

No. _____

Supreme Court of the United States

JUSTIN R. PAGE,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

Appendix to Petition for a Writ of Certiorari

Volume Two

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COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS *

Plaintiff *

v. *

DOCKET NUMBER 2278CR00051

JUSTIN R. PAGE *

Defendant *

HEARING

BEFORE THE HONORABLE MARK D. MASON

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Courtroom 4

January 6, 2023

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
William Gordon (By Mr. Thomas)	8		45	
(By Mr. Mass)		25		

P R O C E E D I N G S

1
2 (Court called to order 2:27:42 p.m.)

3 THE CLERK: Calling criminal indictment 2278CR051,
4 Commonwealth vs. Justin Page.

5 This matter is on for motion to suppress.

6 THE COURT: Okay. Good afternoon and thank you all for
7 your patience. I did review the motion and the opposition. I
8 understand that there are quite a few witnesses. And I respect
9 that. It's an interesting case. Today we're going to go to
10 3:30. I am writing up a rather lengthy decision order on a
11 motion in limine that I heard this morning for a trial which is
12 mid empanelment and which I hope to have an opinion given to
13 counsel first thing Monday morning and I -- I need to get back
14 to writing at 3:30 today. So what we don't finish, we'll
15 continue to a day within the next two weeks; okay?

16 Do you have any pressing dates on this? I take it you're
17 not on the trial list for this month obviously. Do you have a
18 final pre-trial conference date on this case yet?

19 MR. MASS: I don't know that we do.

20 THE COURT: Okay. So -- so we're in good shape. Okay.
21 All right. Very well. Are there any preliminary matters before
22 we dive in, ADA Thompson [sic]?

23 MR. THOMAS: No, Your Honor. I can give Your Honor an
24 overview of where we expect to go.

25 THE COURT: Oh, it's Thomas.

1 MR. THOMAS: If, Your Honor, would like?

2 THE COURT: You know, I reviewed your motion and your
3 opposition, so I think I have a general sense. If you wish to
4 embellish on that in the form of an opening, I'm always happy to
5 hear from you. Otherwise we can just begin.

6 MR. THOMAS: No, I think, Your Honor, it's -- the only
7 addendum I would make in -- in large part it depends on -- on
8 the evidence that's developed. But, you know, we have three
9 witnesses the Commonwealth intends to call. The first two
10 witnesses are dealing with this episode that occurred in the Big
11 Y parking lot. and the third witness, that's the witness that
12 really is involved in a criminal investigation. Any of the
13 evidence that we find, whether it's by statement or for -- for
14 -- for physical contraband, it's not pursuant to A criminal
15 investigation, but it's a community care taking that the
16 officers are doing at the Big Y parking lot.

17 THE COURT: Uh-huh.

18 MR. THOMAS: This third witness, which I would expect to
19 get --

20 THE COURT: Who -- who is the third witness?

21 MR. THOMAS: Officer Lagoy.

22 THE COURT: Okay.

23 MR. THOMAS: He -- I would expect to reach his testimony on
24 another date within the next two weeks. He mirandized the
25 defendant --

1 THE COURT: Okay.

2 MR. THOMAS: -- three times.

3 THE COURT: All right.

4 MR. THOMAS: So if there's a problem with the way this
5 evidence is found, the Commonwealth in no way's conceding that
6 there is, there is -- there's an attenuation and between the
7 events that happened at Big Y and what Officer Lagoy does.
8 Because it's Officer Lagoy, once the defendant, a couple of
9 hours have passed, the defendant sobers up to a degree, not
10 entirely, but to a degree and again I didn't see from the
11 defense motion that voluntariness is an issue, but I included it
12 in -- in broad brushstrokes a voluntariness analysis just so
13 that Your Honor, is comfortable with the -- the statements that
14 are -- that are generated, developed.

15 THE COURT: I appreciate actually your -- your -- your
16 adding that, thank you very much. Just bear with me a brief
17 moment, Attorney Mass, I just want look at something here. Hold
18 on. Yeah, I don't think so. I need a signature on the
19 affidavit.

20 MR. MASS: Oh, okay. I'll provide that.

21 Your Honor, I would agree with my brother that there's no
22 issue of voluntariness as to the statements made at the -- at
23 the station. Those -- those for the purpose our motion -- are
24 only considered for suppression under a fruits theory, fruits of
25 the poisonous tree. He essentially, if you suppress everything

1 else, he wouldn't have been arrested. He wouldn't have been in
2 a position to make those statements. There are statements,
3 however, that are made at the scene and where he was not
4 mirandized. And we would argue he was -- he was subject to
5 custodial interrogation at that point.

6 THE COURT: Okay. So it's not just a fruits of the
7 poisonous tree? There's a custody issue.

8 MR. MASS: There -- there is a custody issue as to the
9 statements he made on the scene in the Big Y pla -- parking lot.
10 There is a fruits issue as to statements he made at the station.

11 THE COURT: Okay. Was that briefed in your memorandum;
12 that portion?

13 MR. MASS: Clearly not -- clearly not well enough that my
14 brother counsel --

15 THE COURT: I didn't see that part. Okay. So this is what
16 we're going to do. We're going to move forward. I'm going to
17 give you both an opportunity to supplement your filings on that
18 particular issue alone. Which could be terribly onerous, but
19 we'll address that, you know, we can address it today. Okay.
20 So why don't we dive on in. You can call your first witness.
21 And I understand there's a video. Is that stipulated as to its
22 authenticity?

23 MR. THOMAS: We can -- that'll be with our third witness,
24 Your Honor, so I don't expect to reach it today.

25 THE COURT: Okay. Very well. How lengthy is the video?

1 MR. THOMAS: Well, we can -- I can speak with brother
2 counsel. Once I became aware of our time table I put that issue
3 on the back burner.

4 THE COURT: Yeah, I guess I appreciate that. The reason
5 I'm asking is that if you're going to stipulate to the
6 introduction of that DVD as an Exhibit, I'll take it now,
7 between now and our next hearing. I will watch it.

8 MR. THOMAS: Oh, I understand, Your Honor. So what I'll do
9 is, you know, I have the video in it's entirety. I have the
10 video in snippets. I was going to speak with brother counsel
11 and make sure that his comfort level was --

12 THE COURT: Okay.

13 MR. THOMAS: -- or see what that was before I began
14 admitting things as Exhibits and see what we could stipulate to.
15 There is, because while we're at it, there is cruiser came from
16 Big Y when they pull up that I could add that --

17 THE COURT: Okay.

18 MR. THOMAS: -- that is of limited probative value. I
19 don't know --

20 THE COURT: Okay.

21 MR. THOMAS: -- just from the motion I wasn't quietly sure,
22 quite sure, where the fight was, so.

23 THE COURT: Okay. Let's just -- we'll put that shoe on a
24 shelf, as I like to say. So, all right. Very good. You can
25 call your first witness.

1 MR. THOMAS: Yes, Your Honor, the Commonwealth would call
2 Deputy Chief William Gordon.

3 THE COURT: Did you say deputy?

4 MR. THOMAS: Deputy Chief, Your Honor.

5 THE COURT: Okay. That's what I thought you said. All
6 right. Deputy Chief Gordon, welcome. We'll swear you in.

7 **WILLIAM GORDON, Sworn**

8 THE CLERK: Thank you.

9 THE COURT: All right. Please have a seat and speak
10 directly into the microphone in a loud and clear voice. When
11 ever you're ready, ADA Thomas.

12 MR. THOMAS: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. THOMAS:**

15 Q All right. Good afternoon.

16 A Good afternoon.

17 Q Would you please state your name and spell your last name?

18 A My name is William Gordon, G-O-R-D-O-N.

19 Q And what is it that you do?

20 A I'm the Deputy Chief of the Greenfield Police Department.
21 I'm second in charge of operations. I'm in charge of
22 operations, second in charge of the department.

23 Q Okay. And what does that work entail?

24 A Mostly administrative work. Paperwork, payroll.

25 Q All right.

1 A Policy.

2 Q At some point in your career did you do field
3 investigations?

4 A I absolutely did.

5 Q All right. And -- and how long have you been with the
6 Greenfield Police Department?

7 A Over thirty years now. I started in 1993.

8 Q All right.

9 A Well, just at thirty years now.

10 Q Okay. So when did you start working as the Deputy Chief?

11 A I started working as the Deputy Chief, I believe, it was
12 exactly two years from this date, so '20 -- '21, '20.

13 Q Okay. And then prior to that what unit were you assigned?

14 A I was a lieutenant and I was the administrative lieutenant
15 and from 2008 to 2020, and in there I also had patrol lieutenant
16 duties which was in charge of patrol.

17 Q All right. And so when was the last time you were doing
18 hands on field work?

19 A Basically 2010 as a pa -- as a patrol lieutenant, but even
20 that was limited so really 2008 I was assigned to shifts.

21 Q All right. So on September 24th of 2021, you were
22 obviously employed by the Greenfield Police Department and in
23 that -- in that the role you currently enjoy as Deputy Chief?

24 A Correct.

25 Q And on the evening of that day, were you working?

1 A No.

2 Q All right. And so on the evening of that day, did you go
3 to the Big Y here in Greenfield?

4 A I did.

5 Q And why'd you go there?

6 A To go grocery shopping.

7 Q All right. And with whom did you go grocery shopping?

8 A My wife who at the time was also a Greenfield Police
9 Officer.

10 Q Okay. And her name?

11 A Laura Gordon.

12 Q All right. So you and Officer Laura Gordon work for the
13 same department?

14 A At the time, yes.

15 Q Yeah. And at that time what -- what unit was she assigned
16 to?

17 A Patrol.

18 Q All right. And was she working that night?

19 A No.

20 Q All right. So both of you are off duty; is that right?

21 A Correct.

22 Q All right. And so obviously you're wearing plain clothes?

23 A Yeah.

24 Q All right. And when you went to Big Y, did you and she
25 take a personal car or a car provided by the department?

1 A It's a car provided for by the department that I'm allowed
2 to utilize in a personal manner due to my position.

3 Q All right. And that car that you used, did it have a radio
4 that was set for the police band?

5 A Correct. Yes, it did.

6 Q All right. And did you hear anything that caught your
7 attention while you were going to Big Y?

8 A Yes, while I was pulling into the Big Y parking lot we
9 heard a report that there was a person down or semi-conscious, I
10 don't remember the exact words, in the Big Y parking lot of
11 which we were pulling into.

12 Q All right. Do you remember what time of day this was?

13 A Oh, 5:30 maybe.

14 Q Okay. And 5:30 in the evening?

15 A Yes.

16 Q All right. And so what, you all were getting groceries for
17 the weekend?

18 A We were getting groceries.

19 Q Yeah.

20 A I don't -- you know.

21 Q And so you hear something on the radio about a person being
22 unconscious and how is it that you react?

23 A Well, instinctively, as police officers for thirty years,
24 we want to make sure that we try to help people. So we looked
25 around and we saw a large group of people surrounding a car. So

1 we take -- took a look and there was somebody that appeared that
2 was passed out behind the wheel of that car.

3 Q All right.

4 A Kind of in the New Fortune area, which is a little off set
5 of Big Y.

6 Q Okay. I'm sorry, just I couldn't quite hear what you last
7 said. Right where?

8 A In the New Fortune area, which was just a little offset
9 from Big Y. It's like the very next buildings.

10 Q All right. So there's a -- it's a strip mall essentially
11 that this parking lot uses, several businesses share this
12 parking lot?

13 A Correct.

14 Q So we have a Big Y in the middle of the strip mall and we
15 have businesses on either side?

16 A Yeah.

17 Q All right. So as you enter Big Y off of Route 2 there's --

18 A No, we came off of Colrain Street.

19 Q Okay. But a -- as --

20 A Colrain Road. I'm sorry.

21 Q All right. And, but most commonly as people I suppose
22 would enter the Big Y parking lot from Route 2, New Fortune is
23 on the right-hand side of Big Y?

24 A If you're looking at Big Y, it would be towards the left
25 side.

1 Q On the left side. All right. So this car was how many, I
2 don't know, what distance was this car from you when you heard
3 about the unconscious person?

4 A Two or three rows away from us.

5 Q All right. Rows of parked cars?

6 A Yeah.

7 Q All right. So you hear about it, you -- you go there, you
8 say you saw somebody slumped behind the wheel?

9 A Uh-huh.

10 Q When -- where were you when you first saw this person?

11 A In my car.

12 Q Okay. And what distance away?

13 A One car length.

14 Q Okay. And this person that was slumped behind the wheel,
15 was that person by themselves in the car?

16 A Yes.

17 Q All right. And is that person in the courtroom now?

18 A Yes.

19 Q All right.

20 MR. THOMAS: And, Your Honor, may the record reflect the
21 witness has pointed at the defendant? Well --

22 MR. MASS: No, objection, Your Honor.

23 THE COURT: Or -- why don't you just ask him to identify,
24 thank you.

25 BY MR. THOMAS:

1 Q Could you describe something that he's wearing?

2 A He has a red shirt and multi-colored tie.

3 Q All right.

4 MR. THOMAS: And, Your Honor, may the record reflect the
5 witness has identified --

6 THE COURT: The record will so reflect.

7 MR. THOMAS: It's just a habit, Your Honor. Motion to
8 suppress, identity is obvious so it's a habit. Excuse me.

9 THE COURT: It's a good habit.

10 BY MR. THOMAS:

11 Q The -- the -- the so when you saw the defendant, he's alone
12 in the car, were there people around? Or was he by himself?

13 A No, there was a small group of people around the veh --
14 around his driver's side door.

15 Q All right. So you see the car, you see the defendant
16 slumped behind the wheel, what is it that you do?

17 A I grabbed the radio and called it in. I said it looks like
18 we have the person is here. Something -- something to that
19 effect.

20 Q And what is it that your spouse does?

21 A She jumps out of the car and rushes over to the -- the male
22 party driving the car which is the person I identified.

23 Q Okay. And how long has she been a police officer?

24 A Oh, same as me. So she started in 1993, so it had been
25 just under thirty years at that time.

1 Q Okay. And you and she have received the same training in
2 regards to responding to an event such as this?

3 A Correct.

4 Q All right. And when you're responding to an event such as
5 this, what is it that -- that you're trained to do?

6 A Well we're trained to assess the situation for our safety,
7 the safety of others, including possible medical response which
8 from my driver's door looking, I could see that the person was
9 pale white, almost like ashen white, as if somebody wasn't
10 breathing.

11 Q All right. So you're calling it in and your spouse,
12 Officer Laura Gordon, goes to the drivers side of the defendant
13 car.

14 A Yes.

15 Q What happens next?

16 A She calls out and she believes that person, what we -- was
17 overdosing. Which I gave to -- I radioed to our dispatch that
18 the person could be probably nodding. Which is another word for
19 overdosing. If somebody's in the car sitting and they're
20 basically there head goes up and down as they're trying to
21 breath. And it's an indicator that somebody might not be
22 breathing.

23 Q Okay. And just for the record, you nodded your head up and
24 down just now.

25 A Correct.

1 Q Is that what you saw the defendant doing that day?

2 A Yes.

3 Q All right. And -- and as you saw the defendant doing that,
4 is that when you began to suspect that he may be overdosing?

5 A I really didn't put a complete su -- I -- I thought maybe
6 he would have been overdosing, but I don't know exactly because
7 many things can do that. A seizure could do that, diabetics can
8 do that. An overdose could do that. So it -- it -- I really
9 didn't, even though I said on the radio it could be nodding, it
10 -- it really is, who knows what it -- I'm not a medical doctor,
11 so.

12 Q Well you've been on the job for thirty years; have you seen
13 a person overdose before?

14 A Yeah, definitely.

15 Q Uh-huh. And is it something that you see more often than
16 you used to?

17 A Well I'm not on the road very much, so I don't see it as
18 often as other people. But in the town of Greenfield, yes. We
19 see that as general calls of service.

20 Q And you and -- and other officers are trained to -- to try
21 and identify they symptoms; is that fair to say?

22 A That is definitely fair to say.

23 Q Okay. And what does that training entail?

24 A It's forty hours a -- a year of first responder
25 instruction. CPR instruction. It's one of the first things you

1 say -- you see in CPR is hey, hey, are you okay?

2 Q All right.

3 A You know.

4 Q So it when you call this in as being a possible overdose,
5 are you still in your car?

6 A Yes.

7 Q All right. And Officer Laura Gordon is -- is working with
8 the defendant at this point; right?

9 A Actually, yeah, she goes over, but it appears to me that
10 she's fighting with -- with him. At the -- as she opens the
11 door, I notice there seemed to be a struggle that was going on.

12 Q What do you see happen exactly?

13 A Well she -- she gets out of the passenger side of the car.
14 She runs in front of the car. I -- I grab the radio so I'm
15 talking on the radio as she's going towards the vehicle. She
16 opens the door and I can't hear -- I think, if I remember right,
17 she said something like I think it's an overdose. Something to
18 that effect. But then there was a small struggle that may have
19 appeared or she was shaking him to try to wake him up. But I'm
20 a car -- you know.

21 Q At that point you're not sure.

22 A Yeah.

23 Q So what is it that you do to try and support your spouse?

24 A Well, she still teases me to the day that I didn't respond
25 fast enough, but eventually I got out of my car and -- and went

1 over to see if I could help her, you know, and -- and if it was
2 a struggle to be able to help, you know, protectable situation.
3 But it's not just her, it would be everybody involved.

4 Q Right. Because there's what, half a dozen people still
5 kind of milling around?

6 A I -- I don't -- I didn't count, but yeah --

7 Q Yeah.

8 A -- there's a small group of people.

9 Q And so when you get out of the car to assist your fellow
10 officer and spouse, what is it exactly that you do? Where is it
11 that you go?

12 A So I go to the driver's seat and I notice that, well not
13 the driver's seat, the driver's door, which was open. And there
14 wasn't really enough room for me to -- to get involved, but I
15 try -- I try my best to see if I can assist. I notice that
16 there was, like, food or chicken McNuggets or something in his
17 lap and in his face. But as I -- as I was doing that, Officer,
18 I believe, Griffin showed up. And he was a uniformed officer
19 which is much better than two non-uniformed officers. So I let
20 him help Officer Gordon.

21 Q And what is it that you do?

22 A So I basically stand aside, but I notice that the gentleman
23 looked like he was fighting to get to the steering wheel,
24 possibly to drive the vehicle. The officers continued to, you
25 know, struggle with him and I also notice that he starts

1 reaching for -- there was a backpack on the seat next to him.
2 And he starts reaching for this backpack and then they pull him,
3 I can hear Officer Griffin saying stop, stop reaching for the
4 backpack, stop reaching for the backpack. So between him
5 reaching for the backpack and him reaching for the control of
6 the vehicle, you know, I -- I was alarmed that there was a
7 safety issue that was going on at this point. So I -- I go over
8 to the passenger's side, I try to open the passenger door, which
9 was locked.

10 Q Okay. And -- and the Big Y parking lot as -- as you
11 indicated earlier in your testimony its shared by several
12 businesses. I mean, how busy was it on a Friday night around
13 5:30 p.m.?

14 A Oh there -- it was very busy. There was cars everywhere.
15 Now there's -- the crowd is growing a little bit because there's
16 action and police cars coming in and -- and my car has it's blue
17 lights on too which is attracting attention. So people are
18 coming over to watch.

19 Q All right. And -- and so you go to the passenger side
20 door and you indicate that its locked, what is it that happens?

21 A I ask one of the officers, and I can't remember off the top
22 of my head, but I believe it was Officer Gordon to unlock the
23 door so I could get over to that backpack so maybe that would
24 stop the fight if I grab the backpack out of his reach.
25 Although he was still trying to fight for the -- the steering

1 wheel as well. But I was able to unlock the door. I reached
2 in, I grabbed the backpack away from the area.

3 Q What measures, if any, are the officers doing to try and
4 deescalate the situation?

5 A Well they're talking to him and they're trying to explain
6 because its -- they're trying to explain to him who they are, I
7 -- I believe so. You know, trying to calm him down. Like,
8 we're here to help you, we're here to help you.

9 Q All right. Because at this point you're not aware of any
10 criminal wrong doing; is that fair to say?

11 A Absolutely not.

12 Q All right. So you -- you -- this door eventually is
13 opened; is that right?

14 A Correct.

15 Q And how's that happen?

16 A I -- I ask him to unlock it. I was able to open the door.

17 Q Okay. You open the door --

18 THE COURT: Wait, just back up there. Repeat what you just
19 said. You asked him to unlock it? Him being?

20 THE WITNESS: I'm sorry. If I said him, her. Officer
21 Gordon.

22 THE COURT: Okay. Thank you.

23 THE WITNESS: I said that earlier.

24 THE COURT: Just if you can just either -- why don't you
25 just repeat your answer.

1 THE WITNESS: Okay.

2 BY MR. THOMAS:

3 A So I attempted to unlock -- I attempted to open the door,
4 the door was locked. I asked officer, I believe it was Officer
5 Gordon, to unlock the door which was a power lock on her side.
6 So I was able to get into that door. So I was able, she
7 unlocked it, and I was able to open the door.

8 Q Okay. So you didn't ask your spouse to reach across this
9 --

10 A No.

11 Q -- (inaudible at 2:48:15, low audio) defendant.

12 A No, no, it was a power lock.

13 Q Power lock. And so she unlocks the door and you're able to
14 open the passenger's side door.

15 A Correct.

16 Q All right. And upon doing so, what is it that you do?

17 A I secure the backpack.

18 Q All right. And again, grabbing his backpack what did you -
19 - what did you do with it?

20 A Well, I assumed the backpack was going to be going to him
21 with the hospital, whenever he was going. And -- and the fact
22 that he kept on trying to grab the backpack I was afraid that
23 there would be weapons in the backpack or maybe his ID was in
24 the backpack, because we really didn't know who he was. So --
25 but I ended up opening the backpack and then reaching in and I

1 found several smaller bags with hard objects in them. And I
2 didn't know what those hard objects were, could've been a
3 wallet, could've been anything. I don't know what they were so
4 I was able to open the bag and I noticed that there was bundles
5 of heroin packets and I was able to tell they were heroin
6 packets from my training and experience. I've seen them plenty
7 of times. So I put those on the -- on the roof right next to
8 me, but I wasn't really there to look for heroin packets, I was
9 trying to find some ID or weapons or whatnot, so I just kind of
10 ignored the si -- ignored that for that moment, kept on going
11 into the backpack, and at the bottom of the backpack I found a
12 -- a large amount of cash, a knife and then a pistol right next
13 to it and it was laying on the bottom of the backpack.

14 Q Okay. And so earlier your testimony you described officers
15 trying to deescalate by talking to the defendant, trying to calm
16 him down. What if anything do you remember the defendant saying
17 back to them? If anything.

18 A I really wasn't paying attention to that conversation so I
19 -- I don't really have a good recollection of --

20 Q All right.

21 A -- the conversations that they were having.

22 Q And then so when you opened the backpack, you weren't
23 looking for heroin or any other criminal contraband; is that
24 fair to say?

25 A Absolutely not. Matter of fact, if I thought there was any

1 type of criminal contraband, as a Deputy Chief it would not have
2 been me to open the backpack. I would have handed the backpack
3 to somebody else, a patrol officer. That -- that's their
4 specialty.

5 Q And from the moment you opened the backpack and see what
6 you believe to be the heroin, how much time has passed from you
7 receiving the call with your -- with your spouse, Officer Laura
8 Gordon, to this moment?

9 A Well time distorts when you're in a critical incident like
10 that, so I'm not positive. But we're probably in like, the
11 ambulance hasn't even arrived yet so we're within minutes.

12 Q All right. And this is still, as far as the Greenfield
13 Police Department is concerned, a medical emergency. An
14 ambulance is on its way.

15 A Absolutely.

16 Q All right. So you find these things and you recognize the
17 -- the heroin as being problematic to say the least, the handgun
18 is also an issue. What is it that you do now?

19 A I then -- no my assumption is he was reaching for the
20 backpack to get that weapon. So I immediately tell the
21 officers, I secure that -- that -- that -- the person with
22 handcuffs. As -- because between him trying to reach for the
23 dri -- the controls of the vehicle, the backpack that had the
24 gun in it, I had not doubt in my mind he was trying to injure
25 somebody. So I asked them to handcuff the subject.

1 Q Okay. And that was done?

2 A That was done.

3 Q And do you remember whether or not the car was running?

4 A I -- I can't remember off the top of my head. But there
5 was -- I definitely had a concern of the vehicle moving so, I'm
6 not --

7 Q And so once he was handcuffed do you or strike that.

8 Do you remember which officer handcuffed him?

9 A I -- my assumption would be Officer Griffin. He had his
10 equipment and -- and Officer Gordon did not have her equipment.

11 Q All right. And as you find -- as you were finding the --
12 the heroin and firearm in the backpack, how many officers were
13 on scene besides you, Officer Gordon and Officer Griffin?

14 A I believe one, if off the top -- one or two more officers
15 showed up.

16 Q All right. So once you find the weapon you have these
17 other safety concerns that obviously come into play. He's hand
18 -- handcuffed. What happens next?

19 A At that point there was enough officers, on duty officers
20 that were there. I handed the -- the stuff that I found to one
21 of the officers and Laura was able to disengage because he was
22 handcuffed. And we han -- let the situation go to uniformed
23 officers.

24 Q All right.

25 MR. THOMAS: If I could have a moment, Your Honor?

1 THE COURT: Take all the time you need.

2 MR. THOMAS: Those are the questions the Commonwealth has
3 for this witness, Your Honor.

4 THE COURT: Very well. Cross-examination?

5 MR. MASS: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. MASS:**

8 Q Greenfield Fire Department was called to the scene?

9 A Yes.

10 Q And that was for medical treatment?

11 A Yes.

12 Q Did you interact with Greenfield Fire Department during
13 this interaction?

14 A At the very end of the call, one of our officers who is a
15 drug recognition officer, I believe it was Officer Griffin,
16 recognized this is to not be a medical situation and I told one
17 of the firefighters, I believe it was Bill Taylor, but I'm not
18 positive, that they weren't needed because it was not a medical
19 situation according to our drug recognition ex -- expert.

20 Q And that was the only interaction between any of the
21 Greenfield Officers and the Fire Department?

22 A I can't speak for anybody else, because we left the scene
23 as we were off duty, but that's all I know of.

24 Q Till -- till the point you left, there was no -- there was
25 no other interaction with the Fire Department?

1 A I believe so. Correct.

2 Q Okay. And so the Fire Department did not ask you to look
3 for information?

4 A No.

5 Q Okay. I just want to clarify how many officers were on the
6 scene. You and Officer Gordon arrived in plain clothes?

7 A Correct.

8 Q Then Officer Griffin and another officer arrived -- arrived
9 in uniform; correct?

10 A Yes.

11 Q Were other officers arriving after Officer Griffin and his
12 -- whoever responded with him?

13 A Honestly, I'm paying attention -- I'm more tunnel vision.
14 I'm paying attention to right in front of my face so I'm not
15 counting officers. I don't know who arrived as I -- as we were
16 leaving.

17 Q Okay.

18 A I'm just -- what -- what's in my face is what I'm seeing.

19 Q Appreciate that. You said when you were looking in -- when
20 you took the backpack out, you had no concern for criminal
21 wrongdoing at all at that point?

22 A Didn't even -- nope. Didn't even cross my mind.

23 Q Okay. And you assumed the backpack would go with him to
24 the hospital. What made you assume the backpack would go with
25 him to the hospital?

1 A Because what we do when we have situations like that is we
2 often gather important things that the hospital may need.
3 Important -- and he seemed that he was very intent on getting
4 something out of his backpack. That that backpack was important
5 to him. So it was something that we would probably have taken
6 and put it between his legs on the cot as they were being
7 transported to the hospital. We do it often.

8 Q But you're not required to do that?

9 A No, no we're not required to do that.

10 Q You could've left it in the car?

11 A We could've left it in the car.

12 Q The car was parked?

13 A Car was parked.

14 Q The key was not in the ignition?

15 A I can't remember that off the top of my head.

16 Q Would you have put it in the report if you did, if the key
17 was in the ignition?

18 A I wasn't at the drivers area for more than a couple
19 seconds. It was not my focus of attention.

20 Q But your wife was there; right?

21 A Yes, she is.

22 Q And she's a fellow officer?

23 A Yes.

24 Q And you talked to her about this incident?

25 A Not before I typed the report.

1 Q Not before you typed the report. Okay. Did she write a
2 report in this incident?

3 A I don't believe so. After reviewing the report, I didn't
4 see it.

5 Q Do you know why the person who was interacting with him
6 didn't write a report in this incident?

7 A I -- I don't know.

8 Q So did you prepare for today?

9 A I read my report.

10 Q You did. Did you read the report of your fellow officers?

11 A No, not really. I know that I have their reports in the
12 packet, but I was more --

13 Q But you didn't read it.

14 A No.

15 Q To your recollect -- to your recollection, did anyone
16 indicate that there was a key in the ignition at any point?

17 A I -- I didn't read their reports and I didn't ask. So I
18 don't -- I'm not positive.

19 Q You've never read the report?

20 A I probably read the report when it was first written back
21 two year -- well, a year or so ago, but I don't have any
22 recollection of that.

23 Q You recently read your report in preparation?

24 A Correct.

25 Q You didn't write in your report that the key was in the

1 ignition?

2 A I could -- I have my report, I can scan it if you wish. I
3 don't recall doing --

4 Q if that would help you recall, if the Judge has no
5 objection I -- I have no problem with you --

6 THE COURT: Feel free.

7 Q -- reading the report.

8 A Should have brought my glasses, I'm sorry. I -- I don't
9 notice any. Sorry. I didn't -- I didn't see anything in my
10 report talking about a key in the ignition.

11 Q Nothing about the lights being on in the vehicle? Of his
12 vehicle?

13 A Correct.

14 Q And nothing about him being parked in an inappropriate
15 parking spot?

16 A I don't think he was parked in an inappropriate parking
17 spot if that's --

18 Q It was a lawful parking spot?

19 A It was a lawful parking spot.

20 Q And there was -- and you weren't asked to tow the vehicle?

21 A I did -- what did you say?

22 Q You weren't asked by -- by anyone to tow the vehicle?

23 A Not at that point, no.

24 Q In fact, the vehicle was not towed?

25 A I don't know. We left.

1 Q The -- no one -- the gears were not in -- in place;
2 correct? It was in park; the vehicle was in park.

3 A I didn't check to see if it was in park, but it wasn't
4 rolling. So, one could assume.

5 Q To your knowledge, Mr. Page was never charged with
6 operating a vehicle under the influence; correct?

7 A Yeah, I believe so. Correct.

8 Q Okay. But you did determine he was under the influence?

9 A I didn't determine that at all.

10 Q Okay -- okay. Other officers tell you that he was under
11 the influence?

12 A I don't think we had that discussion. We were taking about
13 a medical -- a medical issue and they told me --

14 Q Did you ask?

15 A -- it wasn't a medical issue. It was more of an overdosing
16 without having a medical.

17 Q Some -- someone who's overdosing is under -- is impaired
18 for purpose of driving a vehicle; correct?

19 A One could assume.

20 Q Okay. And he was not charged with that crime.

21 A Correct.

22 Q So is it fair to say that the vehicle was not in operation?

23 A Yeah, that would be fair to say.

24 Q And when you -- did anyone ask you to look through the bag?

25 A No.

1 Q You did that all on your own?

2 A Correct.

3 Q No one asked you for Mr. Page's identification?

4 A No, I don't think so.

5 Q Okay. At the point that you took the bag out there were
6 two other uniformed officers on the scene; correct?

7 A I believe there was probably one closest to his car, but I
8 am, again I'm focused on the passenger compartment. I'm not
9 looking at the whole totality of the scene and -- and at the
10 door it was Officer Gordon and Officer Griffin.

11 Q Okay. But there was another officer on the scene?

12 A I believe one arrived later on.

13 Q Okay. You indicated that had you been looking for
14 narcotics, you would have handed the bag -- you would have had
15 someone else do that; correct? A uniformed officer.

16 A Yeah, yeah.

17 Q Okay. If you were looking for guns, why wouldn't you have
18 a uniformed officer do that?

19 A Well the -- first of all, the uniformed officer was busy.
20 And this was a -- a -- an emergency, because he was trying to
21 reach for the backpack. And again, we didn't know whether there
22 was information in the backpack that would have told us that he
23 had an overdose, so.

24 Q The -- is there a second uniformed officer who is present
25 other than the officer who is busy?

1 A Again, I was focused on what was right in front of me so I
2 believe later on at some point another officer arrived, but I
3 don't know exactly when that happened.

4 Q So then they weren't there at the same time?

5 A No. They didn't arrive at -- they had different cars, so.

6 Q And when you got the backpack out of the vehicle, at that
7 point, at the same time, Officer Gri -- Griffin and Officer
8 Gordon were getting Mr. Page out of the vehicle; correct? In
9 the opposite direction.

10 A Yeah, I believe so.

11 Q So --

12 A They were managing him whether, I'm not -- I think they
13 were still fighting with him while he was sitting in the seat,
14 but at that point with all of the actions and trying to get to
15 the steering column and -- and they tried -- they were trying to
16 pull him out.

17 Q -- And they got him into a standing position?

18 A At some point they did.

19 Q And he was -- they were -- he was at that point cooperating
20 with them?

21 A I don't think so.

22 Q You don't think so. Okay. And -- but he was out of the
23 vehicle before you searched the bag?

24 A No. He was still in the driver's seat.

25 Q He -- okay. How long after -- so, when you found the

1 narcotics and the drugs, you asked Officer Griffin to cuff Mr.
2 Page; right?

3 A Correct.

4 Q And he was able to do that because Mr. Page was already
5 standing; correct?

6 A I -- I -- there were more or less, and I don't want to use
7 the word fighting, but struggling at the door and on the seat.
8 And I think once I said that we had a gun involved, they weren't
9 necessarily anymore going to allow him to be in the vehicle and
10 that's when they pulled him out of the vehicle.

11 Q They pulled him out of the vehicle?

12 A Well, yeah. Assisted. Pulled.

13 Q He didn't stand up.

14 A I don't believe so. I -- but again, at that point I'm
15 paying attention to the backpack and what's -- what's right in
16 front of me. So I'm not studying what they're doing.

17 Q Okay. Was the backpack doing anything?

18 A The --

19 Q Was there any movement from the backpack itself?

20 A No. No.

21 Q Was there any ticking?

22 A No.

23 Q Any noise of any kind coming from the backpack?

24 A Nope.

25 Q Did you close the door to the car after you took out the

1 backpack?

2 A I doubt that I did. I don't recall on the top of my head,
3 but my intention was to have the backpack go with him, but at
4 that point I believe he was still in the vehicle so I don't
5 think I would've closed the door. I think I would've let the
6 door open, but I'm not positive on that.

7 Q Well if you had a --

8 A I'm --

9 Q -- when you took narcotics out of the -- out of the bag,
10 where did you place them?

11 A I believe I put them on the roof which would be standard
12 for where we put things so we can see them.

13 Q And was the door open at that time?

14 A I can't recall.

15 Q It's possible you might've closed the door?

16 A It's possible.

17 Q And certainly that would've made you more secure; right?
18 It would've been a separation between Mr. Page and the bag you
19 were concerned about.

20 A Yes.

21 Q It makes sense that you would've closed the door; right?

22 A Not necessarily because if they still needed struggling I
23 needed to get back into the vehicle. It's not the first thing
24 that we do to close doors.

25 Q You thought that you would be able to -- if there was a

1 struggle, and there were two officers who were handling him
2 immediately at his presence, that you would be able to crawl
3 through and affect some sort of interact -- inter --
4 interdiction of that struggle?

5 A Well, please understand that he was struggling to get the
6 backpack. He was struggling to do -- to get to the -- the
7 controls of the vehicle. He could've just as easily struggled
8 to get away from the officers through the passengers seat. So
9 it was -- it --

10 Q So wouldn't closing the door prevent him from doing that?

11 A It probably would've.

12 Q When you say struggle, what exactly was he doing?

13 A He was pulling away from them. I mean, you should probably
14 talk to them about exactly --

15 Q Well, just about your observations. That's all I'm asking.

16 A Yeah. He -- he was, again, like I said, he was trying to
17 get to the controls of the vehicle. I believe he was trying to
18 drive away. He was trying to get to this backpack. We had no
19 idea why he -- why he was trying to get to the backpack. The
20 officers kept on saying don't -- don't reach for the backpack.
21 Then he would reach again for the backpack.

22 Q Let -- let's break those things down. Did -- did he have
23 keys in his hand?

24 A I -- I don't recall about the keys.

25 Q What made you think he was trying to operate the vehicle?

1 A Well, I do remember him going for -- was he trying for the
2 gear shift? He was -- he was trying for the gear shift, but I
3 don't remember if it was down here or up here.

4 Q Was --

5 A But that's what we made -- that's what made us concerned he
6 was trying to drive away.

7 Q Wasn't your testimony before the Grand Jury that he reached
8 for the steering wheel?

9 A Yeah, the steering wheel, the gear shifter, the bag --
10 there was -- there was a very active scene here.

11 Q But in the Grand Jury, you testified that he reached for
12 the steering wheel?

13 A Okay.

14 MR. THOMAS: Objection, Your Honor. It's been asked and
15 answered.

16 THE COURT: Sustained. Let's move forward.

17 BY MR. MASS:

18 Q Was that the limit of your testimony to the Grand Jury that
19 he reached for the steering wheel?

20 A I don't remember everything I said in the Grand Jury.

21 Q Would reviewing the Grand Jury minutes refresh your
22 recollection?

23 MR. THOMAS: An objection, Your Honor. There's no
24 indication that his memory's exhausted. It's a questionable, I
25 mean, obviously it's --

1 THE COURT: Let's just move this forward. You can show it
2 to him. I'm questioning the relevance. So you can show it to
3 him, but I do want to move this forward; okay?

4 MR. MASS: Yes, Your Honor. I want to get to the exact
5 page to try to expedite, Your Honor. I'll come back to it if I
6 need to, Your Honor. I'll move on.

7 THE COURT: Okay. Thank you.

8 BY MR. MASS:

9 Q You've responded -- have you ever responded to a scene
10 where other plain duty officers were on the scene before you
11 when you were in a uniform?

12 A Yes.

13 Q And at what point did you take control of the scene?

14 A Well I have been a supervisor for the Greenfield Police
15 Department since 2000 -- since 2000, so twenty-two years now and
16 often when I arrive at the scene I'm the person that's taking
17 control of the scene, so.

18 Q In fact --

19 A I don't know how many times in the twenty years, but often.

20 Q You have a policy, the Greenfield Police Department has a
21 police about off duty officers activating themselves?

22 A Right.

23 Q And that policy indicates that when officers who are in --
24 who are uniformed come to the scene they -- they take control of
25 the scene?

1 A Yes.

2 Q And no officer asked you to get that backpack out?

3 A No.

4 Q And no one asked you to search it?

5 A No.

6 Q And there were other officers on the scene?

7 A I'm sorry?

8 Q There were other officers on the scene.

9 A Well at that point it was Griffin who was in the middle of
10 fighting with the suspect, or struggling with the suspect.

11 Q And he didn't ask for any help?

12 A I don't think he had the opportunity to.

13 Q Okay.

14 THE COURT: Attorney Mass, can you repeat your question as
15 to the Greenfield Police Department has a policy regarding off
16 duty officers to?

17 MR. MASS: Responding to -- respond --

18 THE COURT: Right.

19 MR. MASS: -- responding, activating -- self-activating
20 themselves, Your Honor.

21 THE COURT: Okay. Maybe you can follow-up on that on re-
22 direct; okay? Go ahead.

23 BY MR. MASS:

24 Q Everyone who uses heroin is not overdosing; correct?

25 A Can you say that one more time? I'm sorry.

1 Q Is it fair to say that everyone who uses heroin is not
2 necessarily overdosing?

3 A Well that's -- there's a debate there. How much, you know,
4 if its prescribed by a doctor, if it's not prescribed by a
5 doctor, but.

6 Q Do you transport every person who you come into contact
7 with who has used heroin to the hospital?

8 A No.

9 Q And it is possible for someone to use heroin and have no
10 medical incident?

11 A Correct.

12 Q Officer Gordon actually touched Mr. Page's chest when she
13 first made contact with him, were you able to see that yourself?

14 A No. When she first made contact I was twenty some odd feet
15 away and radioing it in.

16 Q But you were --

17 A I -- I noticed his face was ashen, but I couldn't see
18 behind the door.

19 Q But you wrote in your report that she touched his chest and
20 he awoke when she touched his chest; correct?

21 A Can I review my report?

22 Q You may.

23 A Okay. So --

24 Q Just, did you write that in your report? That's my
25 question.

1 A I did not write it that way.

2 Q What -- you -- okay. You didn't write, "But she rubbed his
3 chest and woke him up and it appeared he was still out of it."

4 A Right. So the way you described it, is she touched the
5 chest like this -- that's not the rub. The rub would be a -- a
6 sternum rub.

7 Q Okay.

8 A And that's in order to wake up somebody that is not
9 responsive.

10 Q But you didn't see that?

11 A I'm not sure if I -- I can't recall it at the time, but
12 apparently when I wrote the report I remembered that part. But
13 I don't recall it --

14 Q Is it poss --

15 A -- at this moment.

16 Q -- is it possible that you talked to your wife before you
17 wrote your report?

18 A Well I most likely talked to my wife before I write the
19 report, but -- does it say when I wrote it? No. I mean we went
20 grocery shopping. I probably wrote it when we got home, so.

21 Q It's different than your prior testimony that says you
22 didn't talk to her.

23 A I didn't talk to her about how to write the report.

24 Q But you did talk to her about what happened.

25 A I -- I'm sure we did.

1 Q Okay. And you didn't perform CPR; right?

2 A No.

3 Q In fact, no one performed CPR.

4 A Correct. Not when I were there, but I don't think before
5 either.

6 Q Well you would -- Officer Griffin made a determination that
7 there was no medical emergency --

8 A Corr --

9 Q -- at some point; right?

10 A -- correct.

11 Q And the emergency medical personnel were sent away?

12 A Right.

13 Q And you didn't observe any police officer's rendering any
14 medical treatment; correct?

15 A Well, it depends on what you're talking about medical
16 treatment. But, you know, rubbing a chest would be medical
17 treatment. Waking somebody up would be medical treatment.

18 Q Waking someone up is medical treatment?

19 THE COURT: Let's move forward.

20 MR. MASS: I -- I will, Your Honor.

21 BY MR. MASS:

22 Q Did -- beyond waking someone up and performing the sternum
23 rub, did you see any medical treatment being provided?

24 A Yeah, I mean the whole situation was a medical situation.

25 Q But what treatment was provided?

1 A Trying to prevent somebody that was -- that appeared to be
2 unresponsive, waking them up would be considered medical
3 treatment. Apparently -- rubbing -- the sternum rub would be a
4 medical treatment. Trying to say hey, hey, are you okay? Is
5 medical treatment. Those are all, you know, trying to prevent
6 somebody from harming themselves is a medical treatment.

7 Q How did you try to prevent someone from harming themselves?

8 A I didn't, the other officers did.

9 Q How did they do that?

10 A They were trying to prevent him from driving a vehicle.
11 They -- they must've made a determination that he was -- he was
12 not -- he was -- somehow shouldn't be driving a vehicle or dia
13 -- somebody with diabetic, somebody with a -- I've seen somebody
14 it was just Irving, two months ago, that I had a situation
15 somebody had a seizure and they drove off the road. They look
16 the ashen white. They had the same exact type of symptoms that
17 he was having, so.

18 Q So stopping him from driving the vehicle was medical
19 treatment. What other medical treatment did he -- did they
20 perform?

21 A They were trying to hold him from harm -- from harming
22 himself. They -- he was trying to lock the door and he's -- I
23 -- I don't want to talk for those officers. I mean, those
24 officers should be able to testify for themselves, but --

25 Q I --

1 A -- I saw medical treatment happening.

2 Q So your belief is trying to prevent him from locking the
3 doors is medical treatment?

4 A The totality of the circumstances.

5 Q Okay. What other medical treatment did you see?

6 A Them trying to get his attention. You know, hey, look over
7 here? Why are you, you know, come -- come look -- look over
8 here. Calm down. All of that type of stuff. It's all part of
9 somebody that is not fulling responsive.

10 Q At the end of the day, he wasn't --

11 A The ashen white.

12 Q -- he wasn't taken to the hospital?

13 A No.

14 Q He was -- he was cuffed.

15 A Uh-huh.

16 Q He was taken to the station.

17 A Uh-huh.

18 THE COURT: I'm sorry.

19 Q Medical --

20 THE COURT: You need to answer yes.

21 THE WITNESS: Correct, I'm sorry. Yes. I'm sorry.

22 THE COURT: Okay.

23 BY MR. MASS:

24 Q Was he provided any medical treatment at the station?

25 A I wasn't at the station.

1 Q Okay. To your knowledge was he provided any?

2 A I -- I wasn't there, so.

3 Q You were the Deputy Chief at that time?

4 A Correct.

5 Q You're in charge of all of the officers within the
6 department?

7 A Correct.

8 Q You review what's going on in the department?

9 A Correct.

10 Q This was a case that you were personally involved in?

11 A Yes.

12 Q On your off time?

13 A Yes.

14 Q You didn't inquire of the officers of what happened later?

15 MR. THOMAS: Your Honor, I have an objection. That's a
16 different question. He was asking --

17 THE COURT: Objection sustained.

18 BY MR. MASS:

19 Q Did you inquire of the officers what happened later?

20 A I -- I'm sure I asked the next day what happened.

21 Q And did anyone indicate to you that medical treatment had
22 been provided?

23 A I don't --

24 MR. THOMAS: Objection, Your Honor, as to the relevance.

25 THE COURT: Let's move forward on this issue; okay?

1 MR. MASS: Your Honor, the Commonwealth's -- the
2 Commonwealth's entire -- the entirety is that the Police
3 Department was acting in their community care taking --

4 THE COURT: I understand that.

5 MR. MASS: -- function.

6 THE COURT: And he's testified as to what he believes was
7 medical treatment.

8 MR. MASS: Okay.

9 THE COURT: Whether or not I --

10 MR. MASS: I understand.

11 THE COURT: -- agree with that is up to me.

12 MR. MASS: I understand, Your Honor. I'll move on.

13 THE COURT: And I think we've heard enough testimony as to
14 what was done.

15 MR. MASS: I have no further questions of this officer at
16 this time.

17 THE COURT: Okay. Re-direct.

18 MR. THOMAS: Thank you, Your Honor.

19 **FURTHER DIRECT EXAMINATION**

20 **BY MR. THOMAS:**

21 Q So, let's circle back on -- on the policy on, I believe the
22 phrase was an off duty officer self-activating.

23 A Okay.

24 Q All right. Describe those -- describe that policy for us?

25 A Well I'm not going to be perfect on it, because the

1 policy's not in front of me, but base -- the basic sense of it
2 is if there's a -- a crime that's being committed or if there's
3 a medical emergency, that you're a police officer twenty-four
4 hours a day and that you should try to intervene as much as you
5 can to a safety sake. For example if there's a bank robbery,
6 you're not necessarily going to tackle the person if you don't
7 have your weapons or whatnot. But if there's a medical
8 emergency, you're expected to act in the capacity of a police
9 officer. However, because you don't have all of the tools that
10 you have, and you're not being compensated, once the officers
11 arrive on the scene that have all the tools, they then would
12 take over the -- the treatment of that case. However, you -- it
13 doesn't absolve you from being able to completely put your hands
14 up and walk away if the scene isn't secure. And at this -- this
15 situation the scene wasn't secure during the -- the course of
16 all of the situation that happened inside the car so we were
17 still activating assisting a police officer. Not unlike if I
18 was to drive down 91 and there's a uniformed officer fighting
19 with somebody, a state trooper, I would pull to the car -- my
20 car to the side of the road and assist that officer, even though
21 I was off duty, but he was still available.

22 Q Okay. And so during the course of your career you've had
23 other moments where you've been off duty, but you've had to step
24 up?

25 A Correct.

1 Q And the other episodes where you've had to step up have
2 included what you believe is criminal activity or medical
3 episodes?

4 A Correct. Matter of fact, that's why I have a -- a cruiser
5 that I can use in my personal time, because in my position, I'm
6 totally, like, basically I'm a salaried employee. I'm working
7 twenty-four hours a day and when I'm off duty, meaning not in my
8 uniform, I'm still responsible for the city of Greenfield.

9 Q Okay. And so -- and so, when there was a report of a
10 person being unconscious in the Big Y parking lot, you didn't
11 know which of these two scenarios was going to play out?

12 A Which of the two what?

13 Q A criminal activity, a criminal investigation or a medical
14 episode without a criminal aspect?

15 A My -- my assumption that there was a medical problem. I
16 mean, we got a call of a medical problem. There was no sense of
17 a criminal issue whatsoever.

18 Q And that assumption that it was a medical episode did not
19 change when you opened the backpack or as you were opening the
20 backpack?

21 A Correct.

22 Q And it -- it didn't change until after the -- after what?
23 He's fire -- you discovered the firearm?

24 A No, even at the discovery of the firearm it was my
25 assumption we were still dealing with a medical episode. It

1 wasn't until later on when the scene -- we were able to secure
2 the person and -- and the -- Officer Griffin, which is a drug
3 recognition expert, I'm not. So I -- I rely on his expertise to
4 say that, no, this was somebody that was just using heroin and
5 not necessarily somebody that was having a medical emergency
6 over heroin.

7 Q Because also you described, this was an active scene?

8 A Yes.

9 Q This -- you removing the backpack from the car's while this
10 person is struggling with your spouse, struggling to get to the
11 controls of the car, struggling to get to the backpack. There's
12 a lot going on in a short amount of time; --

13 A Right.

14 Q -- is that fair to say?

15 A Correct.

16 Q And so you're opening the backpack was for a couple
17 reasons. One is for the safety of everybody involved. And
18 secondly to try and get some sense of what's happening?

19 A Correct.

20 Q And it's not until later when you begin speaking with
21 Officer Griffin that this overdose issue comes to the forefront?

22 A Well, I -- I think there was some conversation about it
23 possibly could be an overdose. Just like it could possibly be
24 diabetic or a seizure or whatever. I mean, the conversations
25 were had. Not really con -- I wouldn't say conversations, but

1 things were mentioned, but it wasn't until somebody that -- that
2 was trained in recognition of somebody that was having the use
3 of drugs made that determination.

4 Q All right.

5 MR. THOMAS: Those are the questions the Commonwealth has.
6 Thank you, Your Honor.

7 THE COURT: Re-cross?

8 MR. MASS: No re-cross at this time, Your Honor.

9 THE COURT: Okay. Very well. You're excused. Thank you,
10 sir.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: Yeah, okay.

14 THE WITNESS: Am I excused for the day or do you want me to
15 stay?

16 THE COURT: No, you're excused for the day, because we're
17 about ready to suspend actually. So -- all right. Very well.
18 We have nine minutes. I think rather than dive in to the other
19 Officer Gordan's testimony, let's suspend. I am trying to
20 ascertain my availability. Next week is tied up in the middle
21 of a jury trial. And the week thereafter I have a jury waived
22 trial at least on the 17th and 18th, 16th is a holiday. And
23 that's in Springfield. I'm trying to ascertain whether or not
24 that will go through till Thursday. So, why don't we do this,
25 because you need to confer with your witnesses to determine

1 their availability. Please speak with Mr. Simanski, perhaps on
2 Monday to schedule a date; okay? In the interim, let me just
3 ask -- unedited, how long is the DVD?

4 MR. THOMAS: It's -- there's no easy answers, Your Honor,
5 but there's a couple different feeds. There's when he's booked,
6 when he's initially brought to the station. That's relatively
7 brief. But then later on when he's brought to the Franklin
8 County House of Corrections, he's mirandized two more times.

9 THE COURT: Okay. I got you. Okay. All right. So let's
10 just -- we'll just leave it out there --

11 MR. MASS: Your Honor, we'll stipulate to all of those
12 Mirandas.

13 THE COURT: Okay. Well, I'm going to leave it at, because
14 I know there are other issues as to exactly what the scope of
15 the Miranda issue is and so once you figure out what's at issue,
16 I'll just have to take a look at the DVD either during the next
17 hearing if it's relatively short or after that hearing. I won't
18 do it before.

19 MR. THOMAS: What I expected to do, Your Honor, is have the
20 unedited version, the edited version just to make sure every --
21 and give -- sign post to Your Honor so that Your Honor knows
22 where to look. But also a comfort level as to the contrast.

23 THE COURT: Yeah, we'll -- we'll view it at the next
24 hearing.

25 MR. THOMAS: Yeah.

1 THE COURT: All right. So work with Mr. Simanski relative
2 to a date. The earliest would be, let's say around the 20th
3 which, Ben, it would be great if we could do some of these
4 things in the morning, presuming that we're not doing any
5 trials. Okay?

6 THE CLERK: Yeah.

7 THE COURT: So, okay. Just touch base with Mr. Simanski
8 and we'll take it all from there; okay?

9 MR. THOMAS: All right. Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 COURT OFFICER: Court, all rise.

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(Adjourned)

Volume I
Pages: 1-47
Exhibits: 1

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS *
Plaintiff *

v.

DOCKET NUMBER 2278CR00051

JUSTIN R. PAGE *
Defendant *

HEARING
BEFORE THE HONORABLE MARK D. MASON

APPEARANCES:

For the Plaintiff:

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Greenfield, Massachusetts
Courtroom 4
February 7, 2023

Recording produced by digital audio recording system. Transcript
produced by Approved Court Transcriber, Donna Dominguez

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Brent Griffin (By Mr. Thomas)	5		19	
(By Mr. Mass)		12		19
Brandon Lagoy (By Mr. Thomas)	21			
(By Mr. Mass)		32		
Argument By Mr. Mass, page 35 By Mr. Thomas, page 39				
Exhibit 1, Marked and Received into Evidence				

P R O C E E D I N G S

1
2 (Court called to order 2:19:04 p.m.)

3 Speaker B: Calling criminal indictment 2278CR051,
4 Commonwealth v. Justin Page. This matter is on for continuation
5 of motion to suppress.

6 THE COURT: Okay. Good afternoon, counsel.

7 MR. MASS: Good afternoon, Your Honor.

8 THE COURT: If you be so kind as just to identify
9 yourselves for the record.

10 MR. THOMAS: Good afternoon, Your Honor. Matthew Thomas
11 for the Commonwealth.

12 THE COURT: ADA Thomas.

13 MR. MASS: Isaac Mass for Mr. Page, Your Honor.

14 THE COURT: Attorney Mass and Mr. Page, good afternoon to
15 you all.

16 Okay, so I last saw you on January 6th when we heard
17 testimony from Deputy Chief Gordon. I did receive the
18 Commonwealth's attachment with a -- a video. Is there going to
19 be any objection to that?

20 MR. MASS: No objection, Your Honor.

21 THE COURT: Okay, that's great, because I did look at it
22 thinking there wouldn't be, just to save some time.

23 Okay, so the video, which is several videos, is on a flash
24 drive that will be entered into evidence as the next exhibit.

25 MR. THOMAS: Commonwealth so moves, Your Honor.

1 THE COURT: Okay, and where are we with exhibits on this?
2 Let me see what I have. Are there any exhibits?

3 THE CLERK: I do not believe so.

4 THE COURT: No, there aren't any. Okay, so Exhibit 1.

5 (WHEREUPON, Exhibit Number 1, was marked and received into
6 evidence.)

7 THE COURT: Okay. All right. ADA Thomas, do you have
8 another witness?

9 MR. THOMAS: We do, Your Honor. We -- and just to give
10 Your Honor a sense of where we're headed. We have two more
11 witnesses, one shorter than the other, in -- in time, I guess,
12 also physically shorter.

13 The Commonwealth would call Officer Brent Griffin.

14 THE COURT: Okay, first name?

15 MR. THOMAS: Brent.

16 THE COURT: Brent Griffin.

17 All right, Officer Griffin, please step forward.

18 **BRENT GRIFFIN, Sworn**

19 THE COURT: All right, please have a seat. Make yourself
20 comfortable, speaking in a loud and clear voice.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Whenever you're ready, ADA Thomas.

23 MR. THOMAS: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 **BY MR. THOMAS:**

1 Q Good afternoon.

2 A Good afternoon.

3 Q Can you please state your name and spell your last name?

4 A My name is Brent Griffin, G-R-I-F-F-I-N.

5 Q And are you employed, sir?

6 A Yes.

7 Q What is it you do?

8 A I'm a patrol officer for the city of Greenfield.

9 Q And what does that work entail?

10 A Essentially, being a -- a police officer working for the
11 community, whether it's serving warrants, responding to certain
12 medicals, or any -- answering any calls for service.

13 Q And how long have you been doing that?

14 A Approximately eight years.

15 Q So obviously you were working as a police officer in that
16 capacity on September 24th of 2021?

17 A Yes.

18 Q On that day, did you have occasion to go to the parking lot
19 associated with the Big Y?

20 A Yes.

21 Q In Greenfield?

22 A Yes.

23 Q What shift were you working that day?

24 A I believe 3:00 to 11:00.

25 Q All right, do you remember the approximate time you went to

1 the Big Y parking lot?

2 A We believe it was -- the call came in a little bit after my
3 shift had started. I don't know the approximate time.

4 Q All right, if I showed you your police report, would that
5 refresh your memory as to when the call came in?

6 A Yes.

7 Q When you went?

8 (Discussion off the record.)

9 MR. THOMAS: If I could part the witness, Your Honor?

10 THE COURT: Absolutely.

11 BY MR. THOMAS:

12 Q Do you recognize the document I'm showing you?

13 A Yes.

14 Q What do you recognize it to be?

15 A My narrative for the incident.

16 Q Okay. And the -- the time on the first line of that
17 narrative.

18 A At approximately 1724.

19 Q Okay, and could you translate that for us?

20 A 5:24 p.m.

21 Q All right, so you went at around 5:24 p.m. And what did
22 you arrive when you got there? Or excuse me. Strike that.

23 What did you see when you got there?

24 A My initial observation was at the time, Officer Laura
25 Gordon speaking with a gentleman in a car.

1 Q Okay, and what did you do upon arrival?

2 A Approached the vehicle.

3 Q What happened?

4 A An individual was not listening to the instructions that
5 were given by Officer Laura Gordon.

6 Q All right, and that individual, is he in the courtroom now?

7 A Yes, sir.

8 Q Can you point to him and identify him by something that
9 he's wearing?

10 A The gentleman wearing a gray suit and a blue button up with
11 a blue tie.

12 Q All right.

13 MR. THOMAS: Your Honor, may the record reflect the witness
14 has identified the defendant.

15 THE COURT: Record will so reflect.

16 BY MR. THOMAS:

17 Q All right, so -- so you arrive and you see Officer Gordon
18 dealing with the defendant. And -- and what is it that happens?

19 A The gentleman was trying to stand up and essentially walk
20 away.

21 Q Okay, what did -- and how did you react?

22 A I intervened.

23 Q How so?

24 A By, if I recall correctly, to have him sit down back in the
25 car so that we can assess the condition of the -- or the medical

1 state of the individual.

2 Q Okay, and --

3 THE COURT: By the individual, you mean the defendant?

4 THE WITNESS: Yes. Excuse me. My apologies.

5 THE COURT: Okay. All right.

6 THE WITNESS: I'll refer to him as the defendant.

7 BY MR. THOMAS:

8 Q All right. And when you say assess, why was that a
9 concern? What is it that you were assessing for?

10 A The call came in as an overdose. And typically, overdoses
11 reflect a medical emergency.

12 Q Okay. And how much time passed from the call coming in to
13 you getting there.

14 A I'm not 100% positive of --

15 Q Okay. But upon arrival, you see the defendant. And -- and
16 what work is it that you begin to do.

17 A To -- to -- to determine what medical attention is needed.
18 To my understanding, fire was already en route. I don't recall
19 if they got there before me or after.

20 Q All right, so what is it that happened? What is it that
21 you did to perform your duty?

22 A To make sure that he was okay.

23 Q All right. And what did you do?

24 A If I'm not mistaken, questioning him on if he had consumed
25 heroin.

1 Q Okay. And why did you ask him that?

2 A To get an idea of what kind of treatment is necessary or to
3 advise medical staff when they arrive.

4 Q And what if anything was he exhibiting physically that
5 prompted you to ask him about heroin specifically?

6 A Well, there are -- there are general indicators for
7 somebody that is under the influence of a narcotic, such as
8 slow, lethargic movements; droopy eyelids; constricted pupils;
9 et cetera.

10 Q Okay. And you've had training in regards to recognizing
11 those indicators?

12 A Yes.

13 Q All right. And what training have you received?

14 A I, at the time, held the title of a drug recognition expert
15 that goes through extensive training beyond what I learned in
16 the Academy.

17 Q All right, so you're one of the few drug recognition
18 experts employed by the Greenfield Police Department?

19 A At the time, yes.

20 Q Okay, and that required, as you describe, specialized
21 training and certification?

22 A Yes.

23 Q All right. And you were certified as a drug recognition
24 expert when you were doing the investigation in this case?

25 A Yes.

1 Q All right, so when you saw the physical -- I'm sorry, the
2 physical symptoms that you described, the general
3 characteristics of a person under the influence of narcotics,
4 what among those did you see evident on the defendant that day,
5 if any?

6 A His body, demeanor, his speech, the appearance of -- of
7 basically, we describe it as nodding off where the head would
8 droop and not really listening to instructions at the time that
9 were given by Officer Gordon.

10 Q So -- and how long did you interact with the defendant
11 prior to him being put in your cruiser?

12 A I don't recall the exact amount of time.

13 Q What were the circumstances that prompted you to put him in
14 your cruiser?

15 A The initial was for officer safety. He was making furtive
16 movements. He was reaching for a bag that was on the passenger
17 seat. He was instructed several times not to reach for the bag.
18 And at that point, for his safety, my safety, he was removed
19 from the vehicle and pat frisked for weapons.

20 Q All right. What, if anything, was found?

21 A I did not -- if I recall correctly, I did not find anything
22 on his person. However, Deputy Chief Gordon had located a
23 handgun in the backpack.

24 Q All right. Once the handgun was discovered, what is it
25 that you did with the defendant?

1 A Myself and Officer Cooley secured him in my fully marked
2 cruiser in handcuffs and in the -- the backseat where prisoners
3 are transported.

4 Q All right. And where did -- where did you take him?

5 A To the Greenfield Police Department.

6 Q All right. Why did you take him there?

7 A For booking purposes.

8 Q All right. You didn't take him to the hospital?

9 A No.

10 Q Why is that?

11 A Fire deemed it not to be a medical emergency.

12 Q All right. While you were transporting him from the Big Y
13 parking lot to the Greenfield Police Department, did he nod off
14 in a way that he -- you had seen earlier?

15 A Yes.

16 Q All right. And when he began nodding off, how did you
17 react?

18 A I immediately activated my emergency lights to get to the
19 Greenfield Police Department faster.

20 Q And why -- why did you do that?

21 A So that if it was necessary to -- to give medical aid, that
22 the appropriate people can be contacted, i.e. AMR that's right
23 across the street from us.

24 Q Okay. And upon arriving at the police station, the
25 gentleman was booked in accordance with procedure?

1 A Yes.

2 Q All right. And based on the work that -- that you had done
3 on scene and your training experience, did you arrive at an
4 opinion as to whether or not he was under the influence of
5 narcotics?

6 A Yes.

7 Q What opinion was that?

8 A That he was under the influence of a narcotic.

9 Q A specific narcotic?

10 A Heroin.

11 Q All right.

12 MR. THOMAS: The Commonwealth has no further questions of
13 this witness, Your Honor. Thank you.

14 THE COURT: Cross-examination for Officer Griffin.

15 MR. MASS: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. MASS:**

18 Q Officer Griffin, are you still a drug recognition expert?

19 A No, I let my certificate lapse.

20 Q To your knowledge, was Officer -- were either of the
21 Officer Gordons, either Deputy Chief Gordon or Officer Laura
22 Gordon, drug recognition experts?

23 A No.

24 Q Officer Cooley a drug recognition expert?

25 A No.

1 Q When you arrived, what role did Officer Cooley play?

2 A He arrived after I did. And if -- if I recall correctly,
3 his was -- his only role at the time was to secure the defendant
4 or to assist securing the defendant in my cruiser.

5 Q Okay. So you pull -- I'm correct that you pulled Mr. Page
6 out of -- out of his vehicle; correct?

7 A Yes.

8 Q And was Officer Cooley assisting you with that?

9 A I don't recall.

10 Q Okay. Did anyone assist you with that?

11 A I don't recall, if anybody, I believe it was Officer Laura
12 Gordon.

13 Q And when you asked Officer -- when you asked Mr. Page to
14 exit his vehicle, he was cooperative with you at that point;
15 right?

16 A Yes.

17 Q The -- you were called for a potential overdose?

18 A Yes.

19 Q You weren't called for a report of a crime of any kind?

20 A No.

21 Q Did Officer Gordon or officer -- or Deputy Chief Gordon
22 indicate you that there was any reason to believe that a crime
23 was being committed?

24 A Not to my knowledge, no.

25 Q And you don't -- it's possible that Greenfield Fire was on

1 the scene before you you said?

2 A Yes. I don't recall who -- who arrived first, myself or
3 fire.

4 Q Greenfield Fire determined there was no medical emergency;
5 correct?

6 A Correct.

7 Q And Greenfield -- and you made your own determination that
8 there was no medical emergency; correct?

9 A Correct.

10 Q In fact, one of -- you carry Narcan with you in your
11 cruiser?

12 A Yes.

13 Q What's Narcan used for?

14 A To reverse the effects of what a narcotic does, where it
15 causes people to go into respiratory failure.

16 Q Specifically heroin?

17 A Yes.

18 Q And you had suspicion that Mr. -- Mr. Page had used heroin?

19 A Yes.

20 Q In fact, he was nodding off from time to time?

21 A Yes.

22 Q Did you administer Narcan?

23 A No.

24 Q When he was nodding off in the cruiser, did you pull over?

25 A No.

1 Q So you didn't administer Narcan on the side of the road?

2 A No.

3 Q Did you stop at Bay State Franklin Medical Center?

4 A No.

5 Q What's closer from where you were, Bay State Franklin
6 Medical Center or the police department?

7 A The hospital.

8 Q Did you call ahead to AMR to have them available at the
9 police station when you arrived?

10 A I don't recall.

11 Q Was -- was AMR at the police station when you arrived?

12 A I don't recall.

13 Q Would it be in your report if it -- if they did or if you'd
14 called?

15 A I don't recall. It's not in my report. No.

16 Q It's not in your report. Okay. And it's the kind of thing
17 you would put in your report; right?

18 A Yes.

19 Q Okay. The -- when you got to the -- when you got to the
20 police station, did you render any medical care to Mr. Page?

21 A I don't believe I was part of the booking process. I don't
22 recall. I had to do some other paperwork.

23 Q Did you provide any medical care to Mr. Page?

24 A No.

25 Q When you got there, you were there; right?

1 A No. No, I didn't administer Narcan or -- or any of that
2 sort.

3 Q No mouth to mouth? No CPR?

4 A No.

5 Q No -- didn't provide any other medications?

6 A No.

7 Q Okay. To your knowledge, did anyone -- did you alert the
8 other -- other staff of a potential medical emergency?

9 A I believe they were aware of it.

10 Q How did they become aware?

11 A Through their interactions and being advised what he was
12 charged with and the contents that were located in his backpack.

13 Q But you didn't make any specific report to them that
14 there's a potential medical emergency that you observed on the
15 way from Big Y to the cruiser -- to the station?

16 A I don't recall what -- what information I passed along to -
17 -

18 Q That's something you would have reported if there was
19 indeed a medical emergency; correct?

20 A Yes.

21 Q And you would have put that in your report?

22 A It's -- it's a booking policy that we -- we inquire. We
23 ask if the defendant needs medical attention. It's standard
24 practice.

25 Q Okay. But did you make an independent determination that

1 he needed medical attention and convey that information to
2 anyone else?

3 MR. THOMAS: Your Honor, that's been asked and answered.

4 MR. MASS: I don't believe it has, Your Honor.

5 THE COURT: Overruled.

6 BY MR. MASS:

7 Q Do you want me to repeat the question?

8 A Yes, please.

9 Q Did you make an independent determination that Mr. Page
10 required medical treatment and convey that information to
11 another party?

12 A If there was a medical concern, I would have passed that on
13 to my fellow officers.

14 Q And did you have a medical concern?

15 A Yes.

16 Q Okay. And who did you convey that to?

17 A To the booking officers. I don't recall what was said or
18 who I said it to. I know that Officer Lagoy and Officer Limoges
19 were part of the booking process.

20 Q Did you -- did you -- did you observe them provide any
21 medical assistance?

22 A I wasn't in the booking room to my knowledge that I recall.

23 Q You didn't observe anything yourself?

24 A Excuse me?

25 Q You didn't observe them provide any medical assistance

1 yourself?

2 A Not at the time, no.

3 Q And did they give you any instructions about providing for
4 his medical care? They ask you to call the ambulance or -- or
5 take any action?

6 A No.

7 Q And you continued to have an interaction with Mr. Page
8 after -- after the fire department cleared the scene; correct?

9 A Yes.

10 Q In fact, that's when you had to ask Mr. Page to get out of
11 the vehicle?

12 A Yes.

13 Q And that was after there was a determination that there was
14 a non-medical emergency by the fire department?

15 A I -- I don't recall the --

16 MR. THOMAS: Objection.

17 A -- whether it was after or before fire cleared.

18 Q Where did the fire department make a determination about
19 Mr. Page's condition? Where was he when they were interacting
20 with him?

21 A I don't recall.

22 Q Were they interacting with him in the back of your cruiser?

23 A I don't believe so, no.

24 Q Okay. Were they interacting with him outside of his
25 vehicle after you had pulled him out of the vehicle?

1 A I don't recall.

2 Q So it's possible that they had their interaction with him
3 while he was still in his vehicle?

4 A Are you saying it's possible?

5 Q Yes. Is that possible?

6 A It is possible, yes.

7 Q And they spoke to you directly about there not being a
8 medical emergency?

9 A Yes.

10 MR. MASS: No further questions at this time, Your Honor.

11 THE COURT: Any redirect?

12 **FURTHER DIRECT EXAMINATION**

13 **BY MR. THOMAS:**

14 Q Under what circumstances do you administer Narcan to
15 someone that's in your custody?

16 A When they're unconscious, when they've nodded off, they're
17 not -- they're unresponsive to verbal commands.

18 Q And how did Mr. Page's condition contrast with that?

19 A He was responsive. He was able to answer questions. And
20 when I advised him to stay awake, he would.

21 Q All right.

22 MR. THOMAS: There's nothing further, Your Honor.

23 THE COURT: Anything further, Attorney Mass?

24 **FURTHER CROSS-EXAMINATION**

25 **BY MR. MASS:**

1 Q Based on not needing Narcan, what medical treatment did you
2 believe that Mr. Page needed?

3 A He was cleared by medical.

4 Q So you didn't believe he had a medical emergency yourself?

5 A My duty was to make sure that he was awake and he was.

6 Q Okay.

7 MR. MASS: Thank you.

8 THE COURT: Anything further, ADA Thomas?

9 MR. THOMAS: No, Your Honor. Thank you.

10 THE COURT: All right, you're excused. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 (Witness excused.)

13 THE COURT: You can call your next witness.

14 MR. THOMAS: Thank you, Your Honor. Commonwealth will call
15 Officer Brandon Lagoy. If I could just excuse myself to the
16 foyer for a moment, Your Honor, just to retrieve my laptop.

17 THE COURT: Sure.

18 Officer Lagoy, please step forward. We'll swear you in.

19 **WITNESS, Sworn**

20 THE COURT: Please make yourself comfortable. Speak in a
21 loud and clear voice.

22 Whenever you're ready, ADA Thomas.

23 MR. THOMAS: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 **BY MR. THOMAS:**

1 Q Good afternoon, sir.

2 A Afternoon.

3 Q Can you please state your name and spell your last name?

4 A It's Officer Brandon Lagoy, L-A-G-O-Y.

5 A And are you employed, sir?

6 A I am.

7 Q By whom?

8 A City of Greenfield.

9 Q And what is it that you do for them?

10 A I'm a police officer.

11 Q And how long have you been doing that?

12 A I've worked for the city of Greenfield for three years in
13 September.

14 Q So obviously, you were working for the city of Greenfield
15 as a police officer on September 24 of 2021.

16 A Yes, sir.

17 Q And on the evening of that day, what shift were you
18 working?

19 A Evening, 3:00 to 11:00.

20 Q Okay. And more particularly, where were you working?

21 A Uniform patrol.

22 Q Okay, and did any of your duties that evening involve the
23 booking procedure?

24 A It did.

25 Q Did you have occasion to book someone that's in the

1 courtroom now?

2 A I did.

3 Q Can you point to them and identify them by something that
4 they're wearing?

5 A A gray suit jacket with a dark blue tie.

6 MR. THOMAS: Your Honor, may the record reflect the witness
7 has identified Mr. Justin Page?

8 THE COURT: The record will so reflect.

9 BY MR. THOMAS:

10 Q All right, so when did you begin working with Mr. Page?

11 A I was asked to assist by the sergeant, the patrol sergeant,
12 that day, to assist with booking.

13 Q Okay, and when Mr. -- when you were booking Mr. Page, what
14 condition was he in?

15 A Initial encounter, unknown. Potential medical issue.
16 Believed to be under the influence of narcotics.

17 Q All right, did you know what narcotics he was under as he
18 was being booked?

19 A I was unaware initially, until, I believe, some statements
20 were made in booking.

21 Q All right, so to your memory, what was it that was asked
22 and said?

23 A Just questions along the line of what you had taken, how
24 much, to kind of get a -- a baseline as to where we were at
25 medically.

1 Q All right, so this idea of where you were at medically, why
2 was that important for you as the booking officer?

3 A Well, we just need to make sure if the person is in a
4 medical emergency, that we get them medical care. And if
5 there's narcotics being used, then, you know, heroin is so
6 common these days we carry Narcan right on our person for that
7 reason, specifically for ourselves and for anyone else.

8 Q All right, you're testifying with your duty belt on.

9 A Yes.

10 Q You have Narcan on you now?

11 A Yes, right here.

12 Q All right. And under what circumstances do you use it?

13 A On a weekly basis.

14 Q Okay. And what prompts you to use your -- you use your
15 Narcan weekly?

16 A Most likely, yeah.

17 Q And so what is it that -- that prompts you to use it?
18 Under what circumstances?

19 A We very frequently go to medical overdoses, and some of the
20 first questions that we ask when we get on scene, if the
21 person's unconscious, you know, obviously you're treating them
22 medically based on how their condition is. There's a few
23 indicators that are physical, snoring, things like that, agonal
24 breathing that we use to address it, and we're trained that
25 Narcan doesn't hurt to administer. So if you administer it and

1 wait a couple of minutes, try it again, and that's kind of how
2 we process overdoses.

3 Q And have there been circumstances in which you've had to
4 administer Narcan in the book, during the booking process?

5 A It's not as common, but typically the person is
6 administered Narcan, then brought to the hospital. So that's
7 kind of what I meant by where we were at, is either we need to
8 get them medical attention, or if the person's going to remain,
9 you know, upright, I should say, then -- then we're going to
10 continue with the booking process.

11 Q Okay. So is it fair to say that a person that comes to you
12 to be booked, a prisoner comes to you to be booked, or a person
13 in your custody, and they're on a continuum of, yes, they --
14 they're completely sober to their life is in peril to the
15 narcotics they may have ingested; is that right?

16 A Yes.

17 Q All right, so you're trying to figure out where Mr. Page
18 was on that continuum that night?

19 A Correct.

20 Q All right. And you didn't know where he was until you
21 asked him?

22 A Correct.

23 Q All right. But he had some physical indicators, is that
24 fair to say?

25 A Yes.

1 Q And what were those?

2 A Just, like, nodding of the head, closing of the eyes, and
3 just, like, inattention, little bit of slurred speech.

4 Q All right. But it's relatively soon into your interaction
5 with him that you administered him his Miranda Warnings?

6 A Yes.

7 Q All right. And it's part of the booking procedure. You
8 mirandize everyone that goes through the booking process?

9 A Absolutely.

10 Q Because given the circumstances, some of the questions that
11 are asked, particularly in a narcotics event, could elicit
12 incriminating responses.

13 A Agreed.

14 Q All right. So he was mirandized just as any other person
15 was?

16 A Yes.

17 Q And he was conscious for that and responded to those
18 warnings?

19 A Yes.

20 Q Now, he was -- after the booking process, he was placed in
21 a cell; is that right?

22 A Yeah.

23 Q And where was he placed?

24 A I can't recall the exact cell that he was placed in. But
25 it's in the -- there's our booking area. Then, like, our

1 printing area, and then there's a hallway full of cells, and
2 there's four cells in the back hallway. And he was placed in a
3 locked cell at that point.

4 Q And you and other officers made the decision to speak with
5 him again, is that fair to say?

6 A Yes.

7 Q And why did you make that decision?

8 A It was determined that some more questioning was in order
9 to determine where some of the evidence had come from.

10 Q Okay, so you knew about what was -- what was in his
11 backpack at this point; right?

12 A Yes.

13 Q Did you know about what was in his backpack when you did
14 the booking process?

15 A Not completely. It was only after we had secured him in
16 the cell that I was able to gain all of the information of
17 property. There was a ton of items. You can see in the
18 pictures that we took of the property that there's a ton of
19 items in there that we were trying to analyze, and, you know, we
20 want to make sure the booking process is done first, and then we
21 kind of go about what -- what the inventory process is.

22 Q All right, so you're inventorying the backpack, and you saw
23 -- among the items that you saw were several hundred bags of
24 heroin and a firearm; is that right?

25 A Correct. Yes.

1 Q Anything else that got your attention?

2 A Right away, we were just kind of trying to decipher the --
3 the big things here, like, you know, the narcotics, trying to
4 get those packaged up, because those are obviously a dangerous
5 drug. Our policy is that we -- we don't count them. We just
6 put them right in a bag and seal it up, because that's -- it's a
7 risk to everyone, obviously making sure the firearm -- firearm
8 is safe and not going to go off, or there's no live ammunition
9 anywhere. And then as we kind of went through all of this
10 stuff, a few things caught my eye, but one in particular was a
11 key, and it was a -- it was like on a little key ring, but it
12 was -- it was what I believed then to be to a metal gun locker.

13 Q All right, and so a key to a gun locker in a backpack with
14 a gun.

15 A Correct.

16 Q How is that more distinctly relevant?

17 A Well, I recognize the key because me myself have had a gun
18 safe very similar. And other than the specific keying of it,
19 like, for that specific lock, the -- the look of the key is the
20 same. It has a bold, like, handle to it almost. And so I
21 recognized it instantly to be a gun safe key. So that was
22 perplexing to me, because now, okay, we have a gun. Gun safe.
23 No LTC. Lots of things are coming into question now.

24 Q Okay. So when the decision was made to approach Mr. Page
25 and speak with him about these concerns that you had, it was a

1 criminal investigation; is that right?

2 A Yes.

3 Q All right. So was he mirandized a second time?

4 A Yes.

5 Q And who did that?

6 A Officer Cooley.

7 Q All right. And where was that done?

8 A In that back hallway area where the cell block is.

9 Q Okay. And then after his Miranda Warnings were given to
10 him that second time, you spoke with him out in the main area
11 where the booking -- excuse me. Strike that.

12 Where the fingerprinting mechanism is?

13 A Correct.

14 Q All right. So -- and the name of that device escapes me,
15 but it's the pad that you put your -- you run your fingers and
16 hands on it.

17 A Scantron.

18 Q Thank you. So where the Scantron machine is, you speak
19 with him more particularly about the concerns you have regards
20 to the gun safety?

21 A Yes.

22 Q All right. And this was about how long after he'd been
23 given Miranda a second time?

24 A I would say, like, 15 to 20 minutes-ish.

25 Q Okay. And how is it that Mr. Page presented to you

1 physically at this point in time, as compared to the booking
2 process?

3 A For the most part, maintained eye contact, more aware, more
4 awake, and, you know, like, exited the cell reasonably,
5 definitely not appearing to be under the influence, like when he
6 entered the booking room.

7 Q Okay. And -- and what did you and he speak about?

8 A I just asked him if he was aware of anything that was in
9 his backpack.

10 Q What did he say?

11 A He said that there was drugs and a gun.

12 Q Okay, and did he indicate where he got the gun from?

13 A He said that he had swiped it from his mother's house.

14 MR. THOMAS: If I could have a moment, Your Honor.

15 THE COURT: Take all the time you need. What was the name
16 of the officer who did the second Miranda, please?

17 THE WITNESS: It's Cooley, C-O-O-L --

18 THE COURT: Oh, it was Cooley. Okay.

19 THE WITNESS: -- E-Y.

20 THE COURT: All right. Thank you. All right. Thank you.

21 MR. THOMAS: Your Honor, just for the clarity of record, I
22 know in Exhibit 1, there was in item four, it's titled Miranda
23 2, booking stream three. After Miranda was given, there's some
24 interaction between Officer Cooley and Mr. Page. The
25 Commonwealth would not be seeking to use that conversation as

1 evidence in -- in any way, so we wouldn't --

2 THE COURT: I want to be clear as to what we're talking
3 about, then. Hold on. One moment. There was one clip where he
4 was just -- there wasn't anyone present in the booking room. Is
5 that what you're referring to?

6 MR. THOMAS: No, Your Honor. It's a -- oh, yes. I'm
7 sorry, Your Honor, it is. It's a color clip, and really all you
8 can hear, and it's -- it's not very loud, but it's Miranda being
9 given a second time.

10 THE COURT: All right. Okay. What is the name of the
11 clip?

12 MR. THOMAS: Miranda 2, booking stream three.

13 THE COURT: Okay, so you're not looking to use that at all?

14 MR. THOMAS: I -- his evidence of him receiving Miranda is
15 relevant for the purpose of this hearing. But the conversation
16 between him and Officer Cooley, you can barely hear it, and it's
17 not until --

18 THE COURT: Right. I -- I appreciate your bringing that
19 up, because, yes, this is the one that I had questions about
20 because I couldn't make out what was being said.

21 MR. MASS: Your Honor, we'd stipulate to the Miranda -- the
22 second Miranda for the purpose of --

23 THE COURT: Okay.

24 MR. MASS: That's what that evidence purports to be.

25 THE COURT: All right, let me just -- hold on a second

1 here. Indeed that is the one that I had flagged because I was
2 having difficulty ascertaining what was being said. Miranda 2,
3 booking stream three. Hold on.

4 MR. THOMAS: And -- so obviously it's relevant here for him
5 -- the receipt of his Miranda Warnings a second time. And it's
6 immediately prior to the more in-depth conversation he has with
7 the officer that's in clip number five. Guns and drugs. The
8 booking stream three. But -- but the Commonwealth is not
9 seeking to use that interaction between him and Officer Cooley
10 after the Miranda Warnings.

11 THE COURT: Okay, one moment. I could make out Miranda
12 Warnings being read. So that was the second Miranda Warning.

13 MR. THOMAS: And that's the only reason that -- for which
14 we offer it.

15 THE COURT: That's fine. One moment, please.

16 Okay, thank you. You for that. I do appreciate. Go
17 ahead.

18 BY MR. THOMAS:

19 Q All right. And so this second interaction that you had
20 with him, about what time was it that -- that you had the second
21 conversation with him, or, excuse me, this -- this more in-depth
22 conversation about your concerns regarding the -- the items
23 found in the backpack.

24 A I would have to look at my report to say specifically what
25 time it was.

1 Q Okay.

2 A I'm not sure if I notated.

3 MR. THOMAS: If I can approach the witness, Your Honor.

4 THE COURT: Yes.

5 BY MR. THOMAS:

6 Q Approaching with a document. Do you recognize what it is?

7 A It's my report.

8 Q Okay, take a moment. Look at it.

9 A It's about 7:30.

10 Q 7:30 in the evening?

11 A Yes, sir.

12 Q All right. And he was booked at around 5:30?

13 A Yes.

14 Q All right.

15 MR. THOMAS: The Commonwealth has no further questions of
16 this witness, Your Honor. Thank you.

17 THE COURT: Okay, you may inquire.

18 **CROSS-EXAMINATION**

19 **BY MR. MASS:**

20 Q Officer Lagoy, did Officer Griffin or Officer Cooley bring
21 Mr. Page to you, or was it both of them?

22 A I'm sorry, did you say did they bring him to me?

23 Q Yeah. How -- how as it -- who -- who transferred Mr. Page
24 to you for booking?

25 A I believe he was in the booking room when I entered, but

1 I'd have to look back at the video for sure. I just -- being so
2 -- this is so long ago, and my -- my memory is only given me
3 back so much.

4 Q That's fine. Just what you remember.

5 A Yep. I believe that when I came into the booking room,
6 Officer Limoges, who was assisting me, and possibly Officer
7 Griffin had brought Mr. Page into the booking room where he was
8 placed in the chair, and then I conducted booking.

9 Q But you hadn't had any prior conversations with either of
10 them about Mr. Page prior to beginning the booking procedures?

11 A Personal conversations? No, I had just listened to radio
12 traffic.

13 Q And you were concerned that there might be a medical
14 emergency?

15 A Upon seeing him, yes.

16 Q And so what actions did you take for this medical
17 emergency?

18 A Well, we had to obviously have questioning to determine if
19 it was a medical emergency or not.

20 Q So did you determine there was a medical emergency or did
21 you determine there was not a medical emergency?

22 A After asking him -- after Officer Limoges had asked him a
23 few questions regarding his condition and if he had taken
24 anything and things like that, because obviously the condition
25 is unknown as he gets to -- to the station, and I was not on

1 scene to interact with him at all. So when he got back there, I
2 had to just make sure for my purposes, we had asked him a few
3 questions to determine, okay, are we going to be able to conduct
4 booking or no? After a few questions were asked, the booking
5 proceeded.

6 Q And -- and so you made a determination that he was not in a
7 medical emergency?

8 A Correct.

9 Q Okay.

10 MR. MASS: No further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. THOMAS: No, Your Honor. Thank you.

13 THE COURT: All right. 7:30 p.m., that was the second
14 Miranda. Is that what happened at 7:30?

15 THE WITNESS: I believe it was a few minutes before that,
16 because I pulled him out of the cell at about 7:30 is what my
17 report would notate.

18 THE COURT: Okay.

19 THE WITNESS: That's when the jail had called, so I believe
20 it was like a few minutes -- just a few minutes before that that
21 Miranda was read.

22 THE COURT: Okay, you're all set. Thank you.

23 THE WITNESS: Thank you, sir.

24 (Witness excused.)

25 THE COURT: Okay, do you rest?

1 MR. THOMAS: We do, Your Honor. Thank you.

2 THE COURT: Okay, do you have any evidence?

3 MR. MASS: Just argument, Your Honor.

4 THE COURT: Okay. One moment, please.

5 Okay, so Attorney Mass, when we started off, you said that
6 voluntariness is not at issue, it's strictly a fruits theory.

7 MR. MASS: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. MASS: As to the -- as to the -- the statements made at
10 the station, Your Honor. Yes.

11 THE COURT: Right. Right. Okay. Okay, great. Happy to
12 hear from you.

13 **CLOSING ARGUMENT**

14 **BY MR. MASS:**

15 Your Honor, Commonwealth relies on Commonwealth v.
16 McCarthy, 71 Mass. App 591 as an exemplar, and I think it's a
17 good exemplar of the medical emergency exception to the probable
18 cause standard. Your Honor, in the different -- I'd like to
19 differentiate the two.

20 In that case, you had officers who are called by third
21 parties to a scene of what may be -- of someone who is having --
22 who is thrashing about on the floor. EMTs come to the -- to the
23 site. They ask the officers to take specific actions to find
24 out, they ask them to look in her bag to see whether or not
25 there's anything in there that could help the EMTs determine

1 whether or not there was -- what she might have consumed. They
2 were asked by a third party medical professional.

3 In this case, plain clothes officers come to the scene. My
4 client does not respond to people who -- the commands of people
5 who are in plain clothes. Actual police -- EMS -- the fire
6 department comes to the scene, clears him for a medical
7 emergency. Independently, Officer Griffin, the only drug
8 recognition expert at the scene, clears Mr. Page of a medical
9 emergency. You heard testimony from both Officer Griffin and
10 Officer Gordon that they had no inference that any crime had
11 been committed. None. They weren't looking for any criminal
12 activity.

13 After he's cleared of a medical emergency, they pull the
14 backpack out of the -- out of the -- the vehicle. There's a --
15 there's a suggestion that that's done for officer safety because
16 Mr. Page reached for the backpack, several reasons. I would
17 suggest that there's no reason for the officers to have been a
18 concern for their safety because there was no reason to believe
19 a crime was committed. They believed a medical incident was
20 going on. Officer Gordon suggested that he took it out and he
21 was going to clear the bag because he might -- it might go to
22 the -- it might go to the hospital or in the ambulance with Mr.
23 Page, who did not go in the ambulance because there was no
24 medical incident. Officer Gordon also testified that he could
25 have just as easily put the bag back in the vehicle. So even if

1 there was a reason to pull the bag out of the vehicle for a
2 temporary basis for officer safety, there was no reason to open
3 the bag and go through the bag. Either there was a medical
4 emergency, which I believe had already been cleared based on the
5 testimony of Officer Griffin who said it's completely possible
6 that the fire department had already cleared this as a medical
7 emergency before he told -- took Mr. Page out of the vehicle.
8 So it's very possible, and I think it's Commonwealth's burden to
9 prove that -- that there was a medical emergency at the time
10 that the search took place. And I don't think they've met that
11 standard. But if Your Honor finds that there was an ongoing
12 medical emergency and there was a reason for officer safety to
13 pull the bag out of the vehicle, there was no reason to search -
14 - search it. No one asked him to search it. Officer Griffin
15 never asked him to search it. I specifically asked him, did
16 someone ask you to do it? And he said, no, I just went through
17 it. Officer Gordon, who isn't trained, didn't ask him to do it.
18 You heard nothing about what Officer Cooley did. The fire
19 department didn't ask him to search the bag. He just in and of
20 himself, admittedly someone who hasn't been on the street in a
21 long time, he's in an administrative role, decided to go through
22 the bag to look for evidence. Chances are he had a good hunch
23 that someone who appeared to be overdosing from heroin may
24 possess heroin, Your Honor, but there was no -- no evidence of
25 that. And he said as much. There was no reason to believe that

1 a crime, even the crime of simple possession was taking place at
2 that time. The only evidence was medical emergency.

3 Your Honor, when you look at the purposes for the search,
4 the purpose for the search has to be to treat the medical
5 emergency, and no one who had any medical expertise at all asked
6 for that to -- to be done.

7 Based on all of that, Your Honor, and the -- and -- and
8 Deputy Chief Gordon's admission that he had no training of his
9 own that would allow him to make a medical decision related to
10 what might need to be determined, he didn't make any
11 determinations himself, I believe that there was no probable
12 cause to search the bag, no probable cause to -- to remove the
13 bag from the vehicle, no -- or no exigency to remove the bag
14 from the vehicle. There was really no cause to exit Mr. Page
15 from the car since the fire department had cleared him from a
16 medical emergency, or at least Commonwealth hasn't met their
17 burden to say that they haven't. That was admitted as a
18 possibility by Officer Griffin. For all of those reasons, Your
19 Honor, this evidence and the evidence of statements which were
20 made subsequent to his arrest, which are fruits of the poisonous
21 tree from the search, because he wouldn't have been arrested but
22 for the search because no crime had been committed until the
23 search, we believe that all of the evidence in this case should
24 be suppressed. Thank you, Your Honor.

25 THE COURT: All right. Thank you, Attorney Mass. ADA

1 Thomas, I'm listening.

2 **CLOSING ARGUMENT**

3 **BY MR. THOMAS:**

4 Yes, Your Honor. As to the -- the timing, it's difficult
5 with a bifurcated hearing because I think, through no fault of
6 his own, brother counsel misstates the -- the timing. But
7 looking at Exhibit 1, and more specifically, the clip of Officer
8 Griffin's dashboard camera when he's entering the Big Y parking
9 lot, there's no fire department there. There's no fire presence
10 there. So he couldn't have been cleared by the time Officer
11 Griffin gets there. Officer Gordon is very clear. Deputy Chief
12 Gordon is very clear when he -- that he and his wife are the
13 first ones there because they're shopping at Big Y when the --
14 when the call comes in, they're on their way in, so they're
15 ready to buy groceries when they hear about trouble going on,
16 they see a crowd. You can see the crowd in the clip from
17 Officer Griffin's dashboard camera on Exhibit 1, that there's a
18 crowd of onlookers kind of milling about when the -- this event
19 is happening, but there's no fire personnel. And it's --
20 Officer Gordon is very clear. It's him and his wife. And this
21 was an unusual situation because deputy chief had some
22 explaining to do when his wife is the one that was dealing with
23 this defendant, that was a bit of a wild card initially.
24 Officer Gordon is -- essentially grabs the backpack to make sure
25 that she's -- for a couple of reasons. One is to make sure

1 she's safe because the defendant's reaching for it, and also to
2 see that the EMTs are going to be safe later on to see what's
3 going on, as in McCarthy, as to the nature of this episode,
4 because the Gordons are unclear as to what's going on. If you
5 can remember as -- from January, they don't know if he's choking
6 on food. They don't know if he's overdosing. They don't know
7 if he's having a seizure. Perhaps the most important part of
8 Officer -- Deputy Chief Gordon's testimony was, well, we
9 certainly weren't going to let him drive away because we had
10 somebody in Irving that drove off the road with similar physical
11 symptoms two months prior to the motion to suppress. So this is
12 something that the officers are aware of, something that they're
13 trying to deal with, and they're trying to diagnose him quickly.
14 They're trying to keep everybody safe, to keep him from driving
15 away or accessing a weapon. There are so many things that the
16 officers have to do quickly and competently that a criminal
17 investigation, the Commonwealth suggests is the furthest from
18 their minds. The reviewing Courts do give officers, as is
19 described in McCarthy, some wide leeway. I have a copy of
20 McCarthy. Obviously, it carries a lot of water for the
21 Commonwealth, for counsel. And if I can approach, I have a
22 copy for Your Honor.

23 THE COURT: Thank you.

24 MR. THOMAS: But it isn't -- the analysis isn't, you know,
25 the best possible criminal investigation. You know, it wouldn't

1 make sense for them to freeze the scene and give him Miranda and
2 try and get to the bottom of everything. They're trying to see
3 if he's about to die. They're trying to see if he's -- if -- if
4 he's going to get behind the wheel of this car and hurt people
5 in this crowded parking lot. So the way they do that is by
6 getting him to become compliant. He has to be interactive with
7 them. He has to listen to what they're saying. He has to
8 acknowledge what they're saying. And to a degree, he needs to
9 satisfy their concerns, their concerns based upon their sworn
10 duty as officers to keep him safe, to keep the public safe. And
11 as McCarthy illustrates, getting into that backpack during that
12 window of time prior to him being cleared, prior to him -- prior
13 to the officers knowing what's going on, this is constitutional
14 behavior. This is something that the officers can do. It
15 wouldn't make sense to suppress this -- this -- this evidence
16 because the officers were acting in good faith. This is an
17 exception to the exclusionary rule because officers weren't
18 doing a criminal investigation at this point. He opened that
19 backpack to try and see what was going on.

20 Officer Griffin gets there before the fire department is
21 there, before he's been medically cleared. And you can see from
22 the cruiser video that's in Exhibit 1 that the Gordons'
23 testimony is corroborated. Officer Gordon, Deputy Chief Gordon
24 talked about him nodding off. The physical symptoms were
25 described, somebody that's lethargic and -- and not compliant.

1 This is basically where the defendant was.

2 So that initial intrusion, the Commonwealth suggests, is
3 McCarthy. It's governed squarely by McCarthy.

4 And the other evidence, the other evidence of interest to
5 the Commonwealth that's from the Commonwealth's perspective as
6 important, is governed by Commonwealth v. Chongarlides. I have
7 a copy for counsel and Your Honor. The concern I had in looking
8 at the case, and this is a case that there's -- there's more to
9 it than what we typically get.

10 THE COURT: Thank you.

11 MR. THOMAS: When he's brought back into the -- when he's
12 brought to the police station and he's being booked, you can see
13 one officer say, well, how many bags of heroin did you do, you
14 know, or what did you take? It's a question like that. It's on
15 Exhibit 1 with the exact quote, and it's on Miranda 2, booking
16 stream three. This is -- or excuse me. Strike that, Your
17 Honor.

18 It's Miranda 1, booking stream two. It's a couple of
19 minutes in length. This is -- it's him getting his first set of
20 Miranda Warnings. Just prior to him getting his Miranda
21 Warning, there's another officer there, and he says something to
22 the effect of, what did you take? How much did you take? That
23 kind of thing. You know, that's the same -- that's not a
24 criminal investigation. It's not a criminal interrogation. I
25 mean, yes, he's in custody. Yes, it's a question that -- that -

1 - that will elicit an incriminating response in all likelihood.
2 But it's very different in character from the interrogation that
3 goes on two hours later. Because officer number one at booking
4 number one is saying -- they're trying to figure out where he
5 sits on that continuum. Are they working with a prisoner that's
6 going to overdose? Are they working with a prisoner that's
7 going to nod out and die? Will they need to use their Narcan,
8 as they often do, apparently on a weekly basis? They do that by
9 asking him a question, seeing what the answer is. Not
10 necessarily to incriminate, but realistically, of course it is.
11 But that question and answer is also protected. It's a good
12 faith basis.

13 But if Your Honor is inclined to see it as a -- a pre-
14 Miranda custodial interrogation, and I can see the basis for
15 that, even -- I don't believe it was raised by counsel, but it's
16 a concern I had. There's an attenuation there. And the
17 attenuation is this -- is -- is governed by a number of
18 different factors. One is the second set of Miranda Warnings
19 and this passage of time. Now, the test is outlined in -- in
20 Brown v. Illinois. It's a -- it's a -- it's a Supreme Court
21 case, but adopted, obviously, and applied to Massachusetts law
22 by Commonwealth v. Chongarlides. And in that case, and what I
23 liked about that case, Your Honor, is, I believe it's on the 8th
24 page of the decision that's before you. They go through a
25 digest of attenuation cases, and part of the analysis is, you

1 know, the temporal distance between an unconstitutional act or
2 potential unconstitutional act, illegal act. And I think the
3 closest we get here is that question put to him pre-Miranda when
4 he's being booked to the evidence that the Commonwealth is
5 interested in. And it's a two hour gap here. And here, the
6 other -- the digest of cases, it's a one and a half hour gap,
7 two hour gap. It's completely consistent with attenuation
8 temporally. Another aspect of this case is the -- the level of
9 ill will or the level of wrongdoing the -- that the officers are
10 exhibiting. Here, it's very low. This is an officer saying,
11 what did you take? Is that typical for you? Is that what you
12 usually take? They're trying to figure out if he's going to
13 overdose or not. They're trying to figure out if they're going
14 to need their Narcan, because once he says, yeah, I took heroin,
15 I took ten bags. And they say, is that typical for you? And he
16 kind of nods or whatever he does, shrugs his shoulders. They
17 leave it alone. They didn't ask him, oh, where did you get the
18 heroin? How much did you pay for it? Is that your usual
19 supplier? They didn't do that. They didn't do that song and
20 dance. Why? Because it's not a criminal investigation in that
21 sense. At that point in time, it's a well-being check. They're
22 trying to -- to get him booked so that he doesn't die on them.

23 Later on it's a criminal investigation, to be sure, but he
24 gets Mirandized a second time, and they wait for him to sober
25 up. So these are officers that are -- are dealing in good faith

1 and fair dealing. They are trying to get to the bottom of where
2 this firearm -- this loaded firearm came from and hundreds of
3 bags of heroin. There's a -- a key ring with a gun safe key on
4 it. What's the bottom line on this?

5 So, for the foregoing, Your Honor, we ask that you deny the
6 motion to suppress.

7 THE COURT: All right, great. Thank you both. I'll take
8 it under advisement. Now, you were on the --

9 MR. MASS: Your Honor, can I speak to the video just
10 briefly?

11 THE COURT: Yeah, sure.

12 MR. MASS: The -- the video that you saw --

13 THE COURT: Which -- which video?

14 MR. MASS: Of the officer arriving, does not give a whole
15 scope of the parking lot. It does not show -- the Commonwealth
16 makes the representation that that's proof that the fire
17 department was not on scene. You don't actually see the fire
18 truck at any point in any of the videos, nor do you see
19 firefighters or EMTs of any kind. You don't even see Officer
20 Cooley arrive on the -- in his vehicle on that -- on that.
21 There's is no -- the absence of it being on video does not mean
22 that it did not happen, Your Honor. Thank you.

23 THE COURT: All right. Thank you.

24 All right. You were on the February trial list.
25 Obviously, that's not going to happen. And there's no Judge

1 here in March.

2 MR. MASS: Your Honor, I believe that this motion will be
3 dispositive one way or another in this matter. So if we could
4 set this up for a status, I think we'll be able to figure out
5 which way we're going.

6 THE COURT: Yeah. Okay. Status in early April, I guess.
7 So what date would you like, Mr. Simanski?

8 THE CLERK: Your Honor, if I could suggest April 5. It's a
9 Wednesday.

10 MR. MASS: April 5th is good.

11 THE COURT: How's that look? April 5, 2:00.

12 MR. THOMAS: Thank you, Your Honor.

13 MR. MASS: Thank you, Your Honor.

14 THE COURT: Okay. And Mr. Page is not required to be here,
15 but certainly it's always helpful if you are. Okay, great.

16 Thank you all.

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(Adjourned)

**UNITED STATES CONSTITUTION,
AMENDMENT IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.