

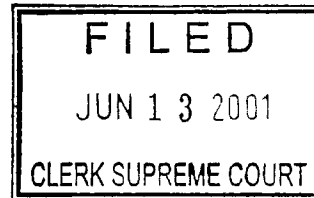
IN THE COURT OF APPEALS OF IOWA

No. 1-017 / 00-0377
Filed June 13, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LESLIE ANN HEBELER,
Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

Leslie Ann Hebeler appeals her convictions for interference with official acts resulting in bodily harm and speeding. She contends the trial court erred in (1) prohibiting a justification defense, thus violating her constitutional rights to be free from unreasonable seizures and to have a fair trial, (2) excluding evidence that the arresting officer was violating department policy, and (3) ruling specific instances of prior conduct could not be used to show the officer's traits for belligerence and intimidation. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, and William E. Davis, County Attorney, for appellee.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Leslie Ann Hebeler appeals her convictions for interference with official acts resulting in bodily harm and speeding. She contends the trial court erred in (1) prohibiting a justification defense, self-defense, thus violating her constitutional rights to be free from unreasonable seizures and to have a fair trial, (2) excluding evidence that the arresting officer was violating department policy, and (3) ruling specific instances of prior conduct could not be used to show the officer's traits for belligerence and intimidation. We affirm.

I. BACKGROUND FACTS

Scott County Sheriff's Deputy Elbert Austin stopped Leslie Ann Hebeler for driving sixty-seven miles per hour in a fifty-five mile per hour zone. Austin was in a marked sheriff's vehicle and in uniform. Austin claimed Hebeler was hostile from the moment he stopped her. Hebeler alleged Austin was rude, intimidating, and almost belligerent as soon as she asked why he stopped her. According to Austin, Hebeler declined to provide her license and registration until he explained why he had stopped her. Austin told her that he need not inform her why he stopped her until he verified her identify and vehicle registration. Hebeler provided him with her driver's license and registration and Austin informed her she had been stopped for speeding sixty-seven in a fifty-five mile-per-hour zone.

When Austin returned to Hebeler's car with the citation for speeding and offered it to her for her signature to indicate her receipt of it, Hebeler stated she wanted to see the radar before she signed the ticket because she knew she was speeding but did not think she was going that fast. Austin refused to show her the radar reading and testified he informed her he was not required to do so in

Iowa. She again refused to sign the ticket and Austin explained that if she would not sign to accept receipt of the ticket he would have to arrest her. Hebeler then informed Austin she felt he was being mean and cruel, that she was uncomfortable with the situation, and she was going to call 911.

Hebeler called 911 on her cell phone and spoke with the Scott County Sheriff's dispatch. The entirety of the 911-call was recorded and a transcript admitted in evidence at trial. Hebeler informed the 911 operator that Austin had a "real bad attitude," was being rude, he would not let her see the radar gun, and that he said he would show anybody but her the radar because she had an attitude. Hebeler informed the operator it was Austin who had the attitude not her. The operator told Hebeler she was going to radio Austin and see if he wanted a supervisor to go to his location. The operator radioed Austin and asked him if he needed another unit there. He said he did not, but informed the operator that he was about to arrest Hebeler if she did not sign the citation. Austin also told the operator if she was talking to Hebeler she "might help her out" by telling her to sign the citation and then if Hebeler had a complaint to file it with the sheriff's office, otherwise he was going to have to arrest her.

The operator contacted a second unit which headed toward the location of the stop. The operator informed both Austin and Hebeler a second unit was on the way. Apparently Austin returned to Hebeler's vehicle while she was continuing to talk to the 911 operator. Hebeler informed the operator Austin had his handcuffs out ready to put on her and she did not appreciate his intimidation. She also stated she had relatives who worked in the police department and asked why Austin was treating her like this. Hebeler told the operator she

wanted to file a complaint against Austin and the operator began to take her information to file a complaint. At this point Austin told Hebeler to step out of the car. She informed Austin "she [the 911 operator] said there's backup coming and there's no need for you." The operator stated, "No, ma'am, ma'am that's not what I said. We have somebody on the way, uh, but you need to do what he says. OK." Hebeler informed the operator, "I'm not going to let him put handcuffs on me."

Austin again told Hebeler to step out of the car and she continued to refuse. Austin then told Hebeler she was under arrest to which Hebeler replied, "I am not under arrest." This argument back and forth between Hebeler and Austin continued for sometime with Austin repeatedly telling her to get out of the car and that she was under arrest and Hebeler refusing to get out of the car and stating she was not under arrest and was not resisting arrest. Austin then reached into Hebeler's vehicle through the window to remove the keys. Austin testified that Hebeler tried to prevent him from doing this by grabbing at his arm. After Austin removed the keys and retracted his arm Hebeler rolled up the window.

Austin then opened the car door and attempted to handcuff Hebeler. She told him to get out of her car and leave her alone. Austin continued to tell her to get out of the car and that she was under arrest. The two struggled somewhat at that point as Austin attempted to handcuff her, and she bit him on the arm. Hebeler then apparently tried to close the door and Austin tried to keep it open. As the struggle over the handcuffs and door continued Austin's forearm struck Hebeler's face, according to her. Austin placed Hebeler in handcuffs and

removed her from the car. The other deputy arrived on the scene and took Hebeler to the Scott County Jail. The State charged Hebeler with interference with official acts resulting in bodily harm in violation of Iowa Code section 719.1(1) (1999) and speeding.

Hebeler filed a notice of self-defense. The case proceeded to jury trial, Hebeler submitted proposed jury instructions on self-defense. After jury selection but prior to the start of the trial the court ruled that she was not entitled to a defense of self-defense. The trial court also overruled Hebeler's motion to admit evidence of specific instances of prior acts of alleged intimidation or rudeness by Austin. Hebeler also made an offer of proof concerning the Scott County sheriff's department's policy on the use of force, its training manual's statement that officers are expected to deal with the public in a "safe, courteous and efficient" manner, and its mission statement that it strives to deal with the public in a "positive and respectful" manner. The trial court sustained the State's objection to the evidence on relevancy grounds.

The jury found Hebeler guilty on both counts and the court sentenced her to a suspended jail term of sixty days and a fine of \$1000. Hebeler appeals, contending the trial court erred in prohibiting her justification defense and in doing so violated her constitutional rights to be free from unreasonable seizures and to have a fair trial. She also alleges the court erred in excluding evidence that Austin was violating departmental policy, and in ruling specific instances of his conduct could not be used to show that he had character traits for belligerence and intimidation.

II. STANDARDS OF REVIEW

We generally review a trial court's rulings on admissibility of evidence for an abuse of discretion. *State v. Axiotis*, 569 N.W.2d 813, 815 (Iowa 1997). This "abuse of discretion" standard applies to decisions concerning relevancy. *State v. Sinclair*, 582 N.W.2d 762, 764 (Iowa 1998). An abuse of discretion is found and reversal warranted only when the trial court has exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.*; *Axiotis*, 569 N.W.2d at 815. When a decision concerning admissibility of evidence turns on statutory interpretation, our review is for correction of errors at law. *State v. Bloomer*, 618 N.W.2d 550, 552 (Iowa 2000). Our review of constitutional issues is de novo. *Id.* at 554 (restriction on scope of cross-examination); *State v. Izzolera*, 609 N.W.2d 541, 545 (Iowa 2000). We review challenges to alleged error regarding submission of or refusal to submit jury instructions for correction of errors at law. Iowa R. App. P. 4; *State v. Rains*, 574 N.W.2d 904, 915 (Iowa 1998).

III. MERITS

The trial court's ruling rejecting proposed jury instructions on self-defense appears to have been founded on its determination that self-defense is not a legally viable defense to a charge of interference with official acts. Its ruling on Hebel's offer of proof was based on the evidence in question lacking relevance. Its ruling on her motion to admit evidence was based on specific instances of Austin's conduct being an improper method of proving character. We need not adopt the trial court's premises, however, in order to sustain its conclusions. *State v. McCowen*, 297 N.W.2d 226, 227 (Iowa 1980). We can uphold a trial court's ruling on any ground appearing in the record, whether urged in that court

or not. *Bensley v. State*, 468 N.W.2d 444, 445 (Iowa 1991). A trial court ruling denying admission of evidence will be upheld on appeal if the evidence could be held inadmissible on any theory, whether or not urged in the objection to admissibility. *Porter v. Iowa Power & Light Co.*, 217 N.W.2d 221, 231 (Iowa 1974). We find that we need not decide whether the trial court was correct in determining self-defense is not available as a defense to a charge of interference with official acts. However, we do conclude that the trial court's challenged rulings should be upheld and Hebeler's convictions affirmed.

Hebeler argues substantial evidence was presented from which a jury could find she reasonably believed Austin was about to inflict unlawful force upon her, thus requiring that self-defense be submitted to the jury. She further argues the trial court erred in rejecting "evidence that Austin was violating department policy directing 'safe, courteous, and efficient' interactions with the public in a 'positive and respectful' manner," because such evidence was relevant to Austin's state of mind and thus his effect on her reasonable belief of harm. Finally, she argues the trial court erred in ruling evidence of specific instances of Austin's conduct on prior occasions was not admissible to show his character traits or belligerence and intimidation.

Several statutes, and cases interpreting and applying those statutes and their predecessors, bear on our analysis. We first summarize relevant statutory provisions and cases.

A. Legal Principles

Self-defense is statutorily denominated as a defense of justification. *State v. Dunson*, 433 N.W.2d 676, 677 (Iowa 1988). The defense, as codified,

provides: "A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." Iowa Code § 704.3 (1999). Substantial record evidence from any source requires the trial court to submit requested instructions on the defense. *Dunson*, 433 N.W.2d at 677. "Although the burden to disprove self-defense rests with the State, the defendant bears the burden of demonstrating that the record contains sufficient evidence to support an instruction on this issue." *State v. Ceasar*, 585 N.W.2d 192, 194 (Iowa 1998).

Interference with official acts occurs where a person "knowingly resists or obstructs anyone known by the person to be a peace officer. . . in the performance of any act which is within the scope of the lawful duty or authority of that officer. . . ." Iowa Code § 719.1(1). If in so resisting the person inflicts a bodily injury, other than a serious bodily injury, the offense is an aggravated misdemeanor. *Id.* Interference occurs when the person is engaged in "actual opposition to the officer through the use of actual or constructive force making it reasonably necessary for the officer to use force to carry out his duty." *State v. Turk*, 595 N.W.2d 819, 822 (Iowa Ct. App. 1999), *overruled on other grounds by State v. Maring*, 619 N.W.2d 393 (Iowa 2000).

Interference with official acts is a general intent crime in which the defendant's subjective reasons are irrelevant. *State v. Buchanan*, 549 N.W.2d 291, 294-95 (Iowa 1996).

Sound public policy supports this statutory construction. The purpose of criminalizing conduct that interferes with official police action is to enable officers to execute their peace-keeping duties calmly, efficiently, and without hindrance. This goal would not be furthered if, in the face of actual interference, an officer were

required to guess at a defendant's subjective intent. The only question should be "whether the officer's acts were hindered."

Id. at 294 (citations omitted).

Iowa Code section 804.12 provides in relevant part:

A person is not authorized to use force to resist an arrest . . . of the person's self . . . which the person knows is being made . . . by a peace officer . . . even if the person believes that the arrest is unlawful or the arrest is in fact unlawful.

This code section was interpreted by our supreme court in *State v. Thomas*, 262 N.W.2d 607 (Iowa 1978). The court held "a person may not resist an arrest reasonably effected by one whom the arrestee knows or has good reason to know is a peace officer, despite legality or illegality of the arrest." *Id.* at 611. Thus, in order to convict one of interference with official acts the jury need only determine that a person, known to the defendant as a peace officer, placed the defendant under arrest and the defendant resisted the arrest. *Id.* at 612.

Iowa Code section 804.8 provides, "A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest. . . ." Therefore, a person does not have the right to resist an arrest merely because an officer uses some force in effecting the arrest.

An officer who has probable cause to believe a driver is speeding may order the driver out of the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 110, 98 S. Ct. 330, 334, 54 L. Ed. 2d 331, 336-37 (1991). Whenever a peace officer has reasonable cause to believe a person is speeding the officer may immediately arrest such person and take the person before a magistrate. Iowa Code § 321.485(1)(a). In lieu of arrest an officer may issue a written citation for

the person to appear in court. Iowa Code §§ 805.1(1), 321.485(1)(b). There is no presumption the officer should decline a custodial arrest in favor of issuing a citation. *State v. Adams*, 554 N.W.2d 686, 690 (Iowa 1996). Nor is there any law requiring a peace officer show a person being charged with speeding the radar reading that is the basis of the charge. If an officer prepares either a citation or a memorandum in lieu of arrest “the alleged offender shall be requested to sign it. If the person signs, the person may be released without arrest.” Iowa Code § 321.485(2).

The test for justification is both subjective and objective. *State v. Elam*, 328 N.W.2d 314, 317 (Iowa 1982). A person claiming self-defense must actually believe he or she is in danger, and the belief must be a reasonable one. *Id.*; *State v. Washington*, 160 N.W.2d 337, 340 (Iowa 1968); Iowa Code § 704.3 (“reasonably believes”). Therefore, the critical issue is whether there is substantial evidence that Hebeler reasonably believed her assaultive actions were necessary to defend herself from an “imminent use of unlawful force.” *Ceaser*, 585 N.W.2d at 194. This requires us to focus on Austin’s actions toward Hebeler and decide whether those actions could be fairly characterized as the use of “unlawful force”. *Id.* We will first consider whether the evidence that was in fact admitted at trial would support submission of self-defense. We will then consider whether rejected evidence should have been admitted.

B. Application of Law to Facts

Relevant facts have been set forth above and a brief and perhaps incomplete summary will at this point suffice to set the framework for analysis. Hebeler did not and does not claim she was not speeding, but merely felt she

had not been going as fast as Austin said she was. Austin initially chose to issue a citation, but Hebeler refused to sign it. Austin warned her he would have to arrest her if she refused to sign. She thereafter repeatedly refused his orders to step out of the car, and repeatedly rejected his assertions that she was under arrest. He reached through her open window to remove keys from the ignition, and she allegedly grabbed his arm to prevent him from doing so. When he then opened the car door and was placing handcuffs on her, she bit him on the arm and attempted to close the door. It appears that Austin's forearm struck Hebeler in the face as she struggled to keep him from finishing placing the handcuffs on her, but this happened only after she bit him.

Austin was in uniform, driving a marked car, and Hebeler was aware he was a peace officer. Austin informed Hebeler of why he had stopped her, offered a citation, attempted personally and through the dispatcher to convince her to accept the citation, and took steps to arrest her only when she repeatedly refused to do so. As noted above, arresting Hebeler was well within the scope of Austin's lawful duty and authority. Under Iowa Code section 804.8 Austin was justified in the use of such force as he reasonably believed to be necessary to effect the arrest.

1. Admitted Evidence

Viewing the facts presented to the jury in light of Austin's right to use reasonable force to effect Hebeler's arrest, we find no substantial evidence that Austin had used or threatened to use unreasonable force to effect the arrest up to and including the point at which Hebeler bit him while he was attempting to finish handcuffing her. There was no evidence Hebeler had been harmed in any

way at that point, or that Austin had used or threatened to use any force beyond that necessary merely to effect the arrest. What little force he had used at that point (attempting to keep her car door open and attempting to handcuff her) was necessitated by her repeatedly challenging and denying the fact that he had placed her under arrest and refusing to obey his lawful order that she step out of the car. There was therefore no basis upon which the jury could find Hebeler reasonably believed her assaultive action of biting Austin was necessary to defend herself from any imminent use of unlawful force. See, e.g., *Ceaser*, 585 N.W.2d at 195. The trial court therefore did not err in refusing to submit self-defense.

If neither evidence that was admitted nor evidence that was denied admission would support submission of self-defense, we need not determine whether self-defense is a legally viable defense to a charge of interference with official acts. We therefore turn next to the question of whether the trial court erred in the evidentiary rulings that Hebeler challenges.

2. Rejected Evidence

The trial court denied admission of evidence that the sheriff's department training manual stated officers are expected to deal with the public in a "safe, courteous, and efficient" manner, and denied admission of its mission statement that it strives to deal with the public in a "positive and respectful" manner. Hebeler argues in her brief that evidence Austin was violating such "departmental policy" should have been admitted because it "shows the deputy's state of mind and, in turn, his effect on Ms. Hebeler's reasonable belief of harm."

On appeal Hebeler urges that the evidence in question goes to her mental state, that is, to her reasonable belief. In marked contrast, in the trial court she urged the evidence was relevant to Austin's mental state, to the reasonableness of his belief that he needed to use force to effect the arrest. She stated

. . . this evidence is relevant to Mr. Austin's state of mind, and his state of mind is the key jury issue at this point. The question is whether he reasonably believed that he needed to use force to effect this arrest.

Although we can and will consider questions of error preservation on our own motion, *Top of Iowa Co-op. v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000), we pass the question of whether Hebeler has preserved error on the issue she now presents and address the merits.

For two reasons we find the evidence in question had little or no probative value with respect to any contested factual issue.¹ First, the internal policies of the sheriff's department have little or nothing to do with the central issues in this case: whether Austin's conduct complied with or violated statutory standards concerning use of reasonable force to effect an arrest and whether Hebeler's use of force fell within statutory standards allowing the use of reasonable force to resist unlawful force. Second, it is Austin's conduct that was at issue, not the comparison of that conduct to policies that are not claimed or shown to have legally binding affect. As noted in the following paragraph of this opinion, it is Iowa Code section 804.8 that sets the standard for Austin's conduct within the context of this case. The trial court's challenged ruling did not reject any

¹ We also note that the idea governmental employees are expected to deal with the public they serve in the manner suggested in the sheriff's department's training manual and mission statement would not appear to be a proposition requiring affirmative evidentiary support in a judicial proceeding. The public surely expects no less in the performance of public servants.

evidence of Austin's conduct that surrounded the charges in this case. We conclude the trial court did not abuse its considerable discretion by determining that the evidence in question lacked relevance.

Hebeler's offer of proof included the sheriff's department's policy as to officers' use of force. Her brief does not make clear that she pursues this issue on appeal. We nevertheless briefly address it.

No evidence of Austin's conduct at the date and time in question was rejected by the trial court. The department policy on use of force would merely have set a standard against which to measure that conduct. We note that in argument on the offer of proof Hebeler indicated the policy "does track with the Code, Section 804.8." The trial court's jury instruction number 13 contained the relevant substance of section 804.8. We therefore need not decide whether the trial court was correct in its ruling, because the policy was merely duplicative of the jury instruction and there can have been no prejudice to Hebeler.

Through a pretrial motion Hebeler sought a ruling that testimony of five witnesses would be admissible. The proposed testimony of each concerned alleged acts of rudeness or intimidation by Austin in prior traffic stops. The trial court ruled that such evidence of specific acts of conduct was not admissible. Hebeler asserts the trial court erred, urging on appeal as she did in the trial court that such evidence goes to an essential element of her defense of self-defense and was thus admissible under Iowa Rule of Evidence 405(b).

Iowa Rule of Evidence 405 provides:

Rule 405. Methods of proving character.

a. Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form

of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

b. Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

Under this rule, if character or a trait of character of Austin is an essential element of Hebeler's defense of self-defense, proof of specific instances of Austin's conduct is admissible. However, if evidence of his character or trait of character is admissible, but for some other purpose, proof must be by reputation or opinion. In analyzing rule 405(b) the Iowa Supreme Court has stated:

In this situation evidence of conduct is not introduced to prove action in conformity therewith (prohibited by rule 404(b)), but to prove an essential element. Only when character is in issue in the strictest sense, and is thus deserving of searching inquiry, is proof by specific acts allowed under rule 405(b). Thus only when character or a trait of character is *an operative fact determining the parties' rights and liabilities* are specific instances of conduct a proper method of proving character. The instances of character in issue as required by rule 405(b) are "rather rare." The rationale of this limitation is that while evidence of a specific instance of conduct is a convincing method of proof, "it possesses the greatest capacity to arouse prejudice, to confuse, to suppress, and to consume time."

Klaes v. Scholl, 375 N.W.2d 671, 676 (Iowa 1985) (emphasis added and citations omitted). In interpreting and applying an identical provision of the Federal Rules of Evidence, another court has aptly observed:

The relevant question should be: *would proof, or failure of proof, of the character trait by itself actually satisfy an element of the charge, claim, or defense?* If not, then character is not essential and evidence should be limited to opinion or reputation.

U.S. v. Keiser, 57 F.3d 47, 856 (9th Cir. 1995) (emphasis added and footnote omitted).

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We conclude that any character or trait of character of Austin's for intimidation or rudeness is not "an operative fact in determining the parties' rights and liabilities," nor "would proof, or failure of proof, of the character trait by itself satisfy an element of the . . . defense." We therefore further conclude that the proposed evidence of alleged prior specific instances of conduct by Austin was not a proper method of proving such character or trait of character, and the trial court was correct in so ruling.

Hebeler's constitutional claims, that the trial court violated her constitutional right to be free from an unreasonable seizure and to have a fair trial, are founded on the trial court rulings reviewed above. Finding no merit to her claims of error regarding those rulings, we find no merit to her constitutional claims.

Although Hebeler appeals from both her conviction for interference with official acts resulting in bodily injury and her conviction for speeding, she raises no claims or issues that implicate her conviction for speeding. We therefore summarily affirm that conviction.

IV. SUMMARY

There was no substantial evidence admitted that Austin had used or threatened to use unreasonable force to effect Hebeler's arrest; the trial court did not err in rejecting of the sheriff's department training manual statements, mission statement, and policy on the use of force; and the trial court did not err in rejecting evidence of specific instances of Austin's alleged prior conduct. The trial court therefore did not err in refusing to submit self-defense. We thus need

not decide whether self-defense can be a legally viable defense to a charge of interference with official acts. We affirm Hebeler's convictions.

AFFIRMED.

Sackett, C.J. dissents.

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SACKETT, C.J. (dissenting)

I respectfully dissent. I would find the district court was in error in rejecting defendant's proposed instruction on self-defense and in refusing to admit evidence of Officer Austin's propensity to harass citizens during traffic stops.

While Iowa Code section 719.1 may be a general intent crime in which the defendant's subjective reasons regarding intent to interfere with official acts may be irrelevant, section 719.1 must nevertheless be based upon the presumption that the peace officer's actions in a particular case have been reasonable. As we find in an interpretation of Iowa Code section 804.12, which states that a person may not use force to resist arrest by a peace officer, whether that arrest is later found to be lawful or unlawful, the arrest must nevertheless have been *reasonably effected* for the statute to apply. See *State v. Thomas*, 262 N.W.2d 607, 611 (Iowa 1978). Further, Iowa Code section 804.8 gives a peace officer authority only to use force which the officer *reasonably believes to be necessary to effect the arrest*.

There is substantial evidence to support a finding that the force used by Officer Austin was not reasonably necessary to effect the arrest of the defendant. If the force is found unreasonable under the circumstances, either (1) defendant's acts are not covered by section 719.1; or (2) defendant's resistance was justifiable. Because there is evidence that Austin's actions were unreasonable, I believe that defendant is entitled to an instruction on self-defense and that testimony essential to that defense regarding Officer Austin's propensity to harass people during traffic stops should be admissible under Iowa Rule of Evidence 404(2)(a).

In denying defendant's claim of self-defense, the majority concludes that Austin used necessary force in arresting defendant. To support its conclusion that defendant's actions merited Austin's use of force, the majority refers to defendant's knowledge of her own driving violation, her refusal to sign the violation, in spite of Austin's warnings that he would arrest her, her refusal to step out of the car, her rejection of arrest, and her grabbing Austin's arms when he tried to handcuff her.

In looking at all of the evidence surrounding the arrest, I believe a fact finder could find that the force Austin used against defendant was unreasonable. Austin is a 6'5" male who weighs 285 pounds. Defendant is a 5'4" female who weighs 130 pounds. Austin stopped the defendant in a remote area. There may be conflicting evidence as to how the traffic stop degenerated into a 911 call. But the 911 transcript evidences defendant's fear of Austin, her request for back-up, and the intimidation Austin used against defendant, as well as his unreasonable behavior while she was attempting to discuss her situation with the law enforcement center. During most of the stop defendant remained in her car. Although she would not sign the citation, neither her words nor her actions indicated she was a threat to Austin. During the call, when defendant was spelling her name and giving her phone number to the 911 dispatcher, Austin was continuously bullying her with rapid-fire orders to, "Step out of the car;" "Quit your talking;" "Get out of the car," as well as other commands. Defendant, who may not have followed his orders, posed no threat as she remained on the phone with the dispatcher, relating to him, panicked, what was occurring. One could find she was more in a threatened state than in a threatening one. Austin, well

aware that another squad car was on its way, continued firing commands at her to, "Step outta the car;" "Step outta the car;" "Step outta the car." As defendant remained on the phone, and before help (which Austin knew was coming) arrived, Austin proceeded to force open her car door and engage in a struggle with defendant, resulting in his getting bitten and her getting hit in the face. When help arrived to transport defendant to the police station, she was so upset she vomited.

Routine traffic stops should not be this traumatic for those citizens who do not pose a threat to the officers stopping them. This entire case occurred due to a traffic violation by a petite female who, although a bit of a protestor, showed no signs during the duration of the stop that she was a threat. In calling 911 and getting reassurance that another officer would be arriving on the scene, defendant took reasonable steps to communicate her fears. Officer Austin knew of her fears, and he was aware that back-up police help would be arriving shortly. Yet he continued his intimidation, even pulling defendant from her car. I would reverse and remand for a new trial.