

1990

Layton City v. Frank R. Aragon : Brief of Respondent

Utah Court of Appeals

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900247-CA

IN THE UTAH COURT OF APPEALS

DOCKET NO.

LAYTON CITY,

Plaintiff/Respondent,

vs.

FRANK R. ARAGON,

Defendant/Appellant.

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ADDENDUM II TO
BRIEF OF RESPONDENT

Case No. 900247-CA

ADDENDUM II TO
BRIEF OF RESPONDENT

(Trial Transcript in pertinent part)

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FILED

JAN 14 1991

Mary T. Noonan

ORIGINAL

IN THE SECOND CIRCUIT COURT, STATE OF UTAH

LAYTON DEPARTMENT

-o0o-

CITY OF LAYTON,

Plaintiff,

vs.

FRANK ARAGON,

Defendant.

Case No. 892001620 TC

JURY TRIAL

-o0o-

BE IT REMEMBERED that on the 8th day of February, 1990,
and the 9th day of February, 1990, the above-entitled matter
came on for hearing before the Honorable K. Roger Bean, sitting
as Judge in the above-named Court for the purpose of this cause,
and that the following proceedings were had.

-o0o-

APPEARANCES:

For the City:

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For the Defendant:

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STATE OF UTAH }
COUNTY OF DAVIS } ss

THE UNDERSIGNED, CLERK OF THE CIRCUIT
COURT, LAYTON DEPARTMENT, DAVIS COUNTY,
STATE OF UTAH, DO HEREBY CERTIFY THAT THE
ANNEXED AND FOREGOING IS A TRUE AND FULL
COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY
OFFICE AS SUCH CLERK.

WITNESS MY HAND SEAL OF SAID OFFICE

THIS 16th DAY OF Aug 1990
SHIRLEY W. PARK CLERK

BY J. Kufe DEPUTY



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AUG 20 1990
900247-CA
Mary T. Nye
Clerk of Court
Utah Court of Appeals

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1 MR. STONEY: Thank you, your Honor.

2 MR. LONG: Your Honor, may we invoke the exclusionary
3 rule before the opening statements are made?

4 MR. STONEY: No objection, your Honor.

5 THE COURT: All right. The prosecution, of course,
6 has the right to have the principal witness at counsel table and
7 you may have that witness here now, if you wish, but whatever
8 you'd like to do.

9 MR. STONEY: Your Honor, the City does not elect to
10 have that. That will be fine.

11 THE COURT: All right. And the statute doesn't
12 require that witnesses be excluded for the opening statements,
13 but I think it's appropriate. And so my instruction to the
14 witnesses is, you're not to discuss with any other witness
15 your expected testimony nor that witness' testimony before you've
16 given your testimony, and I'll ask you to leave the courtroom
17 now. Thank you.

18 MR. LONG: Would you please instruct the sergeant on
19 that as well?

20 UNIDENTIFIED SPEAKER: Yes.

21 THE COURT: All right. Thank you.
22 Please go ahead.

23 MR. STONEY: Thank you. May it please the Court,
24 Mr. Long, Mr. Aragon, ladies and one gentleman of the jury.
25 It's now my opportunity to just give you a basic overview of

1 THE COURT: And the Court directs the jury to disregard
2 Counsel's last question to the Court. Pay no attention to it.
3 Objection sustained.

4 MR. STONEY: Your Honor, that objection is to the
5 characterization of favorable, as well, because it wasn't
6 necessarily favorable.

7 THE COURT: All right. And the jury will disregard it
8 in either respect.

9 Thank you.

10 And you may proceed with evidence, Mr. Stoney.

11 MR. STONEY: Thank you. The City would call Officer
12 Lynch.

13 JOHN LYNCH,
14 called as a witness by and on behalf of the City in this matter,
15 after having been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. STONEY:

19 Q State your full name, please, Officer.

20 A John Adam Lynch.

21 Q Your present position for the police department?

22 A A police officer, patrol division for Layton City.

23 Q How long have you been a police officer?

24 A Over 12 years.

25 Q Has that full time been with Layton City?

1 A No, sir.

2 Q What other agencies did you work for?

3 A I was with a department on the State of Maine, I
4 moved back here, 'cause it got too cold; and I've also been
5 with Davis County Sheriff's Office, and then with the Layton
6 City Police Department.

7 Q During that period of time, I assume that you've had a
8 chance to make numerous arrests for disorderly conduct or
9 delaying and obstructing?

10 A Yes, sir.

11 Q How about DUI?

12 A Yes, sir.

13 Q How many DUI arrests have you made?

14 A Several hundred, I guess.

15 Q During that period of time, you've been an officer
16 over the last 12 years, have you smelled what you believed to
17 be the odor of an alcoholic beverage?

18 A Yes, sir.

19 Q Is that almost a daily occurrence?

20 A Probably daily.

21 Q Okay. Now, do you associate that with DUI, in any way,
22 shape or form?

23 A No. I just associate that somebody's had alcohol.

24 Q Okay. On these DUIs where you've arrested, I assume
25 there has been an odor?

1 A Yes, sir.

2 Q Were you employed and on duty for Layton City on the
3 2nd day of April, 1989?

4 A Yes, sir. I was.

5 Q What were your duties on that date, do you recall?

6 A Patrol officer. I was assigned a cover shift from 8:00
7 p.m. to 4:00 a.m. that evening.

8 Q Okay. Now along about, I guess 1:45, in the early
9 morning hours, you received a call; is that correct?

10 A Yes, sir. I did.

11 Q And what was that call?

12 A We were to respond to a 366 Glen Avenue, on a report
13 of a Frank Aragon was hitting on his wife and was about to leave
14 in a black Monte Carlo.

15 Q Okay. Now, you don't know how that report came into
16 the dispatcher's office, or anything like that?

17 A Probably by telephone.

18 Q And many times when you arrive at the scene, the story
19 is different than what you're dispatched to, what is said there;
20 is that not true?

21 A Yes, sir.

22 Q Okay. You did arrive at 366 Glen Avenue, didn't you?

23 A Yes, sir.

24 Q And that is in Layton?

25 A Yes, sir.

1 Q Did you see the defendant, Mr. Aragon, there?

2 A Yes, sir.

3 Q Okay. And just for the record, the Mr. Aragon that
4 we're referring to, would you describe what he's wearing here
5 today?

6 A He's seated next to Mr. Long, he's wearing a herringbone
7 type jacket, a blue shirt, a blue tie with polka dots, I believe.

8 Q Thank you.

9 MR. STONEY: May the record reflect that he's
10 identified the defendant, your Honor?

11 THE COURT: Yes. Thank you. The record will so show.

12 Q (By Mr. Stoney) And where was Mr. Aragon at?

13 A He was standing on the right side of his vehicle.

14 Q Okay. And that was the black Monte Carlo?

15 A Yes, sir. It was a black Monte Carlo, in the driveway
16 at 366 Glen.

17 Q Was the Monte Carlo just there, not running and
18 everything?

19 A The vehicle was running at that time.

20 Q Okay. How could you tell that?

21 A Exhaust coming out and the motor was running, you
22 could hear it.

23 Q Were the lights on?

24 A I believe they were, I can't exactly recall at that
25 time.

1 Q Okay. Now, was anyone with Mr. Aragon?

2 A There was a woman standing by him that was later

3 identified as, she said his ex-wife, Rose Aragon.

4 Q Okay. Describe the condition that Rose was in when

5 you arrived there and first saw her.

6 A When I arrived there, Mr. Aragon and Rose were standing

7 in close proximity to each other.

8 Q Face-to-face?

9 A Yes. Sort of side-by-side, but they were looking at

10 each other, face-to-face.

11 Q Okay.

12 A Mrs. Aragon was upset, emotional, had tear stains,

13 mascara type that ran, make-up ran, and was upset, I could see,

14 and had red marks about her face and neck.

15 Q Just kinda blotches?

16 A Yes, sir.

17 Q Now like she'd been struck or anything that you could

18 say?

19 A Some type of--usually a struggle like that, a

20 wrestling around and that, gives you red marks.

21 Q Okay. Describe Mr. Aragon's condition when you arrived

22 and first saw him.

23 A He was standing next to the car, I believe he was

24 leaning on his car, but he was standing right there. He looked

25 somewhat emotional, himself, maybe upset, a little--quite somber--

1 Q Okay.

2 A --in appearance.

3 Q And describe the--his eyes. Do you recall what his eyes
4 were like?

5 A When I got close to him and started--and looked at him,
6 his eyes were red and glassy.

7 Q Okay. Did you also notice any alcoholic odors about
8 his person?

9 A Yeah. As soon as he began speaking, I noticed a strong
10 odor of alcohol.

11 Q And you could tell that that was coming from where?

12 A Mr. Aragon.

13 Q From--and from--

14 A From his mouth.

15 Q From his mouth?

16 A When he talked.

17 Q Okay. Was there anything else that Mr. Ara--well, let
18 me ask you this. How was Mr. Aragon standing when he stood and
19 spoke to you?

20 A When he turned and talked to me face--straight on, he--
21 if I remember right, he spread his legs a little bit in a wider
22 than shoulder-width stance.

23 Q And you've received a lot of training with respect to
24 intoxication or people that have imbibed just a little too much,
25 haven't you?

1 A Yes, sir.

2 Q Okay. Is the wide stance any indication of anything?

3 A Usually it's to get a better balance.

4 Q Okay.

5 A A sense.

6 Q So, much like I'm doing here, standing wider than my

7 shoulders?

8 A Yes, sir.

9 Q Okay. Was he moving at all?

10 A Not--I recall a little bit of weaving, but not a

11 whole--you know, not side to side or falling down.

12 Q Okay. What do you mean, a little bit of weaving?

13 You mean just move your upper torso?

14 A Upper torso.

15 Q Could you move for us?

16 A Usually just a little back and forth like that, or a

17 little side to side.

18 Q At that point, were you concerned that he was under--

19 possibly under the influence?

20 A Yes, sir.

21 Q Okay. So, your attention was immediately drawn to

22 that?

23 A Yes, sir. If somebody is like that, you immediately--

24 that's a--a flag goes up.

25 Q Uh huh. Why, for an officer, is that important for you

1 to realize that?

2 A You realize you're not dealing with someone who is
3 thinking clearly or is a hundred percent capable of what you're
4 going to say to them, and you're also going to find something
5 different happen.

6 Q And when you spoke to Mr. Aragon, did he give you any
7 indications that he might not be thinking clearly?

8 A Yes. I asked him what was going on, and he was--I
9 was told that I wasn't needed, that there was nothing wrong,
10 that the police weren't needed.

11 Q Those were his words?

12 A Yes, sir.

13 Q "There's nothing wrong, the police aren't needed."
14 Okay. Did you respond to that?

15 A Yes. I asked him his name, and to that, he refused to
16 give me his name. And I believe I asked him again, he still
17 refused, and then at that time, I informed him why I was there.

18 Q Which was because of a potential family fight or
19 argument?

20 A Yeah, and a dispatch call, and I was going to have to
21 do a report on it.

22 Q Okay.

23 A And that I needed his name, I believe I told him his
24 name and date of birth and that, for that. And I also warned
25 him that he could be arrested for delaying and obstructing.

1 Q Now, you're looking down at something here as you're
2 talking to us; what is that you're looking down at?

3 A That's a report that I filed in supplement to the main
4 body of the report.

5 Q Okay. And when did you write that report?

6 A That day after the incident, probably within a few
7 minutes after.

8 Q Okay. After you were through with Mr. Aragon, then
9 you sat down and wrote it?

10 A Yes, sir.

11 Q You said you got off shift at about 4:00, I believe?

12 A Yes, sir.

13 Q 4:00 in the morning. So, it was before you got off
14 shift?

15 A Oh. Yes, sir.

16 Q Now, you're looking at it today; is there a particular
17 reason why you keep looking down at it?

18 A To just refresh my memory on instances, and to make
19 sure I give it in the right context.

20 Q You've had some other incidences occur, obviously,
21 on your shift work since then; is that right?

22 A Yes, sir.

23 Q Is one of your concerns you don't want to confuse
24 anything of those with this particular incident?

25 A Yes, sir.

1 Q So, you want to be exact as to what happened here?
2 A As much as I can, sir.
3 Q Okay. And to your knowledge, is that report as
4 accurate as you know it was on that particular night?
5 A Yes, sir.
6 Q Okay. Now, you testified before about this particular
7 incident; is that correct?
8 A Yes, sir.
9 Q Okay. Did you tell the same story as you're telling
10 right here?
11 A Yes, sir. Might have changed a word or two.
12 Q All right. Now, you said that he wouldn't give you his
13 name and then you informed him that he could be arrested. Did he
14 respond at all to that?
15 A He gave me his name, Frank Aragon, and then he stepped
16 towards me at--right after giving me his name.
17 Q How did he step toward you when he stepped towards you?
18 A He just took a real quick step right--right towards me.
19 Q How far were you from--beginning, before he stepped
20 towards you?
21 A Oh, he was just out of arm's reach initially, away
22 from me.
23 Q Farther away than I am from you now, or--
24 A Probably actually a little closer, even.
25 Q Okay. About that distance?

1 A Probably. Yes, sir. Probably a foot, two feet off
2 my hand.

3 Q So, if you were standing right there, perhaps could we
4 say four feet away?

5 A Yes, sir.

6 Q From the person?

7 A Four to five.

8 MR. STONEY: May the--may the record reflect that I'm
9 approximately four feet away?

10 THE COURT: Yes. The record will show that.

11 MR. STONEY: Okay.

12 Q (By Mr. Stoney) Now, when he stepped forward to you,
13 how close did he step to you?

14 A Closer than my arm's length, probably--and I have a
15 32-inch sleeve, so within three feet.

16 Q And you stuck your arm out, didn't you?

17 A Yes, sir.

18 Q Why did you do that?

19 A Part of the training in that that we do, that's
20 maintain a safe distance for both my safety and his safety, also.

21 Q Okay. And did you have to actually push him back?

22 A I probably pushed him pretty good. I stuck my arm
23 right out and just the act of me pushing my arm out--

24 Q Okay.

25 A --pushed him back.

1 Q And what did he do or say at that point?

2 A At that time, he--he yelled, "Don't touch me mother
3 fucker. Come on, you want some trouble," and stepped back and
4 doubled up his fists.

5 Q Okay. And you're sitting there and you've got both
6 fists doubled up when you did that; is that what he did, is
7 doubled up both fists?

8 A I believe so. I just saw fists clench and that's--

9 Q Okay. What does that insinuate to you, when somebody
10 clenches their fists?

11 A That I'm about to get struck, that we're going to have
12 a fight.

13 Q Okay. What did you do?

14 A At that time, Sergeant Lybbert had stepped up behind
15 me, and I believe he saw Mr. Aragon double his fists at that
16 time, too, and he said, "You're under arrest." And I reached
17 out to take ahold of Mr. Aragon to place him under arrest.

18 Q And what did he do at that point?

19 A He backed up against his car and started to struggle
20 with us. I believe I got ahold of an arm and Sergeant Lybbert
21 also had come up right immediately also, and we struggled with
22 him for a minute there, and then he was taken to the ground and
23 handcuffed.

24 Q Now, you say he was taken to the ground; was there a
25 reason that you took him to the ground?

1 A Yes, sir. It's easier to control a person when they're
2 on the ground.

3 Q Is it part of the training you've received?

4 A Oh, yes, sir.

5 Q Okay.

6 A Especially somebody that's fighting and that. It's
7 easier if you put them on the ground, especially face-down, you
8 can find that it's very uncomfortable to be down that way, but
9 it's also easier to control them that way, then you handcuff
10 them, then you move them and it's safer for everyone.

11 Q Okay. During the struggle when you were up, was he
12 attempting to hit you?

13 A I believe so. There was a couple of arms flailing
14 about and probably went by my head a little bit, and Sergeant
15 Lybbert's. I concentrated on just getting him in a position
16 where I could handcuff him.

17 Q Was he pushing you?

18 A He was resisting quite violently.

19 Q Okay. When he hit the ground, was it a soft landing
20 when all of you went down to the ground like that?

21 A It was probably a good thump when he landed.

22 Q You fell with him; is that not correct?

23 A Yes, sir. We all went down kinda at the same time.

24 Q Okay. And was Mr. Aragon injured when he fell to the
25 ground?

1 A Yes. He received a scrape on one of his cheeks.

2 Q And was he bleeding a little bit in that spot?

3 A Yeah, it was sort of a weeping-type wound, you know,

4 where little kids call it rug burn or like if you skip on the

5 sidewalk, catch yourself, you take off the top layers.

6 Q Okay. Thank you. Now, you have since the time of

7 this incident, had a chance to determine if that--you keep

8 referring to it as Mr. Aragon's vehicle. Have you had a

9 chance to determine that, have you not?

10 A Yes, sir.

11 Q How did you do that?

12 A A 28, we call it, or a--

13 MR. LONG: Could we have a foundation for that question,

14 your Honor?

15 MR. STONEY: I haven't asked to have it admitted yet,

16 I'm just asking if he's had a chance to do it, your Honor. I'm

17 actually in the process of laying the foundation.

18 THE COURT: Well, he's asked--yeah, that's what I

19 gather he's doing, Mr. Long.

20 MR. LONG: Well, he's asking him questions about--I

21 thought, about the registration, I mean, I--

22 THE COURT: Well, he asked him, did he determine

23 ownership of the vehicle, and then he's asking how did you do

24 that?

25 MR. LONG: All that I'm asking, was it this morning?

1 THE COURT: Oh. I assumed he was back chronologically
2 at that time. You may go ahead and ask him when he did that.

3 Q (By Mr. Stoney) Was that this morning when you did
4 that?

5 A I ran a copy of one this morning.

6 Q Okay. But you actually did that on what occasion?

7 A I did that that night.

8 Q Okay. And you said you call it a 28?

9 A That's a terminology that we used. It's a 10-code--

10 Q Part of a 10-Code?

11 A It's a 1028, yes.

12 Q You're always--when you pull vehicles over, you're
13 always asking dispatch to run 28s on them, et cetera, and you
14 just checked out ownership--

15 A Yes, sir.

16 Q --or registration, all of that kind of good stuff?

17 A Yes, sir.

18 Q Okay. And you did that on that particular occasion?

19 A Yes, sir.

20 Q Okay. And you--

21 MR. LONG: Can we have a more concrete time, your Honor?
22 I mean, that night is a pretty big space of time.

23 THE COURT: Yes. It's appropriate.

24 THE WITNESS: The incident probably occurred about 1:45,
25 I would assume it was probably no later than 2:30. I--I'm not

1 sure. It was probably before I left the scene or the area, I
2 could check my logs on that; but it was before I got off shift
3 at 4:00 o'clock, and after 1:45.

4 Q (By Mr. Stoney) Were you the person that was put in
5 charge of handling the vehicle?

6 A No. Sergeant Lybbert took that over. I initially was
7 there with him during some of--like running the 28 and that,
8 and then--

9 Q Okay. So, it was done while he was present, as well?

10 A Yes, sir.

11 Q Okay.

12 A I believe he was standing right there.

13 Q Now, you also did that this morning; is that right?

14 A Yes, sir.

15 Q And you received a written print-out from the State?

16 A Yes, sir.

17 Q Is that correct? I hand you what has been marked as
18 P-1 for identification purposes only, and ask you is that the
19 sheet that you received this morning?

20 A Yes, sir.

21 Q And you recognize it as being the one?

22 A Yes, sir.

23 Q Now, how do we know that it was Mr. Aragon's vehicle
24 that you actually ran there? Was there--

25 A This was the same registration that was on the vehicle

1 that evening, it's on several report forms, including the DUI
2 form and several others.

3 Q We're talking about the black Monte Carlo that was in
4 the driveway, still running, with the lights on?

5 A Yes, sir.

6 Q Okay. Now, this particular document then, what did
7 you--what does it actually tell you about who was the owner of
8 the vehicle?

9 A It lists who is the registered owner of the vehicle,
10 at the top of the page on it.

11 Q Okay.

12 MR. STONEY: Your Honor, at this time, the City would
13 ask to be entered into evidence P-1.

14 THE COURT: Thank you.

15 Mr. Long?

16 MR. LONG: I'm not quite as familiar as the
17 prosecution with reading these computer printouts, your Honor.
18 I'm just trying to--

19 THE COURT: Surely. Go ahead, take whatever time you
20 need.

21 MR. LONG: I see no relevance for this document,
22 especially since it's produced this morning rather than at the
23 time.

24 MR. STONEY: Your Honor--

25 THE COURT: Does the document purport to reflect

1 ownership on April the 2nd?

2 MR. STONEY: Your Honor, the document purports that
3 ownership at this time, and I believe there's some dates here
4 that it was renewed--its renewal date is 8 of '90, and looks
5 like that would indicate that it was actually on the vehicle 8 of
6 '89.

7 THE COURT: Court admits docu--admits P-1, if that's
8 the only objection, relevance, the Court feels it may have some
9 relevance in light of the testimony to this point. And Exhibit
10 P-1 is received.

11 MR. STONEY: Thank you. May I publish that to the
12 jury, your Honor?

13 THE COURT: Yes.

14 MR. STONEY: Ask the jury to note the name on the top.

15 Q (By Mr. Stoney) Now, Officer, we were at the point
16 where you were down on the ground, you handcuffed Mr. Aragon at
17 that time?

18 A I believe one of us did. I can't remember if I was
19 the one that handcuffed him, but--

20 Q Now, you say one of us, you mean you or Sergeant
21 Lybbert?

22 A Lybbert, or Officer Beckett had also assisted us at
23 that time.

24 Q Okay. What did you do with Mr. Aragon then?

25 A Mr. Aragon was taken and placed in Officer Beckett's

1 car, if I recall.

2 Q Okay. Did you turn this over to Officer Beckett at
3 that point?

4 A Not exactly at that point. We were all still involved
5 with the investigation, and what was going on.

6 Q Okay. There were some questions to be asked of these
7 people, wasn't there?

8 A Yes, sir.

9 Q About the potential fight?

10 A The fight, and just what had been going on, generally.

11 Q Okay. You asked all of those questions to people?

12 A Yes, sir.

13 Q Whom did you talk to?

14 MR. LONG: Your Honor, I'd have to object on the
15 grounds of hearsay, since none of those people are here to
16 testify as to what they told the officer.

17 MR. STONEY: Asking who he talked to is not hearsay,
your Honor.

THE COURT: Overruled. He may ask who he talked to.

MR. LONG: May we have a continuing objection as to
any hearsay that he plans to elicit from this officer?

THE COURT: Well, I'll--no. I think you've got to
make objections if you think a question calls for hearsay. The
Court rules at this point, this question does not call for
hearsay.

1 MR. LONG: Well, I'll just have to object to every
2 question then, I guess, from here on out.

3 THE COURT: It depends. You may use your own
4 judgment about that, Mr. Long.

5 MR. LONG: Fine.

6 THE COURT: But a continuing objection would not
7 suffice. If Counsel wants to ask who he talked to, he may ask
8 that.

9 MR. STONEY: Thank you.

10 Q (By Mr. Stoney) Who did you talk to, Officer?

11 A I talked to a Rose Aragon, a Nicky Trujillo and a June
12 Trujillo.

13 Q Okay. Were any of those names the people that were--
14 that you were told were the complainants on the dispatch call,
15 or do you recall?

16 A I don't really recall. I just remember the call came
17 from that address, 366 Glen.

18 Q In talking to them, did they describe the situation to
19 you?

20 MR. LONG: Objection, your Honor.

21 THE COURT: Well, I think we better have Counsel
22 approach the bench.

23 (Whereupon, an off-the-record discussion was held at
24 side bar.)

25 THE COURT: All right. Objection's overruled. You may

1 continue.

2 Q (By Mr. Stoney) You spoke to these people after
3 Mr. Aragon was placed in the car; is that correct?

4 A Yes, sir.

5 Q Okay. And you were involved with the charging,
6 officers talked this over, about what decisions were made,
7 what crimes to charge the defendant with; is that correct?

8 A Yes, sir.

9 Q Okay. Even though, I guess it was actually Sergeant
10 Lybbert who finally said arrest that man, and you were following
11 instructions of Sergeant Lybbert?

12 A Yeah. He said, "You're under arrest" initially.

13 Q Okay.

14 A From behind me.

15 Q Okay. You were then present when, and I believe you
16 testified that you actually personally spoke to those three
17 other people?

18 A Yes, sir.

19 Q Okay. Now, did they tell you anything that causes you
20 concern about what the charges were?

21 A No, sir.

22 Q Okay. Now, let's move on. After you spoke with these
23 individuals, did you come back to the car and see Mr. Aragon
24 again?

25 A I don't recall. I may have.

1 Q Okay. Were you present when Mr. Aragon was speaking
2 to Sergeant Lybbert?

3 A I possibly was. I don't exactly recall. I remember
4 I was in the general area.

5 Q Do you recall his responses at all, then?

6 A No, not very clearly.

7 Q Okay. Now, why is it that, you know, you kind of--it
8 seems to me like you kind of handled the disorderly conduct
9 part and the delaying and obstructing part, and the other
10 officer, Beckett, handled the DUI.

11 A Probably basically monetary reasons. I get off at
12 4:00, the sergeant didn't want me going over shift.

13 Q DUI takes time?

14 A Yes, sir. It's--the testing procedures, the report
15 forms and that, and doing it well, it'll go past 4:00 o'clock.

16 Q Okay. So, you just didn't throw this at Sergeant--or
17 at Officer Beckett, Mrs. Beckett?

18 A No.

19 Q Who actually determined that it was her that was going
20 to handle the DUI?

21 A I believe it was Sergeant Lybbert, at the time.

22 Q When you say monetary reasons, you mean it costs the
23 department whe you say overtime?

24 A Yeah. It costs the department, it costs the City and
25 they prefer we don't--

1 Q They don't like that?

2 A Yes. Not unless it's a good reason.

3 Q Okay. Thank you. During the process of all of your
4 conversations and being around the defendant, did you have a
5 chance to form an opinion as to his sobriety?

6 MR. LONG: Objection, your Honor. He's testified and
7 this--the jury can arrive at their own conclusion based upon the
8 facts he observed, but he has no right to make that conclusion
9 based upon his observations.

10 THE COURT: Thank you.

11 Mr. Stoney?

12 MR. STONEY: Your Honor, that's exactly what a witness
13 is here for is to make a conclusion based upon their observations.

14 THE COURT: Mr. Long, isn't opinion evidence from an
15 experienced officer like this admissible in evidence?

16 MR. LONG: Well, not when he has such skimpy facts to
17 go on. The testimony was he was in a belligerent mood, they
18 bounced his face off the pavement--

19 THE COURT: Well, now, without arguing it in front of
20 the jury; in general, is officer testimony about sobriety
21 admissible in evidence?

22 MR. LONG: Well, if they do field sobriety tests and
23 they have an intoxilyzer result, then they can form an opinion
24 and give that to a jury.

25 THE COURT: Objection is overruled. You may continue.

1 Q (By Mr. Stoney) Did you form that opinion, Officer, as
2 to, let's say, his ability to safely drive a motor vehicle?
3 A Yes, sir.
4 Q What was that opinion?
5 A I felt he was under the influence of alcohol.
6 Q Now, you know, you--you're familiar with the terms
7 "bombed" or "smashed" or those type of things?
8 A Yes.
9 Q Was the defendant bombed or smashed?
10 A No. He wasn't bombed or smashed that he was laying on
11 the sidewalk.
12 Q No?
13 A No.
14 Q And what is it that you base that opinion on?
15 A The physical characteristics of Mr. Aragon, the--his
16 emotional state that's usually accelerated by the alcohol and
17 that, and just the little cues that I picked up from his
18 physical.
19 Q Did the odor have anything to do with that as well?
20 A Yes, sir. He had a strong odor.
21 Q All right.
22 MR. STONEY: No further questions at this time.
23 THE COURT: Thank you.
24 Mr. Long?
25 MR. LONG: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. LONG:

Q Now, Officer, you say you've done several hundred arrests for DUI?

A Yes, sir. Probably.

Q In the last--and that's over the last 12 years?

A Yes, sir.

Q You've had lots of training for DUI arrests, haven't you?

A Yes, sir.

Q How many hours, would you say?

A Do you want it yearly, or a total?

Q Well, whichever way it's convenient for you to give it to us.

A Well, I probably exceed 24 to 40 a year, and in 12 years, what would that be, 500 hours, I guess, probably. Close to it.

Q So that's just total training on DUIs, huh?

A Yes, sir. It's arrest and apprehension, what they call DUI.

Q So, there's a big priority then on DUIs, I guess?

A I would assume, yeah, there is. It's--the training, sir, it's mandatory.

Q Uh huh. And how many hours of training have you had on family dispute resolution?

1 A Total or yearly, again, would you like?
2 Q What's your total?
3 A Family disputes, probably pretty close to the 500 hours
4 also.
5 Q Five hundred hours of training on family dispute
6 resolution?
7 A Yes, sir. I attended one that was about 80 hours
8 alone on--on family disputes, domestics and that.
9 Q And do you get certificates that you've completed these
10 programs?
11 A Yes.
12 Q Do you keep those?
13 A Probably somewhere. I'd have to dig.
14 Q Could you tell us what grade you got on those training
15 seminars, or do they give grades?
16 A In the majority of them, they give grades, and I usual
17 never get less than shall we say an "A" grade on anything.
18 Q Uh huh.
19 A In the 90's.
20 Q So, you consider yourself pretty much an expert at
21 resolving family disputes?
22 A After 12 years? Yes, I could probably consider myself
23 an expert.
24 Q And this was just one you couldn't resolve?
25 A We probably could have, we weren't given the chance.

1 Q Uh huh. So, you think if you'd had more time under
2 other circumstances, you could have resolved it?

3 A I don't know how it would have been resolved. That, I
4 can't tell you. It wasn't, and that happened.

5 Q Uh huh. You think you, by yourself, could have
6 resolved this, without the interference from other officers?

7 A I don't know. It's not our policy to go to family
8 fights and that by ourselves. We always have back-up.

9 Q So, you've learned, I guess, in your training for
10 family resolution--or family dispute resolution, that you
11 don't threaten people who are belligerent and in an argumentative
12 mood; isn't that right?

13 A Sometimes we need to threaten them. We use our
14 authority, it's not really a threat. Sometimes you have to get
15 their attention, especially where alcohol is concerned.

16 Q Uh huh. So, in this particular case, you pushed
17 against the defendant when he was four feet away from you?

18 A That's an officer tactic on officer survival.

19 Q Uh huh. So, you felt threatened?

20 A Yes, sir.

21 Q Uh huh. And I--I noticed when you were walking up to
22 the podium, you're rather short for an officer.

23 A I'm probably average height. What's the average U.S.
24 male? 5'9"? I'm 5'8", probably one inch difference.

25 Q Uh huh. So did that have a bearing that Mr. Aragon

1 appeared threatening to you, in terms of his size?

2 A No, sir. I'm a very capable person. That--

3 Q So--

4 A That's not a threat.

5 Q --it wasn't his physical presence, or the stance he

6 took that made you feel threatened?

7 A It would make me feel threatened in the fact that I

8 don't want to get hit, I don't like to be struck. I don't

9 think anyone does.

10 Q And on that particular occasion, I presume you were

11 wearing your uniform?

12 A Yes, sir.

13 Q And did you have your night stick with you?

14 A I did not have my night stick at that time.

15 Q But you did have your firearm?

16 A Probably.

17 Q And handcuffs?

18 A Yes, sir.

19 Q And I suppose you looked similar to the bailiff?

20 A Probably.

21 Q In the courtroom today?

22 A Yes. We have different colored uniforms.

23 Q Uh huh. But in other words, you were not just by

24 yourself without any--any arms; is that right?

25 A What do you mean, without any arms?

1 Q You had your side arm on and your handcuffs--
2 A Yes. I had my side arm.
3 Q --and your other equipment, except for your night stick?
4 A Yes.
5 Q What about Officer Lybbert? He's quite large, isn't
6 he?
7 A No, sir. We're about the same size.
8 Q Uh huh. And was he armed?
9 A Probably.
10 Q And did he have his night stick?
11 A He may have. I don't recall at that time.
12 Q And what about Sergeant Beckett?
13 A That's Officer Beckett. I--she's dressed the same way,
14 we were all in uniform and on patrol.
15 Q Uh huh. And so when you had a discussion, how long
16 did you discussion last, before Lybbert came?
17 A Not very long. A minute, two minutes, something like
18 that. He was--he had arrived probably a minute, but he wasn't
19 up behind me for a little while. I believe he talked to someone
20 else off to my peripheral sight, that had arrived also.
21 Q Uh huh. So, you have had a lot of training on
22 officer survival?
23 A Yes, sir.
24 Q And they've taught you, haven't they, that officer
25 survival is more important than anything, isn't it?

1 A That's a priority.

2 Q Right. So--

3 A I'm a priority. I'd like to go home at night.

4 Q --if it came to a difference between officer safety,

5 especially your own, versus resolving a family dispute, you

6 would fend for yourself, wouldn't you?

7 A Probably.

8 Q Uh huh. So, in other words, if you felt threatened,

9 that would trigger off the whole sequence of events which led

10 to the scuffle, and--and Mr. Aragon hitting his cheekbone on the

11 sidewalk?

12 A I can't say that. Sequences change as things change.

13 Q But it happened quite rapidly, didn't it?

14 A Fairly rapidly, yes.

15 Q And you don't remember if he had one or both fists

16 clenched, do you?

17 A Not exactly. I remember seeing one for sure.

18 Q Uh huh. But in any event, that's when Lybbert grabbed

19 you from behind?

20 A Grabbed--grabbed who, from behind?

21 Q Mr. Aragon?

22 A No. I don't believe he grabbed him from behind.

23 Q Where was he standing?

24 A Sergeant Lybbert came up from behind me. Mr. Aragon,

25 at that time, stepped back towards the side of his car with his

1 back up against the car.

2 Q Uh huh.

3 A That's why Sergeant Lybbert couldn't have grabbed him

4 from behind.

5 Q So, you were both facing him, then, and his back was

6 against the car?

7 A Probably on each side of him.

8 Q Uh huh.

9 A I usually don't face someone square on.

10 Q Uh huh.

11 A That's a poor position.

12 Q And what about Officer Lybbert? Where was he standing?

13 A Sergeant Lybbert?

14 Q Is it Sergeant Lybbert?

15 A Yeah. There's Sergeant Lybbert and Officer Beckett.

16 Q Uh huh, all right. What about Sergeant Lybbert?

17 A I was probably on one side, and Sergeant Lybbert went

18 to the other side of Mr. Aragon.

19 Q And where was Beckett at this time?

20 A She was a distance away, talking to, I believe Rose

21 Aragon, had moved her off to the side.

22 Q I see. So, is this--in the course of this scuffle,

23 you say you saw his arms flaying about; is that right?

24 A Yes, sir. I don't exactly recall clearly.

25 Q But there were two--two of you officers, and he--he had

1 his face to the ground, didn't he?

2 A No. You've kind of skipped a little bit. Repeat that,
3 please?

4 Q Well, you said you saw his arms flaying, I'm just
5 wondering how he flays his arms if his face is on the ground--

6 A No.

7 Q --with his cheekbone--

8 A No.

9 Q --scraped.

10 A No. He was by the back, he was standing by the side
11 of his car with his back to the car, first.

12 Q Uh huh.

13 A Okay. That's when the arms began flailing and that's
14 defensive posture. After we got ahold of him and that, then he
15 went to the ground.

16 Q Uh huh. But he didn't make any--any punches or
17 anything at you, did he?

18 A I think it was pulling an arm up in this direction and
19 that, but I believe Sergeant Lybbert stopped it. I--

20 Q Wasn't that--

21 A When you're in a scuffle, you don't exactly recall
22 everything.

23 Q Right.

24 A You--

25 Q Wasn't that because Lybbert was reaching for him and he

1 was trying to fend off this grab?

2 A It may have possibly been.

3 Q Okay. So, most of the gestures that Mr. Aragon made
4 were defensive, weren't they?

5 A Possibly.

6 Q I mean, he didn't try to take on two armed police
7 officers, did he?

8 A He put up a pretty good resisting. He wasn't going to
9 be--

10 Q But he never struck you, did he?

11 A He didn't peaceably go along.

12 Probably 'cause I didn't allow him to.

13 Q He never struck Officer Lybbert, did he?

14 A Not that I'm aware of.

15 Q Now, you said that his eyes were red and glassy; is
16 that right?

17 A Yes, sir.

18 Q And you attributed that to drinking; right?

19 A Yes, sir, with the smell coming from him.

20 Q But he was belligerent, wasn't he?

21 A Yes, sir.

22 Q And people who are in a belligerent mood, isn't that
23 often one of the ways they manifest their belligerence is red,
24 bloodshot eyes?

25 A It usually takes a little bit longer, you usually don't

1 have the complication, both red and glassy.

2 Q Even though he may have been in an argument for a long
3 time before you got there?

4 A I didn't see any tears or anything in his eyes at that
5 time, or apparently that he'd been crying, like--

6 Q But there definitely were in his wife's eyes?

7 A Yes, sir.

8 Q And if you're around someone who's crying, don't you
9 have a tendency to tear up yourself?

10 A Not so much in my job, if you're asking for an opinion.

11 Q Have you ever had an argument with your wife?

12 A Maybe once in awhile, but no.

13 Q And when she cries, doesn't it make you feel bad?

14 THE COURT: Mr. Long, we have no objection from
15 Counsel, but you're in argument now, rather than eliciting
16 facts. If you'd like to go ahead with cross-examination, I'd
17 appreciate it.

18 Q (By Mr. Long) And I guess it was Lybbert, Sergeant
19 Lybbert, who put the handcuffs on the defendant?

20 A I really don't recall. I believe he might have.

21 Q Didn't use your handcuffs, did you?

22 A I don't think we did. I don't remember.

23 Q And in any event, he was placed in the back seat of
24 Officer Beckett's car?

25 A Yes, sir.

1 Q And what was the charge that he was placed under arrest
2 for, do you know?

3 A At that time, I believe it was the delaying and
4 obstructing, but I--I wasn't sure. I don't remember any specific
5 thing being told to him or anything. I was concerned with
6 talking to some other people then.

7 Q All right. And when you talked to these other people,
8 you received information about a mystery driver of the car,
9 didn't you?

10 A I believe a June Trujillo said something about, that
11 he'd showed up--

12 Q And so you were trying to find who this mystery
13 driver was, isn't that right?

14 A No. I was just trying to find out what was going on.

15 Q And you never found this mystery driver, did you?

16 A Never could find out anything--

17 Q All right.

18 A --other than that.

19 Q That's fine. And--

20 THE COURT: Well, Mr. Long, if you're going to ask the
21 question, you've got to give him a chance to answer it before
22 you cut him off.

23 Did you finish your answer, Sergeant Lybbert (sic)?

24 THE WITNESS: I was just going to--

25 THE COURT: I mean, pardon me, Officer Lynch.

1 MR. LONG: Well, I just--he'd responded to my question,
2 your Honor.

3 THE WITNESS: I was just going to conclude that there
4 was--

5 MR. LONG: Well, I don't want your conclusion, I just
6 wanted you to answer my question and I thought you had answered
7 my question.

8 MR. STONEY: Excuse me, your Honor. He's attempting to
9 answer his question and Mr. Long's now debating the issue with
10 him. I've let it go and let it go. I would ask that he be,
11 first of all, allowed to answer his question and that we get
12 right to the point here, rather than dilly-dally around.

13 THE COURT: We're--we're getting a lot of argument and
14 repetitious questioning. I'll direct you to let him answer.
15 Officer Lynch, have you finished the answer to the last question?

16 THE WITNESS: I--

17 THE COURT: You may go ahead and answer it.

18 THE WITNESS: I was just going to say--

19 MR. LONG: Well, your Honor, I don't remember the
20 question that the--the question I asked, he answered.

21 THE COURT: Well, let me ask the witness if he
22 remembers the question. Do you remember the question, Officer
23 Lynch?

24 THE WITNESS: I--it was, did I ever find the mystery
25 driver. I believe that was it.

1 MR. LONG: All right. And he said no.
2 THE COURT: All right. You may continue.
3 MR. LONG: Thank you, your Honor.
4 THE COURT: Thank you.
5 Q (By Mr. Long) Now, you said you were supposed to get
6 off shift at 4:00 o'clock?
7 A Yes, sir.
8 Q And what time were you finished with Mr. Aragon?
9 A Probably my part with Mr. Aragon, it was probably
10 around 3:00, and then I believe I got off on time that night.
11 Q So, you left at 3:00 o'clock?
12 A No, sir. I probably--I went off work at 4:00 o'clock.
13 Q But you were finished with Mr. Aragon at 3:00?
14 A I--I don't exactly recall. I--what do you mean,
15 finished with Mr. Aragon? Being in his presence, or finished
16 my reports and did everything, or--
17 Q He was booked into jail by 3:00 o'clock, wasn't he?
18 A He probably was booked here in our facility by 3:00
19 o'clock, and I was probably part of that booking, also. I
20 don't exactly recall.
21 Q So, you still had a whole hour on shift before--that
22 you would have had, if you had handled the charge?
23 A I had to write the report, my report. I also had other
24 reports that were pending from earlier that I had dropped to go
25 on this call that I had to finish up.

1 Q Uh huh. And so when did Beckett come on shift?

2 A She was probably on the midnight shift and came on at

3 2300 hours or 11:00 p.m., which would have started the day

4 before, actually.

5 Q Uh huh.

6 A The midnight shift.

7 Q But you were there the whole time, weren't you?

8 A What do you mean, there the whole time?

9 Q At the jail, when Beckett was interviewing Mr. Aragon,

10 asking him to take the intoxilyzer test?

11 A I--I was there for the intoxilyzer and that, and I

12 probably was there part of the booking. I don't exactly recall.

13 Q So you could have just as easily handled the whole

14 thing yourself, couldn't you?

15 A No, sir. I probably would have went to about 6:00

16 o'clock with all the other reports and that to finish up.

17 Q So, the only incentive, or the only advantage then

18 was you didn't have to prepare a written report?

19 A Advantage, sir?

20 Q Well--

21 A Whose advantage? Mine?

22 Q --you said the reason--the reason you didn't handle

23 the arrest of Mr. Aragon was because you were getting off shift

24 at 4:00 o'clock.

25 A Yes, sir.

1 Q But you were finished with Aragon at 3:00, so you had
2 a whole hour between when you were finished with Aragon until
3 the end of your shift?

4 MR. STONEY: Your Honor, it's been asked and answered
5 and we've gone over it.

6 THE COURT: Sustained. It's in a debate at this point.
7 Please move on to other material, Mr. Long.

8 MR. LONG: I'm just trying to establish, your Honor,
9 what--what--if he was there until 6:00 o'clock, what the
10 difference was. I--I was unable to--

11 THE COURT: I think he's answered that.

12 MR. LONG: --get an answer to that.

13 THE COURT: Ask that you go on to other matters.

14 Q (By Mr. Long) But you didn't decide that Beckett
15 would handle the arrest; that was Lybbert's decision?

16 A That's Sergeant Lybbert, yes, sir.

17 Q And then you--you testified that you felt that the--
18 Mr. Aragon was under the influence of alcohol?

19 A Yes, sir.

20 Q But he was not bombed or not smashed?

21 A No. I believe bombed or smashed by definition is
22 staggering, drooling-type drunk, usually that's what people
23 thinks of.

24 Q And he wasn't that way, was he?

25 A No. He wasn't drooling or anything.

1 Q And you said that you based your decision upon little
2 cues which you'd received during the evening; right?

3 A Yes, sir.

4 MR. LONG: I don't believe that he's asked questions
5 that I would be asking, which exceeds the scope of the direct
6 examination, so I'd ask that this officer remain so I can call
7 him as my witness, unless--

8 MR. STONEY: I have no objection if he wants to call
9 him as his witness at the appropriate time.

10 THE COURT: You're welcome to recall him, yes.

11 MR. STONEY: I have just a few other questions.

12 THE COURT: Are you through with cross, Mr. Long?

13 MR. LONG: Finished with cross, your Honor.

14 THE COURT: Thank you.

15 Mr. Stoney?

16 REDIRECT EXAMINATION

17 BY MR. STONEY:

18 Q Officer, first of all, when you asked the defendant
19 the questions about his--you know, to tell you his name and that
20 kind of thing; what kind of look did he give you?

21 A He just stared right at me.

22 Q Now, do you recall the question that Counsel asked
23 that was regarding receiving information about a mystery driver?

24 A Yes, sir.

25 Q You also received information that there was no

1 mystery driver, didn't you?

2 A Yes, sir.

3 MR. STONEY: Thank you. No further questions.

4 THE COURT: Thank you.

5 Further cross?

6 MR. LONG: No further cross, your Honor.

7 THE COURT: You may step down, Officer Lynch. Ask you
8 to remain so you'll be available.

9 THE WITNESS: Yes, sir.

10 THE COURT: Counsel, we're going to break at about--
11 pardon me--about 12:10, because I have to meet in an adminis-
12 trative meeting through the lunch hour with other judges and
13 administrative people, and so we have about, oh, 23 or 4 minutes
14 for our next witness, if that helps you plan anything.

15 MR. STONEY: All right. We'll call Sergeant Lybbert,
16 your Honor.

17 THE COURT: Thank you.

18 JOHN LYBBERT,
19 called as a witness by and on behalf of the City in this matter,
20 after having been first duly sworn, was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. STONEY:

24 Q State your name, please, Sergeant.

25 A It's John Lybbert.

1 Q Spell your last name for the record.
2 A L-y-b-b-e-r-t.
3 Q Now, you're employed with the Layton City Police
4 Department; is that right?
5 A Yes. I am.
6 Q How long have you been a peace officer?
7 A About 13-1/2 years.
8 Q Has that all been with Layton?
9 A Yes, it has.
10 Q During that period of time, I assume you yourself have
11 made DUI arrests, disorderly conduct arrests and delaying and
12 obstructing arrests?
13 A Yes. I have.
14 Q A number of them?
15 A Yes. I have.
16 Q And associated with many of those is the--is the odor
17 of alcohol?
18 A That is correct.
19 Q Is that almost a daily occurrence in your job?
20 A Oh, yes, pretty well.
21 Q Okay. You were on duty and as the sergeant for the
22 Department on the 2nd of April, 1989; is that correct?
23 A Yes. I was.
24 Q Okay. And do you recall being dispatched or hearing
25 Officer Lynch dispatched at approximately 1:45 in the morning to

1 36--or excuse me, to 366 Glen Avenue?

2 A Yes. I did.

3 Q And that's in Layton; right?

4 A That is correct.

5 Q Okay. And did you back up Officer Lynch in that?

6 A Yes. I did.

7 Q When you arrived at the scene, where was Officer Lynch?

8 A He was standing, it would be at the right front quarter

9 of the--of a black Monte Carlo, probably about three or four

10 feet from the side of the car.

11 Q And that black Monte Carlo was running, was it not?

12 A It was running, had the lights on, nobody in the car.

13 Q Okay. Was there any--was there a female close to

14 them?

15 A Not really. There was a lady over by the door into

16 the house, but that was probably 15 feet away.

17 Q And you have no idea how long Officer Lynch had been

18 there before you arrived, do you?

19 A I don't know exactly, but it was only a matter of just

20 two to three minutes.

21 Q Now, was Officer Beckett there?

22 A Yes. She had already arrived.

23 Q Now, was Officer Beckett talking to the lady?

24 A Yes. She was.

25 Q Okay. And you, I assume, approached the defendant and

1 Officer Lynch; is that correct?

2 A Yes. I did.

3 Q Did you notice anything peculiar about the defendant,
4 Mr. Aragon?

5 A As I was approaching them, I could see him and Officer
6 Lynch at that time were--Officer Lynch was talking to him.

7 Q Could you hear what Officer Lynch was asking him?

8 A He asked him for identification, asked him to identify
9 himself, and at that point, I heard him say, "Well, why do you--
10 who do you think I am?"

11 Q That's Mr. Aragon?

12 A Yes.

13 Q Okay.

14 A And then another lady arrived at that time, and I was
15 distracted by her for just a moment, finding out who she was and
16 why she was there.

17 Q Okay. And was that a Mrs. Trujillo?

18 A Yes. That was a Mrs. Rose--or June, Mrs. June
19 Trujillo.

20 Q Okay. Her daughter, I guess, was there; is that right?

21 A I'm not sure of the relationship, but I think it was
22 her daughter.

23 Q Okay. Now, when was the next time that your attention
24 was drawn back to Officer Lynch and Mr. Aragon?

25 A I heard Mr. Aragon start yelling quite loudly and using

1 a lot of profanity towards Officer Lynch.

2 Q Okay. And when you turned and observed, what did you
3 observe from Mr. Aragon? What was he doing?

4 A When I turned, he was standing, confronting, facing
5 Officer Lynch, and he yelled at Officer Lynch again, using
6 profanity towards him, and backed towards the car, put his hands
7 up like he was going to fight.

8 Q Okay. Now, you just made the move of raising your
9 left fist, I think, and keeping your right fist--

10 A Well, I'm a little bit left-handed. He--I honestly
11 don't remember which hand he brought up, I just remember he had
12 his hands up as though he was going to fight.

13 Q Fists were doubled up then?

14 A Yes.

15 Q Okay. And he was still yelling and screaming these
16 obscenities?

17 A Yes. He was.

18 Q Okay. What did you and Officer Lynch do at that point?

19 A I told Mr. Aragon he was under arrest, and then Officer
20 Lynch and I both grabbed him, and--

21 Q Okay. What did you arrest him for at that time? The
22 disorderly?

23 A Disorderly conduct.

24 Q Okay. And I assume that's from the fighting stance?

25 A From the fighting stance, from the loud yelling, it's

1 one--this was approximately 1:54 in the morning at that point in
2 time, neighbors in close proximity trying to sleep, I'm sure.

3 Q Okay. Now, when he was saying this, was he saying it
4 loud enough that you believe these other people could hear it?

5 A Oh, yes, there's--I don't have any doubt that they
6 could.

7 Q Okay. Did he accept the arrest?

8 A No. He didn't want to be arrested. He attempted to
9 fight away from us, but we arrested him anyway.

10 Q Okay. When you say he fought away from you, what did
11 he do?

12 A He attempted to pull away, to wrestle us down, but we
13 managed to secure his arms, we placed him on the ground and
14 handcuffed him.

15 Q Did he ever strike you?

16 A He attempted to, but we were able to block that and
17 grabbed his arms.

18 Q Okay. Now, you took him to the ground. I guess that's
19 a police defense tactic, isn't it?

20 A Yes, it is.

21 Q And he was injured when he went to the ground?

22 A I think he bumped his head on the--his forehead when he
23 went to the ground.

24 Q Okay. Was this a cut, a scrape, a scratch?

25 A Oh, just a--there was a little scrape, but that night,

1 it didn't--it was just a little red spot, really.

2 Q Okay. Now, did you ever, in the process of doing
3 this, notice that there was an odor of alcoholic beverage coming
4 from Mr. Aragon?

5 A There was a very strong odor of alcoholic beverage
6 coming from Mr. Aragon.

7 Q Do you recall if his eyes were watery?

8 A I didn't see that.

9 Q How about his facial color, was he flushed, red-
10 faced or anything?

11 A As I recall he was flushed, but he was angry and
12 yelling and hollering, and so, you know, I--all I can say is--

13 Q It could have been from that then; right?

14 A Yes, it could have been.

15 Q The way he was standing, did you notice how he was
16 standing?

17 A As I recall, trying to think back on it, before he
18 took up the defensive stance against the car with his back to
19 the car, he was leaning slightly forward with his arms and
20 shoulders hunched a little bit forward, I believe; but it's a
21 long time back.

22 Q Do you recall if he was swaying then, or anything like
23 that?

24 A I don't recall that.

25 Q Okay. Now, after he was arrested, he was put in whose

1 car?

2 A Officer Beckett's car.

3 Q Why Officer Beckett's car?

4 A She has, out of the three of us that were there, she
5 had the only car that was--had a cage in it, or a--we call it a
6 cage, it's a partition dividing the front and the rear to
7 transport--oh, I take that back. Mine also had a partition,
8 but I, being the sergeant on duty, I try not to transport, I
9 assign that to someone else, so that I can be free to rove about.

10 Q Okay. Now, you actually assigned her to be the DUI
11 officer, then?

12 A Yes. I did.

13 Q Why did you assign her and not Lynch?

14 A Because Lynch would be going off duty in a very short
15 time and she would be on until 7:00 in the morning.

16 Q Okay. And these DUIs, I guess, take that long?

17 A Anywhere from an hour-and-a-half, two-and-a-half
18 hours, usually.

19 Q Okay.

20 A To complete all the paperwork, the booking and so on.

21 Q Okay. Were you present on that night when you were--
22 when some officer was thinking about towing the car or doing
23 something with the vehicle?

24 A I in fact did do an impound.

25 Q That was you that did the impound?

1 A Yes. I did that.

2 Q Okay. And that's a requirement, isn't it, by law?

3 A Yes. When somebody's arrested for DUI, if they are

4 the driver of the vehicle and if they are the owner of the

5 vehicle, then we do a State impound.

6 Q Okay. You talked to other people that were there,

7 too, didn't you?

8 A Yes. I did.

9 Q Okay. And that would be, I guess, Rose Aragon?

10 A Yes. Rose Aragon, June Trujillo.

11 Q Okay. And during that conversation with them, you

12 discussed the incident as it had occurred?

13 A Yes. I did.

14 Q From that, you made a determination; is that right?

15 A Yes. I did.

16 Q What did you determine?

17 A I determined that Mr. Aragon was the driver of the

18 car when it arrived.

19 Q Okay.

20 MR. LONG: Your Honor, I'd have to move to strike that

21 answer as being non-responsive to the question. I mean, there's

22 no way to object when he says what conclusion did you make and

23 he comes out--off the wall with what he came up with.

24 THE COURT: I agree there's no way to object to that,

25 but what do you claim as the basis for the--

1 MR. LONG: Well he's going to the truth of the matter
2 asserted and he's making a generalization as to what he came to
3 this conclusion without even the hearsay evidence to base upon
4 his conclusion.

5 THE COURT: Well, when we had our conference at the
6 bench, this is why I asked you if you wanted a limiting
7 instruction because it is relevant as to whether or not they had
8 probable cause.

9 MR. LONG: Right.

10 THE COURT: And of course, he could talk to others for
11 that purpose, and he could make that determination for that
12 purpose. Would you--all right. I deny your motion to strike and
13 to instruct the jury to disregard, well, to strike; but I do
14 instruct the jury to disregard for the purpose--

15 Members of the jury, disregard the witness' last
16 answer relative to the elements of the cause of action, whether
17 defendant was driving. It's a preliminary matter, it's been
18 covered already in motions before the Court. It's admissible
19 for a limited purpose to show that the officer had a reason,
20 this officer or some other officer at the scene, had a reason
21 to arrest Mr. Aragon at the scene, but you should disregard it--
22 that answer as to whether or not, for purposes of your
23 determinations, Mr. Aragon was driving this motor vehicle at
24 this point.

25 You may go ahead.

1 MR. STONEY: Thank you.

2 Q (By Mr. Stoney) Now, at some point in your investiga-
3 tion, you actually came back to the car where Mr. Aragon had
4 been sitting; is that right?

5 A Yes. I did.

6 Q He was handcuffed, I believe, and seat belted in the
7 back seat of that car?

8 A Yes. He was.

9 Q Okay. Was the door open when you were talking to him?

10 A Yes. I opened the door to talk to him.

11 Q Okay. And you reached in and you asked him the
12 question, "Who was your friend?" Is that right?

13 MR. LONG: I'd have to object, your Honor, on the
14 grounds that this is--

15 MR. STONEY: I'll restate the question, your Honor.
16 I apologize, Counsel.

17 Q (By Mr. Stoney) What was the question that you asked
18 him?

19 A The question I asked him was, I asked him, "Where is
20 the other person that was in the car with you, since I need to
21 talk with him."

22 Q And did he respond to that?

23 A He did.

24 MR. LONG: I'd have to object to the response, your
25 Honor.

1 THE COURT: And the ground?

2 MR. LONG: Well, he's handcuffed in the back of a

3 police car, he's under arrest and he hasn't been given the

4 Miranda warnings and they're interrogating him.

5 MR. STONEY: Your Honor, if I could remind the Court

6 that underneath the voluntary exception in the Miranda warnings,

7 the officer's allowed to ask some few basic questions. Here in

8 this question, the officer has no reason to believe that there

9 would be an incriminating response come in. That's why the

10 defendant's response becomes important, because if that response

11 is incriminating, it's unresponsive to the question that he asked.

12 His question is, "Where is your friend?" It has nothing to do

13 with incriminating him in the process. The officer here is

14 impounding a car, he's got a vehicle with him, he's got--and

15 he's merely asking where the friend is, so it's completely

16 unresponsive to what the officer has to say.

17 THE COURT: Mr. Long?

18 MR. LONG: But the response is incriminating, as we

19 know.

20 THE COURT: Well, but what about the fact that it

21 isn't responsive to the question?

22 MR. LONG: Well, it is responsive to the question.

23 THE COURT: He's received--testimony so far is that

24 he's received information somebody else drove it.

25 MR. LONG: Well, but it is responsive to the question.

1 It's just more encompassing than the question asked, which is
2 what the last officer was attempting to do, answer the question
3 and then go on and explain some other things as well, that were
4 not--

5 THE COURT: Objection's overruled.

6 You may go ahead, Mr. Stoney.

7 MR. STONEY: Thank you.

8 Q (By Mr. Stoney) Officer, what was the defendant's
9 answer to the question, and I believe it was, "Is--" "Where is
10 the other person?"

11 A Mr. Aragon stated to me, "There isn't anyone else with
12 me, I was alone when I drove here."

13 Q Now, during the process of talking with Mr. Aragon
14 and being around him on that particular occasion, did you form
15 an opinion as to his ability to safely drive a motor vehicle?

16 A Yes. I did.

17 Q And what was that opinion?

18 A I believe he was intoxicated--

19 MR. LONG: I'd have to object again on the same
20 grounds as the last officer, your Honor. He has very skimpy
21 information upon which to base his opinion.

22 THE COURT: Thank you. Overruled.

23 You may continue.

24 Q (By Mr. Stoney) What is that opinion, Officer?

25 A I felt that he was intoxicated and therefore unable to

1 safely drive.

2 Q Now, that doesn't mean that he was--and pardon the
3 expression--blitzed, bombed or whatever, three sheets to the
4 wind, does it?

5 A I believe that he was intoxicated, that he wasn't just
6 under the influence, that he was beyond that.

7 Q What did you base that on?

8 A On his--

9 MR. LONG: Asked and answered, your Honor.

10 MR. STONEY: I've never asked that question.

11 MR. LONG: Yes, he did. He asked him what--what he
12 noticed--

13 MR. STONEY: I asked him--

14 MR. LONG: --and he said he noticed a very strong
15 odor of alcohol, that's the only response.

16 THE COURT: Well, he asked him what he observed,
17 previously; but I don't think he's asked him the basis in
18 support of this opinion. Overruled. You may ask.

19 MR. LONG: Well, he's allowed to testify as to a
20 conclusion without even laying a foundation. The foundation
21 I thought you were basing your decision on is he said it was a
22 very strong odor of alcohol, that's the only thing he said upon
23 which he based his opinion. Now, he's allowed to go back and
24 remember from the textbook what it says you have to say about
25 somebody that--to get them into this position.

1 THE COURT: Overruled. He may ask.

2 Q (By Mr. Stoney) What did you base it upon, Officer?

3 A I based that on the strong odor of alcohol, his
4 actions when he was confronted by Officer Lynch with a simple
5 request to identify himself, he became very belligerent, that
6 he wanted to fight two police officers in uniform, who truly
7 initially wanted nothing more than to find out who he was and
8 what was going on. I felt that his actions, from experience I've
9 had in the past, indicated to me that he was under the influence
10 of alcohol to a point where I feel he was intoxicated.

11 Q Thank you.

12 MR. STONEY: No further questions.

13 THE COURT: Thank you.

14 Mr. Long?

15 CROSS-EXAMINATION

16 BY MR. LONG:

17 Q Now, Officer, just so the jury knows where your
18 testimony is coming from. You have testified on at least three
19 prior occasions as to this case, have you not?

20 A No. Only two.

21 Q You testified at the per se hearing, did you not, in
22 Farmington, the Department of Motor Vehicles?

23 A Yes. I did.

24 Q And did you not testify in Court here before his Honor
25 on a motion, several months ago?

1 A I don't believe I did.
2 Q And did you--
3 A If I did, I sure don't recall that one.
4 Q Did you testify in District Court on this matter?
5 A No. I've never been in District Court here. You mean
6 here in Davis County?
7 Q In Salt--Salt Lake County.
8 A Oh. In Salt Lake County, yes, I did.
9 Q So, you have testified three prior occasions, have you
10 not?
11 A I think twice. I don't believe I've testified here in
12 Layton before.
13 Q Uh huh. So, you have had an opportunity then to review
14 your written notes, have you not?
15 A Certainly I have.
16 Q On several occasions?
17 A Yes. I have.
18 Q And there are two other police officers involved,
19 Officer Beckett and Officer Lynch; is that right?
20 A Yes. There are.
21 Q And you've had occasion to talk to them on several
22 occasions, have you not?
23 A Yes. I have.
24 Q And also have you talked with Mr. Stoney about this
25 case?

1 A Yes.

2 Q In the presence of the other officers?

3 A Yes, I did. This morning.

4 Q And the other officers discussed the matter with

5 Mr. Stoney while you were present?

6 A Yes, they did.

7 Q So you've all heard everyone's version of this story;

8 is that right?

9 A Yes, I have.

10 Q Uh huh. And so, if there's any kind of a discrepancy

11 against--between say your testimony here today and say your

12 testimony on a prior occasion or your written report, which would

13 you say would be more--more valid?

14 A My written report.

15 Q Your written report would be more valid? Okay.

16 Now, when you were first originally dispatched there, you say it

17 was about 1:45?

18 A The call came in at 1:43. I would presume it was

19 around 1:45, two to three minutes later that I was dispatched

20 to back the other two officers.

21 Q Were you present when Officer--you weren't present in

22 the courtroom here, but this morning, for example, when Officer

23 Lynch testified it was 2:00 o'clock?

24 A No. I haven't been in here at all to any testimony.

25 Q Uh huh. But it is--it is your testimony then that it

1 was 1:45, 1:43?

2 A That's as best I can recall, that was when the call came
3 in to dispatch.

4 MR. STONEY: Your Honor, I'd also object to the
5 question. Officer Lynch's testimony was about 1:45.

6 MR. LONG: It wasn't.

7 THE COURT: I don't recall any 2:00 p.m. testimony--
8 2:00 a.m. testimony. The Court directs the jury to remember that
9 testimony as you remember it, and if questions are asked
10 suggesting another time, you remember the testimony.

11 You may continue, Mr. Long.

12 Q (By Mr. Long) And you backed up Officer Lynch; is
13 that right?

14 A I backed Officer Lynch--Officer Lynch and Officer
15 Beckett.

16 Q Beckett was already there when you got there?

17 A Yes. They both were.

18 Q Uh huh. And when you arrived there, Lynch was already
19 talking to the defendant?

20 A Yes. He was.

21 Q Uh huh. And you walked up to the defendant, so there
22 were two of you?

23 A I walked up, I never did get to the defendant, I was
24 walking towards the two of them, I would have been approaching
25 Officer Lynch from his right back side, and before I reached them,

1 well, I was still probably, I'd say ten, 15 feet away, was when
2 Mrs.--or Ms. June Trujillo arrived, and I diverted to talk with
3 her, to find out who she was and what she wanted.

4 Q Uh huh. And so when was the next time your attention
5 was drawn to Mr. Aragon?

6 A When he started yelling and using the loud profanity
7 towards Officer Lynch.

8 Q And then did you have occasion to walk over to where
9 they were?

10 A I immediately approached the two of them. It appeared
11 that there was going to be a fight. He had, in effect, taken up
12 a combative stance against the side of his vehicle and had
13 challenged Officer Lynch.

14 Q But the car was behind him; right?

15 A It was at that point.

16 Q So--

17 A He had turned with his back to the car.

18 Q So, he was up against the wall, so to speak, wasn't he?

19 A He had--yes. He had taken his--had placed his back
20 against the car.

21 Q Uh huh. And did you witness any physical contact
22 from Officer Lynch?

23 A No, I didn't until I said he's under arrest, and then
24 we both grabbed him.

25 Q So you never saw Officer Lynch push the defendant?

1 A No.

2 Q You never did?

3 A That occurred while I had my back turned.

4 Q Uh huh. So, all you saw was the stance, with his

5 back up against the car?

6 A I heard--I heard him yelling, then as I looked up,

7 he turned and took up the stance. He wasn't already standing

8 with his back against the car when I--my attention was drawn

9 to him.

10 Q Uh huh.

11 A I looked as he was assuming that position, that

12 stance.

13 Q Uh huh. So, who was it, you or Officer Lynch, who

14 grabbed him first?

15 A I think perhaps myself, but I'm not positive.

16 Q Okay.

17 A It was to all intents and purposes simultaneous.

18 Q Uh huh. And so you all went to the ground, all three

19 of you?

20 A Yes.

21 Q And the defendant's head, you said his forehead--

22 A I'm trying to remember, and I think it was right--it

23 was either his right side of his forehead here or the left side

24 here, and I don't--I can't recall which, now.

25 Q Definitely his forehead, though?

1 A Yes.

2 Q And one side or the other?

3 A Yes.

4 Q And you said it--didn't you testify once it was bleeding?

5 A No. Testified it was slightly red, looked like it had
6 been scratched.

7 Q Uh huh, and it wasn't bleeding?

8 A I didn't see it bleeding, or if I did, I don't recall
9 it now.

10 Q Okay. And you asked him who you are, or is this what--

11 A Officer Lynch asked him that.

12 Q You overheard him ask him that?

13 A Yes.

14 Q Uh huh. And the defendant said, "Who do you think I
15 am?"

16 A Yes. I heard his response, "Who do you think I am?"

17 Q And isn't that because the officer had already told
18 him his name was Frank Aragon?

19 A I don't know. If he did, I hadn't heard that.

20 Q From the dispatch tape, didn't you hear the name on the
21 dispatch tape?

22 A Yes. I heard the name on the dispatch tape.

23 Q Uh huh.

24 A I did not know that's who this man was, though.

25 Q But when you arrived, you wrote in your report, on

1 arrival, I observed Lynch to be talking with a male Mexican in the
2 front yard of the home.

3 A Yes. I did.

4 Q Standing by the black Chevy Monte Carlo?

5 A That's correct.

6 Q So, you knew he was a Mexican then, huh?

7 A Yes.

8 Q Had you figured that out from the dispatch tape or from
9 seeing him?

10 A From looking at him.

11 Q Uh huh. I notice in your report that you wrote down
12 that you could smell a strong odor of alcohol, and your testimony
13 was, just now, that it was a very strong odor of alcohol.

14 A Yes.

15 Q And you said before that if there's a divergence in
16 your testimony as to what you're testifying to here today, then
17 your testimony that you wrote in the police report, that the
18 police report is more accurate; is that correct?

19 A That is correct.

20 Q So it wasn't very strong then, it was merely strong?

21 A It was just merely a strong odor, yeah.

22 Q Uh huh. Okay. And you're the one who--well, when he
23 was down on the ground, his--since he'd had his face, his face
24 must have been facing the ground or the pavement; right?

25 A Yes. He was face down.

1 Q So, how is it possible for him to strike out at you
2 or--
3 A He couldn't at that point. He'd already tried that.
4 Q Uh huh. So, when he was on the ground, he didn't do
5 anything in terms of trying to strike at you, did he?
6 A He just tried to pull away. That was the purpose we'd
7 placed him on the ground, so that he--
8 Q So, he was just defensive, acting defensively?
9 A He was trying to resist arrest.
10 Q Uh huh, but he wasn't trying to strike you, was he?
11 A Not any more. Not on the ground.
12 Q Uh huh, okay. Did he ever strike you?
13 A No. I blocked his arm.
14 Q And he never struck the other officer either, did he?
15 A Not that I saw.
16 Q Uh huh. Now, you say that you--when did you assign
17 this case to Officer Beckett?
18 A Immediately on placing him in the back of her car.
19 Q That--that act in itself made her in charge of the
20 whole thing?
21 A No. No, I told her, as soon as we put him in the back
22 of her car, I told her, this will be hers.
23 Q Uh huh. And what was her response?
24 A She said, yes, Sergeant.
25 Q Did she say "Why me?"

1 A No.

2 Q But she didn't arrive there at first, as far as you
3 know, did she?

4 A I think she was the second one to arrive.

5 Q So, isn't it usual to assign the first officer there
6 to be in charge?

7 A If they were going to both be on for the same length
8 of time, I would have, yes.

9 Q But the fact that you appointed Beckett was because of
10 the fact that Officer Lynch was getting off earlier?

11 A He gets off--at that point in time, the shift he was
12 working, he was not on the same shift, he was on a special
13 cover shift, he would have gotten off duty at 3:00 o'clock in
14 the morning.

15 Q Uh huh.

16 THE COURT: Counsel, we'll have to take a recess at
17 this time.

18 Members of the jury, sometimes jurors wonder what they
19 can do and who they can talk to in a lunch recess, and the answer
20 is, whatever you would normally do and wherever you would
21 normally go. The only restrictions are those that I've given
22 to you. Sometimes, friends, family members want to ask you about
23 the case, how are things going, tell me what's happening; we'd
24 put a restriction on you as to that. Please don't let anyone
25 talk to you about the subject matter of the case, nor talk to

1 them about the case. Please don't talk among each other, between
2 yourselves, yet, about the subject matter of the case, and don't
3 make up your minds about it until it's finally submitted to you,
4 please. And don't be in the company of anybody that is or may
5 be connected with the case during the lunch recess.

6 We'll resume at 1:30, take about an hour and 15--19-
7 minute break, and ask you to be back here ready to go then.
8 Thank you.

9 (Recess.)

10 THE COURT: We're returning to session in File
11 892001620 after the noon recess. Mr. Aragon and both Counsel
12 are present, and all of our jurors are present.

13 I think we were in the middle of cross-examination of
14 Sergeant Lybbert, and you may take the stand again, Sergeant
15 Lybbert. And Mr. Long, you may continue with the cross.

16 MR. LONG: Thank you, your Honor.

17 Q (By Mr. Long) I guess we were discussing, just--just
18 before you were talking to other people who were present; is
19 that right?

20 A You mean--

21 Q You'd just placed Mr. Aragon under arrest and put him
22 in the--Sergeant--or Officer Beckett's car?

23 A Yes. I did.

24 Q Back seat. Arrested for disorderly conduct?

25 A Yes.

1 Q And then you did have conversations with three other
2 people there?

3 A Yes. I did.

4 Q Uh huh. And at least one of those other people, or
5 two of those other people told you somebody else drove him there,
6 didn't they?

7 A No, one of them--

8 MR. STONEY: Your Honor, that's clearly hearsay;
9 however, I'll allow it as long as Counsel understands he opens
10 up the questioning regarding those conversations.

11 MR. LONG: I don't plan to pursue that. That's the
12 only question I plan to ask about that because he was--

13 MR. STONEY: It still opens it up, if he asked--if the
14 officer's asked the question.

15 MR. LONG: I'll withdraw the question then, your Honor.

16 THE COURT: All right.

17 Q (By Mr. Long) And you did find a full can of Bud Light
18 beer in the car; didn't you?

19 A I believe I did. I'll have to look in my report here
20 to tell you.

21 Q And you found a completely empty can or one that was--
22 had a very little bit left in it, didn't you?

23 A Yes. I did.

24 Q Both in the car?

25 A That is correct.

1 Q You didn't confiscate those for evidence, though?

2 A I don't believe I did. I didn't see any reason to.

3 Q And there wasn't enough left in the can to justify
4 charging him for having an open container in his car, was there?

5 A No.

6 Q Okay. And then Mrs. Trujillo in fact turned the car
7 off, didn't she?

8 A I think so. I'm not positive now, but I think she did.

9 Q Did you remember testifying at the per se hearing way
10 back when?

11 A I kind of remember some of that, yes.

12 Q In fact, do you remember testifying that Mrs. Trujillo
13 turned the car off after--

14 A I don't recall, but if I said that at that time, then
15 that would have been so.

16 Q Okay.

17 MR. STONEY: Excuse me, your Honor. If Counsel is
18 going to argue from another hearing or whatever, I think it's
19 protocol that Counsel provide a copy of the transcript to the
20 officer so that he can take a look at his testimony to see that
21 that's what he really said. We still don't know from the
22 nature of the questioning if he said that or if he didn't say
23 that at the prior hearing.

24 THE COURT: Well, what you say is correct. I don't
25 know whether you intend to pursue that, Mr. Long, but if you do,

you need to supply the witness with a copy of the transcript.

MR. LONG: Well, only if it comes to some other inconsistency or to refresh his memory.

THE COURT: All right. He really didn't testify inconsistently. He said, I don't know whether I did or not.

MR. LONG: That's true. That's true.

THE COURT: And so--but all right. You may proceed.

Q (By Mr. Long) Now, when you arrived, Aragon was standing near the--near the car, wasn't he?

A Yes.

Q And wasn't he standing about eight or ten inches from the car?

A I don't believe so. I, at this time, can't clearly recall exactly how far from the car, but it seems to me like he was two or three feet from the car.

Q I see. But definitely standing?

A Yes. He was standing.

Q And was it your testimony earlier that Officer Lynch took Mr. Aragon's arm and Mr. Aragon jerked it away, back against the car, then when you said you're under arrest?

MR. STONEY: Excuse me, your Honor. What does he mean by "earlier"? Is that earlier today?

MR. LONG: Tough question, let me rephrase it.

THE COURT: Yes, it ought to be. I--I wouldn't be clear, I don't think the witness could be.

Q (By Mr. Long) Well, after you told the defendant he was under arrest, Officer Lynch took his arm, didn't he?

A Yes. He did, and so did I.

Q And didn't he push away Officer Lynch's arm?

A I don't recall if he did or not.

Q Did he jerk away his arm?

A He attempted to jerk away from both of us.

Q I see. And that's when he went against the car?

A No. He'd already turned his back to the car.

Q Uh huh. But that's when he was leaning against the car? He had nowhere to go?

A I'm not sure I understand the question.

Q Well, did he--he hit his head on the sidewalk was your testimony?

A Yes. He did.

Q You don't remember which side of his forehead, but one side or the other?

A Actually, I've gone back and reviewed it. He did his right cheekbone, right here.

Q And how exactly did you re-do it?

A I looked at his picture we took that night when he was booked into jail.

Q Oh, just after your testimony here, earlier?

A Yes, I did.

Q I see. Did someone bring it to your attention?

A No. We were just curious to know where the injury was, so we went and got the booking--or I had another officer go get the booking pictures and I looked at it so I could see.

Q Well, when you say "we were curious", does that mean you and the other officers were curious?

A The attorney and I were curious.

Q So, he brought this to your attention?

MR. STONEY: Your Honor, I asked if we could look at the booking sheet while we were--or the booking picture while we were there, that's why the officer saw the booking picture. There's nothing inappropriate about that.

THE COURT: Correct. You may proceed.

Q (By Mr. Long) But you didn't think of this on your own? It was brought to your attention by Mr. Stoney?

A Yeah. Through our discussion.

Q And after he hit his head, he acted quite differently, didn't he?

A No, he did not.

Q He quit fighting, didn't he?

A He quit fighting, he was still trying to pull his arms away, and at that point, we also put handcuffs on him and he was unable to fight further.

Q Uh huh. But you didn't testify as to that earlier, did you?

MR. STONEY: Again, your Honor, what is earlier?

1 MR. LONG: Back at the per se hearing when you
2 testified, you didn't testify to that, you just said he quit
3 fighting, didn't you?
4 THE WITNESS: I don't know.
5 MR. LONG: Okay.
6 THE WITNESS: I can't recall what I said back then.
7 MR. STONEY: Your Honor, again, if he's going to ask
8 questions regarding that, he should provide the officer with a
9 copy of what was there.
10 THE COURT: Well, if he intends to impeach or show
11 inconsistency, he must do that; but overruled at this point. You
12 may continue, Mr. Long.
13 MR. LONG: Thank you, your Honor.
14 Q (By Mr. Long) And didn't you--or wasn't he very
15 apologetic after he hit his head?
16 A No. He was not apologetic until we put him in the
17 back seat of the car.
18 Q But then he became very apologetic?
19 A Oh, yes.
20 Q Uh huh.
21 A He wanted me to take the handcuffs back off and let him
22 go.
23 Q And he was willing to do anything that you wanted at
24 that time, then?
25 A Yes. For a short period there, he was.

1 Q So, at that poin, you could have done some field
2 sobriety tests on him, couldn't you?

3 A I don't know if I could have or not. I wasn't going
4 to turn him loose to have another fight.

5 Q Uh huh. So, it wasn't then just because he was
6 uncooperative and belligerent that you didn't do the field
7 sobriety tests, was it?

8 A Yes, it was.

9 Q Even though he was very apologetic and said he'd do
10 anything--

11 A I did not trust his attitude at that time.

12 Q Okay. So, before you talked to Mr. Aragon, himself,
13 handcuffed in the back seat of Officer Beckett's car--

14 A I--just a minute. I can't hear you with the airplane.
15 Please. My hearing's not very good anyway.

16 THE COURT: Mine's not very good either, when they
17 come over. We'll wait just a minute and see how many are coming.

18 All right. We'll try it again. Go ahead, Mr. Long.

19 Q (By Mr. Long) Up until you talked to Mr. Aragon in
20 the back seat of the car, you really had no idea who had driven
21 that car there, did you?

22 MR. STONEY: Your Honor, I couldn't hear the question,
23 I'm sorry.

24 THE COURT: You know, I guessed wrong, we had a third
25 one. Let's just wait a minute and see what they're going to do.

1 I guess it would be too much to ask the squadron commander to
2 send them all at once.

3 All right. Let's try again.

4 MR. LONG: Okay.

5 Q (By Mr. Long) And let's see, up until the time you--
6 you talked to Mr. Aragon, he was handcuffed in the back seat of
7 Officer Beckett's car, you had no idea who had driven that car
8 there, did you?

9 A Yes. I did.

10 Q Well, maybe I should introduce a page of this former
11 testimony, your Honor, and I have the original if your Honor
12 would want me to publish it.

13 MR. STONEY: Excuse me, your Honor. There's no need
14 to publish it, but to note that that is the actual testimony and
15 everything, I believe there's a proper way of counsel going
16 about that, and I would object until he meets that foundation.

17 Q (By Mr. Long) Did you testify on May 16th, 1989, at a
18 per se hearing held in Farmington?

19 A I testified at the per se hearing. I couldn't tell
20 you what date that was.

21 Q But you do remember that, do you not?

22 A Yes. I do remember testifying at a per se hearing.

23 Q And you do remember it was taken under oath by--and on
24 tape, with the hearing officer there?

25 A Yes. I do.

1 MR. LONG: Your Honor, I would move to publish this
2 transcript of that particular hearing.

3 MR. STONEY: Your Honor, I don't think the transcript
4 can become evidence as to the hearing. It can--the officer can
5 use that to refresh his recollection.

6 THE COURT: I think you can use this for the--

7 MR. LONG: All right.

8 THE COURT: --witness, and to question him about his
9 prior testimony, Mr. Long.

10 MR. STONEY: Well you have to open it so he can look
11 at it and see it.

12 MR. LONG: I've got a page here, I was just going to
13 hand him--

14 MR. STONEY: Then use the original, not a copy.

15 MR. LONG: May I open this then, your Honor?

16 THE COURT: Yes. Oh, yes. You're welcome to use it.

17 MR. STONEY: Your Honor, I have no objection. That
18 appears to be the proper transcript, if he wants to cross-
19 examine on it.

20 THE COURT: All right. Thank you. You may go ahead.

21 MR. LONG: Apparently, your Honor, it says on the
22 cover page that this was the 9th of May, just for the record,
23 the outside cover said the 16th, I don't know if that's the day
24 it was typed up or what.

25 THE COURT: I suppose for the witness' purposes, that's

1 not very important to you.

2 MR. LONG: All right.

3 THE WITNESS: I don't recall the date at all, your Honor.

4 THE COURT: All right. Please, you may go ahead, use
5 either date.

6 MR. LONG: Now, I'd like to refer to this, your Honor,
7 only for purposes of a prior inconsistent statement, rather than
8 introducing the entire transcript.

9 THE COURT: Yes. I think that would be more appropriate.
10 Just simply ask him, show him the statement.

11 MR. LONG: All right.

12 Q (By Mr. Long) Let me direct your attention to the--
13 the top line of Page 34 and prior--the question at that time was
14 that, "Did you know who was driving the vehicle?" And this is
15 before you talked to Mr. Aragon.

16 A Uh huh.

17 Q And your response was, "Up until that time, I had no
18 idea really. I didn't know who was the driver."

19 A That is correct.

20 Q So that was your testimony then?

21 A That, and the rest of the sentence also.

22 Q Thank you.

23 THE COURT: You may go ahead and read the rest of the
24 sentence, Mr. Long.

25 MR. LONG: Well, it goes into the hearsay which we've

1 agreed not to introduce, your Honor.

2 THE COURT: Oh, no. You can't introduce part of a
3 statement, Mr. Long. The rules specifically provide that
4 Counsel--

5 MR. LONG: I mean, I'm not asking--I'm only asking him
6 the limited question as to whether he had decided who was
7 driving the vehicle, because priorly, he said he decided after
8 talking to the two people there, and now he's changed his story,
9 and I wanted to make--clear up that, and I'm not introducing any
10 other evidence as to the hearsay.

11 MR. STONEY: Your Honor, and in the first place, he's
12 arguing that he changed his story. The two questions were
13 different, that he asked. The question at this this and the
14 question that he asked the officer. In the second place, he
15 is--he's attempting to put a limitation on what the officer's
16 full answer was, and there was a clarification with respect to
17 that.

18 Now, he's correct, the clarification does go into
19 hearsay, so perhaps we can ask the jury with the Court's
20 permission, just to note that there was--the officer did have a
21 clarification here, but it wouldn't be appropriate for the
22 defendant's behalf to admit any evidence with respect to that.

23 THE COURT: The rules clearly provide that--

24 MR. STONEY: Yeah.

25 THE COURT: --if the statement he's asked about, the

1 prior inconsistent statement he's asked about is only part of his
2 response, his own attorney may put in the rest of it, and you may
3 do that upon direct, redirect, if you wish. I would--I was going
4 to allow the witness to do it right now, but I guess technically
5 that isn't right.

6 So, you may go ahead, Mr. Long, and Mr. Stoney may
7 put in the rest of the answer later.

8 Q (By Mr. Long) So, which is right then, your testimony
9 then under oath, or your testimony now under oath?

10 MR. STONEY: Objection, your Honor. That's assuming
11 the questions were the same. We've already discussed that and
12 the questions were different.

13 THE COURT: Overruled. He may ask.

14 THE WITNESS: Okay. Would you ask me the question
15 again, please?

16 Q (By Mr. Long) Is your testimony under oath before,
17 true, or is your testimony now today under oath true? Which is
18 true?

19 A They're both true.

20 Q They're both true?

21 A That is correct.

22 Q So, you didn't know up at that time, before you talked
23 to Frank, who was driving the vehicle at this hearing, but now,
24 today, you testify you did know who was driving the vehicle
25 before you talked to him?

1 A I believe the question you asked me is, did I have any
2 idea who was driving, and my answer to that was yes, I do have
3 an idea who was driving.

4 Q But then you testified, "Up until that time, I had no
5 idea, really"; right?

6 A You're taking half the sentence. I need to--in order
7 to answer your question, you have to have that whole sentence in
8 there.

9 Q "I didn't know who was the driver"--

10 A Yeah.

11 Q --was the rest of your sentence.

12 A Okay.

13 MR. STONEY: Objection, your Honor. It's been gone
14 over once.

15 THE COURT: It's repetitious, it's argument at this
16 point. Sustained.

17 Q (By Mr. Long) And so what your based your decision
18 upon that he was driving the car then right after you talked to
19 these people, is that your testimony then?

20 A I don't understand your question of me. I based--

21 Q At what point did you make up in your mind that
22 Mr. Aragon was driving the vehicle?

23 A At what point did I become convinced? Is that what
24 you're asking me?

25 Q Right.

1 A After I talked with Mr. Aragon. I had indications, he
2 was the final--final verifier, you might say.

3 Q But before, on direct examination, you said you came to
4 that conclusion before talking to Frank.

5 A I said I had an indication. You asked me if I had an
6 indication and I said yes.

7 Q No, it wasn't me, it was Mr. Stoney asked you that
8 question, and you said you had come to the conclusion after you
9 talked to these people, before you talked to Mr. Aragon.

10 MR. STONEY: Again, your Honor--

11 THE COURT: Well, let's assume he did, and the jury can
12 weigh that, you're arguing the case at this point. What you're
13 doing is debating with the witness. Please--please go ahead and
14 move on to something else.

15 MR. LONG: Well, I'm trying to clear this up because
16 it's such a critical issue, your Honor.

17 THE COURT: Well, what you're really getting--trying to
18 get him to do is admit what you want him to admit, and he's
19 already given his testimony and you can argue it to the jury
20 at the appropriate time.

21 Q (By Mr. Long) You weren't witness to anything that
22 happened at the jail, I assume?

23 A No. I was not.

24 Q And you definitely assigned this case to Officer
25 Beckett--

1 A Yes. I did.

2 Q --at the scene? Not at the jail, later?

3 A No. At the scene.

4 Q And so she was well aware that it was her case before
5 she left the scene?

6 A That is correct.

7 MR. LONG: I have no further questions.

8 THE COURT: Thank you.

9 Further direct?

10 MR. STONEY: Yes, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. STONEY:

13 Q First, let's go to the statement, there were some
14 clarifiers on that; is that correct?

15 A Yes. There are.

16 Q Do you recall what you stated those clarifiers were?

17 A Yes.

18 MR. LONG: Well, your Honor, they involve hearsay
19 evidence and I'd have to object to those.

20 THE COURT: Mr. Long--

21 MR. LONG: I didn't ask any questions about those, and
22 this is just an attempt because it happens to be trailing off
23 the end of the--an answer that he's attempting to put in hearsay
24 explanation. I didn't ask him how he arrived at the conclusion.
25 I asked him if he had arrived at that conclusion at that time.

1 THE COURT: Is this an objection--
2 MR. LONG: Is the only--
3 THE COURT: --that you're interposing?
4 MR. LONG: Yes. It is.
5 THE COURT: Overruled.
6 You may go ahead, Mr. Stoney.
7 MR. STONEY: Thank you, your Honor.
8 Q (By Mr. Stoney) You added clarifiers to that response,
9 did you not?
10 A Yes. I did.
11 Q Do you recall what those clarifiers were?
12 A I stated I had received two conflicting stories or
13 versions from different witnesses, and after talking with
14 Mr. Aragon in the back seat of the car, then I was convinced of
15 who the driver was.
16 Q Okay. Thank you. Now, just a couple of things.
17 Mr. Aragon was dressed different than he is right now on that
18 particular occasion; is that right?
19 A Yes.
20 Q He looked a little different than he does right now; is
21 that correct?
22 A Yes. He did.
23 Q Right now, would you characterize him as looking fairly
24 clean-shaven, dressed nicely?
25 A Yes. Even though he's got a beard, it's neatly trimmed.

1 and he is well-dressed.

2 Q Okay. Certainly, he looked a little different occasion
3 then?

4 A Yes.

5 Q Could you des--

6 A I don't recall what he was wearing, but yes.

7 Q Okay. Do you recall if he was a little more
8 disheveled than he is right now?

9 A Yes.

10 Q Okay. And was there something different about, for
11 instance, his eyes or his face, at that particular point? Other
12 than the markings that were there from the scrape.

13 MR. LONG: Leading questions, your Honor.

14 THE COURT: Sustained. It is leading.

15 Q (By Mr. Stoney) Was there anything different then than
16 now about his appearance?

17 A I can't name a specific thing right at this--at this
18 moment, nothing comes to mind, a specific descriptor. He
19 appeared to me, intoxicated at the time.

20 Q Okay. I believe at one point through cross-examination
21 of counsel, you stated that Mr. Aragon could become apologetic
22 and this was in the back of the car?

23 A That is correct.

24 Q Is mood swings, from being very angry to very
25 apologetic significant of anything?

1 MR. LONG: This witness has not been established as an
2 expert witness, your Honor, and I'd have to object to the
3 question.

4 THE COURT: I think he began by asking him about his
5 arrests and his years on the force and his working with people
6 intoxicated. Overruled. You may ask.

7 Q (By Mr. Stoney) In your experience, is that
8 significant?

9 A Yes. It is.

10 Q What does that indicate to you?

11 A Intox--people who are intoxicated have these great
12 mood swings.

13 Q Okay. Why is it that you wouldn't actually unhandcuff
14 him and do field sobriety tests?

15 A I don't know at that point whether this is an act to
16 get me to unhandcuff him so that we can--he can have another
17 try at getting away from us, or assaulting me or one of my
18 other officers. And so for that reason, since we had physically
19 subdued him, once, I'm not willing to take the chance on having
20 to subdue him again and risk injury to either him or to another
21 police officer.

22 Q In fact, that would probably be a violation of
23 department policy or something, wouldn't it?

24 A Well, it's not actually a written policy that we can't
25 take the handcuffs off, but in my mind, that would not be good

1 sense,
2 Q Okay.
3 MR. STONEY: No further questions.
4 THE COURT: Thank you.
5 Further cross?
6 RE CROSS-EXAMINATION
7 BY MR. LONG:
8 Q Now, someone who's in an argument with their wife and
9 has been--had their head bounced off the pavement, they have
10 mood swings, too, don't they?
11 A I believe that they do have mood swings.
12 Q So, just because he had mood swings doesn't mean it's
13 only because of alcohol, does it?
14 A No. That's not the only reason.
15 Q Okay.
16 MR. LONG: No further questions.
17 THE COURT: Further direct?
18 MR. STONEY: No, your Honor.
19 THE COURT: You may step down, Sergeant Lybbert. Thank
20 you.
21 SERGEANT LYBBERT: Thank you, your Honor.
22 MR. STONEY: Officer Beckett.
23 THE COURT: We'll go off the record for a moment.
24 (Off the record.)
25 *

1 SHARON LEE BECKETT,
2 called as a witness by and on behalf of the City in this matter,
3 after having been first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. STONEY:

7 Q State your full name, please, Officer.

8 A Sharon Lee Beckett.

9 Q Spell your name for the record, your last name.

10 A B-e-c-k-e-t-t.

11 Q Thank you. What's your present position with the
12 Layton Police Department?

13 A Police officer.

14 Q How long have you been a police officer?

15 A A little over four years.

16 Q Has that all been with Layton?

17 A Yes.

18 Q During that period of time, have you made arrests for
19 DUI?

20 A Yes. I have.

21 Q How many arrests?

22 A I don't know.

23 Q Would you give us just an approximation? Hundreds or--

24 A A dozen, maybe.

25 Q Okay. That has not been one of your priorities, then?

1 A No.

2 Q Okay. Were you on duty in the early morning hours of

3 the 2nd day of April, 1989?

4 A Yes. I was.

5 Q And were you dispatched or did you hear a dispatch call

6 to 366 Glen Avenue?

7 A Yes. I did.

8 Q Do you recall the nature of that call?

9 A It was a family fight in progress.

10 Q When you arrived, what did you observe?

11 A I observed a male Hispanic and a female Hispanic

12 standing next to a running vehicle in the driveway.

13 Q Okay. The male Hispanic, as you referred to him, is

14 that Mr. Aragon, the defendant?

15 A Yes. It is.

16 Q For the record, can you identify him here in the

17 courtroom?

18 A The gentleman here, with the beard.

19 Q Thank you.

20 MR. STONEY: May the record reflect that she's pointed

21 towards the defendant and identified him, your Honor?

22 THE COURT: Yes. It will show that.

23 MR. STONEY: Thank you.

24 Q (By Mr. Stoney) Now, Mr. Aragon looks different today

25 than he did on that occasion, doesn't he?

1 A Yes.

2 Q What's different about him?

3 A He's wearing a suit.

4 Q Okay. He wasn't on that occasion, then?

5 A No. He was not.

6 Q Okay. Anything different about his demeanor at this

7 point?

8 A Yes. He's very quiet.

9 Q Okay. He wasn't on this occasion?

10 A No. He was not.

11 Q Okay. Are his eyes different?

12 MR. LONG: I think we're getting into leading questions,

13 your Honor.

14 THE COURT: Well, a leading question is one that

15 suggests an answer, its answer. And that does not suggest the

16 answer.

17 Overruled. You may continue.

18 Q (By Mr. Stoney) Are his eyes different?

19 A Yes. They appear to be.

20 Q And what is different about them?

21 A They're clear.

22 Q Okay. What were they on this particular occasion?

23 A They were watery and red.

24 Q Okay. How about the tone of his skin? Has it changed

25 at all, as far as you can tell?

1 A I--

2 MR. LONG: Same objection, your Honor, on leading
3 questions.

4 MR. STONEY: I can perhaps rephrase that.

5 THE COURT: Well, he's just--well, all right. If you'd
6 like to.

7 MR. STONEY: Okay.

8 Q (By Mr. Stoney) Is there a difference in the tone of
9 his skin today?

10 MR. LONG: Your Honor, he was--she was asked the
11 question if there was anything different she noticed and she
12 didn't respond, and now he's going into all these details,
13 bringing to her attention items that she hasn't remembered.

14 THE COURT: Counsel's allowed to direct the witness'
15 attention to various areas that might be relevant, and without
16 suggesting what the answer ought to be, he has the right to do
17 that, and so your objection is overruled.

18 You may continue, Mr. Stoney.

19 MR. STONEY: Thank you.

20 THE WITNESS: Yes. His face was flushed on that
21 occasion.

22 Q (By Mr. Stoney) What does flushed mean?

23 A Red.

24 Q Okay. Now, was there a time when you became aware that
25 there was a problem with Mr. Aragon that necessitated your

1 attention?

2 A Yes.

3 Q Okay. So, when you first arrived, you weren't really
4 concerned about Mr. Aragon then?

5 A When I first arrived?

6 Q Yes.

7 A I was concerned about the situation.

8 Q Okay. But your attention was towards Rose Aragon,
9 wasn't it?

10 A I started talking to Mrs.--yes. Rose Aragon.

11 Q Okay. When was it that you--your attention was
12 diverted to Mr. Aragon?

13 A I heard some type of commotion behind me, voices
14 getting louder, and turned back to see what was going on.

15 Q Okay. Do you recall what Mr. Aragon was saying?

16 A I don't recall any exact words, no.

17 Q Okay. When you turned around, what did you observe?

18 A Mr. Aragon had stepped away from the car, towards
19 Officer Lynch, and--

20 Q Do you recall what Lynch had done at that point?

21 A He--he had been asking him his name, as far as I knew.
22 That was all that I had heard.

23 Q And when Mr. Aragon made that step toward him, what
24 did Officer Lynch do?

25 A He put out his hand to kinda put some distance between

1 them.

2 Q Okay. And what did Mr. Aragon do at that point?

3 A He was just--he was just very loud and--and abusive,
4 verbally abusive to the officer. He was--his voice--he sounded--
5 he was belligerent.

6 Q Was he using swear words?

7 A I don't recall exactly what he did say.

8 Q Now, was there a time when there was a struggle
9 between the officers and the defendant?

10 A Yes.

11 Q And when did that occur?

12 A Mr. Aragon had--had--just give me a minute to look at
13 my notes.

14 Q Maybe before we get to that question, Officer. What
15 is that that you're looking at?

16 A This is my--my copy of my report.

17 Q I've noticed that you've been pretty nervous all day
18 today. What's the reason for that? Do you testify much?

19 A Not too much. Not too much in DUI trials.

20 Q Okay. You're a little nervous about this, then?

21 A I am, yeah.

22 Q Okay. Let me just ask that you, rather than looking
23 at your report all the time, why don't you just look at us and
24 tell us what you remember, okay?

25 Now, do you remember what--what happened as there was

1 a struggle there?

2 A Yes. I heard--like I said, Mr. Aragon was moving
3 towards Officer Lynch, and it appeared to me that something was
4 going to happen. About that time, Sergeant Lybbert, who had
5 arrived, kind of reached across and said, "You're under arrest."

6 Q Okay. Did you see anybody with their fists drawn or
7 anybody striking anybody at that point?

8 A Nobody striking anyone. I--I just saw Sergeant Lybbert
9 reach towards Mr. Aragon, when he said that you're under arrest.

10 Q And where were you from Mr. Aragon?

11 A I would have been to his left.

12 Q Okay. Over to his left, about how far from him?

13 A Three feet, maybe.

14 Q Okay. In this vicinity, then? Where I'm standing now?

15 A A--just a little bit closer.

16 Q Little closer?

17 A Little closer.

18 Q Okay. Now, was there a struggle between the officers,
19 the two male officers, first of all, and the defendant? Or did
20 you come right in as well?

21 A There--there was a struggle. Mr. Aragon resisted and
22 I had thought about stepping into it, and realized at that point
23 that it probably would be better for me just to stand back and
24 wait for a minute, to see what was going to happen.

25 Q Okay. The two officers had things well in hand?

1 A Uh huh.

2 Q Okay. Whose handcuffs did they use, do you recall?

3 A I don't.

4 Q Do you recall if Mr. Aragon attempted to strike either

5 one of the officers while they were tussling there?

6 A It was just--it was just a tussle. I didn't see--I

7 didn't notice any fists. I was just watching to see what I

8 needed to do, if anything.

9 Q Okay. They went to the ground?

10 A Yes.

11 Q Okay. When they went to the ground, do you recall who

12 was on top, who was on the bottom?

13 A I believe Mr. Aragon was on the bottom.

14 Q Okay. And is that where he was handcuffed?

15 A Yes. On the ground, yes.

16 Q Okay. Now, when was the first time that you became

17 aware or suspected that there was a problem with what--a

18 potential DUI, driving under the influence?

19 A Well, I did smell the odor of alcohol, when--when I

20 first arrived, as I got close to Mr. Aragon in the first few

21 minutes.

22 Q Okay.

23 A And then as he was being taken to the police car,

24 Sergeant Lybbert said, he should do for DUI.

25 Q Okay. Was the vehicle running, the other car that was

1 there?

2 A The vehicle that was in the driveway?

3 Q Yes.

4 A Yes. It was running and the lights were on.

5 Q What color was the car, do you recall?

6 A It was a dark color. I believe it was black.

7 Q Okay. You said the lights were on?

8 A Yes. They were.

9 Q That's the headlights and--

10 A The headlights, yes. And the tail lights.

11 Q Was anybody in the car at the time?

12 A I didn't see anybody in the car.

13 Q Who was outside, around the area?

14 A When I first arrived?

15 Q Yes.

16 A Mr. Aragon and Rose Aragon. Those were the only people

17 I saw when I first arrived.

18 Q There wasn't any other person wandering around or

19 anything?

20 A I didn't see anyone, no.

21 Q Okay. Were there any other males that came up after,

22 during the arrest or after things had calmed down at all?

23 A No. No males.

24 Q Okay. Another person did arrive at the scene, though,

25 that was somehow related, didn't she?

1 A Yes.

2 Q Who was that?

3 A I believe her name was June Trujillo.

4 Q Okay. And she drove up?

5 A I didn't see her drive up.

6 Q Okay. Now, were you present and alongside of the car

7 when Sergeant Lybbert asked the question to the defendant where

8 the other person was?

9 A Yes. I was.

10 Q Do you recall what the question exactly was?

11 A I don't recall.

12 MR. LONG: I'd have to object, your Honor, on the

13 grounds of hearsay. She's overhearing a conversation, that's

14 clearly hearsay evidence.

15 THE COURT: Addressed to the defendant?

16 MR. LONG: Well, she didn't ask the question. She's

17 overhearing a conversation, apparently.

18 MR. STONEY: Your Honor, there's been testimony as to

19 what the question was. Certainly, he can question the witness,

20 Sergeant Lybbert, with respect to that question. We've gone

21 beyond the point now that it would be considered hearsay, it's

22 been entered--

23 THE COURT: Well, it can still be hearsay, but if she

24 overheard--she testifies about a statement made, a question

25 asked to him, it's clearly--whatever the question and answer

1 together constitute an admission, if she testifies about those.
2 Overruled. He may ask the--

3 Q (By Mr. Stoney) Do you recall the answer that the
4 defendant gave? That Mr. Aragon made, what he stated in answer
5 to the question?

6 A Yes. I don't recall the exact words, but it was that
7 he had come there by himself, he wasn't with anyone else.

8 Q Okay. Now, you didn't perform any field sobriety tests
9 on the defendant like your normally would, the finger to nose or
10 the heel to toe or walk the line and that kind of thing, did you?

11 A No. I did not.

12 Q Why not?

13 A He was uncooperative, and I just didn't feel that he
14 would cooperate with that.

15 Q Okay. Were you at all concerned for your safety during
16 those tests, if you were to give the tests?

17 A During the tests? Well, there was that possibility.

18 Q Do they require you to be close to the defendant and
19 explain certain things to him?

20 A Yes. We have to explain the tests and demonstrate them.

21 Q Do they require that his hands and arms and feet be
22 free?

23 A His hands would have to be free, yes.

24 Q Okay.

25 A His hands and arms would have to be free.

1 Q Okay. Did you want to do that at that time, with him
2 handcuffed and in the back of your car?

3 A No.

4 Q Okay. When he walked--did you ever see him walk? Let
5 me ask you that.

6 A The only time was when he was taken to the car in
7 handcuffs.

8 Q How was he walking when he was taken to the car in
9 handcuffs?

10 A He was--he was being held when he was taken.

11 Q Okay. When he stood, how did he stand?

12 A He leaned against--when I first arrived, he was
13 leaning against the vehicle. When--just prior to being placed
14 into my vehicle, he was leaning against my vehicle also.

15 Q Okay. Was--when he was next to something, was he
16 ever standing straight?

17 A I didn't observe him standing straight.

18 Q Okay. Now, you've been through driving under the
19 influence training, have you not?

20 A Yes.

21 Q Is that an indication of something to you? Were you
22 taught that?

23 A A problem with his balance, perhaps.

24 Q Okay. Now, he was arrested and in your vehicle and
25 brought him where? Where did you take him after you took him

1 from the scene?

2 A In to the police department here.

3 Q Is that right here in this building?

4 A Yes. In this building.

5 Q Okay. And what was the purpose of bringing him in here?

6 A Brought him in to administer--we had a holding cell
7 at that particular time, and that's where--this is where we
8 brought our prisoners at that particular time.

9 Q Okay. And was he--was your purpose then to have him
10 stay overnight here in that holding cell, or what?

11 A If he were not able to post bail, that would have
12 been what would have happened.

13 Q Okay. Did you also perform an intoxilyzer test here?

14 A Yes. We do have the intoxilyzer machine here.

15 Q Okay. You did offer that test to the defendant, did
16 you not?

17 A Yes.

18 Q In fact, there's some very specific language that you
19 give to Mr. Aragon when you asked him to take that test, isn't
20 there?

21 A Yes. There is.

22 Q Okay. One of the forms that you have in your hand,
23 is that called a DUI Alcohol Influence Report Form?

24 A I have a copy of that form, yes.

25 Q Okay. That's a State form, is it not?

1 A Yes. It is.

2 Q Every time you do a driving under the influence, you

3 fill that thing out, don't you?

4 A Yes.

5 Q Okay. And under, and on the second page, there's a

6 part where it says chemical test?

7 A Yes.

8 Q Did you ask him the specific questions that are on

9 there?

10 A Yes. I did.

11 Q So what happened when you asked him if he would take a

12 breath test for you? What did he say? The first time.

13 A "I want to see a lawyer."

14 Q Okay. And when they say that, you're required to give

15 a second admonition, are you not, to them?

16 A Yes.

17 Q Okay. And that is the exact admonition that's on that

18 report?

19 A Yes. It is.

20 Q Okay. Did you read that to the defendant?

21 A Yes. I did.

22 Q Okay. And why don't you, for the record, read that to

23 the Court, what you read to the defendant?

24 A Which admonition is it that you wish--

25 Q "The results indicating"... I think that's the first

1 one, is it not?

2 A All right. "Results indicating .08 percent or more by
3 weight of alcohol in your blood shall, and the existence of a
4 blood alcohol content or presence of drugs sufficient to render
5 you incapable of safely driving a vehicle may result in suspension
6 or revocation of your license or privilege to operate a motor
7 vehicle."

8 Q Okay. And again, he did not want to take the test; is
9 that correct?

10 A There was--there was no response.

11 Q Okay. So, you read another part to him, do you not?

12 A Yes.

13 Q And that begins, I believe, "If you refuse", is that
14 right?

15 A Yes.

16 Q Would you read that to the record, please?

17 A "If you refuse the test, it will not be given; however,
18 I must warn you that if you refuse, your license or permit to
19 drive a motor vehicle may be revoked for one year with no
20 provision for a limited driver's license."

21 Q Okay. And it goes on, does it not?

22 A Uh huh.

23 Q If Counsel wants to, he can have you read the rest of
24 it. I don't know that it's important.

25 Did he take the test after that second warning?

1 A No. He did not.

2 Q All right. Now, before the defendant was placed under

3 arrest, did you form an opinion as to his ability to safely

4 drive a motor vehicle?

5 A Yes. I did.

6 Q What is that opinion?

7 A I believe that he was under the influence of alcohol

8 and that he was not capable of safely operating a motor vehicle.

9 Q And you based that on the things that you've testified

10 to here today?

11 A Yes.

12 Q Thank you.

13 MR. STONEY: I have no further questions at this point.

14 THE COURT: Thank you.

15 Mr. Long?

16 MR. LONG: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. LONG:

19 Q So, you say you've only arrested about a dozen people

20 for DUI in the last four years?

21 A Approximately.

22 Q Is that due to your shift, that you just don't happen

23 to find people who may be under the influence on your patrol?

24 A I don't know why that is.

25 Q Uh huh. You just don't find as many as, say, for

1 example, Officer Lynch, who testified he's had over 500 in 12
2 years?

3 A I--I haven't had--I haven't had 500, no.

4 Q Uh huh. So, when you arrived there at this particular
5 scene, where you said there was a family fight, did you find
6 Mr. Aragon standing by his vehicle; is that your testimony?

7 A Yes.

8 Q And he was talking to his wife, having an argument?

9 A I didn't hear an argument.

10 Q Uh huh. But they were talking, apparently, or they
11 appeared to be talking?

12 A When I arrived, they were just standing, as far as I
13 could tell from where I was.

14 Q Uh huh. And you were asked about any differences you
15 noticed from then and now, and your response was, he's very quiet.
16 Does that mean he was quite loud on that night?

17 A He got quite loud, yes.

18 Q Uh huh. When you were asked questions such as anything
19 about his eyes, you said that they were clear and that on that
20 night, they were watery and red?

21 A Yes.

22 Q And you testified that his--when you were specifically
23 asked about it, that his face was flushed; is that right?

24 A Yes.

25 Q Do you remember testifying about this case on the 9th

1 day of May of last year, at the per se hearing in Farmington?
2 Before the hearing officer there.

3 A I remember that we did have a per se hearing and that
4 I did testify. Is this the first one that we had?

5 Q Yes, uh huh.

6 A Okay.

7 Q Let me draw your attention to the bottom of Page 4
8 there, and that's the hearing officer asking you a question.
9 Could you read that question, please?

10 A "At that contact, did anything arouse your suspicions
11 that may have led you to believe that he was under the influence
12 of alcohol?"

13 Q And your response, on the top of Page 5?

14 MR. STONEY: Your Honor, can we have some foundation as
15 to when that question was geared for? I don't know in what type
16 of process, when he says "at that time" on the paper, we have
17 no idea what time in the whole scenario.

18 THE COURT: Sustained. It's an appropriate objection.

19 MR. LONG: Well--

20 THE COURT: It needs to be put in context at the time
21 it was given at the other hearing, Mr. Long.

22 MR. STONEY: Okay. Your Honor, we would stipulate that
23 this is the--at very first, when she--the time-wise appears to
24 be at the very first when she came in contact with Mr. Aragon,
25 and that's what is meant by the question, and I don't have any

1 objection to him going forward with it.

2 THE COURT: Thank you. Do you understand the time

3 frame, Officer Beckett?

4 THE WITNESS: I believe I do.

5 THE COURT: All right. Please go ahead, Mr. Long.

6 Q (By Mr. Long) So this is initially when you came in

7 contact with Mr. Aragon.

8 A Okay.

9 Q And your response on the page, at the top of Page 5?

10 A "Yes".

11 Q And the question?

12 A "And what were those?"

13 Q And your answer was?

14 A "I smelled the odor of alcohol on his breath, of

15 course, and he was arguing with officers. He was belligerent,

16 was uncooperative and finally was involved in a scuffle with

17 officers prior to being arrested."

18 Q And was that the conclusion then of your answer to

19 that question?

20 A It appears to be.

21 Q Thank you. And so you didn't mention here under oath

22 that he smelled the odor of alcohol and he doesn't smell the odor

23 of alcohol here today; isn't that a difference?

24 A I'm testifying from my DUI report form today.

25 Q But I mean, he doesn't smell like alcohol today?

1 A Oh. I don't know. I haven't been close to him.

2 Q Uh huh. Okay. So, you wouldn't notice that difference
3 then?

4 But you--you didn't mention to the hearing officer
5 when you were asked that he had watery or red eyes, did you?

6 A Not according to that answer.

7 Q And you didn't mention that he had a flushed face?

8 A Not according to that answer.

9 Q Uh huh. But you did mention that he was belligerent?

10 A Yes.

11 Q Which would be quiet now, and belligerent, I assume;
12 right?

13 And so it was your testimony under direct examination
14 that Frank, Mr. Aragon, stepped toward Mr. Lynch--Officer Lynch;
15 is that right, and that's when Officer Lybbert put him under
16 arrest?

17 A That was my perception.

18 Q Uh huh, okay. Now, just so the jury understands your
19 testimony, you've testified this is your fourth--fourth time
20 you've testified in this case under oath; isn't that right?

21 A Yes.

22 Q And on these prior occasions, you've had opportunities
23 and did you in fact talk to the other two officers involved in
24 this case?

25 A I'm sorry. I don't understand your question.

1 Q Have you discussed this matter with the other two
2 officers on prior occasions?

3 A Yes.

4 Q And how many times would you say?

5 A I--I don't know.

6 Q And so they've told you what their recollection of the
7 events as they transpired?

8 A We've discussed the case.

9 Q And this morning, did you not, in Mr. Stoney's office,
10 discuss together the facts of the case?

11 A We had a discussion in there.

12 MR. STONEY: It's Mr. Garside's office, but I was
13 there, yes.

14 MR. LONG: Oh, yes. Sorry about that.

15 Q (By Mr. Long) And that's just across the hall, isn't
16 it?

17 A Yes.

18 Q And so the other officers were telling Mr. Stoney what
19 their recollection of the events were, and you were present;
20 is that right?

21 A I--I don't know that we got into that much detail.

22 Q Uh huh. But you were present?

23 A Yes. I was.

24 Q And you have discussed this matter several times with
25 other officers?

1 MR. STONEY: Asked and answered. We'll stipulate that
2 she--

3 THE COURT: Repetitious. Sustained.

4 Q (By Mr. Long) So, if it comes to some kind of a
5 divergency in your testimony between what you have testified to
6 here today and say what's in your written report or your prior
7 testimony, which would you say would be more accurate?

8 A Well, today, I'm going from my written report.

9 Q I see. But if there's a contradiction, say, in what
10 you wrote down right after the event happened, would you say
11 that's more accurate, or what your testimony here today is?

12 A I'm testifying from my report today.

13 Q Uh huh. So, you're using that strictly to refresh
14 your memory?

15 A Basically. It's been quite a long time.

16 Q Uh huh. And didn't you have your report with you
17 when you testified at this per se hearing?

18 A I don't recall if I had my part of the report or not.

19 Q Don't you remember referring to your report when you
20 testified at the per se hearing?

21 A I believe that the DUI report form was there.

22 Q But you don't remember whether your supplemental
23 report was there?

24 A I don't recall.

25 Q Well, it's too cumbersome to go into that, your Honor.

1 THE COURT: All right.

2 Q (By Mr. Long) Now, we--you were asked the question
3 as to why you didn't do any field sobriety tests on Mr. Aragon
4 and you said it was because he was uncooperative?

5 A Yes.

6 Q Now, how did he--didn't he act differently after he was
7 in the police car, in your police car, handcuffed, in the back
8 seat? Didn't he become apologetic?

9 A I don't recall that he was apologetic.

10 Q Did you have any discussions with him when he was in the
11 back seat of your car before you left the scene?

12 A I don't believe I discussed anything with him.

13 Q So, you really don't know how he was in the back seat.

14 A I observed him.

15 Q But earlier--

16 A Talking to other people.

17 Q Earlier, he was uncooperative?

18 A Yes.

19 Q So, but you don't know how he--how his attitude was in
20 the back seat of your police car, since you never talked to him;
21 is that right?

22 A That's--I saw him sitting there.

23 Q Right. Was he struggling to get loose or anything
24 like that?

25 A No, not at that time.

1 Q Uh huh. So, was he still belligerent?

2 A No.

3 Q Okay. Did he become very quiet after he had his facial
4 wound?

5 A What time frame are we--are we referring to now, sir?

6 Q Well, after the scuffle, let's go to the scuffle. You
7 didn't see anybody strike anyone, isn't that right? That was
8 your testimony?

9 A Yes.

10 Q And there was a struggle, and you thought the other
11 two officers had things well in hand?

12 A Yes.

13 Q And that's because Mr. Aragon was on the bottom and
14 they were on the top; isn't that it?

15 A No. At the time that I made that decision, they were
16 still all standing.

17 Q Uh huh. But you watched while the--the struggle
18 ensued, and you saw no--no reason to get involved?

19 A I believe when they were on the ground, I did take
20 ahold of his legs.

21 Q Uh huh. So, but he did fall and--or in the struggle
22 when he went to the ground, he did hit his--somewhere on his
23 face?

24 A I believe he did.

25 Q Do you remember where it was on his face?

1 A I believe it was on his cheek.

2 Q And how do you know that?

3 A Well, he had a mark there.

4 Q Uh huh. Did you use anything to refresh your memory
5 or do you just recollect that?

6 A Oh, I--I've looked at the booking photo.

7 Q Was that at lunch, today?

8 A Yes.

9 Q Uh huh. And was that pursuant to someone's request?

10 A No. It was in response to another question.

11 Q I see. But someone else brought to your attention
12 that you should have looked at the booking photo?

13 A No. I--I suggested that, myself.

14 Q Did anyone join you when you looked at the photo?

15 A I brought it back out, I believe, and showed it to
16 Mr. Stoney.

17 Q Uh huh. Do you know if the other officers were able
18 to look at that photo?

19 A I don't know if they did or not.

20 Q Uh huh. And you never saw any fists at any time?

21 A Pardon me?

22 Q You never saw any fists at any time?

23 A I don't recall.

24 Q Uh huh. But you did testify that you did smell the
25 odor of alcohol?

1 A Yes.

2 Q And at what point was that?

3 A When--when I first came up and was in close proximity
4 to him.

5 Q Uh huh, what point was that? After the scuffle?

6 A No. I believe that was prior to.

7 Q Uh huh. But it was merely an odor of alcohol?

8 A What else would it be?

9 Q Weak odor of alcohol?

10 A Oh. A strong odor.

11 Q So now it's a strong odor, is it?

12 A Yes.

13 MR. STONEY: That's argumentative, your Honor.

14 THE COURT: Well, overruled. He may ask.

15 Q (By Mr. Long) Was it strong, or do you really
16 remember?

17 A According to my DUI report form, I wrote that it was a
18 strong odor.

19 Q But you just testified it was an odor of alcohol.

20 THE COURT: Now it's argument. Sustained.

21 Q (By Mr. Long) Didn't you?

22 THE COURT: She did.

23 Q (By Mr. Long) And it was 1:54 when you placed
24 Mr. Aragon under arrest; is that right?

25 A Yes.

1 Q And what time were you dispatched there?

2 A I don't know.

3 Q And 1:54 would be what time? I mean, what would be

4 going on at 1:54 when you placed him under arrest for DUI?

5 A I'm sorry. I don't understand the question.

6 Q Where were you at 1:54, when you placed him under

7 arrest for DUI?

8 A It says time of arrest. That was the time that--let

9 me look at my notes for a minute.

10 Our normal procedure is that that--

11 Q Well, I don't want to know your normal procedure. I

12 want to know if you recollect. If you don't remember, just--

13 A I don't.

14 Q Don't remember? Okay. So--but you do know that it was

15 1:54 when it occurred?

16 A That's the time that I've indicated on my report.

17 Q I see. So, you say that Officer or Sergeant Lybbert

18 told you that Mr. Aragon should go for a DUI?

19 A Or words to that effect.

20 Q Before you left the scene?

21 A Yes.

22 Q So, it was his determination and not yours that he

23 should be placed under arrest for DUI?

24 A He made that recommendation.

25 Q Uh huh. And isn't his recommendation binding, since

1 he's the senior officer on duty?

2 A He didn't order me to do that.

3 Q He just suggested it?

4 A It was a recommendation.

5 Q Uh huh. Did you ask him upon what he based his
6 recommendation?

7 A No.

8 Q So, you don't know what articulable facts he used to
9 based his recommendation?

10 A I made my own determination.

11 Q Independently of his?

12 A Yes.

13 Q Uh huh. Okay. And when you finally got the jail,
14 was anyone else present when you did the--started to ask him
15 the--or give him the admonitions about the intoxilyzer?

16 A Yes.

17 Q And who else was present?

18 A Officer Lynch.

19 Q Was he the only one who was present?

20 A I believe so.

21 Q Okay. Well, before I start on that. Frank Aragon
22 never told you he'd been driving the car, did he? Never told
23 you directly?

24 A No.

25 Q I see. Now to the test. When you--the first--I'm

1 trying to get this straight because I've looked at your report
2 form here, and maybe just for the jury, you might be able to
3 go through this so I've got the sequence of events proper.

4 The first time, at 1--0159, you told him--asked him if
5 he would submit to a breath test; is that it?

6 A At 0159 is the time that I read the following
7 admonition.

8 Q And would you read that just brief--or let me just
9 synopsise this. It's the one that says if he--if he takes the
10 test and it's determined that he has .08 percent or more in his
11 bloodstream that he can lose his license; is that right?

12 A Yes.

13 Q Okay. And then two minutes later, at 2:01, you read
14 him the--that he has a right to remain silent, and his right to
15 counsel does not apply to the Implied Consent Law?

16 A At--yes, 2:01.

17 Q And that's because he said, "I want to talk to my
18 lawyer", isn't it?

19 A That's just one of the admonitions that you read.

20 Q I mean, the first time you asked him if he'd submit to
21 a breath test, and he said, "I want to talk to my lawyer". Then
22 you read him the admonition that says he doesn't have the right
23 to a lawyer; right?

24 A No. Then I read him the admonition that says "If you
25 refuse this test", at 0200 hours.

1 Q Oh. I see. And his response to that was what?

2 A I don't indicate a response to that.

3 Q I see. And then--then you read him that he has no

4 right to an attorney?

5 A I read him the admonition about your right to remain

6 silent.

7 Q All right, that he doesn't have the right to remain

8 silent?

9 A Would you like me to read that?

10 Q Please.

11 A Your right to remain silent and your right to counsel

12 do not apply to the Implied Consent Law, which is civil in

13 nature, and separate from the criminal charges.

14 Q That's enough. That's the whole--the whole point.

15 In other words, he said, "I want to talk to my lawyer", and you

16 said, you don't have a right to a lawyer; right?

17 A According to the report, yes.

18 Q And then at that point, you re-read him his--the

19 original one, which asks him if he will submit to a breathalyzer;

20 is that right?

21 A I don't--it doesn't indicate that I re-read it. After

22 reading him the right to remain silent admonition, I indicate

23 there was no response, and then at 2:09, he said, "Why do you

24 want me to submit to a chemical test?"

25 Q And then right after that at 2:10, you then read him

1 his Constitutional rights?

2 A Yes.

3 Q And those are the ones that tell him he does have the
4 right to a lawyer; right?

5 A Constitutional rights. Yes.

6 Q Could you please just run through those, start to
7 run through those for the jury?

8 A You have the right to remain silent, anything you say
9 can and will be used against you in a court of law. You have
10 the right to talk to a lawyer and have him present with you
11 while you're being questioned. If you cannot afford to hire a
12 lawyer, one will be appointed to represent you before any
13 questioning, if you wish one. If you decide to answer questions
14 now without having counsel present, you may stop answering
15 questions at any time. Also, you may request counsel at any
16 time during questioning.

17 Q Uh huh. And it was at that point that--what was his
18 response to that, after you finished that?

19 A I'm required to read, do you understand each of these
20 rights that I have explained to you. His response was yes.

21 Q And he declined to answer any of your questions,
22 didn't he?

23 A Having these rights in mind, do you wish to talk to
24 us now. His response was no.

25 Q And then you read him the--the right to take that

1 breathalyzer one more time; is that how it worked?

2 A No.

3 Q You didn't read it to him again?

4 A No.

5 Q So you just started the booking process?

6 A Yes.

7 Q And that's the point at which time he said, "I will
8 submit to a test", isn't it?

9 A During the booking process.

10 Q Right. He said, "I'll take the test."

11 A He requested a blood test.

12 Q And so you wouldn't give him one?

13 A No.

14 Q And now you're saying it was a blood test, huh?

15 A That's what he requested.

16 Q Uh huh. And did you give him a blood test?

17 A No.

18 Q Is a blood test more accurate than a breathalyzer exam,
19 to your knowledge?

20 MR. STONEY: Objection, your Honor. That asks for a
21 legal--or for an opinion that I'm not sure she's qualified to
22 give.

23 THE COURT: Well, overruled, if she may--if she does
24 know, she may answer.

25 Q (By Mr. Long) Do you know?

1 A My understanding is it would give a little bit more
2 accurate.

3 Q The blood test would?

4 A A blood test would.

5 THE COURT: In this respect, Counsel, the jury will be
6 advised in an instruction that the defendant does not have a
7 choice of tests.

8 MR. LONG: Thank you.

9 THE COURT: You may continue, Mr. Long.

10 Q (By Mr. Long) Did you--did you, back at the scene, did
11 you witness Rose Aragon turn off the--the subject vehicle that
12 was in the driveway?

13 A I don't believe Rose turned the vehicle off.

14 Q You don't?

15 A Trujillo turned it off.

16 Q Who's Trujillo?

17 A June Trujillo.

18 Q June Trujillo?

19 A The lady that showed up.

20 Q And not Rose Aragon, huh?

21 A Not according to my report.

22 Q Huh. Okay.

23 MR. LONG: I don't believe I have any further questions,
24 your Honor.

25 THE COURT: Thank you. Further direct?

1 MR. STONEY: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. STONEY:

4 Q First of all, let me hand you again the transcript of
5 that hearing. Your testimony is only about four or five pages
6 long, would you thumb through that quickly, just kind of look
7 it over, please?

8 MR. STONEY: We may wish to go off the record, your
9 Honor, while she looks for that, just looks through it.

10 THE COURT: All right. We will go off the record.

11 (Off the record.)

12 THE COURT: We'll go back on the record.

13 Are you objecting to her searching for the part that
14 Counsel wants to use?

15 MR. LONG: Well, I have no idea what she's searching
16 for. I'm just saying that I used this only for purposes of
17 prior inconsistent statements. The prosecutor asked for a
18 copy of this before, and we told them where they could get a
19 copy. No attempt's been made to ever get a copy. And now, they
20 want to take a copy that I have for--on a first-time basis, and
21 try to--to create a case.

22 THE COURT: Well, your objection is overruled. She
23 may take a moment, a reasonable time to search for what it is,
24 Counsel, but I think Rule 613A allows him, upon request, to be
25 shown the part of the writing that you have used or intend to

1 use for impeachment purposes.

2 MR. LONG: Your Honor, I haven't intended to use
3 anything from those pages he's directed her to read, I don't
4 believe.

5 MR. STONEY: Your Honor, my purpose isn't to show that--
6 in fact, there was no inconsistent statement and that's my purpose.
7 Mr. Long did not present that as an inconsistent statement. He
8 asked her about the testimony with respect to it, and it was no
9 different than what she testified here, and therefore, that's
10 what I'm attempting to point out.

11 And I wanted her to look through that, because my
12 question was going to be, is there anything different that you
13 see there than you've testified here today, and to show that
14 there was consistency in her statement, and in the statement
15 she gave at a prior time, and in her statement here today.

16 And if Counsel will stipulate that there was no
17 inconsistency, we can move on.

18 MR. LONG: Well, there was no inconsistency, other than
19 the things she testified here she left out at that hearing,
20 that's all--the only purpose I brought that up for.

21 THE COURT: Oh, I suppose Counsel could ask her about
22 that.

23 You may take a moment or two.

24 How far do you want her to read?

25 MR. STONEY: Well, if he's just stating the two things,

1 I'll stipulate that she left those two things out--

2 THE COURT: All right. Why don't you do that and we
3 can move on.

4 MR. STONEY: --your Honor, at the hearing.

5 THE COURT: Members of a jury, a stipulation is simply
6 an agreement between Counsel, the Court and the jury, that
7 certain things are to be accepted as if testified to; that is,
8 you're to receive them as evidence, and those--the stipulation
9 here, is, that this witness, at the prior hearing did not
10 testify to two items that she's testified here today.

11 MR. STONEY: For the record, your Honor, I'll make
12 those two items. I believe it was the flushed face and the
13 watery eyes that Counsel questioned with respect to. That's what
14 he stated.

15 MR. LONG: Well, I--yeah, I guess that's--that's it.

16 MR. STONEY: Thank you.

17 Q (By Mr. Stoney) Now, in your DUI report form, you
18 have a place where you note things like flushed face and watery
19 eyes, don't you?

20 A Yes.

21 Q That's at the bottom of the first page, as I recall?

22 A Yes. It is.

23 Q And this is the report form that you filled out within
24 a short time after this incident occurred; is that correct?

25 A Yes. It is.

1 Q And did you note down in that section there was a
2 flushed face and watery eyes?

3 A Yes. I did.

4 Q That's--were those both written down there? Why don't
5 you read for us exactly what you wrote there?

6 A Flushed face, eyes watery, red.

7 Q Thank you. Now, did you mean to leave that out at the
8 prior hearing?

9 A No.

10 Q Counsel also spoke to you concerning speaking with the
11 officers, and that this was the third or fourth time that you've
12 testified and that you'd spoke with the officers before and you
13 spoke with me this morning. In speaking with all of the
14 officers, first of all, has either one of the other two officers
15 or any officer or any person, told you to testify differently
16 than what you recall the situation to be?

17 A No.

18 Q In fact, Sergeant Lybbert being a sergeant, and I
19 suppose they could put some pressure on you in little subtle
20 ways or something; has he ever done that?

21 A No.

22 Q Okay. Did a prosecutor ever do that?

23 A No.

24 Q In fact, when you've been asked what occurred or
25 whatever, how did--how were you asked what happened? Did they

1 say, did this occur, did this occur, did this occur, or did they
2 ask you to explain?

3 A Usually was to explain.

4 Q So, no one, even this morning, asked you to testify
5 in an improper manner?

6 A Pardon me?

7 Q No one who talked to you this morning or asked you
8 questions this morning asked you to testify in an improper
9 manner?

10 A No.

11 Q Now, you've also been through training with respect to
12 testifying in Court through the Police Academy, I assume, and
13 through other agencies; is that correct? Isn't part of the
14 process getting together with the prosecutor and informing the
15 prosecutor of the facts?

16 A Yes.

17 Q Isn't part of the process getting with the other
18 officers and informing them of your version of the facts?

19 A Yes.

20 Q You've known all along that your version of the facts
21 differs a little from the other officers' versions, haven't you?

22 A Yes.

23 Q Okay. You've held to those differences as well,
24 haven't you?

25 A Yes.

1 MR. STONEY: No further questions.

2 THE COURT: Thank you.

3 Further cross?

4 RECROSS-EXAMINATION

5 BY MR. LONG:

6 Q Have you ever considered to talking to the prosecuting
7 attorney alone, without other officers being present?

8 A I--I've done that before.

9 Q But in this particular case, you determined not to do
10 so?

11 A It was not a determination I needed to make.

12 Q I mean, someone else made the determination for you?

13 A We just happened to all be there at the same time.

14 Q All right. And it didn't occur to anyone that it
15 wasn't a good idea to listen to each other's testimony?

16 MR. STONEY: Excuse me, your Honor. I think that's
17 putting something there that's not necessarily the case. If I
18 could ask him to rephrase the question.

19 MR. LONG: Well, maybe I could start over, your Honor,
20 withdraw that question.

21 THE COURT: All right.

22 Q (By Mr. Long) You have talked to another prosecuting
23 attorney on this case, at least on one other prior occasion,
24 have you not?

25 A Yes.

1 Q And when you talked to him at that time, were the other
2 officers present?

3 A I don't recall.

4 Q This was several months ago, wasn't it?

5 A Yes, it was.

6 Q And then when you met at the per se hearing the first
7 time where this transcript was taken, all the officers were
8 there and you were talking with them outside the--in the
9 corridor about it, before you testified, weren't you?

10 A I don't recall if we were or not.

11 Q And then as the officers came in one at a time and
12 testified, the other two officers were out in the hall talking,
13 weren't they?

14 A No, I believe we were instructed not to talk to each
15 other.

16 Q Uh huh. And so over the several months that have
17 transpired since this incident happened, you have had occasion
18 to talk to the other officers about it, have you not?

19 A Yes.

20 Q And you, then this morning again, you spoke to
21 Mr. Stoney about it?

22 A Yes.

23 Q In the presence of the other officers?

24 A Yes.

25 Q And then when you testified in District Court in Salt

1 Lake County, you were interviewed by an Attorney General, and
2 you--you all talked to him together?

3 A I--I don't believe Officer Lynch was there on that
4 particular occasion.

5 Q Uh huh. But in any event, you've had several
6 discussions with varying prosecuting attorneys, three, in
7 fact, with at least one of the other officers present?

8 A Possibly, yes.

9 Q And on each occasion, the prosecuting attorney would
10 ask questions of each of you and the others were allowed to
11 listen to the answers, isn't that right?

12 A On some occasions, yes.

13 MR. LONG: No further questions.

14 THE COURT: Further direct?

15 FURTHER REDIRECT EXAMINATION

16 BY MR. STONEY:

17 Q Officer, there's an insinuation here that you've been
18 forced to say something that you don't want to say; okay? And
19 so I'm going to ask you point-blank. Is there anything here
20 that you've said or been forced to say, that you would say
21 differently?

22 A No.

23 Q That did not occur?

24 A No.

25 Q Have you ever been forced to say anything, or asked to

1 say anything that wasn't true?

2 A No.

3 Q Is there any--any insinuations made by any other
4 officers or anyone in the Department or anyone with any control
5 over you, whether it be a prosecutor, this prosecutor,
6 Mr. Garside, the other prosecutor that talked to you, or anyone
7 that would cause you some concern with respect to that?

8 A No.

9 MR. STONEY: No further questions.

10 THE COURT: Thank you.

11 Further cross?

12 FURTHER RECROSS-EXAMINATION

13 BY MR. LONG:

14 Q Sergeant Lybbert is--is ahead of you in seniority,
15 isn't he?

16 A Yes.

17 Q So you pretty much do what he says, don't you?

18 A He's the sergeant.

19 Q I mean, wouldn't he have been angry if he suggested to
20 you that you arrest Mr. Aragon for DUI and you didn't do it?

21 A No.

22 Q He would have just not even bothered him at all?

23 A Sergeant Lybbert would not--he--he wouldn't, no.

24 Q And isn't it true that when you got to the jail, it
25 was actually Officer Lynch who informed you that this case was

1 yours, and not Lybbert at all?

2 A When we got to the jail--I was--I was thinking that,
3 on the way in, that Officer Lynch was going to do the DUI.

4 Q So, in other words, Lybbert did not instruct you to
5 arrest him for DUI, -then; right?

6 A I said tha t he said he needs to be arrested for DUI.

7 Q And he told you that at the scene?

8 A He said that at the scene.

9 Q And then on the way to the jail, it occurred to you that
10 you should place him under arrest when you got to the jail?

11 A He was already under arrest.

12 Q But you said you didn't know where you were when you
13 placed him under arrest.

14 A He was already under arrest for disorderly and delaying
15 and obstructing.

16 Q Right. Right. I understand that, but in terms of the
17 DUI itself, you don't remember where you were when you placed
18 him under arrest for DUI, do you? That was your testimony,
19 wasn't it?

20 A He was under arrest at the scene, we checked his mouth
21 at the scene, Officer Lynch and I both did.

22 Q Uh huh. So then it's your testimony that you placed
23 him under arrest at the scene?

24 A No. He was already under arrest at the scene.

25 Q For disorderly conduct and obstructing justice?

1 A Delaying and obstructing, yes.

2 Q And not for DUI? That was at the jail, wasn't it?

3 A He was informed at the jail that he was being charged

4 with DUI.

5 Q By you?

6 A By me.

7 Q And that was because Lynch told you it was your case

8 now; right?

9 A That was where that occurred.

10 MR. LONG: No further questions.

11 THE COURT: Thank you.

12 Further direct?

13 MR. STONEY: Just a little.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. STONEY:

16 Q Sergeant Lybbert, did he ever tell you the case was

17 actually yours, with respect to the DUI?

18 A No.

19 Q Okay. And who did you think was in charge of the DUI

20 when, for instance, the defendant's mouth was checked?

21 A At that time, I thought it was Officer Lynch.

22 Q Okay. Did you have any problem with taking over and

23 doing the paperwork with respect to the DUI?

24 A No.

25 Q Okay. Is that something that is often done?

1 A I don't know if it's often. It's happened to me on
2 other occasions.

3 Q And do you know why on this particular occasion, you
4 were asked to take over and do it?

5 A Officer Lynch was supposed to be going off duty.

6 Q Okay. Did you feel as though Officer Lynch or
7 Sergeant Lybbert--pardon the expression--dumped on you with
8 this case?

9 A No.

10 MR. STONEY: No further questions.

11 THE COURT: Thank you.

12 Further cross?

13 MR. LONG: No further questions.

14 THE COURT: You may step down, Officer Beckett. Thank
15 you.

16 Do you want this witness to remain?

17 MR. LONG: Please, your Honor.

18 THE COURT: All right. You should remain. Not in the
19 courtroom, ma'am.

20 OFFICER BECKETT: Oh. Okay.

21 THE COURT: But available. Thank you.

22 OFFICER BECKETT: All right.

23 MR. STONEY: Your Honor, at this point, the City has
24 no other witnesses and the City will rest its case.

25 THE COURT: Thank you. Mr. Long?

1 MR. LONG: I would move to dismiss.

2 MR. STONEY: Your Honor, if there's a motion on behalf--
3 by Mr. Long, I would suggest we do it outside the presence of the
4 jury.

5 THE COURT: Yes. We'll need to do that.

6 Members of the jury, maybe it's an appropriate time to
7 take a recess in any event, so I give you the same admonition,
8 please don't make up your minds about the case yet, don't let
9 anyone talk to you about the subject matter of the case, nor
10 talk to anyone else about it, nor among yourselves, about the
11 subject matter of the case. Please don't be in the company of
12 anybody that has any connection or may have any connection with
13 the case.

14 Ten minutes, and then we'd like you available. It may
15 be a longer recess than that, I should advise you, because we
16 may extend it to handle some matters with instructions between
17 the Court and Counsel, but we'll ask the bailiff to let you know
18 if it's going to be a longer recess. So, let's figure on ten
19 minutes at this point, and we will excuse the jury and remain,
20 the rest of us, in session.

21 The jury has left the room.

22 Mr. Long?

23 MR. LONG: Well, I guess it should be--my first motion
24 should be one to consolidate in that the charges of disorderly
25 conduct and delaying and obstructing, I believe is the other

1 charge, are so similar in nature that they involve the same
2 criminal episode and should be treated as one charge rather than
3 two.

4 THE COURT: All right. Thank you.

5 Mr. Stoney?

6 MR. STONEY: Your Honor, at this point, of course,
7 the burdens on the City are only prima facie in nature.
8 Certainly anyone looking at the evidence that the Court has heard
9 at this point, could believe that both were present, especially
10 when you had, I believe it was Sergeant Lybbert separate them
11 out himself, by stating that the fighting stance, the loud
12 noise was the disorderly conduct, and then you have the other
13 obstructing, failure to give the name. You even have an
14 obstructing, I suppose it could be argued, where he's actually
15 struggling with the officers after he's arrested. So, you could
16 have it in two separate forms there, so I'd ask the Court to
17 deny the motion.

18 THE COURT: Thank you.

19 Anything further, Mr. Long?

20 MR. LONG: Well, I'd like to renew my former motions
21 to dismiss on the grounds of no probable cause to arrest the
22 defendant, no actual physical control being an essential element
23 of the crime being present, and no driving being witnessed by
24 anyone.

25 No other legal, or no other sufficient evidence to

1 constitute a conviction for the prosecution.

2 THE COURT: Thank you.

3 Mr. Stoney?

4 MR. STONEY: Your Honor, with respect to the probable
5 cause issues, those have already been determined, I would expect
6 the Court to hold with the prior ruling. I understand Counsel's
7 motion may also be one to dismiss for lack of being able to
8 prove a prima facie case at this point, and I would just ask the
9 Court to note that those elements are there, albeit circum-
10 stantially, but those elements are there and the jury could find
11 in favor of the City based upon the evidence that it's heard at
12 this point, and would ask the Court to so find.

13 THE COURT: Thank you.

14 MR. LONG: Well, it seems that the evidence is a little
15 different at this time, your Honor. Now Officer Beckett's
16 testimony is that she placed him under arrest at the jail, and
17 she thought it was going to be Lynch who was placing him under--
18 under arrest; but at the scene, her testimony was, she never
19 heard--or Frank Aragon never told her that he was driving the
20 car. So, what we've got now is a case where one officer is puttin
21 somebody under arrest at a subsequent time, based upon perhaps
22 articulated facts in another officer's mind.

23 Now, the other officer, her testimony was, did not
24 order her to place him under arrest. He was apparently--
25 apparently--

1 THE COURT: So what do you make of that? Can't she
2 go ahead and place him under arrest at the jail for DUI and go
3 ahead--

4 MR. LONG: If she had articulable facts upon which to
5 rely to base her--

6 THE COURT: Well, don't we have a--don't we have a
7 Supreme Court decisions that says officers can rely on what
8 their other fellow officers know in making arrests and--

9 MR. LONG: Well, that--that's perfect, because here
10 we've got Officer Lybbert telling her, "I think he should be
11 arrested for DUI."

12 THE COURT: Okay.

13 MR. LONG: But she thinks it's going to be Lynch.

14 THE COURT: So what--

15 MR. LONG: So, they get to the jail and--

16 THE COURT: So what difference does that make?

17 MR. LONG: --Lynch says, it's your case.

18 THE COURT: How does that make a difference? Tell me
19 what significance that has legally.

20 MR. LONG: Well, because if--if Lybbert had in his
21 mind the probable cause to make the arrest--

22 THE COURT: Okay.

23 MR. LONG: --at that time, he would have told her,
24 you must place Mr. Aragon under arrest for DUI, because I have
25 articulable facts in my head to constitute the probable cause,

1 and Sharon Beckett did not have those articulable facts in her
2 head at the time.

3 THE COURT: So?

4 MR. LONG: So it's an invalid arrest and the case
5 should be dismissed.

6 THE COURT: Why is it invalid?

7 MR. LONG: Because you have to have a valid arrest.

8 THE COURT: Can't she rely on what some other officer
9 knows involved in the incident to make the arrest?

10 MR. LONG: But she just testified it was a recommenda-
11 tion by Sergeant Lybbert, it wasn't an order or command.

12 THE COURT: Well, he said--he said he should be put--
13 he should be arrested for DUI.

14 MR. LONG: But she said--testified if she didn't do it,
15 it wouldn't have been any big deal.

16 THE COURT: No. If she could--maybe she'd have
17 determined later on it didn't need to be done, and she might
18 have told her sergeant, I didn't feel like it should be done,
19 I learned some new things, or--so what? Can't she make the arrest
20 based on what he knows?

21 MR. LONG: I mean, isn't this a case where you either
22 have probable cause to arrest somebody, or you do not have
23 probable cause to arrest somebody? And in this case, she doesn't
24 have it and she did it.

25 THE COURT: You're saying the officers together couldn't

1 have probable cause between them?

2 MR. LONG: Well, perhaps that's true. But she doesn't
3 have in her mind the articulable facts to justify the grounds
4 that she needs for probable cause. Perhaps Lybbert did--

5 THE COURT: Collectively, if they have the articulable
6 facts, can they do it?

7 MR. LONG: Perhaps, if they're communicating them--

8 THE COURT: Well--

9 MR. LONG: --but if they didn't--

10 THE COURT: --weren't they, in this case?

11 MR. LONG: No. Because Sergeant Lybbert, who's the
12 senior officer in charge, did not tell her, they gave her the
13 option. He said, "You should arrest him, but if you don't, you
14 can do whatever you want."

15 THE COURT: All right. Thank you.

16 MR. LONG: So then in her mind, it leaves the burden on
17 her, and she said if she didn't do it, he--she wouldn't have
18 gotten in any trouble, but she ended up doing it, but she did
19 not have the articulable facts in her mind to constitute the
20 probable cause.

21 THE COURT: Thank you.

22 Mr. Stoney?

23 MR. STONEY: Your Honor, my response is is that
24 Counsel's arguing something that he didn't elicit, even elicit
25 in cross-examination. Officer Beckett stated that she did do the

1 arrest, she stated what she based that upon. She stated she
2 felt that she was under the influence, all of those things she
3 was aware of, so she, even and of herself, even though she
4 obtained it, it would be hearsay from the officers, had enough
5 information to arrest, there wasn't any question as to that.

6 The question--the time of arrest isn't important with
7 respect to when she had the probable cause to do the arrest, as
8 long as she had the probable cause before she actually made the
9 arrest, and she obtained that information either from the other
10 officers or in her own knowledge, as she testified from the
11 stand.

12 Also, with respect to her testimony hat he never said
13 anything to her about driving, that's correct; but she did
14 testify that he said it to Detective Lybbert.

15 THE COURT: Sergeant Lybbert.

16 MR. STONEY: Sergeant--excuse me--Lybbert, with respec
17 to him driving.

18 THE COURT: And my--my recollection and notes indicate
19 that he said that in her presence, she overheard it.

20 MR. STONEY: Uh huh.

21 THE COURT: Isn't that what the testimony was, Mr. Lor
22 Didn't she hear his response to Sergeant Lybbert?

23 MR. LONG: I think that's what her testimony was, but
24 when I asked her point blank on cross-examination, did Frank
25 Aragon tell you he was driving the car, she said no.

1 THE COURT: Yeah. He told Lybbert and she heard it,
2 that's what her testimony was.

3 MR. LONG: So--

4 THE COURT: Didn't tell her.

5 MR. LONG: So--I mean, now--now she's allowed to base
6 her probable cause on overhearing a conversation between one
7 officer and a defendant who was under arrest and handcuffed in
8 the back of the car, has just had a scuffle and has a head
9 injury?

10 THE COURT: There's something wrong with that?

11 MR. LONG: Well, I think that's why the whole Eastern
12 Europe is coming this way, your Honor, to get away from that.

13 THE COURT: All right. Anything further, Mr. Stoney?

14 MR. STONEY: No, your Honor. We'll submit it. Thank
15 you.

16 THE COURT: Defendant's motions to dismiss are denied.
17 I think there is testimony from which the defendant can be
18 charged in this single criminal episode with disorderly conduct
19 and with delaying and obstructing an officer. The Court finds
20 that there is sufficient evidence in the record to show probable
21 cause for defendant's arrest. I think that that has been
22 covered previously in motions before the Court, and the Court
23 finds nothing now that undermines its earlier decision that there
24 was probable cause for arrest, and so the motions are denied.

25 Should we bring the jury back in, Mr. Long?

1 MR. LONG: Well, I thought perhaps if I had a few
2 minutes to get my thoughts organized, I might be able to save
3 some time in terms of putting witnesses on the stand that I may
4 not need.

5 THE COURT: All right. Let's go ahead and take a
6 recess for us who are now still here in Court for ten minutes.

7 MR. LONG: Okay.

8 THE COURT: Let me mention to counsel now that the
9 clock on the wall's just a minute or two fast, I've got--it's
10 just now coming up on 3:00 o'clock, and I do have to leave for
11 Salt Lake at about 3:30, and that's not really going to give us
12 time to finish this case, and if now is the appropriate time
13 to break and set a new time, we can do that, or we can go on
14 until 3:30. Give that some thought in the next ten minutes.

15 MR. LONG: I would vie for putting it off now, your
16 Honor, so I can--I think it would save the Court's time if I've
17 got everything organized when I come back here. It may be that
18 when I do come back, I don't deem it appropriate to put on any
19 evidence, and we'll just have --

20 THE COURT: Yes. I realize you indicated that you would
21 have no witnesses earlier, but you have, of course, the option
22 to put on testimony, and so we'll go ahead and take the recess
23 and you give it some thought. We'll be in recess.

24 (Recess.)

25 THE COURT: We need the jury, I guess. We'll have to

1 put objections to instructions on the record tomorrow, to
2 proposed instructions, and--

3 Are we on the record?

4 THE CLERK: Yes.

5 THE COURT: The record will show as we return to
6 File No. 892001620, Layton City against Aragon, that our jurors
7 are all back in the jury box, that Mr. Aragon is present and both
8 counsel.

9 During the recess, we determined that because of
10 administrative meetings with other judges, I have to leave this
11 afternoon, and we won't be able to conclude the case. Had we
12 been able to crowd some things in, we might have been able to--
13 I'd go late to the meeting and get finished, but there isn't
14 enough time. So we--and we told you that it was going to be
15 finished today, and ordinarily it is, but we have to finish it
16 tomorrow afternoon.

17 So, here in a moment, we're going to adjourn Court
18 and resume the case tomorrow at 1:00 o'clock. Now, what I need
19 to do is ask the jurors, is there any of you for whom that's a
20 great hardship, unusually onerous task for you to come back
21 tomorrow at 1:00?

22 All right. It appears that you're able to do that. I
23 know that inconveniences you, and I thank you in advance for
24 accommodating that.

25 Counsel have agreed and I'm sure Mr. Long has talked

1 to Mr. Aragon about that, and so this case is now continued
2 until Friday, the 9th, at 1:00 p.m., and we'll try to start
3 promptly, members of the jury, if you can be here five minutes
4 ahead of that, we'll try to get started on time.

5 I have to give you the same admonition. Please don't
6 allow anyone to talk to you, either--even though they're curious
7 family members, about the subject matter of the case. Talk
8 about something else, you can talk about the color of Counsel's
9 tie or anything you want, but not the subject matter of the case,
10 all right?

11 And don't make up your minds about it yet until it's
12 finally submitted to you, and please don't discuss the subject
13 matter among yourselves, yet. When I say allow anybody to talk
14 to you about it, I also include you talk to anybody else about
15 the subject matter of the case.

16 And lastly, don't be in the company of or associating
17 with anybody that is or may have any connection, is connected
18 or may have any connection with the case. All right.

19 And we'll be in recess.

20 (Whereupon, this hearing was continued to February 9,
21 1990.)

22
23 * * *
24
25

1 Mr. Long.

2 MR. LONG: Thank you, your Honor.

3 SHARON LEE BECKETT,

4 called as a witness by and on behalf of the defendant in this
5 matter, after having been previously duly sworn, was examined
6 and testified further as follows:

7 DIRECT EXAMINATION

8 BY MR. LONG:

9 Q Ms. Beckett, do you remember testifying in District
10 Court in Salt Lake County on the 29th day of September of last
11 year?

12 A Yes.

13 Q On this case?

14 A Yes.

15 Q And do you remember when you were asked the question
16 about the probable cause, how you determined there was probable
17 cause to arrest Mr. Aragon; do you remember that you--one of
18 your responses was that there was no one else there confessing?

19 A No. I don't recall.

20 Q You don't recall? Well, if--if there had been someone
21 else there that said that they had driven the car, would you
22 have arrested them for drunk driving?

23 A If they were--if they were intoxicated to the point
24 that they shouldn't have been driving.

25 Q Uh huh. And so if there was someone else there who

1 confessed, though--did you check any of the other rooms in the
2 house?

3 A I did not.

4 Q Did any of the other officers, to your knowledge,
5 check any other rooms?

6 A I--I don't know that they did.

7 Q So, if there had been someone else who was sober and
8 they said they had driven the car there, would you have arrested
9 them for driving under the influence?

10 A Not if they were not intoxicated.

11 Q So, in other words, someone drinking and driving are
12 the critical elements you need to put together to charge someone
13 with a crime; is that right?

14 A Of driving under the influence?

15 Q Uh huh.

16 A They would need to be driving and they would need to be
17 under the influence, yes.

18 Q And they would have to be driving a car while they
19 were under the influence, wouldn't they?

20 A They would have to have been under the influence while
21 they were driving--

22 Q Uh huh.

23 A --or driving while under the influence.

24 Q And were you ever able to ascertain through any
25 independent sources, other than Mr. Aragon, when he arrived?

1 A Not a definite time, no.

2 Q Did anyone establish that, to your knowledge?

3 A Not that I know of.

4 Q Uh huh. So, if someone was there who had sober and
5 said they had driven there, you wouldn't arrest them; but if
6 there was someone there who had been intoxicated, you would have
7 arrested them for drunk driving?

8 A It would have depended on the circumstances.

9 Q Wouldn't you have had to know when they drove there and
10 whether they were intoxicated when they drove there?

11 A We would have to have had some type of a time frame.

12 Q I mean, somebody that was intoxicated, they said, I
13 drove here, and you found out they drove there yesterday, you
14 wouldn't arrest them, would you?

15 THE COURT: Mr. Long, Counsel hasn't objected, but
16 you're putting suppositious (?) questions to the witness that
17 involve matters of law, and it seems to the Court, they're not
18 relevant. I'll ask you to go on and ask her about facts that
19 are appropriate for the jury to consider for this occasion.

20 MR. LONG: Just trying to establish why she arrested
21 Mr. Aragon.

22 THE COURT: You're welcome to ask her that question if
23 you would like.

24 Q (By Mr. Long) And so you did place Mr. Aragon under
25 arrest, your testimony was, at the jail; is that right?

1 A I informed him at the jail that he was being charged
2 with driving under the influence of alcohol.

3 Q I see. And that's when Officer Lynch came in and
4 announced that it was your case?

5 A It was when we were at the office.

6 Q Right. Because you thought it was his case; right?

7 A I--

8 MR. STONEY: Your Honor, I'll object at this point.
9 He's also leading the witness, and this is his direct at this
10 point. If he wanted to ask certain questions--we've also gone
11 over this as well, and--

12 THE COURT: It is repetitious. You're entitled to ask
13 it again, but you can't lead. Sustain the objection to leading.

14 MR. STONEY: Thank you.

15 MR. LONG: I'm just trying to clarify this.

16 Q (By Mr. Long) And at the per se hearing, or at the
17 per se hearing that you testified on the 9th day of May, didn't
18 you--

19 A Which one was the per se, sir?

20 Q The one in Farmington.

21 A All right.

22 Q Department of Motor Vehicles.

23 Did you not at that time, testify that when Mr. Aragon
24 was being booked, that he said that he would submit to a breath
25 test?

1 A I don't recall if I said that or not.

2 THE COURT: Maybe it will save some time, Mr. Long.

3 The testimony of the witness earlier was that when he was first
4 asked, he declined, and then later on, somewhere in the process
5 of booking into jail, that he did say then that he would submit
6 to a test.

7 Am I remembering that correctly, Officer Beckett?

8 THE WITNESS: Yes. He said that he would take a blood
9 test.

10 THE COURT: He said he would take a blood test?

11 THE WITNESS: At a later time, yes.

12 THE COURT: And about how long, perhaps it would be of
13 interest to the jury to know about how long after he was first
14 requested that he did state that?

15 THE WITNESS: I don't have an exact time. It was
16 some time during the booking process. I believe, from the time
17 we started the DUI report form, that was a little over ten
18 minutes, until we completed that, and then we would have started
19 the booking process. Possibly anywhere from 15 to 20 minutes.

20 THE COURT: Had he previously to that had--

21 THE WITNESS: Pardon me?

22 THE COURT: After the test was first offered him, had
23 he been advised that he was--that his declining to take the
24 test was being treated as a refusal?

25 THE WITNESS: Yes. Yes. I read all the admonitions

1 and then told him he was marked as a refusal and let him know
2 that that was what we were doing.

3 THE COURT: All right. And so his offer then to take a
4 blood test would have been about how long after he was advised
5 that he was being treated as a refusal?

6 THE WITNESS: I can't say for sure. I would say
7 between, somewhere between ten and 20 minutes, because like I
8 said, I'm not sure at what point during the booking process that
9 he made that request.

10 THE COURT: Thank you.

11 Mr. Long, why don't you go ahead?

12 MR. LONG: Thank you, your Honor.

13 Q (By Mr. Long) May I direct your attention to the bottom,
14 last question on Page 25 of the transcript of that hearing?
15 Would you mind reading my question to you?

16 MR. LONG: This time frame, your Honor, is at the jail,
17 just--I guess the booking process is just being started.

18 THE WITNESS: "So after you started the booking process,
19 he said he would submit to a test?"

20 Q (By Mr. Long) Then would you read my question?

21 A Wasn't that your question?

22 Q I'm sorry. Your answer, then.

23 A "Some time during that, it was after--I believe after
24 he got most of that done, said something about he would--he would
25 do a breath test."

1 Q Is that what your testimony was?
2 A That's what it says here.
3 Q Thank you.
4 A You've got mine here.
5 Q That's your report, sorry.
6 A Thank you.
7 Q I'd just ask you, do you think if you had shown up by
8 yourself at this incident that we would be here today?
9 MR. STONEY: Objection, your Honor, that's wholly
10 speculative in nature.
11 THE COURT: Sustained. Irrelevant.
12 Q (By Mr. Long) I mean, it sounds like you were
13 handling the situation pretty well from your end, weren't you?
14 THE COURT: The Court instructs the witness not to
15 answer.
16 Mr. Long, the Court has sustained an objection to your
17 question. It's argument, it's irrelevant.
18 Q (By Mr. Long) Have you had training in family dispute
19 resolution?
20 A Yes. I have.
21 Q And how much training have you had?
22 A I don't have an exact number count.
23 Q Isn't it true that when you have people who are--have
24 been in an argument, that you kind of treat them with kid gloves?
25 A In some circumstances.

1 Q I mean, if you walk up to them in a threatening gesture
2 and push on them, doesn't that usually make it worse than better?
3 A It could.
4 Q Doesn't it somehow involve--if someone's on a ledge
5 ready to jump out a window, you don't go and threaten them, do
6 you?
7 MR. STONEY: Objection, your Honor. Again--
8 THE COURT: Sustained. It's irrelevant, it's argument
9 and speculative.
10 Please proceed to--
11 Q (By Mr. Long) You didn't have any--
12 THE COURT: --something--
13 Q (By Mr. Long) You didn't have any difficulty with
14 Rose Aragon, did you? I mean, you were talking to her, you
15 didn't have any trouble with her, did you?
16 THE COURT: Mr. Long, Counsel hasn't renewed his
17 objection, but I direct you to go to something relevant to the
18 charges here. Mr. Aragon is not charged with anything arising
19 out of the family fight. Please confine your questions to
20 something relevant to these charges.
21 Q (By Mr. Long) So how much training did you have in
22 family dispute resolution?
23 A I--I don't know. I've had several classes, but I
24 can't tell you exactly how many.
25 Q Are you pretty good at it?

1 A How would I know?

2 Q Was this your only attempt at family dispute
3 resolution?

4 A I beg your pardon?

5 Q Was this evening your only attempt?

6 MR. STONEY: Your Honor, if he can lay the foundation
7 for that, I'm not sure she's even agreed that she attempted to
8 resolve any family dispute here; but if he can lay a foundation
9 or if he wants to rephrase it, I'd have no objection.

10 THE COURT: No. The Court sustains the objection on
11 the ground of irrelevance. It doesn't matter.

12 Please proceed to something else.

13 Q (By Mr. Long) Well, when you were dis--you were
14 dispatched to this--this scene, and you expected a family fight
15 to be in progress, or some sort of trouble, I think your testimony
16 was.

17 MR. STONEY: Objection, your Honor, that's leading,
18 and that's not what she's testified to earlier.

19 THE COURT: Sustained.

20 Q (By Mr. Long) Well, what was your testimony earlier
21 then about why you went there?

22 A We were dispatched to a family fight in progress.

23 Q So, you anticipated finding a family fight?

24 A In those type calls, you never really know for sure
25 what you're going to find.

1 Q Right. And so when you got there, you started talking
2 to Rose Aragon?

3 A Yes. After--after approaching initially, then I turned
4 to talk to Rose Aragon.

5 MR. STONEY: Your Honor, I'm going to object again.
6 He's leading the witness. If he wants to directly examine and go
7 point by point, I'd have no objection; but he's called her as his
8 witness and I would ask that he be held to that.

9 MR. LONG: Well, I'd like her to be announced as an
10 adverse witness, your Honor.

11 THE COURT: He can--I believe that he can lead this
12 witness, since she testified originally for the prosecution; but
13 I believe that the areas in which he's questioning her are way
14 out, peripheral and beside the point. But I'll let you proceed
15 with that question about Rose Aragon. You may go ahead.

16 Q (By Mr. Long) You did talk to Rose Aragon, didn't you?

17 A I started to.

18 Q You didn't have any trouble with Rose, did you?

19 A No.

20 Q Ever?

21 A No.

22 MR. LONG: No further questions.

23 THE COURT: Mr. Stoney?

24 MR. STONEY: Just a very few questions.

25 *

1 CROSS-EXAMINATION

2 BY MR. STONEY:

3 Q Officer, you've read that transcript now where it said
4 you might have said something about he asked for a breath test;
5 was it a breath or blood test that he asked for at that time?

6 A It was blood.

7 Q Okay. That certainly could have been a typographical
8 error; is that right?

9 A Possibly, yes.

10 Q And it's possible that you could slipped and said
11 breath, at that hearing?

12 A That's possible, also.

13 Q Okay. In addition to that, who chooses which test
14 the defendant should be able to take?

15 A The officer.

16 Q Okay. And that's the way you were trained?

17 A Yes.

18 Q Okay. And when he declined to take the test, then
19 somewhere down the road, ten or 20 minutes later, you said
20 during the booking process, after you moved away and were doing
21 something else, then he said he wanted to take a test; is that
22 right?

23 A Yes. That's correct.

24 Q And that was another test than you had offered him?

25 A That's correct.

1 Q Thank you. Now, when we get to that time element
2 Counsel was talking to you about, he said, was there any
3 indication of what time the defendant had driven up. You, on
4 your DUI report form, you fill out certain things, and one of
5 those is the pre-arrest statements of the suspect; is that
6 right?

7 A Yes.

8 Q Would you take a look at that area of the report?

9 MR. LONG: Your Honor, I believe this exceeds the scope
10 of my direct examination.

11 MR. STONEY: He opened it wide up, your Honor. He asked
12 her about the time.

13 THE COURT: Overruled. He may ask.

14 MR. LONG: Time for what? What are we discussing, the
15 time for what?

16 MR. STONEY: The times when the defendant was driving,
17 if she knew when he was driving or when he got there, you talked
18 about whether he drove the day before or whatever.

19 MR. LONG: Those were all hypotheticals. Has nothing
20 to do with the testimony.

21 THE COURT: Overruled. He may ask.

22 MR. LONG: And the question again, was?

23 MR. STONEY: My question was if she would look at that
24 first.

25 MR. LONG: I don't believe I asked any questions about

1 the DUI report form, your Honor.

2 THE COURT: I don't think you did. It's inappropriate,
3 request of her.

4 Well, the objection's overruled. You may proceed.

5 MR. STONEY: Thank you.

6 Q (By Mr. Stoney) Now, Officer, upon looking at your
7 DUI report form, prior to the arrest of the defendant, he did
8 make some statements to Officer Lynch and some of the others
9 that were there, did he not, about when he had arrived?

10 MR. LONG: Well, your Honor, since there is more than
11 one arrest, I think we should--need a proper foundation as to
12 which arrest he's referring to.

13 MR. STONEY: That's appropriate, your Honor. I'll go--

14 THE COURT: Thank you.

15 Q (By Mr. Stoney) Prior to the time when the defendant
16 was wrestled and handcuffed to the ground, he did make some
17 statements regarding the actual time that he'd arrived, did he
18 not?

19 A Prior to that, I didn't hear a time frame.

20 Q Did you hear him make statements then, at some point?

21 A Yes. I did.

22 Q Okay. When was that that he made statements about when
23 he had arrived?

24 A When he was in my patrol car.

25 Q Were they in response to a direct question or was he

1 just making statements to you?

2 A He was answering a question of Sergeant Lybbert's.

3 Q Which--was that the question that you discussed
4 yesterday, about where was this other person, or whatever the
5 question was?

6 A It was in regards to where his friend was.

7 Q Uh huh. And the answer to that question, we discussed
8 yesterday, but he also added something to that, did he not,
9 about his time of arrival?

10 A Yes. He did.

11 MR. LONG: Your Honor, I'd have to object on grounds
12 of Miranda and corpus delicti of the crime, and that this
13 relates, his answer relates directly to an interrogation by the
14 officer.

15 THE COURT: Objection's overruled. You may continue.

16 MR. STONEY: Thank you.

17 Q (By Mr. Stoney) And what was his response about the
18 time that he had arrived?

19 A I just got here three or four minutes ago.

20 Q Now, one last question, Officer. Counsel talked to
21 you about the situation in dispute resolution and everything
22 else. There was really no dispute resolution here, was there?

23 A No.

24 Q Okay. And whatever was started was interrupted by the
25 defendant and his behavior, was it not? Whatever type of

1 resolution was started was interrupted by his behavior with
2 Officer Lynch?

3 A That's true, yes.

4 MR. STONEY: No further questions.

5 THE COURT: Thank you.

6 Further direct?

7 REDIRECT EXAMINATION

8 BY MR. LONG:

9 Q Well, just say if you got there and you found the
10 engine running and the lights on and the car in the driveway
11 and nobody around, would you have arrested somebody for driving
12 under the influence?

13 A Depends on what the circumstances were.

14 Q I mean if you didn't even--if you only found a person
15 there and he looked stone sober, would you have arrested him for
16 drunk driving?

17 A No.

18 MR. STONEY: Your Honor, again, I'll object.

19 Q (By Mr. Long) So, just the fact that you have a car
20 with the--

21 MR. STONEY: Excuse me. Your Honor, I'd object.

22 THE COURT: The objection is sustained. It is
23 argument.

24 Q (By Mr. Long) So, if you--if you find a car with the
25 lights on and the engine running, it doesn't necessarily mean a

1 crime has been committed, does it?

2 MR. STONEY: Object again, your Honor.

3 THE COURT: The Court directs the witness not to answer
4 the question.

5 Mr. Long, would you like to ask a different question?

6 Q (By Mr. Long) Well, if you find a gun with bullets in
7 it, it doesn't mean that somebody has been murdered, does it?

8 MR. STONEY: I'll object to relevancy, your Honor, as
9 well as the nature--

10 THE COURT: It is argument, it is irrelevant.
11 Sustained.

12 MR. LONG: It's only a question, your Honor.

13 THE COURT: I understand and I've only sustained the
14 objection to it.

15 MR. LONG: Okay. I have no further questions.

16 THE COURT: Thank you.

17 MR. STONEY: Nothing further.

18 THE COURT: You may step down, Officer Beckett.
19 Defense rests?

20 MR. LONG: Defense rests, your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Stoney, further evidence?

23 MR. STONEY: No further rebuttal, your Honor.

24 THE COURT: All right. Members of the jury, we're to
25 the stage where both sides have put in their evidence and they--