

# **EXHIBIT “F”**

3014

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD T. WHITAKER, SR., AND	:	CIVIL ACTION
DALEA LYNN, CO-ADMINISTRATORS	:	
OF THE ESTATE OF RONALD TAYLOR:	:	
WHITAKER, JR.; AND RONALD T.	:	
WHITAKER, SR., TAYLOR	:	
WHITAKER, BRANDI WHITAKER, AND:	:	
CHRISTOPHER HAMMERSTONE,	:	NO. 1:08-CV-00627
INDIVIDUALLY,	:	
PLAINTIFFS	:	
	:	
V	:	
	:	
SPRINGETTSBURY TOWNSHIP;	:	
SPRINGETTSBURY TOWNSHIP POLICE:	:	
DEPARTMENT; CHIEF OF POLICE	:	
DAVID ESHBACH; AND POLICE	:	
OFFICER GARY UTTER,	:	
DEFENDANT	:	JURY TRIAL DEMANDED

VIDEOTAPED  
DEPOSITION OF: GARY UTTER

TAKEN BY: PLAINTIFFS

BEFORE: DONNA E. GLADWIN, REPORTER  
NOTARY PUBLIC

DATE: JANUARY 13, 2009, 10:10 A.M.

PLACE: HAGGERTY & SILVERMAN, P.C.  
240 NORTH DUKE STREET  
LANCASTER, PENNSYLVANIA

APPEARANCES CONTINUED ON NEXT PAGE



1 through high school?

2 A I'm an Army brat, so I lived several places. I was  
3 born in Southern Florida, lived overseas.

4 Q Okay.

5 A Various places.

6 Q And when did you move to York County?

7 A In 1998.

8 Q Okay. And where did you graduate high school from?

9 A Frederick High School in Frederick, Maryland.

10 Q And after high school did you have any post-high  
11 school formal education?

12 A I have a degree from Western Maryland College.

13 Q And that degree is in what subject?

14 A It's a four year degree.

15 Q Okay. What was the subject?

16 A Liberal arts.

17 Q Okay. Was there any emphasis, criminal justice,  
18 political science, anything like that?

19 A History.

20 Q Now -- so when did you graduate college?

21 A 1992.

22 Q If you could describe your -- your work background  
23 from the time you graduated through and including the job  
24 with Springettsbury Township.

25 A After graduation from college I was commissioned,

1 ~~spent four and a half years on active duty in the Army.~~

2 After the Army I was -- I worked for J.C. Penny's and Macy's  
3 Incorporated, loss prevention.

4 For a brief time I worked for Hechinger's, same  
5 type of position, retail thefts, loss prevention. Worked  
6 for Home Depot for, I think, two weeks.

7 And then I was hired by Stewartstown Borough Police  
8 Department. Went through the Academy. They placed me  
9 through the Academy through HACC. Was there for two years.  
10 And then January 21st of 2002 I was hired by Springettsbury  
11 Township Police Department.

12 Q Okay. Would it be fair to say that since your  
13 graduation from college in 1998 through your first job as a  
14 police officer most of your jobs dealt with security or loss  
15 prevention at a retail establishment?

16 MR. MacMAIN: Until the time of the police job?

17 BY MR. SILVERMAN:

18 Q Yes, until the time of the police job?

19 A Yeah.

20 Q And through those entities that you worked for did  
21 they give you any type of training on -- on how to deal  
22 with, you know, people that you thought maybe were doing  
23 something inappropriate in a store?

24 A They gave me training on how to -- what to look for  
25 as far as apprehending somebody or -- I did interviewing

1 A that I had some type of dealing with somebody  
2 that they filed paperwork in some court to say that I did  
3 something wrong.

4 Q Okay. Now, you said you were -- you were hired by  
5 Stewartstown Police Department?

6 A Stewartstown Borough.

7 Q And what county is that?

8 A York County.

9 Q And you were hired there when?

10 A January of 2000.

11 Q And you indicated you went through the Academy, and  
12 obviously you passed it successfully?

13 A Correct.

14 Q Okay. And what was the circumstances surrounding  
15 you leaving that police department?

16 A I got hired by Springettsburg Township Police  
17 Department.

18 Q All right. Was that -- were you looking for a  
19 different job?

20 A I was.

21 Q Okay. And when you got hired by Springettsbury you  
22 were -- had a year probationary period, correct?

23 MR. MacMAIN: In which department? The department  
24 he left or when he got to Springettsbury?

25 BY MR. SILVERMAN:

1 A No.

2 Q Okay. Why are you no longer employed there?

3 A I was terminated October 10th.

4 Q Okay. And what type of job, if any, are you doing  
5 now?

6 A I'm not.

7 Q And October 10 of 2008, correct?

8 A Correct.

9 Q Are you looking for another job as a police  
10 officer?

11 A I have taken an exam, but I'm not really looking  
12 for any employment right now.

13 Q Okay. Now, when you first began your position with  
14 Springettsbury, and I'm -- am I pronouncing it right?

15 A Um-hum.

16 Q Springettsbury, okay. You discussed the field  
17 training, getting familiar with the computer systems. Did  
18 you -- were you given any manuals to read?

19 A We had policies and procedures.

20 Q Okay. And were you provided with a copy?

21 A I was.

22 Q Okay. Did you read them?

23 A We went through them all and continually reviewed  
24 them.

25 Q Okay. And you understood that they were meant --

1 following the rules and the guidelines within those manuals

2 was an affirmative obligation of your position?

3 A Correct.

4 Q And being familiar with those rules and regulations  
5 was an affirmative obligation of your position?

6 A Correct.

7 Q Okay. And a -- if you breached a rule and an  
8 excuse wouldn't be to understanding --

9 COURT REPORTER: I'm sorry.

10 MR. MacMAIN: Yeah.

11 BY MR. SILVERMAN:

12 Q I'm sorry. If you -- well, I'll come back to that.  
13 All right. Now, in your first year on the job what was your  
14 -- what did you primarily do?

15 A Handled day-to-day calls.

16 Q Okay. And what type of calls were they?

17 A Anything and everything that came through.

18 Q Everything from --

19 A Anything that came in through the station, a walk  
20 in, somebody -- a 9-1-1 call, any type of on-view call, just  
21 normal patrol, witnessing a traffic violation or seeing  
22 somebody in distress or somebody in need or somebody waves  
23 you down or whatever.

24 Q Okay. And it seems -- it sounds like you were --  
25 before the shooting incident of July of '07 you were with

1 ~~the Department for approximately five years, correct? Did~~  
2 you say from January, '02?

3 A Yeah.

4 Q Okay. During the time period of hire, let's say  
5 through July of '01, did your description of what you had to  
6 do on a day-to-day basis change?

7 MR. MacMAIN: Objection. You said --

8 THE WITNESS: I wasn't hired in 2001.

9 MR. MacMAIN: You mean July of '07, from the time  
10 he was hired at Springettsbury in '02 through July of '07?  
11 You said July of '01.

12 MR. SILVERMAN: Correct. Oh, I'm sorry.

13 MR. MacMAIN: Okay. So during the five years at  
14 Springettsbury you want to know if his job description  
15 changed?

16 BY MR. SILVERMAN:

17 Q Correct.

18 A I had -- I was a patrolman the entire time.

19 Q Okay. And a lot of it -- you did a lot of traffic  
20 work, correct?

21 A Correct.

22 Q All right. Now, could you please describe, you  
23 know, how large in '07 was the -- was your police  
24 department? How many officers were there?

25 A If -- well, since I've been there we haven't been



1 ~~full strength for probably~~ I'd say maybe four to six  
2 months of that entire time were we at full strength. We've  
3 had additional officers since I was hired to the time that I  
4 left.

5 Cur department has grown. I believe probably by  
6 July I think we had 33 officers, including the Chief.

7 Q Okay. And you had said you weren't full strength.  
8 What do you mean by that?

9 A Meaning that the Township or the police department  
10 had authorized X amount of bodies, but we only had so many  
11 patrolmen. We were always in the process of hiring somebody  
12 or going through a process, or somebody was in the Academy,  
13 in field training, not quite yet able to take calls on their  
14 own. And by the time that person came on the road and they  
15 were handling calls somebody else left for a retirement or  
16 left for another job or resigned or things like that.

17 Q Okay.

18 A We were never really full strength.

19 Q In July of '07 were you at full strength?

20 A I don't recall.

21 Q If you could, let's -- let's focus on the -- the  
22 events of the day of the shooting. Do you recall what day  
23 that was?

24 MR. MacMAIN: What calendar day or what --

25 BY MR. SILVERMAN:

1 A I did.

2 Q Okay. Do you recall how it was called in? Was it  
3 an emergency?

4 A It was a theft, theft in progress or robbery in  
5 progress.

6 Q And were you alone that day in your patrol car?

7 A Yes.

8 Q And could you tell me -- so you drove with your  
9 lights on. You got to the -- to the Giant, and then what  
10 did you -- what did you personally do next?

11 A What did I do?

12 Q Um-hum.

13 A By the time I arrived the subject had been in  
14 custody. He was down on the ground. He was in handcuffs.  
15 And I got him up off the ground, took him to my patrol car,  
16 patted him down for weapons, and placed him in the rear of  
17 my patrol car.

18 Q Okay. Did he have any weapons?

19 A No.

20 Q When you patted him down did he have any contraband  
21 on him?

22 A Contraband?

23 Q What did he have on him?

24 A I believe he -- if I recall right, he had a wallet,  
25 keys, and that was all I can recall right now.

1 Q Okay. And did you take possession of his wallet  
2 and keys?

3 A I took possession of his wallet. He had requested  
4 that his keys be placed in his vehicle.

5 Q Okay. So that his girlfriend could pick them up?

6 A He -- he said his wife, yeah.

7 Q Okay. When you got to the Giant were there other  
8 police officers on site?

9 A There was one other officer that arrived prior to  
10 my arrival, and myself and a couple other officers arrived  
11 at generally the right exact same time.

12 Q All right. How many police officers were on the  
13 scene at any given time that you observed?

14 A There were five of us on duty that night, and all  
15 of us were there.

16 Q Is there a reason that the entire on-duty police  
17 department appeared at the Giant on that -- for that call?

18 A Is there a reason?

19 Q Um-hum.

20 A I don't know of any reason.

21 Q Would that be standard operating procedure, that if  
22 there's a call such as the one that was received on the --  
23 on the Whitaker issue, that the entire on-duty police  
24 department would show up?

25 A Do you want to repeat that again?

1 BY MR. SILVERMAN:

2 Q If you can answer it. If you can't answer it --

3 A Am I aware of any standard operating procedures  
4 that are commonly --

5 Q That were -- during your tenure as an police  
6 officer.

7 A Okay.

8 Q Okay. Were there -- are you aware of any standard  
9 operating procedures that were commonly overlooked or not  
10 followed by police officers?

11 A Not without specific questions, no.

12 Q Okay. Fair enough. Okay. When -- would it be  
13 fair to say before -- when you got to the Giant and before  
14 you left the Giant with Mr. Whitaker in your vehicle that  
15 you said there were -- you and four other officers were  
16 there, correct?

17 A Correct.

18 Q Do you recall their names?

19 A Supervisor on duty was Sergeant Gregory Witmer.  
20 There was myself, Patrolman Christopher Ford, Patrolman  
21 William Polizzotto, and Patrolman John Krentz.

22 Q I'm sorry, John who?

23 A Krentz, K-R-E-N-T-Z. Polizzotto is  
24 P-O-L-I-Z-Z-O-T-T-O.

25 Q Okay. When you left with Whitaker were all four of

1 those others still at the Giant?

2 A For a period of time they were. When we arrived  
3 basically everything had calmed down. We realized  
4 everything had been calmed down. Officer Ford was the first  
5 one to respond. He was handling the incident.

6 He was going to do -- file the charges, if any  
7 charges were going to be filed. He was going to do the  
8 investigation. He was there talking to the victims, getting  
9 the information about the case, talking to witnesses.

10 Officer Krentz was assisting him with interviewing  
11 witnesses. I had told Officer Ford that I would take the  
12 prisoner back to the station to help him out so that he  
13 could stay there and continue to investigate the call.

14 Shortly either just after I left or just prior to  
15 me leaving another call came in. I believe it was a noise  
16 complaint or a party that was, I guess, an evening party  
17 that was too loud because of the hour. The call came in,  
18 and Sergeant Witmer and Officer Polizzoto were in route to  
19 there.

20 Q Okay.

21 A So there were two people at Giant, two people going  
22 to another call, and I was going to the station with the  
23 prisoner.

24 Q When you were -- when you put Mr. Whitaker in your  
25 vehicle and intending to take him back to the station were

1 ~~you aware that there would be no other on-duty officers at~~  
2 the station?

3 A Was I aware?

4 Q That there were no other on-duty --

5 A Well, I knew who was on duty, and I knew I was  
6 going back to the station. So, yeah, I knew that nobody  
7 would be back at the station except for me.

8 Q Okay.

9 A For -- there might have been people at the station  
10 without me knowing, but --

11 Q Okay. But as far as you were aware that there  
12 would be no on-duty officers at the station when you arrived  
13 with Mr. Whitaker?

14 A For a period of time, yeah.

15 Q Okay. Is -- are there any standard operating  
16 procedures that relate to how many officers must be at the  
17 station when bringing a -- a detainee or prisoner in?

18 A I don't recall.

19 Q Okay. Do you recall any training relating to how  
20 many people need to be at the station when bringing a  
21 prisoner in?

22 A I don't recall.

23 Q Okay. So I assume what you're saying is you don't  
24 know if there are or aren't? Sitting here today you don't  
25 recall?

1 A I don't recall any -- any facts or any -- anything  
2 specifically says one thing or another.

3 Q Okay. Now, when you first got to the Giant I think  
4 the -- you indicated that Mr. Whitaker was -- was subdued,  
5 correct?

6 A He was in custody.

7 Q He was calm. Okay. Did you ever learn before you  
8 got back to the station that he had been in some sort of  
9 heightened state of excitement or was crazed, for lack of a  
10 better word, during the incident at the Giant?

11 MR. MacMAIN: Objection. When you say heightened  
12 state of excitement, what do you mean?

13 BY MR. SILVERMAN:

14 Q Okay. Could you please tell me what you learned  
15 about how Mr. Whitaker reacted during the events before he  
16 was under control or in custody?

17 A When we were dispatched we were told that there was  
18 a -- an active robbery or retail theft in progress and that  
19 there was a struggle between employees, Mr. Whitaker, and  
20 customers, and that it was active.

21 And by the time I got there Officer Ford had  
22 already had him in custody. And from that point on I wasn't  
23 handling the investigation. I was there to assist another  
24 officer, and I didn't ask anymore questions.

25 Q Okay. When you were transporting Mr. Whitaker back

1 to the station did you have a conversation with him?

2 A The only thing Mr. Whitaker said was prior to us  
3 leaving I guess he has -- was asking me to secure the keys  
4 in his vehicle. And then just prior to me leaving I guess  
5 he was looking around and saw the police cars and he asked  
6 did I cause this much of a raucous? And I said, yep, you  
7 did. And that was the only conversation I had with him.

8 Q How would you describe his demeanor from the time  
9 he was with you and you took him into the car until you got  
10 to the police station?

11 A He was defeated, cooperative, passive.

12 Q Now, when you got back to the station tell me --  
13 you know, from the time you -- you parked your car or you  
14 pulled into the station what you -- what you did, what you  
15 saw, what you observed. And I'll break it down. First I  
16 believe you saw an off duty officer nearby, correct?

17 A Correct.

18 Q And he was playing bagpipes?

19 A Correct.

20 Q What's his name?

21 A James Miller.

22 Q Did you have any conversation with Mr. Miller prior  
23 to going into the station with Mr. Whitaker?

24 A No.

25 Q Okay. Did he see you? Do you know?



1 lawyer?

2 A David MacMain.

3 Q And he's your only lawyer, correct? You have one  
4 lawyer?

5 A As far as I know, yeah.

6 Q Did you have any -- prior to this counsel did you  
7 have any lawyer -- did you retain a lawyer at all prior to  
8 the filing of this civil action?

9 A Initially Ed Paskey was assisting me. He was the  
10 representative of the FOP.

11 Q Okay. So through the FOP you were provided an  
12 attorney?

13 A He came and said that he'd take care of things,  
14 yes.

15 Q Okay. And what is his full name?

16 A Ed Paskey.

17 Q Okay. Now, getting back to -- tell me what -- when  
18 you got to the station, if we can go through it  
19 sequentially, tell me everything that you -- kind of go  
20 through it step by step what you did.

21 A Arrived at the station, parked in the south bay.  
22 Mr. Whitaker and I walked into the station, placed him in a  
23 holding cell.

24 Q Was he -- I'm sorry. I might interrupt. Was he  
25 still cuffed?

1 A He was.

2 Q Okay. And the cuffs behind him or in front?

3 A Correct.

4 Q Okay.

5 A He was placed in a holding cell, removed the cuffs,  
6 told him to have a seat, shut the door, and went into the --  
7 I guess I got his personal stuff. I think I went back to my  
8 car and gathered that stuff up, and then I went in the squad  
9 room.

10 Q Okay. Let's take the time from when you got to the  
11 station until he was -- you basically -- you for the first  
12 time walked out of the holding cell where you had placed  
13 him. Let's focus on that time for a second.

14 First of all, how many holding cells are in the  
15 facility?

16 A Two.

17 Q Can you please describe basically what was in that  
18 room?

19 A There is a toilet. There is a sink, both of them  
20 metal. From time to time I -- I don't recall whether it was  
21 there or not, there is a metal table. There's generally  
22 some chairs with the table used for interviewing. There's a  
23 metal bench that's fastened to the floor in each one of the  
24 cells.

25 Q Okay. Does the metal bench have an area where if

1 Q Did you ever look to see if he had shoelaces?

2 A No.

3 Q Would it be fair to say then that if you didn't  
4 look, you didn't take away belts or shoelaces?

5 A I didn't.

6 Q Is there a requirement before you leave someone in  
7 a detention room to take away belts or shoelaces?

8 A No.

9 Q Okay. Are you trained at all with regard to  
10 suicide prevention?

11 A I mean, generally we're trained to preserve life.  
12 Whether or not we had specific training to stop somebody  
13 from committing suicide or talk them out of suicide, I would  
14 not say that we did.

15 Q Okay. Do you recall at any time from the time you  
16 first entered into the academy, which I think you said was  
17 somewhere --

18 A January, 2000.

19 Q -- in January. Right, January of 2000 through this  
20 incident did you have any specific training on suicide  
21 prevention?

22 A I don't recall.

23 Q Okay. Were you ever given any training regarding,  
24 you know, taking away someone's belt or shoelaces prior to  
25 putting them in detention?

1 A No.

2 Q When Mr. Whitaker was in your custody from the time  
3 you left the Giant through the time you left him in the  
4 detention room for the first time did you believe he was  
5 intoxicated?

6 A I smelled an odor of an intoxicating beverage  
7 coming from him.

8 Q Okay.

9 A From his expired breath. I'll leave it at that.

10 Q I think what you had testified about, or in a  
11 statement earlier, and we'll go through it in a little more  
12 detail later, that you said that you did smell the  
13 intoxicating -- the breath, or it smelled of alcohol, but he  
14 wasn't -- the word you used was hammered?

15 A Yeah.

16 Q Okay. Can you please describe what would make  
17 someone -- how you would see they were hammered or not  
18 hammered?

19 A He was -- he wasn't falling down drunk.

20 Q Okay. All right.

21 A He was able -- he was coherent enough to follow my  
22 instructions, and he was able to walk by himself without my  
23 assistance. He didn't need to be carried or lifted, and he  
24 wasn't staggering. He wasn't bouncing off walls.

25 Q Did you notice -- other than the alcoholic breath,

1 did you notice anything else that either alone or in  
2 connection with the alcoholic breath that would lead you to  
3 believe that he may be impaired, even -- even very slightly?

4 A No.

5 Q All right. Would it be fair to say then other than  
6 the -- you didn't think that he was impaired at all?

7 A I -- obviously I smelled an alcohol -- you know,  
8 intoxicating beverage. So I would assume that he had  
9 something in his system or recently had it so that it would  
10 be on his breath.

11 Q Okay. Had you received any training with relating  
12 to handling of detainees as it relates to -- to do things  
13 differently if there is alcohol involved or if they're  
14 intoxicated at all?

15 MR. MacMAIN: Objection. Do you -- that's really  
16 two questions, alcohol versus being impaired by alcohol.

17 BY MR. SILVERMAN:

18 Q Fair enough. I will rephrase the question. First  
19 of all, did you have any reason to believe that he may have  
20 -- be on any other drugs?

21 A No.

22 Q All right. Have you received any training relating  
23 to handling individuals that you have reason to believe may  
24 be intoxicated?

25 A Yeah.

1 Q ~~And is any of that training relating to increased~~  
2 risk of suicide?

3 A I don't recall specifically.

4 Q Okay. Is any of that training relating to  
5 providing the officers having heightened duty to watch out  
6 to make sure they don't hurt themselves?

7 A His behavior and his actions didn't elevate to a  
8 point where I was taking any other circumstances than what  
9 I'm dealing with you today.

10 Q Okay. But -- and I understand that, but my  
11 question is just a little different. My question is have  
12 you ever received any training relating to if you come  
13 across someone that you believe is intoxicated, that they  
14 could be at a greater risk to either harm themselves or to  
15 harm someone else?

16 A Yes.

17 Q And could you please describe your understanding of  
18 the increased risks of someone hurting themselves if they're  
19 intoxicated?

20 A You're going to have to rephrase or explain that  
21 one better.

22 Q Okay. Sorry. Basically if you think someone is  
23 intoxicated --

24 A Okay.

25 Q -- do you think they're at a greater risk to hurt

1 themselves?

2 A Yes.

3 Q Do you think if somebody's intoxicated that they  
4 have a greater chance to hurt people around them?

5 A They might have a potential to, yeah.

6 Q Okay. And if you're with an intoxicated prisoner  
7 do you think there's a greater chance that you could be hurt  
8 by that prisoner?

9 A Sure.

10 Q Okay. And, again, I'm not asking the questions --  
11 you've already said to assume that you think he was  
12 intoxicated. All right. So he's put into the room, as you  
13 described, and you then left, correct?

14 A Correct.

15 Q All right. And what did you next do?

16 A I went into the squad room area. I secured his  
17 personal belongings minus his driver's license and Social  
18 Security card, which I found. I knew that Officer Ford was  
19 going to need some required information from him that any  
20 one of our officers that are making an arrest would need.

21 We -- we commonly refer to it as their 23 block  
22 information, which is just their -- their name, their  
23 height, weight, place of birth, current employment, current  
24 address. Just general info, race, sex. So --

25 Q Basic identifying information?

1 A Yeah. Everything that we put into our system, our  
2 database.

3 Q Okay.

4 A I got the form that has the appropriate blocks, and  
5 then I returned to Mr. Whitaker to obtain the information  
6 that I didn't already have. I mean, I had his driver's  
7 license. I had some of the information. I had his Social  
8 Security card.

9 Q Okay. Okay. I must have misunderstood. I thought  
10 you said you didn't have his Social Security and driver's  
11 license initially?

12 A I --

13 Q You did?

14 A I had that in his wallet. I located that in his  
15 wallet.

16 Q Okay.

17 MR. MacMAIN: I think you said you did, and is that  
18 what you had on the transcript?

19 BY MR. SILVERMAN:

20 Q Okay.

21 A I'll clarify that. I had his driver's license and  
22 his Social Security number. So I had some of the  
23 information that I would need for Officer Ford, but I didn't  
24 have all of it.

25 Q Okay. All right. If I heard you wrong, I



1 Q Okay. What else did you talk about?

2 A At that time he was complaining of an injury or  
3 holding his side and was having difficulty breathing.

4 Q Okay.

5 A I asked him about his injuries, and he said that  
6 during the scuffle at Giant he thinks that he injured his  
7 ribs.

8 Q Okay. Was this the first he had complained to you  
9 about having an injury from the -- from the incident at --

10 A That's the first time he complained, yeah. It's  
11 not the first time I saw an injury.

12 Q Okay. When was the first time you saw an injury?

13 A At Giant.

14 Q And what injury did you see?

15 A He had a very minor laceration on his hands.

16 Q Okay.

17 A There was some blood, but there was no -- nothing  
18 dripping or profusely -- nothing requiring any serious  
19 medical attention. I mean, if I had a Band Aid handy, it  
20 would have done more than enough. Paper towel or a tissue  
21 would have sufficed.

22 Q Okay. So then -- so after the conversation about  
23 his injury and the additional indexing you go back to the  
24 patrol room?

25 A Correct.

1 Q And what do you then do in there?

2 A I used my Nextel phone. I contacted my supervisor,  
3 Sergeant Witmer, advised him that the -- Mr. Whitaker was  
4 complaining of his side and advised him that I was going to  
5 have an ambulance respond to the station to check him out  
6 prior to Officer Ford coming back.

7 Q Okay.

8 A And I did that because he wasn't my prisoner, and I  
9 just wanted to let the supervisor know what I was doing  
10 since he wasn't my prisoner.

11 Q He was or was not your prisoner?

12 A He was physically in my custody, but it wasn't  
13 going to be my case.

14 Q Understood.

15 A Officer Ford was going to be the arresting officer.  
16 It was going to be his name on all the paperwork if there  
17 were any charges.

18 Q Are there, that you're aware of or that you recall,  
19 operating procedures or standard operating procedures that  
20 deal with securing weapons while in the station or as it  
21 relates to dealing with a -- or while in the station? Leave  
22 it at that. Sorry.

23 A Yes.

24 Q Okay. And what are they?

25 A I don't know what they are word for word, but --

1 you tell me about that?

2 A I was going to a call, physical domestic, pulled  
3 out of the covered porch. They have metal posts there, and  
4 just cut the corner too sharp as I pulled out and just  
5 clipped the nose of the car.

6 Q Okay.

7 A Took out the turn signal.

8 Q Do you recall if -- strike that. You just  
9 testified a moment ago that you today understand that not  
10 securing the weapon was a violation of the standard  
11 operating procedure.

12 In your five years that you worked there was it --  
13 did you usually secure your weapon? Was this kind of a one  
14 time occurrence, or is this kind of the way you normally  
15 operated?

16 A Unless the person was at a high rate of risk or I  
17 felt threatened, generally I would not be taking the  
18 handcuffs off of somebody -- if I thought that they were  
19 going to be a problem or I felt threatened, I would never  
20 take the handcuffs off them. They would just sit in the  
21 room with the handcuffs on.

22 Generally in situations where I was taking  
23 somebody's handcuffs off it was because they were  
24 cooperative, and I didn't feel threatened.

25 Q Okay. So would you agree that the way you normally

1 operated was if you took the handcuffs on you didn't feel  
2 threatened, therefore, you didn't feel it was necessary to  
3 secure your weapons?

4 A I generally didn't secure my weapon, yes.

5 Q Do you know sitting here today why the -- there is  
6 a standard operating procedure with regard to secure -- the  
7 securing of weapons?

8 A I can understand why it was written, yeah.

9 Q Okay. Tell me what you think that reason is.

10 A So that somebody doesn't grab your weapon and use  
11 it against you or against themselves or others.

12 Q Okay. And the rules with regard to securing of  
13 weapons, is that just the hand gun, or are there other  
14 weapons as well?

15 A I know it's the hand gun.

16 Q Okay.

17 A The firearm.

18 Q Okay. And how about the taser?

19 A I don't recall.

20 Q Okay. And how about your baton?

21 A Anything else besides the firearm I'm unsure of.

22 Q Okay. All right. Now, other than the failing to  
23 secure the weapon on the date of the shooting are there any  
24 other standard operating procedures that sitting here today  
25 you're aware that -- that were violated?

1 A ~~Yeah. My violation with the terms of the firearm~~  
2 was just the mere fact that I did not secure it while I  
3 removed the handcuffs off. The way I should have done it,  
4 and what I'm aware of now is as I brought Mr. Whitaker in, I  
5 should have secured him in the room, shut the door, secured  
6 my weapon, returned to Mr. Whitaker, removed his handcuffs  
7 off, shut the door, gone back to my weapon, put my weapon  
8 on, and that any emergency situation inside the cell or  
9 anything else I would have been all right to go in to the  
10 cell with my weapon.

11 Q Okay.

12 A If I was moving him to another room or taking him  
13 to central booking or anywhere else, the same procedure  
14 would have happened. Prior to putting the handcuffs on I  
15 would have secured my weapon. Once he's in handcuffs,  
16 returned -- retrieve my weapon, and then escort him out once  
17 he's in handcuffs.

18 Q Okay.

19 A But, yes, there was another violation that night  
20 that I am aware of that I did not do.

21 Q And what is that?

22 A I did not call out at the station that I had  
23 arrived at the station. I had advised through county  
24 control or YCC that I was leaving Giant with a prisoner, and  
25 that once I arrived at the station I did not call out with

1 on, correct?

2 A Correct.

3 Q Okay. Is there a requirement that you're aware of  
4 that if you're going to be with the -- the prisoner while he  
5 is not handcuffed, whether you -- is there a time where you  
6 can have -- strike that.

7 Let me try -- rephrase that so it makes sense.  
8 Basically if the prisoner is not handcuffed are you supposed  
9 to have your weapon secured?

10 MR. MacMAIN: You mean --

11 THE WITNESS: If he's secured in the room, I can  
12 have my gun on, and it doesn't matter.

13 BY MR. SILVERMAN:

14 Q Okay.

15 A If I'm in the room with a prisoner who's unsecured  
16 without handcuffs, then I'm supposed to have my firearm  
17 secured.

18 Q Fair enough.

19 A Unless it's an emergency situation, which --

20 Q Okay. Understood. Okay. So we had -- we had  
21 talked about you went back to the room. You got some  
22 additional information. You then went back to the patrol  
23 room, and you were -- I know you were filling out some  
24 information. You were faxing, I assume, some information,  
25 do a criminal background. Tell me what -- you know, while

1 this was happening what you then observed and what happened.

2 MR. MacMAIN: Do you know where we are in the  
3 sequence?

4 MR. SILVERMAN: I'm sorry.

5 MR. MacMAIN: You're at the point -- what you want  
6 to know is he's gone back into the room. He's spoken to Mr.  
7 Whitaker. Mr. Whitaker expresses difficulty breathing.

8 MR. SILVERMAN: Um-hum.

9 MR. MacMAIN: He then leaves the room, calls on his  
10 Nextel for an ambulance to be assigned to the station.

11 MR. SILVERMAN: Correct.

12 MR. MacMAIN: And that's where you want him to pick  
13 up from?

14 BY MR. SILVERMAN:

15 Q Right, correct.

16 A Called Sergeant Witmer by Nextel, told him I was  
17 calling the ambulance. I called directly into the 9-1-1  
18 center, talked to the ambulance board. I had the dispatch  
19 for the ambulance.

20 I knew that Officer Ford was going to need a  
21 criminal history on Mr. Whitaker. Since I had all the  
22 information there I filled out the form and walked the form  
23 up and faxed it off.

24 Q And if you can, just continue with what you then  
25 did, saw, and observed?

1 A Once I returned back to the squad room I checked  
2 Mr. Whitaker on the camera system that was in the cell. We  
3 had monitors in the squad room and saw that he was laying on  
4 the floor with his head towards the door.

5 I ran back to -- went back to the cell, looked  
6 inside. It's a small window in the door. I saw that Mr.  
7 Whitaker was still there on the floor and that he hadn't  
8 moved since I had walked back there and attempted to open  
9 the door.

10 Q Okay. When you looked through the wall before you  
11 -- or the window before you attempted to open the door,  
12 could you see anything around his neck at that point?

13 A No.

14 Q Okay. And what had -- when you observed that did  
15 you conclude anything as to what you thought was happening?

16 A The only thought that was going through my mind was  
17 that, you know, because he said he had difficulty breathing  
18 that maybe he was having some type of medical problem and  
19 that he had made it to the floor.

20 Q Okay. And then you -- you reached down to the  
21 door, tried to open it, pushed it open. There was some  
22 pressure against the door because of his body, correct?

23 A Correct. The door opens inside. The way he was  
24 laying, the door basically would have had to push through  
25 his body.



1 Q Okay.

2 A As I opened it up I heard him having difficulty  
3 breathing, like he was gurgling. As I forced the door open  
4 it rolled his body over so that he was face up. At that  
5 time I could see that there was some type of string or  
6 material, whatever it was. I didn't immediately identify  
7 it, what exactly it was, but that it was tied around his  
8 neck, and that the other end was somewhere tied on the other  
9 side of the door.

10 Q Okay. Have you since learned what that string was?

11 A Yeah. It was his shoelace.

12 Q And it came from his shoe?

13 A I'm assuming.

14 Q Okay.

15 A I don't know. I know it was a shoelace. I can  
16 only assume that it came from his shoe. I don't know for  
17 sure whether it was his shoelace.

18 Q Okay. Other than it coming off the shoes he was  
19 wearing, whether he --

20 A I have no idea if it came off of his shoes.

21 Q Okay. I think you had testified earlier that you  
22 searched the room. It wasn't in there before you put him  
23 in, correct?

24 A Correct.

25 Q Okay. All right. So, again, I know this is

1 ~~probably not the easiest thing, but if you could just again~~  
2 go through what transpired when you saw that happen.

3 A Okay. As I flipped him over I saw that he was  
4 strangling -- he was hanging himself. I attempted to reach  
5 down and get the string from underneath his chin around his  
6 neck. It was pretty tight with his body weight making the  
7 -- the rope taught on the door handle.

8 The only way to really do that was to actually lift  
9 his body up to make some slack to get it up over. As I was  
10 lifting the string around his neck Mr. Whitaker basically  
11 came to and -- and just went bizzerk and started swinging,  
12 screaming. At some point he attempted to bite me.

13 I eventually was able to break free from him. I  
14 withdrew my taser. I aimed and shot him center mass with  
15 the taser. The taser went through its initial cycle in  
16 which Mr. Whitaker went limp again, unresponsive. He was  
17 still attached to the string.

18 I put my taser down, again tried to remove the  
19 string from his neck. Again, I had just about gotten it to  
20 about his nose when Mr. Whitaker came to again, and again  
21 just went bizzerk, started swinging and everything again.

22 Thinking that the taser was still attached, the  
23 probes were still attached to him, I reached down to grab  
24 the taser and to shoot it again. When I looked up Mr.  
25 Whitaker was charging at me and in the doorway, basically

1 charged me there. I retreated back into the hallway. I was  
2 forced back into there.

3 The fight continued to the corner of the hallway.  
4 At one point I attempted to get out of the room by opening  
5 the door. He had shut it. Again, I was trapped in the  
6 corner, started feeling tugging on my waste belt, my weapon.  
7 Reached down to secure my weapon and withdrew it, aimed it  
8 in his general direction, fired first shot, and then  
9 subsequently fired the second shot.

10 Q All right. Could you please describe your weapon  
11 belt, where everything is?

12 A I can -- I'm sure it's documented somewhere. I  
13 could try the best of my ability. I know that I had changed  
14 it after the incident, so I'm not sure if I'm remembering  
15 exactly.

16 Front left I had my ammo pouches. To the left of  
17 that I had my taser. To the left of that I had my radio,  
18 flashlight. I'm not sure at that point if I had my  
19 handcuffs in the rear or not. I changed to a two-cuff case,  
20 and I think I moved it to my front right. But at the time I  
21 think I was still carrying a single-cuff case, and I think I  
22 had it in my right rear.

23 Then I had my asp. To the left of that my weapon,  
24 and then my OC, and then my cell phone.

25 Q Okay. The taser weapon, was it the type of taser

1 through, and the person will go through the cycle again.

2           However, even if the prongs are in and the weapon  
3 is placed on to the person and you fire the trigger, there's  
4 still two metal connectors at the end of the cartridge that  
5 will act the same as probes.

6           Q     Okay.

7           A     So if you take the cartridge off and use the  
8 weapon, it's the same thing. So it doesn't matter if the  
9 cartridge is there or not.

10          Q     Okay. Did you ever -- it appeared, I guess --  
11 strike that.

12                  Do you agree that it appeared that on the first  
13 shot the taser worked appropriately?

14          A     Yes.

15          Q     Do you -- did it appear to you that when you tried  
16 to reuse the taser it did not work appropriately?

17          A     My feeling was that he was walking right through  
18 it.

19          Q     Okay. And when you say he was walking right  
20 through it, do you think it was operating properly if you --

21                  MR. MacMAIN: You're asking him at -- you're asking  
22 him at the time this is happening what's in his mind?

23 BY MR. SILVERMAN:

24          Q     Okay. That's fine. At the time did you think it  
25 was operating properly?

1 A I believed the gun itself was working, because I  
2 was pressing the trigger, and it was making a noise that's  
3 telling me that the device is working.

4 Q Okay. Now, did you ever try to use the -- to use  
5 it like as a prod against him?

6 A No.

7 Q All right.

8 A I was -- no.

9 Q Okay.

10 MR. MacMAIN: You can answer. If you have an  
11 answer, you can --

12 THE WITNESS: From the time that I grabbed it and  
13 was going to use it again I was being charged at. And I  
14 was, at that time, trying to make a stand where I could stop  
15 from going backwards. I was trying to set my right foot to  
16 then go on the offensive. And while I was doing that I was  
17 just holding the trigger down or pressing the trigger trying  
18 to stop him thinking that it was still attached.

19 Q Okay.

20 A And he was continually coming at me. And my  
21 thought at the time was the gun's making the noise, that  
22 it's working. It should be working, and he's walking  
23 through it. Therefore, he's defeating the taser, not that  
24 the taser was broken.

25 Q Do you know if the taser was ever checked to see if

1 you recall to him, stop or I'm going to shoot, stop, I'm  
2 going do something additional?

3 A From the time that he attacked me to the time that  
4 I fired my trigger the only thing that I was doing was  
5 trying to save my life.

6 Q Okay. And I respect that. Now, when the tussle  
7 ensued and you said you felt a -- I think -- again, I'm not  
8 trying to put words in your mouth, so correct me if I'm  
9 wrong. I think you said you felt a tug at your weapon belt,  
10 correct?

11 A Correct.

12 Q Do you know if that tug came from your right or  
13 from your left?

14 A I knew it came from my right hand side.

15 Q Okay. And that's where your --

16 A Where my firearm was.

17 Q All right. And I think you had said that when you  
18 felt that you secured your weapon. Was that the secure  
19 meaning to pull it out?

20 A No.

21 Q What does secure mean?

22 A Initially what happened was I felt -- I was  
23 defending myself with my arms, and then I felt the right  
24 side of my belt being pulled up towards my gun. And what I  
25 did is I reached down and grabbed the handle of my gun and

1 A Generally from what I recall, yes.

2 Q Okay. And when the first shot was fired you were  
3 in arm's length of each other, is that what you said?

4 A I'm assuming, yeah.

5 Q Okay. And so I understand when you say arm's  
6 length, I assume you don't mean if you each put your arm's  
7 length that you would be that far separated, just one arm's  
8 length so he could still reach you, in other words?

9 A I was still feeling him on me, and I was still  
10 feeling punches. So I'm assuming that one of our arms was  
11 within reach if he was reaching out and touching me or I was  
12 still able to touch him.

13 MR. MacMAIN: Howard, just so I'm clear, when  
14 you're asking him these questions are you asking him first  
15 what was in his mind or now looking back looking at the  
16 video, looking at reports? I mean, which?

17 MR. SILVERMAN: What he -- what he recalls  
18 happening back then.

19 MR. MacMAIN: At the time while this was unfolding?

20 THE WITNESS: At the time he was on top of me?

21 BY MR. SILVERMAN:

22 Q Well, no. What I think your counsel is asking, we  
23 all can think something happens, and then when we see it, we  
24 go later and look at it and say, God, I was wrong just based  
25 upon a perception.

1 A So yesterday's memories of what actually happened,  
2 what I saw on the video, is more recent than when I made  
3 statements there.

4 Q Fair enough.

5 A So yes and yes.

6 Q Can we agree -- like we had talked earlier about  
7 perception and reality, and it may be different even though  
8 we're being completely honest with one another, but can we  
9 agree that on July 16th -- first of all, do you remember the  
10 Pennsylvania State Police investigating this?

11 A Yes.

12 Q All right. And do you recall sitting down with  
13 Trooper Hennaman on July 16th to be interviewed?

14 A I'm not very good with names, but I remember being  
15 at the York barracks and being interviewed with counsel  
16 there and a couple troopers there.

17 Q All right. And your attorney, do you remember him  
18 being there?

19 A Ed Paskey, yes.

20 Q And Jeff Rineer, was he there?

21 A I've read the reports. I saw the names.

22 Q Okay.

23 A So if that's true and correct, then I'll swear that  
24 that's who they are. Like I said, I'm terrible with names.  
25 I won't remember your name when I leave here.



1 Q All right. Okay. I don't know if that's a good  
2 thing or a bad thing, but I'll accept it as neither.

3 A All right.

4 Q Can we -- when you gave your statement on July 16th  
5 you were being -- you agree that you were being as honest as  
6 you could?

7 A Hum, correct.

8 Q And you were recanting the story to the best of  
9 your ability?

10 A Correct.

11 Q All right. All right. And on July 16th, if you  
12 said it was one to two seconds, whether it turns out to be a  
13 half second or three minutes, your belief that --

14 A Correct.

15 Q -- was that? All right. And we'll go back and  
16 deal with this later, but now I think you said when you --  
17 your recollection of the shooting when the first shot was  
18 you were in arm's length, and you shot him as you were both  
19 facing each other, correct? So would it be that your  
20 shoulders would have been parallel?

21 A If we're thinking the way that I was thinking at  
22 the time, I have no idea whether or not he was facing me,  
23 whether I was facing him. We were generally facing each  
24 other.

25 How -- if I was looking at the 12:00 position, he

1 was looking at the 5, I have no idea how we were facing.

2 But I basically was under the impression that we were  
3 generally facing each other, and that he was on top of me,  
4 and that we were both -- I was able to reach out and grab  
5 him, and he was throwing punches at me. So, yes, we were  
6 within arm's length.

7 Q Okay. And would that hold true also for shot No.  
8 2?

9 A That I can reach him?

10 Q Um-hum.

11 A That we were still within arm reach, yes.

12 Q All right. And do you recall if shot No. 2 hit him  
13 in the front, back, or side?

14 A It would have been in his back.

15 Q Okay. Okay. After the shots were -- at the time  
16 the shots took place your taser was not on you, correct?

17 A I have no idea where my taser was.

18 Q All right. When you looked at the video yesterday  
19 did you -- do you recall seeing the taser on the floor?

20 A I remember seeing the taser sliding --

21 Q Okay.

22 A -- south.

23 Q All right. And south would be?

24 A Away from me.

25 Q To your left? The record will reflect it. We'll

1 get back to that.

2 A To the top of the screen.

3 Q Did you have -- did you have -- that's right. Did  
4 you have any -- back then did you have any belief that he  
5 was going for the taser?

6 A No.

7 Q Was it your concern that he was going for the  
8 taser?

9 A No. I was --

10 Q So your fear for your life, I think you testified  
11 earlier, was based upon his hands beating you and knocking  
12 you out and then maybe taking the weapon or something?

13 A Right.

14 Q All right. All right. So after the event  
15 occurred, after the shooting occurred, what did you next do  
16 then?

17 MR. MacMAIN: Okay. Now, the shooting's -- the two  
18 shots are fired. You want to know where he goes or what he  
19 does then?

20 BY MR. SILVERMAN:

21 Q The two shots are fired.

22 A Okay.

23 Q Whitaker is down.

24 A Okay.

25 Q What do you do next?

1       A    I went back into the squad room, pulled out my  
2       portable. I called Signal 13, asked for back up at the  
3       station. I think I returned to check on Whitaker to make  
4       sure he was still there. I was hearing additional units on  
5       the radio calling in and county verifying what I needed and  
6       status of whatever.

7                I heard other departments coming in, Spring Garden  
8       and York Area Regional. I heard our units saying that they  
9       were in route to the station. My thought was if somebody  
10      outside of our department reaches our station first, nobody  
11      can get into our building because the doors are locked.  
12      We're the only ones that have the keys.

13           Q    Okay.

14           A    So that I needed to prop open an outside door so  
15      that people could come in. As I went towards the door Jamie  
16      Miller had come in. I told him what happened just quickly;  
17      that, you know, shots fired, that he's down in the hallway  
18      in the squad room.

19                He ran that way. I don't know if I ran back with  
20      him to show, but eventually I went back out to the bay doors  
21      or the doors by the squad room. When I opened the door the  
22      ambulance crew had just basically were getting out of their  
23      ambulance.

24                I told them, you know, the shots fired. The guy's  
25      down. And they came running in. And then basically enough

1 A Um-hum.

2 Q -- did you -- did you give any thought to doing  
3 anything other than what you did?

4 A Yeah. We -- what was going through my mind or what  
5 I should do and what I thought was the priority at the time  
6 are two different things. I knew that I needed somebody  
7 else there and that I needed to help.

8 But the priority was to save this guy's life, that  
9 he was trying to kill himself, and that if I could get the  
10 rope off of his neck, and if nothing else secure him in a  
11 room without the rope, then he can't harm himself any  
12 further. And I can just contain him in the room until I got  
13 more help there.

14 But I wasn't going to not go in there and not help  
15 him out, sit back for five minutes waiting for somebody to  
16 come to the station to help me out to go in with another  
17 body.

18 Q Okay.

19 A You know, really I had -- my primary concern was  
20 his safety and going in there and helping him out as fast as  
21 I could.

22 Q Okay. You said your -- I think you said your  
23 primary goal was his safety?

24 A Um-hum.

25 Q Are you trained that when you take a -- a person

1 Q Okay. Have you or were you trained that when  
2 you're arresting people that are drunk you must handle that  
3 particular person differently?

4 A Define drunk.

5 Q Okay. Well, I think you already testified that you  
6 didn't think he was drunk?

7 A I -- I don't even think that I thought that he was  
8 mildly intoxicated. I think there was just -- there was a  
9 hint of alcohol on his breath. And, you know, if you had --  
10 you and I had a drink at a bar and we were saying goodbye at  
11 the end of the night, I would -- I don't even know if I'd  
12 smell that much alcohol on you.

13 Q Okay.

14 A His level of intoxicity had really no factor on or  
15 made me think anything was going to happen.

16 Q Okay. Well, let me ask you this question then.  
17 And really what I was asking was more of a general question.  
18 But if you thought he was intoxicated, would you have -- and  
19 -- would you have handled him differently?

20 A Yeah. If he was falling down, you know,  
21 intoxicated where he was going to slip and fall and injure  
22 himself, then, yeah, I might make sure that he wasn't going  
23 to be getting up and walking around a lot. I would make  
24 sure that there were things in the room that he wasn't going  
25 to bump into. Checking on him a little more regularly to

1 the country to war?

2 A No.

3 Q Do you recall that when you were dispatched to the  
4 Giant to see Mr. -- to deal with the Whitaker matter that  
5 you were told he was possibly intoxicated?

6 A I seem to recall that that was part of the  
7 dispatch, that he was possibly intoxicated.

8 Q You had testified on July 16th that as you returned  
9 to the station you noticed Officer Miller playing the  
10 bagpipes in the park and you thought that was funny. Is  
11 that something that you had seen before? Is this the first  
12 time you had seen that?

13 A No. Officer Miller had a habit of playing his  
14 bagpipes after duty or at odd places. He's been known to  
15 walk the parking lot, Wal-Mart, and play 11, 2:00 in the  
16 morning, 3:00 in the morning, whatever. He's gone out to  
17 the Township park numerous times and played. It calms him,  
18 relaxes him, and doesn't bother too many people.

19 Q Okay. Previously you had testified that when you  
20 got back to the station Mr. Whitaker -- I don't want to -- I  
21 want to make sure your testimony is the same today. You  
22 said that he was calm?

23 A Yeah.

24 Q Okay. That he was relaxed?

25 A Seemed to be.

1 Q That he was mellow?

2 A Correct.

3 Q And you also said, quote, just layed back as he can  
4 be, end quote?

5 A He was relaxed.

6 Q Okay.

7 A He was passive.

8 Q Okay. When -- the second time you went back to Mr.  
9 Whitaker in the holding was at the time that he expressed to  
10 you that he was injured, correct?

11 A No.

12 Q That was -- okay.

13 A That was the first time.

14 Q First time, okay. Actually you're right. The  
15 first time you went back, but the second time you were with  
16 him?

17 A Right.

18 Q The first time was when you left him -- either way,  
19 I agree. It was the first time you went back.

20 A Okay.

21 Q All right. You had testified that you opened the  
22 door and you said, but I was outside. I had my distance to  
23 him. What did you mean by you had your distance to him as  
24 you were outside the door?

25 A I was in the door frame, and he was inside sitting



1 break and get you a copy now. Here, if you take a look, I  
2 think it's bates stamped 0016. That's the beginning of the  
3 transcript.

4 MR. MacMAIN: What page? Because the set that I  
5 have that I think were produced by Attorney Keepers don't  
6 have bates numbers. I have them, but they don't have bates  
7 numbers.

8 MR. SILVERMAN: Okay. Why don't we go off the  
9 record for a second and let me show you what I've got. And  
10 if I need to, I'll pull you a folder.

11 MR. IRVIN: We're going off the video record. The  
12 time is 12:56.

13 (Discussion held off the record.)

14 MR. IRVIN: We're back on the video record. The  
15 time is 12:58.

16 BY MR. SILVERMAN:

17 Q I show you a document. It's a transcript. It says  
18 interview with Gary Utter dated July 16th, 2007. Have you  
19 had an opportunity at all to read this transcript?

20 A I breezed through it.

21 Q Okay. When did you breeze through it?

22 A Yesterday.

23 Q Okay. As you breezed through it did you see  
24 anything in here that was inaccurate?

25 A Not what I saw.

1 Q Okay.

2 A It's consistent.

3 Q And if I could take your attention to page 16.

4 A Is that at the top, or is that at the bottom?

5 Q The bottom. It says -- I'll read a few lines. You  
6 did not see him remove a shoelace. Officer Utter, no, no.  
7 Corporal Rineer, okay. Officer Utter, and I couldn't even  
8 tell you if he had -- shoes had laces on it. It's not a  
9 policy that we have that we take everybody's shoes. I know  
10 central booking had everybody taking their laces off their  
11 shoes if they want to keep their shoes on. Corporal Rineer,  
12 right. But we don't?

13 A Could I ask you to pause? I have page numbers on  
14 the top, and I have State Police 126 at the bottom. So --

15 Q It's the numbers on the top right. I'm sorry.

16 A Okay. I asked --

17 Q You're right.

18 A So you're at 16?

19 Q 16 and 17.

20 A Okay.

21 Q And if you could look now at the top of 17.

22 A Okay.

23 Q And --

24 A Okay.

25 Q And I'll read again from 17, line 1. And I

1 couldn't even tell you if he had shoes that had laces on it.  
2 It's not a policy that we take everybody's shoes. I know  
3 central booking had everybody taking their laces off their  
4 shoes if they want to keep their shoes on. Officer Rineer,  
5 right. Officer Utter, but we don't. We've never had an  
6 issue with that before. It's not a policy.

7 Now, my question is when you said it's not a  
8 policy, was it not a policy to take shoes off, to check for  
9 laces, or to take laces out of shoes, or all three of the  
10 above?

11 A It was -- it was never a requirement that we had to  
12 do any of those three.

13 Q Okay. Okay. Thank you. If you could turn to page  
14 21, please. And I'll just -- I'm going to ask you to look  
15 at the -- starting at line 15, if you could just take a  
16 second and look at it, 15 through 23.

17 A Okay.

18 Q Now, sitting here today do you have a recollection  
19 that -- thinking back then that you weren't sure if the  
20 first shot hit him?

21 A Correct.

22 Q All right. Can we agree that if you go -- if  
23 there's a determination that deadly force is necessary, that  
24 it is possible that the -- that deadly force at some point,  
25 before it's actually carried out, could no longer be

1 ~~who may be dangerous to you is close to you, that in and of~~  
2 itself doesn't make it a risk to you?

3 MR. MacMAIN: Objection.

4 MR. GABRIEL: Objection to the form.

5 BY MR. SILVERMAN:

6 Q In other words, I understand he was close to you,  
7 but he -- after the first shot he was going away from you,  
8 correct?

9 A Correct.

10 Q Okay.

11 MR. GABRIEL: When you say -- you're talking about  
12 whether it was the second or two seconds between the first  
13 and the second shot?

14 MR. SILVERMAN: Right.

15 MR. GABRIEL: You're not talking about at any point  
16 after the first shot?

17 BY MR. SILVERMAN:

18 Q No, right, exactly. So after the first shot but  
19 before the second shot he was going away from you. What led  
20 you to believe after the first shot, before the second shot,  
21 that at that moment he was still a risk to come back at you?

22 A It was still -- it was one continuous act.

23 Q Okay. Would you agree that before you fired the  
24 second shot you aimed it towards his back?

25 A I aimed center mass.

1 that went through your head, correct me if I'm wrong, is  
2 that you're in a closed environment, that it would affect  
3 you as well, so that was not an appropriate measure,  
4 correct?

5 A Correct.

6 Q And I think that I saw that you also had the same  
7 thought process with regard to the baton?

8 A Correct.

9 Q So under certain circumstances would you agree that  
10 the use of a baton could be deadly force, just generally  
11 speaking?

12 A It would be a use of force. If I used it and  
13 killed somebody, therefore it turns into deadly force.

14 Q Okay.

15 A But it would be a use of force.

16 Q Okay.

17 A You're -- you're confusing words in there.

18 Q All right. I apologize. I'm not trying to do  
19 that. Okay. Now, when you were first hired were you given  
20 the standard operating procedures?

21 A Yeah.

22 Q Where did you -- did you maintain a copy for your  
23 -- for review as you may need to review?

24 A Yeah. Each officer was given a binder that had all  
25 the SOPs in it.

1 Q ~~All right. Where did you keep your binder?~~

2 A Mine was in the squad room in my box.

3 Q I'm sorry. Where?

4 A We have assigned boxes.

5 Q Like a locker?

6 A In the officer area.

7 Q All right. And would you agree that when a --  
8 every once in a while the procedures were -- there were  
9 either new ones added or some ones were updated?

10 A Correct.

11 Q And when that happened were you given new papers, a  
12 whole new book? What happened?

13 A If any changes or additions were made, generally  
14 what happens is the chief will have a supervisor's meeting  
15 where they regularly, I guess, sign certain SOPs that are  
16 going to be reviewed, seeing if there aren't any changes  
17 that need to be made or updates.

18 If it's deemed that any changes or updates need to  
19 happen, then our supervisors are given copies of the changes  
20 or the updates or additions. And then the platoons will  
21 meet, all that are available will review the changes,  
22 replace the entire chapters if needed or just one page if  
23 that's needed, and then we initial off that we've reviewed  
24 the changes.

25 Q Okay. And who was your immediate supervisor?

1 ~~A Am I in the right binder or what?~~

2 MR. MacMAIN: Yeah, at the bottom.

3 BY MR. SILVERMAN:

4 Q I'm sorry, at the bottom right.

5 A Okay. Rules of conduct.

6 Q We had previously discussed the rules of conduct  
7 and documents that you were provided during training, and  
8 that may or may not have been updated as may have been  
9 appropriate. Is this one of the documents that you had seen  
10 before the one that you're looking at?

11 A Yeah, I'm familiar with this.

12 Q Okay.

13 A It is used by our department.

14 Q All right. Now, and I -- I think you testified  
15 earlier they were given to you when you began your -- your  
16 job with the Township, correct?

17 A Correct.

18 Q All right. Did -- during your tenure, I think it  
19 was about a five year tenure that you were with the  
20 department, did you, on occasion, go back and review the  
21 rules and read the rules to update, refresh yourself with  
22 them?

23 A On occasion.

24 Q Okay. Do you agree that the rules require that  
25 officers conduct themselves at all times, both on and off

1 me.

2 Q Okay. Okay. Now, let's -- are you aware that  
3 there are rules related to standard operating procedures for  
4 holding rooms?

5 A Yes.

6 Q Do you know what the purpose of those rules is?

7 A The purpose of the rules?

8 Q Um-hum.

9 A I could guess at it.

10 Q Well, I don't want you to guess. If you -- if you  
11 know, that's fine. If you don't, that's fine as well.

12 A I couldn't quote the exact purpose of it in the  
13 SOP.

14 Q I'm not asking you to quote it, but --

15 A I have a general concept of it.

16 Q That's fine. What is your general concept?

17 A Probably to protect the persons inside the room,  
18 both the employees and prisoners, or anybody else that might  
19 be in the rooms.

20 Q Okay. If you could take a look -- and you go to  
21 209. And the -- if you take a look, and please don't read  
22 it into the record, but there is a purpose set forth in the  
23 handling -- or the purpose of holding room standards.

24 Is -- and you had previously given testimony as to  
25 what you believe that those standards are. Is that about



1 Springettsbury Police did you have a -- an understanding or  
2 did you have an obl -- a requirement to do any type of a  
3 medical evaluation when you took someone into custody?

4 MR. MacMAIN: And you mean they haven't complained  
5 about injury, just as SOP everybody gets a medical  
6 evaluation?

7 MR. SILVERMAN: Right.

8 MR. MacMAIN: By a police officer?

9 BY MR. SILVERMAN:

10 Q Correct.

11 A I am aware that we have a form that asks general  
12 questions as to health and welfare. I do know that since we  
13 became accredited there have been numerous changes, and I'm  
14 not sure if those took place after this incident or prior to  
15 the incident.

16 I do know in this situation and in past situations  
17 the arresting officer's the one that's required to do those  
18 paperwork and not somebody who's assisting them. So  
19 generally the things that I did that night were above and  
20 beyond what I was required to do.

21 And Officer Ford was, therefore, required to do all  
22 those things. And so if those things were a requirement,  
23 they would have been done by Officer Ford and not required  
24 by me.

25 Q Okay. Do you know if back in July of '07 if there

1 was a -- if there was a procedure that you would have  
2 followed if it was -- if you made the arrest and your --  
3 your prisoner was in detention as it related to completing a  
4 medical evaluation?

5 A Again, because of the accreditation there was  
6 numerous changes that were made. And I do know that prior  
7 to my -- while I was employed there that there was a form  
8 that was a general questionnaire. I don't recall the exact  
9 questions that are on there, but it was general -- general  
10 welfare, well being. But I'm not sure if it was prior to  
11 the incident, at the time of the incident, or after.

12 Q Okay. Did you -- let's say back in -- in July of  
13 '07 were you trained by your employer at the time to do any  
14 suicide assessment?

15 A No.

16 Q Okay. Was a suicide assessment a standard  
17 operating procedure back in July of '07 when someone was  
18 detained in the holding cell?

19 A Not to my knowledge, unless they were given some  
20 type of verbal or physical indication that they were going  
21 to do harm to themselves or others. We had an obligation if  
22 somebody said I'm going to kill myself to seek help for  
23 them. But if we didn't witness any type of signs that they  
24 were heading that way, then we didn't have any obligation to  
25 ask them whether or not they had any intention of hurting

1 themselves or not.

2 Q Okay. Would you say that Mr. Whitaker exhibited  
3 any violent behavior at the Giant?

4 MR. MacMAIN: That he observed or that he was told  
5 of or he learned about later?

6 BY MR. SILVERMAN:

7 Q Okay. I think you testified earlier that when you  
8 showed up he was already restrained. While -- after you had  
9 spoke with him -- when you got to the scene of the Giant you  
10 had spoken to the other officers about Mr. Whitaker,  
11 correct, a little bit?

12 A He was in cuffs, and basically my conversation is,  
13 is he under arrest? Yes, he's under arrest. I'll take him  
14 back to the station for you while you handle this call.

15 Q Okay. Did anyone tell you he was or was not  
16 violent before you got there?

17 A According to the dispatch.

18 Q He was violent?

19 A The dispatch said that it was active, and that  
20 there was a possibility that he was being detained by  
21 employees and/or customers. And by the time Officer Ford  
22 arrived, Officer Ford notified that the prisoner was in  
23 custody and was not being -- not being resistant or  
24 combative, and that the responding units could slow down  
25 their response.

1 A If it -- if it was in effect, then I guess I had  
2 to.

3 Q Okay. Well, whether it was or was not in effect,  
4 and I'm not suggesting that it was or was not --

5 MR. IRVIN: Excuse me, Howard. When you -- that's  
6 causing distortion.

7 BY MR. SILVERMAN:

8 Q Oh, I'm sorry. In any time during your training  
9 for police officer's duties, whether it was at HACC or  
10 anywhere else, were you given any training relating to the  
11 -- the -- you know, the items or the description of what's  
12 set forth at Roman Numeral IV-A-3?

13 A Prior to this incident the items that we would take  
14 away that are included in here would be the phones, the  
15 purses, the wallets, the necklaces, lighters, matches,  
16 cigarettes, because there was no smoking in the area. We  
17 generally take away their medications. We did not take away  
18 shoes with laces, belts, or chain, unless it was like a  
19 necklace or a pendant or something like that that was overly  
20 large, something like that.

21 Q Do you know what the purpose of taking necklaces  
22 away was, why you took necklaces away?

23 A Why would we take it away? So that it wouldn't be  
24 used as a weapon.

25 Q Okay. When you took things like necklaces, other

1 A The thickness of it.

2 Q When you think of the reason you take weapons away  
3 though, is it so somebody can't use it to hurt somebody  
4 else?

5 A Or themselves, correct.

6 Q Okay. Now, I think you had said during the time of  
7 the Whitaker incident there was no requirement to remove  
8 shoelaces and belts and some other clothing items?

9 A Prior to the Whitaker incident I was not aware of a  
10 requirement to do it, nor was it a habit of myself, or nor  
11 did I see any of my other officers regularly do it.

12 Q Okay. Was there ever a point in time before you  
13 left your employment with the police where that did become  
14 part of your regular way that you handled detainees?

15 A Me personally or the department?

16 Q You personally?

17 A I still consistently did not do it.

18 Q Okay. And you did -- did you have occasion after  
19 January of '08 to arrest or deal with any detainees?

20 MR. MacMAIN: '07.

21 MR. SILVERMAN: '08.

22 MR. MacMAIN: '08, July of '08?

23 MR. SILVERMAN: Did I say July? I'm sorry, January  
24 of '08.

25 MR. MacMAIN: Okay.

1 completion of the PSP investigation and the ruling from the  
2 DA's office when I came -- was reinstated back to full duty  
3 I did change platoons. So I had two new supervisors.

4 Q Okay. Do you know why you changed platoons?

5 A Specifically, no. I was reassigned to a platoon.

6 MR. SILVERMAN: Okay. Can we take a two minute  
7 break so I can go to the men's room?

8 MR. MacMAIN: Sure.

9 MR. IRVIN: We're going off the video record. The  
10 time is 2:43.

11 (Discussion held off the record.)

12 MR. IRVIN: We're back on the video record. The  
13 time is 2:56.

14 BY MR. SILVERMAN:

15 Q Okay. I think where we were last talking was about  
16 the rules and regulations or standard operating procedures  
17 with regard to the -- the holding rooms. And I think I had  
18 asked you some questions -- and correct me if I'm wrong, I  
19 asked you questions about do you recall receiving any  
20 training on any new rules post both July, '07 and again  
21 January, '08. And I think you said you don't recall any  
22 specific training, any additional training from your  
23 supervisors?

24 A No.

25 Q Okay. If you would just take a look for a second

1 ~~in that~~ == the documents I gave you starting at No. 176. If  
2 you could just take a quick look and see if you recognize  
3 this document or these documents, which I will represent go  
4 through 188.

5 A Use of force?

6 Q Right. Were you familiar with these procedures as  
7 of July, '07?

8 A I had gone over them, yes.

9 Q Okay. And were you expect -- or do you believe you  
10 were expected to comply with these procedures?

11 A Yes.

12 Q Okay. Do you believe that as it relates to the  
13 shooting of Whitaker you did comply with these procedures?

14 A Yes.

15 Q If you could take a look at page 182, and 2, B-2,  
16 it talks about verbal commands, dialog. Is that just  
17 something that you -- do you do that any time there is a --  
18 an issue where your simple presence will not keep a  
19 situation under control? Is that your first kind of  
20 deterrent or effect to get things under control is  
21 verbalizing commands?

22 A Yeah, I guess. I guess telling somebody to put  
23 their hands behind their back, they're under arrest, would  
24 be a verbal command.

25 Q After a case involving the death or injury there's

1 BY MR. SILVERMAN:

2 Q Please, yes.

3 A Prisoner transport.

4 Q And I assume you were familiar with the standard  
5 operating procedures relating to prisoner transport?

6 A This was an SOP that was put in place while I was  
7 employed there, yes.

8 Q And just like other SOPs, you were expected to  
9 comply with them and expected to understand and know all the  
10 rules, correct?

11 A Correct.

12 Q To the best of your knowledge did you comply with  
13 all the SOPs that were in effect on the date of the incident  
14 of July, '07?

15 A Best of my knowledge I did everything that I  
16 thought I should do.

17 Q Okay. Do you know if after the Whitaker shooting  
18 there were any changes put in place with regard to prisoner  
19 transportation?

20 A Do I know of any?

21 Q Um-hum.

22 A I couldn't quote you any right now.

23 Q I'm not asking you if you can quote any specific  
24 ones. My question is do you know if any new ones were put  
25 in place after that?



1 ~~already had plans for vacation while I was on administrative~~  
2 leave. That I do know because they still took my vacation  
3 days away.

4 MR. MacMAIN: And if you don't know, you don't have  
5 to guess where you were two years ago.

6 BY MR. SILVERMAN:

7 Q That's right.

8 A I'm sure it's on record somewhere.

9 Q Okay. If you can take a look -- what kind of --  
10 what kind of weapon do you carry? Did you carry a Sig 40?

11 A At the time, yeah, a Sig.

12 Q If you look on page 127, it talks about  
13 qualifications. Were you qualified at the time of the  
14 shooting in accordance with the requirements of Section 6?

15 A As far as I know I qualified twice a year.

16 Q Okay.

17 A I never missed a qualification.

18 Q Okay.

19 A I never did not qualify.

20 Q Do you still have a license to carry?

21 A I don't know.

22 Q Okay. Do you still carry a weapon?

23 A I haven't recently.

24 Q Okay. Have you since you left the -- your job?

25 A Have I carried a weapon?

1 A When I started with Springettsbury we didn't have  
2 tasers. And with the process of accreditation, I think  
3 almost every single policy was probably changed or modified.

4 Q Were you trained at all to evaluate a prisoner or  
5 detainee that's intoxicated under the similar guidelines  
6 that you would evaluate or deal with someone that was either  
7 mentally ill or mentally not -- not, you know, fully there  
8 at the moment?

9 A Meaning that if they were in an altered state?

10 Q Correct.

11 A Either mentally or physically?

12 Q Yes.

13 A That we were supposed to increase our care or our  
14 watch of them, yes.

15 Q Okay. And why do you think it was -- you were  
16 required if somebody was mentally impaired to increase the  
17 watch?

18 A Because they might do something stupid.

19 Q Okay. And if you take a look at the standard  
20 operating procedures beginning at page 189 through 203, and  
21 take a moment to look at them.

22 A Okay.

23 Q All right. I don't -- if you want you're welcome  
24 to read them all, as you were any of the others. But if the  
25 -- if you -- if you need to, if not, can you tell me if

1 these appear to be the standard operating procedures that  
2 were in place as of January, '07 through, at a minimum,  
3 July, '07 that you were expected to comply with relating to  
4 dealing with mentally ill or mentally -- and mental health  
5 emergencies?

6 A I'm assuming.

7 Q Okay. Is that assumption based upon you --

8 A That assumption --

9 Q Not sure if these are the actual documents?

10 A Yeah, I have no idea. I'm just looking at dates.

11 Q Fair enough. Fair enough.

12 A Effective date 1/9 of '07.

13 Q I will represent to you that these were the ones  
14 that were provided to me by your counsel, and I believe an  
15 effective date of January 9, '07. Assuming that these were  
16 in effect on January 9, '07 do you have any reason to  
17 provide -- or do you have any -- provide testimony that you  
18 were not required or expected to comply with these in July  
19 of '07?

20 A I was expected to apply to all the policies that  
21 were in effect for Springettsbury Township.

22 Q Okay. Without going through the documents, do you  
23 recall what you believe -- and I understand that the  
24 standard operating procedures show differently. They show  
25 what they show. But what was your belief as it related to

1 kind of replaying it, putting it back forward, replaying it  
2 again, putting it in slow motion.

3 BY MR. SILVERMAN:

4 Q Right. All right. So I hit play, hit the play.

5 A Hit pause. That's frame by frame.

6 Q All right. All right.

7 MR. MacMAIN: Can I ask a question?

8 MR. SILVERMAN: At this -- go ahead. I'm sorry.

9 MR. MacMAIN: Can I ask a question while we're  
10 doing the replay and the fast forward and all this? Right  
11 now we're 23:55:24. There's an object in Mr. Whitaker's  
12 right hand. Now, did you know at the time this was  
13 happening what that was?

14 THE WITNESS: No.

15 BY MR. SILVERMAN:

16 Q Do you know what it is now?

17 A It's my asp.

18 Q Okay.

19 A My expandable baton.

20 Q But I think you testified earlier you didn't know  
21 he had it, nor were you afraid at that time that he was  
22 going to use that on you at -- that particular weapon?

23 A I didn't know he had that weapon, no. That was  
24 located right next to my gun.

25 Q Now, at this point that we're looking at have you

1 handle detainees once you got back to the station?

2 A Yeah, I guess.

3 Q Okay. And did you -- to the best of your knowledge  
4 as you understood what you had learned through training did  
5 you follow the training as provided to you in the hand -- in  
6 the way in which you handled Mr. Whitaker prior to the  
7 shooting?

8 A Best of my ability.

9 MR. SILVERMAN: Okay. I -- I don't think I have  
10 anything further, if you wanted to get a couple questions in  
11 then.

12 CROSS-EXAMINATION

13 BY MR. MacMAIN:

14 Q Okay. Let me start then. I had a few questions  
15 about things we covered both this morning and this  
16 afternoon.

17 First of all, is there anything during your course  
18 of dealing with Mr. Whitaker that indicated to you that he  
19 was suicidal?

20 A No.

21 Q Was there anything during the course of your  
22 dealing with Mr. Whitaker that indicated that he had a  
23 mental illness?

24 A No.

25 Q Was there anything during your dealing with Mr.

1 Whitaker that you thought that he was intoxicated?

2 A No.

3 Q You were asked questions about -- I think it was  
4 this morning -- about policies and procedures about securing  
5 your gun and that gun locker. Remember those questions?

6 A Correct.

7 Q And just so I'm clear, your testimony was that it  
8 was your understanding that you would secure your gun in the  
9 gun locker when you went into the room the first time to  
10 remove the handcuffs?

11 A Yeah. Knowing what I know now, the way I should  
12 have done that whole process was upon entering the station,  
13 securing the prisoner in the holding cell while still  
14 handcuffed, closing the door, securing him inside of the  
15 holding cell, turning to the lockers, taking the firearm  
16 off, securing it, retrieving the key, securing the key on --  
17 on your body, entering into a holding cell, removing the  
18 handcuffs, closing the door again and securing him inside,  
19 and then securing a weapon again.

20 And that any additional instance in which I needed  
21 to enter the room because of an emergency, medical, other,  
22 whatever way, that I was justified to have the weapon on me.

23 However, if -- if say he needed to be -- he or she  
24 needed to be transported to another facility, say central  
25 booking or York County Prisoner -- Prison, that it would

1 emergency?

2 A Yeah. Base -- based on his complaint of pain and  
3 difficulty breathing that he told me and the reason why I  
4 had dispatched the ambulance, my initial thought was when he  
5 was laying on the floor was that he had some type of medical  
6 problem, and that perhaps he had made his way to the door  
7 and had been banging on the door while I was up front faxing  
8 the form off.

9 And when I saw him in the monitor laying there,  
10 then went back to the room and again saw him in the exact  
11 same position and not moving, that's when I thought he had a  
12 medical emergency. And when I tried yelling at him at the  
13 door or say anything I knew I wasn't going to be able to be  
14 heard through the door.

15 So I opened the door to try to talk to him, you  
16 know, just crack it open. And at that point is when I heard  
17 his gurgling sounds like he was having difficulty breathing.  
18 And that's when I forced my way open and saw the string on  
19 his neck and realized that he was hanging himself.

20 Q Okay. Now, just -- I'm going to try to orient you  
21 because we're trying to cover --

22 A The whole day.

23 Q -- six hours of things. The gun that you were  
24 carrying, how many shots were in it? How many bullets could  
25 you have fired if you wanted to?

1 A I believe it's a 12 plus one. 12 in the magazine,  
2 one in the chamber. So 13 total rounds, plus I had two  
3 other magazines that were fully loaded with 12 rounds.

4 Q Okay. Just the ones that were in your gun, how  
5 long would it have taken you to unload all of those shots if  
6 you wanted to?

7 A Only a matter of seconds.

8 Q Okay.

9 A As fast as I could pull my trigger.

10 Q Now, you mentioned something earlier about double  
11 tap. What is -- just for the record explain what double tap  
12 is.

13 A Basically it's a term that we use that when firing  
14 that we fire multiple rounds. Double tapping being that we  
15 fire two consecutive quick-fired rounds, basically trying to  
16 maintain those two rounds on target.

17 Basically it's been determined that any additional  
18 rounds above that, basically because of recoil and  
19 everything, that you're just going to throw rounds outside  
20 of wherever you're supposed to aim.

21 And basically it's just a consecutive -- basically  
22 a one motion type of thing. And it's a fluid motion that  
23 you pull -- pull the first one, the trigger the first time,  
24 and then again pulling the trigger the second time. It's  
25 almost -- it's almost automatic.



1 Q Okay. Now, I just want to go right to the shooting  
2 itself. You described a couple of times, we've looked at  
3 the video. Why did you fire the first shot?

4 A The first shot, basically I was in fear for my  
5 life.

6 Q Okay. And --

7 A And I knew that my utility belt and my pants were  
8 getting messed with and pulled and yanked. I knew the  
9 location of my hands. I knew that they weren't there. The  
10 only other person in the station to my knowledge that was  
11 there was Mr. Whitaker.

12 So my assumption was -- is that he was the one that  
13 was moving my belt around. Because of the location of where  
14 I was feeling the tugs and everything was the location where  
15 my -- my firearm was. My first instinct was that he was  
16 going for my gun.

17 My immediate thing was as I was reaching down for  
18 my gun, to hold it, to retain it, and while there I was in  
19 the corner. I had already gotten my -- my glasses knocked  
20 off my head. I was still getting hit with punches. I was  
21 trying to force him back. I had already tried getting out  
22 of the room, out of the -- the space that I was at  
23 unsuccessfully.

24 Again, like I testified, I think, I don't know how  
25 clear I was, but basically time stopped for me, and I

1 started going through my options of what I could do. That's  
2 when I started talking about whether I could use my spray or  
3 whether I could use my asp and things like that. And I  
4 determined that because of my confined spaces that they just  
5 weren't going to be able.

6 It came to a point where I knew it was just him and  
7 me, and basically it was just going to take one lucky punch,  
8 and I was going to be out of the game. And it was just  
9 going to be him or me. And that's when I determined that my  
10 life was in danger. And if I hadn't done something, then  
11 that was my last option that I could do was to pull my  
12 firearm and fire.

13 Q Okay. And was that the same analysis for the  
14 second shot?

15 A It was just one fluid motion.

16 Q Okay.

17 A The first shot that I fired I fired underneath my  
18 left arm that I was using to shield from Whitaker -- Mr.  
19 Whitaker's blows. So I knew the general direction that he  
20 was at based on where I could feel his body against my arm  
21 and where I was feeling the punches coming from.

22 I basically withdrew my weapon, tucked it close to  
23 my body, and aimed in a general direction I thought was best  
24 where the blows were coming from, fired the first round. At  
25 that point I could see -- rotate around, and then I came up

~~with one more, aimed second shot and fired a second shot.~~

2 Q During the sequence of events beginning when he  
3 first attacked you in the holding room, and you've looked at  
4 the video now, were there periods where he'd come closer to  
5 you and move away, come closer to you, move away?

6 A He was always on top. He was charging me. I mean,  
7 my whole thing from the point in which I got out of the  
8 holding cell itself in the doorway when I had tried to grab  
9 the taser, that I had put it on the ground, my whole frame  
10 of thinking was I just needed to set my right foot to stop  
11 me retreating so that I could go on the offensive.

12 At no point was I able to set that foot to go  
13 forward. Whitaker was constantly on the attack, and I was  
14 reacting every single second. The one chance that I had to  
15 do something different was when I had gone for the door to  
16 try to get some -- basically my idea was I needed to get out  
17 of the confined hallway so I had more room, more options to  
18 go for.

19 I could use my spray. I could use the baton, just  
20 I had more room to go anywhere. And when that option was  
21 taken away from me that was -- that was it.

22 MR. MacMAIN: Okay. That's all the questions I  
23 had.

24 BY MR. GABRIEL:

25 Q Prior to the point in time when Mr. Whitaker

1 attacked you did you have any reason to believe that he was  
2 going to do that?

3 A No.

4 Q And do you have any way of knowing when he  
5 formulated that intent, whether it was before or after he  
6 used the shoelace?

7 A He -- he gave me absolutely no indications that he  
8 was not going to be anything but compliant and cooperative  
9 the entire time. From the second that I picked him up at  
10 Giant he followed all my commands as I escorted him to the  
11 car. He followed all my commands as I patted him down,  
12 placed him in the vehicle.

13 The conversation I had with him as far as securing  
14 his -- his keys, I mean, generally that's not the type of  
15 thing that we would do is to throw a set of keys into  
16 somebody's vehicle and just leave it there for a spouse  
17 member. But he had been so cooperative that I was like, you  
18 know what, sure. You know, that's what you want. I'll go  
19 ahead and do that. It's not something that we would  
20 normally do.

21 Even on the ride home -- or home -- to the station  
22 he didn't say anything. He was just sitting there. You  
23 know, he -- he was like the person who said, you know, hey,  
24 I -- I did something wrong, and yeah, this is just the end  
25 of it.

1 ~~It was like he was going over his consequences what~~  
2 might happen. You know, hey, I messed up. And getting back  
3 to the station, even getting him out of the station and  
4 escorting him into the room, he, again, got out of the car  
5 without any problems.

6 I had no -- I could have easily asked Officer  
7 Miller -- yelled at him to come over and help me get him out  
8 of the car or get him into the station, but I had no reason  
9 to think that I needed anybody else.

10 Generally I knew I was the only one at the station.  
11 I knew where the other officers were. I took the cuffs off  
12 because I didn't think he was a problem. In the past if the  
13 guy's been -- guy, girl, whoever's been combative or  
14 resistant, then they can sit in there with their handcuffs  
15 on. You know, we don't need to take it off. They can sit  
16 in there.

17 But, again, he was cooperative just like anybody  
18 here in this room today. I mean, went in and took the cuffs  
19 off, told him to have a seat. Even when I came back in to  
20 ask him the information he was calm and relaxed about his  
21 injuries, about his -- his rib injuries.

22 I asked him if he wanted an ambulance, and I don't  
23 recall if he said yes or no. But, you know, I was at the  
24 point where it's not going to hurt anything because I  
25 figured that Officer Ford was going to be tied up for a

1 ~~be, but you're really not 100 percent certain, wouldn't you~~  
2 then -- wouldn't it be better to err on the side of taking  
3 extra precautions to do something to safeguard you and the  
4 prisoner?

5 A If I took that approach, then coming into this city  
6 today I would have a gun on me.

7 Q Okay.

8 A You know, it's -- it's just that's -- that  
9 situation for me it just seems like it was overkill. He was  
10 so compliant, so passive. So --

11 Q Almost lethargic?

12 A -- textbook. No, he wasn't lethargic. He was just  
13 cooperative.

14 Q Okay.

15 A Just like you're being cooperative.

16 Q Okay. Okay.

17 A You know, if I told you to have a seat, you'd have  
18 a seat. If I told you to stand up, you'd stand up. If I  
19 told you to turn around, you'd turn around, and I'd take the  
20 handcuffs off you. He did everything a model citizen would  
21 do. I had no suspicions whatsoever. I didn't think he was  
22 intoxicated even though I smelled alcohol on his breath, or  
23 intoxicating beverage on his breath.

24 Q Okay.

25 A You know, but in no way did he give me any signs

1 that he was under the influence of anything or that he was  
2 contemplating suicide, that he was intending to injure  
3 himself, that he was intending to injure me or anybody else  
4 up until the point in which I opened up the door and tried  
5 getting the noose off of him and he started attacking me.

6 Q Okay. You had talked in response to your counsel's  
7 questions about the procedure with regard to locking down a  
8 weapon and when it's required and when it's not.

9 Would you -- I mean, even though you said if you --  
10 the procedure would have been you should have locked the  
11 weapon until he was secure in the room, but that would have  
12 only dealt with the first time in the room.

13 You had the right under the SOP to go in the room  
14 armed the second time and also when you confronted him the  
15 third time when he was hanging himself. You had the right  
16 under the SOP to have the gun, correct?

17 A Yeah.

18 Q Okay. But do you also have the discretion to keep  
19 the gun in the lock box if you -- if --

20 A Well, yeah. I mean, the department's not going to  
21 take that away.

22 Q Okay.

23 A But --

24 Q Was there any reason that while you were in the  
25 precinct with Whitaker before anyone else got into the --

1 any other officers got there why you needed to have your  
2 weapon on you?

3 A It's part of my uniform.

4 Q Okay.

5 A It's -- being in a uniform every single day, if I  
6 don't have my gun on me, it's like I don't have my head on  
7 me. You feel like something's missing. It's a part of you.  
8 It's a -- it's a distinct weight on your belt and on your  
9 person that you know it's not there. I mean, you know it's  
10 missing, and you feel incomplete like you're not doing your  
11 job, that something is missing. And, I mean, it's -- it's  
12 instinctive. You know.

13 Q Okay. The procedure that you described in response  
14 to your lawyer's questioning, after this incident did you  
15 start following that procedure?

16 A I had to.

17 Q Okay. You had mentioned a -- a double tap, and I  
18 wrote the words, and I quoted it, fluid motion?

19 A Um-hum.

20 Q So it's like bang, bang, right?

21 A Pretty much, yeah.

22 Q And I think when you said it you even talked about  
23 you stay focused on the same target, you don't re-aim for it  
24 to be a double tap?

25 A Yeah.



1 Q Okay. Can we agree then with these two shots that  
2 were fired it was not a double tap? They could have had --  
3 it could have happened sequentially, and it could have  
4 happened in a short period of time, but it wouldn't be a  
5 double tap as you described it?

6 A Well, I would disagree with that.

7 Q Okay.

8 A Because even out on the range doing a double tap at  
9 close distance we can -- the idea is to quickly draw the  
10 weapon and fire the two rounds. I mean, that's how we drill  
11 it. It's a two round double tap. And basically to make  
12 sure that you, as quickly as possible and as accurately as  
13 possible, fire those two rounds down.

14 And ultimately the second shot should be at a  
15 firing position that would be the ideal firing position. In  
16 other words, you have both hands on your weapon. You're  
17 holding it steady, and that you're able to aim now in the  
18 gun sites for the second shot.

19 The first shot was fired like this. (Indicating.)  
20 And as he rotates around the hands -- my hands -- second  
21 hand was able to drop down and was brought up to aim, and  
22 the second shot was fired.

23 So the -- the time it took me to go from this to  
24 this to this and fire is a fluid motion.

25 Q Okay. So this would -- you would -- what you --

1 these two shots you would call a double tap?

2 A If I -- yeah. If I asked any of my other officers  
3 that are familiar with the same thing and describe that,  
4 they would say, yeah, that was a double tap.

5 Q Would you agree that when you do a double tap  
6 there's really no additional thought from shot one to shot  
7 two? In other words, it happens so quick, once you make the  
8 decision to shoot it's bang, bang?

9 A Once the -- once an officer or a person makes the  
10 decision to shoot, basically it's because there's a threat,  
11 and you shoot until there is no more threat.

12 And basically a weapon goes to a low ready position  
13 after you determine that there's no longer a threat, and  
14 that if the threat is reactivated that you're at a low ready  
15 so that you can bring it up to a high ready and, again, make  
16 the determination of whether or not you have to pull that  
17 trigger.

18 So up until the point -- and you can see it in the  
19 video of where there's movement by Whitaker after the second  
20 shot, and I am in low ready, and it's brought up again where  
21 I could have shot a third or fourth or fifth, whatever I  
22 needed to. But there was no threat, and the weapon was  
23 dropped back again.

24 Q Okay. And just going back for that -- the double  
25 tap. I thought you said it -- it means two rounds on