

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Judge Edward W. Nottingham

4 Civil Action No. 02-N-297 (BNB)

5 DUNCAN DUWANE PHILP,
6 Plaintiff,

7 v.

8 KIRK G. BEAULIEU, and
9 DONALD L. ESTEP,
10 Defendants.

11 DEPOSITION OF KIRK G. BEAULIEU
12 AUGUST 29, 2002

13 APPEARANCES:

14 FOR THE PLAINTIFF:

15 VINCENT C. TODD, ESQ.
16 143 Union Boulevard
17 Suite 900
Lakewood, Colorado 80228-1829
(303) 980-0922

18 FOR THE DEFENDANT:

19 PATRICIA GILBERT, ESQ.
20 Assistant County Attorney
100 Jefferson County Parkway
Golden, Colorado 80419-5577
(303) 271-8968

21 ALSO PRESENT:

22 Duncan Duwane Philp
23 Jennifer Pielsticker

24

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1 PURSUANT TO PRETRIAL SCHEDULING ORDER and
 2 the Federal Rules of Civil Procedure, the above-entitled
 3 deposition was taken by the Defendants at 100 Jefferson
 4 Parkway, Fifth Floor, Golden, Colorado, on Thursday,
 5 August 29, 2002, at 2:06 p.m., before Leslie Malecka,
 6 Registered Professional Reporter and Notary Public within
 7 Colorado.

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1 P R O C E E D I N G S

2 KIRK G. BEAULIEU,

3 having been first duly sworn, was examined and testified
4 as follows:

5 EXAMINATION

6 BY MR. TODD:

7 Q. Please state your name, spelling your last
8 name for the record.

9 A. Kirk Beaulieu, B-e-a-u-l-i-e-u.

10 Q. Deputy Beaulieu, how are you employed?

11 A. As an investigator with the Jefferson County
12 Sheriff's office.

13 Q. How long have you been employed as a sworn
14 officer for the Jefferson County Sheriff's office?

15 A. Since March 1, 1985.

16 Q. And on what date did you become an
17 investigator?

18 A. Approximately May 13 of this year, 2002.

19 Q. Were you a patrol deputy for the entire
20 preceding period?

21 A. Yes.

22 Q. What's your educational background?

23 A. High school.

24 Q. Where did you graduate high school?

25 A. Arvada.

1 Q. What year?

2 A. 1981.

3 Q. After your graduation from high school, what
4 employment did you have between graduation and becoming a
5 Jefferson County sheriff's deputy?

6 A. Numerous.

7 Q. What types of jobs?

8 A. Meat cutter, deli server, warehouseman,
9 stocker, cashier, receiver.

10 Q. Is this primarily grocery retail or just
11 retail?

12 A. Grocery. The deli was just a neighborhood,
13 family-owned deli. The -- I can't think. The Best -- I
14 worked for Best, right out of high school. That was
15 shipping, stocking, that stuff. Meat cutter involved
16 meat cutting. Neighborhood family grocery store, so the
17 whole parameters of that. And then a receiving and
18 packing and shipping clerk for a western manufacturer.

19 Q. In 1981, wasn't it still Labelle's?

20 A. Yeah. I think it was Labelle's. It was --
21 not too many people remember Labelle's. But it was
22 Labelle's, and it became Best. And --

23 Q. Okay. And when was your academy class?

24 A. It began March 1, 1985.

25 Q. How long did the academy last?

1 A. Approximately 504 hours.

2 Q. Now, did you have some training at that time
3 that indicated to you that a private parking lot was a
4 roadway under Colorado law?

5 A. During the academy?

6 Q. Yes.

7 A. I don't think it was referred to at that
8 time.

9 Q. So you don't recall any issues in academy
10 telling you that you could enforce failure to signal on
11 private property?

12 A. Are you asking if I had something in
13 reference to failure to signal, or something in relevance
14 that it was a private road or private property?

15 Q. Let's start with failure to signal. And
16 then let's go back to whether you talked about
17 definitions. So, did some instructor in the academy tell
18 you failure to signal applied on private property?

19 A. I don't think it was ever brought up.

20 Q. Did you discuss, in the academy, traffic
21 statutes that applied throughout the state and those that
22 only applied on roadways or highways or intersections?

23 A. I believe it was covered, yes.

24 Q. Was there any indication in your academy, as
25 far as you know, that the minor traffic infractions

1 applied on private property?

2 A. Ask the question again.

3 Q. Do you recall any indication in the academy
4 that the traffic infractions, as opposed to offenses,
5 that any of the traffic infractions would apply on
6 private property?

7 A. In the academy, I can't remember, no.

8 Q. Do you remember some class subsequent to
9 academy that told you that infractions would apply on
10 private property?

11 A. Specifically, no.

12 Q. Okay. Do you recall any course work that
13 dealt with -- subsequent to academy, that dealt with the
14 distinction between private property, roadway, highway,
15 and intersections, as they are defined in Title 42 of the
16 Colorado Revised Statutes?

17 A. I believe somewhere in the career, yes, it
18 had been.

19 Q. Okay. You can't remember where it was?

20 A. Not over the course of 17 years. I can't
21 remember exactly when.

22 Q. When do you believe that you first
23 understood the crime of failure to -- excuse me, the
24 infraction of failure to signal to apply on an -- private
25 property?

1 A. I had a question at one time as to what were
2 the responsibilities of an individual to obey traffic
3 control devices, or otherwise, from leaving a private
4 property and entering onto a public roadway.

5 Q. Okay. Isn't it your understanding that
6 official traffic control devices are covered separately
7 with respect to the responsibilities from -- the
8 responsibility-to-signal section?

9 A. Today? Or when?

10 Q. Any time since you have been an officer
11 under the statutory scheme.

12 A. I do today.

13 Q. Well, I'm sorry, maybe I asked the question
14 poorly.

15 MR. TODD: Would you reread my question.

16 (The last two questions were read back.)

17 MR. TODD: I got it now. I understand.

18 Fair response.

19 Q. (By Mr. Todd) Was it previously your
20 understanding that they were covered in the same section
21 of Colorado Revised Statutes?

22 A. Traffic control devices?

23 Q. And the responsibility to signal a turn.

24 A. That they were in separate areas of the

25 C.R.S.?

1 Q. I'll ask you, did you at some point believe
2 they were covered by the same section --

3 A. No.

4 Q. -- Colorado Revised Statute?

5 A. No. No.

6 Q. Okay. So was there some reason that you
7 believed that the rules for responding to an official
8 traffic control device would somehow cause failure to
9 signal to apply to private property?

10 A. Yes. Because they were both occurring on
11 private property, entering a public roadway.

12 Q. Isn't it the requirement, with respect to
13 the traffic control device, that it be an official
14 traffic control device?

15 A. What is the definition of a traffic control
16 device?

17 Q. In order for a traffic control device to be
18 enforceable on private property, doesn't it have to be an
19 official traffic control device?

20 A. It has to fit the definition per Colorado
21 Revised Statutes, yes.

22 Q. Doesn't it have to be placed by the
23 government entity with authority over the right-of-way to
24 cross the private property?

25 A. I don't know if it has to be installed.

1 Q. Doesn't --

2 A. I'm not familiar with that.

3 Q. Doesn't it have to be placed pursuant to the
4 authority of the government entity with jurisdiction over
5 the right-of-way?

6 A. I don't know that.

7 Q. How many -- on how many occasions have you
8 cited individuals for failure to signal a turn from
9 private property on to a roadway?

10 A. I would say a couple. Totality, I can't
11 give you an exact number.

12 Q. Have you ever had the occasion to read the
13 definition of terms applicable to Title 42, Colorado
14 Revised Statutes?

15 A. Terms or turns?

16 Q. Terms.

17 A. The terms?

18 Q. Yes, sir?

19 A. Okay. I don't understand what you are
20 asking.

21 Q. Of 42-1-102 defines specific terms that are
22 used in Title 42 of Colorado Revised Statutes. Did you
23 ever have occasion to read the way those terms were
24 defined under Colorado law?

25 A. Without looking at it, I wouldn't be able to

1 answer that.

2 Q. Okay. Do you recall ever reading the
3 definition of "highway," as set forth in 42-1-102?

4 A. I believe so.

5 Q. Did you understand that "highway" required
6 that it be publically maintained?

7 A. I believe so.

8 Q. Had you read the definition of "roadway," as
9 set forth in that section?

10 A. I believe so, yes.

11 Q. Did you understand that that required it to
12 be a highway as previously defined?

13 A. I believe so, yes.

14 Q. Had you read the definition of
15 "intersection," as set forth in that statute?

16 A. I don't believe intersection, no.

17 Q. Okay. Didn't you think that it was
18 important to understand what the term "intersection"
19 meant in the failure-to-signal sections before you cited
20 someone for violating those sections?

21 A. For which sections? Highway, roadway and
22 intersection?

23 Q. Yes, sir. Doesn't you citing something from
24 42-608 and 42-903 require that you understand the meaning
25 of the term intersection?

1 A. I'm not familiar with the C.R.S. numbers
2 that you are referring to.

3 A. Okay.

4 Q. You had contact with Mr. Duncan Philp on
5 December 14 of 2001, correct?

6 A. Yes.

7 Q. And you cited him under 42-4-608(1) for
8 failure to use a turn signal, correct?

9 A. Yes.

10 Q. You were present in court on the 8th day of
11 February 2002 when Judge Hoppin determined that the
12 appropriate citation is to 42-4-903; is that correct?

13 A. Yes. I was in court.

14 Q. Now, was Mr. Philp executing a lane change,
15 at the time that you believed he failed to signal,
16 required by law? Or was he turning?

17 A. Turning.

18 Q. And doesn't Colorado law require that that
19 turning be at an intersection, or that you be on a
20 roadway?

21 A. I don't recall, right off the top of my
22 head.

23 Q. Okay. So would it be fair to say you were
24 not familiar with the requirements, under the law, of use
25 of turn indicators at the time that you made a decision

1 to stop Mr. Philp on the 14th day of December 2001?

2 A. Not as how the law is read verbatim, no.

3 Q. Is traffic enforcement one of your primary
4 responsibilities when you are in patrol division?

5 A. Primary? It goes in and out with each
6 administration.

7 Q. Okay. In the current administration, is
8 traffic enforcement a primary responsibility of patrol?

9 A. I would have to say no.

10 Q. Would it be fair to say that policy directs
11 that primary traffic enforcement rests with the Colorado
12 State Patrol in the unincorporated part of the county?

13 A. JCSO policy?

14 Q. Yes, sir.

15 A. That I -- I would have to review it to look
16 back again to see. It's been revised several times, and
17 it's recently been placed on CD ROM.

18 Q. Okay. All right. On the 14th day of
19 December 2001, what brought you to the area of Ken Caryl
20 and Pierce?

21 A. I was assigned to assist in an assignment
22 that was being performed down there that night.

23 Q. And when did you learn of the assignment?

24 A. I don't recall. I don't know if it was that
25 day or if it was previous to that.

1 Q. What was the nature of your assignment to
2 assist?

3 A. To be in the area if we were needed.

4 Q. Did you have special designation at that
5 point in terms of your responsibilities and your
6 availability for special duty?

7 A. Will you define as designated --

8 Q. Were you part of a special response unit at
9 that point?

10 A. What do you mean by a "special response
11 unit"?

12 Q. Some subcategory that may have included
13 other than just patrol officers. Designated for some
14 level of special response?

15 A. I'm a member of the SWAT team, yes.

16 Q. Okay. Was your assignment to this detail as
17 part of SWAT?

18 A. I don't believe as such. I believe it was
19 my duty day and we had just finished a call previous.

20 Q. Okay. The evening of 14 December, was any
21 SWAT equipment moved to the southern part the county as a
22 part of this?

23 A. Not that I recall, no.

24 Q. Okay. What happened when you arrived at the
25 parking lot on the east side of South Pierce, south of

1 Ken Caryl, on 14 December 2001?

2 A. Which time? I was in the parking lot a
3 couple of different times.

4 Q. Okay. Let's take it through what happened
5 the first time. About what time did you arrive?

6 A. I'd have to refer to my DFAR to be specific
7 about what time I cleared headquarters and assumed my
8 duty down there.

9 (Deposition Exhibit 1 marked for
10 identification.)

11 Q. (By Mr. Todd) I'm handing you what has been
12 marked as Exhibit No. 1. Do those documents include what
13 you have just referred to?

14 A. Yes. My daily field activity report.

15 Q. What is a daily field activity report?

16 A. It is a report form used to log activity by
17 an individual.

18 Q. It's a standardized form used by the
19 Jefferson County Sheriff's office in December of 2001?

20 A. Yes.

21 Q. And all officers on duty would be filling
22 out such a form?

23 A. I would believe so, yes.

24 Q. With the possible exception that certain
25 command officers might not be subject to it?

1 A. Yes.

2 Q. Okay. You first arrived when?

3 A. At approximately 1600 hours, which is
4 4 p.m.

5 Q. Okay. Was anyone present -- I'm sorry, that
6 was first on duty or that was at the location?

7 A. I'm assuming at location, because it's under
8 the "arrived" block.

9 Q. Okay. So when you arrived at the location
10 at 1600 hours, who was present?

11 A. In the parking lot?

12 Q. Yes, sir?

13 A. I don't recall.

14 Q. Okay. Then did you at some point leave the
15 location before other individuals arrived?

16 A. I believe so, because I don't remember
17 seeing anybody that I was familiar with at that time.

18 Q. Okay. When did you next return to the
19 location?

20 A. I don't recall specific times. I know I had
21 driven through the parking lot a couple times. Two or
22 three times during the course.

23 Q. At some point did you observe other sheriff
24 deputies present?

25 A. Yes.

1 Q. When did that occur?

2 A. Specifically, I still don't -- because I
3 didn't log it down, because it wasn't significant
4 activity for that duty.

5 Q. Okay. What is your first clear recollection
6 of what occurred with respect to the special duty and in
7 that parking lot that night?

8 A. What do you mean by "special duty"? My
9 first recollection of the "special duty"?

10 Q. I'm sorry, your first recollection with
11 respect to the operation on which you had been requested
12 to meet other officers in that parking lot.

13 A. Okay. I had driven through the parking lot
14 and recognized one of our -- what I thought was one of
15 our unmarked patrol vehicles.

16 Q. Okay. Do you recall what time that
17 occurred?

18 A. I can assume, by when the summons violation
19 was, that it was prior to 6:40 p.m. that night.

20 Q. Okay. Was it still light out?

21 A. As I recall, yes.

22 Q. Okay. Did you stop at that point in time,
23 stay in the lot, or simply drive on?

24 A. No. I stopped in the lot.

25 Q. Okay. Did you remain, or did you leave

1 again before coming back and having contact with
2 Mr. Philp?

3 A. I remained in that lot during that time.

4 Q. Okay. Did you converse with other officers?

5 A. Yes.

6 Q. Did you converse with the individual in
7 tactical command?

8 A. For this situation?

9 Q. Yes.

10 A. Not somebody that is defined as "tactical
11 command," no.

12 Q. Okay. Was there any command officer present
13 at any time when you were there?

14 A. Not that I ever saw, no.

15 Q. Were you ever told who had command with
16 respect to the operation?

17 A. No.

18 Q. Okay. Did at some point you have occasion
19 to make contact with a Duncan Duwane Philp?

20 A. In the parking lot or that night?

21 Q. That night.

22 A. Yes.

23 Q. Tell us what immediately preceded you
24 initiating contact with Mr. Philp?

25 A. How immediate? I pulled him over.

1 Q. Well --

2 A. So that was immediately prior to contacting
3 him.

4 Q. Let's go back to prior to that. What caused
5 you to make contact with Mr. Philp?

6 A. Failure to signal a left turn while pulling
7 out of the parking lot onto southbound Pierce.

8 Q. From a surface that was not publically
9 maintained and not a roadway, correct?

10 A. Correct.

11 Q. Through a cut in the pavement that had no
12 official traffic control devices, correct?

13 A. As I recall, correct.

14 Q. At what point did you understand that you
15 were there that night in response to -- or to monitor a
16 Tyranny Response Team protest at the Mauser residence?

17 A. I missed the first part. When did I know?

18 Q. Yes.

19 A. I don't recall if it was that night when we
20 finished a callout on the west side, or if it was
21 previous. I know definitely it was after the callout,
22 because I was assigned to go down there and assist in it.

23 (Deposition Exhibit 2 marked for
24 identification.)

25 Q. (By Mr. Todd) I'm handing you what has been

1 marked as Exhibit No. 2. Do you recognize either of the
2 documents that comprises Exhibit 2?

3 A. Yes.

4 Q. Did you see those documents on the relevant
5 dates shown or the day after?

6 A. These dates? The 11 and --

7 Q. Yes.

8 A. No.

9 Q. When did you first see the documents that
10 are Exhibit No. 2?

11 A. The first time that I recall would be the
12 27th, at around noon, when I found them and faxed them to
13 Ms. Gilbert.

14 Q. The 27th of what month?

15 A. August, sorry. August 27.

16 Q. What normally occurs when a memorandum is
17 set for distribution to patrol personnel?

18 A. What usually happens? It gets documented in
19 this format, usually. And then entered into a -- what's
20 termed the sergeant's book.

21 Q. So a memo directed to patrol personnel would
22 only go into the sergeant's book as a BOLO? It would be
23 distributed to the patrol personnel mailboxes?

24 A. No.

25 Q. If you are not physically present for --

1 well, are the items in the sergeant's book read at roll
2 call?

3 A. Some are, some aren't.

4 Q. Is there some policy with respect to
5 officers reviewing BOLOs in the sergeant's book?

6 A. I don't recall seeing one, no.

7 Q. Did you attend a roll call on December 14?

8 A. Not that I recall, no.

9 Q. Would you normally be attending roll call?

10 A. In what aspect?

11 Q. Well, do you normally have roll call prior
12 to patrol shifts?

13 A. Yes.

14 Q. Okay. So there was something on this day
15 that caused you to miss roll call, or you were not
16 assigned -- you were assigned to report directly?

17 A. It was out of the normal, due to the fact
18 that I spent half the day on a SWAT callout.

19 Q. Okay. Is there some policy in place with
20 respect to updating SWAT officers when they are released
21 from callouts, as to what the state of the rest of the
22 county is, enforcement wise, and what they may have
23 missed in terms of roll call BOLOs?

24 A. No.

25 Q. Okay. So, you were released from your SWAT

1 callout, and then went from the SWAT callout over to the
2 shopping center at 1600 hours? Or --

3 A. I didn't leave Ida and go directly to the
4 shopping center, no.

5 Q. Okay. So you were on patrol, without event,
6 for some period of time? Or you were dealing with the
7 aftermath of the event on Ida in terms of equipment
8 cleanup or --

9 A. Yes.

10 Q. Now, that normally would have brought you
11 back to the sheriff's complex; is that correct?

12 A. Yes.

13 Q. Did you log the time that you left the
14 sheriff's complex?

15 A. Which time? Before the callout?

16 Q. After completing the callout at Ida?

17 A. Did I log -- when I left Ida to go to the
18 parking lot?

19 Q. No. When you cleared the department for
20 patrol from the callout.

21 A. No.

22 Q. What did you observe, prior to putting your
23 car in motion, at the point that Mr. Philp started his
24 vehicle in the parking lot?

25 A. What did I do prior to that?

1 Q. What did you observe prior to you putting
2 your vehicle in motion?

3 A. I observed Mr. Philp exit out of the parking
4 lot without signaling. That's when I put it into drive
5 and began to move to follow him.

6 Q. So you were still in a parking space next to
7 Investigator Estep at the time that Mr. Philp exited on
8 to Pierce?

9 A. As I recall, yes. I don't -- I could be
10 mistaken. I could be moving. But as I recall, I was
11 still sitting there, waiting to see if he was going to
12 turn his turn signal on or not.

13 Q. Why would you have been waiting there to see
14 if he was going to turn his turn signal on?

15 A. I wasn't. I was sitting there. And when he
16 moved and went to pull out, and didn't use his turn
17 signal -- if he had used his turn signal, I would have
18 sat there.

19 Q. I'm sorry, Deputy, didn't you just, before
20 this answer, say that you were waiting to see if he put
21 his turn signal on?

22 A. You asked me what did I do prior to putting
23 my car in motion.

24 Q. That's correct.

25 A. He was at the cut in the curb to pull out

1 onto Pierce.

2 Q. And Deputy, my question was -- didn't you
3 initially, in response to that question, say that you
4 remembered waiting there to see if he put his turn signal
5 on?

6 A. If that's what was said, then that's what
7 was said.

8 Q. And why would you have been waiting to see
9 if he put his turn signal on?

10 A. Because he was turning out onto a public
11 roadway.

12 Q. And I believe we have already established
13 that you hadn't familiarized yourself with the elements
14 of when a turn signal was required and when it wasn't
15 from something other than a roadway or intersection,
16 correct?

17 A. Uh-huh. Yes.

18 Q. Were you looking for some opportunity to
19 make involuntary contact with Mr. Philp?

20 A. Say the question again.

21 Q. Were you looking for some opportunity to
22 initiate something other than a voluntary contact with
23 Mr. Philp?

24 A. No.

25 Q. So it was just fortuitous that you observed

1 a failure to signal?

2 A. Yes.

3 Q. You weren't trying to get an opportunity so
4 that Investigator Estep could deliver a document that set
5 forth various statutes that the district attorney
6 indicated you might be able to cite Tyranny Response Team
7 members for during the protest?

8 A. I wasn't aware of that, no.

9 Q. Did you, at the conclusion of the stop,
10 direct Mr. Philp to wait so he could talk to -- or so
11 Investigator Estep could talk to Mr. Philp?

12 A. I don't believe so, no.

13 Q. So at the conclusion of the stop, you told
14 Mr. Philp he was free to go?

15 A. I don't know if I told him he was free to
16 go. I know I walked away.

17 Q. Okay. Were your red and blues still
18 activated?

19 A. When I walked away?

20 Q. Yes, sir.

21 A. Yes. Because I hadn't gotten back in my
22 car.

23 Q. Now, isn't it your understanding of the law
24 that, until you release someone, if those red and blues
25 are activated that the law requires them to remain pulled

1 over?

2 A. Do I know if that's the law?

3 Q. Isn't that your understanding of the law
4 that those --

5 A. No.

6 Q. -- those red and blues require them to
7 remain pulled over?

8 A. No.

9 Q. So it's your belief that an individual who
10 you've pulled over, with your red and blues activated, is
11 free to leave on their own?

12 A. At any time?

13 Q. Yes, sir.

14 A. No. Not until the contact is finished.

15 Q. How do they know the contact is finished if
16 you haven't turned off the red and blues and you haven't
17 told them they are free to leave?

18 A. A summons was issued to him, and I told him
19 thank you, and I walked away.

20 Q. Okay. In that summons you cited Mr. Philp
21 for no valid operators license, correct?

22 A. Yes.

23 Q. Had he presented you with a driver's license
24 from a sovereign state of the United States?

25 A. Yes.

1 Q. Did you get some computer response that
2 indicated he was under restraint in Colorado?

3 A. No.

4 Q. Did you get some indication from that state
5 that that license was not valid?

6 A. No.

7 Q. Did you have some memorandum, or other
8 information, that indicated that Mr. Philp had resided
9 continuously in Colorado such that Colorado required him
10 to have a Colorado license?

11 A. What do you mean by memorandum that I
12 received.

13 Q. Did you receive some writing that told you
14 that Mr. Philp -- some intelligence bulletin or
15 information that told you where Mr. Philp had resided and
16 when, and that he did not qualify for any of the --
17 either student or other transient, including military
18 exemptions, to obtaining a Colorado license?

19 A. I received information, yes.

20 Q. And you are referring simply to Investigator
21 Estep telling you that Mr. Philp did not have a valid
22 Colorado license, correct?

23 A. Correct, yes.

24 Q. He didn't provide you with any information
25 indicating a basis to believe that Mr. Philp actually

1 resided in Colorado, did he?

2 A. Repeat the question.

3 Q. He didn't provide you with any information
4 to indicate that Mr. Philp actually resided in Colorado,
5 did he?

6 A. He provided me information, yes.

7 Q. What information did he provide you?

8 A. The verbal information that he was a
9 Colorado resident and that he did not have a Colorado
10 driver's license.

11 Q. Did he provide you with a Colorado address?

12 A. No.

13 Q. Did he indicate on what he based his
14 conclusion that Mr. Philp was a Colorado resident?

15 A. I missed the first part. Did he tell you --

16 Q. Did he tell you what -- on what basis he
17 concluded Mr. Philp wasn't a Colorado resident?

18 A. I don't recall if he did or didn't.

19 Q. Did he use the word "resident"?

20 A. I believe so, yes.

21 Q. Now, you didn't believe at the time that the
22 information that you had from Investigator Estep was
23 sufficiently reliable to initiate a stop, based upon
24 Mr. Philp not having a Colorado driver's license,
25 correct?

1 A. No.

2 Q. No, that's not correct? Or that is correct,
3 you didn't believe that was a basis for a stop?

4 A. I believed the information that he provided
5 me was correct. Yes.

6 Q. Is there some reason that when you testified
7 in court on February 8 of 2001 that you indicated under
8 oath that the information you received -- the verbal
9 information was not sufficient for you to stop on that
10 basis?

11 MS. GILBERT: Objection. Can you show him
12 the testimony that you are referring to.

13 A. Because I'm becoming confused. At what
14 point?

15 Q. (By Mr. Todd) Do you recall being asked the
16 following question --

17 MR. TODD: On page 11, line 9, Counsel.

18 Q. (By Mr. Todd) "So you weren't pulling him
19 over for a turn violation, you were pulling him over
20 because you believed you had reliable information that he
21 was a Colorado resident operating a motor vehicle without
22 a Colorado license?" And you answered, "No. I pulled
23 him over because he failed to use a turn signal and as a
24 result it was confirmed that he did not have a Colorado
25 driver's license."

1 A. Okay. You are going to have to let me look
2 at that, because that's a rather long sentence and I'm
3 losing you. Which line are we on?

4 Q. (By Mr. Todd) We are starting at line 9.

5 A. Okay.

6 Q. Do you recall that question and answer?

7 A. Yes.

8 Q. Was that an accurate statement when you
9 answered that question?

10 A. No.

11 Q. Was there some reason why in February of
12 2002 (sic) that your recollection was unclear as to your
13 reasons for stop?

14 A. My recollection, no.

15 Q. So you had a clear recollection then, that
16 you do today, of the reasons that you initiated the stop?

17 A. Correct.

18 Q. But you're telling us that your answer was
19 not a correct statement of your recollection?

20 A. When?

21 Q. Your answer under oath at page 11 of the
22 transcript. Your answer starting at line 14 of the
23 transcript?

24 A. That would be correct.

25 Q. So you gave false testimony, under oath, in

1 a proceeding before a court of record of this state, with
2 respect to your grounds for stopping the defendant at a
3 time that you understood the Court to be passing upon
4 reasonable suspicion and probable cause to stop?

5 MS. GILBERT: Objection, mischaracterizes.

6 A. I was confused as to the way the question
7 was worded, as I was again today.

8 Q. (By Mr. Todd) Do you recall being asked a
9 question --

10 MR. TODD: At page 12, Counsel.

11 Q. (By Mr. Todd) "Did Investigator Estep
12 indicate what his basis of knowledge was?"

13 MS. GILBERT: Your question says, "counsel"?

14 MR. TODD: I -- I'm sorry.

15 THE DEPONENT: I'm getting confused here.

16 MR. TODD: I will re-ask it. I indicated --
17 Counsel, I'm at page 12.

18 MS. GILBERT: All right. Sorry for the
19 confusion.

20 MR. TODD: I apologize, Pat. I -- I thought
21 it would be understood. I understand why the witness got
22 confused.

23 MS. GILBERT: Now you are confusing me.

24 MR. TODD: I didn't expect you to be
25 confused by it.

1 MS. GILBERT: I am. I'm easily confused.

2 Q. (By Mr. Todd) Do you recall being asked,
3 "Did Investigator Estep indicate what his basis of
4 knowledge was?"

5 A. Vaguely, yes.

6 Q. Do you recall answering, "No," to that
7 question?

8 A. Vaguely, yes.

9 Q. Did you have some discussion with Deputy
10 District Attorney Carol Retsek with respect to the basis
11 of your stop prior to you testifying?

12 A. Did I speak with her about it?

13 Q. Yes.

14 A. I believe so. But I don't believe --

15 Q. Do you recall a conversation with Carol
16 Retsek and Investigator Estep, in a conference room next
17 to the duty division, with respect to a defense motion
18 for sanctions because specifically requested information
19 had not been turned over, including the communications
20 tapes involved and other materials related to the
21 operation that evening?

22 A. Was I privy to that or a part of that?

23 Q. Yes.

24 A. I don't believe I was a part of it. I was
25 there when the conversation was taking place.

1 Q. So you understood there was a conversation
2 with respect to the fact that the district attorney had
3 not turned over any materials indicating that this was
4 anything other than a random traffic stop, correct?

5 MS. GILBERT: Objection. Mischaracterizes.

6 A. No. Not that I recall.

7 Q. (By Mr. Todd) Were you present in court
8 when defense counsel indicated that there was a motion
9 for sanctions before the Court because of the failure to
10 provide discovery under Rule 16 with respect to
11 communications tapes and other documents that would bear
12 on motive of officers and what was actually occurring
13 that night?

14 A. I believe so. But it didn't involve me, so
15 I wasn't paying that close attention.

16 Q. With respect to Exhibit No. 1 in front of
17 you, did you provide each of those pages that are Exhibit
18 No. 1 to the deputy district attorney in connection with
19 the prosecution of this -- of the criminal case?

20 A. No.

21 Q. Which pages did you provide?

22 A. None -- of this?

23 Q. Yes, sir. Of Exhibit 1.

24 A. Of any of these pages? None of these pages
25 were provided.

1 Q. Were not pages 1 and 2, which are the
2 summons, provided?

3 A. I believe she had her own. I brought no
4 paperwork, no.

5 Q. All right. All right. Had you had any
6 prior conversations with Ms. Retsek with respect to this
7 case prior to February 8 of 2002?

8 A. No. Not that I recall having any.

9 Q. You don't recall any contact from Ms. Retsek
10 with respect to specific defense requests including, in
11 writing, for material that was required to be produced
12 under Rule 16?

13 A. No. All mine was was the summons.

14 Q. Okay. In your discussions with Investigator
15 Estep, did he provide you with any information with
16 respect to any basis to determine that Mr. Philp was not
17 entitled to any of the exemptions to obtaining a Colorado
18 license for an individual who may, in fact, live in
19 Colorado for more than 30 days?

20 MS. GILBERT: Objection, foundation.

21 A. Excuse me. No. Excuse me.

22 Q. (By Mr. Todd) Did you feel that you had
23 been directed by Investigator Estep to initiate a stop
24 based upon no valid operator's license?

25 A. Repeat the question.

1 Q. Did you feel that you had been directed by
2 Investigator Estep to initiate a stop based upon no valid
3 operator's license?

4 A. No.

5 Q. Was it your understanding that when you
6 completed your testimony on February 8 of 2002, that you
7 had presented a dual basis to the Court, one being the
8 failure to signal, and the other being no valid
9 operator's license for your stop?

10 A. Did I know if I did that?

11 Q. Did you believe that that's what you had
12 presented to the Court?

13 A. I'm confused. I don't know what you're
14 asking.

15 Q. Did you believe, at the conclusion of your
16 testimony --

17 A. Okay.

18 Q. -- before Judge Hoppin on February 8 --

19 A. Okay.

20 Q. -- that you had indicated to the Court that
21 you had a dual basis for initiating a stop? That one was
22 your belief that there was a violation with respect to
23 failure to signal a turn?

24 A. Okay.

25 Q. And the second was that you had reasonable

1 suspicion of failure to have a Colorado operator's
2 license?

3 A. I'm missing something in the translation
4 here. I'm sorry. Are you asking me?

5 Q. I'm asking -- I'm asking you, Did you
6 believe that you -- that is what you told the Court that
7 you had two bases for your stop?

8 A. Okay. That's easier. Do I remember saying
9 that? I don't recall. I thought it was just the turn
10 signal.

11 Q. Okay. So you believe that the only thing
12 that you presented to the Court, on February 8, was the
13 turn signal?

14 A. That's what I believed, yes.

15 Q. Now, are you telling us that you believed,
16 at the time, that you had a lawful basis to initiate
17 contact, based upon the information that Investigator
18 Estep had provided, telling you that Mr. Philp did not
19 have a Colorado license and that he was a Colorado
20 resident?

21 A. I'm misunderstanding. Do I believe?

22 Q. Did you believe at the time that you put
23 your vehicle in motion --

24 A. Okay.

25 Q. -- and at the time that you initiated the

1 stop with your overhead lights, that you had a valid
2 basis to stop Mr. Philp, based upon the information that
3 Investigator Estep had provided that Mr. Philp was a
4 Colorado resident and did not have a Colorado license?

5 A. I based the stop on the turn signal, not the
6 information -- is that what you are asking?

7 Q. That's what I'm asking.

8 A. Mine is based on the turn signal. His is
9 supplemental information.

10 Q. You never believed that information
11 justified your stop?

12 A. The driver's license?

13 Q. Yes, sir.

14 A. As a primary reason for the stop?

15 Q. As a legal basis for the stop.

16 A. Not as a primary reason for the stop, no.

17 Q. Did you stay with the operation until the
18 protest concluded?

19 A. I believe so, yes.

20 Q. Were you present at some point when
21 Investigator Estep observed an individual taking
22 photographs of him?

23 A. Where? I don't --

24 Q. At the Mauser residence?

25 A. I saw flashbulb. Flash going off. I don't

1 know who the picture was being taken of at the time.

2 Q. Did you hear Investigator Estep indicate,
3 "Your protest has gone on long enough," or words to that
4 effect?

5 A. No.

6 Q. When you initiated contact with Mr. Philp --

7 A. Okay.

8 Q. -- did you write -- and when you determined
9 you were going to cite him for no valid operator's
10 license, did you write anything on your summons? Or did
11 you prepare any report to indicate any basis to believe
12 that Mr. Philp was, in fact, a Colorado resident and
13 required to possess a Colorado operator's license in
14 order to drive a motor vehicle in this state?

15 A. The only note that I had provided was per
16 Investigator Estep. The defendant is a Colorado
17 resident, and endorsed him as a witness.

18 Q. Okay. So did you believe that by doing that
19 you put the district attorney on notice that they would
20 have to obtain information from Investigator Estep to
21 document the charge?

22 MS. GILBERT: Objection. Foundation.

23 A. I believe so. I -- I don't work with the
24 District Attorney's office, so I don't know what their
25 requirements are for that.

1 Q. (By Mr. Todd) Did you understand that the
2 no-proof-of-insurance charge was a criminal offense
3 carrying up to one year in jail?

4 A. Am I aware of that?

5 Q. Yes, sir?

6 A. I believe so, yes.

7 Q. Were you aware of it on December 14, 2001?

8 A. Yes.

9 Q. So you knew that the summons that you were
10 issuing was for a criminal offense that would fall
11 completely under the Colorado Rules of Criminal
12 Procedure, correct? Would not be dealt with as a traffic
13 infraction?

14 A. Not as a traffic infraction, yes.

15 Q. And in your training and experience, you are
16 aware that the district attorney has certain
17 responsibilities with respect to providing exculpatory
18 evidence and statements of witnesses and any documentary
19 evidence to the defense, under Rule 16 of the rules of
20 criminal procedure, are you not?

21 A. Yes.

22 Q. So at the time that you issued this summons,
23 you knew that this was a matter on which the evidence
24 which formed the basis of the charge of failure to obtain
25 a Colorado -- or have a Colorado driver's license, would

1 be required to be produced by the district attorney for
2 the defense, within 20 days of the filing of the -- of
3 the initial appearance in court of the filing of charges,
4 correct?

5 MS. GILBERT: Objection.

6 A. Time element. I'm not -- I'm not an
7 attorney, so I don't know the time frame as to what they
8 have.

9 Q. (By Mr. Todd) Have you, in training, been
10 advised by members of the district attorney's staff of
11 the responsibility of providing documentation to them so
12 they can comply with their responsibilities under Rule 16
13 and under the United States Supreme Court's decision of
14 Brady v. Maryland?

15 A. In relevance to?

16 Q. Any criminal prosecution?

17 A. I'm aware of it, yes.

18 Q. Hasn't -- has the District Attorney's
19 office, through its courses, seminars, lectures that it
20 provides for the sheriff's office, made you aware that
21 their initial disclosure requirements trigger 20 days
22 after the initial appearance of a defendant before the
23 Court?

24 A. Not that I ever recall hearing, no.

25 Q. Do you recall them ever telling you that

1 they must fully comply with all materials at least 30
2 days in advance of trial?

3 A. No.

4 Q. Do you recall them telling you that you must
5 continue to communicate with them and provide them with
6 any and all documents that are relevant to the case and
7 disclosure of any and all statements, any and all
8 witnesses?

9 A. That, yes.

10 Q. What did you do in this case to insure that
11 the information upon which Investigator Estep was basing
12 his statement to you, that Mr. Philp was a Colorado
13 resident without a Colorado license, was provided to the
14 district attorney so that they could comply with their
15 obligations under Colorado law?

16 A. What did I do?

17 Q. Yes, sir.

18 A. Nothing.

19 Q. Were you aware that an officer was
20 videotaping events on December 14? Were you aware that
21 an officer was videotaping events at the protest?

22 A. No.

23 Q. When did you first become aware that a
24 deputy was videotaping?

25 A. I don't recall. But it was either today or

1 yesterday, maybe.

2 Q. In your training and experience, does the
3 Jefferson County Sheriff's Department have policies with
4 respect to documenting when videotapes or other items are
5 collected as evidence?

6 A. As evidence? Yes.

7 Q. Do you have some reason to believe that the
8 videotape that was done on December 14 of 2001 was not
9 made for evidence?

10 A. I have no clue.

11 Q. Is there some policy that permits sheriff's
12 department resources to be expended in preparing tapes
13 that are not for evidence -- evidentiary purposes?

14 A. Yes.

15 Q. Other than training, what would that be for?

16 A. We did a SWAT callout last night and
17 videotaped it, from the air, for intelligence purposes to
18 develop a plan. And it's not used as evidence.

19 Q. And on what basis do you say it's not used
20 as evidence?

21 A. It's not going to be entered into court
22 under the criminal court case.

23 Q. Do you understand there's an obligation to
24 advise the district attorney so they can advise the
25 defense that the tape exists?

1 A. No. I'm not aware of that.

2 Q. What's your understanding of the obligation
3 of the prosecution to provide exculpatory evidence to the
4 defense?

5 A. What is my understanding?

6 Q. Yes, sir.

7 A. That they have to provide it.

8 Q. Do you have some reason to believe that
9 there's no defense theory under which that tape that you
10 just referred to from last night could be exculpatory?

11 A. I have no clue. It was given to us and
12 given back to the investigator. We're not the caretaker
13 of the tape. It was given to us to provide information,
14 for officers' safety issues, and then returned.

15 Q. Why was it that you believed that the
16 individual who gave it to you for your review, and to
17 whom it was then returned, was not considering the tape
18 as evidence?

19 MS. GILBERT: Objection. Calls for
20 speculation.

21 A. Yeah. I don't know.

22 Q. (By Mr. Todd) But you did tell us, when you
23 brought up this taping last night, that that tape would
24 not be evidence, correct?

25 A. It may or may not be. I don't know what

1 they are going to use it for. It wasn't taken out as
2 evidence. And I don't know if it was booked in after the
3 fact. I don't know.

4 Q. Is there some policy of the Jefferson County
5 Sheriff's office that indicates that, other than training
6 materials, that videotapes of operations on which charges
7 are filed are not required to be booked as evidence?

8 A. No. I don't know of a policy.

9 Q. Do you know of any policy that would appear
10 to permit such items to not be booked in?

11 A. Off the top of my head, I can't say one way
12 or the other.

13 Q. Did you hear radio traffic with respect to
14 another officer's observations of Mr. Philp's exit onto
15 southbound Pierce that night?

16 A. Did I hear another officer say something
17 about the --

18 Q. Did you hear --

19 A. -- exit.

20 Q. Did you hear a callout on the radio?

21 A. A callout? No.

22 Q. Were you monitoring?

23 A. I had the radio on, yes.

24 Q. Was there any vehicle directly behind
25 Mr. Philp as he pulled out from the parking lot onto

1 southbound Pierce?

2 A. Not that I recall seeing, no.

3 Q. Was there some discussion among the deputies
4 present in the parking lot on east side of Pierce, with
5 respect to needing to make contact with these individuals
6 and discuss with them prior to their entering into the
7 neighborhood for the vigil?

8 A. Not that was told to me, no.

9 Q. Were you present when Investigator Estep
10 made contact with Mr. Philp at the conclusion of your
11 stop?

12 A. I believe I was in my vehicle, yes.

13 Q. So did you observe Investigator Estep make
14 contact?

15 A. I assumed he made contact, since he was
16 standing at the driver's door.

17 Q. But you weren't able to hear what was said?

18 A. No.

19 Q. Was Investigator Estep in uniform or in any
20 way identified at that point as a deputy?

21 A. He was not in a uniform. I don't know the
22 rest. I don't know what he had, badge, ID. I don't know
23 what was presented.

24 Q. So you are not in a position to say whether
25 a reasonable person would have believed that they were

1 free to leave, as you left, but Investigator Estep
2 approached?

3 A. Okay. Re-ask the question.

4 Q. As I understand it, you said, "Thank you" to
5 Mr. Philp, and turned toward your vehicle, having given
6 him the summons?

7 A. Correct.

8 Q. At this point, Investigator Estep is moving
9 in towards the door of the vehicle, correct?

10 A. I don't recall exactly where Mr. Estep was
11 as I'm turning around to walk back to my vehicle.

12 Q. You get back to your vehicle and you observe
13 Investigator Estep at the door?

14 A. Yes.

15 Q. And you didn't hear anything that would have
16 communicated to Mr. Philp that he was free to leave,
17 rather than to talk to Investigator Estep at that point,
18 correct?

19 A. I heard nothing.

20 Q. Do you recall discussing with Investigator
21 Estep and Carol Retsek that the tape that had been
22 provided by communications did not relate to -- or was
23 only a subsequent call for a CR number for the stop of
24 Mr. Philp?

25 A. What was the first part of the question?

1 Q. Do you recall a conversation between
2 yourself, Investigator Estep, and Carol Retsek, on the
3 morning of February 8, with respect to the tape that the
4 Jefferson County Sheriff's Department had produced with
5 respect to communications?

6 A. I don't recall the conversation, no.

7 Q. You don't recall listening to the tape?

8 A. No.

9 Q. Did you have occasion to, after 9 p.m., make
10 a cell phone call to request a CR number on your stop of
11 Mr. Philp?

12 A. Did I listen to a tape?

13 Q. No. Did you have occasion, after 9 p.m.,
14 after 2100 hours, on the evening of December 14, 2001, to
15 make a cell phone call requesting a CR number for your
16 stop of Mr. Philp?

17 A. Yes.

18 Q. Why was it that you didn't request the CR
19 number in the normal course of business, at the time that
20 you initiated the stop, before you issued the summons?

21 A. I don't always take a CR upon issuing a
22 summons. It's not recorded that way.

23 Q. What was it that caused you to -- at that
24 time to make a cell-phone call to request a CR?

25 A. I think I was heading into the office and

1 needed to get a CR in order to complete my paperwork for
2 the night.

3 Q. What was it about this case at that point
4 that required a CR?

5 A. Because I had issued a summons.

6 Q. I must have misunderstood. I thought you
7 indicated you didn't always get a CRs for your summonses?

8 A. No. I don't always get CRs upon issuing
9 summonses.

10 Q. Isn't that the way you are trained to do it?

11 A. No.

12 Q. Is a CR number assigned before you request
13 it?

14 A. No.

15 Q. So, waiting until the end of shift to
16 request a CR number means the CR numbers end up being out
17 of time sequence, correct?

18 A. Yes.

19 Q. At the time that you requested license,
20 registration, and proof of insurance, that was on the
21 basis of your belief that you were investigating a
22 failure to turn -- a failure to use turn signals as
23 required by statute, correct?

24 A. Yes.

25 THE DEPONENT: How much longer are we going

1 to be? I need to use the bathroom.

2 MR. TODD: I probably only have 10 minutes
3 or so. But let's go ahead and break.

4 (Break from 3:11 p.m. to 3:18 p.m.)

5 Q. (By Mr. Todd) If you could look at Exhibit
6 No. 1, please. Now, you show yourself, if I'm reading
7 this correctly, on your -- on the last page, you show
8 yourself on special assignment from 1630 to 1955 hours?

9 A. You said the last page?

10 Q. I'm sorry, that's what I have is --

11 A. Okay. You want my DFAR, correct?

12 Q. Yeah.

13 A. Okay: That's not my DFAR. Dennis Beery.

14 Q. Sorry.

15 A. That's okay.

16 Q. All right. Let's see.

17 A. Second to the last.

18 Q. You show yourself -- I'm sorry, from 1600 to
19 2000 hours, on the special assignment, correct?

20 A. Not special assign -- I -- I show 6885 West
21 David Drive.

22 Q. Assist intel?

23 A. Correct.

24 Q. Now, on the 8th day of February, when you
25 were testifying in Jefferson County court before Judge

1 Hoppin, do you recall being asked the question, "So you
2 weren't there because that was the staging area for a
3 protest by the Tyranny Response Team that night?" And
4 you're answering, "No. I was just there to meet with
5 Investigator Estep. I mean I was there for a couple of
6 minutes and then I left."

7 A. Correct. Yes.

8 Q. Do you recall giving that testimony?

9 A. Yes.

10 Q. Well, are you saying that you were there
11 assisting intel for four hours and you never came to
12 understand that that was a protest by the Tyranny
13 Response Team?

14 A. I knew it was a protest, yes.

15 Q. So why, when I asked you whether you were
16 there in that parking lot because it was the staging area
17 for the protest by the Tyranny Response Team, did you say
18 "No. I was just there to meet with Investigator Estep"?

19 A. I don't know what the question is.

20 Q. Why did you say, under oath, that you were
21 not there because it was the staging area for the protest
22 with the Tyranny Response Team?

23 A. Why I was not there in the parking lot?

24 Q. Yes.

25 A. I wasn't there specifically because of that,

1 no.

2 Q. Wasn't that the entire reason that the
3 forces were in the parking lot that night was because
4 that's where the protestors were staging --

5 A. That could be. It wasn't why I was there,
6 no.

7 Q. So when did you first understand that your
8 presence had been requested by intel because of the
9 protest with -- by the Tyranny Response Team?

10 A. When did I first know that my presence was
11 requested by the intel? I believe when my sergeant told
12 me to go down there.

13 Q. And when did you first understand intel had
14 requested it because of the Tyranny Response Team's
15 protest?

16 A. When? I don't know. I don't know when that
17 was.

18 Q. Did you understand that sometime before
19 February 8 of 2002?

20 A. That my presence was requested?

21 Q. That your presence had been requested
22 because of the Tyranny Response Team protest?

23 A. I don't recall. I . . .

24 Q. Did you understand at some point that the
25 operation was larger than just Investigator Estep?

1 A. Yes.

2 Q. So, when you were asked, with respect to the
3 parking lot, was there a reason that you were parked
4 there, do you recall responding, "Just to speak with
5 other officers that were in other cars there"?

6 A. Do I recall that? Yes.

7 Q. And when you were asked specifically about
8 the Tyranny Response Team protest that night, you told
9 the Court, No, you are only there meeting with
10 Investigator Estep?

11 A. Yes.

12 Q. You were actually working that operation
13 with Investigator Estep for four hours, weren't you?

14 A. Define "working with Investigator Estep."

15 Q. Whose operation did you understand the
16 monitoring of the Tyranny Response Team protest to be?

17 A. The intelligence unit.

18 Q. Who was there from the intelligence unit?

19 A. From my understanding, several.

20 Q. Which individuals from intel did you speak
21 with?

22 A. Investigator Estep.

23 Q. Okay. And did you, at some point,
24 understand that the staging area for the protest that
25 night was that parking lot?

1 A. Staging? No. Where they were meeting or
2 arriving at? Yes.

3 Q. Explain for us your understanding of the
4 difference between staging and meeting prior to.

5 A. In my police experience, and I have to do it
6 from my tactical, that we meet at the command post. And
7 then when we get close to the objective, we stage, get
8 prepared, get ready, and then proceed to the objective.

9 Q. Did you understand that there was some
10 interimmediate location between that parking lot and the
11 Mauser's residence where the Tyranny Response Team then
12 staged, as you used the term?

13 A. Did I know? No.

14 Q. Did you at some point believe that there was
15 some other -- or identify some other area that you
16 thought was a staging area?

17 A. There could have been, yes.

18 Q. I didn't ask you if there could have been.
19 I asked you, did you at some point determine if there was
20 some other location that you believed was where they
21 staged, as you understand the term staged?

22 A. No.

23 Q. So why was it that you told the Court, under
24 oath, on February 8, that you were not -- you and the
25 other officers were not in the parking lot because it was

1 the staging area for the protest?

2 A. I was not there for the staging of the
3 protest.

4 Q. Why did you believe that your presence had
5 been requested for the assist to intel?

6 A. Why did I believe my assistance had been
7 requested?

8 Q. Yes.

9 A. I wasn't -- the supervisor -- I was told to
10 do what my supervisor had asked me to do.

11 Q. Wasn't that to assist intel in monitoring
12 the protest?

13 A. No. It was to assist intel.

14 Q. Didn't you understand, when you responded to
15 the scene, that intel was monitoring the protest?

16 A. I assumed.

17 Q. Are you telling me, the whole time you were
18 there, intel never told you what you were doing?

19 A. Pretty much, yes. I didn't work under
20 intel's direction.

21 Q. So you were assisting intel without knowing
22 what they wanted you to do?

23 A. Specifically, yes.

24 Q. And you didn't ask what they wanted you to
25 do?

1 A. They usually tell us what they want us to
2 do, if it's something specific.

3 Q. You never asked what the plan was?

4 A. No.

5 Q. You never asked Estep where he wanted you?

6 A. Not that I recall, no.

7 Q. And you never asked why he was in the
8 parking lot?

9 A. It wasn't a concern to me, no.

10 Q. Are you familiar with the term "heads-up
11 policing"?

12 A. No.

13 Q. Never heard the term?

14 A. Not that I recall.

15 Q. You train that it's necessary for you, as a
16 patrol officer or a SWAT officer, to be aware of your
17 surroundings?

18 A. Do I train that way?

19 Q. Are you trained that way?

20 A. To know my surroundings?

21 Q. Yes, sir.

22 A. Familiar. I wouldn't say know.

23 Q. Are you trained that you should strive to be
24 constantly aware of significant events within your
25 surroundings?

1 A. Significant, yes.

2 Q. Are you trained that you are to be aware of
3 your current objectives?

4 A. If they are provided, yes.

5 Q. Did someone indicate that there was an
6 objective in terms of traffic enforcement as to
7 Mr. Philp?

8 A. That that was an objective? No.

9 Q. Yes, sir. Did someone indicate that you
10 were released from assisting intel in the parking lot
11 before you went to make your traffic stop of Mr. Philp?

12 A. No.

13 Q. Well, if you were there to assist
14 Investigator Estep and the intel division, who authorized
15 you to break contact with them in order to initiate a
16 traffic stop?

17 A. Officer discretion.

18 Q. You believe that you have officer discretion
19 when you're supposed to be assigned to assist a specific
20 command, and you still haven't determined what the
21 command's objectives are that night?

22 MS. GILBERT: Objection. Mischaracterizes
23 testimony.

24 A. Given the specific area, yes.

25 Q. (By Mr. Todd) Would you believe that you'd

1 have the same degree of discretion on a SWAT call-up?

2 A. In what aspect?

3 Q. That if you were awaiting a specific
4 assignment, you could break from the staging area in
5 order to make a traffic stop?

6 MS. GILBERT: Objection. Mischaracterizes
7 his prior testimony.

8 A. I don't think I would be assigned a patrol
9 car in order to facilitate that, no.

10 Q. (By Mr. Todd) Weren't you assigned a patrol
11 car in order to get down to the location?

12 A. In which incident?

13 Q. With respect to the stop of Mr. Philp?

14 A. Yes.

15 Q. Don't you often arrive at call-ups, if you
16 are out on patrol when the call-up occurs, in a patrol
17 car?

18 A. Rarely. I think maybe once or twice in my
19 career have I.

20 Q. So, are you telling us that the normal
21 protocol is that you all respond back to central location
22 and then move out together with the equipment?

23 A. Yes.

24 Q. So if you are on patrol in the south end of
25 the county, and there's a SWAT call-up in the south end

1 of the county, you report up to headquarters rather than
2 waiting for equipment to arrive?

3 A. Yes.

4 Q. And that's still the procedure after the
5 review of Columbine?

6 A. Yes.

7 MR. TODD: I don't have anything further.

8 MS. GILBERT: I don't have anything.

9 WHEREUPON, the within proceedings were
10 concluded at the approximate hour of 3:33 p.m. of this
11 29th day of August, 2002.

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S I G N A T U R E O F W I T N E S S

I, KIRK G. BEAULIEU, do hereby certify that I have read the foregoing deposition and that the foregoing transcript and accompanying change sheets, if any, constitute a true and complete transcript of my testimony.

KIRK G. BEAULIEU

SUBSCRIBED AND SWORN TO before me this ____ day of _____, _____.

() No changes () Changes attached

NOTARY PUBLIC

Address: _____

My commission expires: _____

Re: Philp v. Estep and Beaulieu
Date of Deposition: August 29, 2002
Trial Date: None
Volume: --
Reporter: LM

1 C E R T I F I C A T I O N

2 I, LESLIE MALECKA, RPR, appointed to take
3 the deposition of

4 KIRK G. BEAULIEU

5 certify that prior to the deposition the witness was
6 sworn by me to tell the truth; that the deposition was
7 taken by me at 100 Jefferson County Parkway, Fifth Floor,
8 Golden, Colorado 80419 on August 29, 2002; that the
9 proceedings were reduced to typewritten form by
10 computer-aided transcription consisting of 59 pages
11 herein; that the foregoing is an accurate transcript of
12 the proceedings.

13 I certify review of the transcript was
14 requested off the record.

15 I further certify I am not related to any
16 party herein or their counsel and have no interest in the
17 result of this litigation.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 5th day of September, 2002. My Commission
20 expires December 15, 2004.

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LESLIE MALECKA
Registered Professional Reporter