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CHATHAM COUNTY GA.

SUPERIOR COURT OF CHATHAM COUNTY
EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA)	
)	CASE NO.: CR13-2673-J2
)	Poss/Delivery Of C/S With
vs.)	Intent Distribute (3)
)	
)	
FABIAN KEITH NOTTO)	
)	
)	

Transcript of the proceedings heard during a MOTION HEARING in the above-styled case at the Chatham County Courthouse, Savannah, Georgia, on the 1st day of March, 2016, before the Honorable LOUISA ABBOT, Judge, Superior Court, Eastern Judicial Circuit, State of Georgia.

APPEARANCES:

For the State:	JEREMIAH JOHNSON NOAH ABRAMS Assistant District Attorney Savannah, Georgia
For the Defense:	LARRY CHISOLM Savannah, Georgia
Court Reporter:	Andrea White, CCR

1 THE COURT: This is State of Georgia versus Fabian
2 Notto, it's CR13-2673. He is present here in court with
3 his attorney, Larry Chisolm. The State being represented
4 by Assistant District Attorney's Jeremiah Johnson and Noah
5 Abrams.

6 And we are here on the Defendant's motion for
7 reconsideration of a ruling made on the Defendant's motion
8 to suppress, which was denied. So, Mr. Chisolm, do you
9 intend to present evidence on your motion for
10 reconsideration?

11 MR. CHISOLM: Brief evidence, Your Honor. And one
12 witness has just arrived in the courtroom and I have not
13 had a chance to speak with him yet to see whether or not
14 he even knows what's going on today. So, I may need a
15 second just talk to him.

16 THE COURT: Okay. You've got just a second. I'm
17 just kidding. So do you want to do that right now or do
18 you want to go ahead and have the other witnesses sworn
19 and have that presented? I mean, either way is fine with
20 me, you let me know.

21 MR. CHISOLM: That's the only witness that has
22 appeared today and I think that would be the one we're
23 going to present.

24 THE COURT: Okay. So you would like to speak to that
25 witness momentarily outside in the hallway?

1 MR. CHISOLM: Yes, ma'am.

2 THE COURT:

3 MR. ABRAMS: If Mr. Chisolm wants a moment alone, if
4 we just might have a moment right afterwards to also find
5 out.

6 THE COURT: Sure.

7 (NOTE: Pause.)

8 THE COURT: Is everyone ready to proceed?

9 MR. CHISOLM: We're ready, Your Honor.

10 MR. JOHNSON: We're ready, Your Honor.

11 THE COURT: Because it is a motion for
12 reconsideration filed by the Defendant, at this point the
13 burden is incumbent upon you, I believe, Mr. Chisolm, to
14 come forward and show why I should reconsider my order.
15 So it's not the same as the original motion to suppress
16 where the burden would be on the State. You agree?

17 MR. CHISOLM: I do, Your Honor.

18 THE COURT: All right. Then you want to swear your
19 witness.

20 (NOTE: All witnesses sworn.)

21 THE COURT: And you may call your witness, Mr.
22 Chisolm. I've read your motion, so - -

23 MR. CHISOLM: That's what I wanted to - - I wasn't
24 clear on whether the Court had an opportunity to review
25 it, so you answered my question.

1 THE COURT: Yes, I'm familiar. And needless to say
2 I'm familiar with the case and I realize that what you're
3 bringing forward is something that you believe affects the
4 credibility of earlier testimony regarding the basis for
5 the stop, is that correct?

6 MR. CHISOLM: Essentially, Your Honor.

7 THE COURT: Okay.

8 MR. CHISOLM: As well as based on the factors
9 outlined in the motion, the detention after the stop as
10 well is brought into question by some of the additional
11 factors that have been asserted since the time of the
12 original motion.

13 THE COURT: I have reviewed it, and since - - the
14 record will reflect that I presided over all the hearings
15 concerning the motion to suppress, so I do have, I think,
16 a good grasp of that. Moreover, did the order based on
17 the evidence previously, and so, I'm ready for you to have
18 your witness come on up.

19 THE COURT: Good afternoon.

20 THE WITNESS: Good afternoon, Your Honor.

21 THE COURT: Mr. Chisolm, you may proceed whenever
22 you're ready.

23 MR. CHISOLM: Thank you.

24 SERGEANT ROBERT LARRY WAS CALLED BY THE DEFENSE AND HAVING BEEN
25 DULY SWORN, TOOK THE STAND AND TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. CHISOLM:

2 Q Sir, stat your name for the record.

3 Q Sergeant Robert Larry.

4 Q Where are you employed?

5 A I'm currently assigned with Savannah-Chatham
6 Metropolitan Police Department Internal Affairs.

7 Q And how long have you been employed by the Savannah-
8 Chatham Metro Police Department?

9 A Going on twenty-four years.

10 Q And how long have you been assigned to Internal
11 Affairs?

12 A Going on maybe three years or so.

13 Q Three years?

14 A Three years or so.

15 Q What year was that?

16 A When I was assigned?

17 Q Uh-huh.

18 A I believe it was like 2012 or something like that.

19 Q Directing your attention back to August of 2013, did
20 you have an occasion to be involved in an investigation
21 concerning Officer Castro?

22 A Yes, I was.

23 Q Can you explain to the Court how you became involved
24 in that investigation?

25 A Basically there was some concerns from the command

1 staff in regards to the use of force that was used on a subject
2 by the name of Mishawn Green (phonetic).

3 Q Could you explain to the Court the circumstances of
4 the report that was made?

5 A I'm sorry?

6 Q Could you explain to the Court the circumstances
7 surrounding that report?

8 A Surrounding my report or?

9 Q The report that was made to you that there was a need
10 for an investigation involving Officer Castro and Mishawn
11 Green.

12 A Basically there was an allegation of excessive force
13 and the command staff wanted it looked into.

14 Q And you were the primary investigator associated with
15 that?

16 A Yes.

17 THE COURT: Detective Larry, could you spell the
18 first name of Mr. Green for the court reporter?

19 THE WITNESS: Mishawn Green. I believe it spelled M-
20 I-S-H-A-W-N.

21 THE COURT: Thank you. Sorry to interrupt Mr.
22 Chisolm.

23 Q And in connection with that report, you were the
24 primary investigator?

25 A Yes.

1 Q And you've had an opportunity to review your reports
2 and records pertaining to that particular event?

3 A I got to scan over it.

4 Q You mentioned to me just a few moments ago that it
5 was more than just report one report that I had that it was
6 really a pretty voluminous case file, is that correct?

7 A Yes. The case file is actually two hundred and
8 forty-six pages.

9 Q And directing your attention specifically to what
10 occurred, can you tell the Court what were the circumstances of
11 the arrest of Mishawn Green?

12 A Basically Metro officers were conducting a
13 surveillance on Mr. Green for several burglaries that they were
14 looking into, there were some burglaries they were looking
15 into. At which time Officer Castro, at one point one of the
16 locations they were sitting there for quite a while and he
17 decided to go knock on the door and determine whether or not
18 the suspect was at the home.

19 He knocked on the door, someone opened the door, a
20 young lady opened the door and he said he thought he had a
21 glimpse - on his report indicates he thought he saw a glimpse
22 of her - - of him, Mishawn Green. At which time he went back
23 to the car and was trying to alert everyone that thinks he
24 might be there, but he wasn't sure. At which time Mr. Green
25 came out of the house, walked over and started looking in the

1 cars and then he saw Officer Castro in the vehicle. Officer
2 Castro was in plain clothes and when the subject saw him
3 holding his radio, it surprised him and Officer Castro was
4 surprised also that the suspect walked over to the vehicle.

5 At which time a pursuit began. Officer Castro chased
6 after the suspect. Some of his property came off, his badge
7 came off, I believe his holster came off -- excuse me, his
8 badge came off. The suspect lost a shoe; they were running for
9 quite a distance. At which time Officer Castro was able to
10 apprehend the subject and then there was a brief physical
11 struggle between the two, at which time Officer Castro was able
12 to take the suspect in the custody. After he was able to
13 officers responded.

14 Q Let's go back to when he took the suspect into
15 custody. Well, actually let's go further back to when you're
16 talking about them being at the door, was there, in the course
17 of your investigation was there something irregular about what
18 he did as far as going to the door?

19 A He had permission from his supervisor. His
20 supervisors told him that he could do so, to go knock on the
21 door.

22 Q Do you have the report and front of you?

23 A Yeah.

24 Q Did you not interview his supervisors in connection
25 to his instructions?

1 A I believe they did make some mention about they
2 thought that he might - - they felt as though - -

3 (NOTE: Pause. Witness reviewing documents.)

4 A I vaguely remember this. There was some
5 communication error between him and one of the primary
6 detectives as far as going to the scene, going and knocking on
7 the door. One supervisor - -

8 Q More specifically, wasn't he told to hold his
9 position until - -

10 MR. JOHNSON: Objection leading.

11 MR. CHISOLM: Your Honor, apparently the witness is
12 having some difficulty understanding what's in his report,
13 and I would point out for the record, that he is a member
14 of the Savannah-Chatham Metro Police Department and it
15 appears that he is minimizing what's included in the
16 report and I would ask for some latitude in terms of
17 cross-examination.

18 THE COURT: I'm not inclined to allow you to treat
19 him as hostile at this point. But, you know what would be
20 really helpful because I've got like some noise
21 interference, if you could come forward and speak more
22 loudly. And you can move this podium anywhere you want,
23 but they're apparently cleaning the front of the building,
24 for whatever purpose that is, I don't know. And you can
25 also approach the witness at will and point out what you

1 would want him to look at regarding your questions. I'm
2 not going to let you lead right now, but we may get there,
3 okay?

4 MR. CHISOLM: I appreciate being closer, I'm hearing
5 you better as well.

6 THE COURT: I know I have a very soft voice and
7 honestly it sounds like a dentist drill. It's just a
8 miserable noise, but there's nothing I can do about it,
9 I'm not in charge of them.

10 Q Okay. Officer, so I want to direct your attention
11 back to my question; my question pertained to the instructions
12 that Mr. - - excuse me, Officer Castro had from supervision
13 with regard to the investigation of the suspect Mr. Green that
14 day.

15 A And again, to answer your question, yes, he was
16 initially told to remain there. However, there were some
17 communication errors between the lead investigator and also one
18 of the supervisors, which was Sergeant Williams, which was her
19 supervisor. At one point she thought that Sergeant Williams
20 said go ahead and for Officer Castro to go ahead and do that.
21 However, there was miscommunication between Officer Castro,
22 Sergeant Williams, who was one of the supervisors, and
23 Detective Berkowski (phonetic), who was there.

24 Q And you have that outlined in your report that was
25 submitted to me in reference to my open-records request?

1 A I don't know what was submitted to you in your open-
2 records request.

3 Q I handed you a report from which you were - -

4 A Yes, sir. There's an entire case file, like I said
5 two hundred and forty-six pages where each person's statement
6 was transcribed. And Sergeant Williams, I know there was a
7 communication and when she and I talked about it during her
8 interview, she said there were some communication errors. That
9 would be in her transcribed statement that she had I believe.
10 So, again, to answer your question, yes, was he told initially
11 to wait there, yes; however, he operated under the assumption
12 that the Sergeant knew that he was going to do when he spoke to
13 Detective Berkowski.

14 Q Okay. So, let's move forward then. After the
15 suspect got out of the house and there was the chase by Officer
16 Castro behind the suspect, Mr. Green, you said that there was -
17 - how did you describe it? What happened between the two?

18 A There was a struggle between the two.

19 Q And in the course of the struggle was there a gun
20 produced?

21 A Yes.

22 Q And who produced a gun?

23 A Officer Castro.

24 Q And what were the circumstances of that?

25 A Officer Castro placed his gun to the subject's head

1 and told the subject to stop resisting, at which time the
2 subject stopped resisting. And then we he attempted to re-
3 holster the subject would start struggling again and that kind
4 of went back and forth. And, at which time - - each time the
5 subject struggled Officer Castro would produce his weapon.

6 Q When you say produce his weapon, what do you mean by
7 that?

8 A He put - - he places his gun, his weapon to the
9 subject's head. However, he unloaded his weapon prior to doing
10 so.

11 Q Did the suspect also make any indications about being
12 struck by the weapon?

13 A I'm not sure about that.

14 Q Are you familiar with the term pistol-whipping?

15 A That was a statement that he had allegedly made to
16 Officer Dana Knight, that he was pistol-whipped, but there was
17 no evidence of that.

18 Q After the conclusion of the arrest, did the officer
19 have an opportunity to prepare a report about what occurred?

20 A Yes.

21 Q And what did - - in his initial report what did he
22 say about the incident?

23 A He basically wrote his report; however, he did not
24 indicate the portion involving the weapon. He initially did
25 his report, there was some question about it, he then amended

1 his report. After he amended his report, that one went into
2 the file.

3 Q Do you have your report with you?

4 A Yes, this is it.

5 Q In that report you made a summary of what statements
6 Officer Castro made to you during the course of your
7 investigation, is that correct?

8 A Yes, I did.

9 Q What did he tell you about the first report?

10 THE WITNESS: As far as we have it on the record,
11 Your Honor, these statements were made under Garrity at
12 the time.

13 THE COURT: All right.

14 A During which time - - you want the entire statement?

15 Q Uh-huh (affirmative).

16 A Prior to a statement Officer Garrity - - Officer
17 Castro was given his Garrity warning, he stated that he
18 understood them. After reviewing his report APO Castro was
19 asked to tell me what happened. He advised Precinct Three CSU
20 Units were told to assist in the capture of the suspect Mishawn
21 Green.

22 CSU Units were told to assist with the capture the
23 suspect, Mishawn Green. APO Castro advised his duty for the
24 operation were surveillance and if Green was spotted to call
25 marked units in. APO Castro stated he parked in a lot of a

1 nearby barbershop, within visual range of the trailer.

2 Detective Berkowski called him from her cell phone and they
3 talked about the fact that he saw no movement.

4 APO Castro advised that he then called and asked,
5 "How much time are we going to dedicate to this?" And Detective
6 Berkowski replied "Not all day." APO Castro advised because he
7 thought no one was home, he asked Detective Berkowski if he
8 could go up to the trailer. She told him that she needed to
9 let Sergeant Williams, who was one of the supervisors, know and
10 that according to her Sergeant Williams said it was okay.

11 APO Castro advised he approached the trailer and as
12 he was leaving, a female exited the trailer. He told her he
13 was looking for a subject named John Brown and she told him no
14 one lived there by that name. APO Castro advised that as he
15 walked back to the car, he called Detective Berkowski and told
16 her he saw a male in the house. As Detective Berkowski was
17 going to relay the information, Mishawn Green came out of the
18 trailer and he, APO Castro, told Detective Berkowski over the
19 phone it was him. APO Castro advised his radio was on, so he
20 turned it down. APO Castro tried to conceal himself in his
21 vehicle, however the suspect Green saw him and then fled. He
22 advised he was still on the phone so he told Detective
23 Berkowski the suspect was fleeing. When asked if he alerted
24 other units over the radio he said no, he told Detective
25 Berkowski, who was still on the phone with him.

1 When asked why he turned off his radio when he saw
2 the subject coming towards him - - coming towards him, he said
3 he just did it. He advised he understood tactically his
4 actions were not sound. He advised things happened so fast
5 that members of Precinct Three CSU Unit normally relay
6 information. He was asked what happened after Green fled and
7 APO Castro advised he was unable to retrieve his radio prior to
8 chasing Green.

9 He chased Green dropping items, for example, his
10 spare magazine, a shoe and Green lost his slippers. They
11 jumped several fences until eventually they ended up in an
12 empty field. APO Castro advised that he thought to himself F-
13 U-C-K, I got him but I don't have my F'ing radio and he didn't
14 know where he was at. He advised Green was tired and he fell
15 down so he, Castro, jumped on top of him. Castro advised Green
16 began making statements like he had kids and he was not going
17 to jail. When Green felt no back up was coming Green said, "So
18 if you ain't got no backup coming, so what we gonna do?" He
19 advised Green tried to get up but he, Castro, kept him from
20 escaping.

21 APO Castro advised he felt Green thought he was
22 afraid of him so Castro stated he would use this to his
23 advantage. Castro advised that he kept his right arm around
24 Green's neck with no pressure and used his left hand to eject
25 his pistol's magazine. He put it in his pocket and then

1 ejected the chambered round. He put the pistol to Green's head
2 and said, "Okay. You're right. You're right. You got me.
3 You got me. Hey MF'er, it's me or you. I chose me so if you
4 F-around with me I'm going to blow your F'ing head off around
5 here."

6 Green tried to escape at least two or three more
7 times. APO Castro advised each time he put the unloaded gun to
8 Green's head to gain compliance. Do you want me to continue?

9 Q Yes.

10 A I asked if he had his badge with him, he stated he
11 did and he dressed in plain clothes. When asked if he
12 identified himself as a police officer to the initial female he
13 spoke to, he stated no. When asked looking back if he would've
14 taken the extra five seconds to retrieve his radio before
15 pursing the suspect he stated he would not because he would
16 have gained more distance from him. He eventually acknowledged
17 he should've taken as radio with him. When asked why he laid
18 on top of Green if the suspect was exhausted and he stated he
19 tried to handcuff him. He advised Green said he didn't know he
20 was an officer and accused him of possibly trying to rob him.

21 When Sergeant Lovett asked, "If you had no radio, why
22 didn't you grab your cell phone?" He stated that he didn't
23 think about it. When asked why he unloaded the gun, he stated
24 he didn't want to put a real loaded gun to his head, "Some shit
25 - - excuse me, some S-H-I-T might happen and I actually shoot

1 him in the head." When asked if he felt that way, why did he
2 put the gun to his head instead of holding him at gun point,
3 Castro stated he was trying to handcuff him.

4 When asked if he was trained to unload his gun or put
5 it to the suspect's head he replied, "No, sir." When asked why
6 he did not use any of the various other tactics we are taught
7 he stated, "That stuff only works in DT, which is Defenses
8 Tactics, not in real-life." When asked why he never used any
9 of the other techniques, he stated the suspect never gave him a
10 reason to strike him. He said, "The easiest choice was to use
11 his gun and not fight him." When I asked if he had a knife - -
12 when asked what if he had a knife, referring to the suspect,
13 APO Castro replied that he could have killed him in ten seconds
14 with his hands if he wanted too. I then asked if that was the
15 case why pull the gun out and he said he didn't want to kill
16 him, but that the suspect had said something to him. When
17 asked what he said he replied Green said that he was not going
18 back to jail et cetera.

19 When asked if looking back on this if he would do it
20 again, APO Castro stated that, "No, he would've just been a
21 sorry MF'er and let him run away." He advised that he felt
22 when you give a hundred percent you end up in IA. APO Castro
23 advised he didn't normally chase suspects without his radio. I
24 then questioned him about what he told his supervisors about
25 use of force and what he wrote in his report.

1 APO Castro was asked if the first report he submitted
2 was complete and accurate and he stated no. He was asked if he
3 completed the use of force portion of his report, he stated he
4 had not. When asked why not, he replied that he knew he broke
5 a couple of departmental policies and methods and that the
6 methods he used were unconventional and that it was wrong. He
7 went on to state that APO Dana Knight approached him, she saw
8 him, he had a gun to Green's head. Green asked APO Knight,
9 "Did you see that? He had the gun to my head." And APO Knight
10 stated to Green that "she didn't see anything." APO Castro
11 advised that since she made that remark, that it was just her
12 and him back there and he didn't have to put those facts in his
13 report.

14 Sergeant Lovett asked APO Castro if he wrote the
15 report being deceitful and Castro stated yes. When asked if he
16 received any disciplinary action for his actions, he stated,
17 "Yes. Sergeant Garvin drilled me a new A-S-S." He received a
18 verbal counsel. When asked if he received any written
19 documentation, he stated no, documented discipline, he stated
20 no. When asked if at any point did he tell Sergeant Garvin or
21 Sergeant Wilson he was going to the trailer to knock on the
22 door, he stated, no, he spoke to Detective Berkowski and she
23 was supposed to relay it to Sergeant Williams. He assumed that
24 Sergeant Williams was going to relay that to Sergeant Garvin
25 and/or Sergeant Wilson, who are both sergeants there on the

1 scene, also on the scene.

2 We discussed the departmental policy violations and
3 if he felt that he violated any and he acknowledged he violated
4 some. The interview was concluded and CD was added to this
5 case file.

6 Q As a result of your investigation did he receive any
7 sort of disciplinary?

8 A Yes. He received five days and a last chance
9 agreement.

10 Q And what was that based on?

11 A There was a Use of Force Board that was conducted and
12 during the Use of Force Board, the members of the board
13 recommended the five days suspension and the last chance
14 agreement.

15 Q So that was based on his use of force and failure to
16 include all of that information in his report?

17 MR. JOHNSON: Object Your Honor, leading.

18 THE COURT: I think this is more of a summary at this
19 point, I'll allow it.

20 Q So my question was, was the basis for the
21 disciplinary action for lack of information being included in a
22 report concerning use of force?

23 A I believe it's for the entire incident overall, but
24 the use of force usually addresses the actual use of force that
25 was used. But I believe the five day suspension that he

1 received was for everything.

2 Q And when you say everything, was that also including
3 his admission that he was deceitful regarding the incident?

4 A He was cited under the general order of preliminary
5 investigations - - criminal investigations under the
6 preliminary investigations portion; failure to complete your
7 report fully and accurately, that's what I cited him for as
8 well as the use of force issues.

9 Q You just outlined what you read to be his statements,
10 is that a true and accurate reporting of what he said on the
11 day in question?

12 A Yes.

13 Q And during that particular event, it is your specific
14 recollection that he admitted that he was deceitful, as far as
15 his report was concerned in the investigation, is that correct?

16 A That is correct. Basically he felt as though - - he
17 - -

18 Q My question was more specific than that, which was
19 whether or not he said it was deceitful?

20 A Yes. He stated he was.

21 Q You said that there were other techniques, that
22 during the course of your conversation with him, that there
23 were other techniques that were available to him that should've
24 been utilized, do you recall what those - - what those
25 pertained to?

1 MR. JOHNSON: I think that's going to be irrelevant,
2 Your Honor.

3 MR. CHISOLM: That issue here is search and seizure
4 and whether or not he had specifically been deceitful with
5 regard to an incident where search and seizure and
6 constitutional rights of an individual were involved, and
7 I was just pursuing - - because I don't know the answer to
8 the question, whether or not it had to do with any of
9 those search and seizure procedures that they utilize.

10 MR. JOHNSON: He wasn't even there at the scene that
11 day, he just called in the PC for the stop.

12 THE COURT: Well, I guess specifically, Detective, I
13 think that what Mr. Chisolm is trying to get to is - - did
14 Mr. Castro understand, Officer Castro understand what his
15 alternatives are with regard to Fourth Amendment issues?
16 And Detective Larry, I'm sure, is very familiar with this,
17 so Detective Larry, if you could make some response to
18 that question.

19 A Yes. He was familiar. He did know that he had other
20 options and we went over those options. And do you want those
21 specifically?

22 Q Sir?

23 A Do you want to know what those options were?

24 Q What those options were if you know them.

25 A One of them, basically, when the subject had fallen

1 down he didn't have to try to have him at that point. He could
2 have held him at gunpoint until more units got there. And then
3 when those units arrived, handcuffed him. There were some
4 statements that he made in regards to the tactics that he used.
5 Officer Castro is a former Foreign Legion, so he used some of
6 these tactics during the apprehension of the suspect and some
7 of those techniques - - well, those techniques aren't taught by
8 us. That was pretty much what we went over.

9 Q As a result of this incident was he required to
10 undergo any sort of remedial training with regard to search and
11 seizure?

12 A They did. They spoke with him. I know he had to - -
13 he had to attend the use of force training. It's my
14 understanding that they were scheduling him for some classes.
15 That part of the discipline we don't get involved in. We don't
16 get involved in recommendations or things of that nature. But
17 he - - they were scheduling him for some classes, as far as use
18 of force and what techniques he should use and could have
19 utilized.

20 Q And that also extended to search and seizure?

21 A I would not say, no. No, I don't think it had
22 anything to do with that portion, no. I think it dealt with
23 specifically the force that he used, the techniques that he
24 used, and that they were against departmental policy.

25 MR. CHISOLM: I have no further questions.

1 THE COURT: Thank you. Mr. Johnson?

2 MR. JOHNSON: Just very briefly.

3 CROSS-EXAMINATION BY MR. JOHNSON:

4 Q When you had the opportunity to interview Agent
5 Castro, based on your experience, he was open and honest with
6 you guys during that interview?

7 A Extremely.

8 Q And just to briefly touch on the other options that
9 he had, you know, as far as holding somebody down at gunpoint
10 until backup arrived. Given that he was - - didn't have the
11 opportunity because he got into pursuit of that suspect
12 quickly, who actually had an arrest warrant on them or for
13 them, he didn't know at what point backup would even be
14 arriving, did he?

15 A No, his radio - - he lost - - he left his radio in
16 the car when he took off and he dropped his cell phone. He was
17 basically - - he was alone. He was alone for awhile trying to
18 take Green into custody. And he stated that Green made several
19 statements to him like it's me or you. I'm not going back to
20 jail. I'm not - - I have kids. And Officer Castro stated he
21 felt as though - - he felt as though he did what he had to do
22 to take the subject to the custody.

23 Q Can having an IA investigation negatively affect
24 someone's career path whether any findings are substantiated or
25 not?

1 A It could definitely if they're substantiated.
2 That's, however, and this is outside the subject, it can't
3 necessarily keep you from being promoted. But, if you try to
4 go to another agency, this information may show up.

5 Q And was Officer Castro terminated?

6 A No, not at all.

7 Q I know that you don't handle this part, as far as the
8 recommendations, but as far as you know was there ever any
9 recommendation that he be terminated?

10 A I do not recall anyone - - I do not recall anyone
11 recommending that he gets terminated. During the Use of Force
12 Board that was not anything that was discussed, as far as
13 termination. They wanted to find out whether or not the force
14 that he used was justified or not.

15 Q Was anybody else cited in this investigation? Were
16 his supervisors cited?

17 A Yes, they were.

18 Q Was that for dereliction of their supervisor
19 responsibilities essentially?

20 A Yeah, there's a use of force report that needs to be
21 completed after the officer completes use of force. The
22 sergeant then has to prepare a memo. And because he had two
23 sergeants, neither of them completed the use of force memo.
24 It's a minor policy violation, but they were cited and I
25 believe they received a written reprimand - - both received

1 written reprimands.

2 Q And I'm looking at all the things that Officer or
3 Agent Castro was (unintelligible) and those are all under the
4 use of force guidelines?

5 A Some of them were under use of force guidelines, the
6 others were under the policy for criminal investigations, under
7 preliminary investigation. That's basically making sure his
8 report was completed and accurate the first time.

9 Q Specifically as to reporting use of force?

10 A That, and as well as the parts that he left out of
11 his initial report.

12 Q And to your knowledge, since this incident has any
13 other- - has Agent Castro been subject of any other IA
14 investigations?

15 A No.

16 Q And to your knowledge, is APO Castro currently a
17 uniformed officer, still working the streets, writing reports
18 and effecting arrests?

19 A Yes. He's still assigned to the same unit. He's
20 still within the CSU Unit. Still in the same precinct. Still
21 working.

22 Q And in this report, did you make any findings in
23 regards to Officer Castro's ability to formulate probable
24 cause, effectuate lawful Fourth Amendment searches?

25 A To my knowledge there's been no other issues

1 involving APO Castro.

2 MR. JOHNSON: Thank you.

3 RE-DIRECT EXAMINATION BY MR. CHISOLM:

4 Q You just indicated this was the last involving
5 Officer Castro in terms of any sort of disciplinary actions?

6 A No. I'm saying I'm not familiar with anything else
7 that I was involved in that I can remember. He may have had
8 other incidents, but I can't remember being involved in
9 anything else.

10 Q So the correct response is you're not familiar with
11 them, but there would have been others, is that correct?

12 A Any other use of force incidents?

13 Q Other disciplinary issues that he faced with Internal
14 Affairs.

15 A There could be. We all get assigned cases and I can
16 only talk about - -

17 Q You didn't bring those records with you?

18 A No. I wasn't told to bring anything like that. I'm
19 not aware of him having any other issues after this; he had a
20 last chance agreement. So with the last chance agreement they
21 would've terminated him for it.

22 Q Can you explain what a last chance agreement is?

23 A A last chance agreement is if the department feels as
24 though there's an infraction, they can administer a last chance
25 agreement and if you violate any policies in relation to what

1 you were placed on the last chance agreement for, for example,
2 if there's another use of force incident where he uses
3 questionable tactics, he could be terminated.

4 Q Are you familiar with the fact that he faced a
5 sanction in 2010 in which he was sent again for training for
6 search and seizure?

7 A I'm not sure.

8 MR. JOHNSON: That would be previous to this
9 incident.

10 A When I got the case it was in 2012, 2012 or 2013,
11 2013.

12 Q On cross-examination you were asked about other
13 officers being cited in connection with this incident, do you
14 remember approximately when all of this took place?

15 A When I completed my report I cited everyone. I cited
16 APO Castro for the use of force. I cited APO Castro for the
17 report. I cited Sergeant Wilson for supervisor responsibility
18 and I cited Sergeant Garvin for supervisor responsibility.

19 Q This is my fault I should have been more specific.
20 Approximately what date did you do that?

21 A Whatever date the report was completed, the file was
22 completed. I mean, it would've been in 2013, so whenever I
23 completed the file - -

24 Q Your report says November 6th, 2013, is when you made
25 this report, is that correct?

1 A Yeah. But that's when I wrote this report and then
2 we have what's called a closure report. And after we complete
3 the entire case file it goes through the chain. So this case
4 file would have gone to their commander, their captain, and
5 their captain would have prepared a LOT and then he would have
6 been the one to administer discipline.

7 Q So the incident took place on August 17th, 2013?

8 A That's correct.

9 Q And then he was interviewed by you on October 18th,
10 2013?

11 A October 17th, 2013.

12 Q And the discipline came sometime November/December
13 2013?

14 A I can't say when it came, I'm just saying we had a
15 Use of Force Board, and during which time we had a board
16 hearing and after the board hearing that's what they decided
17 that they were going to give him, the discipline they
18 administered. So to say it was November 6th, no. That board
19 hearing may have been months later.

20 MR. CHISOLM: No further questions.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: Nothing from the State.

23 THE COURT: Lawyers come up for a moment to sidebar.

24 (NOTE: Off record sidebar.)

25 THE COURT: Any other witnesses, Mr. Chisolm?

1 MR. CHISOLM: Just some evidence and argue.

2 THE COURT: All right.

3 MR. CHISOLM: Your Honor, at this time the Defense
4 offers into evidence Defendant's Exhibit Number 1, which
5 is a DVD that indicates a traffic stop at Barnard Street
6 and West Liberty Street. And it has the CRN, the date
7 prepared, and prepared by Veronica Parrish.

8 THE COURT: Any objection?

9 MR. JOHNSON: No objection.

10 MR. CHISOLM: How long is this? I mean, if you play
11 it, how long is it?

12 MR. JOHNSON: I think the relevant portion comes in
13 at - -

14 MR. CHISOLM: 3:50

15 MR. JOHNSON: Three minutes and thirty seconds.

16 THE COURT: Six minutes and thirty seconds?

17 MR. JOHNSON: Correct.

18 MR. CHISOLM: I know it starts at 3:15 and it
19 finishes at about 3:44, correct?

20 MR. JOHNSON: What?

21 MR. CHISOLM: The recordings themselves start at
22 about 3:15 and then they stop - -

23 MR. ABRAMS: When we listened to it, we looked at it
24 according to the counter the Windows Media Player and it
25 was six minutes and thirty seconds in when Officer Castro

1 makes the announcement that he observed the vehicle going
2 through the intersection at Gwinnett Street. So that, in
3 our mind was the critical part. But before that it's
4 about six or five minutes before whatever the stop was
5 when Agent Cogswell radioing about looking at a vehicle
6 and wanting assistance, and then there's the actual stop,
7 I think, occurs maybe ten minutes.

8 MR. CHISOLM: Right. So it's about six minutes.

9 THE COURT: The only reason I'm asking it, if you
10 want me to listen to - - it's an audio obviously, not a
11 video. If you want to listen to the whole thing I will,
12 but I can't do it right now.

13 MR. CHISOLM: That was going to be my recommendation
14 to the Court and I was offering it with the recommendation
15 or the hope that the Court would, at its own discretion,
16 review it as opposed to today.

17 THE COURT: That would be a really good idea because
18 in five minutes I have matter in chambers that like a
19 whole bunch of people are going to be there for. Not that
20 they can't wait, and not that we want to continue to have
21 many many hearings, but if you want me to listen to that
22 whole thing I'm not going to do it right now but I will do
23 it, yeah, on my own schedule.

24 So, that would be the evidence that you would be
25 presenting and it's admitted.

1 MR. CHISOLM: And I also wanted to bring to the
2 Court's attention, the transcript of the probation
3 revocation hearing, which are referenced in the original
4 motion to reconsider, pages 11 through 13 of the
5 transcript before Your Honor on September 21st, 2015.
6 This is the probation revocation on CR09-0506-J4, and that
7 would be portions pertinent to the testimony of Officer
8 Fikes (phonetic).

9 THE COURT: It seems to me that it's a good idea for
10 me to listen to the audio. And I understand that you've
11 offered the testimony regarding Officer Castro to cast
12 suspicion upon his credibility. I would say that would be
13 the purpose for that, right?

14 MR. CHISOLM: That's correct.

15 THE COURT: And then to look back at the evidence in
16 the probation case, and at the additional hearings we had
17 connections with this case, the motion hearings. So if
18 I'm correct about that being your position, and including
19 everything that's in your motion for reconsideration, does
20 the State have anything to offer or is the State willing
21 to allow me review all this and come back at a later date?

22 MR. JOHNSON: That would be perfect, Your Honor.

23 THE COURT: Perfect. Really perfect. Mr. Johnson is
24 really good at giving me compliments. He's really really
25 good at it. What was the last one you gave me, it was

1 like the best one I've ever had.

2 MR. CHISOLM: Your Honor, just so I can be clear, and
3 I had to look back, I missed a gap in - - what was the
4 final analysis of what's - -

5 THE COURT: The final analysis is that I'm going to
6 review everything, listen to everything, then we're going
7 to reschedule for oral argument. Okay, is that all right?

8 MR. CHISOLM: Okay. Yes.

9 THE COURT: Jess, what do you think, what date?

10 THE COURT: March 24th at 1:30. Everybody check
11 their calendar on that one. You don't have to check it
12 right this second, but March 24th at 1:30 would be the
13 next date if everybody's available. If not, you all e-
14 mail me, you know how to find me. Actually, Mr. Johnson,
15 you haven't given me the best compliment of any lawyer,
16 there is one lawyer who has given me a better one, Mr.
17 Pagano.

18 MR. JOHNSON: He is the master of compliments.

19 THE COURT: He is, yes.

20 MR. ABRAMS: Mr. Johnson is most sincere.

21 THE COURT: Mr. Pagano gives everyone the same
22 compliment. Okay, we're going to be adjourned for today.
23 Be back here March 24th at 1:30 unless you all let me know
24 that you have a conflict or something like that, and we'll
25 do oral argument. I'll be ready and hopefully able to

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rule from the bench at that point. Thank you so much.

MR. CHISOLM: Thank you.

C E R T I F I C A T E


This is to certify that the foregoing thirty-three (33) pages of typewritten material were taken down by me and transcribed by me, and that the same contain a true and accurate transcript of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto, nor am I an interested party to these proceedings.

This 16th day of March, 2016.

Andrea White
Andrea White, C.C.R.

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CERTIFIED COPY
This document is a certified copy of the original document placed on record in the office of the Clerk of Superior Court, Chatham County, GA. Given under my hand and seal this 28 day of March 20 18.
B. Aiken
Deputy Clerk, S.C.C.C., GA