

REPORTER'S RECORD

VOLUME 3 OF 5 VOLUMES

TRIAL COURT CAUSE NO. 32004

COURT OF APPEALS NO. 12-15-00280-CR

STATE OF TEXAS) IN THE DISTRICT COURT
VS.)
RICHARD GROSS) ANDERSON COUNTY, TEXAS
) 87TH JUDICIAL DISTRICT

JURY TRIAL

COPY

The following proceedings came on for the hearing in
The above-entitled and numbered cause on the 14TH day
of July, 2015, before the Honorable Deborah Oakes Evans, Judge
presiding, held in Palestine, Anderson County, Texas:

Proceedings reported by computerized stenotype machine.

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1 (July 14, 2015)

VOLUME 3

2 (Outside presence of the Jury)

3 THE COURT: Y'all ready? The Jurors are all here? It's
4 the State's witness?

5 STATE: Yes.

6 THE COURT: Okay.

7 MR. CARGILL: Is this the only witness you have here
8 right now?

9 THE STATE: Yes.

10 THE COURT: If you'll raise your right hand? Do you
11 solemnly swear or affirm that your testimony will be the truth,
12 the whole truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do, ma'am.

14 THE COURT: Have a seat.

15
16 RULE INVOKED

17 MR. CARGILL: Your Honor, at this time we invoke the
18 rule.

19 THE COURT: I figured you'd invoke the rule. The
20 rule's been invoked, that requires witnesses to remain out of the
21 courtroom when other witnesses are testifying, not to talk about
22 the case, the facts of the case except in the courtroom or with
23 one of the attorneys.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. Do we have any other witnesses that

1 may be coming in?

2 MR. CARGILL: None of our witnesses are here yet.

3 THE COURT: The rule's been invoked, so if you see
4 someone walk in just walk back and simply ask them or your
5 witness if they're not -- that's fine. If they are just tell
6 them to wait outside.

7 STATE: Okay. Yes, ma'am.

8 THE COURT: Okay. You can have a seat, it's going to
9 be a few minutes, my jury's not all here yet.

10 THE WITNESS: Okay.

11 THE COURT: Okay. Let me go ahead and swear y'all in.
12 How are y'all?

13 THE WITNESS: All right. How are you?

14 THE COURT: I'm good. Let me go ahead and swear you
15 in. Both raise your right hand. Do you solemnly swear or affirm
16 that your testimony will be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Okay. The rule's been invoked you're
21 required outside the courtroom until you're brought in my the
22 court or somebody comes and gets you.

23 THE WITNESS: Okay.

24 THE WITNESS: Okay.

25 THE COURT: Y'all ready? The jury's all here. Y'all

1 ready?

2 STATE: State's ready.

3 THE COURT: Okay.

4 (Jury present)

5 BAILIFF: All rise.

6 THE COURT: Okay. The courtroom may be seated.

7 Welcome back Ladies and Gentlemen, it's good to see you. Thank
8 you for your promptness. I appreciate it and I know the parties
9 do as well.

10 As I mentioned to you yesterday, we're going to proceed
11 this morning and the State may make an opening statement if it
12 chooses. Would the State like to make an opening statement?

13 STATE: Yes, ma'am.

14 THE COURT: Okay. You may proceed whenever you're set
15 up and ready.

16

17 STATES OPENING STATEMENT

18 STATE: May it please the Court, Counsel. Good morning
19 everybody, you've made it through the Voir Dire process,
20 congratulations.

21 Now, you're in the box and instead of hearing about
22 legal theory and charges in a broad based manner, you get to hear
23 about the actual case, today. And fulfill your role as the Jury
24 and as Jurors.

25 And a case tells the story, it's not by the narrator,

1 it's not by one person, it's told by evidence. It's told by
2 testimony -- testimony given right here on the witness stand.

3 And as the State, which has the burden of proof, as you
4 heard about yesterday, we're going to present witnesses today.
5 One of those witnesses is Sergeant Mike Mitchell.

6 And what he's going to tell you is that on November
7 19th, 2014 of last year, he was dispatched to 1109 Bedry Lane in
8 Elkhart for a potential disturbance with weapons. Him along with
9 Deputy Don Meyers arrived on scene and they saw a man standing in
10 front of a trailer house.

11 That man was Richard Gross, speaking incoherently,
12 holding a rope with his left hand that was tied to the stairs of
13 the trailer house and a kid's table in the right hand. Now both
14 Meyers and Mitchell pleaded with Richard Gross to put down the
15 table, put down the rope, to get on the ground. Did he listen?
16 No.

17 And the evidence will show that Richard Gross would not
18 follow those instructions by the law enforcement officers. The
19 evidence will show and Mr -- Sergeant Mitchell will get on this
20 witness stand and tell you how he came around the Defendant, how
21 he tried to get him on the ground himself to avoid using a taser
22 or some other force to get him to comply. Mitchell got him on
23 the ground, but the evidence will show that Richard Gross didn't
24 stay there, instead he tried to get back up. That's what Deputy
25 Meyers used his taser.

1 You'll see the video. Used his taser to make Richard
2 Gross comply with their instructions.

3 Now the evidence will show that once Richard Gross was
4 on the ground, the EMT's came and checked him out. And Deputy
5 Meyers and Sergeant Mitchell will tell you they then ensued on
6 another struggle with Richard Gross, trying to get him in the
7 vehicle. He simply would not do it.

8 They had him on the ground, they're going to tell you
9 how they put handcuffs on his hands, on his wrists, put shackles
10 on his legs -- at this point, Trooper Lynn Hubert of the DPS
11 showed up to assist.

12 So law enforcement officials decided Lynn would grab
13 his legs, Deputy Meyers would grab the front part of his body,
14 try to get him in the car.

15 And Deputy Meyers will tell you that when Richard Gross
16 -- when they're trying to put Richard Gross into the vehicle what
17 did he do? He bit Deputy Meyers on the right thigh, drew blood,
18 cut the skin, through his uniform.

19 Deputy Meyers will tell you at that point, he struck
20 Richard Gross in the head with his right fist, had to -- he tried
21 to get him to release the bite.

22 Deputy Meyers will tell you how he broke fingers on his
23 right hand doing that very act. And Deputy Meyers will tell you
24 that Richard Gross didn't let go of his bite, that Deputy Meyers
25 had to pull his leg away.

1 And once again, that bite caused pain. Deputy Meyers
2 will sit here today and tell you about the pain involved and
3 you'll see the pictures of the bite mark and the broken skin.

4 Y'all sacrificed a lot of time yesterday and as the
5 State and as the Defense, and Mr. Cargill will tell you we
6 appreciate your time here today. Coming back and hearing this
7 evidence and fulfilling your role as the Jury.

8 Thank you for your time.

9 THE COURT: Would the defense like to make an opening
10 statement at this time or reserve your statement?

11 MR. CARGILL: We'd like to make our opening statement.

12 THE COURT: Okay. You may proceed whenever you're set
13 up and ready.

14 DEFENSE OPENING STATEMENT

15 MR. CARGILL: Good morning. Well, you're the lucky 13.
16 A lot of the facts you'll hear today, you're not going to like.
17 A lot of the testimony you're going to have questions in that
18 regard.

19 What the evidence will show though when it gets down to
20 it is the State cannot prove beyond a reasonable doubt that the
21 officer -- the public servant that is was lawfully discharging
22 his duty which is required by statute.

23 I think that the narrative that the State just gave you
24 shows some factual contents and then there's other perspectives
25 when you look at it. When just for instance the evidence will

1 show that my client had handcuffs on and that's when they were
2 tasing him. And they continued to tase him, and continued to
3 tase him and then the struggle to the car -- the evidence is
4 going to show my client was limp.

5 What happened between the time period after he was
6 multiply tased and he was limp getting to the car -- that is a
7 big discrepancy. And it's not shown on the video.

8 The evidence will show when the video is being shown
9 initially it captures my client and what was going on with him.
10 Then after -- the multiple times and Mr. Gross is limp and on the
11 ground, for some reason of no explanation at all the camera
12 becomes to be focused -- yet in another place.

13 We believe the evidence is not going to show the
14 officer was lawfully discharging his duty as required by the
15 statute.

16 THE COURT: Thank you, Mr. Cargill. Does anybody want
17 a notepad -- anybody want to take notes? If you don't, then
18 don't -- but we've got them, the Bailiff will hand you one if you
19 want a notepad, don't feel like you have to and don't feel like
20 somebody's that's taking notes is necessarily doing a better job
21 than somebody that might not be. It's a personal preference.

22 STATE: Your Honor, may I move this podium back --

23 THE COURT: Yes, sir.

24 THE COURT: Okay. The State may call its first
25 witness.

1 STATE: State calls Mike Mitchell.

2 THE COURT: Mike Mitchell. Deputy, I swore you in a
3 few minutes ago, you're still under oath. If you'll come forward
4 and take a seat in the witness chair.

5 STATE: May I proceed, Your Honor?

6 THE COURT: Yes, sir -- Yes, ma'am, you may.

7 DIRECT EXAMINATION

8 BY STATE:

9 Q Could you please tell the Jury who you are?

10 A Deputy Michael T. Mitchell.

11 Q And Deputy Mitchell, how are you presently employed?

12 A As a patrol deputy for our Anderson County Sheriff's
13 Office.

14 Q How long have you been a patrol deputy?

15 A Almost seven years now.

16 Q And at one point were you a Sergeant?

17 A Yes, ma'am. I was.

18 Q And you've gone back to being a deputy?

19 A Yes, ma'am.

20 Q Is that less of a headache?

21 A Very much.

22 Q And Deputy Mitchell have you been in Anderson County
23 your whole life?

24 A Yes, ma'am.

25 Q And we're not related are we?

1 A Not at all.

2 Q You don't claim me, I don't claim you, right?

3 A No, ma'am.

4 Q Can you just briefly explain to the jury how you become
5 a law enforcement officer?

6 A Yes, ma'am. I -- you get selected by an agency, go
7 before them and they will sponsor you to go through police
8 academy. You go through approximately seven to eight weeks of
9 training at that time, it will go through up to four months of
10 training period.

11 Once you pass the police academy test, you pass the
12 state test and then you go back to your hiring agency, they will
13 put you through a minimum of four months of training. It's call
14 field training and after that you get the discretion of your
15 training Sergeant.

16 Q So you've been a peace officer for seven years?

17 A Seven years with Anderson County. Prior to that I was
18 one year in the Dallas Police Department.

19 Q So eight years total?

20 A Yes, ma'am.

21 Q And were you working in the capacity as public servant
22 on November 19th, 2014?

23 A Yes, ma'am.

24 Q And who were you working with that day?

25 A Deputy Don Meyers, working on the south end of the

1 county.

2 Q Explain to the jury what the south end is?

3 A We have Anderson County broke up into three districts.
4 We have District 1 which is the Frankston area, Highway 155 over
5 to Highway 84. District 2 which is the Elkhart Slocum. We cover
6 everything in District 3 which is Montalba.

7 Q So when you're working the south end explain to the
8 jury what that means?

9 A It means your primary duties are to patrol the south
10 end of the county, District 2, which is Slocum, Elkhart.

11 Q And at one point during your patrol on this date on
12 November 19th, 2014 were you dispatched to a residence there in
13 Elkhart?

14 A Deputy Meyers was dispatched.

15 Q Okay. But were you with Deputy Meyers at the time?

16 A Yes, ma'am.

17 Q And where did y'all go?

18 A I believe the address was 1109 Bendry Lane.

19 Q And is that in Elkhart?

20 A Yes, ma'am.

21 Q Is that in Anderson County, Texas?

22 A Yes, ma'am.

23 Q Why were y'all dispatched -- why did you make your way
24 there?

25 A Dispatch informed us of a possible disturbance with

1 weapons in progress.

2 Q And once you got the scene did you notice anyone
3 outside?

4 A Yes, ma'am.

5 Q Now did you actually ride with Meyers or did you have
6 your own car?

7 A No, ma'am. I was a patrol supervisor so I was in my
8 patrol car.

9 Q In your own and Meyers was in his?

10 A Yes, ma'am. That is correct.

11 Q Did y'all arrive at the same time?

12 A Yes, ma'am.

13 Q And when you arrived at the scene what did you see?

14 A I observed an individual standing outside, Bedry Lane
15 which is 1109, next to a porch area going up to the trailer
16 house.

17 Q Is a trailer park area or is this just a stand alone
18 trailer -- is this like a mobile home park?

19 A Yes, ma'am.

20 Q Okay. How was the Defendant or excuse me -- how was
21 the person acting?

22 A At the time we arrived he had a what appeared to be a
23 rope in his hand and was tugging against it and I couldn't hear
24 him -- but we could see his mouth moving and we kind of sat there
25 and watched him to see what was going on for a minute before we

1 exited our cars.

2 Q And did you exit your car?

3 A Yes, ma'am.

4 Q Was he talking to anyone -- was there anybody outside?

5 A He was talking but there was no one around.

6 Q How did he appear to you?

7 A At that time he appeared under the influence of an
8 unknown substance but I hadn't made that contact yet.

9 Q Once you got out of the vehicle did you approach him?

10 A Do I what?

11 Q Once you got out of the vehicle did you approach him?

12 A Deputy Meyers approached first and I kind of stayed on
13 the side of him and back out of the way.

14 Q Explain to the jury why you were in the position you
15 were in?

16 A At that time as Deputy Meyers made his approach, he's
17 always the contact primary officer and takes the subject gets
18 aggressive or tries to evade us, I always try to position myself
19 and cut off the approach.

20

21 Q What did you observe from your vantage point?

22 A The subject was grasping the rope in his hand and
23 lunging out and had a small child's round chair that has fabric
24 on it like you sit and watch TV in front of in the other hand and
25 was not really slinging it -- while he was slinging it around and

1 making inaudible statements that we couldn't understand.

2 Q Did you make any orders towards the individual?

3 A No, ma'am. Deputy Meyers did.

4 Q Did you recognize the individual?

5 A I didn't understand you.

6 Q Did you recognize the individual?

7 A Not at that point from where I was standing.

8 Q Did you at some point recognize him?

9 A Yes, ma'am.

10 Q And who was he?

11 A Richard Gross.

12 Q And do you see him in here in the courtroom today?

13 A Yes, ma'am. Yes.

14 Q Can you please describe what he's wearing?

15 A He's wearing a black/gray and white pin striped short
16 sleeve shirt.

17 STATE: Your Honor, may the record please reflect he's
18 identified the Defendant, Richard Gross.

19 MR. CARGILL: No objection.

20 THE COURT: The record will so reflect.

21 STATE: Thank you, Your Honor.

22 Q (BY STATE) So Deputy Meyers did the primary talking?

23 A Yes, ma'am.

24 Q Did you have any of your weapons drawn or your taser
25 drawn?

1 A I did not.

2 Q And Deputy Mitchell can you explain to the jury what
3 the -- what's the point of having the taser?

4 A The taser is another step in our use of force
5 procession that we use. Once we determine that the individual is
6 taking down or for there being any further violence or harm to us
7 or anybody else we use it when we figure out the verbal command
8 is not going be an effective tool.

9 Q As Deputy Meyers attempted to talk to Richard Gross,
10 did Richard Gross comply?

11 A Not at all.

12 Q From the verbal commands?

13 A Not off the bat. No, ma'am.

14 Q Was he repeatedly asked in your presence to drop the
15 chair?

16 A Yes, ma'am.

17 Q And did he actually comply by dropping the chair?

18 A Yes, ma'am.

19 Q After he dropped the chair what was he ordered to do
20 next?

21 A He was ordered to go to his knees.

22 Q And explain to the jury why y'all request that?

23 A From the actions and behavior of what he had observed
24 from Mr. Gross it reflects unknown substance at that time and for
25 his safety and ours he was going to be placed on the ground and

1 placed in hand restraints and detained -- for our safety and
2 until we had gotten further investigation.

3 Q And would he go to the ground -- would he go to the
4 ground?

5 A The first time I went in a little bit behind him and
6 placed him on the ground.

7 Q Explain to the jury what actions you took?

8 A Deputy Meyers responded and given him instructions that
9 if he didn't lie down on the ground he would be tased and he told
10 him to get on the ground. I go to the ground -- at that point I
11 moved in behind him and made an attempt to put him on the ground
12 by using the taser, that's a step further in our process, if it's
13 not working. I got in behind him, took him to the ground face
14 first on his stomach and he started picking me back up off the
15 ground.

16 Q So you were able to jump on his back?

17 A Yes, ma'am.

18 Q And get him to the ground and while y'all were on the
19 ground your testifying to the jury that he was able to stand up
20 with you on his back?

21 A He put his -- he got his hands underneath him and
22 picked me up like a rag doll.

23 Q Like a rag doll?

24 A Yes, ma'am.

25 Q And Richard Gross he's pretty tall, he's skinny, you're

1 not as tall as him, you're stockier, do you consider yourself
2 pretty strong?

3 A Pretty much.

4 Q Have you ever been thrown off like that before?

5 A Not like that.

6 Q And while this is going on are you aware if Don Meyers
7 had his taser out?

8 A Yes, ma'am.

9 Q And do you -- do the tasers have camera capabilities?

10 A Yes, ma'am. They do.

11 Q Explain that -- do you know how they work -- how the
12 tasers work?

13 A Yes, ma'am.

14 Q Can you explain it to the jury?

15 A Yes, ma'am. Before we even get to use a taser we have
16 to go through training exercise and they explain to us how they
17 work, they show us the camera, the way they turned on -- the
18 laser on it. Then we all have to go through being tased. But it
19 has a cartridge on the end of it, ours has a 21 foot reach
20 capability on it or you can remove the cartridge and use the
21 taser itself. It's called dry stun for compliance. The camera
22 when you activate the taser, turn it on -- the light and the
23 camera automatically come on and once you initiate it it's
24 already recording when you turn it on.

25 Q So it's on -- when you turn it on -- you don't have to

1 deploy it for it to activate the camera?

2 A No, ma'am.

3 Q And you testified earlier that his taser was displayed?

4 A Yes, ma'am.

5 Q And once Richard Gross tossed you like you said like a
6 rag doll, what happened next?

7 A Deputy Meyers then deployed his taser and got
8 compliance from Mr. Gross.

9 Q Have you ever been tased before?

10 A Yes, ma'am.

11 Q Can you explain to the jury what your body does?

12 A It's a muscle immobilizing device, it will lock your
13 body up. It's the worst five seconds of your life.

14 Q It lasts how long?

15 A Five seconds.

16 Q And in that -- you said you've been tased -- in the
17 five seconds your muscles -- what do they do -- do they contract
18 do they --

19 A They contract, they lock up, you can't move. You just
20 want away from it, you can't get away from it.

21 Q So that's total compliance?

22 A Yes, ma'am.

23 Q And after the five seconds last or thereabouts what
24 does your body -- in your experience what did your body do?

25 A You have about a two or three lapse where your body

1 starts relaxing, where your muscles start getting over the
2 initial shock that basically electricity going through them.

3 Q And what is the if they shot at someone are they-- is
4 the person that shot the prongs able to tase the person again?

5 A Are they able to tase them? Yes, ma'am. As long as
6 they are still connected.

7 Q And if the person is still not compliant and trying to
8 get up, not obeying orders, who has been tased, what is your
9 understanding of procedure that's to be used?

10 A We can tase them again.

11 Q Was Richard Gross tased multiple times that night?

12 A I don't know. I only remember one taser being used.

13 Q Have you used your taser gun before?

14 A Yes, ma'am. I have.

15 Q Have you used it multiple times on the same person?

16 A No, ma'am.

17 Q Do you find that they normally gain -- you normally
18 gain compliance after the first time?

19 A Yes, ma'am.

20 Q And once Richard Gross was on the ground, what happened
21 next?

22 A We were able to move in and apply the wrist restraints
23 on him.

24 Q Is it -- metal restraints as in hand and legs or --

25 A At the first it was just hand restraints, handcuffs.

1 Yes, ma'am.

2 Q Are you able to remove -- the Sheriff's Deputies or any
3 of them are they able to remove the prongs are actually left --
4 as he was shot --

5 A Yes, ma'am.

6 Q Are y'all able to remove that or do you have to wait
7 for medical?

8 A No, ma'am. We have to call for EMS.

9 Q And did EMS come to the scene?

10 A Yes, ma'am. They did.

11 Q And did EMS remove the prongs?

12 A Yes, ma'am.

13 Q And was he checked out medically?

14 A Yes, ma'am.

15 Q Was there any indication to you that he could not be
16 transported to jail at that time?

17 A None whatsoever.

18 Q And why -- you handcuffed him was he eventually leg
19 cuffed as well?

20 A Yes, ma'am.

21 Q Why was he leg cuffed?

22 A Because he would not stay on the ground, he kept making
23 an attempt to get up and get away. He was kicking at myself and
24 Deputy Meyers. He kept coming to his knees and we were afraid he
25 might try to get up.

1 Q And at this point when he threw you off his back had
2 you in your opinion had he committed any type of offense that you
3 could arrest him for?

4 A Not until the time he was being detained.

5 Q Okay. So he was being detained?

6 A Yes, ma'am.

7 Q And when he's handcuffed on the ground did you make
8 contact with the people inside the trailer?

9 A After he was handcuffed and restrained. Yes, ma'am.

10 Q After he was handcuffed and restrained?

11 A Yes, ma'am.

12 Q And through your investigation with the incident that
13 happened inside the trailer, were you able to determine that you
14 would be arresting him?

15 A Yes, ma'am.

16 Q So based off the information that you learned in this
17 investigation you felt like an offense may have been committed?

18 A Yes, ma'am.

19 Q Inside the trailer house?

20 A Yes, ma'am.

21 Q And when you came back outside and the prongs were off
22 did you assist in actually placing Richard Gross into the patrol
23 car?

24 A Not until the final force. He went limp and fell to
25 the ground.

1 Q So who actually picked him up off the ground?

2 A That would have been Deputy Don Meyers and Trooper L.
3 Hubert.

4 Q Have you ever seen anyone who is being arrested or have
5 you seen them handcuffed with leg and hand restraints before?

6 A Yes, ma'am.

7 Q Have you seen anyone have to be carried to the patrol
8 car before?

9 A Numerous times.

10 Q Is it something that happens when people just won't
11 comply and they're very combative?

12 A If they were combative and won't comply. Yes, ma'am.

13 Q As Deputy Meyers and Trooper Hubert picked up Richard
14 Gross and brought him to -- who's patrol car were y'all going to;
15 do you remember?

16 A Deputy Meyers.

17 Q As were y'all were going to Meyer's car where were you?

18 A I was on the driver's side of the vehicle.

19 Q What type of vehicle is this?

20 A It's a Chevrolet Impala four door patrol car.

21 Q So you were where in the front; is that what you said?

22 A I was on the driver's side near the back of the car.

23 Q Near the back of the car. And what did you do?

24 A Once I heard them -- he would -- they were having
25 trouble getting him in the car -- they were on the passenger

1 side, I opened the driver's side rear door once they started with
2 him I was going to be able to grab his legs and help pull him to
3 the back of the car.

4 Q And were you able to do that?

5 A I started that way up until he bit my partner.

6 Q And did you actually see him bite?

7 A No, ma'am. But I could hear Deputy Meyers screaming.

8 Q So you heard Deputy Meyers scream?

9 A Yes, ma'am.

10 Q Did he say anything as he was screaming?

11 MR. CARGILL: Objection, hearsay.

12 STATE: Your Honor, it goes towards excited utterance
13 if he heard it in his presence.

14 THE COURT: Overruled.

15 MR. CARGILL: Your Honor, our objection is she hasn't
16 provided predicate for excited utterance.

17 THE COURT: Overruled.

18 STATE: Thank you, Your Honor. May we proceed?

19 THE COURT: Yes, you may.

20 Q (BY STATE) So you're in the back of the car to be
21 pulled into the back of the car you hear Deputy Meyers scream?

22 A Yes, ma'am.

23 Q Was it a scream of pain, happiness, I mean, what did it
24 make you believe?

25 A That he was in extreme pain.

1 Q Did he say anything to lead you to believe that yes, he
2 was in extreme pain -- yes or no?

3 A Just his tone of voice.

4 Q Okay.

5 STATE: May we have one second, Your Honor?

6 THE COURT: Yes, you may.

7 Q (BY STATE) And after you heard Deputy Meyers scream
8 what did you do next?

9 A I continued trying to get Mr. Gross in the car.

10 Q Did you see where Deputy Meyers went? Did you see
11 where Deputy Meyers went?

12 A From once we got him in the car, he went straight to
13 the ambulance.

14 Q And so EMS was still there?

15 A Yes, ma'am.

16 Q Did you go over to see about him?

17 A Yes, ma'am.

18 Q How did he appear to you?

19 A Visibly shaken.

20 Q What did you do after you checked on Meyers?

21 A I contacted my Sergeant -- Sergeant Bishop.

22 Q And did Bishop come out?

23 A Yes, ma'am.

24 Q And were y'all dressed in your Anderson County
25 Sheriff's Department Office uniforms?

1 A Yes, ma'am. Just as I am now.

2 Q Okay. So the brown and the black tie -- well black tie
3 is fancy for court, right?

4 A Yes, ma'am.

5 Q Okay. Just like the Bailiff's, I guess?

6 A Yes, ma'am.

7 Q Clearly identifying yourselves as law enforcement?

8 A Yes, ma'am.

9 MR. CARGILL: Objection, leading.

10 THE COURT: Overruled.

11 STATE: May I proceed, Your Honor?

12 THE COURT: Yes, you may..

13 Q (BY STATE) Were you identified as law enforcement?

14 A Yes, ma'am.

15 Q Did you show up there in your marked patrol vehicle?

16 A Yes, ma'am.

17 Q Did you have your lights on as well?

18 A I had my lights on as well.

19 Q Were y'all very far from this residence when y'all were
20 initially dispatched?

21 A Maybe two-tenth of a mile.

22 STATE: I pass the witness, Your Honor.

23 THE COURT: Mr. Cargill?

24 MR. CARGILL: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MR. CARGILL:

2 Q Good morning, officer.

3 A Good morning, sir.

4 Q You said when you arrived my client was talking and no
5 one was around?

6 A Not outside of the trailer. No, sir.

7 Q And how far were you away from him?

8 A When I parked probably 30 feet maybe.

9 Q And did he seem incoherent as far as not making any
10 sense?

11 A Yes, sir. I mean --

12 Q When he was talking and talking around?

13 A Yes, sir. He wasn't making any sense.

14 Q Now you said that he had a rope in one hand?

15 A Yes, sir.

16 Q And a child's small chair in the other?

17 A Yes, sir.

18 Q And did you notice whether or not the rope was tied off
19 to the --

20 A Banister.

21 Q Banister?

22 A Yes, sir.

23 Q It was?

24 A Yes, sir.

25 Q So he wasn't going any further than -- as long as --

1 during your observation he wasn't going any further than the rope
2 because he was holding on to the rope; is that correct?

3 A Until he let go of it.

4 Q And how long was that rope?

5 A I didn't measure it.

6 Q Oh, no. I'm not asking you a measurement. Was it
7 short?

8 A Yes, sir.

9 Q A long cord?

10 A No, sir. It was a short rope.

11 Q Okay. Now, you wrote a report in this incidence; is
12 that correct?

13 A Yes, sir.

14 Q And you reviewed that report prior to your testimony?

15 A Yes, sir. I also have it with me.

16 Q Okay. I might ask you to refer to that report to see
17 if it reflects or refreshes your memory. I want to ask you a
18 couple of questions. Give me just a second let me see where I
19 was. My client's speech do you remember whether it was slurred
20 or not -- was my client's speech slurred?

21 A Can I look --

22 Q Certainly, just -- you can't read it out loud, but you
23 can review it.

24 A Okay.

25 Q That's why I asked you to --

1 A And your question again, Mr. Cargill?

2 Q My client's speech was it slurred?

3 A Yes, sir.

4 Q And he was unsteady on his feet?

5 A Yes, sir.

6 Q And his eyes were glassy?

7 A Yes, sir.

8 Q Okay. Do you know whether or not he understood the
9 commands you gave?

10 A At the time I don't know.

11 Q Now I might have misheard but I think when Ms.
12 Mitchell asked did you give commands for him to -- any commands
13 you had said that Officer Meyers gave the commands, but you in
14 fact gave the commands; is that correct?

15 A Yes, sir. Once I moved behind the party. Yes, sir. I
16 did also.

17 Q Oh, no, that's fine. It's been a while, we've all
18 slept since then, right?

19 A A little bit. Yes, sir.

20 Q So you gave him several commands to drop the chair and
21 get on the ground; is that correct?

22 A Yes, sir.

23 Q He -- he complied by dropping the chair?

24 A Yes, sir.

25 Q But he didn't get on the ground?

1 A Never.

2 Q Okay. And that's when you moved behind him?

3 A Yes, sir.

4 Q Okay. Y'all told him that if he didn't get on the
5 ground he would be tased?

6 A Yes, sir.

7 Q Now was he acting any different then than when you
8 first arrived -- what I mean is was he still speech slurred, eyes
9 glassy, kind of incoherent?

10 A Yes, sir.

11 Q Okay. You did get him to the ground; is that correct?

12 A Yes, sir. That is correct.

13 Q And then it's kind of a little different but he got up
14 off the ground or started to get up off the ground; is that
15 correct?

16 A Yes, sir.

17 Q And that's when he was tased?

18 A Yes, sir.

19 Q And became compliant after that?

20 A Yes, sir.

21 Q Tasers you said that it's the worst five seconds of
22 your life; is that about accurate?

23 A I don't ever want to get hit again.

24 Q But you were hit with the taser was it just one time or
25 did they repeat the tasing when you --

1 A No, sir. You can either take what we call a dry stun
2 like I explained to the jury or you can take the full five second
3 ride.

4 Q Okay. And the full five second ride is kind of tough,
5 right?

6 A Yes, sir.

7 Q Would you imagine that it would be even more
8 excruciating or more difficult for the human body to take if you
9 were tased a second time -- after you just had been tased?

10 A That depends on your state at that time, if you're
11 under --

12 Q Depends on what you're -- the condition of your body is
13 a human; is that correct?

14 A Yes, sir.

15 Q And now although tasers seem to have made as a safe
16 alternative to definitely against to your firearm, tasers have
17 caused death in some instances; is that correct?

18 A I'm not --

19 Q In your training you didn't learn that?

20 A I've never been told that tasers was the actual cause
21 of death.

22 Q Okay. Now this is if you'll review your report pretty
23 carefully again, if you'll just read it to yourself because I'm
24 going to ask you a couple of other questions that you had
25 answered in direct. If you'll just read the first page that's

1 all I'll go over -- do you recall in your report you didn't say
2 anything about Mr. Gross kicking your knees or any of that type
3 of physical struggle or --

4 A I know he kicked me.

5 Q It's not mentioned in your report; is it?

6 A No, sir.

7 Q Okay. And in fact after you had stated in your
8 testimony that he became compliant that's when handcuffs were
9 placed on him; is that correct?

10 A Yes, sir.

11 Q And then eventually the taser prongs were removed and
12 leg restraints were put on?

13 A Yes, sir.

14 Q Now after that point did you not see that Mr. Gross
15 once he was helped up or as I think you said in your testimony
16 carried to the car by Trooper Hubert and Deputy Meyers, Mr. Gross
17 went limp and fell to the ground?

18 A Yes, sir.

19 Q Once he fell to the ground how long was it before he
20 was again picked up and put in the patrol car?

21 A Just a matter of seconds.

22 Q Okay. Then he made it into the patrol car?

23 A Yes, sir.

24 Q Now also in your report you don't mention anything
25 about Deputy Meyers screaming or anything to that effect; is that

1 correct?

2 A No, sir. I do not mention that in the report.

3 Q And you agree with me that or you did just earlier your
4 memory might be better the night of instead of after you slept
5 for while and replayed things in your mind, correct?

6 A Yes, sir. It would have been a lot fresher then.

7 MR. CARGILL: No further questions, Your Honor. Pass
8 the witness.

9 THE COURT: Okay. Ms. Mitchell?

10 STATE: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY STATE:

13 Q Deputy Mitchell, have you ever been with one of your
14 partners when they've been bitten before?

15 A That's the first time I've ever had a partner bit.
16 Yes, ma'am.

17 Q You have been around someone before?

18 A I got there after the fact.

19 Q After the fact?

20 A Yes, ma'am.

21 Q Was that the first time you had ever been present?

22 A Yes.

23 Q Is the way he sounded is that something that you still
24 remember?

25 A Yes, ma'am.

1 Q And you testified earlier that it sounded like pain?

2 A Yes.

3 Q You said it sounded pain -- like painful?

4 A Yes, ma'am.

5 Q And as he was screaming did you hear him say anything?

6 A Yes, ma'am.

7 Q What did you hear him say?

8 A He bit me.

9 Q Did you bite him?

10 A No, ma'am.

11 Q Did you see Trooper Hubert bite him?

12 A No, ma'am.

13 Q And you testified I believe with Mr. Cargill that you
14 approached -- that you believe that he was under the influence of
15 something?

16 A Yes, ma'am.

17 Q And what led you to believe that?

18 A His glassy eyes, his unsteadiness on his feet, his
19 slurred speech, his excited speech and all of his speech which
20 was very hard to understand.

21 STATE: I pass the witness, Your Honor.

22 THE COURT: MR. CARGILL?

23 RE CROSS EXAMINATION

24 BY MR. CARGILL:

25 Q Just to make sure I'm clear, you didn't mention

1 anything in your report about Deputy Meyers saying he bit me or
2 anything to that effect?

3 A No, sir.

4 Q And I forgotten once my client complied by dropping the
5 chair -- the child's chair and y'all searched him -- he didn't
6 have any weapons; is that correct?

7 A Not that I recollect at this time.

8 Q Okay. And the rope was attached to the banister,
9 correct?

10 A Yes, sir.

11 Q So that couldn't be used as a weapon unless I guess you
12 got close enough that he could grab it?

13 A Yes, sir.

14 MR. CARGILL: No further questions.

15 STATE: May I have one second, Your Honor?

16 THE COURT: Yes, ma'am.

17 STATE: I have no further questions, Your Honor.

18 MR. CARGILL: I have no further questions.

19 STATE: May Deputy Mitchell be released, Your Honor?

20 THE COURT: Yes, sir.

21 MR. CARGILL: Your Honor, if we could remain under the
22 rule but no objections to his release.

23 THE COURT: Yes, he's free to go but you're still under
24 the rules of the trial, so you're free to go but if they need you
25 they'll call you back and don't talk about the case or the facts

1 of the case.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Okay. You may call your next witness.

4 STATE: The state calls Lynn Hubert.

5 THE COURT: Okay. Lynn Hubert.

6 MR. CARGILL: Your Honor, may we approach?

7 THE COURT: Sure.

8 MR. CARGILL: It's not about Officer Hubert's
9 testimony.

10 THE COURT: Okay. Well, we'll just leave him standing
11 at the back.

12 (Bench conference)

13 MR. CARGILL: My client keeps saying he needs to go to
14 the restroom.

15 THE COURT: Go ahead and tell Brock.

16 MR. CARGILL: Okay. We will wait until after him.

17 (End of bench conference)

18 THE COURT: Okay. Okay. I swore you in a few minutes
19 ago, you're still under the oath.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay.

22 STATE: May I proceed, Your Honor?

23 THE COURT: You may.

24 DIRECT EXAMINATION

25 BY STATE:

1 Q Good morning.

2 A Good morning.

3 Q Can you introduce yourself to the jury?

4 A My name is Trooper Lynn Hubert.

5 Q And how are you currently employed?

6 A I'm a Trooper with the Texas Highway Patrol.

7 Q And how long have you been with the Texas Highway
8 Patrol?

9 A Going on 14 years.

10 Q Were you in law enforcement before you were with the
11 Texas Highway Patrol?

12 A No, I was not.

13 Q So you've been in law enforcement for 14 years?

14 A That is correct.

15 Q Have you always been in Anderson County area?

16 A No, I worked in Limestone County for a year which is
17 around Mexia and Waco and Houston County which is Crockett for a
18 year and a half.

19 Q And the rest of the time you've been in Anderson
20 County?

21 A That is correct.

22 Q Were you on duty on November 19th. 2014?

23 A Yes, I was.

24 Q And were you dispatched to 1109 Bedry Lane in Elkhart?

25 A I wasn't per se, dispatched, they had a call come out

1 of a disturbance and I was fairly close and I responded to it.

2 Q Explain to the jury how that works, how -- you're not
3 specifically dispatched but you show up on the scene?

4 A Really the only time the Sheriff's Office calls us if
5 there's a crash or something like that or if an officer needs
6 assistance.

7 On this particular incidence, they just put out kind of
8 anybody that's close we have a fight or a disturbance in progress
9 and like I said I don't remember exactly where I was at but I was
10 fairly close to the south end of the county, and I responded.

11 Q And so you went to 1109 Bedry Lane?

12 A Yes, I did.

13 Q And is that in Anderson County?

14 A Yes, sir. Elkhart, Texas.

15 Q And what was the scene like when you arrived?

16 A When I arrived on the scene there was two marked deputy
17 cars with their lights activated and an ambulance from Palestine
18 Regional with its lights activated and some commotion -- there
19 were some individuals in front of the cars and I had to park way
20 back in the back so it kind of took me a while to get up to where
21 everything was actually going on.

22 Q So it's safe to say you were not the first responder on
23 scene?

24 A No, I was not.

25 Q And what deputies were already on scene?

1 A Deputy Mitchell and Deputy Meyers were already on the
2 scene.

3 Q And what are your duties when you show up to assist the
4 way you did in this case?

5 A Basically, just to see if the Sheriff's office is there
6 first and they're interviewing people, obviously, there was no
7 fight going on at that time, you can obviously could tell
8 something of a disturbance had taken place.

9 The deputies were handling everything. There wasn't a
10 large amount of people so basically I just stood back, I didn't
11 speak with any of the other individuals that was there. Just
12 kind of stood back and you know was there for support if
13 something else happened.

14 Q Did you talk to the deputies?

15 A I might of spoken to them -- you know -- they knew I
16 was there but they were handling the disturbance that had been
17 going on.

18 Q Was -- and when you showed up were you able to tell
19 whether there was a suspect on scene?

20 A Yes, there was.

21 Q Okay. And how could you tell that?

22 A From the best I can remember there was two subjects, a
23 black male and a white male, both of them looked like they had
24 been in an altercation I believe with either ripped shirts or you
25 know bloody noses, lips, something like that. And the deputies

1 were -- Deputy Mitchell was talking with the black male subject.

2 Q And was the black male was he detained at that point?

3 A He -- I don't believe -- he wasn't restrained. They
4 were just talking to him trying to figure out what was going on
5 and he wasn't being very cooperative.

6 Q And were you able to identify that black male?

7 A Did I identify him -- no, I didn't identify him.

8 Q Did you learn of his identity?

9 A I learned after everything had taken place.

10 Q And who was that black male?

11 A Mr. Gross.

12 Q And is Mr. Gross in the courtroom today?

13 A Yes, he is.

14 Q And can you identify with by an article of clothing
15 that he's wearing?

16 A It's a black and gray striped shirt.

17 STATE: Your Honor, let the record reflect that the
18 witness has identified the Defendant.

19 THE COURT: The record will so reflect.

20 Q (BY STATE) So he was not actually detained when you
21 showed up on scene?

22 A He didn't have handcuffs on and like I said they were
23 talking -- the deputies -- Deputy Mitchell was visiting with him
24 and just basically just trying to figure out what had happened.
25 So I don't know at what point -- I don't know if he had already

1 told him he was under arrest or I don't know that.

2 Q You said a little earlier that he was being
3 uncooperative. Did you see him being uncooperative when you
4 were on scene?

5 A Mainly just the verbal, his loudness, he was you know
6 screaming and hollering somewhat incoherent and intoxicated I
7 guess would be a better word or appeared to be intoxicated on
8 something. He wasn't acting normal.

9 Q Did he end up being detained while you were on the
10 scene?

11 A Yes.

12 Q Okay. Explain how that occurred?

13 A I didn't -- there was a use of force, I didn't see
14 whether I was visiting with another party that was involved or it
15 was a female there. I didn't see actual use of force as far as
16 what happened. I know the taser was deployed by the deputy.
17 Once that happened I still did not go hands on with anything they
18 had -- you know -- under control. There was no need for me to
19 kind of jump in and do anything. Once they got him in handcuffs,
20 I believe leg irons was placed on him for kicking and just being
21 belligerent because it seemed to get worse after he was put in
22 restraints.

23 Q And let's talk a little -- go in a little more with
24 your assisting duties. Did you make any determination of whether
25 he should be detained on scene?

1 A I didn't get involved in any of that. No, sir.

2 Q Sounds like that was up the sheriff's deputies that
3 were on --

4 A Yes, sir. I let them do their job and I didn't butt in
5 and say hey, you need to arrest this guy or whatever. I was just
6 there for merely support if something else happened.

7 Q So you said something like he had hand restraints, leg
8 restraints put on him by the other deputies that were on the
9 scene?

10 A That is correct.

11 Q Okay. So when did you actually get hands on?

12 A The deputies, Deputy Mitchell -- Deputy Meyers and
13 myself after he was -- after Mr. Gross was handcuffed we assisted
14 him to his feet and escorted him around Deputy Meyers's patrol
15 car and was going to sit in the back seat of the car.

16 And that was the first time that I actually went hands
17 on and assisted because at that point Deputy Mitchell was talking
18 on the radio because the taser had been deployed and they started
19 talking with the other individuals that was there. So I jumped
20 in and kind of helped get Mr. Gross in the car.

21 Q And it's safe to say there was a lot going on in that
22 time period?

23 A There were people and we were trying to figure out what
24 all had happened and it was at somebody's residence and there
25 were several people was upset and this and that and it was later

1 in the evening.

2 Q So explain -- you said you got hands on with Deputy
3 Meyers explain to the jury how that occurred. How you were
4 positioned with Mr. Gross?

5 A When we were escorting Mr. Gross to the right side of
6 Deputy Meyer's patrol car he was -- you know -- I had one of his
7 arms, Deputy Meyers had the other arm. We were just kind of
8 walking with him, he was stumbling, then he would try to jerk
9 back, lean forward, fall down, stuff like that. So we were
10 actually having to hold him up.

11 And then I can't remember if I opened the back door or
12 if Mr. Meyers did but the back door was open and we tried to get
13 Mr. Gross into the vehicle and he stood up and got real stiff and
14 wouldn't go in the car.

15 Q So he's not being compliant when you were hands on
16 trying to get him in the vehicle?

17 A That is correct.

18 Q And did anything else happen while you were trying to
19 get him in the vehicle with Deputy Meyers?

20 A When we noticed or I made the comment to Mr. Meyers, I
21 said, look, I said, you know, just lay him down on the ground,
22 we'll pick him up slide him in because you know he has leg irons
23 on, we'll just slide him in and no problem. So we did that laid
24 him on the ground, chest first, I grabbed one side of -- picked
25 his legs up -- picked his, you know, under his arm up and Deputy

1 Meyers did the same thing. We opened -- or the door was open, we
2 just slid him in feet first through the back seat -- when he --
3 when Mr. Gross -- we almost had him in Mr. Gross leaned over our
4 legs and crotch area was facing what would be Mr. Gross's head --
5 he was looking down and Mr. Gross leaned over and bit Mr. Meyers
6 in the leg and grabbed a hold of him pretty good. When he had
7 him you know three-quarters of the way in the car.

8 Q So you actually saw it happen?

9 A Yes, I did.

10 Q Move his head over and bite Deputy Meyers?

11 A Yes, I did.

12 Q What did Deputy Meyers do?

13 A Deputy Meyers, you know -- we both told him to stop,
14 and he ended up striking him in the -- you know -- facial region.

15 Q And when you say, "striking him", explain what you saw
16 to the Jury?

17 A I saw him hit him because he wouldn't let go. He was
18 clamped down on his thigh pretty good -- I mean he struck him and
19 Mr. Gross let go.

20 Q What happened after that -- did you end up getting him
21 in the patrol car?

22 A Yes, we did. We slid him -- you know -- got him the
23 rest of the way after he let go and I shut the door and then I
24 immediately took Deputy Meyers to the ambulance that was on the
25 scene and we started tending to him at that point.

1 Q So you were actually were involved with getting Deputy
2 Meyers over the ambulance?

3 A Yes, I was.

4 Q What did you do once you got him over to the ambulance?

5 A We -- we were standing in the side door of the
6 ambulance and the EMS personnel we took his gun belt off, slid
7 his uniform slacks down and they were you know doctoring his leg
8 up, putting antiseptic and stuff like that on his leg.

9 Q Did you see any injury to the leg?

10 A Yes, sir.

11 Q And what did that injury look like?

12 A It looked like a huge bite mark on his thigh -- on the
13 inside of his thigh, I guess.

14 Q And what were your duties after that -- after EMS was
15 dealing with Deputy Meyers what did you do after that?

16 A After that Deputy Mitchell was handling he said, hey I
17 got to make some phone calls, I've got to get a supervisor out
18 there and this and that. I told Donnie to get in my car and I
19 took him to the hospital. I said, you know, Mr. Gross is in
20 custody, he's in the car, the other individual who was there was
21 being compliant during this whole time -- there was no -- my main
22 concern at that point was taking care of the deputy and getting
23 him to the hospital and I didn't find it necessary to wait on
24 anybody. We just -- I got him to the hospital.

25 Q So you actually took him to the hospital?

1 A Yes, I put him in my car and drove him to the hospital.

2 Q What hospital did y'all go to?

3 A Palestine Regional.

4 Q And did you write a report for this incident?

5 A No, I didn't.

6 Q Why not?

7 A When we assist as I explained before unless the -- the
8 investigators with the Sheriff's office actually request that we
9 write any type of supplement or anything like that we don't -- we
10 assist with the Sheriff's office and the PD's on a -- you know --
11 out of an eight hour day, you know six or seven times a day. And
12 as routine, we don't do a supplement on every time we assist
13 because we wouldn't be able to get and work on our own and vice
14 versa we don't ask them for a supplement if they assist us.

15 Q Did you take any video while you were on the scene?

16 A My in car video is activated when I turn my lights on
17 or I can manually do it on my belt. The problem with that is on
18 that particular instance that video doesn't pick up -- the video
19 will pick up but the audio doesn't pick up after you get so many
20 feet away from the car -- the camera that's in the car. We do --
21 as a rule of thumb --

22 MR. CARGILL: Your Honor, can we approach?

23 (Bench conference.)

24 MR. CARGILL: I cannot hear him because my client keeps
25 telling me he needs to go to the restroom.

1 THE COURT: Let's take the Jury out. Go with him to the
2 restroom.

3 (End of bench conference)

4 THE COURT: Take the jury out for a few minutes. And
5 y'all can take a recess, we'll take at least 10 minutes, so use
6 the restroom if you need to. Keep him in here for just second --
7 let him use the restroom but don't let him leave. Leave them in
8 the jury room , you can step down.

9 (Jury out) (Outside the presence of the Jury)

10 THE COURT: Deputy, go ahead and stand right here. Go
11 ahead and raise your right hand. Do you solemnly swear or affirm
12 that your testimony will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Lower your hand. State your name for the
16 record.

17 THE WITNESS: David Brock.

18 THE COURT: Okay. When you took the Defendant into
19 the restroom was there a juror present?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Which juror was it?

22 THE WITNESS: I don't know his name but it's the one in
23 the tag short sleeve shirt, stocky man -- no words were exchanged
24 between the Defendant.

25 THE COURT: Did he actually see the Defendant or was he

1 in the stall?

2 THE WITNESS: He was standing in front of the urinal
3 and Mr. Gross walked in behind him and went directly to the
4 commode.

5 THE COURT: Who did?

6 THE WITNESS: Mr. Gross.

7 THE COURT: Oh, Mr. Gross?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: And he had his leg shackles on?

10 THE WITNESS: Well, he had his leg braces, yes ma'am.

11 THE COURT: Was the juror able to notice that?

12 THE WITNESS: I don't know if he could see them or not,
13 ma'am.

14 THE COURT: Okay. If y'all have any questions -- I'm
15 not sure exactly what -- if I bring the juror in and ask then I'm
16 pretty much -- you know what I mean that I pretty much --

17 THE WITNESS: No words were exchanged between anyone.

18 THE COURT: Oh, no, I didn't assume there was, but
19 that's why I sent the jury out before we took him so they
20 couldn't tell who was in here.

21 MR. CARGILL: I have a couple of questions.

22 THE COURT: Yeah, go ahead.

23 MR.. CARGILL: Were you in the restroom?

24 THE WITNESS: I was standing at the door looking in,
25 yes.

1 MR. CARGILL: But you weren't acting as if you were
2 using the restroom. You were just standing there in observation?

3 THE WITNESS: Yes.

4 MR. CARGILL: No further questions, Judge.

5 THE COURT: Is there any motion?

6 MR. CARGILL: Your Honor, I believe that's going
7 To taint the jury --

8 THE COURT: I do too.

9 STATE: Your Honor, we object. We don't think it will.
10 Deputy Brock says that he walked behind the individual juror
11 while he was in front of the urinal and headed directly to the
12 commode. If the Court is inclined to excuse the Jury that just
13 happened to walk into the bathroom, the State asks that you give
14 us time to do research because I don't believe that that is the
15 that a juror has to be excused just because they saw the
16 Defendant in the leg restraints.

17 THE COURT: Okay. Can you do --

18 STATE: Doing it right now.

19 MR. CARGILL: Actually, so the record is clear.
20 The juror walked behind the Defendant --

21 THE COURT: No.

22 THE WITNESS: No --

23 THE COURT: The Juror was already in there.

24 MR. CARGILL: No, okay.

25 THE WITNESS: Your client --

1 THE COURT: So he was in and Mr. Brock brought him in;
2 is that correct?

3 THE WITNESS: He went running in to the bathroom --
4 your client did --

5 STATE: Running?

6 THE WITNESS: Well, walking as fast as he could. And
7 he went straight to the commode and walked behind the juror and
8 at that time I do not believe the juror knew who had walked
9 behind him.

10 MR. CARGILL: And you were standing at attention at the
11 door?

12 THE WITNESS: I had -- yes, I was standing halfway in
13 the door.

14 THE COURT: I tell you what we're going to do, he's
15 stands with the door open, is what he does. They typically will
16 do that sometimes even when a Juror is -- you know what I mean --
17 if -- what we'll do is we'll go ahead and proceed. Look that up
18 for me and then I'll make a decision whether -- it's only one.
19 So we'll go ahead and proceed, if I need to, I'll replace that
20 person with an alternate.

21 STATE: Your Honor, just for the record since we are
22 talking about this, the Jury was -- Deputy Brocks testified that
23 he walked behind him. So I doubt the man's going to see faces in
24 front of him, he's walking behind him, urinal's got to be on the
25 wall -- I don't go to the men's restroom very often but I would

1 assume it's on the wall he walked behind him.

2 So it's reason to believe that he didn't see him and
3 Brocks testified that he didn't believe he saw him.

4 THE COURT: Which is why I put him under oath and on
5 the record so I could ask him exactly what the juror saw. I
6 understand the juror went in there. I didn't want to question
7 him about it without finding out what exactly his testimony would
8 be.

9 MR. CARGILL: Which would be speculative unless we ask
10 the juror and I guess that's what we'd have to do after the trial
11 to ask him whether or not he saw it, to get an affidavit and ask
12 for a new trial if he in fact saw it. And waste the --

13 THE COURT: Sure that's what the law requires us while
14 Brenda's looking it up if it says a mere glimpse of somebody
15 walking in the restroom is enough to prohibit -- you know what I
16 mean -- is it some type of an issue then I'll take it up at that
17 time.

18 Mr. CARGILL: The only problem additionally, Your
19 Honor, is you're providing the state an opportunity to research
20 that but not the Defense.

21 THE COURT: Oh, you both may. If you find something,
22 you both may. I'm going to go ahead and proceed with the trial,
23 because it's not going to make any difference right now one way
24 or the other. I'm going to proceed with the trial with my
25 alternate sitting here. If I think that I need to I will excuse

1 that person before we begin deliberations and we'll proceed
2 thereafter.

3 STATE: It's my understanding of the law, Your Honor
4 that in of itself is not enough. You have to ask the Juror if he
5 was biased against Mr. Cargill's client now, if he did, in fact,
6 see him. That would be the test.

7 MR. CARGILL: The problem also is he can further taint
8 the rest of the jurors if he mentions his observations.

9 THE COURT: Well, there's a lot of things that can
10 taint the rest of the jurors that I've ordered them not to. So
11 that's just one of those things that you know the jury box we
12 assume they're doing everything the way they're supposed to do
13 and that's what the law presumes.

14 So I'm going to carry on at this point and then I'll
15 see if I need to do something. If I will I'll excuse the juror
16 and I'll put my alternate in place. So Trooper you can go ahead
17 -- and Mark you as well, we've got today, I mean we're not going
18 to finish here in the next one hour or two hours so --

19 MR. CARGILL: Yes, we are, Your Honor.

20 THE COURT: Okay. When you get to the end of your
21 witnesses, we'll take a recess, we'll look at that.

22 Honestly, Mr. Cargill, I never know if y'all are going
23 to call a witness or not but before the State actually rests and
24 closed I'll figure that issue out.

25 Okay. So let's go ahead and get our testimony done at

1 this point.

2 Go ahead and bring the jury in.

3 BAILLIFF: Yes.

4 (Jury in)

5 THE COURT: The courtroom may be seated. Welcome back,
6 Ladies and Gentlemen, the State may proceed where the court --

7 STATE: Thank you, Your Honor.

8 DIRECT EXAMINATION (CONTINUED)

9 BY STATE:

10 Q Trooper, we just took a short break; is that correct?

11 A Yes, sir.

12 Q Do you remember what we were talking about before, we
13 were talking about your reporting and video tapes and things like
14 that so let me go back to that. When you said before that you
15 didn't write a report?

16 A That is correct.

17 Q Because you were in an assisting capacity?

18 A That is correct.

19 Q And will you'll explain to the Jury here the video tape
20 and why that wouldn't work and you testified that because of
21 where you parked your unit and because of the way you came up to
22 the scene you felt that the video tape would not be necessary at
23 that point?

24 A The -- my video will record however far the camera can
25 see, the problem with that is the audio that's on my belt -- once

1 I get about two car lengths -- you know, ahead of my camera it
2 starts getting scratchy and you can imagine the further you get
3 away from the device it starts getting unusual, the video
4 however, we maintain the video from our traffic stops for three
5 months.

6 After three months if we don't have any evidence as far
7 as what we've arrested or something like that we reuse that DVD
8 and like I said nothing was ever said about this so whatever
9 video of the ambulance or whatever deputy I parked behind, I
10 don't have that at this point.

11 Q Oh, so a videotape was taken but again because you were
12 in an assisting capacity that video tape was never captured and
13 added to the file?

14 A Well it was captured but nobody ever requested it. I
15 don't do a report because it was basically routine patrol and so
16 therefore it was just reused.

17 Q Thank you for your time.

18 STATE: Pass the witness.

19 THE COURT: Mr. Cargill?

20 CROSS EXAMINATION

21 Q So when you were observing the officers questioning Mr.
22 Gross that was before he was tased and before he had his
23 handcuffs on; is that correct?

24 A Yes, sir. I don't remember exactly where I was
25 standing when all of that happened. There was a -- there was a

1 female that --

2 MR. CARGILL: Objection, non-responsive.

3 THE COURT: Sustained.

4 Q (BY Mr.Cargill) It was just before he was tased?

5 A And they were talking to him?

6 Q Yes.

7 A Yes, sir.

8 Q Okay. And after he was tased, that's when you remember
9 he had handcuffs on him?

10 A Yes, sir.

11 Q Okay. Now, when you said that you had to assist him to
12 the car isn't it true that Mr. Gross had fallen limp and fell to
13 the ground?

14 A No, sir. He was -- are you talking about after he was
15 tased?

16 Q Yes.

17 A Yes, sir. When he was tased he fell to the ground.
18 Yes, sir.

19 Q And then after that when he was -- when y'all had
20 assisted him up and he was going to the car did he fall again
21 limp and fall to the ground; do you remember that?

22 A No, sir. I remember him falling forward, but I don't
23 remember him ever falling to the ground because we were holding
24 on to him.

25 Q Now, if Officer Mitchell testified to that act you

1 wouldn't dispute that?

2 A I know Officer Mitchell didn't help him to the car, I
3 did myself and Mr. Myers did.

4 Q Speaking of that. Do you recall that as Mr. Gross was
5 walking forward that Deputy Myers pulled him forward and put him
6 back on his stomach by grabbing his collar; do you recall that?

7 A No, sir.

8 Q Do you recall that after he got back up and y'all
9 almost made it to the car that you grabbed his collar and pulled
10 him backwards until he was back on the ground?

11 A No, I don't remember that.

12 Q You don't recall that? Did you review the report that
13 Deputy Myers wrote?

14 A No, sir.

15 MR. CARGILL: May I approach the witness?

16 THE COURT: Sure.

17 STATE: Your Honor, I object. He didn't write this
18 report, he's trying to refresh his memory with someone else's
19 report and so somebody wrote would be written hearsay.

20 Q (BY MR. CARGILL) Let me ask you -- would reading
21 Deputy Myer's report refresh your memory about the events that
22 took place?

23 A It's his report, like I said, I didn't write one. I
24 mean I can read it and --

25 Q But could it refresh your memory?

1 A Yes, sir. I guess it could.

2 THE COURT: He can go ahead and look at it but I don't
3 want you asking him specific questions about it.

4 MR. CARGILL: I'm not going to ask him whether he --

5 THE COURT: If it doesn't refresh his memory at all --
6 or if he didn't see it himself.

7 THE WITNESS: You want me to read it out loud?

8 THE COURT: No.

9 MR. CARGILL: No. Just read it to yourself.

10 Q (BY MR. CARGILL) With that -- does that refresh your
11 memory?

12 STATE: Your Honor, I object, he didn't allow him to
13 read the entire report.

14 MR. CARGILL: He can read the entire report, but the
15 question is not about the entire report.

16 STATE: I believe the rule of optional completeness
17 that he's able to read the whole report to refresh his --

18 THE COURT: Read the whole report.

19 MR. CARGILL: If he desires.

20 THE COURT: I don't know how lengthy it is.

21 MR. CARGILL: Here's the 100 and something pages that
22 you can review --

23 THE COURT: Oh, let's just --

24 STATE: Your Honor, Mr. Cargill is being a little
25 dramatic. Deputy Myers report is like three pages.

1 THE COURT: I don't want him commenting on Deputy Myers
2 report so I don't know what it is that you wanted him to review
3 and to refresh his memory, ask him if it refreshes his memory, if
4 it did let's move on.

5 MR. CARGILL: That's my question.

6 THE COURT: Okay.

7 Q (BY MR. CARGILL) Did this refresh your memory reading
8 this portion of the report?

9 A In reference to your question? Yes. That you asked
10 me.

11 Q Okay. And do you -- do you remember now that Mr.
12 Richard Gross's collar was pulled and he was pulled forward to
13 his stomach by Deputy Myers; do you recall that now? Just "yes"
14 or "no".

15 A No.

16 Q Okay. Do you recall whether or not that you grabbed
17 his collar and pulled him backward until he was to the ground?

18 A That was when he was made to go to the ground because
19 he wouldn't go in the car. Yes, we placed him on the ground.

20 Q Okay. And by pulling his collar, correct?

21 A No.

22 Q You don't recall it happening that way?

23 A No, I didn't pull his collar.

24 Q Okay. And there was no video that -- that you produced
25 or that you were making or caused it to be part of the report

1 because your audio wasn't clear; is that correct?

2 A No, I was never informed that anybody from the
3 Sheriff's office, any investigators needed anything from me
4 that's why nothing was turned into them.

5 MR. CARGILL: I pass the witness.

6 THE COURT: State.

7 REDIRECT EXAMINATION

8 BY STATE:

9 Q Did Mr. Gross go the car willingly?

10 A No.

11 Q Did you have trouble getting him there?

12 A We had to assist him, yes.

13 Q And you testified earlier that there were a lot of
14 things going on while you were trying to get him from the
15 position he was in assisting Deputy Myers to the car?

16 A Correct.

17 Q And it was during that time period the time period you
18 just testified to, you know with pulling collars putting him on
19 the ground things of that nature that you saw him put his head
20 over and bite Deputy Myers?

21 A Sir?

22 Q During the whole -- the time period that you just
23 testified to when you're near the car -- you know, Mr. Cargill
24 asked you about pulling collars, putting him on the ground,
25 things of that nature?

1 A Right.

2 Q Was it during that time period when you're nearing the
3 car that you saw Richard Gross bite Deputy Myers?

4 A Yes. When we were putting him in the car, yes.

5 STATE: Pass the witness, Your Honor.

6 THE COURT: Mr. Cargill?

7 RE CROSS EXAMINATION

8 Q (BY MR. CARGILL) Now, in the academy and in your
9 experience you've learned the laws of the state of Texas; is that
10 correct?

11 A Yes.

12 Q Are you familiar with the law of resisting arrest?

13 A Yes.

14 Q Okay. Resisting arrest doesn't require an officer
15 executing a lawful arrest or discharging a lawful duty; is that
16 correct -- it doesn't require that?

17 A Correct.

18 Q But in regards to an assault on a public servant it
19 requires the officer exercising a lawful duty; is that correct?

20 A I'm not sure.

21 Q Okay.

22 MR. CARGILL: Okay. No further questions.

23 STATE: Quick redirect, Your Honor.

24 REDIRECT EXAMINATION

25 BY STATE:

1 Q Was in you opinion you talked about you have training,
2 you've been in law enforcement for 14 years, was Deputy Meyers
3 fulfilling his duty as an officer that day?

4 A Yes, sir.

5 Q Did you see -- his actions were well within his duties?

6 A Yes, very professional.

7 Q So when you -- you testified earlier that when you
8 showed up Richard Gross was not detained?

9 A He did not have handcuffs on, mainly everybody was just
10 trying to figure out what was going on.

11 Q But at some point you said that he -- the taser was
12 implemented and that he was detained?

13 A That is correct.

14 Q And in a public servant's official duties when somebody
15 is detained, handcuffed, however it goes about, what is your next
16 duty?

17 A To secure the individual.

18 Q Do you have to get them to your patrol car?

19 A Do I have to? No, I can get them to another patrol
20 car, an ambulance or wherever -- I mean it doesn't specifically
21 say I have to get him in to my patrol car, but that's generally
22 where they go.

23 Q Is that what y'all are attempting to do in this case?

24 A Yes.

25 STATE: No further questions, Your Honor.

RECROSS EXAMINATION

1
2 BY MR. CARGILL:

3 Q Just to be specific, a detention doesn't necessarily
4 require putting handcuffs on?

5 A No, sir. It does not.

6 Q When you have stopped somebody and begin asking them
7 questions on your investigation as a subject that's a detention;
8 is that not correct?

9 A Right. As long as we're investigating something. Yes,
10 sir.

11 MR. CARGILL: I pass the witness.

12 STATE: No further questions, Your Honor.

13 THE COURT: Okay. You're excused and free to go.
14 You're still under the rule in the event that they need to call
15 you back, but you're not required to remain at the courthouse.

16 THE WITNESS: Okay. So I can leave?

17 THE COURT: Yes, but you're still under the rule so
18 don't talk about the case or the facts of the case with anybody
19 except the attorneys.

20 THE WITNESS: Right.

21 THE COURT: The state may call its next witness.

22 STATE: The state calls Deputy Don Meyers, Your Honor.

23 THE COURT: Okay. Deputy I swore you in a few moments
24 ago, you're still under oath.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: You can come around here and have a seat in
2 the witness chair.

3 THE WITNESS: Okay.

4 THE COURT: You may proceed, whenever you're ready.

5 STATE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY STATE:

8 Q Good morning, how are you?

9 A I'm fine, how are you this morning.

10 Q Good. Can you please tell the jury who you are?

11 A My name is Don Myers, I'm a deputy sheriff now for
12 Smith County.

13 Q With Smith County?

14 A Yes, ma'am.

15 Q When did you start?

16 A About two weeks ago.

17 Q Okay. We stole you pretty quick from your new job,
18 huh?

19 A Yes.

20 Q Do you feel this is an important trial for you to be
21 at?

22 A Yes, I do.

23 Q Where were you employed before you became a Smith
24 County Sheriff's deputy?

25 A Here in Anderson County.

1 Q How long have you been a law enforcement officer?

2 A Total probably somewhere between 15 years, somewhere
3 right in there.

4 Q Have you had some breaks in between?

5 A I have. I had a break for a while, I guess.

6 Q And what did you do while you were on break?

7 A I was self employed, I took over a family business.

8 Q Town Talks?

9 A Yes, ma'am.

10 Q But now you're back in --

11 A Yes, ma'am.

12 Q Public service. Deputy Myers you know why we're here
13 today. So I'm just going to get straight to it. Were you
14 dispatched to a possible disturbance with weapons in Elkhart?

15 A Yes, ma'am.

16 Q And who was with you? Were you -- let me back up --
17 that's a really bad question, I do that sometimes. You were
18 dispatched?

19 A Yes, ma'am. I was.

20 Q And when you're dispatched to a call such as that do
21 you like to have back up?

22 A Yes.

23 Q And when you got the call did you radio someone to
24 assist you?

25 A Actually I was already in the area with Deputy

1 Mitchell, so he responded.

2 Q So Deputy Mitchell responded with you?

3 A Yes.

4 Q And when you got the residence there at Elkhart what
5 did you observe?

6 A Well, the residence consisted of a mobile home. I
7 drove up and I saw the suspect facing the mobile home and
8 appeared to be hanging on to a piece of rope that had one point
9 been attached to the steps -- as if he was leaning back on it,
10 just like behind a boat like he was skiing and as I got up and
11 approached I discovered it looked like he was using this rope to
12 basically maintain his balance and stay on his feet.

13 Q And once you saw him maintaining his balance, did you
14 make your way closer to him?

15 A I did. But I did ask him to turn around -- of course
16 there was some noise involved -- the motor of the vehicle's are
17 very close, getting out of the car, slamming the door. Still
18 didn't get his attention until I asked him to turn around and
19 that's when he -- he quickly realized I was standing there.

20 Q Did he have anything in his other hand at this time?

21 A When he turned and began to approach me he had a rope
22 in one hand and a like an outdoor piece of furniture or chair in
23 the other hand.

24 Q Did you notice anything else laying about the yard near
25 him?

1 A Not that I can recall.

2 Q And did you make a report in conjunction with this
3 case?

4 A Yes, ma'am. I did.

5 Q Did you look at it before you came to Court today?

6 A Not today but I have looked at it. Yes, ma'am.

7 Q If you believe this -- if you don't recall -- if you
8 were able to look at your report it would help you to refresh
9 your memory?

10 A Yes, ma'am.

11 STATE: May I approach the witness, Your Honor?

12 THE COURT: Yes, you may.

13 Q (BY STATE) Don't read it out loud. Okay. So after
14 reviewing your report does it refresh your memory?

15 A Yes, ma'am.

16 Q Do you remember seeing any other objects?

17 A Yes, ma'am. There was a flat bar or some people might
18 call it a wonder bar used in construction.

19 Q And what type of call were you called out to at the
20 residence?

21 A It was a disturbance with weapons.

22 Q Now that bar had nothing to do with your interactions
23 with Richard Gross; did it?

24 A No, ma'am.

25 Q When you got up out of your car you saw him pulling the

1 rope, you saw him with the chair in his hand were you able to
2 recognize the person?

3 A Yes.

4 Q Who was it?

5 A Richard Gross.

6 Q Do you see him here in the courtroom today?

7 A Yes, ma'am.

8 Q What's he wearing?

9 A He's wearing a black and gray striped shirt.

10 STATE: Your Honor, may the record reflect that he's
11 identified the Defendant, Richard Gross.

12 THE COURT: The record will so reflect.

13 STATE: Thank you, Your Honor.

14 Q (BY STATE) Deputy Myers what did you do next?

15 A Well because he turned and began to approach me I told
16 him to go ahead and drop what he had in his hands because he
17 continued to kind of walk toward me. At that -- he was getting
18 to a point where I then removed my taser and was about to tase
19 him when out of peripheral view I saw Deputy Mitchell come from
20 my left over toward my right, grabbing the chair away from Mr.
21 Gross.

22 Q Okay. Let's stop there and go -- and go point by
23 point. So you got there what do you order him to do -- what did
24 you order Gross to do?

25 A I ordered him to drop the items he had in his hand.

1 Q And did he immediately comply?

2 A No, he did not.

3 Q How many times did you ask him?

4 A Several times.

5 Q Did he comply?

6 A No, he did not.

7 Q You testified that Deputy Mitchell was with you?

8 A Yes, ma'am.

9 Q And could you see Deputy Mitchell?

10 A Not at first, I didn't see him until, because I had my
11 eyes basically focused on Mr. Gross, he was right in front of me.
12 And Deputy Mitchell came from my left.

13 Q And as you saw Deputy Mitchell come from your left, did
14 you have your taser out the entire time?

15 A No, I did not.

16 Q Okay. When did you get your taser out?

17 A I had my taser out and when I saw Deputy Mitchell
18 approach and go hands on to remove those items I then re
19 holstered my taser and we both went hands on to take him to the
20 ground.

21 Q So you saw Deputy Mitchell come from behind jump on Mr.
22 Gross?

23 A Well, the first thing --

24 MR. CARGILL: Objection, leading.

25 STATE: I'll rephrase the question, Your Honor.

1 THE COURT: Okay.

2 Q (BY STATE) So you saw Deputy Mitchell come around to
3 Richard Gross?

4 A From my left.

5 Q And what did you see Deputy Mitchell with your --

6 A The first thing he did was he approached Mr. Gross
7 from a side angle, reached out and grabbed the chair and took it
8 away from him. At that point we tried to get him to comply and
9 he wouldn't and there with hands on we went to the ground --

10 Q Well, let me stop you there. Why was it important --
11 explain to the jury why was it important to you as an officer for
12 him not to have that chair in his possession?

13 A It was just a safety issue. I didn't want to get hurt,
14 I didn't want him to get hurt is the bottom line.

15 Q So you testified Deputy Mitchell knocks the chair off.

16 A He takes the chair.

17 Q And then what do you see?

18 A And then from there he still would not comply, I turned
19 him around so we could handcuff him, from there he just -- we
20 ended up having to take him to the ground.

21 Q Do you remember if Deputy Mitchell actually made
22 physical contact with him?

23 A Yes.

24 Q Okay. And how did Mr. Gross react to that?

25 A It's a little hard to explain. I believe he may have

1 been intoxicated on some kind of substance.

2 Q Okay.

3 A And we ended up taking him to the ground and Mr. Gross
4 ended up face down on the ground. And we were both on top of
5 him. I was there at the up in the neck and head area while
6 Deputy Mitchell was more or less right on top of his back. And
7 that's when Mr. Gross was actually able to pull his hands in
8 underneath of his body and do a push up and take both of us up
9 into the air.

10 Q So he was to toss --

11 A I rolled off of him and Deputy Mitchell was able to
12 kind of hang on from behind, so now Mr. Gross is standing on his
13 feet and he's got Deputy Mitchell kind of in a piggy back style.

14 Q So he's handcuffed at this point?

15 A No, ma'am.

16 Q Was your taser still out?

17 A No, ma'am. I had put it back in because we went hands
18 on. When he stood and I rolled off and Deputy Mitchell was still
19 on him piggy back style, I then pulled my taser and at that point
20 stepped in and tased him in the mid section -- front mid section.

21 Q So if there's a break in the taser video is that what
22 explains it?

23 A Yes, ma'am. It's probably off and on.

24 Q So you were the one that actually tased Richard Gross?

25 A Yes, ma'am.

1 Q Explain to the jury the decision -- excuse me --
2 process that you went to -- through to make the decision to tase
3 him?

4 A The reason why I tased rather than actually shooting
5 him he had weapons in his hand that could have caused me damage
6 or injury. But with a deputy right behind him piggy back style,
7 that pretty well excluded my weapon as far as my hand held
8 because there's a possibility that I could shoot directly through
9 Mr. Gross and hit my deputy. So therefore the taser was the next
10 step.

11 Q And the taser is clearly the least likely to cause
12 bodily injury or severe bodily injury to the person you're
13 tasing?

14 A Yes, ma'am.

15 Q Versus a firearm?

16 A Especially we were not on a concrete area, it was kind
17 of a perfect environment you know as far as soft dirt that he
18 could basically go down to.

19 Q Through your training and experience as a law
20 enforcement officer was making the decision to utilize your taser
21 that day was it something that you used as your last resort or
22 first resort?

23 A Well, it would be my last resort prior to going with
24 deadly force I would say.

25 Q And deadly force is in this instance would not have

1 been necessarily justified; would it?

2 A No, it would not.

3 Q So after verbal warnings and an attempt to take him the
4 ground and verbal requests and you say try and take him to the
5 ground, you tased him?

6 A Yes, ma'am.

7 Q And what happened when you tased him?

8 A He did go to the ground. We still got a struggle after
9 he went to the ground in getting his hands behind his back.

10 Q And was he eventually handcuffed?

11 A Yes, ma'am. He was.

12 Q How many times did you actually -- you fired your taser
13 gun once to release the prongs?

14 A Yes.

15 Q Where did you hit him?

16 A I believe in the mid section.

17 Q And how many times more did you hit your taser again?

18 A I believe just that one time. I'm not real sure. I
19 know that I did advise him that I could tase him again.

20 Q And once he was tased, did he go to the ground?

21 A Pardon?

22 Q Once he was tased did he go to the ground?

23 A Yes, ma'am.

24 Q Did he stay on the ground?

25 A Well, when he first went to the ground we still had to

1 struggle with him getting his hands behind his back and then once
2 he was handcuff trying to keep him on the ground while -- at that
3 point we had so much problems that we decided that we would use
4 the leg shackles as well. So I stayed there with Mr. Gross in
5 the attempt to keep him on the ground.

6 There was a time or two he kept wanting to stand up I
7 just -- I kind of took into to consideration he'd just been tased
8 -- more than likely was intoxicated and mainly just tried to stay
9 there and talk with him -- and tell him -- explain to him what
10 was going on.

11 Q And your -- was your camera still working on your taser
12 at that point?

13 A I believe at this point.

14 Q And where was Deputy Mitchell during this?

15 A Once he's on the ground and we had him handcuffed he
16 goes to his vehicle to get the shackles to go ahead and put on
17 his legs.

18 Q Did anyone make contact with the people inside the
19 house -- was that you?

20 A I know that there were two people inside the house that
21 had come out -- there was a white female --

22 Q Well, let me stop you there. Did another deputy in
23 your office go and speak about what had previously happened
24 before y'all arrived?

25 A I believe Deputy Mitchell did.

1 Q Okay. But not you?

2 A No, ma'am. I did not have contact.

3 Q And Deputy Myers had you watched the video tape of your
4 taser?

5 A It's been some time, but yeah -- yes, I've seen it.

6 Q But you saw it in our office; did you not?

7 A Yes, ma'am.

8 Q And when you reviewed it did it fairly and accurately
9 portray the events that you remember that night?

10 A Yes, ma'am.

11 Q But as you testified before some times it skips?

12 A Yes, ma'am.

13 MR. CARGILL: Your Honor, we're not going to object to
14 the entrance of the video.

15 (States Exhibit 1 offered and admitted into
16 evidence)

17 STATE: Okay. The State would move and offer into
18 evidence State's Exhibit Number 1.

19 MR. CARGILL: No objection.

20 THE COURT: State's 1 is admitted into evidence.

21 STATE: Your Honor, may I turn off the lights?

22 THE COURT: I'll let the deputy -- but yes, you may.

23 Let's see if they can see it fine with the lights on and if they
24 can't then --

25 STATE: It's a fairly dark video, Your Honor.

1 THE COURT: Okay. We'll turn the lights off -- she
2 can --

3 (Video playing)

4 STATE: I'm going to ask some question of the witness
5 based off the video if that's okay you, Your Honor.

6 THE COURT: Sure. Please put some lights --

7 STATE: I can see.

8 THE COURT: Okay. It's okay. She said --

9 (Video playing)

10 Q (BY STATE) Deputy Myers, we're replaying the first part
11 of the video again for the record. Okay. Deputy Myers, you just
12 saw and there was a break in the video did you turn your taser
13 off you think or did you change -- or do you even know?

14 A I really don't remember other than just there toward
15 the end just turning it off when the EMS got there.

16 Q So at some point he clearly let go of the rope?

17 A He did after --

18 Q So he complied with that letting go of the rope. And
19 33 seconds.

20 (video playing)

21 Q Okay. So is he being ordered at 26 to 34 to get to the
22 ground?

23 A I'm sorry?

24 Q Is he being ordered to get to the ground?

25 A I believe so.

1 Q Did you hear that?

2 A Yes.

3 Q And where was he walking?

4 A He was still in front of the residence where he --
5 where all this originated at.

6 Q Was he approaching you are you the person he's walking
7 towards?

8 A He was just randomly walking back and forth.

9 (video playing)

10 A Also I'm trying to stay in front of him, you can see my
11 red dot --

12 Q Okay. So that the green glowing part that's your
13 taser, correct?

14 A Yes, ma'am. I'm trying to stay in front of him.

15 Q Let me start the video at 36.

16 (video playing)

17 Q Okay. So from I guess it's probably about a minute on
18 State's Exhibit Number 1, we see a commotion, correct?

19 A Yes, ma'am.

20 (video playing)

21 Q We don't really see what happens; do we?

22 A Not for a split section you can see Deputy Mitchell
23 deciding to go hands on to the side -- so at that point that's
24 the break that may have been when I turned the taser off the
25 first time and re holstered it in order to have both hands free.

1 Q And the next shot that we see is clearly your taser has
2 been dispensed?

3 A This is after he has pushed both of us up off the
4 ground and then I draw my taser and activate it.

5 Q Okay. So we don't actually get to see it shoot into
6 him; do we?

7 A No.

8 Q And I noticed through the video that there's blood on
9 his shirt is that typical when you get tased -- I mean the prongs
10 go into your skin?

11 A The prongs do go in -- they're like a straightened out
12 fish hook. Yes, ma'am. That's the one reason why we keep where
13 we're at because we're required to call EMS and they will remove
14 the prongs for us.

15 Q Okay.

16 (video playing)

17 Q So he's admitting that he's been struck with the taser;
18 is he not?

19 A I believe so.

20 (video playing)

21 Q And Deputy Myers it's fair to say from the video that
22 he was tased while he was handcuffed or was he handcuffed?

23 A He was tased when he was handcuffed?

24 Q Was he tased when he was handcuffed?

25 A No, ma'am.

1 Q Okay. Explain to the jury why when we pick up the
2 video -- I asked it the wrong way -- when we pick up the video we
3 see that he has been tased and clearly now he's in handcuffs.

4 Q When the prongs go in the body, they're like a
5 straightened out fish hook. So when they go in they break the
6 skin and then from those prongs we've got two copper leads that
7 actually go from the prongs to our taser.

8 Depending on the cartridge, they've got taser leads
9 that will shoot anywhere to 12 to 15 maybe 20 foot. The further
10 you are away from the suspect when you fire the tasers the wires
11 spread and you will have the prongs, but everything remains in
12 contact and that is so number 1 if you need to re tase you don't
13 need to get close to him, you can merely just activate the taser
14 again from where you're at. And that will work there.

15 If for some reason you're so close and your prongs
16 were so close together and you're not making contact once the
17 cartridge has been dispelled then you can still go up and make
18 contact somewhere else on that person's body with just your taser
19 while the leads are still in place.

20 Q And even after he is tased, well, let me ask this a
21 different way. Are you the person that put the handcuffs on him
22 -- who put the handcuffs on him, if you remember?

23 A I believe it was Deputy Mitchell. We were both still
24 having some resistance while he was on the ground face down we
25 moved his hands from behind his back and I just remember both of

1 us struggling to come around to get his hands behind his back.

2 STATE: Can I have just one second, Your Honor?

3 THE COURT: Yes, ma'am.

4 Q (BY STATE) So he was tased, then handcuffed?

5 A Yes, ma'am.

6 Q Okay. And you testified that Sergeant Mitchell was the
7 one that actually placed the cuffs on him because you were the
8 one dispensing the taser?

9 A Yes, ma'am. And at some point you know is when I
10 assisted getting the other hand out from underneath his body and
11 just laying on him I believe it was Deputy Mitchell's handcuffs.

12 Q And we all saw the videotape even after he's tased and
13 handcuff was he still being compliant?

14 A Not really. He kept wanting to stand. He wanted to
15 leave the prone position and get on his knees and then from there
16 would lift one foot up and put it to the ground and I had to just
17 try to remind him that we wanted him to just basically lay around
18 until EMS got there.

19 Q And was that for his safety as well as y'all's?

20 A Yes, ma'am.

21 STATE: Your Honor, may we have the lights on, please?

22 THE COURT: Yes.

23 STATE: Thank you, Your Honor.

24 Q (BY STATE) So your taser video cuts off at some point,
25 why does it cut off at the end?

1 A At the end, it's just shut off because it was basically
2 the end of the use of force. At that point we were done and the
3 prongs were about to be removed by EMS. And you can hear I think
4 I'm letting -- or telling EMS people that you know we need some
5 prongs removed or something along those lines.

6 Q And were the prongs themselves removed?

7 A Yes, ma'am.

8 Q And once the prongs were removed were any type of other
9 restraints placed on Mr. Gross?

10 A Because of all the previous problems we had we decided
11 to keep him on the ground with leg restraints.

12 Q And you said previous problems but is that what the
13 decision was based off of?

14 A Yes, ma'am.

15 Q Is that something that you will do in these situations?

16 A Yes.

17 Q Have you done it in the past?

18 A Yes, ma'am.

19 Q And after he was placed in leg restraints did y'all sit
20 him up or was he lying down?

21 A He was lying down, face down and they were applied or
22 put in place and then from there we got him to his knees, at some
23 point there I believe Deputy Len Hubert arrived and helped me get
24 Mr. Gross to his feet as we escorted him over to the --

25 Q Well, let me ask you some questions.

1 A Okay.

2 Q If we really we want to tell the story the fast way,
3 but the law has to go in stages.

4 THE COURT: Turn his microphone up we're having a
5 little trouble hearing him.

6 Q (BY STATE) Okay. So he's on the ground, after you
7 placed the leg shackles and the hand wrists on is he still acting
8 belligerent; if you remember?

9 A Probably belligerent, but he was -- he had calmed down
10 some.

11 Q Do you remember if he continued to display anger or
12 showed slurred speech?

13 A Yes.

14 Q Do you remember him slobbering?

15 A Yes, ma'am.

16 Q And attempting to reposition himself back on his knees?

17 A Before asked to do so. Yes, ma'am.

18 Q Did he keep attempting to stand up?

19 A Yes, ma'am.

20 Q And so what did you grab his collar -- did you grab him
21 by the collar?

22 A I don't recall the collar -- when we got ready to stand
23 him up that's about the time that DPS Len Hubert was there. We
24 got on each side of him and with someone being handcuffed and
25 then brought up it normally would be probably be one of our arms

1 underneath his arms to kind of assist him up.

2 Q Okay. Let me ask you this way, in order for y'all to
3 pick him up does he need to be on his stomach?

4 A We would need to roll him over on his stomach if he's
5 not getting into a kneeling position and assist him up.

6 Q And did Len Hubert assist you in getting Richard Gross
7 to his feet?

8 A Yes, ma'am.

9 Q And whose patrol car were y'all trying to put him into?

10 A I put in the passenger back seat of my patrol vehicle.

11 Q And why were you putting him in your patrol car?

12 A Because he was under arrest.

13 Q For what?

14 A Aggravated assault -- well, at that point it was going
15 to be just public intoxication.

16 Q And explain to the jury what public intoxication is?

17 A Public intoxication is where someone is intoxicated
18 either by alcohol or by a drug to the point they become a danger
19 to themselves or someone else. There's also a clause in there
20 that says that we had peace officers can release that individual
21 to responsible third person party to watch over that person in
22 lieu of rather than taking them to jail. In this instance there
23 was no such person.

24 MR. CARGILL: Objection, non-responsive.

25 THE COURT: Sustained.

1 STATE: May I proceed, Your Honor?

2 THE COURT: Yes, you may.

3 Q (BY STATE) And Deputy Myers, you said you were going to
4 place him under arrest for just at that time public intoxication?

5 A Yes, ma'am.

6 Q As you're putting him in your car?

7 A Yes, ma'am.

8 Q Was there a responsible adult who was willing to take
9 care of him at that point in the area?

10 A Not in the immediate area.

11 Q And as Trooper Hubert and yourself take him to your
12 vehicle was he compliant?

13 A He was compliant and walking toward the vehicle for the
14 most part.

15 Q Did he agree to enter the back door of your car?

16 A He did not. And that was not by verbal that was just
17 by his body stance -- what he was refusing to do in order to make
18 that happen and get inside the vehicle.

19 So he resisted physically?

20 A Yes, ma'am.

21 Q And at some point did you assist in giving him to the
22 ground to put him in your car?

23 A It was apparent that he was basically you know stiff
24 legging -- he was not willing to basically turn and sit down in
25 the back seat and try to work his way in. We then had to at that

1 point we took him one on each side and took him back to the
2 ground, before we rolled him over on his stomach.

3 Q And how did you pick him up after he was on the ground?

4 A At that point, understand he's got leg shackles on so
5 we grabbed leg and the other arm that was under the handcuffed
6 shoulder under the armpit area, we pick him up and we slide him
7 onto the car seat.

8 Q And where was Deputy Mitchell at this time?

9 A Deputy Mitchell because both of us pretty much the rear
10 passenger side occupied with Mr. Gross sliding him in, that
11 Mitchell went to the driver side passenger door, opened it and
12 began to assist pulling to get him inside the vehicle.

13 Q And as you're assisting Trooper Hubert to get him into
14 the vehicle what happens?

15 A After passing and getting him inside the vehicle, Mr.
16 Gross turns his head and takes a bite out of my right upper leg
17 area.

18 Q Could you explain to the jury what it felt like?

19 A Tremendous pain.

20 Q How did you know it was him that bit you?

21 A He was the only person that had a head down there that
22 night.

23 Q And so you felt immense pain?

24 A Yes, ma'am.

25 Q What did you do next?

1 A Well, as a reaction, I ended up striking Mr. Gross at
2 least one time in the head in attempt to make him let go of the
3 bite that he had -- he didn't just bite and let go -- he bit and
4 he was hanging on -- and I believe that's what caused the damage
5 to my hand.

6 Q Okay. We'll get to that part. So he didn't
7 immediately let go?

8 A No, ma'am. He had to be pried away from my leg.

9 STATE: Your Honor, may I approach the witness to show
10 these Exhibits 2 through 5 to the Defense?

11 THE COURT: Yes, ma'am.

12 (State's Exhibits 2,3,4, 5 marked)

13 Q (BY STATE) Deputy Myers, I'm showing you what's been
14 marked as State's Exhibit 2, 3, 4, and 5. Would you please look
15 through these photographs and tell me without saying what you see
16 if the items, objects in those photographs accurately portray the
17 events, items, of that night that you recognize them?

18 A Yes, ma'am.

19 Q Okay. And who are these photos of?

20 A The photographs of --

21 Q Yourself?

22 A Of myself.

23 Q And your injuries?

24 A And injuries. Yes, ma'am.

25 STATE: Your Honor, the State's previously cleared

1 these through the Defense, the State would ask that offer these
2 into evidence as State's 2 through 5.

3 THE COURT: Any objection?

4 MR. CARGILL: We do not object to predicate, Your
5 Honor.

6 THE COURT: State's Exhibits 2, 3, 4, and 5?

7 STATE: Yes.

8 (State's Exhibits 2,3,4 5 admitted into evidence)

9 THE COURT: Are admitted into evidence.

10 STATE: Permission to publish them to the jury, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 STATE: Thank you.

14 Q (BY STATE) Deputy Myers, State's Exhibit Number 2; is
15 this you?

16 A Yes, ma'am. Standing in the ambulance.

17 Q Okay. Do you remember what that felt like?

18 A Yes, ma'am. I felt pain but I was also scared.

19 Q And is that what you look like when you're in pain?

20 A Pretty much. Yes, ma'am.

21 Q Let me show you State's Exhibit Number 3. Tell the
22 jury what State's Exhibit Number 3 is?

23 A That's a photograph of my right upper leg where I was
24 bit.

25 Q Is that taken right after you were bit?

1 A I believe so. Yes, ma'am.

2 Q And after you were bit were you taken to the hospital?

3 A Yes, ma'am. I was.

4 Q Who took you to the hospital?

5 A DPS Len Hubert took me to the hospital.

6 Q To get checked out?

7 A To get there by a certain time. Yes, ma'am.

8 Q And let me show you State's Exhibit -- were you treated
9 at the hospital?

10 A Yes, ma'am. I was.

11 Q Did you have to go to your doctor for follow up with
12 our injuries, your personal doctor?

13 A Yes, ma'am.

14 Q State's Exhibit Number 4 can you tell the jury what
15 they're looking at?

16 A It's another photograph, it's a bite mark.

17 Q Then the photograph a few days later?

18 A Yes, ma'am.

19 STATE: One second, Your Honor.

20 THE COURT: Yes, ma'am.

21 Q (BY STATE) When you went to the hospital, Deputy Myers
22 did you receive wound treatment?

23 A Yes, ma'am. I did.

24 Q And did your hand hurt -- your fingers?

25 A Yes, ma'am.

1 Q What was diagnosed as being wrong with your fingers?

2 A Well, I complained of my hand hurting and they took an
3 x-ray and it ended up that my ring finger and my pinky finger on
4 my right were broken in different places.

5 Q And how were you treated for that?

6 A That night they put my hand in a cast, put my fingers
7 in a cast then they wrapped everything up.

8 Q Let me show you State's Exhibit Number 5, is that what
9 we're looking at is your hand in a cast?

10 A Yes, ma'am.

11 Q And back to State's Exhibit Number 4, how were you
12 instructed to treat the bite mark as far as the wound itself?

13 A Well, as far as the bite marks -- you really -- there's
14 nothing to stitch and basically where it's at, I just kind of
15 used a remedy of salt water and like a Betadine soap, you just
16 have to kind of let it heal from the inside out.

17 Q Now, after the initial bite, did you continue to feel
18 any pain?

19 A Yes, ma'am. I had pain for several days.

20 Q And your fingers did they heal up fine?

21 A No, ma'am.

22 Q Do you still have problems with one of your hands?

23 A Yes, ma'am.

24 Q As far as what?

25 A As far as my right pinky I've got --

1 MR. CARGILL: Your Honor, may we approach?

2 THE COURT: May you approach? Yes.

3 (Bench conference)

4 MR. CARGILL: I am going to object to future
5 testimony as far as regards to this witness to the States effects
6 because it goes to punishment.

7 THE COURT: Objection sustained.

8 (End of bench conference)

9 Q (BY STATE) Dr. Brown's your doctor, correct?

10 A Yes, ma'am.

11 Q And you went to Palestine Regional Medicine -- it's
12 been a long morning -- Palestine Regional Medical Center?

13 A Yes, ma'am.

14 Q And so you signed a release to release your medical
15 records, correct?

16 A Yes, ma'am.

17 (State's Exhibits 6,7,8 offered and admitted into
18 evidence)

19 STATE: Your Honor, the state would offer into evidence
20 State's Exhibits 6, 7, and 8. They are self authenticated
21 business records with affidavits provided previously filed with
22 the court of Deputy Myers.

23 MR. CARGILL: Your Honor, if I could have just a
24 moment.

25 THE COURT: Yes, you may.

1 MR. CARGILL: No objection to State's Exhibit Number 6.

2 THE COURT: State's 6 is admitted into evidence.

3 MR. CARGILL: No objection to Exhibit Number 7.

4 THE COURT: State's 7 is admitted into evidence.

5 MR. CARGILL: No objection to State's Exhibit Number 8.

6 THE COURT: State's 8 is admitted.

7 Q (BY STATE) Deputy Myers were you wearing the uniform --
8 I know it's not the same one but a uniform similar to what you
9 have on here today?

10 A Yes, ma'am.

11 Q And when you came up the house itself were you in your
12 patrol car?

13 A Yes, ma'am. I was.

14 Q Were you identified as a public servant?

15 A Yes, ma'am.

16 MR. CARGILL: Objection.

17 THE COURT: Overruled.

18 MR. CARGILL: It goes to the conclusion that the Jury
19 has to make in the final determination as to whether he's a
20 public servant.

21 THE COURT: Overruled.

22 Q (BY STATE) Is that the uniform that the officer --
23 well, not that one -- but the Anderson County --

24 A Yes, ma'am. It's a distinctive uniform we wear.

25 Q The city kind of has the same uniform just different

1 patches, huh?

2 A Yes, ma'am.

3 Q For you to get new uniforms?

4 A Yes ma'am.

5 Q And Deputy Myers, you testified earlier when you
6 putting Richard Gross into the patrol car at that time it was a
7 just for public intoxication?

8 A Yes, ma'am.

9 Q Did he -- without going into detail, was he charged
10 with something else?

11 A Well, initially he was charged with resisting arrest --

12 Q Without going -- resisting?

13 A Yes, ma'am.

14 Q And then obviously we're here for what allegedly
15 happened to you?

16 A Yes, ma'am.

17 Q So at the time that you were placing him in the vehicle
18 were you effectuating an arrest on him or performing your duties
19 as a peace officer?

20 A Yes, ma'am.

21 Q And I've already you this question before but -- Where
22 is -- did all this happen?

23 A This happened in Elkhart, Texas on Bedry Lane.

24 Q And is that in what county?

25 A That's in Anderson County, Texas.

1 Q And what date was that?

2 A I'd have to go back to my report --

3 Q It's 11/19/2014 sound familiar?

4 A Yes, ma'am.

5 STATE: I pass the witness, Your Honor.

6 THE COURT: Thank you, Mr. Cargill?

7 CROSS EXAMINATION

8 BY MR. CARGILL:

9 Q I'm trying to keep some --

10 THE COURT: Wait just a second -- put -- give this to
11 -- just put one on each table. It's not something for now that's
12 she's -- it's something for later.

13 Q (BY MR. CARGILL) I'll try to keep some order as we go
14 but the first question is you didn't identify yourself as a
15 public servant did you -- did you not --

16 A Not as a public servant, no.

17 Q Okay. You didn't identify yourself as a police officer
18 or a deputy?

19 A Police officer. Yes, sir.

20 Q Okay. And you had your uniform on as well?

21 A Yes, sir. I did.

22 Q Now in the first part of the testimony with Ms.

23 Mitchell, you said that my client had a chair in his hand and a
24 rope in the other hand; is that correct?

25 A Yes, sir.

1 Q And that he wouldn't drop the chair; is that correct?

2 A Yeah, that's what I said. Yes, sir. And we did
3 instruct him, he did eventually let go of the chair himself.

4 Q Okay. So you remember now that Deputy Mitchell did not
5 grab him or the chair or any have to remove the chair from his
6 hand?

7 A That is correct.

8 Q And would you agree with testimony of Deputy Mitchell
9 if he said he was compliant in that regard but he was not
10 compliant as to laying on the ground -- compliant with regard to
11 letting go of the chair?

12 A Yes.

13 Q But not compliant on laying on the ground?

14 A Yes, sir.

15 Q Now on the video he's compliant holding his hands up?

16 A I'm sure at some point he's holding his hands.

17 Q And when you searched my client did he have a weapon?

18 A No, sir.

19 Q Now, Deputy Mitchell brought him to the ground; is that
20 correct?

21 A Yes, sir.

22 Q And when you were using your taser, when it's out the
23 video is on; is that correct?

24 A If the weapon is activated. Not trigger pull but
25 there's a switch where you actually activate the taser itself

1 which will or is supposed to activate a video and audio.

2 Q And the -- so when the taser's out --

3 A Yes.

4 Q It has to be activated before it's used?

5 A Yes, sir. It has to be turned on.

6 Q So you would remove it from your person or your
7 holster?

8 A Yes, sir.

9 Q And then activate it?

10 A Turn it on. Yes, sir.

11 Q And then and soon as you activate it the video is on;
12 is that correct?

13 A If everything working correctly, yes sir. That's the
14 way it should be.

15 Q Did you have any question of the video working
16 correctly that night?

17 A No, sir. That can only be from me turning the video or
18 turning off -- just before he was tased I had them out but when
19 Deputy Mitchell decided to go hands on, I had to turn it back off
20 and re holster it.

21 Q I'm asking right before you tased Mr. Gross, as soon as
22 you activated the video is on; is that correct?

23 A Should be. Yes, sir.

24 Q Now after the tasing and leg shackles were placed on my
25 clients hand was he still speaking in slurred speech?

1 A He continued to ramble -- every time where he would get
2 quiet and then you know you can see that in the tape.

3 Q And do you recall having seen him slobbering?

4 A Yes, sir. He was slobbering.

5 Q And he --

6 A And the slurred speech.

7 Q He was -- speech was inaudible?

8 A At times. Yes, sir. At times I could make out what he
9 was saying, but for the most part, no.

10 Q Now, also in your direct testimony you talked about
11 that the taser is like step two; is that correct?

12 A Well, it would be in step process.

13 Q In the step process. And in your direct you said that
14 you use the taser when somebody may have a weapon but it's not a
15 deadly -- a weapon that can cause --

16 A I wouldn't use it just if they had a weapon. I would
17 use the weapon -- the taser is designed for us to basically
18 either party being injured.

19 Q But in this case, you used the weapon before you did
20 step one and that is the take down; is that correct? It's in the
21 video you used the weapon --

22 A Yeah, we went hands on. Deputy Mitchell made that
23 decision to go hands on. I had the taser out.

24 Q And this was all to effectuate an arrest on a Class C
25 misdemeanor?

1 A Yes, sir.

2 Q Public intoxication is a Class C were you --

3 A Yes, sir.

4 Q Right?

5 A Yes, sir.

6 Q Up to a \$500 fine?

7 A Plus court costs, yes.

8 Q Plus court costs?

9 A Yes, sir.

10 Q Same thing as a speeding ticket something to that
11 matter; is that correct?

12 A Yes, sir.

13 Q Now you said that after my client bit you -- you hit
14 him at least one time in the head?

15 A Yes, sir.

16 Q Okay. You don't recall anything more than one time in
17 the head?

18 A I know one time that's the time that I broke my hand.

19 Q So you hurt your hand actually hitting my client in the
20 head?

21 A Yes, sir.

22 Q Okay. And when you say hit would you characterize as
23 some of the witnesses have as punched him in the head?

24 A Yes, sir. I had a closed fist.

25 Q Now after you tased him, after he was on the ground,

1 and y'all had him in handcuffs, let's see, leg restraints,
2 handcuffs, y'all got him up; is that right?

3 A Yes, sir.

4 Q You all walked him to the car and he fell down; is that
5 right?

6 A I'm sorry?

7 Q Did he fall down?

8 A No, sir. He did not. We had him over to the passenger
9 side of my --

10 MR. CARGILL: Objection, non-responsive.

11 THE COURT: Sustained.

12 Q (BY MR. CARGILL) Now, as the -- were you the primary
13 officer in this report or this incidence?

14 A I believe so. Yes, sir.

15 Q And being the primary officer would you review Officer
16 Mitchell's report?

17 A Sometimes.

18 Q Did you review Officer Mitchell's report in this
19 incident?

20 A No, sir.

21 Q If Officer Mitchell's testimony reflected that he did
22 go limp and fell to the ground as y'all were taking him to the
23 car would that be inaccurate?

24 A In my opinion, yes.

25 Q In your opinion. Nevertheless, while you were going

1 that way did you grab the collar of Richard Gross and pull him
2 forward until he was back on his stomach?

3 A Is when he's standing at the car or was this --

4 Q As you're making your way to the car?

5 A No, sir. We had him -- it was a DPS Hubert on one
6 side, I was on the other, we had our hands kind of through his
7 under his armpits and we were escorting him and walking to the
8 vehicle to the passenger side of my vehicle.

9 Q Okay. So it didn't happen as EMT removed the prongs
10 and then Richard Gross continued to display anger so you grabbed
11 him by the collar and pulled him forward until he's back on his
12 stomach -- that didn't happen?

13 A This is before he gets escorted --

14 Q Yes, sir.

15 A To the car -- yes. Yes, he was pushed back to the
16 ground. Yes, sir.

17 Q Okay. And did y'all escorted him to the car, you and
18 Deputy --

19 A DPS Hubert.

20 Q DPS Hubert?

21 A Yes, sir.

22 Q And once you got to the car did DPS Hubert grab Mr.
23 Gross by the collar and pull him backward on to the ground
24 backwards?

25 A After he refused or was resisting getting into the

1 vehicle at that point he was taken back to the ground.

2 Q The question was did he grab him by the back of the
3 collar and cause him to fall backwards to the ground?

4 A I'm not real sure, I know we both had a hand on him and
5 we both took him seemed like backwards to the ground.

6 Q Would reading your report refresh your memory?

7 A Yes, sir.

8 MR. CARGILL: May I approach, Your Honor?

9 THE COURT: Yes, sir. Reading his report, correct?

10 MR. CARGILL: Yes.

11 THE COURT: Reading his own report?

12 A Yes, sir. Backwards. Yes, sir.

13 Q (BY MR. CARGILL) And that's with Mr. Gross handcuffed
14 behind his hands; is that correct?

15 A Yes, sir.

16 Q And leg shackles on his feet?

17 A Yes, sir.

18 MR. CARGILL: Your Honor, if I could have just one
19 moment?

20 THE COURT: Yes, sir.

21 Q (BY MR. CARGILL) Just trying to review this, give me
22 just one moment. Now I think the -- your testimony you talked
23 about how Mr. Mitchell jumped on his back and rode piggy back?

24 A No, sir.

25 Q He didn't?

1 A He did not jump on his back. When he was -- when Mr.
2 Gross was taken to the ground he went down on his stomach. And
3 then at that point Deputy Mitchell got on top of his back while
4 Mr. Gross was already on the ground.

5 Q And Mr. Mitchell did that not yourself; is that
6 correct?

7 A He was the majority of his back. I moved forward to
8 the front torso close by the head to start -- in an attempt to
9 grab one of the hands to pull back for a handcuff position. And
10 that's when Mr. Gross let us in, he pulled out to go behind his
11 back and did a push up rolling me off of his back. And then
12 stood up with Deputy Mitchell on his back.

13 Q And so he was completely on the ground on his stomach?

14 A Yes, sir.

15 Q And then that's when he walked to approach him; is that
16 correct?

17 A I'm sorry.

18 Q He was completely on the ground -- completely on the
19 ground on his stomach with Officer Mitchell on top of him and
20 that's when you approached the subject?

21 A That's when I -- yes, sir. That would be the point
22 where you might see a break in the video that's where I
23 reactivate the taser, re holster and then go up to the front part
24 of the body. Yes, sir.

25 MR. CARGILL: No further questions.

1 THE COURT: Okay. Ms. Mitchell?

2 STATE: May I have just one second, Your Honor?

3 THE COURT: Yes, ma'am. You may.

4 REDIRECT EXAMINATION

5 BY STATE:

6 Q Deputy Myers, when Richard Gross was outside of the
7 vehicle or outside your patrol car --

8 A Yes, ma'am.

9 Q Did he resist?

10 A Yes, ma'am. He did.

11 Q And the resisting is it, resisting arrest, search or
12 transportation --

13 A Transport. Yes, ma'am.

14 Q And you'd already decided to charge him with public
15 intoxication; is that correct?

16 A Yes, ma'am.

17 Q Then he also picked up the resisting arrest charge; is
18 that correct?

19 A Yes, ma'am.

20 Q And when you arrest someone as part of the continuation
21 of effecting that arrest is that getting them into a patrol car
22 to take them to the jail?

23 A Yes, ma'am. It is.

24 Q And once the person is released to the jail is that
25 technically when you believe it ends the arrest part?

1 A Yes, ma'am.

2 Q And as far as the taser use itself did you try to talk
3 him down verbally?

4 A I'm sorry?

5 Q Did you try to talk him down verbally?

6 A Yes.

7 Q Did you try to physically restrain him?

8 A Yes.

9 Q And was the taser the last resort?

10 A In this instance? Yes, ma'am.

11 Q And did you feel that you were justified in using it
12 given the state of mind of the Defendant?

13 MR. CARGILL: Objection.

14 THE COURT: Wait, wait, let -- rephrase your question.

15 Q (BY STATE) Did you feel justified in using it given
16 the state of mind of the Defendant as you saw it?

17 THE COURT: Overruled. You can answer.

18 A Yes, ma'am. That and also just not getting compliance.

19 Q (BY STATE) Mr. Cargill asked you a few times about him
20 being forced to the ground -- on the ground is that part of what
21 happens when someone is not being compliant or is that --

22 A It could be. It just depends on the situation. He's
23 refusing to get into the vehicle so we basically just took him
24 back to the ground.

25 Q And even after being tased I believe you said he was

1 still acting erratic?

2 A Yes, ma'am.

3 Q Even after handcuffed how was his behavior?

4 A As far as the speech about the same. He was a little
5 more -- he had no place to go, once he was handcuffed and the leg
6 restraints.

7 Q But he still was -- you testified he was resisting --
8 describe to the jury how that could be?

9 A I mean -- just not compliant as far as resisting. He
10 basically stiffened up his legs and he was refusing to get into
11 the vehicle and the actual title is you know resisting arrest or
12 transport. That was part of my job to get him from Point A to
13 Point B, getting him in that car and he resisted that. Basically
14 making the elements of that offense at that point.

15 Q Did he continue to display any type of anger?

16 A I suppose -- anger, just still rambling. Some of it
17 you could understand or make out but some of it you just could
18 not as far as his speech.

19 (BY STATE) I pass the witness, Your Honor.

20 THE COURT: Mr. Cargill?

21 CROSS EXAMINATION

22 BY MR. CARGILL:

23 Q Now, Officer Hubert assisted in getting him to the car;
24 is that correct?

25 A Yes, sir.

1 Q So that would all be indicated on Officer Hubert's
2 video had it been available?

3 STATE: Objection, Your Honor, that calls for
4 speculation. He doesn't know if the camera was working, an angle
5 that it was when he parked his car?

6 THE COURT: Sustained.

7 Q (BY MR. CARGILL) As the primary officer, did you ever
8 ask for Officer Hubert's video?

9 A No, sir. I did not.

10 MR. CARGILL: No further questions.

11 THE COURT: Okay. Ms. Mitchell?

12 STATE: No further questions, Your Honor.

13 THE COURT: Okay. Deputy, you may step down. Brock --
14 (Bench Conference)

15 THE COURT: I am going to recess for lunch.

16 (End of bench conference)

17 STATE RESTS

18 STATE: Your Honor, at this time the State rests.

19 THE COURT: Okay. What I'm going to do is I'm going to
20 go ahead and recess the jury for lunch. And if I know -- come
21 here for just a second -- y'all come here for just a second.

22 (Bench conference)

23 THE COURT: So I'm going to break until 1:30. We have
24 a couple of things that we need to do in the break that we need
25 to do. Put whatever you want to put on the record outside of the

1 presence of the Jury.

2 (End of bench conference)

3 THE COURT: Okay. Ladies and Gentlemen, except for my
4 come here -- Deputy, go ahead and step on down.

5 THE WITNESS: Okay.

6 THE COURT: Okay. I'm going to go ahead and recess you
7 for lunch.

8 We'll recess until 1:30 we have some other things that
9 we have to handle outside your presence during that recess --
10 that break -- it's called a recess but it's your lunch break,
11 basically.

12 I need to hang on to one of my jurors and the Bailiff
13 will advise you of that. It will just take a few minutes. And
14 I'll see y'all back at 1:30.

15 Please be reminded not to talk about the case or the
16 facts of the case during your lunch break. You can step down and
17 if you'll advise which one.

18 (Juror Ronald Mark Hill is brought into
19 Courtroom.)

20 And I do need to keep you on the record for now. Step
21 -- just have him stand right there -- you're not in any trouble.
22 Don't worry. I just need to ask you a few questions. Can you
23 hear him okay standing over there because I don't really want to
24 put him -- shut the door. Okay. I need to ask you a few
25 questions, and to do so I have to swear you in, so there's not

1 anything that you've done wrong so don't be concerned, you're not
2 in any kind of hot water.

3 But the only way I know to find out is to ask you and I
4 have to do that in this type of format, I can't talk to you, just
5 one on one. So I'm going to swear you and I'm going to ask you
6 one or two little questions.

7 Will you raise your right hand. Do you solemnly swear
8 or affirm that your testimony will be the truth, the whole truth,
9 and nothing but the truth, so help you God?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Go ahead and state your name for the
12 record.

13 THE WITNESS: Ronald Mark Hill.

14 THE COURT: Okay. Mr. Hill, you're serving as one of
15 my jurors in the case of the State of Texas vs. Richard Gross,
16 correct?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Okay. We had a little bit of a mix up a
19 few minutes ago and I believe you may have been in the restroom
20 at the same time that Mr. Gross went into the restroom.

21 Is there anything about seeing Mr. Gross in the
22 restroom or having that contact with him that would affect your
23 opinion in any way in this case?

24 THE WITNESS: No, ma'am.

25 THE COURT: Negative or positive? Did you have any

1 interaction with him?

2 THE WITNESS: No, ma'am.

3 THE COURT: Did he speak to you or you speak to him?

4 THE WITNESS: No, ma'am.

5 THE COURT: And so how long would you approximately say
6 you were -- did you leave immediately thereafter?

7 THE WITNESS: I washed my hands and left.

8 THE COURT: Okay. Did he walk behind you or --

9 THE WITNESS: He walked behind me and went into the
10 booth --

11 THE COURT: Okay.

12 THE WITNESS: And when I finished, I washed my hands
13 and walked out and Officer Brock he apologized he didn't know I
14 was in there.

15 THE COURT: Okay. Is there anything about that that
16 would affect your opinion in this case at all?

17 THE WITNESS: No, ma'am.

18 THE COURT: Is there anything about that that you --
19 that you had a conversation with any of the other jurors about or
20 anything of that sort?

21 THE WITNESS: Never said a word.

22 THE COURT: Okay.

23 THE WITNESS: I didn't know he would come in there with
24 me.

25 THE COURT: Okay. Well, that's what I thought but I

1 wanted to make for sure and the only way I knew was to ask you so
2 come back at 1:30 --

3 STATE: Your Honor --

4 THE COURT: Yes, ma'am.

5 MR. CARGILL: Can we approach the side --

6 THE COURT: Hang on just a second, I want to be
7 careful and not say anything to you that's going to suggest --

8 (bench conference)

9 STATE: I think as a precaution you need to admonish
10 him.

11 (End of bench conference)

12 THE COURT: Okay. And please don't mention what you
13 saw or this hearing anything like that to the other jurors.

14 THE WITNESS: I haven't said a word.

15 THE COURT: I didn't think you had. It was an
16 incidental contact but just to make sure everything is --

17 THE WITNESS: Somebody went in this way and I went --

18 THE COURT: Yes, sir. You didn't do one thing wrong.
19 That was the Court's mishap. I want to make sure it didn't
20 affect you. You're excused. Have a good lunch, see you back at
21 1:30.

22 THE WITNESS: Thank you.

23 THE COURT: Okay. If you want Ms. Waldrip, with the
24 rest of us gone, you may have her --

25 MR. CARGILL: No, Your Honor, I don't think that's

1 going to be necessary.

2 THE COURT: Mr. Cargill, the State is resting and
3 closing.

4 MR. CARGILL: We anticipate resting and closing after
5 lunch.

6 THE COURT: Okay. Let's go ahead and start looking at
7 the charge then if you don't mind or would y'all prefer to go to
8 lunch and then come back after lunch and do that?

9 STATE: We would prefer to do it now if that's okay
10 with the Court.

11 THE COURT: It makes it a little easier. Go ahead and
12 have a seat, Mr. Gross.

13 MR. CARGILL: Yes.

14 THE COURT: Yeah, well, wait until my jurors get out,
15 yeah. Yes, and then he may -- we'll have an informal conference
16 and then we'll go on the record. Okay. Okay. Let's come back
17 at 1:15 or whatever -- y'all eat lunch and then at 1:15 we'll
18 have our formal charge conference on the record and you can take
19 him -- oh -- let me note something else for the record since I
20 still have Ms. Waldrip here. And this is going back to the issue
21 with the inadvertent contact that the juror had. The Court's
22 going to note for the record that although Mr. Gross has some
23 type of leg braces on his leg, he does not have physical shackles
24 and the Court was not aware that he had those on underneath his
25 slacks either. So he doesn't have a visible leg chain on his

1 leg. Okay. Take him to lunch and we'll see y'all back after
2 lunch. Everybody eat and then we'll do it.

3 MR. CARGILL: 1:15?

4 THE COURT: Yeah or 1:20 just basically don't let me
5 forget to do the formal charge conference on the record before we
6 bring the Jury in.

7 (Lunch break taken)

8 THE COURT: Okay. Let's go on the record and I'll note
9 that the jury is not present, counsel for State and counsel for
10 the Defendant are present in the courtroom along with the
11 Defendant, Mr. Gross. What I understand and I'll change what
12 we're doing if I need to is that the State is going to rest and
13 close and then I anticipate the defense will rest and close at
14 that time as well.

15 MR CARGILL: Yes, Your Honor.

16 THE COURT: Then I will bring in the jury, so I'm going
17 to go ahead and do the charge conference now if there's no
18 objections.

19 STATE: No objections.

20 MR. CARGILL: No objection.

21 (Charge Conference)

22 THE COURT: The State having been provided with the
23 copy of the proposed charge and the Court; does the State have an
24 requested additions to the charge or objections to the charge?

25 STATE: No, Your Honor, the State does not.

1 THE COURT: Okay. Defense?

2 MR. CARGILL: No, Your Honor.

3 THE COURT: Very well then, I'm just going -- this is a
4 pretty simple charge, I'm not going to try to get them a copy,
5 I'll just read it to them. Let me get -- I need Janice, I need
6 to have it file marked and then I'll bring the Jury in. And I'll
7 give y'all time to set up for closing you know while the Jury's
8 -- or whatever you need to do. And Ms. Waldrip's got our
9 Exhibits right there.

10 STATE: Yes, ma'am. They're in order, they should be.

11 BAILIFF: All rise.

12 (Jury present)

13 THE COURT: Okay. The courtroom may be seated. And
14 the State may call its next witness.

15 (State Rests)

16 STATE: Your Honor, the State rests.

17 THE COURT: Defense, any witnesses?

18 (Defense Rests)

19 MR. CARGILL: Your Honor, the Defense rests.

20 THE COURT: Okay.

21 STATE: State rests and closes.

22 MR. CARGILL: Defense rests and closes.

23 THE COURT: Ladies and Gentlemen of the jury, I
24 anticipated that that was going to happen and so during the lunch
25 break we also we ahead and worked on the charge so we could go

1 ahead and present it to you without any interruption.

2 At this time I'm going to read to you the charge in the
3 court containing the law applicable to the case and in continuing
4 to discharge your responsibilities as a juror, you will continue
5 to observe all of the instructions that have been previously
6 given to you.

7 These instructions are given to you because your
8 conduct is subject to review the same as that of the witnesses,
9 parties, attorneys and myself. If it should be found that you've
10 disregarded any of the Court's instructions, it will be jury
11 misconduct and it may require another trial by another jury.

12 If any of you observed one or more of your number
13 violating the court's instructions you shall immediately warn the
14 violator, caution him or her not to do so again.

15 Please listen carefully as I read the charge to you.
16 The original will be placed on the table in the jury room when
17 you retire to begin your deliberations after closing arguments.

18 Cause Number 32004, the State of Texas vs. Richard
19 Gross in the District Court of Anderson County, Texas, 3rd
20 Judicial District. Charge of the court, Ladies and Gentlemen of
21 the jury, the Defendant, Richard Gross, stands charged by
22 indictment of the offense of assault of a public servant alleged
23 to have been committed on or about the 19th day of November, 2014
24 in Anderson County, Texas. The Defendant has pled not guilty.
25 You are instructed that the law applicable to this case is as

1 follows. Our law provides that a person commits the offense of
2 assault on a public servant if the person intentionally,
3 knowingly or recklessly causes bodily injury to another. And the
4 actor knows the other person is a public servant. And the actor
5 commits the offense while the public servant is lawfully
6 discharging an official duty. Another means a person other than
7 the actor. Bodily injury means physical pain, ailments or any
8 impairment of physical condition. Public servant means a person
9 elected, selected, appointed, employed or otherwise designated an
10 officer, employee or agent of the government. You are instructed
11 that voluntary intoxication does not constitute a defense to the
12 commission of a crime. Intoxication means disturbance of the
13 mental or physical capacity resulting from the introduction of
14 any substance into the body. The person acts intentionally or
15 with intent with respect to the nature of his conduct or to a
16 result of his conduct when it is his conscious, objective or
17 desire to engage in the conduct of cause or result. The person
18 acts knowingly or with knowledge with respect to the nature of
19 his conduct or to circumstances surrounding his conduct and he's
20 aware of the nature of his conduct or that these circumstances
21 exist. A person acts knowingly or with knowledge with respect to
22 the result of his conduct when he is aware that his conduct is
23 reasonably certain to cause the result. A person acts recklessly
24 or is reckless with respect to the result of his conduct when he
25 is aware of but consciously disregards a substantial and

1 unjustifiable risk of the result will occur. The risk must be of
2 such a nature and degree that it's disregard constitutes a gross
3 deviation from the standard of care that an ordinary person would
4 exercise under all those circumstances as viewed from the actors
5 standpoint. The actor's presumed to have known the person
6 assaulted was a public servant. If the person was wearing
7 distinctive uniform or badge indicating the person's employment
8 as a public servant. The State must prove beyond a reasonable
9 doubt that the person assaulted was wearing a distinct uniform or
10 badge indicating the person's employment as a public servant. If
11 you find that such has been proven beyond a reasonable doubt, you
12 may find the Defendant knew the person assaulted was a public
13 servant. But you're not bound to so find but if the State fails
14 in its proof, or you have a reasonable doubt thereof, you should
15 not consider this presumptive for any purpose. Even if you find
16 based on this presumption that the Defendant knew the person
17 assaulted was a public servant, the State must prove each of the
18 other elements of the offense charged beyond a reasonable doubt.
19 Now bearing in mind the foregoing instructions if you believe
20 from the evidence beyond a reasonable doubt that on or about the
21 19th day of November 2014 in Anderson County, Texas, Richard
22 Gross did then and there intentionally, knowingly or recklessly
23 cause bodily injury to Don Meyers by biting Don Meyers and the
24 Defendant did then and there know that the said Don Meyers was
25 then and there a public servant to wit: Anderson County Sheriff's

1 Deputy and that Don Meyers was lawfully discharged in an official
2 duty to wit: effectuating arrest or detention of said Defendant
3 then you will find the Defendant guilty of the offense of assault
4 on a public servant as charged in the indictment. Unless you so
5 find from the evidence beyond a reasonable doubt that the
6 Defendant is guilty or if you have a reasonable doubt thereof you
7 will acquit the Defendant of assault on a public servant and say
8 by your verdict not guilty. Our law provides that a Defendant
9 may testify in his own behalf if he elects to do so. This
10 however, is privilege accorded to the Defendant and in the event
11 he elects not to testify that fact cannot be taken as a
12 circumstance against him. In this case the Defendant has elected
13 not to testify and you are instructed that you cannot and must
14 not refer or elude to that fact throughout your deliberations or
15 take it into consideration for any purpose whatsoever as a
16 circumstance against the Defendant. A Grand Jury indictment is
17 the means whereby a Defendant is brought to trial in a felony
18 case. It is not evidence of guilt nor can it be considered by
19 you in passing upon the question of the guilt of the Defendant.
20 The burden of proof in all criminal cases rests upon the State
21 throughout the trial, it never shifts to the Defendant. All
22 persons are presumed to be innocent and no person may be
23 convicted of an offense unless each element of the offense is
24 proved beyond a reasonable doubt. The fact that a person has
25 been arrested, confined or indicted for or otherwise charged with

1 an offense gives rise to no inference of guilt at his trial. The
2 law does not require a Defendant to prove his innocence or
3 produce any evidence at all. The presumption of innocence alone
4 is sufficient to acquit the Defendant and unless the jurors are
5 satisfied beyond a reasonable doubt of the Defendant's guilt
6 after careful and impartial consideration to all the evidence in
7 the case. The prosecution has the burden to prove the Defendant
8 guilty and it must do so by proving each and every element of the
9 offense charged beyond a reasonable doubt, and if it fails to do
10 you must acquit the Defendant. I think I read the same paragraph
11 twice -- sorry. It is not required that the prosecution prove
12 guilt beyond all possible doubt, it is required that the
13 prosecution's proof excludes all reasonable doubt concerning the
14 Defendant's guilt. In the event you have a reasonable doubt as
15 to the Defendant's guilt after considering all of the evidence
16 before you and these instructions you will acquit him and say by
17 your verdict, not guilty. You are limited in your deliberations
18 upon a verdict to consideration and discussion of such facts and
19 circumstances only as were admitted into evidence or as
20 reasonably deductible from the evidence. And no juror is
21 permitted to communicate to any other juror anything she or he
22 may have heard regarding the case or any witness therein from any
23 source other than the witness stand. In deliberating on the case
24 you are not to refer or discuss any matter not in evidence before
25 you, nor talk about this case to anyone not of your jury. During

1 your deliberations you are instructed that you should not
2 consider the remarks, rulings or actions of the Judge presiding
3 during this trial as any indication of the Court's opinion as to
4 the existence or non-existence of any fact or as indication of
5 the Court's opinion as to the guilt or innocence of the
6 Defendant. You are the exclusive judges as to the facts proven
7 of the credibility of the witnesses and the weight to be given to
8 their testimony. But you are bound to receive the law from the
9 Court which is herein given to you as you be governed thereby.
10 After arguments of counsel, you will retire and select one of
11 your members as your presiding juror. It is his or her duty to
12 preside over the deliberation and to vote with you in arriving at
13 a verdict. Your verdict must be unanimous. And after you've
14 arrived at your verdict you may use the forms attached hereto by
15 having your presiding juror sign his or her name. Your presiding
16 juror will sign one form only. After you've retired to consider
17 your verdict, no one has the authority to communicate with you
18 except the officer Bailiff of the Court who has your charge. In
19 the event you desire to communicate with the Court on any matter
20 in connection with your deliberations, your presiding juror will
21 notify the Bailiff who will inform the Court thereof. Any
22 communication relative to the cause must be written, signed by
23 the presiding juror, submitted to the Court through the Bailiff
24 of the court. Signed, Judge Deborah Oakes Evans, Judge
25 presiding, the date is July the 14th, 2015. The verdict reads as

1 follows, we the jury find the Defendant, Richard Gross, guilty of
2 the offense of assault on a public servant as charged in the
3 indictment, a spot for the presiding juror to sign or we the
4 jury, find the Defendant, Richard Gross, not guilty of the
5 offense of assault on a public servant as charged in the
6 indictment, signed -- a place for the presiding juror to sign.
7 That concludes the reading of the charge. At this time we'll
8 have closing arguments of counsel. State may proceed whenever
9 you're set up and ready.

10 STATE: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12

13 STATES CLOSING ARGUMENTS

14 STATE: May it please the Court, Mr. Cargill, Mr.
15 Gross, Ladies and Gentlemen of the jury, this is the point that
16 you now will be a test on what the Judge has just told you. That
17 was kind of foreign to you; wasn't it? You're really not -- this
18 is your instructions to tell you what to do when you're back
19 there. So let's look at it. It's called the Charge of the
20 Court. So we know why we're here, we're here because I've
21 alleged to you that Richard Gross, committed assault on a public
22 servant when he bit Deputy Don Meyers.

23 So the first page has your definitions, another, bodily
24 injury, public servant -- the fact that you are intoxicated does
25 not excuse your behavior for committing a crime. Page 2 it

1 continues with the intentionally or knowingly or recklessly as we
2 talked about in Voir Dire.

3 The middle part talks about public servants. If you
4 find he's wearing a distinctive uniform or badge indicating
5 himself as a public servant well, you can find he's a public
6 servant. And Deputy Meyers testified to you that he was dressed
7 in his Anderson County uniform that day. So I submit to you that
8 you're able to find that.

9 But you don't stop there, you have to ask yourselves
10 the questions in IV, the first paragraph and that is what I have
11 to prove to you. There we go -- I have to prove to you that on
12 or about the 19th day of November 2014 in Anderson County, Texas,
13 Richard Gross did then and there intentionally, knowingly and
14 recklessly cause bodily injury to Don Meyers by biting Don Meyers
15 and the Defendant who is Richard Gross did then and there know
16 that said Don Meyers was lawfully -- was then and there a public
17 servant to wit: an Anderson County Sheriff's Deputy that Don
18 Meyers was lawfully discharging official duty to wit effectuating
19 arrest and the detention of said Defendant. Whew -- that's a lot
20 of words to basically say you've got to ask yourself did Richard
21 Gross bite Don Meyers while Don Meyers was doing his job as an
22 Anderson County Sheriff's Deputy.

23 So let's go over the elements. First of all, you heard
24 multiple people tell you that yes, in fact this did happen in
25 Anderson County, Texas. Everybody knows Elkhart is Anderson

1 County, Texas. So check one. Second, that it occurred on
2 November 19th, 2014, every single witness told you -- there's
3 been no refuted evidence to show it didn't happen on that date.
4 So that. Identification of the Defendant -- Mike Mitchell, Glen
5 Hubert, and Don Meyers all three told you that in fact the person
6 that bit Don Meyers in this case was in fact the Defendant,
7 Richard Gross. So we have a check on that one. Intentionally,
8 knowingly or recklessly caused bodily injury to Don Meyers, well,
9 we know that from testimony Richard Gross was trying to be placed
10 into the patrol car and during the course of him being arrested
11 for public intoxication and thanks to his behavior outside the
12 vehicle, also resisting arrest, transportation or search he
13 turned his head and bit Don Meyers in the thigh. There's been
14 absolutely no evidence to show you any different. Richard Gross
15 is the one who did the biting. It wasn't Glen Hubert, Don Meyers
16 certainly didn't bite himself and Mike Mitchell wasn't near him.
17 He intended to cause harm to this Anderson County Deputy. He
18 knew was he was doing when he turned his head and bit the
19 officer. And let's look at that. Well -- may I have a second,
20 Your Honor?

21 THE COURT: Yes, ma'am.

22 STATE: Thank you. Cause bodily injury to Don Meyers.
23 As Don Meyers told you this photograph was taken at the scene
24 clearly got on his brown sheriff's department badge on. So this
25 is fresh. You can see where Richard Gross teeth slid on his

1 thigh. You can see the skin broken like hamburger meat. You can
2 see how deep it is by the blood. And days later that's State's
3 Exhibit 3 and State's Exhibit Number 4, we can still see the
4 severity of it. I think it's fair to say that all the evidence
5 does show that Richard Gross did in fact bite Deputy Meyers.

6 But my proof to you does not stop there. I also have
7 to show that he's a public servant. I believe there's been
8 unrefuted evidence as we talked about through Page 1 that he was
9 in fact a Anderson County Sheriff's Deputy. Then we come to that
10 he's performing his official duty -- that's not very helpful
11 --here we go -- that he's -- I picked from my own notes
12 detaining, arresting Defendant but in actuality the jury charge
13 says effectuating arrest or detention of said Defendant. Let's
14 talk about that. You heard from Deputy Mike Meyers that given
15 the way that Richard Gross was behaving -- you saw his behavior
16 on video. The man was holding on to the ropes for balance, had a
17 chair in his hand, waving it at the deputies, dropped the chair,
18 walked towards Deputy Meyers, refused to abate to the demands,
19 Deputy Meyers and Sergeant Mitchell put him -- tried to put him
20 on the ground. With his sure strength and whatever substance
21 he's on, he throws off Mike Mitchell and Don Meyers and then Don
22 Meyers takes control of the situation by tasing him. All within
23 the course of his official duties. They made a determination
24 that Mr. Gross was probably publicly intoxicated and as both
25 officers told you can be arrested for that. He was taken -- one

1 he was tased, he was handcuffed -- he wasn't handcuffed and then
2 tased as Mr. Cargill told you in opening. There's been no
3 evidence to say that it wasn't that way. He was tased to gain
4 control and then he was handcuffed. And even as he's tasered,
5 he's still fighting, he's still trying to get up, he's still
6 running his mouth -- he's still not obeying what he's been told
7 to do. You heard them testify that eventually they were able to
8 get leg restraints on him and the arrest doesn't stop there.

9 The continuation of it is you got to get them into the
10 patrol car to remove them from the scene. So they get him
11 ushered to the vehicle. You know when Mr. Cargill was trying to
12 say well, did you grab him by the collar, did you push him on the
13 ground -- that's not relevant. It's not relevant to what you're
14 being asked to do. You might not like it, but it's not relevant.
15 What is relevant is what Richard Gross's behavior was.

16 What's relevant is the fact that Don Meyers was doing
17 his job. When they got him to the car Richard Gross refused to
18 get in. That's resisting transport or resisting arrest, so
19 there's another offense there. He's already in handcuffs and leg
20 chains so there's no need to "reapply" them. They try to get him
21 in the car and that's when his third crime occurred when he bit
22 Deputy Don Meyers.

23 Ladies and Gentlemen the evidence is abundantly clear,
24 these officers were doing their job. Basically it just boils
25 down to what I said in the beginning. Richard Gross bit Don

1 Meyers because he didn't want to get in that car. He didn't want
2 to be arrested. He resisted and Don Meyers paid the price that
3 night. You heard no evidence that Richard Gross was injured in
4 any way, because he wasn't. But Don Meyers had to receive
5 treatment.

6 I ask you to do what the evidence demands of you and to
7 find him guilty. Thank you.

8 THE COURT: Mr. Cargill?

9

10 DEFENSE CLOSING

11 MR. CARGILL: Thank you, Your Honor. Thank you for
12 your time and attention, Ladies and Gentlemen. And although this
13 was a very short trial, this is an extremely important trial to
14 my client.

15 It's a felony offense, and I'm glad that you paid
16 attention, and I hope that you look at the facts that were
17 presented and the document or the pictures and documents and the
18 video that were introduced into evidence. And reconsider that
19 and look at it and apply it to the law.

20 You know officers have a very difficult time. It's
21 difficult being out there. They've been trained, they have the
22 equipment, they have the experience -- but it's still -- it's
23 hard to prepare for every situation and be able to contain human
24 nature. And we sympathize with the officer's injuries. We
25 understand that that can be very troublesome and painful.

1 Now you look and you're thinking well, this is a spur
2 of the moment thing, this is something that occurred very quickly
3 as you can tell by the testimony it was a few seconds here, a
4 minute here and the video's not even very long. But we have the
5 luxury of looking at all the actions after the fact.

6 And why is that the case, well that's what the
7 legislature allows you to do. That's why the legislature set up
8 the laws it did so that you can consider the facts after it
9 happened with an open mind and open slate and know step apart
10 from all the emotions and all the situation and ongoings that's
11 going on and truly find whether or not if this is a felony
12 assault of a public servant or some other case.

13 In a moment people react with human nature and we even
14 had that admitted by the alleged victim himself. He said, yes, I
15 hit him with my fist, it was out of reaction. That's not
16 ununderstandable thing. It's very understandable. That's what
17 would happen -- it's a knee jerk reaction if you want to say it
18 that way. Well, that's not exactly how you have to look at it
19 when you're looking at it in the after the fact, on a clear
20 slate, the way the law looks at it.

21 And I'll explain a little bit further as we go along.
22 Also another thing that happens when you're in a spur of the
23 moment things and events are occurring real rapidly and you have
24 it in your mind -- you think things occur that just don't. For
25 instance, without the benefit of the video the officer didn't

1 remember that my client did not have the chair and was in his
2 mind I'm sure attacking him with it.

3 In fact, he complied and put the chair down. In his
4 mind it was to the point to where the other officer had to remove
5 the chair from his hands. And that's understandable, that's
6 because it's that type of situation. But then you look and the
7 officer said Mr. Gross was not tased until he was -- before he
8 was handcuffed -- he wasn't tased after he was handcuffed.

9 Well, first of all, he said in his own testimony he
10 doesn't recall how many times Mr. Gross was tased -- he thinks
11 once. Secondly the video -- which you have the right to look at
12 again, if that weapon -- that taser is operating correctly -- we
13 have no evidence that it wasn't -- the video begins immediately
14 when the taser is activated. We watched the video -- most
15 definitely he was handcuffed when he was tased. Why is that so
16 important? Well, it comes to one of the elements that we're
17 going to discuss in just a moment.

18 But even in the State's own questioning -- when they
19 questioned him -- they questioned him that way. Well, so if he
20 was handcuff when he was tased only Officer Meyers disagreed with
21 that. Watch the video, it's clear. Why is it so important?
22 Well, it's so important because that's not a lawful action --
23 even though it may be understandable, even though it may be
24 something that was a split decision that occurred, it's not a
25 lawful action.

1 STATE: Your Honor, I would object to his
2 characterization of this. It's not a question of whether -- what
3 happened before the incident on trial -- or it's lawful or not,
4 in fact, if it was unlawful Deputy Meyers would be in the --

5 THE COURT: Okay. I've sustaining the objections
6 because there's not any -- I'm sustaining the objection.

7 MR. CARGILL: The -- why is it important to look at
8 things that fact -- the same reason why the fist was hit upon the
9 head. Why isn't he charged with hurting the officer's hand --
10 why isn't that part of the trial? It's simple. Because that's
11 not a lawful act.

12 STATE: Your Honor, I'd object again. The decision to
13 indict someone for an offense is left to the discretion of the
14 District Attorney's office. The fact that I did not indict him
15 that way does not mean that Don Meyers acted in an unlawful way.

16 THE COURT: Overruled. Ladies and Gentlemen as I
17 advised earlier, arguments of counsel are just that -- they're
18 arguments of counsel. Y'all are to consider only the evidence
19 that's before you. Go ahead, Mr. Cargill.

20 MR. CARGILL: If I can go ahead and start back -- you
21 can consider that. You also can consider during the process of
22 effectuating detention or arrest, he was not only pulled up, then
23 when he fainted and fell down again, pulled up again, he was
24 collared to pull forward, collared to pull backwards and slammed
25 -- or pulled to the ground I think were the words -- he wasn't

1 slammed but pulled to the ground.

2 All those things, although may be understandable
3 because of the circumstances or the actions or maybe they're not,
4 but those happened in a split second. The legislature knew that
5 we'd have the luxury of looking at this with a clean slate. And
6 that's why they required certain elements.

7 And one of those elements that the State did not cover
8 -- which they covered all the elements except for one, if you
9 look -- did they cover that then -- that Don Meyers was lawfully
10 discharged in an official duty. You noticed they left that out
11 in getting to their argument. They didn't talk about the
12 lawfulness of the duty which is a requirement.

13 Let's look at the charge. If you look at the charge it
14 says in Paragraph 3 so that we know, it says, even if you find
15 based on the presumption that wearing the uniform that the
16 Defendant knew the person who was assaulted was a public servant
17 -- okay. That's assuming that there is an assault and that the
18 person was a public servant. The State must prove each of the
19 other elements in the offense charged beyond a reasonable doubt.
20 So even if there is an assault and the person is a public servant
21 they still have to prove the rest of the elements.

22 Now if we look at the elements, they're in Paragraph 4,
23 on or about the 19th day of November 2014 in Anderson County,
24 Texas, Richard Gross did then and there intentionally, knowingly
25 or recklessly cause bodily injury to Don Meyers by biting Don

1 Meyers the Defendant did then and there know that the said Don
2 Meyers was then and there a public servant to wit an Anderson
3 County Sheriff's Deputy and all those things she showed you where
4 they proved that beyond a reasonable doubt. But then it gets to
5 and that Don Meyers was lawfully discharging an official duty to
6 wit effectuating arrest or detention of said Defendant. And yes,
7 they showed that he was doing his official duty, but they didn't
8 point out that it happened to be a lawful discharge.

9 If you look at Paragraph 7, the prosecution has the
10 burden of proving the Defendant guilty and it must do so by
11 proving each and every element of the offense charged beyond a
12 reasonable doubt. And if it fails to do so the instructions say
13 you must acquit the Defendant -- whether you want to or not.
14 It's the same thing we talked about in Voir Dire, what if all the
15 elements are made, yet one's missing? One's not quite to the
16 point of beyond a reasonable doubt. And if it's not quite to the
17 point of beyond reasonable doubt, the instructions say you must
18 acquit the Defendant.

19 And every one of you as I looked into your eyes while
20 we were doing Voir Dire, you said that you could follow that, you
21 could follow the law in that regards. What level -- not was he
22 acting lawfully more likely than not. Not was it clear and
23 convincing that he was acting lawfully, but beyond a reasonable
24 doubt was he acting lawfully. You saw the video, you heard the
25 testimony. It's just not there. There's no proof beyond a

1 reasonable doubt that his actions were being lawfully discharged.
2 Why does the legislature require the element of lawfully
3 discharging the duty in the language? It's because this is such
4 an important issue, it's a felony matter. They put that in to
5 make and insinuate that it has to be discharged in a lawful duty.
6 Now can you look at other things? Sure. The District Attorney's
7 pointed out -- public intoxication -- oh, you can nail that one.
8 Resisting arrest, certainly there.

9 What about assault? Certainly, there's assault --
10 there's assault shown, the State was clear with that, he was bit.
11 But what does the instruction say? Read very carefully in
12 Paragraph 3, the bottom of the paragraph, even if you find based
13 on this presumption that the Defendant knew the person assaulted,
14 that's assuming there was an assault, which there was, was the
15 public servant -- the State must still prove each of the other
16 elements including the lawful discharge. So that even showed
17 you, yes, you can have an instance where you have a public
18 servant and you have an assault but if there wasn't a lawful
19 discharge of the duty happening at the time, then it's simply an
20 assault and not an assault on a public servant. The legislature
21 knew that and put that additional element in -- that element is
22 required to be proven by the state if they want this particular
23 charge.

24 And I know that because during Voir Dire, you said that
25 you could follow the law, and you said that you would look at

1 each and every element as instructed by the jury's charge and
2 that you would make measurement and determine whether each one of
3 those elements were met. And although we have an assault, and
4 although we have a public servant, and although we can sympathize
5 with the officer and have an understanding of the circumstances
6 and what was going on we all know that although they might have
7 shown even by preponderance that there was a lawful duty --
8 wasn't clear and convincing or beyond a reasonable doubt. And
9 because they didn't show that element beyond a reasonable doubt
10 there's only one conclusion that the jury can make and that's
11 because it's ordered -- it says you must find the Defendant not
12 guilty if they haven't done that.

13 And so on the verdict form, even if it pains you that's
14 where it has to be signed, not guilty, because they didn't prove
15 that beyond a reasonable doubt. Reasonable doubt. Resisting?
16 Yes. Assault? Yes. Public intoxication? Yes. But that's not
17 what this particular case is concerning in this particular Court.
18 Thank you.

19 THE COURT: Ms. Mitchell?

20 STATE: Thank you, Your Honor.

21 THE COURT: You may conclude.

22 STATE: May I have a two minute warning, Your Honor?

23 THE COURT: You can finish up.

24
25 STATES CLOSING

1 STATE: Yes, ma'am. First page of the jury charge,
2 Ladies and Gentlemen, our law provides a person assaults a public
3 servant if the person intentionally, knowingly or recklessly
4 causes bodily to another. And the actor knows the other person
5 is a public servant and the actor commits the offense while the
6 public servant is lawfully discharging an official duty. Mr.
7 Cargill's right. I have to prove that Don Meyers was lawfully
8 discharging his official duty.

9 Well, what do I have to prove to you at that time was
10 his official duty? It's just like in the indictment which read
11 to you said, we have to prove to you that he was in fact
12 effectuating arrest, detention of said Defendant. If you
13 determine that yes, he was effectuating an arrest then yes, his
14 conduct is lawful.

15 MR. CARGILL: Objection, Your Honor. That's a
16 misstatement of the law.

17 STATE: It is not, Your Honor.

18 THE COURT: Wait -- overruled.

19 STATE: The law provides you this -- the basis that we
20 have to add what you have to determine to be lawful behavior.
21 What you have -- if -- just like the assault itself. We can't
22 just say, oh, Richard Gross assaulted Don Meyers. We have to
23 show you how he assaulted him. Just like we have to show you how
24 Don Meyers was lawfully discharging his official duty. And there
25 has not been one iota of evidence presented to you to show you

1 that he was acting unlawfully.

2 MR. CARGILL: Objection, Your Honor, it's a
3 misstatement of the facts.

4 THE COURT: Overruled. Again, Ladies and Gentlemen of
5 the jury, closing argument is just that. Closing argument you're
6 entitled to consider the evidence as you heard it from the
7 witness stand and from the Exhibits.

8 STATE: Thank you, Your Honor. You know when you don't
9 have anything to work with you just sometimes want to throw stuff
10 on the wall and see what sticks. And that's what's happened
11 here. The smoke screen has been blown up in front of you, but I
12 know that y'all have paid attention to the evidence that you
13 heard from that witness stand, that videotape that you watched
14 and those photographs that you saw and you know the truth.

15 The truth is beyond a reasonable doubt, Richard Gross
16 bit Don Meyers while Don Meyers in uniform was effectuating an
17 arrest on Richard Gross. Maybe you don't like the fact that
18 because of Richard Gross's behavior they had to put him on the
19 ground or grab him by his collar to put him on the ground. Did
20 you see that video tape? Even after the man was tased and
21 handcuffed, he kept trying to get up. These officers didn't know
22 what to expect and then they get him to the car and he does the
23 same thing again? Was he acting angry? Yes, Deputy Meyers.
24 Was he being combative? Yes, Deputy Meyers.

25 But those officers took an oath to their jobs so they

1 tried to place him in the vehicle. And that's when Richard Gross
2 struck. And man, did he strike hard. You heard testimony from
3 Deputy Meyers, he had to strike him in the head and get him to
4 let go.

5 You heard testimony from Mike Mitchell that Deputy
6 Meyers screamed out in pain. Don't get swayed by the smoke
7 screen. You know what the truth is, you know what the elements
8 are. Don Meyers was lawfully discharging his duty that day. Had
9 he not been, you, 12 or 13 wouldn't be here. You wouldn't, for
10 Richard Gross. You wouldn't be here for Don Meyers. Don Meyers
11 did nothing wrong.

12 MR. CARGILL: Objection, Your Honor. That's a
13 misstatement of the law that if he was not lawfully discharging
14 that he'd be charged. One the District attorney has full
15 discretion of who they charge, and two it's not an offense.

16 THE COURT: Overruled. That's why I didn't want to
17 open this door like I allowed it to be. Overruled. Go ahead.

18 STATE: Thank you, Your Honor. Because he has a duty
19 as an officer. He has a duty as an officer to uphold the laws
20 and any time he steps out of line that could be official
21 oppression. We don't have that here.

22 The only oppression that occurred that day was by
23 Richard Gross. When Don Meyers got up that morning, when Mike
24 Mitchell got up that morning, when Glen Hubert got up that
25 morning, they didn't expect for this to happen.

1 Trooper Hubert told you you don't have a report, are
2 you able to remember it? Yes, I remember it. Why? Because
3 dates like this stick out in your mind. They've been worried
4 about their daily routine, they deal with people all the time who
5 are combative towards them, like Mr. Gross. They followed
6 procedure, they were completely nice to Richard Gross. Richard
7 laying on the ground with Trooper -- no, stay on the ground, stay
8 on the ground -- how many times was he asked? Repeatedly. But
9 Richard wanted to do what Richard wanted to do that day.

10 And even though Deputy Meyers puts on his uniform
11 every day and now he protects the citizens of Smith County, but
12 he definitely protected ours for a long time, well he still owes
13 their respect as a fellow human being. There's nothing --

14 MR. CARGILL: Objection, Your Honor. It's an improper
15 argument asking for sympathy or bias.

16 THE COURT: Sustained.

17 STATE: We need to send a message to people like
18 Richard Gross. We need to send a message to our law enforcement
19 that their jobs don't go unnoticed. He needs to be found guilty
20 of what he did. Look straight of what was asked of you and
21 you're going to be able to find beyond a reasonable doubt that he
22 did this. Thank you.

23 THE COURT: Ladies and Gentlemen of the jury, at this
24 time all of the evidence, the closing arguments of counsel and
25 the charge of the court are before you. I'm going to hand the --

1 the jury forms to the Bailiff that will be provided to you in the
2 jury room.

3 We'll also send the Exhibits down, if you wish to view
4 the videotape, you need to advise the Bailiff and she'll set that
5 up for you.

6 Do not begin your deliberation until all of you are
7 present and assembled in the jury room. By that, I mean, if you
8 need to take a comfort break you may do so that's up to you.
9 Don't start deliberating until you're all present in the jury
10 room.

11 I need to -- my alternate juror to remain in the
12 courtroom and the additional jurors and we'll stand in recess
13 until they reach a verdict.

14 (JURY BEGINS DELIBERATIONS)

15 THE COURT: Okay. Ms. Denman, you've got the worst
16 job in the courthouse because we have to have an alternate but
17 the legislature says you're not allowed to go back and
18 deliberate.

19 If y'all were assessing punishment, then I would have
20 to keep you in a room by yourself. You're lucky in this case
21 because you're not required to do that. I'm going to excuse you
22 at this time. You're released on all of the instructions that
23 the court gave to you. You can talk about the case with anyone
24 including the attorneys, you can refuse to talk about the case,
25 you're also welcome to remain that the courthouse and view the

1 proceedings but you're not required to, it's up to you.

2 ALTERNAE JUROR: You mean I can actually leave?

3 THE COURT: You can leave, you're done. That's why I
4 didn't make you sit in a room by yourself, that's why I'm saying
5 you're lucky. Because normally you'd have to sit in a room by
6 yourself until we get a verdict and then I have to bring you back
7 out and have you sit here.

8 This time you're excused with the Court's thanks.
9 You'll get paid for your work here today. Help her get
10 downstairs to get a jury excused. You're excused with the
11 Court's thanks.

12 ALTERNATE JUROR: Thank you.

13 THE COURT: You're welcome.

14 Take these Exhibits back to the Jury.

15 BAILIFF: Okay.

16 THE COURT: And then we'll stand in recess until we get
17 a verdict. I'll let y'all know if we have a question.

18

19 VERDICT

20 THE COURT: Okay. I received a note from the jury that
21 they have a unanimous verdict and you can bring the jury in.
22 Okay.

23 (Jury present)

24 The courtroom may be seated. Ladies and Gentlemen, I
25 understand that you've reached a verdict for us? Are you my jury

1 foreman?

2 JURY FOREMAN: Yes, ma'am.

3 THE COURT: Okay. Would you hand the verdict form to
4 my Bailiff, please? Okay.

5 The Defendant may rise. The jury's verdict is as
6 follows: Cause Number 32004, we the jury, find the Defendant,
7 Richard Gross of the offense of assault on a public servant as
8 charged by the indictment. A unanimous verdict as the Court
9 required and signed by the jury foreman.

10 Does either side request a jury poll?

11 STATE: No, Your Honor.

12 MR. CARGILL: No, Your Honor.

13 THE COURT: Ladies and Gentlemen -- he's not eligible
14 for deferred, is he?

15 STATE: No.

16

17 VERDICT ACCEPTED

18 THE COURT: Okay. The Jury having found the Defendant
19 guilty of the offense, the Court accepts the Jury verdict and
20 adjudicates the Defendant, Mr. Gross, guilty of the offense of
21 assault on a public servant. Mr. Gross will be going to the
22 Court for sentencing. And so I will take care of that after I
23 excuse the jury.

24 Ladies and Gentlemen of the Jury, at this time because
25 Mr. Gross has elected to go to the Court for sentencing, your

1 duty here today this week is done. I want to thank you so much
2 for your time and attention, I know it's been a short trial, but
3 it's been an important trial to the parties involved.

4 Normally, sometimes I'll come back and visit with you a
5 second, I'm in charge of sentencing so I won't be able to do
6 that, because I -- I don't need -- I'm under the same rules that
7 y'all are. I'm not allowed to hear anything outside of the
8 courtroom.

9 So I want to thank you for your time and attention, the
10 District Clerk has your jury excuses for you for yesterday and
11 today. She will meet you around the hallway when you walk out and
12 provide those to you. So thank you -- oh you're also released
13 from your previous instructions, you're free to discuss the case
14 with anybody including the attorneys you're also free to refuse
15 to discuss the case, however you see fit.

16 So again thank you for your time and attention, you're
17 excused with the Court's thanks.

18 (Jury exits)

19 MR. CARGILL: Your Honor, has the alternate been
20 released?

21 THE COURT: I released her before I sent them back to
22 deliberate. Oh and I was going to tell y'all in case you thought
23 your juror was trouble. He was not, because I think -- the Court
24 had made an error and I think he -- I was worried he had some
25 inadvertent contact with the Defendant which he hadn't. So I was

1 worried over nothing. So y'all may step -- I didn't want y'all
2 to think he got in trouble.

3 STATE: The Court inquired of the State if Mr. Gross
4 was eligible for deferred, at any time the Court in its
5 discretion can give any Defendant deferred adjudication, however,
6 he is not eligible for probation.

7 THE COURT: He --

8 MR. CARGILL: He is eligible for deferred and probation
9 through the Court.

10 STATE: Yes, the court I just didn't --

11 THE COURT: Oh, okay. Okay. Then --

12 MR. CARGILL: Not through the Jury.

13 STATE: Not through the Jury.

14 THE COURT: Okay. I'll go back on the record and
15 deferred adjudication until we have our sentencing hearing.

16 STATE: No, I guess I misunderstood.

17 MR. CARGILL: She's not giving him deferred -- she's
18 waiting until the sentencing to --

19 THE COURT: It makes a difference whether I go ahead
20 and adjudicate him guilty today or I wait until I do it at the
21 sentencing hearing.

22 STATE: Yes, ma'am.

23 THE COURT: And if he's eligible for deferred --

24 STATE: Through the Court --

25 THE COURT: Through the Court then I don't actually

1 pronounce the words until --

2 STATE: Yes.

3 MR. CARGILL: No, Your Honor, but you do accept on the
4 record --

5 THE COURT: I accept the Jury's verdict. The only
6 issue for me was whether I actually needed to adjudicate him
7 today or make that decision at the sentencing. Some people are
8 not eligible at all for deferred -- you know -- at all.

9 STATE: Well, Judge, I don't know because he was found
10 guilty so I think you can't adjudicate him.

11 MR. CARGILL: She can still do it --

12 THE COURT: I intend to adjudicate him, I mean if y'all
13 want to I'll listen at the sentencing hearing, but I don't intend
14 to defer adjudication on him. I mean, I've listened to the
15 evidence I'm adjudicating him, I mean I don't intend to defer
16 adjudication. I intend to adjudicate him and so I might as well
17 go ahead and do so today and my only question now is what is the
18 appropriate sentence. You know --

19 THE STATE: Yes.

20 THE COURT: And if you want to provide additional
21 information on that and I'm going to keep him in custody until
22 sentencing.

23 MR. CARGILL: Well, he's being held on another charge.

24 THE COURT: He's being held on something else anyway
25 and I'm going to order a PSI and I've asked for the probation

1 office to come over. I'm ordering a full -- oh there you are --

2 PROBATION OFFICER: Yes, ma'am.

3 THE COURT: I'm ordering a full PSI, the full scale PSI
4 there's some issues with some maybe some --

5 MR. CARGILL: Mental issues --

6 THE COURT: Mental issues possibly in the past that
7 might be appropriate to my sentencing and I think that's going to
8 take at 60 days, that's my guess -- it's going to take about 60
9 days. Don't you think?

10 PROBATION OFFICER: Minimum.

11 THE COURT: That's typical. 45 would be you know what
12 I mean -- would be not the norm for a long one -- that's pretty
13 much typical in the county so it's going to be about 60 days. Or
14 that's about how long it takes if we need a PSI.

15 And then I need to set the sentencing and I'm not quite
16 sure when to set it without having Tina available to tell me what
17 dates I have.

18 CLERK: On the 25th.

19 THE COURT: What day of the week is that? I just don't
20 know what I already have set.

21 CLERK: Right.

22 THE COURT: Do y'all think it will take a day or half a
23 day -- or what do y'all think on sentencing -- half a day?

24 STATE: Half a day.

25 THE COURT: What's the day -- that you said? Okay.

1 Let's set it on September 25th, if we need to move it we will --
2 at 1:30.

3 STATE: Yes, ma'am.

4 THE COURT: And that's a Friday, that's a typical
5 criminal Friday day, you know -- if for some reason it happens
6 faster we can move it forward. What do y'all -- I guess you
7 don't know what you're going to do with this other case at this
8 point. What is it? What is the charge on that one?

9 STATE: I don't know. There's a few.

10 THE COURT: Okay. I won't worry about -- yes, verify
11 that with Tina. And also I'm advising him that he has a right to
12 appeal the verdict and I'll give him that in writing -- he has a
13 right to appeal the verdict and I'll give him his notice of the
14 right to appeal the verdict.

15 MR. CARGILL: You can do that after sentencing.

16 THE COURT: I know I do, but I always advise them
17 verbally as well. I'm advising him verbally. Obviously nothing,
18 you can't appeal anything until you have the final judgment and
19 we don't have the final judgment. I'm going to give him the --

20
21 THE COURT: And will you help set that up with Ms.
22 Angela -- Mark, with your client -- set up whatever she needs
23 with your client or whatever --

24 MR. CARGILL: Yes.

25 PROBATION OFFICE: Your Honor, when do you want the PSI

1 Due -- how many days prior to the --

2 THE COURT: Well, 60 days from now will be July --
3 August -- wait that's just barely -- a week if you can, a week.
4 I mean, if you could get it done sooner than that it won't hurt,
5 but that would give me time. Did I give you the verdict form?
6 Mr. Gross, you can sit or stand, whatever you want to do, this
7 process is going to be -- take a little bit of time. Would y'all
8 come sign this.

9 MR. CARGILL: Yes.

10 THE COURT: You can take it to him.

11 MR CARGILL: Your Honor, I think as we've
12 Discussed it we've decided that you cannot do deferred
13 so --

14

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1 THE COURT: Okay. I didn't think he was eligible but I
2 always ask that just in case. I mean you've had several that we
3 ended up after deferring -- you know what I mean and placed them
4 on probation.

5 (End of Proceedings)

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REPORTERS RECORD

VOLUME 3 OF 5 VOLUMES

TRIAL COURT CAUSE NO. 32004

COURT OF APPEALS CAUSE NO. 12-15-00280-CR

STATE OF TEXAS) IN THE DISTRICT COURT

VS.)

RICHARD GROSS) ANDERSON COUNTY, TEXAS

) 87TH JUDICIAL DISTRICT

I, Susan A. Waldrip, Official Court Reporter in and for the 87th District of Anderson County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by Counsel for the parties to be included in this volume of the Reporter's Record, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporters Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporters Record is and was/will be paid by Anderson County, Texas.

/s/ Susan A. Waldrip.

Texas CSR 3377, Exp. 12/31/2016.
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