

1 THE COURT: Evelt Davis, charged
2 with the felony offense of felon in possession of a
3 firearm. Let the record further reflect that the
4 jury was selected yesterday, both sides are present,
5 announced ready. Pending before this Court, the
6 motion to suppress the evidence in the case. All
7 right. Both sides are ready. Let's proceed. State
8 calls?

9 MR. AKERS: State calls Officer
10 Tewes, Your Honor. May I proceed, Judge?

11 THE COURT: Has this officer been
12 sworn?

13 MR. AKERS: He has not.

14 THE COURT: Please raise your right
15 hand, Officer.

16 (Witness sworn)

17 THE COURT: Very well. You may
18 proceed. And your name again, Officer?

19 THE WITNESS: My name is Eric
20 Tewes.

21 THE COURT: Thank you so much,
22 Officer. You may proceed, Mr. Akers.

23 MR. AKERS: Thank you, Your Honor.

24 ERIC TEWES,
25 After having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 Q. (By Mr. Akers) Would you mind stating
3 and spelling your name, just so we have it on the
4 record, Officer?

5 A. First name is Eric, E-R-I-C, last name
6 Tewes, T-E-W-E-S.

7 Q. And, Officer Tewes, how long have you
8 been with HPD?

9 A. Just over seven years.

10 Q. And did you go through the -- I'm just
11 going to breeze through this part. Did you --

12 THE COURT: Yes, let's keep this
13 short. I'm aware that he's been there for some
14 time, and I will accept him.

15 MR. AKERS: We'll just move on.

16 THE COURT: Thank you.

17 Q. Do you remember the night of January
18 11th 2012?

19 A. Yes, sir.

20 Q. Where were you?

21 A. I was working as a Gang Task Force
22 officer, assigned to the patrol division.

23 Q. Did you ever come across the
24 intersection of Yellowstone and Calhoun?

25 A. Yes, sir.

1 MR. AKERS: May I approach the
2 witness, Your Honor?

3 THE COURT: Yes, you may.

4 Q. You recognize this photograph?

5 A. Yes, sir.

6 Q. What is this photograph of?

7 A. This is a westward facing photo of the
8 intersection at Yellowstone and Calhoun.

9 Q. Does it fairly and accurately represent
10 that intersection?

11 A. Yes, sir.

12 MR. AKERS: Your Honor, we'd offer
13 -- for purposes of this hearing, we'd offer this as
14 State's 1.

15 MS. BELL: No objection, Your
16 Honor.

17 THE COURT: For limited purposes of
18 this hearing, State's 1 will be admitted.

19 Q. (By Mr. Akers) Is this location in
20 Harris County, Texas, Officer?

21 A. Yes, sir.

22 Q. At this location did you come -- ever
23 come into contact with someone named Evelt Davis?

24 A. Yes, sir.

25 Q. Do you recognize Mr. Davis here in the

1 courtroom?

2 A. Yes, sir.

3 Q. Would you mind pointing him out and
4 identifying him by an article of clothing he's
5 wearing?

6 A. White shirt with the multicolored, brown
7 tie.

8 MR. AKERS: Your Honor, let the
9 record reflect the witness has identified the
10 defendant.

11 THE COURT: Record so shall
12 reflect.

13 Q. (By Mr. Akers) Under what circumstances
14 did you come across him?

15 A. We were initiating a traffic stop.

16 Q. And where was he in this picture? You
17 can actually use your finger to draw.

18 A. The defendant was traveling eastbound on
19 Yellowstone.

20 THE COURT: Thank you.

21 A. On a bicycle.

22 THE COURT: Thanks. Let the record
23 reflect the Assistant District Attorney moved the
24 video screen so the Court can see it. Let's
25 proceed.

1 Q. You drew a squiggly line there. Why did
2 you draw a squiggly line?

3 A. Because the defendant was riding a
4 bicycle eastbound on Yellowstone, and he was
5 zigzagging in and out of traffic. He was not
6 obeying traffic laws.

7 Q. Now, when you say "not obeying traffic
8 laws", was he crossing over the yellow line?

9 A. Yes, sir.

10 Q. Is that crossing over, travelling into
11 oncoming traffic?

12 A. Yes, sir.

13 Q. Is that a traffic violation under
14 Houston city ordinance?

15 A. Yes, sir.

16 Q. What time did you come across him?

17 A. I have to recall.

18 Q. Was it at night or during the day?

19 A. It was at nighttime, sir.

20 Q. Was this -- are we talking 5:00 o'clock,
21 or are we talking 10:30?

22 A. It was approximately 10:30 p.m.

23 Q. Was it dark?

24 A. Yes, sir.

25 Q. Did the defendant have a headlight on

1 his bicycle?

2 A. No, sir.

3 Q. Is that again, in and of itself, a
4 traffic violation?

5 A. Yes, sir.

6 THE COURT: Can you tell them to
7 shut that down?

8 THE BAILIFF: Y'all got to come
9 out. Y'all got to come out.

10 THE COURT: Court reporter can't
11 hear. Okay.

12 Q. (By Mr. Akers) Is driving a bicycle at
13 night without a headlight in and of itself a traffic
14 violation?

15 A. Yes, sir.

16 Q. Now, is crossing over to the opposite
17 oncoming lane of traffic an arrestable offense under
18 the State of Texas?

19 A. Yes, sir.

20 Q. Is driving a bicycle without a headlight
21 an arrestable offense in the State of Texas?

22 A. Yes, sir.

23 Q. Once you saw these two traffic offenses
24 what -- you were with Officer Robert Moss; is that
25 right?

1 A. Yes, sir.

2 Q. Was he driving, or were you driving?

3 A. Officer Moss was driving.

4 Q. In what type of vehicle?

5 A. HPD marked patrol car.

6 Q. The type that says "Police" on the sides
7 with sirens at the top?

8 A. Yes, sir.

9 Q. Were you wearing an HPD uniform at the
10 time?

11 A. Yes, sir.

12 Q. Was it clearly marked that you are an
13 HPD officer?

14 A. It was clearly marked with "Police"
15 across the front of my vest.

16 Q. Now, you said -- you stated you saw the
17 defendant squiggling in and out of traffic right
18 here. Where were you guys?

19 A. We were actually traveling westbound on
20 Yellowstone.

21 Q. Draw me a line where you guys were.

22 A. In that direction.

23 Q. And, so, eventually, did you -- did you
24 ever -- you saw the defendant committing these
25 traffic offenses. What did you intend to do at that

1 point?

2 A. At that point in time we attempted to
3 stop him and talk to him.

4 Q. How did you do that?

5 A. We slowed the patrol vehicle down and my
6 partner, Officer Moss, got onto the P.A. system and
7 ordered the defendant to come to the vehicle as I
8 was stepping out of the car.

9 Q. Is the P.A. system loud?

10 A. Yes, sir.

11 Q. How loud?

12 A. It's the same volume level that our
13 siren is. It's very, very loud.

14 Q. Is it safe to say that from where the
15 defendant was when Officer Moss went over the PA, is
16 it safe to say he heard you?

17 A. Yes, sir.

18 Q. And after you stated -- after Officer
19 Moss told him to stop and come over to the car, what
20 were y'all planning at that point, arrest him or
21 talk to him?

22 A. We were going to talk to him to check to
23 see if he was okay, make sure he wasn't intoxicated.

24 Q. Now, why do you say "make sure he wasn't
25 intoxicated"?

1 A. The route -- the way he was riding the
2 bicycle it seemed like he was unsteady and kind of
3 weaving back and forth without regard for any kind
4 of traffic.

5 Q. Were there other cars on the road?

6 A. I believe so, yes, sir.

7 Q. A lot or a few?

8 A. I believe there were a few. I don't
9 know exactly how many, but there were other cars.

10 Q. It's not rush hour or anything though,
11 is it?

12 A. No, sir.

13 Q. Okay. And as Officer Moss told him to
14 stop and come out of the car, you stated you got out
15 of the car?

16 A. As Officer Moss was slowing the car
17 down, he got onto the P.A. system to tell the
18 defendant to stop. At that point in time, as soon
19 as it came to a stop, I was stepping out of the
20 passenger seat.

21 Q. Right. And where was the defendant at
22 that time?

23 A. He was in front of the vehicle, in front
24 of the patrol car.

25 Q. And did he stop?

1 A. No, sir, he did not.

2 Q. Where did he go?

3 A. He continued past the passenger side of
4 the vehicle and passed me.

5 Q. I don't mean to interrupt you. So, you
6 guys are in the oncoming lane of traffic, and he
7 went all the way on the other side of your vehicle?

8 A. He went around to the passenger side of
9 my vehicle that was facing westbound.

10 Q. So, that would have been closest to this
11 sidewalk right here?

12 A. Yes, sir.

13 Q. And what did he do?

14 A. He stepped up on his bicycle, and he was
15 off of the seat. He started hightailing it.

16 Q. When you say -- what do you mean
17 hightailing it?

18 A. When you --

19 Q. You haven't ridden a bicycle since you
20 were about 15, have you?

21 A. No, sir. He had stepped up onto the
22 peddles and was peddling as fast as he could to try
23 to get the bike going as quickly as he could.

24 Q. But was he inhibited by, I think it's
25 called inertia? He was trying to get the bike to go

1 faster? Is that what you're saying?

2 A. Yes, sir. He was accelerating quickly.

3 Q. Did he ever -- so, when he tried to get
4 the bike to go faster, did he look at you?

5 A. Yes, sir.

6 Q. Did he look at you when he was in front
7 of you, or did he look behind himself?

8 A. Both.

9 Q. Both. So, he clearly saw you and heard
10 you, right?

11 A. Yes, sir.

12 Q. At that point, what did you think he was
13 doing?

14 A. At that point in time I believe that he
15 was evading us.

16 Q. He was -- I'm sorry?

17 A. He was running from us. He was evading.

18 Q. Bicycle is not a motor vehicle, right?

19 A. No, sir.

20 Q. It's the same as evading on foot?

21 A. Yes, sir.

22 Q. At that point, what did you do?

23 A. I then ran after him on foot, yelling
24 for him to stop.

25 Q. Now, I know we're approaching on two

1 years ago this happened, but about how far would you
2 think it was?

3 A. I believe it was 20 to 30 yards, if I
4 remember correctly.

5 Q. The drawings you have here are not
6 exactly to scale, right?

7 A. No, sir.

8 Q. That's just the directions?

9 A. Yes, sir.

10 Q. So, you ran after him for maybe 20 to 30
11 yards, right?

12 A. Yes, sir.

13 Q. And as he's in front of you on the
14 bicycle, how many ways could you -- did you have a
15 clear shot at him?

16 A. With a gun?

17 Q. Yeah.

18 A. Yes, sir.

19 Q. But that's absolutely not what you want
20 to do here, is it?

21 A. No, sir.

22 Q. Is HPD -- is it also HPD policy not to
23 tase someone while they're on a bicycle?

24 A. We're not to tase anybody while
25 operating a vehicle or otherwise.

1 Q. Because shooting at him, obviously, or
2 tasing him while he's on the street could have been
3 dangerous?

4 A. Yes, sir.

5 Q. So, after you ruled both of those
6 options out, what did you do?

7 A. Last resort, I tackled him off of the
8 bicycle.

9 Q. When you say "tackled him", I mean, did
10 you perform like a linebacker tackle where you dive
11 through the air?

12 A. No, sir.

13 Q. Are you physically able to do that, do
14 you think?

15 A. I'm not.

16 Q. So, what happened?

17 A. When I went to tackle him, we both fell
18 off of the bicycle. We went over the bicycle and
19 landed on the grass.

20 Q. So, could you indicate for us where you
21 fell?

22 A. I don't remember exactly, but it was in
23 this general area.

24 Q. But you cleared the sidewalk, right?

25 A. Yes, sir.

1 Q. And you cleared the bicycle?

2 A. Yes, sir.

3 Q. And where did you land in relation to
4 him?

5 A. The defendant landed onto the ground,
6 and I landed on his back.

7 Q. Are you, like, directly on top of him?

8 A. Yes, sir.

9 Q. And at what -- are you saying anything
10 to him at that point?

11 A. At that point in time, I'm telling him
12 to give me his hands, give me his hands.

13 Q. What is he doing?

14 A. He immediately reached into --
15 underneath him.

16 Q. And do you know if it was -- was it
17 underneath him like something -- first of all, when
18 you tackled him, did you see anything in the grass?

19 A. No, sir.

20 Q. It was just grass, right?

21 A. Yes, sir.

22 Q. So, you said you tackled him, and he was
23 reaching under him, right?

24 A. Yes, sir.

25 Q. What happened next?

1 A. A gun came out in his left hand.

2 Q. In whose hand?

3 A. In the defendant's left hand.

4 MR. AKERS: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes, you may.

7 Q. Do you recognize this?

8 A. Yes, sir.

9 Q. What is it?

10 A. That would be the gun that the defendant
11 pulled out.

12 Q. Is it in same or substantially same
13 condition as when you found it?

14 A. Yes, sir.

15 Q. Is it, in fact, the exact same gun that
16 the defendant pulled out?

17 A. Yes.

18 MR. AKERS: Your Honor, for
19 purposes of the hearing, we'd offer State's 2.

20 MS. BELL: Just the objection that
21 I made --

22 THE COURT: For the limited purpose
23 of this hearing, it will be admitted.

24 MS. BELL: Yes, Your Honor. No
25 objection.

1 THE COURT: State's 2; is that
2 right?

3 MR. AKERS: Yes, Judge.

4 Q. (By Mr. Akers) Now, describe this gun
5 for me.

6 A. It's maybe a chrome-plated revolver.

7 Q. Is it the type of gun you can fit in a
8 pocket? Can I put this right in my side pocket
9 right here?

10 THE COURT: Let the record reflect
11 the State has his hand in his right front pocket.

12 Q. Is this a big gun?

13 A. That's a large gun.

14 Q. Kind of looks like Dirty Harry. Am I
15 describing that accurately?

16 A. Yes, sir.

17 Q. Do you believe while you're running, if
18 this gun was just sitting on the ground, you would
19 have noticed this shiny, gigantic gun sitting in the
20 grass?

21 A. I'd like to think so.

22 Q. It's huge, right?

23 A. It is large.

24 Q. And you stated that that gun was in his
25 hand. It was in his left hand, right?

1 A. Yes, sir.

2 Q. And where did his hand -- I mean, what
3 did you do with it?

4 A. The defendant pulled the gun out with
5 his left hand and immediately went in this --
6 pointed it to the left.

7 Q. Was it straight to the left like I'm
8 doing right now?

9 A. It was -- it immediately came out and
10 went to his left and maybe to his -- to the back a
11 little bit.

12 Q. A little bit. So, maybe at his, like,
13 8:00 o'clock?

14 A. Yes, sir.

15 MR. AKERS: Let the record reflect
16 I'm now holding the gun at my 8:00 o'clock.

17 Q. And at that point, what did you do?

18 A. I immediately yelled "gun" and tried to
19 swat at the defendant's arm.

20 Q. What happened next?

21 A. At that point in time, the gun fell to
22 the ground, and the defendant continued to fight
23 with me and struggle.

24 Q. And when he was struggling with you,
25 what was happening?

1 A. At that point in time I was -- I had my
2 right arm around his neck and was trying to
3 administer a choke. The defendant was then moving
4 back towards the gun to where it fell.

5 Q. How was he moving back towards the gun?

6 A. He was lifting both myself and him up
7 and moving.

8 Q. Is that -- let the record reflect the
9 officer is pushing up his hands like a pushup
10 position. Is that accurate?

11 A. Yes, sir.

12 Q. He is doing a pushup to try to push to
13 the location where the gun fell?

14 A. I believe so.

15 Q. And, again, it fell out of his own hand?

16 A. Yes, sir.

17 Q. At that time you said you were
18 administering a choke-hold?

19 A. Yes, sir.

20 Q. Were you trying to kill him?

21 A. At that point in time, I was attempting
22 to use deadly force.

23 Q. All right. Why?

24 A. I had no other option.

25 Q. I mean, is this because the gun is

1 almost within his reach, right?

2 A. It was close.

3 Q. But did you use deadly force to get him
4 off of the bicycle?

5 A. No, sir.

6 Q. Was that -- the way you handled that,
7 was that, in fact, your only option?

8 A. Yes, sir.

9 MR. AKERS: Judge, for the record,
10 are we doing the motion to suppress the statements
11 in the same proceeding?

12 THE COURT: Might as well.

13 MR. AKERS: Okay.

14 Q. At that point, where was your partner?

15 A. I didn't see my partner at the time. I
16 immediately got out of the car and was running after
17 him.

18 THE COURT: Does that mean you
19 don't know?

20 A. I don't know at the time.

21 THE COURT: Thank you. Let's move
22 on.

23 Q. Eventually, you were able to get him
24 under control; is that right?

25 A. Yes, sir.

1 Q. And you put him in the patrol vehicle?

2 A. Yes, sir.

3 Q. Did you try to identify him?

4 A. Yes, sir.

5 Q. Did you ask him his name?

6 A. Yes, sir.

7 Q. What did he say?

8 A. He didn't -- I don't recall exactly what
9 he said, but he was not giving us his name at all.

10 Q. And when -- so, what did you do then?
11 Did you call another unit?

12 A. We called another unit who had a mobile
13 fingerprinting device in order to get him
14 fingerprinted and I.D.'d on the scene.

15 Q. They were able to I.D. him, right, or
16 someone was?

17 A. Yes, sir. Yes, sir.

18 Q. When he was sitting in the back of the
19 patrol car, what was he doing?

20 A. He was actually making a bunch of
21 different statements. He was just yelling out the
22 window.

23 Q. Now, was he also, in fact, kicking the
24 windows of your vehicle?

25 A. He was combative in our patrol car

1 and --

2 Q. Was he kicking the windows?

3 A. He was kicking all over the back of the
4 car.

5 Q. And then he calmed down when you put him
6 in the other car, right?

7 A. To an extent.

8 Q. Now, in relation to the weapon, did he
9 say anything in relation to the weapon while he was
10 in the patrol car?

11 A. Yes, sir.

12 Q. Was what he said in response to any
13 question?

14 A. No, sir.

15 Q. I mean, specifically, he was under
16 arrest at that point, right?

17 A. Yes, sir.

18 Q. But you were not interrogating him?

19 A. No, sir.

20 Q. What did he say?

21 A. He stated, "You should have killed me
22 because it's on now."

23 Q. In regards to the weapon?

24 A. He stated that, "That ain't the only gun
25 I've got."

1 Q. And at that point y'all took him to
2 Harris County Jail, right?

3 A. Yes, sir.

4 MR. AKERS: Pass the witness.

5 MS. BELL: May, I Your Honor?

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 Q. (By Ms. Bell) Officer, we've previously
9 discussed you tackling the defendant, correct?

10 A. Yes, ma'am.

11 MS. BELL: And may I approach the
12 screen, Your Honor?

13 THE COURT: Yes, you may.

14 Q. When you approached the defendant,
15 Mr. Davis, he was in the street, right?

16 A. Yes. Yes, ma'am.

17 Q. That's a traffic violation, right?

18 A. Yes, ma'am.

19 Q. It's not above the level of Class C,
20 correct?

21 A. Correct.

22 Q. When he's weaving this way, you say he
23 goes over to the side. He's still in the street,
24 correct?

25 A. Yes, ma'am.

1 Q. There's still traffic, correct?

2 A. To what I recall.

3 Q. You jumped out of the car, correct?

4 A. I stepped out of the car.

5 Q. Okay. You stepped out. He's
6 hightailing it on a bike and you tackle him with
7 enough force to clear this street and there was
8 traffic, correct?

9 A. I don't recall if he was actually on the
10 street or in the sidewalk when he was on his bike.

11 Q. Have you previously testified he was on
12 the street at the time you initiated the tackle?

13 A. I don't recall what I testified the last
14 time.

15 Q. Okay. So, he clears the street with
16 traffic?

17 A. Okay.

18 Q. He clears the sidewalk, correct?

19 A. Yes, ma'am.

20 Q. And he lands in the grass, correct?

21 A. Yes, ma'am.

22 Q. That's a lot of force, correct?

23 A. Uh --

24 Q. -- to clear a lane of traffic, sidewalk,
25 in the grass?

1 THE COURT: Excuse me. The court
2 reporter cannot take two voices at one time. So,
3 you-all have some courtesy for each other, and allow
4 the officer to finish his statement before you ask
5 the next question. And you allow Counsel to finish
6 her question before you answer the question that's
7 being asked, even though you know what the answer is
8 going to be. That way the court reporter can have
9 an accurate record. Thank you so much. Let's
10 proceed.

11 Q. (By Ms. Bell) My apologies for cutting
12 you off. Finish what you were saying.

13 A. What was your question?

14 Q. I said, you cleared the traffic, the
15 sidewalk, and ended up somewhere here in the grass.
16 Isn't that a lot of force?

17 A. It was a lot of force.

18 Q. Officer, did you have any control over
19 where you landed?

20 A. No, ma'am.

21 Q. So, Mr. Davis could have landed in the
22 street with the traffic?

23 A. Yes, ma'am.

24 Q. Mr. Davis could have landed on the
25 sidewalk, correct?

1 A. Yes, ma'am.

2 Q. Officer, if you tackle Mr. Davis and he
3 lands on the street, and as you've acknowledged,
4 traffic is still going, what could happen to
5 Mr. Davis? What's a reasonable possibility to
6 happen?

7 A. It's possible that he could have been
8 injured.

9 Q. Okay. If Mr. Davis lands on the
10 sidewalk, is it possible that he could have broken
11 his arm or broken his leg?

12 MR. AKERS: I'm going to object,
13 calls for speculation, Your Honor.

14 THE COURT: That's sustained.

15 Q. (By Ms. Bell) Officer, the way you
16 tackled him could have resulted in serious bodily
17 injury, correct?

18 MR. AKERS: Again, I'm going to
19 object. It calls for speculation.

20 THE COURT: I'm going to let him
21 answer that.

22 A. I'm not sure.

23 Q. (By Ms. Bell) Have you previously
24 testified as to whether you believed it could have
25 caused serious bodily injury?

1 A. It's possible.

2 Q. And is it -- when you testified, did
3 you, in fact, tell the Court that he could have
4 cracked his skull? He could have broken a leg, or
5 he could have broken a bone? Is that --

6 MR. AKERS: I'm going to object to
7 improper impeachment.

8 THE COURT: That's not improper.

9 MS. BELL: Judge, may I approach
10 the witness?

11 THE COURT: Yes, you may. Ask the
12 question.

13 Q. (By Ms. Bell) Officer, is it true that
14 you previously testified that you testified -- when
15 you testified that you believed he could have broken
16 a leg because of the way you tackled him?

17 A. I don't recall exactly what I said on
18 the last testimony.

19 MS. BELL: May I use this, Your
20 Honor? For purposes of the record, I'm handing the
21 officer a copy of the trial transcript from our
22 previous trial. We are referencing page 62, Your
23 Honor.

24 A. That's the question you asked me.

25 THE COURT: Excuse me. You-all

1 cannot carry on a conversation. Ask him the
2 question again.

3 Q. So, when you were questioned prior to
4 this about whether he could have -- you thought you
5 could have made him break a leg, bust open his
6 skull, or a broken arm, as a result of the force you
7 used when you tackled, did you say that that was
8 something that your force could have done?

9 MR. AKERS: Judge, I'm going to
10 object to asking him to testify about her sidebar
11 question before that. On that question, page 62,
12 line 11, it says "he could have broken a leg, an
13 arm, cracked his skull." That's Ms. Bell's sidebar.
14 The question was, "There's a lot of damage that
15 could have been done to his body?"

16 THE COURT: Well, I've got the
17 record here.

18 MR. AKERS: I didn't realize that.
19 I'm sorry, Judge.

20 THE COURT: I've got it right here.
21 So, let's move on. I've got his answer. Let's move
22 on.

23 Q. (By Ms. Bell) Officer, prior to this,
24 his violations were a municipal violation of riding
25 a bicycle without a headlight and weaving in the

1 road?

2 A. Yes, ma'am.

3 Q. And you said that you had started to do
4 the misdemeanor of evade?

5 THE COURT: Started to do what?

6 MS. BELL: The misdemeanor offense
7 of evading.

8 A. Yes, ma'am.

9 Q. (By Ms. Bell) And that was it?

10 A. Yes.

11 Q. At that time he wasn't brandishing a
12 weapon, was he?

13 A. No, ma'am.

14 Q. At that time you had no reason to
15 believe he was armed and/or dangerous, did you?

16 A. At that time, I didn't know.

17 Q. So, you had no reason to believe if you
18 didn't know; is that correct?

19 A. At the time, I had no reason to believe
20 that he did or didn't have a weapon. I didn't know.

21 Q. So, when you use that force, it was in
22 response to somebody at most committing a
23 misdemeanor offense?

24 A. Correct.

25 Q. Officer, let's fast forward down the

1 line to the statement. At the time the statement
2 was given, before the statement was given, Mr. Davis
3 had been assaulted by you and Officer Moss, correct?

4 MR. AKERS: I'm going to object
5 to -- that's just not true. That's Counsel's
6 testimony.

7 THE COURT: Rephrase your question.

8 Q. (By Ms. Bell) After you detained
9 Mr. Davis and he had laid down the weapon, you
10 continued to choke him, correct?

11 A. I don't recall him laying the weapon
12 down.

13 MS. BELL: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes, you may.

16 Q. Have you previously testified that you
17 swatted at him, even during this hearing, you
18 swatted at it and he laid the weapon down? Is that
19 what you previously testified to?

20 A. I testified -- to my memory, I testified
21 that he -- I swatted at his arm and the gun fell out
22 of his hand. I don't know. I don't recall saying
23 that he laid the gun down.

24 Q. Okay. You swatted, and it came out of
25 his hand. After it came out of his hand, did you

1 proceed to choke him?

2 A. Yes, ma'am.

3 Q. When Officer Moss arrived to assist you,
4 was the gun in Mr. Davis' hand?

5 A. No, ma'am.

6 Q. Did Officer Moss pick up the gun at that
7 time?

8 A. At that time? I don't recall when he
9 picked up the weapon.

10 Q. Do you recall?

11 A. I have to refer to my --

12 THE COURT: Wait now.

13 MS. BELL: My apologies, Your
14 Honor.

15 Q. Do you recall previously testifying the
16 gun was two feet away from Mr. Davis?

17 A. I don't remember exactly how far it was,
18 but I remember it was a few feet, I recall.

19 Q. And do you recall previously testifying
20 that when Officer Moss came up, he bypassed the gun
21 and proceeded to start hitting Mr. Davis?

22 A. I remember that Officer Moss got in
23 between the defendant and the gun while we were
24 trying to detain him.

25 Q. Do you remember him picking it up at

1 that time, or do you remember him hitting Mr. Davis?

2 A. At that time I don't remember exactly.

3 Let me see here. Okay. I have it here.

4 THE COURT: What's the question?

5 A. What's your question?

6 Q. At the time Officer Moss came up and the

7 gun is two feet away from the defendant, does he

8 pick it up, or does he proceed to hit Mr. Davis?

9 A. Officer Moss arrived at my side and
10 began striking the suspect in the torso as a

11 diversion to get the suspect away from the gun.

12 Q. Okay. But he walked away to get him
13 away from the gun?

14 A. He didn't walk past the gun.

15 Q. Okay. You said he positioned himself in
16 between the defendant and the gun, correct?

17 A. Yes, ma'am.

18 Q. So, on this side is the defendant and
19 this -- I'm sorry. On the left side we have the
20 defendant, and on the right side we have the gun,
21 correct?

22 A. I'm sorry. Could you repeat your
23 question?

24 Q. You said Officer Moss positioned himself
25 between the defendant and the gun?

1 A. Yes, ma'am.

2 Q. So, the defendant would have to be on
3 one side of Officer Moss, and the gun would be on
4 the other side of Officer Moss, correct?

5 A. That's correct.

6 Q. Instead of Officer Moss picking up the
7 gun on that one side, he holstered his and begins
8 striking Mr. Davis, correct?

9 A. That is correct.

10 Q. And this continued for awhile, correct?
11 You said about a minute previously?

12 A. Yes, ma'am, approximately.

13 Q. And Mr. Davis didn't have any other
14 weapons on him, did he?

15 A. Later we found out, no, but at the time
16 we didn't know.

17 Q. At the time that you're applying the
18 choke-hold and the officer, I believe, is hitting
19 him all over his body and kicking, Mr. Davis doesn't
20 have a weapon but y'all proceed, correct?

21 A. We are trained when a suspect or
22 defendant has a gun, we are to detain him, believing
23 that when there's one, there's possibly two.

24 Q. Okay. And you said that you're hold --
25 you're choking him for dear life, so he can't

1 breathe, correct?

2 A. That's correct.

3 Q. He's trying to gasp, and he's crying
4 out, correct? Is that what you previously testified
5 to?

6 A. I don't remember exactly what I
7 testified to and --

8 Q. Okay. Officer, after all this happens,
9 y'all just pick Mr. Davis up and put him in the car,
10 correct?

11 A. It wasn't that easy.

12 THE COURT: Excuse me. That's a
13 yes or no, and we'll move on.

14 A. Yes.

15 Q. Have you previously testified -- so, you
16 did just pick him up?

17 A. Okay. Before we moved him to the car --

18 MS. BELL: Objection, Your Honor,
19 nonresponsive.

20 THE COURT: Sustained. Either you
21 remember, or you don't.

22 A. Can you repeat the question, please?

23 Q. Did you guys, after it was all over,
24 pick Mr. Davis up and put him in the car?

25 A. After he was searched on the ground for

1 additional weapons.

2 Q. You just lifted him up, correct?

3 A. I don't remember if he stood up on his
4 own or -- I don't remember.

5 MS. BELL: Your Honor, may I show
6 him his testimony just to refresh for this question?

7 THE COURT: Please do so.

8 A. Okay.

9 Q. So, did you previously testify that you
10 just lifted him up and carried him back to the car?

11 A. Yes, ma'am.

12 Q. Okay. Officer, now let's get to the
13 statements. The statements -- when the statements
14 were made, did Mr. Davis have a weapon on him?

15 A. No, ma'am.

16 Q. Was Mr. Davis close to a weapon?

17 A. No, ma'am.

18 Q. Had the felon in possession of a weapon
19 incident already -- you had already found him to be
20 in possession of a weapon, correct?

21 A. That's correct.

22 Q. And this was something that happened in
23 the car, a period of time after the incident that
24 he's on trial for today occurred, correct?

25 A. That's correct.

1 MS. BELL: Pass the witness, Your
2 Honor.

3 THE COURT: Thank you. State.

4 MR. AKERS: Very briefly, Judge.

5 REDIRECT EXAMINATION

6 Q. (By Mr. Akers) When you got him off of
7 the bicycle, other than getting him off or shooting
8 him or tasing him, was there any other way to stop
9 him from evading you?

10 A. No, sir.

11 Q. Had you allowed him to go a little
12 faster, he would have picked up a little more speed
13 and been able to out-bike you while you're running
14 on foot?

15 A. Yes, sir.

16 Q. While you were choking him and while
17 Officer Moss was doing -- was hitting him, are those
18 called diversionary strikes?

19 A. Yes, sir.

20 Q. While that was occurring, what was the
21 defendant doing?

22 A. The defendant was actually moving back
23 towards the gun, in the direction of the gun.

24 MR. AKERS: No further questions,
25 Judge.

1 THE COURT: Thank you. Anything
2 further?

3 MS. BELL: No, Your Honor.

4 THE COURT: May this officer step
5 down?

6 MR. AKERS: He may, Judge.

7 MS. BELL: Yes, Your Honor.

8 THE COURT: Remain outside the
9 courtroom until such time as you're called back to
10 testify. Thank you for your time and your
11 testimony, sir. Call your next.

12 MR. AKERS: As far as the motion to
13 suppress goes, Judge, we rest.

14 THE COURT: Do you have any
15 witnesses?

16 MS. BELL: No, Your Honor.

17 THE COURT: Do you rest on the
18 motion?

19 MS. BELL: Yes, Your Honor.

20 THE COURT: We're going to take a
21 recess. Well, I tell you what let's do. Let's go
22 ahead and have argument on the suppression at this
23 time.

24 MR. AKERS: That's fine. I believe
25 it's your motion. So, you go first.