

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

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

5 DUNCAN DUWANE PHILP,

6 Plaintiff,

7 v.

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

10 Defendants.
11

12 DEPOSITION OF DONALD L. ESTEP
13 September 12, 2002

14 VOLUME II
15

16 APPEARANCES:

17 FOR THE PLAINTIFF:

18 VINCENT C. TODD, ESQ.
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20 Suite 900
21 Lakewood, Colorado 80228-1829
22 (303) 980-0922

23 FOR THE DEFENDANT:

24 PATRICIA GILBERT, ESQ.
25 Assistant County Attorney
 100 Jefferson County Parkway
 Golden, Colorado 80419-5577
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 ALSO PRESENT:

 Duncan Duwane Philp

1 PURSUANT TO PRETRIAL SCHEDULING ORDER and
2 the Federal Rules of Civil Procedure, the above-entitled
3 deposition was taken by the Plaintiff at 143 Union
4 Boulevard, Suite 900, Lakewood, Colorado, on Wednesday,
5 August 28, 2002, at 10:02 a.m., before Leslie Malecka,
6 Registered Professional Reporter and Notary Public within
7 Colorado.

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12	EXAMINATION INDEX	PAGE
13	By Mr. Todd	113

14	EXHIBIT INDEX	PAGE
15	10 §42-2-102 Persons exempt from license	131
16	11 §42-1-102 Definitions--repeal	132

17

18

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1 WHEREUPON, the within proceedings were taken
2 pursuant to the Rules of Civil Procedure:

3 DONALD L. ESTEP,
4 having been previously sworn, was examined and testified
5 as follows:

6 EXAMINATION

7 BY MR. TODD:

8 Q. Okay. Investigator Estep, do you understand
9 that you are still under oath? This is a continued
10 deposition?

11 A. Yes, sir.

12 Q. At the time of the December 14 protest by
13 the Tyranny Response Team, had you reviewed any materials
14 which indicated that there was any felony fraud
15 investigation into Duncan Philp or the Tyranny Response
16 Team?

17 A. No, sir.

18 Q. Did you have any reason to believe that when
19 Sgt. Ester indicated that the Colorado Department of
20 Revenue, in December of 2001, that Mr. Philp's photograph
21 was being requested from those records in connection with
22 the felony fraud investigation that there was a felony
23 fraud investigation in which that request was being made?

24 A. No, sir.

25 Q. Had you reviewed any materials which

1 indicated that Duncan Philp had resided continuously in
2 Colorado, for any 90-day period, prior to December 14 of
3 2001, after his Colorado operator's license had lapsed?

4 A. Yes, sir.

5 Q. What materials had you reviewed which
6 indicated Duncan Philp had continuously resided in
7 Colorado for a 90-day period after his Colorado driver's
8 license had elapsed?

9 A. The arrest record, the criminal history, the
10 addresses that he had given on those criminal history
11 checks. I based it on that.

12 Q. Now, the address that he gave on what you
13 are referring to as the criminal history was the mail
14 drop, correct?

15 A. I don't know that's a mail drop. I just --

16 Q. Does it indicate anywhere that it is a
17 residence address?

18 A. It indicated the address that he had
19 reported.

20 Q. That he had recorded?

21 A. That he had provided to the agency or
22 agencies when contacted.

23 Q. But does anything in any of those reports
24 indicate that it was a residence address, or that he
25 claimed to be a Colorado resident?

1 A. The address that he gave, I believed to be
2 his resident address.

3 Q. And that wasn't the question, sir. Did any
4 of those documents indicate that Mr. Philp ever indicated
5 that was a residence address or that he was a Colorado
6 resident?

7 A. My understanding of the document is the
8 address listed there is the residence address of the
9 individual the information is contained in.

10 Q. Does anything in that document indicate that
11 there is no other residence address?

12 A. No, sir.

13 Q. Does anything in that document indicate that
14 Mr. Philp was continuously residing in Colorado?

15 A. No, sir.

16 Q. In your experience, do individuals who have
17 residences in more than one state sometimes not reside
18 within Colorado for 90 days continuous?

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

21 MR. TODD: I will rephrase the question,
22 rather than have him answer that one.

23 Q. (By Mr. Todd) Have you dealt with
24 individuals who have a summer home in Colorado, or a
25 winter home in Colorado, but their primary residence is

1 in other states?

2 A. No, sir.

3 Q. So in all of your years in law enforcement,
4 you have never dealt with someone whose residence is out
5 of state but they maintained a vacation home in Colorado?

6 A. I have had contact with individuals of such,
7 but I have not had contact with them in reference to
8 their ability to operate a motor vehicle.

9 Q. Well, let's talk about that then. Was there
10 some reason that you, coming into the Tyranny Response
11 Team's candlelight vigil, were researching whether or not
12 Mr. Philp could lawfully operate a motor vehicle in
13 Colorado?

14 A. Yes, sir.

15 Q. And what was that reason?

16 A. The information that I had received from the
17 Denver Police Department that's -- was that he did not
18 have a valid operator's license in the state of Colorado.
19 The information that I received from the Department of
20 Motor Vehicles he had been issued summonses prior for
21 operating a motor vehicle without a valid license in this
22 state.

23 Q. Well, the Denver Police Department didn't
24 indicate to you that he was unlawfully operating a motor
25 vehicle in this state, did it?

1 A. The information I received from the Denver
2 Police Department indicated that he did not have a valid
3 driver's license in the state of Colorado. He did not
4 have a valid Colorado driver's license.

5 Q. It did not indicate he could not lawfully
6 operate a motor vehicle in Colorado, did it?

7 A. No, it did not.

8 Q. So no one from the Denver Police Department
9 indicated to you that they believe Mr. Philp to be
10 unlawfully operating a motor vehicle in Colorado, did
11 they?

12 A. No.

13 Q. So would it be fair to say, that in looking
14 at the Denver record, you were looking for some
15 opportunity to be able to contact and cite Mr. Philp?

16 A. No, sir.

17 Q. How many traffic summonses have you been
18 involved in issuing in the last 5 years?

19 A. Two or three.

20 Q. Were any of those not involved with the
21 target of an intelligence operation?

22 A. Yes, sir.

23 Q. So, of those two or three, is one of those
24 Mr. Philp?

25 A. Yes, sir.

1 Q. So that leaves us with one or two others in
2 the last 5 years?

3 A. Approximately. There may have been more.
4 But those are the ones that I can remember.

5 Q. Why don't you tell us about the
6 circumstances under which those were issued.

7 A. One of them I was driving to another part of
8 the state. I observed an individual carelessly,
9 recklessly driving down the highway. I contacted a local
10 law enforcement agency and advised them. And they
11 subsequently contacted the individual and wrote a
12 summons.

13 The other individual was a gentleman who I
14 had previous contacts with, who did not feel he had the
15 need to possess a valid Colorado driver's license, insure
16 his vehicle, or properly register his vehicle. I
17 observed this individual operating a motor vehicle. I
18 notified the patrol section.

19 Q. This vehicle you said wasn't properly
20 registered, so it didn't carry any state's plates or
21 what?

22 A. I think the plates were expired on that
23 vehicle. That was two or three years ago.

24 Q. Okay. So when you directed the stop, it was
25 on a violation that was immediately apparent from looking

1 at the tags -- registration tag displayed on a Colorado
2 plate, correct?

3 A. Not totally. I explained to the deputies in
4 the area, to the best of my knowledge, this individual
5 does not possess a valid driver's license. This
6 individual doesn't possess proper insurance. If you see
7 him -- if he, you know, commits another violation in your
8 presence, in your observation, if you stop him, then
9 confirm or corroborate this information.

10 Q. So, with respect to the protest we're
11 dealing with, it was your intent to have patrol officers
12 stop Mr. Philp if he was observed operating a motor
13 vehicle, correct?

14 A. Correct.

15 Q. Tell us, sir, why is it that -- did you
16 brief the officers, or the deputy, who was responsible
17 for videotaping?

18 A. Yes, sir.

19 Q. Could you explain to us why the videotape
20 was shut off as soon as Duncan Philp started moving
21 towards his vehicle to drive out of the parking lot?

22 A. No, sir.

23 Q. When you briefed that individual with
24 respect to operation of the videotape, did you tell him
25 that you intended to have patrol officers contact

1 Mr. Philp if he was observed operating a motor vehicle?

2 A. Yes, sir.

3 Q. So that individual would have known that
4 Mr. Philp's operation of a motor vehicle was going to be
5 critical with respect to any issues of Fourth Amendment
6 or First Amendment violations by the department, correct?

7 MS. GILBERT: Objection to the form of
8 question.

9 MR. TODD: Can you answer the question as
10 phrased?

11 A. I don't understand the question. Would you
12 please rephrase it?

13 Q. (By Mr. Todd) Based upon your briefing,
14 that individual would have known that Mr. Philp's
15 operation of a motor vehicle was critical to the
16 documentation that was being done at the protest?

17 A. He should have known.

18 Q. Were any other members of the Tyranny
19 Response Team targeted for contact?

20 MS. GILBERT: Objection to the form of the
21 question.

22 Q. (By Mr. Todd) Do you understand the
23 question?

24 A. Yes, sir.

25 Q. Okay. You may answer the question then.

1 A. No, sir.

2 Q. So the original individual that you provided
3 information with respect to directions to the officers to
4 contact was Duncan Philp?

5 A. Yes, sir.

6 MR. TODD: At this point, Bill, I'm not
7 going to do anything else that touches on information
8 that might have come up from the Department of Justice.

9 MR. PHARO: Okay.

10 MR. TODD: If you want to go ahead and
11 depart, you can do so, as we discussed before.

12 MS. GILBERT: Well, make it easy.

13 MR. TODD: Sure.

14 MR. PHARO: Call me if anything comes up. I
15 think everything is copacetic.

16 MR. TODD: We are back on track.

17 MS. GILBERT: We are not going there?

18 MR. TODD: As I understand his answers,
19 there isn't any information from there, so . . .

20 MR. PHARO: Okay.

21 MS. GILBERT: Okay.

22 (Whereupon, Mr. Pharo left the deposition.)

23 Q. (By Mr. Todd) So, would you have any
24 explanation as to why the videotape would have been shut
25 off as Mr. Philp left the group to get into his vehicle

1 to leave the lot?

2 A. No, sir.

3 Q. Was there any reason why the videotape was
4 not listed as an exhibit in information provided to the
5 District Attorney's office with respect to the criminal
6 prosecution of Mr. Philp?

7 A. Yes, sir. I forgot about it.

8 Q. Was there any reason why the briefing
9 documents, including documents provided by the District
10 Attorney's office, was not -- were not forwarded to the
11 district attorney in connection with the criminal
12 prosecution of Duncan Philp?

13 A. At the day of the motions hearing, I wasn't
14 aware that I needed those documents. I did not have
15 those documents with me.

16 Q. Weren't you present in court at the start of
17 a motions hearing when I advised the Court, on the
18 record, that there were outstanding issues on the failure
19 to provide material required by Rule 16?

20 A. Yes, sir.

21 Q. And you were aware that, although evidence
22 had been suppressed, that there remained a criminal
23 prosecution in place against Mr. Philp at the point that
24 the court recessed the motions hearing, correct?

25 A. No, sir.

1 Q. Did you hear the judge indicate that the
2 criminal charges were dismissed?

3 A. I heard the judge indicate that on his
4 review of the stop -- the traffic stop, the turn signal
5 violation that did not hold up, and that everything
6 thereafter was dismissed. The traffic stop and
7 everything after was dismissed. So, it was done.

8 Q. Was any of the -- was any part of the charge
9 of operating a motor vehicle without a valid Colorado
10 operator's license dependent upon anything flowing from
11 the stop?

12 A. No.

13 Q. So, the no valid -- operating a motor
14 vehicle without a valid license charge was not dependent
15 on any of the information, any of the evidence that the
16 Court had suppressed in the motions hearing, correct?

17 A. My understanding of what occurred is that
18 the judge ruled the traffic stop was invalid. The
19 traffic stop was thrown out. And everything after that
20 was then lost. I was under the impression that it was
21 done.

22 Q. Did you hear the district attorney move to
23 dismiss the case?

24 A. No, sir.

25 Q. Did you hear the Court order the case

1 dismissed?

2 A. No, sir.

3 Q. And you knew that Mr. Philp had been
4 identified before he got into the vehicle, correct?

5 A. Yes, sir.

6 Q. And you knew that Mr. Philp had been
7 observed operating that vehicle as it entered, and was on
8 a public roadway or highway, within Jefferson County,
9 correct?

10 A. Yes, sir.

11 Q. And that had occurred prior to Officer
12 Beaulieu -- or Deputy Beaulieu activating his emergency
13 equipment and initiating a traffic stop, correct?

14 A. Yes, sir.

15 Q. So, when the Court recessed on February 8 of
16 2002, you knew that the criminal case in 01T12882 against
17 Duncan Philp had not been dismissed. And you knew the
18 evidence upon which the charge of operating a motor
19 vehicle without a valid license was based, flowed from
20 information that you had provided to Beaulieu, prior to
21 the stop, and your observations, as well as that it was
22 Mr. Philp, and that he was operating a motor vehicle, and
23 that he operated that motor vehicle on a public roadway
24 in Colorado, correct?

25 MS. GILBERT: Objection. Form of the

1 question.

2 A. No, sir.

3 Q. (By Mr. Todd) Would you break it down for
4 me? Which of the elements of that question do you
5 disagree with?

6 A. When I left the Court, it was my
7 understanding, if the District Attorney's office did not
8 appeal the judge's ruling, that the case would be
9 dismissed.

10 Q. Did someone tell you that?

11 A. I think I spoke with Deputy District
12 Attorney Retsek, and she advised it would have to be a
13 decision by the District Attorney's office if they were
14 going to appeal it or not. And if they did, I'd be
15 notified. And if not, it would be done.

16 Q. So she told you she was going to dismiss if
17 she didn't get approval for an appeal?

18 A. Maybe not in those words, but that was my
19 understanding. If they did not appeal it, the case was
20 done.

21 Q. So did she tell you that she did not need
22 any further materials to comply with Rule 16 obligations?

23 A. No. She did not say that.

24 Q. So the point you left the courtroom, you
25 knew that the criminal prosecution was still active. And

1 whether or not the People proceeded depended on a
2 supervisor's decision?

3 A. No, sir. I felt that it would be dismissed
4 if they did not appeal it.

5 Q. But you were told that that appeal was
6 dependent upon a supervisor's decision, correct?

7 A. That appeal was based upon a decision made
8 at the District Attorney's office.

9 Q. By the chief county deputy or an appellate
10 deputy, correct? Not by Ms. Retsek?

11 A. They didn't say.

12 Q. So at that point you knew that it was
13 possible that the District Attorney's office was going to
14 proceed and attempt to appeal the ruling?

15 A. Yes, sir.

16 Q. So you knew that the case was still active?

17 A. I knew the case was still there. I have not
18 had any experience on appellate -- appellate cases. So
19 to qualify as active, I don't -- I don't -- I don't know.

20 Q. Well, my question to you then is, if you
21 were not certain whether the case was still active, why
22 weren't you looking to provide the district attorney with
23 material that was discussed at the beginning of the
24 hearing, in terms of materials that the district attorney

25 had not provided with respect to the sheriff's department

1 response to the Tyranny Response Team's candlelight vigil
2 at the Mausers' residence is?

3 A. Because the information that I thought that
4 was being referred to was the audiotape from dispatch
5 that she did provide. I thought that's what the entire
6 issue was over, was that audiotape.

7 Q. You knew that the audiotape that had been
8 provided was not complete, correct?

9 A. Yes, sir.

10 Q. Did you take any steps to get communications
11 to provide the complete tapes?

12 A. I offered that to deputy district attorney
13 Retsek. To advise if I needed to get that, and I will go
14 through the process and obtain the one during the time of
15 the stop.

16 Q. So are you telling us that Deputy District
17 Attorney Carol Retsek told you that you need not provide
18 her with those materials?

19 A. I don't remember exactly what was said.
20 Because after the motion was lost, I assumed it was done.
21 And it wasn't discussed after the motion was over.

22 Q. So we're clear, Deputy District Attorney
23 Carol Retsek did not tell you that the instructions had
24 changed with respect to providing her with materials
25 after the hearing?

1 MS. GILBERT: Object to the form of the
2 question.

3 Q. (By Mr. Todd) Do you understand the
4 question?

5 A. No, sir.

6 Q. Did Deputy District Attorney Carol Retsek,
7 following the hearing, tell you that instructions she had
8 given to you, or your agreement with respect to you
9 obtaining that tape, had changed as a result of the
10 hearing?

11 (At 9:30 a.m., Mr. Duncan Philp left the
12 deposition.)

13 A. I don't believe it was discussed after the
14 hearing, sir.

15 Q. (By Mr. Todd) So your last agreement with
16 the district attorney was that you were going to obtain
17 the complete communication tape?

18 A. Yes, sir.

19 Q. And you never did that?

20 A. Yes, sir. That's correct. Until recently.

21 MR. TODD: Have we now been able to produce
22 the complete communication tape?

23 MS. GILBERT: I have what we have.

24 Q. (By Mr. Todd) Okay. Have you reviewed the
25 tape that your counsel has now indicated that we have?

1 A. Yes, sir.

2 Q. Does it appear now to cover the time of the
3 stop and the conversation in the parking lot, that you
4 indicated occurred with one deputy, indicating that
5 Mr. Philp did not signal?

6 A. No, sir.

7 Q. Is it covering the channel that the units
8 were on at the time of the -- that Mr. Philp exited the
9 parking lot?

10 A. No, sir.

11 Q. Okay. And why is that?

12 A. My understanding is that dispatch only
13 records certain channels of the communications. We have
14 a wide band of channels that we utilize. The
15 communications that night were on a channel that is not
16 recorded.

17 Q. That's because it's one of the tactical
18 channels rather than a patrol channel?

19 A. It's another channel. I don't know if it
20 would be classified as a tactical channel or not. Yes --
21 yes, it is. It has like south tac, north tac,
22 investigations tac. So yes. Technically, it is a tac
23 channel.

24 (At 9:32 a.m., Mr. Duncan Philp returned to
25 the deposition.)

1 Q. (By Mr. Todd) So which channel was this on?

2 A. I couldn't say.

3 Q. The generation of communication equipment in
4 use at the time this occurred, would officers be able to
5 monitor a primary channel and the tactical channel at the
6 same time? Or would all officers on the tactical channel
7 be monitoring only the tactical channel?

8 A. My understanding is the radio -- based on
9 the radio that I have, it has a scanner capability.
10 Meaning I can be on tac channel and I can scan the other
11 channels. That's the radio that I have. I can't speak
12 for what's in the other cars, sir.

13 Q. Okay. Would there have been any other
14 communication between units that would have been terminal
15 to terminal that night?

16 A. I don't understand.

17 Q. Do your vehicles have alphanumeric computer
18 terminals in there for direct inquiry?

19 A. Some patrol vehicles have -- if what we are
20 talking about, the mobile data computers, or MDTs, is
21 that what you are talking about?

22 Q. Yes.

23 A. Yes. Some of the patrol vehicles have
24 those.

25 Q. Okay. And are those capable of

1 terminal-to-terminal communication ?

2 A. I think so.

3 Q. Okay. Do you know whether there was any
4 terminal-to-terminal communication with respect to the
5 protest that night?

6 A. No. I do not, sir.

7 Q. So, in responding to the subpoena duces
8 tecum to Sheriff Stone on behalf of the department, you
9 didn't make any attempt to determine, with respect to
10 Number 5, any and all materials relating to Jefferson
11 County Sheriff's office response to the Tyranny Response
12 Team's candlelight vigil to the Mauser residence on
13 December 14, 2001, whether there were records of
14 terminal-to-terminal communications between units?

15 A. No, sir. I did not.

16 MR. TODD: Counsel, can that now be done?

17 MS. GILBERT: I believe it may have already
18 been done. But I can follow up.

19 MR. TODD: Okay. Thank you.

20 (Deposition Exhibit 10 marked for
21 identification.)

22 Q. (By Mr. Todd) Do you recognize the text
23 that is Exhibit 10?

24 A. Yes, sir.

25 Q. Where do you recognize that text from?

1 A. It appears to be taken out of the Colorado
2 C.R.S. 42-2-101. Persons exempt from licenses.

3 (Deposition Exhibit 11 marked for
4 identification.)

5 Q. (By Mr. Todd) I'm handing you Exhibit 11.
6 Do you recognize the text that's Exhibit 11.

7 A. Yes, sir. It appears to be a portion of
8 Colorado C.R.S. 42-1-102. The definitions.

9 Q. Directing your attention on Exhibit 11,
10 42-2-102(81), did you, on the 14th day of December 2001,
11 have any reason to believe that Duncan Philp owned or
12 operated a business in the State of Colorado?

13 A. No, sir.

14 Q. Did you have any reason to believe, on
15 December 14, 2001, that subsequent to obtaining his New
16 Mexico operator's license that Duncan Philp had obtained
17 gainful employment within the state of Colorado?

18 A. I'm sorry, would you repeat the question?

19 Q. Do you have any reason to believe that
20 subsequent -- as of December 14, 2001, did you have any
21 reason to believe that Duncan Philp had obtained gainful
22 employment within the state of Colorado, after his New
23 Mexico operator's license was issued?

24 A. No, sir.

25 Q. When you heard the deputy indicate over the

1 tactical channel that Mr. Philp had not signaled his turn
2 from the parking lot onto Pierce, did you have any reason
3 to believe that that area of the parking lot, from which
4 he was turning onto Pierce, constituted a roadway as set
5 forth in subsection 85 on Exhibit 11?

6 MS. GILBERT: Objection. Foundation.

7 A. Okay. Would you ask the question again?

8 Q. (By Mr. Todd) Let's take it one step at a
9 time. Did you have any reason to believe, on December
10 14, 2001, that the section of the parking lot, that
11 proceeds through the cut in the sidewalk to southbound
12 Pierce, was publicly maintained?

13 A. No, sir.

14 Q. So, would it be fair to say that you had no
15 reason to believe that that constituted a highway as set
16 forth in 42-1-102(43)?

17 MS. GILBERT: Objection. Calls for a legal
18 conclusion.

19 MR. TODD: It does not call for a legal
20 conclusion, Counsel. It asks whether he had any reason
21 to believe that, based on his understanding of the
22 definition, that he has a reason that will go to this
23 factual basis.

24 MS. GILBERT: I will object on foundation
25 basis to see -- you are asking him to interpret these --

1 these different definitions. And whether he knew about
2 the definitions at that time, I'm not sure. Whether he
3 read them before the stop, I'm not sure.

4 Q. (By Mr. Todd) Deputy Estep, as a -- when
5 was the last time that you reviewed the Model Traffic
6 Code and the definitions within the Model Traffic Code of
7 Colorado, with respect to what traffic statutes applied
8 where, within Jefferson County?

9 A. Probably the entire code, in complete
10 review, would have been somewhere in 1983. Since then, I
11 have reviewed specific statutes.

12 Q. Do you have any reason to believe that the
13 definitions of "roadway, highway, or intersection"
14 changed subsequent to December -- excuse me -- subsequent
15 to 1983, when you reviewed the code?

16 A. I don't know, sir, if they have changed or
17 not.

18 Q. Does the definition set forth in
19 42-1-102(43) appear to be the definition when you
20 reviewed the code in 1983?

21 A. I wouldn't know, sir. I can't remember what
22 I reviewed in '83.

23 Q. So, is it your testimony, that on December
24 14 of 2001, you did not believe yourself sufficiently
25 versed in the Model Traffic Code to make a decision as to

1 whether or not the conduct of Mr. Philp constituted a
2 violation of the code, when it was alleged that he turned
3 from the parking lot to southbound Pierce without
4 signaling?

5 MS. GILBERT: Object to the form of the
6 question.

7 A. I'm sorry, you've lost me. There was about
8 three phrases in there -- I think I had it, and then you
9 kind of -- can you repeat question, please?

10 Q. (By Mr. Todd) Did you believe, on December
11 14, 2001, that you had -- that you were sufficiently
12 versed in Title 42 of the Colorado Revised Statutes, to
13 make a determination of whether or not a turn from a
14 private parking lot onto southbound Pierce legally
15 required a signal?

16 A. Yes, sir.

17 Q. So, you did not know, at that point in time,
18 what the definition of "highway, intersection, or
19 roadway" was under Colorado law, correct?

20 A. I could not quote the definitions. But my
21 impressions were, and my belief was, that when you exit a
22 parking lot onto a roadway, you are required to use a
23 turn signal.

24 Q. And what was that impression based upon?

25 A. My knowledge of the motor vehicle laws.

1 Q. Had any instructor, at any certified academy
2 or continuing education course, ever told you that?

3 A. I don't remember, sir.

4 Q. When you had your initial meeting, and then
5 the subsequent meeting with the -- Mr. Pautler and
6 others, did you request from the District Attorney's
7 office a list of possible offenses that might apply to
8 those individuals, though residents in the neighborhood,
9 with respect to interfering with the protest?

10 A. I believe I asked for one. But if not, they
11 advised they would prepare one. It was discussed.

12 Q. Okay. Which of the offenses that they laid
13 out for you would have applied, or was intended to apply,
14 to the residents of the neighborhood?

15 A. Trespass, obstruction, noise -- and I would
16 have to review the list to --

17 Q. Well, let's deal with it this way. What
18 steps did you take to meet with individuals in the
19 neighborhood to provide them notice of the statutes that
20 would govern their conduct the evening of December 14,
21 2001?

22 A. I had had at least one conversation with
23 Mr. Mauser, and at least one conversation with a
24 neighbor.

25 Q. Who was the neighbor?

1 A. I don't remember the name. I believe it's
2 in my notes.

3 Q. How did you come to select that neighbor?

4 A. That neighbor contacted the sheriff's
5 department. Lt., I believe, Meyer, and was concerned
6 about the demonstration that she'd heard about. And
7 Lt. Meyer referred that information to myself, and I
8 subsequently contacted that individual.

9 Q. So that's Lt. Teresa Meyer?

10 A. Yes, sir.

11 Q. Now, did there come a point in the vigil
12 that individuals of the Tyranny Response Team were taking
13 photographs?

14 A. Yes, sir.

15 Q. Did that include taking photographs of you?

16 A. There were attempts to take photographs of
17 me. I don't know if they were successful or not.

18 Q. Well, why do you believe they may not have
19 been successful?

20 A. Because, whenever I saw the camera, I turned
21 away from it.

22 Q. Was there some reason you were attempting to
23 conceal your identity?

24 A. Yes, sir.

25 Q. And that was?

1 A. I have cases where I'm working in an
2 undercover capacity, that I didn't really think it was
3 prudent to have my facial features broadcast all over.
4 Because I think it would kind of have an effect on my
5 ability to effectively do my job.

6 Q. Why did your command make the decision to
7 have you at the protest?

8 A. Because it's my assignment.

9 Q. You made a decision to initiate contact with
10 Mr. Philp, after Deputy Beaulieu had him stopped,
11 correct?

12 A. Yes, sir.

13 Q. So, you were doing things that night to
14 place you in contact with individuals who might later
15 recognize you, even though you were investigating them,
16 correct?

17 A. No, sir.

18 Q. Was Mr. Philp the only one that you spoke
19 to, about the list of possible offenses provided by the
20 District Attorney's office, and the perceived need to
21 contact the County Attorney before there were any future
22 protests?

23 A. No, sir.

24 Q. So, who else did you speak to?

25 A. Mr. Glass.

1 Q. So, you chose to identify yourself to both
2 Mr. Philp and Mr. Glass, correct?

3 A. Yes, sir.

4 Q. Didn't that undermine your ability to
5 conduct undercover operations against the TRT in any
6 event?

7 A. I was not conducting undercover
8 investigation against the TRT, sir.

9 Q. But you didn't want Mr. Philp or Mr. Glass
10 to be able to document who you were, in your presence
11 that night, correct?

12 A. I did not want my photograph taken, as it
13 could hamper my abilities -- or it could jeopardize my
14 safety while completing other investigations, sir.

15 Q. So, did you, in response to attempts to take
16 your photograph, tell the protestors that they had had
17 their protest, that that was it, that they needed to wrap
18 it up?

19 A. No, sir.

20 Q. You never said those words, or anything to
21 that effect?

22 A. What I said was, I had a discussion with
23 Mr. Glass. He said they were only going to be 15
24 minutes. I said, "Okay." So, after about 20 minutes, I
25 walked up to Mr. Glass. And I said, "You said you were

1 only going to be here 15 minutes, and it's been 20
2 minutes. Are you done?" And he said, "Yes."

3 Q. What time was that?

4 A. I don't remember, sir.

5 Q. And why did you think it was appropriate for
6 you to say that to Mr. Glass?

7 A. I just was reminding him of what he told me.
8 He said he wanted 15 minutes. He said they were going to
9 be there 15 minutes. And I was just reminding him of
10 what time it was.

11 Q. Did you think you had some legal obligation
12 to limit the vigil to 15 minutes?

13 A. No. He was the one that said he was only
14 going to be there 15 minutes.

15 Q. Was there some reason that you were asking
16 him, in the first place, how long he was going to be?

17 A. I was curious how long it was going to be so
18 I knew how to -- I -- I knew how long it was going to be.

19 Q. And didn't you ask that question, in the
20 context of having initially indicated to Mr. Glass, that
21 for any future protests he was going to need to contact
22 the County Attorney's office in advance?

23 A. Yes, sir.

24 Q. So, you said that, and asked that, in the
25 context of, "At this time we'll let you go without having

1 checked with the County Attorney for a permit," correct?

2 MS. GILBERT: Object to the form of the
3 question.

4 Q. (By Mr. Todd) Do you understand the
5 question?

6 A. Would you repeat the question?

7 Q. (By Mr. Todd) Did you lead Mr. Glass to
8 believe that you were permitting him to go forward
9 without a permit on this one occasion?

10 A. Yes, sir.

11 Q. Even though you had no information that
12 indicated that a permit was actually required?

13 A. I referred Mr. Glass to the County
14 Attorney's office to determine if a permit was required
15 for any further demonstrations, sir.

16 Q. The County Attorney's office had not
17 provided you with any information that indicated that a
18 permit was actually required for anything that the
19 Tyranny Response Team was doing on December 14, 2001,
20 correct?

21 A. Yes, sir.

22 Q. Yes, that's correct?

23 A. Yes, sir. That is correct.

24 Q. And knowing that, you led Mr. Glass to
25 believe that you had been instructed that a permit was

1 required. That you were letting them go forward, for a
2 limited time, the evening of December 14 without one, as
3 long as they would agree to go to the County Attorney in
4 the future and arrange for whatever permits were
5 necessary?

6 MS. GILBERT: Objection. Calls for
7 speculation.

8 Q. (By Mr. Todd) Did you intend Mr. Glass to
9 believe that he was required to have a permit?

10 A. Yes, sir.

11 Q. And in that context, you asked him how long
12 the protest was going to last?

13 A. No, sir. He said the protest will only take
14 about 15 minutes.

15 Q. That was after you led him to believe that
16 he was required to have a permit, correct?

17 A. After I advised him I thought a permit was
18 necessary. And I asked him to please contact the County
19 Attorney's office if this ever happened again.

20 Q. So you obtained a commitment to limit the
21 protest to 15 minutes, upon indicating to Mr. Glass that
22 you thought he was required to have a permit and that he
23 would need to check with the County Attorney's office for
24 any future protests?

25 A. Yes, sir.

1 Q. And you knew at the time that you did that
2 that you had not been provided any information from the
3 County Attorney that indicated that a permit was actually
4 necessary for what was being done that evening?

5 A. At that time, I was uncertain if there was a
6 permit required.

7 Q. And being uncertain, you led him to believe
8 that a permit was required?

9 A. Being uncertain, I asked him to please
10 contact the County Attorney's office next time to
11 clarify, get a clarification. I was there to make
12 certain they didn't get in trouble.

13 Q. That they didn't get in trouble?

14 A. Yes, sir.

15 Q. You were trying to protect him from the
16 County Attorney's office independently initiating a code
17 enforcement action against them?

18 A. Yes, sir.

19 Q. Did you have any reason to believe that the
20 County Attorney's office intended to independently
21 initiate any code enforcement action?

22 A. Oh. Excuse me. No, sir.

23 Q. So, if you didn't issue a summons for a
24 violation, with respect to a permit required, or none of
25 your officers did, no one was going to do anything to

1 claim a permit was required, were they?

2 A. On that night? On that event? No, sir.

3 Q. And you had, 10 days previously, requested
4 guidance from the County Attorney's office. And they had
5 provided you with no indication that a permit would be
6 required, correct?

7 A. Correct.

8 Q. Did you have some reason to believe that
9 leading Mr. Glass to believe that there was a permit
10 requirement, or that you believed there was a permit
11 requirement that impacted their protest, would not have a
12 chilling effect on their exercise of their First
13 Amendment rights?

14 A. No, sir.

15 Q. Were you attempting to get the candlelight
16 vigil out of the neighborhood prior to Mr. Mauser
17 returning from dinner?

18 A. No, sir.

19 Q. You already had a timeline for Mr. Mauser in
20 terms of times that he was going to be out of the
21 neighborhood, correct?

22 A. I knew what time Mr. Mauser was leaving. I
23 did not know what time he was returning. My
24 understanding was he would be contacted by a neighbor
25 when the event was concluded.

1 Q. And when you went up to Mr. Glass and
2 said -- you said, "15 minutes, it's already 20," or words
3 to that effect, you were aware of that, correct?

4 A. Yes, sir.

5 MR. TODD: Off the record.

6 (Off the record from 10:02 a.m. to 10:03
7 a.m.)

8 Q. (By Mr. Todd) So, was it your concern for
9 the First Amendment rights of the Tyranny Response Team
10 that caused you to talk to them about obtaining a permit,
11 when you had not seen any county ordinance that would
12 have required a permit?

13 MS. GILBERT: Object to the form of the
14 question.

15 A. I don't think I understand the question.
16 Would you ask it again, please?

17 Q. (By Mr. Todd) I believe you testified
18 that -- in the beginning of your deposition, that you
19 were there on December 14 to protect the First Amendment
20 rights of the protestors as well as the rights of the
21 community?

22 A. Yes, sir.

23 Q. So, did you believe that you were protecting
24 the First Amendment rights of the protestors when you
25 referred them to a permit requirement without having ever

1 seen any ordinance that required a permit?

2 A. My discussion with Mr. Glass does not
3 pertain to his First Amendment rights. My discussion
4 with Glass was to the county's policies on the need of
5 permits. My discussion with Mr. Glass was so that he, or
6 the Tyranny Response Team, didn't violate any county
7 ordinance that pertains to that.

8 Q. And these were county ordinances that were
9 so widely published that you didn't know of their
10 existence, correct?

11 A. These are ordinances that I did not know,
12 correct.

13 Q. And that the County Attorney's office had
14 been unable to provide you with 10 days advanced notice?

15 A. Correct.

16 Q. Would the inability of the County Attorney's
17 office to provide you with that material, with 10 days
18 advance notice, and knowing when the protest was, be a
19 pretty strong indication that there were no such
20 ordinances?

21 A. Yes.

22 Q. Would that, in your opinion, make it more
23 probable than not, that there were no such ordinances?

24 A. Yes.

25 Q. When you met with the District Attorney's

1 office, did Mr. Pautler review with you the crimes of
2 official oppression, and at what point actions of police
3 officers in interfering with lawful protests become
4 criminal?

5 A. No, sir.

6 Q. Is there any discussion with respect to the
7 constraints on use of official action?

8 A. No, sir.

9 Q. Did you have any indication as to why that
10 was?

11 A. No, sir.

12 Q. In what capacity did you understand
13 Mr. Pautler to be functioning when he met with you in
14 those two meetings prior to the protest?

15 A. Guidance on possible statutes that
16 potentially would be violated.

17 Q. Did you discuss with Mr. Pautler your view
18 that Mr. Philp was not lawfully entitled to be operating
19 a motor vehicle in Colorado?

20 A. Probably did.

21 Q. You have no recollection of it, but you
22 think you did, or what?

23 A. I think I did. Because on the day of the
24 first meeting, I think I had knowledge that Mr. Philp had
25 been contracted prior, by Denver PD, without a valid

1 driver's license. But, I'm not sure if that was
2 discussed or not at that first meeting.

3 Q. Well, you had two separate meetings, did you
4 not, with Mr. Pautler?

5 A. Yes, sir.

6 Q. So, are you reasonably certain that, between
7 the two meetings, you discussed Mr. Philp with
8 Mr. Pautler and the possibility of contacting Mr. Philp
9 based on -- solely on your view that he could not
10 lawfully operate a motor vehicle in Colorado?

11 A. Probably.

12 Q. Do you recall any response from Mr. Pautler,
13 or any advice that he gave you with respect to when an
14 individual was required to have a Colorado license?

15 A. No, sir.

16 Q. Were there any other individuals that you
17 were discussing with Mr. Pautler at the time, in terms of
18 a potential to make contact with them?

19 A. Are you referring to the meetings at the
20 District Attorney's office, sir?

21 Q. I am referring specifically to the meetings
22 at the District Attorney's office, and any other
23 conversation that was related to the December 14, 2001
24 candlelight vigil protest.

25 A. The only other discussion about Mr. Philp

1 would have been at the December 14 briefing, among the
2 sheriff's department deputies.

3 Q. No. I was talking about conversations with
4 Mr. Pautler.

5 A. Oh. I don't remember. I don't remember if
6 we specifically spoke about Mr. Philp or not.

7 Q. Well, the question related to whether you
8 had conversations with respect to any other TRT members,
9 and the possibility of contacting them for some violation
10 not associated with the information that you had obtained
11 at the protest.

12 A. I was asked my knowledge of members of TRT
13 and what I knew of them.

14 Q. Okay. Which individuals did you provide
15 information on?

16 A. Triston Trebber, Mr. Glass, and I believe
17 Mr. -- it starts with -- the last name Z. Zeig. Those
18 are the individuals that I had some knowledge of.

19 Q. And Mr. Philp?

20 A. Yes, sir.

21 Q. But, to the best of your recollection, there
22 was no discussion with respect to potential charges
23 against an individual other than Mr. Philp?

24 A. At the meetings at the District Attorney's
25 office, I don't know that we got into Mr. Philp's

1 driving -- or driver's -- driving privileges in Colorado.
2 I believe the balance of the meeting was pertaining to
3 the demonstration.

4 Q. Okay. I thought you had indicated earlier
5 that you believed that you had discussed with Mr. Pautler
6 your belief as to Mr. Philp's status as to a motor
7 vehicle operator's privilege?

8 A. I thought I answered that I may have. But
9 it didn't -- I don't exactly remember if we discussed
10 Mr. Philp's driving history or not.

11 MR. TODD: All right. Thank you, sir. I
12 don't have anything further.

13 MS. GILBERT: I have nothing.

14 WHEREUPON, the within proceedings were
15 concluded at the approximate hour of 10:13 a.m. of this
16 12 day of September, 2002.

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

I, DONALD L. ESTEP, 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.

DONALD L. ESTEP

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: September 12, 2002
Trial Date: None
Volume: II
Reporter: LM

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

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

DONALD L. ESTEP

certify that prior to the deposition the witness was
sworn by me to tell the truth; that the deposition was
taken by me at 143 Union Boulevard, Suite 900, Lakewood,
Colorado 80228-1829, on September 12, 2002; that the
proceedings were reduced to typewritten form by
computer-aided transcription consisting of 42 pages
herein; that the foregoing is an accurate transcript of
the proceedings.

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

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

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

LESLIE MALECKA
Registered Professional Reporter

