

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)

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5 DUNCAN DUWANE PHILP,  
6                               Plaintiff,

7 v.

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

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

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13 APPEARANCES:

14 FOR THE PLAINTIFF:

15   VINCENT C. TODD, ESQ.  
16   143 Union Boulevard  
17   Suite 900  
18   Lakewood, Colorado 80228-1829  
19   (303) 980-0922

20 FOR THE DEFENDANT:

21   PATRICIA GILBERT, ESQ.  
22   Assistant County Attorney  
23   100 Jefferson County Parkway  
24   Golden, Colorado 80419-5577  
25   (303) 271-8968

ALSO PRESENT:

Duncan Duwane Philp  
Jennifer Pielsticker

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

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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

KIRK G. BEAULIEU

certify that prior to the deposition the witness was  
sworn by me to tell the truth; that the deposition was  
taken by me at 100 Jefferson County Parkway, Fifth Floor,  
Golden, Colorado 80419 on August 29, 2002; that the  
proceedings were reduced to typewritten form by  
computer-aided transcription consisting of 59 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 5th day of September, 2002. My Commission  
expires December 15, 2004.

---

LESLIE MALECKA  
Registered Professional Reporter