

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

-----x
UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 : CRIMINAL ACTION NUMBER:
vs. : 1:22-CR-52
 :
LANCE KURETZA, :
 :
Defendant. :
-----x

JURY TRIAL **EXCERPT** - TESTIMONY OF DEPUTY ETHAN MONGOLD
BEFORE THE HONORABLE THOMAS S. KLEE, CHIEF DISTRICT JUDGE

July 11-12, 2023

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The Defendant was present in person.

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

I N D E X

PAGE

July 11, 2023

DEPUTY ETHAN MONGOLD

Direct Examination by Ms. Wagner

3

July 12, 2023

80

DEPUTY ETHAN MONGOLD

Direct Examination by Ms. Wagner

83

Cross-Examination by Mr. Dresbold

88

Redirect Examination by Ms. Wagner

168

Recross-Examination by Mr. Dresbold

179

E X H I B I T S

IDENTIFICATION

PAGE

Government's Exhibit 1B

26

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 July 11, 2023, 3:14 PM

2 THE COURT: All right. The Government may call its
3 next witness.

4 MS. WAGNER: Thank you, Judge. We call Deputy Ethan
5 Mongold.

6 THE COURT: Yes, sir. If you wouldn't mind making
7 your way to the front of the courtroom. We'll ask you to pause
8 with Madam Clerk so she can swear you in. Then we'll ask you
9 to take the witness stand. Thank you.

10 **DEPUTY ETHAN MONGOLD, GOVERNMENT'S WITNESS, SWORN**

11 THE CLERK: Thank you, sir. If you'd please have a
12 seat here in the witness stand.

13 The witness is Deputy Ethan Mongold, M-O-N-G-O-L-D.

14 THE COURT: Thank you so much, sir. And, Deputy,
15 once you're seated and comfortable, if you wouldn't mind
16 adjusting that microphone so everyone can hear you. Don't
17 worry, can't break it. And you're going to want to make sure
18 that those ladies and gentlemen to your left can hear you.

19 Ms. Wagner.

20 MS. WAGNER: Thank you, Judge.

21 DIRECT EXAMINATION

22 BY MS. WAGNER:

23 Q. Sir, could you please tell the jurors who you are.

24 A. Ethan Daniel Mongold. I'm a deputy sheriff with the
25 Monongalia County Sheriff's Department.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And do you know the Defendant?

2 A. Yes, I do.

3 Q. How do you know him?

4 A. I work with him.

5 Q. How long have you been employed at the Monongalia County
6 Sheriff's Office?

7 A. A little over seven years.

8 Q. You started about April of '16?

9 A. Yes.

10 Q. All right. What did you do prior to becoming a sheriff's
11 deputy?

12 A. I was a city officer in the City of Moorefield for about
13 three years.

14 Q. And that's Moorefield, West Virginia?

15 A. Yes, ma'am.

16 Q. Could you describe your relationship with Deputy Kuretza?

17 A. Coworker. Friend.

18 Q. And can you point out Deputy Kuretza to the jurors?

19 A. Yes. He's sitting over there.

20 MS. WAGNER: If the record could reflect Deputy
21 Mongold pointed to the Defendant.

22 THE COURT: So reflected.

23 BY MS. WAGNER:

24 Q. Sir, why are you here today?

25 A. I was subpoenaed to be here as a result of an

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 investigation into Deputy Kuretza.

2 Q. All right. Is it fair to say you aren't here because you
3 really want to be?

4 A. Yes.

5 Q. What is your primary duty as a deputy?

6 A. Currently, I am the shift supervisor.

7 Q. Okay. And as a shift supervisor -- well, what do -- were
8 you a shift supervisor back in 2018?

9 A. No, I was not.

10 Q. Back then you were a deputy?

11 A. Yes, ma'am.

12 Q. And what were your responsibilities as a deputy?

13 A. Answering 911 calls, doing basic patrols, attempting
14 warrants, paper services, things of that nature.

15 Q. And when did you become a shift deputy?

16 A. A shift deputy?

17 Q. I'm sorry. Shift supervisor.

18 A. Less than a year ago. I think September of last year.

19 Q. And how did your responsibilities change?

20 A. Not a whole lot. There's still a shift commander that
21 makes most of the decisions. I just assist him. And when he's
22 not there, I perform his duties.

23 Q. What shift do you currently work?

24 A. Night shift.

25 Q. And what is the time of that shift?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. It's usually 11 PM to 7 AM, with some variance.

2 Q. And how long have you worked that shift, the midnight
3 shift?

4 A. Six years.

5 Q. When you started at the sheriff's office, what sort of
6 policies were you provided?

7 A. With the Monongalia County Sheriff's Office Policy Manual.

8 Q. And what is contained in that manual?

9 A. The entire policy, from uniforms to use of force to
10 pursuit to basically everything that we need to know as a
11 deputy.

12 Q. Did you receive training on those policies when you came
13 to the sheriff's department?

14 A. Yes.

15 Q. To your understanding, do all deputies receive training on
16 those policies when they begin?

17 A. Yes.

18 Q. Have you -- since you began, do you receive or have you
19 received periodic training/retraining on those policies?

20 A. Yes.

21 Q. You mention that one of the policies in the manual is a
22 use of force policy. What, generally, does the use of force
23 policy do to -- for deputies?

24 A. Outlines what level of force can be used in response to
25 what level of aggression is being -- you're being faced with.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And what governs, for deputies, how you use force? Just
2 the policy?

3 A. The Supreme Court case of *Graham versus Connor*.

4 Q. Okay. Do you also use your training in how you decide to
5 use force and when you decide to use force?

6 A. Yes.

7 Q. And is the -- is part of that training, training that you
8 received at the West Virginia State Police Academy?

9 A. Yes.

10 Q. Okay. And is the sheriff's department's policy on use of
11 force consistent with the training that you received both at
12 the sheriff's department and at the state police academy?

13 A. Yes.

14 Q. When you are -- when you were trained on using force
15 against an individual, what are you trained about the amount of
16 force you're allowed to use?

17 A. The amount of force reasonable.

18 Q. Okay. And what purposes are you allowed to use force for?

19 A. To effect an arrest or to -- if they are under arrest and
20 they're still combative, to end their combativeness.

21 Q. All right. Are you allowed to use force to protect
22 yourself from harm?

23 A. Yes.

24 Q. Are you allowed to use force to protect others from harm?

25 A. Yes.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And you said "the amount of force that's reasonable." Can
2 you break that down for us a little bit? What constitutes, in
3 your -- you used the term. What do you mean by "reasonable"?

4 A. Well, *Graham versus Connor* outlines it as far as age,
5 experience level, fatigue, physical condition. There are
6 several *Graham* factors that come into play. I'm not real sure
7 how to describe it further than that.

8 Q. All right. Well, let me ask you this. Are you allowed to
9 use more force than is necessary to accomplish one of those
10 purposes that you just described: making an arrest, getting a
11 situation under control?

12 A. No.

13 Q. Can force be used by law enforcement officers to punish
14 someone?

15 A. No.

16 Q. And you're trained on that at the sheriff's office?

17 A. Yes.

18 Q. If I say -- if I use the term "progressive continuum," do
19 you know what I'm talking about?

20 A. Yes.

21 Q. Okay. Tell us what that term means.

22 A. Essentially the lowest level of the continuum would be
23 officer presence. From there it would go to hands on, then to
24 intermediate weapons or impact weapons, all the way up to
25 lethal force.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. All right. And how does that progressive continuum come
2 into play in your training and in your experience?

3 A. It depends on the level of resistance that you're facing.

4 Q. Okay. So you pick something on that continuum based on
5 what you are faced with by a subject.

6 A. Yes.

7 Q. Is deadly force permitted by officers?

8 A. Under certain circumstances, yes.

9 Q. All right. And what are those circumstances?

10 A. When themselves or someone else is in threat of receiving
11 bodily harm or death -- or -- I'm sorry -- serious bodily
12 injury or death.

13 Q. All right. Can you tell us some examples of deadly force?

14 A. Shooting someone.

15 Q. Anything else?

16 A. Stabbing. Certain strikes. Things of that nature.
17 Strikes to sensitive areas. Things like that.

18 Q. Would that include strikes to a subject's head?

19 A. Yes.

20 Q. Can you tell us what you are trained about knee strikes?

21 A. To hit large muscle groups.

22 Q. Okay. So just breaking it down -- or stepping back one
23 step, are deputies permitted to use knee strikes under the
24 policy and training you've received?

25 A. Yes.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And where are knee strikes to be applied?

2 A. Large muscle groups.

3 Q. And what are the large muscle groups?

4 A. Generally the thighs. There's usually a chart that shows,
5 like, green, red, and yellow. I believe the upper arms are
6 also in the green. But generally speaking, it will be the
7 thigh area.

8 Q. Okay. So you said the upper arms. Basically you're
9 talking about the outside of --

10 A. Yeah.

11 Q. -- the meaty part of your arm?

12 A. I believe so. Like I said, there's usually a chart. I
13 don't have the chart in front of me. But I believe that's what
14 it covers.

15 Q. Okay. And you testified that knee strikes to the head can
16 be deadly force; correct?

17 A. Yes.

18 Q. All right. And how do you know that?

19 A. From training.

20 Q. All right. What is OC spray?

21 A. It's basically the technical term for what most call
22 pepper spray. It's a chemical formula that is designed to
23 basically cause a burning sensation to someone's eyes. It can
24 also cause respiratory distress based on the formulation of the
25 spray.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Okay. And when you say respiratory distress, difficulty
2 breathing?

3 A. Yes.

4 Q. Coughing?

5 A. Yes.

6 Q. And what is OC spray used for?

7 A. To basically get a subject under control.

8 Q. Do you, as a sheriff's deputy, carry OC spray?

9 A. Yes.

10 Q. And where do you carry it?

11 A. On my belt, in the front, on my right side.

12 Q. What else do you carry on your belt typically?

13 A. A firearm, two pairs of handcuffs, a baton, a radio, a
14 flashlight, a TASER, and extra magazines for my firearm.

15 Q. All right. And to the extent you know, is that what all
16 deputies at Mon County wear?

17 A. Generally. There's some variation, but that's -- for the
18 most part, yes.

19 Q. All right. What of those items you just listed are sort
20 of required for deputies to be wearing at all times?

21 A. Handcuffs, the firearm, the extra magazines. I'm not sure
22 if OC spray is required to be carried or a TASER. There are
23 some exceptions where people aren't required to carry a TASER
24 or OC.

25 Q. Do you generally carry all of those items you just listed?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Yes.

2 Q. You have received training on how to properly use pepper
3 spray?

4 A. Yes.

5 Q. In your training at the state police academy or at the
6 Moorefield Police Department or at the sheriff's office, did
7 you receive -- did your training include being pepper-sprayed
8 yourself?

9 A. Yes.

10 Q. Can you tell the jury what it's like to be sprayed with
11 pepper spray?

12 A. It burns a lot. It causes -- I don't think it causes
13 temporary blindness; it just makes you want to close your eyes.
14 The formula I got hit with did not cause any respiratory
15 distress, just a burning sensation.

16 Q. All right. Are there fluids generated from pepper spray?

17 A. Generally, yes.

18 Q. Where are those fluids coming from?

19 A. Everywhere. The nose, the mouth, the eyes, some pores.

20 Q. Tears? Sweat?

21 A. Yes.

22 Q. Snot?

23 A. Yes.

24 Q. Now, you said that the formula that you used -- or that
25 you were sprayed with did not cause you respiratory distress.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Did you cough after receiving it?

2 A. I don't recall. It was ten years ago.

3 Q. All right. You have been involved in uses of force
4 involving pepper spray?

5 A. Yes.

6 Q. Have you, yourself, pepper-sprayed subjects?

7 A. Yes.

8 Q. What effect does that have on you as the officer when you
9 pepper-spray somebody?

10 A. It does cause me to cough and --

11 Q. It does cause you to cough?

12 A. -- a -- kind of like a tingling sensation; not quite a
13 burn, but a tingling to certain areas.

14 Q. Is it fair to say it's different than being -- receiving
15 the pepper spray?

16 A. Yes.

17 Q. When you were pepper-sprayed as a person in training on
18 using pepper spray, were the effects of the pepper spray
19 instantaneous?

20 A. Yes.

21 Q. What about when you are the officer spraying somebody?

22 A. Generally, yes.

23 Q. Within a matter of one or two seconds?

24 A. Yes.

25 Q. How does one become decontaminated from pepper spray?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Generally we're -- our policy now is to call EMS. Every
2 time I've seen them do it, they use saline solution and water.
3 And that's pretty much it.

4 Q. Have you had to personally decontaminate either yourself
5 or others?

6 A. I've decontaminated myself, but not others.

7 Q. All right. And how did you decontaminate yourself?

8 A. Water, Dawn dish detergent, and a fan.

9 Q. Have you seen other officers decontaminate subjects?

10 A. I believe so. I'm not a hundred percent sure, but I
11 believe I have.

12 Q. All right.

13 A. And I've seen people also decontaminate themselves with an
14 eyewash station.

15 Q. I'm sorry. I didn't hear that.

16 A. I've seen people decontaminate themselves with an eyewash
17 station.

18 Q. Okay. And you're talking about other officers?

19 A. Other, well, subjects that have been sprayed.

20 Q. Oh. They're allowed to clean themselves up.

21 A. Yes.

22 Q. Do officers have an obligation to decontaminate people
23 that they have sprayed?

24 A. Yes.

25 Q. And how quickly does that obligation kick in?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. As soon as practical.

2 Q. All right. And how does that -- I think you said how, in
3 your experience, it's been by calling EMS and having them do
4 it?

5 A. Yes.

6 Q. And is that typically done on scene of the arrest?

7 A. It depends on the circumstances of the scene. Sometimes
8 we just have them meet us on station. Sometimes they're
9 sprayed on station. But I think the -- I've only sprayed two
10 people, and they were both decontaminated on station.

11 Q. All right. And were they sprayed on station?

12 A. One was; one was not.

13 Q. I think you said that they're to be decontaminated as
14 quickly as possible. What does that mean sort of in practical
15 terms?

16 A. Quickly as practical.

17 So there was a situation one time where another deputy
18 sprayed a female at a Walmart, and there was nothing really
19 going on, so we called EMS directly there versus the time --
20 the first time I sprayed someone, we were on scene of a still
21 ongoing altercation. So it wasn't wise to bring EMS in there,
22 which is why we left and they were -- it was quicker for them
23 to come on station than it was for them to come all the way to
24 where we were.

25 So it depends on the situation going on on scene. If

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 there's not, like, an active altercation or it's not going to
2 be that big of an issue, we would call someone to -- we would
3 call them to scene to do it. But if it's going to be quicker
4 for them to get to station then do it, we'll do it that way.

5 Q. All right. What was your training -- well, let's talk
6 about medical treatment. What obligation do officers have to
7 provide medical treatment to arrestees?

8 A. If they're injured or we feel they need medical treatment,
9 we have to at least offer it.

10 Q. All right. If a person is obviously injured, do deputies
11 have an obligation to call for EMS at a minimum?

12 A. Yes.

13 Q. All right. And then if someone -- an arrestee asks for
14 medical treatment?

15 A. Yes.

16 Q. And you're trained on that at the sheriff's department?

17 A. Yes.

18 Q. What is your training with respect to searching people who
19 you have placed under arrest?

20 A. Search them incident to arrest or at least do a Terry
21 frisk.

22 Q. All right. Tell us what a Terry frisk is.

23 A. It's basically just a -- I don't want to call it a quick
24 search, but not an extremely in-depth search for weapons. You
25 would pat, like, the outside of their pockets instead of going

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 in their pockets. You can check their waistband, around their
2 ankles, around their wrists, things like that.

3 Q. And what is the purpose of a Terry frisk?

4 A. To check for weapons.

5 Q. So officer safety, safety of others?

6 A. Yes.

7 Q. And a Terry frisk is done sometimes on people who haven't
8 been arrested or aren't going to be arrested?

9 A. Yes.

10 Q. Okay. And you also mentioned a search incident to arrest.
11 What does -- tell us what that is.

12 A. That would be more in depth as far as going into pockets,
13 basically anything they wanted to bring -- if they have a bag
14 that they want to bring with them, we have to check that first.
15 There are certain situations where a strip search might be
16 performed while on station. Not on scene, of course. But
17 things like that.

18 Q. And when do you conduct this search incident to arrest?

19 A. Generally, as soon as practical.

20 Q. When, in relation to handcuffs, do you do a search
21 incident to arrest?

22 A. After.

23 Q. Okay. When, in relation to when you transport a person
24 from the scene of the arrest, do you do a search incident to
25 arrest?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Generally, before.

2 Q. And why is that?

3 A. You don't want them in the back seat of your car with a
4 weapon.

5 Q. All right. You're vulnerable?

6 A. Yes.

7 Q. And is that your practice, what you've just described?

8 A. For the most part, yes. There's certain situations, like
9 if there's a female that I don't have a female that can respond
10 to scene, I just try to search the best I can without basically
11 trying to cause them any strife. And then once I get to
12 station, we'll have a female search them there.

13 Q. All right. And your practice that you've just described
14 is consistent with your training at the sheriff's department?

15 A. Yes.

16 Q. All right. I want to talk -- start talking about the
17 January 20th, 2018, incident. What shift were you working
18 that night?

19 A. Night shift.

20 Q. Okay. And tell us what happened, just, like, what -- you
21 know who Quintin Graciano is; correct?

22 A. Yes.

23 Q. How did you come to learn about the incident involving
24 Mr. Graciano?

25 A. We were dispatched to a call involving a fight with

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 several individuals where someone was threatening to shoot
2 someone.

3 Q. All right. And where was that call from?

4 A. The Residence Inn. It's on Willowdale Road in Morgantown.

5 Q. All right. And where, in location to the West Virginia
6 University Hospital, is the Residence Inn?

7 A. Right across the street.

8 Q. All right. So you can come out of the hotel parking lot
9 onto Willowdale and make the next left into the hospital
10 parking lot?

11 A. Yes.

12 Q. Who all responded that night to the Residence Inn?

13 A. It would have been Deputy Kuretzka, Deputy Coe, Sergeant
14 McRobie, Sergeant Alexander, and myself.

15 Q. All right. And how did you all get to the hotel?

16 A. We all drove separate vehicles.

17 Q. Is that standard practice?

18 A. Yes.

19 Q. Were you wearing your body-worn camera that night?

20 A. I was not.

21 Q. And can you tell the jury why you were not wearing your
22 body-worn camera that night?

23 A. Shift started at 11:00. I think I got gas at 11:01. So I
24 would have got back on station around 11:10 or 11:15. My body
25 camera was like 95 percent full, I believe. Back then we had

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 one computer for about 40 deputies. You could either watch
2 video, upload video, or burn video only one at a time. And
3 that was really it. It took a while to upload. So mine was
4 uploading when this call came out.

5 Q. All right. And you said yours was about 95 percent full.
6 Do you know how many -- can you translate that into hours, like
7 how much time/video footage was on that camera?

8 A. I don't. I have a different camera now. I believe the
9 storage is different.

10 Q. All right. So you would agree, though, that generally
11 department policy required you to have your body-worn camera
12 on.

13 A. Yes.

14 Q. Okay. You got this call, so you left without your camera.

15 A. Yes.

16 Q. Are you aware of whether the other deputies were wearing
17 cameras that night?

18 A. Yes, they were.

19 Q. Okay. You just described for us the things that you
20 typically wear on your belt: pepper spray, firearm, handcuffs,
21 extra ammunition. Is -- were you wearing all of those things
22 that night?

23 A. I did not have a TASER.

24 Q. Okay.

25 A. I wasn't certified for a TASER yet. But everything else I

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 was, yes.

2 Q. Okay. So you had pepper spray, firearm, handcuffs?

3 A. Yes.

4 MS. WAGNER: I would like to bring up Exhibit 1,
5 please.

6 BY MS. WAGNER:

7 Q. Can you see the screen in front of you, sir?

8 A. Yes, ma'am, I can.

9 Q. And you should -- you might be able to see this screen
10 here also.

11 MS. WAGNER: Could we play about the first ten
12 seconds.

13 (Video played.)

14 BY MS. WAGNER:

15 Q. All right. Can you orient us to who is wearing the camera
16 and who the other deputies are?

17 A. I believe that's Deputy Kuretza's camera. The deputy on
18 the left would be me. The deputy on the right, with the
19 individual in the doorway, would be Deputy Coe.

20 Q. All right.

21 MS. WAGNER: Could we play to 22, please.

22 (Video played.)

23 BY MS. WAGNER:

24 Q. We just saw you there with an individual not wearing a
25 shirt. That was you; correct?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Yes.

2 Q. What were you just doing there with that individual?

3 A. A Terry frisk.

4 Q. Okay. That's what you just described for the jury?

5 A. Yes.

6 Q. Okay. Why did you do a Terry frisk on that individual?

7 A. To ensure he didn't have any weapons.

8 Q. Okay. And that was, at least in part, because that was
9 what was reported to you that night, that there was potentially
10 a gun?

11 A. Yes.

12 Q. Did you do a Terry frisk on any of the other individuals
13 who you approached that night, interacted with that night?

14 A. I don't believe so.

15 Q. Did you, at any point that night, search the bags or other
16 belongings of any of the men that you interacted with that
17 night?

18 A. No.

19 MS. WAGNER: Could we play I think to 38.

20 (Video played.)

21 BY MS. WAGNER:

22 Q. We see here a set of hands in black gloves. Whose hands
23 were those?

24 A. Deputy Kuretza's.

25 Q. All right. Who else was wearing gloves that night at the

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 hotel?

2 A. I don't believe anyone.

3 Q. Okay.

4 MS. WAGNER: Could we continue playing Exhibit 1
5 until 4:40.

6 (Video played.)

7 BY MS. WAGNER:

8 Q. Up until this point, Deputy Mongold, what did you
9 understand was going on?

10 A. There was several intoxicated males arguing. I believe
11 there at the four-minute mark Sergeant McRobie was informing us
12 that management wanted them removed.

13 Q. Did you have an understanding -- well, I guess you just
14 testified you -- it was clear to you that they were
15 intoxicated.

16 A. Yes.

17 Q. At this point in the night, after you all got on scene,
18 were any of these individuals being aggressive with each other
19 or the other deputies?

20 A. I think at one point someone said -- one of them said
21 something to the other one in a kind of aggressive tone, but
22 not toward us and not overly aggressive to the point where we
23 needed to detain anyone.

24 Q. Were any of the individuals being physically aggressive
25 with each other or the deputies?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. No.

2 Q. At this point in the night or at any other point, did any
3 of the deputies draw their firearms?

4 A. No.

5 Q. And we just heard Sergeant McRobie say that the hotel
6 clerk had told him there was someone in Room 327. At that
7 point, what did you know about the person in 327?

8 A. Just that there was a person in there.

9 Q. All right. Did you have any reason at that time to
10 believe that he had been involved in the altercation with the
11 others?

12 A. I mean, we didn't know for sure. But there was nothing
13 specifically, I guess, stated; just that management said there
14 was someone in there for some reason.

15 Q. And tell us what's about to happen here as far as where
16 you and Deputy Kuretzka are.

17 A. The gentleman in the green plaid unlocked the door, and
18 we're getting ready to enter the room.

19 Q. All right. And when you got in there, did you -- were the
20 lights on? Did you turn the lights on?

21 A. I think the -- I guess the living area lights were already
22 on.

23 Q. All right. Did you have any trouble seeing because of the
24 light --

25 A. Not in that area.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Can you explain the layout of the room for us?

2 A. When you walk in, there's, like, a little kitchenette to
3 the right. To the left there's, like, a little living area.
4 And then as you continue to the right, there's the bed. Then
5 there's a sharp right into a hallway, closet, and bathroom.

6 Q. All right. And when you got into the room, what did you
7 see?

8 A. Mr. Graciano was laying on the bed.

9 Q. All right. And what did you do immediately upon going
10 into the room?

11 A. I went to check the bathroom to see if anyone was in
12 there.

13 Q. All right. And did you find anyone in there?

14 A. No.

15 Q. And what were you and Deputy Kuretzka trying to do once you
16 got in the room?

17 A. Wake up Mr. Graciano.

18 Q. When you first walked into the room, did you make any
19 observations about Mr. Graciano?

20 A. You could smell alcohol and raw marijuana emitting from
21 his general area.

22 MS. WAGNER: Could we finish playing Exhibit 1 to the
23 end.

24 (Video played.)

25 MS. WAGNER: Your Honor, at this time we would move

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 to admit Exhibit 1B, which is a slowed-down version of the last
2 few moments of Exhibit 1. And it's been stipulated to the
3 authenticity, as the Court has read to the jury.

4 MR. DRESBOLD: No objection.

5 THE COURT: Without objection, so admitted.

6 (Government's Exhibit 1B received in evidence.)

7 MS. WAGNER: Could we please play Exhibit 1B.

8 (Video played.)

9 BY MS. WAGNER:

10 Q. Sir, where were your hands as the Defendant's camera went
11 off?

12 A. On Mr. Graciano's left arm, I believe.

13 Q. What were you trying to do there?

14 A. Gain control of his arm.

15 Q. We saw a set of hands in black gloves. You testified
16 earlier that the Defendant was the only deputy wearing gloves
17 that night?

18 A. Yes.

19 Q. After the Defendant's camera went off, what happened?

20 A. We somehow ended up in the little hallway back toward the
21 kitchen. I'm not exactly sure how. I have a very vague memory
22 of Mr. Graciano rolling across the bed. So I think he went off
23 the other side. But I don't know how we actually ended up on
24 the ground in the hallway.

25 Q. All right. Is it fair to say that a use of force begins

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 after the camera goes off?

2 A. Yes.

3 Q. All right. What was your justification for using force at
4 this time?

5 A. The way that Mr. Graciano -- I would classify it, I guess,
6 as a stiff arm. His arm comes up and strikes Deputy Kuretza
7 and then comes back down.

8 Q. Okay. And you had your hand curled there when you were
9 demonstrating for the jury.

10 A. Yeah.

11 Q. Was Mr. Graciano's hand in a fist?

12 A. Yeah. From the video, it looked like it was open.

13 Q. Open palm?

14 A. Yeah.

15 Q. So Mr. Graciano came into contact with the Defendant with
16 an open hand; correct?

17 A. Yes.

18 Q. Was it -- what was your intent at that time?

19 A. Placing him under arrest.

20 Q. And what did you believe he had done that gave you
21 authority to arrest him?

22 A. Battery on an officer and obstructing.

23 Q. All right. And I think you said that when the camera went
24 off, your hands were on Mr. Graciano and you were trying to
25 gain control of his wrist?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Yes.

2 Q. And what's the purpose of trying to get wrist control?

3 A. To basically put it behind their back to put them in
4 handcuffs.

5 Q. All right. And at some point here Deputy Coe comes into
6 the room with his body-worn camera on; correct?

7 A. Yes.

8 Q. Prior to Deputy Coe coming into the room, did -- was
9 Mr. Graciano face up at any point?

10 A. I mean, he would have -- I don't remember, but he would
11 have had to be when he got out of the bed or -- unless he
12 rolled directly to the floor. Like I said, I don't remember
13 how we got from the bed to the hallway.

14 Q. Okay.

15 A. There was some sort of struggle or altercation that got us
16 there.

17 Q. Okay. Was there any point when Mr. Graciano was lying on
18 his back on the floor?

19 A. I don't believe so.

20 Q. How would you describe his position?

21 A. He was laying on his stomach, attempting to stand up.

22 Q. All right. From the time that Mr. Graciano was on the bed
23 'til the time you got him on the floor, did you use any strikes
24 against Mr. Graciano?

25 A. I don't believe so, no.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. All right. And did you witness the Defendant strike
2 Mr. Graciano at that time?

3 A. At that -- between the bed and the floor, I don't believe
4 so.

5 Q. Okay. After you got Mr. Graciano onto the floor, did you
6 witness the Defendant use any strikes against Mr. Graciano?

7 A. Yes. I saw him use one.

8 Q. I'm sorry?

9 A. I saw him use one, yes.

10 Q. What did you see?

11 A. It was a punch.

12 Q. And where did the punch land?

13 A. It would have been on Mr. Graciano's left side of his
14 face.

15 Q. All right. Prior to Deputy Coe coming into the room, to
16 your recollection, did Mr. Graciano's arms connect with you?

17 A. With me? No.

18 Q. All right. What was he doing with his arms during this
19 time?

20 A. I was attempting to gain control of his right arm. And
21 every time I would try to pull it out, he was pulling it back
22 toward his center like this. And he kept trying to get up.
23 His left arm was just kind of free. I'm not real sure what was
24 going on with it. I wasn't very focused on it.

25 Q. All right. To your recollection, prior to Deputy Coe

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 coming into the room, did Mr. Graciano's arms connect with the
2 Defendant?

3 A. I don't remember. I don't believe so.

4 Q. And between the time Mr. Graciano went from the bed, when
5 we saw him push away at the Defendant -- after that, where he
6 connected with the Defendant, between that time and the time
7 that he was ultimately placed in handcuffs, did Mr. Graciano
8 strike or hit or kick at you?

9 A. Not that I remember, no.

10 Q. All right. To your recollection, did he strike or hit or
11 kick at any of the other deputies in that time frame?

12 A. I don't believe so.

13 Q. Now, you had talked about Mr. Graciano trying to stand up.
14 What exactly -- can you describe exactly what he was doing?

15 A. So he was laying face down on his stomach, and he kept
16 bringing his knees up toward his chest to -- I -- what I
17 thought was him trying to develop a base to stand up on.

18 Q. All right. And at this point he's not in handcuffs yet;
19 correct?

20 A. Correct.

21 Q. What did you do in response to Mr. Graciano trying to get
22 a base to stand up?

23 A. I applied knee strikes to his thigh.

24 Q. And do you remember how many or approximately how many
25 knee strikes you used?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Maybe two or three. No more than that.

2 Q. Now, you had just told us that the Defendant punched
3 Mr. Graciano with a closed fist. And did you say that was the
4 left side of his face?

5 A. I believe so, yes.

6 Q. Did you also punch Mr. Graciano with a closed first?

7 A. I did not.

8 Q. Why not?

9 A. Where I was, I didn't see any justification for it.

10 Q. All right. Have you ever punched a person you're
11 arresting?

12 A. I've never punched a person ever.

13 Q. And Mr. Graciano, in your view, didn't do anything to
14 justify you punching him?

15 A. Not to me, no.

16 MR. DRESBOLD: Objection.

17 THE COURT: Go ahead.

18 MR. DRESBOLD: It goes to the ultimate issue.

19 MS. WAGNER: I'm sorry, Judge. He just -- that's
20 what he had just testified; he didn't -- he, himself, did not
21 see a justification for using force.

22 MR. DRESBOLD: It's also leading.

23 THE COURT: Right. But from his perspective.

24 Objection sustained.

25

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 BY MS. WAGNER:

2 Q. We talked just a minute ago about the fact that during
3 this interaction Deputy Coe comes into the room; correct?

4 A. Yes.

5 Q. All right.

6 MS. WAGNER: I would like to play Exhibit 3,
7 Deputy Coe's body-worn camera, which has already been admitted
8 into evidence. Could we play from 6:05 to 6:15 and then pause
9 at 6:15.

10 (Video played.)

11 BY MS. WAGNER:

12 Q. All right. Could you orient the jury as to who is where?

13 A. That's the back of my head right there in the center. And
14 then Kuretza is on one knee in front. And Mr. Graciano is
15 laying face down on the floor, and his head is towards
16 Deputy Kuretza.

17 Q. All right. And, of course, Deputy Coe is coming into this
18 space. He's got the camera on.

19 A. Yes.

20 Q. And what are you trying to do at this point?

21 A. Get his hands behind his back to make an arrest.

22 Q. And were you ultimately able to do that?

23 A. Eventually, yes.

24 Q. Okay. Did you do it by yourself?

25 A. No. It took all three of us.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Okay. And is it correct that you secured one hand and
2 Deputy Coe secured the other?

3 A. Yes.

4 Q. Do you recall which hand you had?

5 A. It would have been the right. Deputy Coe had the left.

6 Q. All right.

7 MS. WAGNER: Could we play to 7:25.

8 (Video played.)


9 BY MS. WAGNER:


10 Q. In this clip we just heard the Defendant say, "You want
11 the solution?" And it sounds like your voice that says, "Give
12 him the solution." Do you agree that that was you that said --


13 A. I agree it sounds like me. I don't remember actually
14 saying it. But it does sound like me saying it.


15 Q. Okay. Do you know what "the solution" or "the
16 problem-solver" was?


17 A. I don't.

18 Q. Do you know why you said, "Give him the solution"? 

19 A. I don't. I have no recollection of saying it. 

20 Q. In what position is Mr. Graciano at this point? 

21 A. Face down with his hands behind his back. 

22 Q. Is he handcuffed at this point? 

23 A. Yes. 

24 Q. How did you know he was handcuffed?

25 A. I put them on -- or I assisted in putting them on.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. All right. And what's going on here after Mr. Graciano
2 got into handcuffs? What are you and the other deputies doing?

3 A. We were all pretty winded, so we were trying to catch our
4 breath.

5 Q. Okay. You all three stood up?

6 A. Yes.

7 Q. And why did you stand up?

8 A. It's just -- I know, for me, it's easier to catch my
9 breath standing than kneeling. I don't know why the other two
10 stood up.

11 Q. Did you feel that Mr. Graciano was secure at this point?

12 A. Yes.

13 Q. If you did not feel that he was secure, would you have
14 stood up?

15 A. I would have probably just kept my weight on him, yeah.

16 Q. At this point, has anyone applied pepper spray to
17 Mr. Graciano?

18 A. Not that I'm aware of.

19 Q. And you're standing here in what sort of -- describe the
20 space that you-all are standing in.

21 A. It's like a hallway. It's pretty confined. There's a
22 counter behind me. I think it's just a counter and a cabinet.
23 I don't think there's a sink there. And then Deputy Coe's
24 camera, to his left there's a closet.

25 Q. All right. And there's a mirror on the closet door?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. I think. Yeah. If I remember right, I think both of them
2 are sliding doors that are both mirrors.

3 Q. All right. Would you characterize this as an enclosed
4 space?

5 A. Yes.

6 Q. If pepper spray had been applied at this point in time, in
7 your training and experience, would you have expected to be
8 reacting to it?

9 A. I would have, yes.

10 MS. WAGNER: All right. Could we play to 8:25,
11 please.

12 (Video played.)

13 BY MS. WAGNER:

14 Q. All right. We just heard the sounds of coughing. Can you
15 explain what that was?

16 A. That was mine and I believe Deputy Coe's reaction to
17 OC spray.

18 Q. All right. And did you -- did you -- who sprayed the
19 pepper spray?

20 A. Deputy Kuretza.

21 Q. All right. And how do you know that it was him?

22 A. He basically said he was doing it before he did it and
23 then did it.

24 Q. All right. So you saw him spray pepper spray?

25 A. I think I saw him, yeah. I don't know where my head was

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 oriented. I don't have, like, a personal recollection of it.

2 But I know it was him, yes.

3 Q. You would agree, though, that we just heard you -- we
4 heard Deputy Coe ask, "What is that?"

5 And you answered, "Pepper spray."

6 A. Yes.

7 Q. From what distance did the Defendant pepper-spray
8 Mr. Graciano?

9 A. I'm not sure. It was pretty close. But I don't have the
10 estimate, really.

11 Q. All right. Do you know what the sheriff's office policy
12 requires?

13 A. Two feet.

14 Q. Do you think it was less than two feet?

15 A. Probably, yes.

16 MR. DREBOLD: Lacks personal knowledge. He said, "I
17 don't have a personal recollection of it."

18 THE COURT: Overruled.

19 BY MS. WAGNER:

20 Q. You can answer.

21 A. I believe it was.

22 Q. You believe it was less than two feet?

23 A. Yes.

24 Q. And prior to that moment, to your recollection or
25 knowledge, had pepper spray been used against Mr. Graciano?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. I don't believe it had, no.

2 Q. And did you, yourself, apply pepper spray against
3 Mr. Graciano that night?

4 A. No.

5 Q. Why not?

6 A. I didn't really see the justification for pepper spray.
7 Plus it was in a confined area.

8 Q. All right. Did you feel that you were in danger at that
9 moment?

10 A. There was a struggle but not necessarily, like, danger
11 capable of, I guess, bodily injury. There was some sort of
12 altercation there, but I don't think that at that point he
13 really could have hurt us. Maybe if he tried hard enough. But
14 I don't really think so, no.

15 Q. At this point he was still restrained in handcuffs?

16 A. Yes.

17 Q. And at this point in time where we've just frozen the
18 video, in what position is Mr. Graciano?

19 A. He's still -- he looks like he's on his right side with
20 the hands behind his back. I think he's turned to his --
21 turned to his left -- I'm sorry -- turned to his right. The
22 right side of his body is on the ground.

23 MS. WAGNER: And could we play from 8:25 to 8:55.

24 (Video played.)

25

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 BY MS. WAGNER:

2 Q. And what force did we just see the Defendant apply here?

3 A. Knee strikes.

4 Q. At the time that this incident was ongoing, did you see --
5 personally see the Defendant do that?

6 A. I did not.

7 Q. Do you know why you didn't see it?

8 A. From that angle, it looks like I was facing the opposite
9 direction at the time that it was applied.

10 Q. Did you apply any knee strikes to Mr. Graciano while he
11 was restrained?

12 A. I don't think so, no.

13 Q. Were you in a position to?

14 A. Yes.

15 Q. Why didn't you?

16 A. I didn't think they would be effective. And there may
17 have been, like, justification for a large muscle group, but I
18 just didn't feel like they would be effective. And he wasn't
19 trying to stand up at that point, I don't think.

20 Q. And he's still in restraints?

21 A. Yes.

22 Q. On the floor still?

23 A. I'm sorry?

24 Q. On the floor still?

25 A. Yes.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 MS. WAGNER: Could we play to 9:09.

2 (Video played.)

3 BY MS. WAGNER:

4 Q. What was happening at this point?

5 A. We were standing him up to move him.

6 Q. And where were you trying to move him?

7 A. Downstairs to a patrol car.

8 Q. Okay. We just heard the Defendant say, "Take care of the
9 tie. Save the tie, please, Sarge." Who was he speaking to?

10 A. Sergeant Alexander.

11 Q. Okay. And had Sergeant Alexander been there, or had he
12 just come into the room?

13 A. He had to have just come in the room. I don't think he
14 was there for the -- it would have been after the pepper spray.
15 I'm not sure when he came in, but at some point after.

16 MS. WAGNER: Could we play to 9:40, please.

17 (Video played.)

18 BY MS. WAGNER:

19 Q. Where are you as Mr. Graciano is being taken out of the
20 room?

21 A. Behind them.

22 Q. All right. And who is escorting Mr. Graciano at this
23 point?

24 A. It would be Deputy Coe on his left side and Deputy Kuretzka
25 on his right side.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And you were behind the three of them?

2 A. I may have been beside Sergeant Alexander. I'm not sure
3 if I was behind him or beside him, but somewhere in that area.

4 Q. Was additional force used on Mr. Graciano as Deputy Coe
5 and the Defendant were escorting him out of the room?

6 A. Yes.

7 Q. All right. What force was used?

8 A. Deputy Kuretza knee-striked the right thigh.

9 Q. All right.

10 MS. WAGNER: Could we turn to Exhibit 4, please. And
11 could we play from 9:10 to 9:30 and then pause.

12 That's fine there.

13 (Video played.)

14 BY MS. WAGNER:

15 Q. Could you orient us to where each deputy is.

16 A. Deputy Kuretza is on the right, next to the wall.
17 Deputy Coe is on the left, near the doorframe. Sergeant
18 Alexander is the person with the body camera on. I would be
19 somewhere to the left, in front of that refrigerator.

20 Q. And we just saw the Defendant apply two knee strikes to
21 Mr. Graciano's body?

22 A. Yes.

23 MR. DRESBOLD: Objection. Leading.

24 THE COURT: Sustained.

25 MR. DRESBOLD: Move to strike.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 THE COURT: Overruled.

2 MR. DRESBOLD: He answered the question.

3 THE COURT: Overruled.

4 Ask the question again. Differently, I should say.

5 MS. WAGNER: Yes, Judge. I apologize.

6 BY MS. WAGNER:

7 Q. What did we just see the Defendant do there?

8 A. He applied two knee strikes to Mr. Graciano's leg or
9 thigh.

10 Q. All right. And do you recall what he was saying as he did
11 so?

12 A. "Stop trying to stomp my feet."

13 Q. Did you observe Mr. Graciano stomp on anyone's feet?

14 A. I don't remember that he -- him doing that, no.

15 Q. Okay. Do you recall whether he was having difficulty
16 walking?

17 A. I believe he was, yes.

18 Q. All right. And do you know why he was having difficulty
19 walking?

20 A. Probably a combination of things: pepper spray,
21 intoxication --

22 MR. DRESBOLD: Objection. Calls for speculation.

23 THE COURT: Sustained.

24 BY MS. WAGNER:

25 Q. In your training and experience, are you -- are deputies

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 permitted to use force when someone inadvertently steps on
2 another person's foot?

3 A. No.

4 Q. From the time that you got -- you all -- the group of you
5 got Mr. Graciano up and escorted him to the door of the hotel
6 room, did you apply knee strikes or any type of strikes against
7 him?

8 A. No.

9 Q. Why not?

10 A. I didn't really see justification for it. I don't
11 remember a whole lot after this camera goes off.

12 Q. What happens next?

13 A. He falls down in the hallway out there, which I think we
14 just saw. And then they attempt to get him down the next
15 hallway, and he falls down again.

16 Q. All right. And how was Mr. Graciano being escorted down
17 the hall?

18 A. Similar to the way he is right there. Hands behind his
19 back. I guess that would be classified as an underhook. A
20 deputy would go under his arms and try to walk him out.

21 MS. WAGNER: Could we turn back to Exhibit 3 and play
22 from 9:40 to 11:00.

23 (Video played.)

24 MS. WAGNER: Actually, can we play it all the way
25 through? I'm sorry. My times are...

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 (Video played.)

2 BY MS. WAGNER:

3 Q. All right. We just saw Deputy Coe's -- well, what
4 happened with Deputy Coe's camera?

5 A. It shut off.

6 Q. Okay. What happened after that?

7 A. After it shut off? I don't remember a whole lot. I
8 remember we tried to get him out to the car. I think he fell
9 again in the hallway. Then we got to the elevator; from the
10 elevator, I guess the lobby. And I think he fell again in the
11 lobby. And then we got him in the car.

12 MS. WAGNER: All right. Could we turn back to
13 Exhibit 4 and play from 19:00 to just about 19:08.

14 And this is Sergeant Alexander's body-worn camera.

15 (Video played.)

16 BY MS. WAGNER:

17 Q. All right. Can you orient the jury as to where Sergeant
18 Alexander is and where in relation to the Defen- -- the
19 Defendant and you and Deputy Coe?

20 A. I can try.

21 I think he's in the hallway. And I think we're on the
22 other side of those double doors. Not the double doors closest
23 to him, but the further -- you can kind of see the exit light.

24 Q. The French door-looking type doors?

25 A. Yeah. Those are automatic doors. I think -- I believe

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 we're on the other side of those right now.

2 Q. Okay.

3 MS. WAGNER: Could we play to 20:04.

4 (Video played.)

5 BY MS. WAGNER:

6 Q. We just heard the Defendant give several commands to

7 Mr. Graciano. Do you recall what those were?

8 A. "Don't spit on me" and "Stand up."

9 Q. Do you recall seeing Mr. Graciano spit on or at any of the
10 officers at any point that night?

11 A. I don't remember him doing so, no.

12 Q. All right. Do you remember whether Mr. Graciano vomited
13 or not?

14 A. I think a little bit, yeah.

15 Q. Do you re- -- to your recollection, do you recall
16 Mr. Graciano trying to stomp or kick anyone as he was being
17 escorted out of the hotel?

18 A. I don't remember. I don't think so.

19 Q. Do you recall seeing Mr. Graciano throwing his body weight
20 around at anyone as he was being escorted out of the hotel?

21 A. He was doing something weird when he would fall. I don't
22 really know how to characterize it. He was, like, shaking a
23 lot. It was almost like a flail. I guess a flail would be the
24 best way to characterize it, but it wasn't, I guess, a flail.

25 But when we were there, we were all applying weight on him

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 there. And that's what he would kind of do. He would lay down
2 and then just start -- like I said, it's kind of hard to
3 describe. But his body was just, like, moving back and forth
4 like this. It was odd.

5 Q. So you're describing when he's on the ground?

6 A. Yes.

7 Q. Okay. While he was being escorted in an upright
8 position -- I mean, he wasn't fully upright. But as he was
9 being escorted, do you recall him throwing his body weight
10 around at any point that night?

11 A. Not that I remember.

12 Q. At any point during your interactions with Mr. Graciano,
13 other than the open-handed push that you described just before
14 the Defendant's body-worn camera went off, did you see
15 Mr. Graciano punch anyone?

16 A. From personal recollection, I don't specifically remember
17 that. Like I said, there was a moment where his hand was free
18 and was I guess flailing or however you would describe it. I
19 don't know if any of those connected or not or if -- or what it
20 was, really, if it was even a punch. That was when we were in
21 the hallway at some point.

22 But like I said, as far as, like, a -- him attempting
23 to -- like, I don't think it -- I don't know if it was, like,
24 an actual attempt. But his hand was free and flailing.

25 Q. Okay. What hallway are you talking about?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. The hallway in the room between the bed and the bathroom.

2 Q. Okay. Do you recall him -- so -- well, let me see if we
3 can clarify this a little bit. Is it correct, then, that you
4 did not see Mr. Graciano punch anyone?

5 MR. DREBOLD: Objection. Leading.

6 THE COURT: Sustained.

7 BY MS. WAGNER:

8 Q. To your recollection, other than the open-handed push that
9 you described, did you see Mr. Graciano punch anyone?

10 A. To my recollection now, no.

11 Q. Did you see Mr. Graciano slap anyone?

12 A. Other than the initial push?

13 Q. Right.

14 A. I don't believe so, no.

15 Q. Did you see Mr. Graciano kick anyone?

16 A. There was that weird thing when he was on his side. His
17 legs were, like, moving. I don't know if that was a kick or
18 not, but it was something odd like that. I don't necessarily
19 think it was a kick. But like I said, there was something
20 weird with his leg. I'm not sure what it was. I don't know if
21 it was, like, an involuntary jerk or what it was.

22 Q. Did you see Mr. Graciano at any time intentionally kick
23 anyone?

24 A. Intentionally? I mean, I don't know what his intentions
25 were. Like I said, it may have been involuntary jerk. But, I

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 mean, I can't speak to his intentions.

2 Q. Did you see Mr. Graciano attempt to do any of those things
3 that we just talked about: punch anyone, slap anyone, kick
4 anyone?

5 A. I'm sorry. Can you --

6 Like I said, like, the involuntary jerk. I don't know if
7 it was a kick or not. The flailing of the arm. I think it was
8 just flailing. I don't think it -- it may have been a punch.
9 I don't know. But to my recollection here today, no.

10 Q. During your interactions with Mr. Graciano that night, did
11 you see him attempt to access any weapons belonging to you or
12 the other deputies?

13 A. Our weapons? No.

14 Q. Any other weapons?

15 A. I mean, there was a time, like I said, he kept coming to
16 his center waist. We didn't know what it was at the time. We
17 now know he didn't have a gun. But we didn't know why his
18 arm -- well, at least I didn't know why his arm kept going to
19 center at the time.

20 Q. After Mr. Graciano was placed in handcuffs, do you
21 recollect seeing anything that you perceived as active
22 resistance by Mr. Graciano?

23 A. I don't think so. Like I said, with the shaking and
24 stuff, I don't know what that was. I don't know if it was
25 involuntary. I don't know if it was him shaking for some

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 reason. And like I classified before, I don't know if those
2 were involuntary movements or if they were intentional. I
3 don't think they were intentional based on -- I mean, I don't
4 think they would have caused a whole lot of damage if they
5 were -- or caused a whole lot of harm if they were.

6 Q. At any point during your interactions with Mr. Graciano,
7 was he verbally aggressive with you?

8 A. No.

9 Q. Did he cuss at you?

10 A. No.

11 Q. What did you hear coming out of Mr. Graciano's mouth
12 during the night?

13 A. My personal recollection, I don't remember. I'm just
14 going off what was on the camera. There was -- he said "Help
15 me" a couple times. He --

16 MR. DREBOLD: Objection. Lacks personal knowledge.

17 THE COURT: Sustained.

18 BY MS. WAGNER:

19 Q. Did you suffer any injury that night during the use of
20 force against Mr. Graciano?

21 A. No.

22 Q. Did you observe any injuries suffered by any of the other
23 deputies?

24 A. Not observe it, no.

25 Q. Did the Defendant tell you he was injured in any way?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. Not that night, no.

2 Q. Did he later tell you that he was injured?

3 A. Yes. Well, he didn't say he was injured, but he did say
4 that the strike hurt him.

5 Q. You testified earlier that in your training and experience
6 you search a person once they are under control, basically,
7 under -- once the situation is under control. Did you see a
8 search or conduct a search incident to arrest?

9 A. That was the weird thing I saw on the body camera. That
10 would be, in my opinion, a better question for Deputy Coe.
11 When he's rolled to the side, it looks like Deputy Coe is
12 patting down his pockets. I can't say for certain that's a
13 search. I can say that is the manner in which we are trained
14 to search someone who's prone out. But I don't know if that's
15 him performing a search or not.

16 Q. Sir, what I'm asking you, though, is once Mr. Graciano was
17 placed in handcuffs and escorted to the car, was he searched?
18 Did you see a search incident to arrest before --

19 A. No, not between us moving him and putting him in the car.
20 I don't think so, no.

21 Q. And you, yourself, did not conduct a search incident to
22 Mr. Graciano's arrest?

23 A. I don't believe so, no.

24 Q. Can you tell us what a use of force report is?

25 A. It's a report filed after an incident where force was used

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 that documents the force used and provides a narrative of what
2 happened.

3 Q. And what triggers -- do all the -- do deputies have an
4 obligation to prepare a use of force report?

5 A. Yes.

6 Q. And what triggers that obligation?

7 A. I'm sorry. What requires it or what --

8 Q. What -- when do you have to file a use of force report
9 or --

10 A. After force is used.

11 Q. And are you -- does the use of force report -- I think you
12 just explained that it contains a narrative of what happened.
13 Correct?

14 A. Yes.

15 Q. All right. What order are you trained to write your use
16 of force report in?

17 A. What order?

18 Q. Yes.

19 A. Can you --

20 Q. As you describe what happened that night, what order are
21 you -- are you trained into how to write that report?

22 A. I'm sorry. I need clarification.

23 There's -- essentially there's a -- the standardized form
24 for a use of force report that's completed by the officer that
25 uses force or uses the highest level of force, generally, or

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 the arresting officer. There's, like, fill-in-the-blank, like,
2 name, weight, height, date of birth, things like that. And
3 then there's a narrative typed by them. And then everyone else
4 that was there, there are statements provided by them.

5 Q. And when you write your narrative -- your personal
6 narrative, how are you -- how do you describe what happened?
7 Do you describe it chronologically? Do you describe it in some
8 other way?

9 A. To me personally, it's whatever flows the best, I guess
10 you could say. It's not necessarily always chronologically.
11 It's a good idea to have it in chronological order for the
12 material statements.

13 But, for instance, if I'm typing "Someone threw a punch
14 and then said something and then threw a kick," I may
15 characterize it as "Someone punched, kicked, and said
16 whatever." It's not always chronologically, but for the most
17 part it is.

18 Q. All right. And you've got a notebook there beside you
19 that's got Exhibit 6 in it. And this is the use of force
20 report regarding Mr. Graciano that night. Could you turn to
21 page 8, please.

22 And could you tell us what page 8 is?

23 A. That would be the statement that I gave for the use of
24 force.

25 Q. All right. Could you read the date that appears in that

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 first sentence?

2 A. "On January 20th, 2017..."

3 Q. All right. And is that a typo?

4 A. Yes.

5 Q. Okay. What date should it have read?

6 A. January 20th, 2018.

7 Q. Could you please read your statement.

8 A. "On January 20th, 2017, deputies were dispatched to
9 Room 329 of the Residence Inn for a disturbance. The caller
10 advised that someone was threatening to kill someone with a
11 gun.

12 "Deputies arrived on scene and discovered the parties
13 involved were in Rooms 329 and 327. Deputy Kuretza and I
14 entered Room 327 and found a male lying on the bed. I could
15 detect the odor of an alcoholic beverage and marijuana emitting
16 from the male. We announced ourselves as the sheriff's
17 department several times. We asked the male to wake up due to
18 the nature of the call possibly involving a firearm.

19 "The male woke up and looked at Deputy Kuretza and refused
20 to get up. He began to flail his arms and push Deputy Kuretza
21 away. Deputy Kuretza again tried to wake the male. The male
22 then struck Deputy Kuretza. Deputy Kuretza attempted to gain
23 control of the male's arms, and he began to resist. I
24 attempted to help gain control of the male, but he fought and
25 resisted.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 "The male rolled to the floor, and an altercation began.
2 We ordered the male several times to give us his hands, but he
3 kept resisting. The male kept his hands underneath him, toward
4 his waistband. I attempted to gain control of his right hand.
5 The male began to kick and flail. We attempted to roll him
6 over to get his hands loose, and he again struck
7 Deputy Kuretza.

8 "Deputy Isaac Coe then came into the room and attempted to
9 help us gain control of the subject. The subject continued to
10 resist and struggle. I applied several knee strikes to his
11 legs. Deputy I. Coe and I managed to get the suspect's left
12 arm free and in a handcuff. The male kept his right arm
13 underneath him, towards his waistband. Deputy Coe and I
14 managed to get his arm free and in the other handcuff.

15 "Once the male was in handcuffs, he continued to attempt
16 to kick Deputy Coe and I and flail his body around.
17 Deputy Coe" -- I'm sorry. "Deputy Kuretza then administered a
18 one-second burst of OC spray to the male. He continued to
19 resist all officers and kick. More knee strikes were applied
20 to his legs until he calmed down. He stated, 'Okay. I'm
21 done.'

22 "Deputies then picked him up and attempted to escort him
23 out of the hotel. He resisted us several times and fell to the
24 ground and flailed his body several times on the way out until
25 he was secured in a police cruiser."

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. You testified earlier that you did not observe
2 Mr. Graciano kick, stomp, spit, or use his body weight to smash
3 deputies.

4 Can you tell the jury how you came to write in your use of
5 force report that "The male began to kick and flail. We
6 attempted to roll him over to get his hands loose, and he again
7 struck Deputy Kuretza"?

8 A. Yeah. This is, I mean, based on my personal perception at
9 the time. Obviously now, watching the body camera, my
10 perception was wrong.

11 But like I said, his arm was free at one point. There was
12 the -- I don't know if it was involuntary jerking of the kick
13 or if it was -- I'm sorry -- the involuntary jerking of the
14 leg. And generally "kick" is more of -- at least I think
15 "kick" can be used in a general term, such as kicking and
16 screaming. Like, if someone -- if a child is kicking and
17 screaming, they're not necessarily kicking, but their legs are
18 often moving. And like I said, this was based on my personal
19 perception at the time.

20 Q. You also wrote, "Once the male was in handcuffs, he
21 continued to attempt to kick Deputy Coe and I and flail his
22 body around. Deputy Kuretza then administered a one-second
23 burst of OC spray. He continued to resist all officers and
24 kick."

25 Can you explain to the jury how you came to write that in

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 your use of force statement?

2 A. Yes. That was, like I said, when he was turned to his
3 side, which I don't know if that was a pat-down or if we were
4 attempting to stand him up. And there was something with his
5 leg. And then someone yelled, "Stop kicking." I think it was
6 Deputy Kuretzka yelled, "Stop kicking." And that's around the
7 time the pepper spray was applied. Or I think we put weight on
8 his body; then the pepper spray was applied.

9 Q. Do you agree that Mr. Graciano was not assaultively
10 kicking officers?

11 MR. DRESBOLD: Objection. Leading.

12 THE COURT: Sustained.

13 BY MS. WAGNER:

14 Q. You did write in your use of force report that once
15 Mr. Graciano was in handcuffs, then he was administered a
16 one-second spray -- or one-second burst of OC spray.

17 And so you -- is it correct that you documented that
18 Mr. Graciano was handcuffed and then pepper-sprayed?

19 MR. DRESBOLD: Objection. Leading.

20 THE COURT: Overruled.

21 THE WITNESS: Do I answer?

22 THE COURT: Yes, sir.

23 A. Yes.

24 Q. You testified earlier that -- as we watched Deputy Coe's
25 video, that you administered knee strikes -- that -- I'm

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 sorry -- that the Defendant administered knee strikes to
2 Mr. Graciano's head. Why is that not recorded in your report?

3 A. I didn't see it at the time.

4 Q. We also saw from Sergeant Alexander's video that the
5 Defendant administered knee strikes to Mr. Graciano when they
6 were escorting Mr. Graciano out of the hotel room. Why is that
7 not recorded in your report?

8 A. I don't know if I just didn't remember it or if I didn't
9 see it. I don't think I remembered at the time.

10 Q. All right. I would like to turn now to Exhibit 2.

11 MS. WAGNER: And could we play from the beginning
12 until 20 seconds.

13 (Video played.)

14 BY MS. WAGNER:

15 Q. What is your understanding of what's depicted here?

16 A. Deputy Kuretza transporting Mr. Graciano back to the
17 sheriff's office.

18 Q. And where did the other deputies go immediately after
19 leaving the Residence Inn, to the extent you know?

20 A. I followed. Sergeant McRobie went to a pending call. I
21 think Deputy Coe also went to a pending call. And I'm not sure
22 where Sergeant Alexander went.

23 Q. All right. So did you say that you followed Mr. Graciano
24 in Deputy Kuretza's vehicle?

25 A. Yes.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. And when, in relation to Deputy Kuretza, did you arrive
2 back at the station?

3 A. At the same time.

4 Q. All right.

5 A. Where I pulled in directly after he did.

6 Q. Okay.

7 MS. WAGNER: Could we please play from 9:30 to 10:40.

8 (Video played.)

9 BY MS. WAGNER:

10 Q. We just saw you step forward towards Mr. Graciano and then
11 take a step back. What were you doing?

12 A. Making sure he didn't fall.

13 Q. All right. Why were you trying to make sure he didn't
14 fall?

15 A. He said he thought he was going to fall.

16 Q. All right. Do deputies have a responsibility to the
17 people they arrest?

18 A. Yes.

19 Q. And tell us what that responsibility is.

20 A. Basically make sure no, I guess, undue or additional harm
21 is brought onto them.

22 Q. Did you ultimately help Mr. Graciano get out of the
23 vehicle?

24 A. I think at this point right here, yes. But he -- I think
25 he got out on his own.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. I'm sorry?

2 A. He got out on his own, I think, yeah.

3 MS. WAGNER: All right. Could we please go back and
4 play that from about 10:20 forward.

5 (Video played.)

6 BY MS. WAGNER:

7 Q. Why did you take a step back?

8 A. Deputy Kuretza put his hand up and -- I wouldn't say it
9 was a push back, but motioned for me to step back.

10 MS. WAGNER: I'd like to move forward to 17:30. And
11 could we play to 18:45.

12 (Video played.)

13 BY MS. WAGNER:

14 Q. All right. We just heard a discussion there between you,
15 the Defendant, and who is the transport officer there?

16 A. Eric Wilson.

17 Q. And what's the gist of the conversation?

18 A. Whether or not he needs medical clearance for the jail to
19 accept him.

20 Q. All right. And what does clearance mean in this context?

21 A. Basically he either has to refuse medical treatment at a
22 hospital or a doctor has to clear him for incarceration.

23 Q. All right. We also just heard you tell Officer Wilson
24 that Mr. Graciano did not have black eyes; that his eyes were
25 swollen from pepper spray. And we heard the Defendant say,

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 "Don't lie. Those are black eyes."

2 Were you lying to Officer Wilson?

3 A. No.

4 Q. All right. Tell us what you were doing.

5 A. I thought that his eyes were swollen from the OC,
6 essentially. I've never seen eyes swell that quick from
7 trauma. OC is an inflammatory agent. That's kind of what I
8 figured what happened.

9 Q. And you had testified earlier that you had seen the
10 Defendant punch Mr. Graciano. What side of the face had
11 Mr. Graciano -- had the Defendant punched Mr. Graciano?

12 A. His left side.

13 MS. WAGNER: Could we play to 20:30, please.

14 (Video played.)

15 BY MS. WAGNER:

16 Q. All right. We just heard a discussion about an EMS
17 refusal. And I think you may have started to explain that.
18 But what is an EMS refusal?

19 A. Essentially someone would see EMS workers and decide if
20 they wanted treatment or not. If they didn't want treatment,
21 they would sign a refusal.

22 Q. All right. What -- and what was the department's policy
23 as far as getting Mr. Graciano medical treatment?

24 A. We have to at least offer it, I think.

25 Q. All right. On what basis did you have an obligation -- or

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 officers have an obligation to at least offer Mr. Graciano
2 medical treatment at this point?

3 A. Injuries.

4 Q. And we just heard and saw you call for EMS and also tell
5 dispatch you needed a Pennsylvania 27. What does that mean?

6 A. Twenty-seven is the ten-code for a driver's license check.

7 Q. All right. So you're asking dispatch to check this
8 person's license?

9 A. Yes.

10 Q. What do you -- what are you -- what are they checking for?

11 A. Warrants, basically. Usually what that's for at that
12 point is to fax down a full -- we call it a return, with all
13 his information that we need to process him.

14 Q. All right.

15 MS. WAGNER: Could we play from 20 to 24, please.

16 No. That's fine. You can play from right there.

17 (Video played.)

18 BY MS. WAGNER:

19 Q. We just saw you leave the room; correct?

20 A. Yes.

21 Q. And what were you doing as you were leaving the room?

22 A. I don't remember. I know at some point I went upstairs.
23 That's in the basement of our processing room. I know at some
24 point I called dispatch again and had them send an ambulance.

25 I don't remember the --

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. If I can stop you there. We're going to talk about that.

2 But just now, as you were leaving the room, what were you
3 doing?

4 A. I don't know. Just leaving.

5 Q. Okay.

6 MS. WAGNER: Could we rewind it about 15 seconds,
7 please.

8 (Video played.)

9 BY MS. WAGNER:

10 Q. Okay. Do you see that --

11 A. Yes.

12 Q. Is that you leaving the room?

13 A. Yes. I canceled EMS as I was leaving the room.

14 Q. And why did you do that?

15 A. Deputy Kuretzka said we can cancel EMS.

16 Q. And I think you started to tell us. But did EMS
17 ultimately come back that night to see Mr. Graciano?

18 A. Yes.

19 Q. And do you know how that came about?

20 A. From what I've been able to, I guess, piece together, I
21 called them back. I don't have a personal recollection of
22 calling them back. But based on the video and what knowledge I
23 have from the EMS center -- or -- I'm sorry -- the dispatch
24 center, I believe I'm the one that called them back.

25 Q. And did you tell anyone that you had called EMS back or

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 that EMS was coming back?

2 A. I eventually told Deputy Kuretza.

3 Q. All right.

4 MS. WAGNER: Can we fast-forward about 13 minutes, to
5 36:50, and play to 39:00.

6 (Video played.)

7 BY MS. WAGNER:

8 Q. We'd just heard a part of a conversation. Do you know who
9 was involved in that conversation?

10 A. Yes. It was me and Deputy Kuretza.

11 Q. All right. And can you tell us what was said? We heard
12 part -- only part of the conversation.

13 A. Yeah. I believe the captions were wrong at one point.
14 Basically I told him that EMS -- I had called EMS back. And if
15 I remember right, he said, "I've been worse than that." But
16 the caption said, "I've done worse than that." But I think
17 Deputy Kuretza said, "I've been worse than that before."

18 But essentially I was telling him that I called EMS. And
19 he was kind of asking why I called EMS back. And I explained
20 to him -- I believe I was explaining to him that I was
21 concerned about blood coming from his ears and it could be a
22 sign that he was injured.

23 Q. At some point later did you learn or confirm that you
24 had -- who had responded to your second call?

25 A. For EMS?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Yes.

2 A. I didn't learn until, like, three and a half years later.

3 But I did eventually learn who responded, yes.

4 Q. And who was that?

5 MR. DREBOLD: Objection. Lacks foundation.

6 THE COURT: Overruled.

7 MR. DREBOLD: Based on hearsay.

8 THE COURT: Overruled.

9 THE WITNESS: Answer?

10 MS. WAGNER: Yes, please.

11 THE COURT: Yes, please.

12 A. It was Star City EMS.

13 Q. Did you learn what time they arrived at the station?

14 A. I did. I don't have that in front of me right now. But I
15 had found a sheet with the times outlined on it.

16 Q. And do you recall EMS being there?

17 A. Vaguely. I remember seeing them in passing.

18 Q. All right. And do you remember what you were doing as you
19 passed them?

20 A. Leaving.

21 Q. And where were you leaving for?

22 A. The Lofts apartments in Morgantown.

23 Q. Okay. And why were you going to The Lofts apartment in
24 Morgantown?

25 A. I received a call for a protective order violation.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Okay. And did you -- how far -- where is The Lofts in
2 relation to the police station?

3 A. I don't know. Probably -- I don't know. Depending on
4 traffic -- you mean, like, time-wise or mileage?

5 Q. Time-wise at that time of night.

6 A. Probably like 15-20 minutes.

7 Q. All right. And do you recall whether you spent any time
8 at that call, dealing with that call?

9 A. I don't. I remember the people from that call I had dealt
10 with multiple times within that time frame. And I don't
11 remember which time is which. I just remember dealing with
12 them a lot within that time frame.

13 Q. But I think you just testified it would have taken you 15
14 or 20 minutes to get there?

15 A. Yes. Probably.

16 Q. All right. Do you know if Deputy Coe and Sergeant
17 Alexander were there at the station when you saw EMS in
18 passing?

19 A. I don't think they were, no.

20 Q. Would there have been any benefit to Mr. Graciano if he
21 had refused medical treatment by EMS as far as how quickly he
22 could be processed and released?

23 A. Depending on the extent of his injuries. But probably
24 not, no.

25 Q. All right. Are you aware of what time Mr. Graciano was in

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 court the next morning?

2 A. I think 11:00 AM. I want to say 11:00 AM. That's kind of
3 late, but I think I remember reading that somewhere.

4 Q. All right. And if Mr. Graciano had accepted medical
5 treatment when EMS was there, would that have delayed or been
6 likely to delay his going to court?

7 A. It depends. Generally arraignments would be at 8:00 AM.
8 Like I said, 11:00 AM is kind of late for that.

9 I'm not sure what time it is at this point. It was at
10 1:00 -- close to 1:00, I think. So he may have been cleared
11 and out by the time of his arraignment. But I don't know how
12 long the hospital would have kept him. It really depends on
13 what injuries he had.

14 Q. Okay. So if his injuries were severe enough to be
15 admitted, he may not have made his arraignment?

16 A. Yeah. I wouldn't even -- I wouldn't even go as far as him
17 being admitted. I mean, if he needed, like, a CT scan, we've
18 sat at Ruby for hours before just in the emergency room. But
19 if he would have been admitted, that would have definitely
20 extended it.

21 Q. Did you do anything to discourage Mr. Graciano from
22 getting medical treatment that night?

23 A. No.

24 Q. Why not?

25 A. Well, one, I wasn't there. And two, I felt like he needed

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 it.

2 MS. WAGNER: Your Honor, may I have a moment to
3 confer with my co-counsel?

4 THE COURT: You may.

5 (Pause in proceedings.)

6 BY MS. WAGNER:

7 Q. You testified a little earlier in your testimony, pretty
8 much towards the beginning, that the policy now -- you used the
9 word "now" -- is to call EMS. What was the policy or the
10 practice in 2018?

11 A. I believe --

12 Was that for the EMS decontamination? Is that what you're
13 referring to?

14 Q. Yes.

15 A. I don't know if there was one. Because our department is
16 very weird about our policy. They'll give us a policy manual
17 and then they'll tell us something in a class or we'll get an
18 email that says the policy has changed.

19 I remember the class that said, "If you spray someone,
20 just call EMS to come decontaminate them." I don't remember
21 when that class was. Prior to that, I don't know what the
22 policy was.

23 Q. Sir, did you ever personally decontaminate people you
24 pepper-sprayed?

25 A. I have not, no.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Okay. Even back in 2018?

2 A. The first person I ever pepper-sprayed was in 2019.

3 Q. Was Mr. Graciano the first person you ever saw
4 pepper-sprayed?

5 A. No.

6 Q. Did you see officers not call EMS to pepper spray pe- --
7 to decontaminate people who had been pepper-sprayed?

8 A. I don't really remember. I haven't seen a whole lot of
9 people pepper-sprayed. I'm trying to think.

10 I remember one we called -- they called EMS to scene.
11 Other than that, I don't have a whole lot of recollection. I
12 don't believe so. Because I probably wouldn't have hung around
13 during decontamination unless I had to.

14 I do recall once. I don't think it was this call. But an
15 ambulance pulled in, and I told them that we needed to
16 decontaminate someone. And the EMT asked me for Dawn dish
17 soap, because he said that's what they would use. I don't
18 remember if that was this incident or before or after this
19 incident.

20 Q. All right. And if we could turn back to page 8 of
21 Exhibit 6. In your report you wrote that there was a second
22 strike. And if you can either pull that up or look at your
23 screen.

24 About halfway down you write, "We attempted to roll him
25 over to get his hands loose, and he again struck Mr." -- or

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 "Deputy Kuretzka." Can you explain --

2 A. Yeah. Again, that's based on my personal recollection at
3 the time. That would be before Isaac came into the room, so it
4 wasn't on camera. So I don't have a personal recollection of
5 it at this time. But, I mean, I wrote it for some reason.

6 Q. But you would agree -- would you agree that it was --
7 well, I'll move on.

8 During the use of force in the -- or I'm sorry. Right
9 after the pepper spray, on Deputy Coe's camera the Defendant is
10 heard saying, "Mucho, mucho caliente." What does that mean?

11 A. I believe "very hot." I'm not sure. I know "mucho" means
12 "very." "Caliente" may mean "hot."

13 Q. In Sergeant Alexander's video that we watched a little bit
14 ago, we heard the noise of an ambulance. Do you recall that?

15 A. Yes. A siren, yes.

16 Q. I'm sorry?

17 A. It was a siren, yes. I think it was an ambulance.

18 Q. Was that ambulance noise related to your call with
19 Mr. Graciano?

20 A. No.

21 Q. Okay. And again, where is the hospital in relation to
22 where you were?

23 A. Right across the street.

24 Q. As we were watching the video today, is there any point in
25 either -- in any of the videos we saw that depicted

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Mr. Graciano doing that -- I think you called it "weird shaking
2 movement"?

3 A. I don't think so. When we -- at one time we all -- and
4 when we were still in the confined space, I remember we put
5 weight on his body to kind of restrain him. I don't think he
6 was doing it at that time.

7 Q. So you would agree it's not depicted in the video?

8 A. Yes.

9 Q. We just watched the end of Sergeant Alexander's video
10 where you-all had Mr. Graciano in the lobby, just in between
11 the two sets of doors. Do you recall the Defendant saying
12 that -- the words "He defaced my property"?

13 A. I remember hearing it on the camera. I don't have a
14 personal recollection of it.

15 Q. All right. Do you have a recollection of what he was
16 referring to?

17 A. I'm assuming his tie and nameplate.

18 Q. All right. Now, you had talked about having to offer
19 medical treatment to a person who had been -- who might have
20 injuries. Do you recall that?

21 A. Yes.

22 Q. Okay. And you also testified about your obligation to
23 decontaminate a person who has been pepper-sprayed; correct?

24 A. Yes.

25 MS. WAGNER: All right. And if we could pull up

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Exhibit 2 again. And could we play from about 20.

2 No. I'm sorry. Twenty minutes.

3 (Video played.)

4 MS. WAGNER: Can we pause that.

5 BY MS. WAGNER:

6 Q. At this point had you decontaminated Mr. Graciano or had
7 him decontaminated?

8 A. No.

9 Q. Why has he not been decontaminated at this point?

10 A. I'm assuming we thought EMS was going to do it when they
11 got there, but I don't know for sure.

12 Q. Was there any reason that you would have had to have
13 waited for EMS to decontaminate Mr. Graciano?

14 A. I guess we could have taken him to the eyewash station, or
15 there's a water hose outside.

16 Q. Is there a gallon jug of water right here?

17 A. Yeah.

18 Q. Could that have been used to decontaminate Mr. Graciano?

19 A. I mean, I guess so, yeah.

20 Q. Is decontaminating an arrestee who's been
21 pepper-sprayed --

22 Well, let me ask it this way: Is it sufficient to offer
23 to decontaminate someone who has been pepper-sprayed?

24 A. Sufficient to offer? Yes. I've seen people refuse
25 decontamination before.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. All right. Did you offer to decontaminate Mr. Graciano?

2 A. No.

3 Q. Did you hear anyone else offer to decontaminate him?

4 A. No.

5 MS. WAGNER: Could we skip forward just a little bit
6 to about 22.

7 (Video played.)

8 MS. WAGNER: Go forward a little bit more to 22:30.

9 (Video played.)

10 BY MS. WAGNER:

11 Q. We just hear one of the transport officers tell the
12 Defendant that the -- if the vitals are fine, that's all that
13 really matters. Did you take Mr. Graciano's vitals?

14 A. No.

15 Q. Did anyone, to your knowledge, take Mr. Graciano's vitals?

16 A. At this point? No.

17 Q. I want to turn back to the -- your report. You had
18 explained that you don't necessarily have to write your report
19 chronologically. Do you recall that?

20 A. Yes.

21 Q. Okay. Can you explain how -- what is the use of force
22 report for?

23 A. I thought it was an internal form to basically document
24 the use of force for documentation purposes, and that's pretty
25 much it. Documentation purposes.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Does anyone read the use of force report?

2 A. At that time it would have been Sergeant Thomas. Well, it
3 would have been a shift supervisor, Sergeant Thomas, Chief
4 Kisner.

5 Q. All right. And why would those three individuals read the
6 use of force report?

7 A. Well, it didn't have to be Sergeant Alexander. I guess it
8 could have been McRobie. Back then the policy was the shift
9 supervisor signed off on it first. And then Sergeant Thomas
10 had specialized training in use of force, so it went to him.
11 And then after it went to him, it went to the chief. I don't
12 know why it went to the chief. That was just policy.

13 Q. All right. Well, what are they reading it for? What's
14 their purpose in reading it? Not to just sign it; correct?

15 A. Right. I guess to make sure everything was okay with the
16 use of force.

17 Q. Okay. Can you explain how, if a use of force report is
18 not written chronologically, those individuals would be able to
19 assess whether the use of force was proper, within policy?

20 A. If the statement wasn't written chronologically?

21 Q. Yes.

22 A. They could have watched the video.

23 But like I said, when you were saying chronologically, I
24 think I explained, like, material statements don't [sic] have
25 to be chronological. For instance, I think in this situation

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 you're hinting at pepper spray before or after handcuffs. That
2 would be what I would consider material, so that would need to
3 be chronological. But I'm thinking more of, like, the -- you
4 know, setting the venue type things, describing the
5 environment, things like that. That's what I meant by not
6 chronological; not material statements.

7 Q. All right. So something like who arrived on scene
8 first --

9 A. Yes. Things like --

10 Q. -- might not be material in a given situation?

11 A. Things like that, yes.

12 Q. But would you agree -- I think you've just explained that
13 actions the officers took, force the officers used would be
14 material?

15 A. Yes.

16 MR. DRESBOLD: Objection. Leading.

17 THE COURT: Sustained.

18 BY MS. WAGNER:

19 Q. Would -- in your training and experience, do you include
20 your -- the actions you take during a use of force
21 chronologically?

22 A. Generally, yes.

23 Q. What circumstances would you not record a use of force --
24 your actions during a use of force in something other than a
25 chronological manner?

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 A. My actions?

2 Q. Your actions.

3 A. Actions I would include chronological.

4 I was thinking more along the lines of say they make a
5 specific threat and then do an action, then make another
6 specific threat. I may type it up as they made threats to do
7 this and this and then did this action.

8 But if I was the one actually doing it and it was a
9 material statement that needed to be in order, I would put it
10 in order.

11 Q. You explained a little bit about what a Terry frisk is.
12 Where do you receive training -- when in your career have you
13 received training on how to conduct a Terry frisk?

14 A. The police academy.

15 Q. Okay. One of the first fundamental things that you learn?

16 A. Yeah.

17 Q. And in what circumstances do you do a Terry frisk?

18 A. Generally anytime you believe someone may have a weapon.
19 Or you can -- it's not that invasive of a search. So you can
20 Terry frisk someone if you have contact with them and have a
21 lawful reason to have contact with them.

22 Q. Is there a legal reason not to conduct a Terry frisk if
23 you have a belief that they may have a weapon?

24 A. Not that I'm aware of.

25 Q. And if you believe that you -- that a person had a weapon,

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 is it your practice and your training to conduct a Terry frisk?

2 A. Yes.

3 MS. WAGNER: Judge, could I confer with my
4 co-counsel, please?

5 (Pause in proceedings.)

6 MS. WAGNER: I'm almost done, Judge.

7 THE COURT: Okay.

8 BY MS. WAGNER:

9 Q. Deputy Mongold, just to clarify: When you have arrested
10 somebody and you're about to put them in your vehicle, are you
11 conducting a Terry frisk at that time?

12 A. Yes.

13 Q. You're only --

14 I'm sorry. You are not -- describe what you do when you
15 search a person who's been arrested.

16 A. Situations vary. But usually I'll start with a Terry
17 frisk. I usually ask if they have anything that's going to
18 stick me, poke me, things like that. If they say yes, like a
19 needle, I'll take precautions to not get stuck with a needle.
20 Or like I said before, if it's a female, I'll just do, like, a
21 brief, just to make sure there's no weapons, and then transport
22 them to a female to be searched.

23 But majority of the time, if there's no extenuating
24 circumstances, I'll usually check their pockets, check their
25 waistband, try to check in between their legs as much as

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 possible, things like that.

2 Q. Okay. What training do you receive at the academy about
3 conducting searches incident to arrest?

4 MR. DREBOLD: Objection. Cumulative.

5 THE COURT: Sustained.

6 BY MS. WAGNER:

7 Q. Are you shown any videos when -- have you ever seen a
8 video that shows what the dangers of not thoroughly searching
9 an individual before you put them in your cruiser, your patrol
10 car?

11 MR. DREBOLD: Objection. Relevance.

12 THE COURT: What is the relevance of that given the
13 charges in this case, Ms. Wagner?

14 MS. WAGNER: Judge, the relevance is that he's
15 suggesting that he would simply pat down a person before he
16 would put him in a vehicle. And I think it's highly relevant
17 to this incident because Mr. Graciano was not searched prior to
18 being put in the cruiser that day. And this was a gun call,
19 and there was a use of force that has been -- that the deputy
20 indicated in his use of force narrative that he couldn't --
21 that he wasn't sure if Mr. Graciano had a weapon. And so I'm
22 trying to tease out whether that was a legitimate concern.

23 MR. DREBOLD: Judge, the question as to whether this
24 witness has viewed a video during his training dealing with
25 weapons and searches doesn't make any fact of consequence more

1 or less likely to have existed.

2 THE COURT: Overruled.

3 Ask your question again, Ms. Wagner.

4 BY MS. WAGNER:

5 Q. Have you seen any videos that show the dangers of not
6 thoroughly searching a person for a weapon before putting them
7 in your police vehicle?

8 A. Yes.

9 Q. And can you please describe those videos to the jury.

10 A. The only video I've seen in relevance of that, the guy was
11 able to pull a weapon, a handgun, but the officer was able to
12 disarm him before he was shot.

13 Q. Okay. And where was the person when he pulled the
14 handgun?

15 A. In the back of a police car.

16 MS. WAGNER: Those are all the questions we have for
17 the witness.

18 THE COURT: I assume there is cross, Mr. Dresbold.

19 MR. DRESBOLD: There will be cross.

20 THE COURT: Okay. Well, that's going to happen
21 tomorrow morning, then.

22 Ladies and gentlemen of the jury, we're going to call it a
23 day. We'll be ready to resume at 9:00 AM again tomorrow
24 morning. Thank you all for your time and attention today.

25 Please continue to refrain from discussing the case with

1 anybody. That includes between or among any of your fellow
2 jurors and any curious family, friends, neighbors, or
3 otherwise. Please continue to blame me for why you can't talk
4 about it. Please also continue to refrain from any independent
5 investigation or research efforts about the case, including any
6 social media activity or postings about your jury service.

7 I may have misspoke yesterday with respect to your
8 notepads. We do gather those up in the evening. Court
9 personnel gather those. We store them in a vault. And I know
10 they got the order reversed this morning. So my apologies for
11 any confusion. But no one sees those. They're gathered face
12 down. No one reviews them, of course. They're just stowed
13 securely in our vault. But we'll do our best to keep the order
14 straight in the morning. But you can leave those, again, face
15 down.

16 With that, have a lovely, lovely evening. We'll see
17 everyone tomorrow morning. Thank you so much.

18 THE WITNESS: May I be dismissed, sir?

19 THE COURT: Just wait one second.

20 (Jury retired from the courtroom at 5:21 PM.)

21 THE COURT: Thank you, everyone. Please be seated.

22 Take a seat one second, Deputy.

23 Deputy, you might take this as good news or bad news, I
24 guess, depending on the perspective. Because you're midstream
25 in your testimony, sir, no one can speak with you about your

1 testimony. You're basically a man without a country. I'd also
2 counsel you you're not allowed to speak to anyone about your
3 testimony. That's not just limited to the lawyers or parties
4 to this case, but that's the rest of the world.

5 THE WITNESS: Okay.

6 THE COURT: So you get a quiet evening with respect
7 to your testimony. But we'll be ready to resume with you at
8 9:00 AM tomorrow morning.

9 THE WITNESS: Yes, sir.

10 THE COURT: You can go ahead and step down, sir.
11 Thank you so much. And you can leave whatever exhibits there.
12 We'll take care of them.

13 THE WITNESS: Yeah. I've just got this.

14 THE COURT: Yeah. Perfect. Thank you, sir.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 Anything we need to take up from the Government's
18 perspective at this point?

19 MS. WAGNER: No. Thank you, Judge.

20 THE COURT: All right. Mr. Dresbold, anything from
21 the defense?

22 MR. DRESBOLD: Your Honor was going to let us know
23 about Friday.

24 THE COURT: Yes. We will not be here on Friday.
25 We'll take Friday off.

1 MR. DRESBOLD: That's all.

2 THE COURT: Okay. All right. We'll see everyone
3 tomorrow at 9:00 AM, then. Thank you.

4 (Proceedings adjourned at 5:22 PM.)

5 - - -

6 July 12, 2023, 9:03 AM

7 THE COURT: All right. We convene for day three of
8 trial. The Court notes counsel of record and Mr. Kuretzka are
9 both present.

10 Ms. Wagner, was there something we need to take up, ma'am?

11 MS. WAGNER: Yes. Could we approach, Judge?

12 THE COURT: Sure. Sure.

13 (At the bench without the Defendant present:)

14 MS. WAGNER: Last night we -- after Deputy Mongold's
15 testimony we went back and looked at his grand jury testimony.
16 And there's a material inconsistency with respect to his
17 testimony about the searches incident to arrest.

18 THE COURT: Okay.

19 MS. WAGNER: We would like to --

20 THE COURT: With respect to the incident involving
21 Mr. Graciano or the more general --

22 MS. WAGNER: The more general what was his training.
23 Specifically, he said he remembered one video. In grand jury
24 he testified agreeing that there were multiple videos they saw
25 where officers were killed --

1 THE COURT: Okay.

2 MS. WAGNER: -- and that, based on that training, it
3 was his practice to conduct searches incident to arrest for
4 male arrestees. So we'll want to clean that up.

5 THE COURT: Okay.

6 MS. WAGNER: And we've spoken with Mr. Dresbold this
7 morning, and his -- well, Mr. Boynton did. And as I understand
8 it, his position is that we could do that on redirect; he would
9 give us latitude. And if the Court would give us latitude to
10 do that, even though it would likely be beyond the scope of the
11 cross.

12 THE COURT: Scope of cross. Right.
13 You have the grand jury transcript; correct?

14 MR. DRESBOLD: Yep.

15 THE COURT: Okay. All right. Go ahead,
16 Mr. Dresbold.

17 MR. DRESBOLD: I'm fine with that plan. I also --
18 standing here thinking about it, I'm fine if they want to
19 briefly reopen direct and just do that at the end, and then I
20 cross.

21 THE COURT: Okay.

22 MR. DRESBOLD: It doesn't matter. I'm -- it wasn't
23 an issue I was planning on addressing. But I understand the
24 need to clean it up.

25 THE COURT: No. Understood.

1 Well, let's go ahead. We'll resume direct to clean that
2 up. But let's keep it limited to that.

3 MS. WAGNER: Yes.

4 THE COURT: And then we'll proceed to cross and we'll
5 go from there.

6 MS. WAGNER: Okay. Thank you.

7 THE COURT: All right. Great. Thank you all.

8 MR. BOYNTON: Thank you, Your Honor.

9 (Bench conference concludes.)

10 THE COURT: Okay. Anything further from the
11 Government's perspective we need to take up before we have
12 Deputy Mongold resume testimony?

13 MS. WAGNER: No. Thank you, Judge.

14 THE COURT: All right. Mr. Dresbold, anything from
15 the defense's standpoint?

16 MR. DRESBOLD: No, Your Honor.

17 THE COURT: All right. Can we have our jury, then,
18 please, sir. Thank you.

19 (Jury returned to courtroom at 9:06 AM.)

20 THE COURT: All right. Good morning, ladies and
21 gentlemen. Please be seated. Thank you very much. It appears
22 notepads are in good order this morning. Outstanding.

23 Deputy, if you wouldn't mind making your way all the way
24 to the witness stand, sir.

25 Good morning, sir.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 THE WITNESS: Good morning, sir.

2 THE COURT: All right. I'll remind you you remain
3 under oath, of course.

4 It was my understanding the Government actually had a
5 couple additional questions for the Deputy before they pass the
6 witness?

7 MS. WAGNER: Yes, Judge.

8 THE COURT: All right. You may proceed, Ms. Wagner.

9 MS. WAGNER: You thank.

10 DIRECT EXAMINATION

11 BY MS. WAGNER:

12 Q. Good morning, sir.

13 A. Good morning, ma'am.

14 Q. You were asked yesterday about searches incident to
15 arrest. And I believe your testimony was that sometimes you
16 would do a full and thorough search, and sometimes you would
17 just do a pat-down. Is that correct?

18 A. Yes.

19 Q. Which would you do with a male arrestee?

20 A. A full.

21 Q. All right. And you were also asked yesterday whether you
22 received any training on what can happen when an officer does
23 not conduct a thorough search.

24 A. Yes.

25 Q. And you testified that you could recall only one video, in

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 which the arrestee got to a gun but the officer ended up
2 getting the gun from him.

3 A. Yes.

4 Q. Okay. Is there anything that would refresh your
5 recollection about the rest of that training?

6 A. I don't know. I don't even think that was training. I
7 think that was just a video I watched on YouTube.

8 Q. All right.

9 MS. WAGNER: Judge, may I approach the witness?

10 THE COURT: You may.

11 BY MS. WAGNER:

12 Q. Deputy Mongold, I'm showing you what has been marked as
13 Exhibit 14 for identification purposes. This is your grand
14 jury transcript from November of 2021; correct?

15 A. Yes.

16 Q. And that's your name there on the front page?

17 A. Yes.

18 Q. If I could turn your attention to page 74.

19 THE COURT: What page was that again, Ms. Wagner?

20 MS. WAGNER: 74.

21 THE COURT: Thank you.

22 BY MS. WAGNER:

23 Q. At line 18. And I'm going to read this and would like for
24 you to read along silently.

25 A. Okay.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Q. Mr. Boynton asked you, "Did you -- did anyone search him
2 for a firearm at this point?" referring to Mr. Graciano.

3 And you answered, "Not yet at this point."

4 Mr. Boynton asked, "At some point you will need to do a
5 search incident to arrest; right?"

6 You answered, "Correct."

7 Mr. Boynton asked, "So you described a frisk to members of
8 the grand jury before, and you talked about not going into
9 somebody's pocket. Search incident to arrest, what are you
10 doing?"

11 And you answered, "You can go into someone's pocket at
12 that point -- pockets at that point."

13 Mr. Boynton asked, "You can go through everything on their
14 person; right?"

15 And you said, "Correct. If they had a handbag or things
16 like that. Anything they're taking with them to the jail or to
17 the holding facility."

18 Mr. Boynton asked, "And this is a search that you're
19 allowed to do anytime you arrest another person."

20 And you answered, "Yes."

21 And then Mr. Boynton asked, "And that's -- and what's the
22 purpose of the search incident to arrest?"

23 And you answered, "Look for weapons or any evidence of if
24 they have something on them they shouldn't have."

25 Mr. Boynton asked, "Okay. You talked about weapons.

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 You're about -- if you're arresting somebody, you're about to
2 put them in the back of your patrol car; right?"

3 You answered, "Yes."

4 Mr. Boynton asked, "And your back is going to be to them
5 as you drive them somewhere."

6 And you answered, "Yes."

7 Mr. Boynton then asked, "And in your police training,
8 you've seen videos of police officers being killed by armed
9 subjects in the back of police cars; is that right?"

10 You answered, "Yes."

11 Mr. Boynton asked, "And that's part of your training on
12 why search incident to arrests are so vital to your safety."

13 And you answered, "Yes."

14 Mr. Boynton asked, "Okay. You talked a little bit before
15 with me about, you know, individuals who had a handcuff key, a
16 video that you've seen of an individual who had a handcuff key
17 and a razor blade stored in a necklace, and he was able to kill
18 the officer by uncuffing him and getting to that weapon; is
19 that correct?"

20 You answered, "Yes."

21 Mr. Boynton asked, "Okay. These are videos that you are
22 shown at the West Virginia State Police Academy to drive home
23 the point that a search incident to arrest is vital to your
24 safety; is that correct?"

25 You answered, "Yes."

Deputy Ethan Mongold - Direct Examination (Ms. Wagner)

1 Mr. Boynton asked, "Okay. And is that true? That's what
2 you're trained on, but is that also true from your experience?
3 That's what you do in practice?"

4 And you answered, "Yes."

5 Did I read that correctly?

6 A. Yes.

7 MS. WAGNER: May I confer with co-counsel for a
8 moment?

9 THE COURT: You may.

10 BY MS. WAGNER:

11 Q. Deputy Mongold, do you agree with your prior testimony
12 before the grand jury?

13 A. Yes. I would say it's accurate. Like I said, I don't
14 recall any specific video. But we watch -- I mean, for the
15 first, like, two weeks of the police academy, that's all we
16 watch are videos of officers getting killed. So maybe I
17 remembered more then and I don't remember now. I mean, this
18 was a year and a half ago.

19 I know of instances where police officers were killed from
20 an individual in their back seat. But at this time I can't
21 remember any, like, specific video of seeing that.

22 Q. Okay. Thank you.

23 MS. WAGNER: Judge, may I retrieve that exhibit?

24 THE COURT: You may.

25 MS. WAGNER: Thank you.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 THE COURT: All right. Mr. Dresbold?

2 MR. DRESBOLD: Thank you.

3 CROSS-EXAMINATION

4 BY MR. DRESBOLD:

5 Q. Good morning, Deputy.

6 A. Good morning, sir.

7 Q. How old are you?

8 A. I'm sorry?

9 Q. How old are you?

10 A. Thirty-two, sir.

11 Q. How long have you been in law enforcement?

12 A. A little over ten years.

13 Q. Always at the same department?

14 A. No, sir.

15 Q. Where were you before?

16 A. The Moorefield Police Department.

17 Q. From when to when?

18 A. March of 2013 until April of 2016.

19 Q. And then in 2016?

20 A. 2016 until current I've been with the Monongalia County
21 Sheriff's Office.

22 Q. Okay. And that's your current job.

23 A. Yes, sir.

24 Q. And you still work night shift.

25 A. Yes, sir.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. You know Lance Kuretza.

2 A. Yes, sir.

3 Q. You met him at the sheriff's office.

4 A. Yes, sir.

5 Q. Okay. Was he there before you, or did he come after you?

6 A. Before me, sir.

7 Q. Okay. And you guys were the same rank; right?

8 A. Yes, sir.

9 Q. And no one was in charge just based on seniority or
10 anything like that; right?

11 A. Correct.

12 Q. And when you worked with Deputy Kuretza, you guys worked
13 as equals.

14 A. Yes.

15 Q. On January 20th of 2018, it was a normal shift.

16 A. Yes.

17 Q. And you were just going about your evening working as a
18 deputy.

19 A. Yes.

20 Q. And you were taking calls like everyone else.

21 A. Yes.

22 Q. And nothing struck you as unusual going into that evening.

23 A. No.

24 Q. And no one's actions that evening, at least prior to the
25 phone call for the Residence Inn, were unusual.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. No.

2 Q. And so when you went to that call to the Residence Inn,
3 you were informed that there was a disturbance.

4 A. Yes.

5 Q. Some sort of fight.

6 A. Correct.

7 Q. Possibly involving a firearm.

8 A. Correct.

9 Q. But you respond to lots of disturbances.

10 A. Yes.

11 Q. And lots of possible fights involving firearms.

12 A. Yes. I would say that's accurate.

13 Q. Nothing about that alarmed you.

14 A. Heightened awareness since there was a mention of a
15 firearm, but nothing out of the ordinary.

16 Q. Heightened awareness. Being on alert, but not alarm.

17 A. Yes.

18 Q. And five of you from the department went to the Residence
19 Inn.

20 A. Yes.

21 Q. It was you, Deputy Kuretza, Deputy Isaac Coe, and two
22 sergeants.

23 A. Yes.

24 Q. Sergeant Alexander and Sergeant McRobie.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And you set out that evening to do your job.

2 A. Yes.

3 Q. Why did you become a cop?

4 A. Various reasons. I like the type of work. Government
5 benefits. Things like that.

6 Q. When you say you like the type of work, what do you mean?

7 A. Something different every day. I'm not really confined to
8 an office and get to go out and drive around and answer calls
9 and meet a lot of people, interact with a lot of people.

10 Q. You get to help people; right?

11 A. Correct.

12 Q. That's a benefit of the job; right?

13 A. Yes.

14 Q. Not every job you get to go out and make a difference;
15 right?

16 A. Yes.

17 Q. And do you still feel like you do that?

18 A. Yes. To an extent.

19 Q. To an extent. It's not as glorified as you thought it
20 might be?

21 A. No.

22 Q. Okay. But you still feel good about the work you do.

23 A. Yes.

24 Q. And you set out to be an honest cop.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Right? I'm using that word colloquially. But I mean
2 sheriff's deputy. Right?

3 A. Yes.

4 Q. And you do your best.

5 A. Yes.

6 Q. And that's what you expect out of everyone.

7 A. Yes.

8 Q. And you were trained in multiple training facilities
9 before eventually -- before now. You've gone through lots of
10 training.

11 A. Yes.

12 Q. Okay. And you've been trained specifically on use of
13 force.

14 A. Yes.

15 Q. And even more specifically, you've been trained by
16 Sergeant Thomas.

17 A. Yes.

18 Q. And that would be on the county use of force policy as
19 part of the manual you received when you joined the Monongalia
20 Sheriff's Department.

21 A. Yes.

22 Q. And you're familiar with that policy.

23 A. Yes.

24 Q. And as part of that policy, you have to be familiar with
25 that policy.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. Right?

3 And you're required to follow it.

4 A. Correct.

5 Q. Now, you would agree with me that sometimes practice and
6 policy aren't the same.

7 A. Absolutely, yes.

8 Q. And certainly, at least in 2018, practice sometimes
9 trumped policy.

10 A. Yes.

11 Q. And people would follow the practice that they learned.

12 A. Yes.

13 Q. Right?

14 And certainly, they would do as their supervisors told
15 them.

16 A. Yes.

17 Q. And they would do kind of what everyone else did.

18 A. Correct.

19 Q. Right?

20 But in general, you were guided by the policy.

21 A. Yes.

22 Q. You said something yesterday that struck me. And I had
23 said something similar earlier in the trial. You said, when
24 you were talking about -- in going through your use of force,
25 you said, "Based on my personal perception at the time, I

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 believed this. Obviously, watching the body cam now, I was
2 wrong."

3 Do you remember saying something like that yesterday?

4 A. Yes.

5 Q. How does personal perception play into your job?

6 A. Everyone has a different perception of what's going on
7 based on their own personal experience or based on their own
8 training that they've taken. As far as, you know, my personal
9 perception during this incident -- at least if there's, like, a
10 high-stress, high-adrenaline event, I'm going to perceive
11 something differently than what I would perceive under normal
12 conditions.

13 Q. So in your experience dealing with people in your job and
14 just dealing with people in your everyday life, is it your
15 belief or your takeaway that sometimes two or three people
16 could perceive the same event differently?

17 A. Oh, absolutely. Yes.

18 Q. Is that common?

19 A. Yes.

20 Q. Tell me about that.

21 A. I mean, interviewing witnesses in general, I mean,
22 everyone is -- usually has a general agreement on what happened
23 overall; but sometimes, like, details they might get different
24 or -- I'm sorry -- they might be different based on the person
25 you're asking.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. So if you interviewed, say, four witnesses to an event, is
2 it possible that they'd all have some basic facts that they
3 could all agree on, but there were some other things that were
4 inconsistent?

5 A. Yes.

6 Q. Does that happen often?

7 A. Yes.

8 Q. And you don't -- your takeaway from that isn't three
9 people are lying; right?

10 A. Correct.

11 Q. What's your takeaway usually?

12 A. Everyone perceives something different, or everyone
13 perceives things in different ways.

14 Q. Okay. There's -- different people perceive the same event
15 differently often.

16 A. Yes.

17 Q. And that doesn't mean they're lying about their
18 perception; it just means that's their perception at the time.

19 A. Correct.

20 Q. Can new information change somebody's perspective?

21 A. Yes.

22 Q. Right?

23 And as you hear from more people and you see more
24 evidence, you're willing to adapt.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Right?

2 You have a perception, but you're not so close-minded to
3 think, "I'm always right." Right?

4 A. Correct.

5 Q. And even when an event is happening, there's things that
6 get missed.

7 A. Yes.

8 Q. Certainly, as you described this event as a high-stress
9 event, there's things that you can sit here today and say "I
10 did not see but I believed they happened."

11 A. Yes.

12 Q. And sometimes you think you see something that wasn't
13 there.

14 A. I would agree with that, yes.

15 Q. Right?

16 Sometimes you would even say, "I know that this happened."
17 And then when confronted with new evidence, you have to say, "I
18 was wrong."

19 A. Yes.

20 Q. That's happened.

21 A. That's happened to me, yes.

22 Q. It's kind of a human experience; right?

23 A. Yes.

24 Q. And certainly part of your job as a sheriff's deputy.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And you're willing to say that when new evidence comes.

2 A. Yes.

3 Q. Perception also is one of the things that's outlined in
4 the manual as a factor to be taken into account when
5 determining the proper force; is that correct?

6 A. Yes.

7 Q. You have a binder in front of you. I'm going to ask that
8 you pull it out and turn to Exhibit 8.

9 MR. DRESBOLD: If you wouldn't mind pulling up 8, 14.

10 THE WITNESS: I'm sorry. What was the page number?

11 BY MR. DRESBOLD:

12 Q. It's going to be Exhibit 8, page 14. And it will be on
13 your screen as well, if you have a screen in front of you.

14 MR. DRESBOLD: Would you mind highlighting that top
15 white box.

16 BY MR. DRESBOLD:

17 Q. So we went over this exhibit yesterday. I don't know that
18 anyone asked you about it. But do you recognize this exhibit,
19 Exhibit 8?

20 A. Yes. I believe this is the old use of force policy.

21 Q. This is an older version of the use of force policy that
22 you've seen.

23 A. Yes.

24 Q. Okay. And that's the use of force policy at the sheriff's
25 department.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And it gets updated over time and changed over time?

3 A. Yes.

4 Q. There's been some pretty serious recent updates; right?

5 A. There was one major update a few years ago. And I think
6 there's been a few minor updates since then.

7 Q. Okay. But you recognize Exhibit 8 as the kind of document
8 you would have received during your training.

9 A. Yes.

10 Q. And when I -- when we turn to 8, 14, in that box, do you
11 recognize that page that -- page 14 at all?

12 A. Yes.

13 Q. Okay. You see that kind of as, like, a chart, a general
14 guideline for actions that necessitate certain levels of force.

15 A. Yes.

16 Q. Okay. And on the top, where it says "Important," it says,
17 "The list of officer response is not intended to be in any
18 specific order but reflects the amount of resistance
19 encountered. The officer will choose the necessary response to
20 gain control of the situation based on department policy, his
21 or her physical capabilities, perception, training, and
22 experience." Right?

23 A. Yes.

24 Q. So your perception of the events, as a matter of policy,
25 plays into the amount of force that's justified.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And the amount of force that's within policy.

3 A. Yes.

4 Q. Right?

5 And of course, your perception is dictated by a number of
6 things; right?

7 A. Correct.

8 Q. One of them is your training.

9 A. Yes.

10 Q. One of them is your life experience.

11 A. Yes.

12 Q. And then kind of your physical feelings going into
13 something; right?

14 A. Yes.

15 Q. You said that certain events might get your heart pumping.

16 A. Yes.

17 Q. Your adrenaline going.

18 A. Yes.

19 Q. Now, when that happens, when you have these physiological
20 changes, right, when your heart goes or your chemicals release
21 in your brain, your body actually feels different a little bit.

22 A. Yes.

23 Q. You perceive things differently.

24 A. Yes.

25 Q. Things are going fast sometimes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. But at the same time, maybe it feels like time is slowing
3 down.

4 A. Yes.

5 Q. It's a strange feeling.

6 A. It is.

7 Q. It's an altered state of perception.

8 A. Yes.

9 Q. When you went to the hotel on January 20th, 2018, you
10 were not in that altered state.

11 A. No.

12 Q. This was a typical call, and you were on heightened alert.

13 A. Yes.

14 Q. But you were certainly within all your faculties.

15 A. Yes.

16 Q. You didn't think you'd have any issue remembering what was
17 going on.

18 A. Correct.

19 Q. And you were able to perform your job.

20 A. Yes.

21 Q. And when you went to the hotel and, along with your fellow
22 deputies, approached the group of men who were there, you felt
23 in control.

24 A. Yes.

25 Q. And although there was this note that, you know, there may

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 be a gun involved, you were still able to handle the situation
2 based on your training.

3 A. Yes.

4 Q. And at some point you became aware that these people were
5 no longer welcomed at the hotel?

6 A. Yes.

7 Q. And it was part of your duty to help them understand that
8 and leave.

9 A. Yes.

10 Q. And that's what you were doing.

11 A. Yes.

12 Q. But you also wanted to maintain your safety.

13 A. Yes.

14 Q. The safety of everyone else.

15 A. Yes.

16 Q. And make sure that nothing more was brewing here.

17 A. Correct.

18 Q. Right?

19 Because even as we watch the videos, you could see some
20 back and forth and tit for tat between some of the men.

21 A. Yes.

22 Q. But nothing that got out of control.

23 A. Correct.

24 Q. You came to understand that there was an additional room
25 that was also under this reservation.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And you came to understand that the occupants of that room
3 were also being evicted.

4 A. Yes.

5 Q. And so at some point a decision was made that you would
6 enter that room.

7 A. Yes.

8 Q. And you'd find out what's going on in there.

9 A. Yes.

10 Q. And if there was a person in there who wasn't welcome at
11 the hotel, he would be evicted.

12 A. Yes.

13 Q. If there were multiple people in there who weren't welcome
14 in the hotel, they would be evicted.

15 A. Yes.

16 Q. And so you and Deputy Kuretza entered the room.

17 A. Yes.

18 Q. You believed you were legally justified to do so.

19 A. I believe we were, yes.

20 Q. That was your perception at the time.

21 A. Yes.

22 Q. That's still your perception today.

23 A. I think so. I know there's been some disagreement, but I
24 believe so.

25 Q. But your perception.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. You thought you were doing the right thing.

3 A. Yes.

4 Q. And you still think that.

5 A. Yes.

6 Q. You weren't wearing a body cam.

7 A. I was not.

8 Q. And it wasn't because you were trying to hide something;
9 right?

10 A. Correct.

11 Q. It was because there was one station available to all the
12 deputies at the department to use for body cam purposes.

13 A. Yes.

14 Q. And at the beginning of your shift, you had a body cam
15 that was 90-plus percent full.

16 A. Yes.

17 Q. And are body cams individually assigned?

18 A. Yes.

19 Q. So your body cam is your body cam.

20 A. Yes.

21 Q. And there was no requirement at that time to dump it every
22 shift.

23 A. I think there was, like, a verbal thing that you should
24 dump it every shift, but it was not feasible. Because you have
25 six people trying to dump it every shift, and the computer just

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 wasn't capable of that.

2 Q. Not practical?

3 A. No.

4 Q. And not what the practice was.

5 A. Correct.

6 Q. And so that's not what you did.

7 A. Correct.

8 Q. But when it was that full, it was time to dump it.

9 A. Yes.

10 Q. And you had your camera hooked up to that one computer
11 station, dumping the old stuff, when this call came in.

12 A. Yes.

13 Q. Now, there was some testimony yesterday that I'd like to
14 ask you about. Not your testimony. But there was testimony
15 that once -- back then, in 2018, once something was dumped,
16 that you could go back to your computer or any computer and
17 just pull it up.

18 A. No.

19 Q. Tell me where you were able to view body cam back then.

20 A. One computer near our reception station.

21 Q. One computer.

22 A. Yes.

23 Q. And that was the same computer that you were dumping.

24 A. Yes.

25 Q. And that was the same computer that everyone had to use.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And when someone is dumping their camera, no one else
3 could use that computer.

4 A. Correct.

5 Q. Right?

6 It was not fast.

7 A. Yes.

8 Q. Yes, it was not fast?

9 A. It was very slow.

10 Q. Okay. And there was no cloud or general access to these
11 body cams. It was only on that computer.

12 A. It was -- I believe it's stored on a server, but you can
13 only access the server from that computer.

14 Q. And so when you had to burn your body cam and turn it in,
15 you could only do it on that computer.

16 A. Yes.

17 Q. You did not have access to other people's body cams.

18 A. No.

19 Q. And you did not have access to the files that they would
20 have dumped off of their computer.

21 A. Correct.

22 Q. The only way to get access is to go to that officer and
23 ask them to show it to you.

24 A. Or a supervisor, yes.

25 Q. Or a supervisor.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And they'd show it to you on that computer.

3 A. Yes.

4 Q. Okay. That changed.

5 A. Yes, it did.

6 Q. Now everyone can dump on their own computers?

7 A. No. There's -- there was -- we bought, like, an
8 eight-port dock that everyone could use. It broke probably
9 five or six times. They sent it back, got another one. It
10 broke again. They sent it back. Now they have three computers
11 where you can dump at. But you can view your own from any
12 computer in the department.

13 Q. Okay. And the policy now requires everyone involved in a
14 use of force to view all of the body cam before writing their
15 use of force report.

16 A. Yes.

17 Q. That includes other deputies' body cams?

18 A. Yes.

19 Q. That was not the policy then.

20 A. Correct.

21 Q. In fact, that was not the practice then.

22 A. Correct.

23 Q. In fact, it would have been impractical.

24 A. Yes.

25 Q. It wasn't done.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Correct.

2 Q. You wrote your report that night without viewing anyone's
3 body cam.

4 A. Yes.

5 Q. And is it your expectation, based on your understanding of
6 the practice, that everyone would have done the same?

7 A. Yes.

8 Q. Okay. You wrote your report that night without colluding
9 with anyone else.

10 A. Correct.

11 Q. You didn't discuss what was going to go into your use of
12 force report with Lance Kuretza or anyone else.

13 A. Correct.

14 Q. You wrote it on your own?

15 A. Yes.

16 Q. It was based on your perception of what happened that
17 evening.

18 A. Yes.

19 Q. And it was written in good faith?

20 A. Yes.

21 Q. It was written knowing that somebody was going to review
22 it?

23 A. Yes.

24 Q. It was written knowing that somebody was going to compare
25 it to body cams eventually?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And it was written knowing that it could be used in the
3 future.

4 A. I was under the impression it was an internal form but
5 that it could be used in the future for internal purposes, yes.

6 Q. Even for internal purposes, if something was wrong, it
7 could be used again.

8 A. Yes.

9 Q. And you also understood the procedure as far as the use of
10 force review at the time.

11 A. Yes.

12 Q. You understood that the officer either who made the arrest
13 or who used the significant force was the officer responsible
14 for filling out a use of force report.

15 A. Yes.

16 Q. And that report details his use of force and also the use
17 of force that he perceives from other officers.

18 A. Yes.

19 Q. When Lance filled out his use of force form that evening,
20 he didn't ask you questions, did he?

21 A. Not that I recall.

22 Q. You didn't help him with the form?

23 A. No.

24 Q. You didn't sign off on the form.

25 A. I signed my own statement. That was it.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Right. So you didn't even see the form that night.

2 A. I don't believe so, no.

3 Q. Okay. Where the body would have been X'd on --

4 A. Correct.

5 Q. -- and so forth, you didn't see that that night.

6 A. No.

7 Q. Your duty, as you understood it, was to write your report,
8 get it to Lance so that he could compile everything and get it
9 to a sergeant.

10 A. Yes.

11 Q. That had to be done that shift.

12 A. By the end of shift, yes.

13 Q. That was policy and practice.

14 A. Yes.

15 Q. And so when you wrote that use of force statement, you did
16 so based on your best memory, based on your perception of what
17 you had just seen and experienced that evening.

18 A. Yes.

19 Q. Is it fair to say your memory of that evening is better --
20 or was better then, that night, than it is today, five years
21 later?

22 A. Absolutely, yes.

23 Q. All right. You had a much clearer memory of the events as
24 you perceived them that night.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And that's what you wrote.

2 A. Yes.

3 Q. Now, how -- when you turn in a use of force to Lance and
4 then he -- he sends it up to the sergeant, it's your
5 understanding, based on both policy and practice, that the
6 sergeant might have questions.

7 A. Yes.

8 Q. And you have had times where somebody has come to you and
9 asked you questions about a use of force.

10 A. Yes.

11 Q. And you have had times where somebody has asked you to
12 either amend or clarify or add more to a statement.

13 A. I don't believe a written statement, no.

14 Q. Are you familiar with that happening in the department?

15 A. Yes, it has happened in the department.

16 Q. And that's part of policy; right?

17 A. Yes.

18 Q. Almost -- if there's questions, you're ready to answer
19 them.

20 A. Yes.

21 Q. And you wouldn't be offended if somebody came to you and
22 said, "Would you write a little more" --

23 A. No.

24 Q. -- or "Would you tell me a little more about this."

25 A. I would not be offended, no.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. The purpose is to be as clear as possible and to write
2 down what you remember as you perceived it.

3 A. Yes.

4 Q. Nobody, after you turned in that use of force to Lance --
5 And I imagine you didn't physically hand it to him, did
6 you?

7 A. I think I handed him my statement.

8 Q. Okay. Either that or you put it in his mailbox, one of
9 the two?

10 A. One of the two. Or I may have left it on the printer and
11 just told him to get it off the printer. I know he somehow got
12 my statement.

13 Q. Somehow you made sure that he got it.

14 A. Yes.

15 Q. Okay. And so if somebody had questions or anything, they
16 would have followed up with you.

17 A. Yes.

18 Q. Or you would have expected that at least.

19 A. Yes.

20 Q. But no one did.

21 A. Yes, they did.

22 Q. When?

23 A. Probably a week or two later.

24 Q. Who was that?

25 A. Lieutenant Yaskoweak.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Okay. And he asked you to confirm that that's how you
2 remembered it?

3 A. He didn't read the statement.

4 MS. WAGNER: Judge, we would object. This calls for
5 hearsay.

6 THE COURT: How does it not, Mr. Dresbold?

7 MR. DRESBOLD: Well, I guess it's really for the
8 effect on the listener. But I'll move on from it.

9 THE COURT: Understood. Sustained.

10 BY MR. DRESBOLD:

11 Q. You never did amend your statement.

12 A. No, I did not.

13 Q. And so -- and you never -- and like you said, you didn't
14 review any body cams even after -- like, immediately after
15 turning in the statement.

16 A. I did not, no.

17 Q. And you didn't talk to Lance, you know, about your
18 statement after you handed it to him.

19 A. No.

20 Q. Okay. He didn't ask any questions.

21 A. No.

22 Q. That evening, then, you moved on; right?

23 A. Yes.

24 Q. And you kept doing your job.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Nowhere in your statement do you note that you believed
2 that you were witnessing a constitutional violation.

3 A. Correct.

4 Q. Nowhere in your statement do you note that you were
5 witnessing an improper use of force.

6 A. Correct.

7 Q. You didn't perceive either of those to have happened.

8 A. Correct.

9 Q. You were aware at least of the physical injuries that you
10 could see on Mr. Graciano that evening.

11 A. Yes.

12 Q. In your mind, all of those injuries resulted from things
13 that you observed.

14 A. I don't know. I --

15 Q. I'll ask it a different way.

16 A. I saw that one punch. But the rest of his injuries, I
17 really didn't know what they came from.

18 Q. You didn't ask any questions to Lance or anyone else about
19 how did this injury happen or that injury happen.

20 A. No, I did not.

21 Q. Right?

22 You saw the injuries, and you assumed they all happened
23 during the use of force.

24 A. Yes.

25 Q. And that was the use of force that you perceived to be

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 constitutional.

2 A. Yes.

3 Q. So you enter that room, Room 327 at the Residence Inn;
4 right?

5 A. Yes.

6 Q. And when you entered that room, you were still feeling
7 pretty similarly to how you felt before you entered the room.

8 A. Yes.

9 Q. You were on heightened alert because of the mention of a
10 gun. Maybe a little less alert.

11 A. Yes.

12 Q. But you were still aware of the situation.

13 A. Yes.

14 Q. You were still going into a room where you didn't know
15 what was on the other side of the door.

16 A. Yes.

17 Q. Right?

18 And you were taking precautions.

19 A. Correct.

20 Q. First thing you did when you entered the room was you
21 looked around.

22 A. Yes.

23 Q. Right?

24 And I saw kind of Lance walked in kind of one way, and you
25 walked in kind of another way. Is that a tactic?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. I believe I went to the bathroom just to clear the room,
2 make sure no one else was in there.

3 Q. Okay. Made sure that no one else was in the room.

4 A. Yes.

5 Q. And no one else was in the room.

6 A. Correct.

7 Q. Upon entering the room, Deputy Kuretzka announced himself
8 as a sheriff's deputy.

9 A. Yes.

10 Q. And I'll pick up kind of where you wrote in your report --
11 or before we do that, he announced himself as a sheriff's
12 deputy.

13 A. Yes.

14 Q. Why? What's the purpose of that?

15 A. To let anyone know that the police are there and that
16 we're the police and not other people.

17 Q. Why is that important?

18 A. If you enter a room or knock on a door at night or
19 something like that, you want people to know that, you know,
20 it's the police so they don't, you know, try to do anything
21 that they would do to an intruder or anything like that.

22 Q. Was he quiet about saying that they were the sheriffs?

23 A. No.

24 Q. It was loud; right?

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. It was meant to alert anyone in the room sheriffs are
2 present.

3 A. Yes.

4 Q. Police are present.

5 A. Yes.

6 Q. Because police presence in itself is the lowest level of
7 force.

8 A. Yes.

9 Q. Right?

10 And typically police presence changes a situation.

11 A. Correct.

12 Q. Right?

13 Simply announcing that the police are there gains
14 compliance in most situations.

15 A. Yes.

16 Q. And so it's within your training to announce loudly,
17 "Police," "Sheriffs." Right?

18 A. Correct.

19 Q. And that's what happened.

20 A. Yes.

21 Q. When he approached the person on the bed, you, at that
22 point, did not know whether that person was sleeping, passed
23 out, in need of help, or faking it.

24 A. Correct.

25 Q. All right. Could have been any of those things.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And it was important, based on what needed to happen as
3 far as evicting that person and also making sure of which one
4 of those things it was, that somebody approach that person.

5 A. Yes.

6 Q. And make an attempt to contact that person.

7 A. Yes.

8 Q. And wake that person up.

9 A. Yes.

10 Q. Again, we don't know if that person was part of whatever
11 happened before.

12 A. Correct.

13 Q. We don't know if that person was armed.

14 A. Correct.

15 Q. We don't know if that person was dangerous.

16 A. Correct.

17 Q. We don't know if they were in their right mind.

18 A. Correct.

19 Q. But we knew that they should be woken up.

20 A. Yes.

21 Q. And so that's what happened.

22 A. Yes.

23 Q. Or an attempt at that is what happened.

24 A. Yes.

25 Q. And while that was happening, the person,

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Quintin Graciano, started kind of flailing his arms and making
2 noises.

3 A. Yes.

4 Q. And you and Deputy Kuretza were continuing your efforts to
5 wake that person up.

6 A. Yes.

7 Q. As he was flailing, Deputy Kuretza continued to announce
8 himself as a sheriff.

9 A. Yes.

10 Q. At least five times as I saw it on his video. You watched
11 that video; right?

12 A. I did. I didn't keep count, but it was multiple times.

13 Q. Multiple times he said "Sheriffs," "Sheriff's deputy,"
14 "Sheriff's office," something like that.

15 A. Yes.

16 Q. And you perceived that it was clear that the two of you
17 were making yourselves known as sheriffs.

18 A. Yes.

19 Q. You saw this person flailing and Deputy Kuretza continuing
20 to identify himself. You also heard Deputy Kuretza start
21 giving commands.

22 A. Yes.

23 Q. He said, "Wake up."

24 A. Yes.

25 Q. "Sheriff's office. Wake up."

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. He said, "Stop flailing."

3 A. Something --

4 Q. Or something like that. "Stop hitting me," something --

5 A. Something like that, yes.

6 Q. He said something to the effect of "If you keep swinging,
7 I'm going to put you in handcuffs."

8 A. Yes.

9 Q. He didn't say, "I'm going to punch you."

10 A. No.

11 Q. He didn't say, "I'm going to knock you out."

12 A. No.

13 Q. "I'm not going to hurt you." [sic]

14 A. No.

15 Q. Right?

16 "I'm going to put you in handcuffs."

17 A. Yes.

18 Q. Right?

19 At that point it was your perception that the person
20 sleeping was aware that there were sheriff deputies in the
21 room.

22 A. Yes.

23 Q. That's because you saw his eyes open.

24 A. Yes.

25 Q. You saw him look at you and Deputy Kuretza.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And then you perceived him to make motions and moves
3 having been aware of your presence.

4 A. Yes.

5 Q. You perceived that then?

6 A. Yes.

7 Q. You perceive that now.

8 A. Yes.

9 Q. After Deputy Kuretzka said, "Sheriff's department. Stop or
10 I'm going to put you in handcuffs," something to that effect --

11 A. Yes.

12 Q. -- he didn't stop.

13 A. Correct.

14 Q. He kept flailing and swinging.

15 A. Yes. I believe so.

16 Q. Right?

17 In fact, when you spoke to Sergeant Alexander later in the
18 evening, you said, "He woke up swinging."

19 A. Yes.

20 Q. You said, "He knew we were deputies."

21 A. I may have said that. I don't have a personal
22 recollection of that, but...

23 Q. Did you watch Sergeant's Alexander's body cam?

24 A. Not all of it.

25 Q. Okay. Fair enough. But that was your perception then;

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 that's your perception now.

2 A. Yes.

3 Q. And so he continued despite your belief that he knew you
4 were deputies and that Lance Kuretzka told him to stop.

5 A. Yes.

6 Q. At that point it was your perception that there was
7 probable cause to make an arrest.

8 A. Yes.

9 Q. What is probable cause to make an arrest? What does that
10 term mean?

11 A. Probable cause would be what a reasonable person would
12 perceive as a violation of a crime.

13 Q. Okay. So when you, as an officer, view what a reasonable
14 person would see as a violation of a -- of the law --

15 A. Yes.

16 Q. -- you perceive yourself as authorized to make an arrest.

17 A. Yes.

18 Q. And justified in making an arrest.

19 A. Yes.

20 Q. And constitutionally permitted to make an arrest.

21 MS. WAGNER: Objection, Judge. That calls for a
22 legal conclusion.

23 MR. DRESBOLD: Goes to his perception.

24 THE COURT: Overruled.

25

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 BY MR. DRESBOLD:

2 Q. That's your perception; right?

3 A. Yes.

4 Q. And that was your perception that night.

5 A. Yes.

6 Q. And so you believed that was a lawful attempt to make an
7 arrest on your part and Deputy Kuretza's.

8 A. Yes.

9 Q. Because swinging at an officer knowing or believ- -- that
10 he was in the room, that he was an officer, you believe is a
11 violation of West Virginia law.

12 A. Yes.

13 Q. And so at that point you and Deputy Kuretza were
14 attempting to effectuate an arrest.

15 A. Yes.

16 Q. At that point, the body cam went off.

17 A. Yes.

18 Q. And you didn't see how it went off.

19 A. I did not.

20 Q. Okay. But it was your memory and your perception of that
21 night was it went off during the flailing.

22 A. Yes.

23 Q. Somebody must have bumped it.

24 A. Yes. That night, that was my perception, yes.

25 Q. But just because the body cam went off doesn't mean your

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 memory went off; right?

2 A. Correct.

3 Q. And so after the body cam went off, you continued to
4 attempt to effectuate the arrest.

5 A. Yes.

6 Q. Okay. And you met resistance.

7 A. Yes.

8 Q. And that resistance continued for a period of time.

9 A. Yes.

10 Q. At that moment when the flailing started, when after you
11 perceive this person as knowing that there was law enforcement
12 there and continuing to resist, after you perceive there being
13 probable cause to arrest, did you start feeling different
14 inside?

15 A. Yes.

16 Q. Describe that to me.

17 A. I mean, it's like an instant adrenaline spike.

18 Q. As soon as the resistance happens, there's an instant
19 adrenaline spike.

20 A. Yes.

21 Q. You start feeling different.

22 A. Yes.

23 Q. Like we said before, time starts feeling different.

24 A. Yes.

25 Q. Your perception starts feeling different.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. Did you perceive danger at that moment?

3 A. Yes.

4 Q. Why?

5 A. If you're attempting to arrest someone and they're
6 resisting arrest, there's always the question as to why they're
7 resisting arrest. Is it because they want to hurt police? Is
8 it because they don't like police? Is it because they don't
9 know what's going on? I mean, there's any number of
10 possibilities.

11 Q. They want to hurt the police. They don't like the police.
12 They don't like what's going on.

13 A. Or they don't know what's going on, yes.

14 Q. None of those are positive things.

15 A. No.

16 Q. Something negative is happening.

17 A. Yes.

18 Q. And it's your job at that point to quell it.

19 A. Yes.

20 Q. Right?

21 To get this situation under control.

22 A. Yes.

23 Q. And so, naturally, your body reacts to that.

24 A. Yes.

25 Q. You're not the kind of guy who's been in a lot of fights.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. I'm sorry?

2 Q. You haven't been in a lot of fights in your life.

3 A. I have not, no.

4 Q. Right?

5 And you haven't had negative interactions with law
6 enforcement in your life.

7 A. I have not, no.

8 Q. Right?

9 You've led a pretty clean life.

10 A. Yes.

11 Q. And so to be in this situation was unusual for you.

12 A. Not in the course of my work. I have been in those
13 situations before. Not too many. But I have been in them
14 before.

15 Q. But it's certainly not every day.

16 A. Correct.

17 Q. And it's a different kind of feeling.

18 A. Yes.

19 Q. And it's a kind of feeling that you actually have to work
20 to control.

21 A. Yes.

22 Q. Otherwise you might perceive things that aren't there?

23 A. Yes.

24 Q. Or perceive things differently than you would have in a
25 different situation.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. Okay. So as the incident continued, your altered state of
3 perception, did it increase or decrease?

4 A. My altered state of perception?

5 Q. Right. Do you feel more adrenaline as it was going or
6 less?

7 A. More, yes.

8 Q. More. And so as the incident progressed for seconds to
9 minutes and so forth, you were feeling more worked up.

10 A. Yes.

11 Q. Fatigue also was starting to set in.

12 A. I guess. Like, we were breathing hard. So the
13 cardiovascular, whatever that would be: fatigue or exhaustion
14 or however you want to characterize it.

15 Q. This was no longer an easy situation.

16 A. No.

17 Q. You were in a fight.

18 A. Yes.

19 Q. Eventually, as you're wrestling with the suspect or the
20 subject, more officers enter the room?

21 A. Yes.

22 Q. Right. You did not have him under control when it was
23 just two of you.

24 A. Correct.

25 Q. A third officer, Officer Coe, entered the room and

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 assisted you.

2 A. Yes.

3 Q. And even with the three officers in there, control didn't
4 come easy.

5 A. Correct.

6 Q. And it didn't come immediately.

7 A. Correct.

8 Q. And as you were gaining control, you were still feeling
9 this altered state of perception.

10 A. Yes.

11 Q. But Deputy Coe was in there; and eventually, you were able
12 to get handcuffs on Mr. Graciano.

13 A. Yes.

14 Q. And even after you got handcuffs on him, there was still
15 resistance.

16 A. I would say so, yes.

17 Q. You certainly perceived so at the time.

18 A. Yes, I did.

19 Q. And you perceive it now.

20 A. Yes.

21 Q. And so the three of you...

22 Just getting the handcuffs on didn't -- didn't eliminate
23 that feeling.

24 A. It started to come down, but it was still there.

25 Q. Still there; right? The adrenaline was still going? Your

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 heart was still pumping?

2 A. Yes.

3 Q. And you were breathing heavy, like you said.

4 A. Yes.

5 Q. Right?

6 Yesterday you said that -- I wrote it down. You said, "It
7 took all three of us to subdue him, and we were all winded,
8 trying to catch our breath." Is that your memory?

9 A. Yes.

10 Q. Okay. "Winded" meaning you were out of breath.

11 A. Yes.

12 Q. This was an intense situation for you.

13 A. Yes.

14 Q. You helped in the removal of Mr. Graciano from the room?

15 A. Yeah. I attempted to. It was difficult. With trying to
16 move someone, two people usually do it. A third person, it's
17 kind of difficult to get hands on to actually assist without
18 actually just being in the way. But I was there behind them,
19 yes.

20 Q. It appeared as though they were having a hard time.

21 A. Yes.

22 Q. That was your perception.

23 A. Yes.

24 Q. And that's still your perception.

25 A. Yeah. They were having a difficult time removing him.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. When the thr- -- four of you, I guess, exited the room,
2 more body cams picked up that exit.

3 A. Yes.

4 Q. And at that point the goal was to get Mr. Graciano out of
5 the hotel as safely and quickly as possible.

6 A. Yes.

7 Q. And no one said that was the goal, but you understood it.

8 A. Yes.

9 Q. And that was how everyone was proceeding.

10 A. Yes.

11 Q. Right?

12 It appeared to you that evening that that was everyone's
13 purpose.

14 A. Yes.

15 Q. And that they were acting towards that purpose.

16 A. Yes.

17 Q. And that Mr. Graciano was frustrating that purpose.

18 A. Frustrating as in how?

19 Q. That he was making it difficult.

20 A. Yes.

21 Q. And that continued, that removal process -- that difficult
22 removal process continued for about ten minutes.

23 A. Approximately.

24 Q. How were you feeling?

25 A. Winded.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. How about that altered state of perception that we talked
2 about?

3 A. It's still there. I mean, it's coming down at that point,
4 but it doesn't come down instantly.

5 Q. Does your head kind of feel a little light?

6 A. Yeah.

7 Q. A little unsteady on your feet?

8 A. Yeah, probably.

9 Q. It's not a fun feeling.

10 A. No.

11 Q. Eventually he was brought to the vehicle; right?

12 A. Yes.

13 Q. You went off on another call.

14 A. No.

15 Q. What happened to you?

16 A. I followed Deputy Kuretza to the sheriff's office.

17 Q. Okay. And you arrived around the same time.

18 A. Yeah. I think I pulled in right after he did.

19 Q. Okay. And then Mr. Graciano was processed.

20 A. Yes.

21 Q. Photographs were taken of the injury.

22 A. Yes.

23 Q. Injuries.

24 He was fingerprinted.

25 A. I don't know. I wasn't there for it. I'm not sure.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Maybe.

2 Q. Were you aware that he was cleaned up?

3 A. At some point, yes.

4 Q. Are you aware that Deputy Kuretzka and two of the transport
5 officers cleaned up his face?

6 A. I was told that later, but I wasn't aware that night.

7 Q. Okay. And we saw on direct there was the EMS, and then
8 the EMS didn't come, and then the EMS came.

9 A. Yes.

10 Q. EMS usually only takes a couple minutes to respond?

11 A. Yes.

12 Q. But that night, for some reason, they were taking a lot
13 longer?

14 A. Yes. It took a very long time.

15 Q. Okay. But you didn't expect it to take very long.

16 A. No.

17 Q. Okay. But you are aware that they came and attempted to
18 check him out.

19 A. To my understanding, yes.

20 Q. And that he refused.

21 A. To my understanding, yes.

22 Q. I noticed on the tape that you were the one who suggested
23 an EMS refusal as a way of handling the situation.

24 A. Yes.

25 Q. Can you explain that to me?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Basically just have EMS come check him out. There was --
2 I didn't even know what the jail's policies really were at the
3 time. But basically just to get some form of medical
4 treatment, whether he wanted to accept it or not.

5 Q. But why not just say, "Let's call EMS"? Why mention a
6 refusal?

7 A. I don't know.

8 Q. Okay. All right. But regardless, it was your intention
9 to make sure he was cleaned up and taken care of.

10 A. Yes.

11 Q. And that's why you eventually did call EMS?

12 A. Yes.

13 Q. And you -- like you -- I won't ask again about the
14 clean-up. You weren't there for that.

15 A. Correct.

16 Q. Okay. After processing him, did you have more calls?

17 A. Yes.

18 Q. And so you had more duties that night?

19 A. Yes.

20 Q. Do you remember at what point you wrote your report?

21 A. If I remember correctly, from the video downstairs, there
22 was a point where I left. I went upstairs, and my camera was
23 still dumping. It actually still wasn't fully dumped. And I
24 believe I wrote it then, if I'm correct.

25 Q. So it would have been before you went on any more calls?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. So pretty much immediately after the incident.

3 A. Within an hour I would imagine, yeah.

4 Q. All right. Within an hour of getting back to the station.

5 A. Yes.

6 Q. And had you completely calmed down by then?

7 A. For the most part.

8 Q. Were you a little shaken?

9 A. I don't remember being shaken; but it wouldn't be out of
10 the realm of possibility, I guess.

11 Q. All right. But you set out to write the most accurate use
12 of force report that you could.

13 A. Yes.

14 Q. Based on your memory and perception of what happened that
15 evening.

16 A. Yes.

17 Q. Now, since then, you've seen these body cams, and you
18 think you may have perceived things differently than how they
19 actually happened.

20 A. Yes.

21 Q. Since then, you've also met with the FBI and the
22 Government a number of times.

23 A. Yes.

24 Q. How many times?

25 A. Four or five.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. You also testified in front of the grand jury a number of
2 times.

3 A. Twice, yes.

4 Q. Before that happened, you were threatened with indictment.

5 A. Before?

6 Q. Before the testimony.

7 A. Not before the first one.

8 Q. Okay. So after you testified, they sent you a target
9 letter?

10 A. No.

11 Q. Before you testified.

12 A. I'm sorry. I was never sent a target letter.

13 Q. You never received a target letter?

14 A. No.

15 Q. You never received something saying that you -- any
16 information from the Government that you perceived to mean that
17 you were under investigation for criminal actions.

18 A. I did not, no.

19 Q. Okay. I'm going to go back to the use of force letter
20 that -- or report that you wrote.

21 A. Okay.

22 Q. You said that you wrote that based on your perception and
23 to be as accurate as possible.

24 A. Yes.

25 Q. I want to go through it.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 MR. DRESBOLD: Can you pull up, please -- I think
2 it's -- could you please tell me what exhibit that is.

3 (Pause in proceedings.)

4 MR. DRESBOLD: Exhibit 6, page 8.

5 Thank you. I have one that's not marked.

6 And if we could just blow up kind of, like, the first
7 third of the letter.

8 BY MR. DRESBOLD:

9 Q. All right. So this is what you wrote that evening.

10 A. Yes.

11 Q. Okay. And I'd like to go over it with you. It starts,
12 "On January 20th, 2017..."

13 Obviously, it was 2018; right?

14 A. Yes.

15 Q. You testified to that. It had just turned 2018 maybe
16 20 days ago; right?

17 A. Yes.

18 Q. And so like we all sometimes do on checks, you wrote the
19 date wrong.

20 A. Yes.

21 Q. "...deputies were dispatched to Room 329 of the Residence
22 Inn for a disturbance."

23 That's accurate?

24 A. Yes.

25 Q. That's how you perceived it then?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. That's how you perceive it now.

3 A. Yes.

4 Q. "The caller advised that someone was threatening to kill
5 someone with a gun"?

6 A. Yes.

7 Q. Accurate?

8 A. Yes.

9 Q. "Deputies arrived on scene and discovered the parties
10 involved were in Room 329 and 327." Accurate.

11 A. Yes.

12 Q. "Deputy Kuretza and I entered Room 327 and found a male
13 laying on the bed." That's accurate.

14 A. Yes.

15 Q. "I could detect the odor of an alcoholic beverage and
16 marijuana emitting from the male."

17 A. Yes.

18 Q. What does that tell you?

19 A. He's more than likely intoxicated or impaired.

20 Q. How does a noticeable odor of an alcoholic beverage or
21 marijuana affect how you approach a situation?

22 A. Just be prepared to know that they probably have an
23 altered mental state.

24 Q. A little extra alert?

25 A. Yeah.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Just smelling marijuana probably puts you on a little bit
2 of extra alert.

3 A. Yeah. It kind of gives me a headache. But yeah.

4 Q. "We announced ourselves as the sheriff's department
5 several times."

6 A. Yes.

7 Q. Right?

8 And you told me the purpose of that. And that's your
9 memory of that; right?

10 A. Yes.

11 Q. Do you believe it was clear to anyone in that room -- or
12 it should have been clear to anyone in that room that the two
13 of you were sheriffs?

14 A. Yes.

15 Q. "We asked the male to wake up due to the nature of the
16 call possibly involving a firearm."

17 So that's correct; right?

18 A. Yes.

19 Q. When you entered the room, you announced yourselves.
20 That's officer presence.

21 A. Yes.

22 Q. Right?

23 At that point, you started giving verbal commands.

24 A. Yes.

25 Q. "Wake up."

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. That's a verbal command.

3 A. Yes.

4 Q. An escalation in the use of force escalation chart.

5 A. Yes.

6 Q. Right?

7 And you believed that that was justified.

8 A. Yes.

9 Q. "The male woke up and looked at Deputy Kuretza and refused
10 to get up." That was your perception then?

11 A. Yes.

12 Q. It's your perception now.

13 A. Yes.

14 Q. "He began to flail his arms and push Deputy Kuretza away."
15 Accurate?

16 A. Yes.

17 Q. "Deputy Kuretza again tried to wake the male."

18 A. Accurate, yes.

19 Q. Accurate.

20 "The male then struck Deputy Kuretza."

21 A. Yes.

22 Q. Is that when the body cam went off?

23 A. Around that time, yes.

24 Q. Everything before the body cam went off is accurate.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. I want to jump now down to the bottom third of the letter,
2 where it starts "Deputy I. Coe" in the middle. The first line
3 of that is "strikes to his leg."

4 Okay. So this is the bottom, kind of, portion of your
5 statement. Starting with "Deputy I. Coe" --

6 MR. DRESBOLD: Or I'm sorry. Can we go up a little
7 more? I actually want to go where it says "struck
8 Deputy Kuretza. Deputy Isaac Coe..."

9 Thank you.

10 BY MR. DRESBOLD:

11 Q. Do you see where I'm at on here, where it says, "Deputy
12 Isaac Coe then came into the room..."

13 A. Yes, sir.

14 Q. Okay. So I skipped a portion of the middle. We'll get
15 back to it. Okay?

16 A. Yes.

17 Q. But this is when that second body cam picks up; right?
18 When Deputy Isaac Coe came into the room?

19 A. Yes.

20 Q. Okay. "Deputy Isaac Coe then came into the room and
21 attempted to help us gain control of the subject." That's
22 accurate.

23 A. Yes.

24 Q. "The subject continued to resist and struggle." That's
25 how you perceived it then?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. That's how you perceive it now.

3 A. Yes.

4 Q. "I applied several knee strikes to his leg." Is that
5 right?

6 A. Yes. That may be a little out of -- I think I applied a
7 knee strike before Isaac came in the room as well.

8 Q. Okay. Well, we haven't --

9 A. Okay.

10 Q. -- looked at that. We're just talking about this after
11 portion. But that was accurate? That's how you perceived it?

12 A. Yes.

13 Q. And that's what happened; right?

14 A. Yes.

15 Q. "Deputy Coe managed to get the suspect's left arm free and
16 in a handcuff."

17 A. Yes.

18 Q. I want to go back to the line about the knee strikes. You
19 said you applied several knee strikes to his legs. Did you
20 believe you were justified in using that force?

21 A. Yes.

22 Q. Why?

23 A. He was attempting to stand up. We can strike large muscle
24 groups.

25 Q. And so that's obviously more force than presence or

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 verbal; right?

2 A. Yes.

3 Q. But you believed it was within policy to do that at that
4 point.

5 A. Yes, I do.

6 Q. You believed it then, and you believe it now.

7 A. Yes.

8 Q. Okay. All right. So Deputy Coe managed to get the
9 suspect's left arm free and in a handcuff? You saw that?

10 A. Yes.

11 Q. All right. And the male kept his right arm underneath,
12 towards his waistband.

13 A. Yes.

14 Q. Why was that important?

15 A. There was a gun call. That's a common place that some
16 people might keep a firearm.

17 Q. So at that point you still weren't sure that he wasn't
18 armed.

19 A. Correct.

20 Q. Did that affect the way you were thinking?

21 A. Yes.

22 Q. Did that affect the way you perceived the situation?

23 A. Yes.

24 Q. Did that affect the perception to the level of danger you
25 may be in?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. Again, when someone is not following commands and giving
3 you their arms when you're requesting them, and instead pulling
4 them towards his waistband, does that concern you?

5 A. Yes.

6 Q. Why?

7 A. Because you don't know what's -- what they're doing. You
8 don't know if it's a -- something that could be potentially
9 dangerous or not.

10 Q. Did you perceive these to be voluntary actions on the part
11 of Mr. Graciano or involuntary actions?

12 A. Him pulling his arm toward his waist? Voluntary.

13 Q. He meant to do it.

14 A. Yes.

15 Q. "Deputy Coe and I managed to get his arm free and in the
16 other handcuff." Is that accurate?

17 A. Yes.

18 Q. "Once the male was in handcuffs, he continued to attempt
19 to kick Deputy Coe and I and flail his body around." That's
20 how you perceived it.

21 A. That's how I perceived it at the time, yes.

22 Q. Is that still how you perceive it?

23 A. Not -- I mean, based off the body camera, not really.

24 Like I said, there was -- there was a time when he was rolled
25 to his side, which I'm not sure if we were trying to stand him

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 up or if Deputy Coe was trying to start a pat-down. And then
2 that's when a struggle began again. And there was some yelling
3 to stop kicking. But I don't have a personal recollection
4 right now of him attempting to kick.

5 Like I said, when I wrote this, it was right after. Maybe
6 then. But I don't have that recollection now, and I don't see
7 it on the camera when I watch it.

8 Q. You say, "Maybe then." You certainly believed it then;
9 right?

10 A. During the time of the struggle? Yes.

11 Q. And when you wrote it, you believed it; right?

12 A. Yes.

13 Q. I mean, you wouldn't have written it if you didn't believe
14 it.

15 A. Correct.

16 Q. And so that's how you perceived the events as they were
17 happening.

18 A. Yes.

19 Q. "Deputy Kuretzka then administered a one-second burst of
20 OC spray to the male."

21 Now, you said yesterday that you didn't physically see him
22 with the canister in his hand, delivering the burst.

23 A. No.

24 Q. But you felt it.

25 A. I could feel the -- I guess it'd be called "splash" or

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 however you want to characterize it.

2 Q. The liquid.

3 A. Yes.

4 Q. You physically felt it.

5 A. Yes. And --

6 Q. You also started feeling a reaction to it shortly
7 thereafter.

8 A. Yes.

9 Q. But you didn't see it.

10 A. No.

11 Q. Okay. And in fact, you were still struggling as that was
12 happening.

13 A. I mean, I believe at that time I just applied weight to
14 him to try to stop the -- whatever, if it was a flail or an
15 involuntary jerk or whatever it was.

16 Q. Right. Because there was a handcuffing; right?

17 A. Yes.

18 Q. And then there was more resistance post-handcuffing.

19 A. What I perceived as resistance at the time, yes.

20 Q. All right. You certainly perceived that at the time;
21 right?

22 A. Yes.

23 Q. And everyone in the room reacted as though that was
24 happening.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And so even post-handcuffing, you believed some level of
2 force was appropriate.

3 A. Yes.

4 Q. Right?

5 You said that you were holding him down by your knee?

6 A. Yeah. I just used my knee to apply weight to him.

7 Q. And so that wouldn't have happened if you didn't believe
8 that it was appropriate.

9 A. Correct.

10 Q. And it wouldn't have happened if you didn't believe he was
11 still doing something to justify it.

12 A. Correct.

13 Q. "He continued to resist all officers and kick." That's
14 your perception?

15 A. Perception at the time, yes.

16 Q. "More knee strikes were applied to his legs until he
17 calmed down." Do you remember that?

18 A. I don't. Like I said, I wrote it at the time. Maybe I
19 remembered it at the time. But I don't remember that now.

20 Q. Reading what you wrote, again, at the time, that's what
21 you perceived.

22 A. Yes.

23 Q. Going back and reading it now, do you have a belief as to
24 who was delivering those knee strikes that you wrote about?

25 A. I believe it was either me or -- well, it wasn't me,

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 because I didn't do anything after handcuffing.

2 It may have been Deputy Coe, or I may have been
3 referencing the ones as he was walking out. I don't remember,
4 really. I just wrote that there was knee strikes applied.

5 Q. Well, you wrote this chronologically; right?

6 A. To the best of my recollection, I wrote it
7 chronologically.

8 Q. Because the next thing you wrote was, "He stated, 'Okay.
9 I'm done.' And then deputies then picked him up and attempted
10 to escort him out of the hotel."

11 A. Yes.

12 Q. So it at least sounds, based on your perception of that
13 night and how you recalled it, that the knee strikes that you
14 were referencing to his legs were knee strikes that happened
15 before he was escorted up and out of the hotel.

16 A. Yeah. Like I said, I know they happened before he said,
17 "Okay. I'm done." But based on what I was watching, I don't
18 think he said that until after we stood him up or after he was
19 in the hallway.

20 Q. Okay. Well, he made lots of comments that you probably
21 didn't hear --

22 A. Yeah.

23 Q. -- in real time; right?

24 A. I would imagine, yes.

25 Q. And in fact, when a suspect or a subject of a use of force

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 makes comments like "I'm done," does that always mean he's
2 done?

3 A. No.

4 Q. Right?

5 In fact, people say, "It hurts" or "Stop it" and then they
6 continue to resist or use force.

7 A. Yes.

8 Q. That's common.

9 A. I wouldn't call it common, but it does happen.

10 Q. Certainly something you've experienced.

11 A. Yes. Something that I've experienced several times, yes.

12 Q. And as you were going through the events that evening,
13 perceiving what was happening around you, you didn't perceive
14 genuine cries for help and a genuine plea that it stop because
15 he was stopping resisting.

16 A. At the time, I don't remember hearing any pleas for help
17 at all. I didn't hear those until I watched the body camera
18 footage.

19 Q. And his actions that night didn't leave you with the
20 perception that he had given up.

21 A. No.

22 Q. Okay. So at least your perception that evening was that
23 knee strikes were applied to the legs until he calmed down, and
24 that was before he was removed.

25 A. Either before or during.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. The people on -- near his legs before were you and
2 Deputy Coe.

3 A. Yes.

4 Q. You don't today remember delivering knee strikes.

5 A. Not post-handcuffing. I don't have a recollection.

6 Q. Okay. But you didn't note any other use of force by
7 Deputy Coe in your report; right?

8 A. No.

9 Q. Okay. And typically you write your uses of force.

10 A. Yes.

11 Q. And so when you wrote, "More knee strikes were applied to
12 his legs until he calmed down," could that have been you
13 applying the knee strikes?

14 A. It could have been, yeah. Like I said, I remember a lot
15 of times I was using my knee to apply pressure. But I don't
16 remember actually, like, putting force behind it, if that makes
17 sense.

18 Q. In any event, the post-handcuffing use of force that you
19 deployed you believe was within the policy.

20 A. Yes.

21 Q. You believed it then; you believe it now.

22 A. Yes.

23 Q. "He stated, 'Okay. I'm done.' Deputies then picked him up
24 and attempted to escort him out of the hotel." That happened;
25 right?

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. "He resisted us several times and fell to the ground and
3 flailed his body several times on the way out, until he was
4 secured in the cruiser." That's what happened; right?

5 A. Yes. That's -- that's what I was mentioning yesterday
6 about I don't know if it was a flail, but the best way to
7 characterize it would be like a flail. It was like a -- some
8 sort of shaking or him moving his body for some apparent
9 reason.

10 Q. However we kind of define it -- I remember you testifying
11 about it -- you'd agree that it was resistance.

12 A. I would imagine, yes.

13 Q. And you would agree that this period of time after he was
14 in handcuffs, he was not being compliant.

15 A. Yeah, I think that's a fair statement.

16 Q. That was your perception then; that's your perception now.

17 A. Yes.

18 Q. Right?

19 Certainly in the moments -- the two or three minutes after
20 he was put in handcuffs, he was not a compliant person.

21 A. Yeah, I think that's a fair statement.

22 Q. And so we went over the beginning of your use of force
23 statement and the end of your use of force statement, all of
24 which were the portions that were captured on various body
25 cams.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. And standing here -- or sitting here today, those are
3 still what you believe your perceptions were that evening?

4 A. Yes.

5 Q. And there's nothing in there that you want to go back and
6 change that we just read.

7 A. No.

8 Q. Okay. The middle portion occurred in the 30 to 40 seconds
9 where there was no body cam.

10 A. Yes.

11 MR. DRESBOLD: Can we please highlight the middle of
12 the use of force, I guess, starting with "The male woke up and
13 looked" and going down to "Deputy Isaac Coe."

14 A little higher. Maybe three lines higher.

15 MS. JONES: Include this?

16 MR. DRESBOLD: Yeah. Right there. Great. Thank
17 you.

18 BY MR. DRESBOLD:

19 Q. All right. So we went over the portion that was "The male
20 woke up and looked at Deputy Kuretza and refused to get up. He
21 began to flail his arms and push Deputy Kuretza away.

22 Deputy Kuretza again tried to wake the male. The male then
23 struck Deputy Kuretza. Deputy Kuretza attempted to gain
24 control of the male's arm, and he began to resist."

25 Okay. So that -- that's around the portion where the body

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 cam shuts off; right?

2 A. Yes.

3 Q. As the body cam shuts off, both you and Deputy Kuretzka are
4 attempting to get arm control and wrist control on
5 Mr. Graciano.

6 A. Yes.

7 Q. Both of you are using your hands to try and control his
8 hands.

9 A. Yes.

10 Q. What's the purpose of wrist control?

11 A. If you control their wrist, you can put it behind their
12 back and you can place them in handcuffs.

13 Q. So at this point was it your goal to get him in handcuffs?

14 A. Yes.

15 Q. And did that appear to you at the time to be what
16 Lance Kuretzka was trying to do?

17 A. Yes.

18 Q. But he did not submit.

19 A. Correct.

20 Q. And instead you attempted -- you say here, "I attempted to
21 help gain control of the male, but he fought and resisted."

22 A. Yes.

23 Q. You remember that.

24 A. Yeah. I remember, like I said, he kept trying to bring
25 his arm to center, and I kept trying to pull it out. And he

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 kept trying to stand up.

2 Q. By this time your body is kind of going; right?

3 A. Yes.

4 Q. Right? You're feeling it.

5 A. Yes.

6 Q. And you know that you're engaged in something.

7 A. Yes.

8 Q. Right?

9 And, really, your goal here is just to get control of the
10 situation.

11 A. Yes.

12 Q. And it appeared to you as though that was Deputy Kuretza's
13 goal too.

14 A. Yes.

15 Q. "The male rolled to the floor, and an altercation began."

16 A. Yes.

17 Q. That was an altercation between the three of you.

18 A. Yes.

19 Q. Fair to say that things were happening fast?

20 A. They were, yes.

21 Q. Now, this whole time it was Lance who was still giving
22 verbal commands.

23 A. Yes.

24 Q. You kind of deferred to him as far as verbal commands go.

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. That's part of policy, or at least practice.

2 A. Part -- yeah, training and practice. I'm not sure if it's
3 in policy or not.

4 Q. Right. Is to have one officer give the verbal commands.

5 A. Yes.

6 Q. Because otherwise it could be confusing.

7 A. Correct.

8 Q. The person might not know what to do.

9 A. Yes.

10 Q. And part of giving verbal commands during a use of force
11 situation is to try and let the suspect know what he needs to
12 do to end the force.

13 A. Yes.

14 Q. Right?

15 "Give me your hands," kind of in parentheses, "and this
16 will stop." Right?

17 A. Yeah, I guess.

18 Q. That's the theory behind it; right?

19 A. Yes.

20 Q. And so it was Lance Kuretzka giving verbal commands.

21 A. Yes.

22 Q. And those verbal commands were, "Give me your hands. Stop
23 resisting."

24 A. Yes. Along those lines.

25 Q. Repeatedly.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. You did not perceive anything off or wrong about the
3 verbal commands that were being issued.

4 A. Correct.

5 Q. You believed that they were compliant with policy and
6 appropriate in the situation.

7 A. Yes.

8 Q. You perceived that then; you perceive that now.

9 A. Yes.

10 Q. So the altercation began between the three of you.

11 A. Yes.

12 Q. And things were happening fast.

13 A. Yes.

14 Q. And Deputy Kuretzka was giving commands. "We ordered the
15 male several times to give us his hands." That was part of the
16 commands; right?

17 A. Yes.

18 Q. That happened; right?

19 A. Yes.

20 Q. That's accurate.

21 "But he kept resisting." That's accurate.

22 A. Yes.

23 Q. You don't classify active resistance versus passive
24 resistance versus ominous resistance in your report, do you?

25 A. No.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Why?

2 A. Resistance is resistance.

3 Q. Okay. And were you comfortable at the time that the
4 amount of force that was being given was there to meet the
5 resistance?

6 A. Yes.

7 Q. But he kept resisting.

8 A. Yes.

9 Q. "The male kept his hands underneath him, towards his
10 waistband."

11 A. At least his right hand.

12 Q. "I attempted to gain control of his right hand."

13 A. Yes.

14 Q. Right?

15 "The male began to kick and flail." Right?

16 A. Yes.

17 Q. That's how you perceived it.

18 A. Yes.

19 Q. Kick is different than flail.

20 A. Yes.

21 Q. Kick is an intentional act.

22 A. It can be classified as one, yes.

23 Q. And it's dangerous.

24 A. Yes.

25 Q. Flail could be involuntary.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. It could, yes.

2 Q. But when you wrote "kick and flail," you perceived that to
3 be his intentional actions.

4 A. At the time, yes.

5 Q. And there's no body cam at this point.

6 A. Correct.

7 Q. So you haven't seen body cam to disavow you of that.

8 A. Correct.

9 Q. So that's still your perception.

10 A. Yeah. I don't know if it -- now, looking back, I don't
11 know if the kicks were involuntary jerks or if they were
12 intentional, but...

13 Q. But you certainly felt that way when you wrote it.

14 A. Yes.

15 Q. "We attempted to roll him over to get his hands loose."
16 What's that mean?

17 A. Basically, if they're laying on top of their hand like
18 this, it's kind of hard to get it out. So you kind of have to
19 relieve some of the body weight in order to remove the hand.

20 Q. Were you both doing that?

21 A. I don't remember.

22 Q. You wrote "we." That's why I ask.

23 A. Yeah. I kind of use "we" as a general sense. But we had
24 the same goal, and that's kind of what I meant.

25 Q. Were you communicating --

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. I don't believe so.

2 Q. -- "Let's roll him over," anything like that?

3 A. I don't believe so at that time. I don't remember saying
4 a whole lot during the altercation.

5 Q. When you're attempting to roll someone over, does that put
6 you in a vulnerable position?

7 A. Yeah.

8 Q. Why?

9 A. You never know -- if they roll over, they could have
10 something you didn't see or it could give them an advantaged
11 position. You just don't know what's coming next.

12 Q. So when you were doing that, were you on maybe even a
13 little heightened alert, even more than you were originally?

14 A. I don't know. At this point my adrenaline was pretty
15 high, so --

16 Q. Running wild; right?

17 A. -- I don't know if I had gotten more heightened or not,
18 honestly.

19 Q. But it was high this whole time.

20 A. Yes.

21 Q. Certainly at this point.

22 A. Yes.

23 Q. "We attempted to roll him over and get his hands loose,
24 and again" -- "and he again struck Deputy Kuretz." Right?

25 And that's the last line that you write before Deputy Isaac Coe

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 came into the room.

2 A. Yes.

3 Q. Right?

4 That's how you perceived it at the time.

5 A. Yes.

6 Q. You said yesterday -- this is the point yesterday where
7 you said, "That was based on my personal perception at the
8 time. Obviously, watching the body cam now, I was wrong."

9 A. Yes.

10 Q. There was no body cam of that.

11 A. Yeah. Correct.

12 Q. Right?

13 And that was your perception at the time.

14 A. Yes.

15 Q. And you've seen no camera to say that you were wrong.

16 A. Correct. Yeah.

17 Q. So the line "Obviously, watching the body cam now, I was
18 wrong," doesn't apply to that line.

19 A. Yeah. Correct.

20 Q. And so you have no reason to believe that that wasn't what
21 happened.

22 A. Yeah. I guess.

23 Q. Right?

24 You wouldn't have written it if you didn't perceive it.

25 A. Correct.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And you haven't seen any evidence, any body cam to show
2 that that didn't happen.

3 A. Correct.

4 Q. And so it probably happened.

5 A. Probably.

6 Q. And at least you certainly perceived it.

7 A. Yes.

8 Q. Now, do you remember when -- right before Deputy Coe
9 entered the room hearing Deputy Kuretza say anything about
10 hitting him or punching him or anything?

11 A. No.

12 Q. Okay. I'm going to play a --

13 So you don't -- you don't have a real good memory of that
14 strike, sitting here today.

15 A. Not of the -- I don't have a whole lot of memory of the
16 event entirely at this day.

17 Q. Okay. I want to play just a portion of Sergeant McRobie's
18 body cam, which is Exhibit 5, along with Exhibit 5A, at the
19 11:00 mark. I just want you to listen to it and watch it.

20 (Video played.)

21 MR. DRESBOLD: Stop it right there.

22 BY MR. DRESBOLD:

23 Q. Can you orient us to that?

24 A. It looks like Sergeant McRobie is still in the hallway,
25 and he is entering the room.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. You heard in the video just now, at about 11:03, "You
2 fucked up, man." Right?

3 A. Yeah.

4 Q. Do you remember hearing that in the room?

5 A. I don't, not at the time.

6 Q. Okay. Looking back at the other body cams, do you know
7 when that happened?

8 A. I think right after or during -- it was either during or
9 after Kuretza shut off.

10 Q. Okay. Almost, like, right as that had happened; right?
11 You kind of hear it at the end of his body cam?

12 A. Yes.

13 Q. He starts to say it. But you remember him saying that.

14 A. I don't remember him saying it at the time. I remember
15 from the body cam.

16 Q. Okay.

17 MR. DRESBOLD: Let's go ahead and play it.

18 (Video played.)

19 BY MR. DRESBOLD:

20 Q. You heard him then say, "Stop hitting me"?

21 A. Yeah.

22 Q. You don't remember him saying that, though, as it was
23 happening.

24 A. Not today. Maybe that's why I wrote it at the time.

25 Maybe I remembered it then, but I don't remember it now.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. Okay.

2 MR. DRESBOLD: And if we keep going for another
3 ten seconds.

4 (Video played.)

5 MR. DRESBOLD: Stop.

6 BY MR. DRESBOLD:

7 Q. That's when, during that ten seconds, Isaac Coe entered;
8 right?

9 A. Yes.

10 Q. And so that yelling -- "Stop hitting me. Stop hitting
11 me" -- that happened right before Isaac Coe entered.

12 A. Yes.

13 Q. And in your report, Lance getting once again struck
14 happened right before you wrote about Deputy Coe entering.

15 A. Yes.

16 Q. So is what you saw consistent with what you wrote, that
17 you believed at the time, that Deputy Kuretza had been struck
18 again.

19 A. Yes.

20 Q. Okay. So that portion that we just read, that middle part
21 of your report, it was all accurate.

22 A. Based on what I've seen, yes.

23 Q. So sitting here today, every word of what you wrote was
24 accurate as you perceived it then?

25 A. Yes.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Q. And it's accurate as you perceive it now.

2 A. Yeah. Like I said, after the handcuffing, with the
3 kicking, I mean, I kind of perceive it a little differently
4 today. At the time, like I said, there was definitely
5 something going on. I remember in the video someone is
6 yelling, "Stop kicking." So it's definitely accurate at the
7 time I perceived it.

8 Q. Definitely accurate at the time you perceived it.

9 A. Yes.

10 Q. You didn't have any conversations about what to put in
11 this report with anyone?

12 A. No.

13 Q. Deputy Kuretzka didn't tell you to alter your perception in
14 any way?

15 A. No.

16 Q. He never asked you to add anything to your report that
17 didn't happen?

18 A. No.

19 Q. He didn't ask you to omit anything from your report that
20 did happen?

21 A. No.

22 Q. It was your understanding that this report was going to be
23 turned in to him and then forwarded to a supervisor.

24 A. Yes.

25 Q. That's what ended up happening.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. When people download body cam to turn it in for a use of
3 force, they're responsible for -- at least in 2018 they were
4 responsible for turning in their own body cam; right?

5 A. Yes.

6 Q. That wasn't the responsibility, necessarily, of the
7 officer who was filling out the use force.

8 A. The officer filling out the use of force isn't able to
9 even access -- unless they're a supervisor, you couldn't access
10 someone else's body camera.

11 Q. It wasn't even possible.

12 A. No.

13 Q. And so everyone had to take it upon themselves to turn
14 that in by the -- as soon as practical.

15 A. Yes.

16 Q. These things weren't always possible to do, as far as body
17 cam, by the end of the shift.

18 A. Correct.

19 Q. At the time that the incident occurred with
20 Quintin Graciano, you did not perceive any constitutional
21 violation on any of the officers' parts.

22 A. I did not.

23 MS. WAGNER: Objection. It's a legal conclusion.

24 THE COURT: Sustained. The Court will strike that
25 answer. The jury is to disregard it.

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 Why don't you reword that, Mr. Dresbold.

2 BY MR. DRESBOLD:

3 Q. You didn't speak to anyone about believing that you had
4 witnessed a crime --

5 A. No.

6 Q. -- on the part of any of the officers?

7 A. No.

8 Q. You did not believe --

9 MS. WAGNER: Same objection, Your Honor. Same
10 objection.

11 THE COURT: Sustained.

12 MR. DRESBOLD: Okay.

13 BY MR. DRESBOLD:

14 Q. Had you believed you witnessed a crime, would you have
15 reported it?

16 A. Yes.

17 Q. And you didn't make such a report.

18 A. I did not.

19 Q. We talked about -- or you talked about, a couple times
20 now, with the Government about searches. You believed at the
21 time that Isaac Coe had done a frisk of the suspect?

22 A. I don't remember. I know every time I watch this video I
23 see something different that I didn't see last time, or I
24 perceive something different that I didn't see last time.

25 But I think the first time I watched it, I kind of missed

Deputy Ethan Mongold - Cross-Examination (Mr. Dresbold)

1 it. And the second time, I just noticed it. It happened
2 quick. It looked like, at least based on my training -- that's
3 how we're trained to frisk someone that's prone'd out. You roll
4 them to the side. And from what I saw in the video, Isaac
5 rolls him to the side. It looks like he starts patting his
6 pockets, which would be the start of one. But then that's when
7 the altercation began again.

8 Again, I don't know if that was what Isaac was doing.
9 It's just what it looks like to me from the video.

10 Q. When was the first time you viewed some of this body cam?

11 A. The very first time I viewed it?

12 Q. Yes.

13 A. It would have been during the internal investigation.

14 Q. Which would have been how shortly after?

15 A. Eighteen months.

16 Q. Did it appear then as it appears now?

17 A. No. Like I said, every time I watch it I notice something
18 new.

19 Q. I don't mean did it appear to you. I mean was it the same
20 brightness and audio? Everything else was the same?

21 A. Yeah. That's again what I was saying. There's --
22 depending on, I guess, the TV or the screen, sometimes it looks
23 brighter; sometimes it looks duller. So I know when I watched
24 it the first time it was very dark.

25 Q. Okay. But sitting here today having watched everything,

1 having talked to everyone, having looked back five years, you
2 would agree with the statement; that the statement you wrote
3 that night was as you perceived it --

4 A. Yes.

5 Q. -- as it happened.

6 A. Yes.

7 Q. And as you still perceive it now.

8 A. Honestly, I don't know. That's...

9 Q. And your memory was much better then about the events than
10 it is now.

11 A. Yes.

12 MR. DRESBOLD: Thank you, Deputy. Nothing further.

13 THE COURT: Thank you, Mr. Dresbold.

14 We're going to go ahead and take our morning break at this
15 time, Ms. Wagner.

16 MS. WAGNER: That's fine.

17 THE COURT: Ladies and gentlemen of the jury, we're
18 going to take our morning break at this point. We'll take a
19 15-minute break. Please continue to refrain from discussing
20 this case with anyone, including between or among any of your
21 fellow jurors. And please continue to refrain from any
22 independent research or investigation efforts about the case.

23 But with that, we'll take a 15-minute break and see you
24 shortly. Thank you.

25 (Jury retired from the courtroom at 10:34 AM.)

1 THE COURT: There we go. Thank you, everyone.
2 Please be seated.

3 Deputy, you've heard this a couple times now. You remain
4 off limits from everybody. So no one is being rude or
5 discourteous if they don't speak to you or they turn the other
6 way if they see you in the hallway, but no one can talk to you
7 while you're midstream. But you can go ahead and step down if
8 you'd like, sir.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Thank you.

11 All right. We'll see everyone here in a few minutes.
12 Thank you.

13 (Recess taken from 10:36 to 10:52 AM.)

14 THE COURT: All right. We ready to resume?
15 Ms. Wagner, you ready?

16 MS. WAGNER: Yes, Judge.

17 THE COURT: Okay. Great.

18 Can we have our jury, please, sir. Thank you.

19 (Jury returned to courtroom at 10:52 AM.)

20 THE COURT: Thank you, ladies and gentlemen. You may
21 be seated. Thank you so much.

22 Ms. Wagner.

23 MS. WAGNER: Thank you.

24

25

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 REDIRECT EXAMINATION

2 BY MS. WAGNER:

3 Q. Deputy Mongold, you were asked a lot of questions about
4 your perception.

5 A. Yes.

6 Q. Correct?

7 And how that might have been different under stress?

8 A. Yes.

9 Q. Did you document everything you personally did in your use
10 of force report?

11 A. To my knowledge, yes.

12 Q. Why?

13 A. It's what's required by policy.

14 Q. And did you have any trouble perceiving what you
15 personally did?

16 A. I don't believe so.

17 Q. All right. When you -- you were also asked about
18 perception in determining the proper amount of force. When you
19 respond to a call with other deputies, how do you communicate
20 your perceptions to them?

21 A. Vocally.

22 Q. So if you perceive a threat, you let the other deputies
23 know by telling them?

24 A. Not always. I mean, you can read body language. I mean,
25 you can kind of tell if someone -- like, if someone perceives

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 something I don't, I can look and see that they might be on
2 edge or they might be tense for some reason. It might, you
3 know, increase my awareness as well. But generally, vocally.
4 Not always, but generally.

5 Q. What threat did you perceive from Mr. Graciano?

6 A. At the time, I mean, I wasn't sure. I just knew it was a
7 threat. There was an altercation. There was mention of a gun.
8 Like I said, there was definitely resistance, and I didn't know
9 why there was resistance. But I just knew there was some sort
10 of threat.

11 Q. You would agree that when you walked into the hotel room
12 and Mr. Graciano was on the bed asleep that he didn't pose a
13 threat?

14 MR. DRESBOLD: Objection. Leading.

15 THE COURT: Sustained.

16 BY MS. WAGNER:

17 Q. What threat did Mr. Graciano pose to you and
18 Deputy Kuretza when you walked in there and he was lying asleep
19 on the bed?

20 A. I mean, we didn't know he was actually asleep. So we
21 didn't know what kind of threat it could have been. I mean, we
22 know now he was asleep. But at the time -- I mean, I've had
23 people fake being asleep before. But, I mean, I don't know a
24 specific threat.

25 Q. Did Mr. Graciano's friends tell you what he was doing in

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 that room?

2 A. I think they said he was in there and asleep, maybe, yes.

3 Q. You were asked about dumping your body-worn camera and it
4 not being practical to dump after every shift.

5 Is it correct that if the camera is more full then it
6 takes longer to dump?

7 A. Yes.

8 Q. All right. And -- but if you did dump it at -- after each
9 shift, then you would be more likely to be able to use it the
10 next shift?

11 A. Yes.

12 Q. Were you turning -- or when you burned your videos, are
13 they being burnt to CDs?

14 A. Yes.

15 Q. All right. And so once a CD is burned, can it be shared
16 amongst the deputies?

17 A. Yes.

18 Q. And then once it's burned to a disc, can it be watched on
19 any computer?

20 A. Any computer with a disc drive.

21 Q. You were asked about the fact that you and -- or that the
22 Defendant announced that you-all were with the sheriff's
23 department. Have you ever before spoken to someone who is
24 sleeping -- come upon someone who's sleeping when you are
25 responding to a call?

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 A. Yes.

2 Q. And do you -- do you announce to them that you're
3 sheriff's department?

4 A. Either sheriff's office or when I was with the police I
5 would just say "police."

6 Q. All right. Do they always hear you?

7 A. Not always.

8 Q. Do they always respond?

9 A. Not always.

10 Q. Did you -- I think your testimony yesterday, and maybe
11 again today, is that once you arrived on scene you understood
12 that everyone there was intoxicated.

13 A. Yes.

14 Q. And in your training and experience, is it more difficult
15 to wake up a person who's intoxicated?

16 A. Yes.

17 Q. And in your training and experience, if you announce that
18 you're with the police or the sheriff's department to someone
19 who is sleeping, when they wake up, do you sort of re-announce
20 that so that you're certain they understand?

21 A. Yes.

22 MS. WAGNER: Could we play Exhibit 1, please. If --
23 I think if we start around minute four.

24 And as we're playing this -- well, let's play it.

25 (Video played.)

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 BY MS. WAGNER:

2 Q. Could you -- when you are sure that Mr. Graciano is awake
3 in this video, could you please just raise your hand? And
4 we'll pause the video there.

5 A. Yes.

6 (Video played.)

7 BY MS. WAGNER:

8 Q. You believe Mr. Graciano is awake there?

9 A. I mean, but I'd think there's different levels of coming
10 out of a sleep and to being awake. But he's moving and he's
11 reacting at some point. I mean, you can't do that unconscious.
12 So he had some form of alertness -- or some level of alertness.

13 Q. All right. I think in your report you use the phrase
14 "fully awake." Is that correct?

15 A. I'm not sure. Let me pull it back up.

16 THE COURT: Is that Exhibit 6, Ms. Wagner?

17 MS. WAGNER: Exhibit 6, page 8. I apologize.

18 THE COURT: Okay. Thank you.

19 BY MS. WAGNER:

20 Q. All right. I don't -- I don't think that's in there.

21 A. No. It just said "the male woke up."

22 Q. And was it your belief that at this moment Mr. Graciano
23 understood that you and Deputy Kuretzka were from the sheriff's
24 department?

25 A. I don't know what he understood.

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 Q. What's the best way to make sure that an individual does
2 know what's going on?

3 A. Have them acknowledge.

4 Q. And how do they do that?

5 A. In a number of ways. I mean, generally, if we show up on
6 scene, I don't usually hear people say, "Hey. Oh, there's the
7 police." They just say, "Hey," "Hello," or -- I mean, people
8 can acknowledge you in several different ways.

9 Q. Did Mr. Graciano do anything that night that communicated
10 to you that he understood that you were the police?

11 A. I mean, I don't know. I don't think so. I mean, I don't
12 know how he would acknowledge it.

13 Q. You -- let's see. You were asked about Mr. Graciano being
14 taken down the hall. And I think you were asked about your
15 perception that he was not being compliant. Do you recall
16 that?

17 A. Yes.

18 Q. And on your direct examination yesterday you testified
19 that he was being asked to walk bent over at the waist;
20 correct?

21 A. Yes.

22 Q. And you also testified that his hands were cuffed behind
23 his back?

24 A. Yes.

25 Q. And you testified that he had been pepper-sprayed in the

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 face?

2 A. Yes.

3 Q. And you also testified that being pepper-sprayed in the
4 face results in eyes involuntarily closing?

5 A. Yes.

6 Q. And you testified that he had been struck in the face by
7 this point as well.

8 A. Yes.

9 Q. All right. What did Mr. Graciano need to do to be
10 compliant being carried down the hall, in your opinion -- or
11 your perception, I should say?

12 A. As far as him, like, falling down a lot, I mean, if I
13 remember right, there are times where his legs weren't even
14 moving.

15 But my big thing was, like, when he would fall, like I
16 said, there was that weird movement he would do that I don't
17 know what it was. I don't know if it was a flail or what it
18 was, but it just didn't make sense that he was doing that. I
19 mean, that, to me, is -- I guess would be a contributing factor
20 to maybe there was -- I don't know if he was doing it on
21 purpose or not. Like I said, that could have been involuntary.
22 If he was just falling, I could -- you know, that's one thing.
23 But with that combined with it, it's just odd. Like, I just
24 don't know what was going on.

25 Q. I think I heard you testify that "Resistance is

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 resistance." Did you --

2 A. Yeah. Passive or active or ominous.

3 Q. Okay. But that's not -- that's not true, is it?

4 Resistance is not resistance? There are different levels?

5 A. There are different levels, but it's all -- it all falls
6 under, you know, response to resistance.

7 Q. At any time on this night of January 20th of 2018, did
8 you see or perceive Mr. Graciano to be engaged in lethal
9 resistance?

10 A. Lethal? No.

11 Q. Okay. You testified on cross-examination that -- to a
12 number of things; that you thought something happened then, but
13 now you know it didn't. Is it correct that you knew then and
14 you know now that the Defendant pepper-sprayed Mr. Graciano
15 while he was in restraints?

16 MR. DRESBOLD: Objection. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: I'm sorry. Are you asking did I know
19 then and know now that he was pepper-sprayed in restraints?

20 BY MS. WAGNER:

21 Q. Yes.

22 A. Yes, I did know then.

23 Q. And did you know -- I think you testified that you didn't
24 see it then. But do you know now that the Defendant used knee
25 strikes against Mr. Graciano while he was in restraints?

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 MR. DRESBOLD: Objection. Leading.

2 THE COURT: Overruled.

3 THE WITNESS: I know now. I did not know then.

4 BY MS. WAGNER:

5 Q. All right. You were asked, again, a number of questions
6 about adrenaline and stress. Once -- and how you felt in the
7 moment during this use of force. How did you feel once you and
8 Deputy Coe got Mr. Graciano in handcuffs?

9 A. That's where we started -- I would imagine when we started
10 to come down.

11 Q. Did the Defendant exhibit stress during this use of force?

12 A. I don't know how he would -- I don't know how he normally
13 would show that he's exhibiting stress.

14 Q. Do you recall that the Defendant was joking during this
15 use of force?

16 A. Yes.

17 Q. What do you recall about the jokes he was making?

18 A. Something --

19 MR. DRESBOLD: Objection. Outside the scope of my
20 cross.

21 THE COURT: Ms. Wagner?

22 MS. WAGNER: Judge, he asked a lot of questions about
23 adrenaline and perception and what's going on in the moment.
24 And this line of questioning is aimed at flushing out whether
25 the Defendant was under the same kind of stress that would

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 affect his perception.

2 THE COURT: Understood.

3 Mr. Dresbold?

4 MR. DRESBOLD: My questions went to this officer's
5 perception of his own adrenaline and how it affected him.

6 THE COURT: No. Understood. Overruled.

7 BY MS. WAGNER:

8 Q. What do you remember about the jokes that the Defendant
9 was making during his use of force?

10 A. It was about his tie.

11 Q. And do you recall when in the -- when, in relation to the
12 pepper spray, the Defendant was joking?

13 A. Definitely after. Maybe before.

14 Q. Do you recall when, in relation to applying the knee
15 strikes, the Defendant was making his jokes?

16 A. Like -- I think both before and after, I believe.

17 Q. So you recall that both before pepper-spraying
18 Mr. Graciano and between pepper-spraying and knee-striking
19 Mr. Graciano in restraints, the Defendant was joking, and that
20 he was joking afterwards?

21 A. I believe so.

22 Q. You testified yesterday that you didn't use knee
23 strikes -- and again today -- that you didn't use knee strikes
24 against Mr. Graciano after he was in handcuffs; correct?

25 A. Correct.

Deputy Ethan Mongold - Redirect Examination (Ms. Wagner)

1 Q. And do you recall the reason that you did not use knee
2 strikes?

3 A. I didn't think they were -- they would be effective or
4 justified.

5 Q. All right. And you were asked and you testified that you
6 didn't use pepper spray against Mr. Graciano that night. Do
7 you recall -- and you were asked why. And do you recall your
8 testimony?

9 A. Yes.

10 Q. Or your response?

11 A. Yes. It was in a confined space, and I didn't see
12 justification.

13 MS. WAGNER: May I confer with my co-counsel, Judge?

14 THE COURT: You may.

15 MS. WAGNER: Could we go back to Exhibit 1. And go,
16 I'd say, about five minutes in, or just under five.

17 (Video played.)

18 MS. WAGNER: A little bit further. I want to get to
19 the place where we paused it before.

20 MS. JONES: It was 5:14.

21 MS. WAGNER: 5:14? Okay. Can we go there, please.

22 BY MS. WAGNER:

23 Q. Deputy Mongold, would you agree with me that when we
24 played this a moment ago this is where you raised your hand and
25 said that you believed Mr. Graciano was awake?

Deputy Ethan Mongold - Recross-Examination (Mr. Dresbold)

1 A. Yes.

2 Q. Okay. And could you tell us what the time on the screen
3 is?

4 A. 5:14.

5 Q. Okay.

6 MS. WAGNER: Those are all the questions I have.

7 THE COURT: Thank you.

8 Recross, Mr. Dresbold?

9 MR. DRESBOLD: Can you play the tape from 5:14,
10 please.

11 THE COURT: And that's Exhibit 1?

12 MR. DRESBOLD: That's right.

13 THE COURT: Okay. Thank you.

14 (Video played.)

15 RECROSS-EXAMINATION

16 BY MR. DRESBOLD:

17 Q. All right. Having watched that, it appears that two times
18 after you believe Mr. Graciano was awake Deputy Kuretza again
19 identified himself as the sheriff's department; is that right?

20 A. Yes.

21 Q. Okay. You believe that now; you believed that then.

22 A. Yes.

23 Q. This joke about the tie. Do you want to tell me about
24 that, where that originated?

25 A. Where it originates?

Deputy Ethan Mongold - Recross-Examination (Mr. Dresbold)

1 Q. Yeah.

2 A. Our department, for some reason, has a very strict tie
3 policy. Our shift commander at the time had a very strict tie
4 policy for whatever reason.

5 Q. And they were clip-on ties?

6 A. Yes.

7 Q. And sometimes they get messed up or lost?

8 A. Commonly, yes.

9 Q. So was it your perception that when Lance was making
10 reference to his tie coming off and his nameplate coming off it
11 was in reference to that policy and the general feeling about
12 that?

13 A. Yes.

14 Q. You were asked on redirect about, you know, your ability
15 to view other people's CDs once they downloaded the body cam.
16 In 2018, when somebody downloaded a body cam under their CD, it
17 was then their responsibility to turn it in to their sergeant;
18 right?

19 A. For a use of force?

20 Q. Right.

21 A. They would give it to the officer doing the use of force.

22 Q. And so that would be out of their possession at that
23 point.

24 A. Out of whose possession?

25 Q. The officer's.

1 A. Yes.

2 Q. And even if you were -- if you wanted to view somebody
3 else's body cam, you could only do it in their presence, with
4 their permission; is that right?

5 A. I'm not exactly sure. I think if they give you the CD,
6 you're fine to view it whenever.

7 Q. So not necessarily in their presence, but at least you
8 have to request it from that officer?

9 A. Yeah, back then, or a supervisor.

10 Q. Okay.

11 A. Yeah.

12 Q. Thanks.

13 THE COURT: Re-redirect, Ms. Wagner?

14 MS. WAGNER: No, Your Honor. Thank you.

15 THE COURT: No? May the officer step down subject to
16 recall?

17 MS. WAGNER: Yes, Judge.

18 THE COURT: All right.

19 Officer, thank you so much. You may step down, sir.

20 THE WITNESS: Am I subject to recall, sir?

21 THE COURT: You are.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Thank you. Thank you so much.

24 The Government may call its next witness.

25 (End of Deputy Ethan Mongold's trial testimony, 11:13 AM.)

CERTIFICATE

I, Rachel Kocher, a Registered Professional Reporter and Official Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action as reported by me stenographically, all to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 9th day of August 2023.

Rachel Kocher

Rachel Kocher, RPR, CRR