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San Diego County Sheriff's Department, and Bonnie Dumanis

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

AMERICAN NEWS AND
INFORMATION SERVICES, INC., a
Connecticut Corporation; EDWARD A.
PERUTA; and JAMES C. PLAYFORD,

Plaintiffs,

v.

WILLIAM D. GORE, individually and in
his official capacity as San Diego County
Sheriff; JAN CALDWELL, individually
and in her official capacity as San Diego
County Sheriff's Department Public
Affairs Director; THOMAS SEIVER,
San Diego County Sheriff's Department
Deputy, individually; BRENDAN COOK,
San Diego County Sheriff's Department
Deputy, individually; JESSE
ALLENSWORTH, San Diego County
Sheriff's Department Deputy, individually;
JAMES BRENEMAN, San Diego County
Sheriff's Department Deputy, individually;
MICHAEL PROCTOR, San Diego County
Sheriff's Department Deputy, individually;
JOHN DOE 1-10; San Diego County
Sheriff's Department; WILLIAM
LANSDOWNE, individually and in his
official capacity as San Diego Police
Chief; JOHN DOE 1-10; San Diego Police
Department; and BONNIE DUMANIS,
individually and in her official capacity as
San Diego County District Attorney;
JOHN DOE 1-10; San Diego County
District Attorney's Office, individually,

Defendants.

No. 12-cv-2186-BEN(KSC)

NOTICE OF LODGMENT COMBINED
WITH REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Date: April 22, 2016
Time: 10:30 a.m.
Dept.: 5A - Courtroom of the
Honorable Roger T. Benitez
Trial Date: None

Defendants County of San Diego, William D. Gore and Jan Caldwell hereby lodge certified copies of the following exhibits, and request judicial notice thereof pursuant to Federal Rules of Evidence rule 201, in support of their motion for summary judgment, as follows:

Exhibit A: Transcript of Trial Proceedings in Superior Court Case No. CN300278, Volumes I and II, selected pages.

Exhibit B: Trial documents from Superior Court Case No. CN300278.

Exhibit C: Excerpts from Superior Court Appellate Division Case No. CA241562.

Exhibit D: Trial documents from Consolidated Superior Court Cases No. C299221 and No. C299043.

DATED: March 24, 2016

THOMAS E. MONTGOMERY, County Counsel

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EXHIBIT “A”

ORIGINAL



**AD HOC
REPORTING**

The Chamber Building
110 West C Street
Suite 807
San Diego, CA
92101

619 236-9325

IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
Plaintiff,)
)
v.)
)
JAMES PLAYFORD,)
)
Defendant.)

Case No. CN300278

VOLUME I
TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD E. MILLS
SUPERIOR COURT JUDGE, and a Jury
(Department 21)

Vista, California
Wednesday, May 16, 2012

Transcription Service: Franesca St. John
Ad Hoc Reporting
110 West C Street, Suite 807
San Diego, California 92101
(619) 236-9325

EXHIBIT A

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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

PEOPLE OF THE STATE OF)	
CALIFORNIA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CN300278
)	
JAMES PLAYFORD,)	
)	
Defendant.)	

VOLUME I
TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD E. MILLS
SUPERIOR COURT JUDGE, and a Jury
(Department 21)

Vista, California
Wednesday, May 16, 2012

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[See transcriber note on p. ii.]

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

EXHIBIT A

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TRANSCRIBER NOTE: The sound system in this courtroom is either not set up correctly or not working properly. Of the four available channels on the recording system, only one is being used. In addition, there are several locations in the courtroom where there is no working microphone. As a result, there are numerous "indiscernible" notations throughout this transcript, but especially during the opening statements of counsel.

EXHIBIT A

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VISTA, CALIFORNIA -- WEDNESDAY, MAY 16, 2012

--oOo--

(Call to order of the Court.)

THE COURT: The trial case is CN300278, a misdemeanor, so we're not having a court reporter, we'll do a recording. And the probation revocation matter is CN250900, and that is a reckless driving case. So the only law -- the only case on probation to be heard in the evidentiary hearing is whether or not Defendant violated any law. People have filed some motions for this trial. Mr. Wang and Fio Rito are present for the People, Mr. Crawford for the Defendant. And I'm going to assume this is Mr. Playford. Is that you, sir?

MR. PLAYFORD: Yes, sir.

THE COURT: Okay. We're going to do the People's motion first. And the first motion is to -- well, that's for discovery, so that's granted.

The second motion is with regard to a 911 call. Normally that would be admissible. Mr. Crawford, is there any reason why that shouldn't be admissible?

MR. CRAWFORD: No, Your Honor.

THE COURT: All right. 911 call's admissible.

People's third motion, Defense should be precluded from mentioning that the bomb threat was ultimately determined to be a bottle of urine. I'm not going to grant that motion. I'm not even going to -- I'll listen to you if you want to make an argument, but I can't imagine granting it. I mean, that's what happened, so I don't want to hide that from the jury.

MR. WANG: Your Honor, the People's only contention

Williamson - Direct

1 THE WITNESS: Robert John Williamson, W-i-l-l-i-a-m-
2 s-o-n.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. WANG:

6 Q Good afternoon, sir. What do you do for a living?

7 A I'm a deputy sheriff for the County of San Diego.

8 Q Is there a particular assignment that you are
9 (indiscernible)?

10 A Yes. I'm assigned to the arson and explosives unit.

11 Q Was that your assignment on December 1st of 2011?

12 A Yes, it was.

13 Q Do you remember getting a call on that specific date of a
14 possible explosive device that was located somewhere near
15 Congressman Issa's office?

16 A I think it was actually for a suspicious device, but yes,
17 I do.

18 Q When you get such a call for a suspicious device, what
19 are the -- what are the protocols that are put into place?

20 A Initially -- our initial response, we have our patrol
21 units establish a 300 foot perimeter around the scene. And
22 that's, that's for the public safety and for our safety as
23 well.

24 Q Do you respond to every single call that's made about
25 potential explosive devices?

26 A Within the County of San Diego, yes, we do.

27 Q Now, on this particular call, did you guys know at that
28 particular time when you responded to this scene what the

Williamson - Direct

1 nature of the explosive device was?

2 A We did not.

3 Q Did you know if there were any individuals still
4 inside --

5 MR. CRAWFORD: I'm going to object to the prosecutor
6 continuing to call this device an explosive device. The
7 officer's already corrected him once, that it was a suspicious
8 device.

9 THE COURT: Yeah, let's work on that please.

10 BY MR. WANG:

11 Q Sir, when you had responded to the scene about this
12 suspicious device, did you know what the nature of it was?

13 A We did not.

14 Q Do you treat suspicious devices differently than
15 explosive devices?

16 A No, we treat them the same.

17 Q When you got to the scene, did you know if there were any
18 individuals still inside of the building where Congressman
19 Issa's office is?

20 A We had been told that the building had been evacuated.

21 Q And so at that point -- I'm sorry -- so then evacuation
22 had happened prior to you getting there?

23 A That's correct.

24 Q Once the arson and explosive unit get on scene, what is
25 it that you guys do?

26 A Initially we're briefed as a unit by the on-scene
27 commander, and then we establish our response plan.

28 Q On that specific -- I'm sorry. Is it safe to assume that

Williamson - Direct

1 being a part of this unit, you are familiar with explosives and
2 how they might be detonated?

3 A Yes, I am.

4 Q Are you familiar whether or not cell phones can be used
5 to detonate a device?

6 A Yes.

7 MR. CRAWFORD: Objection; relevance.

8 THE COURT: Overruled. Answer may stand. Next
9 question.

10 BY MR. WANG:

11 Q On that specific -- on that particular day, were you able
12 to identify ultimately what the suspicious object was?

13 A Yes, we were.

14 Q And what was it?

15 A There were actually two. One was a coffee cup, and the
16 second one was a plastic water bottle that contained urine.

17 Q Prior to identifying what these suspicious objects were,
18 did you treat the situation any differently than if you had
19 known that there was an explosive on the scene?

20 A No, we did not.

21 Q Why is that?

22 A By standard response, we respond to every call the same
23 as if it is an actual device.

24 Q And why is that?

25 A That's for our safety and for public safety.

26 Q So just because something isn't immediately described to
27 you as a bomb or an explosive device, doesn't mean that you
28 don't take it just as serious?

Williamson - Cross

1 A We take them all just as serious.

2 MR. WANG: Thank you. No further questions.

3 THE COURT: All right. Mr. Crawford, do you have
4 any questions at all?

5 MR. CRAWFORD: Yes, I do.

6 CROSS EXAMINATION

7 BY MR. CRAWFORD:

8 Q Do you recall the time of day that you actually received
9 the call to go out to this particular location on December 1st?

10 A No, I don't.

11 Q Did you generate any report of any sort?

12 A No, I did not.

13 Q Do you know how long after you actually arrived, you and
14 perhaps your unit, that it was determined that it was a bottle
15 of urine and a coffee cup?

16 A We were on scene for probably about an hour and a half.

17 Q And do you recall within that hour and a half when you
18 determined that the suspicious device was a bottle of urine and
19 a coffee cup?

20 A It would have been within the last half hour of the call.
21 Hazmat responded and determined that it was a bottle of urine.

22 Q Do you ever recall any bottles of urine being detonated
23 by a cellular phone?

24 A No.

25 Q How about coffee cups?

26 A No, I don't.

27 Q Do you know if other officers in the area were aware of
28 what the suspicious device was?

Williamson - Cross

1 MR. WANG: Objection; calls for speculation.

2 THE COURT: No. Answer please.

3 THE WITNESS: I don't know.

4 BY MR. CRAWFORD:

5 Q Okay. This 300-foot parameter, do you know how that's
6 established?

7 A That 300-foot perimeter is -- number one, it's the
8 sheriff's department's policy, and that's a standard for bomb
9 squads throughout the country.

10 Q Do you know how that 300-foot parameter, how that
11 interplays with the media?

12 A I do not.

13 Q Do you recall how many particular officers responded to
14 that particular location?

15 A I don't know.

16 Q Is there radio transmissions going on back and forth in
17 terms of what the suspicious device is?

18 A Not within that 300-foot perimeter.

19 Q Where are those transmissions being done?

20 A It would be outside of the safety zone, which is a 300-
21 foot limit.

22 Q So in terms of officers being outside the safety zone,
23 there's dispatch communications going on back and forth? I'm
24 sorry, radio communications?

25 A Could you repeat the question?

26 Q Well, you said that there -- I believe, maybe it was a
27 bad question -- but there was no radio communications inside
28 the 300-foot perimeter.

Williamson - Cross

1 A There were no radio communications between my unit,
2 myself and my teammates within that 300-foot perimeter.

3 Q How is communications then made to keep officers outside
4 the perimeter?

5 A We do face-to-face contacts.

6 Q Do you recall when that face-to-face contact was done, if
7 at all, in this particular case?

8 A There were numerous face-to-face contacts throughout the
9 entire event.

10 Q And when you arrived, the building had been evacuated,
11 correct?

12 A It had been.

13 Q Is it safe to say, then, that individuals were at that
14 time outside the 300-foot perimeter?

15 A That's correct.

16 Q As a police officer, then, you've talked about this
17 perimeter and lack of communications. Would you stop people
18 from using communications outside that 300-foot perimeter?

19 A I'm not sure I understand your question.

20 Q Well, I assume that no communication is being done within
21 the 300-foot perimeter because of safety; is that correct?

22 A That is correct.

23 Q So as an officer, if you're outside that 300-foot
24 perimeter, would you see a reason to stop someone from using a
25 communication device?

26 MR. WANG: Objection; relevance.

27 THE COURT: Overruled. Answer please.

28 THE WITNESS: No, I do not.

Williamson - Redirect

1 MR. CRAWFORD: Nothing further. Thank you.

2 THE COURT: All right. Any redirect.

3 REDIRECT EXAMINATION

4 BY MR. WANG:

5 Q When you say that there's no communications within that
6 300-foot perimeter, why is that? What is it about the
7 communications that make it dangerous?

8 A One of the reasons that there's a 300-foot rule is
9 because of stray radiofrequency that are put out by cell phones
10 and portable radios, including the type of radios that we carry
11 as police officers, and personal mobile radios that the public
12 often carry.

13 Q Why are you concerned about stray radio signals?

14 A The primary reason we're concerned about stray
15 radiofrequency is because initiators like blasting caps or
16 home-made initiators are susceptible to stray radiofrequency,
17 which could make them go off.

18 Q If an individual, in your experience and with your
19 knowledge of explosive devices, if an individual had a trigger
20 tied to his cell phone, could he detonate that device outside
21 the 300 foot range?

22 A Yes, he could.

23 MR. WANG: Thank you. I have no further questions.

24 MR. CRAWFORD: I'm sorry, I didn't understand the
25 question.

26 THE COURT: Well, that's not an objection.

27 MR. CRAWFORD: All right.

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Williamson - Recross

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RECCROSS EXAMINATION

BY MR. CRAWFORD:

Q How could someone detonate an explosive bottle of urine from outside of 300 feet with a cell phone?

THE COURT: That's not a fair question, Mr. Crawford.

BY MR. CRAWFORD:

Q Let's say we're 500 feet away, an individual's on his cellular phone, does that concern you?

A No, it does not.

MR. CRAWFORD: Thank you.

THE COURT: Okay. Deputy Williamson, thank you for your testimony. You're excused. Next witness.

MR. WANG: Your Honor, the People call Detective Cook to the stand.

THE BAILIFF: Stand up right here. Face the clerk and raise your right hand to be sworn.

(Pause.)

BRENDAN COOK, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Have a seat in the witness stand. Please state your full name and spell your last name for the record.

THE WITNESS: Brendan Cook.

MR. WANG: Detective Cook, good afternoon.

THE WITNESS: Good afternoon.

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EXHIBIT A

Cook - Direct

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DIRECT EXAMINATION

BY MR. WANG:

Q What do you do for a living?

A I'm a sheriff's deputy employed by the County of San Diego.

Q And how long have you been doing that is this?

A Approximately 12 years.

Q Was that your occupation on November -- sorry, December 1st, 2011?

A It was. I was assigned to the gang enforcement team in the City of Vista.

Q At some point during that day, were you called to respond to set up a perimeter near Congressman Issa's office?

A I was.

Q Can you describe to the jury what led you to that particular location?

A There was a call of a -- well, a bomb threat in Congressman Issa's office. There had been a protest earlier in the day of some sort. I don't really know the nature the protest. And I had just kind of driven by in the morning. But we call of a bomb threat at that point, and we were asked to assist the patrol units with maintaining a perimeter and evacuating people out of there because there was still a lot of employees still inside the building.

Q When you arrived on scene at Congressman Issa's office, had individuals been evacuated yet from the building?

A I'm sorry, had any individuals been evacuated?

Q Yes.

EXHIBIT A

Cook - Direct

1 A Yeah. There was an evacuation in process. I had parked
2 on the east side of the perimeter, and I was assisting with
3 some evacuations from the parking lots, and we were determining
4 whether people were going to be removing vehicles or not. We
5 were trying to get people out. And then I noticed on the west
6 side of the perimeter there was vehicles, and the fire
7 department, but it looked like firefighters had been left to
8 watch that perimeter, so I went up there to make sure that
9 there was a law enforcement officer watching the perimeter.

10 Q So at some point had you made it from the east perimeter
11 to the west perimeter?

12 A Yes.

13 Q I want to talk to you briefly about that particular day
14 and the dispatch call that led you there. Did you know
15 anything else at the time that you arrived other than the fact
16 that there was a bomb threat located at Congressman Issa's
17 office?

18 A From the dispatch call, no. And I'm not sure whether it
19 was a dispatch call or someone on the ground had told me there
20 was a bomb located inside the doorway on the west entrance,
21 which is a couple of large glass doors.

22 MR. CRAWFORD: I'm going to object as to hearsay;
23 lack of foundation. I don't know who someone is.

24 MR. WANG: Your Honor, it goes to his state of mind.

25 THE COURT: Yeah, just let me rule. You don't need
26 to argue the objections. The objection's overruled. It's not
27 for the truth of the matter stated. It's only telling us --
28 the information you got is only being given to you as jurors to

Cook - Direct

1 explain why the deputy or detective did what he did.

2 BY MR. WANG:

3 Q On that particular day when you had moved onto the west
4 perimeter, can you describe a little bit of the layout of that
5 particular area for the jury?

6 A Yes. Thibodo Road is a east/west road. It parallels the
7 78, and there's a building between the road and the 78 which
8 would be the Congressman's building. The roadway is a standard
9 two-lane roadway divided by I think it's a double yellow. And
10 on the western perimeter, there was a fire truck, and there
11 were two patrol cars parked, and there was some cones out
12 blocking traffic, preventing traffic from being able to drive
13 past the building in either direction.

14 MR. WANG: Your Honor, may I approach the witness?

15 THE COURT: Yeah. Just go ahead anytime you need
16 to.

17 BY MR. WANG:

18 Q Officer, I'm just going to ask you briefly to go through
19 these really quickly, and then we'll talk about them when
20 you --

21 THE COURT: Just put them up on the screen. That
22 saves time.

23 BY MR. WANG:

24 Q Officer, can you find the exhibit that corresponds to the
25 enlargement that we see on the projector?

26 A Yes, I have it right here. It's Exhibit -- Court's
27 Exhibit 3.

28 Q Can you describe for the jury what it is that we're

Cook - Direct

1 looking at, at the enlargement?

2 A We're looking at an aerial view slightly to the west of
3 the building. If you see the building that looks kind of like
4 an "L" right there, that's Congressman Issa's -- that's
5 Congressman Issa's building right there. That would be where
6 the doorway is, the western door. And the perimeter was set
7 approximately right here. This is a parking lot where most of
8 the employees were parked. There's another parking lot. And
9 then the road was blocked in this direction.

10 Q So when we're talking about the fact that you were at the
11 west perimeter, so in relation to this particular photograph,
12 the Court's Exhibit 3, you mean towards the top of the
13 photograph?

14 A That would be at approximately right here (indicating).

15 Q Now, looking at this next photo, can you identify which
16 exhibit you have in front of you that corresponds to this
17 enlargement?

18 A That would be Court's Exhibit 6.

19 Q Can you describe for the jury what Court's Exhibit 6 is?

20 A Court's Exhibit 6 is a view in Thibodo Road north to the
21 building. This would be the western entrance. I described
22 some large glass doors earlier, and they were about right here.

23 Q And earlier when you had testified, you said that it was
24 your understanding that what was reported to you as an
25 explosive device was located somewhere in this area?

26 A It was supposedly just inside these doors.

27 Q Officer, now looking at this exhibit that I put -- can
28 you find the corresponding picture from the exhibits in front

Cook - Direct

1 of you and identify which exhibit we're looking at?

2 A It's Court's Exhibit 4.

3 Q Can you describe for the jury what is Court's Exhibit 4?

4 A Court's Exhibit 4 is a view from the west back towards
5 the building. So right here, you'd be looking at the western
6 entrance to the building right here, and the glass doors I
7 described earlier. And this is the parking lot where the
8 employees -- most of the employees parked. That's the largest
9 parking lot.

10 Q Is this the entrance, then, from you had to set up --
11 where you were manning the western perimeter, is this the kind
12 of the view you had of the building?

13 A Yes.

14 Q Officer, can you again identify what is the exhibit in
15 front of you that corresponds with this?

16 A This is Court's Exhibit 7. This is the perimeter on the
17 west that day. This is the 78 right here. If you look right
18 over there, there's some trucks and things coming by
19 (indicating), this is fire department that starts with the
20 cones being out. Those would be the cones right there
21 (indicating). That is me (indicating). This is one of the
22 sheriff's deputies' that was parked blocking traffic
23 (indicating). And appears to be another one right there
24 (indicating).

25 Q Okay. So on that particular side, it looks like there
26 are individuals standing near a sidewalk area. What would
27 those people be -- what are they doing?

28 A Those were employees who had been evacuated, and fire

Cook - Direct

1 department officials right there. What I had initially seen
2 was, again, a group of people up there (indicating), the fire
3 department talking to them. I realized those were the ones
4 that are supposed to be manning the perimeter, so I went up
5 there. And again, there were employees who had just been
6 evacuated out of the building. I actually had walked out there
7 with one.

8 Q Okay. And again, can you identify what exhibit we're
9 looking at by looking at (indiscernible)?

10 A This is Exhibit Number 8, Court's Exhibit Number 8. This
11 is also looking west toward -- or, I'm sorry, looking east
12 towards the building. That would be those glass doors I
13 referenced a couple times. And these were the marked patrol
14 cars, the fire department vehicle where the cones are blocking
15 traffic, and then there's another one there (indicating). And
16 this is a sidewalk right -- it kind of goes down into a little
17 culvert right here (indicating). It's a dirt kind of sidewalk
18 area.

19 Q Now, I've noticed that well's no police tape along that
20 particular edge. Were members of the public allowed to go past
21 those police units?

22 A No, they weren't.

23 Q Why not?

24 A The bomb blast area, as told to us by the fire department
25 safety zone, the fire department had told us that their trucks
26 were going to delineate the safety zone out here. And that's
27 why I came out. These vehicles were supposed to delineate the
28 safety zone right there.

EXHIBIT A

Cook - Direct

1 Q Is that why the individuals that we had seen in a
2 previous slide were parked next to the fire truck?

3 A Right. That's why they were -- had walked down the fire
4 truck, and they walked in right there with the fire truck
5 (indicating).

6 Q And lastly, Officer, can you identify what corresponds to
7 this particular exhibit?

8 A This is Court's Exhibit 5.

9 Q Does this show that particular walkway area we were
10 talking about that was --

11 A Yes, it's a walkway area. And I think I described a
12 culvert. This would be the culvert right there.

13 Q So there's that little stretch of grass and gravel that
14 wasn't marked off yet by police tape?

15 A Correct.

16 Q Now, officer, when you get -- you may have a seat. Thank
17 you so much?

18 A In fact, and my seat kind of went down. Okay.

19 Q When you arrive on scene and you move from the east
20 perimeters to the west perimeter, why did you do that?

21 A I did that -- I was initially helping to evacuate people
22 and getting some information. I did that because I looked up
23 and I noticed that that area was not being manned by any law
24 enforcement officers, the deputies who parked there had
25 obviously come in and began evacuating people. And we needed
26 to have somebody out there. The fire department is busy with
27 the issues that they have to deal with, and they needed us out
28 there, so I went out there.

EXHIBIT A

Cook - Direct

1 Q So were you the only sheriff's deputy that was on that
2 particular perimeter at that time?

3 A Yes.

4 Q At some point during that day, did you come in contact
5 with an individual by the name of Mr. Playford?

6 A Yes.

7 Q Could you please look around the courtroom and see if you
8 see Mr. Playford in court here today?

9 A I do.

10 Q Would you please identify where Mr. Playford is seated
11 and an article of his clothing?

12 A Mr. Playford's seated at the Defendant's table, and he's
13 wearing a blue long-sleeve shirt with the cuffs just rolled up.

14 MR. WANG: Your Honor, may the record reflect that
15 the witness has identified the defendant?

16 THE COURT: Yes.

17 BY MR. WANG:

18 Q Describe for the jury what events were occurring when you
19 first noticed the Defendant?

20 A We were still in the process of trying to get people out
21 of the perimeter, to get out of the bomb blast area, you know,
22 in simple terms trying to get them out of there. People
23 naturally wanted to go to their cars, they want to do things
24 like that, so it's -- it was kind of hectic. The scene was by
25 no means static at that time. So I had gone up there and -- I
26 don't know if I'm starting to tell a story, or I've just lost
27 focus.

28 Q Well, let me break it up, then. When you were attempting

Cook - Direct

1 to escort people out of the blast area, were you having
2 conversations with them?

3 A Yes, I was.

4 Q At any point did any of them point out Mr. Playford to
5 you?

6 A Yes. Once we got back to the fire truck -- we were
7 standing there.

8 MR. CRAWFORD: Objection; hearsay.

9 THE COURT: No, you've answered the question. The
10 question was did anybody point him out, and your answer was
11 yes. So next question.

12 BY MR. WANG:

13 Q Well, what did you do after this individual had pointed
14 Mr. Playford out to you?

15 A I went over to contact Mr. Playford.

16 Q What was it about what this individual had told you about
17 Mr. Playford that led you to go and contact him?

18 A The person I contacted -- or I was with had said -- they
19 had pointed to Mr. Playford and said --

20 MR. CRAWFORD: Objection, Your Honor; hearsay.

21 THE COURT: No it's not offered for the truth of the
22 matter stated. Objection's overruled. Finish your answer
23 please.

24 THE WITNESS: Had told me that that guy was in the
25 building -- or "that guy was with the protesters earlier and he
26 was in the building right before the bomb threat came out."
27 Words to that effect. He was with a with the protesters and
28 was in the building right before the bomb threat came out.

Cook - Direct

1 BY MR. WANG:

2 Q Did you get any independent observations of the Defendant
3 prior to when you contacted him?

4 A I did.

5 Q And what if anything did you see?

6 A I saw an individual who was, you know, walking with a
7 real hurried pace to get down to the area. I noticed the
8 clothing he had on. He had on jeans that were really dirty and
9 covered with grease, kind of greasy and oily. I also noticed
10 he had a military-style kepi hat on, you know, kind of like --
11 well, like an army-style hat. It was a solid olive drab.

12 Q You mentioned the sustained pants. But why did that
13 stand out for you?

14 A We're talking about bomb threats, and in all your bomb
15 threat training, whether it's packaged bombs or whether it's
16 manufacturing bombs, whatever, one of the things that comes
17 with building things is getting dirty, greasy, oily. You're
18 dealing with wires and electrical issues.

19 Q Based on your conversation with the individual that
20 pointed out Mr. Playford, as well as your own observations,
21 what did you do next?

22 A I went over to determine what the individual was doing,
23 who they were.

24 Q When you first went up to make contact with Mr. Playford,
25 was he outside of that 300 -- of that perimeter of the bomb
26 blast?

27 A No, he was walking in.

28 Q So he had actually walked --

EXHIBIT A

Cook - Direct

1 A He was walking past the vehicles.

2 Q Okay. So let's back up for a second. We're looking at
3 -- I think this is -- can you check? Is it Court's Exhibit 8?

4 A It's Court's Exhibit 8, yes.

5 Q So when we're looking at Court's Exhibit 8, are you
6 saying that he had to walk past the two squad cars at this
7 point?

8 A Yes. He had walked past the first one. I don't know if
9 he had cleared all the way past the second one, but he was
10 heading in.

11 Q When you noticed that Mr. Playford was heading into the
12 blast area, what then did you do?

13 A I engaged him in conversation and told him to stop and he
14 needed to back out of it.

15 Q What did he do when you told him that?

16 A He began arguing with me, but he did back out.

17 Q So at some point he had come back on, I guess the west
18 side of the first patrol car that we see in Court's Exhibit 8?

19 A Yes.

20 Q At that point, once he had gotten onto the west side of
21 that first patrol car, what did you do?

22 A I asked him his name.

23 Q Why did you do that?

24 A I wanted to know who he was. We have an active
25 investigation. There's several indicators, there's people
26 saying that he was with protesters and that he was in the
27 building right before the bomb threat. I'm looking at the
28 pants, they're greasy, they're oily. His demeanor was

Cook - Direct

1 argumentative, very high strung.

2 MR. CRAWFORD: Objection; this is not a response to
3 the question, Your Honor. It's a narrative.

4 THE COURT: Objection overruled. Please continue.

5 THE WITNESS: The military-style cap, the way he was
6 wearing it, you know, kind of a forward angle to it. I also
7 noticed that it was a hand-held camera. Hand-held cameras are
8 generally not something that you're going to set up for a long
9 period of time. Hand-held cameras are generally something that
10 you want to take something quick with. So those things made me
11 concerned that he may have been involved with the bomb threat.

12 BY MR. WANG:

13 Q Just a second ago you mentioned that he had a camera in
14 his hand. So what was he doing with this camera?

15 A Intermittently he was filming.

16 Q Was he bringing it to his -- to his ears -- I'm sorry,
17 his eyes to do the film?

18 A Yes. Yeah, he had it in his left hand and he would bring
19 it up.

20 Q Did you ever tell him to stop filming?

21 A Not while he was just filming.

22 Q At some point you said that had you asked him for his
23 name and he didn't give it to you. What did you do then?

24 A I asked him a couple more times, and then just observed
25 him.

26 Q So at that point, did you take his camera away?

27 A No.

28 Q Did you place him under arrest?

EXHIBIT A

Cook - Direct

1 A No.

2 Q Did you at anytime during that initial contact where you
3 had simply asked for his name, did you ever go hands on with
4 him in any way?

5 (Audio played.)

6 BY MR. WANG:

7 Q Officer, is that an accurate portrayal of this first
8 initial contact that we've been talking about?

9 A Yes.

10 Q What's going through your head when you're asking him to
11 calm down, what's your name and he keeps refusing?

12 A It's odd. It wasn't -- I didn't feel that I was asking
13 him in a confrontational manner or anything. And normally
14 people will talk to you and give you your name or ask you
15 what's going on, words to those effect.

16 So, like a lot of times when you approach somebody,
17 regardless of the situation, in law enforcement you'll start
18 engaging them in conversation, and what you're doing is you're
19 gauging their demeanor, you're gauging what they're doing,
20 you're watching their face, you're watching their body, you're
21 watching all those things to determine the threat to you or
22 anyone else.

23 Q At some point after the events had happened on this
24 video, did you ever have to get more physical with the
25 Defendant?

26 A I did.

27 Q Can you describe for the jury what events led you to
28 determine that you needed to get more physical with the

Cook - Direct

1 Defendant?

2 A Mr. Playford was filming, and that's fine, anyone can
3 film, as long as they're outside the perimeter. But on the one
4 point -- if it's okay, can I demonstrate with a phone what I
5 observed or...

6 MR. WANG: Your Honor, may the witness get off the
7 stand?

8 THE COURT: Well, you can stand up to demonstrate.

9 THE WITNESS: Mr. Playford was taking the camera
10 down, had brought it back up and was filming, and then had
11 pulled up a flip cell phone and held it while he was holding
12 the thing right to his eye and began dialing the number like
13 this.

14 MR. WANG: Your Honor, may the record reflect that
15 the witness has indicated holding a camera in his left hand up
16 to his eye, as well as a cell phone in his right hand up to his
17 eye level as well?

18 THE COURT: All right.

19 BY MR. WANG:

20 Q Officer, this video camera and the cell phone, where were
21 they directed?

22 A They were directed at the -- those glass doors on the
23 western edge where I had described early.

24 MR. CRAWFORD: Objection; calls for speculation.

25 THE COURT: No, he's testifying to what he observed.
26 It's all right.

27 BY MR. WANG:

28 Q I'm sorry, were you going to answer?

EXHIBIT A

Cook - Direct

1 A The glass doors on the western edge of the building.

2 Q When you saw him pull out his cell phone and begin
3 dialing, what was going through your head?

4 A I thought he was going to detonate a bomb.

5 Q Is there anything about your training that led you to
6 believe that way?

7 A Yes.

8 Q Can you describe that for the jury?

9 A Based on my training, both in college and in the military
10 as a marine corps officer in the infantry in dealing with
11 demolitions, and also in the sheriff's department both our
12 basic training, advanced training and my gang investigations,
13 as well as our -- we had some terrorism training, I know that
14 people who detonate bombs frequently like to record that bomb
15 being detonated, particularly for political issues. They want
16 to record the event for posterity. Same thing a lot of times
17 with people who set fires, but a little bit different.

18 The other thing is if you're going to remotely
19 detonate a device, most common way lately has been to use cell
20 phones. And I've actually had issues where we've been called
21 out to detain people, federal agents have called us out to
22 detain people for buying multitudes of those same type of cell
23 phones because they were concerned they were being used as
24 detonating devices.

25 Q So based on your military training, as well as your
26 training as an officer, you thought that Mr. Playford might
27 have been detonating a device?

28 A I thought he was.

EXHIBIT A

Cook - Direct

1 Q What did you do once you formed that belief?

2 A I told him to hang up the phone.

3 Q Did he comply?

4 A No.

5 Q How many times did you ask Mr. Playford to hang up his
6 phone?

7 A I believe four or five times.

8 Q When he didn't comply with those four or five requests,
9 what did you do next?

10 A I took his phone and I closed it, and I took his camera
11 and I put it down and I detained him.

12 Q At that point after he had refused to hang up his phone,
13 what led you to believe that at that point you needed to detain
14 him?

15 A When he was filming, I was telling him to hang up the
16 phone, and he appeared to be continuing to dial. If I didn't
17 stop him from doing that, there were people down in that
18 building, there were people on the other perimeter as you can
19 see in the other one, there's people nearby, I don't know the
20 strength of that bomb, I don't know who is near it, if that
21 number gets completed and the bomb gets detonated, then I've
22 just watched that happen and I've done nothing to stop it.

23 Q Once you had taken the cell phone and placed it along
24 with the camera on the ground, did you immediately put
25 handcuffs on the Defendant?

26 A I did not.

27 Q What did you ask him to do instead?

28 A I asked him to sit down.

EXHIBIT A

Cook - Direct

1 Q Before we get into that, so as of right now you've taken
2 the cell phone, you've put it on the ground, you've taken the
3 video from him and you've put it on the ground, what is the
4 Defendant doing at this point?

5 A He's arguing with me and turning his body around. And
6 I've gotten his hands behind his back and I'm holding him by
7 his fingers with his hands behind his back.

8 Q And at that point when you say he's arguing with you,
9 what do you mean by that?

10 A He's yelling and screaming at me.

11 Q You said that you asked him to sit down. Why did you do
12 that?

13 A I wanted to be in a position of advantage. Mr.
14 Playford's larger than me. I'm restricted by gear. I don't
15 want to end up in a fight with an individual. I don't have
16 anyone else around there to help me at that point. I don't
17 know where everybody else is at. I don't know if he's armed.
18 In fact, I asked him that, and he refused to answer that.

19 Q Well, before we get into that. So you asked him numerous
20 times to sit down. How many times would you say?

21 A Three, at least.

22 Q At that point after those three requests, did he ever sit
23 down?

24 A He did not sit down until I had to guide him down, use
25 body weight and pushed him down onto the ground.

26 Q Prior to him physically being -- I'm sorry -- when you
27 applied pressure to get him to sit down, you said that you
28 asked him if he had any weapons on him. Why did you do that?

EXHIBIT A

Cook - Direct

1 A I was detaining him to investigate whether he was
2 involved in a crime that I thought was about to take place.
3 When I detain anybody, particularly -- well, when I detain
4 anyone for a crime that involves violence, and somebody is
5 being aggressive verbally with me, verbally, facial cues,
6 physical cues, stiffening of the body and everything like that,
7 and being non-compliant, I want to know if they have a weapon
8 because I don't want to get harmed by that weapon.

9 Q Did you see --

10 A And I don't want anyone else harmed by that weapon.

11 Q I'm sorry, Officer. You just said that you're looking
12 for facial cues. Were there any facial cues that the Defendant
13 was exhibiting that led you to believe that he might be a
14 threat to you?

15 A Yes.

16 Q Can you describe those for the jury?

17 A When I was trying to speak with him, he would be
18 interrupting me, and he had an angry -- I would describe an
19 angry look on his face with his brows down. And his voice was
20 extremely loud, so his lips and face, as you're pushing out the
21 words, has an angry demeanor to it.

22 Q You also mentioned that you're looking for some sort of
23 physical cue, the stiffening. Were there any physical cues
24 that you observed that day that led you to believe that the
25 Defendant might have been hostile towards you?

26 A Yes.

27 Q Can you describe those for the jury?

28 A He was moving his body back and fourth. He wasn't

Cook - Direct

1 listening to me. He wasn't lowering his voice. He was moving
2 his shoulders slightly. And he would turn almost, you know,
3 like he wants to see where I'm at, things like that. And,
4 again, he wouldn't let me get in a position of advantage.

5 Q At some point after he had exhibited these facial queues,
6 as well as the stiffening of the body, were you able to get him
7 into handcuffs?

8 A I was.

9 Q Once you got him into handcuffs, did he begin to comply
10 with you then?

11 A No.

12 Q When you say that he didn't comply with you, what do you
13 mean by that?

14 A He didn't comply with information identifying who he was.
15 He didn't comply in telling me whether he was armed or not, if
16 he was in possession of any weapon on his body that might harm
17 me. He didn't comply in telling me if he was on parole or
18 probation. He didn't comply in assisting me with investigating
19 whether he was there to detonate a bomb or whether he was there
20 for some other reason. And he was physically, you know, non-
21 compliant when we tried to stand him up later and move him over
22 to a vehicle and put him in a police car.

23 Q At some point after you had detained the Defendant, did
24 you explain to him why you had detained him and taken his cell
25 phone and put it on the ground?

26 A I did.

27 Q What did you tell him?

28 A I told him that I detained him because I thought he was

Cook - Direct

1 using his cell phone and try and detonate an explosive device.

2 Q How did the Defendant respond to that?

3 A He said I was crazy.

4 THE COURT: Wait a second. Is this what we talked
5 about in the jail?

6 MR. WANG: No, it's not, Your Honor. This is still
7 on the field.

8 THE COURT: All right. Hearing no objection, go
9 ahead.

10 THE WITNESS: He began screaming that I was crazy or
11 -- he was just screaming, yelling, upset.

12 BY MR. WANG:

13 Q At that point when you explained to him why you had
14 detained him, did he ever tell you, "No, Officer, that's not
15 why I'm here"?

16 A No.

17 Q Did he ever tell you that, "No, I was just filming and I
18 had nothing to do with this," did he ever tell you anything to
19 that effect?

20 A No.

21 Q At some point did you come to believe that he might be
22 involved in the media in some way?

23 A Yes.

24 Q Can you describe for the jury how you came to that
25 belief?

26 A He began yelling. And at one point he identified himself
27 as a reporter for Fox News 6. He asked the People who were
28 watching in the crowd to call Fox News 6 and tell them that

Cook - Direct

1 they had one of their reporters under arrest or in custody.

2 Q Reporters, they're allowed to be around the crime scenes;
3 are they not?

4 A Everybody's allowed to be around the crime scene.

5 Q Are reporters -- do reporters dress in a certain way, or
6 do they have any credentials that help distinguish them as
7 press compared to regular civilians?

8 A Yes.

9 Q Can you describe what that is to the jury?

10 A They have little identification cards, press credentials
11 that are usually validated by the San Diego Police Department
12 or the San Diego Sheriff's Department, at least in this area.

13 Q When you had contact with the Defendant, at any point did
14 you see him clearly displayed media badge on him?

15 A No.

16 Q So when you had contacted him prior -- I'm sorry, all the
17 way leading up to him pulling his cell phone, did you have any
18 idea that he was media?

19 A No.

20 Q Did have any idea who he was?

21 A No.

22 Q Eventually when he starts yelling out that, you know,
23 someone from channel -- about a reporter from Channel 6, how
24 did you respond to that?

25 A I asked him if he worked for Channel 6.

26 Q Did he respond to you?

27 A He did.

28 Q What did he say?

EXHIBIT A

Cook - Direct

1 A He began yelling profanities at me, and then he refused
2 to -- he said something about being a stringer for Channel 6,
3 and that he wasn't going to answer any more of my questions.

4 Q So when you tried to identify whether or not he was
5 indeed media, he refused to answer any more of your questions?

6 A Yes.

7 Q At some point after you had asked him all of these
8 questions, did you attempt to move him into a police vehicle?

9 A Yes.

10 Q When he started to struggle, were there any attempts to
11 put him in the back of the vehicle?

12 A Yes.

13 Q Can you describe for the jury how he struggled with you?

14 A When we -- I had to call additional units to assist me.
15 And as we were walking him over, he began shrugging his
16 shoulders and moving. I know we were telling him to relax, and
17 then we had to tell him at least three times to get in the
18 vehicle. And his body stiffened, and he wouldn't get in.
19 Eventually, he complied.

20 Q Now, just a second ago you mentioned that you actually
21 had to call other units over. So when you had first contacted
22 the Defendant, how many officers were on that western
23 perimeter?

24 A One.

25 Q Was that yourself?

26 A Yes.

27 Q At what point did you decide that you needed more officer
28 help?

EXHIBIT A

Cook - Direct

1 A When I noticed -- initially, when I contacted him and he
2 was being just verbally non-compliant, from the observations
3 that I saw in his clothing and everything else, I requested at
4 least another officer. But when he started telling me, you
5 know, to make my hands off him and shrug away from me when I
6 was trying to get him to sit down, I had to call more. And I
7 ended up, I believe, with a total of four, and had to have a
8 supervisor monitor.

9 Q Why were you concerned when he started struggling that
10 you would need more officers?

11 A Again, I don't -- I want to be focusing on the
12 investigation of the bomb threat. I don't want to be focusing
13 on this individual. I don't want to get hurt by this
14 individual. I don't know if he's armed. He's considerably --
15 well, he's larger than me, considerably larger than me. I
16 don't know any of his training. I don't know anything about
17 him at this point.

18 (Audio played.)

19 MR. WANG: Your Honor, I have transcripts of this.
20 Can I pass them out before we play it?

21 THE COURT: Yeah, whatever you want.

22 THE CLERK: (Indiscernible)?

23 THE COURT: Yeah, what's -- is this exhibit that
24 you've been playing have a number?

25 MR. WANG: Yes, Your Honor. Both contained within
26 People's -- Court's Exhibit 2, I believe, is the disc.

27 THE COURT: All right.

28 MR. WANG: The Court has a copy?

EXHIBIT A

Cook - Direct

1 THE COURT: No, I don't have one, but it's all
2 right.

3 (Pause.)

4 THE COURT: You want to let the jurors know where
5 they are on their transcript or --

6 MR. WANG: (Indiscernible.)

7 THE COURT: Okay.

8 (Audio played.)

9 BY MR. WANG:

10 Q Officer, does that accurately reflect the conversation
11 that you had with the Defendant that we were just talking about
12 concerning having his cell phone?

13 A Yes.

14 Q Officer, in that video, it appears that there were
15 numerous times where you asked him his name and to sit down.
16 Was there something about the circumstances that surrounded
17 this who incident that made you believe that you had to
18 ascertain, one, his compliance, as well as his identity?

19 A Yes.

20 Q Can you explain that for the jury?

21 A There were still people in the building. It was an
22 active investigation of a bomb. We didn't know if there was a
23 bomb that was going to detonate, when the bomb was going to
24 detonate, who was going to detonate the bomb. I had the only
25 person with me that appeared in any way related to it, and I
26 wanted to find out who that person was so we didn't waste time,
27 asset, manpower, investigating something that had nothing to do
28 with a bomb.

EXHIBIT A

Cook - Direct

1 Q Now, Officer, did the Defendant's actions on that
2 particular day delay or obstruct you in the performance of your
3 duties in terms of the investigating that bomb threat?

4 A Yes.

5 Q Is that for all the reasons that you've articulated for
6 the jury, the fact that other resources would have to be
7 brought in?

8 A Yes. And I wasn't able for my duties on the perimeter.

9 Q These other deputies that you had called in, were they
10 called in from other perimeters and other duties?

11 A Yes. They were called in from the evacuations, and I
12 think two of them I know from the other perimeter.

13 Q So when you had called down -- other individuals that
14 were aiding in the evacuation of the building had to respond to
15 come and help you?

16 A Yes. As well as supervisors who were trying to
17 coordinate it, had to -- one of them had to stop doing that and
18 had to monitor this incident. And investigative resources had
19 to be used to try and identify who he was, and any relation he
20 may have to a -- an explosive device.

21 Q At any point during your contact with the Defendant out
22 in the field, did you learn that this explosive device that you
23 were potentially investigating was in fact a bottle of urine
24 and a coffee mug?

25 A Not until I was back at the station.

26 Q So this entire contact that had you with the Defendant,
27 what did you believe was going on inside of Congressman Issa's
28 office?

EXHIBIT A

Cook - Direct/Cross

1 A I believed that there was an explosive device.

2 Q Did any individual from the bomb squad ever approach you
3 and tell you like, "It's nothing, it's harmless, don't worry
4 about it"?

5 A No.

6 MR. WANG: Thank you, I have no further questions.

7 THE COURT: All right. Cross-examination, Mr.
8 Crawford.

9 MR. CRAWFORD: Thank you.

10 CROSS EXAMINATION

11 BY MR. CRAWFORD:

12 Q Officer Cook, were you in contact with other officers by
13 radio or anything of that sort?

14 A Yes.

15 Q And is it your testimony that at no point in time when
16 you were out in the field, that you were told that the, quote,
17 suspicious device was a bottle of urine?

18 A No.

19 Q You've had briefings in that sort of thing as being a
20 deputy sheriff, correct?

21 A Yes.

22 Q And you've also mentioned that you've had training both
23 as a marine -- I think you said marine?

24 A Yes.

25 Q And in the academy, I assume, police force?

26 A In the academy, yes.

27 Q And also in dealing with -- assuming some level of
28 training in dealing with explosives?

EXHIBIT A

Cook - Cross

1 A Yes.

2 Q The parameter that you had you set up on that day on
3 December 1st, was that in line with what you had been trained
4 in terms of an accurate or -- I'm sorry, not an accurate -- but
5 a good parameter, so to speak, for safety purposes?

6 A I didn't set it up. But I'm not -- I'm not sure exactly
7 what you mean. Depending on the size of the explosive device,
8 I don't know.

9 Q Well, okay. Well, apparently the two police cars were
10 parked at a particular distance away?

11 A Correct.

12 Q The fire trucks were parked at a particular distance
13 away?

14 A Correct.

15 Q Do you know how far away that was?

16 A I think it's generally 300 meters or 300 yards.

17 Q Could it have been more?

18 A It could have been.

19 Q Now you've been trained, as we said, that people
20 sometimes use cell phones to designate (sic) these explosive
21 devices?

22 A Yes.

23 Q Were you not trained that if they're outside the
24 perimeter it would be okay to use a cell phone? Was that not
25 part of your training?

26 A No.

27 Q As part of your training and part of your briefings, were
28 you ever briefed on who might be members of the media and who

Cook - Cross

1 might not be members of the media?

2 A Yes.

3 Q Now, your sheriff substation, if you will, or perhaps
4 your main station, you're aware that they have a picture of Mr.
5 Playford as being a media member there. Are you familiar with
6 that?

7 A No.

8 Q Your particular office has never been briefed on Mr.
9 Playford?

10 A No. I had no idea when Mr. Playford was before this day.

11

12 Q Are you familiar with someone by the name of Jan Caldwell
13 (ph)?

14 A Yes.

15 Q And who is she?

16 A Jan Caldwell is a public affairs representative at our
17 Ridgehaven (ph) Office. I've never met her, but I've seen her
18 on TV.

19 Q And she has never briefed your particular location or
20 your substation on who Mr. Playford was?

21 A No. Not to my knowledge. I've never met her and I've
22 never received any briefing on that whatsoever.

23 Q How much training did you get in the academy in terms of
24 the use of cell phones for detonating explosive devices?

25 A We had a block on domestic terrorism. And we also had
26 our annual training on domestic terrorism. So when they refer
27 to it, they don't get deep in the minutia of it, but they just
28 talk about that cell phones can often be used to detonate a

EXHIBIT A

Cook - Cross

1 device because there's a transfer, I guess, of static
2 electricity, and if you dial from one to another one, it can
3 detonate a device.

4 Q So you didn't have very extensive training in that area
5 at all?

6 A No, just basic, that cell phones can be used to detonate
7 explosive devices.

8 Q When you arrived, was the bomb squad already there, or do
9 you know?

10 A No. No.

11 Q You don't know or --

12 A No, they were weren't.

13 Q How long after when you arrived did they arrive?

14 A I have no idea.

15 Q And you said there were actually people still in the
16 building?

17 A Yes.

18 Q Did you go in the building and see those people?

19 A No, I didn't. I saw them through the window.

20 Q Exhibit 7 --

21 A It's the picture of me walking next to the --

22 Q It's a picture of you walking, but it's not the same as
23 what was showed to the jury.

24 MR. WANG: Is this it?

25 THE WITNESS: Yes, that's it.

26 (Pause to confer.)

27 BY MR. CRAWFORD:

28 Q You don't know how far away this truck and this car is

Cook - Cross

1 from the building; is that correct?

2 A I don't know the exact measurement, no.

3 Q But you believe, based upon your training that it should
4 be at least 300?

5 A About that, yes.

6 Q Okay. 300 yards?

7 A It's 300 yards or 300 meters.

8 Q Now this is you right here, right (indicating)?

9 A Yes.

10 Q In the center of the photo?

11 A Yes.

12 Q Walking -- you're the only uniformed officer in this
13 particular Exhibit 7, correct?

14 A Yes.

15 Q And you indicated these people along here, these are --
16 who are these people?

17 A The majority of them, I believe are people who were
18 evacuated out of the building. Either that or people who of
19 just come down to meet them. I don't know who each one is, but
20 most of them were people out of the building.

21 Q Can you identify the individual who appears to be the
22 male in the far left of this particular exhibit?

23 A No.

24 Q But you're also in that particular exhibit a few feet
25 from him?

26 A Yes.

27 Q Is it fair to say that he appears to be on a cell phone?

28 A Yes.

EXHIBIT A

Cook - Cross

1 Q Did you know who he was?

2 A No.

3 Q Did you see him on the cell phone at the time?

4 A I did not.

5 Q Is it fair to say he's on -- that he appears to be on one
6 in that picture, though, right?

7 A He appears to be on one in that picture.

8 Q I'm done with that exhibit. Now, you said that Mr.
9 Playford was -- his appearance alerted you because he was
10 greasy and dirty?

11 A His pants were. His shirt was not. He had a
12 Jacksonville Jaguars shirt on that was clean, but his pants
13 were greasy.

14 Q And you said that in your training and experience, you
15 know that in dealing with electrical issues, that you can get
16 greasy and dirty?

17 A Yes.

18 Q What is it about electronics that makes you greasy and
19 dirty, if you know?

20 A The whole bomb-making process, we're taught a lot that
21 when you look for a package, a suspicious package, look for
22 wires, look for greasy smudges. A lot of times grease will be
23 used to make the contacts apparently work better. I'm not an
24 electrician, but I know just from my time in the military when
25 you try putting things together, whether it's with tape or
26 whether it's, you know, boxes, whether you're using bolts,
27 whatever you're using, you tend to get yourself dirty. And
28 grease is just one of those things.

EXHIBIT A

Cook - Cross

1 Q Okay. You said that someone else pointed out to you that
2 Mr. Playford was with the Occupied people; is that what you
3 said?

4 A No.

5 Q You said --

6 A He was with the protesters. I had mentioned that there
7 was protesters there earlier that morning.

8 Q And was it indicated to you that he was protesting? Is
9 that what was indicated to you?

10 A I think I took that from he was with the protesters.

11 Q I see. Do you know if any of the protesters were
12 arrested that morning?

13 A I don't believe so. But I don't know for sure.

14 Q All right. Now when you first saw Mr. Playford, you
15 indicated he was walking towards the safety zone or something
16 along those --

17 A Yes.

18 Q And do you believe he got past the first patrol car, but
19 never past the second?

20 A Yeah, I don't -- I don't recall if he got past the
21 second. I remember just knowing that he was making a beeline
22 in there, and I wanted to stop him, so I wasn't going to be
23 chasing him around inside the area.

24 Q Did he start videotaping after you stopped him, or when
25 did he start videotaping?

26 A He brought the camera up a couple times, so I would say
27 before I stopped him. And then during, and then, you know,
28 after what we saw there.

EXHIBIT A

Cook - Cross

1 Q Well, on the video that we saw, you -- is it fair to say
2 that from that video he could not have been past the cars?

3 A Well, yeah, he was -- the last one we watched, he was
4 back. He was back when he was filming. He had moved back when
5 I told him to move back.

6 Q And he never crossed the last car?

7 A I don't recall if he did. I don't believe he did.

8 Q Are you familiar with the San Diego Sheriffs Department's
9 guidelines on how to deal with the media?

10 A Yes.

11 Q You've gone over that?

12 A I've been briefed on it. I don't know it verbatim,
13 but...

14 Q Is it fair to say, then, that -- yeah, I think you said
15 earlier, "Anybody can be at a crime scene."

16 A Anybody can be at a crime scene. It's very common when
17 you have a crime scene for people to show up, to videotape, to
18 film, to take photos.

19 Q And anybody can videotape or take photos, whether they be
20 media or not; is that correct?

21 A Yes.

22 Q As long as they don't interfere with police activity in
23 doing so?

24 A Right.

25 Q Now when you got a hazardous area, or in this case, an
26 alleged bomb threat, isn't the policy of the San Diego Sheriff
27 to warn the media there may be some danger there?

28 A I think you might be mixing up what's called a disaster

Cook - Cross

1 area or avalanche zone and a crime scene. It's 409.5 PC, the
2 Penal Code says that, "After being warned, the media is allowed
3 to enter into a disaster area." So, for instance, the fires
4 that we've had in San Diego, the media's allowed to go in those
5 zones and report, as long as their presence isn't going to
6 interrupt the emergency, the firefighting, they're not going to
7 drive over the hoses or anything like that. So the media is
8 warned, but they're allowed to go into those type things.

9 A plane crash, I think the case was a plane crash in
10 San Diego. The media is allowed to go into that site. But if
11 it's an active crime scene, that doesn't apply.

12 Q And an active crime scene is designated how?

13 A An active crime scene is designated as an unnatural event
14 that's taking place. I mean, we're trying to determine if a
15 crime is occurring at that moment, is about to occur or has
16 just occurred.

17 Q And how is it that a person of the media is told that
18 they're crossing an active crime scene?

19 A I would tell the person, "I'm sorry, you can't go past
20 this crime scene." There's generally not a problem. They'll
21 tell them where they can go and they'll set up wherever they
22 need to go. That's how I tell them.

23 Q Did you have a command center set up at this particular
24 location?

25 A There was a command center, I believe, just west of there
26 on the side --

27 Q Just west of?

28 A I'm sorry, just west of our location down a side street.

EXHIBIT A

1 There was commands -- a command post set up with the capitals
2 and lieutenants and everybody coordinating the efforts.

3 THE COURT: All right. It's 4:30 or a little past.
4 I assume you have quite a bit more.

5 MR. CRAWFORD: I do.

6 THE COURT: All right. Well, let's take our break,
7 then. Deputy Cook, we need you back tomorrow at 9:00, okay.

8 THE WITNESS: No problem, Your Honor.

9 THE COURT: Okay. You may be excused for now. And
10 per the jurors, it's important that I remind you of the
11 admonition. You don't need to talk to the lawyers or Mr.
12 Playford. Don't do any research on the case. Don't look up
13 anything on the internet. Don't go by the scene. Don't
14 consult with anybody else or any other reference works. And if
15 you have a problem, make sure you call us.

16 And we'll be ready to go at 9:00. And we're moving
17 right along, so I would anticipate that you'll get this case
18 tomorrow. I think that would be a good bet. And if you need
19 to deliberate on Friday, you can do that. So, any questions
20 about the schedule? Okay, then leave your notebooks and we'll
21 see you tomorrow.

22 (Jury exits courtroom.)

23 THE COURT: All right, the jurors have left. I've
24 gone over -- I want to talk about instructions for a minute. I
25 looked at the instructions that Mr. Wong provided. I took out
26 -- I don't know where I put it, so I don't know what the number
27 is -- the one that says Defendant testifying, but not
28 explaining anything, I never read that one. Defendant

EXHIBIT A

1 testifying and not explaining everything, that one I don't
2 read.

3 I believe that we're going to need instruction 3500,
4 the unanimity instruction. I know that you put it in here,
5 kind of, but there's been -- let me find that, because this
6 could be important later on. Yeah, this is the end of
7 instruction 2656, resisting arrest, and you have a paragraph
8 you put in here of your theory. The People allege that the
9 Defendant resisted or delayed Brendan Cook by doing the
10 following: Refusing to comply with orders after being
11 detained. You may not find the Defendant guilty unless you all
12 agree that the People have proved that the Defendant committed
13 at least one of the alleged acts of resisting or delaying a
14 peace officer who was lawfully performing his duties.

15 I suggest that paragraph is inconsistent, internally
16 inconsistent, because you've presented all kinds of theories
17 under which he could be guilty. If you want to select only one
18 of those theories, that is, that he didn't comply with orders
19 after being detained, if that's your only theory that you're
20 going to argue, then this still isn't a good paragraph, because
21 you're including other conduct in the last sentence.

22 So, what I think we ought to do --

23 MR. WANG: Your Honor, just to let Your Honor know,
24 that is directly pulled from the CALCRIMS. The reason why the
25 People filled in that blank is that we did allege with
26 specificity where the conduct is, so that we would not need a
27 unanimity instruction. If Your Honor feels that way, I'll
28 certainly prepare one, but I'm just letting you know that that

1 was not a paragraph put in by me as a special instruction,
2 that's directly from the CALCRIMs.

3 THE COURT: Well if you're going to only argue --
4 what are you going to argue that he did then?

5 MR. WANG: I'm going to argue that after --

6 THE COURT: What's the plan?

7 MR. WANG: I'm going to argue that after the cell
8 phone was placed on the ground where the video camera by the
9 officer, his refusal to sit down and comply with orders by the
10 officer is what the 148 is.

11 THE COURT: You're not going to argue that it's
12 delaying the other officers who had to come to the scene, or
13 the supervisor, or --

14 MR. WANG: It certainly delayed Officer Cook's
15 investigation that he had to call other officers over.

16 THE COURT: Well, but what I'm saying, you're not
17 going to argue that it's a 148 for all that other stuff?

18 MR. WANG: I am not going to allege multiple victims
19 of the 148. The fact that other individuals came and responded
20 is simply to reflect the amount of delay that Officer Cook had
21 to do, because he actually had to call a cover officer before
22 he could engage the upon defendant, due to his non-compliance.

23 THE COURT: All right. You're going to have to be
24 really careful in your argument.

25 MR. WANG: I will not allege that other officers
26 were delayed.

27 THE COURT: All right. Now when you say he refused
28 to comply with orders after being detained, and then you say

EXHIBIT A

1 with you, but I understand that concept.

2 MR. CRAWFORD: No, I understand.

3 THE COURT: Pardon?

4 MR. CRAWFORD: I understand you don't agree with me.

5 THE COURT: All right. I just -- I'd do it a
6 different way, but it's not my job to decide how to do it. My
7 job is only to decide if instructions match what the arguments
8 are going to be.

9 MR. CRAWFORD: I am going to oppose that instruction
10 the way it's been particularly generated. I think that that's
11 a due process argument. I think what he's saying to this jury,
12 if you find that he did those specific acts, then you find that
13 that's an obstruction. I think that's a due process issue.

14 THE COURT: Okay.

15 MR. CRAWFORD: They're asking the jury to come to a
16 specific conclusion based upon certain acts. And I think
17 that's unlawful.

18 THE COURT: Okay. That instruction's fine. I mean,
19 it's part of an entire instruction. It's really limiting.
20 It's limiting the rest of the instruction.

21 MR. CRAWFORD: What I have found, Your Honor, in
22 this kind of case, is what a jury does is they take that very
23 instruction and they -- they vote, if you will, for lack of a
24 better term, on do you find this particular act occurred, yes
25 or no.

26 THE COURT: Well, then that's your job to convince
27 them not to do that.

28 MR. CRAWFORD: But I think it's the Court's job not

1 to issue an instruction that is in violation of due process of
2 the law.

3 THE COURT: Well, I agree with that part. All
4 right. If you have any other instructions, bring them in the
5 morning, because I anticipate we'll be reading instructions
6 pretty early in the day tomorrow.

7 Have you -- you don't need to tell me right now, Mr.
8 Crawford, what the answer is, but have you made a decision
9 about whether or not Mr. Playford's going to testify, just in
10 terms of --

11 MR. CRAWFORD: Right now I would say yes, but --

12 THE COURT: All right. So I'm just thinking in
13 terms of scheduling. So I should plan on some extra time?

14 MR. CRAWFORD: Well, I don't know. I don't know how
15 many more witnesses he's planning on calling, but I think he's
16 got through the crux of his case already.

17 THE COURT: Yeah. Well, let me do this. How much
18 more cross do you want to -- just guess for me.

19 MR. CRAWFORD: Half hour max.

20 THE COURT: All right, 9:30. Then what are you
21 going to do?

22 MR. WANG: Your Honor, have I four civilian
23 witnesses that are the same length, approximately, of Deputy
24 Williamson, the individual that testified right before Deputy
25 Cook, so about 10, 15 minutes each.

26 THE COURT: Okay. I may not have let Williamson
27 testify if I'd known what he was going to say and there was an
28 objection. I don't think he's testified to anything relevant.

1 What are the other people going to say?

2 MR. WANG: Your Honor, there were individuals that
3 were actually part -- as the Court can see from the fire
4 station, they observed the incident as it occurred.

5 THE COURT: So they're percipient witnesses to
6 alleged 148?

7 MR. WANG: Right.

8 THE COURT: All right.

9 MR. WANG: As far as the individual that directed
10 the deputy's attention to Mr. Playford, that he testified
11 about.

12 THE COURT: All right. So they're all percipient
13 witnesses, that's fine. So, so you have roughly 9:30, if you
14 don't get involved in some lengthy redirect, these other
15 witness, 10:30, 11:00 maybe?

16 MR. CRAWFORD: They should have the -- they should
17 have it by early afternoon.

18 THE COURT: Yeah, I was going to say, we won't
19 finish in the morning if we have defense evidence, but that's
20 fine. All right. Then see everybody in the morning.

21 MR. WANG: Thank you, Your Honor.

22 THE COURT: I do have -- I don't think these -- I
23 don't think you marked these transcripts.

24 MR. WANG: I need to mark the transcripts.

25 THE COURT: All right. Well, let's do that tomorrow
26 morning before we start. Do you have another transcript, or do
27 we have all of them?

28 MR. WANG: Yes, I have one more. I forgot to give

1 that one to (indiscernible).

2 THE COURT: But we already played it?

3 MR. WANG: We did play it.

4 THE COURT: All right.

5 MR. WANG: It was the first one and it was very
6 short.

7 THE COURT: All right. Let's forget about it, then.
8 That's all right. Just mark the other ones either tonight or
9 tomorrow.

10 (Proceedings recessed.)

11

12 CERTIFICATE

13 I certify, under penalty of perjury, that the
14 foregoing is a verbatim transcription prepared from the
15 electronic sound recording provided to me from the proceedings
16 in the above-entitled matter, and is a true and accurate
17 transcript of said proceedings to the best of my ability and
18 belief.

19

20 Francesca St. John
21 Francesca St. John, Transcriber

JUL 31 2012
Date

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EXHIBIT A

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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
JAMES PLAYFORD,
Defendant.

Case No. CN300278

VOLUME II
TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD E. MILLS
SUPERIOR COURT JUDGE
(Department 21)

Vista, California
Thursday, May 17, 2012

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[See transcriber note on p. iii.]

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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Cook - Redirect

1 Q On that particular date, December 1st, 2011, did you
2 arrest the defendant because he was trying to film?

3 A No.

4 Q Did you arrest the Defendant because he wouldn't tell you
5 his name?

6 A No.

7 Q Did you arrest the Defendant because he potentially was a
8 media person that had tried to cross that line?

9 A No.

10 Q Why did you arrest him?

11 A I arrested him because after I detained him and was
12 trying to conduct a preliminary investigation to find out if he
13 was in fact involved with this bomb, his behavior, his
14 mannerisms, his evasiveness, his physical refusal to comply
15 with my commands to the point where I actually had to put my
16 hands on him and force him to sit down required me to call four
17 other deputies who were on perimeters who were trying to
18 evacuate people, who were trying to make sure no innocent
19 people drove their car in, or, you know, someone on their
20 bicycle doesn't go around the perimeter, caused me to have to
21 call and have detectives try and identify who this person was.

22 And caused us to focus a descent amount -- I mean,
23 we really only had like six or seven people there, and we were
24 all focused on him for, you know, a good 20, 30 minutes at that
25 time before I could leave. The video is only the beginning
26 part of it. That's why I arrested him, because I couldn't
27 complete my preliminary investigation.

28 MR. WANG: Thank you. I have nothing further.

1 THE COURT: However, I have one more thing to do.
 2 And that is, he's going to have to pay some attorney's fees. I
 3 read his financial declaration. I'm going to give him a break
 4 on it, but I'm going to set the attorney's fees for the trial
 5 at a reduced rate of \$300. And you can get your -- you can
 6 wait outside. We'll give you the paperwork. You can take it
 7 down to Collections and set up an account to make payments.

8 MR. PLAYFORD: Thank you very much.

9 MR. CRAWFORD: Thank you.

10 (Proceedings adjourned.)

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CERTIFICATE

I certify, under penalty of perjury, that the foregoing is a verbatim transcription prepared from the electronic sound recording provided to me from the proceedings in the above-entitled matter, and is a true and accurate transcript of said proceedings to the best of my ability and belief.

Francesca St. John

 Francesca St. John, Transcriber *WZ*

7-31-12

 Date

EXHIBIT A

1 that could have had drastically different outcomes than it
2 did. And we expect members of our community that we entrust
3 with a badge and uniform that they don't sit idly by and watch
4 someone potentially commit a crime. They're not
5 (indiscernible), they're just as much (indiscernible).

6 And members of the jury, we might be sitting here
7 scrutinizing a different person if Deputy Cook had not done
8 (indiscernible), because he was doing his job. He was
9 protecting those individuals in Congressman Issa's office. He
10 was making sure that today, as we stand here today, that
11 December 1st of 2011 didn't have any significance.

12 THE COURT: All right. Thank you, Mr. Wang. Mr.
13 Crawford, go ahead.

14 MR. CRAWFORD: I'm going to need a minute to set up,
15 just to swap the table out.

16 THE COURT: All right.

17 MR. CRAWFORD: I hope it works.

18 (Pause.)

19 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

20 MR. CRAWFORD: Thank you. Ladies and gentlemen of
21 the jury, we all respect police officers. That's not what this
22 is about. Mr. Playford also had a job to do. And butt for the
23 interference, and unlawful interference and unlawful detention
24 of a police officer, Mr. Playford would have been allowed to do
25 that job.

26 First Amendment guarantees freedom of the press.
27 That's what we talked about way yesterday morning, a long time
28 ago it seems like now. That's what the First Amendment

1 guaranties. Mr. Playford has a right to dispute his
2 infringement upon his First Amendment right. First Amendment
3 guarantees freedom of speech. Certainly, I don't hear the
4 prosecution saying that the things that Mr. Playford was saying
5 were unlawful. So that's not an issue for us, whether or not
6 his speech was unlawful.

7 I think what you've heard is a significant amount of
8 verbal criticism, particularly after Mr. Playford was
9 approached unlawfully, and detained unlawfully. We talked
10 about him being immediately abusive and aggressive. That's not
11 what you heard on the videotape. When he's initially
12 approached he's saying, sir, yes, can I help you, have I done
13 anything wrong, have I broken any laws. He has a right to
14 inquire. He's being detained. He's being stopped from doing
15 what he has a lawful right to do. It's not until the officer
16 becomes more aggressive that the officer starts using force,
17 that Mr. Playford then becomes agitated and uses some language
18 that none of us appreciate.

19 Had that officer not stopped Mr. Playford from doing
20 what he's legally entitled to do, none of us would be here
21 today determining the outcome of this particular case. While
22 that police officer may resent having abusive language directed
23 at him -- and the judge read you that, as part of the
24 instruction you have -- think may not exercise that power at
25 their disposal to punish individuals for conduct that is not
26 merely lawful. Lawful, it is lawful for him to videotape. It
27 is lawful for him to be on his cellular phone. It is lawful
28 for him to question why are you talking to me at all, why are

EXHIBIT A

1 you bothering me. I'm not in a safety zone, I'm outside the
2 safety zone. I'm not even near the yellow tape. You have no
3 reason, Officer, to talk to me at all.

4 Was Mr. Playford being a nice guy? No. He doesn't
5 have to be. He's (indiscernible). Is he saying things that
6 you probably -- you're probably saying oh, man, I don't like
7 that language, but it's not against the law. You can't be
8 arrested for that. It's not a jailable offense to use swear
9 words. It's not a jailable offense to swear at an officer.

10 Not only is it lawful, but it is protected by the
11 First Amendment. That's what we talked about early yesterday.
12 Everybody heard of the First Amendment; does anybody have a
13 problem with it? I don't believe anyone indicated that have a
14 problem with the First Amendment.

15 A peace officer is not lawfully performing his or
16 her duties if he or she is unlawfully arresting or detaining
17 someone. The police officer may believe that he has a lawful
18 detention, but that doesn't make it so. The peace officer may
19 believe he has a reasonable detention, but that doesn't make it
20 so. That's determined by statutes and codes.

21 Therefore, if he's incorrect in arresting or
22 detaining someone who's doing something perfectly lawful, and
23 we've talked about what's perfectly lawful, I even asked the
24 officer what's lawful, what was unlawful about what Mr.
25 Playford was doing. Folks, it's lawful to videotape; and it's
26 not unlawful. If it's lawful to be on your cellular, then it's
27 not unlawful. If it's lawful to say get away from me, then
28 it's not unlawful. Therefore, if you're detaining someone for

EXHIBIT A

1 any of those reasons, it's an unlawful detention.

2 We heard from a bomb expert, a real expert
3 apparently, he said that he was, he qualified himself as one,
4 one with more knowledge about the use of cellular phone in the
5 field, and what did he tell you? Not concerned with someone
6 using a cellular phone outside the safety zone, wouldn't
7 concern him at all. So a reasonable officer who knows what
8 he's doing, wouldn't be concerned about that at all. So if a
9 reasonable officer is not concerned about a person using a
10 cellular phone outside the safety zone, it is unreasonable for
11 another officer to say it's not something you should be doing.

12 People make mistakes. Officers make mistakes. Mr.
13 Playford makes mistakes. We all make mistakes. Thus, if this
14 officer is making a mistake in detaining Mr. Playford, it's a
15 mistake. But that doesn't mean that Mr. Playford has done
16 anything wrong. It doesn't mean that Mr. Playford was
17 willfully violating the law. Mr. Playford was willfully doing
18 what he had been trained to do. Stay outside the safety zone,
19 videotape, get that message to their agency as soon as you can,
20 and update your agency as soon as you can. That's what he was
21 doing. So he had a job he was performing as well.

22 If the officer made a mistake in believing that Mr.
23 Playford was trying to detonate a bomb, so be it, he made a
24 mistake. Does that make it a lawful arrest? Does that make
25 Mr. Playford an illegal person? I submit to you it doesn't.
26 No more than it would have made that other person standing over
27 there using his cell phone an illegal person. That other
28 person could have been questioned as well if he had been

EXHIBIT A

1 questioned. Why didn't you ask me to get off my cellular
2 phone? I have a right to use my cellular phone. Everyone else
3 here was using their cellular phone, why are you -- why are you
4 messing with me? As a citizen you have a right to do that, to
5 question what you believe is unlawful. Illegal, violation of
6 your constitutional rights, activity by peace officers.

7 You can also use reasonable force when you believe
8 unreasonable force has been used against you. What kind of
9 force have we heard that Mr. Playford used at any point in
10 time? Oh, get away from me, what are you doing, he's running
11 away from him. Well, that's the first thing we've heard. Is
12 that unreasonable when you believe someone's taking away your
13 ability to make a living? Was that unreasonable for you to
14 question what he's doing and to try to -- he didn't take off
15 running, he said what are you doing? At least by the
16 description. Why are you trying to grab my cellular phone.
17 Why are you trying to grab my camera. I'm with the news. What
18 else did he want to say? What else did that officer need to
19 hear at that point?

20 He doesn't have to provide identification. He's not
21 required to. He doesn't have to say his name. He's not
22 required to. None of that is unlawful.

23 Officer Cook said at no time did he see a press
24 credential. That's what he said initially. At no time had he
25 ever seen one. Wasn't aware of one to this day. Then when I
26 cross-examined him on that, he changed it. Have you a jury
27 instruction about the believability of the witness. And you
28 have to ability to judge the believability of a witness, .

1 whether he be a police officer or whether he be anyone else.
2 And you can question the believability of that testimony.

3 Initial indication was never -- at no point in time
4 was he able to verify that he was a number. Changed that to
5 saying that well at some point in time we did find something
6 around his neck. How does that comport with the statement
7 that, No, I never was able to verify he was a member of the
8 media? That's part of the exhibit.

9 As for a San Diego sheriff's officer press
10 credential, that doesn't even ask. Why is he asking Mr.
11 Playford for something that doesn't exist? The officer said
12 well I thought it did, it used to be. Did he say when it used
13 to be? It was last year or the year before, 10 years ago?

14 Never saw Mr. Playford enter the safety zone. To me
15 that's huge. Tremendous. If he never saw him enter the safety
16 zone, why is he approaching him in the first place? If you
17 never see a person committing a crime, why did you take them in
18 the first place? You may want to investigate, but he doesn't
19 have to cooperate.

20 Admitted that it's not against the law to video, he
21 admitted that. So what you saw Mr. Playford doing outside the
22 safety zone was videotaping. Is that against the law, sir?
23 No, it isn't. Can you detain someone for doing something that
24 is lawful? Is that unlawful detention?

25 And it's not against the law to be on his cellular
26 phone. Particularly, where that's a particular concern is that
27 he's outside the safety zone on his cellular phone. If it's
28 not against the law to be on his cellular phone, he wasn't in

1 the safety zone, it's not against the law to video, why is he
2 being detained? Is that unlawful detention? If he has a right
3 to question why he's being detained, is that unlawful? That's
4 his First Amendment right.

5 Officer didn't notice another person on the phone
6 right in front of him. What were his observations? He said he
7 was there to observe the perimeter. To make sure no one went
8 beyond the perimeter. That's what he said that his duty was at
9 that particular point. Well, no one did go beyond the
10 perimeter. That his observations are so keen that he didn't
11 see another guy on his cellular phone directly in front of him,
12 but you saw the picture. If he did see him, why didn't he
13 detain him?

14 He did not know the device was urine in a bottle,
15 yet Mr. Playford did. Mr. Playford's got more knowledge than
16 the police at that point? You can disbelieve what Mr. Playford
17 said or you can disbelieve what the officer said, or you can
18 have some other reasonable explanation for that. But if you
19 believe what Mr. Playford said, apparently he's got more access
20 to what's going on at that crime scene than the police do. I
21 asked the police officer, aren't there communications going on
22 outside the perimeter. Aren't there radio transmissions that
23 you're listening to? He said yes, but he was not informed as
24 to what the device was. Mr. Playford knew what the device was.
25 He said he got that information from Channel 6. Channel 6 had
26 more information than the police?

27 You can question that for yourselves. The Defendant
28 is not guilty, plain and simple. We have an unlawful detention

EXHIBIT A

1 and an unlawful arrest. You can use reasonable force in
2 resisting either. You can use reasonable statements in
3 questioning either. Therefore, he cannot be convicted of the
4 charge. I'm going to ask you to find that he is not guilty.
5 Thank you.

6 THE COURT: All right. Thank you, Mr. Crawford.
7 Mr. Wang, why don't you go ahead.

8 MR. WANG: Yes, sir.

9 THE COURT: This will probably go a little bit past
10 noon, but I'll stop if somebody wants me to stop right now, but
11 I rather finish. So is everybody okay for maybe another 10
12 minutes, 15, something like that?

13 REBUTTAL ARGUMENT ON BEHALF OF THE PLAINTIFF

14 MR. WANG: You may notice a funny thing when you go
15 back in the jury room. Read through that instruction that asks
16 you about what constitutes unlawful detention, you're not going
17 to hear the word lawful or illegal anywhere in that
18 description. What it asks is whether or not the officer
19 (indiscernible) to believe that someone might commit a crime.
20 That's (indiscernible). Why did he that particular
21 individual? Well, because somebody told him that that guy was
22 part of the demonstrate. He was inside the building right
23 before the bomb scare. Why did he come and take the
24 Defendant's cell phone away? Because he raised it in front --
25 pointed it at the building where he thought the bomb was and
26 started punching in numbers.

27 Members of the jury, when you go back there, I want
28 to you ask yourself a question because Mr. Crawford seems to