



Transcript of the Testimony
and Proceedings

STATE OF ALABAMA

AARON CODY SMITH

Date: March 23, 2016

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Exhibit C

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DC-2016-000580.00
March 23, 2016

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IN THE DISTRICT COURT FOR THE
COUNTY OF MONTGOMERY
STATE OF ALABAMA

STATE OF ALABAMA,
Plaintiff,
VS. CASE NO. DC-2016-000580.00
AARON CODY SMITH,
Defendant.

COPY

TESTIMONY & PROCEEDINGS before the
Honorable Jimmy B. Pool, sitting as District Court
Judge, before Jeana S. Boggs, Certified Court
Reporter and Notary Public, at the Montgomery County
Courthouse, 251 South Lawrence Street, Montgomery,
Alabama, commencing at approximately 1:00 p.m.,
Thursday, March 24th, 2016.

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9 WITNESS INDEX
10 FOR THE STATE
11 JASON DINUNZIO
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1 THE COURT: Okay. State versus
2 Aaron Smith.
3 MR. MCDERMOTT: Attorneys present,
4 Your Honor. Represented by
5 counsel. Counsel of record
6 is Ms. Roianne Conner and
7 Mickey McDermott, Your Honor.
8 THE COURT: Okay. Is State ready?
9 MR. BAILEY: State of Alabama is
10 here and ready, Your Honor.
11 THE COURT: All right. Everybody
12 who is going to testify raise
13 your right hand.
14 Do you solemnly swear
15 that the testimony you are
16 about to give will be the
17 truth, the whole truth and
18 nothing but the truth, so
19 help you God?
20 MR. DINUNZIO: I do.
21 (At which time, the witness
22 was sworn).
23 THE COURT: Mr. DA, let your

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1 witness stand right in front	1 Q And I assume you had other agents that
2 of me so I can hear him well.	2 were working with you --
3 MR. BAILEY: Sure.	3 A Yes.
4 THE COURT: Thank you. Go ahead.	4 Q -- under your direction?
5 * * * * *	5 A Yes, sir.
6 JASON DINUNZIO,	6 Q Okay. Can you describe the scene there
7 of lawful age, having been first duly sworn, was	7 at McElvy Street when you after arrived?
8 examined and testified as follows:	8 A Yes. Upon my arrival, the entire block
9	9 from Mobile Drive -- if you are coming
10 DIRECT EXAMINATION	10 off of Mobile Drive onto McElvy Street,
11 BY MR. BAILEY:	11 pretty much right there at the beginning
12 Q Can you tell the Court your name.	12 of McElvy from Mobile Drive almost all
13 A Jason Dinunzio.	13 the way around to Liles Court was pretty
14 Q And how are you employed?	14 much blocked off. There was numerous
15 A I am a special agent with the State	15 police vehicles on both sides of the
16 Bureau of Investigation.	16 street. I almost couldn't actually get
17 Q And that's formerly the Alabama Bureau of	17 into the area to get close enough to it.
18 Investigation; is that correct?	18 Q And these are Montgomery Police
19 A Yes, sir.	19 Department vehicles?
20 Q Were you called out to 3237 McElvy	20 A Yes.
21 Street, back on February the 25th of this	21 Q Okay.
22 year?	22 A And some of those were some of my
23 A Yes, sir, I was.	23 co-workers as well, but the area is
Page 6	Page 8
1 Q And what was the nature of that call?	1 pretty much blocked off pretty good.
2 A It was in reference to an officer	2 Immediately surrounding 3237
3 involved shooting, involving a Montgomery	3 McElvy Street, I observed yellow crime
4 police officer. The Police Department	4 scene tape surrounding what appeared to
5 requested that the State Bureau of	5 be a crime scene around the front yard
6 Investigation conduct the investigation.	6 area of 3237 McElvy Street. And then
7 Q And why is that?	7 down on McElvy Street just past Liles
8 A That is normal procedure involving the	8 Court I saw some orange cones out there,
9 Montgomery Police Department. We have a	9 or there are some property -- some debris
10 memorandum of understanding that we work,	10 in the roadway, I guess, on the -- I am
11 you know, whatever shootings that they	11 not sure what side it was on -- on the
12 ask us to.	12 odd side of McElvy Street, the same side
13 Q Okay. And you did that in this case.	13 where Liles Court was.
14 You-all accepted?	14 Initially, I didn't know if
15 A Yes, sir.	15 that was related or not. We didn't find
16 Q And you were assigned the case?	16 that out until later. Inside --
17 A Yes.	17 Q Before --
18 Q And were you what we currently or	18 A Yes.
19 commonly referred to as a case agent?	19 Q -- you move on, did you learn at any
20 A Yes, sir.	20 point during your investigation that
21 Q The person in charge of the	21 anything had been moved from the scene or
22 investigation?	22 by the time the call went out and the
23 A Yes.	23 time you got there?

2 (Pages 5 to 8)

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Page 9	<p>1 A Initially I did not know that.</p> <p>2 Q Okay.</p> <p>3 A I now know some stuff was moved.</p> <p>4 Q Such as?</p> <p>5 A Mainly just a vehicle.</p> <p>6 Q Okay.</p> <p>7 A And that would be Officer Smith's</p> <p>8 vehicle.</p> <p>9 Q And do you know throughout your</p> <p>10 investigation who moved that vehicle?</p> <p>11 A I forget the actual officer's name, but</p> <p>12 he has been interviewed.</p> <p>13 Q Was it an SBI officer?</p> <p>14 A No. It was a Montgomery police officer.</p> <p>15 If you want, I can explain.</p> <p>16 Q No. That's okay. That's okay.</p> <p>17 You were about to explain, I</p> <p>18 think, the -- around the residence.</p> <p>19 A Yes, sir.</p> <p>20 Q So, if you could pick up with that.</p> <p>21 A Yes. Okay. The residence is a</p> <p>22 one-story, white house that had black</p> <p>23 trim shutters and around the doorways and</p>	Page 11	<p>1 the first thing I saw was the body of</p> <p>2 Mr. Gunn. Mr. Gunn was actually somewhat</p> <p>3 half behind the bush and between that and</p> <p>4 the front of the residence. Mr. Gunn was</p> <p>5 lying face up. His right arm -- or hand</p> <p>6 was kind of propped up, kind of like</p> <p>7 this. (Demonstrating).</p> <p>8 Q Did you observe any injuries to Mr. Gunn?</p> <p>9 A Yes. I observed that he had -- did have</p> <p>10 some kind of injury to his right wrist</p> <p>11 here where -- I am not sure what caused</p> <p>12 that injury, but it was pretty</p> <p>13 substantial. I could also see where</p> <p>14 medics, prior to my arrival, looked --</p> <p>15 appeared that they cut his shirt open for</p> <p>16 medical intervention. And I could see</p> <p>17 blood and -- as well as a possible</p> <p>18 gunshot wounds to the -- to his chest</p> <p>19 area.</p> <p>20 Q Okay. Would those have been center</p> <p>21 chest, right chest, left chest?</p> <p>22 A The one I remember seeing was actually</p> <p>23 center. It looks like he had some more</p>
Page 10	<p>1 everything. It's a very -- Well, it</p> <p>2 appeared to be a very small house. This</p> <p>3 is a residential area. There's two</p> <p>4 vehicles in the driveway. I believe</p> <p>5 there was a white truck, like a pickup</p> <p>6 truck, parked closer up to the house in</p> <p>7 the driveway. And then there was, like,</p> <p>8 a silver passenger car, kind of parked --</p> <p>9 it looks like it's a somewhat made</p> <p>10 parking pad, almost parked directly in</p> <p>11 front of the front door in the yard</p> <p>12 itself.</p> <p>13 As you are looking at the front</p> <p>14 of the house, there is obviously a main</p> <p>15 entrance door. There are some windows on</p> <p>16 either side. There is a front concrete</p> <p>17 patio. It had, like, a little awning</p> <p>18 covering on top of it. Kind of to the</p> <p>19 left of that porch was a fairly</p> <p>20 substantial size bush. It was pretty</p> <p>21 big.</p> <p>22 What I observed in that area</p> <p>23 upon me entering the crime scene was --</p>	Page 12	<p>1 injuries, that it was very dark, because</p> <p>2 I really couldn't see all of his</p> <p>3 injuries.</p> <p>4 Q Okay. Did -- Can you describe if there</p> <p>5 was anything -- anything that you saw in</p> <p>6 the victim's hands?</p> <p>7 A Yes. In the victim's left hand, it was</p> <p>8 kind of somewhat in this fashion here</p> <p>9 (demonstrating). And his fist was</p> <p>10 closed, and he was actually holding a --</p> <p>11 what appeared to be a black hat, like a</p> <p>12 baseball hat. His right hand again, was</p> <p>13 kind of like this (demonstrating), and</p> <p>14 there was an object directly next to the</p> <p>15 right side of his body.</p> <p>16 Q Okay. Did you learn what that -- or did</p> <p>17 you --</p> <p>18 A Yeah, I saw it myself --</p> <p>19 Q -- figure out what it was?</p> <p>20 A Yeah. I later learned that that was</p> <p>21 actually a paint roller.</p> <p>22 Q Okay.</p> <p>23 A And it was actually, again, on the right</p>

3 (Pages 9 to 12)

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1 side with the roller and actually closer	1 A A few hours later, yes, sir.
2 to the -- towards the top of his body.	2 Q Was your first interview?
3 Q Gotcha. So, you are saying in his left	3 A Yes.
4 hand he had a baseball cap?	4 Q And this interview was conducted person
5 A Correct. And it was still clinched tight	5 to person?
6 in his left hand, yes, sir.	6 A Correct.
7 Q All right. During the course of your	7 Q It wasn't over the phone?
8 investigation, did you learn the location	8 A No.
9 of Mr. Gunn's residence in relation to	9 Q It was person to person. Okay. So, you
10 where his body was found?	10 had an opportunity to observe Officer
11 A Yes. If you are looking at the front of	11 Smith and talk to him --
12 3237 McElvy, which is where the shooting	12 A Yes.
13 occurred, his mother's residence and	13 Q -- at fairly close range?
14 where he actually was living at that time	14 A Yes.
15 was directly next door to the left, at	15 Q Did you observe any visible injuries on
16 3233.	16 Officer Smith?
17 Q Okay. During your investigation, did you	17 A I did not.
18 learn the identity of the shooter?	18 Q Did he have any torn clothing?
19 A Yes. Yes. That would be Officer Aaron	19 A Not that I observed.
20 Cody Smith.	20 Q Did you see any stains or grass stains,
21 Q And just for the record, since we are on	21 dirt, or anything, on his uniform?
22 the record and for the Judge, is Officer	22 A I do not remember seeing any grass stains
23 Smith in the courtroom present today?	23 or torn clothing or anything on his
Page 14	Page 16
1 A Yes. He is standing here right to my	1 uniform.
2 left.	2 Q Did you see any buttons missing or
3 MR. BAILEY: Okay. If the record	3 anything to show?
4 could reflect that he has	4 A Not that I recall.
5 identified the Defendant in	5 Q When you spoke was Officer Smith, did he
6 this case.	6 tell you he had any injuries?
7 THE COURT: Done.	7 A After -- During me speaking with him, he
8 Q Did -- At any point during your	8 never indicated that he had any injuries.
9 investigation, did you have an	9 Q So, he didn't complain of any injuries
10 opportunity to interview Police Officer	10 and didn't point out any injuries to you?
11 Smith?	11 A No. On the interview on the 25th, no,
12 A Yes, I did.	12 sir.
13 Q How many times did you interview him?	13 Q Okay. Let me jump ahead. When you say
14 A Twice.	14 "the interview on the 25th," you had a
15 Q All right. The first occasion was when?	15 second interview?
16 A The first occasion would have been on the	16 A Yes, sir.
17 25th. I believe that interview started	17 Q When was that interview?
18 about 7:00 a.m. So, roughly about	18 A March 1st of 2016.
19 three-and-a-half hours after the	19 Q Okay. So, that would have been on a
20 shooting.	20 Tuesday of the month?
21 Q So, the same day as the shooting?	21 A I know that was -- that's leap year, so
22 A Yes.	22 we had that one extra day of the 29th.
23 Q A few hours later?	23 Q But, regardless, it was the next week?

4 (Pages 13 to 16)

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Page 17	<p>1 A Right.</p> <p>2 Q Okay. When you say he didn't complain of</p> <p>3 any injuries on the day of the incident,</p> <p>4 did he complain of any injuries on the</p> <p>5 second interview?</p> <p>6 A Well, he indicated that he potentially</p> <p>7 had an injury. If you want, I can</p> <p>8 explain.</p> <p>9 Q Yeah.</p> <p>10 A He -- During that interview process, he</p> <p>11 actually -- When I asked him again the</p> <p>12 second time did he receive any injuries</p> <p>13 from this altercation, and he</p> <p>14 indicated -- he actually took his shirt</p> <p>15 off. He had a flannel shirt on. He took</p> <p>16 it off. He had a T-shirt underneath.</p> <p>17 And he began to point to -- Well, he was</p> <p>18 indicating a possible bruise on his left</p> <p>19 upper arm near his bicep. I, myself,</p> <p>20 stood up, looked at it. I didn't see any</p> <p>21 visible that I could actually document</p> <p>22 with an actual photograph at that time.</p> <p>23 And we tried to discuss what could have</p>	Page 19	<p>1 injuries that Mr. Gunn had inflicted on</p> <p>2 him?</p> <p>3 A According to Officer Smith, on either</p> <p>4 interview, he indicated that Mr. Gunn</p> <p>5 never inflicted any injury on him.</p> <p>6 Q Okay. According to Officer Smith, did</p> <p>7 Mr. Gunn ever strike him?</p> <p>8 A According to Officer Smith, Mr. Gunn</p> <p>9 never -- Well, actually, let me go back.</p> <p>10 There's two versions --</p> <p>11 Q Sure.</p> <p>12 A -- to Officer Smith's statement. If you</p> <p>13 want, I can elaborate on both versions.</p> <p>14 Q Yes, please.</p> <p>15 A Mr. -- Officer Smith -- I will call him</p> <p>16 "officer."</p> <p>17 Officer Smith first indicated</p> <p>18 on the first interview that throughout</p> <p>19 that incident -- if you want, there is</p> <p>20 different phases to what occurred. If</p> <p>21 you want, I can break those down.</p> <p>22 After initial contact with</p> <p>23 Mr. Gunn, he indicated through subsequent</p>
Page 18	<p>1 caused this injury. And I think Officer</p> <p>2 Smith actually indicated he could have</p> <p>3 hit himself with his own ASP.</p> <p>4 Q Okay. But at any time during --</p> <p>5 THE COURT: He could have hit</p> <p>6 himself with what?</p> <p>7 THE WITNESS: He could have hit</p> <p>8 himself with his own</p> <p>9 expandable baton, Your Honor.</p> <p>10 THE COURT: Oh.</p> <p>11 THE WITNESS: It goes by "ASP."</p> <p>12 MR. BAILEY: A-S-P.</p> <p>13 THE COURT: Thank you.</p> <p>14 THE WITNESS: Sorry.</p> <p>15 MR. MCDERMOTT: For the record,</p> <p>16 that's a metal baton,</p> <p>17 correct?</p> <p>18 THE WITNESS: That is correct. An</p> <p>19 expandable metal baton. Yes,</p> <p>20 sir.</p> <p>21 BY MR. BAILEY:</p> <p>22 Q Okay. During the course of either</p> <p>23 interview, did he complain of any</p>	Page 20	<p>1 contact with Mr. Gunn --</p> <p>2 Q Let me -- let me stop you there --</p> <p>3 A Yes, sir.</p> <p>4 Q -- and ask you this, and then we will</p> <p>5 cover it in order.</p> <p>6 A Okay.</p> <p>7 Q I think that will make better sense for</p> <p>8 the Court.</p> <p>9 Did he ever indicate to you</p> <p>10 that Mr. Gunn ever punched him with his</p> <p>11 fist or hit him or kicked him or anything</p> <p>12 like that?</p> <p>13 A No.</p> <p>14 Q Okay. According to Officer Smith, did</p> <p>15 Mr. Gunn ever threaten him?</p> <p>16 A Verbally?</p> <p>17 Q Yes.</p> <p>18 A No.</p> <p>19 Q Okay. Now, going back to how this</p> <p>20 incident began, did Officer Smith tell</p> <p>21 you how he came into contact with</p> <p>22 Mr. Gunn?</p> <p>23 A Yes, he did.</p>

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1 Q Okay. Tell us about that.
2 A Officer Smith advised that he actually
3 had a previous arrest that he was leaving
4 headquarters from, and he was headed back
5 to his district. And this area actually
6 is his assigned district, Unit 314,
7 District 14.
8 He was headed back. Actually
9 between heading back and actually making
10 it back to his district, he actually
11 conducted a traffic stop for a minor
12 traffic violation, gave that individual a
13 written warning, and then proceeded to
14 give his district extra patrol in
15 relation to, you know, that area having a
16 lot of recent vehicle break-ins and
17 residential burglaries.
18 He turned -- He advised --
19 Officer Smith advised that he turned onto
20 Mobile Drive, turned left onto McElvy
21 Street. As soon as he turned onto
22 McElvy, he observed Mr. Gunn walking on
23 the sidewalk. Mr. Gunn was walking on

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1 field interview.
2 Q Okay. Did he ever tell you that Mr. Gunn
3 was acting suspicious in any kind of way?
4 A No.
5 Q Okay. So, he tells you that he sees
6 Mr. Gunn, he is walking on the sidewalk,
7 and he is just going to stop and to
8 conduct a field interview?
9 A Yes, sir.
10 Q Okay. Did he give you any other reason
11 why he would have stopped Mr. Gunn?
12 A No. That was the only reason.
13 Q Okay. Did he indicate to you --
14 MR. BAILEY: Well, I will retract
15 that question.
16 THE COURT: What time of day was
17 the first contact with the
18 Defendant and Mr. Gunn?
19 THE WITNESS: Your Honor, it was
20 about 3:15, 3:20 in the
21 morning.
22 THE COURT: Thank you.
23

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1 the sidewalk from Boone Street towards
2 Liles Court, and Officer Smith is
3 obviously coming on McElvy Street
4 approaching Mr. Gunn. So, they are kind
5 of coming on toward each other.
6 Officer Smith advised that
7 he actually -- instead of being in the
8 right lane of traffic, he actually went
9 to the left side, oncoming side, pulled
10 up next to the curbing there, and
11 actually radioed his dispatcher and
12 advised that he was getting out with a
13 subject in the area, I think, Boone and
14 McElvy Street.
15 Q Okay. At this time, did Officer Smith
16 tell you why he was getting out with
17 Mr. Gunn? Did he suspect him of any
18 crime? Did he see him commit a crime?
19 A Officer Smith advised that he did not
20 actually suspect Mr. Gunn of committing
21 any crime. He did not see Mr. Gunn
22 committing any crime. He merely was
23 attempting to make contact to conduct a

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1 BY MR. BAILEY:
2 Q Did he ever make any statements to you --
3 and I am talking about Officer Smith --
4 make any statements to you about stopping
5 people in general, specifically in this
6 neighborhood?
7 A Yes. He actually said, if there was
8 anyone walking at that time of night in
9 that neighborhood, they were going to get
10 stopped.
11 Q Okay. And he said that, in that
12 neighborhood, he would stop anybody he
13 saw walking?
14 A At that -- At that time of the morning in
15 that neighborhood, he said that he would
16 stop them regardless of what race they
17 were.
18 Q Did he tell you that he got out with
19 Mr. Gunn, got out of his vehicle?
20 A Yes, he did.
21 Q Okay. At the time he got out of his
22 vehicle with Mr. Gunn -- well, let me ask
23 you this: Did he say he had ever seen

6 (Pages 21 to 24)

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1 Mr. Gunn before? Did he recognize him?
2 A Officer Smith did not recognize Mr. Gunn.
3 And he advised that he had no previous
4 contact with Mr. Gunn prior to that day.
5 Q Did -- During the time that he had seen
6 Mr. Gunn walking on the sidewalk and --
7 let me just ask you this question first:
8 Did you later find out, during your
9 investigation where Mr. Gunn was coming
10 from?
11 A Yes.
12 Q Where was that?
13 A Mr. Gunn had been hanging out at a
14 friend's house on Boone Street. His name
15 is Robert Jelks, Junior. He was just
16 around the corner a little bit. He was
17 hanging out, and I guess he was headed
18 home.
19 Q And leaves his residence, and he was
20 walking --
21 A His friend's house.
22 Q -- in the direction of his house?
23 A And he was headed towards his residence,

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1 walking home. Yes.
2 Q Did Officer Smith say during the time
3 that he saw Mr. Gunn walking on the
4 sidewalk whether he was carrying
5 anything? Was he carrying a stick, a
6 gun, a knife, any object that he saw?
7 A I asked Officer Smith that, and he stated
8 that he did not see anything in
9 Mr. Gunn's hands.
10 Q Now, Officer Smith was in a Montgomery
11 Police Department assigned vehicle?
12 A Correct.
13 Q And I believe it was a Tahoe is what you
14 later learned; is that right?
15 A Yes.
16 Q Okay. Was this police vehicle equipped
17 with video?
18 A Yes. It did have video recording
19 capabilities, yes.
20 Q And did you ask Officer Smith if he
21 activated this video?
22 A Correct. I did.
23 Q And what did he say?

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1 A He advised that the vehicle recording
2 usually begins by itself. It auto
3 records as soon as you activate the blue
4 lights. He advised obviously the blue
5 lights were not activated for this stop.
6 He then indicated that the vehicle -- the
7 dash-cam video can be activated manually,
8 which he did not.
9 Q He did not activate it?
10 A He did not activate it manually.
11 Q Either way?
12 A Either way.
13 Q Okay. During the time of the stop and of
14 this incident, did Officer Smith advise
15 you whether or not he was wearing a body
16 camera?
17 A Yes, he did, and he was.
18 Q And just so the Court knows, what is a
19 body camera?
20 A A body camera is a little device that's
21 probably a little bit smaller than a pack
22 of cigarettes. It's designed to --
23 usually to assist officers and, you know,

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1 recording their events, interactions with
2 citizens. And it records internally,
3 inside of the device. Obviously, I am
4 not associated with the company in any
5 way, but my understanding of it is, is it
6 records video to itself. The officers
7 then, in return, when they get to the
8 police department, there is docking
9 stations. They place this recording
10 device in the docking station. The video
11 is uploaded to a server that the officer
12 does not have access to. And then the
13 supervisors and back desk personnel can
14 request copies, and they can see the
15 videos on the server itself. The officer
16 never gets to see that.
17 Q The body camera that Officer Smith had,
18 did he tell you how that was activated as
19 far as, do you activate it manually or is
20 it automatic or...
21 A Yes. You have to activate it manually.
22 There is a little switch that goes side
23 to side, and you have to flip it on to

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Page 29	<p>1 actually start recording. Because, if 2 not, it would just -- if it kept 3 recording all the time, then the data 4 would be full, and you would not be able 5 to use it. 6 Q During the whole course of events that 7 morning, did Officer Smith advise you -- 8 did he say he ever activated his body 9 camera? 10 A During this incident with Mr. Gunn? 11 Q Yes. 12 A -- or at all that day? 13 Q With Mr. Gunn. 14 A Mr. Gunn, no. He never activated it 15 during the interaction with Mr. Gunn. 16 Q Never turned it on? 17 A No. 18 Q All right. Was there any evidence on the 19 body camera that Officer Smith had 20 activated his body camera that same 21 day -- 22 A Yes. 23 Q -- during his shift?</p>	Page 31	<p>1 to do anything? 2 A Yes, he did. 3 Q And what did he say? 4 A Mr. Gunn was approaching Officer Smith. 5 Officer Smith, according to his 6 statement, the only instructions or 7 interaction that he gave Mr. Gunn was -- 8 is to take his hands out of his pockets 9 and place them on the hood of his 10 vehicle. 11 Q Well, according to Officer Smith, did he 12 ask him anything prior to that, like, 13 hey, what's your name, where are you 14 going, do you live here -- 15 A No. There was no other -- 16 Q -- how are you doing? 17 A According to Officer Smith's statement, 18 he did not ask him -- there was no any -- 19 there was no other previous interaction 20 other than: Take your hands out of your 21 pockets, and place them on the hood of 22 the vehicle. That was his initial 23 contact with Mr. Gunn.</p>
Page 30	<p>1 A Yes, there was. Yes, there was. There 2 was -- I observed two other videos that 3 were on the body camera. 4 Q I think you told us about a traffic stop? 5 A Correct. 6 Q Was that on the -- 7 A That was the most recent one just prior 8 to Mr. Gunn, and that was actually about 9 2:56 a.m., so roughly 20, 25 minutes 10 before his interaction with Mr. Gunn. 11 Before that, it was around 1:00 o'clock 12 in the morning. I'm not sure exactly the 13 time. 14 Q That's okay. 15 A That was another call him and another 16 officer went on. 17 Q But you have evidence that about 20 18 minutes prior to this incident with Mr. 19 Gunn he had activated his body camera? 20 A Yes. 21 Q Okay. During the time that Officer Smith 22 gets out of the vehicle with Mr. Gunn, 23 did he -- did Officer Smith ask Mr. Gunn</p>	Page 32	<p>1 Q And at this time that he is asking 2 Mr. Gunn to do this, does he tell you 3 whether or not he has any charges? Is he 4 going to arrest him for anything, or is 5 he under suspicion of anything? 6 A At this moment, he does not have any 7 charges, and he doesn't suspect Mr. Gunn 8 of doing anything other than just being 9 out in the morning at about 10 three-something in the morning. 11 Q According to Officer Smith, did Mr. Gunn 12 say anything during this initial 13 encounter? So, he asked him to put his 14 hands on the hood. Did Mr. Gunn say 15 anything? 16 A According to Officer Smith, after he told 17 him to take his hands out of his pockets 18 and motioned for him to come over 19 to place his hands on the hood of the 20 vehicle, Mr. Gunn began to verbalize 21 his -- you know, why was he being 22 stopped, what was the reasoning for this. 23 He did initially comply and put his hands</p>

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<p>1 on the right front quarter panel of the 2 driver's side -- quarter panel of the 3 vehicle as Officer Smith got closer. 4 Q Did Officer Smith tell you whether or not 5 he did or tried to complete a pat down? 6 A Yes. Officer Smith had stated that he 7 got behind Mr. Gunn and moved in closer 8 to perform a pat-down search, and he 9 stated that Mr. Gunn motioned to put his 10 right hand in his right pocket. Officer 11 Smith stated that he swept his hand 12 underneath the jacket in an attempt to 13 try to feel around the waistband area 14 looking for a weapon, which he never 15 felt. And then at that moment, that's 16 when Mr. Gunn fled. 17 Q Well, let me ask you this: Before you 18 say Mr. Gunn fled, was -- did Officer 19 Smith indicate to you that he ever saw 20 anything fall from the person or on the 21 person of Mr. Gunn? 22 A Yes. Just prior to Mr. Gunn actually 23 stepping away from the vehicle about the</p>	<p>1 A Okay. This is, again, where there is two 2 versions of what happened according 3 Officer Smith. Well, he gave two 4 statements, which are two different 5 versions. If you want, I can elaborate. 6 Q Well, let me ask you this before you do 7 elaborate. 8 A Yes, sir. 9 Q Are the versions consistent that Mr. Gunn 10 took off, fled? 11 A Yes. 12 Q All right. What did -- and if these are 13 consistent, you can say that. If not, 14 you can tell us the differences. 15 But what did Mr. -- Officer 16 Smith say that happened once Mr. Gunn 17 fled? 18 A Immediately after Mr. Gunn fled, within a 19 short foot pursuit shortly thereafter, 20 Officer Smith deployed his Taser. 21 Q Okay. Let's talk about you taking us to 22 the point he is doing the pat-down, the 23 cell phone falls down, he says that</p>
Page 34	Page 36
<p>1 same time he is putting his hand in his 2 pocket, Officer Smith described that he 3 started to shuffle his feet to the left 4 toward the front of the vehicle. And all 5 Officer Smith remembered was a cell phone 6 falling, I guess, out of his peripheral 7 vision, and it fell to the ground. That 8 is the only thing that he recalled 9 seeing. 10 Q Okay. He didn't tell you he saw anything 11 else? He didn't see a gun, a knife, a 12 stick or anything? 13 A Nothing else. 14 Q Just the cell phone? 15 A Yes, sir. 16 Q You may have answered this and I 17 apologize. But did he say he ever felt a 18 gun or saw a gun? 19 A He never saw a gun or felt a gun. 20 Q Okay. And what did Officer Smith tell 21 you that -- After the cell phone falls to 22 the ground, what did Officer Smith tell 23 you that happened next?</p>	<p>1 Mr. Gunn shuffles, takes off. Officer 2 Smith is giving chase. Does he have any 3 charges on him at this point according to 4 Officer Smith? 5 A Officer Smith stated that he did not have 6 any charges. 7 Q And did he have any suspicion that he 8 committed a crime at this point? 9 A No, he did not. 10 Q Okay. You said that he deployed his 11 Taser? 12 A Yes, sir. 13 Q Can you tell us briefly how a Taser 14 works? Specifically if you know the 15 Taser that Officer Smith had on him that 16 night. 17 A The Taser that Officer Smith has, 18 actually, it's the newer version, I 19 believe. It's called the X2. There is 20 actually two side-by-size bays of Taser 21 probes. So, you basically have two 22 chances to shoot without having to reload 23 like the old one used to be. So, he can</p>

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Page 37	<p>1 deploy the left side first, and two 2 probes shoot out to try to make contact 3 with the subject. If that does not work, 4 then he can go to, basically, to bay two, 5 which on the right side and shoot that 6 one. And then it also does have the 7 capability to have drive stunning 8 purposes where you have to make contact 9 with your subject, and there is a little 10 arc that strikes the subject. 11 Q And that accomplishes the same thing as 12 the -- 13 A Correct. Correct. 14 Q Okay. 15 A Basically the same concept. 16 Q All right. So, you said he deployed his 17 Taser. At this point in time, does 18 Officer Smith say that Mr. Gunn is 19 running away from him, or is he facing 20 toward him? 21 A Mr. Gunn is running away from him. 22 Q So, he deployed his Taser into the 23 back --</p>	Page 39	<p>1 him in the back; that's why he deployed 2 his Taser? 3 A Yes. That's -- That's what -- That's in 4 his statement, yes, sir. 5 Q After this first tazing incident that 6 Officer Smith described, what happened 7 next? 8 A What happens next, again, this is -- 9 there are two different versions to what 10 happens next. 11 Q Okay. Tell us about both. 12 A In Officer Smith's initial statement, 13 after Taser one deployment, he advises 14 that Mr. Gunn is actually -- Mr. Gunn 15 actually ran across the street on the 16 opposite side of where there were at. 17 And Mr. Gunn, at the time of the Taser 18 deployment, he fell to the ground. And 19 Officer Smith was not sure if he just 20 merely tripped on something, or he was 21 being incapacitated by the actual Taser. 22 I think he -- His opinion was he felt he 23 was not incapacitated because he was</p>
Page 38	<p>1 A Correct. 2 Q -- of Mr. Gunn? 3 A Yes, to the back. 4 Q And this is the first taze? 5 A Yes, sir. 6 Q All right. At the point of deploying his 7 Taser into the back of Mr. Gunn, did he 8 indicate to you whether he had any 9 charges on Mr. Gunn? 10 A After initial -- or prior to initial 11 Taser deployment and even post initial 12 Taser deployment, he -- Officer Smith 13 stated that he had no charges. 14 Q All right. Did he tell you why he tazed 15 him? 16 A Yes. Yes, he did. In his second 17 statement, he was a little bit more 18 detailed. He actually described that he 19 was not sure if Mr. Gunn had a gun, and 20 he didn't want to shoot him in the back. 21 So, he then chose to deploy his Taser, 22 which was nonlethal. 23 Q He actually said he didn't want to shoot</p>	Page 40	<p>1 still -- still continuing to try to get 2 away. 3 His initial statement, he says 4 that after Mr. Gunn goes to the ground, 5 Officer Smith states that he went to the 6 ground with Mr. Gunn and they wrestled 7 while on the ground. They wrestled 8 together while on the ground, and that 9 Mr. Gunn shoved him off in an effort to 10 get away. 11 In version two, on March 1st, 12 he actually states that he does not make 13 contact with Mr. Gunn, that Mr. Gunn 14 trips -- or falls to the ground. He did 15 not want to go to the ground with 16 Mr. Gunn because he had just, I think, 17 within the last week, had an incident 18 where he tackled a guy that had a gun, 19 and he didn't want to do that again. I 20 guess it felt unsafe. So, he was 21 standing over Mr. Gunn. 22 As soon as Mr. Gunn hits the 23 ground, he gets -- he regains his</p>

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Page 41	<p>1 footing, and he takes off again.</p> <p>2 So, in version two, there is no</p> <p>3 physical contact, whatsoever. In version</p> <p>4 one, they are wrestling on the ground.</p> <p>5 That was a difference in his statement.</p> <p>6 And then Mr. Gunn, in both</p> <p>7 statements, continues now running back</p> <p>8 across the street.</p> <p>9 Q Okay. Let me stop you there.</p> <p>10 A Yes, sir.</p> <p>11 Q Version one that Officer Smith gives you,</p> <p>12 I believe you said that Mr. Gunn falls</p> <p>13 and he gets on his back and they wrestle</p> <p>14 on the ground. Did you ask Officer Smith</p> <p>15 about charges at that point?</p> <p>16 A Yes, I did.</p> <p>17 Q And what did he say?</p> <p>18 A I actually what's -- I can actually</p> <p>19 take --</p> <p>20 Q Yeah.</p> <p>21 A The question I had for him actually was,</p> <p>22 if after the initial Taser deployment you</p> <p>23 would have been able to get Mr. Gunn, you</p>	Page 43	<p>1 contact with Mr. Gunn.</p> <p>2 Q Okay. What -- And we are still on the</p> <p>3 first taze, right?</p> <p>4 A Yes.</p> <p>5 Q Okay. What happened next?</p> <p>6 A Okay. After Mr. Gunn -- In both</p> <p>7 versions, Mr. Gunn regains his footing</p> <p>8 and is now continuing to flee, running</p> <p>9 away from Officer Smith. Mr. -- I mean,</p> <p>10 Officer Smith is still giving chase.</p> <p>11 They went from the opposite side of the</p> <p>12 street where the initial interaction</p> <p>13 occurred. Now they are going back</p> <p>14 towards the same side of the street that</p> <p>15 they are originally on in an adjacent</p> <p>16 yard next to 3237 McElvy Street.</p> <p>17 In the middle of the street,</p> <p>18 the officer describes that that's when he</p> <p>19 deploys Taser two again in the back</p> <p>20 attempting to incapacitate Mr. Gunn.</p> <p>21 Q During the time that he is getting up off</p> <p>22 the ground and running and the time that</p> <p>23 the second Taser is being deployed, did</p>
Page 42	<p>1 know, in control, what was your next</p> <p>2 move? You know, what was -- what were</p> <p>3 you going to do next? And I think he</p> <p>4 advised that he was going to place him in</p> <p>5 handcuffs and try to figure out why he</p> <p>6 was running.</p> <p>7 Q Okay.</p> <p>8 A So, he had no legitimate charges at that</p> <p>9 point.</p> <p>10 Q Okay. The second version, as I</p> <p>11 understand you are saying, is that he</p> <p>12 said he never got on top of Mr. Gunn?</p> <p>13 A Correct.</p> <p>14 Q That he stood behind him, over him?</p> <p>15 A Correct. He was standing over him, and</p> <p>16 he was actually -- What I remember is</p> <p>17 Officer Smith describing is he is trying</p> <p>18 to get on the radio to advise dispatch</p> <p>19 that he actually just had tazed somebody,</p> <p>20 that -- and he couldn't get on the radio</p> <p>21 because somebody else was talking on the</p> <p>22 radio.</p> <p>23 So, there was no physical</p>	Page 44	<p>1 Officer Smith indicate to you that</p> <p>2 Mr. Gunn ever had turned around and faced</p> <p>3 him or ever threatened him in any way?</p> <p>4 A No. The only interaction that Officer</p> <p>5 Smith described is, he initially -- in</p> <p>6 his first statement, he was describing</p> <p>7 that throughout the process when Mr. Gunn</p> <p>8 was merely trying to get away in his own</p> <p>9 words, Mr. Gunn would have been bladed to</p> <p>10 which his -- his right side towards</p> <p>11 Officer Smith and maybe in a motion -- in</p> <p>12 a motion like this trying to get away</p> <p>13 from Officer Smith.</p> <p>14 Q Those are Officer Smith's words --</p> <p>15 A Right.</p> <p>16 Q -- that he was Mr. Gunn was trying to get</p> <p>17 away?</p> <p>18 A Correct. And that's only in -- That's</p> <p>19 only in statement one, not in statement</p> <p>20 two.</p> <p>21 Q Gotcha. So, what happens after the</p> <p>22 second tazing or the second Taser is</p> <p>23 deployed?</p>

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1 A According to Officer Smith, that had	1 arrested that person?
2 little to no effect on Mr. Gunn. And	2 A Yes. We actually specifically asked him
3 they are now in the yard. If you are	3 that question, and his response was,
4 looking at 3237, which is where the	4 "No." That's why this one is different.
5 shooting occurred, they are now into	5 That's how he described that.
6 the -- basically the yard on the right of	6 Q So, in every other case, he says that he
7 the house where the shooting occurred. I	7 has deployed his Taser on someone he said
8 forget what the actual address is. I	8 he had charges?
9 think it's 3241.	9 A According to Officer Smith, yes.
10 Q Okay. So, he tazes him the second time.	10 Q Okay. Now, what happened according to
11 He says that that does not appear to have	11 Officer Smith after he has tazed him
12 an effect on Mr. Gunn?	12 twice now in the back? Does he -- Is
13 A No effect.	13 there consistent statements in one and
14 Q And Mr. Gunn continues running away from	14 two or is it different?
15 Officer Smith?	15 A After Taser two, basically moving into
16 A Yes. I think Officer Smith just	16 what I would consider Taser three, which
17 indicated that Mr. Gunn just said, I	17 would be the drive stun application, on
18 think, in response to being tazed the	18 the first version, the first statement
19 second time, said that Mr. Gunn replied,	19 from Officer Smith, he never indicated of
20 "Fuck your Taser, Bitch," I think was his	20 a drive stun application. And statement
21 response according to Officer Smith.	21 two on March 1st, he did indicate a drive
22 THE COURT: What was it again?	22 stun application.
23 THE WITNESS: "Fuck your Taser,	23 Once they made it to the yard
Page 46	Page 48
1 Bitch," is what Mr. Gunn's	1 across the street next to the shooting
2 response was to being tazed	2 scene, he was within arms length of
3 the second time.	3 Mr. Gunn. He described that he pressed
4 BY MR. BAILEY:	4 the Taser up to his upper right back of
5 Q Was he consistent with that in both	5 Mr. Gunn in an attempt to drive stun him
6 statements?	6 which had little to no effect.
7 A To my knowledge. I don't recall a big	7 So, I didn't know about it on
8 discrepancy. I don't recall that in the	8 his first statement. It came out on the
9 first one. I think I just recall that in	9 second.
10 the second one.	10 Q Okay.
11 Q Yeah. Did you ever -- well, let me --	11 THE COURT: Does the gun have any
12 Before I ask you this question, let me be	12 kind of recording device on
13 clear.	13 it or how many times it's
14 At the time of the second	14 activated or anything like
15 tazing, did Officer Smith indicate to you	15 that?
16 that he had any charges on Mr. Gunn in	16 THE WITNESS: Yes, it does.
17 the second statement?	17 THE COURT: So, what did that
18 A During the Taser deployment two, Officer	18 show?
19 Smith indicated he had no charges.	19 THE WITNESS: Just what it showed
20 Q Did you ever ask or did anybody in the	20 is that -- what we figured,
21 interview ask Officer Smith if he had	21 we actually had that
22 ever tazed someone without charges	22 downloaded. And what we can
23 without -- taze someone and never	23 see out of the data recorded

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1 in the device itself is
2 initially that it's -- it
3 appears to be about an hour
4 off the time zone. I am not
5 sure, you know, whether time
6 just jumped ahead. But other
7 than that, what it shows
8 actually is -- initially the
9 gun was placed in an armed
10 position, which means it was
11 put on, I guess, fire ready
12 to be deployed for actually
13 about 39 seconds and then put
14 on safe. Then 11 seconds
15 later was the initial Taser
16 deployment when the first
17 cartridges were fired.
18 After that first Taser
19 cartridge was fired --
20 BY MR. BAILEY:
21 Q What does that indicate to you? I mean,
22 why is that important?
23 A And that's -- That's a question that I

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1 guess is still ongoing because we don't
2 understand why -- why was the Taser
3 initially put in that armed status prior
4 to any of the initial deployment. That's
5 a question that we don't have the answer
6 to right now.
7 Now, between Taser one and
8 Taser two deployment, what I have seen is
9 the drive stun actually occurred for some
10 reason in between those two. So, instead
11 of occurring at the end, it actually
12 occurred, according to the data, between
13 Taser one and Taser two.
14 So, that is a little bit of a
15 discrepancy. I don't understand why that
16 is.
17 Taser two -- When Taser two is
18 finally deployed, instead of just --
19 usually it cycles for about five seconds
20 and then it will go off. This one -- and
21 looks like there was -- the initial five
22 seconds, and then there was actually two
23 more follow-up was is called, like,

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1 reenergizing of the probes itself. So,
2 that would almost indicate, after the
3 Taser two, there was -- he pulled the
4 trigger two more times in an attempt, I
5 guess, to energize the probes in an
6 effort to incapacitate Mr. Gunn. But I
7 don't think Officer Smith described those
8 events quite in that order. There is
9 just a little bit of discrepancy there,
10 Judge.
11 THE COURT: All right. DA, go
12 ahead.
13 Q That's okay. All right. You have taken
14 us to -- I believe the last thing you
15 were talking about was the drive stun
16 where he was attempting to make contact
17 with Mr. Gunn using the probes on the
18 Taser.
19 Did he indicate to you where he
20 was -- had tried to make contact with
21 Mr. Gunn?
22 A Yes. He indicated the area in the upper
23 right back.

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1 Q Okay. What happens next according to
2 Officer Smith?
3 A According to Officer Smith, there is
4 little to no effect still with the Taser.
5 At that point, he holsters his Taser, and
6 he goes for his expandable baton, metal
7 baton, which is also referred to as an
8 ASP.
9 Q And what does he do with that, if
10 anything?
11 A Mr. Gunn, according to Officer Smith's
12 statement, is still trying to get away.
13 Now, again, there is still somewhat of a
14 discrepancy between statement one and
15 statement two.
16 Statement one, he is
17 describing, again, that Mr. Gunn is kind
18 of bladed to him with his right side
19 towards the officer, and he is pushing in
20 an attempt to get away, and Officer Smith
21 is striking him in his right shoulder
22 area, I think, right arm. He is trying
23 to, I guess, to get Mr. Gunn to stop

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1 running.	1 before I ask you that question.
2 Q And I am not asking you for a number	2 Did you later learn of any type
3 because I can't imagine anybody would	3 of injuries to the head of Mr. Gunn?
4 know a number. But did he indicate to	4 A Yes, I did.
5 you that he hit Mr. Gunn multiple times	5 Q Okay. Tell us about that.
6 with the ASP?	6 A During the autopsy, Mr. Gunn had a --
7 A Yes. It would be more than one strike.	7 what was discovered to be a laceration
8 Q Okay. And did Officer Smith say what	8 towards the back of his head.
9 Mr. Gunn was doing the whole time that he	9 Q Laceration being skin split?
10 was being beat with the ASP?	10 A Yeah. I actually saw the photos of it.
11 A Mr. Gunn, according to Officer Smith in	11 It looks like the skin was split. It
12 both statements, Mr. Gunn is just trying	12 looked to be -- I don't know the exact
13 to get away.	13 length of it, but it looked like about an
14 Q And is this still headed towards the	14 inch long.
15 residence that you referred to?	15 Q Did you ask Officer Smith about this head
16 A Correct. In the -- yes. Towards the --	16 injury to Mr. Gunn?
17 it leads to the front porch of 3237	17 A Yes. During the second interview on
18 McElvy Street.	18 March 1st, I was asking Officer Smith if
19 Q Okay. I know I asked you this about the	19 Mr. Gunn could have fell and hit his head
20 bow tazings and the initial chase, but I	20 after the shooting or maybe before the
21 want to ask you this about the ASP	21 shooting at some point and hit his head
22 deployment and being hit with the ASP.	22 on something. Officer Smith volunteered
23 Did Officer Smith indicate to	23 that: That probably came from my ASP, or
Page 54	Page 56
1 you that he had any charges on Mr. Gunn	1 it could have come from my ASP.
2 when he was hitting him with the ASP?	2 Q He volunteered that?
3 A Officer Smith did not indicate that he	3 A Yes.
4 had any charges --	4 Q Okay. Did he give you an indication to
5 Q Okay.	5 where that might have happened?
6 A -- during ASP or expandable baton	6 A Yes. He indicated that that happened in
7 application.	7 the proximity of the front porch area
8 Q Now, to the point that you have taken us	8 where the concrete patio of 3237 McElvy.
9 right now, you have described the initial	9 Q Did Officer Smith tell you where they
10 pat down. You said that Mr. Gunn takes	10 eventually wound up?
11 off running. There is a Taser one	11 A Yes. Him using Officer Smith --
12 deployment, Taser two deployment, drive	12 According to Officer Smith, the
13 stun, ASP being deployed multiple times.	13 expandable baton application. He is
14 Did you ever ask Officer Smith whether it	14 describing somewhere between the house to
15 was illegal, against the law, for someone	15 the right, and we are in the area of the
16 to run from the police that did not have	16 actual driveway entrance of 3237. And
17 charges or was not suspected of	17 they both -- According to Officer Smith,
18 committing a crime?	18 they both make their way, him and
19 A Yes. Yes. We asked Officer Smith if it	19 Mr. Gunn, to the vicinity of the front
20 would be illegal to run on foot or flee	20 porch because Officer Smith actually
21 on foot, and he stated that, no, it is	21 describes that during his application of
22 not illegal.	22 the expandable baton, he remembered
23 Q At some -- Well, let me ask you this	23 actually when he was reaching back and

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<p>1 loading the expandable baton, he was 2 actually hitting the truck that was 3 actually on the right side of the 4 residence. 5 So, that's actually just to the 6 right of the porch. And he is actually 7 still striking Mr. Gunn with Mr. Gunn's 8 back to him hitting him on the right 9 side. I think he described right 10 shoulder and right leg initially. 11 Q Okay. We will stop you there, I think 12 it would be helpful for the Court to see 13 some photographs of the scene. I will 14 show these to counsel. They are a 15 collage of photographs. These two 16 collages, do you recognize these 17 photographs? 18 A Yes, sir. This depicts the crime scene 19 that night. 20 Q Fairly and accurately depicts the crime 21 scene? 22 A As I remember it, yes, sir. 23 MR. BAILEY: Judge, for the</p>	<p>1 their positions on the porch? 2 A Yes. Officer Smith is -- If you are 3 looking at the porch, there is obviously 4 a door somewhat centered of that little 5 concrete patio there. 6 Q And, Agent Dinunzio, I apologize. Now 7 that the judge has some pictures, you 8 mentioned something about Officer Smith 9 saying that he was striking a vehicle. 10 Did you say a white vehicle? 11 A Yeah. The white truck. 12 Q Okay. 13 A And that's what Officer Smith described. 14 Q Okay. 15 A Yes. 16 Q Go ahead. 17 A So, there -- He is still attempting to 18 strike Mr. Gunn with the expandable baton 19 and he is not complying. And I think 20 Officer Smith describes one of the last 21 strikes occurring on the front porch 22 there. The only response that Mr. Gunn 23 gave was, I think it was, "aight,</p>
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<p>1 purposes of this hearing, we 2 will introduce these as 3 State's Exhibits One and Two 4 just for the Court to be able 5 to -- 6 THE COURT: I have got a question. 7 You said reloading the baton. 8 You just meant drewed (sic) 9 it back to hit him, right? 10 THE WITNESS: Yes, sir. 11 THE COURT: Okay. 12 THE WITNESS: Just loading it, 13 yes, sir. Ready to strike, 14 yes, sir. 15 THE COURT: Yeah. Okay. 16 (At which time, the referred- 17 to documents were marked as 18 State's Exhibit Nos. 1 & 2 19 for identification.) 20 BY MR. BAILEY: 21 Q All right. So, at this point, they are 22 on the porch. Can you describe what 23 Officer Smith said, if he did, about</p>	<p>1 police," which he interpreted as a smart 2 comment. And -- 3 Q All right, police, or aight, police? 4 A "Aight, police." 5 Q Okay. 6 A Like, I am not sure. 7 Q Okay. 8 A He interpreted that as Mr. Gunn being 9 smart, you know. 10 Q But that's what he said Mr. Gunn said? 11 A Right. Just "aight, police." 12 Q Go ahead. 13 A So, they are on the porch. When they get 14 to the porch and there's -- that's 15 regarding the actual expandable baton 16 applications because we talked about the 17 potential strike to the head, that 18 Officer Smith indicated he could have 19 done, not intentionally, but 20 accidentally. There is a little bit 21 variation. In statement one, he actually 22 never described hitting Mr. Gunn in the 23 head at all. That didn't come out until</p>

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1 version two when I started asking him	1 some way to prevent him from hitting him
2 about, hey, could he have fallen and hit	2 in the head with the paint roller?
3 his head on anything. That's when he	3 A Yes.
4 volunteers, well, I could have hit him in	4 Q Were you clear on that? Was there any
5 the head with the ASP. That just never	5 ambiguity about that, or was that pretty
6 came out in statement one. That's a	6 clear to you that's what he said?
7 little bit of difference there.	7 A It was very clear. And he actually
8 Q Okay.	8 reiterated the fact that Mr. Gunn
9 A After that -- Again, this is where	9 swinging this pole, I think, like, two or
10 there's two different versions of what	10 three separate occasions on that first
11 happened.	11 statement.
12 After that last -- that last	12 Q Did you have any concerns about his
13 strike with the expandable baton, Officer	13 descriptions that he gave you about him
14 Smith describes what happens next. He	14 swinging this paint roller at his head
15 basically --	15 when he said it?
16 Q Why don't you go with statement one	16 A Initially after he said it and I was able
17 first.	17 to evaluate Officer Smith's statement in
18 A Okay.	18 comparison to the scene and the evidence
19 Q That would be logical.	19 itself, I did have some reservations if
20 A Statement one, Officer Smith states that	20 that was even possible or not. The way
21 Mr. Gunn picks up a yellow pole, which I	21 the scene was and the porch layout and
22 think initially appeared to be as a	22 this big, heavy bush and the house, I had
23 garden tool or something like that.	23 some reservations which was also a reason
Page 62	Page 64
1 Picked it up.	1 why I had to do a follow-up interview.
2 Q This is according to Officer Smith,	2 Q And I know the Court has the photographs.
3 correct?	3 But the porch -- does it have -- Why
4 A Correct. Officer Smith's statement. And	4 don't you describe it for us. Why would
5 Officer Smith states that Mr. Gunn swung	5 that seem impractical to you based on the
6 the pole at him where he had to duck to	6 layout of the porch?
7 avoid being struck. Then backed up on	7 A Because initially the layout of the front
8 his own, transitioned from his ASP to his	8 porch right there because Officer Smith
9 service weapon and discharged his service	9 basically put themselves, Mr. Gunn and
10 weapon and striking Mr. Gunn several	10 Officer Smith, both within that confines
11 times.	11 roughly of that front porch. The porch
12 Version two --	12 itself has these two pillars that, you
13 Q Hold on.	13 know, it's got some kind of floral design
14 A Yes, sir.	14 on it. It's meant to support the awning.
15 Q Okay. You are saying in the first	15 I am sure.
16 statement that he is saying that Mr. Gunn	16 To the left of that, if you are
17 picks up what you eventually learn to be	17 looking at the front of the house, to the
18 a paint roller?	18 left of the porch is a fairly good size
19 A Yes, sir.	19 bush that was pretty -- pretty dense.
20 Q And he swung it at least the direction of	20 And obviously Mr. Gunn would have been
21 his head, and you said, I believe --	21 between the bush and the house.
22 correct me if I am wrong -- that Officer	22 So, within the confines in
23 Smith was able to duck out of the way	23 swinging a pole, we had some reservations

16 (Pages 61 to 64)

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1 if that would even be physically
2 possible.
3 Q Does your reservations have anything to
4 do with the length of the paint roller?
5 A It does. The length -- not only the
6 length, the weight.
7 Q Did you discover the length of the paint
8 roller?
9 A Yes. The paint roller is exactly, from
10 top to bottom, is actually five feet,
11 six inches -- well, six-and-a-half inches
12 actually in total length.
13 Q Okay. Once -- and still on the first
14 statement. Once he says that he swings
15 the paint roller at his head and he is
16 able to duck, miss, or whatever, what
17 does Officer Smith say happens next?
18 A After Mr. Gunn swinging the paint roller
19 at him, Officer Smith states that he
20 backs up in an effort to create distance
21 between himself and Mr. Gunn. And he
22 believes he falls into something. He
23 doesn't know what that is exactly. And

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1 then he draws his service weapon.
2 Q Let me stop you there. Does he say he
3 falls into something or backs into
4 something or --
5 A Right.
6 Q -- what is he describing?
7 A He is backing up, and he feels himself
8 back into an unknown object that he could
9 not describe.
10 Q Did he give you an indication of what
11 that might be?
12 A He described it could either have been
13 the vehicle that he initially made
14 contact with or like the pole --
15 Q Which would be the white vehicle that he
16 described?
17 A Correct.
18 Q Okay.
19 A And then that's when he -- when he felt
20 initially that he had nowhere else to go.
21 He was backed up against a car, and he
22 chose to discharge his firearm.
23 Q Okay. Just -- and I know the Court has

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1 the picture. But sometimes pictures are
2 hard to see depth.
3 Can you give us a fair
4 estimate, since you observed the scene,
5 how far is that truck away from where
6 Mr. Gunn -- you found Mr. Gunn?
7 A I know the confines of the patio
8 itself -- the patio measures -- If you
9 are looking at the house from the left to
10 the right, so the confines of that is
11 actually 10 feet. I measured it myself.
12 It's eight feet from the front of the
13 house to the edge of the patio. So, it's
14 an eight-by-ten slab.
15 Mr. Gunn's body I would gage
16 was about three to four feet on the other
17 side. The vehicle would have been
18 about -- I would probably say another
19 five or 10 feet on the other side of the
20 vehicle.
21 So, total distance from vehicle
22 to Mr. Gunn I would probably estimate at
23 least 20 feet.

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1 Q Okay. So, he says he backs up, gives him
2 distance. And then what happens?
3 A He chooses to fire his service weapon
4 striking Mr. Gunn.
5 Q Did you learn how many times Officer
6 Smith discharged his gun?
7 A Officer Smith was unsure how many rounds
8 he discharged, but we found seven fired
9 cartridge cases at the scene.
10 Q That were consistent with the ammunition
11 that he uses?
12 A Consistent, same caliber. Those are
13 being analyzed.
14 Q Okay. The -- Anything else significant
15 at this point about the first statement,
16 or can we move to the second statement?
17 A I think that's pretty -- that pretty much
18 explains the way he advised -- what he
19 summarized the events of the first
20 version. Other than him -- after the
21 shooting, him positioning himself in the
22 monitoring position of Mr. Gunn until
23 backup arrived.

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<p>1 Q Okay. Let's move on to the second 2 version. I think you have given us both 3 versions of the Taser and the ASP. Now 4 let's talk about what happens on the 5 porch in his second version of the facts 6 and the second statement that you took on 7 March 1st. 8 A Okay. This is -- Now we are up to the 9 point of one of the last expandable baton 10 strikes which potentially could be, 11 according to Officer Smith, the one that 12 struck Mr. Gunn in the head. 13 Mr. -- Officer Smith actually 14 reenacted this in our interview room on 15 video. He advised that Mr. Gunn's back 16 was to him, and Mr. Gunn leaned down and 17 to the right and picked up this long 18 yellow pole, and would have turned around 19 in this fashion like this. 20 And when he was doing this 21 (demonstrating), he actually had both 22 hands up in this fashion and would have 23 been in this -- you know, when Officer</p>	<p>1 A - Yes. He is right-handed, and it would 2 have been his strong hand. 3 Q All right. And I am assuming -- just 4 from what you testified, so correct me if 5 I am wrong -- but Officer Smith's right 6 side would have been facing the house? 7 A Correct. Correct. Front door would have 8 been here and Officer Smith is -- right. 9 Yes. 10 Q So, back to the second statement, he says 11 he picks up this paint roller and what 12 happens? 13 A At that moment when Mr. Gunn has the 14 roller like this (demonstrating), Officer 15 Smith chooses to deploy his service 16 weapon and discharge rounds at Mr. Gunn. 17 Q Did he indicate to you in the second 18 version that Mr. Gunn swung the pole at 19 his head? 20 A No, actually. When we asked him that, 21 after he did this reenactment, he 22 actually sat back down. And I said -- I 23 clearly asked him. I said, "So, did he</p>
Page 70	Page 72
<p>1 Smith is, you know, looking at him, that 2 is Mr. Gunn's stance is like this with 3 the pole in his hand like this 4 (demonstrating). 5 Q Okay. And what happens according to 6 Officer Smith? 7 A At that moment, Officer Smith realizes 8 that he only has his ASP at this moment, 9 and he chooses to discard the ASP and go 10 for his service weapon, again, getting 11 distance and going for his service 12 weapon. 13 Q As aside, where did y'all eventually find 14 the ASP? 15 A We actually found the ASP in the 16 driveway. It would have been actually 17 between McElvy Street and the back of the 18 pickup truck in the driveway. So, quite 19 a, you know, a decent distance away from 20 where this initial action on the front 21 porch occurred. 22 Q Did Officer Smith indicate to you what 23 arm he used to deploy the ASP?</p>	<p>1 have one or did he have both hands on 2 this pole?" Because we knew that 3 Mr. Gunn had this hat in his left hand 4 which we think could create a problem for 5 holding another object and getting 6 leverage. 7 He said that he was not sure if 8 he had one or both hands on it. That 9 kind of caused concern for me personally 10 because he is describing using both hands 11 in this fashion, and then now he is not 12 saying he is sure which hand it was or 13 how many hands he used. 14 And I asked him again, well, 15 you know, did the officer -- I mean, "Did 16 Mr. Gunn swing the pole at you?" 17 And he said that he was not 18 sure. 19 So, that was a difference in 20 his statement as well. The first 21 statement was clear-cut on three 22 different occasions that Mr. Gunn swung 23 the pole at him. Now, it's -- now he is</p>

18 (Pages 69 to 72)

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1 not sure if he was just going for the
2 pole or if he had swung it. So, that was
3 a little deviation there.
4 Q Okay. So, at this point, was it clear to
5 you that he wasn't actually sure or was
6 he --
7 A Yes. There were several times
8 throughout, actually, his initial
9 interview in more so the second interview
10 where Officer Smith would just sit there.
11 After we would ask him a question, he
12 would kind of stare off into space
13 thinking or trying to come up with an
14 answer.
15 Q Okay. Let me ask you: When you were --
16 When you were asking him to reenact the
17 second -- in the second statement,
18 reenact the picking up the paint roller
19 and all of this, somebody was portraying
20 Mr. Gunn during this reenactment?
21 A Yes. Yes. That would be -- I mean, my
22 partner --
23 Q One of your fellow agents?

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1 A Yes. Agent Tony Green.
2 Q One of your colleagues.
3 Did -- In this second
4 statement, did Officer Smith ever
5 indicate to you that Mr. Gunn was in a
6 crouched position?
7 A I do remember him I think -- or telling
8 my partner to kind of crouched a little
9 bit lower, somewhat in a forward position
10 to that effect. That just wasn't -- I am
11 not sure why. He is describing what
12 Mr. Gunn's actions were at the time.
13 Q Okay. During either statement, first or
14 second, did Officer Smith ever indicate
15 to you that Mr. Gunn verbally threatened
16 him with the paint roller?
17 A I specifically asked Officer Smith if at
18 any point in time, even after Mr. Gunn
19 either possessed the actual pole or not,
20 if Mr. Gunn actually made any threats
21 towards him to harm him or if he was
22 going to kill him, or anything; did he
23 make any statement?

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1 And he said, "No."
2 Q Did Officer Smith ever, during the course
3 of these events, tell you that Mr. Gunn
4 ever went for his -- for Officer Smith's
5 weapon? Did he ever try to grab his gun,
6 try to wrestle for the gun?
7 A At -- there was -- At either point at
8 either statement, Officer Smith never
9 indicated that Mr. Gunn made an
10 aggressive move towards trying to gain
11 his firearm, his Taser, his ASP,
12 anything.
13 Q Okay.
14 A Or even aggressive strikes.
15 Q And this direction that you have taken us
16 through Officer Smith's version, that is
17 going in the direction of Mr. Gunn's
18 residence?
19 A Correct. Yeah. He was -- He was
20 probably within about 10 feet of his
21 residence.
22 Q Did Officer Smith ever say that Mr. Gunn
23 ever charged at him with the paint

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1 roller?
2 A No.
3 Q Came at him?
4 A He did not.
5 Q He did not. Yeah. Did he not say or did
6 he -- Let me ask you this way so I am
7 clear.
8 Did he ever allege that
9 Mr. Gunn came at him with a paint roller?
10 A Officer Smith never advised that. He
11 never made a statement that Mr. Gunn
12 lunged at him. You know, initially, you
13 have the swing. Second version, no.
14 Q Yeah. And that's what I am talking
15 about.
16 A Right.
17 Q I'm sorry I wasn't clear on that second
18 version.
19 What does Officer Smith say
20 happens after he has deployed or he has
21 discharged his firearm?
22 A Immediately after the shooting, Officer
23 Smith describes that the pole that

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1 Mr. Gunn would have had in his possession	1 that Mr. Gunn could have had a firearm, a
2 actually fell, as he described it,	2 weapon.
3 propped up against the house somewhat of	3 Q So, after the shooting, I think you
4 a 45-degree angle. Obviously not to be	4 described that Officer Smith goes around
5 exact. But I think it was clear between	5 and is standing over of Mr. Gunn, does he
6 everybody in the interview room, which	6 every search him for a weapon?
7 would have been myself, Officer Smith,	7 A Not to my -- not to Officer Smith's
8 Mr. McDermott and my partner, Tony Green,	8 statement, no.
9 how that pole would have come to rest.	9 Q He said he did not search him for a
10 Basically, after the shooting,	10 weapon?
11 he describes it fell up against that	11 A He did not.
12 other residence kind of like this	12 Q Okay. Did you ever -- well, let me see.
13 (demonstrating) almost at an angle.	13 Did Officer Smith ever ask --
14 That's what Officer Smith said.	14 and this is according his statement. Did
15 Q Is that how you found it?	15 he ever ask Mr. Gunn to drop the paint
16 A That is not how I found it.	16 roller?
17 Q Okay. What does Officer Smith say he	17 A Not to my recollection. Officer Smith
18 did -- I know you described the paint	18 never advised -- never stated that he
19 roller. But what does he specifically	19 actually gave Mr. Gunn any verbal
20 say he did, if anything, after the	20 commands --
21 shooting?	21 Q To drop the paint roller?
22 A Immediately after getting on the radio	22 A -- prior to -- right. After he went for
23 and advising shots fired, I think at some	23 the pole and between the timeframe, he
Page 78	Page 80
1 point he told the dispatcher that Mr.	1 discharged his service weapon.
2 Gunn was -- code six was the subject	2 Q During this second statement, which is
3 shot. He advised that he stood there in	3 the most recent statement, right?
4 close vicinity to Mr. Gunn until backup	4 A Yes.
5 got there, which the first officer there	5 Q And he had Mr. McDermott with him, his
6 would have been Corporal Warren, Steven	6 attorney?
7 Warren.	7 A Yes.
8 Q Did -- Let me ask it this way: Officer	8 Q So, you would assume -- well, nobody can
9 Smith, through your testimony of what he	9 assume. But he was with Officer Smith.
10 said, has told you that he was doing a	10 During this second statement,
11 pat-down search. He was looking for a	11 do you believe that Officer Smith was
12 weapon. As he was chasing him, he was	12 able to articulate the need to use deadly
13 afraid that he might be going for a	13 force?
14 weapon during the tazing.	14 A In my opinion, no. Based on the facts,
15 So, was it clear to you that	15 as Officer Smith was describing them, I
16 what Officer Smith is trying to convey to	16 do not believe that he had enough
17 you is that he was in fear that this guy	17 probable cause to use deadly force at
18 might have had a gun?	18 that time.
19 A That was -- That was pretty clear. From	19 Q At every indication that Officer Smith
20 the initial stop when he tells Mr. Gunn	20 gave to you throughout these events
21 to take his hands out of his pockets, the	21 leading up to his version of Mr. Gunn
22 initial contact through the foot chases,	22 picking up the paint roller, he said he
23 through everything, I think he believed	23 had no reason to charge Mr. Gunn?

20 (Pages 77 to 80)

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1 A That is correct.	1 A Correct.
2 MR. BAILEY: That's all the	2 Q Did you check?
3 questions I have.	3 A Yes. Yes.
4 THE COURT: Let me ask a couple of	4 Q Okay. All right. Tahoe, according to
5 questions before you start.	5 the statements, should have a set of
6 Agent Dinunzio, can you	6 handprints on the front hood. Did you
7 tell us about the lighting	7 test for fingerprints on the front?
8 out there on the street, or	8 A We did not, no, sir.
9 is it on the porch?	9 Q You did not test the Tahoe for
10 THE WITNESS: Yes, Your Honor.	10 fingerprints?
11 There were some street lights	11 A No, sir.
12 in the area that were	12 Q Okay. Did you test the charging
13 illuminated. I do recall a	13 statement for the -- is there a changing
14 decent light somewhere	14 station for the Tahoe for the Taser in
15 actually in their front yard	15 the vehicle?
16 of 3237 McElvy Street. But	16 A Not that I -- Not that I know of. I am
17 even with that exterior	17 not aware of that.
18 lighting, it was still very	18 Q Have you gone in the Taser -- I mean, in
19 dark around that --	19 the Tahoe?
20 THE COURT: On the porch, it was	20 A I did not go in the Tahoe.
21 dark?	21 Q So, you have not gone in the Tahoe?
22 THE WITNESS: Yes, sir. It was	22 A I did not go in the Tahoe, no, sir.
23 very dark. If you were	23 Q Okay. Where is the Tahoe today?
Page 82	Page 84
1 standing in the street, you	1 A It's probably on the street.
2 couldn't hardly even make out	2 Q Okay. Did you secure the radio traffic
3 what was actually on the	3 that night from the Montgomery Police
4 ground.	4 Department's radio channels?
5 THE COURT: So, the porch light	5 A Yes. We have copies of the radio traffic
6 wasn't on?	6 and the CAD reports.
7 THE WITNESS: I don't recall if it	7 Q Okay. Have you listened to those tapes
8 was on, Your Honor, but it	8 to see if there is, in fact, radio
9 really didn't provide a whole	9 traffic consistent with Officer Smith's
10 lot of lighting. It was	10 statements?
11 really dark.	11 A Based on what Officer Smith told me about
12 THE COURT: Thank you. Cross?	12 what radio traffic that he would have
13 MR. MCDERMOTT: If I may, Your	13 recorded, it is consistent, yes.
14 Honor.	14 Q But you haven't listened to them?
15 CROSS-EXAMINATION	15 A No, I have.
16 BY MR. MCDERMOTT:	16 Q Oh, you have?
17 Q Agent Dinunzio, let me get my science	17 A Yes, sir. I have listened to them.
18 questions out of the way here. We will	18 That's what I'm saying. It is fairly
19 start off with, have you tested or	19 consistent.
20 recovered the Tahoe?	20 Q Okay. So, you have them? And you have
21 A Have we tested it?	21 them?
22 Q Yes, sir. Does the Tahoe -- has the	22 A Yes.
23 recording devices?	23 Q Okay. And my science questions are

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1 evidence that I am going to have to look	1 Q Do you know which forensic examiner
2 at, and I just need to know where it is.	2 conducted the autopsy?
3 A Yes, sir. That would be in the case	3 A Dr. Boudreau.
4 file. Yes, sir.	4 Q Dr. Boudreau. Okay. And do you know the
5 Q All right. The next thing: Do you have	5 status of that report?
6 his ASP?	6 A I do not.
7 A Yes, we do.	7 Q Okay. All right. Let's talk about the
8 Q Okay. Has that ASP been tested?	8 vehicles in the driveway.
9 A For?	9 A Yes, sir.
10 Q Well, the testimony is -- from you is	10 Q One of the statements stated that he may
11 that, during the course of the chase,	11 have made -- that Officer Smith (sic) may
12 there was multiple contacts with Mr.	12 have made contact with the vehicle. Did
13 Gunn's body. Has Mr. Gunn's body and the	13 you test, photograph, those vehicles?
14 ASP been tested to see if there is any	14 A We didn't test them. They would have
15 transfer between Mr. Gunn's DNA, which is	15 been photographed with normal crime scene
16 supposed to be from the strike, onto the	16 photos. But --
17 ASP?	17 Q Did you take photos?
18 A I -- what I will say, sir, is that upon	18 A No, I did not.
19 my viewing of the actual expandable	19 Q Who took the photos?
20 baton, I observed that it did have blood	20 A Agent Houton.
21 evidence -- what I believe to be blood	21 Q Okay. And that's with --
22 evidence on the very last extension of	22 A He would have them.
23 the ASP, which is usually about three to	23 Q -- your agent?
Page 86	Page 88
1 four different extensions.	1 A Yes, sir. He is with us.
2 Q Far end of the ASP?	2 Q All right. The pole -- Do you have the
3 A The very far end, yes, sir. I observed	3 pole?
4 that with my own two eyes. I collected	4 A Yes, we do.
5 blood samples from that, and they have	5 Q Okay. Did you test the pole yet for
6 been submitted to the Alabama Department	6 fingerprints?
7 of Forensic Sciences.	7 A Yes, I did.
8 Q That's what I needed to hear.	8 Q Okay. Did it have Mr. Gunn's
9 A Yes, sir.	9 fingerprints on it?
10 Q Okay. All right. So, you conducted an	10 A It did not.
11 autopsy?	11 Q Okay. And Mr. Gunn had no contact with
12 A No, I didn't.	12 the pole based on your forensics?
13 Q An autopsy has been conducted?	13 THE COURT: Objection. Overruled.
14 A One has been.	14 Go ahead and answer.
15 Q Okay.	15 A My only answer to that, sir, is all I can
16 A I am not being paid correctly for that.	16 say is, after being processed for latent
17 Q That's all right. That was a good	17 fingerprints, Mr. Gunn's prints were not
18 retort. I like that.	18 on the pole.
19 Okay. But the autopsy -- were	19 Q Who tested the pole?
20 you present?	20 A That would be Shannon Fitzgerald, who is
21 A I was not present, no, sir.	21 one of our latent, certified latent
22 Q Have you gotten the results back yet?	22 fingerprint --
23 A No, I have not.	23 THE GUARD: Noise down.

22 (Pages 85 to 88)

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1 Q And where was the pole recovered?
2 A From the right side -- on the ground on
3 the right side of Mr. Gunn's body.
4 Q Okay. Were there any fingerprints from
5 anyone on the pole?
6 A To my knowledge, there were not.
7 Q Okay. So, there's no fingerprints on
8 them?
9 A I don't believe so, sir.
10 Q Okay. Was there evidence that the pole
11 had been wiped down or that the pole --
12 whoever last held the pole may have been
13 wearing some kind of gloves or cloth?
14 A Like I said, I don't have any knowledge.
15 I couldn't tell if it had been wiped down
16 or not. I would probably say, no,
17 because, upon my visual inspection of
18 this poleless paint roller, I did see
19 what looked like paint -- a blood
20 splatter, very small specks of what I
21 thought was blood on it, and I actually
22 photographed and swabbed those and those
23 are all being tested to compare to

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1 Mr. Gunn's DNA.
2 Q The hat in Mr. Gunn's hand --
3 A Yes, sir.
4 Q -- has it been turned over for forensic
5 examination?
6 A No, it has not, at this time.
7 Q But based on the physics of what you have
8 already told us, Mr. Gunn had a hat in
9 his hand?
10 A That's where it was, yes, sir.
11 Q Okay. So, are you going to test the hat
12 to see if it was used to hold the pole?
13 A No, sir. I guess a lot of this we will
14 have to discuss with the District
15 Attorney's association --
16 Q Okay.
17 A -- or office, not association.
18 Q All right. You stated that, during
19 course of your investigation, you
20 recovered several rounds of the type of
21 weapon -- type of caliber of ammunition
22 consistent with Officer Smith's service
23 weapon.

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1 A Yes, sir.
2 Q Where in relationship to the porch were
3 they recovered?
4 A Almost all seven of them were actually on
5 the concrete porch on that -- in those
6 pictures right there, right there in
7 front of the front door or right around
8 the front door.
9 Q How many feet away from where Mr. Gunn --
10 not where his body was found, but where
11 he was shot. How far away were the shell
12 casings from Mr. Gunn at the point of the
13 impact and the time of the impact?
14 A I don't know if we can actually, at least
15 so far through this investigation,
16 determine where Mr. Gunn was exactly at
17 at the time he was shot. And --
18 THE COURT: The question I
19 think --
20 THE WITNESS: Yes, sir.
21 THE COURT: -- he is asking is:
22 How far were the shell
23 casings, that you found, away

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1 from where Mr. Gunn's body
2 was found?
3 THE WITNESS: That I would
4 probably say roughly five or
5 10 feet.
6 BY MR. MCDERMOTT:
7 Q Roughly? That's a big difference.
8 A I mean, I just don't know the exact --
9 Q Okay.
10 A -- distance right now.
11 Q Okay. What was the distance from
12 Mr. Gunn's body laying on the ground
13 versus the shell casings?
14 A I think Mr. Gunn's feet would have been.
15 about three to four feet on the other
16 side of the concrete pad. All these
17 casings -- cartridge cases would have
18 actually been on the concrete patio. It
19 in itself, like I said, eight-by-ten.
20 Q Okay. All right. Let's start off and go
21 back through.
22 Your first statement was
23 collected from the officer just hours

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1 after this incident?	1 is a major -- Tatum, Scott Tatum. And
2 A Yes, sir.	2 Detective Guy Nokin (phonetic), who was
3 Q Okay. And he was alone?	3 helping -- he is kind of like a liaison
4 A He was.	4 for me with the Police Department to get
5 Q Just you?	5 any records and stuff like that. And
6 A Me and another partner, Steve Arrington.	6 that's normal. That's usually how we do
7 Q Two of you?	7 things.
8 A Yes, sir.	8 When I initially came in there
9 Q Okay. And did you Mirandize him?	9 when I spoke to Officer Smith, I said,
10 A I did.	10 "Well, it's about time we have to take
11 Q Okay. And did you give him the	11 Officer Smith's statement. I actually
12 opportunity to get an attorney --	12 had to tell everyone else that they had
13 A I did.	13 to exit the room because that gives the
14 Q -- or a senior officer?	14 impression of Garrity, and I clearly
15 A Well, I -- I advised him like I advise	15 explained to Officer Smith that this is
16 everybody that they have a right to	16 not Garrity, this is not an
17 counsel. He waived.	17 administration investigation, this is a
18 Q This officer just worked a full shift,	18 criminal investigation, and that he would
19 been involved in a traumatic shooting,	19 be Mirandized, which he was; and he was
20 and you put him in a room at the	20 offered the chance to have a lawyer
21 Montgomery Police Department by himself	21 present.
22 and --	22 Q Did you record that statement?
23 THE COURT: Mr. McDermott, I am	23 A I did, yes, sir.
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1 the guy that has got to make	1 Q Is the statement in your presence?
2 a decision. You can look at	2 A In my presence?
3 me while you question the	3 Q Or do you have it in your --
4 witness.	4 A It will be in the case file, yes, sir.
5 MR. MCDERMOTT: Your Honor.	5 Q Okay. All right. And that's why I am
6 Q Now --	6 still on my science questions.
7 THE COURT: That wasn't funny.	7 A Yes, sir.
8 Q -- Agent Dinunzio, when you questioned	8 Q All right. So, then days later, you take
9 him, did you give him the opportunity to	9 another statement at your offices after
10 get him an attorney?	10 the officer has had an opportunity to
11 A Yes. He was advised of his Miranda	11 rest and get over the initial shock of
12 rights. And I actually -- I actually	12 this; is that correct?
13 went further to explain to him. Because	13 A Yes.
14 when I initially entered, he was actually	14 Q Okay.
15 transported to the Montgomery Police	15 A We -- correct.
16 Department Criminal Investigation	16 Q Now, you have conducted these type of
17 Division by one of his supervisors. I	17 investigations of police officer involved
18 think that was Rodrigue Davis -- Sergeant	18 shootings before?
19 Rodrigue Davis. By the time I got to the	19 A I have.
20 CID office, when I entered -- let me	20 Q Okay. Is it normal for you to take a
21 explain this to you.	21 statement from the officer within moments
22 When I entered that room,	22 or within a short period of time after
23 Sergeant Davis was in there. I think he	23 the incident?

24 (Pages 93 to 96)

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Page 97	<p>1 A Our policy is that, if the agency does 2 not have any requirement that we don't 3 interview their officer for a certain 4 time period, then we would like to speak 5 with the officer then. But if the 6 officer chooses in some cases to not make 7 a statement, that he would like to speak 8 with his or her attorney, then we honor 9 that as well, and that would have been 10 conducted at a later date. 11 Q So, this officer freely gave a statement. 12 A He did, yes, sir. 13 Q Because his department does not have a 14 policy about not giving a statement 15 immediately following the incident? 16 A That's correct. 17 Q Okay. All right. So, now, let's go to 18 the particular night. Were you able to 19 interview anyone from his department as 20 to the reason he was in that district? 21 A That night? 22 Q Yes, sir. 23 A I don't remember -- I mean, I just</p>	Page 99	<p>1 A Mr. Gunn was -- 2 Q Not on the statements. 3 A Okay. Mr. Gunn was wearing jeans -- dark 4 pants. He had a black hooded type 5 sweatshirt. Underneath that sweatshirt 6 was -- I know now by seeing the crime 7 scene photos and everything. He had some 8 kind of red shirt underneath it, and 9 there may be one or two different layers 10 of a white shirt underneath that. The 11 only reason I know that is because 12 obviously, when medics tried to do 13 medical intervention, they try to cut up 14 the shirts to see his injuries, and I 15 could see the different colors of shirts. 16 Q So, Mr. Gunn dressed in dark clothing at 17 3:00 o'clock in the morning. Would you 18 consider this, based on your 19 investigation and your training and 20 experience, a high crime neighborhood? 21 A I will be honest with you, sir, I don't 22 know anything about that neighborhood. 23 Q Okay. So, part of your --</p>
Page 98	<p>1 remember there was initial -- I think 2 Captain Scott Seithail initially 3 indicated that they had been having a 4 rash of break-ins, either vehicle or 5 burglaries. I think it was an initial 6 impression that he was almost, like, on a 7 special detail. But I think what I have 8 learned now is that this was just his 9 assigned district. He was getting a lot 10 of, you know, houses or cars broke into. 11 I think he was told, hey, look, when you 12 are not going on call for service, give 13 the area extra patrol and see if you can 14 deter some of this stuff. 15 Q And he carried out that order. Okay. 16 A He was doing his job, yes sir. 17 Q Okay. So, at 3:00 o'clock in the 18 morning, he encounters Mr. Gunn. What 19 was Mr. Gunn wearing? 20 A I think -- What I know or what he 21 described? 22 Q No. What your facts -- We want to focus 23 on the facts.</p>	Page 100	<p>1 A I don't know if it's high crime or not. 2 I don't know. 3 Q So, no part of your investigation did you 4 spend finding out if there is suspicious 5 active in that neighborhood or a specific 6 reason why an officer would stop a moving 7 suspect at 3:00 o'clock in the morning 8 dressed in dark clothing? 9 A I would -- I am not saying that's not 10 going to be a part of this investigation. 11 I am just saying, as of right now, I 12 don't have any direct knowledge of -- 13 Q Okay. 14 A -- of the crime in that neighborhood at 15 all. 16 Q Okay. 17 A I just don't. 18 Q So, based on your training and 19 experience, if the officer made a field 20 interview stop based on your previous 21 statements, was he legitimately and 22 legally entitled to conduct that field 23 interview?</p>

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<p>1 A He was up until the point where, if</p> <p>2 Mr. Gunn wanted to voluntarily continue</p> <p>3 speaking with Officer Smith, he could</p> <p>4 have continued that process, yes, sir.</p> <p>5 Q Okay. And Mr. Gunn voluntarily, based on</p> <p>6 the statements, put his hands on the</p> <p>7 front of the Tahoe, isn't that correct,</p> <p>8 based on his statements?</p> <p>9 A Right. And I disagree, and I can explain</p> <p>10 why. Because according to Officer Smith,</p> <p>11 his own statement was, he didn't ask</p> <p>12 Mr. Gunn: Would you please, sir, come</p> <p>13 over here and put your hands on this.</p> <p>14 He said, "Take your hands out</p> <p>15 of your pockets. Put your hands on the</p> <p>16 hood."</p> <p>17 So, that's more of a directive.</p> <p>18 Q He gave a command?</p> <p>19 A That's a directive.</p> <p>20 Q He gave a command?</p> <p>21 A Right. Which isn't normal for field</p> <p>22 interviews.</p> <p>23 Q Okay. But Mr. Gunn -- and I will preface</p>	<p>1 down a somewhat general area is, there</p> <p>2 was an area on McElvy Street between</p> <p>3 Liles Court and Boone Street on the same</p> <p>4 side of this -- of the shooting basically</p> <p>5 where we found on the ground next to the</p> <p>6 curbing was a pack of Newport cigarettes,</p> <p>7 a cell phone where the back had come off,</p> <p>8 and then additionally what appeared to us</p> <p>9 to be in close proximity was shattered</p> <p>10 glass and what we believe was evidence of</p> <p>11 possibly a crack pipe, but we are not</p> <p>12 sure.</p> <p>13 Q And this would be in the approximate</p> <p>14 location where the initial pat-down</p> <p>15 search occurred, because we don't know</p> <p>16 exactly because somebody moved the</p> <p>17 vehicle?</p> <p>18 A That is correct.</p> <p>19 Q And we don't he know exactly who moved</p> <p>20 the vehicle?</p> <p>21 A Well, we know it. I just don't remember</p> <p>22 the officer's name. He has been</p> <p>23 interviewed, and he has admitted that "I</p>
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<p>1 to you based on what we have already</p> <p>2 heard here tonight --</p> <p>3 A Yes, sir.</p> <p>4 Q -- and from your statements that there</p> <p>5 was a rash of burglaries, and the officer</p> <p>6 conducted a field interview. And he</p> <p>7 moved it up to the next level and gave</p> <p>8 Mr. Gunn a command. And you haven't</p> <p>9 tested the front of the Tahoe to see if</p> <p>10 Mr. Gunn actually complied and put his</p> <p>11 hands on the Tahoe.</p> <p>12 So, we don't know now and</p> <p>13 probably will never know forensically if</p> <p>14 Mr. Gunn complied, right?</p> <p>15 A It was not processed for fingerprints,</p> <p>16 yes, sir.</p> <p>17 Q Okay. So, the Tahoe has not been</p> <p>18 processed for fingerprints. Were you</p> <p>19 able to find the exact location where</p> <p>20 Mr. Gunn was supposedly standing at the</p> <p>21 time of this incident when it first</p> <p>22 occurred at the Tahoe?</p> <p>23 A The only way we've been able to narrow</p>	<p>1 got into it. I moved it." And then he</p> <p>2 is actually on dash cam observed moving</p> <p>3 the vehicle.</p> <p>4 Q And did we ever ask him why he moved the</p> <p>5 vehicle?</p> <p>6 A He was actually advised by Corporal</p> <p>7 Warren. Corporal Warren -- I don't</p> <p>8 think -- specifically said go get in</p> <p>9 Officer Smith's car and use it to block</p> <p>10 traffic. I think Corporal Warren just</p> <p>11 gave one of the lower-ranking officers an</p> <p>12 instruction, hey, block the street. He</p> <p>13 just made a bad decision and got into</p> <p>14 Officer Smith's vehicle and moved it.</p> <p>15 Q So, the crime --</p> <p>16 A It wasn't intentional.</p> <p>17 Q So, the crime scene had not been</p> <p>18 completely preserved, correct?</p> <p>19 A Correct. Yes, sir.</p> <p>20 Q Okay. So, in the area where you found</p> <p>21 this shattered crack pipe, the cell</p> <p>22 phone, which is consistent with Officer</p> <p>23 Smith's statement, have you processed</p>

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1 those items to see if Mr. Gunn's
2 fingerprints or his DNA is on any of
3 them?
4 A I will say the phone, itself, which I
5 think is actually the only thing Officer
6 Smith saw. The phone is believed to be
7 his. I processed it myself. His sister,
8 Kimberly Gunn, gave me his phone number.
9 That is the same phone number for his
10 phone.
11 So, that is somewhat of a
12 match. I can't, at this moment in any
13 way and fashion, say the cigarettes, the
14 Newport cigarettes, or whatever that
15 was -- I don't know if it's a pipe or not
16 because it's bits and pieces of a
17 shattered something or another. It just
18 appeared to be a crack pipe. I don't
19 know -- We can't say who that is at this
20 moment.
21 Q But my question is: Have you turned it
22 over to forensic sciences for testing?
23 A No, we have not at this time. No, sir.

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1 Q So, if Mr. Gunn had a crack pipe on him
2 and it fell, that evidence is in your
3 possession, but it has not been tested?
4 A Are you asking me what my knowledge is
5 now or what Officer Smith did do then?
6 Q No, I am not asking about Officer Smith.
7 I am asking about the science of your
8 investigation. You have evidence which
9 is consistent with Officer Smith's
10 testimony and statements to you, but you
11 haven't tested it, and it's sitting right
12 there. Are you going to test it?
13 A It can be tested. Again, I will consult
14 with the District Attorney's Office.
15 Q So, as of today --
16 A As of right now, it has not --
17 Q That's fine.
18 A -- except for the phone we know was his.
19 Q You know Mr. Gunn had a phone.
20 All right. Now, the second
21 interview that you conducted with Officer
22 Smith, he gave a different version and
23 slightly different details, correct?

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1 A Yes, he did.
2 Q Okay. But the -- But the facts based
3 upon his statements and just looking at
4 the facts from the traffic -- from the
5 stop, whether you call it a field
6 interview or that he gave him a command,
7 when he moves from that location, isn't
8 it true that Officer Smith gave in his
9 second statement that Mr. Gunn made
10 physical contact with him before he fled?
11 A Officer Smith did indicate that Mr. Gunn,
12 he said, could have, and we actually went
13 over the fact of whether he felt that
14 that was intentional or not. He said he
15 is just really not sure. And that's why
16 he didn't feel he had any charges.
17 Q Okay.
18 A So, he did describe somewhat of some
19 initial contact as Mr. Gunn was fleeing,
20 yes, sir.
21 Q So, Mr. Gunn -- In reality, regardless of
22 what the officer's statements are,
23 Mr. Gunn had made physical contact from

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1 an officer after he had been given
2 commands and broke those commands,
3 violated the order of a law enforcement
4 officer, who is in uniform and in a
5 marked vehicle, correct?
6 A I would just say that my response would
7 be that at that moment, you know, him --
8 Officer Smith directing Mr. Gunn to go
9 from taking your hands out of your
10 pockets to placing them on the vehicle,
11 that's not usually consistent with some
12 type of initial field interview. You
13 know, it's more, hey, how is it going,
14 what are you doing tonight, do you mind
15 if I talk to you. And then if it
16 escalates from there, I could see moving
17 to that aspect of it.
18 But in Officer Smith's own
19 statements, in both statements, both
20 versions, in his own words, he says his
21 initial contact with Mr. Gunn is, "Take
22 your hands out of your pockets and put
23 your hands on the hood of the car."

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<p>1 To me, that's a little bit</p> <p>2 different. That's almost actually</p> <p>3 conducting a stop or a seizure of</p> <p>4 Mr. Gunn at that moment.</p> <p>5 Q Okay. Well, Mr. Gunn, who we believe</p> <p>6 that, if the Tahoe had been tested, would</p> <p>7 have had his fingerprints on that car</p> <p>8 which we can't tell now?</p> <p>9 THE COURT: You have made that</p> <p>10 point, Mr. McDermott.</p> <p>11 MR. MCDERMOTT: Your Honor, thank</p> <p>12 you, sir. I'll move on.</p> <p>13 THE COURT: Thank you.</p> <p>14 BY MR. MCDERMOTT:</p> <p>15 Q Now, since we haven't tested the evidence</p> <p>16 found at the -- what we believe is the</p> <p>17 initial scene --</p> <p>18 A Yes, sir.</p> <p>19 Q -- okay -- did you walk the path from</p> <p>20 that initial scene to where Mr. Gunn's</p> <p>21 body was found? Did you photograph and</p> <p>22 test along the path?</p> <p>23 A I would say it was photographed. As far</p>	<p>1 Smith, he actually hands it in my</p> <p>2 possession, I photograph it, photographed</p> <p>3 the Taser wire, and I collected it</p> <p>4 myself.</p> <p>5 Q Okay. Did you collect anything else</p> <p>6 related to this case from the point of</p> <p>7 the initial contact to where the shooting</p> <p>8 and Mr. Gunn's body was found?</p> <p>9 A I believe the only thing that we found</p> <p>10 was Officer Smith's ASP, which I don't</p> <p>11 think, at that time, either of us knew</p> <p>12 that it was actually still in his</p> <p>13 possession. We actually both learned</p> <p>14 that at the same time.</p> <p>15 And his cartridge cases around</p> <p>16 the front porch and obviously Mr. Gunn's</p> <p>17 body, this paint roller pole, and I</p> <p>18 believe -- oh, and Officer Smith's body</p> <p>19 camera was actually -- I forgot to</p> <p>20 describe that. It actually was right</p> <p>21 next to the front porch sitting on top</p> <p>22 of, like, a brick. Officer Smith, I</p> <p>23 think, said that it could have came off</p>
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<p>1 as test along the path, I'm not --</p> <p>2 Q Okay. Well, did you find evidence</p> <p>3 consistent with the statements of the</p> <p>4 officer to include Taser cartridge number</p> <p>5 one?</p> <p>6 A Actually the only -- as far as the Taser</p> <p>7 is concerned, sir, Mr. -- Officer Smith</p> <p>8 still had his Taser in his possession at</p> <p>9 the time of the initial interview. I</p> <p>10 actually collected it from him directly</p> <p>11 so it would have been post incident. And</p> <p>12 then there was, like, a ball of Taser</p> <p>13 wire that was collected along with the</p> <p>14 Taser.</p> <p>15 Q Where was it collected?</p> <p>16 A From his person.</p> <p>17 Q Okay. It's still part of the Taser?</p> <p>18 A Well, somebody had -- I don't know who.</p> <p>19 Somebody had disconnected a lot of the</p> <p>20 Taser wire, and it was, like, in a ball</p> <p>21 on the conference room table at CID. And</p> <p>22 I saw that first. And then when I</p> <p>23 collected the Taser actually from Officer</p>	<p>1 during whatever had happened.</p> <p>2 Q The distance from the initial point of</p> <p>3 contact to where Mr. Gunn was shot, how</p> <p>4 far is that?</p> <p>5 A I would estimate it. I don't know</p> <p>6 exactly. I think we actually talked</p> <p>7 about this in his interview. I think</p> <p>8 you're probably talking about total</p> <p>9 distance, maybe 50 to 75 yards.</p> <p>10 Q Okay. In that 50 to 75 yards, you found</p> <p>11 evidence which was consistent with the</p> <p>12 officer's statements that he began the</p> <p>13 initial stop, he continued and pursued</p> <p>14 Mr. Gunn who has fled from him and, at</p> <p>15 some point in time, he deploys nonlethal</p> <p>16 force, not once, not twice, but multiple</p> <p>17 times, based on the Taser record. Okay?</p> <p>18 A Correct.</p> <p>19 Q And I don't know enough about Tasers to</p> <p>20 say whether it turned on his arm or not,</p> <p>21 but we will wait for forensics of that</p> <p>22 test.</p> <p>23 A Yes, sir.</p>

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1 Q But he used nonlethal force for this
2 75-foot distance -- 75-yard distance, and
3 he used nonlethal force with his ASP
4 repeatedly, correct?
5 A He -- Well, he did use those items, which
6 would be considered intermediate weapons.
7 But usually those are used in making
8 lawful arrests, which Officer Smith did
9 not have.
10 Q Okay. Your opinion is that he had no
11 lawful reason to pursue a suspect who has
12 broken away from him in -- I will
13 argue -- is a high-crime area at 3:00
14 o'clock in the morning with his
15 suspicious dress and his run from the
16 officer, and from the statements and the
17 facts, we know he not only continued
18 to run --
19 MR. BAILEY: Your Honor, I am
20 going to object unless there
21 is a question.
22 MR. MCDERMOTT: I'll come to my
23 question.

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1 THE COURT: Chop it up just little
2 bit, Mr. McDermott.
3 BY MR. MCDERMOTT:
4 Q Mr. Gunn continued to flee from the
5 officer and nonlethal force did not
6 contain or stop Mr. Gunn, correct?
7 A I would say that he did use a Taser,
8 which is considered nonlethal. But in
9 his own statement, Officer Smith states
10 that it is not against the law to run
11 from the police.
12 Q Okay. Is it not that -- We are not going
13 to look at that question.
14 A Yes, sir.
15 Q I am looking at the facts of the question
16 is: Mr. Gunn continued to run after
17 nonlethal force was used repeatedly,
18 correct?
19 A He did. Yes.
20 Q Okay. And were you able to determine if
21 Officer Smith gave him verbal commands
22 any time during this pursuit?
23 A Yes.

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1 Q What were those verbal commands?
2 A According to Officer Smith, he stated
3 that -- I think numerous times he told
4 Mr. Gunn to stop and get on the ground.
5 Q Stop and get on the ground. Were you
6 able to -- If you looked at the radio
7 traffic, did you see if the Officer made
8 any attempts to use his radio from the
9 time of the initial stop to the time that
10 he reported the shooting?
11 A I don't know. I think the only time that
12 Officer Smith, based on his statement,
13 that he told me he tried to get on the
14 radio and couldn't, I think it was after
15 the initial tazing. He said he was
16 trying to get on the radio and couldn't
17 because somebody was already on it.
18 Q Well, let's explain that once more --
19 A I think scientifically I don't know if he
20 was trying. You know, I haven't seen the
21 data.
22 Q Well, okay. I want to explain for the
23 Court. If Officer Smith tried to use his

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1 radio, why could he not use his radio?
2 Because you say somebody else was on the
3 radio? What does that mean?
4 A Right. I am not sure that the radio
5 system in Montgomery has at this moment.
6 But at some point when I was previously
7 employed there, it was a digital system
8 that basically, if somebody was keying
9 the mic -- basically it locks in the
10 signal and nobody else can get on there
11 at that time. I don't know if that is
12 still the same system or not. I don't
13 know. I haven't been there in a long
14 time.
15 Q Okay.
16 A So...
17 Q Are you able to estimate the amount of
18 time from the initial stop from Officer
19 Smith's perspective and to the time that
20 he makes a radio call? How long did all
21 this last?
22 A You are talking -- The only time frame so
23 far that I may have been able to

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<p>1 determine is, Officer Smith, based on 2 some of the dash cam stuff and other 3 times that I have seen, is he gets on the 4 radio and puts himself out at Boone and 5 McElvy at about 3:20, and I believe about 6 at 3:22 he is on the radio talking about 7 shots fired. So, about two minutes 8 transpired. 9 Q About two minutes they have moved 10 75 yards. And this officer has used 11 nonlethal force -- 12 THE COURT: Mr. McDermott, now, 13 you have said that about four 14 times. Let's move on to 15 questions for the agent. 16 Q Agent, would it be consistent -- Even 17 though the statements are inconsistent, 18 aren't the facts consistent as to why 19 Officer Smith pursued Mr. Gunn? 20 A I don't believe the -- I mean, well, 21 okay. I will say that the facts are 22 consistent in the fact that he could 23 not -- Officer Smith could not articulate</p>	<p>1 A Correct. 2 Q Okay. 3 A That is correct, sir. 4 Q And that ASP -- So, the ASP is not in the 5 immediate presence of where lethal force 6 was used, correct? 7 A That is correct. 8 Q Okay. The ASP is a cylinder of metal, 9 correct? 10 A (Witness nodding in the affirmative.) 11 Q Were you be able to ascertain by 12 photograph or examination of the concrete 13 where the ASP fell and where it came to 14 rest at? 15 A No, I can't. That has not been 16 determined. 17 Q Okay. So, we don't know where exactly 18 the ASP fell and where it may have -- and 19 where it wound up after it rolled? 20 A Correct. I could just describe this is 21 where we found it. 22 Q Okay. But at some point in time, we are 23 on a porch in an area from your</p>
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<p>1 that Mr. Gunn was doing anything 2 suspicious. He could not articulate why 3 Mr. Gunn was fleeing on foot, and he 4 could not articulate that he had any 5 charges on Mr. Gunn. 6 Q Okay. 7 A So, those were all consistent. 8 Q So, his inability to give proper 9 statements don't coincide with the fact 10 that the facts are consistent, correct? 11 The facts are consistent of -- 12 A Well -- 13 Q -- that he interviewed him. He went to 14 make the contact with him, and Mr. Gunn 15 fled. And he pursued him, correct? 16 A Well, I would -- I would disagree in 17 respect to -- Officer Smith's statements 18 are -- besides the evidence, are the only 19 facts of this investigation that we have. 20 Q Okay. Well, let's move to the porch. 21 You found the ASP and you stated that -- 22 you found Officer Smith's ASP, and it was 23 not on the porch. Okay?</p>	<p>1 dimensions, four or five feet wide, and 2 conveniently not much longer than the 3 bench that we are standing in front of. 4 And from your statements, it is very 5 dark. This officer has just chased this 6 man all of this way, and now from both 7 statements which, given the facts and the 8 circumstances of inconsistency at the 9 time that they were taken, these -- the 10 facts of the shooting occurred within a 11 five or less feet distance, based on 12 where the shell casings were found and 13 where Mr. Gunn's body was found, wouldn't 14 it be -- 15 A I wouldn't say it was five feet. 16 Q Maybe a little longer? 17 A I just don't know exactly. 18 Q Okay. 19 A I will just -- I think base -- The best 20 estimate is actually the estimate that 21 Officer Smith gave in his statement, 22 which I think he said at the time of the 23 shooting was eight to ten feet away.</p>

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<p>1 Q Okay. So, they are in very close 2 proximity. They have just made this 3 pursuit, and Mr. Gunn has not complied to 4 any verbal commands from the officer, 5 correct? 6 A I would agree with that according to 7 Officer Smith. 8 Q And Mr. Gunn didn't run to his front 9 door. He ran to his neighbor's house, 10 correct? 11 A Yes. That's where he was at. Yes, sir. 12 Q Okay. And at some point in time, based 13 on the officer's statements, he made a 14 movement to arm himself according to the 15 officer's statements? 16 A In both versions, yes, sir. Officer 17 Smith did indicate that he went for a 18 pole. 19 Q All right. And the officer used lethal 20 force? 21 A He did. 22 Q Okay. Now, I am not asking you to 23 comment on what the law is or what the</p>	<p>1 the shooting? If you would, just be my 2 live demonstration. 3 A Okay. 4 Q You testified before -- 5 A Are you the officer? 6 Q -- that Officer Smith was right handed, 7 and -- 8 A Okay. 9 Q -- and used his right hand. 10 A As he described it, Mr. Gunn was like 11 this (demonstrating). 12 Q And all of the rounds that had impacted 13 Mr. Gunn, okay, are on the right side, 14 except for one round which is in the 15 chest area. Now, do we know the angles 16 yet? 17 A I do not. 18 Q So, we don't know yet which round struck 19 first or which part of the body was 20 struck first. But what we do know is 21 that Mr. Gunn's arm was raised? Do we 22 know that? 23 A According to Officer Smith, yes.</p>
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<p>1 procedures are. But the wound pattern on 2 Mr. Gunn, would you demonstrate using 3 your own body where the wound pattern 4 was? 5 A Based on the only report that I have is 6 Agent Houton -- you know, Houton attended 7 the autopsy, because I told you I did 8 not. Based on his summary, which is not 9 the official report obviously, which 10 would be done by the medical examiner, he 11 described injuries that he observed were 12 obviously in the right wrist area. The 13 right -- All the injuries according to 14 him, except for, like, one was in the 15 center of the chest, were on the right 16 side of Mr. Gunn's body. 17 Q And so you don't know which round struck 18 which part of the body first? 19 A No. 20 Q Okay. So, is it possible, based on your 21 training and experience and your 22 familiarity with this case, that Mr. Gunn 23 was bladed to the officer at the time of</p>	<p>1 Q Okay. And based on the wound pattern, 2 Mr. Gunn's right hand was facing the 3 officer just as we are facing each other 4 now, correct, at some point in time? 5 A I would agree. 6 Q Okay. And we don't know in the dark what 7 the level of light that Officer Smith's 8 perception was or what he could 9 physically see clearly. Okay? 10 A I don't, but I will state that Officer 11 Smith never indicated that he could not 12 see clearly either. 13 Q Okay. And did you ever ask him was it 14 dark? 15 A I mean, I did not. 16 Q But you didn't ask, so you don't have 17 that answer? 18 A You are correct. 19 Q Okay. 20 A But he did not elect to -- 21 Q But when you got there -- 22 THE COURT: Hold on, guys. 23 THE WITNESS: Yes, sir.</p>

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1 THE COURT: Please wait until	1 Q Agent, when you photographed the scene of
2 Mr. McDermott finishes a	2 the body, okay, did you photographed it
3 question --	3 or --
4 THE WITNESS: Yes, sir.	4 A I did not. Agent Houton did.
5 THE COURT: -- before you answer.	5 Q Okay. Well, you observed it?
6 THE WITNESS: Yes, sir.	6 A Yes, sir.
7 THE COURT: Please wait until he	7 Q Okay. Agent Houton's photographs are
8 answers before you ask	8 where right now?
9 another one.	9 A I have them in the case file.
10 MR. MCDERMOTT: My apologies, Your	10 Q Okay. So, you are in possession of
11 Honor.	11 those?
12 THE COURT: The Court Reporter is	12 A Yes, sir.
13 trying to take it down for	13 Q Once again, one of my science questions.
14 you, Mr. McDermott.	14 A Yes, sir.
15 MR. MCDERMOTT: I am paying her by	15 Q All right. So, have you had an
16 the minute.	16 opportunity to review all of the evidence
17 BY MR. MCDERMOTT:	17 that you have collected so far?
18 Q Officer -- Agent, you have already	18 A Everything? I would say, no.
19 testified that you have training and	19 Q Okay. So, there are still more evidence
20 experience and you are a former	20 to collect?
21 Montgomery police officer?	21 A Probably to collect and to be analyzed,
22 A That's correct.	22 yes, sir.
23 Q I'm going to ask a question and this	23 Q Is it your intentions to find the Tahoe
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1 attorney can object to it. I have got to	1 and run a fingerprint analysis on the
2 ask it, though. Okay? I have got to	2 front hood?
3 create the record.	3 A At this point, I would say, no.
4 If a suspect that you began an	4 Q But it's possible that, if you were to go
5 in-depth field interview with ran from	5 do it, it's possible Mr. Gunn's
6 you, would you chase him?	6 fingerprints are going to be on that car?
7 A In-depth? I guess my response to that	7 A Again, I will just say that I will
8 would be is how in-depth it was and had I	8 consult with the DA's office --
9 established probable cause at that point	9 Q Okay.
10 for a charge, I would say, yes. If not,	10 A -- and we will make that decision
11 then, I would say -- and I have had	11 jointly.
12 people run from me before that I do to	12 Q And at some point in time, you are going
13 give chase for. So, that would be my	13 to test the alleged crack pipe?
14 response.	14 A We are going to consult about that --
15 Q Okay. Well, this is an officer at 3:00	15 Q Okay.
16 o'clock in the morning with a suspect	16 A -- whether it's going to be fruitful or
17 dressed in all dark clothing in a	17 not.
18 high-crime area.	18 Q Have you gotten any toxicology reports as
19 MR. BAILEY: Your Honor, I am	19 to Mr. Gunn's body?
20 going to object to argument	20 A No, sir, I have not.
21 that doesn't seem to be a	21 Q Okay. Do you have a time frame of when
22 question.	22 that might be?
23 MR. MCDERMOTT: Withdrawn.	23 A Unfortunately, DFS is really backed up,

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<p>1 and I don't control when they generate</p> <p>2 reports.</p> <p>3 Q I have just got to create the record.</p> <p>4 A I don't know.</p> <p>5 Q Okay. All right. Now, I want to go back</p> <p>6 through the body itself.</p> <p>7 A Yes, sir.</p> <p>8 Q Okay. Mr. Gunn's wounds, according to</p> <p>9 the radio traffic, two minutes after this</p> <p>10 incident occurred the officer has called</p> <p>11 for assistance. How long is it before</p> <p>12 the first officer arrives to back up</p> <p>13 Officer Smith?</p> <p>14 A Based on the dash cam videos, which is</p> <p>15 inside the car video of Corporal Steven</p> <p>16 Warren, he gets there roughly about 15 to</p> <p>17 20 seconds after Officer Smith says,</p> <p>18 "shots fired."</p> <p>19 Q Okay. In that 15 or 20 seconds, is there</p> <p>20 a call for assistance for Mr. Gunn?</p> <p>21 A Yes. Actually, initially, Corporal</p> <p>22 Warren -- When Officer Smith first gets</p> <p>23 on the radio, he puts himself out with a</p>	<p>1 run emergency to get to Officer Smith.</p> <p>2 Prior to Corporal Warren</p> <p>3 getting there, Officer Smith gets on the</p> <p>4 radio and says, "shots fired." Then</p> <p>5 Corporal Warren pulls up about --</p> <p>6 according to the dash cam video, about 15</p> <p>7 to 20 seconds after the shooting.</p> <p>8 Q Okay. And were paramedics responding to</p> <p>9 the call to respond to the body?</p> <p>10 A Yes. At some point, I have heard Officer</p> <p>11 Smith get on the radio and advise again,</p> <p>12 "subject was shot." I think another</p> <p>13 officer at some point saying, "hey, make</p> <p>14 sure that your medics are en route to</p> <p>15 check on this guy."</p> <p>16 The medics do show up, and I</p> <p>17 think about 3:35 I think Mr. Gunn was</p> <p>18 pronounced dead.</p> <p>19 Q Okay. On the scene?</p> <p>20 A On the scene.</p> <p>21 Q Okay.</p> <p>22 A Correct. Yes, sir.</p> <p>23 Q And did you -- Have you conducted any</p>
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<p>1 person or subject at Boone and McElvy. I</p> <p>2 don't think the dispatcher, it appears</p> <p>3 based on my review of the radio traffic,</p> <p>4 heard exactly where Officer Smith was</p> <p>5 placing himself. So, she's trying to</p> <p>6 raise Officer Smith to figure out exactly</p> <p>7 again where he is at to make sure he is</p> <p>8 okay. I think Mr. -- Officer Smith --</p> <p>9 there is somewhat miscommunication. The</p> <p>10 dispatcher doesn't know exactly where he</p> <p>11 is at. At that point, I think she</p> <p>12 dispatches -- the dispatcher dispatches</p> <p>13 314 Bravo, which is Corporal Warren. He</p> <p>14 was coming from the area of about Air</p> <p>15 Base and Day Street. He starts</p> <p>16 responding non-emergency to the area just</p> <p>17 to kind of check on Officer Smith to make</p> <p>18 sure he was all right.</p> <p>19 In between that time and him</p> <p>20 getting there, Officer Smith gets on the</p> <p>21 radio and says, I think, "foot pursuit."</p> <p>22 That's when I think Supervisor Sergeant</p> <p>23 Mason Wells authorizes Corporal Warren to</p>	<p>1 interviews with these follow-up officers</p> <p>2 that arrived to the scene afterwards?</p> <p>3 A Yes.</p> <p>4 Q Okay. Have you taken into your</p> <p>5 possession their dash cameras and their</p> <p>6 body cameras?</p> <p>7 A Yes.</p> <p>8 Q Okay. And have you reviewed them for</p> <p>9 today?</p> <p>10 A Yes.</p> <p>11 Q Okay. And the first arriving officer on</p> <p>12 the scene, you have reviewed his body</p> <p>13 camera. What does his body camera reveal</p> <p>14 as to the location of this pole, this</p> <p>15 five-foot, six-inch pole?</p> <p>16 A Okay. The first officer on the scene was</p> <p>17 Corporal Steven Warren. To my knowledge,</p> <p>18 Officer Warren was equipped with a body</p> <p>19 camera but not -- he did not ever</p> <p>20 activate his body camera.</p> <p>21 Q Okay.</p> <p>22 A The second officer on scene I believe --</p> <p>23 I can't remember if it's Warren or Randy</p>

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<p>1 Smith. I think he was unit 311. Upon 2 his arrival, which was shortly thereafter 3 Corporal Warren, he gets there pretty 4 close, almost just a few seconds after 5 the fact. 6 Now, at some point, two minutes 7 after -- I think it's two minutes after 8 the shooting, he turns his body camera 9 on, and he is one of the only officers 10 out there that actually turns their body 11 cameras on -- 12 Q Okay. 13 A -- for whatever reason. 14 Q And upon your review of this evidence, 15 were you able to find the location of the 16 pole? 17 A Based on that officer's body camera, the 18 placement of that officer -- Smith 19 actually, not Aaron Smith, another 20 officer -- he is actually somewhat 21 standing almost on top of Mr. Gunn's 22 body. Not actually on top of him, but he 23 is right there close proximity -- I would</p>	<p>1 Q Okay. And did you talk to any of the 2 officers about why the officer was on the 3 ground? 4 A I have, and I have also spoke with 5 Officer Smith. 6 Q Okay. And what is their explanation of 7 him being on the ground? 8 A What they saw was that they saw Officer 9 Smith. It looked like he was having a 10 hard time breathing. I think they are 11 describing that he actually had, at some 12 point on his own, unzipped his uniform 13 shirt in an effort to give him some more 14 slack. He is on the ground and kind of 15 had his arm like this (demonstrating) 16 over his head. Obviously, that's 17 consistent with what Officer Smith said. 18 He said he was feeling faint at that 19 moment in time. And then I don't know 20 exactly at what moment, but he was 21 brought to his feet and just placed in a 22 vehicle while he could still, you know, 23 calm down from what happened.</p>
<p>Page 134</p> <p>1 probably say -- just next to his head. I 2 think he, himself, is trying to figure 3 out what happened, and he is actually 4 having a conversation with another 5 officer next to him, and they are trying 6 to figure out what had occurred and 7 what's going on. 8 So, you know, just from the 9 officer's safety standpoint until they 10 figure out what's going on. They are 11 trying to assess what they have got, 12 basically. 13 Q Where is Officer Smith at this time? 14 A Office Smith actually is not in view, so 15 I don't actually know where he is at. I 16 know what's been described to me. 17 Q Okay. Was has been described to you? 18 A At that moment, it's been described to me 19 that Office Smith is actually lying on 20 the ground away from Mr. Gunn. 21 Obviously, I don't know distances or 22 anything like that, but he is lying on 23 the ground.</p>	<p>Page 136</p> <p>1 Q He didn't get up on his own powers; he 2 had to be lifted up? 3 A That's what's been described to me. Yes, 4 sir. 5 Q Okay. Who lifted him up? 6 A I don't know exact. I can't remember 7 exactly -- 8 Q Okay. 9 A -- which officer helped him. 10 Q That's in your report? 11 A It will be, yes, sir. 12 Q Okay. All right. I am looking for 13 preservation of the evidence. 14 A Yes, sir. 15 Q From this point forward, who takes 16 possession of Mr. Gunn's body, and how 17 long did it remain on the scene? 18 A Okay. I don't know the exact time frame 19 or the exact time Mr. Gunn's body was 20 collected from the scene because I didn't 21 work the crime scene. Agent Houton did. 22 But to my knowledge, it was 23 actually transported because Montgomery</p>

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<p>1 PD does have a vehicle used to transport</p> <p>2 bodies. And it would have been</p> <p>3 transported directly from the scene to</p> <p>4 the Alabama Department of Forensics</p> <p>5 Sciences for the autopsy.</p> <p>6 Q Okay. How long was it after the shooting</p> <p>7 and the two-minute pursuit that led to</p> <p>8 this incident were you on the scene?</p> <p>9 A I was notified about 4:00 o'clock,</p> <p>10 4:00 a.m., from my supervisor. I would</p> <p>11 have to refer to my notes or the crime</p> <p>12 scene log itself as far as the time of my</p> <p>13 arrival.</p> <p>14 Q So, it's at least --</p> <p>15 A It will be documented.</p> <p>16 Q So, there is a considerable length of</p> <p>17 time between the time of this incident</p> <p>18 and the time you take over this scene?</p> <p>19 A I would probably say within an hour.</p> <p>20 Q Okay.</p> <p>21 A Yes, sir.</p> <p>22 Q Okay. And during that time period, who</p> <p>23 was in charge of the scene?</p>	<p>1 course of the pat-down search he felt a</p> <p>2 hard object, or did he say, "I felt a</p> <p>3 cell phone"?</p> <p>4 A He articulated that he -- Well, number</p> <p>5 one, he wasn't able to complete a</p> <p>6 pat-down. But through that simple</p> <p>7 contact, he did described -- he did</p> <p>8 describe what felt like another object.</p> <p>9 And the only object that he saw fall out</p> <p>10 was a phone. And he wasn't sure if there</p> <p>11 were other objects in Mr. Gunn's</p> <p>12 possession or not.</p> <p>13 Q Isn't it true that his statement says, "I</p> <p>14 felt a hard object"?</p> <p>15 A I don't recall exactly.</p> <p>16 Q Okay.</p> <p>17 A I just don't.</p> <p>18 Q All right. Now, this is at the moment of</p> <p>19 the pat-down search, correct?</p> <p>20 A According to Officer Smith, this is at</p> <p>21 his initial contact, correct.</p> <p>22 Q So, for this officer, for his safety and</p> <p>23 the safety of the community, has started</p>
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<p>1 A The scene initially, obviously, is</p> <p>2 preserved by the Montgomery Police</p> <p>3 Department --</p> <p>4 Q Okay.</p> <p>5 A -- until they figure out who is going to</p> <p>6 work it. There were some of my</p> <p>7 co-workers that arrived prior to me.</p> <p>8 Q I am really looking to see, Agent, if</p> <p>9 there is a log of who all entered into</p> <p>10 the crime scene.</p> <p>11 A Yes, there is.</p> <p>12 Q Okay. Who maintains that log?</p> <p>13 A Montgomery Police Department maintains</p> <p>14 the log; and then when the scene is</p> <p>15 closed, it's turned over to us.</p> <p>16 Q Is it in your possession now?</p> <p>17 A Yes.</p> <p>18 Q So, there is list of all the players who</p> <p>19 came and went from the scene in your</p> <p>20 possession?</p> <p>21 A Yes.</p> <p>22 Q Okay. Now, you testified earlier that</p> <p>23 Officer Smith indicated that during the</p>	<p>1 a pat-down search, correct?</p> <p>2 A I will just say Officer Smith chose to do</p> <p>3 pat-down at that time.</p> <p>4 Q Okay. And as soon as the search starts,</p> <p>5 Mr. Gunn doesn't make any statements</p> <p>6 according to Officer Smith. He flees,</p> <p>7 correct?</p> <p>8 A I think Officer Smith articulated the</p> <p>9 fact that Mr. Gunn became questioning as</p> <p>10 far as why he was being stopped.</p> <p>11 Q Okay.</p> <p>12 A So, there was some kind of initial</p> <p>13 comments. I don't think Officer Smith</p> <p>14 remembered everything Mr. Gunn said. But</p> <p>15 shortly thereafter, as Mr. Smith --</p> <p>16 Officer Smith moves in to do his</p> <p>17 pat-down, I think that's when Mr. Gunn</p> <p>18 takes off and runs.</p> <p>19 Q So, the moment the search and the officer</p> <p>20 makes physical contact with Mr. Gunn,</p> <p>21 Mr. Gunn reacts and flees, correct?</p> <p>22 A Based on Officer Smith, yes.</p> <p>23 Q Okay. And the facts of the case -- and I</p>

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1 will just call it the physics of this
2 pursuit -- are consistent with the
3 officer pursuing him and, at some point
4 in time, using lethal force on Mr. Gunn,
5 correct?
6 A Yes. Eventually lethal force was used,
7 yes, sir.
8 Q After multiple verbal commands by the
9 officer to stop and show him his hands?
10 A I would agree with that.
11 MR. MCDERMOTT: Okay. May we have
12 a moment, Your Honor?
13 THE COURT: Uh-huh (positive
14 response).
15 MR. MCDERMOTT: If I may continue
16 just briefly, Your Honor.
17 THE COURT: Just briefly. Go
18 ahead.
19 BY MR. MCDERMOTT:
20 Q Agent Dinunzio, have you --
21 THE GUARD: Noise down.
22 Q Have you looked for the marking material
23 in the Taser? Are you not familiar with

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1 the Taser at all?
2 A I am.
3 Q Okay. Are you aware that the Taser
4 leaves a marking trail?
5 A I am familiar with the X2, I think, used
6 to leave those little aphids, I think is
7 what they are called. I am not sure
8 about the X2. I don't have enough
9 knowledge of that just yet.
10 Q Okay. So, that's why I asked earlier, if
11 you had walked the scene from this
12 initial contact point to where Mr. Gunn's
13 body was, if it had been photographed or
14 marked the -- wouldn't it be, if the
15 Taser deployed, the Taser's marking
16 device would have been impacted and left
17 on the scene?
18 A I don't know "impacted." From what I
19 remember from previous models, because we
20 don't carry the X2 model, they are very
21 small -- very small little pieces of
22 paper that has some kind of number on
23 them, and they are very hard to see with

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1 the naked eye. If they were left, could
2 we have seen them, I would say, yes.
3 Q Okay. And --
4 A I didn't see any, personally.
5 Q But because there was a substantial
6 length of time between the time that the
7 crime scene was initiated and the time
8 you took over, wouldn't someone have --
9 if they contained the crime scene,
10 weren't those markers on the scene and
11 recoverable?
12 A I mean, they could have potentially --
13 Q Okay.
14 A -- if the X2 has markers. Like I say, I
15 just don't know if they have them.
16 Q And you don't know -- So, you don't know
17 if there was a marker?
18 A I do not.
19 Q You don't know if anybody collected a
20 marker?
21 A As to my knowledge -- well, I know what
22 evidence was collected, and those -- I
23 think they used to be called "aphids" --

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1 I don't believe we actually have any of
2 those that were collected.
3 Q How long did you stay on the scene?
4 A I was on the scene -- I don't know
5 exactly. I just know at some point I
6 left the scene. I would probably say an
7 hour-and-a-half.
8 Q In an hour-and-a-half, was it still dark
9 when you left?
10 A It was pretty dark and getting daylight,
11 I think, by the time I left.
12 Q Okay. So, to your knowledge, nobody has
13 gone from the initial point where the
14 cell phone and that possible crack pipe
15 was found, nobody walked that trail in
16 the daylight?
17 MR. BAILEY: Objection. Asked and
18 answered.
19 Q I just want to ask you if it was done in
20 the daylight.
21 THE COURT: I'll let you ask it
22 one more time.
23 Q Okay. Did anybody walk that trail -- Did

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<p>1 you walk, as the investigator, or 2 somebody from your agency, walk that 3 trail, that 75 yards, in the daylight? 4 A I would say I did not, no, sir. 5 Q So, all of our collection was done at 6 night; and so if there is anything else 7 missing, it has not been collected? 8 A If those -- If there was those little 9 markers out there, to my knowledge, they 10 were not collected. 11 Q My questions, Your Honor. We are done. 12 THE COURT: Okay. Anything 13 further from the State? 14 MR. BAILEY: No, sir. 15 THE COURT: All right. You want 16 to offer any evidence, 17 Mr. McDermott? 18 MR. MCDERMOTT: No, sir. 19 THE COURT: All right. Probable 20 cause found and the Defendant 21 is bound over to the grand 22 jury. 23 MR. MCDERMOTT: Thank you, Your</p>	<p>1 this amount two times the 2 Rule 7 limit or statutory 3 amount. In a murder case, 4 the normal bond is between 5 \$15,000 and \$75,000. We 6 understand that this 7 particular jurisdiction in 8 murder cases uses \$150,000 as 9 a deterrent to criminal 10 activity, and we certainly 11 understand that. 12 In this case, this is a 13 still employed Montgomery 14 police officer with highly 15 unusual set of facts. He is 16 not a flight risk. He has 17 never been a flight risk. 18 And we feel that, quite 19 frankly, the posting a bond 20 should not have been 21 \$150,000; and, quiet frankly, 22 we don't think a bond is 23 necessary, but that is a</p>
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<p>1 Honor. 2 Now, Court is still in 3 session. The people that are 4 here with the deceased, Mr. 5 Gunn's family, I want them to 6 be escorted from the 7 courtroom. And when the 8 deputies tell us that they 9 are off the premises, then 10 other people can leave. But 11 we are going to get those 12 folks out of here first. 13 Court is still in 14 session. 15 (Thereupon, a discussion was 16 held off the record.) 17 MR. MCDERMOTT: And further, Your 18 Honor, we would like to 19 address bond. 20 THE COURT: All right. Go right 21 ahead. Court is still in 22 session. 23 MR. MCDERMOTT: Bond was set in</p>	<p>1 different story. 2 However, we would like 3 that bond to be reduced 4 within the schedule, just as 5 a housekeeping matter, Your 6 Honor. 7 THE COURT: All right. What says 8 the State? 9 MR. BAILEY: Judge, our response 10 is, first, in 20 years I have 11 never bond seen a bond 12 reduction motion when the 13 defendant is actually out on 14 bail. 15 THE COURT: Nor have I in 40 16 years. 17 MR. BAILEY: Okay. But the second 18 response to that is, I 19 understand that the bail was 20 set by Judge Reese, the 21 Circuit Court judge, and it 22 is consistent with every 23 other bail that has been set</p>

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<p>1 in the last two years. 2 THE COURT: Anything else? 3 MR. MCDERMOTT: Out response is, 4 it's still not in accordance 5 with Rule 7. And given that 6 this is -- I know we are 7 going to call him a 8 defendant. I am still going 9 to call him an officer. And 10 as an officer, we believe 11 that the statutory rule of 12 \$150,000 is not only 13 excessive, it is unnecessary. 14 THE COURT: Anything else? 15 MR. MCDERMOTT: We would ask the 16 Court to consider it. 17 THE COURT: Okay. It's 18 considered. Bond reduction 19 denied. Anything else? 20 MR. BAILEY: No, sir. May we be 21 excused? 22 THE COURT: All right. We are 23 going to get started on the</p>	<p>1 REPORTER'S CERTIFICATE 2 STATE OF ALABAMA 3 ELMORE COUNTY 4 I, Jeana S. Boggs, Certified Professional 5 Reporter and Notary Public in and for the State of 6 Alabama at Large, do hereby certify on Thursday, 7 March 24th, 2016, I reported the testimony and 8 proceedings before the Honorable Jimmy B. Pool, in 9 the matter of STATE OF ALABAMA, Plaintiff, versus 10 AARON CODY SMITH, Defendant, Case No. 11 DC-2016-000580.00, now pending in the District Court 12 for Montgomery County, Alabama; that the foregoing 13 colloquies, statements, questions and answers 14 thereto were reduced to 150 typewritten pages under 15 my direction and supervision; that the deposition is 16 a true and accurate transcription of the 17 testimony/evidence of the examination of said 18 witness by counsel for the parties set out herein. 19 I further certify that I am neither of 20 relative, employee, attorney or counsel of any of 21 the parties, nor am I a relative or employee of such 22 attorney or counsel, nor am I financially interested 23 in the results thereof. All rates charged are usual</p>
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<p>1 next cases. Anybody here 2 that is in support of Officer 3 Smith, just wait. The 4 deputies will tell you when 5 those other folks are gone, 6 and we will help you ease out 7 even if we are trying another 8 case. 9 All right. We are going 10 to call the docket. 11 12 (Hearing concluded at 13 approximately 2:56 p.m.) 14 * * * * * 15 16 17 18 19 20 21 22 23</p>	<p>1 and customary. 2 I further certify that I am duly licensed 3 by the Alabama Board of Court Reporting as a 4 Certified Court Reporter as evidenced by the ABCR 5 number following my name found below. 6 This the 28th day of March, 2016, in the 7 year of our Lord. 8 9 10 11 12 Jeana S. Boggs, CCR 13 ABCR NO. 7 14 Certified Court Reporter and 15 Notary Public 16 Commission expires: 8/6/2018 17 18 (C) Copyright 2016, Boggs Reporting & Video, LLC. 19 All rights reserved. No portion of this document 20 may be reproduced without written consent of Boggs 21 Reporting & Video, LLC. 22 23</p>

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