one, while you are here in the courthouse deliberating
16 on the case, you will be kept together in the jury
17 room. You may not leave the jury room during
18 deliberations, and if you have a beeper or cell phone
19 or other electronic device, please give it to a court
20 officer to hold for you while you're engaged in
21 deliberations.

22 Two, you must deliberate upon the case only when
23 you are all gathered together in the jury room. You
24 must not, for example, be discussing the case as you go
25 to and from the courtroom. It is important that each

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1 juror have the opportunity to hear whatever another
2 juror has to say about the case and that by law must
3 only be done when you are all gathered in the jury
4 room. Thus, if for any reason all 12 of you are not
5 gathered in the jury room, stop deliberating until all
6 12 are again present.

7 Number three, during your deliberations, you must
8 discuss the case only amongst yourselves and you must
9 not discuss the case with anyone else, including the
10 court officer, or permit anyone other than a fellow
11 juror to discuss the case in your presence.

12 If you have a question or request, you must
13 communicate with me by writing a note which you'll give
14 to the court officer to bring to me. The law requires
15 that you communicate with me in writing in part to make
16 sure that there are no misunderstandings.

17 I should explain that under the law, I am not
18 permitted to have a conversation about the facts of the
19 case or possible verdict or vote of the jury on any
20 count with any one juror, any group of jurors or even
21 with the entire jury panel. Thus, in any note that you
22 send to me do not tell me what the vote is of the jury
23 on that count. All right?

24 That concludes the Court's instructions on the
25 law. I will ask counsel if there's any corrections or

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1 additions? Miss Ensell?

2 MS. ENSELL: No, Judge, I didn't hear any
3 corrections or additions.

4 THE COURT: Mr. Albert?

5 MR. ALBERT: Very briefly. I could have
6 missed this part but was there the instruction about
7 the indictment not being proof?

8 THE COURT: Yes, there was.

9 MR. ALBERT: Okay, I must have zoned out.

10 THE COURT: All right. Officer, if you could
11 hand the verdict sheet to Miss Faulkner. Yes, sir?

12 JUROR: Yes, Your Honor, I have a general
13 question. Do these charges have to be deliberated in
14 the order that you're given or can we change this
15 order?

16 THE COURT: You can proceed any way that the
17 jury wishes.

18 JUROR: Okay, thank you.

19 THE COURT: All right. So, at this point I
20 will ask our 12 jurors to adjourn to the jury room.
21 Mr. Hope, I will ask you to remain here briefly while
22 they adjourn.

23 (The jury retired to deliberate at 10:28 a.m.)

24 THE COURT: As an alternate juror, your job
25 is to wait. We'll take you to a separate room. You'll

1 be brought back if there are any questions or inquiries
2 and you'll also be brought back in at the time when a
3 verdict is reached. I again remind you not to discuss
4 the case with anyone as you're waiting.

5 THE CLERK: I'll take you somewhere.

6 THE COURT: Anything before we adjourn
7 waiting to hear from the jurors?

8 MR. ALBERT: No, Your Honor.

9 MS. ENSELL: I don't think so. Probably
10 regardless of outcome, Judge, I'm going to ask if
11 anyone will want to stay. Do you usually do that? I
12 know in some of my courts I don't have to do that.

13 THE COURT: I always instruct the jury that
14 it's up to them if they wish to talk to you.

15 MS. ENSELL: Okay. Thanks.

16 (Recess pending jury deliberations.)

17 (The following occurred without the jury present:)

18 THE COURT: On the record, the parties and
19 counsel are present and the jury is not. We have a
20 note from the jury signed by the foreperson which we've
21 marked as Court's Exhibit No. 2. The note says:
22 Number nine, second occurrence, with a question
23 mark and then in parenthesis, what constitutes two
24 separate occurrences? Underneath that it reads,
25 Failure to yield to two separate emergency vehicles

1 with a question mark. My interpretation of that,
2 subject to counsel's suggestions, would be if they're
3 inquiring if that means that there had to be a separate
4 occurrence involving each of two emergency vehicles.
5 I'll just note for the record that the bill of
6 particulars does state that it was failure to yield to
7 the emergency vehicle of Officer Kowalski as well as
8 the emergency vehicle of Deputy Hunt.

9 MR. ALBERT: So, I mean, based upon the bill
10 of particulars they're bound by that theory and the
11 answer would be yes, based upon that bill of
12 particulars.

13 THE COURT: Miss Ensell?

14 MS. ENSELL: I do think that's what the bill
15 of particulars said. I don't know what the argument
16 is. I still think it constitutes two separate
17 occurrences.

18 THE COURT: I think they're just inquiring if
19 that's what the two separate charges are, and that is
20 consistent -- I just rechecked the bill of particulars.
21 It was alleged for each of the two vehicles. My
22 proposed instructions would be that, yes, in
23 considering count nine, that that would be for a second
24 emergency vehicle. Any objection?

25 MR. ALBERT: No, Your Honor.

1 MS. ENSELL: No objection, Judge.

2 THE COURT: All right. They also asked for
3 me to re-read the charge for eight and nine which I
4 will do.

5 MS. ENSELL: So, eight and nine is the
6 Failure to Yield?

7 THE COURT: Failure to Yield to Emergency
8 Vehicles. All right, let's bring them in.

9 (The jury returned at 11:12 a.m. and the following
10 occurred:)

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

13 THE COURT: All right. The Court did receive
14 a note from the jury properly signed by the foreperson
15 which we've marked as Court's Exhibit No. 2. I have
16 discussed this with counsel and my interpretation of
17 this note is that you'd like the instructions for
18 Counts 8 and 9 which was the Failure to Yield to
19 Emergency Vehicle re-read and also clarification on
20 whether or not the two separate counts apply to the two
21 separate emergency vehicles that were testified to
22 during the trial. Is that an accurate interpretation
23 of this note?

24 (Affirmative nods.)

25 THE COURT: First of all I'll respond, based

1 on our conversation, with conversation. The two
2 separate instances would apply, one each to the two
3 separate emergency vehicles. All right?

4 And now, as requested, I'll re-read the
5 instructions on the law for those two counts which is
6 as follows: The 8th and 9th counts are Failure to
7 Yield to an Emergency Vehicle. Under our law, a person
8 is guilty of Failure to Yield to an Emergency Vehicle
9 when, upon the immediate approach of an authorized
10 emergency vehicle sounding a siren, horn or electronic
11 equivalent, the driver of another vehicle on a public
12 roadway fails to yield the right of way and fails to
13 immediately drive to a position parallel to and as
14 close as possible to the right hand edge or curb of the
15 roadway and fails to stop and remain in such position
16 until the authorized emergency vehicle has passed or
17 unless otherwise directed by a police officer. All
18 right?

19 So, in order for you to find the defendant guilty
20 on the 8th count, the People are required to prove from
21 all the evidence in the case beyond a reasonable doubt
22 that on or about February 27th, 2016, in the County
23 of Cattaraugus, the defendant, [REDACTED], upon
24 the immediate approach of an authorized emergency
25 vehicle sounding its siren, horn or electronic

1 equivalent, he did fail to yield the right of way on a
2 public roadway and failed to immediately drive to a
3 position parallel to and as close as possible to the
4 right hand edge or curb of the roadway and failed to
5 stop and remain in that position until the authorized
6 emergency vehicle had passed or was otherwise directed
7 to proceed by a police officer.

8 Therefore, if you find that the People have proven
9 the charge beyond a reasonable doubt, you must find the
10 defendant guilty of Failure to Yield to an Emergency
11 Vehicle as charged in the 8th count. On the other
12 hand, if you find that the People have not proven this
13 charge beyond a reasonable doubt, you must find the
14 defendant not guilty of failure to yield to an
15 emergency vehicle as charged in the 8th count.

16 Now, in order for you to find the defendant guilty
17 of the 9th count, the People are required to prove from
18 all the evidence in the case beyond a reasonable doubt,
19 that on a separate occurrence from the conduct in the
20 8th count and on or about February 27th in the County
21 of Cattaraugus, the defendant, [REDACTED], upon
22 the immediate approach of an authorized emergency
23 vehicle sounding its siren, horn or an electronic
24 equivalent, the defendant did fail to yield the right
25 of way on a public roadway and failed to immediately

1 drive to a position parallel to and as close as
2 possible to the right hand edge or curb of the roadway
3 and failed to stop and remain in such position until
4 the authorized emergency vehicle had passed unless
5 otherwise directed by a police officer.

6 Therefore, if you find the People have proven the
7 charge beyond a reasonable doubt, you must find the
8 defendant guilty of Failure to Yield to an Emergency
9 Vehicle as charged in the 9th count. On the other
10 hand, if you find that the People have not proven this
11 charge beyond a reasonable doubt, you must find the
12 defendant not guilty of Failure to Yield to an
13 Emergency Vehicle as charged in the 9th count. All
14 right? I think that covers your note. Any other
15 questions at this point?

16 JUROR: We are going to see the video if
17 that's what you're asking for next.

18 THE COURT: All right. You are going to want
19 to see. All right. Now, which video?

20 JUROR: I think we'd like to see them all
21 again.

22 THE COURT: Okay. We will start making that
23 arrangement. How long is that going to take?

24 MS. ENSELL: I just have to get my laptop and
25 plug it in so I can be on the screen.

1 THE COURT: Okay. Let's do this, let's get
2 that ready for viewing. In the meantime, we have or
3 should be there by now some menus so that you can order
4 your lunch. If you'd like to adjourn to the jury room
5 and if you'd like to also, sir, at least pick out your
6 lunch, we'll come back, watch the videos and then we
7 can proceed.

8 (The jury retired to further deliberate at
9 11:20 a.m.)

10 (The jury returned to the courtroom and the
11 following occurred:)

12 THE COURT: All right. The Court will note
13 that the parties, counsel and the jury are present.
14 Mr. Westfall, you had a question?

15 JUROR: Yes, sir. Would it be possible to
16 have somebody annotate the location as the film
17 proceeds?

18 THE COURT: I believe at this point, because
19 the proof has closed, we would not be allowed to do
20 that. What we will be doing at this point, at the
21 jury's request, we will be reshowing the video that is
22 Exhibit 29 which was the alternating dash and rear view
23 camera from the defendant's vehicle, then followed by
24 Exhibit 27B which is the body camera video from the
25 police officers. All right, let's proceed.

1 (Exhibit 29 was played to the jury.)

2 MS. ENSELL: Judge, can counsel and I
3 approach real quick?

4 THE COURT: Mr. [REDACTED] if you want to join
5 us.

6 (Discussion off the record.)

7 THE COURT: Counsel has just agreed we can't
8 do a commentary, but if at any time any juror would
9 like to have the video paused, please get my attention
10 or the officer's attention and we can do that. Let's
11 continue with it.

12 (Exhibit 29 continued playing for the jury.)

13 JUROR: Can we just replay that one again?

14 THE COURT: Let's do that.

15 JUROR: Can I make the same request, to play
16 that one again?

17 THE COURT: Play that one again, all right.

18 MS. ENSELL: Judge, this is up to where we
19 published for the trial. If they'd like to continue,
20 the entire exhibit was entered into evidence but it's
21 up to the jury. They can indicate what they want to
22 see.

23 THE COURT: That concludes what was shown
24 during the trial. Is that satisfactory for the jury?

25 (Affirmative nods.)

1 THE COURT: All right. Next let's do the
2 body camera which is Exhibit 27B.

3 MR. ALBERT: Judge, to the best of my
4 recollection, not that it necessarily matters, but I do
5 remember a few more screens that were published. I
6 could be mistaken but I thought there was the glass
7 shattering, that scene I thought was published
8 previously to the jury. It's in evidence but --

9 MS. ENSELL: It's up to the jury, what they
10 want to see.

11 MR. ALBERT: Yes, it is up to the jury.

12 JUROR: We didn't discuss the need to watch
13 the body cam footage. We discussed the traffic
14 footage.

15 THE COURT: All right. So, there's no
16 request to watch the body cam?

17 JUROR: We may later.

18 JUROR: Not at this time.

19 JUROR: We have to talk a little bit.

20 THE COURT: Do you wish to see any more of
21 this video?

22 JUROR: I don't think we do at this point.

23 THE COURT: Okay. You can come back at any
24 time. Just send me a note. I expect it will be a
25 little while before lunch is delivered. So, I would

1 ask you to continue with your deliberations.

2 (The jury retired to further deliberate at 11:52
3 a.m.)

4 (The following occurred without the jury present:)

5 THE COURT: We have a note from the jury,
6 again signed by the foreperson which we've marked as
7 Court's Exhibit 3. It says "number five" which I will
8 allow counsel to look at. I'm thinking it may mean
9 Count 5 which is the Failure to Keep Right. They would
10 like to hear testimony of Officer Hunt and the
11 defendant and then it says "when officer was in front
12 of defendant's car trying to slow him down,
13 parenthesis, about crossing the double yellow lines."
14 The note then also states "video clip that ends in 2A,
15 parenthesis, corresponding clip again." Counsel want
16 to view this? We may need to bring the jury in just
17 for clarification.

18 MS. ENSELL: I think I get the gist of it. I
19 don't really frankly recall whether or not Officer
20 Kowalski gave any testimony which would be the car in
21 front. Officer Hunt likely did. Honestly, at this
22 point, it was so long ago.

23 THE COURT: I'm interpreting this -- and
24 again, we can get clarification -- that they're asking
25 for Officer Hunt's testimony about when the other

1 officer was in front trying to slow the car.

2 MS. ENSELL: Okay.

3 THE COURT: Because I recall him testifying.

4 MR. ALBERT: Yes, Your Honor.

5 THE COURT: But I'm a little confused about
6 "video clip ends in 2A."

7 MS. ENSELL: Well, I think they're referring
8 to how the clips are actually --

9 THE DEFENDANT: A is forward and B is back.

10 THE COURT: They're numbered that way?

11 MS. ENSELL: Yes, that's how they save.

12 THE COURT: All right. Shall we bring them
13 in and get that clarification?

14 DEPUTY: Verna just delivered their lunch.

15 THE COURT: All right. So, we're gonna be
16 another half hour or so.

17 MR. ALBERT: Okay.

18 MS. ENSELL: Before everyone leaves though, I
19 am gonna note for the Court's record, the People did
20 print off and provide, obviously not as evidence but
21 for the Court's record, the slide presentation that was
22 during the summation to the Court Reporter so she'll
23 have that for the Court's record.

24 THE COURT: All right. We'll make sure
25 that's included in the record.

1 MS. ENSELL: Thank you.

2 MR. ALBERT: Thank you, Your Honor.

3 THE COURT: Why don't we plan on being back
4 ready to go about 1:00 then.

5 MR. ALBERT: Yes, Your Honor.

6 (Recess for lunch.)

7 (The following occurred without the jury present:)

8 THE COURT: Let's go back on the record. Our
9 Court Reporter has pulled out some relevant testimony
10 for both Officer Hunt as well as the defendant's
11 testimony. Would counsel like to view them to see if
12 there's anything in addition to add? I think we're
13 pretty clear on Officer Hunt's testimony. As far as
14 the defendant's testimony, there wasn't really one
15 section that really addressed their issue too much.
16 So, counsel want to review what we've pulled out and
17 marked?

18 MR. ALBERT: That's fine.

19 THE COURT: Let's get them in here. We have
20 another note from the jurors which we will mark as
21 Court's No. 4 asking in regards to Count 3, "picture of
22 windshield through driver's door taken at the scene or
23 any pictures inside of defendant's vehicle at the scene
24 as well as photos taken at John's Collision," and
25 they want a read back of the instructions for Counts 2

1 and 3.

2 (The jury returned to the courtroom at 1:25 p.m.
3 and the following occurred:)

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

6 THE COURT: All right. The Court has two
7 notes from the jury and I'll start with the first one
8 which is Court's Exhibit No. 3. "The jury would like
9 to hear the testimony of Officer Hunt and the defendant
10 when officer was in front of the defendant's car trying
11 to slow him down," in parenthesis, "testimony about
12 crossing the double yellow line and also a video clip
13 that ends in 2A," parenthesis, "corresponding clip
14 again." We have retrieved the testimony of both
15 Officer -- Deputy Hunt as well as the defendant which
16 counsel have agreed will be responsive to this note.
17 So, when ready, we will have the the Court Reporter do
18 the read back of those two sections. Let's start with
19 Officer Hunt's testimony.

20 (Record read back by reporter.)

21 THE COURT: Court's Exhibit 3, the question
22 also asks for the video clip ending in 2A. Sir?

23 JUROR: When they started the video, a few of
24 us wanted to look at certain times, so we were gonna
25 ask if I could say pause at a couple of times and have

1 you ready to pause it?

2 MS. ENSELL: I can do that, Judge.

3 THE COURT: I have no objection. Counselor?

4 MR. ALBERT: No, Your Honor.

5 THE COURT: Let's see what we can do along
6 those lines.

7 MS. ENSELL: Judge, can we get clarification,
8 2A -- I'm assuming -- I just want to know if there's a
9 particular -- I understand the labeling and I'm sure
10 they saw it too but --

11 THE COURT: Are you requesting the end of the
12 video clip that you viewed before?

13 JUROR: Yeah. It was the part when he was
14 behind, right before he stopped, whether he did or did
15 not cross the double yellow line.

16 MS. ENSELL: I think I'm ready.

17 THE CLERK: You are ready?

18 MS. ENSELL: Thank you.

19 (Video clip played.)

20 JUROR: Pause. Can we rewind that a little
21 bit? We're trying to see --

22 MS. ENSELL: Ah-huh.

23 JUROR: If you pause it there, is there a way
24 to go frame by frame?

25 MS. ENSELL: I don't believe.

1 JUROR: Or slow motion?

2 MS. ENSELL: I don't have the capability on
3 this, Judge.

4 THE COURT: All right. Why don't we try
5 proceeding with this and we'll allow a play back as
6 many times as you need is probably the best we can do.

7 JUROR: Okay.

8 JUROR: Could you play it again please?

9 JUROR: Anyone else want to see it again?

10 JUROR: I'd like to see it one more time.

11 JUROR: Yeah.

12 (Video clip played.)

13 JUROR: Anyone else again?

14 JUROR: I'm good.

15 JUROR: I'm good.

16 THE COURT: Okay. The Court will then move
17 along to Court's Exhibit 4 which is the note asking for
18 pictures. The Court has separated out the pictures in
19 evidence, and as soon as I read these instructions, I
20 will have counsel confirm that they feel those are the
21 appropriate ones and they'll be delivered into the jury
22 room for you. You've also asked for a read back of the
23 instructions for Counts 2 and 3. All right.

24 The second count is Obstruction on Windshield.
25 Under our law, a person is guilty of Obstruction on

1 Windshield when he or she drives a motor vehicle on a
2 public highway with any non-transparent material other
3 than a certificate or paper required to be displayed by
4 law upon the front windshield.

5 In order for you to find the defendant guilty on
6 this charge, the People are required to required to
7 prove from all the evidence in the case beyond a
8 reasonable doubt that on or about February 27th,
9 2016, in the County of Cattaraugus, the defendant,
10 [REDACTED] drove a motor vehicle on a public
11 highway with a non-transparent material other than a
12 certificate of paper required to be displayed by law
13 upon the front windshield.

14 Therefore, if you find the People have proven this
15 charge beyond a reasonable doubt, you must find the
16 defendant guilty of Obstruction on Windshield as
17 charged in the second count. On the other hand, if you
18 find that the People have not proven this charge beyond
19 a reasonable doubt, you must find the defendant not
20 guilty of Obstruction on a Windshield as charged in the
21 second count. All right.

22 And now, the third count is Driver's View
23 Obstructed. Under our law, a person is guilty of
24 Driver's View Obstructed when he or she operates a
25 motor vehicle on a public highway with any object

1 placed or hung in or upon the vehicle in such a manner
2 as to obstruct or interfere with the view of the
3 operator through the windshield or to prevent him from
4 having a clear and full view of the road and condition
5 of traffic behind such vehicle.

6 Some of the terms used in the definition have
7 their own special meaning and I will give you the
8 meaning of the following term which is operate. To
9 operate a motor vehicle means to drive it.

10 So, in order for you to find the defendant guilty
11 on this charge, the People are required to prove from
12 all the evidence in the case beyond a reasonable doubt
13 that on or about February 27th, 2016, in the County
14 of Cattaraugus the defendant, [REDACTED]
15 operated a motor vehicle on a public highway with an
16 object placed or hung in or upon the vehicle in such a
17 manner as to obstruct or interfere with the view of the
18 defendant through the windshield or to prevent him from
19 having a clear and full view of the road and condition
20 of traffic behind such vehicle.

21 Therefore, if you find that the People have proven
22 this charge beyond a reasonable doubt, you must find
23 the defendant guilty of Driver's View Obstructed as
24 charged in the third count. On the other hand, if you
25 find that the People have not proven this charge beyond

1 a reasonable doubt, you must find the defendant not
2 guilty of Driver's View Obstructed as charged in the
3 third count. All right.

4 Does that answer your questions regarding both of
5 these notes? Yes, Mr. Westfall.

6 JUROR: Your Honor, I have a question maybe
7 you can elaborate on it, maybe not, but number two
8 indicates non-transferable material, non- --

9 THE COURT: The charge reads non-transparent.

10 JUROR: Non-transparent material?

11 THE COURT: Yes.

12 JUROR: Is there a way you can elaborate on
13 that, what that consists of?

14 THE COURT: Would counsel approach?

15 (Discussion off the record.)

16 THE COURT: All right. Mr. Westfall and
17 members of the jury, the parties have agreed that I can
18 give you the following explanation. Perhaps this will
19 help. Transparent means it's ordinary common meaning,
20 meaning something that you cannot see through. So,
21 there's no special legal definition. It's just the
22 common every day meaning of non-transparent. So,
23 something that you cannot actually see through.

24 JUROR: It doesn't have to be material? It
25 can be anything?

1 THE COURT: Well, it says non-transparent
2 material. It doesn't limit it to any certain type of
3 material.

4 JUROR: Thank you.

5 THE COURT: Okay. If that answers your
6 question, please return and continue your deliberations
7 and we'll have the pictures brought right into you.

8 (The jury retired to further deliberate at
9 1:40 p.m.)

10 (The following occurred without the jury present:)

11 THE COURT: The Court's received a two part
12 note from the jury marked as Court's 5 signed by the
13 foreperson. First, they would like a read back on that
14 portion of the instructions, the distinction between
15 motive and intent as well as the law regarding
16 Obstructing of Governmental Administration. I'm
17 assuming that means the charge involving Count One.
18 The second part of the note, "the video of Hunt and
19 Kowalski from the time the car is stopped to when the
20 defendant's window is broken."

21 THE DEFENDANT: That would have been the one
22 right after --

23 MR. ALBERT: Yeah --

24 THE COURT: Refresh my recollection. Was
25 that shown earlier?

1 MR. ALBERT: It was and then I believe it was
2 where the last publishing was cut off.

3 THE COURT: Okay. So, I'm assuming that all
4 they're referring to -- yes, it would have to be the
5 dash cam or the rear cam, okay.

6 MR. ALBERT: Yeah.

7 THE COURT: All right. Are we all in
8 agreement on the responses then?

9 (No response.)

10 THE COURT: Let's get some jurors in here.

11 (The jury returned for further instructions at
12 2:46 and the following occurred:)

13 THE CLERK: Your Honor, the jury, counsel and
14 defendant are present.

15 THE COURT: All right. The Court has marked
16 as Court's Exhibit 5 a note -- actually two notes from
17 the jury, both signed by the foreperson and I have
18 discussed these notes with counsel. In the response to
19 the inquiries from the jury, the Court will re-read the
20 instructions on the elements of Obstruction of
21 Governmental Administration, second degree, as well as
22 the instructions that dealt with the distinction
23 between motive and intent. We will also show the
24 continuation of the video from the time that the
25 defendant's vehicle was stopped to the point where

1 there was the breaking of the glass. All right?
2 That's my understanding of what the jury would like at
3 this point.

4 (Affirmative nods.)

5 THE COURT: Seeing that everyone is nodding,
6 I will start with the instructions dealing with
7 Obstructing Governmental Administration. The first
8 count is Obstructing Governmental Administration in the
9 Second Degree. Under our law, a person is guilty of
10 Obstructing Governmental Administration in the Second
11 Degree when that person intentionally obstructs,
12 impairs or perverts the administration of law or other
13 governmental function or prevents or attempts to
14 prevent a public servant from performing an official
15 function by means of intimidation, physical force or
16 interference.

17 Under our law, the administration of law or other
18 governmental function or the official function the
19 defendant is charged with having prevented or attempted
20 to prevent must have been authorized. All right?

21 Now, the Court will also explain what constitutes
22 an authorized function in the context of this case. An
23 example of such a charge would be as follows: A police
24 officer's arrest of any person is authorized if the
25 officer has probable cause to believe that offense was

1 committed and that such person committed the offense.
2 Another example would be a police officer's detention
3 of a person is authorized if the officer has reasonable
4 suspicion to believe that the person is involved in any
5 criminal activity.

6 The term intentionally and public servant used in
7 this definition have their following special meanings
8 in our law and I will give you the meaning of those two
9 terms. Intent means conscious objective or purpose.
10 Thus, a person intentionally obstructs, impairs or
11 perverts the administration of law or other government
12 function or prevents or attempts to prevent a public
13 servant from performing an official function when that
14 person's conscious objective or purpose is to do so.

15 Public servant means any public officer or
16 employee of the state or of any political subdivision
17 thereof or any governmental instrumentality within the
18 state or any person exercising the functions of any
19 such public officer or employee.

20 So, in order for you to find the defendant guilty
21 of this crime, the People are required to prove from
22 all of the evidence in the case beyond a reasonable
23 doubt each of the following three elements: That on or
24 about February 27th, 2016, in the County of
25 Cattaraugus, the defendant, [REDACTED]

1 obstructed, impaired or perverted the administration of
2 law or other governmental function or prevented or
3 attempted to prevent a public service from performing
4 an official function; number two, that the defendant
5 did so intentionally and by means of intimidation,
6 physical force or interference; and number three, that
7 the administration of law or other governmental
8 function or the official function was authorized.

9 Therefore, if you find that the People have proven
10 beyond a reasonable doubt each of those elements, you
11 must find the defendant guilty of the crime of
12 Obstructing Governmental Administration in the Second
13 Degree as charged in the first count. On the other
14 hand, if you find that the People have not proven
15 beyond a reasonable doubt any one or more of those
16 elements, you must find the defendant not guilty of the
17 crime of Obstructing Governmental Administration in the
18 Second Degree. All right.

19 I will now give you the explanation as previously
20 written regarding motive and intent. All right? Let
21 me now explain motive and in particular the difference
22 between motive and intent.

23 Intent means a conscious objective or purpose.
24 Thus, a person commits a criminal act with intent when
25 that person's conscious objective or purpose is to

1 engage in the act which the law forbids or to bring
2 about an unlawful result. Motive, on the other hand,
3 is the reason why a person chooses to engage in
4 criminal conduct.

5 If intent is an element of a charged crime, that
6 element must be proved by the People beyond a
7 reasonable doubt. In this case intent is, as I've
8 explained, an element of the crime of Obstruction of
9 Governmental Administration Second Degree. Motive,
10 however, is not an element of the crime charged.
11 Therefore, the People are not required to prove a
12 motive for the commission of the charged crime.

13 Nevertheless, evidence of a motive or evidence of
14 a lack of a motive may be considered by the jury. For
15 example, if you find from the evidence that the
16 defendant had a motive to commit the crime charged,
17 that is a circumstance which you may wish to consider
18 as tending to support a finding of guilt. On the other
19 hand, if the proof establishes that the defendant had
20 no motive to commit the crime charged, that is a
21 circumstance you may wish to consider as tending to
22 establish that the defendant is not guilty of the crime
23 charged.

24 All right? That concludes the read back on the
25 instructions. Are we at the point when we're ready for

1 the video?

2 MS. ENSELL: Yes, Judge.

3 THE COURT: Okay. Let's proceed.

4 (Exhibit 29 was played to the jury.)

5 MS. ENSELL: That's where the glass breaks.

6 THE COURT: Do you wish it played any

7 further?

8 JUROR: Could we go back from the first one,
9 from the front view so we can see the time stamp of
10 when Officer Kowalski got out of his vehicle?

11 THE COURT: And if you need to get closer to
12 see that, we can arrange for that.

13 JUROR: No, I can see.

14 (Exhibit 29 was played again.)

15 JUROR: Did one of the jurors say what the
16 time stamp was? I don't want to tell him.

17 THE COURT: My reading right at this point is
18 3.4S and 28 seconds. Parties agree with that?

19 MR. ALBERT: Yes, Your Honor.

20 THE COURT: Okay.

21 (Exhibit 29 continued to be played.)

22 JUROR: Can we have that time?

23 THE COURT: At this point I've got 3.41.58.
24 Do you wish it played further?

25 JUROR: Is that the one where the glass

1 breaks?

2 JUROR: Because I thought I saw 41, glass
3 flying.

4 MS. ENSELL: Do you want me to go from that
5 point, Judge?

6 THE COURT: Let's go back.

7 JUROR: I do have a question though. Is that
8 where his camera stops recording?

9 JUROR: No. There's another one after that.

10 MS. ENSELL: I can't answer them directly.

11 JUROR: Could we watch the other video you
12 played when we first came in?

13 JUROR: The one that picks up at 41.59.

14 JUROR: Front view.

15 (Played.)

16 JUROR: There's the glass.

17 JUROR: Roughly 42.

18 (Played.)

19 THE COURT: Any further play backs?

20 JUROR: They wanted to know about the -- we
21 all wanted to know about the Miranda law, the rights,
22 how they pertain to this particular stop.

23 THE COURT: All right. I can read back what
24 was the agreed upon instructions. Is that acceptable
25 to counsel?

1 MR. ALBERT: Yes, Your Honor.

2 THE COURT: I will now discuss the law as it
3 relates to testimony concerning the statements of the
4 defendant made to police officers. Our law does not
5 require that a statement by a defendant be in any
6 particular form. It may be oral, written or
7 electronically recorded. There's no requirement that a
8 statement be made under oath.

9 Now, under our law before a person in custody may
10 be questioned by the police, that person must first be
11 advised of his rights; second, must understand those
12 rights; and third, must voluntarily waive those rights
13 and agree to speak to police. On the other hand, a
14 defendant who is not in custody when questioned by the
15 police need not be advised of his or her rights and any
16 voluntary statement may be considered by the jury.

17 Under our law, a person is in custody when he or
18 she is physically deprived of his or her freedom of
19 action in any significant way. The fact that the
20 defendant was being questioned by police does not
21 necessarily mean the defendant was in custody. Whether
22 the defendant was in custody at the time of the
23 questioning is not determined by what the defendant
24 himself believed or what the police believed. In other
25 words, the test is not whether the defendant believed

1 he was in custody or the police believed he was in
2 custody. The test is what a reasonable person innocent
3 of any crime in the defendant's position would have
4 believed. If that reasonable person would have
5 believed that he was in custody, then the defendant was
6 in custody. If that reasonable person would have
7 believed that he or she was not in custody, then the
8 defendant was not in custody.

9 To decide whether a reasonable person, innocent of
10 any crime in the defendant's position would have
11 believed he was in custody, you must examine all of the
12 surrounding circumstances including, but not limited
13 to, the reason the defendant was speaking to the police
14 or being questioned by the police, where the
15 questioning took place, how many police officers took
16 part in the question, whether the questioning was
17 investigative or accusatory, whether the questioning
18 took place in a coercive atmosphere, whether the
19 defendant was handcuffed or physically restrained,
20 whether the police treated the defendant as if he was
21 in custody, whether the defendant was offered food or
22 drink and whether the defendant had been allowed to
23 leave after the questioning.

24 If you find that the People have proven beyond a
25 reasonable doubt that the defendant was not in custody

1 when he made a statement to police, you may then
2 consider that statement as evidence and evaluate it as
3 you would any other evidence. If you find that the
4 People have not proven beyond a reasonable doubt that
5 the defendant was not in custody when he made a
6 statement, then you must disregard the statement and
7 not consider it, provided, however, that you may
8 consider that statement if it was made spontaneously.
9 All right?

10 Here -- excuse me, a defendant in custody -- I'll
11 start that one over again. If a defendant in custody
12 spontaneously volunteers a statement, that statement
13 may be considered by the jury, regardless of whether or
14 not the defendant was advised of his rights. For a
15 statement to be spontaneously volunteered, the
16 spontaneity must be genuine and not the result of any
17 questioning, inducement, provocation or encouragement
18 by the police. Under our law, questioning includes
19 words or actions by the police which they should know
20 are reasonably likely to elicit an incriminating
21 statement.

22 So, if you find that the People have proven beyond
23 a reasonable doubt that a custodial statement was
24 spontaneously volunteered, you may then consider that
25 statement as evidence and evaluate it as you would any

1 other evidence. If you find that the People have not
2 proven beyond a reasonable doubt that a custodial
3 statement was spontaneously volunteered, then you must
4 disregard the statement and not consider it. All
5 right? And that's the extent of the instruction in
6 that regard. Anything else at this point?

7 (Negative nods.)

8 THE COURT: All right. I'll ask you to
9 return and continue your deliberations.

10 (The jury retired to further deliberate at
11 3:08 p.m.)

12 (The following occurred without the jury present:)

13 THE COURT: On the record. The Court's
14 received two more questions from the jury, the first
15 which is Court's Exhibit 6 asked for a re-reading again
16 of the instructions regarding Obstructing Governmental
17 Administration.

18 The next which is Court's Exhibit 7 asks as
19 follows: "Are we following the law if we consider the
20 defendant's motive in deciding if he intentionally
21 obstructed administration of governmental -- of
22 governmental, can we consider his motive to delay the
23 traffic stop?"

24 For Court's Exhibit 6 I will re-read the
25 instructions again. I'm open to suggestions for

1 responses to Court's Exhibit 7. Any thoughts?

2 MS. ENSELL: I mean, I think that -- I think
3 they have to consider the evidence they were given in
4 reference to the motive charge, the reading of the
5 motive instruction.

6 MR. ALBERT: Yeah. I mean, basically, that
7 if they were unclear as to the motive versus intent
8 instruction, you can read that again but you can't
9 really instruct much further than that, I would think.

10 THE COURT: Do you agree with that, Miss
11 Ensell?

12 MS. ENSELL: Yeah. I guess I'm a little
13 unclear on the question itself, but I think we're both
14 in agreement that they, aside from again instructing
15 them on the difference between motive and intent --

16 THE COURT: I'm not sure if that's gonna
17 clarify it in their mind.

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

19 THE COURT: But I'm not sure that the Court
20 wants to direct them one way or the other.

21 MS. ENSELL: Give me one second. Yeah, I
22 don't --

23 THE COURT: All right. I'll re-read them
24 those two sections again. Let's bring them in. I
25 would also at this point tell them unless these two

1 questions are gonna lead to an immediate verdict, we
2 will have to adjourn till the morning and inquire from
3 them what they feel.

4 (The jury returned to the courtroom at 4:25 p.m.
5 and the following occurred:)

6 THE CLERK: Your Honor, the jury, counsel and
7 defendant are present.

8 THE COURT: All right. I have two notes from
9 the jury marked as Court's Exhibit 6 and 7. The first
10 note, Court's Exhibit 6 asks for the instructions again
11 for Obstructing Governmental Administration which I
12 will read and the second note asks as follows: "Are we
13 following the law if we consider the defendant's motive
14 in deciding if he intentionally obstructed
15 administration of governmental," question mark. "Can
16 we consider his motive to delay the traffic stop?"

17 All right. I've discussed this with counsel. I
18 think at this point in regards to the last question,
19 what the Court can do and will be allowed to do is
20 again re-read the instruction, the distinction between
21 motive and intent which also does have some statements
22 as to what motive can be used for. So, that's what
23 I'll be allowed to do.

24 I'll start with the instructions again for
25 Obstructing Governmental Administration. The first

1 count is Obstructing Governmental Administration in the
2 Second Degree. Under our law, a person's guilty of
3 Obstructing Governmental Administration in the Second
4 Degree when that person intentionally obstructs,
5 impairs or perverts the administration of law or other
6 governmental function or prevents or attempts to
7 prevent a public servant from performing an official
8 function by means of intimidation, physical force or
9 interference.

10 Under our law, the administration of law or other
11 governmental function or the official function of the
12 defendant that the defendant is charged with having
13 prevented or attempted to prevent from performing must
14 have been authorized. I can give an example of what
15 authorized means.

16 For example, a police officer's arrest of another
17 person is authorized if the officer has probable cause
18 to believe that an offense was committed and that such
19 person committed the offense. Also, a police officer's
20 detention of a person is authorized if the officer has
21 reasonable suspicion to believe that the person is
22 involved in any criminal activity.

23 The term intentionally and public service used in
24 the definition have their own personal meaning in our
25 law and I will give you the meaning of the following

1 terms. Intent means a conscious objective or purpose.
2 Thus, a person intentionally obstructs, impairs or
3 perverts the administration of law or other government
4 function or prevents or attempts to prevent a public
5 service from performing an official function when that
6 person's conscious objective or purpose is to do so.

7 Public service means any public officer or
8 employee of the state or any political subdivision
9 thereof or any governmental instrumentality in the
10 state or any person exercising the function of some
11 public officer or employee.

12 So, in order for you to find the defendant guilty
13 of this crime, the People are required to prove from
14 all the evidence beyond a reasonable doubt each of the
15 following three elements: Number one, that on or about
16 February 27th, 2016, in the County of Cattaraugus,
17 the defendant, [REDACTED], obstructed, impaired
18 or perverted the administration of law or other
19 government function or prevented or attempted to
20 prevent a public service from performing an official
21 function; number two, that the defendant did so
22 intentionally and by means of intimidation, physical
23 force or interference; and three, that the
24 administration of law or other government function was
25 authorized.

1 Therefore, if you find the People have proven
2 beyond a reasonable doubt each of those elements, you
3 must find the defendant guilty of the crime of
4 Obstructing Governmental Administration as charged in
5 the first count. On the other hand, if you find the
6 People have not proven beyond a reasonable doubt any
7 one or more of those elements, you must find the
8 defendant not guilty of the crime of Obstructing
9 Governmental Administration.

10 I will now read the instruction regarding motive
11 and intent. All right. As follows: Let me now
12 explain motive and in particular the difference between
13 motive and intent. Intent means conscious objective or
14 purpose. Thus, a person commits a criminal act with
15 intent when that person's conscious objective or
16 purpose is to engage in the act which the law forbids
17 or to bring about any unlawful result. Motive, on the
18 other hand, is the reason why a person chooses to
19 engage in the criminal conduct.

20 If intent is an element of a charged crime, that
21 element must be proved by the People beyond a
22 reasonable doubt. In this case intent is, as I've
23 explained, an element of the crime of Obstruction of
24 Governmental Administration. Motive, however, is not
25 an element of the crimes charged. Therefore, the

1 People are not required to prove a motive for the
2 commission of the crime. Nevertheless, evidence of a
3 motive or evidence of the lack of a motive may be
4 considered by the jury.

5 For example, if you find from the evidence that
6 the defendant had a motive to commit the crime charged,
7 that is a circumstance from which you may wish to
8 consider as tending to support a finding of guilt. On
9 the other hand, if you find that the proof establishes
10 the defendant had no motive to commit the crime
11 charged, that is a circumstance you may wish to
12 consider as tending to establish that the defendant is
13 not guilty of the crime charged. All right?

14 That is the end of the instruction on that. All
15 right? I also must ask you at this point, based on the
16 time of day, if there is any possibility of an imminent
17 verdict? If not, we will probably adjourn at this
18 point until morning. By imminent, I would mean within
19 the next ten to 15 minutes. Do you feel that there is?

20 JUROR: We can vote one more time.

21 THE COURT: What's that?

22 JUROR: We could vote one more time.

23 THE COURT: All right. If you'd like to vote
24 one more time and I will probably have to come in and
25 call you back in in the next -- say quarter to five.

1 JUROR: That's fair.

2 THE COURT: If not, we'll be adjourning till
3 morning.

4 JUROR: That's fair.

5 (The jury retired to further deliberate at
6 4:33 p.m.)

7 (The jury returned with their verdict at 4:44 p.m.
8 and the following occurred:)

9 THE CLERK: Your Honor, the jury, counsel and
10 defendant are present.

11 THE COURT: All right. I've received a
12 completed verdict form. So, formalities, I will ask my
13 foreperson, Miss Faulkner, has the jury reached a
14 verdict on each count?

15 JUROR: We have, Your Honor.

16 THE COURT: Officer, could you hand this back
17 to Miss Faulkner. And Miss Faulkner, what I will do is
18 ask your verdict as to each count starting with Count
19 One. All right? As to the count of Obstructing
20 Governmental Administration in the Second Degree, how
21 does the jury find?

22 JUROR: The jury finds the defendant guilty.

23 THE COURT: As to Obstruction on Windshield,
24 how does the jury find?

25 JUROR: Guilty.

1 THE COURT: As to Driver's View Obstructed,
2 how does the jury find?

3 JUROR: Guilty.

4 THE COURT: As to Failure to Keep Right,
5 Count Four, how does the jury find?

6 JUROR: Guilty.

7 THE COURT: As to Failure to Keep Right,
8 Count Five, how does the jury find?

9 JUROR: Not guilty.

10 THE COURT: As to Count Six, Failure to
11 Signal, how does the jury find?

12 JUROR: Not guilty.

13 THE COURT: As to Count Seven, Failure to
14 Signal, how does the jury find?

15 JUROR: Guilty.

16 THE COURT: As to Count Eight, Failure to
17 Yield to an Emergency Vehicle, who how does the jury
18 find?

19 JUROR: Guilty.

20 THE COURT: As to Count Nine, Failure to
21 Yield to an Emergency Vehicle, how does the jury find?

22 JUROR: Guilty.

23 THE COURT: And as to Count Ten, No
24 Headlights, how does the jury find?

25 JUROR: Guilty.

1 THE COURT: All right. Members of the jury,
2 I will ask you in unison, is this, in fact, your
3 verdict on each of the counts?

4 JURY: Yes.

5 THE COURT: I will note that each juror has
6 responded in the affirmative. Does either side wish to
7 have the jurors individually polled?

8 MS. ENSELL: No, Your Honor.

9 MR. ALBERT: No, Your Honor.

10 THE COURT: All right.

11 (The jury was dismissed and the following
12 occurred:)

13 THE COURT: In regards to the Count One and
14 the other charges, the Court will be ordering a
15 presentence investigation and would set, subject to
16 counsel's availability -- how about August 21st at
17 9:30?

18 MS. ENSELL: It may not be me, Judge, because
19 usually, according to my schedule, I may be in another
20 court, but if I'm unavailable, it will be someone from
21 our office.

22 THE COURT: It's a Monday.

23 MS. ENSELL: I'll stay here instead.

24 THE COURT: All right. If there's nothing
25 further before the Court today, we will stand

1 adjourned.

2 MS. ENSELL: Thank you, Judge.

3 MR. ALBERT: Thank you, Your Honor.

4 (Whereupon, proceedings concluded.)

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6 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
7 ABOVE-ENTITLED ACTION.

8 (People v. [REDACTED], Indictment No. 16-116, Jury
9 Trial held June 8, 2017.)

Kathleen M. Trost

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Kathleen M. Trost,
Court Reporter

11 Dated: July 28, 2017

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