

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 WESTERN SECTION

4 Daniel Bradley)
5) 18cv30039-MGM
6 vs)
7) February 19, 2020
8 Christian Cicero,)
9 Joseph Dunn, and)
10 Daniel Moynahan)
11 _____)

12 **Jury Trial, Day 3,** Held Before
13 The Honorable Mark G. Mastroianni
14 United States District Judge.

15
16 APPEARANCES:

17
18 See the following page.

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1 **(Court commenced at 9:03.)**

2 THE CLERK: Your Honor, this is 18cv30039,
3 Bradley versus Cicero, et al.

4 Counsel, will you please identify yourself starting
5 on my right?

6 MR. SLEPCHUK, JR: Peter Slepchuk for the
7 plaintiff

8 MR. SLEPCHUK: Peter Alexander Slepchuk for the
9 plaintiff.

10 MR. COYLE: Kevin Coyle for the defendant,
11 Christian Cicero.

12 MS. SZAFRANSKI: Cary Szafranski for defendant
13 Joseph Dunn.

14 MR. SAINT LAURENT: Jeremy Saint Laurent for
15 defendant Joseph Dunn, and for the record Attorney Schmidt
16 is on his way, Your Honor.

17 THE COURT: Okay.

18 **(The jury entered at 9:05.)**

19 THE COURT: Good morning. Was everyone able to
20 follow my instruction not to talk about the case? Begin
21 deliberation? Discuss or post on the internet or post on
22 social media? The entire group of instructions that I
23 always give you, everyone follow it? Yes? Okay.

24 Based upon the response of each juror, they remain
25 fair and impartial.

1 All right. Defendant.

2 MR. SAINT LAURENT: Your Honor, we are going to
3 play the video deposition at this time.

4 THE COURT: Okay. This was taken very recently?

5 MR. SAINT LAURENT: Yes, Your Honor, February
6 12th.

7 THE COURT: All right. And this person could
8 not be in court and so it was agreed upon to take the
9 video deposition?

10 MR. SAINT LAURENT: Yes, Your Honor.

11 THE COURT: All right. So, ladies and
12 gentlemen, this is a video deposition that you're going to
13 see.

14 A deposition is the taking of testimony under oath.
15 So counsel for each side was at this deposition, which was
16 done very recently, a few weeks ago, for this individual
17 witness who couldn't appear in court.

18 The parties agreed that because the individual
19 couldn't appear in court, they would take this person's
20 deposition and record it on video and present it just as
21 if it's testimony. All right.

22 So it's different from yesterday when someone read
23 back a transcript. It wasn't actually that person;
24 someone else was reading someone's else testimony. This
25 is the person so you're able to look at this person,

1 assess their demeanor, make any credibility determinations
2 you want to.

3 You will be able to listen to the attorneys in this
4 case conduct the examination. Again, that was a little
5 different from the transcript you heard read back to you.
6 It was not necessarily the attorneys in this case
7 conducting the examination.

8 You should treat this deposition testimony just as if
9 you would if someone was here on the witness stand. I
10 think the reason for this particular witness not being
11 available today, and this witness only, was that there was
12 a trial date scheduled I think the week or two before when
13 we actually started and because of another trial that ran
14 longer --

15 (Attorney Schmidt entered the courtroom.)

16 THE COURT: -- this trial got pushed and delayed
17 and so this gentleman couldn't be here today.

18 It's the defendants' witness so go right ahead, Mr.
19 Saint Laurent.

20 **(Video deposition of Mr. Silverman playing.)**

21 THE COURT: All right. Thank you.

22 Ladies and gentlemen, why don't you just stand up and
23 stretch?

24 The next witness?

25 MR. SAINT LAURENT: I believe the next witness

1 is Officer Moynahan.

2 THE COURT: All right. Please take the witness
3 stand.

4 THE CLERK: Please raise your right hand.

5 **Daniel Moynahan (sworn)**

6 **DIRECT EXAMINATION**

7 Q. (By Mr. Schmidt) Officer Moynahan, could you state
8 your name and spell your last name for the record?

9 A. Good morning. Daniel Moynahan, M-o-y-n-a-h-a-n.

10 Q. How are you employed?

11 A. The city of Springfield, Springfield Police
12 Department.

13 Q. And you're a police officer?

14 A. Yes, I am.

15 Q. When did you start working for the Springfield Police
16 Department?

17 A. In 2007 as a Springfield police cadet.

18 Q. What does that mean?

19 A. The cadet program is a program designed for
20 individuals who are looking for a law enforcement career.
21 The Springfield police office offers this program to
22 individuals between the ages of 18 and 21 years old. It's
23 a three-year training within the department. During my
24 time I worked in the detective bureau, the records bureau,
25 and the fingerprint identification bureau.

1 Q. So would it be fair to say it's almost like an
2 on-the-job apprenticeship?

3 A. Yes, it is.

4 Q. And you did that for how long?

5 A. I did that until 2014, May, when I started the police
6 academy.

7 Q. And prior to being a cadet in the Springfield Police
8 Department, how far did you get with your education?

9 A. High school.

10 Q. You graduated from high school?

11 A. Yes.

12 Q. What high school?

13 A. High school of Commerce.

14 Q. And when did you actually become a sworn Springfield
15 police officer?

16 A. In October of 2014 I graduated the police academy.

17 Q. Now, directing your attention to October (sic) 26,
18 2015, the date we've been talking about in this trial,
19 what was your assignment at that time?

20 A. In August?

21 Q. Yes.

22 A. In August I was a uniformed police officer. I worked
23 in a fully marked police cruiser in the State Street,
24 Mason Square area of the city of Springfield.

25 Q. Now subsequent to being on patrol at that time, have

1 you had any specialized assignments?

2 A. Yes. I'm currently in the 4-to-12 narcotics bureau
3 with the city of Springfield.

4 Q. And how long have you been in the narcotics bureau?

5 A. Since October of 2016 until today's date.

6 Q. And fair to say that being a detective in the
7 narcotics bureau that's a promotion from what you were
8 doing before?

9 A. Yes, in a sense.

10 Q. Now, directing you back to August 26, 2015, what
11 shift were you working that night?

12 A. I was working the early role midnight shift. That
13 shift starts at 10:45 p.m. and ends at 6:45 a.m. the next
14 morning.

15 Q. Was that your usual shift at the time?

16 A. Yes, it was.

17 Q. And were you eventually in the Gunn Square area?

18 A. Yes, I was.

19 Q. And what neighborhood is that in the city?

20 A. The Mason Square Six Corners area is in between the
21 two colleges of AIC and the rear of Springfield College.

22 Q. Now, in your experience was that an area you
23 patrolled with some regularity at the time?

24 A. Yes, every single night that I worked.

25 Q. While you were working there, were you aware about

1 what kind of criminal activity, if any, was occurring in
2 that neighborhood?

3 A. Yes. This was considered a high-crime area, still to
4 this day is a high-crime area - multiple felonies, armed
5 robberies, shots fired incidents with both victims,
6 property damage, and homicides were a result.

7 Q. Now, in the evening of August 26, 2015, did you at
8 some point arrive at a traffic stop initiated by Officers
9 Cicero and Dunn?

10 A. Yes, I did.

11 Q. Why did you come across or come upon that traffic
12 stop?

13 A. Normal procedure for the Springfield Police
14 Department when conducting traffic stops is for the police
15 officers who are initiating the traffic stop to utilize
16 their hand-held radios inside the cruiser to notify or
17 dispatch of the traffic stop. This includes the location
18 of the stop, the vehicle make, model, color, license
19 plate, and their opinion at the time before exiting of how
20 many occupants. This also includes at the end of the
21 transmission whether the officers will be all set or
22 they'll advise -- sometimes they don't say anything at
23 all.

24 Q. And do you happen to remember what happened on this
25 particular incident?

1 A. I remember the transmission coming out. I remember
2 the details being the same as in the arrest report, the
3 plate, the Massachusetts plate of the car, the type of
4 car, the color of the car, and the number of occupants
5 being four.

6 Q. And having received that information -- and who was
7 your partner that night?

8 A. Tasha Ellison.

9 Q. And were you and Officer Ellison in a marked cruiser?

10 A. Yes, we were.

11 Q. And when you and Officer Ellison received this
12 information, did you do anything in response to it?

13 A. Yes. We made our way from our area which is foxtrot
14 one to Officer Dune and Officer Cicero's district which is
15 fork trot two. The other thing that divides our districts
16 is the State Street yellow line and so we made our way
17 from our district across State Street towards their
18 location.

19 Q. Okay. One side is on the east side of State Street
20 and the other side is on the west side essentially?

21 A. Yes.

22 Q. Which one is on the west?

23 A. It's north and south.

24 Q. North and south, sorry.

25 A. Fork trot one is on the north side and foxtrot two is

1 on the south side.

2 Q. Okay. And fair to say you got to the area of
3 Northampton and King Streets?

4 A. Yes.

5 Q. And what happened? What did you see?

6 A. The traffic stop was already or the vehicle was
7 already stopped. At the time we parked our cruiser behind
8 Officer Cicero and Officer Dunn's cruiser. We exited our
9 vehicle. I proceeded to I believe Officer Dunn's side of
10 the cruiser which they were inside the cruiser and I spoke
11 to them.

12 Q. And after you spoke to the officers at their cruiser,
13 what did you do?

14 A. I believe Officer Cicero at that time was getting off
15 of an attempted phone call to the rental company. I spoke
16 to -- I also spoke to Officer Dunn and he stated that they
17 were going to be towing the vehicle.

18 I was then aware that they already approached the
19 vehicle. At that time I didn't know if they had gone up
20 to the vehicle already or if they stayed in their cruiser
21 thinking that maybe more officers would arrive to the
22 traffic stop.

23 Q. So to be clear, did you have anything to do with the
24 decision to pull that vehicle over?

25 A. No.

1 Q. Did you have any contact with the operator in that
2 initial conversation that Officer Cicero testified to?

3 A. No.

4 Q. And so what happened after you had the conversation
5 at the police car with Officer Dunn? What did you do
6 after that?

7 A. Officer Dunn then exited his passenger side of the
8 police cruiser. I walked behind him. Officer Dunn
9 approached the farthest pillar of the Chrysler 200. I
10 positioned myself in a tactical position to the 7 o'clock
11 of Officer Dunn, more towards the rear trunk area, so I
12 was able to visually see through the rear windshield into
13 the vehicle.

14 Q. And so what side of the vehicle is Officer Dunn on?

15 A. On the passenger side.

16 Q. He's on the passenger side and you're by the trunk in
17 towards the center of the car a little bit; is that fair
18 to say?

19 A. Correct, in between the center and the outer most
20 part of the passenger side of the trunk.

21 Q. Is there any particular reason you're positioning
22 yourself like that?

23 A. Yes. It's a position where we can see generally,
24 depending on the car, the heads of the occupants from the
25 rear. It's a tactic taught procedure by our academy.

1 Q. And what happened after that?

2 A. While I'm standing there and Officer Dunn is at the
3 rear pillar, I observed the back rear passenger Mr.
4 Bradley who's in a seated position.

5 I can see through the rear windshield his body shift
6 towards the right, so which would be like the center
7 console area, the center armrest as well in the back seat
8 towards the right, and then Mr. Bradley came up and kind
9 of shifted towards his right and then that was the end of
10 the movement.

11 Q. Before August 26, 2015 had you ever met or seen Mr.
12 Bradley before?

13 A. No.

14 Q. And having seen those movements that you just
15 described as a police officer, does that have any
16 significance to you?

17 A. Yes. All of that that I just explained has a huge
18 significance, including the fact that we as police
19 officers were on a re-approach to a stopped motor vehicle.
20 A re-approach or a secondary approach after the
21 information was originally gathered by Officer Cicero and
22 Officer Dunn is the most dangerous point in a traffic
23 stop. That is because the occupants of the vehicle know
24 generally how many police officers are on scene and have
25 time to think if they were to do something, about how they

1 would do it and when they would do it when the officers
2 re-approached the vehicle.

3 On top of that with Mr. Bradley's movements from his
4 left to his right -- again I'm only seeing his upper
5 portion because I'm looking through the back windshield --
6 those movements are extremely dangerous. Just based on my
7 experience in that year, those same movements where
8 someone was moving from left to the right towards the
9 door, when I opened the door in that same scenario in a
10 different case --

11 MR. SLEPCHUK: Objection.

12 THE COURT: Sustained.

13 MR. SLEPCHUK: Move to strike the answer.

14 THE COURT: All right. To the extent there was
15 an answer given, it's stricken anything that was said. So
16 just ask another question.

17 Q. (By Mr. Schmidt) Officer Moynahan, focusing on what
18 you saw Mr. Bradley do, what concerns did you have
19 approaching the vehicle?

20 A. That he was arming himself with a weapon.

21 Q. And have you received training specific to furtive
22 movements during motor vehicle stops?

23 A. Yes, we have. It was a huge portion of our academy.

24 Q. And the academy training is how long?

25 A. Mine at the time I believe consisted of 23 or 24

1 weeks of total training.

2 Q. And did it cover car stops in general?

3 A. Yes, it did.

4 Q. Now, you observed these movements. Officer Dunn is
5 in his location at the passenger side. What happens after
6 that?

7 A. I believe I hear Officer Dunn instructing what I
8 believed to be in the direction of Mr. Bradley to keep his
9 hands up.

10 Q. And what happened after that?

11 A. Officer Dunn then opened the motor vehicle's rear
12 passenger door, the one that went to Mr. Bradley's seat.
13 Officer Dunn then told Mr. Bradley to exit the vehicle.

14 Q. Did Mr. Bradley exit the vehicle?

15 A. No.

16 Q. What happened?

17 A. Officer Dunn then had to remove Mr. Bradley utilizing
18 a modified escort position to get him out of the vehicle.

19 Q. What's the modified escort position?

20 A. A modified escort position would be any position
21 where you're guiding a noncompliant individual that isn't
22 directly behind him. A proper modified or the proper
23 escort position would be taught from behind holding the
24 upper tricep and the wrist with your opposite hand to
25 control the movements of the person that you're moving.

1 Q. And at this point did Officer Dunn strike Mr.
2 Bradley?

3 A. No.

4 Q. So essentially, if I understand your testimony, he's
5 grabbing him, holding him by the tricep and walking him
6 out of the car?

7 A. Yes.

8 Q. And what was Mr. Bradley doing at this point?

9 A. Mr. Bradley was not making an attempt to walk with
10 Officer Dunn. It seemed like he was using his own body
11 weight and just standing his ground and kind of not moving
12 with Officer Dunn.

13 Q. What was Mr. Bradley's manner?

14 A. Very hostile, not necessarily verbally hostile but
15 you could tell based on my training and experience
16 someone's demeanor by the way that they carry their body
17 and the way that I observed Officer Dunn having to escort
18 Mr. Bradley out of the vehicle.

19 Q. Did you see any -- did you notice anything about Mr.
20 Bradley's hands?

21 A. Yes. His I believe it was his right hand in
22 particular was clinched in a fist in a ball.

23 Q. Now at this point did you say anything to Mr.
24 Bradley?

25 A. Yes. I walked over, which was only a couple of feet

1 towards Mr. Bradley and Officer Dunn, and I explained that
2 I was going to perform a patfrisk.

3 Q. And what happened when you attempted to perform the
4 patfrisk?

5 A. So the patfrisk that I was performing -- because of
6 movements, the training and experience, I stood in a
7 generally rear position of Mr. Bradley. My attempt for
8 the patfrisk was my right arm to go around Mr. Bradley's
9 waist and start at the left hip portion of Mr. Bradley's
10 waistband and come across. As soon as I got over to the
11 left hip area, Mr. Bradley thrust his pelvic area and
12 waistband into the rear of the vehicle into the side.

13 Q. So was your arm actually trapped between Mr. Bradley
14 and the car?

15 A. Yes.

16 Q. And you heard Mr. Bradley's testimony during this
17 trial?

18 A. Yes, I did.

19 Q. Did you manipulate his penis in any way?

20 A. No, I did not.

21 Q. Did you manipulate his testicles in any way?

22 A. No, I did not.

23 Q. Is that something you would ever do when you patfrisk
24 someone?

25 A. No.

1 Q. Now after he -- you testified your hand gets trapped
2 between Mr. Bradley and the car. What happened after
3 that?

4 A. Officer Dunn and myself pulled Mr. Bradley away from
5 the rear of the vehicle to where my hand was trapped in
6 between his waistline and the vehicle. I then removed my
7 right hand from in front of Mr. Bradley and I could
8 observe Mr. Bradley bracing himself. Now I could clearly
9 see his left fist as well balled up on the trunk holding
10 the side of the vehicle.

11 Q. Were you ever able to complete that patfrisk?

12 A. No.

13 Q. So where you left off, he's got his fists balled up
14 on the back of the vehicle. What happened next?

15 A. Mr. Bradley is tense. You can feel -- when you put
16 your hand on someone, even like the small of their back,
17 you can feel when someone is tense. When someone is
18 pushing back against you and your force even as slight as
19 just touching the back, you can feel it.

20 At that point we were instructing Mr. Bradley to calm
21 down. After Mr. Bradley's actions wouldn't cease and it
22 seemed like there was no way that Mr. Bradley was going to
23 become compliant enough for us to conduct a full thorough
24 patfrisk is when Officer Dunn and I made the decision to
25 detain Mr. Bradley to safely perform the patfrisk to its

1 fullest completion with Mr. Bradley in handcuffs.

2 Q. And what happened when you put Mr. Bradley in
3 handcuffs? And do you remember which one of you put Mr.
4 Bradley in handcuffs?

5 A. I believe it was Officer Dunn.

6 The situation at that point when the handcuffs
7 started to go on Mr. Bradley became more of a hostile
8 environment, even more so than just prior when we were
9 explaining for him to calm down. It became a situation
10 where with everything that had gone on, the reason for us
11 conducting the patfrisk, we needed to get Mr. Bradley in
12 handcuffs as soon as possible and Mr. Bradley was not
13 complying. He was not allowing me to take his arm to put
14 it towards the small of his back to put him in handcuffs.

15 Q. So if you could explain to the jury what happened as
16 you were trying to put handcuffs on Mr. Bradley, what he
17 did?

18 A. Mr. Bradley then kicked back striking Officer Dunn in
19 his shin.

20 Q. Were you able to see that?

21 A. I was able to see a motion of the leg come back. I
22 wasn't able to see the actual contact.

23 Q. Now while all this is going on, is Mr. Bradley saying
24 anything?

25 A. Yes. He's saying things like -- I can't recall at

1 this moment the specifics of what he's saying.

2 Q. Was he angry?

3 A. Yes.

4 Q. And so after the strike to Officer Dunn's leg, was
5 Mr. Bradley fully cuffed at that point?

6 A. No.

7 Q. How long did it take you to get him fully cuffed?

8 A. Approximately 45 seconds to a minute.

9 Q. And once you have him cuffed, what happened after
10 that?

11 A. After we had him cuffed, Officer Dunn -- I let go of
12 Mr. Bradley. Officer Dunn then started to walk him back
13 to their marked police cruiser, the one that initially
14 made the traffic stop and was right behind the vehicle.

15 Q. What did you do after that?

16 A. I positioned myself in a tactical position because in
17 my head there's still three people inside this car.
18 There's still a patfrisk now that needs to be conducted in
19 a reasonable reach area of Mr. Bradley from within the
20 vehicle if the weapon was disregarded in the vehicle, and
21 I also in the back of my mind know that Mr. Bradley was
22 not compliant. There was a struggle and Officer Dunn is
23 by himself -- although in handcuffs -- escorting a man who
24 doesn't want to be going with Officer Dunn to the cruiser.

25 Q. And fair to say you never did recover a weapon in

1 this case?

2 A. No.

3 Q. Now, so Officer Dunn is taking Mr. Bradley to his
4 cruiser. What happens?

5 A. I can hear a commotion behind me. When I turn, I
6 still slightly see the commotion. In this instance it
7 didn't seem like Officer Dunn was going to be able to put
8 Mr. Bradley in the cruiser by himself.

9 Q. So what did you do?

10 A. I then went to the cruiser. I don't remember which
11 side I went to. I believe I was -- I had to unlock to
12 cruiser. It's normal for us during traffic stops to lock
13 the cruiser behind us and we use the key to then open it,
14 but locking the cruiser also locks the back doors and
15 causes there to be an unlock button to be hit to open
16 those rear doors.

17 Q. And is the purpose of locking the car during a
18 traffic stop so no one can enter the cruiser?

19 A. Correct.

20 Q. And what happened as you and Officer Dunn attempted
21 to get Mr. Bradley in the cruiser?

22 A. Mr. Bradley -- I was more towards the driver door. I
23 opened that door to unlock the cruiser. When it was
24 unlocked, Officer Dunn opened the rear driver's side
25 passenger door and the door of the cruiser was blocking my

1 view but I could see at that point Mr. Bradley was looking
2 towards Officer Dunn. A person in handcuffs should never
3 be let go and looking towards the officer that's supposed
4 to be escorting them.

5 Q. Why is that?

6 A. There's flight risk, safety concern. Everything is
7 not good about that.

8 Q. So what happened after that?

9 A. Well, Mr. Bradley was, from my perspective, appeared
10 to be kind of like pushing towards Officer Dunn. Officer
11 Dunn then pushed back on Mr. Bradley towards the rear seat
12 and open the door of the cruiser.

13 Q. And did Mr. Bradley fall into the cruiser?

14 A. Yes.

15 Q. What kind of cruiser are we talking about?

16 A. A Ford Explorer with a modified interior.

17 Q. And how did Mr. Bradley land in the cruiser?

18 A. On the seat, on the rear plastic seat.

19 Q. Now, you were in the courtroom and you heard Officer
20 Dunn's testimony with regard to sort of the layout of the
21 back of that cruiser.

22 A. Yes.

23 Q. Was his testimony accurate?

24 A. Yes.

25 Q. So fair to say there's not a lot of room back there?

1 A. No, not at all.

2 Q. Okay. Did you ever stomp on Mr. Bradley's back?

3 A. No.

4 Q. Could you and Officer Dunn be able to fit into the
5 cruiser and stomp on Mr. Bradley's back at the same time?

6 A. That would be impossible.

7 Q. Did Mr. Bradley ever complain to you that he had any
8 injuries?

9 A. No, that was the last time I saw Mr. Bradley outside
10 of my instructions on what I was going to do. I did not
11 ever speak to Mr. Bradley.

12 Q. When you say instructions about what you were going
13 to do, you mean the patfrisk?

14 A. Yes, the patfrisk.

15 Q. Now, so you had no contact with Mr. Bradley after he
16 left the scene?

17 A. Correct.

18 Q. And did you have any involvement in the booking?

19 A. No.

20 Q. Now, are you ever on parole without a service pistol?

21 A. No.

22 MR. SCHMIDT: Just a moment.

23 Q. (By Mr. Schmidt) Officer Moynahan, did you hear the
24 plaintiff Mr. Bradley's testimony about emptying his
25 possessions into the cruiser?

1 A. Yeah -- or I heard into the vehicle in which we
2 exited him from.

3 Q. You're talking about the Chrysler 200 or 300?

4 A. Yes, 200.

5 Q. Did you do that?

6 A. No.

7 Q. And is that something that an officer would do?

8 A. No. At no point when you exit someone from a car
9 would you then leave that car door open. That car door
10 acts as a secondary barrier if we were to lose control of
11 Mr. Bradley or anyone that we were conducting a patfrisk
12 on so that their attempts to get back in the car were
13 stopped or slowed by the vehicle door.

14 At no time during a patfrisk for weapons would I then
15 put the items that were to be deemed dangerous and taken
16 from someone in front of them. They're not in handcuffed.
17 Their hands would be easier to access the items then, more
18 than it would be on the person.

19 Q. And in this case you weren't even able to complete
20 the patfrisk, correct?

21 A. No. No.

22 MR. SCHMIDT: Nothing further.

23 THE COURT: All right. Thank you, Attorney
24 Schmidt.

25 We're going to take a break. All right? We'll take

1 our morning break. The same instructions as always apply.
2 Don't talk to each other about the case or begin jury
3 deliberations. Don't access the internet or try to post
4 anything on the internet. Any instructions I have left
5 out, all of the instructions continue to apply. All
6 right?

7 **(The jury left at 11:03.)**

8 THE COURT: Attorney Schmidt, any witnesses
9 after this?

10 MR. SCHMIDT: I don't believe so.

11 THE COURT: All right. So the defendant is
12 going to rest?

13 MR. SCHMIDT: Yes.

14 THE COURT: So I imagine that we will go to
15 cross-examine and then going into closings.

16 All right. Very good. Thank you.

17 **(A recess was taken at 11:04 until 11:34.)**

18 MR. COYLE: Before the jury comes in, I don't
19 know if we are going to discuss your charge and verdict
20 slip?

21 THE COURT: We will talk about it. We will
22 definitely have a conference.

23 **(The jury entered at 11:35.)**

24 THE COURT: Ladies and gentlemen, was everyone
25 able to follow all of my instructions during the break?

1 THE JURY: (Yes.)

2 THE COURT: All right. Based upon the response,
3 the jury remains fair and impartial. All right.

4 Go right ahead.

5 MR. SLEPCHUK: Thank you, Your Honor. May I
6 proceed?

7 THE COURT: Sure.

8 **CROSS-EXAMINATION**

9 Q. (By Mr. Slepchuk) Good morning, Officer Moynahan.

10 A. Good morning.

11 Q. So back on that night, August 26, 2015, you testified
12 that you were working as a dually sworn officer of the
13 Springfield Police Department with your partner Tasha
14 Ellison; is that correct?

15 A. Yes.

16 Q. And that night did you have any police body cameras
17 that you were wearing?

18 A. No. Our police department does not have police body
19 cameras.

20 Q. What about cruiser dash cameras, do you have those?

21 A. Our cruisers are also not equipped with cruiser dash
22 cameras.

23 Q. And sometime around 2 a.m. you responded to near King
24 Street and the intersection of Northampton Avenue upon
25 learning that Officer Cicero and Dunn had stopped a car;

1 is that right?

2 A. Yes.

3 Q. And you had already known that there were four
4 occupants and the make and model of the car and such
5 information, correct?

6 A. Yes, that's true.

7 Q. You talked a little bit about this neighborhood, the
8 Gunn Square area; is that right?

9 A. Yes.

10 Q. Okay. Officer Moynahan, do you see the map that's on
11 your screen?

12 A. Yes, I do.

13 Q. I'm showing you what's been marked as Exhibit No. 1
14 in this case. And would you agree with me that this map
15 depicts the area of where the motor vehicle stop occurred?

16 A. Yes.

17 Q. And do you see up here it says Gunn Square? Is that
18 the Gunn square that you were referring to?

19 A. Yes.

20 Q. So Gunn Square has nothing to do with actual guns or
21 weapons, correct?

22 A. Correct.

23 Q. That's just the name, G-u-n-n, correct?

24 A. Correct.

25 Q. Thank you.

1 You testified that when you arrived Officers Cicero
2 and Dunn they were still in their cruiser, correct?

3 A. They were in their cruiser, yes.

4 Q. You went and spoke with them, correct?

5 A. Yes.

6 Q. And Officer Dunn told you that they were going to
7 have to tow the car, correct?

8 A. Yes.

9 Q. So that determination had already been made before
10 you arrived on scene?

11 A. Correct.

12 Q. Okay. When that determination -- had you ever been
13 involved in a stop where a car had to towed?

14 A. Yes, I have many times.

15 Q. Okay. Have you been in a situation where there were
16 passengers in a car that needed to be towed?

17 A. Yes.

18 Q. Okay. And when that determination is made, is it
19 normal for you to tell the passengers that the car has got
20 to be towed, everyone within needs to get out?

21 A. Yes.

22 Q. Now that didn't happen in this case, correct?

23 A. Eventually, yes.

24 Q. Okay. But what happened next was you went to the
25 side of the car, the passenger side with Officer Dunn,

1 correct?

2 A. Yes, the passenger rear side.

3 Q. You positioned yourself you said at the 7 o'clock
4 position I believe behind Officer Dunn?

5 A. Correct.

6 Q. Okay. And did you have your flashlight out?

7 A. Of course.

8 Q. Illuminating the interior of the car?

9 A. Illuminating my general area of view.

10 Q. Okay. At that point neither you nor Officer Dunn
11 told the people in the car, hey, time to get out. The
12 car's got to be towed, correct?

13 A. Correct. The point of contact I believe was Officer
14 Cicero.

15 Q. Okay. So instead of communicating that information,
16 you're standing at the 7 o'clock position. You're
17 observing the occupants of the car, correct?

18 A. Yes.

19 Q. And in addition to you and your partner, do you
20 remember where she was positioned?

21 A. I do not.

22 Q. And what about Officers Bienvenue and Lariviere, you
23 agree they were present as well?

24 A. Not at that moment?

25 Q. Not at that moment.

1 But at that moment in time at least there were four
2 of you around the car?

3 A. There was four police officers, yes.

4 Q. Okay. All armed with service pistols, correct?

5 A. Yes. Their duty belt includes their service pistol,
6 OC spray, baton, handcuffs, radio, holster, and Taser.

7 Q. It's at this point in time while you're standing
8 there in the 7 o'clock position that Officer Dunn opens
9 the rear passenger door and reaches in and removes Mr.
10 Bradley from the rear passenger seat; is that right?

11 A. Just does it? I don't understand where your question
12 is coming from.

13 Q. So just to walk through this, you speak to Officer
14 Dunn at the cruiser. He says we got to tow this car,
15 right?

16 A. Correct.

17 Q. You then approached the car, correct?

18 A. Correct.

19 Q. You and Officer Dunn are on the passenger side?

20 A. Yes.

21 Q. Officer Cicero goes to the driver's side?

22 A. Yes.

23 Q. The occupants are not given the opportunity to leave
24 the car, correct?

25 A. No, not at that moment.

1 Q. Even though the determination has already been made
2 that the car has to be towed and they're going to have to
3 get out, correct?

4 A. Correct.

5 Q. And you're making some observations, correct?

6 A. Correct.

7 Q. And you claim that you saw Mr. Bradley lean towards
8 the interior of the vehicle near the center console; is
9 that your testimony?

10 A. Correct.

11 Q. Okay. You never saw him holding a weapon, right?

12 A. No. My vision would have been obscured from anywhere
13 below his high shoulders and below.

14 Q. You didn't see him reaching down out of sight,
15 correct?

16 A. Correct. His body maintained that upper portion in
17 my view.

18 Q. And you didn't see him reaching down towards the
19 doorjamb, correct?

20 A. Correct.

21 Q. All you saw was him lean not down but just lean
22 towards the interior of the car, correct?

23 A. Correct. There's an obvious dip when someone leans
24 in their shoulders so that's what I'm seeing, but that's
25 all I can see and base my observations on are the

1 shoulders. So I can't see if a hand has moved from a lap
2 towards the ground. I can't see that. I can only see the
3 shoulders themselves.

4 Q. You didn't see his shoulders dip down out of sight,
5 right?

6 A. Out of sight, no.

7 Q. So you'd agree with me that if you're sitting -- if
8 you're sitting in the seat, if you were going to reach to
9 say below the seat, that you would be able to see the
10 shoulders dip down to reach underneath the seat, correct?

11 MR. SCHMIDT: Objection.

12 THE COURT: Sustained.

13 Q. (By Mr. Slepchuk) Would you be able to see that if
14 somebody leaned down?

15 A. Depending on the vehicle, it depends on what you
16 would or wouldn't be able to see at that moment.

17 Q. Okay. But you didn't see Mr. Bradley dip down out of
18 sight, correct?

19 A. Correct. I didn't lose sight of his upper body.

20 Q. And your testimony is that that slight movement to
21 the right, that made you fearful that he was armed with a
22 weapon?

23 A. The right and the left, yes.

24 Q. Okay. Now, you said that you saw him lean towards
25 the interior, correct?

1 A. Left. That's to his left.

2 Q. That's to his left. Okay.

3 A. And my left because I'm behind.

4 Q. So towards the interior which would have been his
5 left, your left, correct?

6 A. Uh-huh.

7 Q. You never saw him reach down to the right, correct?

8 A. I just saw him come back to generally his position
9 before.

10 Q. Okay.

11 A. But my vision is blocked towards that right side
12 because of that metal pillar on the vehicle so I wouldn't
13 even have been able to make the observation towards the
14 door, the doorjamb.

15 Q. You wouldn't have been able to see that standing
16 there?

17 A. No.

18 Q. Well, his body didn't disappear out of your field of
19 view, right?

20 A. There's blind spots, yes, in every vehicle.

21 Q. Are you saying that you lost sight of him?

22 A. No.

23 Q. Okay. So you saw him lean a little bit towards the
24 center to the left, right?

25 A. Correct.

1 Q. He's still in your field of view, correct?

2 A. Correct.

3 Q. Then he comes back to basically where he started,
4 correct?

5 A. Correct.

6 Q. Okay. He doesn't go beyond that further to the right,
7 correct?

8 A. Not that I recall.

9 Q. Okay. And that movement made you think that he had a
10 weapon?

11 A. Yes.

12 Q. At this point Officer Dunn opens the door and removes
13 Mr. Bradley from the rear seat, correct?

14 A. He gives him an order to, yes.

15 Q. An order to?

16 A. Yes.

17 MR. SLEPCHUK: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes.

20 Q. (By Mr. Slepchuk) Officer, I'm going to show you
21 your testimony from the prior criminal trial. I'm going
22 to direct your attention you to line 12.

23 "Question: So that you physically took him out of
24 the vehicle; is that fair to say?

25 "Answer: Yes.

1 "Question: Okay. So you didn't ask him to come out?

2 "Answer: No."

3 Do you remember testifying that you did not ask him
4 to get out of the car?

5 A. Now I do, yes. I did not but that's not me, that's
6 Officer Dunn.

7 Q. Did you ask Mr. Bradley if he had any weapons on him
8 prior to ordering him out of the car or at any point?

9 A. I don't recall.

10 Q. I'm going to direct you to the same page, line 17:

11 "Did you ask him if he had any weapons?

12 "Answer: No.

13 "Question: You didn't ask him?"

14 A. "Uh-uh," but.

15 Q. You'd agree you didn't ask him?

16 A. No.

17 Q. Now, when you got him out of the car, it's your
18 testimony that -- well, did you place him in handcuffs
19 right away?

20 A. No.

21 Q. Now why wouldn't you do that if you thought that he
22 had a weapon?

23 A. Not all patfrisks call for someone to be put in
24 handcuffs. You perform the patfrisk.

25 Q. Now you said this was a bad neighborhood, right?

1 A. That still doesn't justify us putting someone in
2 handcuffs during a patfrisk.

3 Q. So even though you claimed to be so concerned that he
4 had retrieved a weapon and you needed to take steps to
5 protect your safety and the safety of the other officers,
6 you didn't take the precaution to place him in handcuffs;
7 is that your testimony?

8 MR. SCHMIDT: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: No. The patfrisk is for my
11 safety, the officers' safety, the occupants' safety,
12 everyone involved. But again, that doesn't make a
13 determination on whether we put someone into handcuffs to
14 perform the patfrisk. A patfrisk can and is normally
15 performed uncuffed.

16 Q. (By Mr. Slepchuk) It certainly would be safer if you
17 cuffed him first, wouldn't it?

18 A. Not necessarily.

19 Q. You think it would be easier for him to retrieve a
20 weapon if he was handcuffed than if he wasn't?

21 A. It's more important that I would -- that I, being the
22 officer patfrisking him, would become aware of the weapon
23 rather than us attempting to put Mr. Bradley in handcuffs
24 to which he fights and puts his hand in his waistband and
25 takes out a firearm.

1 My knowledge by conducting the patfrisk quicker than
2 attempting to put someone in handcuffs is more beneficial
3 to my safety, officers' safety, and everyone's safety for
4 me to patfrisk and find that weapon before taking time out
5 to put someone in handcuffs.

6 Q. Okay. Now, at the time of this -- you testified that
7 as you're conducting -- you testified as you're conducting
8 the frisk that when you got near the groin area that he
9 that he slammed up against the car trapping your hand; is
10 that correct?

11 A. The waistband area, yes.

12 Q. Okay. And then you told him to calm down?

13 A. Yes.

14 Q. And he backed off. You were able to remove your
15 hand, correct?

16 A. I never said that he backed off.

17 Q. You were able to remove your hand from the area
18 between his pelvis and the car, correct?

19 A. Yes.

20 Q. And I think you described that he had his hands in a
21 fist and he was on the car, something like this so to
22 speak? (Indicating)

23 A. Yes.

24 Q. And you told him to calm down, right?

25 A. Yes.

1 Q. And you were going to continue the patfrisk?

2 A. Attempt it again.

3 Q. Okay. And you claimed that you couldn't complete it?

4 A. Correct.

5 Q. And why is that?

6 A. The patfrisk is larger than just the waistband area.
7 That is a common starting point in a patfrisk. That is
8 based on training and experience the most common area for
9 an individual to have a weapon, a knife, a gun, a heavy
10 object in that area. That's where generally a patfrisk
11 starts, but the patfrisk is of the whole individual
12 themselves that's why.

13 MR. SLEPCHUK: That really didn't answer my
14 question and I move to strike the answer as nonresponsive.

15 THE COURT: The answer will stand.

16 Q. (By Mr. Slepchuk) My question, Officer Moynahan, was
17 he's positioned like this against the car. What prevented
18 you from patfrisking him at that point in time
19 specifically? (Indicating)

20 A. His actions after that.

21 Q. What actions?

22 A. His actions of backing up, stiffening up, his hands
23 in a fist.

24 Q. So is there a requirement that when somebody is being
25 patfrisked, they have to have their hands open like this

1 and not like this? (Indicating)

2 A. There's no requirement for an individual's hands to
3 be in a certain way, but the manner in which someone holds
4 their fists is very indicative of possible action by the
5 person.

6 Q. Okay. How does it affect your ability to pat down
7 someone?

8 A. Balled fists?

9 Q. Yes.

10 A. It just increases your concern.

11 Q. Okay. But it doesn't affect your ability to conduct
12 a patfrisk, correct?

13 A. It can.

14 Q. How?

15 MR. SCHMIDT: Objection.

16 THE COURT: Overruled.

17 Q. (By Mr. Slepchuk) You can answer.

18 A. Because those balled fists change the patfrisk from
19 uncuffed to cuffed.

20 Q. So any time somebody goes like this on a car, that
21 means that you have a right to cuff him? (Indicating)

22 A. No.

23 Q. Okay. So we can agree that the position of
24 somebody's hands, whether like this or like this, has no
25 physical impediment to you patted down their arms or their

1 legs or any other part of their body, correct?

2 (Indicating)

3 A. Again, I disagree.

4 Q. Okay. And you testified that he was tense; is that
5 right?

6 A. Yes.

7 Q. Okay. And again whether somebody who's standing like
8 this is tense, that also has no impact on your ability to
9 pat them down, correct? (Indicating)

10 A. Again, I still disagree.

11 Q. So there's a difference between somebody having a
12 tense arm and a non-tense arm, that's going to make it
13 more difficult for you to feel if there's a solid object
14 like a gun; is that your testimony?

15 A. Yes. If someone was to tensely hold their arms
16 against the interior of their body and they had a knife,
17 which is another dangerous weapon, that would essentially
18 affect my ability to get in between that crevice in
19 between the armpit area to feel that there was a knife
20 because someone was being tense on their body.

21 Q. Okay. But that's not what you testified happened in
22 this case. You didn't say that his arms were like this.
23 You said they were like this on the car? (Indicating)

24 A. That was your question that I answered.

25 Q. Okay. Well, I'm talking about the facts of this

1 case. That he had his hands out like this, we already
2 agreed? (Indicating)

3 A. Yes.

4 Q. They weren't in like this? There's no possibility
5 that he was pinching a knife or something in his armpit,
6 correct? (Indicating)

7 A. Correct.

8 Q. Okay. So there was nothing stopping you from
9 completing that patfrisk at that point in time?

10 A. He needed to be placed in handcuffs in order to have
11 it done.

12 Q. And at this time Mr. Bradley was wearing sweatpants;
13 isn't that right?

14 A. Based on the booking video my recollection seemed to
15 be jogged that he was.

16 Q. And you would agree with me that sweatpants are kind
17 of a lose thin cloth most of the time?

18 A. Not always.

19 Q. They're soft and made of cotton, right?

20 A. Not always.

21 Q. They're not made of denim, sweatpants?

22 A. Not that I know of.

23 Q. Do you remember the type of material that Mr. Bradley
24 was wearing that night?

25 A. No.

1 Q. Would you agree that when dealing with sweatpants or
2 that type of material, soft cotton, that it's fairly easy
3 to feel a solid metal object inside that clothing?

4 A. Yes, to a certain extent.

5 Q. Now, just to be clear, you never saw Mr. Bradley kick
6 Officer Dunn, correct?

7 A. I saw the motion of the kick. I don't believe I saw
8 the actual contact of the kick.

9 Q. So after he was placed in handcuffs, I think your
10 testimony was that Officer Dunn led him over to his
11 cruiser?

12 A. Yes.

13 Q. And this was on the driver's side of the cruiser?

14 A. Ye.

15 Q. You went over and unlocked the door, correct?

16 A. Yes, I believe so.

17 Q. And Officer Dunn was standing essentially right next
18 to you with Mr. Bradley; is that right?

19 A. To my right if I am looking into the interior of the
20 front of the vehicle.

21 Q. Okay. So you're standing roughly a few feet away
22 from him at that point in time?

23 A. Correct.

24 Q. Now, you heard -- you were present when Officer Dunn
25 testified; is that right?

1 A. Yes.

2 Q. You heard his testimony?

3 A. Yes.

4 Q. Did you hear his testimony about Mr. Bradley falling
5 out of his grip and falling into the rear floorboard area
6 of the cruiser? Did you hear that?

7 A. No.

8 Q. Okay. But that didn't happen, correct?

9 A. Not from my point of view.

10 Q. What you saw was Officer Dunn pushing him in his
11 chest; is that right?

12 A. I think I said that Mr. Bradley seemed to be pushing
13 out and Officer Dunn was kind of holding and pushing in.

14 Q. That was you said face to face?

15 A. Yeah, it appeared so. Again, I had an open cruiser
16 door that was kind of blocking my whole field of vision.

17 Q. But you would agree with me that when Mr. Bradley was
18 ultimately secured in the rear of the cruiser, his head
19 was pointing towards the floor?

20 A. Yes.

21 Q. Okay. And he was still handcuffed at that point in
22 time?

23 A. Yes, he was.

24 Q. And are you aware that as a result of this incident
25 Mr. Bradley sustained a busted lip?

1 A. After the incident, yes, I became aware.

2 Q. Okay. Do you have any idea how that happened?

3 A. No.

4 Q. And you didn't take any witness statements from any
5 of the three girls in the car that night, correct?

6 A. No, I did not.

7 Q. Now Mr. Bradley was searched incident to arrest; is
8 that right?

9 A. Was he or?

10 Q. Was he searched?

11 A. I would suspect so by the arresting officers.

12 Q. Okay. Did you see him get searched by them?

13 A. No, I was out on the street.

14 Q. But when you were at the car, did you see Officer
15 Dunn searching Mr. Bradley's person?

16 A. Not to my knowledge. I don't remember.

17 Q. So you didn't see him take his wallet out for
18 instance?

19 A. I'm not sure. Normal procedure when you put someone
20 into the back of a cruiser is to take their cell phone,
21 wallet, if they have a purse, and that goes to the front
22 of the vehicle with usually whatever officer took it on
23 the passenger side. This is to cut down on the chance of
24 someone attempting to make a phone call or retrieve
25 something from a wallet or something like that.

1 Q. Did you see him remove a wallet or a cell phone from
2 Mr. Bradley?

3 A. I don't recall.

4 Q. You're aware that no weapons were found on Mr.
5 Bradley, correct?

6 A. Yes, I am.

7 Q. And you were involved with the search of the vehicle
8 along with your partner; is that right?

9 A. An inventory of the vehicle I believe we were.

10 Q. And you didn't find any weapons inside the car,
11 correct?

12 A. No, we did not.

13 Q. No weapons? Nothing in the center console, right?

14 A. No.

15 Q. Nothing in the area where Mr. Bradley was sitting,
16 correct?

17 A. For weapons?

18 Q. Yes.

19 A. No.

20 Q. The only thing that was found was the bottle of
21 Hennessy?

22 A. An open bottle of Hennessy, yes.

23 Q. I think you testified on direct that you at the time
24 when Officer Dunn was leading Mr. Bradley back to the
25 police cruiser, that you were also concerned about the

1 three other occupants of the car, the three girls; is that
2 right?

3 A. Yes.

4 Q. Did anybody make any attempt to patfrisk any of them?

5 A. I would think my partner who's a female, Tasha
6 Ellison, would have conducted the patfrisk.

7 Q. Did you see her patfrisking any of those women?

8 A. No.

9 Q. And you were asked a little bit about I guess the
10 layout of the back seat of the police cruiser. Do you
11 remember being asked some questions about the seat and the
12 space and stuff like that?

13 A. When?

14 Q. On direct examination do you remember your attorney
15 asking you a couple of questions about the spacing in the
16 back seat of the police cruiser? Do you remember that?

17 A. Yes, that it was tight and I agreed with officer or
18 Lieutenant Dunn's description of the back seat.

19 Q. And I think you said it would have been impossible
20 for you to stomp somebody who was in the back seat?

21 A. That the two of us standing at the open door of a
22 cruiser would be impossible for us to simultaneously stomp
23 someone.

24 Q. Now if somebody was only partially in, let's just say
25 only their torso, they're on their knees and the rest of

1 their legs are outside and just their torso is leaning in,
2 you would agree with me it would be possible to kick
3 somebody in that position?

4 A. If someone is on their knees, their legs are outside
5 of the cruiser and the rest of their body is on the seat,
6 no, I would not be able to.

7 Q. If they were getting up, if they were starting to
8 position themselves up, you would not be able to just
9 stick your foot in the door and kick them?

10 A. No.

11 MR. SLEPCHUK: I have nothing further.

12 THE COURT: Thank you. Anything?

13 MR. SCHMIDT: Briefly, Your Honor.

14 **REDIRECT EXAMINATION**

15 Q. (By Mr. Schmidt) Detective Moynahan, Attorney
16 Slepchuk went over some furtive movements with you a
17 little bit.

18 A. Yes.

19 Q. Now you heard Officer Dunn testify he also saw
20 furtive movements?

21 A. Correct.

22 Q. Now you're approaching the car at the same time from
23 different viewpoints; is that fair to say?

24 A. Yes.

25 Q. Did he communicate to you what he was seeing?

1 A. Yes, and especially with the utterance of him stating
2 again like I had testified to before, it appeared towards
3 Mr. Bradley to keep his hands up that was in conjunction
4 with exactly what I was seeing. My thought, as a police
5 officer, knowing Lieutenant Dunn and his training are the
6 same. We're all police officers. If I'm seeing something
7 and he's continuously seeing something and it causes him
8 to tell someone to put their hands up, that's me in a
9 sense a reassurance that what I'm seeing is exactly what
10 he's seeing. That I'm not seeing something else.

11 Q. So your determination on what you were seeing, those
12 furtive movements, was that dependant or independent of
13 anything that you heard from Officer Dunn?

14 A. Mine was independent.

15 Q. Now you were asked about why couldn't you have
16 patfrisked Mr. Bradley when he was behind the car with his
17 fists balled. Did you feel safe doing it at that point?

18 A. No.

19 Q. When you tried to put handcuffs on Mr. Bradley, was
20 that an easy process?

21 A. No, it was not.

22 Q. Again how long did it take you to get him in
23 handcuffs?

24 A. Forty-five seconds to 60 seconds.

25 MR. SCHMIDT: Nothing further.

1 MR. SLEPCHUK: Just briefly, Your Honor.

2 **RECROSS-EXAMINATION**

3 Q. (By Mr. Slepchuk) Officer Moynahan, have you had a
4 chance to review the arrest report in this case?

5 A. Yes.

6 Q. And as far as you know, is there anything inaccurate
7 in that report as to what happened?

8 A. I don't believe so.

9 Q. Would you agree --

10 MR. SCHMIDT: Objection.

11 THE COURT: Basis?

12 MR. SCHMIDT: It's not his report.

13 THE COURT: Sustained. Rephrase the question.

14 The question and answer are stricken so just rephrase the
15 question.

16 Q. (By Mr. Slepchuk) You testified that Officer Dunn
17 told Mr. Bradley to show his hands; is that right?

18 MR. SCHMIDT: Objection. We're outside.

19 THE COURT: I'll allow it. Go ahead.

20 THE WITNESS: In some form, yes.

21 Q. (By Mr. Slepchuk) Okay. Would you agree with me
22 that no where in the arrest report does it say anything
23 about Officer Dunn telling Mr. Bradley to show his hands?

24 A. Correct.

25 MR. SLEPCHUK: Nothing further.

1 THE COURT: Anything, Attorney Schmidt?

2 MR. SCHMIDT: No, Your Honor.

3 THE COURT: Thank you. You can step down.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Any further witnesses?

6 MR. SCHMIDT: No, Your Honor.

7 THE COURT: Defense rest?

8 MR. SCHMIDT: We do.

9 THE COURT: All right.

10 MR. SLEPCHUK: If I could have just one moment?

11 THE COURT: Yes.

12 MR. SLEPCHUK: Your Honor, at this time I'd like
13 to recall Mr. Bradley to the stand in rebuttal.

14 THE COURT: All right. Sidebar.

15 (Sidebar conference.)

16 THE COURT: Okay. What's your proffer that the
17 testimony is going to be regarding, the general area? You
18 don't have to be too specific.

19 MR. SLEPCHUK: Very briefly on the issue of
20 whether or not he had a wallet that night. There was
21 testimony that I heard for the first time that Officer
22 Dunn seized his wallet at the car.

23 THE COURT: So on the wallet issue.

24 MR. SLEPCHUK: Very brief.

25 THE COURT: All right.

1 MR. SAINT LAURENT: Your Honor, may I be heard?
2 I believe there was previous testimony that the wallet was
3 in his possession. That when asked for ID, the wallet was
4 already in his possession in front of the cruiser. I
5 don't think --

6 THE COURT: That's what Officer Dunn said.

7 MR. SLEPCHUK: Yes.

8 THE COURT: Is that what you're talking about,
9 the first time you heard it was from Officer Dunn?

10 MR. SLEPCHUK: Correct.

11 THE COURT: So Officer Dunn did testify about
12 that.

13 MR. SAINT LAURENT: I'm sorry. I thought he
14 said this was the first time.

15 THE COURT: No, not with Moynahan.

16 MR. SLEPCHUK: I'm talking about Dunn.

17 THE COURT: I do remember Dunn saying that about
18 the wallet.

19 MR. SAINT LAURENT: Okay.

20 THE COURT: Very good. I mean, I don't want to
21 limit you to other rebuttal. I just want to make sure you
22 give me a general outline of what's going on.

23 MR. SLEPCHUK: That's it.

24 THE COURT: All right.

25 (End of sidebar conference.)

1 THE COURT: So, ladies and gentlemen, the
2 defense has rested which means they are calling no further
3 witnesses. Now it goes back that the plaintiff may offer
4 a rebuttal case if they would like. This goes back and
5 becomes the plaintiff's case and the plaintiff has asked
6 to put on a witness as their rebuttal case.

7 Go right ahead.

8 MR. SLEPCHUK: Daniel Bradley please.

9 THE COURT: Mr. Bradley, when someone takes the
10 witness stand and then leaves and comes backs, I need to
11 remind that person you remain under oath.

12 THE WITNESS: Okay.

13 THE COURT: Do you understand?

14 THE WITNESS: Yes.

15 THE COURT: All right.

16 **REBUTTAL DIRECT EXAMINATION**

17 Q. (By Mr. Slepchuk) Mr. Bradley, did you hear when
18 Officer Dunn testified that he took your wallet from you
19 when you were at the car, at the police cruiser that is?

20 A. Correct.

21 Q. Did you have a wallet on you that night?

22 A. No.

23 Q. And remind us when he asked you for your ID? When
24 you provided your ID?

25 A. I was in the rear passenger's seat after they ran her

1 license and he returned to the car.

2 MR. SLEPCHUK: Thank you. I have nothing
3 further.

4 THE COURT: All right. Any questions?

5 MR. SAINT LAURENT: Nothing, Your Honor.

6 MR. SCHMIDT: No, Your Honor.

7 MR. COYLE: No, Your Honor.

8 THE COURT: Thank you. Anything further from
9 the plaintiff?

10 MR. SLEPCHUK: No, Your Honor, but I do have a
11 motion.

12 THE COURT: All right. Both sides rest?

13 MR. SCHMIDT: Yes, Your Honor.

14 MR. COYLE: Yes.

15 THE COURT: All right. Ladies and gentlemen,
16 I'm going to excuse you while I talk to each side about
17 legal issues and this will in preparation for closing
18 arguments.

19 I don't know how long or short this might be but I'd
20 like to move into the closing arguments as soon as we can
21 but sometimes there's legal issues that take longer to
22 deal with.

23 So your lunch might be here. We don't know. So it
24 depends how long this takes. If I can resolve all these
25 issue fairly quickly, I'm going to ask you to come back

1 and we'll do closing arguments, which would take certainly
2 no longer than an hour of closing arguments. Then I'm
3 going to have you go to lunch and I'll make a
4 determination if the jury instructions can be put together
5 to be able to give them to you today or whether you come
6 back tomorrow morning and start the jury instructions.

7 So right now we're going to take a break. All right?
8 All instructions apply. Don't talk about the case even
9 though the case is over. Don't begin to talk about
10 anything to do with the case and all the instructions that
11 I always give you all apply. Thank you.

12 **(The jury left at 12:13.)**

13 THE COURT: All right. There's motions?

14 MR. SLEPCHUK: Yes, Your Honor. I've got a
15 motion for judgment as a matter of law.

16 THE COURT: On what issue, what count, and
17 against what defendant?

18 MR. SLEPCHUK: Well, Your Honor, it's for all
19 counts, but I won't waste the court's time with arguing
20 every single fact at this point but I'd like to focus on
21 two points which I think deserves discussing right now.

22 THE COURT: All right.

23 MR. SLEPCHUK: With respect to, you know, the
24 first thing is the traffic stop. Obviously we've got
25 disputed testimony so I'll move on from that. But beyond

1 that, clearly under the law once the police have
2 determined whether or not they're going to issue a
3 citation, whether or not a car is going to be towed,
4 that's the end of the inquiry. The police cannot detain
5 people in a car further than is reasonably necessary to
6 effecutate the purpose of the stop.

7 The testimony from the defendants themselves is at
8 the time they re-approached that car, they had already
9 determined -- they had already made whatever calls they
10 needed to make, that that car was going to be towed and
11 that Ms. Robinson was going to be issued a citation. That
12 is it. The inquiry -- the detention needs to stop at that
13 point in time but that's not what happened. Instead there
14 was further detention.

15 Now Mr. Bradley testified, and Ms. Tucker previously
16 corroborated, that at this point they asked him for his
17 identification, which would be a violation of Article 14.
18 The defendants deny that. I understand that. But even if
19 we take their word for it, even if we accept their
20 testimony, it's still a violation.

21 Mr. Bradley and everybody in that car should have
22 been given the opportunity to leave because the car was
23 going to be towed. There was no longer any legitimate
24 purpose to keep them in that car. That's what they did,
25 and at some point later that's when they claimed they see

1 these movements and move him out of the car. So right
2 there, from my position, no reasonable jury could find in
3 the defendants' favor on that issue with respect to
4 seizure and length of the stop.

5 THE COURT: I thought the testimony was that
6 calls were made to a rental agency; the rental agency
7 couldn't be contacted. They went back to the car.
8 Moynahan arrived when Dunn was going to the area where Mr.
9 Bradley was seated, and that's when it was this
10 re-approach that was described and that's when the
11 testimony was, at least from the police perspective, they
12 saw certain movements.

13 MR. SLEPCHUK: You're right, but it's not when
14 they're approaching. It's not when they're walking up to
15 the car. They've already gone up to the car. They've
16 already positioned themselves around this car and they're
17 still shining their flashlights in it.

18 There's a period of continued detention at this
19 point. Now it wasn't stated exactly how long. I don't
20 know if anybody was timing it, but certainly it didn't --
21 these observations were not made on the re-approach. That
22 might be different. They're made at some further point in
23 time when they're already surrounding this car. They
24 should have been allowed to leave as soon as they got up
25 to that car and that's not what happened, and that leads

1 me to --

2 THE COURT: What do you mean as soon as they got
3 up to the car? Before they did all the rental agreement
4 inquiry?

5 MR. SLEPCHUK: They already did. That had
6 already been done at this point. The testimony was that
7 they initially got her license and the rental agreement.
8 They went back to the cruiser and they ran it all.

9 When Officer Moynahan gets back or arrives, he's
10 speaking to Officer Dunn and they've already made the
11 determination, hey, we ran everything. We called the
12 rental agency. This car needs to be towed. That
13 determination is made at that point in time.

14 So what needs to happen next -- again, it's a routine
15 traffic stop up to this point. The officers under Article
16 14 and the Fourth Amendment cannot detain any further than
17 reasonably necessary. Their duty is to go back to that
18 car to say, sorry, guys. The car is being towed. You're
19 on your own. That's what needs to happen and that's not
20 what happened.

21 THE COURT: And that happened before or after
22 Moynahan arrives --

23 MR. SLEPCHUK: That happened before.

24 THE COURT: -- in your view?

25 MR. SLEPCHUK: They already made -- first it was

1 Officer Cicero and Dunn, they're the first ones there.
2 They get the license and the rental agreement. They come
3 back. They're in their cruiser making the calls doing the
4 RMV look up. They've already made the determination what
5 the status is that they have to tow this car.

6 When Officer Moynahan comes, they're still in the
7 cruiser. He speaks to them at the cruiser. They say,
8 hey, we got to tow this thing. So the determination is
9 made at that point in time.

10 THE COURT: But how much time elapsed? It
11 didn't seem from the testimony that very much time
12 elapsed.

13 MR. SLEPCHUK: It may not have been a lot of
14 time but that is irrespective. It doesn't matter.

15 THE COURT: No, it's quite respective. I mean,
16 is this ten seconds? Thirty seconds? Two minutes? Other
17 police are arriving. Was it happening -- it seemed to
18 have happened about the same time that they were ready to
19 go approach the car. It seems to me that's the reason
20 they -- the evidence supports that's why they were
21 approaching the car. This is getting towed. Everybody's
22 got to go.

23 MR. SLEPCHUK: I'm not saying they didn't have
24 the right to re-approach the car. They did. But when
25 they get to the car, the next step is to tell them we have

1 to tow the car. You have to leave.

2 THE COURT: Right.

3 MR. SLEPCHUK: That didn't happen. They didn't
4 say that. They continued detaining the car. They
5 continued monitoring the car, standing by the car.

6 THE COURT: Who's they?

7 MR. SLEPCHUK: Officer Moynahan, Officer Cicero,
8 Officer Dunn, and Officer Ellison. That was the testimony
9 that all four of them re-approached the car, surrounded
10 the car, were shining their flashlights into the car, and
11 at some point after that, after they positioned
12 themselves, they claim that they see these observations
13 and then there's the exit order.

14 My point is if they had done what they were supposed
15 to do and got up to that car and said to everybody, the
16 car is being towed, good-bye, then these supposed
17 movements -- again we deny them -- but would have never
18 been made. There never would have been an exit order and
19 we wouldn't be here today. That's the argument with
20 respect to the prolonged detention. The continued --

21 THE COURT: I'm really not following you. There
22 would have had to have been an exit order.

23 MR. SLEPCHUK: Correct, but not a patfrisk.

24 THE COURT: Well, there might have been a
25 patfrisk if you believe the observations of the police.

1 MR. SLEPCHUK: But if the exit order was given
2 right away --

3 THE COURT: What do you mean right away?

4 MR. SLEPCHUK: When they came up to the car.

5 THE COURT: Your scenario is this is a rental,
6 everyone out of the car. Bye?

7 MR. SLEPCHUK: Yes.

8 THE COURT: I don't see that that's -- there's
9 no time frame that was laid out in the testimony. The
10 police went back -- their testimony was they tried
11 contacting the rental agency because there could have been
12 someone there. They could have gotten in touch with the
13 rental agency so that took up some time to verify.

14 MR. SLEPCHUK: That's not my issue.

15 THE COURT: All right.

16 MR. SLEPCHUK: My issue is only when they come
17 back to the car --

18 THE COURT: So when they come back to the car,
19 Moynahan is there with them?

20 MR. SLEPCHUK: Yes.

21 THE COURT: And you're saying they come back to
22 the car, they shouldn't have been looking at the
23 occupants. They just should have said everyone go?

24 MR. SLEPCHUK: Correct.

25 THE COURT: All right. That's denied.

1 MR. SLEPCHUK: Okay. Then the next question is,
2 is the exit order lawful? Again we need reasonable
3 suspicion of a safety threat.

4 Now, Mr. Bradley testified he didn't make any
5 movements. Both the girls in the previous testimony said
6 they didn't make any movements. Officer Cicero is
7 standing right there and just in a position as anybody
8 else to see anything and he didn't see any movements.

9 Officer Moynahan he didn't see any reaching out of
10 sight, anything like that. He saw him not tucking down
11 but just leaning towards the center of the vehicle. I
12 would argue that that, even if believed, is completely
13 insufficient to warrant an exit order.

14 Their best argument is Officer Dunn that he observed
15 this shuffling from side to side and reaching towards the
16 doorjamb. A point I want to make about that is it's
17 against the weight of the evidence. You have all the
18 other witnesses who deny seeing it. That's one point. But
19 when you look at the evidence as a whole, it defies
20 reason. There was nothing found there. There was no
21 weapon. There was no contraband found on Mr. Bradley's
22 person or in that area.

23 THE COURT: But the legitimacy and the legality
24 of a patfrisk is not based upon if something was or was
25 not found. That would be absurd.

1 MR. SLEPCHUK: Certainly.

2 THE COURT: It's based upon the observations
3 themselves and here there was testimony regarding the
4 observations which could be fairly categorized as minimal,
5 minimal, but not nonexistent. There were some indicia,
6 some of the criteria were mentioned, as I said minimal.
7 So why wouldn't that be a jury issue?

8 MR. SLEPCHUK: Your Honor, I'm preserving my
9 rights.

10 THE COURT: Good enough. Okay. So that's
11 denied.

12 MR. SLEPCHUK: I got to make the argument.

13 THE COURT: Denied.

14 MR. SLEPCHUK: Again with respect to the use of
15 force, I know it's disputed but I think when you look at
16 the evidence as a whole, the defendants have offered zero
17 reasonable explanation as to how Mr. Bradley got his lip
18 hurt, how he had injuries to his back. And I think that
19 in light of the weight of the evidence, his testimony and
20 the photographs and any lack of reasonable explanation
21 from defense as to how these things happened, that no
22 reasonable juror could conclude that what happened to him
23 was justified. That would be my argument with respect to
24 that.

25 THE COURT: Again based upon the evidence given

1 by the defense it's up for the jury.

2 MR. SLEPCHUK: Understood, Your Honor.

3 THE COURT: For purposes of your motion, that's
4 denied.

5 THE COURT: Any motion?

6 MR. COYLE: Your Honor, I would renew my motion
7 for judgment as a matter of law that I articulated in the
8 plaintiff's case.

9 THE COURT: All right. As to Mr. Cicero,
10 correct?

11 MR. COYLE: Correct, Your Honor.

12 THE COURT: Mr. Cicero previously it was allowed
13 the judgment as a matter of law on Counts 5, 6, and 7.
14 Motions for judgment as a matter of law are now allowed on
15 Count 8, Count 9, Count 10, and Count 11.

16 I need -- let's now talk about Counts 1 and Counts 2
17 as to Cicero. In each of your verdict forms there is no
18 specificity regarding a theory as to what the unlawful
19 restraint was, as to what the violation was.

20 In other words, was it effectuating the traffic stop
21 or was it assaulting someone and arresting someone? So
22 the verdict forms don't lay it out.

23 Does it matter in each parties' perspective what the
24 action was to violate either state-given rights or
25 federally-given rights?

1 The reason why I bring that up for Officer Cicero is
2 I find only the theory of the traffic stop is applicable
3 to Mr. Cicero, but your verdict form just says unlawful
4 seizure which could be anything and so how do you plan to
5 deal with that?

6 Another way to ask the question is does there need to
7 be unanimity about jury on the theory of a violation?
8 Since you can say a violation could have been the traffic
9 stop, it could have been the use of force to take Mr.
10 Bradley out of the car, it could have been the punching of
11 him. It could have been a number of things.

12 So does there need to be unanimity on each of the
13 potential theories of the violation of federal or state
14 law which is I guess another way of getting to this
15 question regarding Cicero? Because I'm telling you right
16 now my decision on Cicero is the required finding is
17 allowed on Counts 1 and 2 as well as to any theory except
18 for the traffic stop. That survives. That's the only
19 theory that survives on Cicero.

20 But if we're splicing and cutting so finally the
21 theory, we're using the complaint against Cicero as an
22 example, we need to talk more generally about how it
23 applies to everyone and how we instruct the jury and
24 create a verdict form.

25 MR. SLEPCHUK: I agree. I think that if we get

1 into every -- there are a lot of theories --

2 THE COURT: Right.

3 MR. SLEPCHUK: -- and I think the verdict form
4 is going to get very messy and complicated. Perhaps just
5 an unanimity instruction on the theory is sufficient to
6 cure that. You can instruct the jury that with respect to
7 Officer Cicero the only --

8 THE COURT: So that we would like have a jury
9 form that has boxes, do you find -- if you found there's a
10 violation as to... you pick the name of an officer,
11 provide boxes that they could check that might be the
12 violation?

13 Of course, for Mr. Cicero it would only be the
14 traffic stop. That would be the only possibility that
15 remains for him. Something to think about for both
16 sides.

17 MR. SLEPCHUK: Maybe with respect to --

18 THE COURT: I'm not saying we are there right
19 now but something to think about.

20 MR. SLEPCHUK: I understand.

21 THE COURT: What do you think?

22 MR. COYLE: If I can make a couple comments,
23 Your Honor. You didn't address Count 4 which is --

24 THE COURT: I did or did not?

25 MR. COYLE: I'm sorry?

1 THE COURT: I did not?

2 MR. COYLE: Which I think I would argue the
3 motion should be allowed.

4 THE COURT: I did not address Count 4?

5 MR. COYLE: If you did, I missed it. That's the
6 false arrest claim relating to the arrest and charging of
7 Mr. Bradley with a crime. That was obviously done based
8 on the probable cause.

9 THE COURT: I'm sorry, if I didn't address that.
10 Let me rephrase this. All counts against Cicero for
11 judgment as a matter of law is allowed as to all counts
12 except one and two, and one and two only survive on the
13 theory of the stop, the traffic stop. That would be the
14 seizure, the pulling the car over.

15 MR. COYLE: I guess the argument I would make,
16 Your Honor, and I don't have a citation here to offer up,
17 is whether or not, first of all, Mr. Bradley has a right
18 -- a standing even to contest the traffic stop.

19 If you say that he does, in essence, I guess what
20 you're saying is that any time a car full of people is
21 stopped and the police officer was mistaken in whether he
22 reasonable suspicion for a traffic violation, that the
23 whole car full of people can all sue that police officer
24 for federal civil rights violation and that just doesn't
25 seem to be a result that --

1 THE COURT: Well, here let's be clear. Here the
2 evidence is not that it was mistaken. Here the plaintiff
3 has offered evidence to say we didn't do it. We didn't go
4 through a stop light, a stop sign.

5 MR. COYLE: That doesn't mean they weren't
6 mistaken. It's clearly disputed. I'll acknowledge that,
7 but the theory that's being offered here is if it isn't
8 valid, if there isn't the reasonable suspicion of the
9 traffic violation, it's a federal civil rights claim that
10 everybody in the car can bring against that police
11 officer.

12 THE COURT: Why wouldn't a pretextual stop give
13 support for a federal lawsuit if that was true?

14 MR. COYLE: It probably would be but I don't
15 think there's any evidence here or even any allegation
16 that it was pretextual. They're claiming that there
17 wasn't -- I mean, maybe you would say there's no
18 distinction between untrue and pretextual, but there is no
19 evidence of a basis for pretext.

20 THE COURT: Well, there's very little
21 difference. I mean, pretextual was they had something
22 else in mind and they wanted to use the traffic stop to
23 get or allow them to do something else.

24 MR. COYLE: There's certainly no evidence of
25 that or anything from which that could be inferred I would

1 offer.

2 THE COURT: All right.

3 MR. COYLE: So those would be my thoughts. Also
4 again I can't argue specifically but a lot of the case law
5 that we're talking about here in terms of passengers in
6 cars is all state law decided under Article 14 of the
7 state constitution.

8 THE COURT: Yeah.

9 MR. COYLE: I'm not sure --

10 THE COURT: I hear what you're saying.

11 MR. COYLE: And I'm not sure it's applicable to
12 a 1983 claim.

13 THE COURT: I hear what you're saying and I
14 think you're starting to formulate an argument that has
15 some substance to it, but right now your motion is
16 denied.

17 MR. COYLE: Thank you.

18 THE COURT: And the claims survives as to Cicero
19 relative to traffic stop only, Counts 1 and 2. All right.

20 MR. COYLE: Thank you, Your Honor.

21 THE COURT: What does the defense think
22 regarding unanimity on a theory of the violation of
23 federal law or state right? You know, this issue of a
24 traffic stop in and of itself could be a violation;
25 punching someone could be a violation; yanking them out of

1 a car could be a violation.

2 Neither of your jury instructions talk about
3 unanimity as to asking the jury to say here's what we
4 think created the violation. I'm not saying there should
5 be. I'm just asking what your position is did you think
6 about that and do you think it's not necessary? The only
7 reason, quite frankly, this is coming up is because of the
8 way I'm splicing this as to Officer Cicero's conduct.

9 MR. SAINT LAURENT: Could we just have a moment
10 please?

11 THE COURT: Sure.
12 (Off-the-record discussion.)

13 MR. SAINT LAURENT: Your Honor, we've come to an
14 agreement that we would like it to be parsed out as far as
15 the different levels I guess of the detention. So the
16 traffic stop, the patfrisk. Well, first the exit order,
17 the patfrisk, but we'd like those to be special questions.

18 THE COURT: Special questions on the verdict
19 form.

20 MR. SAINT LAURENT: Yes.

21 THE COURT: You guys better call back to the law
22 department and get someone busy drafting one.

23 MR. SCHMIDT: We all have concern, Your Honor,
24 with regard to his standing to contest the stop. Also my
25 client had nothing to do with that decision and so we have

1 that issue as well.

2 THE COURT: Your client had nothing to do with
3 the stop but your client is in the middle of the contested
4 issues about all the other things.

5 MR. SCHMIDT: He's fair game for everything
6 else.

7 THE COURT: Yeah. All right.

8 MR. SAINT LAURENT: Your Honor, just note my
9 objection for my client. We also agree the plaintiff does
10 not have standing for the stop. His rights were first --
11 he first comes in contact with my client when the exit
12 order is issued for him. We don't believe he has
13 standing.

14 THE COURT: So the defense theory in a nutshell
15 is there is no potential violation of federal or state
16 rights by a traffic stop that was effectuated without
17 merit?

18 MR. SAINT LAURENT: Not for Mr. Bradley, no.
19 For the driver of the vehicle, yes.

20 THE COURT: For the driver of the vehicle.

21 MR. SAINT LAURENT: For the driver of the
22 vehicle, yes, if she were to bring a claim if that's what
23 the facts point out to be.

24 THE COURT: So for an occupant.

25 MR. SAINT LAURENT: For an occupant when they

1 are first addressed in an unconstitutional manner, then --

2 THE COURT: So an occupant is in a car -- and
3 this isn't this case. I'm not saying this is in this case
4 -- but police pull over a car. There's no stop sign.
5 The police pull over the car for no reason. There's an
6 occupant in that car. The occupant has no claim you're
7 stating for a violation of federal or state rights --

8 MR. SAINT LAURENT: Correct.

9 THE COURT: -- based on the stop alone?

10 MR. SAINT LAURENT: Unless they are addressed in
11 an unconstitutional manner.

12 THE COURT: All right. I'll look at that.

13 MR. SLEPCHUK: I cited case law to the contrary.
14 It's on page 4 of my proposed jury instructions. It's
15 footnote number 5.

16 THE COURT: Okay.

17 MR. SLEPCHUK: I refer to United States v. Brown
18 cited Delaware v Prouse, also Brendelin v. California, all
19 United States Supreme Court cases.

20 THE COURT: What does it say?

21 MR. SLEPCHUK: "When a passenger in vehicle
22 stopped for traffic violation is seized and may challenge
23 constitutionality of stop," so I think it pretty clear --

24 THE COURT: When a passenger is?

25 MR. SLEPCHUK: "Passenger in vehicle stopped for

1 traffic violation is seized and may challenge
2 constitutionality of stop." I mean this is going back to
3 1979. This is pretty well established case law.

4 THE COURT: I'm going to step off the bench
5 right now and take a quick look and be right back. I
6 think you're all going to be doing closings really soon so
7 I don't want to leave you with the misimpression that
8 that's not going to happen.

9 MR. SLEPCHUK: Understood, Your Honor. Thank
10 you.

11 THE CLERK: All rise.

12 **(A recess was taken until 1:44.)**

13 THE COURT: All right. I've followed down the
14 case law that you cited regarding the occupant of the
15 motor vehicle and find that plaintiff is correct. So,
16 yes, federal civil rights a violation do exist for the
17 occupants. I'm sure you looked at the same case so that's
18 that.

19 The next issue is I had time to look through cases
20 that we could find regarding unanimity in this context and
21 recognize that unanimity would be required in much, much
22 more greater range of cases in a criminal context and
23 sometimes in the civil context. And then I don't -- I do
24 not plan at this point after looking at some of the law on
25 it to include what would be a special interrogatory

1 verdict form.

2 A special interrogatory verdict form lists out all
3 those questions asking for jurors to explain and
4 checkboxes, et cetera. It's going to remain general which
5 is exactly consistent with both the proposals from defense
6 and plaintiff that you had proposed.

7 There will be a change relative to Officer Cicero and
8 that's going to be just in the language. So Officer
9 Cicero's language on the applicable counts will simply say
10 by conducting a traffic stop. So he will stand different
11 than the others, and then there will be a limiting
12 instruction that tells the jury not to draw any
13 conclusions one way or another if there are different
14 counts or different types of language regarding each of
15 the individuals involved.

16 MR. SCHMIDT: You Honor, do you plan to address
17 the fact that Officer Moynahan was not involved in the
18 traffic stop?

19 THE COURT: Yeah, that's a good point. Perhaps
20 we can talk about that after closings when we are talking
21 about how we're going to work on the verdict form without
22 it becoming too long of a special interrogatory form. All
23 right. Okay.

24 So ready for closings?

25 MR. SCHMIDT: Yes.

1 THE COURT: Very good.

2 MR. SLEPCHUK: Your Honor, I do have a few aids
3 I'll put on an easel when I get to my closing. I've shown
4 them to defense counsel and I don't think they have any
5 issues.

6 MR. SCHMIDT: We don't.

7 THE COURT: You can set it up around the side of
8 the table?

9 MR. SLEPCHUK: Probably right here.

10 THE COURT: Is that okay with you?

11 MR. SCHMIDT: We have seen it, Your Honor.
12 That's fine.

13 MR. COYLE: If you can just keep it so we can
14 see the jurors, I'd appreciate that.

15 THE COURT: Perhaps you can put it in the middle
16 of the room.

17 MR. SLEPCHUK: I can put it just over here
18 somewhere.

19 THE COURT: If at any point any defense wants to
20 see it, they can move to take a look at it.

21 **(The jury entered at 1:48.)**

22 THE COURT: Ladies and gentlemen, you can be
23 seated.

24 During that break, which turned into the lunch break,
25 did everyone follow my instructions not to discuss the

1 case and all the other instructions that apply?

2 All right. The jury answered affirmatively. They
3 remain fair and impartial. All right.

4 There's going to be closing arguments now. The
5 closing arguments probably, all of them together, will
6 probably be in the range of an hour and then what will
7 happen is that will be the end of your day.

8 So it worked out that you having lunch during this
9 time allowed us to take care of what we needed to take
10 care of for the closing arguments to occur.

11 Now what needs to occur is there needs to be a
12 conference between myself and the lawyers and the
13 perfection and drafting and redrafting of jury
14 instructions, which are quite lengthy.

15 The jury instructions will probably themselves be
16 close to an hour for me to read and you will get a copy of
17 them. So that takes quite a bit of time and so that's why
18 I'm going to let you go for the day after the closing
19 arguments to give us that time to work on that so we can
20 pick up in the morning and get right to this. All right.

21 Whenever the parties are ready, you can go right
22 ahead.

23 MR. SAINT LAURENT: Thank you, Your Honor.
24
25

1 **CLOSING ARGUMENT BY MR. SAINT LAURENT**

2 MR. SAINT LAURENT: Good afternoon, ladies and
3 gentlemen. On behalf of myself and my client, Lieutenant
4 Dunn, I'd like to again thank you for serving on this
5 jury.

6 At the beginning of this case when Your Honor
7 questioned you, he asked whether you would be fair and
8 impartial and whether you would hold the plaintiff to his
9 burden of proving beyond -- I'm sorry, by the
10 preponderance of the evidence -- meaning it is more likely
11 than not -- that the plaintiff's allegations in fact
12 happened, proving beyond -- proving by a preponderance of
13 the evidence that Officer Moynahan, Officer Dunn, and
14 Christian Cicero in fact violated plaintiff's
15 constitutional rights.

16 Additionally, ladies and gentlemen, I stood before
17 you yesterday and asked that you evaluate the testimony
18 with common sense and view the evidence through the lens
19 of every day experiences. I am calling on you now to
20 abide by those promises.

21 Let's look at the evidence presented over the last
22 two days and see why the plaintiff has failed to prove his
23 case by a preponderance of the evidence.

24 You served -- you've heard from several witnesses
25 yesterday and this morning. You heard first from

1 Christian Cicero. Officer Cicero told you that his
2 interactions with the plaintiff were very limited.

3 Officer Cicero stated that he didn't see Mr.
4 Bradley's removal from the vehicle. He didn't see any
5 alleged stomping on Mr. Bradley's back, and I'd suggest to
6 you that that did not occur.

7 He didn't see Daniel Bradley's foot strike Officer
8 Dunn's shin because he was on the other side of the rental
9 vehicle. But you did hear Officer Cicero testify that he
10 saw a brief struggle between Lieutenant Dunn, Officer
11 Moynahan, and Daniel Bradley as the officers were
12 attempting to handcuff him.

13 Even from the other side of the stopped rental car,
14 Officer Cicero could tell that Daniel Bradley was not
15 complying with the officers' attempts to search him and
16 handcuff him.

17 Next you heard from my client Lieutenant Dunn. You
18 heard Lieutenant Dunn tell how he and his partner saw the
19 car the plaintiff was seated in speed past them, how they
20 pulled behind the car and then observed it run a stop
21 sign. There was no secret motive to this stop.

22 In fact, you heard the transcript read it from the
23 driver of the car, Ms. Daeshavana Robinson and one of the
24 passengers Savon Tucker. You heard Ms. Robinson admit
25 herself that she was unsure if she stopped at the stop

1 sing at the corner of Northampton and King Street.

2 It is clear from the testimony of the officers the
3 only reason they stopped the car was they observed traffic
4 stop violations.

5 You heard Lieutenant Dunn tell you that when he
6 approached the car the second time, his plan was to
7 release the passengers and have the car towed. This plan
8 was foiled by the Lieutenant Dunn's observations of Mr.
9 Bradley's movements in the car.

10 You heard Lieutenant Dunn testify that the movements
11 he witnessed were consistent with someone trying to
12 retrieve or place a firearm by the doorjamb during a
13 traffic stop.

14 Mr. Bradley's actions transformed this routine
15 traffic stop into something entirely different. This
16 seems to be the theme of the evening of August 26, 2015.
17 Mr. Bradley's actions throughout the night consistently
18 escalated the situation when Lieutenant Dunn removed
19 Bradley from the car to perform a patfrisk. It was again
20 Mr. Bradley's actions that led the officers to attempt to
21 handcuff him.

22 Lieutenant Dunn explained to you that Mr. Bradley's
23 actions heightened his awareness and his suspicion that
24 Mr. Bradley was in fact concealing a weapon or had put a
25 weapon down on the side of the car.

1 Mr. Bradley's continued refusal to comply with the
2 orders given to him by Lieutenant Dunn and Officer
3 Moynahan, his continued resistance and his decision to
4 kick Lieutenant Dunn escalated the stop again at this
5 point to the point where handcuffs were needed to restrain
6 him.

7 In addition to the handcuffs being used at the point
8 that Officer Dunn was kicked in the shin, Mr. Bradley was
9 placed under arrest. Again, an escalation as a result of
10 Mr. Bradley's actions.

11 Now Mr. Bradley testified about his alleged injuries.
12 His bloody lip which he claims he sustained from a punch
13 to the face, his bruised back which he claims he sustained
14 from being stomped on. I'd suggest to you those injuries
15 are not consistent with the actions that Mr. Bradley
16 claims the officers engaged in.

17 I'd suggest to you that those injuries are consistent
18 with someone that resisted lawful directives from an
19 officer, resisted arrest, and was forced to be pushed into
20 the rear of the cruiser.

21 Lieutenant Dunn told you that specific uses of force
22 were justified based on Mr. Bradley's actions. Lieutenant
23 Dunn told you that Mr. Bradley escaped his grasp while he
24 was trying to place him into the cruiser as a result of
25 his violent movements.

1 Lieutenant Dunn has been transparent and honest
2 throughout this criminal and civil process. He explained
3 to you the levels of force and he explained to you exactly
4 why he felt he was obligated to use those levels of force.
5 Lieutenant Dunn's testimony was consistent throughout and
6 I'd suggest to you that is because he has nothing to hide.

7 Dr. Eli Silverman testified to you on the screens in
8 front of you how the actions of the officers were in step
9 throughout the entire process with acceptable police
10 practices.

11 He testified how the officers were correct in using
12 some level of pressure or force when searching Mr. Bradley
13 including the groin area; how the manipulation, if you
14 will, of the clothing might lead to an uncomfortable
15 situation because it's warranted to search around the
16 genitals for concealed weapons.

17 Dr. Silverman testified regarding the dangers the
18 officers face on the daily during traffic stops like the
19 one that Officer Moynahan and Officer Dunn encountered and
20 Officer Cicero encountered on August 26, 2015.

21 The evidence shows that Lieutenant Dunn never punched
22 Mr. Bradley. Lieutenant Dunn never kicked Mr. Bradley,
23 and Mr. Bradley was in no way the victim of officer
24 misconduct.

25 The events that unfolded on August 26, 2015 were the

1 result of the actions of one man and that man is Mr.
2 Bradley. His continued insistence on escalating the
3 situation led to this today.

4 Shortly you're going to be given this case and asked
5 to retire to the jury room for deliberations. You will be
6 given all the exhibits admitted throughout the trial. I
7 ask that you take your time and review the evidence, refer
8 to the notes you diligently took throughout the past two
9 days, and evaluate the case critically; weigh the
10 credibility of the witnesses and think whose testimony has
11 been consistent throughout the entire process.

12 The credibility of the witnesses is yours to
13 determine. Ask yourself was Mr. Bradley forthright?
14 Assess his demeanor; evaluate his behavior; consider what
15 Mr. Bradley has to gain by bringing this action.

16 After careful consideration I trust you will come to
17 the conclusion that the officers did not violate Mr.
18 Bradley's constitutional rights. My client Lieutenant
19 Dunn did nothing wrong and you will return a verdict in
20 the defendants' favor. Thank you.

21 MR. COYLE: May I, Your Honor?

22 THE COURT: Yes.
23
24
25

1 **CLOSING ARGUMENT BY MR. COYLE**

2 MR. COYLE: On behalf of Christian Cicero I'd
3 also thank you for your willingness to perform this
4 important task. Jury duty is often is viewed as some sort
5 of curse or something to be avoided, and unless good
6 people are willing to do that, the whole system fails to
7 work. So we do appreciate your willingness to be here and
8 we appreciate the attention that you have shown throughout
9 this trial.

10 As you know I represent Christian Cicero and his
11 involvement in this matter and the claims against Officer
12 Cicero the court will instruct you are limited to his
13 actions as they relate to the traffic stop. There's the
14 actual stopping of the vehicle after it had gone through
15 the intersection of Northampton Street and King Street.

16 The evidence which you have heard are essentially the
17 uniformed versions that were offered by Officer Cicero and
18 Lieutenant Dunn that their attention was drawn to this
19 vehicle on Northampton Street because it was going at what
20 appeared to be an excessive rate of speed.

21 They told you that they didn't end up citing it for
22 that because they didn't have the opportunity to clock it
23 or have any basis for actually asserting speed greater
24 than the speed limit, but certainly it attracted their
25 attention and because of observing that, they then

1 followed this vehicle to the stop sign at the end of
2 Northampton Street and the vehicle turned right on King
3 Street.

4 They testified that the vehicle failed to come to a
5 complete stop at that location, and that really is the
6 crux of this case, is has the plaintiff proven that that
7 vehicle didn't come to a complete stop?

8 The issue in the case against Officer Cicero is was
9 there a reasonable suspicion of a traffic violation?
10 Reasonable suspicion requires both a particularized and
11 objective basis for suspecting a civil traffic offense,
12 and in assessing that you must consider the totality of
13 the circumstances. There must be a finding -- it must be
14 grounded in specific and articulable facts.

15 The articulable facts are pretty simple in this case.
16 They saw the vehicle roll through the stop sign. That is
17 a violation of the law. We all know that. No matter how
18 many people we see every day rolling through stop signs,
19 that is a traffic violation. That's a violation of the
20 traffic statutes of the Commonwealth and it's a legitimate
21 basis to stop the vehicle.

22 As you know, the vehicle then -- things progress from
23 that point on with the questions about whether or not the
24 vehicle was being used without authority. But the initial
25 stop of the vehicle all turns around that question of

1 whether or not there was reasonable suspicion and that
2 would be based on rolling through the stop sign.

3 As I indicated, the testimony on that point of the
4 officers is uniform and, yeah, the operator who they were
5 not -- had no -- they didn't know who was in the car at
6 point in time. The operator the vehicle rolled through
7 the sign.

8 Now, Mr. Bradley would have you believe, he
9 testified, that the vehicle stopped. The operator of the
10 vehicle, whose testimony we have only from a prior trial
11 transcript, Ms. Robinson, her testimony was read to you
12 from that prior trial and twice in there she reiterated
13 that she doesn't know whether she stopped or not.

14 Now she was the operator of the vehicle. If anybody
15 should know whether the vehicle stopped or not, it would
16 be her. It's not believable that the passenger in the
17 rear seat would take such notice of whether a vehicle
18 actually came to a complete stop. And the stop under the
19 law requires a stop, the wheels stop turning. Mr. Bradley
20 claims that they came to a complete stop and I submit that
21 it's inconceivable that he could actually know whether it
22 came to a complete stop or not.

23 Similarly, Ms. Tucker said that the vehicle came to a
24 stop. She also was in the back seat and I would submit
25 she also couldn't really possibly know if the vehicle came

1 to a complete stop.

2 Now, both of these witnesses are friends of the
3 plaintiff Mr. Bradley. They were at this party at Mr.
4 Bradley's brother's house. He was driving them home.
5 Clearly they had at least sympathy towards Mr. Bradley
6 when they testified at Mr. Bradley's criminal trial.

7 I would also ask you to take into consideration the
8 fact that despite numerous and multiple attempts to obtain
9 their presence here at this trial, they willfully avoided
10 and evaded process that would have allowed them to come
11 here and be cross-examined by the defendants' counsel.

12 So we had no opportunity to cross-examine either Ms.
13 Robinson or Ms. Tucker on the finer points of this case,
14 and I submit to you that they were biased in favor of
15 their friend Mr. Bradley and their testimony was slanted
16 in his favor.

17 We also know that the ability to proceed was somewhat
18 impaired. I believe they all acknowledged drinking at
19 this party. We know that Mr. Bradley himself was a
20 regular user of marijuana, weed. The hospital records
21 which will be in the jury room with you will show you that
22 he told the intake personnel at the jail after he was
23 booked and brought to the jail show that he told them that
24 he smoked seven days a week, two to three times a day. He
25 also told you that he smoked half an hour before this

1 incident and so I submit to you that his perception, his
2 ability to perceive was affected by that and perhaps even
3 his behavior as later events evolved.

4 The theory of the plaintiff in this case is that the
5 defendants I guess made all this up, concocted all this
6 for what reason we don't know. They didn't know who was
7 in that car so it's not as though they had some grudge or
8 some prior interaction with Mr. Bradley or anyone in the
9 car.

10 I believe Mr. Bradley testified he had no previous
11 interactions with any of the officers involved in this
12 case. So I guess you would have to think that they just
13 cooked it all up. For what? They're bored? I don't know
14 what motive would explain that, but it also would be a
15 pretty bad concocted story.

16 Officer Cicero was candid. He said, no, I didn't
17 really see what was going on on the other side of the car.
18 I'm looking over the roof. I couldn't see if he got
19 kicked or not. If they were cooking up a story, don't you
20 think he would have more to say in support of the other
21 officers?

22 I'd submit to you that his testimony was candid and
23 truthful and he told you and he told this court exactly
24 what he saw, which included the fact that this woman drove
25 through the stop sign and that was the basis of the

1 traffic stop.

2 The events which took place beyond that he did not
3 have an involvement in. He did not have any physical
4 interaction with Mr. Bradley in the process of placing him
5 under arrest and he didn't see the furtive movements in
6 the car.

7 Again, if this was a big conspiracy to cook up some
8 story, he certainly could have said I saw that but he
9 didn't say that because he came in here and he told you
10 the truth.

11 And you, as Attorney Saint Laurent asked, I ask you
12 to apply your common sense and your life experiences in
13 weighing who is being with most truthful here, and bear in
14 mind that the burden is on the plaintiff to prove his case
15 by a preponderance of the evidence.

16 He is seeking a judgment from you, a verdict from
17 you, to award him money. You can take that into
18 consideration as well when you go into the jury room.

19 I believe and I urge you to find after you consider
20 all of the evidence in this case that Christian Cicero did
21 not violate the rights of Mr. Bradley and that you should
22 return a verdict for him. Thank you.

23 THE COURT: All right.
24
25

1 **CLOSING ARGUMENT BY MR. SCHMIDT**

2 MR. SCHMIDT: Ladies and gentlemen, when I got
3 in front of you at the beginning of this case to give my
4 opening, I had suggested to you that your job here really
5 would be about assessing the credibility of witnesses.

6 I asked you to pay attention to body language, tone,
7 consistency of their testimony, and the consistency of
8 their testimony to prior testimony that they gave earlier
9 on, and I suggest to you that those answers would be right
10 there in that witness box.

11 I'd suggest to you at this point after hearing all
12 the evidence and there will be no more evidence in this
13 case that you will find the defendants not liable and in
14 particular my client Daniel Moynahan.

15 Now, focusing on credibility, I want to point out to
16 you that the fact that Mr. Bradley was found not guilty at
17 trial it has no bearing on your decision making other than
18 that it's an element that they have to prove.

19 It doesn't mean that you have to find one way or
20 another in this case. All you can reasonably presume from
21 the fact that he had a positive prior verdict in the
22 criminal case is that the prosecutor in that case was
23 unable to prove beyond a reasonable doubt -- which is the
24 highest standard in the law -- that Daniel Bradley was
25 guilty of resisting arrest and assault and battery.

1 That's all that that decision was.

2 You, this jury, are here to decide whether or not the
3 defendants violated Mr. Bradley's rights. It's a
4 completely separate issue and it's up to you.

5 Now, focusing on credibility I'd like to start with
6 Mr. Bradley. You heard him testify both with his attorney
7 on direct and with me in cross-examination. You were able
8 to consider his manner. I would suggest to you in
9 answering questions he was evasive, uncooperative, and
10 totally and entirely unable to justify inconsistencies in
11 his testimony that I was able to point out.

12 Please remember in this courtroom the burden is on
13 him. It's not on the defendants. Is he someone you can
14 rely on? Did he meet that burden?

15 He testified earlier on several occasions I was at my
16 brother's house for three or four hours. That's about the
17 range he gave. At trial he said it was one hour. He
18 claimed he had only two to three shots of Hennessy the
19 entire time, but there was an open bottle in the car.

20 And when he was dipping down and the officers are
21 seeing his shoulders move, well, maybe they're passing
22 around that bottle of Hennessy. Use your common sense.
23 Sure, there wasn't a gun found in the car. Sure there
24 wasn't a gun in the center console but they could have
25 been passing around that bottle of Hennessy.

1 Then what about marijuana? I smoked weed. No, I
2 didn't smoke weed. Yes, I smoked weed. Well, why did it
3 keep changing? Why did he hide it the first couple of
4 times he was asked? Well, probably because it might
5 affect his ability and memory, his memory with regard to
6 the incident. It might affect his ability to drive a car.

7 Again, Mr. Bradley wouldn't admit to anything that
8 would hurt his case. He'd admit the things that helped
9 his case, but he wouldn't admit to anything that would
10 hurt his case.

11 What's the truth? It's in the medical records. He
12 smokes marijuana two to three times a day. Nothing wrong
13 with that. Who cares. But why is he lying about it? And
14 he even said under cross-examination the first two times
15 he said he didn't mention the marijuana, he hadn't seen
16 the medical records. After he knew about the medical
17 records and knew that he had admitted he smoked marijuana
18 in the medical records, well, then suddenly it's showing
19 up in legal documents. What does that say about his
20 credibility? He has to be forced to tell the truth.

21 Now, Attorney Coyle touched on this but it's the two
22 back seat passengers who are sure they stopped at the stop
23 sign. Does that make any sense? Daeshavana Robinson
24 testified at trial and it's in the transcript that was
25 read to you, she didn't remember. She said, I mean, I

1 probably did because there was a stop sign but I don't
2 remember. Well, who's being honest? In his opening
3 Attorney Slepchuk told you that she said she stopped.
4 Well, think about that. What does it say that they have
5 to stretch the facts?

6 Now, Mr. Bradley testified he's a back seat
7 passenger. He has a perfect memory of her using her
8 blinker and coming to a complete stop. Who on earth as a
9 back seat passenger in a car pays attention to whether or
10 not the driver uses their blinker?

11 Think of all the things he didn't remember on
12 cross-examination but he remembers those little details.
13 You know why? Because it hurts the stop -- it hurts the
14 police argument and that's why he remembers that.

15 You know, a lot was made by plaintiff's counsel the
16 number of officers present, officers have firearms;
17 officers always have firearms, and again none of that has
18 any bearing on whether they followed proper police
19 procedure.

20 Of course they have their guns. They're working.
21 The issue is whether or not they followed procedure. It's
22 not, oh, there were six of them there, nine of them there,
23 the whole shift. It doesn't matter. It matters whether
24 they followed procedure and I suggest to you that they
25 did.

1 And so two of the women in the car showed up to trial
2 and they didn't show up to testify here today and Attorney
3 Coyle touched on this. Do you think maybe it's a little
4 different to go to court to try to help your friend get
5 out of trouble in a criminal trial than it is to come into
6 a civil federal court where they're seeking to get some
7 money?

8 Mr. Bradley said, oh, the cop car just flew up behind
9 us. Just everything everyone else is doing is wrong.
10 Everything he's doing is right. So the police are
11 speeding up behind him, and then at first he says I saw
12 the blue lights if you remember on cross-examination, and
13 then when I said, well, wait a second. They had their
14 blew lights on when they're pulling up behind you. Then
15 he changed it and said no, no, no it was just the
16 headlights, just the headlights.

17 So even in one instance of testifying he can't stay
18 consistent within 30 seconds, and you saw his demeanor on
19 the stand. You saw him argue, interrupt questions, and he
20 came before you and claimed to just be cool like Fonzie at
21 the scene; just chill; everybody else was upset. He was
22 calm. Who was calm in this courtroom and who wasn't?

23 In his interrogatories answers Officer Dunn asked for
24 my ID; in his deposition, Officer Moynahan asked for my
25 ID; yesterday, I don't know. Can you rely on this? Did

1 he meet his burden? He hit me with an open hand the first
2 time; the second time he hit me with an open hand. In the
3 courtroom in front of the jury he hit me with a closed
4 fist. He's exaggerating.

5 There were six police officers there. We all know
6 there were six police officers there. There were nine cop
7 cars -- I mean, nine cops. The whole shift was there.
8 He's trying too hard.

9 Look at the medical records. These are minor
10 injuries. Everything healed within a couple of -- in a
11 couple of weeks. When you look at the medical records,
12 subjective, subjective, subjective, subjective. Do you
13 know what that means? What that means is that's what
14 Daniel said. There's no tests. There's no diagnosis;
15 there's no CAT scan; there's no bulging disks; there's no
16 soft tissue injury. It's subjective reporting. They gave
17 him essentially Icy Hot and some mild pain killers.

18 And look at his injury. We're not hiding from it.
19 He has a bloody lip. That injury, he could have bit his
20 lip. He could have bit his lip while he was resisting
21 officers' attempts to put the handcuffs on him. He could
22 have hit his mouth when he forced them -- when they had to
23 push him into the police car.

24 Does that lip right there that you're looking at, is
25 that consistent with a man being completely defenseless,

1 handcuffed, and coldcocked in the mouth? I suggest to you
2 that the injury would be a lot more significant.

3 What reason or benefit would there have been to punch
4 a handcuffed man? What point would be to that? This is a
5 situation where it should have been a routine traffic stop
6 followed by a tow. Why would these officers want to put
7 themselves in this position?

8 And he's stomped? Well, you heard from Officer
9 Moynahan. It's physically impossible. We have no idea
10 based on his prior testimony and his testimony in this
11 courtroom how far into the car Daniel Bradley really was
12 because at one point he's saying it was just his feet
13 sticking out. The other time half of his body was
14 sticking out. Sometimes the officer is trying to close
15 the door on his feet; sometimes they're not. So it's
16 frankly very unclear, but what you did hear consistently
17 from the officers was it would have been physically
18 impossible to stomp on his back. Two of us could not have
19 done that.

20 And in all of his prior testimony I was face down.
21 Well, how can he see who's allegedly stomping on his back?
22 What did he do on the stand? Oh, no, I was on my side; I
23 was on my side. I could see. And he complained about his
24 medical treatment at the jail. Everyone is against him,
25 everyone. Everyone else did something wrong.

1 Now with regard to his damages, well, we've heard no
2 evidence whatsoever of any loss wages. He claims to have
3 had terrible back pain but meanwhile he's playing
4 basketball. And then with regard to Officer Moynahan, we
5 really get to the cherry on top of Mr. Bradley's story
6 which is the ultimate exaggeration is that Mr. Moynahan
7 manipulated Mr. Bradley's penis and testicles. Why on
8 earth would he do that? What possible benefit would an
9 officer have to do that? Do you think when Officer
10 Moynahan gets up in the morning and he goes out to do his
11 shift as a police officer that that's what he's looking to
12 do? It makes absolutely no sense.

13 Now, what really happened here? Well, you heard from
14 the officers and I'd suggest to you they were very
15 consistent. You heard from three different people. They
16 saw -- now my officer is not involved in the initial stop
17 but Dunn and Cicero see the car go through the red light.

18 Mr. Bradley is on the passenger's side. Once my
19 client Mr. Moynahan is there, they've already looked at
20 the rental agreement. This car is getting towed. Mr.
21 Bradley is going to have to get out of the car. It's all
22 inevitable. He chose to make it go this way. He chose to
23 be difficult.

24 Officer Dunn and Officer Moynahan independently made
25 the decision that they saw furtive movements requiring

1 action. This wasn't, hey, you know, let's go after Mr.
2 Bradley. Oh, I see this or I see that. There's no time
3 for that. They're both walking up to the car and they get
4 in position and they both see the same thing at the same
5 time. This isn't something you can concoct.

6 THE COURT: One minute, Attorney Schmidt.

7 MR. SCHMIDT: Thank you, Your Honor.

8 It was Mr. Bradley who resisted. It was Mr. Bradley
9 who pressed my client's hands into the car. It was Mr.
10 Bradley who kicked Mr. Dunn in the shin.

11 Again this should have been officers walking back to
12 the car and saying, hey, we have to tow this car.
13 Instead, Mr. Bradley moved around the car putting those
14 officers in fear for their safety and, again, they want to
15 get home to their families. They don't want to have an
16 interaction with a gun or a knife, and that's what this is
17 about. They're not looking to get anyone in trouble.
18 They're looking to get home without getting hurt.

19 Again, I would remind you the burden is on Mr.
20 Bradley and I ask that you hold him to that burden. I'd
21 suggest to you he did not meet that burden, and I ask that
22 you find Daniel Moynahan as not liable for these
23 allegations. Thank you.

24 THE COURT: Thank you. Whenever you're ready.

25 MR. SLEPCHUK: Just have a moment to get set up,

1 Your Honor?

2 THE COURT: Sure.

3 MR. SLEPCHUK: May I proceed?

4 THE COURT: Yes.

5 **CLOSING ARGUMENT BY MR. SLEPCHUK**

6 MR. SLEPCHUK: Good afternoon, ladies and
7 gentlemen.

8 When you head back into that jury room, you're going
9 to have three very important jobs to do. First you're
10 going to have make some decisions about this case.

11 Second, you're going to have to make sure that each
12 and every one of you listens to and obeys the rules and
13 the instructions that the judge is going to give you.

14 And third, before you make any decisions about this
15 case, you're going to have to talk to each other and
16 explain to each other how you feel about this case and
17 why. In the next few minutes let me suggest a few ways to
18 help you do just that.

19 Remember what I told at the very beginning of this
20 trial. Daniel Bradley is suing the defendants because
21 they chose to violate his constitutionally protected right
22 to be free from unreasonable search and seizure on both
23 the Fourth Amendment and Article 14.

24 As I mentioned during my opening statement and the
25 evidence has borne out they violated that right in seven

1 distinct different ways. I'm going to take them one by
2 one.

3 Let's talk about the motor vehicle stop. The judge
4 is going to instruct you that the police cannot pull over
5 a car unless they have reasonable suspicion based upon
6 specific articulable facts that that car has committed
7 some sort of civil traffic violation or the occupants of
8 that car are engaged in criminal activity or have
9 committed a crime.

10 Now Officers Dunn and Cicero testified that they
11 stopped the car because it failed to stop at the
12 intersection of Northampton Avenue and King Street.
13 Daniel told you otherwise. He said, no, that car came to
14 a full and complete stop at that T intersection. Ms.
15 Robinson had her blinker on and we stopped and then we
16 turned.

17 He testified that when the officers came up, they
18 asked Officer Cicero why did you pull us over and at first
19 he didn't say anything about the stop sign. He said you
20 ran a red light, a red light. They said we haven't even
21 gone through a traffic light. Then it became, well, you
22 ran a stop sign.

23 Daniel's testimony on that point was corroborated by
24 the prior sworn testimony of Daeshavana Robinson who was
25 the operator of that car and Savon Tucker who was sitting

1 next to Daniel. They both corroborated that the police --
2 that Officer Cicero changed his rationale for the stop
3 from the traffic light then a stop sign.

4 Ms. Tucker was clear that that car came to a
5 complete stop. Now Ms. Robinson was a little equivocal on
6 that. Her memory I'll admit was a little bit foggy, but
7 remember exactly what she said. She said I would have had
8 to stop because there's a big bush on the left side on the
9 corner so I would have had to stop to make sure there was
10 no oncoming traffic.

11 I'd ask that you credit the testimony of Mr. Bradley
12 and the prior testimony of Ms. Tucker and Ms. Robinson and
13 find that the officers in this case did not have
14 reasonable suspicion that a traffic violation had occurred
15 and that the stop was unlawful. Of course, at that time
16 there was certainly no reasonable suspicion of criminal
17 activity. The officers all admitted nobody had reported a
18 crime. They didn't observe any criminal activity.

19 That brings us to the next issue. The judge is going
20 to instruct you that under Article 14 once they stop a
21 car, the police cannot question the passengers of the car;
22 cannot ask them for their identification unless they have
23 again reasonable suspicion that that particular passenger
24 has committed a crime or is engaged in criminal activity.

25 Now, at this point there was no reasonable suspicion

1 of criminal activity. So the question is whether or not
2 the officers asked for the identification. Daniel told
3 you that they did. They first came up to the car.
4 Officer Cicero got the license and rental agreement from
5 Ms. Robinson. The officers went back to their cruiser to
6 check it. They admitted that. They went and ran the
7 information, and when then came back up to the car, Daniel
8 told you that that's when Officers Dunn and Moynahan on
9 the passenger side asked him for his identification.
10 During her prior testimony Ms. Tucker confirmed that, that
11 they did ask him for his identification.

12 Now even Officer Dunn admitted that at some point he
13 did ask for the ID, but he claims that he asked for the ID
14 much later on when Daniel was already handcuffed and
15 essentially face down with his head pointing towards the
16 floorboard of that police cruiser locked in the back of
17 that cruiser with a plexiglas partition that you can't
18 pass anything in between. That's what he would have you
19 believe. Hey, can you give me your ID? Ask yourself if
20 that makes any sense whatsoever.

21 He then tried to say, well, I had taken his wallet
22 from him when I was over at the car before I put him in.
23 He didn't open the wallet to see if his was ID in it so I
24 just asked him.

25 Now Daniel told you he didn't have a wallet on that

1 night. He didn't have a wallet and when I asked Officer
2 Moynahan, hey, when you were standing right next to him at
3 that cruiser at the time when you put him in the car did
4 you see Officer Dunn search him and take a wallet. He
5 didn't see that.

6 The judge is also going to instruct you that the
7 police may not extend a traffic stop longer than is
8 reasonably necessary to effect whatever the purpose of the
9 stop was.

10 So in this case the officers had gone back to their
11 cruiser. They had run the information and they knew that
12 there was a problem with the rental agreement and they had
13 to tow this car. They were going to issue Ms. Robinson a
14 citation for use without authority. They knew that. They
15 knew that when Officer Moynahan arrived on scene and they
16 told him, hey, we've got to tow this car. There's a
17 problem.

18 At that point in time they had a duty to not prolong
19 that stop; to come up to the car and tell everybody, hey,
20 listen, this is the situation. You know we've got to tow
21 this car. You got to go. But they don't do that. They
22 prolong the stop. They ask Daniel for his ID. They then
23 go back and they check it again. Again, they violate his
24 rights under Article 14 by prolonging that stop and by
25 asking him for his identification.

1 Let's next talk about the exit order. The judge is
2 going to instruct you that under Article 14 the police
3 cannot issue an exit order unless they have reasonable
4 suspicion that that person poses a safety threat.

5 Under both Article 14 and the Fourth Amendment to do
6 a patfrisk they need something more. They need reasonable
7 suspicion that the person is armed with a weapon. They
8 had neither reasonable suspicion or safety concern or a
9 weapon in this case.

10 Officer Dunn testified that he saw Daniel I guess
11 shift from side to side and make some reach towards the
12 doorjamb, towards his right to the doorjamb. That made
13 him very concerned for his safety according him that he
14 could have been retrieving a weapon, although he never saw
15 a weapon. He never saw Daniel stuff anything in his
16 pants. He didn't see that, but maybe he was secreting or
17 hiding a weapon there. That's what made, according to
18 him, made him so concerned for his safety.

19 Now Daniel denied making those movements. Both Ms.
20 Tucker and Ms. Robinson in their prior testimony said
21 Daniel never made any such reaching movements or shifting
22 movements. They said he was just sitting there.

23 Officer Cicero who was standing right at the driver
24 window with his flashlight looking in in a fully
25 illuminated car. The other officers had their flashlights

1 too and the cruiser behind them had the floodlights on.
2 He's in just as a good position to see inside that car as
3 anybody else. He didn't see Daniel making any shifting
4 movement. He does not see him reaching.

5 Even Officer Moynahan who was standing right next to
6 Officer Dunn didn't see any reaching toward the doorjamb
7 or towards the right-hand side. He claimed that he saw
8 Daniel lean towards in the opposite direction or the
9 center of the car and then come back, inconsistent with
10 what Officer Dunn said.

11 What's even more important is that the police didn't
12 find anything. They searched Daniel. They didn't find
13 any weapons; they didn't find any contraband. They found
14 nothing on him.

15 They searched that doorjamb area supposedly that area
16 where Daniel was sitting. They didn't find a weapon.
17 They didn't find anything. So use your common sense and
18 ask yourselves, if there was nothing there, nothing to
19 take, nothing to hide, why would Daniel make a movement
20 like that? Why would he be reaching? He wouldn't. He
21 didn't. He didn't make any such movement. Officer Dunn
22 was untruthful about this reaching movement because he had
23 to justify the exit order somehow.

24 Now, when you're back there deliberating one of you
25 might say, well, if they didn't stop for the stop sign, if

1 Daniel wasn't making these supposed movements, then what
2 was this all about? Why did the officers stop the car?
3 Why would the officers take Daniel out of the car and
4 search him?

5 Well, it was late at night. It was a bad
6 neighborhood. You heard all from every officer about how
7 bad this neighborhood was; about, oh, the drugs and the
8 guns and the violent crimes that are in this neighborhood,
9 late at night, bad neighborhood.

10 The officers come upon a car occupied by four young
11 African-Americans and they want to investigate and we'll
12 see what was going on with this car. Maybe they got some
13 contraband in the car; maybe we're going to catch them
14 riding dirty as it's said. So they stopped the car.

15 They come upon it and they see three females and one
16 male, Daniel. He's the obvious target. Let's pull him
17 out and see if we can find anything on him. Of course,
18 they find nothing. This was profiling, ladies and
19 gentlemen, plan and simple.

20 Now, let's move on to the arrest and the reasons for
21 this arrest. Now Officer Dunn testified that during the
22 patfrisk that Daniel kicked him in the shin, kicked him
23 hard with a shod foot, a dangerous weapon. Daniel denied
24 kicking Officer Dunn.

25 Both Ms. Tucker and Ms. Robinson in their prior

1 testimony said Daniel didn't kick Officer Dunn. Officer
2 Cicero didn't see Daniel kick Officer Dunn. Even Daniel
3 Moynahan who was standing right next to Officer Dunn
4 didn't see any contact between Daniel, any part of
5 Daniel's body and Officer Dunn and Officer Dunn wasn't
6 injured not in the slightest. No bruising, not even
7 slightest bruising, not even slightest swelling despite
8 that he wasn't wearing a shin pad which would be hard to
9 protect his shin, just had his clothing.

10 Use your common sense and use your life experience.
11 If you've ever been kicked in the shin, ever even bumped
12 your shin with something hard, it hurts. It's bony.
13 There's not a lot of meat on the shin. It leaves a mark.
14 But there was absolutely no evidence of any injury to
15 Officer Dunn's shin. Why? Because Daniel did not kick
16 him and the arrest was not based upon probable cause.

17 That brings us to the use of force. The judge is
18 going to instruct you the force has to be reasonable. It
19 has to be proportionate. There are a lot of factors that
20 can play into this and the judge is going to instruct you
21 on that.

22 But in this case, it's pretty simple. Daniel was
23 handcuffed with his hands behind his back. He didn't pose
24 a threat to any of the officers. The only thing he was
25 doing was verbally protesting the way he was being

1 treated. Yeah, he had some attitude. He was mouthing
2 off. He had every right to and officer Dunn struck him in
3 the face, and there's been some talk about whether it was
4 a closed fist or an open fist. It's kind of oxymoron. I
5 don't even know what an open fist means, but it doesn't
6 really matter.

7 The point is, whether it was a closed fist or it was
8 an open palm, it was unreasonable. It was unnecessary
9 because Daniel did not pose a threat. He was defenseless.
10 And the blow was strong enough to break -- to draw blood
11 to bust his lip and to knock him falling face first with
12 his torso into the lower rear floorboard area of that car.
13 At that point Officers Dunn and Moynahan proceeded to
14 stomp on him in the back.

15 Now, again, when you're back there deliberating one
16 of you might say, well, would they do that? What's their
17 motivation to assault DANiel and arrest him? Why would
18 they do that?

19 Again, when Daniel when this was happening, he was
20 being brought out of the car and frisked, being searched,
21 he wasn't a happy camper. He was agitated. He was
22 protesting. Why are you doing this? What have I done?
23 He had attitude. He was questioning them.

24 He was trying to stand up for his rights because he
25 knew what was happening to him was not right and they

1 didn't like that. It's about power. Do what you're told.
2 Don't ask questions or else pay the consequences, and
3 unfortunately Daniel did pay the consequences.

4 Now the officers claimed they didn't -- we didn't
5 punch him. We didn't kick him. We didn't do any of those
6 things, but you know that's not true. We know that's not
7 true because we have the evidence of the injuries.

8 We have this photograph that was taken moments after
9 the event, which I don't think anybody disputes that it
10 shows a bloody lip. It's plain as day. And we have the
11 medical records that document bruising to his back; that
12 he was suffering from back pain the entire time he was
13 held at the house of correction. He was prescribed
14 medication. He was assigned to a lower bunk and that was
15 for the reason because he had actual injuries.

16 Now the defendants have offered zero, zero reasonable
17 explanation as to how those injuries happened. They have
18 no explanation for it. They essentially claim that they
19 don't know how that happened. None of them wrote an
20 injured prisoner report and they claim that they didn't
21 even know about it at the time. And yet, you have Officer
22 Dunn and Officer Cicero, who are shoulder to shoulder
23 escorting Mr. Bradley into that police station, and they
24 couldn't see that. That's plain as day.

25 The use of force in this case was disproportionate.

1 It was unreasonable and it was excessive. It violated
2 Daniel's rights under Article 14 and the Fourth Amendment.

3 That brings us to the malicious prosecution. Once
4 he's brought to the station, they fill out the paperwork.
5 They charge him with these crimes assault and battery on a
6 police officer and resisting arrest. He's got to go to
7 court and gets arraigned and held on a bail he can't
8 afford. He's in jail for 30 days, and it's not until a
9 year later the case goes to trial and Daniel is
10 unanimously found not guilty by a jury after that trial.

11 Now, one important thing I want to bring your
12 attention to is the booking video. Now you have this in
13 evidence and I apologize when we played it during the
14 trial, portions of it were a little choppy. I understand,
15 but you're going to have the ability to view that video
16 back in the jury deliberation room. You can pause it and
17 do whatever you need to do to watch that video. I suggest
18 that you do because that video is the real window into the
19 mind, the state of mind of Daniel when he got to that
20 police station.

21 What's the first thing -- what are the first words
22 out of his mouth when he gets up to that desk in front of
23 the booking sergeant? I need to speak to a captain. I've
24 been assaulted. The booking sergeant brushes him off.
25 I'm the only one you're going to talk to tonight. He asks

1 multiple times throughout that booking procedure to speak
2 to a captain to report the fact that he has been
3 assaulted. Each and every time he's ignored.

4 He's never offered medical treatment despite the fact
5 that he's bleeding from the mouth. Nobody makes a report,
6 and during that procedure he turns to the defendant
7 Christian Cicero and he looks him dead in the eye and he
8 says "You saw everything that happened that night. I need
9 you to man up. I need you to tell the truth about what
10 happened. If you're not going to man up, then you might
11 as well take your badge off your uniform and throw it on
12 the ground if you're going to let them lie like that."

13 And what does Christian Cicero do? He does nothing.
14 What does he say? He says nothing. His silence speaks
15 volumes, ladies and gentlemen, because he knew at that
16 moment that Daniel was right. That Daniel had done
17 nothing to deserve the way he had been treated by both
18 Officer Cicero and the other defendants that night.

19 This brings us to the issue of damages. Now the
20 judge is going to instruct you on the different types of
21 damages. The first is what we call consequential damages
22 and as the name suggests -- or I'm sorry, compensatory
23 damages. As the name suggests, these are designed to
24 compensate an individual for injuries or other wrongs
25 suffered by a defendant.

1 Daniel suffered four different types or categories I
2 would say of damages that are worthy of compensation. The
3 first is indignity. Daniel suffered the indignity, the
4 shame, the embarrassment of this whole ordeal; being
5 profiled that night; being snatched out of that car; being
6 searched; his private area being searched by a complete
7 stranger in the presence of those three females. It was
8 embarrassing. It was an indignity.

9 We already talked about the physical injuries. We
10 know that he suffered an injury to his lip. We know that
11 he had those injuries to his back. They're documented in
12 those medical records during that month period that he was
13 at the jail.

14 He also had emotional injury which are documented in
15 those same records. Daniel told you that he was
16 depressed. He had anxiety. He was experiencing
17 nightmares.

18 And unfortunately Daniel while he was held at the
19 jail, a place he did not belong, he should not have been,
20 would not have been at that place had it not been for the
21 unlawful conduct of the defendants in this case, he has
22 the unfortunate experience of witnessing an inmate attempt
23 suicide and that really bothers Daniel. It bothers him to
24 the point that he has to reach out for help to speak to
25 somebody and he does. He gets in contact with a mental

1 health professional at the jail, a therapist, and he talks
2 about that experience, and that's documented in those
3 medical records.

4 So he suffered emotionally as well as physically, but
5 perhaps the most important damage here is his loss of
6 liberty. He sat in that jail for 30 days -- 30 long days
7 and 30 long nights -- for a crime that he did not commit.
8 He told you how it felt being held for 30 days. It made
9 him feel hopeless and worthless.

10 Now, the injuries to his lip that healed. His back
11 got better, but those 30 days Daniel can't get those back.
12 Those days are gone forever for him.

13 Now as I told you at this beginning of this trial,
14 there is -- these don't come with a price tag and this is
15 hard to try to come up with what these things are worth.

16 I know I asked you at the beginning if it would be
17 helpful for the attorneys to weigh in and it was kind of a
18 mixed bag so I'm not going to do that. I'm going to leave
19 it to you, to your common sense, to your life experience.

20 You're going to have to come together to talk about
21 each and every one of these things and I'm confident that
22 when you do that, you're going to be able to come up with
23 a number that fairly and fully compensates Daniel for each
24 and every one of these losses.

25 The second category of damages that you may award are

1 called punitive damages. The point of punitive damages is
2 not to compensate. It's different. The point of punitive
3 damages is deterrence. To deter the defendants from
4 acting like this in the future.

5 Now the judge will instruct you that you can only
6 award punitive damages if you find that the defendants
7 knew that what they were doing violated Daniel's rights or
8 if they acted in what we could say is a reckless
9 disregard, a callous indifference to Daniel's federally
10 protected rights. And for all the reasons that I already
11 spoke about, I think it's abundantly that the defendants
12 knew exactly what they were doing. They knew what they
13 were doing was wrong and an award of punitive damages is
14 warranted in this case.

15 Ladies and gentlemen, the right to be free from
16 unreasonable search and seizure, it's a sacred right. Our
17 Founding Fathers fought a war to obtain that right, and
18 since then much blood has been shed to preserve that
19 right.

20 Every day people from all over the world come to this
21 country in search of the protections of the Fourth
22 Amendment and Article 14. In totalitarian countries like
23 China and North Korea, they don't have the Fourth
24 Amendment. They don't have Article 14.

25 In those countries the police can stop you, ask you

1 for your documents, detain you, arrest you without
2 justification, without legal recourse, but not here, not
3 in America. We're better than that.

4 The question for you is, what is it worth? What is
5 this right worth? If it's worth nothing, then we might as
6 well be living in China or North Korea. If it's worth
7 nothing, then the right ceases to exist. Because if there
8 is no consequence, if there's no accountability when
9 police officers violate the Fourth Amendment or Article
10 14, they won't be deterred. The unlawful practices will
11 continue. Other people will see that, hey, we can get
12 away with this too and there's a snowball effect until the
13 right ceases to protect anyone.

14 You, as the jury, are the conscience of the
15 community. You have the awesome responsibility here today
16 granted by the Constitution to speak with one voice on
17 behalf of the community.

18 You have the opportunity to tell the defendants that
19 the Fourth Amendment and Article 14 protections are
20 important to the community and will be enforced by the
21 community, and the only way to do that is to render a
22 verdict here today that fully and fairly compensates
23 Daniel for all of the injuries that he suffered and also
24 deters the defendants and anybody else paying attention to
25 this case from acting like this in the future.

1 The choice is yours, folks. The defendants back on
2 August 26, 2015 chose to violate important constitutional
3 principles designed to protect each and every member of
4 the community. I ask that you, as the conscience and the
5 voice of the community, uphold those principles today by
6 assessing compensatory damages and punitive damages
7 against the defendants in this case. Thank you.

8 MR. SCHMIDT: Sidebar please, Your Honor.

9 THE COURT: All right.

10 (Sidebar conference.)

11 MR. SCHMIDT: Your Honor, we have a number of
12 objections to plaintiff counsel's closing. First of all,
13 the argument that the validity of the officers' actions
14 would be in any way affected by whether or not something
15 was ultimately found at the search --

16 THE COURT: That what are the actions?

17 MR. SCHMIDT: The validity of their actions is
18 in any way not appropriate because they didn't find
19 anything. It's a total misstatement of the law. It's
20 just flat out wrong. The question is did they follow
21 proper procedure.

22 THE COURT: Hang on.

23 MR. SCHMIDT: There were furtive movements or
24 there weren't. It doesn't matter after the furtive
25 movements they don't find anything and so that's just a

1 false statement of law.

2 There was zero evidence in this case of profiling.
3 There was absolutely no basis and evidence for that
4 argument whatsoever. We have a lot of concerns about
5 that.

6 Further, to suggest that the jurors would be
7 unpatriotic or have some constitutional duty to make an
8 example out of our clients is just wildly inappropriate
9 frankly. And to say they have a burden on behalf of the
10 community, their decision is to decide the facts here.

11 THE COURT: Anything else?

12 MR. SCHMIDT: Did I cover it?

13 MS. SZAFRANSKI: I think so.

14 MR. COYLE: The reference to a racial motive
15 here is totally --

16 THE COURT: That's the racial profiling.

17 MR. COYLE: The bias or the profiling
18 suggestion.

19 THE COURT: Okay. That was covered.

20 MS. SZAFRANSKI: Additionally I may be restating
21 what Attorney Schmidt said, but the fact that the jury is
22 being asked to deter anyone else by setting an award here
23 in addition to the defendants to set an example of them I
24 believe is inappropriate. I may be just restating what
25 Attorney Schmidt said.

1 THE COURT: Okay.

2 MR. SLEPCHUK: What was the first one again?

3 THE COURT: The fact that nothing was found in
4 the car is evidence or can be used to determine there was
5 no reasonable suspicion.

6 MR. SLEPCHUK: No. The point that I was making
7 was the fact that there was nothing found goes to the
8 credibility of Officer Dunn. It makes no sense -- this is
9 exactly what I said -- that if he was reaching, why would
10 he be reaching for nothing? It makes no sense. That was
11 the point they didn't find anything. If they found
12 something, oh, maybe he put something there. But the fact
13 that nothing was found on either him or where was he
14 supposedly reaching totally cuts against the argument that
15 this movement was made. People don't reach for no reason
16 whatsoever. That's the point.

17 MR. SCHMIDT: People move around for all
18 different kind of reasons.

19 THE COURT: How about on the racial profiling?

20 MR. SLEPCHUK: I think there's an inference --
21 the defendants in their closing said, well, there's no --
22 why would they stop the car? Well, we've got a bad
23 neighborhood; we got four young African-Americans. I
24 don't think it's out of bounds to suggest that the motive
25 was profiling in this case.

1 Of course nobody is going to admit, sure, that I
2 profiled them. No one would ever admit that, but I think
3 under the circumstances I'm allowed to suggest a potential
4 motive as to why they stopped this car.

5 THE COURT: Okay. The patriotic argument?

6 MR. SLEPCHUK: I don't think it was -- I don't
7 think I misstated anything. I believe that there's a
8 plethora of cases referring to the jury as the conscience
9 of the community.

10 This is a case in which we're seeking punitive
11 damages. Deterrence is a totally proper argument to make,
12 and so these are important constitutional principles, and
13 again I believe I'm well within my rights to argue that it
14 is appropriate to award punitive damages to deter future
15 violations of these important constitutional rights.

16 THE COURT: Well, I'm not sure he was arguing
17 about how you characterized it as far as the assessment of
18 damages. I think the argument that Attorney Schmidt
19 raised was regarding the comparison to China. People
20 getting locked up without reason because the police didn't
21 have any structure within which they operate.

22 MR. SLEPCHUK: I don't think anyone is going to
23 stand here and dispute that China and North Korea are not
24 exemplars of civil rights. I mean, this country prides
25 itself in our Bill of Rights and our Constitution and so I

1 don't think there's anything novel about stating that.

2 THE COURT: Do you have any objections to -- did
3 you want to make any objections to defendants' closings?

4 MR. SLEPCHUK: No.

5 THE COURT: All right. On the racial profiling
6 issue I must say I was a little surprised that it just
7 popped up all of a sudden, but I agree with Attorney
8 Slepchuk that it was raised by the defendants in argument,
9 you know, what's the motive here?

10 I think within the context of making an argument, a
11 closing argument that you're pointing out -- well, I don't
12 know. Was there evidence of the race of the other people
13 in the car?

14 MR. SLEPCHUK: There was.

15 THE COURT: Was there?

16 MR. COYLE: The only evidence was that they had
17 no idea who was in the car when they stopped the car.

18 MR. SLEPCHUK: Incorrect. One of the first
19 officers I believe was asked specifically by defense
20 counsel -- by the way, I can't remember which one -- what
21 was the race of the other occupants and the answer was
22 they were all African-Americans.

23 MR. COYLE: After they stopped the car, after.

24 MR. SAINT LAURENT: I was about to suggest that
25 there's no evidence they were able to see the occupants

1 before the car was stopped. Saying it was a pretextual
2 stop would be inaccurate because there's no evidence that
3 they were able to see the occupants before illuminating
4 the vehicle.

5 MR. SCHMIDT: My memory of that evidence was it
6 was me asking Mr. Bradley.

7 THE COURT: Excuse me?

8 MR. SCHMIDT: My memory of that evidence coming
9 in that the race of the three occupants of the car that
10 was through Mr. Bradley.

11 MR. SLEPCHUK: It may have been.

12 THE COURT: I mean, racial profiling as far as
13 the stop of the car, there doesn't seem -- there's no
14 evidence to suggest that they knew the race of the people
15 before the car was already stopped and they walked up to
16 it.

17 MR. SCHMIDT: Right.

18 THE COURT: I mean, the racial profiling
19 argument regarding getting the black male out of the back
20 seat.

21 MR. SCHMIDT: Everyone in the car is
22 African-American.

23 MR. SLEPCHUK: Every person in that car is
24 African-American. He's the easy target. He's a male.

25 MR. COYLE: Basically that was the argument that

1 was made.

2 MR. SLEPCHUK: Right. And I didn't use the term
3 racial profiling by the way. I said it was profiling and
4 you can read whatever you want into that.

5 MR. COYLE: Everybody reads racial into that.

6 THE COURT: I thought that you did say racial
7 profiling.

8 MR. SLEPCHUK: I did not. I said profiling.

9 MR. SCHMIDT: I don't know what kind of
10 profiling it could be.

11 THE COURT: Even if you didn't say racial
12 profiling, I think that's a disingenuous argument. It
13 clearly means racial profiling.

14 I'm going to let the profiling issue stand. I'll let
15 it stand the way it is and the jury can determine what
16 they want to determine about it.

17 I mean, quite frankly, the jury I anticipate is going
18 to go through the same analysis and be talking like we're
19 talking about, like how did anyone see who was in the car
20 before the car was stopped and then come down to the issue
21 of the black male who was in the back seat was pulled out.

22 The question of motive was brought up during defense
23 argument legitimately and so I think responding to it in
24 kind -- not exactly in kind but responding to it. As I
25 said, I was a little surprised but I'm going to let that

1 stand.

2 MR. SCHMIDT: I respect your ruling, Your Honor.
3 I just want to state for the record that this really
4 wasn't something we were in a position to anticipate.
5 It's really an argument that there was no evidence and,
6 quite frankly, an instruction who knows maybe that will
7 just draw more attention to it but it's sort of a big
8 assumption that --

9 THE COURT: Well, what kind of instruction would
10 it be?

11 MR. SCHMIDT: Well, I think it's, you know -- I
12 imagine Attorney Slepchuk would be very --

13 THE COURT: Let me ask you this just in general.
14 Are you asking that I consider addressing the jury right
15 now on this? Because I plan on letting them go home and
16 we can continue to talk about this. I can address them
17 tomorrow.

18 MR. SCHMIDT: That should be fine.

19 MR. COYLE: I would request that you just make a
20 simple statement that there was no evidence of racial
21 motive presented in this case.

22 THE COURT: But the question was, can we
23 continue to talk about this now and let the jury go home
24 and address it in the morning?

25 MR. SCHMIDT: That's fine.

1 THE COURT: Or are you pushing the issue for me
2 to say something now?

3 MR. SCHMIDT: We can instruct them in the
4 morning.

5 MR. SAINT LAURENT: We can instruct in the
6 morning.

7 THE COURT: Okay. I'm going to let them go home
8 and we'll continue to talk.

9 (End of sidebar conference.)

10 THE COURT: Ladies and gentlemen, that concludes
11 the closing arguments. I was discussing the legal matters
12 at sidebar with counsel and I see no reason to leave you
13 sitting there while we start talking over these things
14 because there is quite a lengthy process from here to get
15 the case ready to give you instructions to make the case
16 yours for deliberations.

17 So you're done for today. Come back tomorrow morning
18 at 9:30 instead of nine. Come back at 9:30 so we have a
19 little buffer time in case we need to deal with something
20 in the morning. Come back at 9:30 and I will instruct you
21 tomorrow and the case will be yours for deliberations.

22 Between now and tomorrow, don't talk to anyone about
23 the case. Even though it's over and you've heard closing
24 arguments, all of the same instructions apply about not
25 talking to each other about the case or anyone else or

1 trying to find out about the case, internet wise, post
2 anything about the case, social media wise. Stay away
3 from any media reports. I don't think there are going to
4 be any but if you happen to see any. All right. Thank
5 you.

6 A JUROR: Are we in the court at 9:30 or
7 downstairs?

8 THE COURT: Downstairs at 9:30. Good question.

9 THE CLERK: All rise.

10 **(The jury left at 3:00.)**

11 THE COURT: All right. Everyone can be seated.

12 So, Attorney Schmidt, we were in the middle of
13 talking about -- I think I was going to ask you about what
14 kind of instruction would you be requesting on the racial
15 issue? And at that point I have said -- and I appreciate
16 your comments that you're accepting that the court has
17 found that you did talk about motive. It was responded
18 to, not exactly in kind, by the plaintiff but it was
19 responded to.

20 So you've made, you've made a good point about the
21 stop of the car. There's no evidence to support racial
22 profiling before the officers approached the car to see
23 who the actual occupants are. That's an issue that the
24 jury has before them and so what would you suggest?

25 MR. SCHMIDT: I mean, I'm not sure I agree that

1 the issue is before them. I think it was raised in panel
2 voir dire and then we didn't hear another word about it
3 after that. Frankly, it's litigation by surprise in my
4 opinion.

5 That being said, if Your Honor is not inclined to
6 address race directly --

7 THE COURT: But address it how and in what
8 context? I'm not sure it needs to be -- I'm not sure I
9 need to instruct the jury that there's no way the police
10 saw the race of the people in the car before they pulled
11 it over.

12 MR. SCHMIDT: I agree you can't get that fact
13 specific but some sort of instruction saying, you know,
14 facts that may not be in evidence may have been included
15 in this closing. It's up to you to determine whether that
16 actually -- there is any evidence supporting those claims.
17 You know, it's not up to Attorney Slepchuk whether or not
18 that evidence is there. It's up to the jury and maybe
19 reminding them if there were things in the closings that
20 you don't think you heard, it's up to you.

21 Frankly, I think it would be appropriate to refer
22 back to the last closing because I don't think anyone on
23 the defense side did that. But, again, I feel strongly
24 that this was litigation by surprise.

25 THE COURT: In other words, holding back the

1 profiling reference whether or not racial the complete
2 term or not? Even if it was just profiling, I agree with
3 defense clearly and unequivocally it means racial
4 profiling.

5 MR. SCHMIDT: Frankly, at sidebar the claim was
6 made to be some other kind of profiling and I think that's
7 evidence of the surprising intent here. I don't think the
8 defense is getting a fair shake here.

9 THE COURT: Attorney Slepchuk.

10 MR. SLEPCHUK: Your Honor, they raised it in
11 their closings. What could possibly be the motive? I
12 responded to it.

13 You know, it's incredible to me that a party could be
14 precluded from making this type of argument unless the
15 defendants in any case, not just this case but any type of
16 a case where you have young, African-American people being
17 pulled over by all white police officers that unless the
18 officers were so kind as to admit, well, yes, we did
19 profile them, that you couldn't make the argument. No one
20 is ever going to admit that. Let's be real.

21 So we have an inference. They raised the question
22 what could possibly be the motive and I think that I
23 reasonably and fairly responded to it. And to say they
24 were not on notice of it I think is, quite frankly,
25 disingenuous considering we all know who the parties

1 involved are. We know the circumstances of the case.
2 These issues were teased out in voir dire and they opened
3 the door to that when they suggested there could be no
4 possible motive for them to make all this up or to
5 fabricate.

6 THE COURT: Well, I think Mr. Bradley testified
7 at the very beginning of his testimony regarding why he
8 was bringing a lawsuit and I believe he said something to
9 the effect of, you know, wanting to do something about
10 this type of police treatment of a group of people. I
11 don't know exactly what his testimony was. I don't
12 remember so I don't want to misquote it.

13 MR. SLEPCHUK: Sounds about right.

14 THE COURT: But clearly the gist of what I got
15 was his saying that he wanted to do something himself
16 about this type of racial type of treatment. He said
17 something to that effect in his testimony. Do you recall
18 that?

19 MR. SLEPCHUK: I do recall him saying something
20 to that effect. His exact words I don't know off the top
21 of my head. Yes, he did say something.

22 THE COURT: Attorney Schmidt, do you recall
23 that?

24 MR. SCHMIDT: I remember him saying something
25 about trying to stop this type of treatment.

1 THE COURT: Right.

2 MR. SCHMIDT: I'm not sure it was any sort of
3 racial -- it certainly didn't ring the bell for me that
4 this is going to turn into a race case.

5 THE COURT: It rang the bell for me that he was
6 talking about race. I don't want to say I disagree with
7 you that this case would turn into it. It's hard to say
8 the case actually turned into it by one comment in the
9 closing argument.

10 MR. SCHMIDT: Your Honor, the combination of
11 that and then talking about the bloodshed for these rights
12 and that they have a duty, basically a patriotic duty --

13 THE COURT: Well, so on the racial profiling or
14 the reference to race, I'm not going to -- I'm going to
15 overrule your objection.

16 On the other issues I tend to agree with you. I
17 think that the suggestion that not finding anything in the
18 car is a factor regarding no reasonable suspicion existed
19 is a misstatement of the law.

20 And I think the length to which plaintiff went to
21 talk about other countries and China and patriotism and
22 things like that was an unnecessary and inappropriate
23 appeal to sympathy and inflame passions that can be
24 addressed through an instruction, and there generally is
25 an instruction.

1 There generally is that instruction about the verdict
2 can't be the result of feeling sympathies, et cetera. You
3 all know the instruction I'm talking about. I'm going to
4 work on that instruction to kind of deal with the
5 specifics of this case.

6 On the reasonable suspicion, I will endeavor to come
7 up with some language before I take that on in the jury
8 instructions that kind of defines those things. I'll be
9 able to tell you exactly about these specific instructions
10 in the morning when I get a chance to do that.

11 So remind me in the morning because sometimes I just
12 roll into things. But as to other parts of the
13 instructions, I don't know how much time you've had to
14 look at them but they're an amalgamation of both yours of
15 what was submitted to me. So I felt that we could use
16 this time to talk about those to the extent that you're
17 prepared to.

18 MR. SLEPCHUK: Your Honor, I understand Your
19 Honor's rulings and I appreciate it. I just want to say
20 with respect to the perceived misstatement of law, it was
21 not my intention -- and I don't believe that I came off
22 this way but apparently I did -- that not finding anything
23 was relevant to reasonable suspicion. My point in that
24 was the credibility that somebody wouldn't be making
25 movements for no reason. That was the point, so.

1 THE COURT: What I find a little troubling about
2 your comment is that you had made a comment similar in
3 your motion for judgment as a matter of law and I said to
4 you point blank the fact that you're arguing that nothing
5 was found in the car goes to reasonable suspicion being
6 supported or not supported was absurd. That's my quote.
7 I said absurd and you still used it in your closing
8 argument.

9 MR. SLEPCHUK: I guess, Your Honor, I
10 misunderstood. I think--

11 THE COURT: It's hard to take you saying that
12 you misunderstood. All right. Why don't we just move on?

13 MR. SLEPCHUK: Sure.

14 THE COURT: What do you want to do with the jury
15 instruction?

16 MR. COYLE: Do you want to address these now or
17 in the morning?

18 THE COURT: We're not going to have much time in
19 the morning, so.

20 MR. COYLE: Then I would object to a punitive
21 damage instruction directed at Officer Cicero.

22 THE COURT: What I want to do is kind of go from
23 the beginning forward if we can. Starting with whatever
24 element comes first and that's I think you, Attorney
25 Coyle, with Officer Cicero.

1 MR. COYLE: I'll start on 26 I think.

2 THE COURT: I know that Leeann gave you multiple
3 copies of the instructions. Can I have one back?

4 MR. SCHMIDT: Your Honor, do you want all four
5 back?

6 THE COURT: No, just one copy so I can follow
7 along with what you're following along with.

8 So we are going to start on?

9 MR. COYLE: Page 29 I think the elements start.
10 The general instructions start on 26 I guess.

11 THE COURT: All right. Attorney Coyle, go ahead
12 relative to deprivation of rights to be free from
13 unreasonable seizure, traffic stop.

14 MR. COYLE: In part B you list two factors or
15 elements as to unreasonableness. One, the defendants
16 lacked reasonable suspicion that the driver of the vehicle
17 committed a traffic offense and that the occupants in the
18 vehicle committed a crime or were presently engaged in
19 criminal activity. But number two, the defendants'
20 actions found that the vehicle stop were not reasonably
21 related in scope to any circumstances that may have
22 justified the stop, I'm a little concerned that this
23 allows kind of culpability for --

24 THE COURT: The verdict form, however, is going
25 to be very specific about the only theory that's available

1 for Officer Cicero on that count.

2 MR. COYLE: This kind of bleeds into the
3 subsequent actions after the actual stop.

4 THE COURT: Yes, but the verdict form is going
5 to be specific as to what the only thing the jury could
6 find as to Officer Cicero was.

7 MR. COYLE: Okay.

8 THE COURT: Definitely keep that in mind to make
9 sure that tomorrow morning when you have the verdict form
10 to look at it and you can check that to see if that
11 satisfies you.

12 MR. COYLE: Okay. On page 30 in the paragraph
13 that starts "if you find," you say -- essentially you go
14 through the elements if you find and then I would like to
15 see also in there conversely if you do not find, then you
16 must find for the defendants.

17 THE COURT: All right. I'm not going to include
18 that.

19 MR. COYLE: I believe that was all I had in the
20 time that I had to read it.

21 THE COURT: Okay.

22 MR. SAINT LAURENT: I don't believe we have any
23 other objections to the instructions.

24 THE COURT: All right.

25 MR. COYLE: Actually I didn't have time to read

1 all this, judge, but I'm looking at this, this is titled
2 "reasonable suspicion for a traffic stop."

3 THE COURT: You're on page 29?

4 MR. COYLE: It starts on 30 and as you keep
5 reading, this is all reasonable suspicion for a traffic
6 stop but then it kind of bleeds into -- I'm looking on
7 page 31 now -- "an exit order does not automatically," et
8 cetera. It seems again to mix the two fairly
9 significantly distinct issues in this case, being the
10 actual stop for the traffic violation and the exit order
11 to Mr. Bradley which Officer Cicero had no role in it.

12 THE COURT: Right. Well, under 1983 the
13 unreasonableness would have those two factors. But, as I
14 said, I'd like to wait and see your thoughts after looking
15 at the verdict slip. The effort by the court will be to
16 make sure the verdict slip clarifies and very much narrows
17 what the jury is to consider for Officer Cicero as opposed
18 to the others.

19 MR. COYLE: Okay. Well, I'll deal with that
20 tomorrow.

21 MR. SCHMIDT: Your Honor, I would just make a
22 request that for Officer Moynahan that with the verdict
23 slip just to leave off the issues regarding to the traffic
24 stop.

25 THE COURT: Yes. I hadn't thought about that

1 before although we did realize after we were talking about
2 Officer Cicero that Moynahan wasn't involved. Agreed.
3 I'm going to try to do something on the verdict slip.

4 MR. SCHMIDT: Thank you, Your Honor.

5 THE COURT: And we're going to hopefully email
6 you at least the first draft of the verdict slip sometime
7 tonight. You'll be getting an email from Leeann and if,
8 if after you have more time to look at this you come up
9 with some substantive important objections, you can send
10 an email.

11 Don't email her regarding grammatical corrections or
12 things like that. But if there's something that you find
13 that really you think is of significance, let her know in
14 the email so I can try to think about it before tomorrow
15 morning so that if we're going to make changes, we'll be
16 ready to do that in the short time that we have. All
17 right?

18 MR. SLEPCHUK: Your Honor, the only thing that I
19 saw was on page 40 just when talking about the
20 Massachusetts Civil Rights Act and Article 14, the
21 language that you use I think it pretty much mirrors what
22 I had submitted. However, since I had submitted this,
23 there was somewhat of a change or a clarification that
24 came from the SJC just very recently on January 29th in a
25 case called Commonwealth v. Torres-Pagan.

1 I actually quoted the relevant language in my motion
2 for judgment as a matter of law. It's on page 9 of that.
3 It kind of just clarified the difference under
4 Massachusetts law between what's needed for an exit order
5 versus a patfrisk.

6 So essentially there's a quotation in the case that
7 the police may order the occupants out of the vehicle "If
8 the police are warranted in the belief that the safety of
9 the officers or others is threatened; two, police have
10 reasonable suspicion of criminal activity; or three,
11 police are conducting a search of the vehicle on other
12 grounds."

13 Then they go on to find or clarify that. "Thus, in
14 the absence of reasonable suspicion of a crime or
15 justification to search the vehicle on other grounds, an
16 exit order is justified during a traffic stop if officers
17 have a reasonable suspicion of a threat to safety. A
18 lawful patfrisk, however, requires more; that is, police
19 must have a reasonable suspicion, based on specific
20 articulable facts, that the suspect is armed and
21 dangerous."

22 So that just came out and so I think it's a little
23 bit -- I mean, it kind of clarifies. I think before the
24 standard was in order to justify an exit order for the
25 purpose of a patfrisk, you just need officer safety. This

1 kind of clarifies it a little more. It's kind of a
2 two-step.

3 THE COURT: So Torres-Pagan, I'll take a look at
4 that language to see if it supplements or -- are you
5 saying it's a supplement or a full replacement of the
6 language?

7 MR. SLEPCHUK: I think it would be a
8 replacement. I mean just the line "In addition, a police
9 officer may order the occupants out of the vehicle for the
10 limited purpose of conducting a patfrisk only if there is
11 specific articulable facts that warrant a police officer
12 reasonably to be apprehensive about his safety." I think
13 Torres-Pagan changed that a little bit to say that, yes,
14 for the exit order you need just the safety concern which
15 may be unrelated to a weapon.

16 I mean, I think they use the example in that case
17 like maybe the people could drive off or hit somebody or
18 something like that. But in order to do a patfrisk, you
19 need more than just safety. It needs to be specific to
20 armed and dangerous and so it's a little bit of a
21 clarification of Massachusetts law on the issue.

22 THE COURT: Are you familiar with that case?

23 MR. SCHMIDT: Your Honor, our concern is this
24 happened in 2015. This is a brand new case so I don't
25 know if there's -- I have not seen the case outside of

1 just reading Attorney Slepchuk's motion, but I think
2 that's an issue to be aware of.

3 THE COURT: All right. I'm going to look at it.
4 I didn't read it. When I saw the case referenced in your
5 memo, I didn't read it with a critical eye towards
6 applying it as you're suggesting I apply it now so I'll
7 take a look at it.

8 All right. So again, Attorney Slepchuk, the same
9 issue. If, when you have time going through these things,
10 you see something glaring that's jumping out at you, send
11 it in an email.

12 It's my intention to try to get you a verdict form
13 early enough, before midnight. Actually as soon as I can,
14 at least a draft. So consider what you first get a draft
15 and then you can develop it more. Very good. Thank
16 you.

17 MR. SCHMIDT: Thank you.

18 THE COURT: Be here at nine, five of nine so
19 that if there's anything -- I'm sure there will be so just
20 meet here in court at nine o'clock. All right?

21 **(Court recessed at 3:21.)**

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16 /s/ Alice Moran

March 20, 2020

17 Alice Moran, RMR, RPR

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