APPENDIX

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-KA-01724-SCT

[Filed: June 17, 2021]

BRIAN R. TURNER a/k/a BRIAN RUSSELL TURNER a/k/a BRIAN TURNER	)
	)
v.	)
	)
STATE OF MISSISSIPPI	)

DATE OF JUDGMENT:	10/08/2019
TRIAL JUDGE:	HON. KELLY LEE MIMS
TRIAL COURT ATTORNEYS:	RAYMOND G. O'NEAL, III KYLE DAVID ROBBINS JOHN DAVID WEDDLE ANDREW W. STUART, II
COURT FROM WHICH APPEALED:	TISHOMINGO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	ANDREW W. STUART, II ADAM G. PINKARD

ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	JOHN DAVID WEDDLE
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 06/17/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

CHAMBERLIN, JUSTICE, FOR THE COURT:

¶1. On September 23, 2019, Brian Turner was found not guilty of one count of aggravated assault upon a law-enforcement officer (Count I) and was convicted of one count of failing to stop a motor vehicle pursuant to the signal of a law-enforcement officer (Count II), two counts of aggravated assault upon a law-enforcement officer (Counts III and IV) and one count of possession of a firearm by a felon (Count V). Turner now appeals his convictions and the circuit court's denial of his Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial (J.N.O.V. Motion). Finding each of Turner's assignments of error to be without merit, we affirm Turner's convictions and the circuit court's denial of the J.N.O.V. Motion.

FACTS AND PROCEDURAL HISTORY

¶2. On May 3, 2018, Mississippi Highway Patrol Trooper Derek Earnest, along with Officers James Guthery and Randy Cornelison of the Belmont Police Department and Tishomingo County Sheriff's Deputy Jason Moore, established a safety checkpoint in North Belmont, Mississippi. Two of the law- enforcement vehicles had their blue lights illuminated, while Officer Guthery's vehicle was not illuminated. Officer Guthery testified that "[e]verybody that [came] through [the roadblock] stop[ped]." At one point, Trooper Earnest "noticed a vehicle coming northbound that abruptly stopped . . ." and "darted into an old parking lot, . . . and went the other direction quickly without any regard to traffic that might have been going that direction." Trooper Earnest testified that the vehicle did not use a turn signal and that "there was . . . no tag light."

¶3. Deputy Moore testified that the vehicle turning around was unusual because "[m]ost people do not turn around prior to a safety checkpoint." Deputy Moore then followed the vehicle and observed that "[t]he vehicle did not have any tag lights" and that when he ran the plates, "the tag was expired." Deputy Moore, deciding to initiate a traffic stop while following the vehicle, turned on his blue lights. The truck pulled over, and Deputy Moore got out of his vehicle and approached the truck. Immediately after opening his door and stepping out of the vehicle, Deputy Moore observed "the driver . . . hollering and yelling and extremely irate." At trial, Deputy Moore identified Turner as the driver of the truck.

¶4. Once Deputy Moore reached Turner, he asked for his license. With Turner still "irate," Deputy Moore requested an additional unit at his location. Deputy Moore asked Turner to exit the vehicle, drew his taser and "told him to turn around and place his hands behind his back" since Deputy Moore intended to "arrest him for disorderly conduct based off of his behavior." Deputy Moore testified that Turner then "said, *F this*, and he got back in his truck, and we started a short pursuit north toward the cemetery." Deputy Moore also testified that he had reasonable suspicion to believe that Turner committed traffic violations by having no tag lights and an expired tag, and he testified about Turner's disorderly conduct following the traffic stop.

¶5. As the chase reached County Road 35, Turner turned to go across a bridge that was closed. Turner "did a doughnut back to the – back this way and came back at [Moore] in a head-on manner." After Deputy Moore veered to avoid a wreck, Deputy Moore's and Turner's vehicles collided. Deputy Moore forced his driver-side door open and began to approach Turner's truck. Around that time, Officer Guthery arrived, and Deputy Moore heard Officer Guthery giving Turner the following verbal commands: "*Show me your hands. Drop the gun.*" Deputy Moore then heard gunfire and began "shooting for self-defense."

¶6. Officer Guthery testified that he then approached Turner's vehicle with his flashlight and weapon out. Officer Guthery, after yelling at Turner to get out of the truck, saw a "rifle come up." Officer Guthery "yelled for him to put the gun down," and "[h]e

rocked towards [Officer Guthery] with it, and then [Officer Guthery] opened fire." Officer Guthery testified that he fired his duty weapon first. Deputy Moore testified that he was in fear for Officer Guthery's life as well as his own. After running for safety nearby, Deputy Moore observed Turner point and fire a rifle at him, at which point Deputy Moore fired approximately eight more rounds. Turner fled the scene of the shooting in the truck, heading south on County Road 35.

¶7. Investigator Mitchell of the Tishomingo County Sheriff's Office heard the gunfire from his home nearby and arrived at the scene shortly after Turner fled. Once on the scene, Investigator Mitchell found shell casings of different calibers and bullet holes in the Belmont patrol car and damage to Deputy Moore's patrol unit. Investigator Mitchell also took photographs of the vehicles at the scene and measured distances between the vehicles. Officer Rodney Belue from Red Bay, Alabama, who was near the scene, helped investigate. Agent Keith Woodruff of the Mississippi Bureau of Investigation assisted in the investigation as well. Turner was later arrested in Tennessee without incident.

¶8. On October 9, 2018, Turner was indicted by a grand jury for one count of failure to stop, three counts of aggravated assault of a law-enforcement officer and one count of felon in possession of a firearm. On January 22, 2019, Turner filed a Motion for Dash Camera and Body Camera Surveillance, seeking an order directing the State to produce

> a copy of any and all audio, video, digital or electronic copy of any type of audio or video recording that was made by the Mississippi Highway Safety Patrol, the Belmont Police Department, and or the Tishomingo County Sheriff, or his deputies, to include, but not limited to, the dashboard camera footage from the aforementioned police patrol cars, or any other police patrol car, at the time in question, together with body camera footage from any officer involved herein, to include: Trooper Derek Earnest, Tishomingo Deputy Jason Moore, Belmont Officer James Guthery, and Belmont Officer Randy Cornilson.

Turner alleged that all three law-enforcement agencies have and use body cameras and dash cameras. At the hearing on the same motion, the circuit court ordered the State

> to provide all evidence, including dash cam video, that they have in their possession or through reasonable means of investigation can uncover. . . . I am ordering that the State make available any and all ***Brady***[1] material, and you'll have an opportunity to cross-examine any and all witnesses that you wish to call at the appropriate time.

¶9. On January 23, 2019, Turner additionally filed a motion to suppress "any evidence that was allegedly seized, as a result of the mentioned illegal search and

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[1] ***Brady v. Maryland***, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

seizure and arrest, of Defendant and rule the same inadmissible as to the Defendant . . . ." The circuit court denied Turner's motion to suppress, recognizing first that Turner never stopped at the roadblock and second that the officers had the ability to pursue a car that makes a U-turn prior to a checkpoint to check licenses, insurance "and other things." The jury ultimately found Turner not guilty on Count I and guilty on Counts II-V. Turner then filed his J.N.O.V. Motion on October 2, 2019. In the J.N.O.V. Motion, Turner argued, among other things, that the circuit court erred by failing to grant a mistrial after the State commented on Turner's failure to call a witness on his behalf. Turner also argued that the verdict was against the overwhelming weight of the evidence, that the circuit court erred by failing to order production of body cameras, that the circuit court erred by permitting the testimony of Agent Woodruff regarding ballistics and firearms and that the circuit court erred by denying Turner's motion to suppress based on the claimed unconstitutional roadblock. On October 8, 2019, the circuit court entered its judgments reflecting the jury's verdicts and denied the J.N.O.V. Motion on October 14, 2019. Turner appeals his convictions and the order denying the J.N.O.V. Motion.

ISSUES ON APPEAL

¶10. Turner raises the following issues on appeal, which we address in turn: (I) whether there was insufficient evidence to support the convictions for Counts III and IV; (II) whether the circuit court erred by allowing the State to present improper lay-opinion evidence; (III) whether the circuit court erred by

determining the roadblock was constitutional; (IV) whether the circuit court erred by allowing the district attorney to comment to the jury regarding Turner's decision to not call a witness; (V) whether the circuit court erred by not requiring the State to produce body- and dash-camera footage to Turner; and (VI) whether the circuit court erred by overruling Turner's objection to the district attorney's use of a scaled drawing at trial that was not produced to Turner.

STANDARD OF REVIEW

¶11. "When testing the sufficiency of the evidence, this Court uses a *de novo* standard of review." ***Sanford v. State***, 247 So. 3d 1242, 1244 (Miss. 2018) (citing ***Brooks v. State***, 203 So. 3d 1134, 1137 (Miss. 2016)). Thus, "[t]he relevant question is whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" ***Id.*** (internal quotation marks omitted) (quoting ***Hearn v. State***, 3 So. 3d 722, 740 (Miss. 2008)). And "[t]he evidence is viewed in the light most favorable to the State." ***Id.*** (quoting ***Henley v. State***, 136 So. 3d 413, 415 (Miss. 2014)).

¶12. Moreover, "[w]hen reviewing a trial court's decision to allow or disallow evidence, . . . we apply an abuse of discretion standard." ***Watts v. Radiator Specialty Co.***, 990 So. 2d 143, 145-46 (Miss. 2008) (internal quotation marks omitted) (quoting ***Canadian Nat'l/Ill. Cent. R.R. v. Hall***, 953 So. 2d 1084, 1094 (Miss. 2007)). "Therefore, the decision of a trial court will stand 'unless we conclude that the discretion was arbitrary and clearly erroneous, amounting to an abuse

of discretion.'" ***Miss. Transp. Comm'n v. McLemore***, 863 So. 2d 31, 34 (Miss. 2003) (quoting ***Puckett v. State***, 737 So. 2d 322, 342 (Miss. 1999)). Furthermore, "where questions of law are raised the applicable standard of review is *de novo*." ***Brown v. State***, 731 So. 2d 595, 598 (Miss. 1999) (citing ***Bank of Miss. v. S. Mem'l Park, Inc.***, 677 So. 2d 186, 191 (Miss. 1996)).

ANALYSIS

¶13. For the reasons discussed below, we hold that each assignment of error lacks merit and, as a result, we affirm Turner's convictions and the circuit court's denial of Turner's J.N.O.V. Motion.

I. Sufficiency of the Evidence for Counts III and IV

¶14. Turner argues that insufficient evidence was presented at trial to support the jury's guilty verdicts on Counts III and IV for aggravated assault of a law-enforcement officer and that "[t]he State wholly failed to present any credible evidence to establish that the Defendant did not act in necessary self-defense." The State instead argues that the proper question is "of weight and credibility, not sufficiency, and it is to be decided by the jury."

¶15. Mississippi Code Section 97-3-7(2) provides that

> (a) A person is guilty of aggravated assault if he . . . (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm . . . .

> (b) However, a person convicted of aggravated assault upon any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) shall be punished by a fine of not more than Five Thousand Dollars ($5,000) or by imprisonment for not more than thirty (30) years, or both.

Miss. Code Ann. § 97-3-7(2) (Rev. 2020). Subsection (14) provides that assault upon various enumerated classes of individuals, including law-enforcement officers acting within the scope of their "duty, office or employment at the time of the assault . . . [,]" acts as an aggravating factor under Section 97-3-7(2)(b). Miss. Code Ann. § 97-3-7(14)(a) (Rev. 2020).

¶16. For Count III, the circuit court provided the following jury instruction:

> Brian Russell Turner is charged in Count III with the felony offense of aggravated assault on a law enforcement officer. If you find beyond a reasonable doubt from the evidence in this case that:
>
> . . . On or about May 3rd, 2018, in Tishomingo County;
>
> Brian Russell Turner did knowingly and purposely cause or attempt to cause bodily injury to James Guthery;
>
> With a deadly weapon, a gun; and

> At the time of the assault, James Guthery was acting within the scope of his duty and/or employment as a law enforcement officer; and
>
> Brian Russell Turner was not acting in necessary self-defense,
>
> Then you shall find Brian Russell Turner guilty as charged in Count III. If the prosecution has failed to prove any one or more of these listed elements beyond a reasonable doubt, then you shall find him not guilty of Count III.

The circuit court provided an almost identical instruction for Count IV regarding Turner's aggravated assault of Deputy Moore.

¶17. For the self-defense instruction, the circuit court provided the following:

> To make an assault justifiable on the grounds of self-defense, the danger to the defendant must be either actual, present, and urgent, or the defendant must have reasonable grounds to apprehend a design on the part of the other person involved in the altercation to kill the defendant or do him some great bodily harm, and in addition to this, the defendant must have reasonable grounds to apprehend that there is imminent danger of such design being accomplished. It is for the jury to determine the reasonableness of the grounds upon which the defendant acts.

As to any count, if you find from the evidence that Brian Russell Turner acted in self-defense, then you must find him not guilty in such count.

If, however, you find from the evidence in this case beyond a reasonable doubt that the State has proven the necessary elements of aggravated assault and that the defendant did not act in necessary self-defense, you should find the defendant guilty as charged.

The intent or purpose for an act is a question to be determined by you, the jury, from consideration of the evidence presented in this case. In doing so, intent can be inferred from the defendant's actions, conduct, expressions, and from the circumstances surrounding the charged crime.

An aggressor is not entitled to assert the defense of self-defense. As to any count, if you find that Brian Russell Turner was the initial aggressor in the series of events, then Brian Russell Turner may not claim that he acted in self-defense.

. . . .

The apprehension or fear that will justify assaulting another in self-defense must appear objectively real to a reasonable person of average prudence. Stated another way, the actor's apprehension must be objectively reasonable before his assault is justified.

¶18. Since Turner's argument fails under both the sufficiency-of-the-evidence and weight-of-the-evidence standards, we find Turner's first assignment of error to be without merit. Again, for sufficiency, "[t]he relevant question is whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" ***Sanford***, 247 So. 3d at 1244 (internal quotation marks omitted) (quoting ***Hearn***, 3 So. 3d at 740). Further, "[t]he evidence is viewed in the light most favorable to the State." ***Id.*** (quoting ***Henley***, 136 So. 3d at 415). Officer Guthery testified that after shooting at Turner in response to Turner raising a gun and rocking toward him, Turner returned fire at him. Deputy Moore corroborated Officer Guthery's testimony and testified that Turner shot at Deputy Moore as well. It is undisputed that Officer Guthery and Deputy Moore were law-enforcement officers acting within the scope of their duties at the time Turner shot at them. The jury heard the testimony of Investigator Mitchell, Agent Woodruff and Amber Conn, a crime-scene analyst with the Mississippi Bureau of Investigation.

¶19. Specifically, Investigator Mitchell testified that Turner gave a statement indicating that Deputy Moore put a gun to Turner's head. Agent Woodruff testified that Turner told him that he was acting in self-defense when he fired at Officer Guthery and Deputy Moore and that, upon the initial stop, Deputy Moore "stuck a gun in his face, ordered him out of the truck, and that he first refused." Turner also told Agent Woodruff that "all law enforcement in Tishomingo County, as well as the highway patrol, was out to kill him." Turner further told Agent Woodruff that he felt as though law

enforcement had a plan to kill him for several years and that Deputy Moore intentionally rammed his truck and began shooting at him once their vehicles stopped following the collision prior to seeing any firearm in Turner's possession.

¶20. Turner also told Agent Woodruff that Officer Guthery and Deputy Moore were aiming for his head when they were shooting at him. Agent Woodruff, however, noted that Officer Guthery and Deputy Moore likely would have shot Turner in the head if they were in fact aiming at his head. When asked whether he could tell the jury if Turner acted in self-defense, Agent Woodruff testified, "I can tell you that based on what he told me in his statement and the evidence collected from the shell casing locations and the trajectories and all that, that his statement was inaccurate and the officers' statement did line up with those type [sic] of evidence." Amber Conn, when asked whether she could tell the jury if, based on her investigation of Deputy Moore's and Officer Guthery's vehicles, Turner was acting in self-defense, she responded, "No, I can't."

¶21. Given the testimony before the jury of Officer Guthery that Turner rocked toward Officer Guthery with a rifle drawn before Officer Guthery fired at Turner in response, as well as Officer Guthery's and Deputy Moore's testimony that Turner shot at each of them, a rational trier of fact could, and indeed did, find that each element of aggravated assault under Mississippi Code Section 97-3-7(2)(b) was proved beyond a reasonable doubt. *See* ***Scott v. State***, 220 So. 3d, 957, 962 (Miss. 2017) (quoting ***Hardy v. State***, 137 So. 3d 289, 303-04 (Miss. 2014)). Specifically, the

testimony before the jury established that Turner attempted to cause bodily injury to Officer Guthery and Deputy Moore with a deadly weapon. Further, Turner's version of events provided to Agent Woodruff was not sufficient to convince the jury that was given a self-defense instruction that Turner was acting in self-defense. ***Id.*** at 962-63 (recognizing that "[a]lthough Scott's testimony contradicts this version of events, his testimony was not sufficient to convince the jury that he was acting in self defense."). Since, when viewing the evidence in the light most favorable to the State, a rational trier of fact could find that each element of aggravated assault of a law-enforcement officer was met here, we hold that sufficient evidence supported Turner's convictions on Counts III and IV.

¶22. Furthermore, and to the extent Turner's argument encompasses a challenge to the weight of the evidence supporting his convictions, Turner's convictions in Counts III and IV were not against the weight of the evidence. "When considering a challenge to the weight of the evidence, we review the evidence in the light most favorable to the verdict." ***Scott***, 220 So. 3d at 963 (citing ***Herring v. State***, 691 So. 2d 948, 957 (Miss. 1997), *disagreed with on other grounds by* ***Dilworth v. State***, 909 So. 2d 731, 735 n.4 (Miss. 2005)). And the Court "will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." ***Id.*** (internal quotation mark omitted) (quoting ***Bush v. State***, 895 So. 2d 836 (Miss. 2005), *abrogated on other grounds by* ***Little v. State***, 233 So. 3d 288 (Miss. 2018)); *see* ***Little***, 233 So. 3d at 292 (addressing the Court's role in reviewing a decision to

grant or deny a motion for new trial and the associated task of "weigh[ing] the evidence in the light most favorable to the verdict, 'only disturb[ing] a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice'" (second alteration in original) (quoting ***Lindsey v. State***, 212 So. 3d 44, 45 (Miss. 2017))).

¶23. When viewed in the light most favorable to the verdict, Turner's convictions on Counts III and IV are not so contrary to the overwhelming weight of the evidence that allowing them to stand would sanction an unconscionable injustice. Again, the jury had before it the testimony of Officer Guthery and Deputy Moore indicating that Turner shot at them. The jury also had before it the testimony concerning Turner's claim of self-defense. The question of the objective reasonableness of Turner's apprehensions forming the basis for his self-defense claims was left for the jury to decide. Thus, when viewing the evidence in the light most favorable to the guilty verdicts, allowing Turner's convictions to stand would not sanction an unconscionable injustice but, rather, would simply uphold the jury's determination, after weighing the evidence presented at trial, that Turner did not fire upon the officers in self-defense. As a result, we also hold that Turner's convictions under Counts III and IV are not against the overwhelming weight of the evidence.

II. Improper Lay-Opinion Evidence

¶24. In his second assignment of error, Turner argues that Agent Woodruff's opinion testimony regarding

both the significance of finding taped-together firearm magazines in Turner's vehicle and conclusions surrounding his observation of bullet-hole-trajectory rods constituted improper lay-opinion evidence since Agent Woodruff was not at any time offered or qualified as an expert under Mississippi Rule of Evidence 702. For the reasons discussed below, Turner's second assignment of error is without merit and, to the extent the circuit court committed error by allowing Agent Woodruff's testimony, such error was harmless.

¶25. Rule 701 of the Mississippi Rules of Evidence provides that

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> **(a)** rationally based on the witness's perception;
>
> **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> **(c)** not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

MRE 701. Rule 702 provides that

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

> **(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> **(b)** the testimony is based on sufficient facts or data;
>
> **(c)** the testimony is the product of reliable principles and methods; and
>
> **(d)** the expert has reliably applied the principles and methods to the facts of the case.

MRE 702.

¶26. Agent Woodruff, when questioned about the purpose of taping two firearm magazines together based on his experience as an investigator, highway patrolman and Mississippi Bureau of Investigation investigator, testified as follows:

> These, it's for a quick change operation. If you notice how they are offset, this one is sticking up higher, and, of course, it's indented here. So when you have one in the rifle and if you run this magazine empty, you don't have to go back on your person or somewhere else to find another one. It's already right there. You can just remove it, spin it, snap it right back in.

¶27. Turner's defense counsel objected to Woodruff's testimony, stating that the testimony "should be [struck] from the record unless it can be established that Officer Woodruff is an expert in firearms. And I think he is the criminal investigator in this case, Your

Honor. That would be our objection." The circuit court overruled the objection, providing that

> I think the witness has been qualified based on his years as a law enforcement officer and having graduated [from] the academy. He's testified generally about the insertion of magazines into a weapon and what the impact of taping them together would be. The testimony is allowed.

¶28. Later, when questioned about the significance of bullet trajectories in the Belmont Police Department patrol car, Agent Woodruff testified that "[t]hat is the location of where Officer Guthery was, and that also indicates that Mr. Turner would have had to have been outside of his truck near the front of his truck to get that angle coming across." Turner's defense counsel objected, requesting that the testimony be struck "unless he can be qualified as some type of ballistics expert." The State responded that "he's already had the testing done by the experts. Now he's testifying about what his investigation revealed as a result of those – of that testing, and we have had the people who performed that test here to testify about it." The circuit court ultimately allowed Agent Woodruff "to testify to what his investigation resulted in."

¶29. Turner argues that his convictions should be reversed since the circuit court allowed a lay witness, and specifically a law-enforcement witness, to testify regarding what Turner contends should be reserved for the province of a ballistics expert. Further, Turner argues that Agent Woodruff's experience as a law-enforcement agent informed his testimony

regarding the firearm magazines and bullet trajectory, which Turner believes is beyond the experience of an average, randomly selected adult.

¶30. As Turner points out, "[t]his Court has held that, '[b]ecause the public hold police officers in great trust, the potential harm to the objecting party requires reversal where a police officer gives expert testimony without first being qualified as such.'" ***Kirk v. State***, 160 So. 3d 685, 693 (Miss. 2015) (second alteration in original) (quoting ***Roberts v. Grafe Auto Co., Inc.***, 701 So. 2d 1093, 1099 (Miss. 1997)). In ***Kirk***, the Court recognized that when "an issue to be determined at trial was whether the injuries sustained by Casey were caused by strangulation" and when a deputy testified that it appeared Casey had been strangled, the same opinion was "the sort of testimony properly reserved to an expert." ***Id.*** In ***Roberts***, Officer Bitowf testified as to the cause of an accident—the ultimate issue at trial. ***Roberts***, 701 So. 2d at 1098-99. Here, however, the ultimate issues to be determined at trial were whether Turner committed aggravated assault on a law-enforcement officer, whether he failed to stop his vehicle pursuant to the signal of law-enforcement and whether he possessed a firearm as a felon.

¶31. We hold that the circuit court did not err by overruling Turner's objection to Agent Woodruff's testimony regarding taped-together firearm magazines, as no specialized knowledge of firearms or firearms training is required to arrive at Agent Woodruff's conclusion; therefore, his testimony was not expert-opinion testimony covered by Rule 702. Stated differently, no expert testimony is required to opine

about the utility of taping firearm magazines together and the ultimate result—the ability to more quickly reload a gun. Such testimony, rather, is common sense. Moreover, Agent Woodruff's opinion was based on his rational observations of the firearm magazines. Thus, Agent Woodruff's testimony was lay-opinion testimony, and the circuit court did not err by overruling Turner's objection.

¶32. Even assuming, *arguendo*, that the circuit court did err by allowing the testimony, unlike in ***Kirk*** and ***Roberts***, Agent Woodruff's discussion of the benefit of taping firearm magazines together has no bearing on whether Turner committed aggravated assault or acted in self-defense. In other words, Turner was not prejudiced by Agent Woodruff's testimony regarding the firearm magazines and, therefore, any potential error resulting from the admission of Agent Woodruff's testimony was harmless. *See* ***Davis v. State***, 18 So. 3d 842, 850 (Miss. 2009) ("Harmless errors are those which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not requiring the automatic reversal of the conviction." (internal quotation marks omitted) (quoting ***Williams v. State***, 991 So. 2d 593, 599 (Miss. 2008))). Indeed, the existence of taped-together firearm magazines and Agent Woodruff's opinion about the purpose of taping them together do not help to prove or disprove any elements of the crimes Turner was charged with.

¶33. Moreover, Agent Woodruff's testimony concerning his observations of the bullet-hole-trajectory rods

placed by a crime-scene analyst fell within permissible lay-opinion testimony under Rule 701; thus, the circuit court did not abuse its discretion by overruling Turner's objection. Agent Woodruff, when asked about the significance of the trajectory of the bullets fired, stated, "[t]hat is the location of where Officer Guthery was, and that also indicates that Mr. Turner would have had to have been outside of his truck near the front of his truck to get that angle coming across." After the circuit court overruled Turner's objection on the basis that Agent Woodruff was not qualified as a ballistics expert, Agent Woodruff opined as to the significance of a lack of projectile defects, or bullet holes, in the Tishomingo County patrol car:

> because if this was Deputy Moore, which, again, was the first one that Mr. Turner stated was approaching him to fire at his vehicle, returning fire in the direction of Deputy Moore, if he was in his patrol car, at his patrol car, there should be defects on the patrol car as well, and there was not.

¶34. We hold that the circuit court did not abuse its discretion by overruling Turner's objection to Agent Woodruff's testimony since his testimony is not expert testimony within the meaning of Rule 702. Indeed, Agent Woodruff's opinion regarding Turner's location that would be necessary to achieve a certain bullet-hole-entry angle does not require specialized knowledge of ballistics. Rather, Agent Woodruff's testimony amounted simply to his opinion that was rationally based on his perception of the crime scene and the trajectory information received from Amber

Conn and Dywana Broughton, the two crime-scene analysts that provided the evidence of the bullet-hole angles. Moreover, Agent Woodruff's testimony was also helpful to understand the previously elicited testimony of both Conn and Broughton. In sum, it is clear that no specialized knowledge was required for Agent Woodruff to testify that if the trajectory angles provided by Conn and Broughton are believed, then Turner would have likely been at a certain location when shooting.

¶35. Further, Agent Woodruff's opinion, while arguably speculative, that if Turner were to be believed, there would likely be bullet-hole damage to Deputy Moore's car if Deputy Moore in fact approached Turner to fire at his vehicle does not require scientific, technical or specialized knowledge subject to Rule 702. Instead, Agent Woodruff's opinion was rationally based on his observation of the crime scene and bullet-hole-trajectory rods and was helpful to understand his testimony, as well as the testimony of Conn and Broughton, the crime-scene analysts that, at the time Agent Woodruff testified, had already testified about the bullet-hole-trajectory angle information. Moreover, Agent Woodruff's testimony can be simplified as follows: a lay opinion as to his interpretation of the significance of the location of the bullet-hole-trajectory rods with respect to the location of Deputy Moore's vehicle based upon his own review of the rods and Broughton's testimony regarding her trajectory-rod analysis.[2] In other words, it required no specialized

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[2] In his dissent, Presiding Justice King, analyzing the language quoted from Agent Woodruff's testimony in paragraph 33 of this opinion, posits that "Agent Woodruff's testimony regarding the

knowledge to opine on Agent Woodruff's own logical conclusion that if Deputy Moore did, in fact, as Turner had claimed, first point a gun at Turner's head while approaching Turner from Deputy Moore's vehicle, when Turner fired back, there would have been damage to Deputy Moore's patrol car.

III. Constitutionality of the Roadblock

¶36. For his third assignment of error, Turner argues that the roadblock was unconstitutional and, therefore,

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trajectory of the projectiles and the positions of the officers also constituted expert testimony." Diss. Op. ¶ 62. Further, Presiding Justice King states that "[a]n average person certainly would not be able to determine the location of the shooters by looking at bullet holes in vehicles." Diss. Op. ¶ 62. While Presiding Justice King's observation about the ability of average persons to discern the location of shooters based only on bullet holes in vehicles is likely sound, Agent Woodruff did not base his testimony or opinion as to the location of Turner and the law-enforcement officers at this shootout only on bullet holes in vehicles. As discussed above, Agent Woodruff's testimony was based on his observation of bullet-hole-trajectory rods placed within the bullet holes by crime-scene analyst Dywana Broughton. Broughton's testimony detailing the methods used in placing the trajectory rods that makes clear the angles at which the bullets struck the vehicles is not subject to Turner's appeal. Agent Woodruff's observation of these rods, coupled with his examination of the crime scene, formed the basis for his opinion, which did not require specialized knowledge that would bring his testimony within the ambit of Rule 702. Indeed, an average person would certainly be able to determine the location of the shooters when presented with both a crime scene and bullet-hole-trajectory rods. To hold otherwise would require us to accept the premise that an average person is not privy to the fact that bullets travel in a relatively straight line from the barrel of a gun or that the shooter's location could be discerned by observing the angle at which a bullet entered the vehicles.

any evidence obtained subsequent to the roadblock should have been suppressed. As a result, Turner argues that the circuit court erred by denying Turner's motion to suppress. "It is well-settled law that the Fourth Amendment of the United States Constitution 'applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'" ***McLendon v. State***, 945 So. 2d 372, 379 (Miss. 2006) (quoting ***Brown v. Texas***, 443 U.S. 47, 50, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979)). The same seizure must "be 'reasonable.'" ***Id.*** (quoting ***Brown***, 443 U.S. at 50).

¶37. Further, the Court "must consider the required balancing test in determining the issue of reasonableness outlined in ***Brown***." ***Id.*** This test "weighs 'the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.'" ***Id.*** (quoting ***Brown***, 443 U.S. at 50-51). Stated differently, "[t]he reasonableness of seizures that are less intrusive than a traditional arrest . . . depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." ***Id.*** (alterations in original) (internal quotation marks omitted) (quoting ***Brown***, 443 U.S. at 50).

¶38. While the Fourth Amendment protects a person from unreasonable searches and seizures, Turner has not alleged that a Fourth Amendment seizure occurred at the roadblock. Indeed, he even admits no such

seizure occurred.[3] Therefore, since no facts indicate a seizure occurred at the roadblock, a fact Turner admits, Turner's argument is not well-taken, and we decline to address the constitutionality of the roadblock on appeal. *See, e.g.*, ***City of Indianapolis v. Edmond***, 531 U.S. 32, 40, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000) ("It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment." (citing ***Mich. Dep't of State Police v. Sitz***, 496 U.S. 444, 450, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990))).

¶39. Additionally, we hold that the trial court did not abuse its discretion by denying Turner's motion to suppress, since no unreasonable seizure occurred when Deputy Moore followed and ultimately stopped Turner. Turner concedes that "[t]his Court has ruled when a motorist evades a police roadblock, the police may stop them and check the validity of their license tag, and inspection sticker." Indeed, "[w]hen a motorist evades a police roadblock we have recognized that police may stop them and check the validity of their license tag, and inspection sticker." ***Boches v. State***, 506 So. 2d 254, 264 (Miss. 1987) (citing ***Morgan v. Town of Heidelberg***, 246 Miss. 481, 150 So. 2d 512, 516 (Miss. 1963)).

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[3] In fact, in his argument attacking the constitutionality of the roadblock under the Fourth Amendment, Turner admits that he was not seized at the roadblock. ("Though the Defendant did not actually experience a 'seizure' at the roadblock, the illegality of the roadblock should require the suppression of any evidence related thereto.").

¶40. Deputy Moore followed Turner to check the validity of his tags after Turner turned around prior to entering the roadblock. Therefore, under ***Boches***, Deputy Moore's seizure of Turner in the initial traffic stop did not result in a violation of Turner's Fourth Amendment rights against unreasonable seizures. Further, Deputy Moore had probable cause sufficient to satisfy the Fourth Amendment prior to initiating the stop. "In ***Whren v. United States***, the United States Supreme Court stated that, generally, 'the decision to stop an automobile is reasonable where the police have *probable cause* to believe that a traffic violation has occurred' regardless of the officer's subjective intent." ***Martin v. State***, 240 So. 3d 1047, 1051 (Miss. 2017) (quoting ***Harrison v. State***, 800 So. 2d 1134, 1138 (Miss. 2001) (quoting ***Whren v. United States***, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 660 (1979))). In other words, "when a police officer personally observes a driver commit what he reasonably believes is a traffic violation, he then has probable cause to stop the vehicle." ***Id.*** at 1052.

¶41. Deputy Moore, before following Turner for turning around before the roadblock, observed that Turner's tag light was out and, upon further investigation, realized that Turner's tag was expired. Therefore, in addition to witnessing Turner turning around before the roadblock, Deputy Moore personally observed Turner commit what he reasonably believed to be a traffic violation and, as a result, had probable cause to stop Turner's vehicle. Turner's third assignment of error is therefore without merit.

IV. The State's Comment Regarding Turner's Failure to Call a Witness

¶42. In his fourth assignment of error, Turner argues that the circuit court erred by allowing the State, during its closing argument, to comment on Turner's failure to call Officer Belue as a witness. Because Turner's counsel first commented on the State's failure to call Officer Belue to testify prior to the State's comment on Turner's failure to do so, we find that Turner's fourth assignment of error lacks merit. As Turner correctly notes, we have held that "the failure of either party to examine a witness equally accessible to both is not a proper subject for comment before a jury by either of the parties." ***Morgan v. State***, 388 So. 2d 495, 498 (Miss. 1990) (internal quotation mark omitted) (quoting ***Phillips v. State***, 183 So. 2d 908, 911 (Miss. 1966), *overruled on other grounds by* ***Harrison v. State***, 534 So. 2d 175 (Miss. 1988)). Even so, the circuit court correctly pointed out that Turner, in first speculating as to the reasons for the prosecution's failure to call Officer Belue as a witness, opened the door for the prosecution to do the same. In response, Turner's counsel withdrew the objection.

¶43. Following the objection withdrawal, Turner's counsel objected to the following speculative comment from the State: "And he said we couldn't know what – he didn't know what he would have to say about Rodney Belue's testimony if he was here. I do. You do. He would say he's another one of these bad apples." The circuit court sustained Turner's second objection, and Turner's counsel neither requested an admonition to the jury nor a peremptory instruction. "When a trial

court sustains an objection it cures any error." ***Holland v. State***, 705 So. 2d 307, 335 (Miss. 1997). Thus, any error allegedly caused by the State's comment regarding Turner's failure to call Officer Belue in its closing argument was cured. As a result, Turner's argument regarding this assignment of error is without merit.

V. Discovery of Body Cameras

¶44. Since the circuit court ordered law-enforcement agencies to produce any and all body-camera and/or dash-camera footage that they possessed and since multiple law-enforcement witnesses testified that the agencies were not in possession of any body- and/or dash-camera footage, Turner's fifth assignment of error also lacks merit. Again, the circuit court ordered the State "to provide all evidence, including dash cam video, that they have in their possession or through reasonable means of investigation can uncover." The circuit court went a step further, ordering that the State provide any exculpatory material covered by ***Brady***, 373 U.S. 83, to the defense as well.

¶45. Turner correctly points out that the Court, in ***Hentz v. State***, 489 So. 2d 1386, 1388 (Miss. 1986), held that "as a matter of good practice and sound judgment in the trial of criminal cases, prosecuting attorneys should make available to attorneys for defendants all such material in their files and let the defense attorneys determine whether or not the material is useful in the defense of the case." The problem with Turner's argument, however, is that the State did not refuse to produce body- and/or dash-camera footage. Instead, each relevant

law-enforcement witness for the State testified under oath that footage from body and/or dash cameras was not available. Therefore, we decline Turner's request to hold that "[t]he Circuit Court erred in not requiring the State to provide the body camera to Mr. Turner, prior to trial." The circuit court did exactly what Turner requested—it required the State to turn over any body- and/or dash-camera footage to the defense.

VI. Turner's Objection to the Use of a Scaled Drawing

¶46. In his sixth and final assignment of error, Turner argues that the circuit court erred by allowing the State to use, over Turner's objection, a not-to-scale demonstrative in front the jury depicting the "accident and or shooting scene on Joel Cemetery Road" that was not provided to Turner prior to trial. Turner points to Mississippi Rule of Criminal Procedure 17, which he argues required the disclosure of the demonstrative to the defense prior to trial.

¶47. Rule 17.2 provides that

> Subject to the exceptions of Rule 17.6(a) and 17.7, the prosecution must disclose to each defendant or to the defendant's attorney, and permit the defendant or defendant's attorney to inspect, copy, test, and photograph upon written request and without the necessity of court order, the following which is in the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecution:

(1) Names and addresses of all witnesses in chief proposed to be offered by the prosecution at trial, together with a copy of the contents of any statement (written, recorded or otherwise preserved) of each such witness and the substance of any oral statement made by any such witness;

(2) Copy of any written or recorded statement of the defendant and the substance of any oral statement made by the defendant;

(3) Copy of the criminal record of the defendant;

(4) Any reports, statements, or opinions of experts (written or otherwise preserved) made in connection with the particular case and the substance of any oral statement made by any such expert;

(5) Any physical evidence, photographs, and data or information that exists in electronic or magnetic form relevant to the case or which may be offered in evidence; and

(6) Any exculpatory material concerning the defendant.

Upon a showing of materiality to the preparation of the defense, the court may mandate such other discovery to the defendant's attorney as justice may require.

MRCrP 17.2.

¶48. The State offered the scaled drawing of the crime scene as a demonstrative only. The circuit court recognized this fact:

> For the record, the prosecution put forward an exhibit. It is a white magnetic dry erase board presented with what looks to be handwritten documentation describing the scene of the crime, the alleged crime. There are magnetic automobiles, replicas, three of which have been used by the prosecution to move around the board for use in describing the scene.
>
> The use of this exhibit was objected to by the defense and overruled by the Court. And the defense may use the exhibit as well, demonstrative evidence, which was the finding that I made that it's being used for that only.

Although Turner neither argued nor did the circuit court discuss Rule 17 during trial, the plain language of Rule 17.2 does not address nor require the production of demonstratives prior to trial.

¶49. Furthermore, "[t]he admission of 'reasonably necessary and material' demonstrative evidence is within the discretion of the trial court." ***Lewis v. State***, 725 So. 2d 183, 189 (Miss. 1998) (quoting ***Murriel v. State***, 515 So. 2d 952, 956 (Miss. 1987)). To that end, the trial judge is generally given "broad discretion in ruling upon the admissibility of many types of demonstrative evidence." ***Id.*** (internal quotation mark omitted) (quoting ***Murriel***, 515 So. 2d at 956). Given the wide latitude afforded to a trial court's decision to admit demonstrative evidence, the circuit court did not

abuse its discretion by allowing the use of the demonstrative and by overruling Turner's objection based on the State's failure to produce demonstrative evidence prior to trial. Therefore, Turner's sixth and final assignment of error lacks merit.

CONCLUSION

¶50. Each of Turner's assignments of error lack merit. Therefore, we affirm Turner's convictions and the circuit court's denial of Turner's J.N.O.V. Motion.

¶51. **AFFIRMED.**

RANDOLPH, C.J., COLEMAN, MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ., CONCUR. KING, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, P.J.

KING, PRESIDING JUSTICE, DISSENTING:

¶52. Because I would find that the trial court committed reversible error by allowing Agent Keith Woodruff to present improper expert-opinion testimony, I respectfully dissent.

¶53. "The admission of expert testimony is addressed to the sound discretion of the trial judge. Unless we conclude that the decision was arbitrary and clearly erroneous, amounting to an abuse of discretion, that decision will stand." ***Seal v. Miller***, 605 So. 2d 240, 243 (Miss. 1992) (citing ***Hooten v. State***, 492 So. 2d 948, 950-51 (Miss. 1986)). Mississippi Rule of Evidence 701 provides,

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> **(a)** rationally based on the witness's perception;
>
> **(b)** helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> **(c)** not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

MRE 701. Mississippi Rule of Evidence 702 states,

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> **(a)** the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> **(b)** the testimony is based on sufficient facts or data;
>
> **(c)** the testimony is the product of reliable principles and methods; and
>
> **(d)** the expert has reliably applied the principles and methods to the facts of the case.

MRE 702. Therefore, "[b]efore providing expert opinion testimony, a witness must be qualified, tendered, and accepted as an expert under Rule 702 of the Mississippi

Rules of Evidence." ***Chaupette v. State***, 136 So. 3d 1041, 1045 (Miss. 2014) (citing ***Cotton v. State***, 675 So. 2d 308, 312 (Miss. 1996)).

¶54. This Court previously has found that an investigator's testimony regarding gang activity constituted expert testimony because the testimony "was based on specialized knowledge under Mississippi Rule of Evidence 702, because an average, randomly selected adult likely would not be able to identify the Black Disciples or testify about the difference between a gang member and a 'hang-around.'" ***Croft v. State***, 283 So. 3d 1, 10 (Miss. 2019). This Court rejected the State's argument that the investigator was merely a lay witness "because his testimony was based on his personal observations of the facts gathered during his investigation and his 'first-hand knowledge' obtained over several years working as a gang investigator in Meridian." ***Id.*** Additionally, in ***Roberson v. State***, this Court held that an investigator's testimony that "following his investigation he did not think [the victim] was 'killed in the wreck'" was expert testimony. ***Roberson v. State***, 569 So. 2d 691, 696 (Miss. 1990).

¶55. At Turner's trial, counsel for the State showed Agent Woodruff three gun magazines that had been taped together with electrical tape. Counsel then asked, "[d]oes your training and experience as an investigator and as a highway patrolman and an investigative agent of the Mississippi Bureau of Investigation, based on all of that, what is the purpose of taping magazines together like that?" Agent Woodruff responded:

> These, it's for a quick change operation. If you notice how they are offset, this one is sticking up higher, and, of course, it's indented here. So when you have one in the rifle and if you run this magazine empty, you don't have to go back on your person or somewhere else to find another one. It's already right here. You can just remove it, spin it, snap it right back in.

Turner's counsel objected and argued that the preceding testimony should be struck unless it could be established that Agent Woodruff was an expert in firearms. The trial court overruled the objection and stated, "I think the witness has been qualified based on his years as a law enforcement officer and having graduated [from] the academy. He's testified generally about the insertion of magazines into a weapon and what the impact of taping them together would be. The testimony is allowed."

¶56. "Where, in order to express the opinion, the witness must possess some experience or expertise beyond that of the average, randomly selected adult, it is a M.R.E. 702 opinion and not a [Rule] 701 opinion." ***Langston v. Kidder***, 670 So. 2d 1, 3-4 (Miss. 1995) (citing ***Miss. State Highway Comm'n v. Gilich***, 609 So. 2d 367, 377 (Miss. 1992)). Because knowledge of "quick change operation[s]" requires special knowledge that a lay person would not be expected to know, I would find that Agent Woodruff's testimony should have been considered expert testimony. Agent Woodruff testified that the magazines were "offset, this one is sticking up higher, and, of course, it's indented here. So when you have one in the rifle and if you run

this magazine empty, you don't have to go back on your person . . . . You can just remove it, spin it, snap it right back in." An average, randomly selected person likely would not possess knowledge of "quick change operation[s]" or the intricacies of the indention of magazines.

¶57. The prosecution's line of questioning further supports the conclusion that Agent Woodruff improperly presented expert testimony under the guise of lay-opinion evidence. The prosecution prefaced its question regarding the testimony of taped-together magazines with "[d]oes your training and experience as an investigator and as a highway patrolman and an investigative agent of the Mississippi Bureau of Investigation, based on all of that . . . ." Yet "[a] lay witness's unique qualifications have no bearing on the witness's ability [to] give a lay opinion." ***Collins v. State***, 172 So. 3d 724, 739 (Miss. 2015) (internal quotation marks omitted) (quoting ***Heflin v. Merrill***, 154 So. 3d 857, 863 (Miss. 2014)). Therefore, I would find that the trial court erred by allowing Agent Woodruff to present evidence regarding the taped-together magazines.

¶58. I disagree with the majority's conclusion that any error was harmless. This Court has clearly stated that "because 'the public hold police officers in great trust, the potential harm to the objecting party requires reversal where a police officer gives expert testimony without first being qualified as such.'" ***Id.*** (quoting ***Kirk v. State***, 160 So. 3d 685, 693 (Miss. 2015)). Agent Woodruff clearly was an officer of the law and his opinion held great sway with the jury. Thus, the

potential harm resulting from his testimony cannot be considered harmless.

¶59. Agent Woodruff's testimony ran "afoul of our stated policy requiring that expert witnesses be first tendered as such before being allowed to express expert opinions." ***Sample v. State***, 643 So. 2d 524, 529 (Miss. 1994) (citing ***Roberson***, 569 So. 2d at 696). "To sanction this testimony attempts to circumvent this policy by the familiar retreat to [Rule] 701, which some attorneys would use to justify all transgressions of our discovery and evidentiary policies concerning expert opinion." ***Id.*** Accordingly, I would find that the admission of Agent Woodruff's testimony without first qualifying him as an expert cannot be considered harmless. I submit that this issue requires reversal.

¶60. Likewise, Agent Woodruff was allowed to testify regarding the location of the officers while they were firing at Turner, testimony of which he had no firsthand knowledge. Agent Woodruff testified as follows:

> So this would be Deputy Moore's rounds. And then he also indicated how that Officer Guthery was approaching his vehicle firing rounds on me as well when he came up.
>
> This – the yellow ones here indicating the .40 caliber rounds, this is all Officer Guthery's shell casings. Now, this was Officer Guthery's patrol car and Mr. Turner's pickup.
>
> So what stands out – one of the things that stands out here is had Officer Guthery been approaching the side of Mr. Turner's pickup

firing at him, then the shell casings that are marked in yellow, there would be some up here in this area in the front of his patrol unit.

Instead, Officer Guthery's statement that he typed up and gave to us indicated that he then was immediately retreated, that whenever he saw a rifle come up inside the pickup, he began firing as he was retreating.

The weapon that Officer Guthery had is going to eject up and right, by the way. So when he is standing here, this is going to be his shell casings.

Another thing that is important is Officer Guthery talking about being at the rear of his patrol car. There was a projectile that was recovered from the rear of Officer Guthery's patrol car that came out of Officer Guthery's own gun. So that verifies to us that he, indeed, was at the rear of his patrol car.

. . . .

The other things that's talking about Deputy Moore, these green indicate Deputy Moore's shell casings, which these will coincide actually with trajectory that was taken from Mr. Turner's pickup showing the angles of the rounds coming from Deputy Moore. He was not right up on the pickup, for one. And you can see these over here, which, again, Deputy Moore's statement to us was when he was – when he felt like he was under fire, he was retreating to the bridge. These two shell casings here, again,

> corroborate Deputy Moore's statement by finding them at the location that he stated that he was at.

¶61. The prosecution then asked,"[a]nd when Dywana Broughton performed the trajectory analysis to the entrance defects on the driver's side of the suspect's truck, what was the trajectory of those?" Agent Woodruff responded, "[t]hey were showing right to left, front to back. In other words, when you're standing looking at that pickup on this side, they would be coming from the right to the left, front to back, at an angle." The prosecution then again stated, "[b]ased on your training and experience as an investigator, would that angle be the same if he was approaching the driver's side door attempting to shoot Mr. Turner? . . . How does that – if you know, how does that trajectory relate to the defendant's version of what happened?" Agent Woodruff responded that "[i]t opposes it."

¶62. The testimony continued, and the prosecution asked whether Amber Conn had performed a trajectory analysis on one of the patrol cars. Agent Woodruff responded that she had and stated,

> Indicated front passenger – you said passenger. Some people say right or left. Just to clarify, the front passenger trajectory to right driver's side rear. . . . That is the location of where Officer Guthery was, and that also indicates that Mr. Turner would have had to have been outside of his truck near the front of his truck to get that angle coming across.

Counsel for Turner again objected and asked that the testimony be struck unless Agent Woodruff could be qualified as a ballistics expert. The trial court allowed Agent Woodruff "to testify to what his investigation resulted in." In my opinion, Agent Woodruff's testimony regarding the trajectory of the projectiles and the positions of the officers also constituted expert testimony. *See* ***Parvin v. State***, 113 So. 3d 1243, 1249 (Miss. 2013). An average person certainly would not be able to determine the location of the shooters by looking at bullet holes in vehicles. Additionally, the prosecution again prefaced its question by asking Agent Woodruff to speculate based on his training and experience.[4]

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[4] The majority states that "an average person would certainly be able to determine the location of the shooters when presented with both a crime scene and bullet-hole-trajectory rods." Maj. Op. ¶ 35 n.2.Yet trajectory rods are not something an average person utilizes. The majority would make it seem as simple as sticking a stick in a bullet hole and determining which direction it faced. However, whether the rods accurately depicted the trajectory of the bullets would depend on whether the correct size rod was used, whether the rod was inserted into the bullet hole correctly, whether an improperly inserted rod had changed the size or shape of the bullet hole, etc. Although Agent Woodruff was not the person who placed the trajectory rods, Agent Woodruff's experience and knowledge with his position at the Mississippi Bureau of Investigation assisted him in making those determinations. Thus, Agent Woodruff presented expert testimony. Additionally, Agent Woodruff's testimony was not simply that the bullets came from a general direction. He testified to the positions of the shooters based on the directions of the trajectory rods, which required advance measurements and involved the specialized training and experience that falls under Rule 702.

¶63. This error also cannot be considered harmless. Turner's defense rested on the contention that law enforcement first fired upon him and that he returned fire only in self defense. However, Agent Woodrufftestified that Turner could not have been inside his truck, returning fire in self-defense. He stated that Turner "would have had to have been outside of his truck near the front of his truck to get that angle coming across." Therefore, his testimony negated Turner's version of events.

¶64. The jury heard a member of law enforcement, who had not been qualified as an expert, testify as to the meaning of a quick-change operation with taped-together magazines and testify that Turner was outside of his truck firing at the officers and agents based on the trajectory of bullets. Therefore, I would find that the trial court committed reversible error by allowing Agent Woodruff to testify to scientific, technical, and specialized knowledge without first being qualified as an expert. Accordingly, I dissent.

KITCHENS, P.J., JOINS THIS OPINION.

APPENDIX B

IN THE CIRCUIT COURT OF TISHOMINGO COUNTY, MISSISSIPPI

CAUSE NO. CR 18-187

[Filed: November 19, 2019]

STATE OF MISSISSIPPI	)
	)
VS.	)
	)
BRIAN R. TURNER	)
	)
DEFENDANT	)
	)

ORDER DENYING MOTION FOR J.N.O.V. OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

The above styled and numbered cause of action is currently before the Court on the Defendants Motion for J.N.O.V. or, in the Alternative, Motion for New Trial. Following a careful review of the Defendant's Motion as well as the record in this matter, the Court now finds the Motion is not well taken and shall be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant's Motion for J.N.O.V. or, in the Alternative, Motion for New Trial shall be, and the same is hereby, **DENIED.**

ORDERED AND ADJUDGED on this ___ day of October, 2019.

/s/
KELLY L. MIMS
CIRCUIT JUDGE

[SEAL]

APPENDIX C

IN THE CIRCUIT COURT OF MISSISSIPPI
FOR TISHOMINGO COUNTY

Case No. CR-18-187

[Filed: October 9, 2018]

STATE OF MISSISSIPPI	)
Appellant,	)
	)
v.	)
	)
BRIAN TURNER	)
Appellee.	)
	)

Decided October 8, 2019

Before: MIMMS, *Circuit Judge*.

Cross-Examination of Derrick Earnest at Trial

BY MR. STUART:

Q. Good afternoon, Officer Earnest. How are you today?

A. Good, sir.

Q. We've met each other quite a few times, haven't we?

A. Yes, sir.

Q. I'm Drew Stuart from Tupelo.

A. Yes, sir.

Q. You mentioned a moment ago, Trooper Earnest, that you had a—you've had a prior relationship with Officer Moore. I mean, y'all have been friends for some time?

A. Yes, sir. I just -- during high school as an acquaintance. I knew more of the girl he dated at the time, and I met him, like, once or twice later. But later on through my career, come to find out he was in law enforcement, and I got to know him when he was at Itawamba.

Q. All right. But you've known him since high school?

A. Yeah, just the name. I knew who he was.

Q. Y'all went to high school together?

A. No, sir.

Q. You just knew him?

A. I knew of him, yes, sir.

Q. I'm going to take you back to May the 3rd, 2018.

A. Yes, sir.

Q. You had set up a roadblock at Northside and 25 in Belmont, correct?

A. Q. No, sir. We set up a checkpoint.

Q. Well, you were stopping cars that were driving through, correct?

A. Yes, sir.

Q. And you were in the middle of the road, correct?

A. Yes, sir.

Q. What notice did you put out on the side of the road to let drivers know that they were approaching a safety checkpoint?

A. There was no notice.

Q. You didn't put any signs out to tell drivers they were approaching a safety checkpoint and they have to stop?

A. No, sir.

Q. Did you run it in the paper –

A. No, sir. –

Q. to let drivers know?

A. No, sir.

Q. You also didn't put it on the news to let drivers know that when they are traveling down Highway 25 they had to stop at Northside and No. 25, did you?

A. No, sir.

Q. And isn't it true, I believe you said that where Mr. Turner turned was about a thousand feet away. Didn't you say that?

A. Yes, sir. I caught myself today when I was 4 coming up here, I counted the lines, and just a rough estimate, yes, sir.

Q. About a thousand feet?

A. I believe that's right. The lines are ten feet and 30 feet gaps, yes, sir.

Q. And isn't it true, Trooper Earnest, that a rear tag lamp only has to be visible on a passenger vehicle at 50 feet? Isn't that true?

A. Fifty -- I'm not familiar of the exact footage. I just know it's required to have one.

Q. Well, if I told you Mississippi Code Annotated Section 63-7-13 only requires that a rear lamp be construed and placed as to illuminate with a white light the rear registration plate and render it clearly readable from a distance of 50 feet to the rear, you wouldn't disagree with that, would you?

A. I wouldn't, but it still has to be presented to be able to read it.

Q. I'm sorry, sir?

A. The light would still have to be there for you to read the tag at any distance.

Q. There was nothing, isn't it true, Officer Earnest, to distinguish or differentiate your safety checkpoint from a car accident, was it, if you're a thousand feet away? There is no way to know, was it?

A. I would say not.

Q. So it would be reasonable, wouldn't it, sir, for someone to believe what they are approaching is a car accident?

A. It's possible, yes, sir.

Q. Isn't it equally true, Officer Earnest, on the night in question you did not see Officer Jason Moore make a stop of Brian Turner in this case, did you?

A. That's correct.

Q. It is also true, Trooper Earnest, that you did not see anybody fire a weaponon the night in question, did you?

A. That's correct.

Q. You did not see Brian Turner fire a weapon on in question, did you?

A. I did not.

Q. You did not see James Guthery fire a weapon on the night in question, did you, sir?

A. I did not.

Q. Isn't it true, also, sir, you did not see Jason Moore fire a weapon on the night in question?

A. I did not.

Q. Isn't it equally true, Officer Earnest, that you did not see the car accident at issue? You did not see that happen, did you?

A. Not the physical accident, no, sir.

Q. Officer Earnest, you've been through quite a bit of training in your 12 years with the highway patrol, have you not, sir?

A. Yes, sir.

Q. And isn't it true, sir, that you have been taught that it is important to accurately and truthfully and completely fill out Uniform Crash Reports?

A. Yes, sir. Yes, sir.

Q. And you've -- could you tell the jury what a Uniform Crash Report is?

A. It's the document that is made out a wreck. It's a -- what is filled out from the information provided.

Q. If law enforcement investigates or works a car accident, generally they fill out a Uniform Crash Report in Mississippi, don't they, sir?

A. Generally, yes, sir.

Q. Particularly, the Mississippi Highway Patrol utilizes the Uniform Crash Report, don't they?

A. All agencies use it, but in particular cases, location and severity depends on—

Q. Sure. I'm not trying to trick you.

A. Yes, sir.

Q. A Uniform Crash Report is filled out to document what happened in a car accident, correct?

A. That's correct.

Q. Alright. Thank you, sir. Additionally, in addition to there being no notice to drivers that they 25 would have to stop at the roadblock on Highway 25, does 26 the–

MR. STUART: I'm sorry. Strike that, Your Honor.

Q. Isn't it true, Officer Earnest, that the Mississippi Highway Safety Patrol has dash cameras in their vehicles?

A. We do.

Q. Isn't it true, sir, that you have utilized dash cameras in a vehicle?

A. Yes, sir.

Q. However, it is equally true, isn't it, sir, that you have no dash camera video from this night in question, do you, sir?

A. That's correct.

Q. And dash cams are used, are they not, Trooper Earnest, to document, record, and preserve evidence in cases that the Mississippi Highway Patrol investigates?

A. Yes, sir. Mostly on traffic stops, yes, sir.

Q. It's equally true, isn't it, Trooper Earnest, that the Mississippi Highway Patrol has body cameras?

A. No, sir.

Q. The Mississippi Highway Patrol, you're telling 20 this jury, sir, on your oath in 2019, that the Mississippi Highway Safety Patrol does not use body cameras?

A. As far as my knowledge, we do not. I do not have one.

Q. So it would be fair to say you have no body camera—

A. That's correct.

Q. –evidence from the night in question, do you?

A. Yes, sir. Correct.

Q. You also don't have any audio recording of the night in question, do you, sir?

A. No. No, sir. Not to my knowledge, no, sir.

MR. STUART: Court's indulgence for one moment.

(BRIEF PAUSE.)

BY MR. STUART:

Q. You mentioned blue lights at the roadblock, Trooper Earnest. Do you recall that?

A. Yes, sir.

Q. Isn't it true that Jason Moore's blue lights were not activated at the roadblock?

A. I don't recall on his vehicle, sir.

Q. That would be important, wouldn't it?

A. No, sir.

MR. STUART: No further questions for this witness, Your Honor.

APPENDIX D

IN THE CIRCUIT COURT OF MISSISSIPPI FOR TISHOMINGO COUNTY

Case No. CR-18-187

[Filed: October 9, 2018]

STATE OF MISSISSIPPI	)
Appellant,	)
	)
v.	)
	)
BRIAN TURNER	)
Appellee.	)
	)

Decided October 8, 2019

Before: MIMMS, *Circuit Judge*.

Cross-Examination of James Guthery at Trial

BY MR. STUART:

Q. Good morning, Officer Guthery.

A. How are you doing, sir?

Q. Doing fine, sir. I'm Drew Stuart from Tupelo. We've met before.

A. We have.

Q. Thank you, sir. On the night of May 3rd, you were working for the Belmont Police Department?

A. Yes, sir.

Q. And you were at the roadblock, isn't it true, as you stated, at Northside Drive and Highway in Belmont?

A. Safety checkpoint, yes.

Q. You were there?

A. Yes, sir.

Q. And you saw a black truck turn about a thousand feet from the roadblock, correct?

A. Roughly. I never went up there and measured it. I don't know how far it is. It could be more. It could be less.

Q. Well, you've previously given testimony in this courtroom under oath, and did you or did you not testify it was about a thousand feet?

A. Yes.

Q. Thank you, sir.

A. You're welcome.

Q. At the time you saw the black truck turn, you did not see any crime committed by the person driving the black truck, did you?

A. No, sir. He made a -- a smooth turn. He wasn't in no hurry. He went across the fog line into a vacant parking lot and back out.

Q. Well, when you say he went across the fog line, he made a left across –

A. Yes, he turned left. What I'm saying is, he didn't just abruptly spin out in the road or make some U-turn within the lanes.

Q. Right.

A. He done it the right way and went off completely and then come back.

Q. The driver of the black truck did not make an abrupt turn, did he?

A. No.

Q. Thank you, sir. Also, on the night in question, talking about the roadblock, isn't it true, sir, that there was no notification to oncoming drivers that they had to proceed through the roadblock on Highway 25?

A. In DUI-only roadblocks, there should be a sign.

Q. That's not my question.

A. In a safety checkpoint, we do not have to have any notification except blue lights on both sides of the road.

Q. I understand. But if you'll listen closely to my question. My question to you, sir, is, there was no notification on the roadway to oncoming drivers that they had to proceed through this roadblock?

A. No, sir.

Q. There was no notification that it was, in fact, a roadblock for a safety checkpoint, as you've called it, was there?

A. There was not.

Q. In fact, sir, there was nothing, absolutely nothing to differentiate the roadblock or safety checkpoint from a common car wreck a driver at a thousand feet away, was there?

A. No.

Q. If you would have been positioned as the driver of the black truck, Officer Guthery, and you were traveling on Highway 25 towards the roadblock and you saw the blue lights, there would have been no way you would have known if it was a safety checkpoint or a wreck, would you?

A. I sure wouldn't.

Q. You would not have, would you, sir?

A. No.

Q. After you saw the black truck turn, you did not see Officer Moore stop the black truck, did you?

A. No, sir. He they turned left onto Green Street, and so it was out of our sight by then.

Q. I'm talking about you specifically, sir. You did not see Officer Moore stop the black truck?

A. No, I did not.

Q. Isn't it true, Officer Guthery, as we sit here today, you really don't know what happened at the stop of the black truck because you weren't there?

A. I have no idea.

Q. Isn't it equally true, Officer Guthery, that you did not see Officer Moore's vehicle and the black truck collide?

A. I did not.

Q. You did not see it. You arrived after the vehicles collided at or near Joel Cemetery on Highway Old Highway 25, correct?

A. That's correct.

Q. And at the time you arrived until the end of that altercation, you never identified the defendant, Brian Turner, at the scene of this crime, did you?

A. No, sir.

Q. You did not see Brian Turner's face at any time?

A. No, sir.

Q. On May the 3rd, 2018, did you, sir?

A. I did not.

Q. Isn't it true, sir, that you had previously testified on or about May 2018 under oath regarding this collision, in this courtroom? Do you recall that, sir? Do you recall giving testimony in May of 2018 in that very seat you're sitting in, sir?

A. Yes.

Q. Okay. And at that time you indicated that once that—you observed the vehicles that had been in the collision after they had come to rest; isn't that correct?

A. Yes. Deputy Moore's vehicle was already stopped. The black pickup was moving.

Q. And those two vehicles were not close together, were they?

A. Not just real close, no.

Q. You previously testified in this case, sir. And when you were testifying, sir, I asked you, *Were they, the vehicles, touching or very close to each other?* Do you recall that question?

A. No, I don' t.

Q. If I told you I'm reading from the transcript from that hearing and that's what I asked you, would you believe what I'm saying?

A. I'm not saying you didn't ask me. I'm just saying I don't remember you asking me. That was a long time ago.

Q. Well, you recalled it better then than you do now, didn't you?

A. Of course.

Q. You've had a lot of opportunity to talk with Jason Moore about this case, haven't you?

A. I don't talk to Deputy Moore that much.

Q. You've talked to Deputy Moore about this case, haven't you, sir?

A. Of course we have.

Q. You talked to him after the incident, didn't you, sir?

A. Yeah.

Q. At no time did the MBI take a statement from you, did they, sir?

A. They did.

Q. You gave your statement to the Belmont 3 investigator, did you not?

A. Yes, and the MBI got it from there.

Q. You wrote your own statement?

A. Right.

Q. The MBI did not come question you, did they?

A. No.

Q. You were never subjected to any kind of internal investigation, were you –

A. No, sir.

Q. -- by the Belmont Police Department? In fact, you weren't even investigated by the MBI as a result of this officer-involved shooting, were you?

A. No, sir.

Q. At no time did the MBI investigate you, sir, as to what happened in this case, did they?

A. No, sir.

Q. They also did not investigate Officer Moore, did they?

A. Not to my knowledge. I don't know if they did or not.

Q. I'll go back to the hearing of May 2018 when I asked you, *Were they, the vehicles, touching or very close to each other?* You said, *No, no. They weren't touching. They weren't even close.* That's what you testified to then.

A. They weren't touching.

Q. And that's what you testified here to today?

A. Right. They were not touching.

Q. So if Officer Moore says they were close, he's wrong, isn't he?

A. Well, what's his definition of close? His idea of close might be different from my idea of close.

Q. Well, my question to you is, if Officer Moore said the vehicles were close, he's wrong, isn't he?

A. Not necessarily.

Q. You have been, sir, in the United States Army?

A. I have.

Q. Dutifully served. And you have served as a police officer in the City of Belmont for how many years, sir?

A. Eight.

Q. Eight years. And could you tell this jury about 16 the training that you've undergone to serve as a police officer in the State of Mississippi?

A. It's just a basic law enforcement class.

Q. And at that law enforcement class, isn't it true, sir, that you were taught to fill out reports, correct?

A. Yes.

Q. Accurate reports?

A. Right.

Q. Complete reports? Is that a yes, sir?

A. I said we were.

Q. The only reason I'm asking is -- and I know you know she is taking down everything you say, so please don't nod. Just answer orally. Okay, sir?

A. Right.

Q. You were also taught, and you would agree with me, that it is important to follow your training as a police officer?

A. That's true.

Q. That's the safe thing to do?

A. Right.

Q. It's equally important, isn't it, sir, to follow 9 your department policy; isn't that true?

A. That's true.

Q. Do you know, sir, if the -- I'm sorry. Strike that. You were, on the night in question, driving a -- or operating a Belmont City police car?

A. I was.

Q. Are those Belmont City police cars, are they 16 equipped with dash cams?

A. They're not.

Q. They're not. So you -- it would be fair to say, have no dash cam video to –

A. Have none.

Q. -- substantiate anything in this case?

A. Have none.

Q. In your training or experience as a law enforcement officer, are you aware of the use of body cameras?

A. Yes.

Q. Are you familiar with that investigative tool, a body camera?

A. Yes.

Q. Thank you, sir. Isn't it true, sir, that police body camera footage can offer the police, the prosecution, a tool to collect and retain evidence to show at a trial?

A. Yes, it can.

Q. It is a helpful investigative tool, is it not?

A. Very.

Q. In fact, isn't true that a body camera will supplement what the officer's later testimony is; isn't that true?

A. That's right.

Q. With a body camera, we could download that footage onto a computer and play it in a courtroom; isn't that true?

A. You can, yes.

Q. In other words, we wouldn't --not only wouldwe have evidence as to what the witness is testifying to on the witness stand, there would be a supplement for the jury to look at?

A. There would be.

Q. And that's what body cameras are intended for, isn't it?

A. That's right.

Q. Body cameras—tell, if you know, have you ever used a body camera?

A. Yes.

Q. Could you explain to the Jury how a body camera works?

A. Oh, it depends on what kind you have.

Q. The kind you've used. Tell the jury how they work.

A. The kind I use, well, you either -- you have a power button. You can flip it completely off or you can flip it to standby. When you need it, you hit the center

button, and it takes so long to come on. It backs up 30 seconds. There is no audio during that 30 seconds, but you'll get the video.

Q. You just have it clipped onto your shirt or tie?

A. No, mine was clipped onto my outer carrier vest in the passenger's seat.

Q. Well, what I'm asking you is, to turn on the body camera, you just push a button, right?

A. If you got it on standby, yes.

Q. To turn off the body camera, just push a button?

A. Push and hold until you hear an audible beep.

Q. Just like this computer, right?

A. Yeah.

Q. Push the button and it's on. Push the button. Push the button and 's off. In other words, that body camera footage, if someone accused an officer of doing something wrong, it's possible that that body camera footage could substantiate what the officer says or what he did, right, or she; isn't that correct?

A. That's correct.

Q. It could also -- the body camera footage could also contradict what any witness might say, correct?

A. That's true.

Q. It could prove that defendants were properly advised of their *Miranda* rights, couldn't ?

A. It could.

Q. It could highlight and prove police misconduct, couldn't it?

A. It sure could.

Q. It could also prove the actual innocence of a defendant, couldn't it, sir?

A. It could do that, too.

Q. The Belmont Police Department has a body camera policy, do they not?

A. They do.

Q. And you're familiar with that policy, aren't you, sir?

A. Somewhat.

Q. How long did you work as an officer at the 16 Belmont Police Department?

A. Eight years.

Q. During that time did you familiarize yourself with the body-worn camera policy?

A. Once we got them, yes.

Q. And you were issued a body camera, were you not, sir?

A. We're not issued any, not as our personal or anything like that. You just get one when you go in. They're just plugged up on the counter.

Q. Well, you're required to, aren't you?

A. Yeah. It says we -- you know, we need to have it, but no one has ever been written up for not having it.

Q. No one at Belmont Police Department has ever been -- I'm sorry. Strike that. What 1s a write-up? I'm sorry, sir.

A. Written up, reprimanded. No one has ever gotten in trouble if they didn't have it. It's just there for a tool for us.

Q. So it's basically --you're saying it's just left to officer's discretion whether you want to wear the body camera or not?

A. Just about it.

Q. Just about it or it either is or it isn't.

A. Pretty much it is. If I didn't want to get one, I didn't get one.

Q. Were you in charge of making that decision?

A. No, sir, I wasn't.

Q. Who's in charge of making those type decisions, sir?

A. The chief.

Q. On the night in question, you were acting in the as a Belmont police officer, weren't you, sir?

A. Yes, sir.

Q. You were acting in your official duty as a police officer, weren't you, sir?

A. Yes, sir.

MR. STUART: May I approach this witness, Your Honor?

THE COURT: You may.

BY MR. STUART:

Q. Sir, I'm going to show you this set of about -- how many pages is that, Mr. Guthery?

A. One, two, three, four, five.

Q. All right. Do you recognize that document?

A. Yes.

Q. What is it?

A. It's the body cam policy.

Q. And that's the body-worn cam policy from the City of Belmont, Mississippi, right?

A. This is nothing the City itself come up with. This was passed on from another agency, as the rest of our policies were.

Q. Well, that is the policy that is used at your department, is it not?

A. Yes. In the big picture, yes.

Q. If I told you I sent a public records request to your chief of police and that's what he sent me back as your body-worn camera policy –

A. Right.

Q. -- would you disagree with your chief of police?

A. No, this is it.

Q. All right, sir. Thank you.

A. Yep.

Q. Does that appear to be a true and accurate representation of the body-worn camera policy, sir?

A. Yes.

Q. Thank you. May I see that document, sir?

A. Yeah.

MR. STUART: The Court's indulgence one moment.

(BRIEF PAUSE.)

BY MR. STUART:

Q. Isn't it true, sir, that you do not have any body-worn camera video from the night in question?

A. No, sir, no video.

Q. You did not have your body-worn camera activated at the time of the events in question, did you?

A. No, sir, it was not on my person.

Q. You did not have -- not only was it not on your person and was it not activated at the events in question, the body-worn camera was not on or activated at the roadblock, was it?

A. No, sir. We just don't wear them for checkpoints.

MR. STUART: Your Honor, may I approach the witness again?

THE COURT: You may.

BY MR. STUART:

Q. Sir, I'm going to show you what you've identified as the Belmont body-worn camera policy.

A. Um-hmm.

Q. On the top of the third page, sir, beside letter A, would you read that complete sentence?

A. All right. *Except as otherwise provided in this policy, officers shall activate body-worn cameras to record all contacts with citizens in the the performance of official duties.*

Q. Thank you, sir. On the night -- the day in question, sir, you were not in compliance with your department policy, were you, sir?

A. No, sir.

Q. So as we sit here today, you failed to collect evidence with your body-worn camera, didn't you, sir?

A. Right.

Q. At no time did the MBI try to obtain your body-worn camera, did they?

A. Not to my knowledge. They didn't come ask me personally.

Q. And to your knowledge they have never reviewed any body-worn camera that you may or -- may or may not have worn on the night in question?

A. No.

Q. You've never even given any information to the MBI about the body-worn camera, have you?

A. No.

Q. At no time did you tell any MBI investigator that you were acting outside of your department policy on the day in question, did you?

A. No.

Q. At no time did the MBI even question you about acting outside your department policy?

A. No.

Q. Isn't it true, sir, after you acted outside your department policy and failed to collect evidence with your body-worn camera, that you were not even written up by the Belmont Police Department, were you?

A. No, sir.

MR. STUART: Your Honor, I would move to admit the Belmont Body-worn Camera Policy as Defendant's Exhibit 13.

THE COURT: What says the State?

MR. O'NEAL: No objection, Your Honor.

THE COURT: It shall be admitted.

(WHEREUPON, THE BELMONT BODY-WORN CAMERA POLICY WAS MARKED RECEIVED AS DEFENDANT'S EXHIBIT NO. 13.)

BY MR. STUART:

Q. Isn't it true, sir, that your department policy has indicated that body-worn cameras allowed for accurate documentation of police public contacts; isn't that correct?

A. That's correct.

Q. Arrests; isn't that correct?

A. That's correct.

Q. And critical incidents. And you would agree with me an officer-involved shooting is a critical incident?

A. Very critical.

Q. Also, your policy has instructed you and taught you that the body-worn cameras also serve to enhance the accuracy of officer reports and testimony.

THE COURT: Hold on a second.

(OFF THE RECORD.)

MR. STUART: May I proceed, Judge?

THE COURT: You may.

BY MR. STUART:

Q. Audio and video recording, sir, from your body-worn camera enhance the Belmont Police Department's ability to review probable cause for arrests, doesn't it?

A. That's true.

Q. It also records officer and suspect interaction, 4 doesn't it?

A. It does.

Q. And it's evidence for investigative and prosecutorial purposes, correct?

A. That's correct.

Q. And it provides additional information for officer evaluation and training, correct?

A. That's true.

Q. The body-worn camera policy at the Belmont Police Department on the night in question, sir, indicated to you that body-worn cameras may also be useful in documenting crime and accident scenes; isn't that correct?

A. Correct.

Q. As a Belmont Police Department -- and correct me if I'm wrong, sir -- you had worn a body-worn camera prior to this incident, hadn't you?

A. Oh, yeah.

Q. You had received at that point on May the 3rd, 2018, you had already received the department-approved training on the operation of the body-worn camera, hadn't you?

A. We didn't have any kind of class. I mean, they were, like I said, self-explanatory to turn on.

Q. So prior to you using a body-worn camera, you never received any training pursuant to your department's policy?

A. No. I mean, we didn't just sit down and have a class specifically on a body cam, no.

Q. So you never went through any training to begin with with the department on these body-worn cameras, correct?

A. Correct.

Q. So it would suffice to say, Mr. Guthery, that where your policy indicates that additional training shall be provided at periodic intervals to ensure the continued effective use of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy or equipment, you had not done any of that pursuant –

A. We hadn't had a class, no.

Q. Did the Belmont Police Department even follow this procedure, sir?

A. I'm sure they do.

Q. You were there for eight years?

A. We didn't always have cameras.

Q. Well, I'm just talking about this policy. Does the department follow the procedure as laid out in this policy?

A. They do, yes.

Q. But on the night in question, it is true you did not follow the department policy, did you?

A. Did not have one on, no.

Q. Did you notify the MBI that you failed to act according to the department policy?

A. I didn't just call anybody up and say, *Hey, I didn't have a camera on*. I mean, I'm sure they knew it. They found out at some point in time.

Q. Well, you would agree with me, Officer Guthery, that it is important to follow department policy?

A. It is, very.

Q. I think you also said on direct when the prosecutor was questioning you, Officer Guthery, that Trooper Earnest was not at the scene of the collision?

A. He showed up later. He wasn't there initially, no.

Q. You could see a gun in this case is your testimony, correct?

A. Sir?

Q. You could see a gun?

A. Yes. The individual in the black truck with a gun?

Q. Yes, sir.

Q. You could see that?

A. Could see it.

Q. But you couldn't see the individual's face?

A. No.

MR. STUART: Your Honor, I tender Officer Guthery back to the prosecutor.

APPENDIX E

IN THE CIRCUIT COURT OF MISSISSIPPI FOR TISHOMINGO COUNTY

Case No. CR-18-187

[Filed: October 9, 2018]

STATE OF MISSISSIPPI	)
Appellant,	)
	)
v.	)
	)
BRIAN TURNER	)
Appellee.	)
	)

Decided October 8, 2019

Before: MIMMS, *Circuit Judge*.

Cross-Examination of Jason Moore at Trial

BY MR. STUART:

Q. Good afternoon, Officer Moore.

A. Good afternoon, sir.

Q. Officer Moore, do you recall May the 15th of 2018, here in this courtroom, you gave testimony under oath?

A. Yes.

Q. And I was here?

A. Yes, sir.

Q. And the county prosecutor was here?

A. Yes, sir.

Q. All right. Did you answer all of those questions truthfully at that time?

A. Yes, I did.

Q. Would you change any of your testimony from that hearing on May the 18th, 2018, at this time?

A. No.

Q. All right. Thank you, Mr. Moore. At that hearing you indicated that you had given a statement to the MBI in this case?

A. Yes.

Q. In fact, you gave that statement to Greg Mitchell, didn't you?

A. I believe that's right, yes

Q. In fact, isn't it true, Officer Moore, you typed out your own statement?

A. Yes, I did.

Q. Isn't it true, Officer Moore, that at no time have you met with Greg Mitchell—I'm sorry. Strike that—with Keith Woodruff about this case, have you?

A. I have not.

Q. On May the 18th, when we had a preliminary hearing, you had not met with the lead investigator, Keith Woodruff, in this case, had you?

A. No.

Q. And as we are here today in front of this jury, you still have not met with Keith Woodruff about this case, have you?

A. Have not.

Q. And you know that he is the lead investigator, correct?

A. Yes.

Q. At the time of the hearing on May 18th, 2018, Mr. Moore, when you told me you had given a typed statement that you typed yourself, that was, in fact, the case, wasn't it?

A. Yes.

Q. And have you typewritten any other statement since that time?

A. No, that's the only one.

Q. Have you given any other official statement since that time?

A. No, I have not.

Q. When you made your typewritten statement prior to May 18th, 2018, did you put everything in that statement that was true and correct in this case?

A. Everything that I recall, yes, sir.

Q. Did you put everything that was important?

A. Yes, sir.

Q. Have you had a chance to review that statement of facts that you typed up?

A. I reviewed it before I turned it in.

Q. Have you reviewed it before this testimony here today?

A. No.

Q. All right. Would you change anything at this time that you put in that statement of facts?

A. No.

Q. You would agree with me, then, nowhere in your statement of facts do you mention anything about getting a long gun out of your trunk?

A. No, I did not put that in my statement.

Q. Additionally, you gave sworn testimony on May 14 the 13th, 2018. You said you recall that, Mr. Moore?

A. Yes.

Q. At no time during that testimony did you 17 indicate to the Court that you retrieved an AR-15 out of your trunk?

A. No.

Q. I'm going to take you back, Mr. Moore, to the roadblock itself. Do you recall the roadblock, sir?

A. Yes, sir.

Q. It was located at Northside Drive and Highway 25 in Belmont?

A. Yes, sir.

Q. You were there?

A. I was.

Q. Officer Guthery was there?

A. He was.

Q. He was with the Belmont Police Department?

A. He was.

Q. Trooper Earnest was there?

A. He was.

Q. And Officer Cornelison of the Belmont Police Department; is that correct?

A. Yes, sir.

Q. And at that particular roadblock, isn't it true, Mr. Moore, that you were obviously in your patrol car?

A. Yes, sir.

Q. And you did not have your blue lights on at the 12 roadblock, did you?

A. No, I did not.

Q. And isn't it equally true, Mr. Moore, that when the black vehicle turned away from the roadblock, it was approximately a thousand away, wasn't it?

A. I don't know how far it was. I haven't measured it.

MR. STUART: Court's indulgence one moment.

(BRIEF PAUSE.)

BY MR. STUART:

Q. When Mr. Turner turned around, there was a 23 parking lot, wasn't there?

A. There is a parking lot to an old store, yes, sir.

Q. Yes, sir. It wouldn't be unusual to turn around in a parking lot if someone believed there was a wreck ahead, would it?

A. For a wreck, no. A checkpoint, yes.

Q. I asked you a minute ago if it was approximately a thousand feet. Do you recall that?

A. Yes, sir.

Q. You said you didn't know.

A. That's correct.

Q. Do you remember that, sir?

A. Yes, sir.

Q. On May the 18th, 2018, your county attorney questioned you. Do you recall that?

A. Yes, sir.

Q. He said -- strike that. Once he turned around in the parking lot and went down Green Street, correct?

A. Yes.

Q. And you followed him?

A. Yes.

Q. And you pulled him over?

A. I did.

Q. And he, in fact, did pull over, didn't he?

A. After a short time with me behind him with my blue lights on, yes, he did pull over.

Q. And he pulled over to the right side of the road?

A. He did.

Q. And he put down his window?

A. He did.

Q. You went up to his window?

A. I did.

Q. You did not smell alcohol?

A. I did not.

Q. You did not smell alcohol on his person?

A. I did not.

Q. You did not smell a strong scent of alcohol coming from the vehicle, did you, sir?

A. I did not.

Q. Additionally, you did not smell any marijuana?

A. No, sir.

Q. You didn't see any illegal drugs or anything illegal in the vehicle, did you, sir?

A. No, sir.

Q. After that, you've indicated, sir, that Mr. Turner left the scene of the stop?

A. He did.

Q. That was on Old Highway 25?

A. Yes, sir.

Q. And you've indicated that you followed him?

A. I did.

Q. In fact, you chased him, didn't you?

A. I pursued him.

Q. And it is a fact, isn't it, sir, that you have no dash cam video to substantiate what you're saying, do you, sir?

A. That's correct.

Q. As we sit here today in 2019, you do not have dash cam video of this incident, do you?

A. No, sir.

Q. However, on May the 3rd, 2018, you testified that the Tishomingo County sheriff's office had utilized body cams, correct?

A. Yes, sir.

Q. In fact, they had issued you a body camera?

A. Yes, sir.

Q. And you've testified that your camera was in Officer Marlar's office?

A. Yes, sir.

Q. Isn't it true, sir, you have no documentation or writings to substantiate the location of your body cam on the night in question, do you?

A. I don't understand what you're asking me, sir.

Q. You have a logbook.

MR. STUART: I'm sorry. Strike that, Your Honor.

BY MR. STUART:

Q. Isn't it true you have nothing from a logbook or any recording as to where your body cam was on the night in question?

A. No, sir.

Q. How many times did the lead investigator from the MBI, Keith Woodruff, how many times did he contact you to review your body camera?

A. He hasn't.

Q. He still hasn't contacted you?

A. No, sir.

Q. Hasn't contacted you to even ascertain what may or may not be on the body camera, has he?

A. No, sir.

Q. At no time has Officer Woodruff himself or anyone else from the MBI come to interview you, have they?

A. To interview me, no, sir.

Q. They simply relied on the statement that you typed up, correct?

A. That's correct.

Q. And you gave it to Greg Mitchell with the Tishomingo County sheriff's office?

A. Yes, sir.

Q. You've been an officer, certified officer, since when, sir?

A. Since September the 11th of 2013, I believe it is.

Q. Q. How long have you been a full-time certified officer?

A. Since I graduated, April the 27th of 2017.

Q. So since April the 27th of 2017, you've been a 16 full-time certified officer?

A. Yes, sir.

Q. Prior to being involved in this shooting, sir, you had heard about officer-involved shootings, I'm sure; isn't that correct, sir?

A. That's correct.

Q. Don't you believe, sir, that it is important that there be an independent investigation when there is an officer-involved shooting?

A. I would -- I would assume so, yes, sir.

Q. You would agree with me that an independent investigation is important?

A. I guess.

Q. Well, I'll ask you this, sir: If you were accused of a crime, would you want there to be an independent investigation?

MR. ROBBINS: Objection, Your Honor. And he's not involved—

THE COURT: I think you can ask the question.

BY MR. STUART:

Q. I'm sorry, sir. I'll repeat the question. If you were accused of a crime, Mr. Moore, would you want there to be an independent investigation?

A. I would want it to be investigated by the proper authorities.

Q. Would you want it to be independent?

A. I'm not sure I understand what you're asking me.

Q. You don't know what an independent investigation is, sir?

A. I don't understand the question you're asking me.

Q. At the previous hearing, sir, you testified about the wreck. Do you recall that, sir?

A. Yes, sir.

Q. And at that hearing I asked you, sir, whether at some point –

MR. STUART: I'm sorry, Your Honor. I thought it was turned off. I'm not very good at this thing. May I proceed, Judge?

THE COURT: You may.

BY MR. STUART:

Q. Officer Moore, at the May 19th, 2018, hearing, I asked you a question. I said, *You've also indicated, sir, at some point this black vehicle rammed your vehicle in a head-on collision; is that correct?* Do you remember that question?

A. I remember talking about the wreck itself, but I don't remember the exact question, no.

MR. STUART: May I approach this witness, Your Honor?

THE COURT: You may.

BY MR. STUART:

Q. Mr. Moore, I'm going to show you the transcript of the hearing on May of 2018.

A. Okay.

Q. All right, sir. I'll let you take it and look at it, and I'll ask you to flip over to Page 29, sir.

A. Okay.

Q. Do you see Line 13?

A. I do.

Q. Will you read Line 13, 14, and 15, sir?

A. Thirteen says, You've also indicated, sir, at some point this black vehicle rammed your vehicle in a head-on collision; is that correct?

Q. Thank you. Now do you recall the question, sir?

A. Yes, sir.

Q. And you answered, *Yes*. You answered *Yes*, didn't you?

A. Yes.

MR. STUART: Your Honor, may I approach and look at the State's exhibits?

THE COURT: Sure.

BY MR. STUART:

Q. Have you had an opportunity to view the black vehicle in this case, sir?

A. The only vehicle I've seen is my patrol car, sir.

Q. That's the only one you've seen?

A. Yes, sir.

Q. All right. You indicate, sir –

MR. STUART: I'm sorry. Strike that, Your Honor.

BY MR. STUART:

Q. Is your answer to my question, Mr. Moore, *At some point this black vehicle rammed your vehicle in a head-on collision; is that correct?* And you said, *Yes*. Is that still your answer today?

A. Well, he didn't hit me head-on, but we almost hit head-on.

Q. At some point did you meet with Officer or Trooper Cody McGee in this case?

A. The only time I met with him was that night.

Q. And you explained to Trooper McGee what happened in this case?

A. Very briefly.

Q. He did an accident report?

A. I'm assuming.

Q. He filled out a Uniform Crash Report?

A. I believe so.

Q.Based on the information that you gave him, correct?

A. Yes, sir.

Q. Did you give him true and accurate information on the night in question, sir?

A. Yes, I have.

Q. Has anything changed since you gave him that information, sir?

A. No.

Q. Also, Mr. Moore, at the May 2018 hearing you were questioned by the county attorney wherein the county attorney asked you, *Post-wreck, were your vehicles touching at s point?* Do you recall that question?

A. Not - not exactly, no, sir.

MR. STUART: May I approach the witness, Your Honor?

THE COURT: You may.

MR. STUART: Ray, I'm going to start on Page 12.

BY MR. STUART:

Q. He asked you, sir, on Line – Page 12, Line 1, *Then what happened at that point*? You said, *His vehicle struck my vehicle.*

A. Yes.

Q. Correct?

A. Yes.

Q. Then getting past the wreck, sir, you said, AndI went to approach the driver's side of his vehicle. You said that, didn't you?

A. Yes, after the wreck.

Q. You were asked after that, *Okay. Were your vehicles touching at this point*? You said, *No*. Do you remember that?

A. Yes.

Q. That was a true and correct answer, right?

A. Yes.

Q. You said after that –

MR. STUART: I'm sorry. Strike that, Your Honor.

BY MR. STUART:

Q. The next question was, *Were they close together*? Do you recall that?

A. I believe so.

Q. And you answered, *They were close together, but they weren't touching*. Do you recall giving that answer?

A. Yes.

Q. Do you still stand by that answer?

A. I do.

Q. So let me ask you this: If Officer Guthery testifies they weren't close together, that would be untrue?

A. I've not heard any of Officer Guthery's testimony, so I couldn't answer that.

Q. That's not my question. You said they were close.

A. They were close.

Q. But not touching?

A. That's correct.

Q. My question to you is, if Officer Guthery testifies that they weren't even close, the vehicles, that is untrue, isn't it?

A. I believe that's a matter of opinion on my definition of close and his definition of close.

Q. Have you gone back—I'm sorry. Strike that. Isn't it true that after the initial incident, after other officers showed up, Greg Mitchell took over the scene, you were still able to talk with Officer Guthery about this, weren't you?

A. I was.

Q. And you did talk with Officer Guthery about this.

A. I was. Or I did.

Q. After this incident, Mr. Moore, you were checked by medical personnel; isn't that true?

A. That's correct.

Q. Were you given any -- any kind of testing for medicines by the medical personnel?

A. They checked my blood pressure and my heart rate. That's all they did.

Q. Were you given a urinalysis?

A. I was not.

Q. Were you given a blood test?

A. I was not.

Q. Isn't it true, Officer Moore, that this is not the only use-of-force case you've been involved in?

A. That's true.

MR. STUART: Court's indulgence for one moment.

(BRIEF PAUSE.)

BY MR. STUART:

Q. Isn't it true, Officer Moore, that you retained your gun after this incident occurred for several days?

A. Yes.

MR. STUART: No further questions for this witness, Your Honor.

APPENDIX F

IN THE CIRCUIT COURT OF MISSISSIPPI FOR TISHOMINGO COUNTY

Case No. CR-18-187

[Filed: October 9, 2018]

STATE OF MISSISSIPPI	)
Appellant,	)
	)
v.	)
	)
BRIAN TURNER	)
Appellee.	)
	)

Decided October 8, 2019

Before: MIMMS, *Circuit Judge.*

Closing Argument by Mr. O'Neal of the Prosecution

BY MR. O'NEAL:

Good afternoon. It's been a long week. As the judge was reading instructions, I just looked at this picture and it just struck me how peaceful that is. I've driven by there, I don't know, several hundred times, I guess, coming to Iuka for work. And peaceful. Just think about this. One moment we are here for, you know, just a few minutes. Probably even less than a few minutes

out here that were not peaceful. And your job as jurors is to decide the guilt or innocence of Mr. Turner.

The judge said a word that I think is very important -- or two words. Common sense. That's why we have jurors. That's why we have 12 people from Tishomingo County to ultimately decide this case.

You try to think of things. I know that in opening, I think Mr. Stuart said something about the fox guarding the henhouse. Well, you know, there's no hens sitting out here. That's pretty brave people that get out there and do this for a living. It's a tough job. You're not dealing with perfect situations, you know.

You have family squabbles and disputes in Itawamba County where somebody drinks too much and they get sprayed. Well, that doesn't have anything to do with Tishomingo County, folks. There's a lot of things that don't have anything to do with this case. Advertising in the newspaper about a checkpoint. Vests on at a checkpoint. DNA on bullet holes when everybody knows whose gun it was. That has nothing to do about the case.

When I was a kid, I grew upin the Delta in afarm community. My dad had a little store, and he liked riding around. He was older. When I was born, he liked riding around looking at fields. And there was a bird called a killdee. And we were riding down the road and saw this bird with a broken wing running. *Daddy, that bird is hurt*. He said, *That bird isn't hurt*. I said, *Yeah*. He said, *No, that's a mama bird, and there is a nest over there on the ground somewhere, and she doesn't*

want us to find it so she is pretending like she's wounded where a predator will come after her.

So you talk about a lot of different things, and that goes on in court sometimes. And you talk about issues like safety vests or it would have been nice if they had body cameras on. It would have been nice, but we don't have it.

Here is the thing: We have the evidence of what happened in this case on the counts that you're here to decide. You're here to decide a felony fleeing count, you're here to decide a felon with a weapon, and three counts of aggravated assault, one with a vehicle and two with a weapon.

We've had several witnesses here today or over this week. We've got the officers, Officer Moore, Officer Guthery. They were there. They told you what happened from their standpoint. We have a chart. We have a patrol car. We have the suspect vehicle. We have another patrol car. We have Officer Moore's shell casings all here in green. We have Officer Guthery's shell casings all here in yellow back behind this car. We have the shell casings from the SKS rifle that Mr. Turner illegally possessed here and here.

What do we know about a shell casing from the guns in this case? They throw out to the right and up. So if I am shooting that way, the shell casings go out that way. So if the suspect is shooting towards this car, his shell casings are going here to the right or here to the right. It all made sense. It all pieces together. The story makes sense.

Miraculously, nobody was killed. I don't know. That's -- it's really a miracle. Any gun is serious, but these are really serious to have 30 of these babies coming down a barrel at an officer. They went home to their families that night. That's the good part.

But let's think about this. Common sense. We've heard about, *Well, I thought there was a wreck. Maybe I was going to turn around.* I don't think getting stopped by a wreck for a long period of time is really a big problem in Belmont. It's not in Fulton. I mean, there may be a wreck, it may slow you down two or three minutes, but it's not that big of a deal.

But blue lights flashing is a big deal when you're a convicted felon with an expired tag and an SKS with a 30-round mag loaded in there. That is a problem. That's what was going on. And that's why he was so agitated when he was stopped, and that's why he ran, and that's why he drew his gun.

Look how he acted afterwards. He was fearing for his life. Did he go turn himself in to another agency? He called one. But did he go turn himself in? No, he went to Tennessee. He called his family just to basically tell them goodbye. *They're coming to get me. They're going to kill me.* And he had nearly 1500 rounds of ammo.

When you get back there, pick -- this is a serious amount of lead, folks. A bulletproof vest. Not that common outside of law enforcement. And these magazines made tactically. Shoot it 30 times, flip it over and shoot it 30 times, flip it back over and shoot it

30 times. You are ready for -- you are ready for the end when you're locked and loaded like this.

What is an officer to do when someone runs from them and points that at them? I don't know what will go through your mind. You don't have a lot of time. You don't have time to think about *What's my family going to do? What's going to happen?* You just have to react. That's your training. And you shoot.

Now, this was two officers. Don't work in the same department. Happened to be at the same checkpoint. They end up at this peaceful location with a very nonpeaceful person. I think in his interview that you've heard, Mr. Turner said, *I'm not violent unless I'm pushed*. Well, he was pushed, and he got real violent.

Let's think about the wreck. Mr. Griggs was here. Mr. Griggs is a nice guy. A vehicle is coming and coming head-on. You're having to turn. You have a sideswipe. That's what we have. This is somebody running from the police, by his own statement, turned around in this -- I would sort of call it a cul-de-sac. Nobody has called it that. But turn around in this sort of little dead turnaround there coming at the officer.

He was getting away. He was not going to jail that night. You heard that in his statement. He was not. Well, he made a choice. He pointed a gun at a law enforcement officer. He pulled the trigger. Common sense.

So when Mr. Robbins talks to you, he's going to talk to you a little bit more about the elements of the crime and of this case. But clearly, you have a situation with a felon who had a weapon, said he knew he wasn't

supposed to have a weapon. And he had a very serious weapon. All guns are serious. I was raised up around guns, but that's very, very serious. And that is a whole lot of lead.

He ran into the police. He assaulted two officers with a gun, and he was coming head-on at another officer with a car. It was a dangerous, dangerous situation. It would be nice if this was somewhere 40 miles away from everywhere, but this is so close that Greg Mitchell could hear it at his house. His kids are outside playing. I mean, this is a super serious, super dangerous situation that was caused by one person, Mr. Turner.

I'm trying to think, is it mean? Is it reckless? I mean, it's everything you want to think about. That is the dumbest way to act around the police in the world. You don't run from the police and draw a gun on them. I mean, you just don't do that. That's stupid. It's mean. It's crazy. But it's mostly mean. It's reckless. And there is a good reason why it's against the law.

There are a lot of rabbit holes you could go down. You've got the what happened in Itawamba County with Mr. Six Beers Grimes. We're not trying that case. We could have brought half of Itawamba County here and talk about that. That's not what we're here about. That's the old mama killdee running off saying, *Don't look here. Don't look here.* His gun. His ammo. His motive to run. It's all there.

You've seen the demeanor of the officers. They --do they appear to be reasonably telling the truth? I think so.

Does Mr. Turner's statement make sense? No. This case isn't about acetylene torches. Okay. He went to work. His boss was here and said, yeah, he went to work that day. Okay. That's several hours before. That doesn't have anything to do with this case.

This is what this case is about right here. And thankfully we have live victims back here. The officers of Tennessee are alive. We can be thankful for that, but we have a job to do today. Thank you.