

Exhibit B:
Leonard Deposition
Transcript

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GILBERT WEBER, et al.,
Plaintiffs, Case No. 1:13-cv-00469
vs. Hon. Paul L. Maloney
CITY OF GRAND RAPIDS, et al.,
Defendants.

DEPONENT: ANTHONY LEONARD
DATE: Wednesday, January 22, 2014
TIME: 2:50 p.m.
LOCATION: 300 Monroe Avenue, N.W.
Grand Rapids, Michigan
REPORTER: Kathryn Trap Hevelhurst, RPR, CSR-1457

<p style="text-align: right;">Page 28</p> <p>1 the watch commander, who is a lieutenant, and after the 2 lieutenant, it would be the captain. After captain, it would 3 be chief. 4 Q Do you know who those people would have been back in 5 February 2012? 6 A The watch commanders I do not remember. I've worked for many 7 different patrol supervisors and many different watch 8 commanders. The captain -- or my unit commander would have 9 been Captain VanderKooi, and the chief would have been 10 Chief Belk. 11 Q Would you have had the same patrol supervisor in January 2012 12 as in February of 2012? 13 A Yes, it should have been Sergeant Rifenberg. 14 Q What about in September 2011? 15 A Sergeant Rifenberg, yes. 16 Q During your initial training with the Grand Rapids Police 17 Department, was there anything specific to enforcing trespass 18 statutes or ordinances? 19 A I'm sure it was touched on. We went over many of the city 20 ordinances. I'm confident that trespassing was one of them. 21 Can I remember the actual body of that instruction? No, I 22 don't. 23 Q When I talk about a no trespass letter, do you know what I 24 mean? 25 A Yes.</p>	<p style="text-align: right;">Page 30</p>
<p style="text-align: right;">Page 29</p> <p>1 Q What does that mean? 2 A To me a no trespass letter is a document signed by a business 3 owner, a business manager, or a merchant extending or 4 expressing to the Grand Rapids Police Department that they do 5 not want people at their business or on their business 6 parking lot that are not there patronizing them for business. 7 If they're loitering, hanging out, doing anything but being a 8 customer, for any unreasonable amount of time, then by 9 signing that no trespass letter, I feel that's an explicit 10 expression from management and from the owners that they want 11 police involvement. 12 Q Were the no trespass letters part of your initial training 13 with the Grand Rapids Police Department? 14 A Yes. 15 Q What do you recall specifically about the training back in 16 March of -- this would have been in March of 2005, right -- 17 March of 2005 about what you were told in terms of the 18 utilization of the no trespass letters? 19 A Specifically, sir, I don't remember specifics. I remember 20 being taught it. I remember them saying that to enforce it, 21 to look at the totality of the situation, to look at all the 22 different factors that go into it, and being taught how to 23 verify if an address has a no trespass letter on file, so 24 finding the information as well as the correct way of 25 applying it to certain situations.</p>	<p style="text-align: right;">Page 31</p>

10 (Pages 28 to 31)

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1 A Yes, of course.

2 Q And to enforce laws the way that your superiors expect you to

3 enforce laws, correct?

4 A Yes.

5 Q Deposition Exhibit 3 is a statute, correct?

6 A Yes.

7 Q It's MCL 750.522 Trespass Upon Land, correct?

8 A Yes, sir.

9 Q Are you familiar with that statute?

10 A Yes.

11 Q Is that a statute that you have enforced as a member of the

12 Grand Rapids Police Department?

13 A Yes and no. The bulk of what we enforce as a police officer

14 are the city ordinances. The city ordinances, for the most

15 part, will mirror state law, but when I'm enforcing, I'm not

16 enforcing 750.522; I would be enforcing the City of Grand

17 Rapids adopted ordinance of it, which inherently is very

18 similar, in my opinion.

19 Q I've handed you what's been marked as Deposition Exhibit 2.

20 A Yes, sir.

21 Q Which is a Grand Rapids ordinance, correct?

22 A Yes.

23 Q And that ordinance, specifically 9.133, Subpart 1, is the

24 trespass ordinance, correct?

25 A Yes.

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Page 37

Page 39

1 9.133 (1), it says: No person shall, colon, paren one,

2 trespass upon the premises of another or unlawfully remain on

3 the premises of another to the annoyance or disturbance of

4 the lawful occupants, correct?

5 A Yes.

6 Q Reading this ordinance, have you been taught what trespass

7 means in this context?

8 A Yes, I think it's been conveyed to me and other police

9 officers what behavior -- you know, the reasonableness of

10 some behavior versus other behavior, absolutely.

11 Q So what have you been taught trespass means?

12 A I believe it's been conveyed to me that trespassing is a

13 person who is on another person's property, whether that be

14 private residential or business, who is either not leaving or

15 does not have the right to be there.

16 Q So let's talk about a business then. If I'm lost and I pull

17 off at a gas station and ask for directions with no intent to

18 purchase anything at the gas station, gas or food or anything

19 else, am I trespassing?

20 MR. LANNEN: Before you answer, I'm going to object

21 to the form of the question. I think it's an improper

22 hypothetical. Go ahead.

23 BY MR. WALDMAN:

24 Q Can you answer the question?

25 A In my opinion, no, I don't think so, nor do I want to live in

12 (Pages 36 to 39)

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<p>Page 40</p> <p>1 a society where if you pull into a business parking lot to 2 ask for directions, you're construed as trespassing. I think 3 there's some human nature behind it. I think I need to be 4 reasonable and pragmatic. Given the limited circumstances 5 that you gave me, in my opinion, no, I don't think you're 6 trespassing by simply removing yourself from the roadway to 7 try to reorient yourself.</p> <p>8 Q And you wouldn't argue that I don't have a right to be there 9 if the business is open to the public, correct?</p> <p>10 MR. LANNEN: Same objection.</p> <p>11 THE WITNESS: Can you repeat that again?</p> <p>12 BY MR. WALDMAN:</p> <p>13 Q Sure. If I go to a business during the day -- and I'll try 14 to make it more specific, and we'll make the business a gas 15 station. If I go to a business and it's open, whether or not 16 I intend to buy anything, as a police officer, do I have the 17 right to be there?</p> <p>18 A In my opinion, I think there's an understanding that if you 19 are on the business -- if you're in the gas station, if 20 you're there in the parking lot or you're walking inside, I 21 think there's an understanding, albeit if it's signed with no 22 trespassing or they explicitly say no bathroom use for 23 non-paying customers, I think that there's an understanding 24 that if you're there that you're going to be a customer. 25 There are a whole lot of businesses that will --</p>	<p>Page 42</p> <p>1 basis, and I think that's what the no trespass letter affords 2 us is a business owner or management expressing to the police 3 department they've had problems of whatever nature, and -- 4 it's establishing a rapport and a trust from that business 5 saying, I'm empowering you and entitling you to enforce this 6 when you see fit, when you think this person is not 7 legitimately a customer of mine.</p> <p>8 Q You can enforce a trespassing ordinance without a no 9 trespassing letter, correct?</p> <p>10 A Yes.</p> <p>11 Q We're not to the trespassing letter yet. Let's talk about 12 your situation with the wifi. When you say we have a 13 problem, have any coffee shops complained that people are 14 using their wifi without actually coming in and being inside 15 the coffee shop and being a paying customer?</p> <p>16 A Yes, I have personally policed those calls.</p> <p>17 Q So, in other words, the property owner has let you know that 18 they object to the people being in their parking lot and 19 using their wifi without being a customer, correct?</p> <p>20 A Yes.</p> <p>21 Q So without signing a no trespass letter, they've informed 22 you, I want you to look out for this specific type of person, 23 correct?</p> <p>24 A Yes.</p> <p>25 Q And you know as a police officer when you see someone doing</p>
<p>Page 41</p> <p>1 that have signs that say, "Bathrooms for customer use only." 2 I can go further and say coffee shops. We have a problem 3 with coffee shops with people utilizing free wifi on the 4 internet, especially at nighttime, people going to the 5 parking lots at the closed coffee shop and utilizing the wifi 6 system so that it saves on their data bills for their cell 7 phones or their mobile devices.</p> <p>8 So back to your instance, if you go to a gas 9 station and you walk inside and you have absolutely no 10 intention to buy anything, there comes a time that I think 11 you go from it's probably not that big of a deal to, yes, you 12 are trespassing.</p> <p>13 Q And would you agree with me that whether or not -- you 14 indicated that a trespass to you is someone on another 15 person's property not leaving with no right to be there?</p> <p>16 A Yes.</p> <p>17 Q A person having no right to be there is, to a large extent, 18 going to be based on whether the property owner wants them 19 there, right?</p> <p>20 A Yes.</p> <p>21 Q So as a police officer, you need -- if you're trying to 22 determine if someone is trespassing, you need to make a 23 determination whether the property owner actually wants that 24 person there, right?</p> <p>25 A Yes, on both an individual basis, but also on an overall</p>	<p>Page 43</p> <p>1 it, you know the intent or the feeling of the property owner, 2 right?</p> <p>3 A Yes.</p> <p>4 Q Have you made arrests of these people using wifi without the 5 owners intending or wanting them to use their wifi?</p> <p>6 A None that I can think of off the top of my head. The caveat 7 could be I may have, but none come to mind immediately.</p> <p>8 Q In that situation -- and since you don't have a specific 9 memory, we'll just use a hypothetical that someone is at a 10 coffee shop, they're in the parking lot, they're using the 11 wifi. Is there any way for that person to know whether or 12 not the property owner wants them to use the wifi?</p> <p>13 A The one sticking in my head is there is a Biggby coffee on 14 East Beltline between Lake Eastbrook and East Mall Drive. 15 This is one that I had responded to on more than one 16 occasion, and I believe there's lettering in the front facade 17 of the window, white lettering, that I think says, "Wifi and 18 bathrooms for paying customers," something to that effect, 19 some verbiage of that, but on one of the occasions that I 20 responded, the business had closed, or just recently closed, 21 and there were still staff members there. The staff called 22 the police to say this person was out in the -- they were 23 calling because they were fearful that this person was casing 24 the business for a potential robbery. Once we arrived, 25 that's when it was also relayed to us that they had been</p>

<p>Page 44</p> <p>1 experiencing problems with people during the day when they're 2 open, but also at nighttime of utilizing their wifi. 3 Q I guess my question is do you know -- and maybe you don't, 4 but do you know how a person is supposed to tell other than 5 if there is a sign up? Is there any way for a person to know 6 they're not supposed to use the wifi? 7 A Again, I would say yes and no. In my own experience, if I go 8 to a business, a Panera Bread or something -- many 9 businesses, and I think Panera is one of them, change their 10 wifi password on a daily basis, so you could show up and have 11 strong wifi signal in the parking lot; however, you won't get 12 the password unless you go inside and purchase something, and 13 then once you actually make your purchase, printed on your 14 receipt will be the password for the wifi, or you ask for it, 15 or there's a sign that says, "Wifi password available upon 16 purchase." 17 So, again, in that situation, would a person 18 necessarily know they can't do that? No, but I think it's 19 reasonable for a person who is using a mobile device, that if 20 a password is required on free wifi, then it's probably not 21 free, that they're not just broadcasting this band out for 22 anyone to use, that there's, again, some type of an 23 understanding, we will allow the use of our wifi if you 24 purchase something from our business. 25 Q So that I understand how the enforcement of a trespass works,</p>	<p>Page 46</p> <p>1 If your answer is no, I would say, "Sir, then you 2 need to leave. The employees have told me that they don't 3 want you here and the wifi is for paying customers. I'm sure 4 if you go inside, they'll be more than happy, if you buy a 5 cup of coffee, to let you use the wifi." 6 Depending on what our interaction was, if you said, 7 "Sure, no problem, I will go inside," then problem solved, if 8 you were to go inside and buy a cup of coffee or whatever. 9 If there is a backlash and you tell me you're not 10 doing anything wrong, then my next step would be -- assuming, 11 of course, that I've identified you -- to go get management 12 from the Starbucks, ask management to come out, and in my 13 presence say, "Sir, our wifi is for paying customers. If you 14 don't leave our parking lot right now, I want you arrested 15 for trespassing." At that point, if you're still not obeying 16 what the management has said, it is in my presence that you 17 are refusing the management's directives to leave being that 18 you're not a paying customer, and at that point I think you 19 would be subject to arrest for trespass. 20 Q It sounds to me like you're saying, when we investigate a 21 potential trespass, we look at a number of factors, right? 22 A Yes. 23 Q And any one of those factors can be important in determining 24 whether or not an arrest should or should not be made? 25 A Yes, I would agree with that.</p>
<p>Page 45</p> <p>1 today if I pulled up to a Starbucks and was in the parking 2 lot using their wifi, I had no idea that the business owner 3 didn't want me using that, but I'm clearly there, I'm not 4 buying anything, and I'm just there using free wifi, would 5 the policy and practice of the Grand Rapids Police Department 6 be to issue me a warning that I need to stop using the wifi 7 or I need to get off the property? 8 A I would say the policy and practice of the GRPD would be to 9 investigate the crime thoroughly -- investigate the situation 10 thoroughly. If I were to respond to that situation with the 11 presumption that, one, there is not a no trespass letter, 12 and, two, the wifi is not password protected, when I arrived, 13 I would contact whoever called the police, and if they said 14 it's the gentleman in the blue blazer and the red tie sitting 15 in that vehicle, he's been there for this long, we're 16 confident he's using our wifi, and he has not bought 17 anything, I would ask, "Do you want this gentleman to leave 18 your parking lot?" If the answer is yes, I would say, "Okay, 19 sit tight." 20 I would go out, I would then contact you, "Sir, my 21 name is Officer Leonard from Grand Rapids Police. The 22 Starbucks' employees have called the police. They think that 23 you're utilizing their wifi and you haven't bought anything. 24 Do you plan on purchasing a cup of coffee or a donut or a 25 danish or something?"</p>	<p>Page 47</p> <p>1 Q And it sounds like one of the important factors is whether or 2 not there is a no trespass letter on file, correct? 3 A Or a standing agreement that you have from management or from 4 the owners that they don't want people on their property who 5 are not customers. 6 Q A standing order makes it abundantly clear in your mind, 7 correct? 8 A Yes, they've expressed to the police department that if we 9 have people here and I'm not profiting from them and my 10 business is not profiting, I don't want them here. 11 Q And you're in a position now where you get to know some of 12 the people, the business owners, in your neighborhood, 13 correct? 14 A Yes. 15 Q And so you even, beyond that, have an understanding of what 16 exact problems may be occurring, what times of day, what 17 types of activity to be looking out for? 18 A Yes. 19 Q And what the business owners' wishes and desires are in terms 20 of people on their property, correct? 21 A Yes. 22 Q During the entire time that you've been with the Grand Rapids 23 Police Department has the manner in which you enforce the 24 trespass ordinance changed? 25 A Recently, I would say within the last year, as a result of</p>

14 (Pages 44 to 47)

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1 maybe this lawsuit, and I think it was Judge Buter, but a
 2 Kent County District Court ruling, I think we've taken
 3 another look at the issue of trespassing and clarified some
 4 of the things that a police officer should be doing to
 5 encompass a quality investigation and report. I wouldn't
 6 necessarily call it a change, but it may be revisiting what
 7 we're looking to do.

8 Q What do you mean what you're looking to do?

9 A Me, personally, I'm looking to solve problems. In the
 10 instances we have here, I'm looking to obey the wishes of the
 11 business owners. I'm trying to help them to not have to
 12 clean up the messes that people leave in their parking lots.
 13 I'm also trying to show them that their concerns do not fall
 14 on deaf ears. That even though it's 3:00 in the morning and
 15 they might not see us doing it, police officers are concerned
 16 about their property, we are concerned about their business,
 17 and we want them to thrive, and that we're willing to work
 18 with them and follow through with what their wishes are.

19 Q At the same time -- and I think it goes without saying, but
 20 let's be clear -- you're also trying to respect the rights of
 21 the people who may be on the property, correct?

22 A Absolutely, absolutely. I need to be reasonable,
 23 approachable, and use common sense, and be pragmatic about
 24 it. For the most part, I think being able to communicate
 25 some of the concerns to the people will almost always gain

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1 compliance.

2 Q So what is it recently that -- you said it wasn't a change,
 3 but what is it that's different recently in terms of
 4 enforcing trespass?

5 A Now, more so than ever, we're stressing signage. There are
 6 some signs -- there's a small plastic sign that I help
 7 distribute, and then there's also an exterior metal sign that
 8 I will help distribute, which, again, I think clarifies to
 9 customers or non-customers what a particular business -- what
 10 their intentions are. With the posting of these signs, I
 11 think it's making it abundantly clear that if you're not here
 12 to do business with me, then I don't want you here. Again,
 13 I'm paraphrasing that in laymen's terms, but that's the way I
 14 interpret that.

15 Q Is there a way to devise a sign that really uniformly
 16 expresses a business owner's intent with regard to who they
 17 want on the property?

18 A I don't think so. I don't think there's a blanket sign that
 19 says this will be allowed and this will be allowed, but this
 20 will not be allowed.

21 Q Anything other than stressing signage that's any different in
 22 this recent, not change, but area of emphasis, or whatever
 23 you want to call it?

24 A I think from the training unit there was a re-emphasis on
 25 conducting a quality investigation. I think it underscores

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1 the importance of interviews, of getting statements, of
 2 putting down all the dynamics that you're seeing, all the
 3 nuances of the scene.

4 Instead of just one litmus test of, this is the
 5 element I saw and therefore I took this approach, I think
 6 it's important that officers -- though trespassing might be
 7 on the very low end of the scale as far as criminal behavior
 8 it is still a crime and still can be approached with a
 9 quality and thorough investigation, which would include
 10 interviews, documenting what you're seeing, what you're not
 11 seeing, and then also producing a quality, thorough, accurate
 12 police report.

13 Q In terms of a re-emphasis on a quality investigation, you're
 14 not testifying that it was ever the policy to not do a
 15 quality investigation, correct?

16 A No.

17 Q I mean, that's the same. You wanted to do a quality
 18 investigation before this new emphasis and you still want to
 19 do a quality emphasis, right?

20 A Absolutely.

21 Q When you say that it's not one litmus test, are you saying
 22 that in the past if someone was on property and there was a
 23 letter of intent that all of a sudden that was justification
 24 for an arrest?

25 A Not at all. That would be one facet of what I would look

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1 for.

2 Q So it was one facet before this new emphasis and one facet
 3 after this new emphasis, correct?

4 A Yes.

5 Q Before we mark this, I'm going to hand it to you to make sure
 6 that we know what it is and how many pages it actually is.
 7 I've handed you a two-page document, correct?

8 A Yes.

9 Q Or I've handed you two pages?

10 A Yes.

11 Q Can you tell if they go together?

12 A Yes.

13 Q Have you seen those documents before?

14 A Yes.

15 Q Tell me, are there any other pages that are missing from that
 16 package?

17 A Not that I remember.

18 Q So let's take a second and go off the record and mark it as
 19 an exhibit.

20 (Deposition Exhibit No. 14 marked)

21 BY MR. WALDMAN:

22 Q I've marked as Exhibit 14 a two-page document, correct, or
 23 two documents that are bound together?

24 A Yes, sir.

25 Q And the cover sheet is an e-mail, correct?

15 (Pages 48 to 51)

<p>Page 52</p> <p>1 A Yes.</p> <p>2 Q It's an e-mail from Dan Lind. I'm trying to read it upside 3 down. Why don't you read it to me?</p> <p>4 A It is from Dan Lind. Lieutenant Lind is the commander of the 5 training unit. I see Katie Hefner's name along the top. I 6 don't know if that means that Lieutenant Lind first sent it 7 to Katie Hefner who then distributed it to us, or Katie, 8 being that she's currently assigned to the training unit, 9 printed it from her e-mail.</p> <p>10 Regardless, it was sent Monday, January 14, 2013, 11 at 12:17 in the afternoon. It is sent to Police Sworn 12 Personnel. Courtesy copies went to Margaret Bloemers and 13 Karen Chadwick. The subject heading is a forward message of 14 trespass update with attachment of final 011013.pdf file.</p> <p>15 Q So are you police sworn personnel?</p> <p>16 A Yes.</p> <p>17 Q Did you get a copy of this e-mail?</p> <p>18 A Yes.</p> <p>19 Q Did you get the PDF that came with it?</p> <p>20 A Yes.</p> <p>21 Q Is the PDF the second sheet attached to Exhibit 14?</p> <p>22 A Yes, the one I remember getting was in color, but I think 23 this is an accurate memorial, a black and white, of what I 24 received.</p> <p>25 Q Why don't you read the text of the e-mail?</p>	<p>Page 54</p> <p>1 A No, I felt like I was hitting on all of these bulletins.</p> <p>2 Q I want to go back when you -- and maybe it makes no 3 difference, but I'm thinking in the context of when you were 4 working patrol. If you see someone in a parking lot and the 5 business is closed, is one of the things you want to do to 6 determine whether there is a no trespass letter in place?</p> <p>7 A That would be helpful, yes.</p> <p>8 Q How do you go about doing that?</p> <p>9 A Are you asking me now or are you asking what I did then? The 10 asterisk on that would be we have changed. We, the police 11 department, have gone to a new dispatching system. With the 12 former system it was much easier to access information. The 13 new system, though technologically advanced in some areas, is 14 not as user friendly for patrol officers. So if you're 15 asking me today right now, there's one way of doing it. How 16 I did it back during these instances, it was different. Now, 17 again, I'm not trying to be argumentative, I promise.</p> <p>18 Q No, you're not. How do you do it now?</p> <p>19 A By utilizing either my mobile phone and calling the dispatch 20 center or radioing in and asking about a particular business 21 and their address.</p> <p>22 Q You don't have a way to access it on your own?</p> <p>23 A There may be, but I'm not familiar with it.</p> <p>24 Q You talked about -- let's go back to talking about trespass 25 in general. To enforce the trespass ordinance -- we</p>
<p>Page 53</p> <p>1 A "Trespassing is a valuable proactive enforcement tool and the 2 attached Training Bulletin should ensure consistency and 3 continuity in the enforcement of trespassing complaints 4 and/or arrests."</p> <p>5 Q Do you know what is meant here by "valuable proactive 6 enforcement tool"?</p> <p>7 A I interpret that as it is a mechanism I can utilize to solve 8 problems. It is something that can be used as a police 9 officer, as a patrol officer, to address some of the problems 10 we deal with night in and night out. It is useful in solving 11 problems that are small before they become major, violent 12 crimes.</p> <p>13 Q As a patrol officer you told me that you think you had less 14 opportunity to solve problems and more you just were dealing 15 with things after they occurred, correct?</p> <p>16 A Yes.</p> <p>17 Q Does the term valuable proactive enforcement change if you 18 were a patrol officer as opposed to a community police 19 officer?</p> <p>20 A No, not in my opinion.</p> <p>21 Q Did you read the training bulletin dated January 2013 22 attached in the e-mail as part of Exhibit 14?</p> <p>23 A Yes.</p> <p>24 Q After reading that, did anything change in the way that you 25 enforce the trespassing ordinance?</p>	<p>Page 55</p> <p>1 obviously talked about the fact that you've made arrests for 2 trespass, correct?</p> <p>3 A Yes.</p> <p>4 Q What types of circumstances or factors help you as a police 5 officer determine if there is probable cause to make an 6 arrest for trespass?</p> <p>7 A What I would look for is the location, the history at that 8 location, directives from my unit commander, but also my 9 supervisor, input from fellow officers, from not only my team 10 but the corresponding other patrol team.</p> <p>11 I would also look at what I think the occupants are 12 doing. I look at the -- as I'm talking to them, I'm kind of 13 taking stock of if what they're telling me makes sense. Does 14 it pass the proverbial smell test. I will also factor in 15 what are my experiences in the past dealing with this 16 establishment wherever the location may be. There are so 17 many different nuances that go into it with ultimately trying 18 to determine whether or not probable cause exists here to 19 effect an arrest.</p> <p>20 Q Of the factors that you've given me, do any of those 21 encompass the property owner's desires or whether or not they 22 agree or want a person on their property or don't want a 23 person on their property?</p> <p>24 A Certainly, I would say that would qualify under my past 25 experiences with that establishment, if we're talking about a</p>

16 (Pages 52 to 55)

<p>Page 56</p> <p>1 business. If I can say last week I spoke to the manager of 2 whatever business, Widgets Incorporated, and if the manager 3 told me, I'm having a lot of problems with people using my 4 parking lot to smoke marijuana, then the following Saturday I 5 probably don't have to talk to the manager of Widgets 6 Incorporated if the drug problem still persists. I'm going 7 to presume that seven days later that's a standard 8 communication from them. 9 Q Is the no trespass letter a factor in determining whether or 10 not there's probable cause? 11 A Yes. It would be a slice of the pie, sure. 12 Q In the nine years that you've been working for the 13 Grand Rapids Police, do you have an estimate of how many 14 arrests you've made for trespassing? 15 A I really don't. That's something that is accessible through 16 our FileMaker system, but off the top of my head, I don't 17 know. A ballpark presumption figure, I would say, would be 18 between 100, maybe 200. 19 Q Do you have a ballpark of how many of those involved a no 20 trespass letter? 21 A I would say probably the bulk of them did with, of course, 22 each instance having its own set of circumstances that I 23 would have taken enforcement action on and dealing with all 24 of those, you know, with the big picture on each and every 25 one of those.</p>	<p>Page 58</p> <p>1 A Yes. 2 Q Do you have a memory of receiving specific training, other 3 than what you've told me about when you first came to 4 Grand Rapids in March of 2005 -- any specific training with 5 regard to how to enforce the trespass statute or ordinance? 6 A In the seven-week in-house training, I'm confident that they 7 review that and train us in that. As far as the specific 8 training that was given to us, no, I don't know, but I do 9 remember it being taught to us. 10 Q Let me hand you a document marked as Exhibit 5. Can you tell 11 me what that is? 12 A This looks to be a photocopy from the Field Training Manual 13 from the Grand Rapids Police Department. 14 Q And it has a date in the lower -- I think it's the lower 15 left-hand corner of the pages, correct? 16 A Yes. 17 Q And can you tell me what that date says? 18 A Reading it correctly, it would say, Revised 04 of 09, so I 19 would read that as revised in April of 2009. 20 Q There's multiple pages there. Can you turn to Page 72? 21 A Okay. 22 Q If you look toward the bottom of Page 72, it talks about 23 "Offenses Against Property," correct? 24 A Yes. 25 Q I assume this is a document you're familiar with, the Field</p>
<p>Page 57</p> <p>1 Q In any of those cases do you recall there not being a no 2 trespass letter in place? 3 A Oh, yeah, sure. 4 Q How many? 5 A I have no idea. I know I've made a trespassing arrest at a 6 business where there is a no trespass letter, but the manager 7 or merchant, the agent, has said, "I want this person gone," 8 and said person has not complied. 9 Q In each one of the cases that you recall making an arrest 10 without a no trespass letter, there was a business owner 11 telling you, "I want this person out of here"? 12 A Or some form of communication. There are times where some of 13 our police officers are close friends with business owners. 14 There are times where people have communicated through church 15 groups and neighborhood association groups that -- a certain 16 person might own a carpet store, they may own a tile shop, 17 and though they may not send the letter, it's been 18 communicated or relayed to me somehow that the owner of 19 whatever this business is, Widgets Inc., has relayed to us, 20 to the police, they don't want people there, so would I 21 utilize that in the same manner and would I take that into 22 effect just like a no trespass letter, sure, I would. 23 Q So in a business setting, a business that's open to the 24 public, we can agree that if a business owner asks someone to 25 leave and that person doesn't leave, they're trespassing?</p>	<p>Page 59</p> <p>1 Training Manual, right? 2 A Yes. 3 Q And you're actually now a field training officer, correct? 4 A Yes. 5 Q So if we look at "Trespass," it cites the ordinance, correct? 6 A Yes. 7 Q It says: "No person shall trespass or unlawfully remain upon 8 the premise of another to the annoyance or disturbance of the 9 lawful occupants." 10 A Yes. 11 Q And then it says you should conduct a brief preliminary 12 investigation or questions with the suspect to determine if 13 he or she is trespassing, right? 14 A Yes. 15 Q And then it says complainant and, slash, or valid no trespass 16 letters are necessary to arrest, correct? 17 A Yes, sir, and it looks like in mine it's highlighted. I 18 don't know if it was on yours. 19 Q It is on mine. I don't know who put it there, but it is. 20 In other words, you either need to have a physical 21 complaint from the owner or occupant or you need to have a no 22 trespass letter to make the arrest, correct? 23 A Or both, yes. 24 Q Or both? 25 A Yes.</p>

17 (Pages 56 to 59)

<p style="text-align: center;">Page 60</p> <p>1 Q And that's been the case from April of 2009 until today, 2 correct?</p> <p>3 A Yes.</p> <p>4 Q And that was the case when you hired in in March of 2005, 5 right?</p> <p>6 A Yes.</p> <p>7 Q It also says always attempt to contact the property owner or 8 the person controlling the property to verify the suspect's 9 unlawful presence, correct?</p> <p>10 A Yes, and I interpret that as if there is a no trespass letter 11 on file, my attempt to contact the property owner would be 12 the verification of that no trespass letter.</p> <p>13 Q Why is that?</p> <p>14 A The no trespass letter is valid for one year. I interpret by 15 signing that document that that is a standing expression from 16 them that they will cooperate with trespassing prosecutions.</p> <p>17 Q But isn't the determination of whether someone is trespassing 18 in part the state of mind of the business owner or the person 19 controlling the property?</p> <p>20 A If we're talking about what I'm capable of doing now during 21 the day versus what I did at night, the bulk of the work that 22 we did with no trespass letters were at night at closed 23 businesses with a lot of the problems, though, arising out of 24 open businesses, albeit nightclubs and liquor stores.</p> <p>25 Q So you're referencing it only in terms of someone at night</p>	<p style="text-align: center;">Page 62</p> <p>1 such an immense database of information. Once I had it open, 2 it would probably be another 20 to 30 minutes of my checking 3 an address. If I were to utilize that same program back at 4 headquarters while plugged into the network, it would be 5 nanoseconds if FileMaker is run efficiently.</p> <p>6 Q So it's not really practical, that second type of FileMaker 7 you're talking about, when you're out in the field?</p> <p>8 A Correct. When I'm radioing into the dispatch center, it's my 9 understanding that that's what they're doing. They're 10 checking FileMaker, the databases of no trespass letters, 11 that are on file.</p> <p>12 Q And you have the ability to look at an abbreviated FileMaker 13 when you're in the patrol car?</p> <p>14 A Yes.</p> <p>15 Q Does that give you the ability to determine if there is a no 16 trespass letter on file?</p> <p>17 A No. If it's accessible through the truncated, smaller mobile 18 version, I'm not aware of how to find out.</p> <p>19 Q You talked about how there's been some changes in the system, 20 and it's actually tougher today to find out whether or not 21 someone has a no trespass letter on file without making a 22 call into dispatch than it used to be, correct?</p> <p>23 A Yes, but that's not FileMaker. That would be our CAD system, 24 our computer-aided dispatch system.</p> <p>25 Q So under the CAD system, can you determine whether or not</p>
<p style="text-align: center;">Page 61</p> <p>1 with a closed business?</p> <p>2 A Correct.</p> <p>3 Q All right. It says in situations where enforcing a no 4 trespass letter, confirm the letter's existence and validity 5 through dispatch, radio, or FileMaker, correct?</p> <p>6 A Yes.</p> <p>7 Q So contact dispatch and they'll let you know whether there is 8 a valid no trespass letter on file, right?</p> <p>9 A Yes.</p> <p>10 Q Tell me about FileMaker. How do you do that?</p> <p>11 A There are two different FileMaker programs that we utilize at 12 the GRPD. The first one would be what the patrol officer 13 uses, and that is one loaded onto your computer, and that's 14 the one that is accessible for your daily log. It has your 15 police reports in there. It also has a list of the most 16 recent wanted people, access to the manual procedures, state 17 law, city ordinance, things like that. It's a condensed, 18 almost truncated version of what would be the other FileMaker 19 system which is generally run in the network at headquarters. 20 That would be the larger of the databases, and to verify it 21 through FileMaker, it would be possible for me to do it in my 22 cruiser, but that would require me to shut down the mobile or 23 the field version of FileMaker only to open up, then, the 24 other version of FileMaker. That would take anywhere from a 25 half-hour to 45 minutes to load that program because it is</p>	<p style="text-align: center;">Page 63</p> <p>1 there's a no trespass letter on file?</p> <p>2 A Under the new system there's probably a means; I don't know 3 how to do it.</p> <p>4 Q You've told me that. What about under the old system?</p> <p>5 A Under the old system very readily available, very easy, just 6 a matter of a few keystrokes.</p> <p>7 Q When you enter in the keystrokes, what do you see?</p> <p>8 A Under the command line, I would type in P, then I, then a 9 bracket, and then I could either list the address of the 10 business that I'm looking at or the name of it, and as long 11 as the name was precise, the computer system would tell me 12 whether or not a letter is on file.</p> <p>13 The P and the I were abbreviations for premise 14 information, so if I'm running a PI and a bracket, it would 15 tell me not only about the no trespass letter, but it would 16 also yield other information. The fire department utilizes 17 the premise information like at carwashes for chemicals that 18 are caustic. At Meijer it would give a schematic of the 19 facility. It isn't just for the no trespassing.</p> <p>20 Q I understand. But in terms of the no trespassing letter, 21 would it give you the effective dates of the no trespass 22 letter?</p> <p>23 A Yes, on the old system.</p> <p>24 Q Under the old system?</p> <p>25 A Yes, it would.</p>

18 (Pages 60 to 63)

<p>Page 64</p> <p>1 Q It's my understanding that the no trespass letters have 2 changed over time; is that fair? 3 A I think there's an updated version of it now. 4 Q Has it been updated more than once since you've been with the 5 Grand Rapids Police Department? 6 A If it has, I'm not aware of it. I do know the way an old 7 trespass letter used to look, and I know what they look like 8 now. 9 Q Was there ever -- do you know when the letter changed? 10 A No, I do not. 11 Q Was it when you were still able to use the CAD system to 12 determine whether or not there was a no trespass letter in 13 place? 14 A It may have been, but I have no idea. 15 Q When you call in now and try to find out from dispatch if 16 there is a no trespass letter in place, do you ask whether 17 it's the old letter or the new letter? 18 A No, I do not. 19 Q Does it make a difference to you? 20 A No. 21 Q Is that information offered to you when you call in, whether 22 it's the old letter or the new letter? 23 A No. 24 Q One of the things you mentioned was important in determining 25 probable cause for a trespass was the previous history of the</p>	<p>Page 66</p> <p>1 Trespassing' signs must be posted and visible," correct? 2 A Yes. 3 Q So the requirement that there be posted visible signs was in 4 place back in 2009, correct? 5 A Yes. 6 Q Was that -- is that required now? 7 A Yes. 8 Q Has the requirement changed at all? 9 A Not that I'm aware of, no, sir. 10 Q Under "Community Policing" on Page 165, it talks about under 11 enforcement -- do you see where it says, "Utilize Letters of 12 Intent to Prosecute for Trespassing"? 13 A Yes. 14 Q Is this explaining that part of community policing is getting 15 business owners to sign letters of intent? 16 A I interpret that as putting business owners on notice that 17 they're available. I have had business owners tell me, "No, 18 I don't want them," so I think as part of community 19 policing -- as a community policing officer, I think it's my 20 responsibility to make business owners and management aware 21 of this service, and ultimately it is on them, so it's not my 22 position to stress to them. It's not my position to try and 23 force them into it. It's my position to tell them about it, 24 to answer their questions, to talk to them about some of the 25 utilities of them, maybe to cite some of the examples that</p>
<p>Page 65</p> <p>1 location, correct? 2 A Yes. 3 Q Why is this important or relevant? 4 A I think if there is a history of problems at a certain 5 location, again, gas station, liquor store, nightclub -- if 6 there's a history there and I'm familiar with that, and I 7 know that allowing some behavior -- if I allow this to go on, 8 if we allow as a patrol team this conduct to continue, what 9 it could potentially turn into, then, yes, I think the area 10 or the business specific -- I think it's pivotal, because if 11 you allow some conduct to go unaddressed, it can very rapidly 12 turn into very volatile situations. 13 I guess to best answer your question, it's a 14 case-by-case basis and it's taking everything into account, 15 because if I go to a certain club or a certain gas station 16 and it's isolated, I might not be as concerned about 17 addressing that behavior if I think it's been quelled right 18 then and there, or am I going back to the same location again 19 and again and again for very similar circumstances. 20 Q Continuing on, it talks about community policing, correct, on 21 Exhibit 5, Page 165? 22 A Yes. 23 Q Actually, let's go back to Page 72, I apologize. 24 If you look at (g) at the bottom of Page 72, "For 25 business applications of no trespass letters, 'No</p>	<p>Page 67</p> <p>1 I've utilized, and ultimately it's upon them. By and large, 2 I will not tell somebody, "Please sign this right now in 3 front of me." I also generally hand out -- there's a 4 corresponding packet, and I will hand that to them. For the 5 most part, I give them my business card, write down my mobile 6 number, and say, when you have this signed, feel free to 7 text, e-mail or text or call me, and I will come back. That 8 way, they don't feel I'm pressuring them into it, and they're 9 making an independent and informed decision on whether or not 10 they want the letter. 11 MR. WALDMAN: Let's take a five-minute break and 12 we'll come right back. 13 (Deposition Exhibit No. 15 marked) 14 (Recess held from 4:50 p.m. until 5:00 p.m.) 15 BY MR. WALDMAN: 16 Q While we were off the record I marked as Exhibit 15 17 another -- actually, what are there -- three pages, four 18 pages? 19 A Three. 20 Q Three pages? 21 A Fifty-eight, 59, and 60 are the pages at the bottom. 22 Q At the top it says, "Grand Rapids Police Department, Field 23 Training Manual," correct? 24 A Yes. 25 Q Does this look like another version of the Field Training</p>

19 (Pages 64 to 67)

Page 68	<p>1 Manual you've seen or been familiar with?</p> <p>2 A Yes.</p> <p>3 Q At the bottom corner of all three pages it says that it was</p> <p>4 revised in August of 2006, correct?</p> <p>5 A Yes.</p> <p>6 Q Do you know if there were any revisions in August of 2006</p> <p>7 that were specific to the enforcement of trespassing?</p> <p>8 A No.</p> <p>9 Q During the time that you've been a police officer with the</p> <p>10 Grand Rapids Police Department, are you aware of any</p> <p>11 revisions in the Field Training Manual specific to</p> <p>12 trespassing or enforcement of trespassing?</p> <p>13 A No, I'm not.</p> <p>14 Q Just kind of looking at Page 58 of Exhibit 15, again, it</p> <p>15 says: Always attempt to contact the property owner to verify</p> <p>16 the suspect's unlawful presence, correct?</p> <p>17 A Yes.</p> <p>18 Q Or the occupant?</p> <p>19 A Yes.</p> <p>20 Q It also says, "In situations where enforcing a no trespassing</p> <p>21 letter, confirm its existence." We went through that?</p> <p>22 A Yes.</p> <p>23 Q And it's your testimony that number one and two there under</p> <p>24 Part "c" are an either/or; you can do one or the other or</p> <p>25 both?</p>	Page 70	<p>1 Q So you would have to actually get information from the</p> <p>2 property owner?</p> <p>3 A Correct.</p> <p>4 Q And if the business is closed and I'm still there using the</p> <p>5 wifi --</p> <p>6 A If you're inside the building, then we wouldn't be talking</p> <p>7 trespassing; we would be talking burglary.</p> <p>8 Q And if I'm outside the building, if I'm in Panera's parking</p> <p>9 lot after business hours, I've still got my code, I'm able to</p> <p>10 use the wifi, do you contact them to find out if I'm still</p> <p>11 allowed to be there after I bought my lunch ten hours ago</p> <p>12 or --</p> <p>13 A And there's no trespassing letter on file?</p> <p>14 Q Let's say there is a no trespass letter on file.</p> <p>15 A If I arrive at a scene and I'm dealing with somebody at a</p> <p>16 Panera and they show me the receipt saying that they</p> <p>17 purchased a coffee at nine o'clock, which gives them the wifi</p> <p>18 access code, and if I'm a night shifter and it's now</p> <p>19 eleven o'clock and Panera has long since closed and you're in</p> <p>20 the parking lot, and if all you're doing is utilizing the</p> <p>21 wifi, I would be very comfortable telling that person -- I</p> <p>22 would be comfortable speaking on behalf of Panera and saying,</p> <p>23 "You've gotten your money's worth. It's time for you to</p> <p>24 leave."</p> <p>25 Q But that's what you're doing really is you're speaking on</p>
Page 69	<p>1 A I interpret this, which is essentially from our manual</p> <p>2 procedures -- my interpretation of that is if the trespassing</p> <p>3 is being enforced under the no trespassing letter, then it's</p> <p>4 appropriate to verify the validity of the no trespass letter</p> <p>5 to ensure that it is not expired and that you're at the</p> <p>6 correct address, along with obviously a number of other</p> <p>7 dynamics that would go into an investigation. Or, if there</p> <p>8 is not a no trespass letter, then I am contacting the</p> <p>9 merchant and speaking with the business owner or management</p> <p>10 to ensure that whatever person with whom I'm dealing that</p> <p>11 they are unlawfully there or that they are the subject of</p> <p>12 their call, that they are the reason why I'm there.</p> <p>13 Q You mentioned this -- actually you mentioned Panera. I</p> <p>14 stopped at a Panera on my way here and had a hard time</p> <p>15 getting a seat because there's people using the wifi. I had</p> <p>16 no idea that there was this daily change of password that you</p> <p>17 talked about.</p> <p>18 A That's at some locations. I'm not sure if it's corporate</p> <p>19 wide.</p> <p>20 Q Regardless of where it happens, if someone goes into a Panera</p> <p>21 and they get a cup of coffee or lunch and then they use their</p> <p>22 wifi password, how long before it's not authorized for them</p> <p>23 to be on the property anymore? Can they stay there and take</p> <p>24 up my seat for five hours or 30 minutes?</p> <p>25 A I would say that's up to whatever business is enforcing,</p>	Page 71	<p>1 behalf of Panera at that point, right, because you've not</p> <p>2 spoken with anyone?</p> <p>3 A Right. If we're presuming that there's no staff there, it's</p> <p>4 a dark, empty business, it's just myself, the wifi, and</p> <p>5 whoever this person is and their mobile device, I would be</p> <p>6 very comfortable, after hours and hours and hours, of telling</p> <p>7 that person, "It's probably time for you to leave. I think</p> <p>8 you've gotten your money's worth, and I don't think that this</p> <p>9 agreement of one purchase of a cup of coffee -- I would</p> <p>10 fairly say it's probably not meaning that you get to use</p> <p>11 unlimited data under this wifi plan for hours and hours and</p> <p>12 hours." Personally would I effect a trespassing arrest on</p> <p>13 that? Probably not if I was dealing with someone that was</p> <p>14 cooperative.</p> <p>15 Q But, again, to get to that point, in speaking with the</p> <p>16 person, you're taking that letter and expressing what you</p> <p>17 believe the belief would be of the property owner or</p> <p>18 occupant, correct?</p> <p>19 A Yes.</p> <p>20 Q And that's what you're always doing when you use the no</p> <p>21 trespass letter, right?</p> <p>22 A Yes, it's one part of the arrest that I feel like I am</p> <p>23 enforcing what has already been expressed to the police,</p> <p>24 which is if you're not a customer, then I don't want you</p> <p>25 here.</p>

20 (Pages 68 to 71)

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<p>Page 72</p> <p>1 Q Sometimes it's not so easy to define who is a customer and 2 who is not a customer, correct?</p> <p>3 A Yes.</p> <p>4 Q So that letter allows you to then make assumptions about what 5 the business owner's belief is about who is a customer and 6 who is not a customer?</p> <p>7 A Yes.</p> <p>8 Q If we look at the ordinance -- and maybe you still have it in 9 front of you, I don't know.</p> <p>10 A I do.</p> <p>11 Q Exhibit 2. Would you agree that to be unlawfully on the 12 premises it has to be an annoyance or disturbance to the 13 unlawful occupant?</p> <p>14 MR. LANNEN: I'm going to object. I think it calls 15 for a legal conclusion.</p> <p>16 THE WITNESS: If we read parenthetical number one 17 under 9.133, yes, it reads that it has to be to the annoyance 18 or disturbance of the lawful occupants.</p> <p>19 In my years of experience, I think a disturbance 20 can be small, but it can also be incredibly large and flare 21 up into absolute chaos. So if we're talking just a mere 22 disturbance of I don't like the fact that this person is 23 tapping their foot, certainly, but I would interpret this as 24 what are the factors. We have this disturbance. What other 25 fallout issues are we going to have? What is a minor</p>	<p>Page 74</p> <p>1 Q If the same person is tapping his foot with a letter of 2 intent in place, do you make an arrest?</p> <p>3 A I can't say that as a blanket response yes or no.</p> <p>4 Q Because the letter of intent doesn't tell you what behavior 5 the property owner objects to, correct?</p> <p>6 A Correct.</p> <p>7 Q The letter of intent is just a vague statement that they're 8 going to cooperate with a prosecution of a trespasser, 9 correct?</p> <p>10 MR. LANNEN: Object to the wording of the question 11 particularly to the word vague. Go ahead.</p> <p>12 THE WITNESS: I would say in my interpretation of a 13 signed no trespass letter from a business owner -- one 14 portion of that is an agreeability of cooperating with 15 trespassing prosecutions, but I also think it shows a 16 collaborative effort that the businesses are willing to work 17 with us, that by signing a no trespass letter they will be 18 willing to post no trespassing signs on their property, that 19 they may be willing to have police cars in their parking lot 20 during normal business hours but also during off hours. Some 21 people are not trusting of the police. Some businesses don't 22 want a marked police cruiser anywhere near their front door, 23 so I think showing a willingness to cooperate with the 24 prosecution -- yes, I think that's one facet, but I don't 25 think it's the only facet.</p>
<p>Page 73</p> <p>1 disturbance presumably going to lead to if left unaddressed?</p> <p>2 BY MR. WALDMAN:</p> <p>3 Q So what may disturb one person or occupier of land may not 4 disturb another person, right?</p> <p>5 A Yes.</p> <p>6 Q If the person's there, the occupant of the land is there, and 7 you can talk to them, you can gain an understanding of what 8 is a disturbance or annoyance to them and what is not an 9 annoyance, right?</p> <p>10 A Yes.</p> <p>11 Q Even though it may sound ridiculous to you, if a property 12 owner says that guy is out there in my parking lot tapping 13 his foot and it's driving me crazy and I've asked him to 14 leave and he won't, you know what the intent of the property 15 owner is, right?</p> <p>16 A Correct.</p> <p>17 Q And you're going to enforce -- either ask the person to leave 18 or arrest them. Well, what would you do? What would you do 19 if a property owner said, "That guy is in my parking lot, 20 it's my property, he's tapping his foot, and I don't like the 21 way he taps his foot, get him out of here"?</p> <p>22 A I would contact the person and tell them, "You're on private 23 property. I've spoken to the owner, the manager, and they 24 don't want you here. You need to leave now, because if you 25 do not leave, you're going to be arrested for trespassing."</p>	<p>Page 75</p> <p>1 BY MR. WALDMAN:</p> <p>2 Q You just mentioned some business owners are not trusting of 3 police. In your experience is that one of the reasons that 4 some business owners have told you they don't want no 5 trespass letters on file for their property?</p> <p>6 A Yes. I've also had some business owners tell me, "I don't 7 care who's here." That knowing who and what their clientele 8 are does not bother them, because they would rather deal with 9 some minor issues of loitering in parking lots, littering, 10 public urination, sometimes unruliness. They would rather 11 deal with that as long as that person is still making 12 purchases in the store.</p> <p>13 Other business owners say, I'm more than willing to 14 lose that small amount of business from that person such that 15 my other paying customers who are sober, who are not 16 disturbing others, who are acting in, I guess, a normal and 17 civilized manner such that they're not disturbed while 18 they're here.</p> <p>19 Q Have any business owners ever told you, "I don't want you to 20 arrest someone if you find them urinating on my property"?</p> <p>21 A I've never been told that.</p> <p>22 Q Has anyone told you, "I don't want you to arrest people if 23 you see them littering on my property"?</p> <p>24 A I've never been told that, no.</p> <p>25 Q Have they given you any other reasons why they wouldn't want</p>

21 (Pages 72 to 75)

<p>Page 76</p> <p>1 a no trespass letter on file?</p> <p>2 A Some have expressed to me, similar to what I just answered,</p> <p>3 they are leery that they will lose some of their business.</p> <p>4 To be candid with you, many people are aware of the no</p> <p>5 trespass letters, they're aware of the no trespassing</p> <p>6 ordinance.</p> <p>7 A lot of our image and population in our Heartside</p> <p>8 area, in our mission areas -- they're well aware of what</p> <p>9 businesses have no trespass letters and actively want those</p> <p>10 enforced. They avoid buying anything there. And whether or</p> <p>11 not that's a cup of coffee, a pack of cigarettes, rolling</p> <p>12 papers for their own cigarettes, they won't go there. Some</p> <p>13 business owners would, again, say, I'm willing to deal with</p> <p>14 some of these quality-of-life issues knowing full well that</p> <p>15 they could explode in volatility because I'm not willing to</p> <p>16 lose out on that business.</p> <p>17 Q Why would someone not go to a business and conduct business</p> <p>18 at a certain establishment just because there's a no trespass</p> <p>19 letter on file for that property?</p> <p>20 A I have no idea. To speculate, maybe they don't agree with</p> <p>21 the no trespass letters. It might be a political thing. It</p> <p>22 might be a protest thing. Some might not trust the fact that</p> <p>23 once they're there -- they don't trust the fact that they</p> <p>24 will not be willing to leave if they know that some things</p> <p>25 could happen there. Just to put it out there, I've had</p>	<p>Page 78</p> <p>1 Q There's no way for the general public to know whether or not</p> <p>2 if they have a general understanding that there once was a no</p> <p>3 trespass letter on a certain piece of property whether on any</p> <p>4 specific day it's a valid no trespass letter, correct?</p> <p>5 A Correct.</p> <p>6 Q Obviously they can be told by the owner that they're not</p> <p>7 wanted on the property and that would let them know they're</p> <p>8 not wanted, correct?</p> <p>9 A Yes.</p> <p>10 Q What other ways can give them notice that they're on the</p> <p>11 property against the will of the owner?</p> <p>12 A I would say a glaring one would be signs, no trespassing</p> <p>13 signs. Another one would be they're calling the police and</p> <p>14 utilizing the police as a spokesman by saying -- you know, if</p> <p>15 they called the police because they see this person --</p> <p>16 sometimes it's not uncommon for residents but also business</p> <p>17 owners to not want to look like the bad guy, for lack of a</p> <p>18 better word, so they'll call the police and say, "Will you</p> <p>19 please go deal with this person?" They may not want the</p> <p>20 person to know they themselves were the ones that called the</p> <p>21 police, ergo using us as a mechanism. We end up being the</p> <p>22 bad guy, but the problem is resolved and they get to save</p> <p>23 face.</p> <p>24 Q In other words, the police are the mechanism to give notice</p> <p>25 to the occupier of the land?</p>
<p>Page 77</p> <p>1 people tell me I won't go there, because if I do, I know I'm</p> <p>2 going to smoke crack cocaine. They have said flat out, "If I</p> <p>3 go there, I will smoke crack cocaine," so maybe that's a</p> <p>4 reason.</p> <p>5 Q But that has to do with crack cocaine, not a no trespass</p> <p>6 letter, right?</p> <p>7 A Well, that has to do with the fact of a location and its</p> <p>8 history and knowing the accessibility of narcotics. I know</p> <p>9 that seems like a huge leap; I'm just telling you the way it</p> <p>10 is.</p> <p>11 Q Would you agree for someone to be trespassing they have to be</p> <p>12 aware the property owner doesn't want them on the property?</p> <p>13 A Yes.</p> <p>14 MR. LANNEN: That's your opinion, that's fine.</p> <p>15 BY MR. WALDMAN:</p> <p>16 Q In what ways can the general public learn -- for example, we</p> <p>17 talked about no trespass letters. Some people know they're</p> <p>18 there you said, right?</p> <p>19 A (Nods head affirmatively)</p> <p>20 Q Correct?</p> <p>21 A Yes.</p> <p>22 Q You have to answer out loud.</p> <p>23 But even you as a police officer have to check to</p> <p>24 see whether they're updated, right?</p> <p>25 A Yes.</p>	<p>Page 79</p> <p>1 A Yes.</p> <p>2 Q Or to the person who is on the land unwanted?</p> <p>3 A Yes.</p> <p>4 Q When you do that, is it fair to say you don't show up and</p> <p>5 arrest people? You let them know they're not wanted and you</p> <p>6 give them a chance to leave, right?</p> <p>7 A Yes.</p> <p>8 Q But when there's a no trespass letter, do you give them that</p> <p>9 same opportunity to leave?</p> <p>10 A Are you asking me personally?</p> <p>11 Q Yes, you personally.</p> <p>12 A I would give them the opportunity to leave. If all they're</p> <p>13 doing is simply their presence and it's a situation where</p> <p>14 we're not leading into greater problems, we're not having a</p> <p>15 week-in-and-week-out-type issue -- if I arrived and a person</p> <p>16 is literally standing in a parking lot, and I know that</p> <p>17 there's a no trespass letter there, if it's the middle of the</p> <p>18 day, I would give them that opportunity to leave.</p> <p>19 Other times, based on what my supervisors have</p> <p>20 directed me to do or what my unit commanders have done, some</p> <p>21 of the expectations of my teammates and expectations of</p> <p>22 myself, as well as enforcement of what business owners have</p> <p>23 told or expressed to us, then, yes, there would be occasion</p> <p>24 where maybe I would effect an arrest immediately.</p> <p>25 Q Without giving notice?</p>

22 (Pages 76 to 79)

<p>Page 80</p> <p>1 A Correct.</p> <p>2 Q And is this your practice or is it the practice and policy</p> <p>3 that's been instructed to you by the Grand Rapids Police</p> <p>4 Department?</p> <p>5 A I think that would be my practice, and I would speculate to</p> <p>6 say that's what my partners do, too, and are doing.</p> <p>7 Q With regard to a sign giving a person notice that they</p> <p>8 shouldn't be on the property, how specific does the sign have</p> <p>9 to be?</p> <p>10 A Again, I have no idea. I think two simple words, no</p> <p>11 trespassing. I think that's pretty much a universal sign to</p> <p>12 anyone saying -- with the understanding that you can come to</p> <p>13 my business and be in my parking lot if you are a customer,</p> <p>14 if you're a paying customer.</p> <p>15 Q And if there's a sign up that says no trespassing, you</p> <p>16 haven't bought anything and you're on the property, you're</p> <p>17 considered a trespasser at that point?</p> <p>18 A You're giving me pretty limited circumstances. If you want</p> <p>19 to give me a little more detail, I'll be happy to answer the</p> <p>20 question.</p> <p>21 Q Sure. I get a text. I don't want to read my text while I'm</p> <p>22 driving, so I pull into a gas station that has a sign that</p> <p>23 says no trespassing. I read my text message. I move on.</p> <p>24 Have I just violated the law? Am I trespasser?</p> <p>25 A To the absolute letter of the law, I would say yes. As far</p>	<p>Page 82</p> <p>1 is going to then turn into a drug dealer or a rapist or a</p> <p>2 murderer or something more severe?</p> <p>3 A Time of the day, weather, as far as actual temperature</p> <p>4 outside. What type of event said person is attending, the</p> <p>5 number of people who are attending, whether or not those</p> <p>6 attending all have similar concepts culturally, religiously,</p> <p>7 or gang members.</p> <p>8 If you have an event -- if you have 25 gang members</p> <p>9 who pull into a parking lot to read a text and in that same</p> <p>10 parking lot 25 rival gang members pull in to read a text,</p> <p>11 though independently each one of them is only reading a text,</p> <p>12 I'm very comfortable telling you there will be a problem.</p> <p>13 Each one individually, probably not that big of a deal, but</p> <p>14 when you've got 25 gang members reading their texts and on</p> <p>15 the opposite side of the parking lot 25 rival gang members</p> <p>16 reading their own text messages, based on the time of the</p> <p>17 day, temperature, event they're attending, I'm very</p> <p>18 comfortable saying there's a strong possibility for violence.</p> <p>19 Q Whether they're trespassing or not, there's a strong</p> <p>20 possibility for violence there, right?</p> <p>21 A Absolutely. And then by me intervening and preventing them</p> <p>22 from being in that area and stopping the congregation and</p> <p>23 stopping the loitering by addressing the trespassing, then I</p> <p>24 feel like I'm stemming that a little bit, I'm curtailing that</p> <p>25 behavior. I am not allowing this to occur. My presence is</p>
<p>Page 81</p> <p>1 as being reasonable, I mean, a practicality there, what I</p> <p>2 said before, I don't want to live in that world, I really</p> <p>3 don't, where we're that rigid and we're that structured. If</p> <p>4 I were to see that scene, what's the greater -- what's the</p> <p>5 lesser of the two evils, a distracted driver and trespassing</p> <p>6 for a minute to prevent that distracted driver? I'm very</p> <p>7 comfortable with saying I don't have a problem with that.</p> <p>8 Q So when you talk about the trespass potentially escalating</p> <p>9 into something more, are you saying that you're intervening</p> <p>10 before something worse than a trespass occurs?</p> <p>11 A Yes.</p> <p>12 Q So if I pull over and I'm reading my text message and you</p> <p>13 come and say, "Hey, there's a no trespass sign here, what are</p> <p>14 you doing?" and I say, "I'm just reading a text message.</p> <p>15 I'll be on the road, Officer," it's reasonable to let me go,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q There's not really a perceived risk of this text reading</p> <p>19 escalating into something bigger than that, correct?</p> <p>20 A Correct.</p> <p>21 Q Even though I may be a trespasser, there's no perceived risk</p> <p>22 that I'm going to engage in some more serious offense while</p> <p>23 I'm on that property, right?</p> <p>24 A Correct.</p> <p>25 Q So what types of things tell you whether or not a trespasser</p>	<p>Page 83</p> <p>1 there, and I'm utilizing -- with all the circumstances,</p> <p>2 addressing the individual behavior, though it's on a larger</p> <p>3 scale -- you know, I can only address the individuals, but by</p> <p>4 several officers addressing the individuals' conduct, I think</p> <p>5 we can have an impact on violence.</p> <p>6 Q In other words, by addressing a trespass, you're actually</p> <p>7 trying to address a more serious offense?</p> <p>8 A Absolutely.</p> <p>9 Q Is the no trespass letter a tool that allows you to do that?</p> <p>10 A Yes.</p> <p>11 Q Let's talk about. Let me see what we've marked as exhibits</p> <p>12 real quickly before they get too unorganized. Let's see if I</p> <p>13 can put them in place here.</p> <p>14 I'll hand you Exhibit 13 and we're going to talk</p> <p>15 about this incident for awhile, all right?</p> <p>16 A Yes, sir.</p> <p>17 Q Exhibit 13 involves the arrest, as we said, of Jacob Manyong,</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q The arrest happened what day?</p> <p>21 A February 19, 2012.</p> <p>22 Q What time?</p> <p>23 A Approximately 8:40.</p> <p>24 Q And then you prepared the report about 45 minutes later, 44</p> <p>25 minutes later?</p>

23 (Pages 80 to 83)

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<p>1 A Yes.</p> <p>2 Q I'm sorry 34 minutes later, correct?</p> <p>3 A (Shakes head)</p> <p>4 Q You can't shake your head. You have to say yes or no.</p> <p>5 A Forgive me. Yes. Customarily we finalize the reports which</p> <p>6 are done on our laptop computers within our cruiser. The</p> <p>7 report date/time can be misconstrued because the moment I</p> <p>8 begin the report, it would then be time/date stamped at 2114</p> <p>9 hours. I'm very confident on that evening I finished the</p> <p>10 report after releasing Mr. Manyong, but I could have gone</p> <p>11 through -- under our reporting system, I could have gone</p> <p>12 through and inserted all of Mr. Manyong's information, his</p> <p>13 phone number, the Robbins Lock information, and then not</p> <p>14 typed the narrative until three or four hours later. If</p> <p>15 that's the case, my report would still read that I began at</p> <p>16 2114 hours, but that's because that's when I started it.</p> <p>17 That doesn't necessarily mean that's when the narrative was</p> <p>18 completed, but I'm quite confident the narrative and the</p> <p>19 parties involved and location was all completed in</p> <p>20 uniformity.</p> <p>21 Q If we look at your report, in the narrative section, which is</p> <p>22 the second page, correct?</p> <p>23 A Yes.</p> <p>24 Q It indicates that you were on patrol on South Division</p> <p>25 Avenue, approaching Burton Street, S.E., when you saw a male</p>	<p>1 here, this is Burton Street, S.E. Division is the divider,</p> <p>2 so on the opposite side of Division would be Burton Street,</p> <p>3 S.W. This is Burton Street, S.W. and that's a cardinal</p> <p>4 east-west divider in Grand Rapids.</p> <p>5 Q So this photograph was taken basically standing on Division</p> <p>6 Street looking at the lock shop, correct?</p> <p>7 A Yes, and the photographer -- again, the direction of the</p> <p>8 photograph is north-northeast.</p> <p>9 Q And you're saying that Mr. Manyong was parked in one of these</p> <p>10 spots closest to Division Street, correct?</p> <p>11 A Yes, sir.</p> <p>12 Q Why don't you -- in fact, use my pen just because I have a</p> <p>13 blue pen and you have a black pen and blue might be easier to</p> <p>14 see -- circle the area where you think Mr. Manyong was parked</p> <p>15 when you first observed him.</p> <p>16 A Well, where I first observed him was -- I saw his car earlier</p> <p>17 in the shift, probably about an hour prior to. I'm certain</p> <p>18 that I saw Mr. Manyong's car in the Robbins Lock parking lot.</p> <p>19 I didn't reference this in my police report because I can't</p> <p>20 say for certain. I'm confident that it was he, but I'm not</p> <p>21 confident to the point that I'm going to testify to it.</p> <p>22 Q Isn't that what you're doing right now?</p> <p>23 A What I will say is I believe I first saw his car over in this</p> <p>24 area (indicating). What I will say, without question, at the</p> <p>25 onset of this police report is I saw him in this</p>
Page 85	Page 87
<p>1 sitting in the driver's seat of a parked vehicle in the</p> <p>2 parking lot of Robbins Lock, correct?</p> <p>3 A Yes.</p> <p>4 Q And that's at 2004 South Division?</p> <p>5 A Yes.</p> <p>6 Q So you were just on patrol, not going any particular place,</p> <p>7 and that's when you observed Mr. Manyong, correct?</p> <p>8 A Correct.</p> <p>9 (Deposition Exhibit No. 16 marked)</p> <p>10 BY MR. WALDMAN:</p> <p>11 Q Let me hand you a photograph I've marked as Exhibit 16. Does</p> <p>12 that depict the Robbins Lock establishment?</p> <p>13 A Yes. In a much warmer climate, too, regrettably.</p> <p>14 Q Looking at that photograph, can you show me where</p> <p>15 Mr. Manyong's car was parked when you first observed him?</p> <p>16 A If I'm right, he's going to be in one of these spaces right</p> <p>17 here (indicating).</p> <p>18 Q So you're kind of indicating a general area where he may have</p> <p>19 been, correct?</p> <p>20 A Correct.</p> <p>21 Q And that area is the area closest to -- is this Division</p> <p>22 Street?</p> <p>23 A Yes, this is an actual -- the photographer here is facing</p> <p>24 north-northeast. This being South Division, which is a true</p> <p>25 cardinal north-south avenue -- this street over here, right</p>	<p>1 area (indicating).</p> <p>2 Q All right. Let's right now focus on what you have in your</p> <p>3 report and we'll come back.</p> <p>4 A I haven't circled it. Should I do that?</p> <p>5 Q Let's be clear what you're circling.</p> <p>6 A I'm circling --</p> <p>7 Q I'm going to tell you what to circle. This says: I was on</p> <p>8 patrol northbound on S. Division Avenue approaching Burton</p> <p>9 Street, S.E., when I saw a male sitting in the driver's seat</p> <p>10 of a parked vehicle.</p> <p>11 That's what your report says, right?</p> <p>12 A Yes.</p> <p>13 Q So I'd like you to circle the area where you saw him sitting</p> <p>14 that you've referenced in your report.</p> <p>15 A Sitting in his car, correct?</p> <p>16 Q Sitting in his car.</p> <p>17 A (Indicating)</p> <p>18 Q And you've now circled the area where you saw him sitting in</p> <p>19 his car at the time referenced in your report on Exhibit 16,</p> <p>20 correct?</p> <p>21 A Yes.</p> <p>22 Q And you've done that with a blue circle?</p> <p>23 A Yes.</p> <p>24 (Deposition Exhibit No. 17 marked)</p> <p>25</p>

24 (Pages 84 to 87)

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1 BY MR. WALDMAN:
 2 Q Now I'm going to hand you what I've marked as Exhibit 17,
 3 which is -- I'll tell you my understanding -- an overhead
 4 view of this same property. Does that look to be an overhead
 5 view of the same property?
 6 A Yes.
 7 Q Can you show me on Exhibit 17 that same area, the area you
 8 first saw Mr. Manyong when you -- the area that you have
 9 referenced Mr. Manyong was sitting in when you wrote in your
 10 report that you saw him sitting in his vehicle?
 11 A It would be in this area right here (indicating).
 12 Q Can you do the same thing, circle it in blue ink on
 13 Exhibit 17 where Mr. Manyong was sitting at the time
 14 referenced in your report?
 15 A Yes.
 16 Q You've done that, you've put a blue circle?
 17 A Yes, sir.
 18 Q Again, this is the area leading up to -- or the area closest
 19 to Division Street, correct?
 20 A Yes.
 21 Q The area of the parking lot closest to Division?
 22 A Yes.
 23 Q I'm going to take my pen back. The area closest to Division
 24 in the parking lot actually has parking meters, correct?
 25 A Yes.

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1 Q And then there's also spots that look like they're kind of
 2 close to Burton Street, correct?
 3 A Yes.
 4 Q Are those metered spots also?
 5 A I believe they are, but I'm not certain.
 6 Q Then there's spots that actually are right up against or very
 7 close to the Robbins Lock, correct?
 8 A Yes.
 9 Q And there are not meters in those spots, are there?
 10 A No.
 11 Q Do you know whether or not the metered spots are actually the
 12 property of Grand Rapids?
 13 A Do I know for certain? No, I do not. I would presume so,
 14 but I don't know so.
 15 Q When you arrested -- did you arrest Mr. Manyong?
 16 A He was issued an appearance ticket so he was detained for a
 17 time, issued a summons to come to court.
 18 Q For trespassing?
 19 A Yes.
 20 Q Was he, in your opinion, trespassing on the property of
 21 Robbins Lock?
 22 A Yes.
 23 Q Was it because he was sitting in a car in the area that you
 24 have circled?
 25 A That was one factor, yes, sir.

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1 Q When you watched the videotape in preparation for today, was
 2 your memory confirmed where he was parked or as to where he
 3 was parked?
 4 A It didn't change -- from the vantage point of the in-car
 5 cruiser video, you can't see his car from the footage that I
 6 have unless there's more video out there that I'm not aware
 7 of.
 8 MR. WALDMAN: We've got, I think, some of the video
 9 from that incident cued up. I would like to watch it with
 10 you, just that segment, and then we'll come back and we'll
 11 talk about what we see, and I'll have some follow-up
 12 questions. We can watch it off the record. We don't need to
 13 watch it on the record.
 14 (Discussion held off the record.)
 15 MR. WALDMAN: What I'm going to propose is that we
 16 stay on the record and we're going to show just a portion of
 17 the video that's been produced through this litigation
 18 regarding this incident. We'll try and transcribe it if for
 19 no other reason to have a frame of reference and some
 20 context, understanding we might run into trouble doing that,
 21 because it's not as controlled as you and I talking. If
 22 there are any objections to this unique procedure, we'll
 23 allow the defense to preserve those objections. If for no
 24 other reason, I would like to preserve it as a frame of
 25 reference for when we go back and read the depositions.

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1 MR. LANNEN: Thank you. I'll just place an
 2 objection on the record to the difficulty of synchronizing
 3 whatever's on the screen and what we're talking about without
 4 any definitive marks. I appreciate the procedure, and I
 5 presume that we can remedy it in the future because we won't
 6 be using this procedure.
 7 MR. WILLIAMSON: We do have the -- I don't know if
 8 this can be noted in the transcript, but we do have the -- we
 9 can identify the point in time right at which a certain thing
 10 happened.
 11 MR. LANNEN: When we start this, can we note where
 12 we start and end?
 13 MR. WALDMAN: I'll just put on the record that my
 14 intention here is that we start at 3:03. Is that what you've
 15 got?
 16 MR. GRANZOTTO: Yes.
 17 MR. WALDMAN: What I would propose is we play it
 18 from 3:03 to 5 minutes.
 19 MR. GRANZOTTO: I'll start at 3:00 because that's
 20 where I'm at.
 21 MR. WALDMAN: So we'll do it from three minutes to
 22 roughly five minutes, and that will give us all the ability
 23 to go back and take a look at it again.
 24 (Whereupon a portion of the videotape was played
 25 and transcribed. However, due to the poor quality of the

25 (Pages 88 to 91)

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1 audio, many inaudibles occurred.)
 2 * * *
 3 (Inaudible) Car -- convenience store (inaudible) --
 4 Hi, Nettie. Go ahead Burton. Caller is in
 5 the area there trying to retrieve, slash,
 6 restrain their 15-year-old. What's this guy's
 7 story? (Inaudible) -- at any one time.
 8 Is he a favorite of the intern? I don't know.
 9 Does he like riding with him? I have no clue.
 10 I just rode with him, but, you know -- yeah,
 11 I think he's really annoying when I ride with
 12 him. (Inaudible) Wow. (Inaudible) We've
 13 got some control issues at this light. I
 14 wouldn't say issues. You haven't signed up
 15 for Spanish yet. No. Why don't we have a letter
 16 at Robbins Lock? I don't know. They're used to
 17 be one. Not now. Is it good? What's he saying?
 18 What's his story? Oh, there it is. They got it
 19 back up and running. It says 1911 prior to 1912.
 20 Perfect. Sure was wiggling around in there a lot.
 21 (Inaudible) Do you speak Swahili? No. You're
 22 going to have to learn it.)
 23 MR. WALDMAN: I think we're beyond five minutes.
 24 We can stop.
 25

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1 BY MR. WALDMAN:
 2 Q When we get to the point on the video, we're no longer in the
 3 parking lot, correct?
 4 A When this started, correct.
 5 Q Just the portion I've just shown you, correct?
 6 A Yes.
 7 Q So let's go through your report and get to there before we
 8 talk. You indicate that you saw this white Oldsmobile
 9 Cutlass in the parking lot and that the business was closed,
 10 correct?
 11 A Yes.
 12 Q And you indicated that you knew that the owners and
 13 management had expressed to the Grand Rapids Police
 14 Department that they don't want people there in their lot
 15 during non-business hours, correct?
 16 A Yes.
 17 Q Is that from conversations with the owners?
 18 A Not personal conversations of my own. Through information
 19 expressed to us from the unit commanders. Also, the
 20 cooperation of the Robbins Lock owners signing in succession
 21 no trespass letters, once it expires, signing another one,
 22 once it expires, signing another one.
 23 Q But you were told by unit commanders that Robbins didn't want
 24 people in their parking lot once business was closed?
 25 A And through communication with the southeast service

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1 community police officers.
 2 Q Explain that to me.
 3 A This is at the intersection of Burton and Division. This is
 4 an area that I've personally policed a number of shootings, a
 5 number of robberies, it's inundated with prostitution and
 6 narcotics trafficking. Some of the fallout to that is the
 7 owners of Robbins Lock, after a busy weekend, will be
 8 cleaning up used condoms from the parking lot, hypodermic
 9 needles, litter, things along that nature, so the owners meet
 10 with the community police officers similar to the capacity
 11 I'm working in now, only down in this area of the city, and
 12 then through conversation, e-mails, and overall just hanging
 13 out with some of my friends saying, "The owner of Robbins
 14 Lock was furious because he arrived to work Monday morning
 15 and found an entire trash bag of litter as well as a number
 16 of broken crack pipes or broken liquor bottles."
 17 Q Your report goes on to say as you were trying to position
 18 your cruiser behind the white Oldsmobile, you saw the driver
 19 abruptly back out of the parking space and exit the lot onto
 20 eastbound Burton Street, S.E., correct?
 21 A Yes.
 22 Q By abruptly backing out, what do you mean?
 23 A It seemed to me that as soon as he saw my marked cruiser, as
 24 soon as there was eye contact, and he saw that I was backing
 25 up to contact him, I believe that's when there was a moment

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1 of panic, albeit small, and that he began to leave only
 2 because of my about to approach him. That's my opinion.
 3 Q At what point did you make eye contact or did he make eye
 4 contact with you?
 5 A As I was driving north, seeing this car in the parking lot
 6 substantiated some earlier feelings I had. As I was driving,
 7 I looked over, saw that the vehicle was occupied, applied my
 8 brakes, began backing up on South Division. As I began
 9 backing up with the intention to pull in behind him, that's
 10 when the Cutlass backed up and then pulled out onto Burton
 11 Street.
 12 Q We know from portions of the Field Training Manual we've seen
 13 before that it's important to be detailed in your report,
 14 right?
 15 A Yes.
 16 Q And to list all factors that are relevant to your actions and
 17 arrests, correct?
 18 A Yes.
 19 Q And one of the things that you're saying was important is
 20 your previous suspicion of this vehicle, correct?
 21 A Yes.
 22 Q And that's not listed in your report, is it?
 23 A No.
 24 Q And you're now telling me that the eye contact was one of the
 25 factors, correct?

26 (Pages 92 to 95)

<p>Page 96</p> <p>1 A Well, the eye contact coupled with my stopping my cruiser, 2 backing up, and then beginning to pull into the parking lot, 3 correct. 4 Q Your report doesn't mention anything about eye contact, does 5 it? 6 A No. 7 Q It actually doesn't mention about stopping the cruiser and 8 backing up, does it? 9 A No. 10 Q It says after he left the parking lot you executed a traffic 11 stop, correct? 12 A Yes. 13 Q And the reason that you made the traffic stop was because the 14 registration lights were not functional? 15 A That was part of it, yes. 16 Q And the license plate was completely dark, correct? 17 A Yes. 18 Q As I read your report, not based on anything else, but just 19 based on your report, it's that plate light that's out that 20 is the reason for the traffic stop. Is there any other 21 reason? 22 A Yes, I felt he was trespassing. 23 Q You felt he was trespassing before you pulled him over? 24 A Yes. 25 Q Is there anything in the video when you watched it several --</p>	<p>Page 98</p> <p>1 A Yes. 2 Q Was there a store open across the street? 3 A Yes. 4 Q If there is a store open for business across the street, is 5 there anything that prevents someone visiting the city of 6 Grand Rapids or a resident of the city of Grand Rapids from 7 parking in a public parking space and walking over to that 8 business? 9 A No. 10 Q And that's what he was doing if what he's telling you is 11 true. You saw him in a public parking space, correct? 12 A Correct. 13 Q And he told you that he had been across the street at a 14 business that you knew was open, correct? 15 A I thought he said he was intending on going there. 16 Q Parking at a metered city parking space because you intend to 17 go to a business that is open is not trespassing in and of 18 itself, is it? 19 A No. Looking at this situation, however, Mr. Manyong was 20 suggesting that he was going to go, in my opinion, to Rau's. 21 That's what I interpreted him saying, the liquor store, which 22 would have required him -- now, granted, again, we're in 23 Michigan, and we're in the third week of February, so it's 24 not 70 degrees outside, so he's causing himself to park 25 kitty-corner across five lanes of traffic to go to this</p>
<p>Page 97</p> <p>1 I think you said four to five times over the last week or so, 2 or just now, that confirms whether or not that plate light 3 was working? 4 A Just my testimony. 5 Q Independent of your testimony, something that we can actually 6 physically see in the video? 7 A I don't know if I did it on this one. I can't remember 8 looking for it, but as a practice, I will dim my headlights, 9 turn my headlights completely off, thereby allowing -- if the 10 registration lights are -- if they're just dim, I would be 11 able to see them more readily. I don't remember if I did it 12 on this, nor do I remember looking for whether I did this on 13 the video. 14 Q If your headlights are on while the camera is rolling, it's 15 going to interfere with your ability to see? 16 A Not only the headlights, but also the emergency equipment 17 with the flashing front lights and then the overhead strobe 18 lights. 19 Q So at this point in your report we're now to where we were in 20 the video, not necessarily at that exact moment but the 21 location on the street, correct? 22 A Yes. 23 Q He told you that he intended on buying something across the 24 street, he changed his mind, and he speculated he had been in 25 the parking lot for approximately two minutes, correct?</p>	<p>Page 99</p> <p>1 business when Mr. Manyong is a resident of Grand Rapids. 2 He's actually a resident of the southeast side of 3 Grand Rapids in Alger Heights, and there's a much more viable 4 option of parking behind Rau's, so that's what I took into 5 account. Certainly it's not against the law to park further 6 away, but I would say what's practical and more logical is 7 most people are going to park as near to their destination as 8 possible. 9 Q So the fact that he is parked further away but parked legally 10 makes it more likely that he's committing a trespass? I'm 11 not sure if I understand what you're saying. Is that what 12 you're saying? 13 A It is unusual, and based on the years that I've worked in 14 that area, knowing that that's a point for narcotics 15 trafficking and prostitution, I was leaning more towards the 16 high visibility of that being a rendezvous point versus what 17 I was told, that he was going to the liquor store across the 18 five lanes of traffic, being parked kitty-corner. So in and 19 of itself would that make it trespassing? No. Is it 20 unusual? Is it against the grain of what most people are 21 going to do? I would say yes. 22 Q And that's the reason you pulled him over? 23 A Coupled with the fact of the equipment violation on the 24 vehicle, yes. 25 Q Did you write him up for equipment violation?</p>

27 (Pages 96 to 99)

<p style="text-align: center;">Page 100</p> <p>1 A No, I don't think I did. I think the citation was trespass 2 and then no proof of insurance.</p> <p>3 Q If we go on in your report, you say, back in my cruiser you 4 file checked Jacob, and then going on, you said you checked 5 with CAD to determine if Robbins Lock had a no trespass 6 letter, correct?</p> <p>7 A Yes.</p> <p>8 Q You found the valid no trespass letter and the order was 9 signed by the business owner on 10-19-11 and expired on 10 10-18-12, correct?</p> <p>11 A Yes.</p> <p>12 Q So when I was watching the portion of the video that we just 13 played, I heard what I assume is you and someone that's 14 referred to as Nettie talking, correct?</p> <p>15 A Yes.</p> <p>16 Q Is that what happened, you and Nettie were talking?</p> <p>17 A Yes, myself, Officer Niemeyer, and then police intern, Matt 18 Bartus. Forgive me, and then one additional officer, Officer 19 Brent Stuart.</p> <p>20 Q There's dialogue that may be relevant, may not be relevant, 21 but my memory and my best understanding of what I heard was I 22 think your voice, and I'm asking you to tell me whether this 23 is true or not. Your voice said, unfortunately, I think the 24 letter for Robbins Lock is expired. Do you recall saying 25 that, or do you recall hearing yourself say that when you</p>	<p style="text-align: center;">Page 102</p> <p>1 of a potential trespass, are you doing it because in your 2 mind you have probable cause that the trespass has been 3 committed, reasonable suspicion, or neither?</p> <p>4 A Well, in my mind I have something formulated in my head, of 5 course. More so, I want to talk to him. I want to ask him 6 what he's doing. If his response was, I'm meeting a friend 7 from Lansing and they've never been to Grand Rapids before, 8 and this was the only business that I could think of to meet 9 me here -- if that story rang true and I felt like that's a 10 legitimate one, and I felt like this person was being 11 completely candid with me, then, yeah, I may have taken a 12 different approach on this one. Honestly, I did not 13 completely believe what Mr. Manyong was telling me.</p> <p>14 Q So once you pulled him over -- so you saw him parked in an 15 unusual position, you thought, for a closed business?</p> <p>16 A Right, the followup dialogue afterwards, sure.</p> <p>17 Q If there was no trespass letter, you would not have cited him 18 for trespassing, correct?</p> <p>19 A If a no trespass letter did not exist for that property, then 20 I would not have cited him, correct.</p> <p>21 Q And only because there was one, you did cite him, correct?</p> <p>22 A Yes.</p> <p>23 Q Looking at the totality of the circumstances, are there any 24 other factors that led you to believe that there was a 25 trespass?</p>
<p style="text-align: center;">Page 101</p> <p>1 reviewed the tape?</p> <p>2 A No, and I couldn't distinguish because it was kind of 3 disjointed. If we played it again, I could tell you whether 4 or not that was my saying it. However, I was trying to 5 access the information. As I was trying to access the 6 information -- it's a wireless system, so much like a cell 7 phone call will drop, your service on the computer will drop. 8 I couldn't find it.</p> <p>9 Being that I was not getting a response for Robbins 10 Lock, if I was unable to verify a trespass letter, I would 11 not have taken enforcement against Mr. Manyong. However, I 12 did find the letter. I think you can hear me say, oh, there 13 it is, and I said something to the effect that I'm back up on 14 line or something, again, being that my wireless connection 15 from my cruiser and my laptop is now talking again to our 16 wireless server at the police department.</p> <p>17 Q So, in other words, you -- at this point you've observed him 18 park in an unusual spot, correct?</p> <p>19 A Correct.</p> <p>20 Q You've already in your mind determined that I'm going to pull 21 this person over because of a trespass, correct?</p> <p>22 A Yes.</p> <p>23 Q Or a potential trespass?</p> <p>24 A Yes.</p> <p>25 Q So in your mind when you're pulling this person over because</p>	<p style="text-align: center;">Page 103</p> <p>1 A Absolutely.</p> <p>2 Q You told me the history of the property, right?</p> <p>3 A Uh-huh.</p> <p>4 Q Yes. I'm sorry, you said uh-huh but that's not going to 5 translate well.</p> <p>6 A Yes, based on what has been conveyed to police officers from 7 our unit commander and community officers, based on the 8 expectations of patrol supervisors, teammates, and myself, 9 knowing the issues, the quality of life, but also the 10 violence that has been at and immediately surrounding Robbins 11 Lock, I was leaning toward Mr. Manyong not only trespassing 12 but making a rendezvous for another crime. That's what I 13 believe. As I sit here right now, I'm still convinced of 14 that. Whether or not it's true, I don't know, but I know 15 what I saw and I know what I experienced.</p> <p>16 I also know -- I've been in that situation before. 17 Being that he was by himself, being that he was parked where 18 he was parked, being that the moment that he saw a fully 19 marked police cruiser about to make contact, he leaves the 20 area abruptly, and the response to his questions -- yes, I'm 21 very comfortable that he was trespassing.</p> <p>22 Q But yet you would not have given him a trespassing citation 23 if not for the letter of intent?</p> <p>24 A Had the letter expired -- you know, you're asking me that, 25 but I wasn't -- that's such a hypothetical, because I could</p>

28 (Pages 100 to 103)

<p style="text-align: center;">Page 104</p> <p>1 have accessed or had a dispatcher access FileMaker system to 2 contact the owner of Robbins Lock or the manager, Rob, the 3 owner, and I could have said, "Rob, my name is Tony Leonard. 4 I work night shift for Grand Rapids Police. Your trespass 5 letter has expired. Are you still interested in pursuing 6 trespassing against people in your lot after hours that are 7 not there for business?" If on the phone Rob said, "Man, I 8 should have renewed that. Yes, absolutely, Officer, please 9 take enforcement action," that would have been another 10 situation. Had Rob said, "You know what, Officer? I think 11 those trespass letters are foolish. It did nothing to help 12 or hinder my business, so the heck with it, no harm, no 13 foul," then obviously I would have treated it differently. 14 Q In this case we agree you or no other police officer made an 15 effort to contact the owner of Robbins Lock, correct? 16 A Correct, because we had the no trespass letter, which to me 17 is a standing cooperative effort. 18 Q Does the no trespass letter extend beyond the property of 19 Robbins Lock? 20 A No, it would cover 2004 South Division, but then we also had 21 the issue of the city parking spaces and the city no 22 trespassing. 23 Q Who signs no trespass letters for city property? 24 A I don't think the City has no trespassing. I know the city 25 ramps are marked for trespassing issues, and I know that the</p>	<p style="text-align: center;">Page 106</p> <p>1 him not to trespass on Robbins Lock's property, would it be 2 reasonable to expect him to think that he also was not 3 allowed to park at a city metered parking space? 4 A I can't speak for Mr. Manyong. That, I don't know. I can 5 say that there's no distinction. This is an ambiguous line 6 between the city-owned and privately-owned Robbins Lock. In 7 the time that I spent working in this service area, I never 8 saw a city worker maintaining these lots; I never saw a city 9 plow removing snow through here. 10 Q Who emptied the parking meters? 11 A I have no idea. I don't know if they're functional to be 12 honest. I'm not saying that to be argumentative. I honestly 13 don't know if they work. 14 Q Regardless of what Mr. Manyong knew, you knew that the spot 15 where he was parked was city property, right? 16 A Well, looking at this, I can see the meters through here. I 17 was under the impression that these along the north side were 18 city lots. I do not remember these meters being through 19 here. Do we know when this picture was taken? I don't know 20 if I'm supposed to ask questions, but this area of Division 21 has been redone. That actually does look like newer 22 concrete. I don't know if those are new meters, but I've -- 23 I remember meters being along the north side of the property 24 and not the west side of the property. That's not to say 25 they weren't there, but my memory is the north end of the</p>
<p style="text-align: center;">Page 105</p> <p>1 parking lot surrounding there -- whether or not there are 2 signs up in this area, if these are city spots, which I am 3 certain they are -- the parking lots immediately next to or 4 across the street behind Rau's -- there are signs from the 5 City of Grand Rapids of no trespassing. 6 Q I'm sorry, there are signs where? 7 A They would not be visible on this map. If we were to pull 8 this back, it would be across the street, so on the west side 9 of Division, still south of Burton, but north of Cutler 10 there's a City of Grand Rapids lot. 11 Q We went through two versions of the Field Training Manual 12 that I'm not sure were any different but had two different 13 dates on them, correct? 14 A Yes. 15 Q And both required that there be signage if you were going to 16 rely on the no trespass letters, correct? 17 A Yes. 18 Q Was there any signage in this parking lot? 19 A For Robbins Lock, yes. Whether or not it was there for the 20 city parking, I don't know. 21 Q Where is the sign for Robbins Lock? 22 A I don't know where it's at. 23 Q Do you know whether it was visible to Mr. Manyong? 24 A No, I don't. 25 Q Even if there was a sign that Mr. Manyong could see telling</p>	<p style="text-align: center;">Page 107</p> <p>1 property was City of Grand Rapids that extended maybe one or 2 two spots in here. I don't remember them extending all the 3 way down into the throat of this driveway. 4 Q If back in February -- or on February 19, 2012, those spots 5 were city property and you knew they were city property, 6 would you have cited Mr. Manyong for trespassing on Robbins 7 Lock? 8 A No. But if we go back and look at the video, I think the 9 footage shows that as I'm backing up, I don't think we see 10 Mr. Manyong's vehicle, and I'm quite certain that as he's 11 backing up, a portion of his vehicle then goes into Robbins 12 Lock. Again, this is ambiguous. There's no fence, there's 13 no line drawn, there's no difference between one form of 14 asphalt versus another. If a portion of a vehicle lands on 15 property that is protected by a trespass letter because the 16 driver of that vehicle is trying to evade police, I'm very 17 comfortable saying that person is trying to trespass. 18 Q Trying to evade police is a crime in and of itself, right? 19 A How about we scratch evade and I say avoid? I like the word 20 avoid better. 21 Q So trying to avoid police is not an element of the crime of 22 trespassing, is it? 23 A No. 24 Q The elements for trespass remain the same. There may be 25 factors that help you in analyzing whether a trespass has</p>

<p style="text-align: center;">Page 108</p> <p>1 been committed, but the elements of trespass are always the 2 same, right? 3 A Yes. 4 Q Simply because you skim over the corner of property when it's 5 closed doesn't necessarily mean you're a trespasser, does it? 6 A Depending on the circumstance, in my opinion, I would say, 7 yes, sometimes, and other times, I would say no. 8 Q One of the major factors is whether or not the owner of that 9 property wants you to be skimming over the corner of their 10 property line, correct? 11 A Yes. 12 Q At the end of what we played there was a comment about 13 language, correct? 14 A Yes. 15 Q Did you make any determination as to whether or not to take 16 any steps to make a determination as to whether or not 17 Mr. Manyong understood English? 18 A Yes. As referenced in my report, while interacting with 19 Mr. Manyong, it's clear that English is his second language, 20 or maybe even fifth language for all I know. I asked him 21 what his native language is, and he said Dinka, I believe 22 it's pronounced. 23 I was comfortable interacting with him though his 24 responses were in broken English. I was confident that I was 25 able to convey the message of why I stopped him and also what</p>	<p style="text-align: center;">Page 110</p> <p>1 Q Is there anyone you can call to find out that information? 2 A During the daytime, I'm certain we could. At 8:40 at night, 3 no one working for the city treasurer's office or city 4 assessor's office would have been working, that I'm aware of 5 Q Is 8:40 at night in that area considered to be late enough 6 that there's going to be the type of activity that you 7 described, prostitution, drug use? 8 A In the Burton Heights neighborhood? 9 Q Yes. 10 A That's still relatively early in the evening, definitely 11 early. 12 Q Is there a certain time that you would expect people to start 13 using IV drug use in Robbins Lock parking lot or prostitution 14 in the Robbins Lock parking lot? 15 A I would say that area -- that business is susceptible any 16 time outside of business hours, and even including during 17 business hours. I know that officers have responded to 18 Robbins Lock when it's open of complaints of prostitution and 19 drug use. Is there a steadfast time that I could say all the 20 prostitutes and drug dealers can start working an area? No. 21 I would say bar closing, right around 2:00 a.m., is when I 22 would say there's much more activity in the Burton Heights 23 area as far as the criminal element. 24 Q If Manyong was never on Robbins Lock's property, does the 25 letter of intent make any difference at all in terms of his</p>
<p style="text-align: center;">Page 109</p> <p>1 his responsibilities were of the citations that I issued him. 2 I guess by pure default, he has to have some working 3 knowledge of the English language based on the fact that the 4 State of Michigan issued him a driver's license. So it's not 5 that -- I don't think I was dealing with a foreign national 6 or a resident alien who has no concept of the English 7 language or our culture and that as I'm communicating with 8 him he has absolutely no idea of the words I'm speaking. 9 Q When you are in your vehicle, do you have a way of 10 determining where a property line starts and ends 11 specifically, let's say, for this property, Robbins Lock? 12 Are you able to determine where their property ends and the 13 city property starts? 14 A If there is one, I'm not aware of it. If you're asking if I 15 have a Geospatial Service, no. There is internet access 16 available, but it's disabled to maybe only a dozen websites. 17 It's restricted. 18 Q You have to find a Panera, right? 19 A No. I can't jump -- from my cruiser, day or night, I cannot 20 jump onto GoogleMaps and plug into 2004 South Division, Grand 21 Rapids, Michigan, to see a plot line, nor could I access Kent 22 County surveyors or the tax assessor to determine what parcel 23 of land is Robbins Lock versus another, or if you and I were 24 neighbors, what our fence line is, what divides my front yard 25 from your backyard.</p>	<p style="text-align: center;">Page 111</p> <p>1 arrest or citing him for trespassing? 2 A Forgive me, I don't understand. 3 Q Sure. Assume that Manyong never stepped foot -- his car 4 never touched the property of Robbins Lock. Does Robbins 5 Lock having a notice of intent letter on file make any 6 difference at all in your mind? 7 A No. If Robbins Lock's property played no role in this 8 situation, then, no, I would not utilize any of my knowledge 9 or any of the trespass notices from management of Robbins 10 Lock as an enforcement tool on someone if they were not 11 involved directly with Robbins Lock. I don't know if I 12 answered your question correctly or if that's what you were 13 looking for. 14 Q And in this case, even though there were many factors, the 15 factor that allowed you to draw the conclusion, okay, we're 16 going to cite this guy for trespass is when it was, oh, yeah, 17 we have one, we have an active notice letter, correct? 18 A That was a portion of it, yes, verifying it was there and it 19 was valid. 20 Q And that's not unusual that you have various factors, and 21 then when you confirm that you've got the notice letter, or 22 the letter of intent, then you cite someone or arrest them, 23 correct? 24 A Sometimes you cite them, sometimes you arrest them, or there 25 are times where you can give them an ultimatum and say,</p>

30 (Pages 108 to 111)

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1 "You're trespassing right now. You leave now or you're going
 2 to be arrested."
 3 Q What makes you decide when you're going to arrest someone or
 4 give them a citation?
 5 A Again, there are a lot of different dynamics that go behind
 6 it. The recent history of a certain location, wishes or
 7 directives coming from an immediate supervisor or unit
 8 commanders. Wishes and requests coming from business owners.
 9 Staffing has another issue to deal with it, as does call
 10 volume.
 11 There are times in the city where if we have a
 12 major incident going on, a lot of our police resources are
 13 tied up. If that's the case and I get sent to -- obviously
 14 even though there may be a major incident going on, we still
 15 have responsibilities of answering police calls. If I
 16 respond to a police call of a trespassing and yet there's a
 17 triple murder elsewhere in the city occupying a lot of other
 18 police officers' time, there's a very strong likelihood that
 19 I'm not going to take enforcement action. I may bluff
 20 somebody and say that they're going to jail if they don't
 21 leave, but in reality my responsibility at that point is not
 22 to get tied up in any type of arrest. My responsibility is
 23 to be available for other emergency calls.
 24 Q So if we go back to your report, we kind of left off with the
 25 letter expiring on 10-18-12. If we go back to the narrative

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1 of the report --
 2 A Yes.
 3 Q -- it says that you contacted Jacob again and directed him
 4 from the driver's seat. So you asked him to get out of the
 5 car?
 6 A Yes.
 7 Q Asked him or ordered him?
 8 A Well, that's subjective. I asked him to get out of the car.
 9 Q He complied?
 10 A Yes.
 11 Q You searched him?
 12 A Yes.
 13 Q Why did you search him?
 14 A Search incident to arrest.
 15 Q So he was arrested at this point?
 16 A He was being lawfully detained at that point, yes. In my
 17 opinion -- yes, he was under arrest at that point.
 18 Q And he was under arrest for trespassing at this point, right?
 19 A Yes.
 20 Q At this point you had not spoken to him yet, correct?
 21 A I had contacted him initially, but had I conveyed the message
 22 of his arrest to him at this point? That, I don't know.
 23 Q Had you gotten his explanation of what he was doing?
 24 A Yes, there was a short discourse as far as why he was there.
 25 Q That's right. He told you he was going across the street.

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1 You found no contraband on him?
 2 A Yes.
 3 Q He denied there were any guns or drugs in his car?
 4 A Yes.
 5 Q And at that point you note that he consented to you searching
 6 his car?
 7 A Yes.
 8 Q At that point did you ask him to search the car? Did you ask
 9 him if you could search his car?
 10 A Yes, I believe I did. I think I said, can we search the car.
 11 In some manner, yes, I believe it was conveyed to him that I
 12 was asking for consent for officers to search the vehicle.
 13 Q Was it made clear to him he was under arrest at this point?
 14 A I don't remember, I don't know.
 15 Q Was he in your patrol car at this point?
 16 A I think he was.
 17 Q So he's sitting in the back seat of the patrol car?
 18 A Yes, at some point he would have been detained.
 19 Q Is he cuffed?
 20 A I don't remember if I cuffed him or not. I don't think I
 21 did. I don't believe he was handcuffed.
 22 Q Did you search the car?
 23 A No.
 24 Q Do you know if anything was located in the car, any
 25 contraband at all?

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1 A I would say no, not from personal knowledge because I
 2 searched it, but because Officers Niemeyer and Stuart arrived
 3 and searched the car. Had they located any contraband, I'm
 4 certain they would have relayed that to me.
 5 Q And your report says none was found, correct?
 6 A Yes. Forgive me, I'm getting tired.
 7 Q Do you need a break?
 8 A No.
 9 Q Is Police Intern Bartus no longer an intern?
 10 A He is no longer an intern. He is now an officer with the
 11 Dallas Police Department. To explain that, we have college
 12 interns working for us. It's a paid internship. They're
 13 required by the police department to be entering some aspect
 14 of the criminal justice arena. They have to be enrolled in
 15 classes, and on nights at the front desk where they're not
 16 exceptionally busy, the watch commanders will approve them to
 17 go out and ride with us.
 18 Matt Bartus rode with me a number of times. It's
 19 an opportunity for these young people to get cruiser time, to
 20 learn from seasoned officers. It helps us kind of cultivate
 21 the blossoming career of a prospective police officer.
 22 Q How far is Division from Eastern?
 23 A Division and Eastern? It's exactly one mile.
 24 Q Robbins Lock parking lot, is it lit?
 25 A It is illuminated. Whether or not those lights are

<p>Page 116</p> <p>1 maintained, I don't know. 2 Q Do you recall if they were on that night? 3 A No, I don't. 4 Q You mentioned there were other factors that weren't in your 5 report. One was that you saw the vehicle earlier you thought 6 but weren't sure? 7 A Yes. 8 Q Was that the only car in the lot when you went by that area 9 earlier? 10 A I don't remember. I do remember seeing a white, older Olds 11 Cutlass in the parking lot prior to the initiation of this 12 incident. 13 Q So that would have been at about 7:30, 7:40 that you saw a 14 white Cutlass, correct? 15 A I have no idea what time it was. I was working night shift. 16 I don't know what shift because I've worked both. There are 17 two different waves of night shifts, both being 12 hours, one 18 that starts at 5:30 at night and the other that starts at 19 6:30 at night, so I could have been on either of those 20 because I've worked both. 21 Q But at some point you think you saw a white Cutlass in that 22 parking lot? 23 A I know I saw that. 24 Q Before you saw it with Mr. Manyong in it? 25 A Yes.</p>	<p>Page 118</p> <p>1 before, when you run the premise information, when the letter 2 is visible, it will be the name and contact phone number. In 3 theory, I could run that and call Rob whatever his last name 4 is and ask Rob is Mr. Manyong -- is he allowed to be on your 5 property, to park there. 6 Q But the letter doesn't tell you who's allowed to park there? 7 In and of itself, the letter doesn't tell you who is allowed 8 to park there and who is not allowed to park there? 9 A Correct. 10 (Recess held from 6:20 p.m. until 6:29 p.m.) 11 BY MR. WALDMAN: 12 Q As you indicated earlier, you've got no way to tell exactly 13 where the property line is, where it becomes Robbins Lock's 14 property and where it's city property, correct? 15 A Correct. 16 Q You said the line is -- I think your word was somewhat 17 blurred, right? 18 A Yes. 19 Q You would agree the line is somewhat blurred to someone 20 driving through that parking lot? 21 A Yes. 22 Q It would have been blurred to Jacob that night? 23 A Yes. 24 Q And you also mentioned that you thought that even though he 25 was parked in what is a city metered lot that when he backed</p>
<p>Page 117</p> <p>1 Q When you saw the white Cutlass earlier in the evening, was 2 there anybody in the vehicle? 3 A I don't remember, but I know it was not parked where I saw 4 Mr. Manyong's car. 5 Q It was parked in the Robbins Lock lot? 6 A Yes. 7 Q Was Robbins Lock open when you saw it earlier? 8 A I don't think it was. 9 Q Were you concerned there was a car in the Robbins lot knowing 10 the history and knowing the owner didn't want people in the 11 lot and they were not open for business? 12 A It's not uncommon to see cars parked in Robbins Lock. Going 13 back to Exhibit 17, I think the owner allows some of his 14 friends to park through here, because you see various 15 vehicles parked through here (indicating). That was not 16 uncommon. 17 Q So you're talking about the parking spaces closest to the 18 building that run closer -- on the Burton side? 19 A Correct. 20 Q Is there a way for you as a patrol officer to know if you see 21 someone in the Robbins parking lot whether they are a friend 22 of the business owner in the lot or whether they are someone 23 that doesn't know the business owner? 24 A I could call them. When I say them, I could call the owner 25 by accessing the no trespass letter, because as I told you</p>	<p>Page 119</p> <p>1 up, he may have skimmed or he probably did skim the Robbins 2 property, right? 3 MR. LANNEN: Let me object because I'm not sure the 4 testimony has verified whether that is a metered lot or not 5 on that night, but go ahead and repeat that. 6 THE WITNESS: Can you repeat that? 7 BY MR. WALDMAN: 8 Q You mentioned the fact that you think he skimmed the Robbins 9 property when he backed up? 10 A I believe when he backed up, a portion of his vehicle, 11 however much, yes, entered the property of Robbins Lock. 12 Q That was not something that was in your mind when you stopped 13 him that night, was it, that he skimmed the Robbins Lock lot? 14 A No. 15 Q Is it something that you mentioned -- well, we've established 16 it's not something you said in your report? 17 A Correct. 18 Q Is it something you mentioned to any other police officers? 19 A I don't think so, no. 20 Q Is it something you mentioned to your supervisors? 21 A I don't think so. 22 Q You know, I don't want to be kind of speculating and kind of 23 going back and forth about whether or not the meters were 24 there, because I realize it's been a couple of years, or 25 close to a couple of years, so why don't we go back and look</p>

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1 at the video real shortly together and see if we can get a
 2 view of whether or not it's there, because I realize when you
 3 were looking at it you weren't necessarily trying to see if
 4 there were meters, so this will give you an opportunity to do
 5 that.
 6 A Okay.
 7 (Discussion held off the record.)
 8 BY MR. WALDMAN:
 9 Q We're back on the record, and we did a quick little look at
 10 the video footage of this incident, and we've got it actually
 11 frozen on the screen right now with your police vehicle
 12 behind Jacob's -- or, I'm sorry, is that Jacob's vehicle
 13 you're behind?
 14 A No.
 15 Q You're behind, it looks like, maybe a black pickup truck or
 16 something?
 17 A Unrelated vehicle.
 18 Q Would you agree that you can see off to the right the spots
 19 that you've referenced are metered?
 20 A Yes.
 21 MS. AUKERMAN: Do you want to mark that?
 22 MR. GRANZOTTO: Six seconds.
 23 BY MR. WALDMAN:
 24 Q For identification purposes, we're looking at around the time
 25 of six seconds, correct?

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1 A Yes.
 2 Q You would agree that when you pulled Mr. Manyong over -- when
 3 you pulled Jacob over, you had a hunch that he was doing
 4 something more than trespassing?
 5 A Yes.
 6 Q You had a hunch he was maybe involved in some activity
 7 involving drugs or prostitution?
 8 A Yes.
 9 Q But you would agree there was no probable cause for an arrest
 10 or even a stop regarding potential drugs or prostitution,
 11 correct?
 12 A For an arrest on prostitution or drugs, no.
 13 Q How about for a stop?
 14 A For a stop, yes, because of the plate light.
 15 Q So the basis -- the reason to stop him -- you certainly had
 16 no basis to stop him based on your hunch of drugs or
 17 prostitution, right?
 18 A Absent the trespassing letter at Robbins Lock and absent the
 19 equipment violation?
 20 Q Yes.
 21 A Yes, I would not have had a justifiable stop on what I
 22 believed I was seeing, on my intuition.
 23 Q Okay. Now, take the plate light out of the equation. You
 24 had the trespass. Do you have probable cause?
 25 A No.

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1 Q Do you have suspicion?
 2 A Yes.
 3 Q So you would be pulling him over because of suspicion of a
 4 trespass?
 5 A Yes.
 6 Q Ultimately you obviously thought you had probable cause for
 7 trespass because you cited him for that, correct?
 8 A Correct.
 9 Q And you actually detained him for a time?
 10 A Yes.
 11 Q He wasn't free to go, correct?
 12 A Correct.
 13 Q When did that time begin? Did it begin when you asked him to
 14 get out of the car?
 15 A Once I found there was a valid no trespass letter and with
 16 all the other circumstances in my observations and the
 17 confirmation of the validity of the no trespass letter, at
 18 that point if Mr. Manyong had got out of his car and said,
 19 "I'm leaving," I would have stopped and detained him.
 20 Q Before you found out that there was a valid no trespass
 21 letter -- at this point is Mr. Manyong in your car when you
 22 find the valid no trespass letter?
 23 A No.
 24 Q If Mr. Manyong said to you while you were looking for the no
 25 trespass letter, "I'm out of here, you have no reason to stop

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1 me," would you have stopped him?
 2 A Yes, because I'm still investigating a crime and I'm still
 3 lawfully detaining him reasonably during the traffic stop.
 4 Q So, in other words, if we're trying to figure out when
 5 Mr. Manyong was no longer free to go on his own, it's from
 6 the time that he's stopped, that the traffic stop begins?
 7 A Yes, that's fair to say. The moment the traffic stops begins
 8 he's not free to leave.
 9 Q And at some point in your mind it converts from a traffic
 10 stop to I'm arresting this person for trespassing?
 11 MR. LANNEN: Objection. Suggests an answer.
 12 MR. WALDMAN: Correct, it does, it suggests an
 13 answer.
 14 BY MR. WALDMAN:
 15 Q Am I correct?
 16 THE WITNESS: Can I answer now?
 17 MR. LANNEN: If you're ready.
 18 THE WITNESS: During this incident, yes, there is a
 19 transitional gray area that this transfers from Mr. Manyong
 20 is being detained to Mr. Manyong is now in police custody.
 21 Can I give you an exact nanosecond in which that occurs? No.
 22 BY MR. WALDMAN:
 23 Q Can you give me generally when it occurs?
 24 A Ballpark, it is -- once I have worked through circumstances
 25 in my head, all of them, once I reiterate in my head what I

<p>Page 124</p> <p>1 saw, once I replay in my head what Mr. Manyong told me and 2 work out all the circumstances, and shortly after I find the 3 no trespass letter, then I'm formulating that, along with all 4 the other instances, for the totality of everything to say my 5 suspicions and my hunches are sustained here and I believe 6 he's trespassing, so I would say it's within the time frame 7 of my finding the letter in the database that we have now 8 gone from he's lawfully detained as a driver of a civil 9 infraction and my investigating the trespass to he's in 10 police custody and he's not free to leave. 11 Q Is that moment when you have the trespass letter or the 12 existence of the trespass letter? 13 A It's somewhere along that time. 14 Q And when you say confirmation that my hunch is correct, your 15 hunch that he is a trespasser? 16 A There is absolutely no doubt in my mind that Mr. Manyong was 17 there in the parking lot for reasons other than he told me. 18 He could show me a blood oath sworn to me in front of his 19 mother and I can tell you what I saw, what I've seen numerous 20 times in my career, and I will not be convinced otherwise. 21 Q Would you agree arresting him for trespassing allowed you to 22 further investigate the hunches you had regarding more 23 serious criminal activity occurring? 24 A That's an aspect of it, but based on my knowledge and my 25 experience of working in this area and the Burton Heights</p>	<p>Page 126</p> <p>1 recall you telling him that he was on Robbins Lock property. 2 Do you recall ever telling him that? 3 A I don't recall, but I'm certain I did. 4 Q Why would you tell him that if he was not on Robbins Lock 5 property? 6 A When he backed up, I'm very confident a portion of his 7 vehicle crossed through that parking lot. 8 Q Did you tell him that that's when he went on Robbins Lock 9 property, when he backed up? 10 A No, I don't think I did. 11 Q Is there any -- how long can you detain someone for a traffic 12 stop? 13 A To my knowledge, there is no designated set time. There's no 14 parameter saying your police business has to be finished 15 within 30 minutes or less. I think there's a reasonableness 16 that goes to it. I think there's a practicalness to it. 17 In this instance, hypothetically, if I -- if I were 18 to call somebody to verify whether Mr. Manyong has the 19 authority to be there and it causes five extra minutes of 20 detention, I would say in my opinion that that's reasonable. 21 If a business owner is in Florida and I task one of my 22 teammates to drive to Florida to locate the business owner 23 and it takes four days, I would say that is not reasonable. 24 Q Do you know how long Mr. Manyong was in your custody? 25 A No.</p>
<p>Page 125</p> <p>1 neighborhood, prostitution is one of the major complaints of 2 business owners along South Division. I have personally seen 3 dozens of used condoms on the sidewalk, in front of the 4 business, in the parking lot, broken liquor bottles of every 5 shape, size and color, hypodermic needles, and other drug 6 paraphernalia. 7 Has Rob specifically told me, Officer Leonard, it 8 really bothers me that I have to clean up used condoms in my 9 parking lot? No. Do I think it's a very safe assumption as 10 a business owner he's not going to want to see used condoms 11 and hypodermic needles? Yes. 12 MR. WALDMAN: See, I'm going to move to strike 13 that whole answer because I don't think it was responsive to 14 my question, so I'm going to try it again. 15 BY MR. WALDMAN: 16 Q I asked if you were using the trespass arrest to investigate 17 your hunch that a more serious crime was occurring. You told 18 me that was an aspect of it, and then you went on to talk 19 about this neighborhood. Can you answer yes or no? Are you 20 using a trespass arrest to investigate a hunch that there's 21 another crime being committed? 22 A Yes. And forgive my diatribe earlier. 23 Q That's okay. 24 During your encounter, either your investigation or 25 your arrest of Jacob, when I looked at the tape, I believe I</p>	<p>Page 127</p> <p>1 Q The use of a trespass arrest to investigate a hunch, do you 2 know if that's what Lind's e-mail refers to when it talks 3 about trespass being a proactive tool? 4 A Can I see that exhibit? 5 MR. WILLIAMSON: I think that's it right there. 6 BY MR. WALDMAN: 7 Q We're talking about Exhibit 14, trespassing is a valuable 8 proactive enforcement tool. 9 A Yes. I think there's an aspect of Lieutenant Lind's -- his 10 statement here is saying that trespassing is a mechanism that 11 patrol officers can use to try and solve or remedy bigger 12 issues. 13 For example, if I make a traffic stop and the 14 driver is arrested or detained for trespassing and if I open 15 the trunk and find three six-year-old girls who have been 16 sexually assaulted, I'd say that's a pretty damn good arrest. 17 In this instance with Mr. Manyong, his vehicle was 18 searched, no contraband was located, no weapons were located. 19 Quite frankly, I didn't think we were going to find one, I 20 honestly didn't based on my suspicions and my hunches. I 21 don't think -- I did not think I was going to find an AK-47, 22 or my partners were, nor did I think they were going to find 23 sex slaves locked away in the trunk, I didn't. 24 Q Let me ask you, on the incident report when it says 25 investigation type and then it says city attorney, what does</p>

<p>Page 128</p> <p>1 that mean?</p> <p>2 A To my knowledge, that has very little to do with me as a</p> <p>3 patrol officer. This has to do with the case management, our</p> <p>4 reporting system, and which investigator the case gets</p> <p>5 assigned to. Directly below that box it's investigator</p> <p>6 assigned. This is something that is -- it's a pre-populated</p> <p>7 box in FileMaker that I have absolutely no access to. I</p> <p>8 cannot manipulate this or change this in my reporting</p> <p>9 function in FileMaker.</p> <p>10 Q Do you know who fills in that portion of the form?</p> <p>11 A That would be our case management detectives, and that would</p> <p>12 consist of Sergeant Doezema and Officer Porter.</p> <p>13 Q Doezema and Porter, are they still part of the force?</p> <p>14 A Yes.</p> <p>15 Q Let's talk about in Mr. Manyong's case probable cause for</p> <p>16 trespassing. Earlier you told me one of the elements for</p> <p>17 trespassing is that you have to be on someone's property,</p> <p>18 correct?</p> <p>19 A I may have said that. I presume I did, yes.</p> <p>20 Q That's a fair statement, right?</p> <p>21 A Yes.</p> <p>22 Q And when you pulled Mr. Manyong over believing he had</p> <p>23 trespassed, at that point you weren't doing it because you</p> <p>24 saw him on someone's property, right?</p> <p>25 A Mr. Manyong was stopped as part of my investigation for</p>	<p>Page 130</p> <p>1 A Yes.</p> <p>2 Q And the only thing we have to determine whether or not -- did</p> <p>3 Mr. Manyong not have authority to be parked at a public</p> <p>4 parking meter?</p> <p>5 A I'm sorry, forgive me. One more time with the question.</p> <p>6 That is a double negative.</p> <p>7 Q Did he lack the authority to be at a public parking spot?</p> <p>8 A No, he had all privileges to be in the public parking spot,</p> <p>9 yes.</p> <p>10 Q Another one of the elements is that you have to be on</p> <p>11 property and you're not leaving the property, correct?</p> <p>12 A Yes.</p> <p>13 Q When you saw him, he was actually leaving the property,</p> <p>14 right?</p> <p>15 A Yes, I believe prompted by my presence, but yes.</p> <p>16 Q One of the elements for trespassing is that the person has to</p> <p>17 be on a property with no right to be there, right?</p> <p>18 A Yes.</p> <p>19 Q And you would agree he had a right to be in a public parking</p> <p>20 spot, wouldn't you?</p> <p>21 A When he was in the public parking spot, yes, he had a right</p> <p>22 to be there.</p> <p>23 Q Is it your testimony when he backed up and skimmed the</p> <p>24 property line that you believe was blurred over at Robbins</p> <p>25 Lock that he then had no right to be there?</p>
<p>Page 129</p> <p>1 trespass, as part of my observations from what I saw, coupled</p> <p>2 with what I know of that area, the directives of my unit</p> <p>3 commanders, the expectation of my patrol supervisors, my past</p> <p>4 experience and knowledge of what I know from the management</p> <p>5 and ownership of Robbins Lock, and he had a plate violation.</p> <p>6 His plate was not illuminated.</p> <p>7 Q Here is what I want to know. Every crime has it elements,</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q Trespass has its elements, right?</p> <p>11 A Yes.</p> <p>12 Q And for you to arrest someone for a crime, you have to have</p> <p>13 probable cause for each element, correct?</p> <p>14 A Yes.</p> <p>15 Q So let's take one element at a time. For a trespass you have</p> <p>16 to be on someone else's property, right?</p> <p>17 A Yes.</p> <p>18 Q Mr. Manyong was parked in a public parking spot, correct?</p> <p>19 A Yes.</p> <p>20 Q He was not on someone else's property, was he?</p> <p>21 A Well, he was on public property, but it was not his own, but,</p> <p>22 yes. I would say yes to your answer. Forgive me, I'm</p> <p>23 getting tired.</p> <p>24 Q They have to be on someone else's property without that</p> <p>25 person's authority, correct?</p>	<p>Page 131</p> <p>1 A I don't think I've used the word skimmed yet. Without a</p> <p>2 doubt in my mind, when Mr. Manyong backed up abruptly, a</p> <p>3 portion of his vehicle entered on the property of Robbins</p> <p>4 Lock.</p> <p>5 Q How long was he on Robbins Lock's property during that</p> <p>6 pulling back and going forward?</p> <p>7 A It would be very briefly.</p> <p>8 Q Less than a second?</p> <p>9 A I don't know.</p> <p>10 Q Less than ten seconds?</p> <p>11 A Yes.</p> <p>12 Q Less than five seconds?</p> <p>13 A Probably, yes.</p> <p>14 Q Would you agree that the minute he -- assuming he did cross</p> <p>15 onto Robbins Lock's property, the moment he did that he</p> <p>16 immediately started leaving the property?</p> <p>17 A Yes.</p> <p>18 Q Would you agree that he had no notice that he was not allowed</p> <p>19 to be doing that?</p> <p>20 A Yes.</p> <p>21 (Deposition Exhibit No. 18 marked)</p> <p>22 BY MR. WALDMAN:</p> <p>23 Q We're going to move to the arrest of Mr. Hightower. You've</p> <p>24 reviewed that incident report as well, correct?</p> <p>25 A Yes.</p>

35 (Pages 128 to 131)

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1 Q I've marked a document as Exhibit 18. That's the incident
 2 report you prepared as the arresting officer of
 3 Mr. Hightower?
 4 A Yes.
 5 Q That's at a facility called Cheero's Sports Bar?
 6 A Yes.
 7 Q On September 4, 2011?
 8 A Yes.
 9 Q And, again, the charge was -- the arrest was made for
 10 trespassing, correct?
 11 A Yes.
 12 Q There's also a related charge for marijuana possession listed
 13 on here, correct?
 14 A Yes.
 15 Q But that did not apply to Mr. Hightower, did it?
 16 A No, it did not.
 17 Q The only charge against Mr. Hightower or the only reason for
 18 the arrest was trespassing?
 19 A Yes.
 20 Q Cheero's, as I understand it, is no longer Cheero's?
 21 A Right.
 22 Q Do you know what it is now?
 23 A It is now Zen Asian Sushi Bistro.
 24 Q This is over near Burton and Breton?
 25 A Yes.

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1 Q In general Burton and Breton is not a high crime area, is it?
 2 A No.
 3 Q Under investigation type on this report -- I know you didn't
 4 prepare it, but it says vice. Do you know why there's a
 5 distinction for vice here as opposed to city attorney?
 6 A Absolutely no idea. That would clearly be something from the
 7 case management unit.
 8 Q You weren't working vice at the time you made this arrest,
 9 were you?
 10 A No. If it were the other person involved, I would say that
 11 because marijuana was involved -- I would say that the
 12 marijuana and the trespass were coupled together and went to
 13 the vice unit, but as far as with -- relative specific to
 14 Hightower, that, I don't know, and I know that Mike Mesman --
 15 he's a detective in our vice unit, still is, and was at that
 16 time, so it may have been just a matter of convenience that
 17 he was assigned to all of these cases. I have no idea.
 18 (Deposition Exhibit No. 19 marked)
 19 BY MR. WALDMAN:
 20 Q I've marked as Exhibit 19 a photograph facing Cheero's from
 21 Burton, correct?
 22 A Yes.
 23 (Deposition Exhibit No. 20 marked)
 24 BY MR. WALDMAN:
 25 Q Exhibit 20 is an overhead shot of the building where Cheero's

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1 is located, right?
 2 A Yes.
 3 Q At some point we'll get into this in more detail. You
 4 obviously see Mr. Hightower in a vehicle in a parking lot
 5 near Cheero's, correct?
 6 A Yes.
 7 Q Can you point out to me where that was in either picture,
 8 either 19 or 20?
 9 A Approximately right here (indicating).
 10 MR. WILLIAMSON: Where is Cheero's?
 11 THE WITNESS: Right here (indicating).
 12 BY MR. WALDMAN:
 13 Q Again, using a blue pen on Exhibit 20 circle the area where
 14 Mr. Hightower was parked.
 15 A (Witness complied)
 16 Q Can you initial TH for Tyrone Hightower and the area where he
 17 was parked inside your circle? And you've done that,
 18 correct?
 19 A Yes.
 20 Q Now, can you draw an arrow pointing to the entrance of
 21 Cheero's?
 22 A (Witness complied)
 23 MS. AUKERMAN: I think he's drawing --
 24 BY MR. WALDMAN:
 25 Q I'm trying to find out where the front door is for Cheero's.

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1 Before you write on it again, just show me where the front
 2 door is for Cheero's on Exhibit 20.
 3 A (Witness complied)
 4 Q I got it. Why don't you make a box over the front door for
 5 Cheero's. So the arrow that you've drawn -- so you've made
 6 the box over the door, correct?
 7 A Yes.
 8 Q And the arrow that you've drawn would be just the direction
 9 from where Mr. Hightower was parked toward the front door,
 10 right?
 11 A Yes. Parked in this vicinity, at these back spaces, though,
 12 with then the front door being basically to his immediate
 13 west.
 14 Q You're showing me Exhibit 19 and showing -- you can see where
 15 the Cheero's entrance is because you can see Cheero's above
 16 it?
 17 A Yes.
 18 Q And then he's parked, if you're facing the building, to the
 19 left or to the west?
 20 A To the east of the main entry.
 21 Q To the east of the main entry to Cheero's?
 22 A This would be east, yes, sir.
 23 Q I got it. Where is the entry to the MAC?
 24 A I don't know if there are other entries. The main entry
 25 would not be visible on Exhibit 19. It would be right here

<p style="text-align: center;">Page 136</p> <p>1 looking at Exhibit 20 (indicating).</p> <p>2 Q I got it. Cheero's is inside the same building that the</p> <p>3 Michigan Athletic Club is in, correct?</p> <p>4 A Yes.</p> <p>5 Q Is it commonly referred to as the MAC, the Michigan Athletic</p> <p>6 Club? Do they refer to it as the MAC?</p> <p>7 A Yes.</p> <p>8 Q Is there anything else in that building?</p> <p>9 A I have no idea.</p> <p>10 Q Now, at some point during your investigation you learned that</p> <p>11 there was a trespass letter from the owner of Cheero's,</p> <p>12 correct?</p> <p>13 A No. Long before the investigation I was aware of the</p> <p>14 trespass letter.</p> <p>15 Q Do you know if the owners of the Michigan Athletic Club had</p> <p>16 also filled out a trespass letter?</p> <p>17 A I don't know for certain. I do know that Officer Hill,</p> <p>18 Wayne Hill -- this would be east beat four, the service area</p> <p>19 of east with the individual beat being number four. Officer</p> <p>20 Hill was assigned to that service area, and I know Officer</p> <p>21 Hill obtained no trespass letters from a variety of these</p> <p>22 businesses around there. Whether the MAC, the gym facility,</p> <p>23 was one of them, I don't know.</p> <p>24 Q Is there any delineation in this parking lot as to where the</p> <p>25 MAC parking is and where the Cheero's parking is?</p>	<p style="text-align: center;">Page 138</p> <p>1 Q So I may not choose to go meet my running partners on hiphop</p> <p>2 night?</p> <p>3 A If you did, I can assure you it would probably be the last</p> <p>4 time you rendezvoused at that point.</p> <p>5 Q One of the things you're looking at is the appearance of the</p> <p>6 people showing up at Cheero's, correct?</p> <p>7 A I'm looking at the behavior of the people showing up at</p> <p>8 Cheero's.</p> <p>9 Q You're looking at their appearance to determine whether or</p> <p>10 not they're there to actually do business if you're trying to</p> <p>11 figure out if they're trespassing, right?</p> <p>12 A To an extent, yes.</p> <p>13 Q So if someone is parked in the Cheero's parking lot, dressed</p> <p>14 to go to a club, and someone's pulled up with their running</p> <p>15 gear on, who looks like they're more likely to be using that</p> <p>16 property for a business purpose?</p> <p>17 A Based on the time of the day? If it were three o'clock in</p> <p>18 the afternoon --</p> <p>19 Q It's hiphop night. It's hiphop night at Cheero's. There are</p> <p>20 people who are sitting in a van with slacks and a nice shirt</p> <p>21 on, and I'm sitting next to them and I've got sweats on. Who</p> <p>22 is more likely, based on appearance, to be there for a</p> <p>23 legitimate business purpose?</p> <p>24 A I would say if you were sitting at Cheero's wearing sweats,</p> <p>25 you would be in the minority. It would be abnormal to see</p>
<p style="text-align: center;">Page 137</p> <p>1 A No.</p> <p>2 Q In other words, where Mr. Hightower was parked, someone could</p> <p>3 easily park to go to the MAC, correct?</p> <p>4 A Yes, but the MAC is not open when the -- when we are present</p> <p>5 in this area, the MAC is closed and Cheero's is open.</p> <p>6 Q All right. But people who are members of the MAC can go use</p> <p>7 that parking lot when it's closed, right?</p> <p>8 A I have no idea. I don't know if they're entitled to park</p> <p>9 there off hours.</p> <p>10 Q Let's talk about that. I'm a member of the MAC and I meet</p> <p>11 people at the MAC before it opens to go for a run. I sit in</p> <p>12 my car and I wait for my friends to get there. Am I</p> <p>13 trespassing?</p> <p>14 A No, I don't think so, not in my opinion.</p> <p>15 Q I'm on the property of another, right?</p> <p>16 A Yes.</p> <p>17 Q They're not open for business, right?</p> <p>18 A Not under your circumstance, no.</p> <p>19 Q Let's say they have a no trespass letter on file. Do you</p> <p>20 assume that I'm there without their authorization?</p> <p>21 A Based on these limited dynamics that you're giving me, I will</p> <p>22 say, no, you're not committing a trespass, in my opinion,</p> <p>23 which has absolutely nothing to do with and is 1,000 percent</p> <p>24 different from what this atmosphere is on a Saturday night</p> <p>25 for hiphop night.</p>	<p style="text-align: center;">Page 139</p> <p>1 somebody wearing athletic gear on hiphop night for Cheero's,</p> <p>2 yes.</p> <p>3 Q Would you have reason to believe I'm trespassing at that</p> <p>4 point?</p> <p>5 A If I did not see you making any progress to enter the club,</p> <p>6 to leave the club, if you were blaring loud music and bass to</p> <p>7 the extent it's almost rattling the inside of our car, and</p> <p>8 you maintained the position in your vehicle while you watched</p> <p>9 me and my partner run through and execute trespassing arrests</p> <p>10 of people in your clear view, yes, when I walk up to you and</p> <p>11 you're still there, yes, in my opinion, I believe you are</p> <p>12 trespassing.</p> <p>13 Q At what point -- how long do I have to stay there?</p> <p>14 A That's subjective, sir. I have no idea. I think that you</p> <p>15 need to be making some type of effort to either enter the</p> <p>16 club or to leave.</p> <p>17 Q Let's go through your report with Hightower. Exhibit --</p> <p>18 A -- 18.</p> <p>19 Q Again, you're the reporting officer, correct?</p> <p>20 A Yes and no. Both Officer Rekucki and myself submitted</p> <p>21 narratives on this. On the cover sheet it says original</p> <p>22 reporting officer, Officer Leonard, so, yes, I'm the one that</p> <p>23 started the report and inserted the information, but if you</p> <p>24 draw your attention to the last page of the exhibit, there's</p> <p>25 kind of a separation at the bottom two-thirds of the page</p>

<p style="text-align: center;">Page 140</p> <p>1 where it reads Officer Rekucki's narrative. At that point 2 that is Officer Greg Rekucki's words and not mine. 3 Q Let's take a look at your narrative on page three, correct? 4 A Yes. 5 Q It says you were monitoring the lot of Cheero's bar and saw 6 two males sitting in a full-size blue van, correct? 7 A Yes. 8 Q You said it was along the southern edge of the parking lot 9 near the east side, correct? 10 A Yes. 11 Q It says that they were sitting in their van listening to 12 music, right? 13 A Yes. 14 Q How would you quantify how loud the music was? 15 A Well, I could hear it for more than 25 feet away, which then 16 puts them in violation of the city's noise ordinance of car 17 stereos. 18 Q Is that really what it is, 25 feet? 19 A At night, yes, sir. 20 Q During the day you're allowed to play it louder than at 21 night? 22 A It's fifty feet. The time is 7P to 7A and vice versa. 23 Q Did you cite them for a music violation? 24 A No. 25 Q Why not?</p>	<p style="text-align: center;">Page 142</p> <p>1 and we had a reason to stop them, and, yes, that's the type 2 of behavior that was really irritating a lot of the 3 surrounding neighbors. 4 If I lived in that area across the street from 5 Cheero's, would it bother me if two guys were hanging out in 6 their van smoking a joint? Probably not because I would be 7 asleep. But if two guys are hanging out in a van, whether or 8 not they're smoking a joint, but their stereo was blaring and 9 their bass is blaring and pounding me and waking up my 10 family, yes, that would trouble me. As a resident, that 11 would bother me more, the music, than the fact that they're 12 sitting there. 13 Q I've kind of lost track here. What question are you 14 answering? 15 A Why they were not cited. 16 Q When you first saw the blue van, was it parked? 17 A Yes. 18 Q So when you -- so you didn't have to stop them, right? 19 A Correct. 20 Q They were already stopped? 21 A Yes. 22 Q Was the engine running? 23 A When we first saw them, I don't know. 24 Q Were the lights on? 25 A I don't think so, no.</p>
<p style="text-align: center;">Page 141</p> <p>1 A Officer discretion. 2 Q One of the things you were advised you were supposed to be 3 doing at Cheero's is looking for noise violations, correct? 4 A Yes. 5 Q You're telling me you saw a noise violation, right? 6 A Yes. 7 Q But you didn't cite the person for it? 8 A Correct. 9 Q Did you tell them to turn their music down? 10 A No. 11 Q You were also told you were supposed to be looking for people 12 loitering in this area? 13 A Yes. 14 Q Did you cite them for loitering? 15 A Well, they were -- he was lodged for trespassing. 16 Loitering -- there's a distinction there, but that's very 17 close. It's really close, alligator/crocodile. Those are 18 very, very similar. The reason being -- as a practice, if 19 I'm lodging somebody, I frequently will not try and trump up 20 all the charges I possibly could against them. I'm not going 21 to cite them for every single thing we could. 22 Even though the conduct and demeanor of these two 23 was poor, I'm still not going to lose my professionalism and 24 start throwing out tickets that don't need to be written. 25 There was absolutely no doubt that their music was blaring</p>	<p style="text-align: center;">Page 143</p> <p>1 Q At some point Officer -- how do you pronounce his name? 2 A Rekucki. 3 Q Contacted the front seat passenger, Mr. Williams, correct? 4 A Yes. 5 Q And then you contacted the driver who you later learned was 6 Tyrone Hightower, correct? 7 A Yes. 8 Q When you approached them, did you approach them with the 9 belief that they were trespassing at that point? 10 A Yes. 11 Q How long had you seen them parked in that spot at that time? 12 A Probably 10 to 15 minutes. Again, Officer Rekucki and I 13 contacted two other individuals. We see their van. We 14 contact two other individuals. They're both cited for 15 trespassing for very similar conduct of Mr. Williams and 16 Mr. Hightower. After the disposition of those two, the van 17 is still in the same position and the music is still blaring, 18 and they're still not making any effort to either leave the 19 complex or enter the club. 20 Q Was there a line at the club? 21 A There may have been. I don't remember. 22 Q You were familiar with this area on Saturday night or hiphop 23 night, correct? 24 A Yes. 25 Q Was there commonly a line to get in?</p>

<p>Page 144</p> <p>1 A Yes.</p> <p>2 Q Was it raining that night?</p> <p>3 A I don't think so.</p> <p>4 Q Was there a time that the line would typically thin out?</p> <p>5 A Yes, it will ebb and flow. Sometimes the line would swell to</p> <p>6 maybe 50-some people and there would be a wait of 10 to 15</p> <p>7 minutes. Other times it would string down just as quickly,</p> <p>8 and there would be a wait of under a minute.</p> <p>9 Q Would you agree it's more comfortable to wait for a line</p> <p>10 sitting down in your car than it is standing outside?</p> <p>11 A That's subjective.</p> <p>12 Q You've sat before?</p> <p>13 A Yes.</p> <p>14 Q And you've stood before?</p> <p>15 A Yes.</p> <p>16 Q What's easier?</p> <p>17 A Sitting.</p> <p>18 Q Was there a sign posted telling people not to sit in their</p> <p>19 car while they were waiting to get into a club?</p> <p>20 A No.</p> <p>21 Q Was there a sign saying that they weren't allowed to sit in</p> <p>22 their car while they were waiting for people to get out of</p> <p>23 the club?</p> <p>24 A No.</p> <p>25 Q Was there anything that would have told Mr. Hightower that</p>	<p>Page 146</p> <p>1 A No.</p> <p>2 Q Does it make any of the elements more or less likely because</p> <p>3 you're playing music or playing it at a certain volume?</p> <p>4 A No.</p> <p>5 Q Why is it important then?</p> <p>6 A It's important because it was disruptive to the community.</p> <p>7 Many different residents had voiced their concerns not only</p> <p>8 to officers but to the unit commanders. Plus it creates</p> <p>9 almost a party environment, and it fosters and enables</p> <p>10 certain people that are there simply for the ambiance of the</p> <p>11 club to not go inside, and this would be substantiated by</p> <p>12 many different bar managers and owners. They don't want</p> <p>13 people listening to music in the parking lot when the owners</p> <p>14 and managers want them inside the club listening to music.</p> <p>15 Q You're not aware of anyone telling Mr. Hightower that, are</p> <p>16 you?</p> <p>17 A I'm sorry?</p> <p>18 Q You're not aware of anyone telling Mr. Hightower that, that</p> <p>19 he was not wanted in the parking lot playing music?</p> <p>20 A No, I'm not aware of anyone.</p> <p>21 Q Again, if we look at the elements of trespass, Mr. Hightower</p> <p>22 was on the property of someone else, correct?</p> <p>23 A Yes.</p> <p>24 Q Another element is he has to be on the property without</p> <p>25 authority of the owner, correct?</p>
<p>Page 145</p> <p>1 the property owner did not want him sitting in a van outside</p> <p>2 of Cheero's when it was open for business?</p> <p>3 A No.</p> <p>4 Q You approached the van and you asked Mr. Hightower what he</p> <p>5 was doing, right?</p> <p>6 A Yes, in some manner.</p> <p>7 Q He told you he was waiting for a friend to come out of the</p> <p>8 bar, right?</p> <p>9 A Yes.</p> <p>10 Q You asked him how long he had been there and he told you he'd</p> <p>11 been there a half-hour?</p> <p>12 A Yes.</p> <p>13 Q That was not inconsistent with what you observed, was it?</p> <p>14 A No.</p> <p>15 Q At that point you asked him to get out and you handcuffed</p> <p>16 him, right?</p> <p>17 A Yes.</p> <p>18 Q You arrested him for trespassing?</p> <p>19 A Yes.</p> <p>20 Q You knew that he had been sitting in a van in a parking lot</p> <p>21 of a business that was open, correct?</p> <p>22 A With music blaring and drugs inside, yes.</p> <p>23 Q Does music blaring have anything to do with trespassing?</p> <p>24 A I absolutely think it's part of it, without a doubt.</p> <p>25 Q Is blaring music an element of trespassing?</p>	<p>Page 147</p> <p>1 A Yes.</p> <p>2 Q Did the owner tell you that Mr. Hightower didn't have</p> <p>3 authority to be there?</p> <p>4 A Explicitly Mr. Hightower, no. As a generalization, yes.</p> <p>5 Q How can someone generalize that they don't want Mr. Hightower</p> <p>6 on their property?</p> <p>7 A Forgive me. As a specific to Mr. Hightower, no. In general,</p> <p>8 people loitering in the parking lot and not patronizing the</p> <p>9 business, yes, that was expressed to us.</p> <p>10 Q Is picking up someone in a club part of patronizing a</p> <p>11 business?</p> <p>12 A I would defer that to a business owner. I would see maybe</p> <p>13 some business owners might say yes and others might say no.</p> <p>14 If it is an exceptionally busy night and that person is</p> <p>15 taking up a parking space away from four or five paying</p> <p>16 customers, if I ran a business, I would rather have that spot</p> <p>17 dedicated to four or five paying customers.</p> <p>18 Q But this was not your business?</p> <p>19 A It was not mine.</p> <p>20 Q Did you ask the owner if he objected to people parking there</p> <p>21 to pick up customers?</p> <p>22 A Did I?</p> <p>23 Q Yes.</p> <p>24 A No.</p> <p>25 Q Did anyone?</p>

<p>Page 148</p> <p>1 A Yes.</p> <p>2 Q Who?</p> <p>3 A Officer Tobin spoke to Mr. Lee. And, no, he is no longer employed with us.</p> <p>4</p> <p>5 Q Where is he employed, if you know?</p> <p>6 A I have no idea, sir. I don't know. He got a medical retirement.</p> <p>7</p> <p>8 I'm aware of a meeting with Officer Tobin and the owner, Mr. Lee, of Cheero's, and that information was relayed to me and other patrol officers by way of Captain VanderKooi that Mr. Lee said he does not want people hanging out in his parking lot.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Q One of the elements you told me -- one of the elements we talked about with trespass is that the person was not leaving. We agree that Mr. Hightower was not leaving when you saw him there?</p> <p>14</p> <p>15</p> <p>16</p> <p>17 A Yes.</p> <p>18 Q How long does a person have to sit before a decision is made that they're not leaving?</p> <p>19</p> <p>20 A I couldn't give you an individual time. It would be a case-by-case basis.</p> <p>21</p> <p>22 Q They have to have notice that they're not allowed to be there, right?</p> <p>23</p> <p>24 A Absent a no trespass letter, yes.</p> <p>25 Q The no trespass letter is a substitute for notice being given</p>	<p>Page 150</p> <p>1 you can buy at any hardware store or Wal-Mart. Pulling into the club or this vicinity, this area, no, I'm not aware of any signs referencing trespassing or no trespassing in the parking lot.</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Q I'm trying to understand. You know there is a sign or you think there is a sign on the door?</p> <p>6</p> <p>7 A I remember seeing a sign there. Whether or not it's still there, I have no idea.</p> <p>8</p> <p>9 Q From most of the spots in the parking lot, can you see that sign?</p> <p>10</p> <p>11 A Probably not.</p> <p>12 Q From the spot Mr. Hightower was in, would he have been able to see there was a no trespassing sign?</p> <p>13</p> <p>14 A That would depend on which route they took to park.</p> <p>15 Q While he's sitting in the spot he was in when you saw him, would he be able to see that sign?</p> <p>16</p> <p>17 A No, not from sitting in that position.</p> <p>18 Q Can we agree there was no way for Mr. Hightower to know he was not allowed to be sitting in that parking spot?</p> <p>19</p> <p>20 A I wouldn't agree with that. Again, I don't know which route they took to pull in. I can tell you on these nights as it started to get busy, there was a very strong police presence that would include our walking around, tapping on people's windows and telling them, "You either need to be in the club or you need to leave." We generally got a lot of complaints</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 149</p> <p>1 to a person that they're not allowed to be there?</p> <p>2 A If you're talking about for me to take enforcement --</p> <p>3 Q Yes.</p> <p>4 A The no trespass letter with signage, yes, I would say would be in lieu of a person from a business communicating to that -- whoever the person is that they're no longer welcome.</p> <p>5</p> <p>6</p> <p>7 Q For there to be a trespass, there has to be probable cause that the person has been notified by the owner to leave or a no trespass letter and signage, correct?</p> <p>8</p> <p>9</p> <p>10 A Yes.</p> <p>11 Q And we agree in Mr. Hightower's case there was no directive from the owner to leave, correct?</p> <p>12</p> <p>13 A Person to person, correct, no directive that I'm aware of.</p> <p>14 Q And there was a notice letter, correct?</p> <p>15 A Yes.</p> <p>16 Q But there was no signage, correct?</p> <p>17 A I am certain there was a no trespass letter at the front of the business, and if Mr. Hightower and Mr. Williams got out of the car to get to the front, I believe they would have seen it.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Q Excuse me, I believe you may have misspoken. A no trespass letter at the front of the business?</p> <p>22</p> <p>23 A Forgive me, no trespass signage. Whether that be gigantic pink letters that say, "Pay money to be here," or it's a small standard sign that looks like a garage sale sign that</p> <p>24</p> <p>25</p>	<p>Page 151</p> <p>1 out of that. Or we would have officers driving around -- and I've done this myself -- with a spotlight shining the spotlight into cars. Usually that can be -- that's an incentive for people that the officers are honking their horn and chirping their siren and shining their spotlight at us, that we should go inside or leave. Beyond that, I don't think it's unreasonable to think that if I'm sitting in a vehicle and I see two uniformed officers addressing behavior directly across from me of somebody doing exactly what I'm doing and I'm seeing those people being handcuffed, I'm seeing those people receiving citations, I'm seeing those people being spoken to by officers, and then I'm seeing those people released, I would say a reasonable, normal person would say I'm doing exactly what they're doing and the police contacted them and they got tickets, perhaps I shouldn't be doing what I'm doing.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Q Is there any way that Mr. Hightower should have known what you were arresting someone else for that night?</p> <p>18</p> <p>19 A I don't think it's unreasonable to think that. Would he have had knowledge exactly? No.</p> <p>20</p> <p>21 Q Did you ever knock on Mr. Hightower's window that night?</p> <p>22 A No.</p> <p>23 Q Are you aware of any police officer knocking on Mr. Hightower's window that night?</p> <p>24</p> <p>25 A No.</p>

40 (Pages 148 to 151)

Page 152	Page 154
<p>1 Q Are you aware of anyone telling Mr. Hightower he had to leave 2 that night? 3 A No. 4 Q When you're using the no trespassing letter at Cheero's, 5 would you agree you're using it as a tool to stop behavior 6 that has nothing to do with trespassing? 7 A I'm using it partially as a tool to stop violence, including 8 myself being hurt. 9 Q As a tool to stop noise for neighbors? 10 A Certainly. 11 Q If we look at your report, it says, in the second paragraph, 12 that Officer Rekucki contacted Williams and you contacted 13 Hightower, right? 14 A Yes. 15 Q The next paragraph says Officer Rekucki asked Williams from 16 the passenger side. Asked him what? 17 A I'm trying to convey there that Officer Rekucki asked 18 Mr. Williams out of the van on the passenger's side. 19 Q Again, this is because you see them playing loud music in a 20 parking lot and they've been there for 15 minutes, right? 21 A Precisely how much time they were there, I don't know. 22 Q You told me approximately -- 23 A Ballpark, 15 to 20 minutes. They are blaring loud music and 24 their bass. They're not making any effort to enter the club 25 or leave. They're seeing officers proactively addressing</p>	<p>1 marijuana was ever seen? 2 A From me, yes, I did not see the marijuana -- or the suspected 3 marijuana until the handcuffing procedure. 4 Q At that point in your mind was Mr. Hightower going to be 5 cuffed before you saw the marijuana? 6 A Oh, yes, absolutely, with or without the marijuana, he would 7 have been handcuffed. 8 Q Because he's a trespasser? 9 A Yes. 10 Q So he was arrested for trespassing before you even asked him 11 what he was doing, correct? 12 A I'm sorry, when you say he -- 13 Q Hightower. 14 A Hightower. It's hard to say he was arrested before he was 15 handcuffed. Did I formulate in my mind how this was probably 16 going to play out? Yes. I was pretty confident that he was 17 not going to tell me he was there to donate a kidney. One of 18 the knee-jerk responses that we hear is, I'm waiting to get 19 in line, I'm waiting to meet a friend, I'm lost, I was kicked 20 out and I don't have a ride. It runs the gamut. It's 21 difficult to substantiate what people are telling us. It may 22 come as a surprise, but a lot of people lie to the police. 23 Q But there are people who tell the truth to the police? 24 A Absolutely. 25 Q And there are people that do --</p>
Page 153	Page 155
<p>1 people sitting in cars, and then as we walked up, not only 2 are they argumentative, but we saw drugs within the van, yes. 3 Q At this point you hadn't seen drugs, though? 4 A Once I was up next to the van, yes, I did. 5 Q And you note that in your report, right? 6 A Yes. 7 Q You said initially he was argumentative and wouldn't get out 8 right? 9 A Yes. 10 Q And then he exited from the passenger's seat, right? 11 A Yes. 12 Q It was while he was exiting the van that you saw that 13 Williams was cupping a plastic bag in his hand, right? 14 A I saw that he was manipulating something in between his legs. 15 At that point there are two police officers and two people 16 that we're contacting. I was confident that it was not a 17 weapon. I believed that it may have been narcotics. In my 18 experience it's better to allow that situation to play out 19 and ensure my partner is seeing it versus yelling out, "I 20 think he has drugs, I think he has drugs," because then I 21 tipped my hand that I saw what he was doing, but -- 22 Q So you waited until he was cuffed? 23 A Right. During the handcuffing procedure is when I saw the 24 plastic bag containing what we believed to be marijuana. 25 Q Williams was in the process of being handcuffed before</p>	<p>1 A -- both. 2 Q And there are people who pull up to a bar and decide they 3 want to smoke a cigarette in their car before they go in, 4 right? 5 A Without a doubt. 6 Q And there are people who actually go pick up friends from 7 bars, correct? 8 A Yes, I'm sure that happens. 9 Q If you have a friend who is drinking at a bar, a good friend 10 is going to pick that person up, right? 11 A Yes. 12 Q How is that person to ensure that they're not going to be 13 trespassing while they're waiting to stop their friend from 14 driving drunk? 15 A I would say a guarded response to that to be safe is not 16 arrive too early, to ensure that there is a rally point, and 17 then once there to act like a civilized person and not blare 18 your bass in your stereo to the extent you're waking up the 19 neighborhood, and then if and when contacted by the police, 20 be able to immediately substantiate you are here to meet a 21 friend, call your friend to say, there's a uniformed officer 22 right next to me. Please come out here. Being that I'm 23 doing a service of picking you up -- allegedly because you've 24 been drinking -- could you please now do me the solid of 25 coming out to verify my story.</p>

41 (Pages 152 to 155)

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1 Q Did you ask Mr. Hightower to contact his friend and have his
 2 friend come out?
 3 A I don't remember if I did or not. I don't think so. I don't
 4 believe I did.
 5 Q Did you give him an opportunity to make a phone call while he
 6 was in the parking lot?
 7 A Well, he had ample opportunity to make a phone call without a
 8 doubt.
 9 Q After he was in your custody?
 10 A Not after he was in my custody.
 11 Q You're aware -- are you aware that a friend actually showed
 12 up at the police station afterwards, after Mr. Hightower was
 13 arrested?
 14 A I'm not aware of that, no.
 15 Q Why don't you take a look at your report?
 16 A If we're talking about in the middle where it says, a friend
 17 of Hightower and Williams lobbied to have the van turned over
 18 to him, but he was not the registered owner --
 19 Q Correct.
 20 A You asked if he showed up at the police station.
 21 Q Okay.
 22 A I'm not aware of anyone showing up at Grand Rapids police
 23 headquarters. If you had asked me did somebody --
 24 Q We don't have to argue about my semantics.
 25 A I'm sorry.

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1 Q So a friend of Hightower lobbied to have --
 2 A I have no idea who this person is. I do know this: They
 3 identified themselves and were not the registered owner of
 4 the vehicle.
 5 Q Did anyone ask this person if they were the friend waiting in
 6 the bar that was supposed to come out of the bar to get a
 7 ride?
 8 A I don't know if anybody did. I know I didn't.
 9 Q Did you ever make any contact with this person?
 10 A Who?
 11 Q The person that lobbied to have the van turned over to him.
 12 A Yes, there were some interactions. I remember they were not
 13 pleased that I would not turn over the van to them. As a
 14 practice, if the registered owner is not on scene with some
 15 type of a picture I.D. verifying that they are who they say
 16 they are, then I'm not going to turn a vehicle over.
 17 Q Did you do anything to confirm whether this person was able
 18 to assist you in determining whether Mr. Hightower was there
 19 to hang out in the parking lot or there to pick up a friend?
 20 A I don't think so, no. I may have, but I don't remember doing
 21 it if I did.
 22 Q Are people arrested in the lot at Cheero's for reasons other
 23 than trespassing in your experience?
 24 A Yes.
 25 Q Have you made arrests in there for reasons other than

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1 trespassing?
 2 A Yes.
 3 Q What are some of the reasons?
 4 A Creating a disturbance, disorderly conduct, fighting, alcohol
 5 violations, drug violations, bench warrants that are
 6 discovered after contacting somebody for whatever reason.
 7 Q If I was sitting in the parking lot at Cheero's and saw you
 8 making an arrest on a hiphop night, would I have any way of
 9 knowing whether an arrest was being made because of a bench
 10 warrant violation?
 11 A No.
 12 Q Would I have any way of knowing whether or not there was
 13 alcohol in the car?
 14 A Short of an officer removing an alcohol container and pouring
 15 it out, no. But to continue that, if we can role reverse, if
 16 I'm there to pick you up and the police are all over the
 17 place, I just think -- I think a logical person is going to
 18 pick up the phone to call to say, Friend -- this is the
 19 hypothetical that we're talking about. Dearest Friend, I'm
 20 here now to pick you up such that you don't drink and drive,
 21 so please come out of the establishment such that we can
 22 leave.
 23 Q Do you know if Mr. Hightower tried to call his friend?
 24 A I have no idea.
 25 Q Do you know if Mr. Hightower had a cell phone?

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1 A I don't know.
 2 Q Do you know if his friend had a cell phone?
 3 A I don't know. I know if he would have gone into the club, it
 4 would have been a moot point.
 5 Q Because he wouldn't have heard the phone ringing?
 6 A Well, he could have connected with his friend inside.
 7 Q If his friend was inside, would he have heard his cell phone?
 8 A Heard? Probably not. On vibrate, probably.
 9 MR. WALDMAN: We're going to have to take a quick
 10 break because it's going to take me a second to find what I'm
 11 looking for.
 12 (Brief recess held)
 13 BY MR. WALDMAN:
 14 Q I understand that your report indicates that Mr. Hightower
 15 told you that he was waiting for someone to come out. If we
 16 change one fact and assume that what he told you was that he
 17 was waiting for the line to shorten up and go in, does that
 18 change any analysis in your mind with regard to whether or
 19 not he was trespassing?
 20 A It probably would have changed my response in so much that
 21 standing at the door, I would have said, "Then you need to
 22 go," because at that point -- upon that contact, I'm well
 23 aware of how long he has been in that van, and I'm very
 24 comfortable saying, "You were here for the duration of this
 25 prior stop. You either need to go get in line to go in or

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1 it's time to leave." I'm very, very comfortable telling
 2 somebody that.
 3 Q Would you have told him the same thing if he -- you didn't
 4 tell him the same thing when he said, "I'm waiting for
 5 someone." Is there a distinction in your mind if someone
 6 says I'm waiting to go in as opposed to I'm waiting for
 7 someone to leave?
 8 A Yes.
 9 Q Why?
 10 A Because if somebody says I'm waiting for a friend or I'm
 11 meeting somebody, that's very difficult for me to
 12 substantiate, and also very easy for somebody to lie and
 13 cover up for. However, given the opportunity, I say, you
 14 either need to go inside the club or it's time for you to
 15 leave because I think you're trespassing. I can very easily
 16 substantiate if someone is telling me the truth if they're
 17 going in, because they would exit the vehicle and proceed
 18 toward the front doors.
 19 (Deposition Exhibit No. 21 marked)
 20 BY MR. WALDMAN:
 21 Q Exhibit 21 is an incident report form for another trespassing
 22 arrest at Cheero's?
 23 A Correct.
 24 Q This is another one of the reports that you reviewed in
 25 preparation for today's deposition, correct?

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1 A Yes.
 2 Q But you did not prepare this report, correct?
 3 A Yes.
 4 Q Can you tell me the name and spelling of the officer who
 5 prepared it?
 6 A Officer Andrew Rusticus.
 7 Q It's my understanding that Officer Rusticus is deceased?
 8 A Yes.
 9 Q You were working with him on January 8, 2012?
 10 A Yes.
 11 Q And you were at Cheero's?
 12 A Yes.
 13 Q Was it a hiphop night?
 14 A Yes.
 15 Q How do you know that?
 16 A Because Officer Rusticus and I were doubled up in the parking
 17 lot of Cheero's.
 18 Q That was something that happened on hiphop nights; you
 19 doubled up and --
 20 A And any other night of the week there would be no reason for
 21 our being there.
 22 Q It's not as though you ignored that location any other night
 23 of the week?
 24 A We didn't ignore it. There was no reason for us, the police,
 25 to be there.

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1 Q You didn't write any type of narrative in this report,
 2 correct, Exhibit 21?
 3 A Correct, these are all Officer Rusticus's words.
 4 Q Officer Rusticus indicates that you observed Percy sitting in
 5 the driver's seat of a four-door 1998 Cadillac, correct?
 6 A Yes.
 7 Q And is that consistent with your memory?
 8 A Yes.
 9 Q Do you have a memory of this incident?
 10 A Yes.
 11 Q Was he alone in the vehicle?
 12 A Yes.
 13 Q You approached him, correct?
 14 A Yes.
 15 Q How long had he been in his vehicle before you approached
 16 him?
 17 A He told me about ten minutes.
 18 Q At the point you approached him, did you have any idea how
 19 long he had been in his vehicle?
 20 A No.
 21 Q He also told you he was waiting for a friend, correct? I'm
 22 sorry. Did he tell you -- it says Officer Leonard made
 23 contact with Percy who stated he was waiting for a friend,
 24 correct?
 25 A Yes.

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1 Q Do you have a recollection of Percy telling you that?
 2 A Yes.
 3 Q Do you have a recollection of Percy telling you that he
 4 texted his friend?
 5 A No.
 6 Q Do you have --
 7 A That's not to say it didn't happen. I just don't remember
 8 him saying that.
 9 Q Do you have a recollection of Percy telling you he would show
 10 you the text?
 11 A No, I don't. Again, I'm not suggesting that didn't happen.
 12 I just don't remember that.
 13 Q So if he told you he had a text to show you -- to confirm
 14 that he was waiting for someone, you may or may not have
 15 looked at it?
 16 A Yet if he had said that, it's possible I may have looked at
 17 it; I may not have. Going back to this evening --
 18 Q Let's stick with the questions.
 19 A Go ahead.
 20 Q There's no indication on here that he was playing loud music,
 21 correct?
 22 A Correct.
 23 Q And you have no memory of him playing loud music, do you?
 24 A No.
 25 Q You would agree a person sitting alone in a car is consistent

<p>Page 164</p> <p>1 with someone waiting for another person at the club, right?</p> <p>2 A I would also agree it's consistent with all the problems that</p> <p>3 we were having at this location.</p> <p>4 Q The problems were people fighting, correct?</p> <p>5 A Correct.</p> <p>6 Q People consuming alcohol in their car, right?</p> <p>7 A Yes.</p> <p>8 Q People playing loud music?</p> <p>9 A Yes.</p> <p>10 Q Percy wasn't doing any of those things?</p> <p>11 A You forgot another one, which is people coming to the bar,</p> <p>12 parking in the parking lot, and then not being a customer,</p> <p>13 and I would say Percy was that. Is it possible that he was</p> <p>14 there to pick up a paying customer? Absolutely it was. Is</p> <p>15 it possible that he had arranged for a bazooka for him to</p> <p>16 blow up the building? That's also possible. I don't know.</p> <p>17 What I can tell you is that Percy was sitting in his vehicle</p> <p>18 and not making any effort to leave and not making any effort</p> <p>19 to go inside the club.</p> <p>20 Q So the only thing that Percy was doing was sitting in his</p> <p>21 vehicle for ten minutes, correct?</p> <p>22 A I don't know if it was ten minutes or not. That's what he</p> <p>23 told us. I know that the owner of Cheero's has relayed to</p> <p>24 the Grand Rapids Police Department that he did not want</p> <p>25 people hanging out in the parking lot who were not his</p>	<p>Page 166</p> <p>1 Q So in black ink you've circled where Percy was parked,</p> <p>2 correct?</p> <p>3 A Yes, sir.</p> <p>4 Q Why don't you put a PB inside that circle just to designate</p> <p>5 that that's where Percy was. You've done that, correct?</p> <p>6 A Yes.</p> <p>7 Q What's the distance to the front door from where Percy was</p> <p>8 parked?</p> <p>9 A I don't know. Maybe 25 yards.</p> <p>10 Q What time did you stop Percy?</p> <p>11 A Shortly before 2:00 a.m. About 1:39 in the morning.</p> <p>12 Q Shortly before the club was getting ready to close?</p> <p>13 A Yes.</p> <p>14 Q That would also be consistent with somebody picking up</p> <p>15 somebody from a club?</p> <p>16 A That's also when the bulk of the people show up for the</p> <p>17 ambiance.</p> <p>18 Q Instead of answering a different question, answer my</p> <p>19 question. That is consistent with someone picking somebody</p> <p>20 up when the bar is about to let out?</p> <p>21 A Yes.</p> <p>22 Q Is there any way that Percy should have known that his</p> <p>23 presence on the property at that point was not authorized?</p> <p>24 A I have no idea.</p> <p>25 Q There were no arrests of other people being made at that</p>
<p>Page 165</p> <p>1 customers.</p> <p>2 Q Did you ask Percy to leave?</p> <p>3 A No.</p> <p>4 Q Do you know if anyone asked Percy to leave?</p> <p>5 A No, I don't know.</p> <p>6 Q Do you know if the owner asked Percy to leave?</p> <p>7 A No, I don't.</p> <p>8 Q Do you know if Percy was aware of the fact that there was a</p> <p>9 trespass letter?</p> <p>10 A I'm sorry, I was coughing.</p> <p>11 Q Do you know if Percy was aware there was a trespass letter on</p> <p>12 this piece of property?</p> <p>13 A No, I'm not aware.</p> <p>14 Q Were there any no trespass signs visible to Percy?</p> <p>15 A From his location it is possible he could have seen the</p> <p>16 front.</p> <p>17 Q On Exhibit 20 just point to me where Percy was parked.</p> <p>18 A I'll use my pen but I'll circle it because I keep coughing</p> <p>19 into my hands. I remember his being about right there</p> <p>20 (indicating).</p> <p>21 Q Actually, let's circle it with your pen.</p> <p>22 A Okay.</p> <p>23 Q That way we'll have a different color for Percy, too,</p> <p>24 correct?</p> <p>25 A (Witness complied)</p>	<p>Page 167</p> <p>1 point, were there?</p> <p>2 A I don't think so, no.</p> <p>3 Q There were no people shining lights in Percy's car -- or no</p> <p>4 police officers shining lights in Percy's car, were there?</p> <p>5 A I don't know.</p> <p>6 Q You didn't do it, did you?</p> <p>7 A We may have. I honestly don't know.</p> <p>8 Q Well, was Percy ever in your custody?</p> <p>9 A Yes.</p> <p>10 Q For how long?</p> <p>11 A I have no idea. I can tell you that according to the</p> <p>12 FileMaker report, the incident was initiated at 1:39 in the</p> <p>13 morning of January 8, 2012, and the report was begun at 1:50,</p> <p>14 so I would be comfortable saying it was under 21 minutes,</p> <p>15 because as a practice we're not going to begin the report</p> <p>16 until we're done dealing with the person as a practice.</p> <p>17 Q Did you wait to see if anybody ever came out to Percy's</p> <p>18 vehicle?</p> <p>19 A No.</p> <p>20 Q Are there ever cabs waiting outside of Cheero's to pick</p> <p>21 people up at the end of the night?</p> <p>22 A Not to say I haven't seen them, but as a practice, no, there</p> <p>23 is not a lineup or a cab line.</p> <p>24 Q Let's say that there was a cab waiting for someone to come</p> <p>25 out. Would you arrest the cab driver for trespassing?</p>

44 (Pages 164 to 167)

<p>Page 168</p> <p>1 A If the business owner had said that he has a severe problem 2 with the cab companies being in his lot, yeah, I would 3 address that with the taxicab companies. I think to be 4 reasonable, I would rather have a cab driver waiting in a 5 parking lot if that meant that he would prevent somebody from 6 driving home drunk. 7 Q The no trespass letters, when they're signed, is there a 8 limitation on when they're in effect? In other words, I know 9 there's a one-year cycle, right? 10 A Yes, sir. 11 Q And during that one-year cycle the no trespass letter is in 12 effect 24, slash, 7, right? 13 A Yes. To my knowledge, there are no qualifiers, no trigger 14 effects that would enhance or nullify a trespass letter. 15 Q If Mr. Lee signed a trespass letter, that trespass letter is 16 in effect on hiphop night? 17 A Yes. 18 Q It's in effect when it's not hiphop night? 19 A Yes. 20 Q Did you ever enforce the no trespass letter when it wasn't 21 hiphop night? 22 A No, there was never a need to. 23 Q You never went there when it wasn't hiphop night, right? 24 A When it wasn't hiphop night, frequently that business -- I 25 don't even think they were open, but on nights not on these</p>	<p>Page 170</p> <p>1 Q Wouldn't they also want people to come pick up patrons of the 2 bar? 3 A Pick up, yes. Hang out in the parking lot for an extended 4 time, based on what Mr. Lee told us, no. 5 Q In a case like Mr. Brown where he's there for ten minutes, 6 he's by himself, he's not loud, he's not smoking, he's not 7 drinking, what is it that makes his presence there 8 unauthorized? 9 A To preface my answer, on the hiphop night, right around 10 shortly after 1:30 in the morning, there's a flood of 11 activity, cars pouring into the parking lot at bar close, and 12 they're not getting there -- they're not going there 13 predominantly to make last call. They're there to take in 14 the ambiance of the bar closing, so they're in the parking 15 lot, they're taking up spaces, they're taking up police time, 16 they're taking up security time, and yet the owners and 17 management are not profiting from these people at all. So 18 with Mr. Brown, I have no means in our dialogue of verifying 19 if what he is telling me is true, I don't know if he's lying, 20 I don't know if he's telling me the truth. 21 Q You assumed he was lying, though, right? 22 A Well, what I would say is I've heard that response before, 23 and frequently I have found it to be not true. For all I 24 know Mr. Brown may be a saint who's never told a lie in his 25 entire life.</p>
<p>Page 169</p> <p>1 high-volume nights, there were not hordes of people dancing 2 on cars, there were not random fights, there were not murder 3 attempts, there was not drug trafficking, and there were not 4 people screaming at the top of their lungs for hours. So, 5 no, I did not enforce it on a night that I guess we could for 6 lack of a better bookkeeping title say on off-hiphop nights, 7 because it was on hiphop nights when we had the violence and 8 the quality-of-life issues. 9 Q When someone is on a business property that's open for 10 business, one way to support that business is to be a 11 customer, correct? 12 A Yes. 13 Q And one way to support that business is to just contribute to 14 the trade, so to speak? In other words, if a cab driver 15 enters the parking lot of Cheero's to drop someone off at the 16 bar, it's fair to assume that the owner of the bar wants that 17 cab driver on their property, right? 18 A Yes. 19 Q And the same goes for a cab that is going to pick up the 20 person? 21 A Yes. 22 Q And by the same token, wouldn't the owner of the property 23 want someone who is not a professional cab driver to drop 24 people off at the bar? 25 A Yes, that's reasonable.</p>	<p>Page 171</p> <p>1 Q He may be someone trying to rescue his friend from that 2 environment you just described, right? 3 A By putting himself in harm's way and putting himself right in 4 the thick of things, yes. 5 Q I mean, my daughter worked at a bar. I was there every night 6 from 2:00 to 2:30 to keep her out of harm's way from that 7 very same ambiance you just described. Am I a trespasser? 8 A I would say, no, you're not trespassing. 9 Q What's the difference between me and Mr. Brown? 10 A Are you sober? 11 Q I'm sober. Was Mr. Brown sober? 12 A I have no idea. If I felt he was drunk, I wouldn't have let 13 him drive away. 14 Q And you let him drive away. You had no reason to give him 15 any type of alcohol testing? 16 A Precisely. Mr. Brown, in my opinion, fell right into the 17 wheelhouse of what Mr. Lee was asking us to address, which is 18 people arriving at his bar, sitting in the parking lot, 19 taking up his parking spots, and not being his customer. 20 Q It still has to be criminal behavior before you arrest 21 someone whether or not Mr. Lee wants you to address it or 22 not, right? 23 A What I saw met the elements of trespassing. 24 Q But am I correct, it still has to be criminal behavior 25 regardless what Mr. Lee wants, correct?</p>

45 (Pages 168 to 171)

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1 MR. LANNEN: Asked and answered.
 2 THE WITNESS: Right, and if I didn't think it was a
 3 crime, I wouldn't have written him a ticket.
 4 BY MR. WALDMAN:
 5 Q And for it to be a crime, again, you have to have probable
 6 cause for every single element of the crime, correct?
 7 A Yes.
 8 Q So in determining whether or not there is probable cause for
 9 each element, what's the difference between me and
 10 Percy Brown when I go to pick up my daughter from her job at
 11 a bar?
 12 MR. LANNEN: Objection, improper hypothetical.
 13 THE WITNESS: The difference is I don't work in
 14 your hometown, my unit commander has not asked me to address
 15 behavior of men coming to rescue their daughter from possible
 16 violence after ending their shift at a bar, you are not
 17 playing loud, blaring music, I'm presuming you're not
 18 carrying narcotics, nor am I dodging bullets and breaking up
 19 massive fights and getting people off their cars dancing to
 20 hip-hop music while you're trying to get your daughter from
 21 whatever bar it is.
 22 BY MR. WALDMAN:
 23 Q Let me give you the scenario then. It's downtown East
 24 Lansing. There are people dancing on cars.
 25 A Are you wearing a Michigan hat or not?

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1 Q No, I'm not.
 2 A Okay.
 3 Q There are people dancing on cars.
 4 A Yes.
 5 Q There are people dancing in the street, there are people
 6 walking around falling down drunk, there are people fighting
 7 screaming at each other.
 8 A I've been to this party.
 9 Q There are people stopping employees of the bar, particularly
 10 young women, from getting out the door and down the stairs,
 11 and I'm parked in the parking lot of an adjoining business
 12 that I'm not going to buy anything from. My music is playing
 13 at the same volume as Mr. Brown's. I'm just as sober as
 14 Mr. Brown. I have the exact same amount of drugs in my car,
 15 all zero. What's the difference between me and Mr. Brown?
 16 MR. LANNEN: Objection. Misstates prior testimony,
 17 but go ahead.
 18 THE WITNESS: Do you want me to walk you through
 19 that situation?
 20 BY MR. WALDMAN:
 21 Q I want to know what the -- you're giving me examples of
 22 things that you have to deal with in Cheero's parking lot.
 23 A Right. I would say one of the glaring differences is that
 24 we're talking about your intent. Your intent is removing
 25 your daughter safely. I am presuming Mr. Brown's intent is

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1 to take in the ambiance, to be there as a witness of this,
 2 for short instances, lawlessness going on. I had a number of
 3 people tell me that the reason that they're coming to
 4 Cheero's is because it is, quote, the spot, end quote.
 5 Q But Mr. Brown didn't tell you that, did he?
 6 A No, he did not, but Mr. Brown is in the parking lot doing
 7 what others have told me they're doing, which is taking in
 8 that ambiance. So what I would say is the intent. I guess I
 9 will fall back on what the supreme court -- I don't know who
 10 the justice was who said when describing pornography, I can't
 11 define it, but I know it when I see it. I'm very confident
 12 that if I were to encounter a dad in an adjoining bar parking
 13 lot who calmly said to me, Officer, it's kind of chaotic
 14 here, I'm here to pick up my daughter, I'm pretty confident
 15 that a rational, normal, especially a fellow father, would
 16 say, you know what, I can understand that, especially if --
 17 the mere fact that you're there -- because most middle-age,
 18 white males are probably not going to frequent Cheero's on
 19 hip-hop night, I'm very comfortable saying you're probably
 20 there to pick up your daughter. When I have another male
 21 that I can't substantiate, text message or no, that he's not
 22 there simply to occupy the parking spot and simply to see
 23 what's going to unfold and what's going to develop in the
 24 next 20 minutes -- I'm scrambling for the words, but I'm
 25 saying it's exactly the same, but they're worlds apart.

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1 Q Did you search Percy?
 2 A Yes.
 3 Q Did you find anything?
 4 A No.
 5 Q Did you search his car?
 6 A Yes.
 7 Q Did you find anything?
 8 A No.
 9 Q When you talk about giving me the benefit of the doubt if I'm
 10 sitting in the Cheero's parking lot, does my age, middle-age
 11 man, have something to do with it?
 12 A Hip-hop is for predominantly younger people, yes.
 13 Q How old is Mr. Percy?
 14 A I don't know.
 15 Q Does it say on your report?
 16 A Forty-two.
 17 Q Is that a middle-age man in your mind?
 18 A Yes, and my response was predominantly.
 19 Q You would agree that Percy is middle-age, right?
 20 A Yes.
 21 Q This is a risky question, but would you agree I'm middle-age?
 22 A Yes.
 23 Q Would you agree -- does Percy look middle-age?
 24 A Yes.
 25 Q Does he look older than me? You won't hurt my feelings.

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1 A Subjective. No, I don't think he looks older than you.
 2 Q We're close in age, fair?
 3 A Sure.
 4 Q I'm white, right?
 5 A You are?
 6 Q I'm asking you. Am I white? You're not able to make that
 7 observation?
 8 A I would say, yes, you're probably Caucasian.
 9 Q What about Percy's race?
 10 A He might be black, he might be Dominican, he could be
 11 Puerto Rican.
 12 Q You don't know?
 13 A I have no idea.
 14 Q Would you agree he's a person of color?
 15 A Well, I'm white and white's a color.
 16 Q Percy was something other than white? Can we agree on that,
 17 or still is?
 18 A Based on Percy's skin appearance, yes, he does not appear to
 19 be Caucasian.
 20 Q What does the police report say?
 21 A Race, B for black.
 22 Q How was that determination made?
 23 A I have no idea. What I can tell you --
 24 Q Is that a determination you make as a police officer?
 25 A No, not normally.

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1 Q How do you fill out the reports then?
 2 A If you let me finish. These are drop-down boxes, and it's a
 3 pretty limited array of answers that we have, so --
 4 Q So what options do you have when you pull down the drop-down
 5 box?
 6 A You have a U for unknown, an A for Asian, a W for White, a B
 7 for Black, and then an I for Indian, and I believe those are
 8 all of the choices.
 9 Q Are you just supposed to make your best guess, or do you look
 10 at a driver's license and try to figure it out?
 11 A I think it's a best guess. I have forever argued that if
 12 we're going to include that qualifier, we should probably
 13 include all ethnicities, because I don't think an Inuit or a
 14 Pacific Islander, a person of that heritage -- technically, I
 15 wouldn't be able to identify them on a FileMaker police
 16 report. If you hear Indian, I think some people might think
 17 somebody from India or they could be thinking Native
 18 American.
 19 Q Regardless of your opinion or my opinion of that system or
 20 whether or not black is even an ethnicity, those are the
 21 options you're given?
 22 A Correct.
 23 Q So if you had to prepare the drop-down box based on your
 24 memory of Percy, what would you have selected?
 25 A B for black.

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1 Q Any other differences between my appearance and Percy's
 2 appearance as we're sitting out in the parking lot waiting at
 3 Cheero's other than race?
 4 A No.
 5 MR. WALDMAN: That's all. Thanks.
 6 MR. LANNEN: I'm not going to ask any questions. I
 7 might make the request to reserve examination at some point
 8 in the future rather than continue on at 8:30 in the middle
 9 of a snow storm.
 10 MR. WALDMAN: Why don't I keep the exhibits,
 11 because we have more depositions tomorrow, and I'll bring
 12 them to the deposition.
 13 MR. LANNEN: Yes, that's fine.
 14 (Deposition concluded at 8:30 p.m.)
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1 CERTIFICATE
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF OTTAWA)
 5 I, Kathryn Trap Hevelhurst, Notary Public in and
 6 for the County of Ottawa, State of Michigan, do hereby
 7 certify that the foregoing deposition was taken before me at
 8 the time and place hereinbefore set forth and that said
 9 witness was duly sworn by me to tell the truth, the whole
 10 truth, and nothing but the truth, and thereupon was examined
 11 and testified in the foregoing deposition.
 12 I further certify that this deposition was taken
 13 in shorthand by me, transcribed with the aid of a computer,
 14 in compliance with the regulations set forth in the Court
 15 Reporter Manual published by the Michigan State Court
 16 Administrator's Office, and that it is a true and correct
 17 transcript.
 18 IN WITNESS WHEREOF, I have hereunto set my hand
 19 this 31st day of January, 2014.
 20
 21
 22 _____
 23 Kathryn Trap Hevelhurst, Notary Public
 24 in and for the County of Ottawa
 25 State of Michigan.
 Commission expires: 4/23/2015