

STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION

GREGORY BOMBARD,

Plaintiff,

v.

JAY RIGGEN, Vermont State Police
Trooper, and STATE OF VERMONT,

Defendants.

Washington Unit
Docket No. 21-CV-176

DECLARATION OF JAMES DIAZ IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGEMENT

I, James M. Diaz, declare as follows:

1. I am a citizen of the United States. I am over 18 years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in support of Plaintiff's Motion for Summary Judgment.

2. I am an attorney with the Foundation for Individual Rights and Expression and counsel for Plaintiff in this action. I am admitted to the bar of the States of Vermont.

3. A true and correct copy of the transcript of Plaintiff Gregory Bombard's November 13, 2023 deposition is attached as **Exhibit 1**.

4. A true and correct copy of the transcript of Defendant Jay Riggen's February 21, 2018 Affidavit is attached as **Exhibit 2**.

5. A true and correct copy of the transcript of Defendant Jay Riggen's October 5, 2023 deposition is attached as **Exhibit 3**.
6. A true and correct copy of excerpts of the transcript of Lieutenant Tara Thomas's August 30, 2023 deposition is attached as **Exhibit 4**.
7. A true and correct copy of excerpts of the transcript of Chief Maurice Lamothe Jr.'s August 30, 2023 deposition is attached as **Exhibit 5**.
8. A true and correct copy of the Vermont State Police's Investigative Motor Vehicle Stop Directive [VSP-DIR-403] is attached as **Exhibit 6**.
9. A true and correct copy of Defendant Jay Riggen's February 9, 2018 Police Cruiser video recording is attached as **Exhibit 7**.
10. A true and correct copy of the February 9, 2018 St. Albans barracks video recording is attached as **Exhibit 8**.
11. A true and correct copy of the February 9, 2018 Email from Defendant Jay Riggen to VSPMedia is attached as **Exhibit 9**.
12. A true and correct copy of the Information in *State v. Bombard*, Docket No. 241-2-18 (Vt. Sup. Ct. Feb. 28, 2018) is attached as **Exhibit 10**.
13. A true and correct copy of the Decision on Defendant's Suppress and Dismiss at 3–4, Docket No. 241-2-18 (Vt. Sup. Ct. Aug. 31, 2018) is attached as **Exhibit 11**.
14. A true and correct copy of the Amended Information in *State v. Bombard*, Docket No. 241-2-18 (Vt. Sup. Ct. Nov. 21, 2018) is attached as **Exhibit 12**.

15. A true and correct copy of the Ruling on Motion to Dismiss Count Two, Docket No. 241-2-18 (Vt. Sup. Ct. Dec. 18, 2016) is attached as **Exhibit 13**.

16. A true and correct copy of the Docket sheet of 241-2-18 (Vt. Sup. Ct. Dec. 18, 2016) is attached as **Exhibit 14**.

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury, or other sanctions in the discretion of the court.

Executed on December 15, 2023.

/s/ James M. Diaz
JAMES M. DIAZ

CERTIFICATE OF SERVICE

Plaintiff's counsel confirms that a true and correct copy of the foregoing was served via the Court's electronic filing system on this day, December 15, 2023.

Notice of this filing will be sent by operation of the Court's electronic filing system.

DATED: December 15, 2023

Respectfully submitted,

/s/ James M. Diaz

Respectfully submitted,

/s/ James M. Diaz

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EXHIBIT 1

STATE OF VERMONT
SUPERIOR COURT CIVIL DIVISION
WASHINGTON UNIT DOCKET NO. 21-CV-176

GREGORY BOMBARD,)
Plaintiff,)
vs.)
JAY RIGGEN, Vermont State Police)
Trooper, and STATE OF VERMONT,)
Defendants.)

Deposition of Gregory Bombard
held at 110 Main Street
Burlington, Vermont
on November 13, 2023
beginning at 10 a.m.

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8 I N D E X

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18 deposition)
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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED by
and between counsel as follows:

1. That the requirements of notice of
the taking of the deposition have been
complied with;

2. That the proof of the qualifications
of the Notary Public be waived;

3. That all objections except as to the
form of the question shall be reserved to
the time of trial.

1 (10:08 a.m.)

2 GREGORY BOMBARD

3 Having been duly sworn, testified
4 as follows:

5 EXAMINATION

6 BY MS. FLYNN:

7 Q. Would you state your name for the record,
8 please.

9 A. Gregory Bombard.

10 Q. Have you ever been deposed before?

11 A. No.

12 Q. What would you like to be called for purposes
13 of your deposition?

14 A. Greg.

15 Q. Okay. Greg, I introduced myself a short while
16 ago. My name is Susan Flynn. I'm an attorney
17 representing Trooper Riggins [sic].

18 There are some guidelines I'm going to go over
19 that will make the process go more smoothly for all of us,
20 I think. One is that you'll have to use words for your
21 responses. If you were to just nod your head or if you
22 were to gesture or say a a-hum, that could be difficult
23 for our court reporter, as good as she is, to get down
24 accurately. Does that work?

25 A. Yes.

1 Q. Okay. It's also important that you wait until
2 I finish my question entirely before you start responding
3 so that we are not talking at the same time. Again, that
4 will make our court reporter's job a lot easier. Does
5 that work?

6 A. Yes.

7 Q. And then finally, if any of my questions are
8 confusing or unclear, it's important that you stop me and
9 have me restate the question until you're comfortable you
10 know what I'm asking. Okay?

11 A. Okay.

12 Q. If you don't do that and you just answer a
13 question, I'm going to assume you knew what I was asking.
14 Does that seem reasonable?

15 A. Yes.

16 Q. Okay. So let me get some background
17 information on you. Although first I will ask you this.
18 What did you do to prepare for your deposition? And Greg,
19 I don't want any conversations with counsel. What I'm
20 really focused on is did you look at any materials, review
21 any records, videos, recordings, anything like that?

22 A. Yes.

23 Q. What did you do?

24 A. Looked at the video. I looked at the video.

25 Q. Okay. So the dashcam video --

1 A. A-hum.

2 Q. The trooper's video?

3 A. Yes.

4 Q. Okay. Did you do anything else?

5 A. I looked at some reports.

6 Q. Okay. What kind of reports did you look at?

7 A. Some past police reports or something. Yes.

8 Q. Okay. And the past police reports, did they
9 relate to this incident or other incidents?

10 A. It did not relate to this incident.

11 Q. Okay. So what did they relate to?

12 A. They -- a Facebook comment that I posted.

13 Q. Okay. So you looked at past police reports
14 that related to a Facebook comment that you posted; is
15 that correct?

16 A. Say that again.

17 Q. You looked at past police reports that related
18 to a Facebook post or Facebook comment that you posted; is
19 that correct?

20 A. And I see you looking over at your attorney.

21 Q. Yeah. So just so that we are on the same
22 page, as you know, he can't help you answer questions.

23 A. Yeah.

24 Q. At the conclusion of a question, in other
25 words, once you provide a response, if you want to take a

1 break for any reason, including to talk to your attorney,
2 you can do that.

3 A. Yeah.

4 Q. All right?

5 A. Okay. So can you repeat the question?

6 Q. I'm going to ask Kim to repeat it because I
7 can't -- I'm good for like two, and then I won't be able
8 to remember it.

9 (The record was read as requested)

10 THE WITNESS: Yes. Yup.

11 BY MS. FLYNN:

12 Q. Okay. And so describe the police reports for
13 me.

14 A. The police report was past. It was in the
15 past. One was from 1995.

16 Q. Okay.

17 A. And I believe that's it. Yeah.

18 Q. Okay. So while you testified as to past
19 police reports, you looked at one past police report
20 relating to this Facebook post of yours?

21 A. No. No.

22 Q. You looked at more than one?

23 MR. DIAZ: Objection. Counsel, I'm
24 going to object just -- I think it's vague. But I
25 think to facilitate this a little bit, the question

1 of what a report is might be, you know, what his
2 understanding of report might be might move this
3 forward.

4 MS. FLYNN: Yeah. So I appreciate
5 that, Jay. One of the things I worry about in all
6 depositions, and I'm not suggesting that you were
7 attempting to do this, but sometimes a speaking
8 objection can actually signal to the witness how to
9 craft or answer a question. And so I'm pretty much
10 "objection to form." That's fine.

11 If you want to take me aside because
12 you think I'm, you know, frustratingly lost in a
13 question, which happens --

14 MR. DIAZ: Sure.

15 MS. FLYNN: -- we can do that out of
16 earshot of the witness. And then we don't risk
17 running afoul of that very important rule.

18 MR. DIAZ: Sure thing. Let me chat
19 with my client just one second.

20 MS. FLYNN: Okay. So now we are
21 pending a question. What I was contemplating --

22 MR. DIAZ: You want him to answer that.

23 MS. FLYNN: Yes. If you want to talk
24 to me to tell me why I'm missing it, I'm happy for
25 you and I to talk. Then we don't have to worry about

1 the witness hearing what's going on in a way that
2 might influence his response.

3 MR. DIAZ: That's fine. Let's finish
4 the question, and then we can -- I can advise my
5 client.

6 MS. FLYNN: Okay. Can you find the
7 last question, Kim?

8 (The record was read as requested)

9 BY MS. FLYNN:

10 Q. So you can answer that, and then you can meet
11 with your attorney.

12 A. I looked at a police report from 1995. Where
13 -- do you want the description?

14 Q. Sure.

15 A. Where someone said I was tailgating her or
16 something on Interstate 89. And then from 1996 where a
17 friend, or former friend, said I called her a name on the
18 phone or said something to her on the phone derogatory.

19 MS. FLYNN: Okay. Do you want to meet?
20 I think -- I mean, I think, look, I don't know if he
21 knows what we are talking about. I'm going to get
22 more information if that's helpful to you. So it's
23 up to you.

24 BY MS. FLYNN:

25 Q. All right. Greg, so I'm going to ask you some

1 more questions about these -- what you described as past
2 police reports. One from '95 and one from '96. Okay?

3 A. Yes.

4 Q. Can you describe -- you said something about a
5 police report from 1995 and something about you tailgating
6 someone. Did I get that right?

7 A. Yes. Or getting close to her car.

8 Q. Okay. Can you tell me about that?

9 MR. DIAZ: Objection. Objection. I'm
10 going to object to further questions about police
11 reports from 1995 and older because it's unnecessary,
12 harassing, and oppressive to the witness.

13 MS. FLYNN: Okay. So are you
14 instructing him not to answer? Because only really
15 two grounds to do that. One, is that it's not --
16 there is no good faith basis for it. And the other
17 is that it's a privileged communication.

18 MR. DIAZ: That's not what I agree
19 with. I'm saying it's oppressive under rule, I
20 think, 30(d)3. And so I'm going to instruct him to
21 not answer further questions about police reports
22 dating back to 1995.

23 MS. FLYNN: Okay. So --

24 MR. DIAZ: Not anywhere close to the
25 scope of the relevance of this case.

1 MS. FLYNN: It has become relevant
2 because he looked at it in order to prepare for this
3 deposition. In other words, his eyes were on that
4 document because it was going to somehow inform him
5 for purposes of this deposition; therefore, making it
6 quite relevant.

7 MR. DIAZ: I'm also going to object in
8 addition as to work product because these documents
9 were provided by counsel. And therefore, talking
10 more about these documents will relate to the mental
11 impressions of counsel in determining what documents
12 were provided to the client during advice.

13 MS. FLYNN: Right. Which is one
14 hundred percent always the case. Counsel provides
15 documents for a witness to review. The witness
16 reviews those documents in order to remind them,
17 inform them, provide some assistance in the course of
18 a deposition. Those documents then become relevant
19 because of that.

20 MR. DIAZ: Yeah. My objection stands
21 on both counts -- both grounds. I'm instructing my
22 client not to answer further questions about any
23 police reports related back -- dating back to 1995.

24 MS. FLYNN: Okay. Just so that I'm
25 clear, you provided him with police reports from '95

1 and '96. You provided them in order for him to
2 prepare for his deposition. And now you claim that
3 I'm not entitled to ask him about those documents
4 because they are work product. Is that what you're
5 saying?

6 MR. DIAZ: That, and because they are,
7 under rule 30(d)3 to ask questions about these things
8 which have no relationship to this deposition and no
9 possible relevance whatsoever, are oppressive under
10 30(d)3.

11 MS. FLYNN: You do appreciate that when
12 you state that they have no possible relevance
13 whatsoever, it begs the question why Mr. Bombard was
14 looking at them in order to prepare for his
15 deposition. You do appreciate the weak foundational
16 basis for that.

17 MR. DIAZ: Well that's a question
18 you're asking of me. He has no idea why they were
19 provided and why he reviewed them. That is a
20 question I answered because I am his attorney and
21 that I decided to do.

22 MS. FLYNN: So as I go forward with
23 this deposition, I will have absolutely no
24 understanding how, if at all, those documents are
25 informing his testimony. And you believe that that's

1 a fair basis for objection.

2 MR. DIAZ: Yes. And because there are
3 no actual -- there is no -- those documents are not
4 informing the basis of his testimony whatsoever.

5 MS. FLYNN: Well I've yet to explore
6 that. That's the point. You gave them to him. He
7 looked at them. He says he did it for purposes of
8 his deposition, so I get to explore that with him.
9 That's the way it works.

10 MR. DIAZ: Not under rule 30(d)3,
11 whereas I see them as strongly oppressive and totally
12 unnecessary and unrelated to this deposition.
13 Therefore, to ask about it as of 1995 I'm going to
14 instruct the client not to answer.

15 MS. FLYNN: So you get to offer them to
16 him for his review, and then you get to prevent me
17 from figuring out why he reviewed them and how they
18 may have informed his testimony. That's the way you
19 think it goes.

20 MR. DIAZ: You can ask him how they
21 might inform his testimony, but you can't ask him
22 about those documents.

23 MS. FLYNN: I can't do one without the
24 other, Jay. That's the problem. That's why in my
25 experience always you show documents to a witness at

1 risk that those documents will become something that
2 he has -- the witness has to discuss at a deposition.
3 If you don't want the witness to do that, then you
4 don't show him the documents.

5 MR. DIAZ: What I'm saying is to ask it
6 -- the documents were shown because of reasons his
7 counsel decided to, thereby protecting -- those
8 mental impressions are protected under work product
9 as well as attorney-client privilege.

10 In addition, asking about documents
11 from 1995 that have no relationship to the case at
12 hand, which took place in 2018, we are going to
13 object and instruct the client not to answer going
14 forward about the substance of those documents.

15 MS. FLYNN: All right. Well then we
16 will have to seek the court's advice on this. And it
17 will be at your cost. At least that's what I'll be
18 requesting. Because, frankly, it seems wholly
19 indefensible to me that you can ask a witness to
20 review documents in order to prepare them for their
21 deposition but then you deprive the questioning
22 attorney from asking about those documents, and
23 therefore, understanding how they may have informed
24 the witness.

25 And I would be very interested in some

1 precedent on this. Because, you know, I have been
2 doing this for awhile.

3 MR. DIAZ: Well again, the objections,
4 just to be clear, are under rule 30(d)3 that asking
5 about these types of police reports from 1985 will
6 have no possible relevance here is oppressive to the
7 witness. And, in addition, the reasons that he was
8 shown those are protected work product.

9 MS. FLYNN: Sure.

10 MR. DIAZ: But that's just to be clear
11 on the record what the objection is.

12 MS. FLYNN: No. No. The stated basis
13 is clear. The rationale for the stated basis is far
14 from clear.

15 BY MS. FLYNN:

16 Q. So you looked at a police report from 1995;
17 you looked at a police report from 1996. What else did
18 you look at, Greg, to prepare for your deposition this
19 morning?

20 A. I don't believe anything. I don't remember.

21 Q. When did you prepare for your deposition?

22 A. Last Wednesday. Whatever the date was.

23 Q. Okay. So today's Monday. So we are talking
24 about four or five days?

25 A. Yes.

1 Q. Okay. So you looked at -- how many records do
2 you think you looked at?

3 A. Two maybe. Three.

4 Q. Three pieces of paper?

5 A. I saw two police reports on a laptop. So
6 whether it was a piece of paper on there, yes.

7 Q. Okay. How many pages would you say you looked
8 at?

9 A. One each.

10 Q. So one page for 1995 police report, and one
11 page for a 1996 police report?

12 A. Actually I didn't see the 1996 police report.
13 Jay --

14 MR. DIAZ: I'm going to stop you right
15 there. You don't talk about what was discussed.
16 Attorney-client privilege.

17 BY MS. FLYNN:

18 Q. You looked at a 1995 police report, one page.

19 A. Yes.

20 Q. Okay. And although I don't want to know the
21 contents of any conversations with your attorney, you did
22 not look at a police report from 1996?

23 A. No.

24 Q. Okay. So to prepare for your deposition,
25 which occurred last Wednesday, you looked at one piece of

1 paper or one page of a document on a computer and it was a
2 police report from 1995?

3 A. Yes.

4 Q. And as you sit here today, do you believe that
5 police report from 1995 refreshed your memory as to any
6 events at issue in this lawsuit?

7 A. Can you repeat that, please?

8 Q. Do you believe that that one page of a police
9 report from 1995 refreshed your memory as to any matters
10 at issue in this lawsuit?

11 A. No.

12 Q. So where were you born?

13 A. St. Albans, Vermont.

14 Q. What year were you born?

15 A. 1966.

16 Q. Where did you go to school? Did you go to
17 BFA?

18 A. Yeah. BFA St. Albans. Yeah.

19 Q. When did you graduate?

20 A. 1984.

21 Q. Where do you live currently?

22 A. St. Albans, Vermont.

23 Q. What's your address?

24 A. 7 Ashton Drive. St. Albans.

25 Q. A-S-H-T-O-N?

1 A. Yes.

2 Q. How long have you lived at 7 Ashton Drive, St.
3 Albans?

4 A. 25 years.

5 Q. Do you live there alone, or do you live there
6 with others?

7 A. I live there with one other person.

8 Q. Who's the other person you live there with?

9 A. My mother.

10 Q. What is her name?

11 A. Anna Bombard.

12 Q. Are you related to Mike Bombard?

13 A. Yes.

14 Q. Project Soar? S-O-A-R.

15 A. Yes.

16 Q. What's his relation to you?

17 A. He's my brother.

18 Q. Before living on Ashton Street in St. Albans,
19 where did you live?

20 A. I lived in Tennessee. Moved back.

21 Q. So after you graduated from BFA, Greg, did you
22 go on to have more education?

23 A. Yes.

24 Q. What did you do?

25 A. I went to Champlain College for one semester

1 and quit.

2 Q. Okay. I'm sorry. What did you study at
3 Champlain College?

4 A. Business.

5 Q. And then you quit Champlain College after a
6 year, and what did you do after that?

7 A. I took a year off and then went to Community
8 College of Vermont and gained an associate's degree.

9 Q. Okay. What was your associate's degree in?

10 A. Liberal studies. Yeah.

11 Q. What year, more or less, did you graduate from
12 Community College of Vermont?

13 A. 1990.

14 Q. So between -- I'm going to guess you graduated
15 from BFA in the mid '80s?

16 A. Yes. 1984.

17 Q. Okay. So before that, and before you
18 graduated from Community College of Vermont, what did you
19 do?

20 A. I worked for my father.

21 Q. And what did your father do at that time?

22 A. He owned a bakery/deli.

23 Q. In St. Albans?

24 A. Yes.

25 Q. What did you do for him?

1 A. Assisted him.

2 Q. And then after you did that, what did you do?

3 A. After I did what?

4 Q. After you assisted your father at the
5 bakery/deli, what did you do? Did you stay in St. Albans?

6 A. No. I went to a travel academy and travel
7 school.

8 Q. And where is the travel school?

9 A. It was in Williston, Vermont.

10 Q. And what was your intention going to travel
11 school in Williston, Vermont?

12 A. To become a travel agent, travel consultant.

13 Q. Before they -- while they were still a thing
14 to be, huh?

15 A. Yeah, yeah, yeah.

16 Q. Did you become a travel agent?

17 A. Yes.

18 Q. And when did you become a travel agent?

19 A. 1993.

20 Q. And where did you work as a travel agent?

21 A. I worked in St. Albans; Tennessee; and South
22 Burlington, Vermont.

23 Q. What was the name of the business app or the
24 business that you worked for as a travel agent in St.
25 Albans?

1 A. It had two names. Rail City Travel/Rail
2 Travel Center Tours.

3 Q. Okay. And how long did you work there?

4 A. Two and-a-half years.

5 Q. What did you do after working there for two
6 and-a-half years?

7 A. I went to Costco Wholesale.

8 Q. Okay. In Colchester?

9 A. Yes.

10 Q. What did you do there?

11 A. I'm still there. And I have been a clerk.

12 Q. Let me ask you something, Greg. Are you on
13 any medications right now?

14 A. Yes.

15 Q. Okay. Are you on any medication, to your
16 knowledge, that have the side effect of impacting your
17 ability to remember things?

18 A. No.

19 Q. Are you on any medications for conditions that
20 can affect or impair your memory such as depression or
21 anxiety?

22 A. No.

23 Q. What medications are you on?

24 MR. SARACHAN: Objection.

25 MR. DIAZ: Objection.

1 MS. FLYNN: I think the -- I think you
2 mean objection, but he can answer.

3 MR. DIAZ: Objection to the -- no. I'm
4 going to object for privacy purposes because you
5 asked if any medications are going to affect his
6 memory. He doesn't have to tell you what other
7 medications he might be on that would reveal other
8 private health conditions.

9 MS. FLYNN: So you're going to object
10 on the -- you're instructing him not to answer; is
11 that right?

12 MR. DIAZ: That's correct.

13 MS. FLYNN: I mean relevance obviously
14 is not the basis to prevent someone from answering
15 during a deposition.

16 MR. DIAZ: I didn't say relevance.
17 Again, rule 30(d)3 it's, you know, I'm happy for you
18 to ask him about whether any medications might affect
19 his ability to testify today. But he said no.
20 Therefore, that wouldn't affect his ability. He
21 doesn't have any conditions that would affect that
22 ability to testify truthfully, and so to ask him what
23 medications he's on after that, you know, is private,
24 protected health information, and again, oppressive,
25 embarrassing for his own privacy purposes. So I'm

1 going to instruct him not to answer that question.

2 MS. FLYNN: So you do understand that
3 he may provide me answers that I don't necessarily
4 know to be accurate. And that that ought to entitle
5 me to ask questions that will elicit sufficient
6 information so that I can agree or disagree with Mr.
7 Bombard's characterization.

8 MR. DIAZ: Well none of us are doctors
9 here, so I don't know if -- how we could evaluate by
10 knowing what medications he is on whether they impact
11 his memory or ability to testify truthfully.

12 I'm going to instruct him not answer
13 this question because it's unnecessary and impacts
14 his private health information.

15 MS. FLYNN: So do you know yourself
16 whether or not any of the medications that Mr.
17 Bombard is on --

18 MR. DIAZ: That's not an appropriate
19 question.

20 MS. FLYNN: Sure it is.

21 MR. DIAZ: I'm not going to answer that
22 question.

23 MS. FLYNN: Let's say he's on a
24 medication that has a primary side effect of memory
25 impairment.

1 MR. DIAZ: You already asked him that.
2 He said no. What else do you need?

3 MS. FLYNN: You understand the whole
4 purpose of the deposition is not just hear what Mr.
5 Bombard has to say, but to get information that could
6 allow me independently to corroborate or not the
7 assertions that he makes during the deposition.
8 Right?

9 I don't have -- if he says, you know,
10 did you hit Mr. Rigger, he says no, that's the end of
11 it. You don't ask more questions. He's already
12 provided that answer. That's the whole purpose of
13 the deposition. I get to explore. And if it's
14 sensitive and such that it should never come into
15 trial, then you file a motion for protective order.

16 MR. DIAZ: That's what we will do.

17 MS. FLYNN: That's fine. But you
18 haven't done that. So I get to have the information
19 so that I can figure out whether Mr. Bombard's
20 thinking about it is accurate or inaccurate.

21 MR. DIAZ: We can either adjourn now
22 and we can file for a protective order, or you can
23 continue subject to us filing a protective order
24 later without us waiving any rights to file that
25 protective order as relates to the medications that

1 Mr. Bombard is on.

2 There is no relevance and no --

3 MS. FLYNN: But don't even know that
4 yourself. You don't even know that yourself.

5 MR. DIAZ: The objection stands, and
6 I'm instructing my client not to answer the question.

7 MS. FLYNN: Why don't you file a motion
8 for protective order then.

9 MR. DIAZ: We will. Do you want to
10 continue today's deposition?

11 MS. FLYNN: Do you want to try to reach
12 the court?

13 MR. DIAZ: We can.

14 MS. FLYNN: Go ahead.

15 MR. DIAZ: Where is the phone?

16 (Noise in the room)

17 MS. FLYNN: You know what? It's a
18 difficult enough deposition without comments from
19 someone who is not involved in the process. It is.

20 MR. SARACHAN: I'm involved in the
21 process.

22 MS. FLYNN: Well I would just --

23 MR. SARACHAN: I'm very involved in the
24 process, so don't condescend me, please. I
25 appreciate it. I know that you're very experienced.

1 You've told us that. But you don't have to
2 condescend me. Please. Don't. Let's not.

3 MS. FLYNN: You're at the table.

4 MR. SARACHAN: Please stop, stop, stop.

5 MS. FLYNN: You're not taking or
6 defending the deposition. So comments, size, it's
7 not helpful. You're making comments under your
8 breath.

9 MR. SARACHAN: I actually made one
10 comment, and it was -- it was Byzantine. I
11 apologize.

12 MS. FLYNN: Was that helpful?

13 MR. DIAZ: The choice before us right
14 now, Susan --

15 MR. SARACHAN: Is this helpful?

16 MR. DIAZ: Hang on. The choice before
17 us now is do you want to continue? Or would you like
18 to adjourn so we can file for a protective order?

19 MS. FLYNN: You can try. We can try to
20 get the Washington Superior Court on the telephone.

21 MR. DIAZ: Okay.

22 MS. FLYNN: Is there a telephone here?
23 Do you have a cell phone?

24 MR. DIAZ: You're the one challenging
25 our objection here, so if you would like to call

1 court, you're welcome to.

2 MS. FLYNN: Don't you have to move for
3 a protective order? Wouldn't that be --

4 MR. DIAZ: I don't need to move right
5 now. I'm instructing my client not to answer the
6 question. Whether you want to try to compel him to
7 answer this question at this moment is your decision.

8 MS. FLYNN: I'm going to take a break
9 of 5 minutes, and I'll get back to you on that.

10 (Recess was taken.)

11 MS. FLYNN: Can you read back the last
12 question please, Kim?

13 (The record was read as requested)

14 BY MS. FLYNN:

15 Q. And I understand you're not going to tell me.

16 A. No.

17 Q. Are you -- is there anything -- any reason why
18 we should think that your testimony here this morning is
19 not accurate or reliable?

20 A. No.

21 Q. Why did you go to Tennessee?

22 A. Because I was young and there was some friends
23 down there, and I just wanted to go and get away.

24 Q. How long did you live down there?

25 A. Less than a year.

1 Q. Other states that you've lived in other than
2 Vermont and Tennessee?

3 A. Colorado.

4 Q. When did you live in Colorado?

5 A. '95.

6 Q. Just for the year? Less than a year?

7 A. About 30 to 40 days and came home.

8 Q. Other than Tennessee, Colorado and Vermont
9 have you lived in any other states?

10 A. No.

11 Q. Have you ever been convicted of a crime?

12 MR. DIAZ: Objection. Instruct the
13 witness not to answer pursuant to the privilege under
14 13 V.S.A. 7606.

15 MS. FLYNN: Well please -- I'm not
16 familiar what privilege would exist there.

17 MR. DIAZ: It's Vermont's expungement
18 of criminal records statute.

19 MS. FLYNN: Okay.

20 BY MS. FLYNN:

21 Q. So have you ever been convicted of a crime
22 that has not apparently been expunged under Vermont's
23 expungement of a criminal record statute?

24 MS. FLYNN: Kim, can you repeat that
25 please?

1 (The record was read as requested)

2 MR. DIAZ: Objection to form.

3 THE WITNESS: No.

4 MR. DIAZ: You can answer.

5 BY MS. FLYNN:

6 Q. Not in Tennessee? Not in Colorado?

7 A. No.

8 Q. Have you been involved in any other lawsuits?

9 A. No.

10 Q. So other than Mike, you have other siblings?

11 A. Yes.

12 Q. Who?

13 A. I have a sister.

14 Q. What's her name?

15 A. Bonnie.

16 Q. Where does she live?

17 A. St. Albans.

18 Q. So just the three of you? You, Mike and

19 Bonnie?

20 A. Yes.

21 Q. And are you close?

22 A. Yes.

23 Q. Do you get together regularly?

24 A. Yes.

25 Q. How frequently would you say you get together

- 1 with Bonnie?
- 2 A. Once a week.
- 3 Q. How about Mike?
- 4 A. Once a week.
- 5 Q. Do you have close friends?
- 6 A. Yes.
- 7 Q. Who would you count among your closest of
- 8 friends if you had to pick three?
- 9 A. My friend Sarah. And Kelly.
- 10 Q. Okay. Sarah's last name is what?
- 11 A. Maginn. M-A-G-I-N-N.
- 12 Q. Does she live locally St. Albans, Franklin
- 13 County?
- 14 A. Yes.
- 15 Q. And Sarah -- that was Sarah; is that right?
- 16 A. Yes.
- 17 Q. The other one you mentioned?
- 18 A. Her name is Kelly.
- 19 Q. Kelly. What's her last name?
- 20 A. Greeno. G-R-E-E-N-O.
- 21 Q. Does she live in Franklin County?
- 22 A. Yes.
- 23 Q. Do you see them regularly?
- 24 A. No.
- 25 Q. Do you see your family more?

1 A. Yes.

2 Q. What do you do for a living currently?

3 A. I work at Costco Wholesale.

4 Q. What do you do for them?

5 A. A clerk.

6 Q. What does a clerk do for Costco Wholesale?

7 A. Well there is different types of clerk. I'm a
8 member service clerk. A membership clerk.

9 Q. How long have you been a membership clerk for
10 Costco Wholesale?

11 A. I have been there for 23 and-a-half years, but
12 about 12 years as a membership clerk.

13 Q. Is it a full-time position for you?

14 A. No.

15 Q. It's a part-time position?

16 A. Currently.

17 Q. How long has it been a part-time position?

18 A. I've never been officially full time there. I
19 have had full-time hours, but I'm part time.

20 Q. Okay. Is there a reason, Greg, that you've
21 never been -- even though you're working full-time hours
22 you've never been officially full time?

23 A. Yes.

24 Q. What's the reason for that?

25 A. I don't want it. I don't want to work full

1 time there.

2 Q. Okay.

3 A. I have worked full time many, many hours
4 there. But --

5 Q. Okay. So it's a more flexible schedule for
6 you?

7 A. Yes.

8 Q. And what do you do when you're not working at
9 Costco Wholesale given that you don't want the full-time
10 hours and commitment?

11 A. Recently go to Planet Fitness. Go shopping.
12 I mean -- help my mother out. Yeah.

13 Q. Do you have any particular hobbies or past
14 time, pastimes that you engage in?

15 A. No.

16 Q. Are you a hunter?

17 A. No.

18 Q. Have you ever been a hunter?

19 A. No.

20 Q. So other than spending time with your friends,
21 you help out with your mother. Does your mother have any
22 particular challenges?

23 A. She is 88.

24 Q. So just help her because as she gets older she
25 needs more support?

1 A. Yeah. Running errands for her. Things like
2 that.

3 Q. So other than the events that give rise to
4 this lawsuit, Greg, have you had any direct encounters
5 with the police?

6 A. Repeat that, please.

7 Q. Other than the events that give rise to this
8 lawsuit, have you had any other encounters with the
9 police?

10 MR. DIAZ: Objection. I'm going to
11 advise my client to the extent that you can provide
12 information that is not protected by 13 V.S.A. 7606,
13 you can answer. But other than that, you should not
14 answer.

15 MS. FLYNN: Isn't there going to be
16 some waiver of any privilege associated with that
17 information insofar as it relates to this lawsuit?
18 Generally, you know, you can't protect information
19 that might be useful or relevant given some -- the
20 claims of a lawsuit. Right?

21 MR. DIAZ: Which is -- I have
22 instructed my client to the extent that information
23 is protected, he should not respond with any
24 information that is protected. Otherwise, he can
25 respond.

1 MS. FLYNN: Right. But if it proves to
2 be relevant to this lawsuit; right? I mean we could
3 agree to keep it confidential, we have never -- as
4 far as I can tell nobody's had a conversation about
5 whether there should be a confidentiality agreement
6 with regard to any information that's part of the
7 lawsuit. Right? That's always an option; a
8 reasonable option. So that information that might be
9 relevant to the lawsuit, but otherwise confidential
10 or sensitive, is limited to the people involved in
11 the lawsuit and destroyed after the culmination of
12 the lawsuit.

13 MR. DIAZ: I think we are happy to
14 stipulate to whatever information is available about
15 the -- the subject matter of this lawsuit which is a
16 police stop and arrest on February 9, 2018. That's,
17 of course, fair game.

18 MS. FLYNN: Right. But --

19 MR. DIAZ: And not within -- not within
20 the privilege as far as I'm concerned.

21 MS. FLYNN: But would you agree that
22 privileged information can be relevant in a different
23 context, like this type of lawsuit? And if it is,
24 then it's not appropriate to withhold the privileged
25 information.

1 The better approach would be to agree
2 to some kind of confidentiality agreement so that any
3 sensitive information doesn't leave, effectively,
4 this room. But it's not --

5 MR. DIAZ: I can agree that all types
6 of information is relevant, but if it is privileged,
7 it is privileged and is not to be -- not a part of
8 this lawsuit.

9 MS. FLYNN: Right. But you do, by
10 bringing this type of lawsuit, waive your privilege
11 as to certain matters. I would suggest that if
12 you're --

13 MR. DIAZ: I'm not aware of any such
14 privilege as it relates to -- any such waiver of
15 privilege under 13 V.S.A. 7606.

16 MS. FLYNN: Yeah. So he could have
17 encounters with police that can look very similar to
18 this or might have influenced the way he responded
19 here or even affected his experience of this event
20 and, therefore, be relevant to his damages. But I
21 don't get to ask him about that. That's your
22 position.

23 MR. DIAZ: My objection -- and as I
24 advised my client -- is to the question that was
25 asked which I believe was have you ever had any -- I

1 can't remember the exact question.

2 My instruction to my client was to the
3 extent it would reveal privileged information under
4 13 V.S.A. 7606, do not provide that information. You
5 can answer outside of that.

6 BY MS. FLYNN:

7 Q. All right. I disagree with that. In this
8 context. Can you answer the question?

9 A. Repeat the question, please.

10 Q. Well I think it's my question, but you might
11 as well take it from your attorney because he's got
12 qualifications that I have not imposed. So go ahead.
13 You're the last one asking.

14 MR. DIAZ: I don't have the -- I don't
15 remember what the question was. There's a question
16 pending. I can give my instruction after the
17 question is read.

18 (The record was read as requested)

19 MS. FLYNN: Respectfully, I'm assuming
20 -- So clearly the question's pending.

21 MR. DIAZ: Okay.

22 MS. FLYNN: And you're talking to him
23 before he responds to it. I assume it's in good
24 faith, Jay, because you seem like a decent person.

25 MR. DIAZ: Yes.

1 MS. FLYNN: But don't --

2 (The record was read as requested)

3 MR. DIAZ: Objection. To the extent
4 that you can provide information -- the privilege is
5 13 V.S.A. Section 7606. To the extent you can
6 provide information outside of that privilege, you
7 can answer. Anything inside that privilege you
8 cannot or should not.

9 THE WITNESS: I don't understand.

10 MR. DIAZ: You don't understand the
11 question or you don't understand my instruction?

12 THE WITNESS: I don't understand yours.

13 MR. DIAZ: Okay.

14 THE WITNESS: So the answer to the
15 question is no.

16 MS. FLYNN: Okay.

17 BY MS. FLYNN:

18 Q. Would you say that you harbor any particular
19 feelings or attitudes towards police officers generally,
20 Greg?

21 A. No.

22 Q. Okay. So on the subject of police officers
23 and law enforcement you would say that your attitude is
24 neutral?

25 A. Yes. Yeah.

1 Q. And you haven't had any negative experiences
2 with police officers?

3 A. No.

4 Q. And any close family members have not, to your
5 knowledge, had any negative experience with police
6 officers?

7 A. No.

8 Q. So what damages are you claiming that you
9 sustained because of the interaction with Trooper Riggins?

10 MR. DIAZ: Objection to form. You can
11 answer.

12 THE WITNESS: Damages? I don't
13 understand the question.

14 BY MS. FLYNN:

15 Q. Well you filed a lawsuit; right? You're
16 nodding your head yes. You'll have to say yes so that Kim
17 can get that down.

18 A. Yes.

19 Q. Okay. And do you know you're seeking certain
20 relief in the lawsuit; right?

21 A. Yes.

22 Q. And part of the relief that you're seeking is
23 compensation for harms that have occurred to you. Does
24 that make sense?

25 A. Yes.

1 Q. What compensation -- what harms are you
2 alleging, Greg, occurred to you for which you believe you
3 are entitled to compensation?

4 A. Harms, like my constitutional rights were
5 violated. Certain constitutional rights were violated.

6 Q. Okay. Anything else?

7 A. I don't know how you want me to answer this.
8 Basically that the damages are my constitutional rights
9 were violated by a law enforcement officer. And I was
10 interrogated on the side of the road and pulled over for
11 no reason. So degraded, humiliated.

12 Q. Okay. So are you alleging that the experience
13 caused you to feel humiliated or other psychological
14 distress?

15 A. Yes.

16 Q. Are you seeking compensation for that?

17 MR. DIAZ: Objection. Mischaracterizes
18 previous testimony.

19 MS. FLYNN: I don't -- can we talk for
20 a second outside of this?

21 MR. DIAZ: Happy to.

22 MS. FLYNN: Okay.

23 (A discussion was held off the record.)

24 MS. FLYNN: Okay. So just on the
25 record, it is concerning to me when an objection is

1 made followed by a statement which could have the
2 effect, whether it's intended to or not, of informing
3 the witness or educating the witness about how to
4 answer a question, and that's what I had hoped to
5 have a conversation with Attorney Diaz about. You
6 wanted to say something?

7 MR. DIAZ: I don't have -- I don't know
8 that there is a need to respond, but I would guess I
9 would just say that I did not, of course, in any way
10 do anything improper. I did not provide a speaking
11 objection. I'm not sure what the problem is with
12 saying an objection and stating the basis for that
13 objection in a very short, simple phrase which is
14 very common.

15 MS. FLYNN: I thought you wanted to be
16 on the record. I thought you had said we should be
17 on the record, which is why I came back.

18 MR. DIAZ: No. I said if you wanted to
19 continue, you know, the conversation we had outside
20 because it was going in circles, then we should put
21 it on the record. Otherwise, we can just continue.

22 MS. FLYNN: Can you read back the
23 question please, Kim.

24 (The record was read as requested)

25 THE WITNESS: Yes.

1 BY MS. FLYNN:

2 Q. And would you describe what it is that you
3 experienced for which you're seeking compensation?

4 A. I experienced a violation of my constitutional
5 rights. Other than that, embarrassment, humiliation,
6 anger. Just felt violated.

7 Q. So have you sought any kind of treatment for
8 those conditions? Your embarrassment, humiliation, anger
9 or the feeling that you were violated?

10 A. No.

11 Q. Do you intend to seek any treatment for those
12 conditions?

13 A. No.

14 Q. Have those conditions affected the way that
15 you go about your job?

16 A. No.

17 Q. Have those conditions affected the way in
18 which you interact with Kelly or Sarah?

19 A. No.

20 Q. Have they affected the way you interact with
21 your family members?

22 A. No.

23 Q. Have they affected the way that you present
24 yourself in the community?

25 A. Yes.

1 Q. How so?

2 A. I live in a small town. And I don't like to
3 be seen as much because of the embarrassment and
4 humiliation because of the articles that were written
5 about me in newspapers and a police vlog, blog.

6 Q. Blog with a B, I think you mean?

7 A. From the VSP website. Their -- their Facebook
8 page where they post arrests and other things.

9 Q. Has anyone raised the -- has anyone brought it
10 to your attention, Greg, that they are aware of any of the
11 information in the Vermont State Police blog or from any
12 other source that reflects the events that we are here to
13 talk about today? Has anyone said, for example, hey Greg,
14 I heard you were pulled over by Trooper Rikken. I heard
15 you were cited. Anything like that?

16 A. Yes.

17 Q. Who has told you that?

18 A. Many people.

19 Q. Who are the many people who have told you
20 that?

21 A. Co-workers. Even strangers.

22 Q. Okay.

23 A. Strangers. Friends. Co-workers.

24 Q. So I had asked you -- anybody else or any
25 category of person you want to add to co-workers, friends

1 or strangers?

2 A. A category?

3 Q. Yeah. I'm going to ask you in more detail
4 about specific people. But you sort of shared that
5 co-workers, friends, and strangers are aware of these
6 incidents.

7 A. Yes.

8 Q. Okay. Who are the co-workers who have shared
9 with you that they are aware of them?

10 A. I don't remember.

11 Q. Not one person?

12 A. Yeah. Yeah. I can remember one. Yeah. Her
13 name is Jessica. A co-worker. Yeah.

14 Q. Can you remember what the interaction was?

15 A. Yes.

16 Q. What was the interaction?

17 A. I was stretching my hands at work because I
18 use a keyboard, and she cracked a joke and said: Don't do
19 that. You might get arrested for it.

20 Q. Okay. So did you have reason to think that
21 Jessica felt differently about you because she was aware
22 of it? In other words, she treated you different from the
23 way she would have otherwise?

24 A. No.

25 Q. Okay. Any other co-workers you can think of?

1 A. No. Not at this time.

2 Q. Friends?

3 A. Yes.

4 Q. What friends have shared with you that they
5 were aware of the events that gives rise to the lawsuit?

6 A. The ones I previously mentioned.

7 Q. Sarah and Kelly? You'll just have to say yes
8 if that's what you --

9 A. Yes.

10 Q. You said a moment ago that Sarah and Kelly --
11 it didn't affect the way you interacted with them. Is
12 that true?

13 A. Yes. It didn't affect the way I interact with
14 them.

15 Q. Okay. So do you have reason to think that
16 Sarah or Kelly think about you differently having become
17 aware of these events than they otherwise did?

18 A. Yes.

19 Q. And why do you say that?

20 A. Because it was a strange event. Unusual event
21 that happened to me.

22 Q. But it hasn't affected your friendship?

23 A. No.

24 Q. What about strangers? Strangers you said have
25 -- you're -- you believe that strangers are aware of these

1 events?

2 A. Yes.

3 Q. Can you give me some examples of how you've
4 learned that strangers were aware of these events and --

5 A. Yes.

6 Q. Okay.

7 A. I work at a very busy place. And I had an
8 interaction with a member: Aren't you the one that was on
9 TV that was the arrested for -- saying something
10 derogatory to a police officer? Yeah.

11 Q. Okay. So can you recall other instances,
12 other than the one with a member who said aren't you the
13 one who was on TV?

14 A. No.

15 Q. And do you believe that the interaction with
16 this member was tainted or negatively affected by the
17 member apparently having that information?

18 A. Yes.

19 Q. How so?

20 A. It was embarrassing and humiliating at work.
21 It was at work.

22 Q. To you?

23 A. Yes. Yes. To me. Is that what your question
24 was?

25 Q. Well what I was focused on is whether the

1 interaction with this customer seemed to be affected by
2 this information. In other words, you felt humiliated
3 because the customer was aware of it; is that right?

4 A. Yes.

5 Q. But do you have reason to think that it
6 somehow affected the way that you and the customer
7 interacted? In other words, was the customer angry
8 towards you? Was the customer dismissive towards you?
9 Was the customer somehow not treating you the way you
10 thought the customer would otherwise treat you?

11 MR. DIAZ: Objection to form. You can
12 answer.

13 THE WITNESS: No. The customer was
14 nice.

15 BY MS. FLYNN:

16 Q. Any other examples of strangers --
17 interactions with strangers that demonstrated to you that
18 they were aware of the events at issue?

19 A. No.

20 Q. You described yourself perhaps in the present
21 tense as someone who, other than work, takes care of your
22 mother and spends time with friends. Is that --

23 A. Yes.

24 Q. -- generally what you do?

25 A. Yes.

1 Q. Have you ever been involved in the community?
2 Have you ever been on any committees or the City Council,
3 or I don't know, any activities? You're in St. Albans
4 town?

5 A. Yes.

6 Q. For the Town of St. Albans?

7 A. No.

8 Q. It seems, Greg, and you can tell me if I'm
9 wrong, it seems like you're someone who is, no criticism,
10 not particularly active in your community. Is that a fair
11 statement?

12 A. No. I'm not.

13 Q. You're not?

14 A. No.

15 Q. And in terms of like many people you like to
16 hang out with the people that you're close to. Right?

17 A. Yes.

18 Q. You don't do a lot of activities with groups
19 of people whom you don't know.

20 A. True. Yes.

21 Q. How would you describe your general demeanor?
22 Are you a laid-back guy? Are you kind of intense? Are
23 you quick to anger? How would you describe your --

24 A. I'm a laid-back person.

25 Q. All the time?

1 A. Yeah. Yes.

2 Q. Any particular things that you can think of
3 over the years that really set you off or trigger you?

4 A. Well I work in customer service. It's just
5 you keep it in your -- you don't express yourself. You
6 keep it to yourself.

7 Q. Okay. So there are things -- I think what
8 you're saying is that there are things that sometimes tick
9 you off or trigger you, but because you're in customer
10 service you just have to stay even keeled?

11 A. Yes. Yeah.

12 Q. Do you think that your friends Sarah, Kelly,
13 would describe you as someone who flies off the handle or
14 is quick to anger?

15 MR. DIAZ: Objection to form. You can
16 answer.

17 THE WITNESS: Would they describe me as
18 that? No. No.

19 BY MS. FLYNN:

20 Q. Okay. So you can't recall if you think back
21 to the last, I don't know, 5 or 10 years, an incident
22 where you really lost it getting angry or yelling or --

23 A. No.

24 Q. -- loud?

25 A. No.

1 Q. Do you have reason to believe that the
2 troopers in the St. Albans' barracks somehow knew you
3 personally or knew of your reputation?

4 MR. DIAZ: Objection to form. You can
5 answer.

6 THE WITNESS: I don't know.

7 BY MS. FLYNN:

8 Q. You don't know one way or the other?

9 A. No. No.

10 Q. So February 9, 2018. This incident sort of
11 unfolded more or less around midday?

12 A. Yeah. Around 11:30 a.m. to noonish. Around
13 there.

14 Q. Do you have a memory as to what you had been
15 doing that morning?

16 A. Yes.

17 Q. What had you been doing?

18 A. I had just returned from Dunkin Donuts. I got
19 an iced coffee, and I was on my way to the St. Albans post
20 office to collect my mail at my P.O. Box.

21 Q. Okay. Do you remember what day of the week it
22 was?

23 A. Friday? I'm not sure. I think it was a
24 Friday.

25 Q. I will represent to you that it was a Friday.

1 And it was a Friday -- around that time, 2018, did you
2 have a set schedule at Costco?

3 A. Yes.

4 Q. What was your schedule?

5 A. Oh, no. I didn't. No. You never get a set
6 schedule at Costco.

7 Q. What does that mean? Every couple of weeks
8 you have to --

9 A. It's different -- your days off are different.
10 I happened to have Friday off that day which the next week
11 I might have not had Friday off.

12 Q. Okay. So do you remember what you had done
13 the night before?

14 A. Yes.

15 Q. What had you done the night before?

16 A. I drove for Uber for about three or four
17 hours.

18 Q. Okay. Is that something that you continue to
19 do?

20 A. No.

21 Q. Drive for Uber?

22 A. No.

23 Q. But you did back in 2018?

24 A. Yes.

25 Q. And any particular reason you did that?

- 1 A. Yes.
- 2 Q. What was that?
- 3 A. To be out of credit card.
- 4 Q. So do you remember if you had worked late the
5 night before?
- 6 A. Yes.
- 7 Q. When did you work until?
- 8 A. About 11 p.m.
- 9 Q. Okay. And then was that something you would
10 do that if you didn't have to work the next day you might
11 work for Uber at night or is it --
- 12 A. Yes. Yeah.
- 13 Q. All right. So on that particular morning you
14 had left your home on Ashton Drive. You had gone to
15 Dunkin Donuts. And you had gotten an iced coffee?
- 16 A. Yes.
- 17 Q. And then you were headed to the post office?
- 18 A. Yes.
- 19 Q. And you were headed -- you were headed south;
20 is that right? On Main Street?
- 21 A. Yes.
- 22 Q. Do you recall when -- where Trooper Riggins
23 was in the roadway when your attention was first drawn to
24 him?
- 25 A. No.

1 Q. What do you first recall in terms of seeing a
2 police cruiser? Do you --

3 A. Yes, I do recall.

4 Q. Yeah. What do you remember? What drew your
5 attention to a police cruiser?

6 A. He was in back of my vehicle with his blue
7 lights on.

8 Q. Okay. So the first time that you were sort of
9 drawn to the presence of Trooper Riggins on North Main
10 Street in St. Albans on February 9, 2018, was when he was
11 behind you with his blue lights on?

12 A. Yes.

13 Q. And do you remember what you were thinking as
14 you noticed him behind you with his blue lights on?

15 A. Yes.

16 Q. What were you thinking?

17 A. To pull over so he can carry on and go
18 somewhere.

19 Q. Okay.

20 A. Because it's the law to pull over when there
21 is a police officer with the lights on.

22 Q. Okay. So when you first were drawn to the
23 presence of this officer behind you, you had in mind he
24 must want you to pull over. It didn't occur to you that
25 his being behind you had anything to do with anything you

1 did; is that right?

2 A. Correct. I thought he was going to some other
3 call.

4 Q. Okay. And so when you first saw the police
5 officer behind you, you pulled over?

6 A. Yes.

7 Q. And do you remember your state of mind at the
8 time he pulled you over?

9 A. Yes.

10 Q. How would you describe that?

11 A. Confusing. Confused. To wonder; wonder.

12 Q. Okay. So from what you said, you tell me if I
13 have this right, Greg, you don't have any particular
14 feelings about police officers. You said earlier that
15 you're neutral as it comes to your attitude towards police
16 officers?

17 A. Yes.

18 Q. So you've got this neutral attitude towards
19 police officers. And then a police officer is behind you
20 pulling you over, and you don't think anything of it; is
21 that right? Except confusion because you don't think it
22 has to do with you?

23 A. Yes. Yes.

24 Q. And you appreciate that Trooper Riggins at
25 some point seemed to think that you gave him the finger;

1 is that right?

2 A. I appreciate -- can you repeat that?

3 Q. Yeah. Did you not believe that Trooper
4 Riggins at some point believed you gave him the finger?

5 MR. DIAZ: Objection to form. You can
6 answer.

7 THE WITNESS: Do I not believe that --

8 BY MS. FLYNN:

9 Q. Why do you think Trooper Riggins, in fact,
10 pulled you over?

11 A. He assumed I gave him the bird. The finger.

12 Q. Okay. So at some point it became clear to you
13 that he assumed you gave him the bird or the finger?

14 A. At some point. Yes.

15 Q. Okay.

16 A. After a minute or so, or a few seconds after
17 he came to my window. Yes.

18 Q. Okay. And just so that we are clear, you have
19 no idea yourself as to Trooper Riggins' path of travel
20 before you saw him behind you headed south on North Main
21 Street, is that true?

22 A. No. I did not know he was -- I never saw a
23 police officer or a State Police cruiser until the blue
24 lights were on me.

25 Q. And he was behind you?

1 A. Yes.

2 Q. Right. So you have no idea how it was he came
3 to first see you or your vehicle?

4 A. Correct. I have no idea.

5 Q. All right. So at some point, I think you said
6 after a minute, you came to learn that Trooper Riggins
7 assumed you gave him the bird or the finger?

8 A. He told me.

9 Q. And you deny that you ever did that; is that
10 right?

11 A. Yes.

12 Q. Do you think you might have made some motion
13 or movement which could have been detected by a passing
14 vehicle?

15 MR. DIAZ: Objection to form. You can
16 answer.

17 THE WITNESS: Perhaps. Yes.

18 BY MS. FLYNN:

19 Q. What do you think might have been detected by
20 a passing vehicle? What movement or gesture or -- let me
21 put it this way.

22 You believe that Trooper Riggins was confused
23 about having seen you give him the finger or the bird?

24 A. I don't believe anything. I don't know what
25 he thought.

1 Q. Okay. But do you think you might have moved
2 your hand or otherwise gestured or motioned within your
3 vehicle in a way that could have drawn the attention of
4 somebody who was, say, passing you?

5 A. I don't know why -- I don't know if someone
6 would have seen what I was doing. I was stretching my
7 fingers on the top of my steering wheel. I also smoke.
8 So I don't know what he assumed or what anybody else could
9 assume I was doing in my car.

10 Q. Okay. So when you say you were stretching
11 your fingers, how did you come to think about that? Is
12 that something you decided that in hindsight perhaps could
13 have led him to think that you were gesturing to him?

14 A. I don't know what he was thinking. I was
15 stretching my fingers on my steering wheel. I don't know
16 what he was thinking or what he thought or what other
17 people in other cars are thinking.

18 Q. Okay. So your testimony is that at some point
19 prior to your noticing Trooper Riggins behind you, you
20 were stretching your fingers on your steering wheel?

21 A. Yes.

22 Q. Okay. And --

23 A. My hands. My -- yes.

24 Q. How were you doing that?

25 A. I was doing this. Just like this.

1 (Indicating).

2 Q. So you're motioning with your hands.
3 Presumably they stayed on the steering wheel, or would you
4 release the steering wheel when you were stretching your
5 fingers?

6 A. No. They were just -- one was here and one
7 was here. And I was just moving my hands a couple times.

8 Q. Sort of like 10 and 2 on the steering wheel?

9 A. 10 and 2?

10 MR. DIAZ: Objection to form. You can
11 answer.

12 THE WITNESS: Yes. Yeah.

13 BY MS. FLYNN:

14 Q. All right. You know what I mean when I say 10
15 and 2 on the steering wheel?

16 A. Yes.

17 Q. You remember that from driver's ed?

18 A. Yes.

19 Q. So in other words, your hands weren't directly
20 across from each other on the wheel. One was, if you
21 imagine the sort of centerline or 12:00, one was a bit to
22 the right and one was a bit to the left?

23 A. Yes.

24 Q. And you have a memory of stretching your
25 fingers -- holding on to the wheel at that 10 and 2

1 position and stretching your fingers maybe one hand and
2 then the other, and then one hand and then the other?

3 A. Yes. Yeah.

4 Q. How many times do you think you stretched the
5 fingers on each hand?

6 A. Two or three times.

7 Q. Okay. So two or three times each hand.

8 A. No. I did it together. At the same time.

9 Q. Okay. So two or three times you stretched the
10 fingers together?

11 A. Yes.

12 Q. Okay. Do you -- putting aside what happened
13 in this particular instance, do you think you have a -- do
14 you have a habit or practice of giving people the finger
15 or the bird, as you say?

16 A. No.

17 Q. Is that something you would say you rarely do?

18 A. Yes.

19 Q. So if we, for example, talked to Kelly and
20 Sarah, who are your friends, they wouldn't say: Oh, that
21 Greg. He's always giving us the finger?

22 A. They wouldn't say that.

23 Q. Nor your family members?

24 A. No.

25 Q. It's not something you do often, true?

1 A. At all. I don't do it at all.

2 Q. Never done it?

3 A. Maybe as a teenager I did. Or in my early 20s
4 as a young adult.

5 Q. Okay.

6 A. I don't recall though. But I could have.

7 Q. Okay. So you think that probably since your
8 early 20s you've not given anyone the finger, period, as
9 best you recall?

10 A. Yes. Yeah.

11 Q. Because that's just not the kind of thing you
12 do?

13 A. No.

14 Q. Not since you were young and less -- I don't
15 know what we are when we are young.

16 A. I don't remember actually ever giving the
17 finger.

18 Q. You don't have a memory of that?

19 A. No.

20 Q. Ever?

21 A. No.

22 Q. All right. By the way, so this is happening
23 you say around 11:30. Complaint says it happened around
24 12:15. Middle of the day. North Main Street, St. Albans.

25 A. Yes. I can't remember exactly what time.

1 11:30 to 12, 12:15 around there. Yeah. I just don't
2 remember the exact time.

3 Q. Sure. North Main Street during the lunch hour
4 tends to get busy in St. Albans. Fair statement?

5 MR. DIAZ: Objection to form. You can
6 answer.

7 THE WITNESS: Yes. Yeah.

8 BY MS. FLYNN:

9 Q. I don't know where people come from, but they
10 seem to all be kind of going maybe to run errands during
11 their lunch break or go to restaurants. I don't know.
12 But people seem to come out of the woodwork midday.

13 MR. DIAZ: Objection to form. You can
14 answer.

15 THE WITNESS: Perhaps. I guess. Yeah.
16 Whatever they have got to do. Yeah.

17 BY MS. FLYNN:

18 Q. All right. And so suffice it to say that on
19 this particular Friday around midday there were other cars
20 around you?

21 A. Yes.

22 Q. Would you say it was a typical kind of busy
23 lunch hour traffic situation?

24 A. I'd say it was typical. Not busy.

25 Q. Okay. So you would say that a typical lunch

1 hour on North Main Street at this particular area in St.
2 Albans is not busy?

3 A. It's steady.

4 Q. Steady.

5 A. Yeah. It's not quite busy-busy, but steady.

6 Q. So those are your words, and I don't have any
7 problem with them. But I do want you to say what you mean
8 when you say busy versus steady. Okay?

9 A. There was normal traffic. Typical, normal
10 traffic.

11 Q. For lunch hour normal or for 3 in the
12 afternoon normal?

13 A. It was normal traffic. I'm not really
14 identifying lunch hour. St. Albans Main Street can be
15 busy, typical busy.

16 Q. Maybe I'm mistaken. I thought you said a
17 short while ago that you thought that lunch hour on North
18 Main Street in St. Albans can get busier than traffic at
19 other times of the day.

20 Did I misunderstand that?

21 A. Yes. It can. Just like any other town.

22 Q. Sure. Sure. So I mean traffic North Main
23 Street -- when it comes to St. Albans thoroughfares, North
24 Main Street's probably the busiest or one of them?

25 MR. DIAZ: Objection to form. You can

1 answer.

2 THE WITNESS: There is North and South
3 Main Street in St. Albans. They are busy. Yeah.

4 BY MS. FLYNN:

5 Q. Yeah. So they are busy streets. North and
6 South Main Street. And around lunchtime they get busier.
7 Fair statement?

8 A. Yes. Yeah. Like any other town.

9 Q. Sure. Okay. You had said a moment ago that
10 you wouldn't describe the traffic around the time of this
11 incident as busy. You would describe it as steady.

12 Do you remember saying that?

13 A. Yes.

14 Q. I just want to make sure I understand the
15 distinction you're making. How would you describe a busy
16 traffic situation on North Main Street in St. Albans
17 compared to what you're describing as a steady traffic
18 situation?

19 A. How would I compare --

20 Q. Yeah.

21 A. I think that St. Albans Main Street is more
22 busy between, like, 4, 5 and 6 p.m. I grew up there. I
23 don't think it was actually busy. I think it was a normal
24 noonish time of day there. Like just normal traffic.

25 Q. Okay. All right. What would you describe as

1 normal traffic for noonish time of day there?

2 A. Vehicles -- vehicles on the road.

3 Q. So vehicles heading in both directions?

4 A. Yes. Yeah.

5 Q. And a steady flow of vehicles headed in both
6 directions?

7 A. Yes. Yeah.

8 Q. How are you doing?

9 MR. DIAZ: I don't know when you want
10 to take a break. Maybe the next 10, 15.

11 MS. FLYNN: I have no idea what time it
12 is. Are you looking at a clock behind me?

13 MR. DIAZ: It's almost 11:30. Just
14 saying I don't know if you need a break or you want
15 to take a break. But maybe in the next 10 or 15 we
16 could.

17 MS. FLYNN: That's fine. I can always
18 take a break. How are you doing, Greg?

19 THE WITNESS: We can go on for another
20 10 or 15. However you like.

21 MS. FLYNN: How about we take a break
22 right now. Once someone raises that question, you
23 know what I'm thinking. You don't want to know what
24 I'm thinking.

25 MR. DIAZ: Everybody wants a break.

1 MS. FLYNN: So 10 or 15. So that means
2 we will be back at 20 of.

3 (Recess was taken.)

4 (The record was read as requested)

5 BY MS. FLYNN:

6 Q. Are you ready, Greg?

7 A. Yes.

8 Q. In your complaint, Greg, there is a statement
9 that reads: Rigger confronted Bombard in an angry manner.
10 I'm going to ask you do you agree with that
11 statement?

12 A. Yes.

13 Q. Can you describe for me what led you to
14 conclude that he was confronting you in an angry manner?
15 And understand that I'm focused on when you first saw him
16 behind you and you first encountered Officer Riggins, not
17 the sort of what might be called the second time you
18 engaged. Are you with me there?

19 A. Yes.

20 Q. There was an incident, there was an exchange,
21 he walked back towards his car. Something happened. He
22 approached you again. In general.

23 A. Yes.

24 Q. So we are talking about the sort of phase one.

25 A. Yes.

1 Q. Do you agree that he confronted you that first
2 time in an angry manner?

3 A. Yes.

4 Q. And what was it that you observed that led you
5 to conclude that he was angry? Or his interaction with
6 you was angry?

7 A. His voice.

8 Q. Okay. You think his voice was what? How
9 would you describe his voice?

10 A. Angry and unprofessional.

11 Q. Okay. So I'm going to suggest that those are
12 characterizations. And I'm hoping you can help me
13 understand the observations you made that led you to say
14 to yourself this guy's angry and unprofessional. Let's
15 talk about the angry.

16 A. Okay.

17 Q. What said to you he was angry? You said his
18 voice?

19 A. He had pulled me over. I pulled over. Normal
20 traffic stop is you usually wait a minute or so. They run
21 your plate. And it's about a minute or two.

22 He immediately got out of his police cruiser
23 and walked abruptly to my vehicle and he said something to
24 the point: Do you need some help? You got a problem? So
25 I figured that was not normal procedure.

1 Q. Okay. But is it the words he used that said
2 to you, Greg, he was angry?

3 A. Yes.

4 Q. So it wasn't the -- it wasn't the volume of
5 his voice or the tone of his voice. It was the words that
6 he said that said to you he is angry?

7 A. It was both.

8 Q. Okay. What was it about the volume or tone of
9 his voice?

10 A. It didn't seem friendly. It didn't seem
11 friendly. It didn't seem professional.

12 Q. Okay. So we will get to the professional
13 observation in a moment. Would you say it didn't seem
14 friendly because it sounded serious?

15 A. No. It sounded rude.

16 Q. Okay. It sounded rude. What was it that made
17 it sound rude to you?

18 A. His demeanor. His voice. The way he
19 approached.

20 Q. Okay. So we have talked about the volume of
21 his voice; is that right?

22 A. Yes.

23 Q. And you believe his volume was higher than
24 somebody who was approaching you in a non angry
25 professional way; is that right?

1 A. Yes.

2 Q. Okay. And you believe that the volume of his
3 voice suggested that he was rude, or was it something else
4 that suggested to you that he was rude?

5 A. It was the words and the volume.

6 Q. Okay. And the words and the volume said to
7 you he's being rude; is that right?

8 A. Yes.

9 Q. And you've seen the videotape?

10 A. Yes.

11 Q. And you believe that that displays a rude,
12 unprofessional encounter?

13 A. Yes.

14 Q. Okay. Is there anything else you can tell me
15 other than the words he used and the volume of his voice
16 that signal to you that he was angry and unprofessional?

17 A. Because he abruptly got out of his cruiser. I
18 didn't even have time to get my window down. Usually when
19 you get pulled over they run your plates. It's a minute
20 or two. It was very quick.

21 Q. How many times have you gotten pulled over?

22 A. In my life?

23 Q. Yeah.

24 A. Probably five or six speeding tickets. Yeah.

25 Q. And that would be the sum total of your having

1 been pulled over by police officers except for this
2 incident?

3 A. Say that again please.

4 Q. Yeah. You said you got five or six speeding
5 tickets. Now I don't know if you might have been pulled
6 over for other things, like going through a stop sign or
7 failing to yield, or other things?

8 A. Others. There are others. Yeah.

9 Q. So about how many times, total, would you say
10 you have been pulled over for some kind of traffic
11 related --

12 A. 10 to 12.

13 Q. 10 to 12. If you think of this event in 2018
14 when would the last one have been prior to this event?

15 A. July 2021. Oh, before this event of 2018.
16 July 2021.

17 Q. So this happened in 2018?

18 A. Yes. Oh, prior.

19 Q. Yes.

20 A. Prior, I don't remember.

21 Q. Okay. Had it been years, or was it some
22 recent thing?

23 A. I would say years.

24 Q. And would you have in those 10 to 12 stops
25 ever on another occasion included -- concluded that you

1 were approached in an unprofessional way?

2 A. No.

3 Q. Those other stops had all been professional?

4 A. Yes.

5 Q. This, to you, was different?

6 A. Yes.

7 Q. Because you believed that Officer Riggen was
8 acting in a way that was rude and unprofessional?

9 A. Yes.

10 Q. All right. At some point earlier you said
11 that after about a minute you came to note that he assumed
12 you had given him the finger; right?

13 A. No.

14 Q. You don't remember saying that at the
15 beginning of your deposition?

16 A. He told me that he assumed that -- he told me
17 that I gave him the finger. In passing.

18 Q. Okay. All right. And then you expressed
19 confusion about that; right?

20 A. Yes.

21 Q. Because you hadn't given him the finger?

22 A. No.

23 Q. In fact, it's not something you do?

24 A. No.

25 Q. Okay. And then you told him that you would

1 file a complaint against him; do you remember that?

2 A. Yes.

3 Q. And what was his response to that?

4 A. Go ahead. Okay. You know.

5 Q. He said something like "You're more than
6 welcome to;" do you remember that?

7 A. Yes.

8 Q. And how would you describe his demeanor when
9 he said that to you?

10 A. Normal.

11 Q. Okay. He also told you he wouldn't be taking
12 up any more of your time?

13 A. Yes.

14 Q. And he wasn't going to cause you any more
15 delay. Do you remember that?

16 A. Yes.

17 Q. Okay. And he said that, and then he left.
18 True?

19 A. Yes.

20 Q. Okay. So would you say that after your
21 initial exchange with him, which you describe as rude and
22 unprofessional, that he seemed to become more
23 professional?

24 A. Yes.

25 Q. So when he left you he seemed to be

1 professional, telling you, you know, if -- you're more
2 than welcome to file a complaint, don't want to take up
3 more of your time. Those were words to you that seemed
4 like he was calmer and more professional?

5 A. He seemed more pleasant.

6 Q. At the end --

7 A. Yes.

8 Q. Okay. At the end of that first phase of the
9 encounter?

10 A. Yes.

11 Q. And then he turned and he walked towards his
12 cruiser. Is that true?

13 A. Yes.

14 Q. And then what did you say to him then?

15 A. "I can't believe you just pulled me over for
16 this. Fuck you, Asshole."

17 Q. Okay. So what made you say "I can't believe
18 you just pulled me over. Fuck you, Asshole"? After the
19 tail end of the encounter as we have been talking about
20 seemed to be on better terms?

21 A. What made me say that?

22 Q. Yeah.

23 A. Because I wanted to say that. I wanted --
24 that's the way I expressed my -- that's the way I wanted
25 to express myself. I was angry. I was upset. I was

1 confused. And that's the way -- that's what I did.

2 Q. Okay. So we can agree that when you're angry,
3 upset or confused, you use the word asshole?

4 MR. DIAZ: Objection to form.

5 MS. FLYNN: Right?

6 MR. DIAZ: You can answer.

7 THE WITNESS: No. No.

8 BY MS. FLYNN:

9 Q. Just in this instance you did?

10 A. Yes.

11 Q. And that's unusual for you?

12 A. Yes.

13 Q. And we can agree that when you said "Fuck
14 you," that's a term that you use when you're angry and
15 upset?

16 MR. DIAZ: Objection to form.

17 THE WITNESS: No. I don't use that
18 very much at all, that word.

19 BY MS. FLYNN:

20 Q. I'm sorry?

21 A. No. I don't. I don't use that word very much
22 at all. Is that what you're asking?

23 Q. Yes.

24 A. Yes. No. No, I don't use that word.

25 Q. Okay. You do recall you're sworn to tell the

1 truth. Right?

2 A. Okay. So I'm confused. Can you repeat the
3 question?

4 Q. Sure.

5 (The record was read as requested)

6 THE WITNESS: No. No.

7 BY MS. FLYNN:

8 Q. Okay. And you do appreciate you're sworn to
9 tell the truth?

10 A. Yes.

11 Q. So your using the word "asshole" and your
12 using the term "fuck you" were things that you don't do
13 generally when you're angry and upset. You just did in
14 this particular instance?

15 A. Yes.

16 Q. Okay. What would it be about the
17 circumstances of this particular instance that caused you
18 to feel angry and upset when ordinarily you wouldn't use
19 these kinds of words and phrases?

20 A. Well I had only been up about an hour and 15
21 minutes. My father wasn't doing very well. He was very
22 sick. I wasn't in the mood to be interrogated on the side
23 of a road -- of the road.

24 I didn't know why I was being pulled over in
25 the first place. He approached me rudely. He was

1 basically interrogating me and telling me something that I
2 did that I didn't do. I was confused and angry; upset.

3 Q. So can we agree this isn't the first time in
4 your life, Greg, in your adult life, you are 57; is that
5 right?

6 A. Yes.

7 Q. Can we agree this is not the first time in
8 your adult life that you have been angry and upset?

9 A. Yes.

10 Q. Okay. But on other instances where you were
11 angry and upset you weren't prompted to call somebody an
12 asshole or to say fuck you. That's not what you would do?

13 A. No.

14 Q. You did do that here, however.

15 A. Yes, I did.

16 Q. And you did it here because, among other
17 things, you hadn't been up very long. Right? You said
18 you were only up for about an hour and 15 minutes?

19 A. Yes.

20 Q. Yes?

21 A. Yes.

22 Q. And your father wasn't doing well?

23 A. Yes.

24 Q. And I'm sorry to hear that.

25 It's important for me to understand what your

1 emotional state was at the time you made these utterances.
2 So I'm just going to ask you was your father -- was he
3 dying? Was he that --

4 A. No. No.

5 Q. He was sick with -- what was he sick with?

6 A. Parkinson's disease. Dementia. Yeah.

7 Q. Okay. And how long had he had that as of
8 February of 2018?

9 A. Three years.

10 Q. Okay. Was there anything particular going on
11 with him given that condition at this time in February of
12 '18?

13 A. No.

14 Q. But yet you cited it as a contributing factor
15 to your decision in this instance to use these -- this
16 word and phrase that are not commonplace for you?

17 MR. DIAZ: Objection to form. You can
18 answer.

19 THE WITNESS: I said that because when
20 you've got emotions going on in your life, and then
21 you're being pulled over and interrogated on the side
22 of the road and you don't know -- and you've got
23 other things on your mind that you're dealing with,
24 this -- I wasn't happy. I wasn't amused. I wasn't
25 in the mood for that.

1 BY MS. FLYNN:

2 Q. I understand. So part of the reason you
3 expressed your anger and upsetness with Trooper Rikken was
4 because you had other life stuff going on in your life.
5 Your father, for example, that had you upset?

6 A. No. No.

7 Q. Isn't that what you just told me, Greg?

8 A. No. No. I had other things going on in my
9 life. But that was not because of -- the reason I did
10 that to Trooper Rikken was not that. But it didn't have
11 anything to do with that.

12 Q. Well you will acknowledge that you just
13 testified under oath a very short while ago that those
14 were factors in your decision --

15 A. Well yes, factors, but it wasn't a sole
16 decision. A sole decision.

17 Q. Factors.

18 A. Yeah. Yeah. Yes.

19 Q. A factor that contributed to your decision to
20 call Trooper Riggens an asshole and to say fuck you to
21 him, were these other life things or this particular life
22 thing; you hadn't been up very long that day, and then you
23 had stuff going on with your dad, factors?

24 MR. DIAZ: Objection to form.

25 THE WITNESS: Being up an hour had

1 nothing to do with it. No.

2 BY MS. FLYNN:

3 Q. You just testified a moment ago that it did
4 though.

5 A. Well it didn't contribute solely to what he
6 did.

7 Q. That's why I'm using the term factor. I am
8 using the term factor because that was how you described
9 it. These were factors; right?

10 A. Yes, they were. Yeah.

11 Q. I'm not saying they are the only factors. I
12 understand other factors where you believe -- your belief
13 that Trooper Riggins had no right to pull you over in the
14 first instance; right?

15 A. Yes.

16 Q. But you also respond to him in a way that was,
17 according to your testimony anyway, uncharacteristic.
18 Right?

19 A. Yes.

20 Q. It was uncharacteristic because you used words
21 that you almost never use; right?

22 A. Yes.

23 Q. And you used them in this particular reason --
24 for a particular -- or particular instance for a
25 particular reason; right?

1 A. Yes.

2 Q. And among the reasons that you've or -- yeah.
3 Among the reasons that you used the words in this
4 particular instance are you hadn't been up very long; dad
5 was sick, and you were dealing with that; and you didn't
6 believe that Trooper Rikken had a right to pull you over?

7 A. Correct. Yes.

8 Q. Anything else that prompted you to respond the
9 way you did?

10 A. No.

11 Q. But you will agree that you were angry when
12 those words left your mouth?

13 A. Yeah, I was upset. Yeah. Confused.

14 Q. Do you consider yourself -- do you consider
15 those words "fuck you" and "asshole" to be aggressive
16 terms?

17 A. No.

18 Q. You don't think they are aggressive?

19 A. No.

20 MR. DIAZ: Objection.

21 BY MS. FLYNN:

22 Q. You don't think they are intended to provoke?

23 MR. DIAZ: Objection. Form. You can
24 answer.

25 THE WITNESS: No. No. I don't.

1 BY MS. FLYNN:

2 Q. So you're someone who has rarely used these
3 words in your entire life. You chose them -- you chose to
4 use them at this particular instance, and you don't
5 believe they were meant to provoke; correct?

6 MR. DIAZ: Objection. You can answer.

7 THE WITNESS: No. I don't.

8 BY MS. FLYNN:

9 Q. And you don't believe that they would have
10 been a display of aggression?

11 MR. DIAZ: Objection. Asked and
12 answered. You can answer the question.

13 THE WITNESS: No.

14 BY MS. FLYNN:

15 Q. And you do believe that they reflect the fact
16 that you were angry?

17 A. Yes. Yeah.

18 Q. Do you think you came across as agitated?

19 A. Yes. Yeah.

20 Q. So you were angry and agitated when you
21 uttered this word and phrase?

22 A. Yes.

23 Q. What exactly were you trying to communicate,
24 if anything, to the trooper?

25 A. Communicate?

1 MR. SARACHAN: I'm just -- I apologize.
2 No. I tweaked my back, so this is when I stretch.
3 It's got nothing to do with anything.

4 THE WITNESS: My communication to him?
5 BY MS. FLYNN:

6 Q. What did you want him to know?

7 A. That I was upset. I wasn't -- I was angry. I
8 was confused.

9 Q. Okay. And what was your voice like? Was it
10 soft? Was it elevated? Was it loud?

11 A. More soft.

12 Q. It was soft?

13 A. Yeah. Normal. More normal voice, I think.

14 Q. So when you called him an asshole you were
15 using a normal voice?

16 A. Yeah. Yes.

17 Q. And when you said "fuck you" you were using a
18 normal voice?

19 A. Yeah. Yes. I didn't yell anything.

20 Q. Well you were angry and agitated, but the
21 words you used were not yelled? They were soft, softly
22 spoken, normal?

23 A. They were soft.

24 MR. DIAZ: Objection to form. You can
25 answer the question.

1 BY MS. FLYNN:

2 Q. They were normal?

3 A. They were normal. Maybe a little elevated.
4 Yeah.

5 Q. Okay. And where were you when you yelled
6 these words? Were you sitting in your vehicle?

7 A. I was in my vehicle.

8 Q. Was the window down?

9 A. Yes.

10 Q. And can we assume that traffic around you was
11 steady?

12 A. Yes.

13 Q. So if you had given it some thought, you may
14 not have, but if you had given it some thought you would
15 appreciate that other people could hear these words if
16 they were passing by?

17 MR. DIAZ: Objection to form. You can
18 answer.

19 THE WITNESS: I didn't give any
20 thought.

21 BY MS. FLYNN:

22 Q. You wouldn't know one way or the other. You
23 weren't -- I think what I was trying to say, Greg, is that
24 you might not have been thinking about it at the time.
25 But any reason to think that people steady -- the steady

1 traffic around you couldn't hear what you were saying?

2 A. I believe they could not hear what I was
3 saying.

4 Q. And why do you say that?

5 A. Because it was winter and cold, and people's
6 windows were up. And I didn't see anybody out on the
7 sidewalks or walking.

8 Q. Okay. So this is North Main Street. What are
9 the businesses that are around that area?

10 A. Where I was pulled over there aren't any
11 businesses.

12 Q. Nothing right near there?

13 A. No. No.

14 Q. And there are sidewalks, however?

15 A. Yes.

16 Q. And you're saying this is about midday?

17 A. Yes.

18 Q. And not one person on the sidewalk?

19 A. I didn't see anybody.

20 Q. Did you look before you uttered those words?

21 A. No.

22 Q. That wasn't something you were thinking about?

23 A. No.

24 Q. And after you uttered those words, what
25 happened?

1 A. I put my car in drive. Signaled. And got
2 onto the roadway.

3 Q. And then what happened?

4 A. I continued to drive. And I looked in my
5 rear-view mirror and saw Trooper Riggen following me with
6 his blue lights on. And I think I heard a siren, like a
7 short one. Not a continuous one, but a short one, I
8 believe.

9 Q. Okay. And what did you do in response to
10 that?

11 A. I drove. Turned left on to a street called
12 Brainerd Street. And pulled over.

13 Q. And was Trooper Riggen behind you?

14 A. Yes.

15 Q. And then what happened?

16 A. He got out of his police cruiser and
17 approached me. To my window.

18 Q. And you in your complaint described him as
19 haranguing you. Is that an accurate description?

20 A. What is the word?

21 Q. Harangue?

22 A. Haranguing me? I don't know what that means.

23 Q. Okay. How would you describe his interaction
24 with you now, the second time?

25 A. Very rude. Very aggressive.

1 Q. It was rude and unprofessional the first time;
2 right?

3 A. Yes.

4 Q. Was this different?

5 A. Yes. It was a different encounter.

6 Q. Was his demeanor towards you different during
7 this different encounter?

8 A. No.

9 Q. It was the same as?

10 A. I think it was about the same.

11 Q. Okay. All right. And do you remember telling
12 Trooper Rigger that it was your plan to contact the
13 American Civil Liberties Union?

14 A. Yes.

15 Q. And had you done that before?

16 MR. DIAZ: Objection to form. You can
17 answer.

18 THE WITNESS: I don't remember.

19 BY MS. FLYNN:

20 Q. You may have? You're not sure?

21 A. I'm not sure. Yeah. I don't remember. No.
22 I don't think I've ever contacted the American Civil
23 Liberties Union.

24 Q. And you did contact them at some point?

25 A. I did. Yes.

1 Q. Did you contact -- you were represented by
2 Nick Hadden; is that right?

3 A. Yes.

4 Q. Did you contact them before or after you
5 talked to Mr. Hadden?

6 A. After.

7 Q. After you contacted Mr. Hadden?

8 A. No. It was after my criminal case was
9 dropped.

10 Q. Okay. So you had no communications with the
11 American Civil Liberties Union before your criminal case
12 was dropped?

13 A. No. My lawyer might have. My criminal
14 lawyer.

15 Q. Okay. But you did not.

16 A. No.

17 Q. Okay. Who is Amy Cross?

18 A. A friend.

19 Q. And what do you believe -- what facts do you
20 believe she possesses that are relevant to your lawsuit?

21 MR. DIAZ: Objection to form. You can
22 answer.

23 THE WITNESS: What facts does she
24 believe --

25 BY MS. FLYNN:

1 Q. What facts do you believe she possesses that
2 are relevant to your lawsuit?

3 A. Oh. What I've discussed with her. Yeah.

4 Q. Okay. What have you discussed with her?

5 A. Exactly what happened to me.

6 Q. Okay. So I want you to tell me, in as much
7 detail as you can, what communications you have had with
8 Amy Cross about the events we have been talking about.
9 Let's start with how many times do you think you talked to
10 Amy Cross?

11 A. About this event?

12 Q. Yeah.

13 A. Two or three times.

14 Q. Did I ask you what your sister's last name
15 was?

16 A. No.

17 Q. What's your sister's last name?

18 A. Day. D-A-Y. She hyphenates it Bombard-Day.

19 Q. And her first name is Bonnie?

20 A. Bonnie.

21 Q. Okay. All right. So Amy Cross is a friend?

22 A. Yeah. Very good friend.

23 Q. So you mentioned Kelly as a friend, and we
24 were talking just about your friends generally.

25 A. Yeah.

1 Q. We weren't talking about communications with
2 this --

3 A. Yeah.

4 Q. So there is Kelly. And you mentioned Sarah?

5 A. Yes.

6 Q. But Amy is also a close friend?

7 A. Very good friend. Yeah.

8 Q. And you had conversations with Amy about
9 matters that are at issue in this lawsuit; is that right?

10 MR. DIAZ: Objection to form. You can
11 answer.

12 THE WITNESS: Yes. I told her what
13 happened to me.

14 BY MS. FLYNN:

15 Q. Okay. What did you tell her?

16 A. I told her everything that happened to me.

17 Q. Okay. Did you tell her that you were
18 stretching your fingers on your steering wheel?

19 A. Yes.

20 Q. Did you tell her that Trooper Rikken, when he
21 first pulled you over, was acting in an unprofessional and
22 rude manner?

23 A. Yes.

24 Q. Did you tell her that he then said he wasn't
25 going to take up any more of your time or further cause

1 you delay, and left on -- I think what you described as a
2 better -- I'm totally paraphrasing now, better terms after
3 that first initial stop?

4 A. Yes. I told her.

5 Q. You told her that he kind of left in a nicer
6 way?

7 A. No. I didn't tell her it was nicer.

8 Q. What did you tell her?

9 A. I just said he left.

10 Q. Well did you say that he had started in a way
11 that appeared to you to be unprofessional, but then he
12 left and he seemed somehow improved?

13 A. No. I didn't tell her that.

14 Q. Okay. Did you suggest to her that he was,
15 after that initial interaction, continuing to be difficult
16 or rude or unprofessional?

17 A. Yes.

18 Q. You did?

19 A. Yes.

20 Q. After that initial encounter?

21 A. The first encounter. Yes, I did.

22 Q. Okay. So you told her that he was rude and
23 unprofessional initially. And that he was rude and
24 unprofessional when he left you that initial time?

25 A. No. I didn't tell her that. That when he

1 left, I didn't tell her that. I said he just left.

2 Q. And did you tell her what you said to him?
3 Did you tell her that you called him an asshole?

4 A. Yes.

5 Q. Did you tell her that you said fuck you?

6 A. Yes.

7 Q. How did she respond to that?

8 A. I don't remember.

9 Q. So you can't recall whether that was anything
10 she thought was positive or negative? You don't remember
11 one way or the other?

12 A. No.

13 Q. Do you have any reason to think she would --
14 let me strike that.

15 Do you have any impression, Greg, as to her
16 impression of you using those terms with the police
17 officer?

18 MR. DIAZ: Objection to form. You can
19 answer.

20 THE WITNESS: No. No.

21 BY MS. FLYNN:

22 Q. She didn't seem to react one way or the other?

23 A. She did. Yeah.

24 Q. Well how did she react?

25 A. She was surprised. And I told her what

1 happened.

2 Q. She was surprised by what?

3 A. Me getting arrested, held in a cell for 50
4 minutes. Handcuffed. And the story I told her what
5 happened -- just happened to me.

6 She was surprised. She was shocked. You
7 know, like, you know, what happened. And I told her.

8 Q. Right. And anything else you can remember
9 that you said to Amy Cross?

10 A. No. No.

11 Q. Anything that you remember that she said to
12 you during this -- well let me ask you. How many times
13 did you talk to Amy about this incident?

14 A. Two or three times.

15 Q. Okay. And do you remember any words that she
16 used with you those two or three times?

17 A. No.

18 Q. And then you talked to Kelly Greeno about it?

19 A. Yes.

20 Q. How many times?

21 A. Once or twice.

22 Q. And do you remember the words that you used
23 with her?

24 A. Yes.

25 Q. What words did you use with her?

1 A. I used -- I described what happened to me.

2 Q. How did you describe it?

3 A. I told her what happened. That I got pulled
4 over. A state trooper accused me of giving him the finger
5 in passing. And then so on. The whole story.

6 Q. Did you tell her that you stretched your
7 fingers on the steering wheel?

8 A. Yes. Yeah.

9 Q. And did you tell her that you called him an
10 asshole?

11 A. Yes.

12 Q. And did you tell them that you said "fuck you"
13 to him?

14 A. Yes.

15 Q. And did she seem surprised by that?

16 MR. DIAZ: Objection to form. You can
17 answer.

18 THE WITNESS: Yes. Yes.

19 BY MS. FLYNN:

20 Q. She was surprised that you would use those
21 words with the officer or the trooper?

22 A. Yes. Yeah.

23 Q. Because that's not something you typically do?

24 A. Yes.

25 Q. Did you have a conversation about that, about

1 what prompted you to respond in that particular way?

2 A. Yes.

3 Q. And tell me about that part of the
4 conversation.

5 A. I told her I responded that way because I
6 wasn't happy. I was angry. Confused. I didn't know why
7 I was being pulled over.

8 Q. All right. And how did she respond to that?

9 A. She said, "Oh, my God. Seriously. That's
10 what happened to you? Wow." You know. And I continued
11 on in a conversation.

12 Q. All right. And then Mike Bombard, how many
13 times did you talk to him about it?

14 A. Two or three times. Yeah.

15 Q. Same thing? You told him what happened?

16 A. Yes.

17 Q. You told him the words that you used with the
18 trooper?

19 A. Yes.

20 Q. And did he respond to that at all?

21 A. Yes.

22 Q. And how did he respond to that?

23 A. He said "Well if he was an asshole, then maybe
24 he was. He was an asshole."

25 Q. Okay. So Mike said what? He said if he was

1 an asshole, then maybe?

2 A. Then maybe you had the right to call him that.

3 Q. Okay. So you remember him saying --

4 A. Yeah.

5 Q. -- to you -- just so -- just a reminder you
6 are under oath. So if you have a memory of Mike saying
7 that, that's what I'm interested in.

8 A. Yes. He said that.

9 Q. Okay. He said if he was an asshole, then
10 maybe it was okay to call him that?

11 A. Yeah. And he said -- he said he sounded like
12 an asshole from what your description of the event, he
13 sounded like an asshole.

14 Q. Okay. And so did he suggest that it was okay
15 to call him that?

16 A. No.

17 Q. I thought you had said that just a moment ago.

18 A. Oh, yes. He said if he was, then yes. He
19 said "If he was an asshole, then he was an asshole. You
20 called him that. Good for you."

21 Q. Those are the words that you remember him
22 saying?

23 A. Yeah. Yeah.

24 Q. All right. And did he express surprise that
25 you had used that term since it's so unusual for you?

1 A. No.

2 Q. Did Kelly or Amy?

3 A. No.

4 MR. DIAZ: Objection to the form.

5 BY MS. FLYNN:

6 Q. Did you talk to any of them about your dad or
7 the fact that you had not been up very long?

8 A. No.

9 Q. And then Bonnie is your sister?

10 A. Yes.

11 Q. And how many times did you talk to her?

12 A. Two or three times.

13 Q. And same thing. What did she -- how did she
14 respond to you?

15 A. She is more neutral, my sister.

16 Q. More neutral than whom? Your brother?

17 A. Brother. Yeah.

18 Q. Does that mean to say that your brother was
19 more supportive of you, and your sister was more neutral
20 about your decisions?

21 A. Yes. Yes.

22 Q. Okay. And how did she display to you her
23 neutrality?

24 A. I don't -- I don't remember. I don't remember
25 what she said exactly.

1 Q. Okay. If -- and she did not say, "Wow, if you
2 used those words, something really must have been
3 troubling you," or something to that effect?

4 MR. DIAZ: Objection to form. You can
5 answer.

6 THE WITNESS: I don't remember. She
7 wasn't as supportive as my brother.

8 BY MS. FLYNN:

9 Q. Your brother was supportive because he said if
10 he acted like that, he must have been -- sounds like he
11 was an asshole, so that's fine.

12 A. Yes.

13 Q. And your sister wasn't as supportive because
14 she said what?

15 A. She didn't like -- I think she was embarrassed
16 that her brother was arrested, and his name was in the
17 paper, and on a police social media vlog or blog. I'm not
18 sure what you call it.

19 MS. FLYNN: Can you read back my
20 question and the answer, Kim.

21 (The record was read as requested)

22 BY MS. FLYNN:

23 Q. Okay. So your sister when she is interacting
24 with you she seems concerned about the embarrassment of
25 you being sort of out there in the public with this;

1 right?

2 A. Yes. Yeah.

3 Q. Did she say anything about the way you
4 interacted with the officer or the trooper or the way he
5 interacted with you?

6 MR. DIAZ: Objection to form. You can
7 answer.

8 THE WITNESS: No. I don't remember
9 anything Bonnie said.

10 BY MS. FLYNN:

11 Q. So you described yourself as being handcuffed
12 and in a cell for 50 minutes; is that right?

13 A. 35 to 50 minutes. Maybe an hour.

14 Q. And describe that for me. Were you by
15 yourself? Were you with a bunch of people?

16 A. No. I was by myself.

17 Q. Okay. Had you ever been in a cell before?

18 A. Yes.

19 MR. DIAZ: Objection to form. But
20 objection. Want to remind you and instruct you not
21 to answer any questions that are protected by the
22 privilege 13 V.S.A. 7606. Instruct the witness not
23 to answer to that extent.

24 MS. FLYNN: So are you making any claim
25 for his distress or discomfort because he was in a

1 cell?

2 MR. DIAZ: I would have to look back at
3 the complaint again, but I don't believe there is any
4 claim related to distress.

5 MS. FLYNN: I just, you know, I'm going
6 to say it again, that if that's part of the claim, it
7 doesn't seem to me that there is any way I can be
8 prevented from asking him about that. If it's not
9 part of the claim, that's a different analysis.

10 MR. DIAZ: What I would say is that the
11 privilege under 13 V.S.A. 7606 says -- and we can get
12 exact language -- but something to the effect of when
13 a record is expunged, it's to be treated as if the
14 underlying events never happened. So the -- not
15 underlying events. Any evidence or record of the --
16 any criminal record or anything related to it never
17 happened.

18 So I can get the exact language if you
19 want. But to the extent that your answers would
20 reveal privileged information within the privilege
21 under 7606, I instruct you not to answer.

22 MS. FLYNN: And you're not here waiving
23 any claim of emotional distress, discomfort or
24 hardship, anything related to his time in the cell?

25 MR. DIAZ: Not waiving any claim or

1 damage -- claim damage that is in the complaint.

2 Correct.

3 MS. FLYNN: So you're going to continue
4 to bring that claim, but I can't find out information
5 that might inform me as to the effect that this had
6 on him, seeing that it wasn't his first time in a
7 cell.

8 MR. DIAZ: I don't think we have said
9 that he had any time in the cell. I'm instructing my
10 client not to answer to the extent it would reveal
11 information protected by 13 V.S.A. 7606.

12 Outside of that, he can answer.

13 BY MS. FLYNN:

14 Q. So you were by yourself in a cell.

15 A. Yes.

16 Q. And then somebody came to get you out?

17 A. Yes.

18 Q. Who was that?

19 A. I don't know names. It was a -- a trooper.

20 It wasn't Rigger.

21 Q. Did somebody have to post bail?

22 A. No.

23 Q. So were you met by any family members?

24 A. No.

25 Q. Are you a member of any groups or

1 organizations that have positions with regard to police
2 officers?

3 A. No.

4 Q. You're not a member of any social clubs, are
5 you?

6 A. No.

7 Q. You're not a member of any Facebook groups,
8 are you?

9 A. No.

10 Q. You're not a member of any kind of exclusive
11 club or organization or group to your knowledge, is that
12 true?

13 A. Regarding to police officers and law
14 enforcement?

15 Q. No. Anything.

16 A. A club, no. Can I be more specific with you
17 or -- do you want me just to answer?

18 Q. You can be more specific with me.

19 A. I like things on Facebook. Like I like, like
20 I belong and follow something.

21 Q. Okay. I was thinking of a group of people who
22 are not, you know, that are exclusive in some way. Right?
23 Not accessed by the public.

24 MR. DIAZ: Objection to form. You can
25 answer.

1 THE WITNESS: No. I don't belong to
2 any. No.

3 (A document was marked Exhibit A for
4 identification.)

5 MS. FLYNN: I'm sorry. It should be 6
6 pages.

7 MR. DIAZ: 6 pages total?

8 MS. FLYNN: Yeah. I guess it's
9 Facebook stuff.

10 MR. DIAZ: Okay.

11 MS. FLYNN: I don't know why the, you
12 know, I apologize, but interspersed with the Facebook
13 stuff is a bill to Nick Hadden and then the docket.

14 MR. DIAZ: Yes.

15 MS. FLYNN: I'm just going to mark as
16 Exhibit A the Facebook stuff.

17 (A discussion was held off the record.)

18 BY MS. FLYNN:

19 Q. Why don't you take a look at Exhibit A there.

20 MR. DIAZ: Take your time and read
21 through.

22 THE WITNESS: Is Exhibit A just this or
23 the entire packet?

24 BY MS. FLYNN:

25 Q. Just read through the entire thing, Greg.

1 A. Oh.

2 Q. Because Exhibit A is the entire thing.

3 A. Okay. Okay.

4 (A document was marked Exhibit B for
5 identification.)

6 BY MS. FLYNN:

7 Q. Have you looked at it?

8 A. Yeah. Yes.

9 Q. Are you ready to talk about it?

10 A. Sure.

11 Q. I'll represent to you, Greg, that these
12 Facebook messages were produced in response to our -- or
13 someone asking about documents relevant to the allegations
14 of the complaint. So can you describe for me how you --
15 and I don't want your attorney's impressions -- how you
16 view these as connected to the allegations of the
17 complaint.

18 A. They are not connected. I don't think they
19 are connected.

20 Q. Okay. So you don't know, yourself,
21 independent, I don't want you to share with me any
22 communications you had with your attorneys, you don't know
23 why they were produced in response to questions that were
24 asked to you in the course of this lawsuit?

25 A. No. I don't know why.

1 Q. Okay. The first page of Exhibit A which is
2 stamped -- it's called Bate stamped -- at the top it says
3 Bombard 0001. Do you see that?

4 A. Yes.

5 Q. The first page there has a statement that you
6 made about checkpoints on roadways as being
7 unconstitutional and unAmerican. Do you see that?

8 A. Yes, I do. Yeah.

9 Q. Okay. Do you yourself think that that
10 statement -- and by the way, I'm not on Facebook. So I
11 don't know -- preceding that statement is a Vermont State
12 Police statement that says something about troops
13 conducting a traffic enforcement detail. Do you see that?

14 A. Yes.

15 Q. And are you on -- does this indicate, Exhibit
16 A, that you are on the Vermont State Police's Facebook
17 page and posting a comment yourself?

18 A. Yes. Yeah.

19 Q. Okay. So you -- do you frequent the Vermont
20 State Police Facebook page?

21 A. No.

22 Q. Are there other organizations that have
23 Facebook pages which you visit?

24 MR. DIAZ: Objection to form. You can
25 answer.

1 THE WITNESS: Yes. Yeah.

2 BY MS. FLYNN:

3 Q. Tell me about other ones.

4 A. Other what?

5 Q. Other organizations that have Facebook pages
6 that you visit.

7 A. I like the St. Albans PD. Vermont State
8 Police. South Burlington Mazda. Many other things.
9 Yeah.

10 Q. Okay. So you visit the St. Albans Police
11 Department Facebook page?

12 A. I don't visit it.

13 Q. I thought you said you did visit it?

14 A. It shows up on your feed on Facebook. I don't
15 particular -- I don't make a point to go to the St. Albans
16 PD, Police Department, Facebook page and check it out.

17 Q. Okay. Then perhaps my question was a poor
18 one. Because what I was interested in, we are looking at
19 Exhibit A. Exhibit A is an example of you going to the
20 Vermont State Police Facebook page and posting a comment?

21 A. I did. I did do that. Yes.

22 Q. True. So I'm just asking what other Facebook
23 pages you visit. And I think you said the St. Albans
24 Police Department, and South Burlington Mazza -- Mazda?

25 A. Many others that I just don't remember. Yeah.

1 Q. Just do your best for me.

2 A. Would you like me to pull out my phone and
3 look?

4 Q. No. I just want you to, as best as you can
5 remember, share with me the Facebook pages that you have
6 visited over the years.

7 MR. DIAZ: Objection to the form. You
8 can answer.

9 THE WITNESS: Many. Costco Wholesale.
10 South Burlington Mazda. Mazda USA. Toyota USA.
11 VSP. St. Albans PD. Vermont Trans. Vermont DOT.
12 Vermont Roadways Conditions. St. Albans, Vermont
13 home page. Social page. Many others. Yeah.

14 BY MS. FLYNN:

15 Q. Okay. So you understand what it means then to
16 visit a Facebook page?

17 A. Yes. Yeah.

18 Q. So one of the Facebook pages that you visited,
19 one of the organizations whose Facebook page you visited,
20 was the St. Albans Police Department. True?

21 A. Yes. Yeah.

22 Q. And are there particular reasons you visit
23 that Facebook page?

24 A. Yes.

25 Q. What are the reasons?

1 A. Because it's my community. It's the police
2 department in my community.

3 Q. Okay. All right. And do you look for
4 information there?

5 A. No. I don't specifically go hunting for
6 information. No.

7 Q. Okay. As someone who is not on Facebook, help
8 me understand why you would go to the St. Albans Police
9 Department Facebook page. What would be the purpose of a
10 visit?

11 A. It's hard to explain. The St. Albans PD, a
12 post would show up on your feed, and it's there. And you
13 read it.

14 Q. Okay.

15 A. I'm not particularly going to it. It shows up
16 there in front of me.

17 Q. I see. Somehow you're connected to it so it
18 shows up on your -- on Facebook?

19 A. Yes.

20 Q. Do you ever comment or have you ever commented
21 on the St. Albans Police Department Facebook page?

22 A. No. I can't remember. Not the St. Albans PD.
23 I can't remember.

24 Q. Other police departments?

25 A. Yes.

1 Q. The Vermont State Police?

2 A. Yes.

3 Q. Anyone other than St. Albans and Vermont State
4 Police?

5 MR. DIAZ: Objection to form.

6 BY MS. FLYNN:

7 Q. Any other police department whose Facebook
8 page you commented -- left a comment on, other than St.
9 Albans?

10 A. I don't remember.

11 Q. Any reason you would be seeing in your feed
12 police departments other than St. Albans and the Vermont
13 State Police?

14 A. Any reason?

15 Q. Yeah.

16 A. That I would see --

17 Q. Like have you ever seen the Burlington Police
18 Department show up in your feed?

19 A. No.

20 Q. I can't imagine -- but again, I don't use
21 Facebook. I can't imagine there would be reasons why you,
22 as a St. Albans' town resident, would have Facebook feeds
23 from police departments other than St. Albans or the
24 Vermont State Police. Does that seem right to you?

25 A. No.

1 Q. You would have others?

2 A. Yes. Yeah. You like to know what's going on
3 in your state.

4 Q. I see. I see. So there might be other police
5 departments that you get feeds from?

6 A. Yes.

7 Q. But you can't, as you sit here today, tell me
8 which departments they are?

9 A. I can if you would let me look at my phone.

10 Q. I see.

11 A. I don't go hunt down the information on police
12 department Facebook feeds.

13 Q. But there has to be some connection; right?
14 You have to somehow connect yourself to a police
15 department in order to get its messaging on your Facebook
16 page?

17 A. Yes.

18 Q. Right?

19 A. Yes.

20 Q. And you've connected yourself in some way,
21 shape or form to St. Albans?

22 A. Yes.

23 Q. And you've connected yourself to the Vermont
24 State Police?

25 A. Yes.

1 Q. Have you connected yourself to any other
2 police department?

3 A. Yes.

4 Q. Which police departments?

5 A. I think Franklin County Sheriff. Maybe
6 Swanton PD.

7 Q. Okay.

8 A. Colchester PD. I work in Colchester.

9 Q. Okay.

10 A. And others, I don't remember.

11 Q. Do you remember leaving a message for any
12 police department other than the Vermont State Police
13 department and the message we are looking at in Exhibit A?

14 A. No. I don't remember.

15 Q. Okay. But as far as you're concerned Exhibit
16 A doesn't really have anything to do with this lawsuit.

17 A. No.

18 Q. Okay. Then the second page which is --
19 although it's hard to read -- it seems to be what we would
20 call Bombard 2. Do you see that?

21 A. Yes. I do.

22 Q. And then it says something about end of
23 months' quotas for their bonuses. Do you see that?

24 A. Yes.

25 Q. What did you mean by that?

1 MR. DIAZ: Objection to form. You can
2 answer.

3 THE WITNESS: Six years ago. I guess I
4 meant that they get bonuses for the amount of people
5 they pull over, I guess.

6 BY MS. FLYNN:

7 Q. Okay. And is that information you shared on
8 the Vermont State Police website?

9 A. I'm not sure which one this is here.

10 Q. Okay. Go to the next page, Bombard 3.

11 A. Yes. Yeah. I did. Yes.

12 Q. What's your thinking, Greg, when the Vermont
13 State Police posts something about traffic, about people
14 being killed on the roads and their efforts to prevent
15 crashes, what's your thinking when you post on their
16 website something about end of month quotas for bonuses?
17 Do you mean to provoke?

18 A. No.

19 MR. DIAZ: Objection.

20 BY MS. FLYNN:

21 Q. Do you mean to antagonize?

22 MR. DIAZ: Objection to form.

23 THE WITNESS: No.

24 BY MS. FLYNN:

25 Q. Why do you do it then?

1 MR. DIAZ: You can answer the question.

2 THE WITNESS: I did it because I wanted
3 to. It's freedom of speech. Expression.

4 BY MS. FLYNN:

5 Q. Sure. Just because you could?

6 A. Yeah.

7 Q. Okay. And then on page -- it's very small --
8 but it's so small that I'm not sure I can read it.

9 Bombard 6. Do you see that?

10 A. 6.

11 Q. It's very small. There is a photograph.

12 A. Yeah. It's all the same. They are bigger and
13 then there is smaller. Okay. I see it.

14 Q. So that looked different to me from Bombard 1
15 of Exhibit A. It looked like a different post. Is it a
16 different post? Because the first one on the first page
17 talks about checkpoints on the roadways are
18 unconstitutional and unAmerican. This -- and this says
19 checkpoints are unconstitutional and unAmerican.

20 Doesn't have the word roadways. And then you
21 talk about the Supreme Court's strict policies and
22 guidelines about how police can conduct themselves. Do
23 you see that?

24 A. Yes.

25 MR. DIAZ: Objection to form.

1 BY MS. FLYNN:

2 Q. So you testified a short while ago -- well let
3 me strike that. What's your thinking in that Facebook
4 post on the Vermont State Police website? In other words,
5 you wanted the Vermont State Police to understand your
6 position on that issue. True?

7 A. No.

8 Q. Why would you post it on their website if it
9 weren't true?

10 A. Because other people go to it and see. And
11 other people express their opinions.

12 Q. So you wanted other people who go to the
13 Vermont State Police website to see your opinion?

14 A. Yes.

15 Q. A short while ago, well it may not feel like a
16 short while ago, but when we started this deposition,
17 Greg, you testified under oath that your attitude towards
18 police was neutral; is that right?

19 A. Yes.

20 Q. We have looked at several statements that
21 you've put on the Vermont State Police website which seems
22 to be sending a message with regard to some of the
23 decision making of the State Police.

24 Would you agree with me there?

25 MR. DIAZ: Objection to form.

1 Mischaracterizes testimony and statement in the
2 document.

3 MS. FLYNN: Can you read that question
4 back?

5 (The record was read as requested)

6 THE WITNESS: Yes.

7 MR. DIAZ: Just to restate my
8 objection. Same objection. You can answer.

9 THE WITNESS: Yes. Yeah.

10 BY MS. FLYNN:

11 Q. So you don't think that you have an issue or
12 concern with the Vermont State Police? You believe that
13 you're neutral with regard to your attitude towards them?

14 A. Yes. Yeah.

15 Q. And that would be true with St. Albans police
16 too?

17 A. Yes. Yes.

18 Q. But you do want to make a statement about your
19 view of the legality of traffic stops, true?

20 A. Yes.

21 Q. And yet you're completely neutral with regard
22 to your attitude towards them?

23 A. Yes. I'm not bashing any police officers in
24 this statement. I'm expressing my opinion on a
25 constitutional law.

1 Q. Okay. Are there other examples, other
2 websites, where you -- or Facebook pages where you express
3 your opinions on various laws?

4 A. I don't remember. I don't recall.

5 Q. And do you drink alcohol?

6 A. No.

7 Q. Have you ever?

8 A. Yes.

9 Q. Do you not drink it at all?

10 A. I don't really drink. Once a year. Twice a
11 year. Yeah.

12 Q. And do you take street drugs?

13 MR. DIAZ: Objection. I'm going to
14 instruct the witness not to answer.

15 MS. FLYNN: Is he asserting a fifth
16 amendment privilege?

17 MR. DIAZ: Yes. To the extent it's
18 required. I mean also the question is, I mean, where
19 are we going here? This is like -- that has nothing
20 to do with the stop on February 9, 2018. This is --
21 we are getting into the realm of, like, again,
22 30(d)3. I'm just wondering where is this going?

23 MS. FLYNN: So let me ask you this.
24 Let's say he's drunk at the time of the stop. Is
25 that not relevant?

1 MR. DIAZ: There is no -- Trooper
2 Rigger said at the deposition there was no even
3 thought that my client was inebriated in any way. So
4 we already -- there is no fact in evidence, nothing
5 related to this whatsoever.

6 MS. FLYNN: Yeah. But it doesn't have
7 to be a fact in evidence. That's the purpose of a
8 deposition.

9 MR. DIAZ: He just told you he drinks
10 at holidays.

11 MS. FLYNN: Right. So that's -- I
12 don't think you can use the objection to this
13 deposition so as to prevent me from trying to
14 corroborate something that could be relevant.

15 MR. DIAZ: Corroborate what?

16 MS. FLYNN: Whether it ultimately
17 proves to be relevant is something else.

18 MR. DIAZ: The question pending, I
19 believe, is: Have you ever done drugs or something
20 to that effect. If you want to ask about --

21 MS. FLYNN: Do you use street drugs?

22 MR. DIAZ: -- ask about the incident
23 and whether that had -- any of that had any effect,
24 then that's fine. But I think you're going into
25 territory that, again, I would say is oppressive and

1 designed to annoy or embarrass the witness.

2 And I would instruct him not to answer
3 that question.

4 BY MS. FLYNN:

5 Q. Were you using any street drugs within 24
6 hours of this event?

7 A. On February 8 -- 09, 2018?

8 MR. DIAZ: Objection to form. You can
9 answer.

10 THE WITNESS: No. No.

11 MR. DIAZ: Susan, just for -- I don't
12 want to stop going through the documents, but just to
13 see if we can take a break. It's quarter of 1. At
14 some point in the next little bit.

15 MS. FLYNN: I'm almost done.

16 MR. DIAZ: Do you know how long you're
17 going to go today?

18 MS. FLYNN: Well I will suspend because
19 of the issue about the prior arrest.

20 MR. DIAZ: Just today I mean.

21 MS. FLYNN: I'm almost done.

22 MR. DIAZ: Okay. Great.

23 BY MS. FLYNN:

24 Q. Would you take a look at what's been marked as
25 Exhibit B.

1 MR. DIAZ: Do you have a copy for me?

2 MS. FLYNN: I'm sorry. I do.

3 MR. DIAZ: Thank you.

4 (Handing document)

5 BY MS. FLYNN:

6 Q. Do you recognize Exhibit B, Greg?

7 A. Yes.

8 Q. And is that your bill from Nick Hadden?

9 A. Yes.

10 Q. And have you paid that bill?

11 A. No.

12 Q. Do you have an agreement with -- do you
13 believe that you have an obligation currently to pay the
14 bill?

15 A. Yes.

16 Q. And is that all -- does that reflect in its
17 entirety the amount that you allegedly owe Attorney
18 Hadden? In other words, are there other charges that
19 aren't reflected in Exhibit B?

20 MR. DIAZ: Objection to form. You can
21 answer.

22 THE WITNESS: I believe this is it
23 here.

24 BY MS. FLYNN:

25 Q. \$5,812.50. That's the amount that you owe

1 Attorney Hadden for the work that he did for you?

2 A. Yes.

3 Q. You'll have to say yes.

4 A. Yes.

5 Q. You also claim that there is a fee, a parking
6 fee, that you had to pay because you were taken from the
7 scene?

8 A. A towing fee.

9 Q. A towing fee. And what was that fee?

10 A. I believe \$150.

11 Q. Okay. So are there any other out-of-pocket
12 expenses that you incurred that you allege are damages to
13 which you're entitled in this lawsuit?

14 A. Out of pocket?

15 Q. Well theoretically, are there other monies
16 owed or are there other monies you have paid to anyone
17 else that you believe are related to your claims in this
18 lawsuit?

19 A. No. I've only paid Nick Hadden a \$1,200
20 retainer. I paid him -- you said other monies. And
21 that's -- before this, I have paid him \$1,200.

22 Q. Okay. So is it your understanding that you
23 owe him this amount on top of that 1,200?

24 A. Yes.

25 Q. Or --

1 A. Yes. This on top.

2 Q. Okay. So the monies that you have had to pay
3 or owe Hadden because of this incident is what we are
4 looking at in Exhibit B plus another 1,200?

5 A. I believe it was 1,000 actually. 1,000.

6 Q. Okay.

7 A. Yes.

8 Q. You have somewhere documentation that reflects
9 that?

10 A. Yes. I think it was 1,000.

11 Q. Okay. So if I ask you for documentation that
12 reflects that, can you try to get that and give it to your
13 attorney?

14 A. Yes. Yeah.

15 Q. And so if you include the retainer that you
16 believe you paid Attorney Hadden, if you include this bill
17 that we are looking at, Exhibit B, and you include the
18 parking, the towing fee, I think you specified what the
19 towing fee was. But you don't remember it right now?

20 A. I believe it was 150. And I don't know if I
21 have the receipt for that.

22 Q. Okay. Any other amounts that you have had to
23 pay or you owe connected with this incident?

24 A. No. Just this and the retainer.

25 Q. And you've adequately described for me the --

1 what you said was the embarrassment and humiliation that
2 you've suffered as a result of this incident. Is that
3 true?

4 A. Yes.

5 Q. You've not left out any meaningful details?

6 A. Like what?

7 Q. I don't know. It's your claim. You've talked
8 to me about the impact it had with the person at work, the
9 what do you call them, client or --

10 A. Members.

11 Q. Members. You talked about the impact it had
12 on your relationship with Sarah and/or Kelly I think; is
13 that right?

14 A. There was no impact with my friends.

15 Q. Right.

16 A. The impact was having -- being arrested on the
17 side of the road. Okay? For something that really isn't
18 illegal. Having my name -- having an article written
19 about me in two papers in Franklin County, and being on a
20 Vermont State Police website, website that shows their
21 arrests for the week or day or the last few days. That
22 impacted me quite a bit. Horribly.

23 Q. Okay. So it impacted you quite a bit. It
24 impacted you horribly. Tell me about that. What -- did
25 it affect you physically?

1 A. No.

2 Q. It affect you -- it affected you
3 psychologically?

4 A. Yes.

5 Q. And how did that psychological affect manifest
6 in your day-to-day life, if it did?

7 A. It affected me so bad that I wanted to go to a
8 manager at work and take a leave of absence.

9 Q. Okay.

10 A. But I did not.

11 Q. Did you?

12 A. No.

13 Q. And what was your thinking?

14 A. My thinking?

15 Q. Your thinking. Yeah.

16 MR. DIAZ: Objection to form. You can
17 answer.

18 THE WITNESS: My thinking was I was
19 very embarrassed. I was very angry. I was confused.
20 I was upset.

21 BY MS. FLYNN:

22 Q. Your thinking was that you were so upset,
23 angry, embarrassed, confused that you wanted to request a
24 leave of absence from a manager?

25 A. Yes.

1 Q. But you did not?

2 A. No.

3 Q. Why did you not?

4 A. Because I handled it myself in my -- myself.
5 I didn't need to take the time.

6 Q. Okay. So that might have been an option
7 available to you, but it was not necessary. You figured
8 it out on your own?

9 A. Yes.

10 Q. And I think you said you didn't seek any kind
11 of counseling?

12 A. No.

13 Q. You didn't need any kind of anti-anxiety or
14 anti-depression medication?

15 A. No.

16 Q. You didn't talk about it -- you talked about
17 it to your friends to some degree; right?

18 A. Yes.

19 Q. But the people you cared about didn't seem to
20 have a negative impression of it.

21 MR. DIAZ: Objection to form.

22 Mischaracterizes the testimony.

23 THE WITNESS: No. No.

24 MR. DIAZ: You can answer.

25 THE WITNESS: I don't know what they

1 were thinking.

2 BY MS. FLYNN:

3 Q. Okay. The one stranger who brought it to your
4 attention, that you could remember anyway, didn't seem to
5 think less of you for it. True?

6 A. I don't remember.

7 Q. All right. Is it your contention, Greg, that
8 these feelings or emotions you have with this event
9 continue to bother you, or were they more of an issue
10 before and have more or less gone away?

11 A. No. They haven't gone away. They continue to
12 bother me.

13 Q. And have you thought -- and you're still not
14 seeing anybody for it?

15 A. No. No.

16 Q. And it's been now five years plus?

17 A. Yeah.

18 Q. And can you give me any examples of the way in
19 which these events bother you such that they affect your
20 day-to-day activities?

21 A. How they affect my day-to-day activities, I
22 think of it every day about the humiliation and the
23 embarrassment is basically what it is. There is a feeling
24 in me.

25 Q. Okay.

- 1 A. It's a psychological feeling, you know.
- 2 Q. Does it affect what you do every day?
- 3 A. Physically?
- 4 Q. Does it -- do you change your activities
5 because of it?
- 6 A. No.
- 7 Q. Does it affect who you engage with on a daily
8 basis?
- 9 A. No.
- 10 Q. Does it affect how you choose to spend your
11 time?
- 12 A. Yes.
- 13 Q. How so?
- 14 A. I choose not to be in lots of groups. And a
15 be -- and go places too much.
- 16 Q. So tell me -- give me an example of a group or
17 place you would go before February of '18 that you no
18 longer engage with.
- 19 A. A private party. A personal party. A
20 personal event.
- 21 Q. So before this you would go to private
22 parties?
- 23 A. Yeah. Yeah. Yes.
- 24 Q. And after this you don't go to private
25 parties?

1 A. No. Not really. No.

2 Q. Okay. Have you been invited to private
3 parties that you've turned down because of it?

4 A. Yes.

5 Q. Give me an example.

6 A. A going away party perhaps.

7 Q. Okay.

8 A. And I just refused. I don't want to be around
9 anybody. I don't want to answer questions, because people
10 bring this event up because it was on the news. It was in
11 news outlets.

12 Q. Okay. Who brings it up? That's what I'm
13 trying to get at as clearly as possible.

14 A. Who brings it up?

15 Q. Right. Give me examples of people that bring
16 it up.

17 A. Co-workers that bring it up. A friend. An
18 acquaintance could bring it up.

19 Q. So I tried to -- at the risk of beating a dead
20 horse, I tried to identify early on in your deposition who
21 has brought to your attention the fact that they are aware
22 of this event. Right? You told me about -- you told me
23 about the co-worker who laughed about it when you did
24 something with your hands. And then you talked -- you
25 told me about the member who raised an issue.

1 A. Yes.

2 Q. Right? And am I missing other people that
3 have brought this to your attention?

4 A. It was on the news. It was on media. Many
5 people know about it. So I don't know how to answer your
6 question. Perhaps thousands of people know about it.
7 This is little Vermont.

8 Q. Yeah.

9 A. Okay. It was in two news outlets in Franklin
10 County and State Police blog. And many people know about
11 it. So I don't know who knows about it, and I can't
12 recall who I talked to everybody about.

13 Q. Yeah. Well that's why I tried to narrow the
14 focus of the question to who do you know knows about it
15 because obviously --

16 A. Many people know about it.

17 Q. If you don't know -- right. That's why I
18 tried to ask you about who were the people that you were
19 aware of, Greg, who brought it to your attention that they
20 knew about it.

21 A. Yes, you did.

22 Q. That's what we talked about earlier. Have I
23 missed anybody there?

24 A. I don't remember. I don't remember. I don't
25 know.

1 Q. Right. As best as you can recall you have
2 shared with me all the people who have brought it to your
3 attention that they know about this event; right?

4 A. Yes.

5 Q. Okay. So I want you to tell me a party you
6 went to before this event. Give me -- just give me an
7 example.

8 A. I don't remember.

9 Q. All right. And then give me an example of an
10 -- I think you said a going away party that you didn't go
11 to after this event.

12 A. That was an example. Yes.

13 Q. Sure. Tell me whose party it was and when was
14 it and -- tell me about that.

15 A. That was an example you said. Right?

16 Q. Yeah. Oh, you mean that was just a
17 theoretical example?

18 A. Yes. Yes.

19 Q. Is there an example of a party that you did
20 not go to after this event because you had concerns about
21 what the public knew?

22 A. Yes. Yeah.

23 Q. Okay. Please provide.

24 A. I just don't remember. I have refused to go
25 places.

1 Q. So all I'm asking is, since you are testifying
2 under oath that you have refused to go places since this
3 event, all I'm asking of you is to tell me where you
4 wanted to go and where you didn't go?

5 A. My friend Kelly had a summer event party. I
6 didn't want to go.

7 Q. Okay. So have you been to any event parties
8 that Kelly has had since this event?

9 A. No.

10 Q. Any other examples?

11 A. Not that I recall.

12 Q. Did you share with Kelly why you weren't
13 going?

14 A. No.

15 Q. Did she ask you why you weren't going?

16 A. No.

17 Q. Did she think it odd as far as you could tell?

18 A. No. No.

19 Q. All right. Anything else that we haven't
20 touched upon in terms of how this has affected you on an
21 emotional or psychological level?

22 A. No.

23 Q. All right. Well I am going to suspend the
24 deposition, Greg, which means that we might have to come
25 back together to talk about things. Maybe we won't. I

1 don't know for sure. But I do appreciate your time here
2 this morning. Thank you.

3 A. Okay.

4 MR. DIAZ: I have a few questions. But
5 maybe we should take 5 minutes to take a breather.

6 MS. FLYNN: 5 after?

7 MR. DIAZ: Yeah. Sounds good.

8 (Recess was taken.)

9 EXAMINATION

10 BY MR. DIAZ:

11 Q. All set?

12 A. Yeah.

13 Q. Mr. Bombard, Attorney Flynn and you spoke
14 about the initial traffic stop of Rigger February 9 of
15 2018; is that correct?

16 A. Yes.

17 Q. And you said that when -- that he abruptly
18 left his cruiser and came over to your car; right?

19 A. Yes.

20 Q. And I believe you said at the start he asked
21 you if you had a problem. Something to that effect. Is
22 that right?

23 A. Yes.

24 Q. And how did you respond to that?

25 A. I said no.

1 Q. And he responded something to the effect of,
2 like, you flipped me off; right?

3 A. Yes.

4 MS. FLYNN: I'm just going to object.

5 BY MR. DIAZ:

6 Q. And you said earlier that after -- after you
7 explained to him you said -- after you said no, as you
8 said to Ms. Flynn earlier, you said -- or he said you
9 flipped him off or something like that; right?

10 A. Repeat that please.

11 Q. Why don't you just take me through the
12 interaction of what happened on February 9, 2018, after
13 Trooper Rikken was out of the car.

14 A. He abruptly came to my car. And I believe I
15 heard a knock because my window was halfway down, or one
16 quarter, one fourth down. I heard a knock. I looked and
17 I was startled. And I believe he said something "Do you
18 have a problem? Do you need some help?"

19 I said "No."

20 Q. And what did he say next?

21 A. I believe he said "You gave me the finger back
22 there."

23 Q. And what did you say to that?

24 A. I said, if I remember correctly, "No, I
25 didn't. I'm sorry you think that."

1 Q. And how long was that conversation at your
2 window?

3 A. The entire conversation?

4 Q. Yes.

5 A. 5 to 6; 7 minutes.

6 Q. And after you explained to Trooper Rigger that
7 you didn't give him the finger, how did he react?

8 A. He told me he knew what he saw. He had been a
9 state trooper for 12 or 13 years, and he knew what he saw
10 back there.

11 Q. And how did he -- you said earlier in your
12 testimony that he was angry. Right?

13 A. He seemed angry.

14 Q. And you said earlier that -- how else would
15 you describe his -- as the conversation continued, how
16 would you describe his demeanor when it got to the point
17 of you said, "No," you didn't give him the finger.

18 A. Rude, controlling and arrogant.

19 Q. And how long did he continue to be rude,
20 controlling and arrogant?

21 A. A few minutes.

22 Q. And do you remember what else he said to you
23 during that time?

24 A. Some things. Yeah.

25 Q. What did he say?

1 A. That I should show more respect. And he knew
2 what he saw, that I gave him the finger in passing.

3 Q. And at some point in the conversation did you
4 ever ask him any questions?

5 A. Yes.

6 Q. What did you ask him?

7 A. I believe I asked him if I did do that, what
8 are the consequences. What are the -- am I going to get a
9 fine? Am I going to -- be arrested? Am I going to be --
10 I don't know. I don't understand, you know, what -- if I
11 did do this, what's going to happen to me.

12 Q. And how --

13 A. Something to that extent. I don't remember
14 everything.

15 Q. And do you remember how he responded?

16 A. No.

17 Q. Do you remember what he said next?

18 A. No.

19 Q. Did you all have -- was there a -- was that
20 the end of the conversation, or was there a back and
21 forth?

22 A. There was back and forth. Yeah.

23 Q. What was that like?

24 A. Questions being -- I was asking him questions.

25 Q. And how was he responding?

1 A. With answers. Some answers. Yeah.

2 Q. And how would you characterize his demeanor
3 while he was responding?

4 A. Rude, arrogant. Very controlling.

5 Q. And how did the conversation end?

6 A. He told me he wasn't going to, I believe, take
7 up any more of my time. And he just walked away.

8 Q. So he just left?

9 A. He said he wasn't going to either delay me or
10 take any more of my time up. And he just walked away.

11 Q. Were you -- did you consider the conversation
12 over at that point?

13 A. Yes.

14 Q. Let me rephrase it. Were you still talking at
15 that time, or had you finished talking?

16 A. I was finished, because he walked away. There
17 was no one to talk to.

18 Q. Before he walked away were you still in
19 conversation with him?

20 A. Yes.

21 Q. And then did he -- I'm just trying to
22 understand. Did he depart mid conversation or -- was it
23 over?

24 MS. FLYNN: Objection.

25 MR. DIAZ: You can answer.

1 THE WITNESS: Oh, he ended the
2 conversation. He seemed like he was in control. And
3 he told me I'm either not going to delay you any more
4 or take up any more time, and he walked away.

5 BY MR. DIAZ:

6 Q. Okay. When he walked away, what was his
7 demeanor?

8 A. Arrogance, arrogant. It was arrogant, kind of
9 rude, just walked away.

10 Q. When he said the last -- his last statement to
11 you during that time, something to the effect of I'm not
12 going to take up any more of your time, how would you
13 characterize his demeanor when he said that?

14 A. Rude. I thought he was rude. And
15 unprofessional.

16 Q. When he pulled you over the second time, took
17 you out of the car, tell me what happened after he took
18 you out of the car?

19 A. I think I was protesting a little bit. When
20 he took me -- I actually got out of the car myself. And I
21 told him I can't believe what's -- this is happening to
22 me, something to that extent.

23 Q. And what did he do after that?

24 A. He said that I was being -- he said that he
25 thought that he had reason to believe that I did give him

1 the finger, the first initial passing. And that I did it
2 in front of hundreds of people. I think he literally said
3 hundreds, I think, or dozens. I'm not sure. I can't
4 recall exactly.

5 Q. Did you see hundreds of people?

6 A. No. No.

7 Q. Did you see dozens of people?

8 A. No.

9 Q. Did you see 10 people?

10 A. No.

11 Q. On the streets did you see anybody?

12 A. No.

13 Q. And by street I say on the -- did you see any
14 pedestrians on the sidewalks?

15 A. No.

16 Q. Were there any pedestrians in the street?

17 A. No.

18 Q. Did you see anyone in their cars look at you
19 as you were pulling away from the first stop?

20 A. I don't remember.

21 Q. After Rigger -- going back to the second stop
22 now after Sergeant Rigger -- after you got out of the car,
23 just walk us -- can you walk me through what happened
24 next?

25 A. The second time he pulled me over, and he

1 told me to get out of the car. He was going to arrest me
2 for disorderly conduct, even said this was disorderly
3 conduct 101. And that he had reason to believe that I did
4 give him the finger in passing the first time. And that
5 he said that I had done that in front of hundreds or
6 dozens of people.

7 Q. Now as you exited the car, what happened?

8 A. I stood out beside my car.

9 Q. And then what?

10 A. We continued to talk about something. Like,
11 you know, I can't believe that you're doing this. To that
12 extent. And --

13 Q. Where were you during that conversation?

14 A. Outside of my car on the side of the road.

15 Q. And you know at some point you ended up back
16 at the barracks; right?

17 A. Yes.

18 Q. Trooper Rigger took you to the barracks?

19 A. Yes.

20 Q. So between, you know, getting out of the car
21 and going to the barracks, just tell me your experience of
22 what happened.

23 A. I got out of the car, and I think I was saying
24 things in protest, like, I can't believe you're doing this
25 to me. Why? I didn't give you the finger.

1 That lasted a couple minutes. Another state
2 cruiser pulled up and a male officer got out of the car.
3 He, Trooper Riggen, said something to this male officer.
4 I can't remember what it was. And I believe there was a
5 little bit of other conversation.

6 And then he told me to walk up to the hood of
7 his cruiser, and he cuffed me.

8 Q. And after -- where were you handcuffed?

9 A. The back. My hands put in the back. Yeah.

10 Q. And then what did Trooper Riggen do next?

11 A. He escorted me to the cruiser.

12 Q. He put you in the back of the cruiser?

13 A. Yes.

14 Q. How did it feel to be put in the back of the
15 police cruiser?

16 A. Horrible. So embarrassed. Humiliated. It
17 was crushing. I felt crushed. Like just horrible,
18 embarrassed.

19 Q. Since this all happened have you had other
20 interactions with the police?

21 A. Yes.

22 Q. Were those -- what were those interactions?

23 A. I had a speeding ticket in July of 2021. On
24 the way to work.

25 Q. How did it feel when you saw an officer behind

1 you in 2021?

2 A. I was uneasy. You know, I felt very uneasy.

3 Q. Why was that?

4 A. Because of what happened, what happened to me
5 in 2018. It affected me the way I look at them. I still
6 respect them. But it's just -- it's not the same, you
7 know.

8 Q. So after the incident with Rigger in 2018,
9 you're saying you still respect police officers, but it
10 affected how you look at them now?

11 A. Yeah. Yes.

12 Q. How so?

13 A. I feel like they -- I would never express the
14 way I feel again, ever again, like I did in 2018. I would
15 never do that. I feel like I would never do that because
16 it would cause an arrest -- it would cause an arrest for
17 me to say how I feel or show how I feel.

18 Q. So you're worried about showing or speaking --
19 you're worried about speaking; you're worried about
20 showing how you feel through words to police officers. Is
21 that what you're saying?

22 A. Yes.

23 MS. FLYNN: Objection.

24 BY MR. DIAZ:

25 Q. Is that what you're saying? You can answer.

1 A. Yes.

2 Q. Since that event is there any time -- are you
3 still on Facebook?

4 A. Yes.

5 Q. We went over some Facebook posts that you had
6 made back from 2017, I think. And -- is that right?

7 A. Yes.

8 Q. And when you -- since 2018, since the event in
9 2018, have you posted anything on the Vermont State Police
10 Facebook page?

11 A. No.

12 Q. Have you posted anything about police on your
13 Facebook page?

14 A. No.

15 Q. Have you commented anywhere on social media
16 about police?

17 A. No.

18 Q. Have you -- strike that.

19 And before you -- 2018 before the stop, you
20 did post on Facebook?

21 A. Yes.

22 Q. On the Vermont State Police Facebook page?

23 A. Yes.

24 Q. And you were somewhat critical of Vermont
25 State Police strategy, let's say around checkpoints; is

1 that right?

2 A. Yes. Yeah.

3 Q. Nothing further.

4 EXAMINATION

5 BY MS. FLYNN:

6 Q. So were you critical of the Vermont State
7 Police -- I'm sorry. That's -- yeah. Were you critical
8 about the Vermont State Police on other occasions other
9 than the ones we looked at in Exhibit A?

10 A. I don't remember.

11 Q. Did you post anything on their Facebook page
12 other than what we looked at in Exhibit A, if you know?

13 A. I don't recall.

14 Q. Or if you recall?

15 A. I don't remember.

16 Q. You said that -- well you were asked whether
17 you saw dozens or hundreds of vehicles in the area of that
18 second stop. Do you remember that?

19 A. I wasn't asked that. No.

20 MR. DIAZ: Objection to form.

21 THE WITNESS: Wasn't asked that. I was
22 told that. I was told by him.

23 BY MS. FLYNN:

24 Q. Right. I'm sorry. I'm sorry. Yeah. You
25 were told, but then you were asked by your attorney

1 whether in fact there were dozens or hundreds of people in
2 the vicinity. Do you remember just being asked that
3 question?

4 A. Yes.

5 Q. And are you saying that you stopped and looked
6 around and made observations about how many cars were
7 passing or how many people were in the area?

8 A. I could see the traffic. And I could see
9 around me. And there were no pedestrians or people
10 walking.

11 Q. But there was traffic?

12 A. Yes. Yeah.

13 Q. When Trooper Rikken said something to you to
14 the effect that he wasn't going to take up any more of
15 your time, did it appear to you from his subsequent
16 actions that he was not going to take up any more of your
17 time?

18 A. Yes. Because he walked away.

19 Q. Okay. That's all I have.

20 MR. DIAZ: Nothing.

21 MR. SARACHAN: I object.

22 MR. DIAZ: We will object to the
23 leaving this deposition open. Just for the record.

24 MS. FLYNN: Yeah. So it is -- we are
25 suspending. Yeah.

(Whereupon, the proceeding was
adjourned at 1:25 p.m.)

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S I G N A T U R E

This deposition has been read by me and the answers contained therein are true and accurate.

Gregory Bombard

Subscribed and sworn to before me this

_____ day of _____, 2023.

Notary Public

C E R T I F I C A T E

1
2
3 I, Kim U. Sears, do hereby certify that
4 I reported by stenographic means the
5 deposition of Gregory Bombard, at 110 Main
6 Street, Burlington, Vermont, on November 13,
7 2023, beginning at 10 a.m.

8 I further certify that the foregoing
9 testimony was taken by me stenographically
10 and thereafter reduced to typewriting, and
11 the foregoing 142 pages are a transcript of
12 the stenographic notes taken by me of the
13 evidence and the proceedings, to the best of
14 my ability.

15 I further certify that I am not related
16 to any of the parties thereto or their
17 counsel, and I am in no way interested in
18 the outcome of said cause.

19 Dated at Williston, Vermont, this 16th
20 day of November, 2023.

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ERRATA SHEET

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To: Gregory Bombard
Re: Bombard v. Riggen, et al.
Date of Depo: 11/13/23

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EXHIBIT 2

AFFIDAVIT
Case# 18A200787

STATE OF VERMONT
FRANKLIN COUNTY, ss.

NOW COMES Trooper Jay Rikken, affiant(s), being duly sworn and on oath, deposes and says he has probable cause to believe that Gregory Bombard (DOB: 10/26/1966) has committed the offense(s) of Disorderly Conduct, a violation of Title 13, Vermont Statutes Annotated Section 1026. The undersigned being duly sworn, deposes and says that I, Trooper Jay Rikken am now and have been for the past twelve years and two months, a full time employee of the Vermont State Police, being presently assigned to the St. Albans Barracks as a Trooper

- 1) On 02/09/2018 at approximately 1215 hours I was driving north on North Main Street in St. Albans, VT. I was operating a fully-marked State Police cruiser. While I was driving north I observed a 2016 Mazda CX5 (with VT REG: 62941) traveling south toward me. While I observed this vehicle, I watched as the operator looked at me, lifted his fist, and then extended and displayed his left middle finger over his steering wheel.
- 2) I recognized the signal as generally understood to be a negative gesture as I continued driving north past him. After I observed it I considered that the behavior was supremely unusual. I referenced thousands of previous motor vehicle and public interactions in my twelve years of State Police service and I could not immediately recall a time where I had seen someone signal to me in that way. Although a negative gesture, I was concerned that the driver was seeking and needing my attention. I was unsure if this was a mental health crisis or other need but I decided that a brief motor vehicle stop to ascertain the well-being of the operator and any passengers was not only prudent but necessary.
- 3) I subsequently turned around and caught up to the vehicle as the operator sat in heavy traffic at the traffic signal regulating southbound North Main Street traffic at the North Main Street / Lower Newton Road intersection. The operator did not yield until he traveled

Subscribed and sworn to before me on

this 21 day of FEB, 18

Patricia A. Whitney
(Notary Public) (Judicial Officer)



(Affiant)

02/21/18
(Date)

through the aforementioned intersection. (I did not find this action improper due to the relevant traffic conditions.) After the ultimate yield, I exited my cruiser and approached the driver's side window to speak with the operator.

4) I asked the operator, "Do you need something?" twice. I identified to him that I observed him look at me and then I saw him "flicking me off" (slang for a middle finger gesture). I spoke with him about my specific observations to which the operator responded with denial. The operator claimed that he had been wiggling and stretching his fingers over his steering wheel and had not signaled to me with his middle finger alone. The operator stated something to the effect that "you and other law enforcement are really sensitive, aren't you?" I explained to the operator that I was not overly "sensitive;" rather, his behavior was unusual and I could not recall a previous time I had seen that occur. Ultimately, I explained to the operator that due to the very uncommon action I wanted to be sure that he was "OK." (Although I did not articulate it to the operator, by "OK" I was referring to him experiencing a mental health crisis, experiencing an escalating despondency, or other need that a brief, non-adversarial law enforcement encounter could identify and/or resolve.)

5) I spoke with the operator about the nature of his gesture. I asked him if he understood my perception that if someone was looking for (or needing) the attention of a Trooper, the way to get that attention, although unusual, would be to display that negative symbol. The operator responded something to the effect that he could not agree to that supposition because he didn't understand that type of public mindset.

6) I addressed with the operator that perhaps he had not gestured to me in that way. I explained to the operator that I wouldn't be able to understand the mindset of the gesturer or affirm that the gesture had occurred as observed until I had the chance to speak with him/her. At that time, I understood that the operator was not in crisis or other need and I intended to end the interaction; however, the operator continued to ask me questions. The operator asked me what the citation or crime would be if someone did that. The operator then laughed as I attempted to explain the following: If someone gestures in that way, I

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(Date)

don't know if they are gesturing because they need my assistance, my attention, or because they need my attention as the gesture itself is not "normal" behavior.

- 7) I then told the operator that I would not take up "any more of his time." (Note: At this point in the interaction, approximately three minutes had elapsed from first contact. During that time, I had not asked the operator for identification or conducted any other intervention besides ascertaining the presence of any need.)
- 8) The operator told me that he was going to file a complaint against me. I advised him that he was "more than welcome to" and provided him with my name and my assigned station. At that time, the interaction became cyclical with the same information exchange taking place. I again tried to explain the unusual nature of the gesture demands intervention to determine well-being but the operator again laughed. I told the operator that I didn't wish to "delay him" any more than had been necessary. I concluded that the operator did not want the interaction to end as he continuously asked me the same pattern of questions and responses ("What if I did?" and "If I did...") that he had engaged me in during the previous three minutes. Therefore, to end the interaction I wished him a "good day" and returned to my cruiser. This concluded my encounter with the operator.
- 9) As I arrived back at my cruiser I heard the operator yell "asshole!" I turned around and I could see him looking at me in his sideview mirror. His window was still lowered all the way down and I could clearly see his face as he stated loudly "Fuck you!" two times. I could clearly see his face as he loudly exclaimed the obscenities. I was aware at that moment that a school bus had slowed down and stopped behind traffic at the Lower Newton Road / North Main Street intersection. I was also aware that there were multiple vehicles that were traveling both north and south on Main Street passed the operator and I who were in plain view of his tumultuous declarations. I observed that several vehicles had stopped behind this traffic and were watching my cruiser and the operator's car. While I could see the operator from behind and in his side view mirror, I observed that there were members of the public who were directly across from him and in close proximity who were certainly at risk of

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observing his tumultuous profanity and behavior much more directly than I was. These members of the public included any students who may have been sitting at the rear of the aforementioned school bus.

10) As I continued to watch the operator, he attempted to merge into southbound traffic but was so fixated on me that he did not appear to notice an oncoming southbound vehicle. Therefore, he needed to stop short so he didn't cause a crash. I watched as the operator extended his hand *outside* of his window and, again, extended his middle finger as he entered successfully into southbound traffic and began driving south. The operator extended his middle finger outside of his window for no less than five seconds and as he drove for no less than 15 yards. The operator displayed this signal in the presence of a northbound car, a southbound truck (that he needed to stop short to avoid striking) a northbound truck, and a northbound car.

11) Based on the yelling vulgarities through an open window (tumultuous, obscene, and vulgar) in close proximity traffic and in the presence of a school bus and multiple other vehicles in moderate-volume traffic (public place) in combination with the exaggerated and continuous display of his middle finger through his open window (obscene and vulgar), while being so fixated on his behavior toward me that he didn't recognize approaching southbound traffic for which he needed to stop short to avoid a side-swipe crash, I recognized this as the criminal offense of Disorderly Conduct pursuant to Title 13 VSA 1026(a)(1)(3).

12) I subsequently affected a second motor vehicle stop on the operator as he turned from North Main Street onto Brainerd Street in St. Albans. I exited my cruiser and approached the driver's side window. I advised the operator that he needed to exit the vehicle as he was under arrest for Disorderly Conduct. The operator did not comply as he asked me why his behavior had been "disorderly conduct." I explained to the operator that using his initial negative gesture was not a problem (once his well-being has been established). However, when he used loud profanity in concert with his obscene gesture and in front of numerous members of the public, I advised the operator that he had committed the crime of

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disorderly conduct. The operator did not deny the presence of the public or using the loud profanity or exaggeratedly displaying his obscene gesture.

13) After numerous verbal orders for the operator to exit his vehicle, he ultimately obliged.

The operator (identified upon return to the St. Albans Barracks) was identified as Gregory Bombard (DOB: 10/26/1966) via his valid VT Driver's License. Bombard was placed under arrest pursuant to the above charge. I placed him into handcuffs which were double-locked and checked for tightness. Bombard was placed into the rear seat of my cruiser for transport. Bombard told me that the handcuffs were too tight. Upon hearing this, I immediately checked for capillary refill (which was present in both hands) and made an adjustment to his right handcuff per his request. I asked Bombard if he wanted me to adjust his left handcuff as well. Bombard told me that he did not want that handcuff adjusted.

14) I observed that Bombard's vehicle had been stopped directly in front of a street sign indicating that the side of the road he was on was not a legal parking area. Therefore, without any other valid operator present, I informed Bombard that I needed to contact a tow truck to remove the vehicle. Bombard did not have a presence so I contacted the next tow truck on the VSP wrecker rotation.

15) Bombard was subsequently transported to the St. Albans Barracks for processing. Upon arrival at the Barracks, Bombard was initially secured in a processing room holding cell. I advised him that the process may take approximately 30 minutes. Based on Bombard's public actions and not wanting him to engage in any further cognitive dissonance, I ultimately deferred processing to Detective Sergeant Desany who conducted the remainder of the process.

16) At the conclusion of the processing, Bombard was released with a citation to appear in Franklin County District Court on 03/05/2018 at 1:00pm to answer the charge of Disorderly Conduct.

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this 21 day of Feb, 18

Patricia A. Whitney
(Notary Public) (Judicial Officer)



(Affiant)

02/21/18

(Date)

EXHIBIT 3

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STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION

Gregory Bombard,)
)
Plaintiff,)
)
vs.)
)
Jay Rikken and State of)
Vermont,)
)
Defendants.)
-----)

Docket NO. 21-CV-176

DEPOSITION OF JAY RIGGEN

held at 192 College Street, Burlington, Vermont
October 5, 2023
9:00 a.m.

Sarah M. Bentley, CCR-B-1745
Registered Professional Reporter and Notary Public

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I N D E X

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	DEPOSITION EXHIBITS	
NUMBER	DESCRIPTION	PAGE
AGO-000729	2/7/20 memo from Tara Thomas, 1 page	162
Patno 3	VSP-DIR-403, 4 pages	44
Wood 6	2/9/18 memo to Ryan Wood from Jay Riggen regarding disorderly Conduct, 2 pages	--
Wood 7	Affidavit of Trooper Jay Riggen in Case #18A200787, 5 pages	108
Lamothe 8	VSP-DIR-419, Crowd Control and Management	36
Riggen 32	3/5/18 Citation for Gregory Bombard, 1 page	221
Riggen 33	2/9/18 memo to Maurice Lamothe from Jay Riggen regarding Bombard mugshot, 3 pages	255

* * *

P R O C E E D I N G S

1
2
3
4 MR. MESSINA: Before we get started, just
5 on the record, usual stips?

6 MR. DIAZ: I'll get to the stipulations
7 in just a minute. So we can get to that.

8 JAY RIGGEN,
9 having been first duly sworn to state the truth, was
10 examined and testified as follows:

EXAMINATION

11
12 BY MR. DIAZ:

13 Q. Mr. Riggen, my name is Jay Diaz. This is
14 Gary Sarachan. This is Hillary Rich. We work with
15 Mr. Bombard. We help him with this lawsuit.

16 Would you please state your name for the
17 record?

18 A. Jay Riggen.

19 Q. And have you been deposed before?

20 A. Yes.

21 Q. How many times?

22 A. Estimating, 15.

23 Q. Okay. And have you testified at trial
24 before?

25 A. Yes.

1 Q. How many times?

2 A. Estimating, 20.

3 Q. So you're familiar with the general rules
4 of the road for testifying?

5 Yes?

6 A. Yes.

7 Q. So, you know, you know you have to give
8 truthful answers to the questions I ask?

9 A. Yes.

10 Q. And you know that you're under oath, just
11 as you would be in court?

12 A. Yes.

13 Q. So today you're here, while there isn't a
14 judge you still are under oath and have to provide
15 those truthful answers under penalty of perjury,
16 understood?

17 A. Understood.

18 Q. I'm going to just set a few ground rules
19 just in case -- just to remind you basically.

20 When we're -- when I'm asking the
21 question, let me finish the question before you
22 answer. Most of all it will help the court reporter
23 get an accurate transcript.

24 You can also wait one minute -- or not a
25 minute, but you can also wait a few, make sure you

1 give your attorney a chance to offer an objection if
2 he wants to do that. Is that fair?

3 A. That's fair.

4 Q. It's important that you answer in words,
5 of course, because the transcript is not going to
6 catch head nods and "Uh-Huhs" and things like that.
7 Make sense?

8 A. Yes, it does.

9 Q. And most importantly, if I ask a question
10 and you don't understand the question, will you tell
11 me?

12 A. I will.

13 Q. Because I want to make sure that you are
14 understanding what I'm asking for. Is that
15 understood?

16 A. Understood.

17 Q. We'll take a break for lunch at some
18 point, probably eat around noon, but if at any time
19 you need to take a break for any reason, just let me
20 know. I'm happy to do that.

21 The only thing I ask is while -- if a
22 question is pending, that you answer the question
23 before we take that break. Is that fair?

24 A. That's fair.

25 Q. And is there any -- before we get going

1 is there any other questions you have about the ground
2 rules I've just laid out?

3 A. No.

4 Q. So I want to just check in. You know, I
5 have to ask a couple of questions. It may seem a
6 little bit strange, but it's really just to make sure
7 that you are able to give true and accurate testimony
8 today. How are you feeling?

9 A. Good.

10 Q. Do you feel like you can answer all the
11 questions truthfully?

12 A. Yes.

13 Q. And will you answer truthfully?

14 A. Yes.

15 Q. Have you consumed any alcohol in the last
16 24 hours?

17 A. No.

18 Q. Are you on any particular medications
19 that might affect your memory?

20 A. No.

21 Q. Any that might affect your perception?

22 A. No.

23 Q. Any that might cause forgetfulness?

24 A. No.

25 Q. And you feel, again, like you'll be able

1 to answer all questions fully and truthfully today?

2 A. Yes.

3 MR. DIAZ: So as to stipulations, this
4 deposition as far as I'm concerned will be
5 conducted according to the Vermont Rules of
6 Civil Procedure. We will -- and all objections
7 to form, as I think you did before, except for
8 privilege.

9 I assume we want to read and sign the
10 deposition transcript?

11 MR. MESSINA: Yeah, I'd like him to have
12 the opportunity for the errata sheet so, yeah.

13 MR. DIAZ: Great.

14 BY MR. DIAZ:

15 Q. So, Mr. Rigger, could you tell me, what
16 is your current occupation?

17 A. State trooper.

18 Q. And how long have you been a state
19 trooper?

20 A. About 17 years.

21 Q. What's your rank?

22 You're a state trooper in the Vermont
23 State Police, correct?

24 A. Correct.

25 Q. What's your rank in the Vermont State

1 Police?

2 A. I'm a sergeant.

3 Q. How long have you been a sergeant?

4 A. Since 2019.

5 Q. And where do you work?

6 A. I'm assigned to headquarters.

7 Q. And that's where?

8 A. In Waterbury.

9 Q. And before you were a sergeant in
10 Waterbury where were you based?

11 A. I was a trooper in St. Albans.

12 Q. In the St. Albans barracks?

13 A. Correct.

14 Q. Did you become a sergeant while you were
15 in the St. Albans barracks?

16 A. Yes.

17 Q. And then you moved over to Waterbury; is
18 that right?

19 A. The promotion took me to Waterbury.

20 Q. And so you became a sergeant? Becoming a
21 sergeant was a promotion?

22 A. Yes.

23 Q. And so in your role that you have now as
24 a sergeant in headquarters what are your day-to-day
25 job duties?

1 A. I am the sergeant of special operations
2 with the focus on traffic safety, with a focus -- a
3 particular focus in impaired driving.

4 Q. And so you said that you are -- I'm
5 sorry, can you say your role again?

6 A. So I'm a sergeant in the Special
7 Operations Unit. The focus is traffic safety with a
8 specific focus in impaired driving.

9 Q. And what is the Special Operations Unit?

10 A. It's a group of subject matter experts
11 who are troopers in the Vermont State Police. And so
12 where I do traffic safety, there are crash
13 reconstructionists, canine coordinators, search and
14 rescue experts.

15 Q. And what is your expertise?

16 A. Traffic safety, impaired driving.

17 Q. When you say "traffic safety" what does
18 that mean?

19 A. It's keeping an eye on Vermont's highway
20 safety, taking a look at crash trends and seeing what
21 Vermont State Police can do to be proactive in
22 avoiding tragedy.

23 Q. And you also said you're an expert in
24 impaired driving?

25 A. Yes.

1 Q. Does that mean you're a drug recognition
2 expert?

3 A. Yes.

4 Q. You've been certified as a drug
5 recognition expert?

6 A. Yes.

7 Q. And who does that certification?

8 A. It's State certified.

9 Q. In your role within the Special
10 Operations Unit what are your day-to-day tasks?

11 A. Reviewing the work of other DREs, making
12 sure that DUI arrests that are made proactively by
13 troopers are done per standard, making sure that the
14 highway safety grants are -- the books are balanced,
15 people working the time are being productive.

16 Q. Let's talk about reviewing the work of
17 DREs. What does that look like?

18 A. DRE performs a narrative. Well, performs
19 an evaluation, prepares a report based on that
20 evaluation, and I make sure that the reports are done
21 to standard.

22 Q. When you're reviewing the reports you're
23 checking to make sure that they are according to what
24 standards?

25 MR. MESSINA: Objection.

1 THE WITNESS: The standards of the
2 international drug evaluation classification
3 programs, the standards set forth by the Vermont
4 drug classification program, and make sure that
5 the interpretation is sound.

6 BY MR. DIAZ:

7 Q. Would you say that you're checking the
8 work of the DREs?

9 A. Yes.

10 Q. And you're making sure that their
11 evaluations that they do in the field are appropriate?

12 A. Yes.

13 Q. Before you were with the Special
14 Operations Unit you said you were in the St. Albans
15 barracks; is that correct?

16 A. Correct.

17 Q. And there you became a sergeant. When
18 was that?

19 A. 2019.

20 Q. And before that you were a -- what was
21 your rank?

22 A. I was a trooper.

23 Q. And how long were you in the St. Albans
24 barracks as a trooper?

25 A. Since 2006.

1 Q. When did you join the Vermont State
2 Police?

3 A. I was hired in January of 2006.

4 Q. You went through the Academy before that,
5 I assume?

6 A. Yes.

7 Q. How long was the Academy then?

8 A. Start to finish, January, '06 to May,
9 2006.

10 Q. So we talked a little bit about you have
11 done depositions before. You've -- and you've done
12 trial testimony before. When we talk -- when you talk
13 about depositions what was the -- what were these;
14 criminal cases or civil cases?

15 A. Criminal.

16 Q. Exclusively criminal?

17 A. If there was anything civil I don't
18 recall.

19 Q. There might have been a deposition in a
20 civil matter, or there might not have been?

21 A. My -- my instinct would be there have not
22 been. If there is, I don't remember.

23 Q. Have you ever been party to a lawsuit
24 before?

25 A. Yes.

1 Q. When?

2 A. I don't remember the year.

3 Q. Ballpark?

4 A. 2010 maybe.

5 Q. What was the law -- what was the lawsuit
6 about?

7 MR. MESSINA: Objection.

8 BY MR. DIAZ:

9 Q. You can answer.

10 A. It was alleged that I had used excessive
11 force.

12 Q. So in 2010 there was a lawsuit alleging
13 that you used excessive force in your role as a
14 Vermont state trooper?

15 A. Yes.

16 Q. Were you the defendant in that case?

17 A. My recollection is it was the State of
18 Vermont, and I may have been a co-defendant there. I
19 don't recall.

20 Q. What was the outcome of that case?

21 A. It was dropped by the plaintiffs.

22 Q. Was there a settlement?

23 A. No.

24 MR. MESSINA: Objection.

25 THE WITNESS: Excuse me. No, there

1 wasn't.

2 BY MR. DIAZ:

3 Q. Have you been a party to any other
4 lawsuit other than the one in 2010?

5 A. Yes.

6 Q. And what other ones have you been a party
7 to a lawsuit in?

8 A. There was -- I don't recall what the
9 purpose for it was, but I was a party to one.

10 Q. When was this?

11 A. I don't remember. Maybe it was around
12 that same time, but I don't remember.

13 Q. Was it -- do you remember what the
14 subject matter of the lawsuit was?

15 A. It was a passenger during a DUI stop
16 where I was the arresting trooper. He had sued in
17 small claims court. I don't remember what he alleged.

18 Q. Do you remember the name of the plaintiff
19 in that case?

20 MR. MESSINA: Objection.

21 MR. DIAZ: What's the objection?

22 MR. MESSINA: Relevance, but he can
23 answer.

24 THE WITNESS: I don't remember.

25 MR. DIAZ: Just to be clear, under the

1 Vermont State Rules of Civil Procedure,
2 relevance is preserved. All relevance
3 objections are reserved.

4 BY MR. DIAZ:

5 Q. So there were these two lawsuits that you
6 were a party to?

7 A. Yes.

8 Q. Were there any others?

9 A. Not that I remember.

10 Q. Have you ever been a plaintiff in a
11 lawsuit?

12 A. No.

13 Q. Have you ever been a party to any type of
14 regulatory proceeding?

15 A. For example?

16 Q. Let me rephrase.

17 Have you ever had any cases before the
18 Labor Board?

19 A. No.

20 Q. So you've been a Vermont state trooper
21 for almost 20 years now, right?

22 A. 18.

23 Q. Have any of your stops -- or let me
24 rephrase.

25 In your role as a Vermont state trooper

1 have you had any of your actions reviewed by criminal
2 court?

3 A. Could you be more specific?

4 Q. Sure. You stop people. So let's go
5 back. When you were a trooper you would -- you were
6 on the street, right?

7 A. Yes.

8 Q. You were patrolling?

9 A. Yes.

10 Q. And you did that on a daily basis?

11 A. Yes.

12 Q. And you would, I assume, do traffic
13 enforcement?

14 A. Yes.

15 Q. And you would respond to civilian calls?

16 A. Yes.

17 Q. And were you doing -- were you on patrol
18 for that whole time; 2006 to 2019?

19 A. No.

20 Q. When were you not on patrol during that
21 time?

22 A. There was a nine-month period around 2009
23 where I was assigned to the Governor Security Unit.
24 It's called the Executive Protection Unit now, but it
25 was the Governor's Security Unit then.

1 MR. MESSINA: May we go off the record
2 for just a moment?

3 (A discussion was held off the record.)

4 BY MR. DIAZ:

5 Q. In your role as a trooper you've
6 conducted traffic stops?

7 A. Yes.

8 Q. In your role as a trooper you've arrested
9 people?

10 A. Yes.

11 Q. How many traffic stops do you think you
12 conducted in your role as a trooper?

13 A. Estimating, 1500.

14 Q. And of the arrests, how many arrests do
15 you think you've performed as a trooper?

16 Ballpark. I'm not going to hold you to
17 it.

18 A. Yeah. 800, maybe.

19 Q. So of the traffic stops you conducted,
20 were any challenged in criminal court?

21 A. And you're referring to the basis for the
22 stop; is that correct?

23 Q. Correct.

24 A. Yes.

25 Q. How many?

1 A. I presume the number is the same as
2 hearings I've testified at, so 20, 30. I'm not sure.
3 I'm estimating.

4 Q. So your estimate is between 20 and 30 of
5 your traffic stops have been challenged in criminal
6 court?

7 A. I'm estimating, yeah.

8 Q. And of the arrests you've conducted, how
9 many have been challenged?

10 A. I will say it's difficult for me to
11 answer that question because I don't know to the
12 extent that I would know if they were challenged or
13 not.

14 Q. Have any of your traffic stops been
15 challenged up to the Vermont Supreme Court?

16 A. Yes.

17 Q. How many?

18 A. One that I'm aware of.

19 Q. Is that State v. Button?

20 A. It is.

21 Q. There's no others that you're aware of?

22 A. Not that I'm aware of.

23 Q. Mr. Rigger, you use personal e-mail,
24 right?

25 A. Yes.

1 Q. And which personal e-mail services do you
2 use?

3 A. G-mail.

4 Q. Any others?

5 A. No.

6 Q. How often do you use it?

7 A. A few times a week.

8 Q. Do you use it for work?

9 A. No.

10 Q. Never used it for work?

11 A. No.

12 Q. Have you ever used it to discuss this
13 lawsuit?

14 A. No.

15 Q. Have you ever used it to discuss
16 Mr. Bombard?

17 A. No.

18 Q. And, Mr. Rikken, do you use any social
19 media networks?

20 A. No.

21 Q. Don't have a Facebook account or Twitter
22 account?

23 A. No.

24 Q. Do you have a personal cellphone?

25 A. Yes.

1 Q. And you have a work cellphone, right?

2 A. Yes.

3 Q. Do you have any other cellphones?

4 A. No.

5 Q. Do you ever use your personal cellphone
6 for work purposes?

7 A. Define a work purpose.

8 Q. Communicating with co-workers.

9 A. Yes.

10 Q. Do you ever use your personal cellphone
11 for communicating -- or do you ever use your personal
12 cellphone while you're patrol?

13 A. Yes.

14 Q. And when you're using it, your personal
15 cellphone on patrol, are you using it for work
16 purposes?

17 A. And define "work purposes".

18 Q. Well, what does "work purposes" mean to
19 you?

20 A. I mean, it's such a broad term. It would
21 be hard for me to define it because it's so broad.

22 Q. Well, give me an example of what you
23 think.

24 A. Talking to a dispatcher would be a work
25 purpose, and I would use it for that.

1 Q. Why would you use your personal cellphone
2 for that instead of your work cellphone?

3 A. Just sometimes feels easier. It's --

4 Q. Why does it feel easier?

5 A. Because that's the phone that I've always
6 used, so I'm just comfortable with it.

7 Q. So what do you use your work cellphone
8 for?

9 A. Almost nothing.

10 Q. When you say "almost nothing" what do you
11 use it for?

12 A. On some occasions people will call me on
13 that number that's always for work. I'll get a text
14 message on that number. I'll take -- yeah, I think
15 most recently I tried to -- I think I'll use it to
16 listen to music on it.

17 Q. So are the only times you use your work
18 cellphone when people are -- other than listening to
19 music on it are when people are contacting you?

20 A. No. I'll make phone calls on it, but
21 it's intermittent.

22 Q. Which phone do you use more for work,
23 your personal cellphone or your work cellphone?

24 A. Maybe it's split. I'm not really sure.
25 I never thought about -- I never thought about

1 quantifying the use, so I'm not sure. Split maybe.

2 Q. When you say "split" do you mean that
3 it's even, 50/50?

4 A. Sure, 50/50.

5 Q. So you use your work -- your personal
6 cellphone for work purposes 50 percent of the time;
7 you use your work cellphone for work 50 percent of the
8 time?

9 A. Estimating, yes.

10 Q. And I believe you said that you use both
11 phones for -- I can't remember if you said this, but
12 do you use both phones for phone calls and texts?

13 A. Yes.

14 Q. And have you texted on your personal
15 cellphone about this lawsuit?

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

17 Q. Have you talked to people on your
18 personal cellphone about this lawsuit?

19 A. Yes.

20 Q. Who did you talk to?

21 A. I talked to -- at the time he was Captain
22 Peterson. He called to notify me of the lawsuit.

23 Q. He's a lieutenant now, right?

24 A. He's a major.

25 Q. Major. Who else did you talk to about

1 this lawsuit on your personal cellphone?

2 A. I don't recall if we connected on it, but
3 Ryan Wood had reached out to me wondering what was
4 going on, and I ignored him.

5 Q. Anybody else?

6 A. I don't recall anybody else.

7 Q. You might have talked to somebody else,
8 or you might not have?

9 A. I would say that I may have, but I
10 couldn't give you specifics.

11 Q. And you say you may have, do you think
12 you may have talked to somebody within the Vermont
13 State Police about the lawsuit on your personal
14 cellphone?

15 A. It's possible.

16 Q. And you conducted a search of your
17 personal cellphone as a result of the document
18 requests that were sent as a part of this lawsuit,
19 right?

20 A. Yes.

21 Q. And do you remember what search terms you
22 used?

23 A. I don't remember.

24 Q. Did you come up with those search terms?

25 A. No.

1 Q. And in terms of cellphones, are you
2 familiar with programs or text messaging programs in
3 particular that allow you to -- let me rephrase.

4 Are you familiar with text messaging
5 programs that will delete texts shortly after they're
6 sent?

7 A. So I know that these exists, but I
8 couldn't tell you what programs do that and what
9 don't.

10 Q. Do you use any of those programs?

11 A. I don't think so. You'd have to give me
12 some examples. I don't know what these are.

13 Q. So for this deposition can you tell me
14 what you did to prepare for today?

15 A. I re-watched the car stop video and read
16 my affidavit.

17 Q. What else did you do?

18 A. That was it.

19 Q. You didn't speak with your attorney?

20 A. I did speak to my attorney. Thank you.

21 Q. Other than -- and when you say you
22 watched the car stop video, you're referring to the
23 February 9, 2018 stop of Mr. Bombard?

24 A. February 9, 2018, yes.

25 Q. And was that the full video?

1 A. Yes.

2 Q. So from the initial stop through
3 Mr. Bombard being placed in a holding cell at the
4 St. Albans barracks?

5 A. That's right.

6 Q. How many times did you watch it?

7 A. Once.

8 Q. When did you watch it?

9 A. This morning.

10 Q. And when you -- other than the cruiser
11 cam video and your affidavit, did you look at any
12 other documents?

13 MR. MESSINA: Objection; asked and
14 answered, but go ahead.

15 THE WITNESS: No, but since you mentioned
16 talking to the attorney, that becomes --

17 MR. MESSINA: I object as to privilege.

18 MR. DIAZ: Let me rephrase the question
19 to make sure that we avoid that.

20 MR. MESSINA: Yes.

21 BY MR. DIAZ:

22 Q. Other than any communications with your
23 attorney, did you review any other documents besides
24 the affidavit and the cruiser cam video?

25 A. So I'm familiar with the filings that

1 have gone back and forth.

2 Q. When you say "filings" what do you mean?

3 A. Communications between counsel, motions.

4 Q. Did you review the complaint?

5 A. Yes.

6 Q. And have you read the -- I think you said
7 you've read motions in the case?

8 A. Yes.

9 Q. Which motions are you referring to?

10 A. Generally speaking it's conversations --
11 well, excuse me, motions regarding discovery requests,
12 the motions to dismiss, then e-mail communicating.

13 Q. Anything else?

14 A. I think that's it.

15 Q. Okay. And did you -- so have you
16 reviewed the decision on the motion to dismiss?

17 A. I -- I probably did, yes.

18 Q. When did you review the filings in the
19 case?

20 A. I don't remember. They were sent -- they
21 trickled in over time and then they came in as a big
22 batch and -- but I couldn't tell you the date. I'm
23 not sure.

24 Q. Was it within the last week?

25 A. No.

1 Q. Was it within the last month?

2 A. No.

3 Q. Was it within the last six months?

4 A. Probably.

5 Q. And when you -- you said you also read
6 your affidavit from Mr. Bombard's arrest, right?

7 A. Yes.

8 Q. When did you read that?

9 A. This morning.

10 Q. Did you -- other than communications with
11 your attorney, did you review any other documents this
12 morning?

13 A. No.

14 Q. Are there any other documents that you
15 reviewed as a part of this lawsuit?

16 A. I don't recall.

17 Q. Did you review any deposition
18 transcripts?

19 A. No.

20 Q. And you said you spoke to your attorney
21 in preparation for this deposition?

22 A. Yes.

23 Q. How many times?

24 MR. MESSINA: Objection.

25 BY MR. DIAZ:

1 Q. You can answer.

2 A. Once or twice, counting this morning.

3 Q. And other than Mr. Messina who else was
4 present?

5 A. The first meeting was Rosemary
6 Gretkowski.

7 Q. And who is she?

8 A. She is the lawyer for the Department of
9 Public Safety.

10 Q. Is this on the phone or personal
11 meetings?

12 A. Virtual.

13 Q. So Zoom?

14 A. Zoom.

15 Q. How many did the meeting last?

16 A. 60 minutes.

17 Q. And on your communications with your
18 attorneys was anyone else copied who is not a -- not
19 an attorney?

20 A. In past e-mails was Edmond; Edmond Staff,
21 Attorney General's Office.

22 Q. Anyone else outside of the Attorney
23 General's Office?

24 A. Not that I'm aware of.

25 Q. Have you provided your counsel with all

1 documents related to this case?

2 A. Yes.

3 Q. So I want to just go through a few of the
4 individuals other than you who are involved in this
5 case and make sure that you know who they are.

6 You know a Sergeant Bruzzi, right?

7 A. Yes.

8 Q. How do you know him?

9 A. I worked with him in the St. Albans
10 barracks.

11 Q. And he was -- he came to the scene of
12 the -- of Mr. Bombard's arrest, right?

13 A. Yes.

14 Q. Do you know, I believe you said Ryan Wood
15 earlier, correct?

16 A. Yes.

17 Q. You know him?

18 A. Yes.

19 Q. You all worked together at the St. Albans
20 barracks?

21 A. No.

22 Q. How do you know him?

23 A. Working for the same agency.

24 Q. Working for the Vermont State Police?

25 A. Yes.

1 Q. Is that how you met him?

2 A. Yes.

3 Q. And you know Richard Desany?

4 A. Desany, yes.

5 Q. Desany. Because he also worked at the
6 St. Albans barracks?

7 A. Yes.

8 Q. You know Jim Hughes?

9 A. Yes.

10 Q. He was the State Attorney's in Franklin
11 County?

12 A. Yes.

13 Q. You worked with him in that capacity?

14 A. Yes.

15 Q. And you know John Lavoie?

16 A. Yes.

17 Q. He also worked at the Franklin County
18 State's Attorney's Office?

19 A. Yes.

20 Q. And you worked with him in that capacity?

21 A. That's right.

22 Q. You know Maurice Lamothe?

23 A. Yes.

24 Q. He was the station commander in
25 St. Albans when you were stationed there, right?

1 A. That's right.

2 Q. And do you know Eric Patno?

3 A. Yes.

4 Q. How do you know him?

5 A. I worked with him at the St. Albans
6 barracks.

7 Q. He was a trooper, also?

8 A. Yes.

9 Q. And do you know Tara Thomas?

10 A. Yes.

11 Q. How do you know Tara Thomas?

12 A. I worked with her at the State Police.

13 Q. Where did you work with her?

14 A. She supervised me in the Special
15 Operations Unit.

16 Q. Does she still supervise you in the
17 Special Ops Unit?

18 A. No.

19 Q. Where is -- do you know where Tara Thomas
20 works now?

21 A. Yes.

22 Q. Where?

23 A. She is the commander of the Internal
24 Affairs Unit.

25 Q. So you were on the road for -- are you

1 still on the road as a -- are you still patrolling the
2 roads?

3 A. That's not my primary function.

4 Q. Do you still do it as a part of your role
5 within the Vermont State Police?

6 A. Yes.

7 Q. How often?

8 A. A couple, few times a month.

9 Q. Is there a specific reason that you do it
10 just a couple times a month?

11 A. My primary job duties are, as I described
12 earlier, and I don't always have the time.

13 Q. Are you assigned to do -- to go on patrol
14 a couple times a month, or can you just explain that a
15 little bit more?

16 A. Generally not assigned. There may be
17 intermittent shift coverages, in which case that would
18 then require patrol.

19 Q. And that's the -- is that the reason that
20 you go on patrol is to cover shifts that -- where it's
21 needed?

22 A. Sometimes.

23 Q. What are the other reasons that you would
24 go on patrol?

25 A. I would go on patrol on overtime for

1 highway safety in grants to do extra patrol work.

2 Q. So over the last four years or so you've
3 been on patrol on average a couple times a month?

4 A. On average.

5 Q. For how long -- when you're on patrol how
6 long are you on patrol for?

7 A. It varies.

8 Q. Is it, you know, one hour?

9 A. It could be one hour, and if it's a shift
10 it's longer but indeterminate.

11 Q. How long is a shift?

12 A. Nine hours.

13 Q. And sometimes it's much longer, right?

14 A. That's right.

15 Q. What's the longest shift you've ever
16 done?

17 A. I couldn't say but probably 24 hours,
18 yeah.

19 Q. And when you were in the St. Albans
20 barracks you were on patrol five days a week?

21 A. Average, yes.

22 Q. And how long were your shifts at the
23 St. Albans barracks?

24 A. Generally nine hours.

25 Q. Sometimes longer, right?

1 A. Yes.

2 Q. And you would be on for overtime?

3 A. Yes.

4 Q. When you're on patrol is there anything
5 more important than protecting the rights and safety
6 of Vermonters?

7 A. That's probably the overarching goal.

8 Q. And when I say Vermonters' rights, you
9 understand that that's -- what does that mean to you?

10 A. I think it's the life, liberty, and
11 pursuit of happiness.

12 Q. Declaration of Independence and the Bill
13 of Rights, right?

14 A. That's right.

15 Q. Are you familiar -- and, you know, and
16 that goes for when you're conducting traffic stops,
17 too, right?

18 A. That's right.

19 Q. And when you're making arrests?

20 A. Yes. And I'm going to clarify what I
21 said before. I think people visiting Vermont also
22 have those same rights, so it's not just Vermonters.

23 Q. Absolutely.

24 When I talk about the First Amendment,
25 what does that mean to you?

1 A. It's a freedom of expression, freedom to
2 gather and assemble.

3 Q. And when I talk about -- you've been
4 doing this for a long time. You know about the Fourth
5 Amendment, right?

6 A. I do.

7 Q. What does the Fourth Amendment cover?

8 A. It's a protection against seizure.

9 (Plaintiff's Exhibit 8 was previously
10 marked for identification, attached at the end
11 of the original transcript.)

12 BY MR. DIAZ:

13 Q. I'm going to show you what's been marked
14 as Exhibit 8 in a previous deposition.

15 What is Exhibit 8?

16 A. It is VSP Directive 419.

17 Q. And what's the line under?

18 A. Crowd Control and Management.

19 Q. And do you see Part 2.3?

20 A. Yes.

21 Q. And what does it say?

22 A. It's a paragraph describing First
23 Amendment activities.

24 Q. And it says, First Amendment activities
25 include all forms of speech and expressive conduct

1 used to convey ideas and/or information, express
2 grievances or otherwise communicate with others and
3 include both verbal and non-verbal expression.

4 Did I read that right?

5 A. You did.

6 Q. Does that align with your view of First
7 Amendment activities?

8 A. Yes.

9 Q. Let's go back to one part here.

10 MR. MESSINA: Of Exhibit 8?

11 MR. DIAZ: Just give me a minute.

12 BY MR. DIAZ:

13 Q. So going back to Exhibit 8, can you find
14 Section 4.4 for me? I believe it's on Page 3.

15 I should ask, have you seen this policy
16 before?

17 A. Yes, probably.

18 Q. Do you remember when you saw it?

19 A. No.

20 Q. Do you know -- why do you think you would
21 have seen it before?

22 A. We're required to review policies as they
23 get pushed out.

24 Q. Have you ever been on the crowd control
25 team?

1 A. No.

2 Q. So going to 4.4, do you see where it says
3 "D" there?

4 A. Yes.

5 Q. And it says, Vermont State Police members
6 shall avoid negative verbal engagement with members of
7 the crowd. Verbal abuse against officers shall not
8 constitute a reason for arrest or for any use of force
9 against such individuals.

10 Did I read that correctly?

11 A. Yes, you did.

12 Q. So the Vermont State Police policy is
13 that verbal abuse against officers shall not
14 constitute a reason for an arrest; is that right?

15 A. That's right.

16 Q. And you abide by the Vermont State Police
17 policy, right?

18 A. Yes.

19 Q. I want to talk a little bit about traffic
20 stops. You said you've done over a thousand traffic
21 stops in your career, right?

22 A. Yes.

23 Q. What's your procedure for doing -- for
24 conducting a traffic stop?

25 A. Can you be more specific or define

1 "procedure"? I'm not sure.

2 Q. Do you have a standard procedure that you
3 follow when conducting a traffic stop?

4 A. Are you talking mechanically,
5 administratively?

6 I don't understand what you're looking
7 for.

8 Q. Well, when you see a traffic violation,
9 for instance, walk me through what you do.

10 A. I see a traffic violation. I decide that
11 I'm going to have a contact with the operator about
12 that traffic violation, and so I initiate the traffic
13 stop.

14 Q. And after you initiate the stop what do
15 you do?

16 A. I speak with the operator about what I
17 observed, ask them questions regarding -- often
18 regarding where they're going, where they're coming
19 from. Ask for their driver's license, their proof of
20 registration, their proof of insurance.

21 I validate or ensure that those things
22 are all -- are all legitimate and current, and then I
23 decide what type of action will be taken, whether it
24 will be a form of a warning or a ticket or an arrest.

25 And depending on what that decision was,

1 the stop either concludes or continues.

2 Q. When you walk up to a car what's the
3 first thing you do?

4 A. I address the operator.

5 Q. What do you say?

6 A. It varies. It's -- sometimes I introduce
7 myself, and sometimes it's a casual "Hey", followed
8 with, "Do you know why I stopped you" generally.

9 Q. And after the person, you know, responds
10 to your initial introduction or question about why you
11 stopped them, what's the next step?

12 A. I guess I don't fully understand -- I'm
13 not sure where you want me to fill in the gaps of what
14 I may have missed.

15 Q. Well, you said the first thing you do is
16 you walk up to the car, you introduce yourself or you
17 say, Do you know why I stopped you, right?

18 That's what you said?

19 A. Yes.

20 Q. What do you say to them next?

21 A. Do you know why I stopped you? They
22 answer that question in the affirmative or something
23 else. I then usually direct them to driver's license,
24 registration, proof of insurance. Like I said,
25 perhaps questions about where you're going, where

1 you're coming from. Perhaps I might discuss about the
2 violation itself, and then it's a return to my cruiser
3 to verify the driver's license, registration.

4 Q. And you'd say this is your standard
5 operating procedure?

6 A. I would say that it's evolved over time,
7 but that was generally how I conducted myself.

8 Q. Is it still how you conduct yourself
9 today?

10 A. No.

11 Q. How do you do it today?

12 A. Try to make it more of an education
13 conversation to draw out more with the operator about
14 the nature of why I stopped them and why their
15 behavior may be dangerous and what the purpose of
16 these interactions are. More educative. It's
17 education over reinforcement, I call it.

18 Q. And that's because you're an educator
19 now, right?

20 A. I see it as -- I see the mandate as
21 education.

22 Q. And part of what you do now is you teach
23 and train officers on how to do this correctly, right?

24 A. One of my job duties, yes.

25 Q. Do you advise other officers to try to

1 educate people that they stop?

2 A. Yes.

3 Q. What were you -- just going back to your
4 general, the general -- I guess when did you start
5 doing the more educative type of interaction on motor
6 vehicle stops?

7 A. The last couple years probably.

8 Q. In your role as -- at the Special
9 Operations Unit --

10 A. Yes.

11 Q. -- how were you trained to conduct motor
12 vehicle stops?

13 A. Most of the training, in my recollection,
14 is about the physically conducting the stop. There's
15 not so much a training about how to converse during
16 the stop.

17 Q. I assume when you conduct motor vehicle
18 stops that you're courteous?

19 A. Yes.

20 Q. You're honest?

21 A. Yes.

22 Q. You don't exaggerate facts?

23 A. No.

24 Q. I also assume you've done motor vehicle
25 stops where people have argued with you about the

1 reason -- about why you stopped them?

2 A. Yes.

3 Q. They've probably argued with you about
4 when you gave them a ticket, right?

5 A. Sometimes.

6 Q. Some people get unhappy about it?

7 A. Yes.

8 Q. What's the basis, or do you know the
9 required basis for conducting a motor vehicle stop?

10 A. The legal basis, you're talking about?

11 Q. Well, I guess I'm just asking, what do
12 you think you need in order to justify a motor vehicle
13 stop?

14 A. There's three different things that --
15 one of them needs to exist in order to conduct a motor
16 vehicle stop.

17 Q. And what are those three things?

18 A. Reasonable suspicion that a traffic
19 violation has occurred or that there's a criminal
20 violation occurring or for a community caretaking
21 purpose.

22 Q. So the first is reasonable suspicion of a
23 traffic violation?

24 A. Uh-huh.

25 Q. The second is reasonable suspicion that a

1 crime is occurring. The third is under your community
2 caretaking role?

3 A. That's right.

4 (Plaintiff's Exhibit 3 was previously
5 marked for identification, attached at the end
6 of the original transcript.)

7 BY MR. DIAZ:

8 Q. Okay. I'm just going to show you what's
9 been marked as Exhibit 3 in a previous deposition.

10 What is Exhibit 3?

11 A. It's VSP Directive 403, Investigative
12 Motor Vehicle Stop.

13 Q. Have you seen this policy before?

14 A. Yes.

15 Q. Are you familiar with it?

16 A. Yes.

17 Q. Looking at Section 2.0 where it says
18 Policy, do you see that?

19 A. Uh-huh (affirmative).

20 Q. It says 2.1?

21 A. Yes.

22 Q. It says, All motor vehicle stops shall be
23 based upon probable cause that a statutory motor
24 vehicle violation has occurred or upon a reasonable
25 suspicion to believe that a crime has been or is being

1 committed or upon a community caretaking function.

2 Is that right?

3 A. That's right.

4 Q. Have I read that correctly?

5 A. Yes, you did.

6 Q. And this basically comports with your
7 definition of what you said are the allowable reasons
8 to make a motor vehicle stop, right?

9 A. Yes.

10 Q. So I want to talk about the community
11 caretaking function. What does that mean to you?

12 A. I think that the -- community caretaking
13 to me means that police are guardians of society, and
14 it's not only about enforcement of laws but also make
15 sure the people are okay, which is to say not needing
16 any assistance. So that can be health and welfare,
17 whether that's their physical health or mental health
18 or in general distress.

19 I think the police can be used as a tool
20 for access to services or intervene before something
21 more nefarious occurs.

22 Q. And in terms of what a motor vehicle stop
23 had to be based on, the policy says, you know,
24 probable cause of a violation, a reasonable suspicion
25 of a crime or upon a community caretaking function.

1 In terms of motor vehicle stops what does
2 "community caretaking function" mean?

3 A. I think one may -- an operator may
4 present in a way that is not in violation of any law
5 but requiring some intervention. I should say a
6 community caretaking interaction which would be an
7 intervention to make sure they're not needing any
8 assistance.

9 Q. So part of the community caretaking
10 function, I believe you said, was protecting people's
11 mental health, right?

12 A. Yes, right.

13 Q. You've done mental health calls --

14 A. Yes.

15 Q. -- in your role as a trooper, correct?

16 A. Yes.

17 Q. And that's part of the community
18 caretaking function?

19 A. Yes.

20 Q. What other types of calls are -- would
21 you say are part of the community caretaking function?

22 A. I think medical emergencies would be
23 community caretaking.

24 Q. Anything else?

25 A. I think, like I said, medical

1 emergencies, and I think the other -- the other prong
2 would be like mental health emergencies.

3 So I think -- I am hesitant to put them
4 under two pillars because people could need assistance
5 that don't fall into either of those but could really
6 benefit from a police, public interaction to
7 perhaps -- to perhaps afford them the opportunity for
8 extra services.

9 Q. Can you give me some examples?

10 A. I think an example could be a parent
11 dispute with a child. Not a violation of law, doesn't
12 involve medical emergency or mental health, but
13 perhaps there could be some referral for Department of
14 Children and Families or some other type of social
15 work for that family that they didn't earlier have
16 access to because they were kind of existing in their
17 own -- in their own space.

18 Q. And you'd respond to that because there's
19 a concern about the child's safety?

20 A. It's -- I see it as not necessarily only
21 child safety, but I think about family health and
22 facilitating their ascent through Mansell's hierarchy.

23 Q. And you would be -- I mean, this is
24 something you would be called to, correct?

25 You're not; is that right?

1 A. I'd say that's -- if we're still talking
2 about community caretaking, not necessarily.

3 Q. How else would you interact with people
4 other than when you're called to do so?

5 A. Being on patrol or just being present in
6 the moment to observe departures from norm to say --
7 to recognize people who may be in distress and to
8 check in on them and see if they are and to validate
9 that. If not, move along. And if they are, to see
10 what other types of services may be necessary.

11 Q. When you say "distress" what does that
12 mean?

13 A. I think distress can take many forms, but
14 distress is psychological distress, it's physical
15 distress.

16 I think psychological distress probably
17 falls in the mental health pillar, and physical health
18 falls in the medical emergency pillar.

19 And I think that distress is the physical
20 manifestation that we can see or hear or observe that
21 is physical manifestation of internal stress. And I
22 think some of that stress is toxic stress, and I think
23 that police can help through conversation or access to
24 other services.

25 Q. And how do you determine if someone is in

1 in distress?

2 A. I think recognizing departures from what
3 I've come to know as normal human behavior versus
4 departure from that norm. I may use that as
5 recognizing that this doesn't appear normal so,
6 therefore, I would like to have a conversation and to
7 see if that's validated.

8 And if it is, can I be of service. And
9 if not, then it's over.

10 Q. So are you saying that your definition of
11 distress is anything that's not normal?

12 A. To me that appears not normal. My
13 definition of distress is the physical manifestation
14 of what is probably internal distress. Distress in
15 the form of medical emergency or mental health. The
16 things that stress may manifest itself in things that
17 are not so-called normal.

18 Q. And so how you determine whether someone
19 is in distress is by -- how did you put it?

20 A. Departures from the norm.

21 Q. So a lot of things can be departures from
22 the norm, right?

23 A. Yes.

24 Q. They don't all mean that a person is in
25 distress, right?

1 A. That's right.

2 Q. If you saw a person dancing on the
3 corner, that would be a departure from norm, right?

4 A. Yes.

5 Q. Would you assume that that person is in
6 distress?

7 A. No.

8 Q. Would you have a conversation with that
9 person?

10 A. Not necessarily.

11 Q. What are the other ways you determine
12 whether someone is in distress?

13 A. Someone -- I don't make an observation
14 that appears to be departure from the norm. And, of
15 course, context matters.

16 It would be -- someone may say, I'm in
17 distress, I need your help. It doesn't always happen
18 like that.

19 Q. So we can agree that departures from the
20 norm are not always signs of distress?

21 A. We can agree on that.

22 Q. When you see someone who -- who departs
23 from the norm in the way that you think they might be
24 in distress, what do you do next?

25 A. I consider the context of that departure,

1 and in the event that I think that based on context
2 that I'm going to speak to that person, I'll attempt
3 to -- I'll attempt to speak to them to ascertain if
4 they are, in fact, in distress or not.

5 Q. And is this -- were you trained on
6 community care interactions?

7 A. Yes.

8 Q. How were you trained on them?

9 A. At the Academy level there's
10 conversations about patrol procedures, and one of
11 those patrol procedure mindsets is the community
12 caretaking mindset.

13 Q. And what were you trained to do in these
14 interactions?

15 A. I've kind of already said it.

16 To revisit it, it's recognize people who
17 may be in distress and have a non-adversarial
18 conversation with them to determine if that is, in
19 fact, the case.

20 And if it is, offer them services. And
21 if they would like access to those services,
22 facilitate referral.

23 If they care not to and there's no
24 violation occurring and no other concerns to continue
25 that interaction, then be on your way.

1 Q. And how were you trained -- in your
2 training were you trained on how to recognize
3 distress?

4 A. We're trained to recognize distress, yes.

5 Q. And how were you trained to recognize
6 distress?

7 A. The way people look, the way they may be
8 behaving.

9 Q. Were you told the types of ways people
10 can look or behave?

11 Let's start with the way people look.
12 What were you told are -- about the ways people look
13 that might be signs of distress?

14 A. It would be tough for me to talk about my
15 training from 2006 because I really would be guessing
16 about what I remember I was taught, so I'd rather not
17 do that. I can talk about where my experience has
18 taken me, but it would be hard for me to say who told
19 me what in 2006. That would be disingenuous.

20 Q. Do you remember anything of the training
21 in terms of what you were told people looked like when
22 they were in distress?

23 A. There's -- there's macro ideas here about
24 the use of profanity, being loud, being aggressive,
25 taking aggressive postures, throwing things, just

1 generally, not necessarily arriving to a disorderly
2 level but people that look like they are, probably
3 categorized something informally like having a bad day
4 and so, therefore, your judgment based on context if
5 that requires a police intervention or not.

6 Q. And in addition to how people look, you
7 talked about behaviors. Other than what you just
8 mentioned, are there particular behaviors you were
9 trained are the types of behaviors that would show
10 signs of distress?

11 A. I think people having an argument, for
12 example. That doesn't necessarily mean I'm going to
13 talk to them about their argument, but based on
14 context, I'm seeing body language/behavior that it
15 looks like it may be escalating by way of posture,
16 then that would be context that I would want to
17 intervene.

18 Q. And when you say "escalating", escalating
19 to what?

20 A. Escalating to where a crime could occur.

21 Q. In terms of community care motor vehicle
22 stops, would you say it's necessary for people to be
23 in distress to justify that stop?

24 MR. MESSINA: Objection; form.

25 THE WITNESS: Could you ask the question

1 a different way, just to make sure I understand
2 it?

3 BY MR. DIAZ:

4 Q. Making a community care stop, what is
5 required for you to make that stop?

6 A. Right, so I -- based on what I've -- go
7 ahead.

8 Q. Let me rephrase.

9 A. Yes.

10 Q. What level of distress is required for
11 you to make that stop?

12 A. I think it's the -- if we're talking
13 about a motor vehicle stop, it's about driver behavior
14 and, also, the context of the behavior.

15 Q. We can agree that there are many types
16 of -- we can agree that people experience stress on a
17 daily basis, right?

18 A. Yes.

19 Q. Most people get stressed from various
20 things, yes?

21 A. Yes.

22 Q. And you've on the road, I'm sure,
23 witnessed people get stressed out by driving alone,
24 right?

25 A. Yes.

1 Q. When people -- but being stressed does
2 not -- seeing someone who's stressed out, that
3 wouldn't be enough to conduct a community care stop,
4 right?

5 A. No.

6 I mean, my eyeballs are about to float
7 out of my head. Can I go to the bathroom? Can we
8 just take literally three minutes? Is that okay?

9 (A recess was taken from 10:06 a.m. to

10 10:10 a.m.)

11 BY MR. DIAZ:

12 Q. Mr. Rikken, when I say "stress" what do
13 you think I mean?

14 When I -- rephrase that.

15 When I say "stress" what does stress mean
16 to you?

17 A. When I hear "stress" I think about
18 cortisol release in the body leading to perhaps
19 increased blood pressure and its spinoff health
20 effects and things that maybe cloud judgment and
21 create -- create conflict in the form of not receiving
22 language clearly or processing language clearly, and
23 distress is in response to environmental stimuli and
24 has physical manifestations.

25 Q. And how does that differ from distress?

1 A. I think in the way that I think of them,
2 I think that distress is the physical manifestation of
3 it. So someone who is in distress, that stress has
4 reached a toxic level where it starts to blow over and
5 have observable effects.

6 Q. So it would have to -- so it's stress
7 that reaches a level that it becomes so toxic the
8 person is exhibiting physical signs of that stress, is
9 that what you're saying?

10 A. That's how I -- that's how I would use
11 those terms, yes.

12 Q. And to get to a toxic level the stress
13 would have to be extreme?

14 A. No, not necessarily.

15 Q. Are you familiar with the definition, the
16 common definition of distress?

17 A. No.

18 Q. I'm going to show you the Cambridge
19 English dictionary of distress.

20 (The witness was shown something on
21 Attorney Diaz's cellphone.)

22 Q. Do you see the definition there?

23 A. Yes.

24 Q. Can you read it for me, please?

25 A. A feeling of extreme worry, sadness, or

1 pain.

2 Q. Do you agree with that definition?

3 A. I'm not in a position to disagree with
4 it, no.

5 Q. You don't disagree with it?

6 A. No.

7 Q. And when you see someone exhibiting a
8 feeling of extreme worry, sadness, or pain how do you
9 approach them?

10 A. I may not approach them.

11 Q. If you do, how do you approach them?

12 A. If it's able to be done via a
13 non-adversarial, noncustodial action, it's usually,
14 Hey, are you okay?

15 Q. And you've said you've done mental health
16 calls, right?

17 A. Yes.

18 Q. How many, would you say?

19 A. It would be tough for me to quantify.

20 Q. Is it ten? Is it more than 20?

21 A. It's -- it would be hard for me to
22 quantify because it would be impossible to know what
23 volume of calls have roots in mental illness.

24 Q. Well, not mental illness, but you said --

25 A. Mental health, excuse me, but I wouldn't

1 be able to know, you know.

2 Q. Well, you said you have been on mental
3 health calls?

4 A. Yes.

5 Q. Right?

6 So when you've been on the calls you're
7 thinking of, how have you responded to those people
8 generally?

9 A. Those are -- those are conducted a little
10 bit differently. We're talking about a reactive call
11 for service, so I introduce myself, let them know the
12 reason for the interaction, and it usually involves an
13 offer of referral.

14 Q. And when you first approach the person
15 what is your -- what does your first interaction look
16 like?

17 A. It's usually it's an introduction and an
18 explanation of why we're interacting with each other.

19 Q. And have you ever responded to someone
20 who you believed was in mental health crisis?

21 A. Yes.

22 Q. And would you say you've done that many
23 times?

24 A. Yes.

25 Q. And when you're responding to someone in

1 a mental health crisis how do you first interact with
2 them?

3 A. Like I said, I introduce myself and tell
4 them the reason for the conversation.

5 Q. And what are you trained to do when you
6 first interact with someone in a mental health crisis?

7 A. I think it's just that. It's make sure
8 that they are -- make sure that they are safe, make
9 sure that we're safe and responding professionals are
10 safe, and then a determination if a referral is
11 necessary, if they're safe to be left by themselves,
12 or if a -- if a non or involuntary -- involuntary
13 continuation of custody is necessary.

14 All these determinations are made, and
15 then depending on what level we're at we go down that
16 road, and otherwise the interaction ends once
17 everything is deemed to be stable.

18 Q. And if you approached someone in a mental
19 health crisis and they are escalated, what do you --
20 how do you respond to that?

21 A. If they're escalated it's a sign to me
22 that they are not -- that they are under stress or
23 exhibiting those signs that has those negative --
24 negative nervous system impacts by way of judgment and
25 memory and processing, so my goal is to deescalate

1 them, try to get them to return to more of a -- more
2 of a calm state.

3 Q. And that's what you're trained to do,
4 right?

5 A. Yes.

6 Q. Have you ever conducted -- other than for
7 Mr. Bombard have you ever conducted -- or rephrase
8 that.

9 Have you conducted motor vehicle stops
10 based upon your community care function?

11 A. Yes.

12 Q. When?

13 A. I couldn't tell you specifically.

14 Q. How many times have you done that?

15 A. Estimating? I'll say more than ten
16 times, but I couldn't tell you how many.

17 Q. So it's more than ten, yes?

18 A. Yes.

19 Q. Is it less than 20?

20 A. I would estimate it's probably more than
21 20 but, like I said, we get to a certain number here,
22 I would be guessing.

23 Q. And can you give me some examples of the
24 motor vehicle stops you did based upon your community
25 care function?

1 A. A car pulled off alongside the road, the
2 passenger door opened, and someone appeared to be
3 getting sick.

4 Q. What do you mean, getting sick?

5 A. Vomiting.

6 Q. Out of the car?

7 A. Yes.

8 Q. What's another example?

9 A. Another example is observing an argument
10 taking place and asking -- you know, essentially I'm
11 trying to ascertain if this is -- if this is okay or
12 not. I should say if criminal or not.

13 Q. You saw an argument in a vehicle?

14 A. An argument, yes.

15 Q. So you saw two people arguing inside a
16 vehicle?

17 A. Right, so pulling up next to somebody at
18 a light and looking over and seeing them arguing and
19 then saying, well, okay, that's not a crime, but I'm
20 concerned that it could escalate to a crime so I'm
21 going to check in real quick.

22 Q. Why were you concerned it could escalate
23 to a crime?

24 A. Because people when they are engaged in
25 an argument don't always escalate to violence, but I

1 don't know them. I don't know if they're capable of
2 that. I think anyone could be, I suppose, and so it
3 was simply a non-adversarial check to make sure it's
4 not heading in that direction. I think it's a police
5 mandate.

6 Q. Do you have other examples of when you've
7 stopped, conducted motor vehicle stops based upon your
8 community care function?

9 A. There have been examples of vehicles that
10 were slow moving or stopped along a roadway but not
11 arising to say a slow-moving vehicle statute or
12 stopped along a roadway, not in the aforementioned
13 medical situation where I may pull up alongside them
14 and just talk to them.

15 I had one two days ago. Car was stopped,
16 signaled, signaled to be over. And I pulled up
17 alongside, and I asked if she was okay. She said,
18 Yeah, I was just looking at my phone for directions,
19 and that was the end of the encounter. Examples like
20 that.

21 Q. That last one, where was that?

22 A. In Milton.

23 Q. Was it on a main road?

24 A. Define "main road".

25 Q. Where was it in Milton?

1 A. It was on a -- on Cobble Hill Road.

2 Q. And other than Mr. Bombard have you ever
3 conducted a community care motor vehicle stop because
4 someone signaled to you?

5 A. Yes.

6 Q. And can you tell me about those -- how
7 many times would you say that was?

8 A. I know that it's happened, but I couldn't
9 quantify.

10 Q. And so explain those stops to me.

11 A. Hey -- hey, I need to talk to you. Like
12 that would be the way that would go.

13 Q. So somebody --

14 A. Basically they pull me over.

15 Q. So somebody spoke to you?

16 A. Yes.

17 Q. They asked you for helped?

18 A. Or signaled, waved to me.

19 Q. They waved to you?

20 A. Waved to me, like come over, yes.

21 Q. Any other times someone has gestured to
22 you and you conducted a community care stop?

23 A. Not -- nothing that would be different
24 than those examples that I can recall.

25 Q. Do Vermont state troopers enforce parking

1 violations?

2 A. I would say generally not. I don't -- I
3 presume there have been calls where cars were parked
4 along the road and may be creating a traffic hazard so
5 a trooper may have responded to see if that's true,
6 but that's not -- that's not generally what we do.

7 Q. So I think you just gave me one example
8 of a potential parking violation that a trooper would
9 enforce if there was a call that a roadway was being
10 blocked by a car, right?

11 A. Right.

12 Q. Are there any other examples you can
13 think of?

14 A. None that would be common, no.

15 Q. Is there a policy in the Vermont State
16 Police about enforcing parking regulations?

17 A. I'm not sure.

18 Q. You're not aware of one?

19 A. Yeah, I'm not saying there isn't one, but
20 I wouldn't be able to cite it here.

21 Q. Did you ever receive any training on
22 enforcing parking regulations?

23 A. Probably not. I say probably not. I
24 don't remember receiving it.

25 Q. Do you think you probably didn't?

1 A. I think I probably did not.

2 Q. And have you enforced parking regulations
3 before?

4 A. Yes.

5 Q. When?

6 A. I'm thinking.

7 I wouldn't be able to put a date on it,
8 but the kinds of parking regulations that I would have
9 a conversation with somebody would be like parking in
10 a handicapped spot.

11 Q. And why does that one stand out to you?

12 A. Because when I hear you say "parking
13 regulations" what I'm thinking about, somebody whose
14 meter has expired, so that's what I think of. And so
15 I separate that from a vehicle that is -- a disabled
16 vehicle on the interstate, for example. I don't think
17 of that as a parking regulation.

18 I think of a handicapped -- handicapped
19 parking issue as not a parking meter issue. I feel
20 like that's an access issue for people who may need
21 it.

22 Q. And so I want to -- I appreciate you
23 letting me know how we're thinking about parking
24 regulations here. I guess what I'm thinking about is
25 a car stopped in any way that is unlawful. You know,

1 a vehicle, empty or not, stopped in any way that is
2 not lawful or potentially unsafe.

3 Is that fair?

4 A. Yes, so you and I have a different
5 definition of a parking regulation. What you're
6 describing is unlawful stopping or standing. That may
7 have an encounter with me, yes.

8 Q. Okay. And so taking your definition,
9 unlawful stopping or standing, you have enforced that
10 before?

11 A. Yes, probably.

12 Q. Enforced those regulations before?

13 A. Yes.

14 Q. And what are the types of situations
15 where you would enforce that law?

16 A. A disabled vehicle on the interstate. I
17 guess that is technically not allowed. You can't stop
18 on the interstate barring certain reasons.

19 I think of the aforementioned handicapped
20 thing. I've had conversations with people about that.

21 There may be times where, like I said, a
22 vehicle is stopped along a roadway, it's running,
23 there's nobody around it. I might look into that and
24 see what -- why and what and how and so forth. I
25 can't give you an example necessarily, but these are

1 again ideas that -- general concepts that I would be
2 involved in.

3 Q. And have you personally witnessed these
4 types of violations?

5 A. Yes.

6 Q. And how did you respond to them?

7 A. Sometimes they were non-custodially, and
8 sometimes they were with blue lights.

9 Q. And people were in these cars, is what
10 you're saying?

11 A. Sometimes they were.

12 Q. And sometimes you -- when you say
13 "non-custodially" what does that mean?

14 A. Rolling, driving alongside the driver's
15 window and looking over at them and having a
16 conversation, kind of across our two cars would be a
17 noncustodial encounter.

18 Or a car stopped along the road idling or
19 just parked but doesn't seem to belong there for
20 whatever the context of the environment is. I may or
21 may not have my blue lights on, and in which case
22 making a seizure or not a seizure, I understand that,
23 and just looking around, investigating, ascertaining
24 if there's something wrong or otherwise nefarious.

25 Q. And what do you -- assuming there's

1 nothing else nefarious going on what do you tell the
2 people in the car?

3 A. I tell them why I've interacted with
4 them, what the concern was, and it usually ends the
5 encounter.

6 Q. Do you tell them to move?

7 A. It depends what their reason is for being
8 there.

9 Q. When you find vehicles that are empty --
10 or let me back up.

11 Have you found -- have you found
12 violations of these kind of parking, standing,
13 stopping violations where the car is empty?

14 A. Yes.

15 Q. Meaning there's no driver?

16 A. Uh-huh (affirmative). Yes.

17 Q. And no passengers?

18 A. Yes.

19 Q. In those situations what do you do?

20 A. If the car is not posing a traffic hazard
21 or -- or a -- if a -- it's not on a land or private
22 driveway or something or somebody has asked us to
23 remove it, just let it stay there.

24 Q. For how long?

25 A. I would say indefinitely. I might put it

1 on my to-do list to check on it later, and then I
2 don't always check on it later. I get busy or
3 something, but it didn't pose a hazard. That's why it
4 was allowed to stay.

5 Q. I want to talk a little bit about
6 arrests. You said earlier you've conducted, I think
7 it was 800 arrests; is that right?

8 A. Estimated, right.

9 Q. Ballpark. I won't hold you to --

10 A. Thank you.

11 Q. -- being under penalty of perjury for
12 that one; don't worry.

13 And you've -- so when I say "arrests"
14 does that include custodial arrests and noncustodial
15 arrests?

16 A. That includes any time I issue somebody a
17 citation for court.

18 Q. So it includes the times when you bring
19 them to the station, and it includes the times that
20 you've cited them to court?

21 A. Right.

22 Q. Is there a distinction between how you --
23 between when you arrest someone, meaning bringing them
24 to the station at least, versus when you cite them to
25 court?

1 A. My -- my general patrol procedure there
2 is to -- if it's a Rule 3 exception, I'll generally
3 continue custody. And if it's not, then it will be
4 cited and released.

5 Q. So if there's an exception to Rule 3
6 exception, you'll continue custody to bring the person
7 to the barracks, is that what you're saying?

8 A. Yes.

9 Q. And if there's not, you will generally
10 just give the person a citation and let them go on
11 their way?

12 A. Yes.

13 Q. Outside of -- and so let's make this easy
14 on ourselves here. A moment ago you said generally
15 you would -- generally if a person -- if a violation
16 does not meet an exception to Rule 3, you would cite
17 the person to court and not bring them into custody;
18 is that right?

19 A. That's right.

20 Q. And I want to just explore the word
21 "generally" a little bit.

22 So are there times when -- so how would
23 you decide whether you would -- outside the Rule 3
24 exceptions, whether you would cite them to court or
25 bring them into custody?

1 A. So you're talking about times when I
2 could legally continue custody but chose to do that or
3 not do that and what would be the reason?

4 Q. Correct.

5 A. I would say the operational mindset that
6 I have in a situation where I am allowed to continue
7 custody, do I do that; does this person continue or
8 may they pose a continued harm or threat or continued
9 behavior.

10 Q. Are there any other criteria you use?

11 A. If it's outside just the legal can or
12 can't, if there's discretion in there it's that. It's
13 does this -- do I need to continue custody for this
14 behavior to stop?

15 Q. And that's the only criteria you use?

16 A. I would say that's the -- for me I
17 presume there are other variables there, right, but
18 that would be my primary question I would ask myself.

19 Q. And I want to talk a little bit about
20 affidavits. You did an affidavit of probable cause in
21 this case, right?

22 A. Yes.

23 Q. And you've done -- how many affidavits of
24 probable cause do you think you've written in your
25 career?

1 A. Probably as many arrests and then -- and
2 then some, sure.

3 Q. Before you prepare an affidavit what do
4 you do?

5 A. Can you be more specific?

6 Q. Sure. And so you arrest someone or you
7 cite them to court, and you're required to prepare an
8 affidavit of probable cause, right?

9 A. Yes.

10 Q. And that gets sent to the State's
11 Attorney's Office, right?

12 A. Yes.

13 Q. So -- and, you know, an affidavit of
14 probable cause can be lengthy if they write everything
15 that happened basically, right?

16 A. Yes.

17 Q. So to determine what you're going to
18 write what's the process you go through?

19 A. So it's a review of the evidence that I
20 have, and that evidence often -- often or may often
21 include cruiser video. So I'll review the video to
22 see if it -- to make sure that my recollection of the
23 events are as I believe that they are.

24 And if it's not, then I would want to
25 make a correction as necessary to -- before the

1 affidavit were actually to be filed or to make sure
2 that I thought was going on was actually going on
3 vis-a-vis the available evidence review.

4 Q. And is there anything -- would you do
5 anything different if it was a car stop arrest versus
6 some other kind of arrest?

7 A. Different? How?

8 Q. In what you would do to prepare your
9 affidavit of probable cause?

10 A. No.

11 Q. And is there any difference between -- in
12 your process for preparing an affidavit of probable
13 cause between when you arrest someone and put them
14 into custody versus when you cite them to court?

15 A. No.

16 Q. Other than reviewing the evidence is
17 there else you do before you prepare the affidavit of
18 probable cause?

19 A. No, not that I can think of.

20 Q. Do you talk to colleagues?

21 A. Well, that would be -- that goes into
22 reviewing the evidence. Like if there were other
23 people present, making sure that they saw what I saw
24 or if we disagree, what did you see, and then we'll
25 figure out what -- what -- you know, what the outcome

1 is.

2 Q. And do you talk to the -- do you ever
3 talk to the State's Attorney's Office or anyone in the
4 State's Attorney's Office before you prepare the
5 affidavit of probable cause?

6 A. Sometimes.

7 Q. When would you talk to them?

8 A. So I -- if I had probable cause for an
9 arrest and that arrest was effected, and prior to
10 citation in some situations I would make sure that the
11 State's Attorney supported the charge before I issued
12 the citation so I wouldn't inconvenience the suspect.

13 Q. You say "inconvenience the suspect", what
14 do you mean by that?

15 A. I mean issuing a citation that the
16 State's Attorney wouldn't support the charge.

17 Q. If you believed you had probable cause,
18 why would you call the State's Attorney to see if they
19 would support the charge?

20 A. Because sometimes -- so decisions may be
21 made because probable cause exists, and the facts and
22 the contents of the encounter required me to act in a
23 certain way and so, therefore, the decision to arrest
24 was made based on what I believe was going on at the
25 time.

1 And then once the situation was
2 stabilized I may, in atypical situations, reach out to
3 the State's Attorney and say, Here's what happened,
4 would you like me to cite this person, or would you
5 want me to send it down for review or do you want me
6 to disregard it altogether?

7 Q. Is that because the State's Attorney
8 might say -- so the State's Attorney might say, We're
9 not going to pursue that case?

10 A. That's right.

11 Q. And you want to call and check with them
12 to see if they want to pursue it or not?

13 A. Yes.

14 Q. When you're checking with them do you
15 talk about the affidavit of probable cause?

16 A. I talk about elements that would be in
17 the affidavit of probable cause, but it hasn't
18 necessarily been written yet.

19 Q. Has anyone in the Franklin County State's
20 Attorney's Office ever advised you on what to include
21 in an affidavit of probable cause?

22 A. Not that I recall.

23 Q. You said sometimes you review the cruiser
24 cam footage; is that right?

25 A. Yes.

1 Q. Before completing your affidavit of
2 probable cause?

3 A. Yes.

4 Q. Are there times when you would not do
5 that?

6 A. No.

7 Q. So you always review the cruiser cam
8 footage before writing your affidavit of probable
9 cause?

10 A. Yes.

11 Q. And so you did that in this case for the
12 affidavit of probable cause you wrote about the stop
13 and arrest of Mr. Bombard?

14 A. Yes.

15 MR. DIAZ: All right. Can we take ten
16 minutes?

17 MR. MESSINA: Sure.

18 (A recess was taken from 10:39 a.m. to
19 10:50 a.m.)

20 BY MR. DIAZ:

21 Q. Mr. Rigger, you said that to determine
22 when you are going to arrest someone as opposed to
23 cite them, that the only distinction is -- or, I'm
24 sorry, let me back up.

25 Outside of the Rule 3 context and the

1 Rule 3 exceptions, you said that when you have
2 discretion to either arrest someone or cite them to
3 court, the only criteria you look at is whether they
4 pose a continuing harm; is that right?

5 A. There may be other weights that I put on
6 the decision, but at the top of the list is, is this
7 going to be continued or not, yes.

8 Q. And how do you define -- like how do you
9 determine whether something that's continuing or
10 going?

11 A. I think the variable that led us to the
12 moment of the arrest matter, the context of the arrest
13 itself, as in compliant or otherwise, and then the
14 presence or absence of any other victims or make sure
15 that they're safe.

16 Q. So you said the presence of victims,
17 right? Presence and safety of victims, right?

18 A. Yes, yes.

19 Q. Whether they are going to -- whether they
20 were compliant in the arrest?

21 A. Yes.

22 Q. And what was the third one?

23 A. The variables of what led us to the
24 arrest decision in the first place.

25 Q. Well, I guess I'm just wondering, what

1 would the variables that led up to the decision matter
2 for behavior -- for determining whether the behavior
3 is continuing or not?

4 A. If there are -- if the arrest decision
5 culminated because this has been ongoing, that's
6 different than if it was a one-off, which is to say --
7 I'm trying to think of an example.

8 Somebody who is harassing another. Did
9 they call in once and hang up, or have they been
10 harassing them over the course of a day?

11 Q. So if something has happened numerous
12 times and you -- and you think it's likely to happen
13 again without you taking them into custody --

14 A. That's right.

15 Q. And in that case they would, of course,
16 be a victim, right?

17 A. In that case, yes.

18 Q. You also mentioned that you -- you said
19 you always watch cruiser cam videos before writing
20 your affidavit of probable cause. Do you watch them
21 while you're writing it or before?

22 A. It's before and then sometimes during, in
23 case my notes are incomplete.

24 Q. Why would you only sometimes watch it
25 while you're writing the affidavit of probable cause?

1 A. Because sometimes I think my notes were
2 complete; that I didn't miss anything.

3 Q. So it just depends on what you think?

4 A. Right.

5 Q. You said you watched the cruiser cam
6 video of your stop and arrest of Mr. Bombard on
7 February 9th, 2018, right?

8 A. Yes.

9 Q. You watched that this morning?

10 A. Yes.

11 Q. So do you remember, or I guess can you
12 describe the weather on February 9th, 2018?

13 A. It was cloudy but otherwise -- cloudy and
14 cold but otherwise dry.

15 Q. How cold would you say?

16 A. I don't remember.

17 Q. When you watched the video did you see
18 the -- you could see your breath when you were
19 talking?

20 A. I didn't remark on that.

21 Q. You didn't notice it?

22 A. No.

23 Q. How cold would you say it was?

24 A. I have no idea.

25 Q. Would you be surprised if it was in the

1 20s that day?

2 A. No.

3 Q. When you were -- so the initial stop was
4 initiated when you were driving, I believe south on
5 Main Street in St. Albans, right?

6 A. North.

7 Q. North. You were driving north;
8 Mr. Bombard was driving south?

9 A. Yes.

10 Q. And you passed each other?

11 A. Yes.

12 Q. This isn't on the video, so do you
13 remember -- what do you remember seeing when you
14 passed Mr. Bombard?

15 A. I remember a display of what looked like
16 the operator and his middle finger.

17 Q. And before that where were you going?

18 A. I don't believe I was heading anywhere
19 specific.

20 Q. Were you just on patrol?

21 A. Yes.

22 Q. How long had you been on patrol at that
23 point?

24 A. I don't remember the time of the stop, so
25 I'm not sure.

1 Q. I'll represent to you that the stop was
2 around noon --

3 A. Okay.

4 Q. -- that day. Does that help you
5 understand how long you might have been on the road at
6 that point?

7 A. Yes.

8 Q. How long do you think you were on the
9 road?

10 A. About four or five hours.

11 Q. Do you know how fast you were going?

12 A. I don't.

13 Q. You know there's a traffic light at the
14 intersection of Lower Newton and North Main Street,
15 right?

16 A. Yes.

17 Q. When you saw Mr. Bombard's car were you
18 already through -- you were already heading north and
19 had passed through the traffic light there, correct?

20 A. Yes.

21 Q. Do you remember if you had come from --
22 like did you make a left off of Lower Newton to get
23 onto North Main, or were you just driving on North
24 Main?

25 A. My recollection is I was driving on North

1 Main.

2 Q. So you were driving on North Main. Are
3 you looking for anything when you're driving on patrol
4 typically?

5 A. Yes.

6 Q. What are you looking for?

7 A. Violations. People who may need my help.

8 Q. Do you look at every car that's passing
9 you?

10 A. It's not every; it's a lot of them.

11 Q. So when you're driving you're typically
12 looking at the traffic going the other way?

13 A. With regard to making sure that I'm
14 driving safely, yes.

15 Q. I hope so, as a traffic safety officer.

16 A. I was going to say that exactly.

17 Q. So when you're driving north on North
18 Main, Mr. Bombard is driving south, when did you first
19 notice Mr. Bombard?

20 A. As we were passing each other.

21 Q. So was his car -- so I'm just trying to
22 get a sense of where the cars were when you first
23 noticed him. Was his car ahead of yours or right next
24 to it?

25 A. I remember it being right as we met each

1 other.

2 Q. So they were right next to each other?

3 A. Yes.

4 Q. So you turned left and looked into his
5 car?

6 A. No. I meant as we met each other so hood
7 to hood, passing each other.

8 Q. Okay. And why don't you tell me what you
9 saw.

10 A. Just saw the male operator with what I
11 believe was his middle finger extended.

12 Q. And where -- like can you describe where
13 he -- what it looked like to you?

14 A. It looked like his hands were on the
15 steering wheel. It looked like he had put his hands
16 up above the steering wheel and displayed it as --
17 which got my attention, and then he continued as he
18 drove by, and that was it.

19 Q. Like he put -- like his hands were on the
20 steering wheel. Did he turn his fist around --

21 A. Yes.

22 Q. -- as you were coming towards him?

23 A. Yes.

24 Q. Okay. And did he -- as you passed each
25 other did he look at you?

1 A. I don't remember.

2 Q. Did he turn towards you?

3 A. I don't remember.

4 Q. What do you remember about when you
5 passed each other what you saw?

6 A. It was his left hand, and it was as you
7 demonstrated during the audio record. You
8 demonstrated it was the display of the middle finger
9 through the windshield.

10 And I looked, kind of at that 45,
11 40-degree angle, and as he went by just remarked --
12 remarked that it was happening and then kept driving.

13 MR. SARACHAN: Excuse me, I'm not taking
14 the depo. I just didn't hear the last thing.
15 Would you just read back what?

16 (The record was read back by the court
17 reporter as follows:

18 "ANSWER: It was his left hand, and it
19 was as you demonstrated during the audio record.
20 You demonstrated it was the display of the
21 middle finger through the windshield.

22 And I looked, kind of at that 45,
23 40-degree angle, and as he went by just
24 remarked -- remarked that it was happening and
25 then kept driving.")

1 BY MR. DIAZ:

2 Q. So did you see Mr. Bombard's face at this
3 point?

4 A. Yes.

5 Q. Did you recognize him?

6 A. No.

7 Q. You had never seen him before?

8 A. No.

9 Q. Did you -- what did his face look like?

10 A. A guy wearing glasses.

11 Q. Did you see any emotion on his face?

12 A. No.

13 Q. Just a blank -- blank look?

14 A. Unremarkable.

15 Q. After you passed each other what did you
16 do next?

17 A. I kept driving north.

18 Q. And did you take notice of the make and
19 model of the car?

20 A. Yes.

21 Q. And as it says in your affidavit, you
22 turned around, right?

23 A. Yes.

24 Q. How far -- how far did you drive before
25 you turned around?

1 A. I don't know the distance. Time was
2 probably 15 or 20 seconds after I had seen it.

3 Q. Did you look -- as you passed each other
4 did you look into the car?

5 A. No, I don't remember doing that. It
6 was -- sorry.

7 Q. No, please.

8 A. There was windshield glare and so, like I
9 said, there was a guy wearing glasses. Couldn't
10 determine anything else other than that, other than the
11 display.

12 Q. And the display was remarkable to you,
13 you said, I believe?

14 A. It got my attention.

15 Q. You remarked on it, you said?

16 A. Yes. Yes.

17 Q. Wouldn't it make sense that you would
18 turn as the car was passing you to look into it?

19 A. I didn't want to engage the person
20 actually, so I didn't continue. I didn't continue
21 any -- best to describe I didn't engage him by
22 continuing to look at him.

23 Q. Why didn't you want to engage him?

24 A. I didn't want to participate in what his
25 display was. I didn't want to participate in giving

1 him any -- the satisfaction of any response or even
2 eye contact with me.

3 Q. And that's because the gesture you
4 thought you saw, you recognized it?

5 A. Yes.

6 Q. And it was a -- he put up his left hand
7 and gave you the middle finger; that's what you saw?

8 A. Yes.

9 Q. And what does that mean to you?

10 A. It's a sign of displeasure.

11 Q. Would you call it a -- well, I believe in
12 the affidavit you called it a negative gesture; is
13 that right?

14 A. Yes.

15 Q. Does giving the middle finger to someone
16 have a specific meaning?

17 A. I think it's probably in the eye of the
18 beholder. The eye of the issuer, I should say. I'm
19 not sure it has a specific defined --

20 Q. Has anyone ever given you the middle
21 finger other than Mr. Bombard?

22 A. Yes.

23 Q. What do you think they meant?

24 A. Something negative.

25 Q. Anything specific?

1 A. I think it could be anything under the
2 umbrella of negative.

3 Q. Have you ever given someone the finger?

4 A. Yes.

5 Q. And what did you mean to communicate when
6 you did that?

7 A. Well, if I did it, it was probably in
8 jest so it was in the context of probably a joke with
9 a friend.

10 Q. And what did you mean to communicate?

11 A. I'm not looking to be unresponsive. I
12 don't know. For me it would be a sarcastic gesture
13 with a friend because I don't do that stuff in public.

14 Q. What do you think most people would say
15 when they see someone giving the middle finger?

16 A. I don't know.

17 Q. What would they say that means?

18 A. I don't know.

19 Q. Do you listen to music?

20 A. Yes.

21 Q. Do you ever listen to Kid Rock?

22 A. Sometimes, yeah.

23 Q. Did you hear about the -- I don't know if
24 you heard about this, but did you hear about the
25 Vermont woodcarver who carved a middle finger statute

1 for Kid Rock?

2 A. Was that for Kid Rock? I've driven by it
3 a bunch of times, yeah.

4 Q. You've driven by the other statute of the
5 middle finger? I don't remember the town it's in.

6 A. Westford. Westford, yeah.

7 Q. What do you think that means when you see
8 it?

9 A. I -- it seems like somebody is unhappy
10 with somebody else, but I would never -- I don't want
11 to put words in anybody's mouth. I don't know what
12 they intend to say to that person. It just seems like
13 it's a negative thing directed at somebody else. I
14 mean, that's all that I make of it.

15 Q. Doesn't giving someone the middle finger
16 mean, "Fuck you"?

17 A. I think it depends on who's issuing it.
18 I really do. I don't think it has a specific this
19 equals that with some finite guardrails.

20 Q. Whether it's a joke or not, isn't that
21 what it means?

22 A. I don't know.

23 Q. So you don't know what the middle finger
24 means?

25 A. No. I know that it's negative. I know

1 that one may want to say such things to somebody else,
2 but I would never put the words in their mouth that
3 that's what they're saying. I don't know what they
4 intend to say to somebody when they display it, but I
5 would umbrella it as a negative gesture toward another
6 and what they intend is what they intend.

7 Q. And when Mr. Bombard showed what you
8 believe to be the middle finger to you what did you
9 think he was saying?

10 A. I don't think he was happy. That's what
11 I'm thinking to myself. Oh, he's not happy.

12 Q. Sure. That's not what I'm asking.
13 What did you think he was trying to
14 communicate to you?

15 A. I think he was trying to communicate that
16 he was not happy. I didn't think to myself what his
17 words were via that gesture. It was simply the
18 emotional state of the person issuing was he is not --
19 this person is not happy.

20 Q. Not happy with what?

21 A. With -- I didn't know if it was police or
22 State Police or the government at large. I don't
23 know, but not happy with something that I represent.

24 Q. So you thought he was telling -- he was
25 telling you that he was not happy with the State

1 Police by giving you the middle finger?

2 A. No. I thought that he was saying that he
3 was not happy, either, and I didn't know if it was
4 because of police, the State Police, or the government
5 at large. I didn't go that far. I just said this
6 person is not happy.

7 Q. Well, something -- you already said
8 that -- you said, right, that you believed he was
9 showing you his middle finger, right?

10 A. Yes.

11 Q. Specifically you. And so he was
12 communicating a message to you, correct?

13 A. Yes.

14 Q. And that message was unhappiness with
15 something related to police or the government, is that
16 what you thought?

17 A. Probably, yes.

18 Q. Okay. When your cars passed each other
19 you didn't see any problem with his driving, did you?

20 A. No.

21 Q. You didn't see anyone else in the car,
22 right?

23 A. No.

24 Q. You didn't have any reason to think there
25 was someone else in the car, right?

1 A. No.

2 Q. Did you see Mr. Bombard put his middle
3 finger down?

4 A. I don't remember if he did or not.

5 Q. Earlier we talked about the First
6 Amendment, right?

7 A. Yes.

8 Q. And you said it was about the right to
9 free speech, the right to protest, the right to
10 assemble, and we went over the Vermont State Police
11 policy that talked about what First Amendment
12 activities are, right?

13 A. Yes.

14 Q. Do people have a right to be unhappy with
15 the government?

16 A. Yes.

17 Q. And do they have a right to express their
18 unhappiness with the government?

19 A. Yes.

20 Q. And you work for the Vermont State
21 Police, right?

22 A. Yes.

23 Q. That's a part of the Vermont state
24 government, right?

25 A. Yes.

1 Q. So didn't Bombard have a right to be
2 unhappy and express his unhappiness with the
3 government to you?

4 A. Yes.

5 Q. I think you know what I'm going to ask
6 next. So why did you turn around and stop him?

7 A. Well, I initially -- initially I didn't.
8 Right? We passed each other. I continued to drive
9 for 15, 20 more seconds.

10 As I was reflecting on what I had seen
11 and I thought, Doesn't the public want its police to
12 check in on people to make sure that they're okay?
13 And I was reflecting on my experience up to that
14 point, which was I never -- very rarely had ever seen
15 that. Nowadays it's far more common, but now back
16 then it wasn't more common.

17 But is this worthy of a brief check-in to
18 make sure that this person was okay? I was going
19 through that thought process in my mind as I continued
20 to drive, and that's why I thought, well, I'll check
21 in with him, and so I turned around and went back.

22 Q. And when you say "check in with him" what
23 do you mean?

24 A. Stop his vehicle and have a conversation
25 with him.

1 Q. And so you drove -- you turned around,
2 right?

3 A. Uh-huh.

4 Q. Correct?

5 A. Sorry. Yes.

6 Q. You drove back towards the traffic light
7 at Lower Newton and North Main, right?

8 A. Yes.

9 Q. Do you remember, do you know when you put
10 on the blue lights?

11 A. Slightly -- just before the Lower Newton
12 intersection.

13 Q. And when you -- and you watched the video
14 this morning, you said, right, so you saw that you
15 didn't just drive in your lane. You moved into the
16 other lane to get around cars to get up to behind
17 Mr. Bombard's car, right?

18 A. Yes.

19 Q. You went into the lane that was supposed
20 to be going in the opposite direction; the northbound
21 lane?

22 A. Yes.

23 Q. And then you edged in front of, I think
24 two -- two cars to get behind Mr. Bombard who was
25 stopped at the traffic light, right?

1 A. Yes.

2 Q. When you passed Mr. Bombard's car the
3 first time and saw what you thought was a display of
4 the middle finger directed at you what did you feel?

5 A. Nothing.

6 Q. Nothing at all?

7 A. No.

8 Q. Were you angry?

9 A. No.

10 Q. On a scale of -- you felt nothing?

11 MR. MESSINA: Objection; asked and
12 answered.

13 BY MR. DIAZ:

14 Q. So somebody -- when somebody -- when
15 somebody is unhappy and they express that to you, is
16 your reaction usually to feel nothing?

17 MR. MESSINA: Objection to form.

18 Attorney Sarachan.

19 MR. SARACHAN: I can't talk to him?

20 MR. MESSINA: All right.

21 BY MR. DIAZ:

22 Q. So when somebody expresses that they're
23 unhappy and unhappy with you, is it common that you
24 would feel nothing?

25 A. I don't tend to have an emotional

1 response to someone professionally being unhappy with
2 me. I don't usually have an emotional response to
3 that.

4 Q. Did you have an emotional response to
5 Mr. Bombard's gesture?

6 A. No.

7 Q. On a scale of zero to ten, zero being
8 zero, no anger, and ten being apoplectic, how angry
9 were you?

10 A. Zero.

11 Q. Were you irritated?

12 A. No.

13 Q. Were you upset?

14 A. No.

15 Q. Were you annoyed?

16 A. No.

17 Q. So going back to before you turned
18 around, you said you were thinking, well -- you said
19 you were thinking something along the lines of
20 wouldn't the people of Vermont want me to check on
21 people, make sure they were okay; is that right?

22 A. Yes.

23 Q. And why did you -- why did that come to
24 mind?

25 A. Why did it come to mind?

1 Well, so like the original gesture itself
2 was remarked upon but elicited no emotional response
3 to me. I said, Yeah, this guy is not happy. I kept
4 driving, really informal, blowing it off.

5 Then I started thinking about, Hold on a
6 second. What if he is in some form of crisis right
7 now? Does the public want its capable guardians to
8 not respond in some non-adversarial way to check in on
9 that crisis before it mushrooms into something else?

10 So I had that kind of -- that societal
11 morays type of dialogue with myself. I said, Well,
12 this is -- this I think is what the public needs its
13 capable guardians to do, and so that's what I did.

14 Q. So you said to yourself what if he's in
15 some kind of crisis?

16 A. Right.

17 Q. So you had an emotion?

18 A. So it's the -- so the emotion would be --
19 perhaps there was one under the fear category, of the
20 afraid category, and like a low-level afraid would be
21 a level of concern. So I suppose I did have an
22 emotion, yes.

23 Q. Now, you asked yourself what if he is
24 having a crisis. What made you think he might be
25 having a crisis?

1 A. That up to that point, as I said a moment
2 ago, that that type of gesture was fairly foreign to
3 me. I didn't see it in a lot of public interactions,
4 and so the context of the gesture and where the
5 gesture had occurred was important to me.

6 Q. I'm sorry, did you say the gesture was
7 foreign to you?

8 A. In police public interactions I hadn't
9 seen it very much leading up to that moment.

10 Q. But you had seen it in your personal life
11 many times?

12 A. Yes.

13 Q. When you saw Mr. Bombard you didn't see
14 him crying, did you?

15 A. No.

16 Q. You didn't see him -- you said his face
17 was unremarkable, right?

18 A. Yes.

19 Q. He wasn't showing emotion on his face,
20 correct?

21 A. Right. I also said it was unremarkable.
22 It was hard to see because of windshield glare.

23 Q. But you didn't see him showing any
24 emotion?

25 A. I was not able to see it, right.

1 Q. You didn't know if he was having any
2 emotional response whatsoever?

3 A. That's right.

4 Q. And so I want to go back. We talked a
5 little bit earlier about the one stop you did that
6 went up to the Vermont Supreme Court. You remember
7 State v. Button, right?

8 A. Yes.

9 Q. Do you remember the circumstances of the
10 stop for that case?

11 A. I do.

12 Q. Did you read the decision of the Vermont
13 Supreme Court on that case?

14 A. I did.

15 Q. When was the last time you read it?

16 A. It's been years.

17 Q. What did you learn from that decision?

18 A. What I learned was -- here's what my
19 recollection of the decision, without having read it
20 for a few years. My take-away was that this was not
21 to be -- it was stated in the decision that this was
22 not to be taken to the larger context of the community
23 caretaking; that the public still needs its police to
24 engage in community caretaking activities.

25 The decision was narrowed to the context

1 of this particular stop; that they thought that the
2 operator needed to gesture to the police in order to
3 begin the community caretaking conversation. And so,
4 therefore, simply slow driving by itself and pulling
5 oneself over by itself in that narrow decision was not
6 under the community caretaking doctrine.

7 And the Court was, my recollection is,
8 explicit in that this must not be translated to other
9 community caretaking doctrines. It's simply this
10 moment didn't satisfy it.

11 Q. So you read that case as applying to that
12 exact situation and no other, is that what you're
13 telling me?

14 A. My recollection is that that was -- and,
15 again, if you presented the decision and said here's
16 what they said, my recollection sitting here was that
17 the Court seemed concerned that this would erode the
18 community caretaking at large, and they wanted to
19 express that it was -- the community caretaking
20 function is an essential function of police, but in
21 this case the operator didn't gesture any -- any need
22 for intervention and, therefore, he should not have
23 been intervened upon. They needed to have some sort
24 of outward gesture is what they wrote. That's my
25 recollection.

1 Q. Did you learn anything else from that
2 decision other than what you've already talked about?

3 A. That's all that I recall.

4 Q. Do you recall the Court in State v.
5 Button saying, quote, In the absence of any specific
6 indicia of distress and given that the cars in these
7 cases were safely and lawfully parked in places that
8 are needed --

9 (There was a phone interruption.)

10 MR. SARACHAN: I'm sorry.

11 MR. DIAZ: I'm going to start again.

12 MR. SARACHAN: Please.

13 BY MR. DIAZ:

14 Q. In the absence of specific indicia of
15 distress and given that the cars in these cases were
16 safely and lawful parked in places designated for such
17 parking and at times and locations that did not
18 suggest distress, law enforcement concern for the
19 well-being of the occupants was not sufficient to
20 justify the intrusion of a seizure.

21 Do you remember that?

22 A. Yes.

23 Q. And what do you think qualifies as a
24 specific indicia of distress?

25 A. I think it could be one slumped over a

1 wheel. I think it could be some outward motion of,
2 you know, Hey, help me, I'm having a heart attack.

3 I also think -- and we talked about this
4 at length earlier in our conversation, about when
5 stress is simmering, percolating, boiling over, and
6 again I understand my definition, when I use the --
7 when I use word "stress" it doesn't jive with the
8 Oxford, Cambridge, whatever dictionary you showed me.

9 Distress is something that departs from
10 the norm, but it needs to be something that one can
11 see or hear or something more tangible than simply a
12 vehicle pulled over.

13 Q. And, I mean, a person being in distress
14 is, I think you said, your definition actually did
15 align with the Cambridge dictionary, which is a
16 feeling of extreme worry, sadness, or pain; isn't that
17 right?

18 A. I think it's right. I missed out on the
19 connection.

20 Q. I just asked the question.

21 Doesn't your -- your definition of
22 distress align with the Cambridge dictionary
23 definition, which was an outward showing of a feeling
24 of extreme worry, sadness, or pain?

25 A. Right.

1 Q. That's right, right?

2 A. Yeah, if that's what it said, yes.

3 Q. And so -- and you've told me earlier
4 about some situations where you might see something in
5 a car, be concerned, and you would be concerned that
6 there might be distress and you would pull alongside
7 the car to take a look, right?

8 A. Yes.

9 Q. Or you would -- maybe you would follow
10 that car for a while, right?

11 A. Yes.

12 Q. You don't automatically stop every car
13 just because you have some concern about the people's
14 well-being, right?

15 A. Depends on the context.

16 Q. By the way, you don't always do that,
17 right?

18 A. I don't always?

19 Q. Stop a car because you are concerned
20 there might be someone in distress?

21 A. I think if the -- I do -- I do always act
22 if the actions or display syncs up with context and
23 environment. I do think I don't have a discretion to
24 not act upon that.

25 Q. Well, you said earlier, you talked about

1 two people having an argument. You took a look at
2 them in the car first. You didn't pull them over
3 automatically?

4 A. There's a little bit of nuance missed
5 there, I think.

6 Q. Fair enough. In terms of specific
7 indicia of distress, what was the specific indicia of
8 distress in this case for Mr. Bombard that you thought
9 required you to, as you said, check in on him?

10 A. It was the departure of what I had
11 believed to be normal up to that point, departure from
12 the norm, coinciding with the environment where it
13 occurred.

14 Could I confer with Jeff for a minute?

15 MR. SARACHAN: Yes, you can.

16 (A recess was taken from 11:29 a.m. to
17 11:33 a.m.)

18 BY MR. DIAZ:

19 Q. Other than Mr. Bombard showing what you
20 believed to be the middle finger to you, what led you
21 to believe that he -- what led you to wonder whether
22 he was in distress or not?

23 A. It was the environment where it occurred.

24 Q. What do you mean when you say "the
25 environment where it occurred"?

1 A. The location.

2 Q. What about that location led you to
3 believe that he was in -- might be in some kind of
4 distress?

5 A. The -- the signal itself was, like I
6 said, in that time was unusual but freedom of his
7 expression, I didn't have any reaction to it at all.

8 And then when I was thinking over 10, 15,
9 20 seconds after he and I passed each other, I was
10 reflecting on where this had occurred, and I
11 remembered that it was that literal intersection a few
12 years before where a woman had been shot and killed
13 because of a road rage incident that had precipitated
14 from a similar type of encounter.

15 I remember standing at that gym with the
16 caution tape and dealing with motorists. The guy was
17 taken into custody, and the trooper was off duty and
18 stopped. He thought was a mass shooting at rush hour,
19 and I was like, my God, this is where this happened
20 all these years ago and here I am with a moment,
21 perhaps, to intervene. Not aggressively, not even
22 assertively, just not adversarially, just to check in.

23 Because if someone had checked in on that
24 guy, would that woman still be alive? It was the same
25 benign type of thing. That was my thought. What does

1 the public need from its guardians? And that's what I
2 was reflecting on, and that's why it took me 10, 15,
3 20 seconds.

4 It wasn't because of the gesture in the
5 vacuum. It was the gesture where it occurred and what
6 my experience had been three years prior, being one of
7 the first troopers on the scene of that, and that's
8 what I was reflecting on.

9 Q. So it was something that came to your
10 mind from a previous event. Was the middle finger
11 involved in that event?

12 A. I believe it was, yes.

13 Q. In what way?

14 A. That one motorist was displeased with
15 another motorist and was unhappy, to use my umbrella,
16 about that gesture, and it then mushroomed into the
17 motorists pulling themselves over. And the male who
18 had witnessed the middle finger or witnessed the
19 middle finger in that negativity got out of his car
20 and shot a woman to death in the middle of the road.

21 And I was thinking in the 10, 15,
22 20 seconds after I saw Mr. Bombard's middle finger,
23 like what if guy is trolling right now? Like what if
24 he's unhappy and he's looking for a fight? Doesn't
25 the public want someone to check in with him to make

1 sure that this doesn't end in another Mrs. Alger
2 murder on Main Street in St. Albans in the same
3 intersection, in literally the same place, and that
4 was my thought.

5 I thought I know he can do this by way of
6 expression, but doesn't the community caretaking
7 doctrine mandate that if a capable guardian is present
8 to intervene, that he or she should?

9 I said, I think I have to. And that was
10 the delay for the stop because I was going through
11 that thought process in my mind, and then the ultimate
12 decision to intervene with him.

13 Q. Did you have any reason to think that
14 Mr. Bombard was a danger to others?

15 A. I didn't know, and that was my concern.

16 Q. You didn't have any reason to think he
17 was a danger?

18 A. I didn't have any reason one way or the
19 other.

20 Q. And so you didn't have any reason to
21 think he was a danger?

22 A. My concern is being able to rule out
23 things as much as rule things in, and so I wasn't able
24 to rule that out, much like I presumed in my thought
25 process how I don't know if the gentleman who

1 perpetrated the murder had any overt signs beyond
2 his -- beyond his gesturing and his -- and then
3 ultimately getting out of the car.

4 So I said this is an unusual action. It
5 feels a lot like it did that day by way of this benign
6 thing that happen. Doesn't and shouldn't somebody
7 intervene?

8 Q. Is there anything else that leads you to
9 believe that Mr. Bombard might be in distress?

10 A. No.

11 Q. So in total it was that he showed you his
12 middle finger, and you had a recollection of a past
13 event with other people; is that right?

14 A. Yes.

15 Q. By the way, I noticed you have a notebook
16 with you. Is there -- are there notes related to this
17 case in that notebook?

18 A. This is a prop. There's nothing in here.
19 Something for my hands.

20 Q. Okay, so there's nothing written in
21 there?

22 A. No.

23 Q. Okay. This is a copy of your --

24 (Mr. Diaz and Mr. Sarachan conferring.)

25 (Plaintiff's Exhibit 7 was previously

1 marked for identification, attached at the end
2 of the original transcript.)

3 BY MR. DIAZ:

4 Q. Do you see Exhibit 7 in front of you?

5 A. Yes.

6 Q. What is Exhibit 7?

7 A. It's the affidavit of probable cause
8 related to this case.

9 Q. And you wrote this, right?

10 A. Yes.

11 Q. Can you show me where in here you
12 mentioned your recollection of the past story that you
13 just relayed to us about what happened at the gym
14 nearby?

15 A. I don't -- I don't have it in there.

16 Q. It's not in here?

17 A. No.

18 Q. When you do affidavits you take your time
19 with it, right?

20 A. Yes.

21 Q. You watch the video from the stop, you
22 said, right?

23 A. Yes.

24 Q. You -- clearly from what's in here, you
25 put in your inner thought process and describe it in

1 the affidavit at times?

2 A. I don't always go into inner thought
3 process.

4 Q. But you did here, didn't you?

5 A. To a certain level, yes.

6 Q. Just quickly look on Page 2, Paragraph 4.
7 Do you see at the bottom there of Paragraph 4, there's
8 a parentheses?

9 A. Yes.

10 Q. And before that, the sentence before that
11 starts, Ultimately I explained to the operator that
12 due to the very uncommon action, I want to be sure
13 that he was, quote, unquote, okay.

14 Did I read that right?

15 A. Yes.

16 Q. And then it starts, open parentheses,
17 Although I did not articulate it to the operator by,
18 quote, unquote, okay, I was referring to him
19 experiencing a mental health crisis, experiencing an
20 exalating despondency or other need that a brief
21 non-adversarial law enforcement encounter could
22 identify and/or resolve, close parentheses.

23 Did I read that right?

24 A. Yes, you did.

25 Q. And this is a description of your inner

1 thought process, isn't it?

2 A. Yes.

3 Q. And so in this affidavit you did include
4 your inner thought process that -- when you were
5 talking, describing what you meant when you were
6 talking to Bombard, right?

7 A. Yes.

8 Q. When Mr. -- when you saw Mr. Bombard show
9 what you believe to be the middle finger towards you,
10 did you think he was asking for your help?

11 A. When I first saw it I believed that he
12 was expressing his unhappiness.

13 Q. And later did you think he was asking for
14 your help?

15 A. I wondered if it was a -- an iceberg of
16 an escalating despondency. And so at the top of his
17 consciousness is he saying, Help me? No, I didn't
18 think so, but I'm not sure that people do always cry
19 for help before something happens.

20 Q. If you look on the first page of your
21 affidavit, it says on Paragraph -- in Paragraph 2,
22 about halfway down it starts with, Although a negative
23 gesture. Do you see that?

24 A. Yes.

25 Q. Although a negative gesture, I was

1 concerned that the driver was seeking and needing my
2 attention.

3 Did I read that right?

4 A. Yes.

5 Q. So when he gave you the middle finger you
6 thought he needed your attention; is that right?

7 A. I'm sorry, ask that again.

8 Q. When you saw Mr. Bombard give you the
9 middle finger you concluded that he needed your
10 attention, right?

11 A. Yes.

12 Q. And when you say he needed your attention
13 what did you mean?

14 A. This is a 30,000-foot macro concept way
15 above the minutia, which is attention is --
16 potentially serves as intervention; attention in the
17 form of -- in the form of a law enforcement contact.

18 Q. So you thought he wanted to talk to you?

19 A. No, that's not what I thought.

20 Q. Well, but you said, I believe I heard you
21 say you thought he needed -- him needing your
22 attention in your mind was he needed a law enforcement
23 contact?

24 A. Right, so this is -- I think we're going
25 to combine two themes here. The first is the initial

1 gesture did not get a reaction from me. I was
2 sensitive to not wanting to engage him at all. I
3 think my earlier comment was something to the effect
4 of not wanting to give him the satisfaction of some
5 type of response.

6 And then, as I reflected over the 10, 15,
7 20 seconds that passed, it was somebody needing
8 attention, and needing attention is the form of an
9 escalating despondency potential, as I had experienced
10 a few years prior.

11 Q. So you didn't think he wanted your
12 attention. You thought you had to give him attention;
13 is that right?

14 A. Ish. Also, perhaps, needing the
15 attention from me. But whether he wanted it or not, I
16 didn't think he wanted it. I opined or I wondered or
17 pondered if he needed the attention.

18 Q. Going further from Paragraph 2 right
19 where we left off, you have said, I was unsure if this
20 was a mental health crisis or other need, but I
21 decided that a brief motor vehicle stop to ascertain
22 the well-being of the operator and any passengers was
23 not only prudent but necessary.

24 Did I read that right?

25 A. Yes.

1 Q. We already said you didn't see other
2 passengers; is that right?

3 A. Right.

4 Q. Going back to the first part of that
5 sentence, you say, I was unsure if this was a mental
6 health crisis or other need, right?

7 A. Yes.

8 Q. I think before you said it could have
9 been; it might not have been, right?

10 A. Right.

11 Q. Is there anything short of -- well, let's
12 back up a second.

13 When you pull someone over, that's a law
14 enforcement action, right?

15 A. Yes.

16 Q. Is it a seizure?

17 A. Yes.

18 Q. And under your understanding of the
19 Fourth Amendment, it's a seizure, right?

20 A. Yes.

21 Q. And so -- and that's whether it's for a
22 community care purpose or for to investigate traffic
23 violations or criminal activity, right?

24 A. Right.

25 Q. Short of pulling Mr. Bombard over, was

1 there anything else you could have done to cure your
2 uncertainty about whether he was having a mental
3 health crisis or other need?

4 A. Given that -- given that roadway and not
5 knowing where he was headed, I would say "No".

6 Q. You drove up right behind him, right?

7 A. Yes.

8 Q. Could you have followed him for a while?

9 A. I don't think that would have been
10 prudent.

11 Q. Why not?

12 A. Because I don't know where he was headed.
13 So I'm not sure where, by following him what, if
14 anything, I could have observed regarding -- regarding
15 despondency.

16 I would have preferred to have pulled up
17 alongside to just look over without any blue lights,
18 therefore not engaging in that seizure but, as I said,
19 the roadway was not designed to allow me to do that.

20 And returning to that -- returning to
21 that feeling, not of anger but more of concern, it was
22 the sense of that if this is something that he is, as
23 I said before, trolling for a confrontation with
24 somebody, I am not going to follow the person, waiting
25 for him to decide that. I'd rather decide.

1 Q. If you had -- couldn't you have followed
2 him to a place where you could go up beside him to
3 look into the vehicle?

4 A. Not knowing where he was going, that
5 stretch of road doesn't afford any opportunity to do
6 that. And, also, with the volume of traffic that was
7 present, I don't think there would have been a way to
8 do that in some reasonable period of time.

9 Q. Could you have run his license plate and
10 checked police records related to the person who the
11 car was registered to?

12 A. Those doesn't -- that would not -- no,
13 no.

14 Q. Why not?

15 A. That would not have resolved my concern.

16 Q. Well, if you knew who it was registered
17 to, couldn't you have looked at their -- couldn't you
18 have searched any police reports related to their
19 name?

20 A. So the answer is sure, as in that
21 potential exists, but that would take some time,
22 digging and reading records. Meanwhile, I'm driving a
23 vehicle, so I wouldn't be in a position to do that.

24 And then, in addition to that, a name and
25 records wouldn't necessarily absolve a concern, an

1 acute concern that was developing in that moment.

2 Q. Well, when you look at -- you have like
3 a, kind of computer screen in your cruiser, right?

4 A. Yes.

5 Q. And you can look up -- you can, I guess,
6 punch in a name to look up the records on a person,
7 right?

8 A. Yes.

9 Q. This is how you search for people if they
10 have warrants and things like that?

11 A. Yes.

12 Q. And when you get their license this is
13 what you use?

14 A. Yes.

15 Q. When you put in someone's name into that
16 system can you get a list of reports about that
17 person?

18 A. Yes.

19 Q. And would that list that pops up tell you
20 what kind of incident it was that led to the report?

21 A. Not necessarily.

22 Q. What would it tell you about the incident
23 that led to the report?

24 A. It would -- it would list it potentially
25 by nature of incident. But the nature of an incident

1 tells us nothing about what actually the incident
2 could be. And meanwhile, like I said, I'm driving a
3 car so I can't really do that.

4 Q. And when you say the nature of the
5 incident, can you give me some examples of what it
6 says on the screen?

7 A. So Jay Diaz, and you see on there, aside
8 from all the humanitarian awards that you've won and
9 all that stuff, DUI, suspicious, family fight. Again,
10 macro concepts that in and of themselves doesn't
11 actually tell us what the incident was.

12 And so it is not my practice to -- in
13 this type of a concern to learn everything about a
14 driver before I contact them when really these
15 concerns can be mitigated or mediated by a motor
16 vehicle contact.

17 Q. Would the screen tell you if the person
18 was subject to a welfare check at some point?

19 A. Yes. And that incident could pop up,
20 yes.

21 Q. Would -- is there a separate way that the
22 screen would tell you that there was a mental health
23 call of some kind?

24 A. At that time, knowing that there was a
25 mental health incident name, I think it would be under

1 welfare check.

2 Q. And welfare check and mental health call,
3 are they synonymous to you?

4 A. They feel synonymous, yes.

5 Q. So it was possible to have run the plate,
6 gotten the name and seen if there were any welfare
7 checks for the person registered for the car, right?

8 A. I would classify it as possible but not
9 feasible.

10 Q. A couple times you said -- and we'll go a
11 few more minutes here. A couple times you said you
12 were concerned he might be trolling for a
13 confrontation. What does that mean?

14 A. I should use more concise or clear
15 language than --

16 Q. Use your language. That's what's most
17 important.

18 A. Trolling in the context that I used it
19 in. Somebody is out here with the purpose of -- of
20 creating harm. For the purpose of having conflict I
21 guess is the better way to put it.

22 When I say "trolling", it's that fishing
23 terminology of putting a line in the water and see
24 what you get.

25 Q. And what led you to believe that?

1 Did you think Mr. Bombard was trolling
2 for confrontation?

3 A. I didn't know. I didn't know what his
4 intention was.

5 Q. So you didn't know if -- you did think he
6 was trolling for confrontation, or you didn't?

7 A. I did not know.

8 Q. And did you see him display the middle
9 finger to anyone else other than you?

10 A. No.

11 Q. Do you think he was looking for a
12 confrontation with you?

13 A. I don't know.

14 Q. At the time did you think he was looking
15 for a confrontation with you?

16 A. So at the time I did not know, and I've
17 reflected on that in the years that have passed.

18 Q. You may not be aware, but we deposed your
19 supervisor, Tara Thomas. You remember her, right?

20 A. I do.

21 Q. Your former supervisor, I should say.
22 Did you talk to her about her deposition?

23 A. No.

24 Q. What do you think about Tara Thomas?

25 A. What do you mean?

1 Q. Well, in terms -- is she good police?

2 A. Yes.

3 Q. Was she a good supervisor?

4 A. Yes.

5 Q. Do you trust her?

6 A. Yes.

7 Q. Do you think she's a principled police
8 officer?

9 A. Yes.

10 Q. Was she on patrol?

11 A. In her career?

12 Q. Yes.

13 A. Yes.

14 Q. You're aware of her being on patrol?

15 A. Yes.

16 Q. And in terms, as a supervisor -- and she
17 was your supervisor for how many years?

18 A. Two or three.

19 Q. Do you think she has good judgment?

20 A. Yes.

21 Q. When we spoke to her and asked her about
22 this stop, specifically we asked her whether the
23 stop -- whether it would make sense to -- let me back
24 up a second.

25 When we asked her about the stop and she

1 looked at the affidavit, her response to the initial
2 stop was -- was that something was missing. When we
3 asked her about what was missing, she said that there
4 was no traffic violation, and so there shouldn't --
5 she concluded there shouldn't have been a stop.

6 Why do you think she would say that in
7 this situation that you encountered?

8 A. I --

9 MR. MESSINA: I'm going to object because
10 I think there's a mischaracterization there.

11 BY MR. DIAZ:

12 Q. You can answer the question.

13 A. So you're asking me to suppose what's in
14 her mind when she answered that question?

15 Q. Yes.

16 A. I mean, I think she's -- I think that if
17 that's what she said, she is only -- I presume she's
18 speaking only about is this a motor vehicle violation
19 or not, and she's not -- because it's not a motor
20 vehicle violation.

21 Q. We also asked her whether it made sense
22 that someone would be looking for the assistance of an
23 officer by communicating "Fuck you", and she said, No,
24 that doesn't make sense.

25 How do you respond to that?

1 A. I agree with her.

2 MR. SARACHAN: All right, let's stop
3 there.

4 MR. DIAZ: Break for lunch; I'm hungry.

5 MR. SARACHAN: Let's take an hour.
6 1 o'clock.

7 (Lunch recess taken from 12:00 p.m. to
8 1:02 p.m.)

9 BY MR. DIAZ:

10 Q. Mr. Rigger, we just came back from about
11 an hour break. Did you speak with your attorney
12 during that time?

13 A. A little bit, yes.

14 Q. Did you speak about the substance of this
15 deposition?

16 MR. MESSINA: Objection; privileged.

17 MR. DIAZ: Well, if he spoke about -- if
18 you gave him advice about the substance of his
19 testimony, of his deposition testimony, it is
20 not privileged.

21 MR. MESSINA: How is that not privileged?
22 Doesn't that go to the very heart of the
23 relationship?

24 MR. DIAZ: Well, if you talked to him
25 about how he needs to be testifying, it's

1 important to how he testifies here.

2 MR. MESSINA: I see what you're saying.
3 You can answer.

4 THE WITNESS: Yeah, we didn't talk like
5 that.

6 BY MR. DIAZ:

7 Q. So you didn't speak about the substance
8 of your testimony today?

9 A. No.

10 Q. During the break you took earlier today
11 did you speak to Mr. Messina about the substance of
12 your testimony?

13 MR. MESSINA: I'm going to renew the
14 objection on privilege, but go ahead.

15 THE WITNESS: Yes.

16 BY MR. DIAZ:

17 Q. So we talked earlier about -- we talked
18 about community care stops, right?

19 A. Yes.

20 Q. Community care motor vehicle stops, to be
21 clear, right?

22 A. Yes.

23 Q. And we looked at the Vermont Supreme
24 Court review of one of your stops, right?

25 A. Yes.

1 Q. And that was State v. Button?

2 A. Yes.

3 Q. When you make a community care stop --
4 let me back up.

5 And we also talked about motor vehicle
6 stops. Generally the policy of the Vermont State
7 Police, and I think you agreed with this, was to --
8 that motor vehicle stops require a probable cause of a
9 motor vehicle violation, a traffic violation, or a
10 criminal -- reasonable suspicion of a crime occurring
11 or serving a community care function.

12 Does that summarize it, generally?

13 A. Yes.

14 Q. And is there a specific standard that
15 you're aware of for a community care stop?

16 A. Not that I am able to speak to.

17 Q. Well, traffic violation stops require
18 reasonable suspicion, right?

19 A. Right.

20 Q. And motor vehicle stops for suspicion of
21 a crime also requires reasonable suspicion, right?

22 A. Correct.

23 Q. When you're doing the community care stop
24 is there a requirement of the reasonable suspicion of
25 distress?

1 A. I believe that there would have to be
2 some articulable concern about what is going on with a
3 person or a group of people to use that -- to use that
4 concern.

5 Q. Right.

6 A. To act on that concern.

7 Q. And the case said, I think specific
8 indicia of distress, right?

9 A. Yes.

10 Q. Is that what you understand as what would
11 constitute reasonable suspicion to make a community
12 care stop?

13 MR. MESSINA: Objection as to form.

14 BY MR. DIAZ:

15 Q. You can answer.

16 A. Could you just rephrase, please?

17 Q. Well, I'll repeat the question.

18 Is that what you understand --

19 MR. DIAZ: Well, can you actually just
20 repeat back my question?

21 (The record was read back by the court
22 reporter as follows:

23 "QUESTION: Is that what you understand
24 as what would constitute reasonable suspicion to
25 make a community care stop?")

1 THE WITNESS: And that's the specific
2 indicia?

3 BY MR. DIAZ:

4 Q. Yes.

5 A. I suppose, yes.

6 Q. Going back to your affidavit, I believe
7 you have a copy in front of you, Exhibit 7?

8 Yes?

9 A. Yes.

10 Q. I think we've been over this, but just to
11 be sure, everything that you put in affidavits is
12 truthful, right?

13 A. Yes, yes.

14 Q. And you try to be as complete as
15 possible?

16 A. Yes.

17 Q. And you put in all the important facts,
18 right?

19 A. Yes.

20 Q. And you certainly talked about for the
21 initial stop, you included in your affidavit the
22 reason for that stop, right?

23 A. Yes.

24 Q. And it was that you saw Mr. Bombard
25 display his middle finger, right?

1 A. That was among the reasons, yes.

2 Q. Right. And you said, also, that later
3 on, 20 seconds later I believe, you know, a previous
4 incident came to your mind that resulted in violence
5 in the area related to road rage. Is that a fair --

6 A. Yes.

7 Q. -- summary of what you said?

8 A. Uh-huh (affirmative).

9 Q. In the same general area, right?

10 A. It was at that location.

11 Q. Well, it was at what location?

12 A. It was at the Lower Newton Road, North
13 Main Street intersection.

14 Q. Okay. And remind me, do you know the
15 year of when that incident occurred?

16 A. 2013.

17 Q. So five years before?

18 A. Like four and a half.

19 Q. Sure.

20 A. Three and a half, excuse me. Four and a
21 half, okay.

22 Q. At least.

23 A. Sorry.

24 Q. And you did not include this recollection
25 about this 2013 incident in your affidavit of probable

1 cause, right?

2 A. No.

3 Q. Now, you said earlier that these were
4 the -- the middle finger and this recollection were
5 the two things, put together, that constituted the
6 environment that led you to believe you had to make a
7 stop; is that right?

8 A. Yes.

9 Q. So if the recollection was so important,
10 why didn't you put it in your affidavit?

11 A. Well, I referenced it, and that is what
12 Paragraph 4 and those parentheses is referring to; the
13 mental health crisis, the escalating despondency. And
14 a non-adversarial law enforcement encounter was
15 exactly what that day needed in 2013, and that's what
16 I was thinking about when I wrote that.

17 Q. So you're telling me that what you put in
18 the parentheses here is -- well, tell me where in this
19 parentheses do you talk about the 2013 incident?

20 A. That is what I was thinking about when I
21 described the basis for the stop.

22 I don't -- affidavits of probable cause
23 are not every second of everybody's experience and
24 life experience, professional experiences. It is a --
25 it is a summary for probable cause, and that is a

1 summary of that experience. Like that's what I
2 learned from that event; somebody experiencing mental
3 health crisis, an escalating health despondency that
4 resulted in what occurred in 2013.

5 Q. You just told me that there were two
6 important facts that led you to stop Mr. Bombard. One
7 was that he showed you his middle finger, and the
8 other was this recollection. You said there were no
9 others.

10 Why wouldn't you put anything about that
11 recollection in this affidavit?

12 A. When I wrote this affidavit, although I
13 was very familiar with that -- I'm sorry, what?

14 MR. SARACHAN: No, I was talking to him.
15 BY MR. DIAZ:

16 Q. Go ahead.

17 A. Lost my train of thought, but my
18 affidavits don't include every part of my experience
19 leading up to a moment, and so that is -- I didn't --
20 I made a choice not to reference that incident by
21 name, but that is what that refers to.

22 It is, I want to make sure he's okay,
23 which is he wasn't that guy experiencing mental health
24 crisis, experiencing escalating despondency and,
25 therefore, in need of a brief, non-adversarial law

1 enforcement encounter to identify and resolve that
2 incident before it had mushroomed. That's what that
3 refers to. If I didn't reference the incident, then I
4 didn't reference it.

5 I didn't get any feedback that I should
6 have, and that's it.

7 Q. Did you write down -- write anything
8 about this incident anywhere else?

9 A. No.

10 Q. And what's the date on this affidavit?

11 A. The date of -- the date of signing the
12 affidavit was February 21st.

13 Q. When did you write the affidavit?

14 A. Probably contemporaneous to that, but I
15 don't remember.

16 Q. Do you think you wrote it that day?

17 A. I don't remember.

18 Q. Do you think you might have written it
19 that day?

20 MR. MESSINA: Objection; asked and
21 answered.

22 THE WITNESS: Yeah, I don't remember.

23 BY MR. DIAZ:

24 Q. Do you usually -- when you write an
25 affidavit do you usually, once it's complete, send it

1 to the -- for signing that same day?

2 A. As soon as the affidavit is done I would
3 have it signed, and then I would have it filed.

4 Q. And how long do you usually take to write
5 an affidavit of probable cause?

6 A. It's very dependent.

7 Q. On average.

8 A. From an hour to a month.

9 Q. How long did it take you to write this
10 affidavit of probable cause?

11 A. I don't remember.

12 Q. Do you think it took you one hour?

13 A. I don't remember.

14 Q. Do you think it took you more than a day?

15 A. I don't remember.

16 Q. Well, is it possible it took you more
17 than a day to write it?

18 MR. MESSINA: Objection; asked and
19 answered.

20 THE WITNESS: I really don't remember.

21 BY MR. DIAZ:

22 Q. I'm not asking you if you remember. I'm
23 asking, is it possible that it took you less than a
24 day to write it?

25 A. This is not -- I'm not looking at nine

1 hours of work product here. So it probably didn't
2 take me more than nine hours to write this thing, no.

3 Q. Is it safe to assume that you wrote it
4 within a day or two on February 1st, 2018?

5 A. I don't remember.

6 Q. Would it surprise you if you wrote it
7 within a day or two of February 21st, 2018?

8 A. No.

9 Q. And just for the record, the stop and
10 arrest took place on February 9th, 2018, right?

11 A. Correct.

12 Q. So before the date of the signature on
13 this affidavit that was 12 days earlier?

14 A. Yeah, that's the math, yes.

15 Q. And so you had 12 days before submitting
16 this to think about what you should put in it, right?

17 A. Yes.

18 Q. You had -- and according to you, there
19 were these two main important facts that initiated
20 this whole interaction. One was what you saw and the
21 other was what you remembered, and yet you didn't put
22 what you remembered, your recollection, into this to
23 contextualize your justification for stopping
24 Mr. Bombard, did you?

25 A. No.

1 Q. Let's go to the stop. You pulled
2 Mr. Bombard over. Where did you pull him over?

3 A. Just south of the intersection of Main
4 Street and Lower Newton, on Main Street.

5 Q. And you watched the video this morning,
6 you said, right?

7 A. Yes.

8 Q. Do you remember seeing snow on the side
9 of the road?

10 A. Yes.

11 Q. And there was like snowbanks?

12 A. Yes.

13 Q. Snow all over the trees and lawns nearby?

14 A. Yes.

15 Q. When you approached the vehicle do you
16 remember what you said?

17 A. I think, Hey, do you need something?

18 Q. And how would you describe your demeanor
19 when you approached the vehicle?

20 A. Probably blunt. Probably.

21 Q. Earlier we talked about, you know, your
22 interactions with people in community care stops.

23 Can you take me through your normal
24 procedure when you do community care motor vehicle
25 stops?

1 A. It's -- community care motor vehicle
2 stops would be, and this is what happened, what did I
3 say, yesterday or the day before, it's roll up
4 alongside somebody, try not to turn my blue lights on
5 if I don't have to, and I said, Hey, do you need
6 something? Hey, are you all set? Some version of
7 that.

8 Q. When you said -- when you watched the
9 video this morning you said -- you walked up to him,
10 Need something?

11 Do you think your demeanor appears
12 concerned about Mr. Bombard?

13 A. Reflecting if I could have shown more
14 concern, and I think I could have shown more concern,
15 yes.

16 Q. Why do you think you should have shown
17 more concern?

18 A. The --

19 Q. Well, let me rephrase that.

20 You approached this car. You said you
21 were blunt and that you could have shown more concern.
22 Why would you not have shown more concern in this
23 situation?

24 A. It was, I guess -- well, I guess I'll say
25 I don't know. I don't know the answer to that.

1 Q. Are you usually blunt with people when
2 you're concerned about their mental health?

3 A. Sometimes.

4 Q. Is that what you're trained to do as a
5 Vermont state trooper?

6 A. No.

7 Q. What are you trained to do as a Vermont
8 state trooper when you approach someone who you think
9 might have a mental health need?

10 A. Start it more warmly.

11 Q. What's an example of starting an
12 interaction more warmly?

13 A. Introducing myself.

14 Q. And you didn't introduce yourself at this
15 stop, did you?

16 A. No.

17 Q. Do you think you showed anger to
18 Mr. Bombard when you first started talking to him?

19 A. No.

20 Q. What do you think -- other than being
21 blunt what emotion do you think you showed?

22 A. I think it was -- I think it was
23 unemotional.

24 Q. I'm sorry?

25 A. It was without emotion. I don't think it

1 had emotion.

2 Q. Are you trained to approach people who
3 you believe to be in mental distress by saying, Need
4 something?

5 A. No.

6 Q. You were trained to first introduce
7 yourself?

8 A. I don't know if that's in the prescribed
9 training, but I'm sure that's part of the roadmap is
10 you need to be more warm.

11 Q. What are you trained to say first off the
12 bat?

13 A. I don't know in my training. I don't
14 know what the script is.

15 Q. There's a script?

16 A. I don't think so.

17 Q. In your experience, other than the one
18 example you gave a moment ago, how do you -- how have
19 you approached people who you believed to be in some
20 kind of mental distress?

21 A. I don't know if I always introduce
22 myself. I think sometimes I do, sometimes I don't,
23 and that's more of an explanation of how we are and
24 where we are. It's not always, Hey, I'm Jay, and I'm
25 here to help. I don't always say it like that.

1 Q. That would be a reasonable way to
2 approach someone --

3 A. Yeah.

4 Q. -- in mental health distress, right?

5 A. That would be a good strategy.

6 Q. And do you remember asking Mr. Bombard if
7 he was -- let me back up.

8 In that first minute of the interaction
9 do you remember asking Mr. Bombard if he was okay?

10 A. I remember asking if he was okay. I'm
11 not sure how long it took to get there.

12 Q. And did you -- but it wasn't the first
13 question you asked him, is it?

14 A. No.

15 Q. The first question you asked him was --
16 well, the first thing you said to him after asking if
17 you needed something twice, you say in your affidavit
18 at Paragraph 4, I identified to him that I observed
19 him look at me, and then I saw him flicking me off; in
20 parentheses, slang for a middle finger gesture.

21 That's the first thing you talked about
22 with him, right?

23 A. Yes.

24 Q. You asked him if he needed something.
25 What did you think he might need?

1 A. Need something like -- again, it
2 sounds -- it may sound ridiculous but need someone to
3 talk to, need some action, need something regarding
4 this conversation.

5 Q. Do you think the way you approached him
6 would lead someone to want to speak to you about their
7 mental health needs?

8 A. No.

9 Q. So why did you speak to him that way?

10 A. It -- it could have been done more
11 warmly, and what --

12 Q. Go ahead.

13 A. The pending question is why did I not
14 speak to him more compassionately?

15 Q. My question was -- well, we established
16 that you didn't -- you acknowledged that you didn't
17 speak to him in any way that would lead him to talk to
18 you about his mental health needs. It wasn't warm.
19 It was blunt, in your words.

20 So my question is, if you were concerned
21 about his mental health needs, why did you speak to
22 him that way?

23 A. Yeah. I was thinking more -- thinking
24 too much about the presence of conflict and,
25 therefore, coming in more Alpha than I could have or

1 should have, given -- given a concern that he may need
2 something more gentle from me.

3 Q. Becoming an Alpha?

4 A. Well, I came at him more Alpha instead of
5 more collegial than I perhaps should have, in
6 hindsight.

7 Q. What does that mean to you, coming in
8 somewhere more Alpha?

9 A. I desired to control the action instead
10 of being more collegial, of it based on the memory of
11 the gentleman who was riding around with a gun and
12 then had that road rage incident. So I was thinking
13 more -- I was thinking more assertively than -- I
14 guess my -- my feeling of concern about the experience
15 there betrayed the overall mission, which -- which was
16 a good -- a good understanding of whether he needed
17 help or open that window for him. So my actions
18 didn't really sync up with my concern.

19 Q. Do you think your actions didn't sync up
20 with your concerns because you weren't actually
21 concerned about his mental health?

22 A. No.

23 Q. Do you think your actions didn't sync up
24 with your concern because some part of you was angry
25 about his gesture?

1 A. No.

2 Q. When you got out of your car you didn't
3 run over to his car, did you?

4 A. No.

5 Q. You didn't rush over to check to make
6 sure he was okay, right?

7 A. No.

8 Q. Do you remember as a -- in the video as a
9 point where someone asks you for directions?

10 A. Yes.

11 Q. You saw that this morning, right, on the
12 video?

13 A. Yes.

14 Q. And there was a lot of background noise,
15 but could you hear what he said?

16 A. What he said?

17 Q. Well, the person who asked you for
18 directions, where were they, do you remember?

19 A. I think they were driving north in the
20 other lane.

21 Q. And I don't know if you remember or
22 whether you saw on the video this morning, were you
23 able to catch what they said?

24 A. Yes.

25 Q. And then -- and you gave them directions,

1 right?

2 A. Yes.

3 Q. Do you know how far away from you he was?

4 A. She.

5 Q. Sorry, yeah.

6 A. The -- we were pulled off on the
7 southbound, half on the lane, half off the lane
8 probably, and they were driving north so it's that
9 distance. I'm not sure how long or how wide a lane
10 but 20, 30 feet-ish.

11 Q. Okay. Earlier we talked about, a little
12 bit about your interactions with drivers who disagree
13 with your actions. You said that there have been
14 occasions where a driver has been upset about you
15 stopping them, right?

16 A. Yes.

17 Q. And there have been occasions where a
18 driver has been upset about getting a ticket?

19 A. Yes.

20 Q. I'm sure there have been occasions about
21 people getting upset about getting arrested, right?

22 A. Yes.

23 Q. When they -- and as a part of that, when
24 you've stopped people and they've been upset, have
25 they cursed at you?

1 Have any of them cursed at you?

2 A. Probably, yeah.

3 Q. And when you've written people a ticket
4 and they were angry did any of them -- any of those
5 people curse at you?

6 A. Sometimes, sure.

7 Q. And when people get arrested and you've
8 arrested them, sometimes they curse at you?

9 A. Yes.

10 Q. And in this case, and when people have
11 cursed at you for giving them a ticket on the side of
12 the road, it's in public, right?

13 A. Yes.

14 Q. Have you arrested those people?

15 A. I don't know if it's escalated to that
16 point or not. Dependent on context.

17 Q. And people who have cursed at you after
18 you stopped them, before you might have given them a
19 ticket and they cursed at you, did you arrest them?

20 A. I'm sorry, repeat the question.

21 Q. That's fair. You said you stopped people
22 on the side of the road, right?

23 A. Yes.

24 Q. And some of them have been mad about the
25 stop itself, right?

1 A. Yes.

2 Q. And you -- and they've cursed at you
3 because they were mad about the stop, right?

4 A. The answer is "Yes". I'm just trying
5 to -- the reason I kind of allow myself to leave the
6 presence of the moment here, allowed to think of the
7 time it's happened, it's very rare. I'm trying to
8 think of a specific example. To be honest with you, I
9 don't remember.

10 Q. Did you arrest any of those people?

11 A. I don't -- I don't remember.

12 Q. Is it possible that you arrested the
13 people, or it's not possible?

14 A. I would say it's more likely than not
15 that I did not arrest them.

16 Q. When you interacted with Mr. Bombard at
17 this initial stop he told you he was going to file a
18 complaint against you, didn't he?

19 A. Yes.

20 Q. And how did you respond when he told you
21 that?

22 A. I don't remember the quote. Something to
23 the effect of "That's fine" and gave him my name and
24 my job location.

25 Q. And the conversation kept going for a

1 little while after that, right?

2 A. It did.

3 Q. And you were explaining to him why you
4 stopped -- why you stopped him, right?

5 A. Yes.

6 Q. You explained it to him several times,
7 right?

8 A. Yes.

9 Q. I think you said the conversation was
10 getting cyclical at one point, right?

11 A. Yes.

12 Q. You say that in your affidavit, right?

13 A. Yes.

14 Q. At what point in the stop do you talk
15 about your recollection of that 2013 incident?

16 A. That didn't happen.

17 Q. You didn't tell Mr. Bombard about your
18 recollection?

19 A. No.

20 Q. Why didn't you tell him about it?

21 A. A combination of two things that
22 occurred. One was I was almost immediately confused.
23 Because maybe the gesture wasn't the gesture, because
24 he was so adamant that he hadn't done it so maybe I --
25 I thought for sure it happened, and now I'm sort of

1 wondering maybe it didn't happen. And so I was
2 confused so I kind of got off script, and I never even
3 got to that point because Mr. Bombard hijacked the
4 conversation. So I never got off the launching pad
5 with the dialogue with him.

6 Q. Well, you do explain to him several
7 times, and I think here -- we'll go to your affidavit.

8 Several times you say -- here, I'm
9 looking at Paragraph 5. I spoke with the operator
10 about the nature of his gesture. I asked him if he
11 understood my perception that if someone was looking
12 for or needing the attention of a trooper, the way to
13 get that attention, although unusual, would be to
14 display that negative symbol.

15 Did I read that correctly?

16 A. Yes.

17 Q. And in Paragraph 6 you say, and I'm
18 looking at, starting at the second sentence, I
19 explained to the operator that I wouldn't be able to
20 understand the mindset of the gesture or affirm that
21 the gesture had occurred as observed until I had the
22 chance to speak with him/her.

23 Did I read that right?

24 A. Yes.

25 Q. And then going to the last line in

1 Paragraph 6 on that page, The operator then laughed as
2 I attempted to explain the following.

3 If someone gestures in that way, I don't
4 know if they are gesturing because they need my
5 assistance, my attention, or because they need my
6 attention as the gesture itself is not, quote,
7 unquote, normal behavior.

8 Did I read that right?

9 A. Yes.

10 Q. So you explained your reasoning several
11 times to Mr. Bombard, as recorded in your affidavit,
12 right?

13 A. That's reflective of what happened, but I
14 don't think it's fully accurate.

15 Q. What's not accurate about it?

16 A. Was that this wasn't a -- this wasn't a
17 good dialogue. One person speaks, one person listens,
18 responds to what the speaker says, and we go back and
19 forth.

20 It was a lot of talking over each other,
21 a lot of -- a lot of, I would say -- I would say not
22 formative dialogue, and so this wasn't -- this wasn't
23 the purpose of my conversation. This was the entryway
24 into the conversation about what happened there and so
25 forth. I never got there.

1 Q. But that's not my question.

2 My question is, what did you say to
3 Mr. Bombard?

4 And I'm asking what, did you explain your
5 actions several times?

6 A. I was able to explain metaphorically me
7 choosing to open the door and walk into Mr. Bombard's
8 life.

9 Q. You spoke -- you told him several times
10 why you stopped him; is that right?

11 A. I don't think that that -- I don't think
12 that that's accurate. I explained to him what it was
13 that I saw, and I never got off the launching pad.

14 After that point we talked about what
15 that could be reflective of and what it could not be
16 reflective of, but we never got into the 2013 incident
17 because we just got into this cyclical non-formative
18 type of conversation. It wasn't very productive so I
19 had to . . .

20 Q. Well, you said a number of things. You
21 said, at least according to your affidavit, you said
22 you reviewed the video before you wrote this.

23 In your affidavit it says, I think one,
24 two, three times at least you explained why you were
25 stopping him. And, you know, just to go back, it says

1 because -- because if someone gestures in that way,
2 I -- meaning you -- don't know if they are gesturing
3 because they need my assistance, my attention, or
4 because they need my attention as the gesture itself
5 is not normal behavior.

6 You talked to him. You tell him that a
7 few times at least, you'd say, right?

8 A. I think where we are stuck, if I can
9 answer it this way.

10 Q. No, just answer the question. You tell
11 him something along -- you talk to him about why the
12 stop based on the gesture a few times, right?

13 A. I think a better way to look at it is I
14 attempted to explain and never --

15 Q. Okay, that's fine.

16 And where did you attempt to explain
17 that, in addition to seeing the gesture, it was also
18 because you had this recollection?

19 A. I never got that far in the conversation.
20 That became the problem.

21 Q. And it's not in the affidavit, right?

22 A. Correct.

23 Q. And you didn't have that conversation
24 with Mr. Bombard either, right?

25 A. No.

1 Q. Do you remember saying to him that you
2 were trying to put him in my mindset?

3 A. Yes.

4 Q. When you stop someone, when you conduct a
5 traffic stop do you normally try to explain -- well,
6 going back to 2018, your time in St. Albans, did you
7 normally explain yourself or explain the reasons why
8 you stopped someone and try to put that person in your
9 mindset?

10 A. Yes.

11 Q. And did you talk to them about -- and if
12 they argued with you, did you continue to explain it?

13 A. Sometimes.

14 Q. You told Mr. Bombard that the gesture you
15 saw was so supremely unusual; is that right?

16 A. Yes.

17 Q. That it required you to intervene, is
18 that basically what you said?

19 A. Yes.

20 Q. And you also said that it was clear --
21 you also said something along the lines of if someone
22 shows that symbol, they are looking to get my
23 attention; is that right?

24 A. Yes.

25 Q. You mentioned that several times; that

1 you were -- that someone showing the middle finger
2 gesture to a police officer must be trying to get
3 their attention, right?

4 A. Yes.

5 Q. And by that did you mean looking for
6 your -- or by that what did you mean?

7 A. Like I said earlier in our conversation,
8 which was that this idea of trolling for somebody.
9 They're expressing a state of probably unhappiness
10 with whomever they're directing it at, and I didn't
11 want to give him the attention.

12 Q. You didn't want to give him the
13 attention?

14 A. No.

15 Q. And today you're saying that you didn't
16 think him giving you the middle finger was looking for
17 your assistance, is that what you're telling me?

18 A. Yeah, I don't think "assistance" would be
19 the right word.

20 Q. What would be the right word?

21 A. I think it's -- I think it's attention is
22 the right word.

23 Q. Well, is it -- is it help? Was he
24 looking for your help?

25 A. I don't think he thought he was looking

1 for help, no.

2 Q. Just going back to Paragraph 6 in your
3 affidavit, Exhibit 7, at the bottom you say, If
4 someone gestures in that way, I don't know if they are
5 gesturing because they need my assistance, my
6 attention, or because they need my attention as the
7 gesture itself is not normal behavior.

8 What do you mean when you say, I don't
9 know if they are gesturing because they need my
10 assistance, attention, so on and so forth?

11 A. I suppose at the end of the day I don't
12 really know what their intention is, and it can
13 probably only be one of a few different things and
14 that's the list, I suppose.

15 Q. And I guess in this list you don't
16 include expressing their political opinion, right?

17 A. No.

18 Q. Is that -- is that -- that's not included
19 in getting your attention?

20 A. That might be a -- that might be a given,
21 I suppose. I don't know.

22 Q. What might be a given?

23 A. That an expression could -- it could be
24 something as benign as expressing one's opinion about
25 something, or it could be these other things that have

1 more nefarious roots.

2 Q. And when someone does the middle finger
3 gesture you don't know -- here you're saying you don't
4 know their intention?

5 A. That's right.

6 Q. Now, someone giving any person the middle
7 finger wouldn't typically mean that they're looking
8 for assistance, right?

9 A. Right.

10 Q. That would be -- would you say that would
11 be rare?

12 A. Yes.

13 Q. Has it ever happened to you?

14 A. The short answer is "No".

15 Q. Has any of the troopers, any of your
16 colleagues ever told you about a time when someone
17 showed them the middle finger because they were
18 looking for their assistance?

19 A. No.

20 Q. Have you ever heard of anyone asking for
21 assistance by showing the middle finger?

22 A. No.

23 Q. In the video you said that once you
24 realized Mr. Bombard wasn't flipping you off, he was
25 free to go. Do you remember saying that?

1 A. Yes.

2 Q. And you saw that when you watched this
3 morning, right?

4 A. Yes.

5 Q. If he had told you, yes, I was flipping
6 you off, would he have not been free to go?

7 A. No.

8 Q. So, no, he would not have been free to
9 go?

10 A. No, he would not have been free to go?
11 Right, as in he would have been free to go.

12 Q. He would have been free to go?

13 A. Yes.

14 Q. Double negative.

15 A. Yes.

16 Q. So if he had told you, yes, I flipped you
17 off, he would have been free to go?

18 A. We would -- well, we could use that now
19 as a starting point. Are you okay? What's going on?
20 Blah, blah, blah, blah, blah.

21 The fact he denied it, it just -- it
22 really threw me off about that I was wrong and that I
23 didn't see that; that I made a mistake, and so I
24 really was caught -- I was caught off guard by the
25 denial. I didn't anticipate that he would just deny

1 it. I thought we would use it as a launching pad, and
2 so we would have been engaged in the conversation that
3 I hoped to have that we never got to.

4 But none of that, barring any need for
5 intervention, the form of assistance I talk about,
6 which is access to services, if necessary, if we had
7 gotten there, barring any of that it all would have
8 been voluntary, presumably. He would have been free
9 to go. There wouldn't have been any arrest or
10 consequences.

11 Q. Going to the conversation you hoped to
12 have, you talked about that with Mr. Bombard. You
13 said -- he asked you what I just asked. If he had
14 flipped you off, you know, what was the crime? Would
15 he have been free to go?

16 And I think his exact words were, What if
17 I did flip you off? Do you remember that?

18 A. Yes.

19 Q. And you responded something to the effect
20 of, Then we would be having a conversation about
21 what's appropriate and what's not appropriate?

22 A. Yes.

23 Q. Why, if he had flipped you off, why would
24 you have to have a conversation about what's
25 appropriate and what's not appropriate?

1 A. Because that is -- I believe that that
2 was the crossroads that led to a woman being shot. It
3 was this dramatic escalation and escalating
4 despondency that was set into motion by negative
5 gestures in a road rage environment, and so the
6 conversation could have been this formative moment of
7 you have a right to do such things.

8 I'm talking about what happened here, and
9 I just don't think that's appropriate. I would have
10 said that to him. I would have said that in my
11 experience I don't think that's an appropriate way to
12 express yourself.

13 Can you do it? Yes. I want to make sure
14 that he's not in a position where he's going to be
15 creating harm to somebody or to himself. We just
16 never got there.

17 Q. Do you think if a police officer tells
18 someone that in a way -- saying something is
19 inappropriate would be likely to stop them from doing
20 it?

21 MR. MESSINA: Objection; speculation.

22 Go ahead.

23 THE WITNESS: I think a qualified type of
24 language, say something is inappropriate. I
25 find that telling people what to do actually

1 is -- doesn't help deter people, but I think
2 guiding them through a conversation, asking them
3 questions and them coming to a conclusion
4 themselves is a way to encourage a change of
5 behavior. Not tell but show or lead them to a
6 path themselves.

7 But, again, we just never got there. I
8 was thrown off by the denial, and it never got
9 relaunched again.

10 BY MR. DIAZ:

11 Q. You don't think it was appropriate for
12 Mr. Bombard to have shown his middle finger to you?

13 A. I think that it -- I think -- I don't
14 think that it's appropriate, no. I know that he's
15 allowed to do it, but I don't think that it's
16 appropriate given what it can lead to.

17 Q. Do you think it's inappropriate for a
18 civilian to give a middle finger to a police officer?

19 A. Yes.

20 Q. Do you think it's appropriate?

21 A. Do I think it's appropriate?

22 Q. Do you think it's inappropriate? I'm
23 sorry.

24 A. Yeah, I don't think that that's
25 appropriate, no.

1 Q. And what does it mean for someone to be
2 inappropriate to you?

3 A. Yeah, I think, you know, moving aside
4 from any dictionary definitions, I think if something
5 is inappropriate or appropriate, which is, is it
6 something that I would want my mother to see or my
7 child to see? I think that would be the morals that I
8 would lead into, or societal moray that that would be.

9 MR. SARACHAN: You never met my mother.

10 THE WITNESS: Sounds like a colorful
11 lady.

12 BY MR. DIAZ:

13 Q. And talking about societal morays, do you
14 think that it's a police officer's role to enforce
15 those societal morays?

16 A. I do.

17 Q. And do you think that it's -- you think
18 that you can use and should use your law enforcement
19 authority to enforce those societal morays?

20 A. Yes.

21 Q. And that's part of what you were doing
22 here?

23 A. Yes.

24 MR. DIAZ: Let's take a break for ten.

25 (A recess was taken from 1:50 p.m. to

1 2:00 p.m.)

2 BY MR. DIAZ:

3 Q. So, Mr. Rikken, we've taken our time and
4 looked through all the documents in this case, close
5 to a thousand pages of documents plus the video, and
6 we know you've spoken to people about this stuff,
7 right?

8 A. Yes.

9 Q. I mean, when we look at the documents we
10 don't see any discussion of this recollection of this
11 2013 incident when you tell people about why you
12 stopped Mr. Bombard, and that's because you didn't
13 tell anyone about it, right?

14 A. That's not true.

15 Q. That's not true?

16 A. No.

17 Q. Can you explain that?

18 A. I absolutely have spoken with people
19 about the meaningfulness of that intersection and what
20 happened. I don't know if any of the people who are
21 involved in the incident that brings us all together
22 here were a part of that case, but a lot of the
23 troopers in the St. Albans barracks were on scene that
24 day and I have mentioned that to them.

25 I mean, probably not in a long time now

1 because this incident has fallen to the background,
2 but that was -- that was absolutely part of the
3 conversation I mentioned to people.

4 Q. So I'm sure you've talked to people about
5 the 2013 incident before, right?

6 A. Yes.

7 Q. I believe you there.

8 What I'm asking is when you talked about
9 the stop of Mr. Bombard with anyone else, you didn't
10 mention your recollection about the 2013 incident, did
11 you?

12 A. Yes, I have.

13 Q. When?

14 A. For certain whether it was that day or
15 the days that passed, we talked about some of the --
16 the societal, what I think is a societal mandate of
17 the community caretaker, and this was part of that
18 decision.

19 Because we all agree that a middle finger
20 for a middle finger's sake cannot and should not be
21 enforced. There's nothing to enforce on that. It's
22 this larger piece of what that means in that place. I
23 mean, I have had conversations about that.

24 Q. You talked to Tara Thomas about this
25 stop, right?

1 A. Yes.

2 Q. And she became aware of it because of
3 the -- you said Vermont Records' request related to
4 this stop, right?

5 A. I'm not sure.

6 Q. When did you speak to Tara Thomas about
7 the stop of Mr. Bombard?

8 A. I don't remember.

9 Q. Well, we spoke to Tara Thomas, and are
10 you aware that she recorded information about the stop
11 that you had given her?

12 A. I don't quite know what you're referring
13 to.

14 Q. Are you aware that she summarized your
15 reasons for the stop in writing?

16 A. Yes.

17 Q. Because you and her talked about it,
18 right?

19 A. Yes.

20 Q. And she showed you what she wrote, didn't
21 she?

22 A. Probably.

23 Q. And she also told you that, in reference
24 to this stop, it's the policy of the Vermont State
25 Police to encourage troopers to stop vehicles only for

1 traffic violations; isn't that right?

2 A. I guess partly right.

3 Q. Did she tell you something else?

4 A. I think there's also the community
5 caretaking piece of that as well.

6 Q. Well, what did she tell you?

7 A. I don't remember.

8 Q. If I showed you what she wrote, would it
9 refresh your recollection?

10 A. Yes.

11 Q. I'm going to give you what is marked as
12 AGO-000729.

13 (Plaintiff's Exhibit AGO-000729 was
14 marked for identification, attached at the end
15 of the original transcript.)

16 MR. SARACHAN: Do you have one for
17 Mr. Messina?

18 MR. DIAZ: I don't right now.

19 MR. SARACHAN: Can you share that?

20 MR. DIAZ: Can you share that for now?

21 MR. SARACHAN: Do you have one for you?

22 BY MR. DIAZ:

23 Q. What is AGO-000729?

24 A. Is it an e-mail? I'm not sure. I'm not
25 sure what the basis of this is, but . . .

1 Q. Well, what does it look like to you?

2 A. It looks like an e-mail.

3 Q. And looking at the signature line on the
4 bottom of the e-mail, what does it say?

5 A. It's an e-mail written by Lieutenant Tara
6 Thomas.

7 Q. And it's summarizing the February 9th,
8 2018 stop of Mr. Bombard, right?

9 A. Yes.

10 Q. And it talks about the arrest, right?

11 A. Yes.

12 Q. And then it goes through that it was sent
13 to the Franklin County State's Attorney's Office,
14 right?

15 A. Yes.

16 Q. Where in that paragraph does it talk
17 about your recollection about the 2013 incident?

18 A. It doesn't.

19 Q. And that's because you didn't tell Tara
20 Thomas about the 2013 incident in the context of the
21 2018 stop with Mr. Bombard, right?

22 A. Yes, I did.

23 Q. You told her?

24 A. Yes.

25 Q. When did you tell her that?

1 A. I don't remember. It was presumably
2 contemporaneous to this, and it was remarkable to me
3 because she either reminded me or informed me. I
4 didn't -- I didn't follow it beyond that she was the
5 investigating detective of that case.

6 So she remembered the incident, and she
7 goes, Oh, that's right, yeah. Now, the fact that it
8 wasn't memorialized doesn't make it suddenly untrue.
9 That's a significant event for me.

10 Q. Do you think that Lieutenant Thomas --
11 you said earlier that Lieutenant Thomas has good
12 judgment, right?

13 A. Yes.

14 Q. And she was investigating this because
15 her superiors asked her to, right?

16 A. Yes.

17 Q. And she was going to send a summary like
18 this to her superiors, right?

19 A. Yes.

20 Q. Do you think if she knew that you had
21 stopped Mr. Bombard in part because of your
22 recollection of the 2013 incident, that she would have
23 told that to her and your superiors?

24 MR. MESSINA: Objection; speculation.

25 Go ahead.

1 THE WITNESS: Yeah, I don't know what her
2 style of writing or this theory of writing would
3 be.

4 BY MR. DIAZ:

5 Q. Do you think it's bad judgment that she
6 didn't include it here?

7 A. That's not for me to say.

8 Q. Well, I'm asking you, do you think it's
9 bad judgment to not include that incident in here?

10 A. I don't know.

11 Q. Well, it's either good judgment or bad
12 judgment. What is it?

13 A. It's not for me to say. I don't know.

14 Q. Do you think it's -- do you think it
15 would have been helpful for her to put that in here?

16 A. I don't know.

17 Q. Do you remember writing a press release
18 about the February 9th, 2018 stop of Mr. Bombard?

19 A. Vaguely.

20 Q. And do you remember sending that to
21 anyone for your -- for approval?

22 A. I don't remember if I had to have it
23 approved or not, but the e-mails speak for themselves,
24 I presume.

25 (Plaintiff's Exhibit AGO-000142 was

1 marked for identification, attached at the end
2 of the original transcript.)

3 BY MR. DIAZ:

4 Q. I'm going to show this to you. It's
5 labeled Bates AGO-000142, and this is a -- can you
6 tell me what this document is?

7 A. It's a press release of the events sent
8 from me to the station commander, Lieutenant Lamothe.

9 Q. And it includes a summary of the stop and
10 arrest?

11 A. Yes.

12 Q. And where in this do you include
13 reference to the 2013 incident?

14 A. Yeah, it doesn't.

15 Q. Thank you. And that's the same press
16 release that you sent to the Vermont State Police
17 media, right?

18 A. Yes.

19 Q. And that meant that went out across the
20 state?

21 A. I'm not sure.

22 Q. Well, it goes out to various media
23 outlets in Vermont, though, right?

24 A. Yes.

25 Q. And before we move on, on Page 3 of this

1 document what do you see?

2 A. It's a mugshot of Mr. Bombard.

3 Q. Were you there when he had his mugshot
4 taken?

5 A. No.

6 Q. And did you attach it to this e-mail?

7 A. Probably.

8 Q. And what's the subject of this e-mail?

9 A. St. Albans barracks/disorderly conduct.

10 Q. And what does it say next to
11 "Attachment"?

12 A. Bombard mugshot, dot APD.

13 Q. So you did attach the mugshot to the
14 e-mail?

15 A. Yes.

16 Q. And that mugshot went out to the Vermont
17 State Police media list serve, right?

18 A. Yes.

19 Q. And that means it went out to the various
20 media outlets in the State of Vermont?

21 A. Yes.

22 Q. As I mentioned, we talked to Lieutenant
23 Thomas and we talked to Chief Lamothe.

24 And when we asked Lieutenant Thomas what
25 you said to her about your reasons for the stop, about

1 what happened, she didn't mention anything about the
2 2013 incident. Why do you think that is?

3 A. I don't know.

4 MR. MESSINA: Objection; speculation.

5 THE WITNESS: Yeah, I don't know.

6 BY MR. DIAZ:

7 Q. Well, she was under oath like you are
8 today. Do you think she was -- do you have reason to
9 believe she would be less than complete with us?

10 A. No.

11 Q. So going back to the stop, for the
12 initial stop when did you -- do you remember when you
13 first introduced yourself?

14 A. I don't think I ever did.

15 Q. When did you ask for Mr. Bombard's
16 license and registration?

17 A. I didn't.

18 Q. Now, as you -- eventually you walked
19 away, right?

20 A. Yes.

21 Q. Tell me what happened when you returned,
22 were returning to your vehicle.

23 A. I -- I ended the interaction.

24 MR. SARACHAN: I apologize, would you say
25 that again?

1 THE WITNESS: Sorry. I had ended the
2 interaction and was walking back to my cruiser.

3 Got back to about the side-view mirror,
4 and I heard him start to swear. And so it kind
5 of got my attention, so I stopped and just
6 turned for a moment and looked at him through
7 his -- I could see him looking at me through his
8 side-view mirror and he yelled "Fuck You" twice,
9 called me an asshole, okay, and then stuck his
10 middle finger up again. And so that's what I
11 observed.

12 BY MR. DIAZ:

13 Q. Was that -- was that all while you were
14 standing at your -- at your door?

15 A. Yes.

16 Q. So you were standing at your door. Was
17 the door open or closed?

18 A. Closed.

19 Q. So you were outside the car?

20 A. Yes. Yes.

21 Q. And he said some swear words and stuck
22 his middle finger up; is that right?

23 A. Yes.

24 Q. And that -- and what happened next?

25 A. Well, I looked around, and there was a

1 pickup truck two or three cars back in the north lane.
2 I looked at the driver looking at me and kind of like,
3 what happens now?

4 And I was like, I looked and there was a
5 school bus over here on the corner and there was a car
6 behind me, and I'm like now it's become disorderly
7 conduct in the presence of all these people and I
8 said, well, I'm going to have to arrest this guy.

9 Q. And this is all before you get in the
10 car?

11 A. Yes.

12 Q. How far away were you from Bombard, would
13 you say; your best estimate?

14 A. Two or three car lengths, perhaps.

15 Q. And I don't know what two or three car
16 lengths means. Do you have an estimate of what that
17 is in feet?

18 A. 30, 35, 40. I'm estimating but maybe 30.

19 Q. So somewhere between 30 -- you were
20 somewhere between 30 and 40 feet from Bombard at this
21 point?

22 A. I'm estimating.

23 Q. Your best estimate is you were somewhere
24 between 30 to 40 feet away from him?

25 A. Yes.

1 Q. Okay. So you get back in your car, and
2 what happens next?

3 A. I -- the blue lights were still on, so I
4 wanted to reinitiate the stop. He -- I observed him
5 still looking at me in the side-view mirror. He was
6 distracted by me. Appeared to be distracted by me, I
7 should say.

8 So he held his middle finger up out the
9 window, and then I think he had been distracted enough
10 that he didn't see that a car was trying to get by at
11 the car stop. So he stopped to make sure that he
12 wouldn't cause a crash, and then that car continued,
13 he merged out, and I tried to reinitiate the motor
14 vehicle stop.

15 Q. So -- so are you saying he gave you -- he
16 showed his middle finger three times?

17 A. I'm saying that he -- the initial display
18 that was part of the initial contact. Then it was the
19 obscenities, so perhaps it was -- whatever is in my
20 affidavit would reflect the truth, and so if it was
21 only after he was driving away, then that's what
22 happened.

23 Q. Okay. You said a moment ago that
24 Mr. Bombard appeared to be distracted. What do you
25 mean by that?

1 A. Because he was -- I could see his face in
2 the side-view mirror, as in he was looking back at me,
3 and he was looking at me as he was driving away with
4 his middle finger out the window, and he didn't seem
5 to observe that a car had been passing our car stop at
6 that moment. So he had to stop to let him or her
7 proceed, and then he continued.

8 So I said, Well, look at that. He
9 appears now to be escalating. I'm sorry it's come to
10 this point, and I'm going to stop him again.

11 Q. And at this point where were you when you
12 say he appeared to be distracted?

13 Where were you?

14 A. I was back in my car.

15 Q. So you were in your car at that point?

16 A. Yes.

17 Q. And he's 30 to 40 feet away from you, by
18 estimate, and you're seeing his face in his rearview
19 mirror; is that right?

20 A. Yes.

21 Q. Okay, so I just want to make sure I
22 understand. You walk back to your car. You hear
23 Mr. Bombard swear. You turn around. You hear him
24 swear twice more. And then you get in your car, and
25 you see him display his middle finger; is that right?

1 A. Yes.

2 Q. And can you just demonstrate for me like
3 how he displayed his middle finger?

4 A. It that fair for an audio record? I
5 mean --

6 Q. I'm going for you to do it for me, yeah.

7 A. Just go for the charade? Okay.

8 So he had his left hand out the window
9 and held it up like this.

10 Q. So it was like just outside the window?

11 A. Yes.

12 MR. MESSINA: Let the record reflect that
13 Trooper -- Sergeant lifted up his left hand and
14 demonstrated the middle finger to everybody in
15 the room.

16 BY MR. DIAZ:

17 Q. Now, you watched the video this morning.
18 When you watched it did you -- you said there were
19 some cars across from Mr. Bombard; is that right?

20 A. Yes.

21 Q. And do you remember about how many?

22 A. There was -- a school bus had gone by,
23 stopped off camera. I think there was one car next to
24 us, a truck next to that one, a couple cars behind us.
25 I'm not sure other than that.

1 Q. Okay. And do you remember seeing any of
2 the cars with their windows down?

3 A. I don't recall.

4 Q. Do you remember seeing -- do you remember
5 anybody having their windows down?

6 A. No.

7 Q. Would it make sense to you that people
8 would have their windows down on a cold day in
9 February?

10 A. I would say down, no, but cracked
11 perhaps.

12 Q. Did you see anybody with their windows
13 cracked that day?

14 A. No.

15 Q. And how far apart would you say Bombard's
16 driver's seat was from -- to the car right across from
17 him?

18 A. 30 feet, maybe.

19 Q. And how far to the back of the school
20 bus?

21 A. 40 feet, maybe.

22 Q. A moment ago I believe you said that you
23 looked at somebody in one of the vehicles next to you;
24 is that right?

25 A. That was the operator of a pickup truck

1 that was behind the car that was next to the car stop.

2 Q. So the operator in the pickup truck
3 across -- you know, that was across from Bombard's
4 car?

5 A. No. There was a pickup truck behind a
6 car that was next to Bombard's car.

7 Q. And how far were you from that pickup
8 truck?

9 A. 50 feet, maybe.

10 Q. And I believe you said -- well, what was
11 the interaction there?

12 A. I remember him looking at me, presumably
13 had seen what had transpired. He looked at me kind of
14 like, What are you going to do? I'm like, Okay, well.
15 That was it. Stare at each other; that was it.

16 Q. So from 50 feet away he looked at you?

17 A. Yes.

18 Q. And did he do anything else?

19 A. No.

20 Q. He just looked at you?

21 A. Yes.

22 Q. Did he say anything?

23 A. No.

24 Q. He didn't gesture?

25 A. No.

1 Q. Did he look at Bombard?

2 A. I don't know.

3 Q. You didn't see him look at Bombard?

4 A. No.

5 Q. You saw him look at you?

6 A. Right.

7 Q. Did anybody else look at you, do you
8 remember?

9 A. No.

10 Q. So at that moment nobody else -- you
11 didn't see anybody else looking at you?

12 A. No.

13 Q. Did you see anybody else looking at
14 Bombard at that moment?

15 A. No.

16 Q. Can you tell me where in your affidavit
17 you say that the person in the pickup truck looked at
18 you, and you saw that as some kind of communication?

19 A. I didn't write that.

20 Q. You didn't include that in here?

21 A. No.

22 Q. Did you write it down? Write down this
23 fact anywhere else?

24 A. No.

25 Q. Did you tell Tara Thomas about that fact?

1 A. Yes.

2 Q. And you didn't see it in the report that
3 she wrote, though, right?

4 A. No.

5 Q. You didn't see it in the press release
6 you wrote, right?

7 A. No.

8 Q. And, again, this person looked at you.
9 Did they -- how did you know that -- that they were
10 trying to tell you something?

11 A. He really gave me a look kind of like,
12 What's going to happen now? That was the expression
13 that he gave me. That's how I perceived the way that
14 he was looking at me.

15 I said, Oh, well, this has all played out
16 in front of this person. I wonder who else has seen
17 this now, and I feel like I have to do something
18 about this. This has now become a crime.

19 Q. Did he seem -- was he angry?

20 A. I couldn't tell.

21 Q. Did he have any emotion on his face?

22 A. I couldn't tell.

23 Q. Did you perceive an emotion on his face?

24 A. I couldn't tell.

25 Q. Is it possible that he could have just

1 been looking at you?

2 A. Yes.

3 Q. Is it possible that he could have just
4 meant to communicate something else if he communicated
5 anything at all?

6 A. Yes.

7 Q. So based upon him looking at you, you
8 assumed what he -- that he saw Bombard and was trying
9 to communicate to you?

10 A. My perception was that he was quite taken
11 by what had unfolded, and that was just the way -- it
12 was the expression that he gave.

13 My perception certainly could be wrong.
14 That is how I perceived it, and that was -- led me to
15 believe, I wonder who else has seen this play out now
16 and has been a -- now observed the tumultuous behavior
17 play out, and I have to do this now. I have to arrest
18 this guy.

19 Q. How did the pickup driver's expression
20 make you feel?

21 A. It really -- I'm chuckling because I'm
22 like, Whoa, I've really -- I've lost control of this
23 stop. This is too bad. I didn't want it to go like
24 this. That's what I was thinking to myself.

25 Q. What do you mean, you didn't want it to

1 go like this?

2 A. I really thought we could have a
3 non-adversarial encounter, make sure he was okay, as
4 in he wasn't this guy from a few years ago, could talk
5 to him about what those gestures lead to, although not
6 illegal, not inappropriate. The community caretaking
7 would be resolved. He would be better for the
8 conversation. All these things in my mind that never
9 happened, never played out, and now I've lost control
10 and now a middle finger has now turned into gross
11 profanity in front of these people.

12 I'm like, Huh. I felt kind of bummed
13 out, I guess. That was the feeling; too bad.

14 Q. Because you lost control?

15 A. That I was in control. I kind of lost
16 control of the moment.

17 Q. Right, because you lost control of the
18 situation?

19 A. That's right, that it had escalated to
20 that point.

21 Q. And you were bummed about it, you said?

22 A. Yeah, disappointed because I don't like
23 my -- all of my encounters over all the years are
24 almost always positive encounters, even the arrest
25 situations. The ones where there was enforcement,

1 they're positive encounters for the most part, so I
2 was bummed out that it came out that way.

3 Q. Let's talk about, you said that there
4 were other people in the area; is that correct?

5 A. Yes.

6 Q. But you said you didn't see anyone see
7 Bombard during this time, right?

8 A. I had -- I had assumed that if that guy
9 had seen it, that everyone else here could or did see
10 it, but I --

11 Q. But you didn't see if anyone else saw
12 Mr. Bombard's -- or let me rephrase that.

13 You didn't notice anyone else reacting to
14 Mr. Bombard's statements?

15 A. No.

16 Q. You said there was a school bus about
17 40 feet -- the back of the school bus was about
18 40 feet behind Mr. Bombard; is that right?

19 A. Yes.

20 Q. And when did you first notice the school
21 bus?

22 A. I think I was aware of it driving by us
23 when I was on the car stop.

24 Q. Is that when you were back at your car?

25 A. I'm not sure when I became aware. I knew

1 that it had driven by at some point.

2 Q. And where were you when you first
3 noticed?

4 A. I'm not sure. I just was aware that it
5 was there.

6 Q. And how far was the bus from you?

7 A. I think it was just off the back of my
8 cruiser, stopped at that red light.

9 Q. So the back of the bus was how many feet
10 would you say, an estimate?

11 A. If the front of my car was approximately
12 30 feet from Mr. Bombard, maybe it was less, right,
13 but approximately. Then it was 20 feet, maybe, back
14 off the shoulder. Maybe 30 feet; I'm not sure.

15 Q. And remind me, we said it was around noon
16 that day, right --

17 A. Yes.

18 Q. -- this was all happening? You didn't
19 see anyone on the bus, right?

20 A. No.

21 Q. And you didn't see any -- I mean,
22 obviously someone was driving it, right?

23 A. Right.

24 Q. You didn't see that person, though?

25 A. No.

1 Q. And you didn't see any kids on the bus,
2 right?

3 A. No.

4 Q. You didn't see anybody in the back of the
5 bus?

6 A. No.

7 Q. And in your affidavit you didn't write
8 that you saw students in the back of the bus, right?

9 A. Right.

10 Q. So putting aside the pickup truck driver,
11 you didn't know if anyone else heard Mr. Bombard's
12 statements; is that right?

13 A. I wasn't -- I didn't know one way or the
14 other.

15 Q. But you didn't know that anyone else
16 heard Mr. Bombard's statements?

17 A. I don't know one way or the other.

18 Q. Well, it's a "Yes" or "No" question. You
19 either knew that they heard -- you either knew someone
20 heard the statements, or you didn't know that someone
21 heard his statements. Did you know that?

22 It's true that you didn't know whether
23 anyone heard his statements, right?

24 A. It's true that I didn't know, that's
25 right.

1 Q. In listening to the video today -- you
2 listened to it, right? You had audio?

3 A. Yes.

4 Q. Did you hear Mr. Bombard's statements?

5 A. No.

6 Q. So you didn't hear him on the video say
7 "Asshole"?

8 A. No.

9 Q. And you didn't hear him say "Fuck you"?

10 A. No.

11 Q. Why do you think you didn't hear him?

12 A. Because the body mic was attached to my
13 belt, which was right next to the running engine of my
14 cruiser, V-8 engine, idles kind of hot.

15 Meanwhile, my ears are up here and the
16 line of his voice and my ears are far more sensitive
17 than these body microphones which have a lot of
18 background noise, in this case right next to the
19 cruiser engine.

20 Q. Now, when you were standing next to
21 Mr. Bombard's car talking to him, his car was still
22 running, right?

23 A. Yes.

24 Q. And, as we talked about, someone on the
25 other side of the street drove up and asked you for

1 directions, right?

2 A. Yes.

3 Q. And you heard that person, right?

4 A. Yes.

5 Q. The mic picked it up, right?

6 A. Yes.

7 Q. And that's amidst -- a car goes by in the
8 middle of them talking and still you heard them,
9 right?

10 A. Yes.

11 Q. You're out in the middle of the street at
12 that point, same -- basically same position as you are
13 when you're next to your car, right?

14 A. No.

15 Q. No?

16 A. No.

17 Q. Why not?

18 A. I returned to my cruiser. I was by my
19 side-view mirror. The body mic was faced right
20 towards the engine and at the point of the stop with
21 Mr. Bombard, when that person came and talked to me, I
22 turned toward them, taking me away, and so it picks up
23 their voice a lot clearer.

24 The evidence of that -- take my word for
25 it. The evidence of that when we're talking to

1 Mr. Bombard, you can hear what he says but it's not
2 clear. You can hear the random person driving by
3 asking for directions is not clear because it's open
4 space. Metal doors and things that I might be up
5 against, so --

6 Q. Let me be clear. I think there's a
7 misunderstanding. I'm not saying whether you could
8 understand what Mr. Bombard said, whether you said he
9 made these statements as you were back at your car
10 after the initial stop.

11 I'm asking -- what I meant to ask was,
12 did you hear him at all on the video?

13 A. Right, and I answered that.

14 Q. You didn't hear anything?

15 A. Right.

16 Q. And so when you're standing at your
17 vehicle right near the side-view mirror, you turn left
18 to look at Mr. Bombard, right?

19 A. Yes.

20 Q. And your mic, where is your mic on your
21 body?

22 A. It would be down here.

23 Q. On your right hip?

24 A. More -- my center belt buckle to my hip,
25 it's in the middle of that space.

1 Q. Okay. And when you say you saw someone
2 looked at you, the pickup truck driver looked at you
3 and communicated with you somehow, did you take down
4 that person's license plate?

5 A. No.

6 Q. At that time you had determined a crime
7 had occurred, right?

8 A. Yes.

9 Q. And you didn't -- you didn't seek to like
10 ask that person to come over, right?

11 A. I was more interested in -- no, I didn't.
12 No.

13 Q. You didn't, and you didn't take down the
14 license plate, you said, right?

15 Did you ever find that person to talk to
16 them?

17 A. No. And I had gone back into the video
18 hoping that the video quality was better than it is,
19 and I would have loved to have gotten a front license
20 plate off of it to bring him into the conversation,
21 but it wasn't to be.

22 Q. So after Mr. Bombard makes his
23 declarations or statements -- declarations is a legal
24 term. I don't want to use that.

25 After Mr. Bombard made these statements

1 and swear words, you get back in your car, and you're
2 both about to pull away; is that right?

3 A. Yes.

4 Q. Mr. Bombard -- a few moments ago you said
5 that Mr. Bombard -- you're in your car. I'm just
6 confused about how can you see Mr. Bombard if you're
7 in your driver's seat?

8 A. The way my cruiser is positioned, I can
9 easily see the -- depending on how the driver has
10 their seat and their mirror positioned, sometimes I
11 can see them quite clearly, and so he was looking down
12 in his side-view mirror back at me.

13 And so I'm not trying to be snarky; if
14 you can see me, I can see you kind of thing. So I can
15 see his face in the side-view mirror looking at me,
16 clear line of sight.

17 Q. And he's getting ready to pull out into
18 the lane, right?

19 A. Yes.

20 Q. Now, and you're a traffic safety
21 instructor. When you are going to pull out into a
22 lane, you're supposed to look in your side-view
23 mirror, right?

24 A. There's another part of that, but yes.

25 Q. Well, that's one part of it for sure,

1 right?

2 A. Yes.

3 Q. You've got to look into your side-view
4 mirror to see if anyone is coming behind you, right?

5 A. Yes.

6 Q. Your car is positioned behind
7 Mr. Bombard's, right?

8 A. Yes.

9 Q. And he's got to look behind your car to
10 see -- in his side-view mirror to see if anyone is
11 coming, right?

12 A. Yes.

13 Q. Is it possible that he was looking in
14 your direction but not at you?

15 A. No.

16 Q. It's not possible?

17 A. No.

18 Q. So from 30 feet away your testimony is
19 that you know he was looking at you and not at the
20 cars -- at the area behind you to see if there were
21 cars coming?

22 A. Yes.

23 Q. And when you were talking to Mr. Bombard
24 at his window, cars were coming by you, right?

25 A. Yes.

1 Q. A little bit of a -- I mean, a little
2 nerve-racking to having cars screaming by you, right?

3 Maybe you're used to it.

4 A. They were going pretty slow.

5 Q. Okay. And when you get back to your car,
6 there's a truck that comes up next to you and -- let
7 me go back.

8 And when they're going by you as you're
9 at Mr. Bombard's door, they're giving you a fairly
10 wide berth, right?

11 A. Yes.

12 Q. You can see in the video they're kind of
13 going into the opposite lane, right?

14 A. Yeah, the video speaks for itself. I
15 presume so.

16 Q. Do you remember seeing that?

17 A. No.

18 Q. Okay. I'll represent to you that some of
19 them are going into the opposite lane, at least to
20 some extent, and many vehicles go by, right --

21 A. Yes.

22 Q. -- during that time?

23 When you get back to your car, a truck
24 comes up as Mr. Bombard is preparing to merge into the
25 lane, right?

1 A. Yes.

2 Q. Do you remember him putting on his left
3 turn signal?

4 A. No.

5 Q. And Mr. Bombard pulls up or, I'm sorry,
6 excuse me, the truck comes up, and it's going around
7 your car and his car, right?

8 A. Yes. I don't remember this exactly,
9 but --

10 Q. Do you know where that truck came from?

11 A. I don't.

12 Q. So you don't know if it came from Lower
13 Newton or from North Main?

14 A. I don't know.

15 Q. When you watched the video this morning
16 did you notice that truck that went by you as you were
17 at your car, did you notice that truck swerve in any
18 way to avoid Mr. Bombard?

19 A. No.

20 Q. Did you notice that truck go farther than
21 any of the other cars into the opposite lane --

22 A. No.

23 Q. -- than the cars before?

24 A. No.

25 Q. Did you notice that car slow down at all

1 when it saw Mr. Bombard's car?

2 A. No.

3 Q. Did you notice that car -- that truck --
4 did the truck driver hit the horn?

5 A. No.

6 Q. Did you hear the horn?

7 A. No.

8 Q. Did the truck driver stop his car?

9 A. No.

10 Q. When you merge into traffic isn't it --
11 would you say it's common for you to kind of edge out
12 before you fully enter the lane?

13 A. Sometimes.

14 Q. You kind of go a little bit, stop, check,
15 go a little bit, stop, check, right?

16 A. Yes.

17 Q. That's what most people do?

18 A. Depending on the environment, yes.

19 Q. Right. And was it before -- so I guess
20 Mr. Bombard is pulling out. The truck goes by. Can
21 you tell me when in that sequence he stuck his middle
22 finger out the window?

23 A. It was as he was pulling away, so I
24 couldn't give you a frame-shot necessarily but as he
25 was pulling away.

1 Q. And then -- and your affidavit says, and
2 this is at Paragraph 10 on Page AGO-7. Are you with
3 me?

4 A. Yes.

5 Q. It says, going down to the third
6 sentence, starting with, The operator. Are you with
7 me?

8 A. I watched the operator.

9 Q. The next sentence starts with, The
10 operator?

11 A. Yes.

12 Q. The operator extended his middle finger
13 outside of his window for no less than five seconds
14 and as he drove for no less than 15 yards.

15 I read that right?

16 A. Yes.

17 Q. After he was done displaying his middle
18 finger out the window what did he do?

19 A. I don't recall.

20 Q. Did he -- well, did Mr. Bombard keep his
21 middle finger up in the air?

22 A. No.

23 Q. He stopped displaying the middle
24 finger --

25 A. I think so.

1 Q. -- as he was still driving?

2 A. I think so.

3 Q. Did you see any other signal from him
4 after that?

5 A. No.

6 Q. Any other gesture?

7 A. No.

8 Q. Did you hear anything that he said after
9 that?

10 A. No.

11 Q. You were in your car at that point?

12 A. Yes.

13 Q. And you were driving?

14 A. Yes.

15 Q. Your window was up?

16 A. I don't recall.

17 Q. Do you think your window was probably up?

18 A. As I said before, it could have been
19 cracked. I don't know.

20 Q. You didn't hear anything through your
21 window?

22 A. No.

23 Q. At this point in the video do you
24 remember saying on the microphone, at least you say
25 Mr. Bombard -- or you say he said "Asshole", he said

1 "Fuck you" and flipped you the bird.

2 Do you remember that?

3 A. Yes.

4 Q. And that was after he had put his middle
5 finger away, right?

6 A. Yes.

7 Q. He then puts his blinker, his left
8 blinker on to turn onto Brainerd Street, right?

9 A. Yes.

10 Q. And at that point do you remember what
11 you say?

12 A. Refresh my recollection, and I'll believe
13 you.

14 Q. Let's go back a second. Do you -- you
15 said that when your car was stopped and you were
16 talking to Mr. Bombard, you had your blue lights on
17 that whole time; is that right?

18 A. Yes.

19 Q. At any point after you got back to your
20 car did you turn your lights off?

21 A. I don't think so.

22 Q. And would you normally just leave the
23 lights on when you are getting back in your car?

24 A. Depending on what function I may need to
25 be doing, my practice is usually turn the front blue

1 lights on. So there's no front blue lights in front
2 of me; there's only behind.

3 Q. And were the front blue lights on or off?

4 A. I don't recall. I'm going to suppose
5 that everything was still on.

6 Q. Okay. And you never -- in this whole
7 interaction you never turned them off?

8 A. I don't think so.

9 Q. And so as you're following Mr. Bombard
10 south on Main Street, your blue lights are on that
11 whole time?

12 A. Yes.

13 Q. But he doesn't -- you're not trying to
14 pull him over right there, are you?

15 A. I was.

16 Q. Your siren wasn't on, though, right?

17 A. No.

18 MR. DIAZ: Let's take another ten.

19 (A recess was taken from 2:50 p.m. to
20 3:05 p.m.)

21 BY MR. DIAZ:

22 Q. Taking you back to when Mr. Bombard is
23 pulling away, you said he put his middle finger out
24 the window and that there were a few cars around,
25 right?

1 Did you see anyone see Mr. Bombard put
2 his middle finger out the window?

3 A. No.

4 Q. So you don't know that anybody saw him
5 put his middle finger out the window?

6 A. I don't know.

7 Q. You don't know that anyone saw him put
8 his middle finger out the window?

9 A. Correct.

10 Q. Now, next up Mr. Bombard puts his blinker
11 on. He turns onto Brainerd Street, and you conduct
12 another stop; is that right?

13 A. Yes.

14 Q. And he pulls up over to the right on
15 Brainerd Street, and you pull up behind him, right?

16 A. Correct.

17 Q. And this is to effectuate the arrest you
18 wanted to do --

19 A. Yes.

20 Q. -- for disorderly conduct?

21 A. Yes.

22 Q. Now, after watching the video this
23 morning did you -- do you remember telling Mr. Bombard
24 that -- or let's go back.

25 We talked about earlier when you were

1 interacting with members of the public, whether you're
2 just talking to them on the sidewalk or arresting
3 them, you're always truthful with them, right?

4 A. Unless the -- unless the job, you know,
5 and the need at the moment gives me a procedural
6 ability to be less than honest.

7 Q. Well, when you're -- when you're
8 explaining your actions you're always honest, right?

9 A. Articulating. Say -- I don't want to
10 suppose what you're getting. Articulating an arrest
11 decision, for example.

12 Q. Yes.

13 A. Yes.

14 Q. You're always honest when you're doing
15 that?

16 A. Yes.

17 Q. And you don't exaggerate when you do
18 that, right?

19 A. No.

20 Q. When you watched the video did you see
21 any pedestrians on the street?

22 A. No.

23 Q. There were no pedestrians, right?

24 A. I don't think so.

25 Q. And outside of the few cars that were in

1 the area that you mentioned, there were no other
2 people on the road or behind you, right?

3 A. No.

4 Q. When you -- after you stopped Mr. Bombard
5 for the second time, you walk up to his car, and you
6 ordered him to get out, right?

7 A. Yes.

8 Q. You told him he was under arrest?

9 A. Yes.

10 Q. You told him he had committed a crime,
11 right?

12 A. Yes.

13 Q. And that crime was disorderly conduct,
14 right?

15 A. Yes.

16 Q. And you explained it, and you said it was
17 Disorderly Conduct 101, right?

18 A. Yes.

19 Q. And you told him that his use of swear
20 words and his middle finger, you told him that all the
21 public around at that time heard it and saw it; isn't
22 that right?

23 A. Those are my exact words, I'll not
24 disagree with you.

25 Q. Your exact words were, All that public

1 there heard it and saw it?

2 A. Okay.

3 Q. Is that right?

4 A. Yes.

5 Q. And if you need the video, just tell me.

6 A. No, I believe you, if you have the quotes
7 there. The video speaks for itself.

8 Q. And you ordered him to get out of the car
9 a few times, right?

10 A. Yes.

11 Q. And can you tell me about your
12 training -- you know, tell me about what you're
13 trained to do when you're ordering someone from a
14 vehicle.

15 A. Thinking about like say textbook stuff,
16 it's certainly don't want to use force, and so there's
17 no reason to rush through the encounter and so to
18 avoid that. We're trained to extract people from
19 vehicles, but it's not really the hope or the
20 objective.

21 So the goal is to kind of get clear from
22 the door in case he swings it open so I won't get hit
23 or something, and other than that it's simply let's
24 get this guy to comply without having to use force.
25 That's really important.

1 Q. And where are you trained to -- are you
2 trained in particular places to stand or ways to
3 stand, anything like that?

4 A. As a general interview or things have a
5 potential to escalate, like we talked about the
6 belated stance, which is just angle a weapon away from
7 somebody so it makes not lunge-able basically.

8 Q. So you mean you angle your weapon away
9 from somebody, is that what you're saying?

10 A. Correct.

11 Q. And Mr. Bombard responded to you saying
12 that you were arresting him for disorderly conduct
13 by -- he was in disbelief, right?

14 A. I don't know.

15 Q. Well, when you watched the video this
16 morning what did he think he was -- let me go back.

17 When you watched the video this morning
18 you heard him say things like, I can't believe this,
19 right?

20 A. Things like that, yes.

21 Q. Yeah, so what do you think was going
22 through his mind?

23 MR. MESSINA: Objection; speculation.

24 THE WITNESS: So I -- yeah, in review he
25 did seem surprised.

1 BY MR. DIAZ:

2 Q. And he questioned whether his actions
3 constituted disorderly conduct, right?

4 A. I think so.

5 Q. And at one point you said to him, It
6 wasn't a problem until it became a problem; is that
7 right?

8 A. I think something like that, yes.

9 Q. What did you mean by that?

10 A. That the -- I think what I meant was that
11 the middle finger that was part of the reason for the
12 initial contact was not the problem. The arrest has
13 to do with what happened since then, which was the
14 profanity and the middle finger in front of all those
15 people.

16 Q. All those people who you don't know if
17 anyone saw it, right?

18 A. Well, the affidavit speaks for itself.
19 The video does as well. It was the people were
20 present to be exposed to such things, and I don't -- I
21 didn't take a poll or an attendance of people, but I
22 know there's a lot of people. There seemed to be
23 quite a few people present to observe it, and that was
24 what I made the decision based on.

25 Q. When you say there were quite a few

1 people, we talked about I think a total of four
2 vehicles; is that right?

3 A. In the immediate space, yes.

4 Q. Do you know how many people were in any
5 of those vehicles?

6 A. No.

7 Q. So it's possible that there were four
8 people, maximum, we're talking about here?

9 A. Potentially.

10 Q. And you didn't see if any of those people
11 in any of those cars witnessed what Mr. Bombard said,
12 right?

13 A. That's not -- that's not what I said. I
14 said I had the non-verbal exchange with the pickup
15 truck driver, so I thought that based on his
16 expression that he gave me that he had seen what had
17 happened and he was curious how I was going to respond
18 to it. So I thought if he saw that, then anyone else
19 here also could have seen it. That was my testimony.

20 Q. Let me go back. You said that you didn't
21 know if anyone else saw -- let me go back.

22 You didn't -- you said you didn't know
23 whether anyone else heard Mr. Bombard's statements; is
24 that right?

25 A. That's right.

1 Q. And you also said you don't know if
2 anyone saw Mr. Bombard display his middle finger; is
3 that right?

4 A. I said I believe that that gentleman did
5 or was in a position to because we had already had
6 that interaction with each other. But to the extent
7 that other people were exposed to it, I wasn't sure.
8 That's what I said.

9 Q. I mean, we can read it back. I believe
10 you said you didn't know if anyone else saw it.

11 A. Right. I'm not sure. I didn't say that,
12 no, no one else certainly didn't see it. I said, no,
13 I don't know.

14 Q. In that second interaction with
15 Mr. Bombard when you were on Brainerd Street how would
16 you describe your demeanor?

17 A. It was more direct.

18 Q. Do you remember what you were feeling at
19 that point?

20 A. I was concerned about the -- how the
21 incident escalated, and I knew that I needed to
22 present myself in a way that could affect this arrest
23 without using force. I did not want to have to engage
24 in an arrest situation with him. And so -- but yet I
25 needed to present myself in a way that he knew that I

1 was serious, that this was serious and that it wasn't
2 a time for question or debate. He just had to comply.

3 Q. And would you say that you were surprised
4 by Mr. Bombard's actions after the initial stop?

5 A. Yes.

6 Q. And would you say that his expressions to
7 you, the swear words and the middle finger, were
8 shocking to you?

9 A. No.

10 Q. Would you say that they were upsetting?

11 A. No.

12 Q. Did you feel angry at Mr. Bombard?

13 A. No.

14 Q. When you approached his vehicle on
15 Brainerd Street do you remember that you raised your
16 voice?

17 A. Yeah, I did raise my voice, yes.

18 Q. When you're angry do you raise your
19 voice?

20 A. Yes.

21 Q. You've been angry before, right?

22 A. Yes.

23 Q. Who hasn't. It's common that people when
24 they get angry raise their voices, right?

25 A. Sometimes they do, and sometimes they

1 don't.

2 Q. In your training -- after you got
3 Mr. Bombard out of the car did he resist the arrest at
4 all?

5 A. No.

6 Q. He was compliant?

7 A. Yes.

8 Q. And you walked him over to the hood of
9 your car, right?

10 A. Yes.

11 Q. And you had him put his hands on the
12 hood, right?

13 A. Yes.

14 Q. And then you had him put his hands behind
15 his back, right?

16 A. Yes.

17 Q. And you handcuffed him behind his back,
18 correct?

19 A. Yes.

20 Q. Did you have any reason to think that
21 Mr. Bombard was -- after he's out of the car did you
22 have any reason to think that Mr. Bombard was a danger
23 to you?

24 A. It's not a question to have to ask, yeah.

25 Q. I can rephrase it.

1 After you got Mr. Bombard out of the car
2 you didn't think he was going to hurt you, right?

3 A. No.

4 Q. You didn't think that he was going to try
5 to run, did you?

6 A. No, I didn't think so.

7 Q. You didn't think he was a dangerous
8 person, did you?

9 A. No.

10 Q. And you didn't think that he was under
11 the influence of alcohol, did you?

12 A. No.

13 Q. You didn't think he was under the
14 influence of any illegal drugs, right?

15 A. No.

16 Q. When you conduct an arrest or when you've
17 conducted an arrest in the past do you always handcuff
18 suspects?

19 A. Yes.

20 Q. And do you always handcuff them behind
21 their backs?

22 A. I'd say with very few exceptions.

23 Q. When would you make an exception?

24 A. I think if somehow they had some
25 demonstrable shoulder issues where that would cause

1 them some type of pain, I wouldn't do it. If they
2 were children or something.

3 And I admit that these are not -- this
4 would not be the -- that would be against procedure
5 from the State Police. They would instruct us to
6 always handcuff people behind their back, and I've
7 departed from that from time to time when I thought
8 that the situation felt like it needed it.

9 You could argue about compassion and so
10 forth and how you do that and how you don't, but I
11 think it's different in front and back. And I think
12 some people, in very few situations I have handcuffed
13 them in the front because I thought the circumstances
14 warranted it, and that would be against policy.

15 Q. And have you ever handcuffed a person in
16 front because you didn't think they were a danger to
17 you?

18 A. It's -- I really try to resist that kind
19 of thinking because that type of complacency is
20 exactly what kills and injures police officers and
21 leads to an escalation to the suspects themselves,
22 leading to their injury, so it's -- I really don't
23 think like that. So it's hard for me to answer that.

24 Q. When you arrest someone -- I'm sorry,
25 remind me, when you arrest someone, I think you said

1 you always put them in handcuffs; is that right?

2 A. Yes.

3 Q. In addition to handcuffing Mr. Bombard,
4 you also searched him, right?

5 A. Yes.

6 Q. You patted him down, right?

7 A. Yes.

8 Q. You searched his pockets, right?

9 A. Yes.

10 Q. You didn't find anything illegal in
11 there, right?

12 A. No.

13 Q. You didn't find anything dangerous?

14 A. No.

15 I'd like to be on the record saying that
16 cigarettes are dangerous.

17 Q. You found cigarettes on him?

18 A. I don't remember. I don't remember.

19 Q. So he was a very dangerous person.

20 Earlier we talked about when you would
21 put someone under custodial arrest versus when you
22 would put someone -- when you would cite them into
23 court. And you told me that when you have that kind
24 of discretion, so outside of Rule 3 exceptions, you
25 make that decision based upon whether the behaviors

1 are continuing; that's right, right?

2 A. It's a summary, yes.

3 Q. That's essentially what you said?

4 A. That's the gist, yes.

5 Q. In this case Mr. Bombard, as you said,
6 said some swear words, drove off with his middle
7 finger out the side window and then put it back and
8 continued driving and then went to make the left onto
9 Brainerd Street before you put the siren on; is that
10 right?

11 A. That's actually not accurate.

12 Q. Okay. How is that not accurate?

13 A. I think the piece that we're missing is
14 that I really wanted him to get him to stay on Main
15 Street. He probably could have found himself a
16 parking spot down there. And so he didn't yield to
17 the blue lights, which I was thinking to myself, all
18 right, well, there was no break in the blue lights and
19 so perhaps he's not clear that I'm looking to contact
20 him again.

21 So I was hitting -- once I realized that,
22 as he started to signal before he made the turn, I'm
23 like, whoa, whoa, no, stay down here. And so I
24 started hitting my siren before he did that, and he
25 didn't respond to that. He made the turn at that

1 point, and he continued up to past the exit of a bank
2 that's right there.

3 Q. And -- but to be clear, before you put
4 the siren on he had put his middle finger away, right?

5 A. Yes.

6 Q. So his behavior had -- the behavior you
7 were concerned about, his orderly conduct, had
8 stopped; is that right?

9 A. Yes.

10 Q. And yet you had -- you had already
11 decided to arrest him, right?

12 A. Yes.

13 Q. And then you did arrest him, right?

14 A. Yes.

15 Q. You put him into custody. If his
16 behavior had stopped why in this situation did you not
17 follow your typical procedure of citing him to court?

18 A. So the part of the story that we're
19 missing was the way he left the stop, which was that
20 he was -- he was looking at me in the side-view
21 mirror. He wasn't looking for traffic. He was
22 fixated on me, and so -- and as a result of that I
23 think he had missed the fact that that truck was
24 trying to get by.

25 So he was stopped, while still looking at

1 me, and so I said, look, this guy is agitated now.
2 I'm going to continue custody. This isn't a
3 lodge-able offense, nor would I care to do that, but I
4 am going to cool him down by bringing him --
5 continuing the custody for that processing period, and
6 then we'll release him on a citation. So that was the
7 plan.

8 It was by the nature of those two
9 co-occurring things, which was the -- which was the
10 profanity. He had gotten himself -- he had gotten
11 himself escalated, and then the fact that he had
12 fixated on me and the way that he exited that stop.

13 The concern was if he's agitated, I don't
14 want him to now -- now perhaps I've put into motion
15 this road rage incident that is yet to unfold. I have
16 to just chill him out. And so I'm going to do that by
17 bringing him into custody, processing him up at the
18 barracks, make sure we deescalate this thing, and then
19 we can release him again. So that was the thought
20 process.

21 Q. In your experience does arresting people
22 and putting them into handcuffs deescalate people?

23 A. Yes.

24 Q. Does it ever escalate people?

25 A. Sometimes.

1 Q. Were you worried about that?

2 A. It's not about -- no, I wasn't.

3 Q. So you weren't worried about him
4 escalating as a part of your interaction with him
5 while you were arresting him, but you were worried
6 about his escalating if you didn't arrest him, is that
7 what you're saying?

8 A. I was concerned that there was an
9 escalation that had already been put into motion. And
10 I thought that by continuing custody we can make sure
11 that we normalize this encounter that clearly is not
12 normal at this point. So let's normalize it.

13 It's not handcuffs that escalate or
14 deescalate. It's the conduct that happened
15 afterwards. So the whole strategy from this point
16 moving forward is to make sure that we can deescalate
17 Mr. Bombard, make sure that he's safe to return to the
18 driving population.

19 Q. And would you say it was out of your
20 normal procedure -- you know, we talked a moment ago
21 about, you know, when you have discretion to make
22 these arrests, you said you would only do it if it was
23 a continuing behavior, right?

24 A. Or concern of continuing behavior, yes.

25 Q. And in this instance the behavior itself

1 had ceased; is that right?

2 A. Yes.

3 Q. So this was a departure from your normal
4 practice of only -- of putting people into custody
5 when they have ceased the behavior that you were
6 concerned about; is that right?

7 A. That's not true.

8 Q. Okay. Well, tell me where I'm wrong.

9 A. I was concerned that Mr. -- I just said
10 this.

11 Mr. Bombard was escalated. I was
12 concerned that this thing had now reached a point
13 where if he's this upset, I don't know what kind of --
14 what kind of action may occur beyond a -- let me stop
15 the logic here for a second.

16 I am going to arrest this person. So
17 whether I choose a citation at the side of the road
18 for disorderly conduct and send him on his way or
19 continue that custody, he's going to get the citation.

20 Already he didn't like the community
21 caretaking encounter that I attempted to have with
22 him. He then escalated from that into a disorderly
23 conduct, actually a criminal offense. If I cut this
24 guy a citation and allow him to continue to drive,
25 what will happen now? I can't have that. That's why

1 I have to.

2 This is going to happen, and this is
3 going to happen in the form of a continued custody so
4 that we can make sure he leaves deescalated. I'm not
5 going to just give someone a criminal citation and let
6 them just drive away when this had only gone in one
7 direction at this point, so that wasn't a departure
8 from my norm.

9 In fact, it was consistent with how I
10 treat people in these situations.

11 Q. And I'm just trying to understand because
12 you said that you only do it when there's a continuing
13 behavior, you know, and the example you gave earlier
14 today was that someone's harassing another person.
15 You know, calling them repeatedly, repeatedly and not
16 stopping. You know, you would bring them into custody
17 because they might -- it appears likely that they
18 would do it again, right?

19 If they're calling numerous times, trying
20 to harass someone, right?

21 A. That's right.

22 Q. We talked about that.

23 In this instance you had an initial no
24 middle finger, which -- you know, according to you,
25 and then you had Mr. Bombard swear and show his middle

1 finger as he was driving away.

2 Why do you think that he would have
3 continued that behavior?

4 A. It's not necessarily about the criminal
5 behavior that -- not the minority report. A red ball
6 doesn't go off and a siren and the next thing you know
7 this guy is going to commit a murder a few hours from
8 now. No. It's not about him continuing the
9 disorderly conduct behavior per se, no.

10 The disorderly conduct offense had been
11 committed. He's going to get arrested for that. My
12 discretion is potentially -- even though the Vermont
13 State Police prefers that I continue custody when I
14 witness a misdemeanor, sometimes if I think this can
15 be resolved from a citation, sometimes I just do a
16 citation. And so the variable is not just about
17 continued disorderly conduct behavior. That's not
18 what I said before.

19 It's about a concern about just continued
20 public safety concerns generally. Sometimes it
21 involves a victim. That was the example that I gave,
22 but this was a -- this was a -- I wasn't concerned
23 about some third-party victim at this point. It was
24 I'm going to give him a citation for disorderly
25 conduct.

1 Based on what I've seen with Mr. Bombard
2 so far, he's not going to respond very well to this,
3 and I don't want to own him now having some potential
4 road rage incident after I -- his last contact was
5 with Trooper Rikken, who dropped a citation on him
6 after having witnessed what he witnessed, and now
7 everything is cool, Bro. Like that's not how it
8 works.

9 So he's going to continued custody. He's
10 going to come back to the barracks. We're going to
11 make sure that he's deescalated before we release him
12 with this citation. He has to have this cooling-down
13 period. And that was the logic.

14 I think the public would want that from
15 their police; to make sure that we're not putting
16 things into motion for the worst.

17 Q. You put him in the back of the squad car
18 after he was handcuffed, right?

19 A. Yes.

20 Q. And do you remember calling his behavior
21 ridiculous?

22 A. I think so.

23 Q. What did you mean by "ridiculous"?

24 A. I heard -- I heard my tone this morning
25 as I was listening to the interaction, and it -- I

1 believe what I was thinking at the time was I thought
2 that it was ridiculous akin to unnecessary.

3 And I was -- I think I was disappointed
4 in the fact that this whole thing was unnecessary and
5 yet here we are.

6 Q. When you were going through with him, you
7 had said to him a couple of times that people -- that
8 there were a lot of people around when he swore and
9 showed his middle finger, right?

10 A. Yes.

11 Q. In fact, you said there was over
12 100 people around; is that right?

13 A. Yes.

14 Q. Why did you tell him there were over
15 100 people around?

16 A. You know, I -- at that time that I said
17 that to him I really believed it, and I think
18 somewhere in my mind I was taking a mental tally of
19 all the cars that had driven by in the three minutes
20 of the stop or something. I have no idea, but I was
21 way off the mark, clearly.

22 Q. You didn't see 100 people?

23 A. No.

24 Q. You didn't see ten people?

25 A. I think there was -- yeah, you can say

1 there was four cars around, I think that we could push
2 it to a dozen or something, but there wasn't 100 for
3 sure.

4 Q. And so I mean in the moment there you
5 didn't tell him the truth?

6 A. I really -- I really believed that I did.
7 In my mind I was like there was a lot of people there.
8 That was my truth at that moment. And the reason it
9 doesn't reflect in the affidavit is because upon
10 review I was like, yeah, dude, you're way off on that.
11 There wasn't 100 people there.

12 Q. Do you remember telling Trooper Bruzzi
13 that there were --

14 A. Yes.

15 Q. -- over 100 people?

16 A. Yes.

17 Q. I mean, at the time you were certain
18 there were 100 people?

19 A. Yes.

20 Q. 100 percent certain?

21 A. I wouldn't have said it if I didn't think
22 there was a lot of people there. I don't think -- I
23 don't think that was some euphemism or some metaphor
24 for some crowd or something, but I really thought
25 there was a lot of people there.

1 So I probably pulled 100 out of the sky
2 but, you know, I thought there was more than -- I
3 mean, it was noon on Main Street and so there were a
4 lot of cars going back and forth throughout the entire
5 encounter, and so somewhere in my mind I just -- I
6 overestimated, let's say.

7 Q. So you brought Mr. Bombard back to the
8 barracks, right?

9 A. Yes.

10 Q. You put him in a holding cell?

11 A. Yes.

12 Q. And you, he, and Trooper Bruzzi had a
13 conversation, right?

14 A. Yes.

15 Q. And as a part of that conversation you
16 told him that he would get his property back, right?

17 A. Yes.

18 Q. You told him that he would be there for
19 about a half an hour, right?

20 A. Yes.

21 Q. You talked to him about -- he mentioned
22 the freedom of expression, right?

23 A. Yes.

24 Q. And you talked to him about your
25 perspective on that, right?

1 A. I don't remember exactly what I said.

2 Q. You said one can argue what freedom of
3 expression is. One can argue that his actions were so
4 unusual that it mandated intervention. This is about
5 the first stop --

6 A. Okay.

7 Q. -- is that right?

8 A. Yes.

9 Q. And after he was in a holding cell he was
10 processed, right?

11 A. Yes.

12 Q. And he was released, right?

13 A. Yes.

14 Q. And do you know how long that process
15 took?

16 A. I don't remember.

17 Q. But you had told him it was going to take
18 a half an hour. Do you think it took longer than
19 that?

20 A. I -- I think it probably took longer than
21 half an hour. I don't remember the time.

22 Q. Did you -- and you gave him the citation,
23 right?

24 A. I actually don't remember.

25 Q. Let's see.

1 (Plaintiff's Exhibit 32 was marked for
2 identification, attached at the end of the
3 original transcript.)

4 MR. DIAZ: I'm just going to mark this as
5 Exhibit 32.

6 BY MR. DIAZ:

7 Q. Mr. Rikken, I'm handing you what's marked
8 as Exhibit 32. Can you tell me what Exhibit 32 is?

9 A. Yes. It's a citation for disorderly
10 conduct.

11 Q. And who is it to?

12 A. Greg Bombard.

13 Q. And what is the date of issuance?

14 A. 2/9 -- February 9th, 2018.

15 Q. And where it says signature, issuing
16 officer, is that your signature?

17 A. Yes.

18 Q. And do you remember when you signed this?

19 A. So I -- it would have been
20 contemporaneous to this incident, obviously the day
21 of. I don't think I handed this to him. I think I
22 filled it out, but I don't think I actually handed it
23 to him.

24 Q. And this is his citation to court, right?

25 A. Yes.

1 Q. So you and Trooper Bruzzi both told
2 Mr. Bombard that he would be there for about a half an
3 hour, right?

4 A. Yes.

5 Q. That's what you expected?

6 A. Yes.

7 Q. You knew that you were going to cite him,
8 right?

9 A. Yes.

10 Q. And do you remember about how long he was
11 at the barracks for?

12 A. I don't remember.

13 Q. Do you think it was more than an hour?

14 A. I don't know.

15 Q. Was it -- I mean, it wasn't five hours?

16 A. I don't think so, but I don't remember.

17 Q. Before you put Mr. Bombard in the squad
18 car he asked you what was going to happen to his car,
19 right?

20 A. Yes.

21 Q. And you responded to him by telling him
22 that it was parked in a "No Parking" area, and so it
23 would have to be towed, right?

24 A. Yes.

25 Q. And was there any other reason that you

1 thought Mr. Bombard's vehicle had to be towed?

2 A. No.

3 Q. It wasn't blocking the driveway behind
4 him, right?

5 A. It was not blocking the driveway, no.

6 Q. And it wasn't -- and it wasn't blocking
7 the roadway, right?

8 A. No.

9 Q. And Mr. Bombard didn't choose to park
10 where he was parked, right?

11 A. He did choose that spot.

12 Q. Well, he had to pull over, right?

13 A. He chose where he stopped that car.

14 Q. Did he have a -- did he have a choice to
15 drive further?

16 You put the blue lights on, right?

17 You had the blue lights on the whole
18 time, you said, right?

19 A. Yes.

20 Q. You were following him. You followed him
21 onto Brainerd Street, right?

22 A. Yes.

23 Q. You had your blue lights on, and you had
24 put the siren on by that point?

25 A. Yes.

1 Q. So -- and it's possible he didn't, he
2 just didn't see your blue lights, right?

3 A. That's not likely, but I concede, and I
4 did that day. I said maybe he doesn't realize I'm
5 trying to stop him.

6 Q. Right, so that's why you put the sirens
7 on --

8 A. Right.

9 Q. -- to let him know that you were there?

10 A. Right.

11 Q. Right, and that you wanted to pull him
12 over?

13 A. Yes.

14 Q. Is he allowed under -- and I mean you're
15 a traffic safety expert, right?

16 We've been over that?

17 A. Yes.

18 Q. Is he allowed -- when he recognizes that
19 an officer is trying to pull him over is he permitted
20 by law to continue driving?

21 A. No.

22 Q. Is he permitted to turn around?

23 A. No.

24 Q. Is he permitted to go into a parking lot
25 somewhere or try to find a parking lot to go into?

1 A. No. No.

2 Q. He has to pull over right away, right?

3 A. Yes.

4 Q. And you were aware of that at the time,
5 right?

6 A. Yes.

7 Q. You wouldn't want him to continue
8 driving, right?

9 A. Right.

10 Q. So can you really say that he chose to
11 park where he parked?

12 A. I'm making myself a note to mail him a
13 ticket for not yielding to my blue lights on Main
14 Street where I wanted him to stop in the first place.

15 You know, he chose to make that left-hand
16 turn up to Brainerd, and he chose to stop right past
17 an exit to a bank where a sign says don't park here.

18 And if the environment had been different
19 and it was summertime and we could have moved him past
20 that sign to where the people coming out of the bank
21 wouldn't have an obstructed line of sight, which is
22 why that sign was there, then we would have a
23 different outcome.

24 Unfortunately, he chose to disregard the
25 siren on Main Street, and he chose to travel up

1 Brainerd just far enough to get past that driveway and
2 park in front of a sign that says do not park here.
3 So at that point the -- I don't have any -- any other
4 choice but to remove the vehicle from the road.

5 Q. We're going to watch this part because I
6 think we want to make sure we get this one right.

7 A. Okay.

8 Q. So I'm showing Mr. Riggen what has been
9 marked as Exhibit 12, which is the -- well, I'll let
10 Mr. Riggen explain it.

11 What is Exhibit 12?

12 A. It's the cruiser video from that day.

13 Q. From your cruiser, right?

14 A. Yes.

15 Q. And I've moved it ahead to Minute 5:17,
16 which is after the initial stop had concluded. I'm
17 going to press "Play", and I'd like you, Mr. Riggen,
18 to watch and take note of when you put the siren on as
19 it relates to when Mr. Bombard puts his left turn
20 signal on. Okay?

21 A. Okay.

22 (A video was played on Mr. Diaz's
23 computer for the witness to view.)

24 BY MR. DIAZ:

25 Q. Did you -- do you need to watch it again?

1 A. Yes, please.

2 Q. It's not a problem at all. I'm backing
3 it up. Let me just pause. I'm backing it up to
4 Minute 5:02 of Exhibit 12.

5 (A video was played on Mr. Diaz's
6 computer for the witness to view.)

7 BY MR. DIAZ:

8 Q. Do you see the blinker?

9 A. Yes.

10 Q. Have you heard your siren yet?

11 A. No.

12 Q. So you put your siren on. He's getting
13 ready to turn, and he has a choice there. I'm
14 stopping at Minute 5:37. He has a choice there,
15 right, of whether to -- he's on -- he's getting ready
16 to make a left turn. He can stop what he's doing and
17 go back into -- onto North Main Street and stay and
18 then pull over to the other side of the road, or he
19 can make a left turn and pull over out of traffic.

20 What is the safer option?

21 A. The safer option was to stay on Main
22 Street like I signaled him to do.

23 Q. And is that the safer?

24 I mean, obviously Brainerd Street is a
25 side street, right?

1 A. Right.

2 Q. There's not a lot of traffic on that
3 street, right?

4 A. There's less traffic than Main Street, if
5 that's what you're saying.

6 Q. Yes, less traffic than Main Street. A
7 lot -- much less traffic, right?

8 A. Yes.

9 Q. And on Main Street there was quite a few
10 cars going past you and his car when you were
11 previously on the side of the road, right?

12 A. Yes.

13 Q. Don't you think it's safer for him to
14 turn left onto Brainerd Street since he was already
15 doing that, he was already on that side of his lane,
16 and it wouldn't be where there would be other traffic?

17 A. No, and that's also not what the video
18 shows.

19 Q. I'm asking you.

20 A. Yeah. I'm saying "No".

21 Q. Okay, but after he turns onto Main Street
22 he stops because you're behind him, right?

23 Brainerd Street, sorry.

24 A. He eventually choses to stop at a
25 location on Brainerd.

1 Q. Eventually. How long did it take for him
2 to stop on Brainerd?

3 A. You can play the rest of the video to see
4 where he stops, but it speaks for itself, I suppose.

5 Q. So I'm starting Exhibit 12 at 5:37.

6 (A video was played on Mr. Diaz's
7 computer for the witness to view.)

8 BY MR. DIAZ:

9 Q. And he's pulled over now, right?

10 A. Yes.

11 Q. And it's at Minute 5:43; is that right?

12 A. Yes.

13 Q. So approximately six seconds?

14 A. Six seconds on Brainerd.

15 Q. And he had to drive past a driveway
16 entrance, right?

17 A. Exit, right.

18 Q. A driveway exit; is that right?

19 A. Yes.

20 Q. And is that an entrance or an exit from a
21 parking lot?

22 A. Yes, in that -- I'm sorry.

23 Q. Now, earlier today we talked about
24 parking violations, didn't we?

25 A. Yes.

1 Q. And you said that when you've encountered
2 cars parked, stopped, or standing in an area where
3 they're not supposed to be and there's no driver in
4 them, you said you've left them there for hours,
5 didn't you?

6 A. There was an "if" in there, but -- so,
7 no, I didn't say that in the way that you're framing
8 it.

9 Q. Well, you said that you've encountered
10 cars on the side of -- on the side of the road, right?

11 A. Yes.

12 Q. Without a driver in them, right?

13 A. Yes.

14 Q. And you said that you left them there; is
15 that right?

16 A. You're missing part of that statement.

17 Q. What am I missing?

18 A. You're missing the "if", and the "if" is
19 if they don't pose a hazard.

20 Q. Right.

21 A. And that's the difference in whether a
22 car gets removed or whether a car is allowed to stay.

23 Q. Right. And -- but Mr. Bombard's car
24 wasn't blocking the road, was it?

25 A. Yes, it was.

1 Q. Well, actually you just said a moment ago
2 that it wasn't blocking the road.

3 A. That's -- that's not the context of what
4 I said. It wasn't blocking the road. It was
5 obstructing traffic's ability to exit that parking
6 lot, though.

7 And that little white mark on that
8 telephone pole is a sign that says, "Do Not Park
9 Here". And the concern that the hazard that this
10 poses was demonstrated during an interaction where a
11 woman is exiting the bank parking lot, and she needs
12 Trooper Bruzzi's help to see past Mr. Bombard's car.
13 That's why that sign is there; because it poses a
14 sight obstruction because it does block the road.

15 No, he doesn't block traffic from being
16 able to go up Brainerd. It was posing a hazard for
17 people exiting that driveway, and that's why it got
18 towed.

19 Q. And -- but that's not why you told
20 Mr. Bombard why you had to tow his car, is it?

21 A. Well, what did I say to him? I don't
22 remember.

23 Q. You told him there was a "No Parking"
24 sign, right?

25 A. Right. That's exactly what I just said

1 to you.

2 Q. Was anyone allowed -- was there -- was
3 anyone allowed to park on that side of the street
4 anywhere on that street?

5 A. I'm not sure.

6 Q. Is anyone allowed to park on the other
7 side of that street?

8 A. I'm not sure.

9 Q. He asked to move his car, right?

10 A. Yes.

11 Q. And you didn't let him, right?

12 A. No.

13 Q. And you said that you had already
14 decided, you know, you were going to arrest him but he
15 was going to get a citation, right?

16 A. I'm not quite sure what you mean.

17 Q. Well, at that point you said he's going
18 to get a citation, right?

19 A. Well, that was the ultimate outcome, what
20 I referred to, yes.

21 Q. And when you got back to the barracks
22 earlier, just moment ago you said he was going to be
23 released in a half an hour, right?

24 A. Yes.

25 Q. So his car was, in your estimation, going

1 to be in that spot for a total of maybe an hour; isn't
2 that right?

3 A. Yes.

4 Q. And you thought it was such an
5 obstruction that it had to be towed within -- you
6 know, before that hour was up?

7 A. Yes.

8 Q. Do you think it would have been a
9 courteous thing to do, knowing that he was going to be
10 back out in about an hour and could have went and
11 moved his car, to just have left it there?

12 A. There was absolutely no scenario that car
13 was allowed to stay where it was.

14 Q. But there are scenarios where you have
15 left cars on the side of the highway; isn't that
16 right?

17 A. If they don't pose a hazard to other
18 vehicles, yes, that's true.

19 Q. And you've left cars on the sides of
20 roads in other situations, right?

21 A. If they are safe to be left there, yes.

22 Q. Mr. Bombard's keys were still in the car,
23 right?

24 A. Yes.

25 Q. Did you -- did you happen to look at the

1 other side of the street and see if there were "No
2 Parking" signs there?

3 A. I didn't.

4 Q. Would you be surprised if you're allowed
5 to park on the other side of the street?

6 A. If it's allowed, I wouldn't be surprised.

7 Q. But you didn't check to see if you could
8 move his car just to the other side of the street,
9 right?

10 A. No.

11 Q. You didn't check to see if you could move
12 it up -- I should ask, how far up -- how much farther
13 would you have needed to have the car for it to not be
14 a hazard to the driveway?

15 A. Again, I'm not sure, in that in February
16 in St. Albans I don't know if street parking is
17 allowed.

18 You're posing some things here I don't
19 know if they're real or not, and it occurred to me --

20 Q. That's not the question that's pending.

21 The question that's pending is you said
22 that his car was a hazard because it was blocking the
23 exit from a parking lot in some fashion; is that
24 right?

25 A. Yes.

1 Q. And I'm asking you, how far would it have
2 needed to have moved forward for it no longer to be a
3 hazard?

4 A. I don't know. I'd have to take a look at
5 where the line of sight is and what that sign actually
6 wants. I don't know.

7 Q. Well, we have a picture of it so we can
8 look.

9 I'm showing Mr. Riggen the Exhibit 12
10 again at Minute 5:43. I'm not going to press "Play".

11 Well, let's press "Play" and just make
12 sure the car is fully stopped.

13 (A video was played on Mr. Diaz's
14 computer for the witness to view.)

15 BY MR. DIAZ:

16 Q. The car is fully stopped, right?

17 A. Yes.

18 Q. You see the snowbank just to the right of
19 it, right?

20 A. Yes.

21 Q. And if we go back to 5:38 and press
22 "Play", you can see the driveway, right?

23 A. Yes.

24 Q. Mr. Bombard pulls up to the snowbank,
25 right?

1 A. Yes.

2 Q. And then while we're at it, we can look
3 at the car that comes out. Let's take a look at it.
4 I'm going to show Mr. Rikken Exhibit 12 at -- starting
5 at Minute 11.

6 Can you see this okay?

7 A. Yes.

8 (A video was played on Mr. Diaz's
9 computer for the witness to view.)

10 BY MR. DIAZ:

11 Q. So I'm going to stop at 11:19. There's a
12 car coming out of that exit driveway, right?

13 A. Yes.

14 Q. And it exits. Stopping at 11:33, you
15 actually move your car back, right, to get out of the
16 way of the exit?

17 A. Yes.

18 Q. But the car that comes out of the exit
19 makes it out fine, right?

20 A. Trooper Bruzzi was directing her out.

21 Q. I'm just saying, it gets out without
22 incident, correct?

23 A. Actually, no.

24 Q. Well, it makes a left-hand turn, doesn't
25 it?

1 A. Yes.

2 Q. And it -- the person who was driving it
3 went on her way, right?

4 A. And she drove off the road to do it.
5 That's why Trooper Bruzzi goes, Well, that's one way
6 to do it. Because she had to pull out further than
7 she probably needed to, to cut the curb because I was
8 there and, also, because she couldn't see. The
9 cruiser was obstructing her, too, and so, too, was
10 that car. So she had to drive off the road to do it
11 so, no, I wouldn't say it was without incident.

12 Q. Well, she had to drive around your car?

13 A. Yes. That's what I said, yes.

14 Q. What I'm saying is she was able to clear
15 the driveway --

16 A. Yes.

17 Q. -- regardless of Mr. Bombard's car being
18 there, right?

19 A. Mr. Bombard's car, as the video shows, is
20 obstructing people's views leaving that driveway,
21 which is why that white sign says, "Do Not Park Here".

22 Q. I'm not asking you whether it's
23 obstructing anyone's view.

24 I'm asking you whether it obstructed her
25 exiting the driveway there?

1 A. Yes.

2 Q. She had to go around his car?

3 A. Visual obstructions are an obstruction
4 nonetheless.

5 Q. I'm asking, what's your definition of an
6 obstruction, first of all?

7 A. Obstruction is something that can be a
8 physical barrier that I either have to go around or I
9 cannot see there. It is not transparent. It is
10 opaque.

11 And that vehicle is an obstruction for
12 her visual ability to see up the hill and, therefore,
13 it is imposing an obstruction there, and that's why
14 that sign was there.

15 Q. You know that that's why that sign is
16 there?

17 A. I believe that sign said either do not
18 park on that side of the street, which doesn't really
19 make the case there, or it said don't park from here
20 to the curb or the corner or whatever, and in that
21 case that is why that sign is there.

22 Q. So you don't know if that sign is there
23 because of the driveway or because you're not supposed
24 to park on that side of the street, is that what
25 you're telling me?

1 A. I'm saying that sign says don't park, and
2 that's the end of the debate for me.

3 Q. My point being, she was able to exit the
4 driveway and didn't run into Bombard's car, right?

5 A. Right.

6 Q. Okay. I'm going to ask you again. You
7 just watched the video. You saw where Mr. Bombard's
8 car was; that the back of the car was right up against
9 the edge of the snowbank, right?

10 A. Yes.

11 Q. How far forward would Mr. Bombard have
12 needed to drive or move the car forward -- let me
13 rephrase.

14 How far forward would Mr. Bombard's car
15 need to go in order to not pose a hazard to people
16 exiting that driveway?

17 A. So after reviewing that video, I would
18 say there's no distance that it would not pose a
19 hazard.

20 Q. If he moved his car a thousand feet
21 forward, it would still pose a hazard?

22 A. The video shows the hazard that that car
23 would have posed given the environment on that day.

24 Q. It would have posed a hazard to people
25 exiting that driveway if he had moved it forward

1 1,000 feet, is that what you're saying?

2 A. Are we talking just the driveway right
3 now?

4 Q. Yes. That's the reason that you said it
5 needed to be moved, right?

6 A. It posed a hazard. It posed a hazard.

7 Q. A hazard to who?

8 A. To vehicles that may be needing that
9 road. I continue to reference that driveway exit
10 because that was the sign, purpose of the sign. You
11 posed a hypothetical about how far to move. By moving
12 it, it might -- it might absolve the concern from the
13 driveway exit, but it creates another hazard.

14 Like, for example, the UPS truck that we
15 saw in that video. He would never be able to get
16 around that car. That day, sir, the snowbanks were
17 down onto the road, essentially creating a one-way
18 road. And if I leave Mr. Bombard's car on that road
19 for 30 minutes or an hour or 90 minutes, who knows
20 what kind of operations people are going to do, to
21 include damaging Mr. Bombard's car.

22 The great paradox in all of this is that
23 I'm being accused of something when really I did it
24 for his benefit. I didn't even want him to be in that
25 position. I wanted him to stay on Main Street where

1 there were hundreds of parking spots probably,
2 anywhere. He could have pulled over to the right, and
3 it would have been fine.

4 He made the decision to go left up
5 Brainerd. As soon as I saw his signal come on to turn
6 left I'm like, whoa, no, don't do that, stay here, and
7 that's evidenced by my siren.

8 He continued to drive south. He
9 continued to turn left, and he stopped himself in a
10 zone, Don't Park Here. That road is so narrow it
11 would not be possible to leave his car there. It's
12 that simple. And there's no place for me to
13 reasonably bring it to.

14 There's a busy teller driveway there. It
15 was all residential driveways. It was a bummer that
16 it came to that, and that's what was required.

17 Q. When you took Mr. Bombard in a squad car
18 up to the station you drove past his car, right?

19 A. Yes.

20 Q. You didn't hit the car, did you?

21 A. There was no one coming down the road at
22 that time.

23 Q. That's not what I asked.

24 You didn't hit the car, did you?

25 A. No.

1 Q. You didn't have to go up onto the curb,
2 did you?

3 A. No.

4 Q. You just went around the car and
5 continued, right?

6 A. Right.

7 Q. Did Trooper Bruzzi hit Mr. Bombard's car
8 when he was coming the other direction on Brainerd
9 Street?

10 A. No.

11 Q. And did he have to go onto the curb to
12 avoid Mr. Bombard's car?

13 A. No.

14 Q. So, again, I'm going to ask because I've
15 not gotten an answer to this question yet, we're
16 talking about the driveway only that you said
17 Mr. Bombard's car posed a hazard to because people
18 couldn't see -- wouldn't be able to see other cars
19 coming from their right, correct?

20 A. Correct.

21 Q. How far forward -- assume that he can
22 park. You know, we don't know if there are "No
23 Parking" signs going up that road, right?

24 A. I don't know.

25 Q. We don't know, right?

1 Correct?

2 A. Right.

3 Q. So let's assume that this is the one "No
4 Parking" sign on Brainerd Street, and we're not going
5 to move his car in front of someone else's driveway,
6 right?

7 A. Right.

8 Q. If he moved his car up, how far would it
9 have to go to no longer pose a hazard to people
10 exiting the driveway you see in the video?

11 A. Probably the other side of that pole.

12 Q. And how far do you estimate that was?

13 A. Ten feet.

14 Q. So if he had moved his car up ten feet
15 and it wasn't blocking a driveway and it wasn't
16 blocking the road that people couldn't at least go one
17 way on it, would you have still towed it?

18 A. You know, it really depends on what that
19 sign says, right?

20 If we make some assumptions of what the
21 sign says or doesn't say. If the sign says don't park
22 here to the corner, that's a different sign than don't
23 park on this side of the street.

24 And so in any event, you know, we've
25 gotten to your answer about moving his car up beyond

1 the pole from the driveway to the bank. That then
2 poses -- puts into motion a second hazard that still
3 is going to require that vehicle not being able to
4 remain on that road on that day.

5 Q. And that hazard is what?

6 A. That the road is narrowed because of the
7 overflowing snowbanks. St. Albans Public Works didn't
8 seem to have the opportunity -- maybe there was a
9 snowstorm recently, I don't know, but the banks had
10 come onto the road, and so if he was allowed to park
11 there, vehicles would not be able to get through.

12 And I submit that the UPS truck would
13 actually not been able to get through unless the UPS
14 truck drove off the road to do it.

15 Q. Have we seen a UPS truck when we've
16 watched this video?

17 A. Yeah. When he pulls onto Brainerd
18 there's a UPS truck that is looking to turn onto Main
19 Street. And so that's a wide -- that's a wide box
20 obviously, and so if Mr. Brainerd -- Mr. Brainerd --
21 Mr. Bombard's car is allowed to stay here, it just
22 puts into a motion a ripple here about posing hazards
23 to other vehicles now.

24 Q. Is it a hazard to have a vehicle on a
25 street for one hour when people can stay on the road

1 and drive around it?

2 A. Yes. There are -- yes, it does.

3 Q. Is it a hazard when a vehicle is on the
4 shoulder of a -- of Interstate 89?

5 A. Well, that's a bad example because you
6 can't stand or stop up there, so that would be towed
7 anyway.

8 Q. I'm asking, is it a hazard?

9 A. Yes.

10 Q. It's a hazard for a vehicle to be on
11 Interstate 89?

12 A. Yes.

13 Q. On the shoulder, left there?

14 A. Yes.

15 Q. Is it a hazard for a vehicle to be on
16 North Main Street on the side unattended?

17 A. Potentially, yes.

18 Q. Have you encountered vehicles -- earlier
19 we said you've encountered vehicles that were left on
20 the side of a road, right?

21 A. Yes.

22 Q. And you've encountered vehicles on the
23 side of the road on I-89, right?

24 A. Yes.

25 Q. Is there ever a time that you encountered

1 a vehicle on I-89 that was unattended, on the
2 shoulder, and that you towed it?

3 A. Yes.

4 Q. Is there a time in that situation that
5 you didn't tow it?

6 A. Yes.

7 Q. So there are times when you've seen a --
8 witnessed a vehicle unattended in the shoulder of I-89
9 and did not have it towed?

10 A. Yes.

11 Q. And how did you make that decision?

12 A. What time of day is it? Are we
13 approaching commuter hours, as in darkness poses a
14 different circumstances. We'd want to remove it
15 before darkness.

16 Policy about the interstate specifically,
17 about how many hours a vehicle can remain up there
18 before it's towed automatically, two or three.

19 So environmental factors. Is it snowing?
20 Is it wintertime, or is it summertime? Is there rain
21 in the forecast, or isn't there? And so environmental
22 factors weight very heavily throughout this
23 decisionmaking matrix?

24 Q. It's your discretion?

25 A. Yes.

1 MR. DIAZ: Let's take a break, and then
2 we'll be able to do it a little bit longer and
3 wrap up.

4 (A recess was taken from 4:10 p.m. to
5 4:18 p.m.)

6 BY MR. DIAZ:

7 Q. Mr. Rikken, a moment ago you said that
8 you were making a note in your book there to remind
9 you to give Mr. Bombard a ticket.

10 A. Yes.

11 Q. Were you serious about that?

12 A. No.

13 Q. You were joking?

14 A. Yes.

15 Q. And you are aware that Mr. Bombard was
16 charged with disorderly conduct, right?

17 A. Yes.

18 Q. And are you aware that there was a second
19 charge?

20 A. I don't think so.

21 Q. So you're not aware that he was charged
22 with a second disorderly conduct by -- by vehicle?

23 A. I don't know if I knew that or not.

24 Q. Did you -- when you were talking to or
25 when you were -- when you were preparing your

1 affidavit did you speak with anyone in the State's
2 Attorney's Office?

3 A. No.

4 Q. After you prepared your affidavit did you
5 speak with anyone in the State's Attorney's Office in
6 Franklin County?

7 A. No.

8 Q. Have you ever talked to anyone in the
9 State's Attorney's Office about Mr. Bombard?

10 A. Yes.

11 Q. And when was that?

12 A. It was after the arrest before the
13 citation.

14 Q. Who did you talk to?

15 A. Jim Hughes.

16 Q. And what was the substance of the
17 conversation?

18 A. I have taken this person into custody,
19 here's how it started, here's the elements, and is
20 this a charge that you would bring?

21 Q. And what did Jim Hughes say?

22 A. He said "Yes".

23 Q. What else did you discuss?

24 A. That was it.

25 Q. You know you talked to Mr. Bombard about

1 Disorderly Conduct 101, right?

2 A. Yes.

3 Q. Can you give me -- and you talked to Jim
4 Hughes about the elements of disorderly conduct, you
5 said?

6 A. Yes.

7 Q. What is Disorderly Conduct 101?

8 A. There are a few different components that
9 could be disorderly conduct, and one is violent or
10 tumultuous behavior that is -- profanity being one of
11 those potential variables. It's not in the presence
12 of police. Police cannot be victims of disorderly
13 conduct but members of the public can.

14 And then another variable that I guess
15 there was a second charge, disorderly conduct of a
16 motor vehicle which is obstructing the flow of
17 traffic.

18 And so to me Disorderly Conduct 101 is
19 probably informal language for this is -- this is cut
20 and dry, DC, disorderly conduct. That's what I mean
21 when I say that.

22 Q. And you said it would include violent or
23 tumultuous. When you say "violent or tumultuous" what
24 does that mean to you?

25 A. I think -- I think standing in a park and

1 pounding on top of a trash can could be perceived as
2 violent or tumultuous behavior.

3 I also think that yelling profanities is
4 a form of tumultuous behavior. And, again, I'm
5 acutely aware that police cannot be the victims of
6 such things but members of the public can, and in this
7 case this was a witnessed misdemeanor by me, which
8 was -- the tumultuous behavior was exemplified through
9 the profanity and the middle finger.

10 Q. We've talked about the First Amendment,
11 and you agreed that -- with Vermont State policy that
12 verbal abuse is protected by the First Amendment,
13 right?

14 A. Yes.

15 Q. And that includes profanities, the use of
16 profanities?

17 A. Yes.

18 Q. That includes the use of profanities in
19 public, right?

20 A. Yes.

21 Q. And that includes whether it's in front
22 of a large crowd or a small group of people, right?

23 A. So I think I disagree with that. I think
24 context matters.

25 Q. How so?

1 A. I think that if one is at a protest and
2 there's a lot of profanity expressed, that is a
3 different environment than people who are trying to
4 get to their lunch hour on whenever day in February.

5 Q. So if you use profanity at a protest
6 where there's a crowd getting riled up, it's less
7 impactful, is that what you're saying?

8 A. Yes.

9 Q. And it's in that -- in that context not a
10 crime?

11 A. I believe in that context that would not
12 rise to the level of disorderly conduct because people
13 are willfully submitting themselves to that type of
14 language and atmosphere.

15 Q. And, you know, taking -- you didn't think
16 Mr. Bombard's expressions here were violent, did you?

17 A. No.

18 Q. But you did think they were tumultuous?

19 A. Yes.

20 Q. And so separating these two words out,
21 what does "tumultuous" mean to us?

22 A. "Tumultuous" means behavior that involves
23 profanity and is somewhat perhaps exaggerated or,
24 again, this would not be Merriam Webster, but wound
25 up. So not just profanity for profanity's sake but

1 loud profanity. And holding a middle finger out the
2 window, for example, with those loud profanities in
3 front of people who aren't willfully wanting to
4 receive that to me is tumultuous.

5 Q. So even if Mr. Bombard intended for his
6 expressions -- well, let me back up.

7 When Mr. Bombard used profanities and
8 showed his middle finger, you knew he was directing
9 those at you, right?

10 A. Yes.

11 Q. He was upset about you having stopped
12 him, right?

13 A. Yes.

14 Q. And so he was speaking to you, right?

15 A. Yes.

16 Q. And he was expressing his displeasure
17 with the employee of the State of Vermont, right?

18 A. Yes.

19 Q. So if he wants to display his displeasure
20 with an employee of the State of Vermont who had just
21 stopped him in public and he wants to use profanity to
22 do that, how can he avoid a disorderly conduct charge?

23 A. I think the -- rewinding time, if he
24 wanted to express his displeasure, he certainly had me
25 at the side of his window during that first

1 interaction. He could have sworn all he wanted there.
2 This is me and him talking. No problem.

3 The problem becomes he didn't just
4 express profanity. He was yelling it. I heard it all
5 the way back in my cruiser. It got my attention where
6 I actually turned around, and he continued. And I saw
7 people lay witness to that; this one man in
8 particular. I didn't know who else lay witness to it,
9 but they certainly weren't willful participants in
10 having to experience that. And that becomes the
11 crime.

12 Q. Let me just show you one more part of the
13 video here. This is Exhibit 12.

14 You can see this okay?

15 A. Yes.

16 Q. It's at Minute 22:28, and this is after
17 you've had Mr. Bombard in a holding cell for a little
18 bit and you've had a conversation with him. Will you
19 take my word for it?

20 A. Yes.

21 Q. I just want you to watch what happens.

22 (A video was played on Mr. Diaz's
23 computer for the witness to view.)

24 BY MR. DIAZ:

25 Q. At Minute 23:20, that was you walking by,

1 right?

2 A. Yes.

3 Q. Did you see your expression?

4 A. No.

5 Q. Let's watch it again real quick.

6 (A video was played on Mr. Diaz's
7 computer for the witness to view.)

8 BY MR. DIAZ:

9 Q. Did you see your expression that time?

10 A. Yeah, it's hard to tell.

11 Q. Did it look like you were smiling?

12 A. No. That is not what I was doing there.

13 Q. No?

14 A. No.

15 Q. You weren't smiling?

16 A. No. I -- well --

17 Q. And just to confirm, you know Ryan Wood,
18 right?

19 A. Yes.

20 Q. You both work for the Vermont State
21 Police?

22 A. Yes.

23 Q. Do you remember him e-mailing you on
24 February 9th --

25 A. Yes.

1 Q. -- 2018?

2 A. Yes.

3 Q. Have you seen or have you looked at that
4 e-mail recently?

5 A. Not recently.

6 Q. When did you look at that e-mail?

7 A. A few months ago, probably.

8 Q. What caused you to look at the e-mail?

9 A. I think it was presented to me with a
10 list of discovery, perhaps.

11 Q. I'm going to mark as Exhibit 33 --

12 MR. SARACHAN: It's already been marked.
13 Off the record.

14 (A discussion was held off the record.)

15 (Plaintiff's Exhibit AGO-000136 was
16 previously marked for identification, attached
17 at the end of the original transcript.)

18 BY MR. DIAZ:

19 Q. So this exhibit has already been marked,
20 but we'll just for now call it AGO-000136. Do you see
21 that?

22 Do you have that in front of you,
23 Mr. Rigger?

24 A. Yes.

25 Q. And at the bottom you see AGO-000136?

1 A. Yes.

2 Q. Going to the second -- going to the
3 second page for a moment.

4 A. Okay.

5 Q. What do you see on the second page?

6 A. It's the press release of the incident.

7 Q. And going back to the first page, the
8 e-mail towards the bottom, it says from Rikken, Jay,
9 right?

10 A. Yes.

11 Q. And then it says sent in Friday,
12 February 9th, 2018, 3:10 p.m., right?

13 A. Yes.

14 Q. And that's the -- and it's to the
15 vspmedia@listserv.dps.state.vt.us, right?

16 A. Yes.

17 Q. And above that Ryan Wood sends you an
18 e-mail, right?

19 A. Yes.

20 Q. In response to the e-mail you sent to VSP
21 Media, right?

22 A. Yes.

23 Q. And this is at -- this was sent in
24 Friday, February 9th, 2018, at 8:12 p.m.; is that
25 right?

1 A. Yes.

2 Q. And he says in the e-mail, I recently
3 learned through training these are possible signs of
4 impairment. I haven't been through ARIDE so maybe I'm
5 not the best resource. Did you check his pupils/groin
6 area? Never mind. I see it's in St. Albans. He's
7 probably just retarded.

8 Did I read that right?

9 A. Yes.

10 Q. Going to the first sentence, can you
11 explain what "ARIDE" is?

12 A. It's an acronym for Advanced Roadside
13 Impaired Driving Enforcement.

14 Q. And you do training, ARIDE's trainings,
15 right?

16 A. Yes.

17 Q. You're the instructor for them?

18 A. Yes.

19 Q. And were you the instructor at this time?

20 A. Yes.

21 Q. And you had recently learned -- and so
22 Ryan Wood had recently taken up training with you?

23 A. I'm not sure.

24 Q. Actually he said he hadn't been through
25 ARIDE, so he's not the best resource.

1 And then he asks, Did you check his
2 pupils/groin area?

3 Do you have any idea why he would ask you
4 that?

5 A. No.

6 Q. Do you normally check the -- you didn't
7 think Mr. Bombard was under the influence when you
8 stopped him, right?

9 A. No.

10 Q. And you didn't note that anywhere in the
11 press release, right?

12 A. Right.

13 Q. And so going down to the next line it
14 says, Never mind. I see it's in St. Albans. He's
15 probably just retarded.

16 Have I read that right?

17 A. Yes.

18 Q. What does the word "retarded" mean to
19 you?

20 A. I think it's a slang for people who may
21 have a mental disability.

22 Q. And did he tell you why he wrote that
23 word there?

24 A. No.

25 Q. Is that a word you use?

1 A. No.

2 Q. Have you ever said the word "retarded"?

3 A. Probably.

4 Q. And in reference to what?

5 A. Nothing in particular.

6 Q. Well, what?

7 A. Referring to something as silly or
8 stupid.

9 Q. So something is retarded if it's silly or
10 stupid?

11 A. No. I'm saying that if I've used that
12 word in the past, that may have been the context of
13 how I used it.

14 Q. That's how you meant it when you used it
15 in the past?

16 A. Yes.

17 Q. And in reference to St. Albans, do you
18 have any idea why he would say that?

19 I see it's in St. Albans. He's probably
20 just retarded.

21 MR. MESSINA: Objection; speculation.

22 THE WITNESS: No.

23 BY MR. DIAZ:

24 Q. Did he tell you why he said that?

25 A. No.

1 Q. Do you think he was making a joke?

2 MR. MESSINA: Objection.

3 THE WITNESS: Yes, I believe he was
4 trying to.

5 BY MR. DIAZ:

6 Q. And did you think it was funny?

7 A. No.

8 Q. You didn't think when he wrote this --
9 did you think the first line was funny?

10 A. No.

11 Q. Did you think the second line was funny?

12 A. No.

13 Q. Did you tell him it wasn't funny?

14 A. No.

15 Q. So going up to the top e-mail, it's an
16 e-mail from you to -- back to Ryan Wood, right?

17 A. Yes.

18 Q. It's from Friday, February 9th, 2018, at
19 8:14 p.m., right?

20 A. Yes.

21 Q. Two minutes later, right?

22 A. Yes.

23 Q. And says, Hahaha ... I definitely missed
24 some good clues harvesting opportunity.

25 What does "hahaha" mean?

1 A. It's the word for laughter.

2 Q. And you laugh at things because you think
3 they're funny, right?

4 A. That's when people laugh, yes.

5 Q. And this is in response to Ryan Wood's
6 e-mail, correct?

7 A. Yes.

8 Q. And it's in response to his e-mail that
9 says both -- that both references checking
10 Mr. Bombard's pupils and groin area and then saying
11 that people -- that I see it's in St. Albans, he's
12 probably just retarded, right?

13 A. Yes.

14 Q. So you thought it was funny?

15 A. No, I didn't.

16 Q. But you wrote that you were laughing?

17 A. I wrote that I was laughing, yes.

18 Q. Do you think that people with mental
19 disabilities are funny?

20 A. No.

21 Q. Do you think that that is an acceptable
22 behavior for a Vermont state trooper?

23 A. No.

24 Q. Did you tell Ryan Wood that?

25 A. No.

1 Q. Why not?

2 A. There's no reason.

3 Q. You didn't think it was important to tell
4 him?

5 A. It didn't occur to me, no.

6 Q. And you've done the Law Enforcement Torch
7 Run, you said, right?

8 A. Yes.

9 Q. And that's -- that run is about
10 supporting people with disabilities, right?

11 A. Yes.

12 Q. So you've represented Vermont State
13 Police in an event supporting people with
14 disabilities, right?

15 A. Yes.

16 Q. How do you think the people with
17 disabilities who you're supporting in that event would
18 feel about that language?

19 MR. MESSINA: Objection.

20 THE WITNESS: That it's offensive.

21 BY MR. DIAZ:

22 Q. Do you think you should have told Ryan
23 Wood that that's not acceptable?

24 A. Knowing Ryan I don't think that's what's
25 in his heart, so I think it's a flippant, stupid

1 comment. I didn't think it needed correction.

2 Q. And now do you think it still doesn't
3 need correction?

4 A. I think he's gotten the message.

5 Q. Did he get that message from you?

6 A. After -- I don't think I've ever talked
7 to him about this, but I think he told me that it came
8 up -- when did I talk to him about this?

9 I don't know, but I think this came up in
10 his deposition with you, and I think he's gotten the
11 message.

12 Q. So you talked to him about this because
13 of his deposition --

14 A. I don't --

15 Q. -- or after his deposition?

16 A. I don't remember. I'm screwing up
17 timelines. I'm not sure.

18 Q. I mean, what else did he say about it?

19 A. I recall -- whatever fit into the
20 timeline here. He -- I think he had probably gotten a
21 subpoena, and he was like, What is this about? And
22 I'm like, I'm not going to talk about this.

23 And then he had some conversation with
24 the AG's Office. I think he got this e-mail, and he
25 was like basically, I'm going to have to answer to

1 that. I'm like, Yeah. Yeah, you are.

2 So it was very -- it was very brief. I
3 just don't remember where exactly it fit in.

4 Q. And did you tell him anything in regard
5 to this e-mail?

6 A. No.

7 Q. And so after Mr. Bombard was in the
8 holding cell, you walked away, you called Jim Hughes,
9 right?

10 A. Yes.

11 Q. Can you take me through what happened
12 next?

13 A. That was the end of it. I didn't have a
14 good rapport with Mr. Bombard, so I asked Detective
15 Sergeant Richard Desany to do the processing. I
16 filled out the citation on the back end. I think
17 Sergeant Desany actually handed it to him, and that
18 was the end of my involvement.

19 Q. Did you speak with anyone at the Franklin
20 County State's Attorney's Office after you submitted
21 the affidavit of probable cause?

22 A. No.

23 Q. Are you aware if there's a video system,
24 like a CTV system in the St. Albans barracks?

25 A. There is.

1 Q. And are the cameras in particular places?

2 A. Yes.

3 Q. Are they throughout the barracks?

4 A. Not throughout.

5 Q. Where are they?

6 A. The processing room is one place. And I
7 don't know if I want to keep this line of questioning
8 as far as barrack security.

9 MR. MESSINA: Can you proffer just a
10 basis, just for --

11 MR. SARACHAN: Why don't we just make
12 this part of the deposition confidential?

13 MR. DIAZ: I'm happy to stipulate to any
14 kind of -- if there's a particular phrase?

15 MR. SARACHAN: No, we'll just make this
16 confidential.

17 MR. DIAZ: I'm happy to stipulate that
18 this section will not be released to the extent
19 it reveals any St. Albans barracks security
20 measures. Fair enough?

21 MR. MESSINA: Sure.

22 MR. DIAZ: Fair enough, Jay?

23 MR. MESSINA: That's okay.

24 MR. DIAZ: And I'll also try to direct my
25 questions more specifically.

1 MR. MESSINA: Thank you.

2 BY MR. DIAZ:

3 Q. You said there's a camera facing the
4 processing area. Is that what you said?

5 A. Yes.

6 Q. Is that where the holding cell is?

7 A. There are two holding cells in the
8 processing room.

9 Q. And are there cameras -- so I guess at
10 some point Mr. Bombard was taken out of the cell, and
11 he was fingerprinted?

12 A. Yes.

13 Q. And he was photographed?

14 A. Yes.

15 Q. Would he have been on camera during his
16 fingerprinting?

17 A. Yes.

18 Q. Would he have been on camera during
19 the -- his mugshot?

20 A. Yes.

21 Q. And would he have been on camera whenever
22 he was interacting with officers during that time?

23 A. I think most of it, yes.

24 Q. Have you ever seen a video of Mr. Bombard
25 from the St. Albans barracks cameras?

1 A. I have.

2 Q. When was that?

3 A. A long time ago. Years ago.

4 Q. Was it around the time of the stop?

5 A. Yes.

6 Q. Do you know if that video was ever shared
7 with anyone outside of the St. Albans barracks?

8 A. I would think that it would have been
9 made as part of discovery, the State's Attorney's
10 Office, but other than that, no.

11 Q. You did the press release on this stop,
12 and you included Mr. Bombard's mugshot, right?

13 A. Yes.

14 Q. Why did you include his mugshot?

15 A. I had to.

16 Q. Why?

17 A. The State Police rules are very clear
18 around press releases.

19 Q. And what do they say?

20 A. That essentially it's the who, what,
21 where, when, and then a mugshot needs to be attached
22 if it's available.

23 Q. So the -- is a mugshot always taken when
24 someone is brought in for processing?

25 A. It should be, barring external

1 circumstances.

2 MR. DIAZ: Can you give us two minutes?

3 THE WITNESS: Yes.

4 (A recess was taken from 4:43 p.m. to
5 4:50 p.m.)

6 BY MR. DIAZ:

7 Q. Mr. Rikken, we talked about how the
8 mugshot, Mr. Bombard's mugshot was attached to the
9 press release, right?

10 A. Yes.

11 Q. And earlier we talked about that you're
12 aware that the press releases go out to the various
13 news outlets in the Vermont media, yes?

14 A. Yes.

15 Q. Are you aware of any information about
16 that stop being printed in Vermont Media?

17 A. I'm not sure.

18 Q. Are you aware of any -- of anything
19 related to the press release that you sent out on
20 February 9th, 2018, being covered by Vermont Media?

21 A. No.

22 Q. Would it surprise you if it was covered
23 in the St. Albans Messenger, for instance?

24 A. It wouldn't surprise me, no.

25 Q. We talked about your communications with

1 the State's Attorney's Office a little bit, and you
2 said you spoke with James Hughes, Jim Hughes?

3 A. Yes.

4 Q. The former state's attorney?

5 A. Yes.

6 Q. Did you also speak with John Lavoie?

7 A. Yes.

8 Q. Was that at the same time you talked with
9 Jim Hughes?

10 A. Yes.

11 Q. So they were both on the phone at the
12 same time, at that time?

13 A. No.

14 Q. So when was the conversation with Jim
15 Hughes?

16 A. This -- the same day.

17 Q. And when was the conversation with John
18 Lavoie?

19 A. The same day.

20 Q. So you had two conversations with
21 attorneys at the Franklin County State's Attorney's
22 Office?

23 A. Yes.

24 Q. So what was the -- why did you -- why did
25 you speak to -- and who did you speak to first?

1 A. John.

2 Q. So why did you -- did you call John?

3 A. I called the State's Attorney's Office,
4 and they put John on the phone.

5 Q. And what was the substance of that
6 conversation?

7 A. Oh, I ran the variables of this case by
8 John, and I said, What do you think?

9 And he said, I'm not sure, you should
10 have a conversation with Jim.

11 Q. Did he say anything else?

12 A. Not that I recall.

13 Q. Did you ask him any questions?

14 A. No.

15 Q. That was the end of the conversation?

16 A. Yes.

17 Q. And then how did you get in touch with
18 Jim Hughes?

19 A. I don't know if I was put on hold and he
20 picked up the phone, or if I called right back and
21 then got put through to Jim.

22 Q. Okay. When did you first learn the name
23 of the driver that you stopped and then arrested on
24 February 9th, 2018?

25 A. Probably when I arrested him.

1 Q. The arrest took a little bit of time,
2 right?

3 We talked about how you brought him out
4 of the car, put him on the hood, put his hands behind
5 his back, et cetera. You put him in the car. When
6 during that time did you first identify him?

7 A. I'm not sure if I looked at his driver's
8 license after I arrested him. There's a communication
9 I had with dispatch, which I -- well, I asked him. I
10 said, Is this car registered to you? And so I told
11 dispatch, This is the male RO I have in custody for
12 starting the paperwork on that.

13 I don't know if I knew his name even at
14 that point. It may not have been until I put his name
15 on the citation because, like I said, I had no
16 interaction with him after the arrest. So I just
17 don't remember if I saw his driver's license when I
18 was searching him, or again I -- and the only reason I
19 think I didn't know was because, I said, Hey, are you
20 the registered owner of this vehicle? He said, yeah.

21 So I said, I have the male RO, 95. I
22 didn't know his name.

23 Q. Could you say again what "RO" is?

24 A. I'm sorry. Male registered owner.

25 Q. And "95" meant?

1 A. I'm sorry. I don't know why I talk like
2 that. In custody.

3 Q. Did John Lavoie tell you why he was
4 unsure about whether his office would pursue the
5 charge?

6 A. I don't recall.

7 Q. He might have told you, or he might not
8 have?

9 A. I don't think so. It was such a -- it
10 was such a brief conversation, and he almost
11 immediately put me on to Jim so I don't remember.

12 MR. DIAZ: All right. I'm all set.

13 MR. SARACHAN: You have some questions?

14 MR. MESSINA: I have a couple of
15 questions.

16 Do you want to take a quick five, regroup
17 and then come back, or do you want me to just
18 shoot right into them?

19 MR. DIAZ: I'm happy to go, but before I
20 do that I just want to say that so at this point
21 we will -- I think that's good.

22 Yeah, you can go ahead.

23 EXAMINATION

24 BY MR. MESSINA:

25 Q. Sergeant Rigger, thank you very much. I

1 know it's been a long day. I'm going to be as quick
2 as I possibly can. I just want to dot some Is and
3 cross some Ts.

4 So, first, you were provided earlier with
5 what was marked as both Exhibit 8, Crowd Control and
6 Management, and Patno 3, which was Investigative Motor
7 Vehicle Stops.

8 Do you recall being presented with those?

9 A. Yes.

10 Q. In Exhibit 8, I guess it's technically
11 Page 3, Section 4.4(D), you were read that section.
12 Vermont State Police members shall avoid negative
13 verbal engagement with members of the crowd. Verbal
14 abuse against officers shall not constitute a reason
15 for an arrest or for any use of force against such
16 individuals.

17 Is that correct? Did I read that
18 correctly?

19 A. Yes.

20 Q. And this is in the Crowd Control and
21 Management Policy, correct?

22 A. Yes.

23 Q. Is that specific and limited to
24 conducting crowd control and management, or is that an
25 expectation that the State Police have for the

1 troopers engaging with any civilian in any context at
2 all?

3 A. This is -- this is more specific to the
4 crowd management policy.

5 Q. Okay. Thank you.

6 You were asked earlier in what regard you
7 would speak to a SA for charging support.

8 Would you do it to look to find a way or
9 the correct way to make a charge?

10 A. It would be done when I had probable
11 cause for an arrest, but I would want the fair or best
12 outcome for whatever this moment was. But perhaps it
13 wasn't so cut and dry, so I would want their counsel
14 as far as here are the variables, is this a charge you
15 want to pursue?

16 Q. Can you give an example of where you were
17 on the fence -- my word -- in speaking to the State's
18 Attorney, the respective state's attorney, you decided
19 not to charge?

20 A. So I recall on occasion responding to the
21 port of entry in Highgate. A father had crossed over
22 the border with his son, and there was an active
23 restraining order where the father couldn't be in
24 contact with his son.

25 So I had arrested the father, brought him

1 back to the barracks, and during that -- that
2 conversation after the arrest began to just get not
3 concerned but perhaps there was more to it than this.

4 Like perhaps this was supposed to have
5 been withdrawn and it wasn't, but meanwhile this guy
6 is going to be lodged on this offense. And so I just
7 didn't feel quite right in fairness to the 13- or
8 14-year-old son who was there, for the father himself.
9 This wasn't what it was supposed to be, and perhaps a
10 mother or an ex-wife out there somewhere, so I had to
11 run it by the State's Attorney Office.

12 So I called and talked to, in that case I
13 think it was John Lavoie and said, Hey, this is what's
14 happened. I think that there's some -- here's what
15 happened. Like you tell me, what do we do next? And
16 he opted not to charge him. And so the father was
17 released, and that was the end of that.

18 Another case I had an occasion to
19 encounter someone on a -- using a personal mobility
20 device. They were alcohol impaired, and so I arrested
21 them for DUI. And when they were in my cruiser I
22 started to think, Wait a second, I think that the
23 mobility device is actually an exception to the motor
24 vehicle definition. So I called up the State's
25 Attorney at the time. It was Heather Brochu at the

1 time.

2 And said, Hey, am I remembering this
3 correctly or not? She goes, No, this isn't DUI, you
4 can't arrest him. So I ended up towing the personal
5 mobility device to his house and then giving him a
6 ride home.

7 So two examples there as far as effecting
8 an arrest but then needing to bounce it off the
9 State's Attorney to say, is this something you're
10 pursuing or not? Make sure it was a fair for
11 everybody.

12 Q. Thank you. We talked about a little bit,
13 did you know or know of Mr. Bombard before this
14 encounter?

15 A. No.

16 Q. Did his face look familiar to you
17 beforehand?

18 A. No.

19 Q. Is it fair to say that you had no
20 intention of arresting him for that initial stop?

21 A. That's right.

22 Q. You were going to your car to drive away?

23 A. That's right.

24 Q. Thank you.

25 We talked a little bit earlier about --

1 if we go back to Patno 3, Policy 2.1, the three causes
2 of an appropriate stop being the probable cause for a
3 motor vehicle violation, reasonable suspicion for a
4 crime has or is being committed, and upon a community
5 caretaking function.

6 Do you recall having that conversation?

7 A. Yes.

8 Q. And I believe something that you said, it
9 might even have been in your affidavit was that there
10 was -- you thought that there might be a need for
11 attention in this case?

12 A. Yes.

13 Q. Do you mean that somebody was
14 specifically -- that Mr. Bombard was specifically
15 asking for it?

16 A. No.

17 Q. So what do you mean by a need for
18 attention in a matter like that?

19 A. I think if people are in a mental health
20 crisis, they could have escalating despondency. I
21 don't think that -- I don't know of any occasion where
22 they're asking for help but yet still needing
23 assistance, which requires someone to do a
24 non-adversarial check-in to have that conversation to
25 determine if there is that need or not.

1 Q. Thank you.

2 One of the questions that was asked was
3 could you have effectuated the answers that you needed
4 by running the plate.

5 Can you tell the immediate mental state
6 of someone by their criminal record?

7 A. No.

8 Q. Does a criminal record in and of itself
9 dictate someone in distress?

10 A. No.

11 Q. So how does that procedure work?

12 Assuming you got to those records, you're
13 in your cruiser, you want to go check a plate, how
14 does that work?

15 What first information do you get by
16 checking the plate?

17 A. A license plate check will reveal the
18 license -- excuse me, the registered owner, the status
19 of the vehicle as in registered or expired
20 registration, and whether or not the registered
21 owner's license is valid or not.

22 Q. If you wanted to or need to go the step
23 further, how would you get that criminal record, or
24 could you?

25 A. The system we had at the time would

1 require running the name separately to then -- to then
2 get his police -- a record of his police encounters.

3 I wouldn't be able to access his criminal
4 record like that. It requires a separate check that
5 I'm not able to run. So I would see his police
6 encounter record, and then I would have to do a --
7 basically a narrative search. Read all the narratives
8 to learn about it.

9 Q. So assuming you got do that point, you
10 were able to do that and you're considering whether or
11 not somebody is in distress or despondent, would
12 looking at those records tell you whether or not, say
13 they lost their job that day?

14 A. No.

15 Q. Or whether, for instance, that they were
16 in the process of a divorce or lost a child?

17 A. No.

18 Q. So how else would you be able to tell if
19 they were despondent other than by other -- if not by
20 checking their records?

21 A. Yeah, I don't think I would be able to.

22 Q. People cursing at you. People don't
23 always like interactions with the police; is that fair
24 to say?

25 A. Yes.

1 Q. And I believe you were asked something
2 along the lines of have you ever been sworn at for
3 either giving a ticket or giving a citation?

4 A. Yes.

5 Q. And what was your answer to that?

6 A. The answer is "Yes".

7 Q. I think you were asked whether or not you
8 had made arrests as a result of them swearing at you.
9 Do you remember that question?

10 A. Yes.

11 Q. And what was your answer to that?

12 A. I think it was I don't recall.

13 Q. Okay. Would you arrest somebody -- have
14 you arrested somebody for simply swearing at you for
15 giving you a ticket -- I'm sorry, for you giving them
16 a ticket?

17 A. No.

18 Q. Have you ever added a charge to somebody
19 who swore at you for simply giving them a citation?

20 A. No.

21 Q. There are a couple questions regarding
22 whether or not you thought it was appropriate for
23 somebody to give you the middle finger. I believe you
24 answered that you thought it was inappropriate; is
25 that correct?

1 A. Yes.

2 Q. You know that that doesn't mean that it's
3 unlawful?

4 A. What was the question again?

5 Q. Sure. So you believe that somebody, a
6 civilian giving you the middle finger is
7 inappropriate, but you are aware that that does not
8 make it unlawful?

9 A. Yes, I know that.

10 Q. Now, do you think it's inappropriate for
11 that civilian to just give the police the finger or
12 anybody else?

13 A. Yeah, I think it's inappropriate for
14 anyone to give anybody the finger.

15 Q. But you don't question the lawfulness of
16 it?

17 A. No.

18 Q. Okay.

19 MR. MESSINA: May I have access to one or
20 two of those, your documents? Just because they
21 were not marked.

22 MR. SARACHAN: Sure. What do you need?

23 MR. MESSINA: I'm looking for AGO-729 and
24 I guess 142.

25 (Documents were handed from Mr. Diaz to

1 Mr. Messina.)

2 MR. MESSINA: Thank you very much.

3 BY MR. MESSINA:

4 Q. So I'm going to direct your attention
5 again to what --

6 MR. MESSINA: This wasn't actually an
7 exhibit that went in, though, was it?

8 We just talked about it?

9 MR. SARACHAN: That was an exhibit in the
10 Thomas deposition by number, but since I think
11 we just referred to it by Bates.

12 MR. MESSINA: Thank you.

13 BY MR. MESSINA:

14 Q. So we reviewed Bates AGO-000729, which
15 does have an exhibit number but we're going to go by
16 AGO-000729 for the time-being. Can you refresh what
17 this is?

18 A. Right. It looks like it's an e-mail that
19 was authored by Lieutenant Tara Thomas.

20 Q. So in this e-mail, this was in regards to
21 this stop, correct?

22 A. Yes.

23 Q. And the last sentence says, Sergeant
24 Rikken was advised that although in the scope of his
25 law enforcement authority, commanders of the Vermont

1 State Police encouraged the presence of a motor
2 vehicle violation for the initial cause of a traffic
3 stop.

4 Is that what that says?

5 A. Yes.

6 Q. Is there anything in this e-mail that
7 specifically says you did something wrong?

8 A. No.

9 Q. And the press release, looking at
10 AGO-000142, which is the press release I believe you
11 drafted on February 9th, 2018?

12 A. Yes.

13 Q. At 3:04. I think you answered this
14 before, but I want to make sure.

15 So when the Vermont State Police
16 effectuates an arrest or some sort of incident, is it
17 standard practice and procedure to draft a report
18 about that incident?

19 A. Yes.

20 Q. Is it standard practice and procedure to
21 draft an actual press release?

22 A. Yes.

23 Q. In what context -- do you have discretion
24 to do a press release?

25 A. No.

1 Q. And if you do a press release, I think
2 you said before you were required to provide a mugshot
3 if one was available; is that correct?

4 A. Yes.

5 Q. So is there anything outside of the
6 ordinary course of business procedure, practice with
7 this press release regarding Mr. Bombard compared to
8 anyone else that you would have done?

9 A. I would say there's one difference I
10 think it's important to highlight --

11 Q. Okay.

12 A. -- which is that the departure from the
13 norm is that this was at an e-mail from me to my
14 supervisor, the station commander at the time. I --
15 in that era I did not like sending press releases and
16 yet -- and so, therefore, I was ordered to by my
17 supervisors to send press releases every time you
18 arrest them, but send them to us first so we can
19 approve them to make sure that they're appropriate.

20 And so in that way, if it had been up to
21 me, I wouldn't have sent a press release on any arrest
22 that I made, but that's -- that was the procedures of
23 the State Police. My supervisors wanted me to do it,
24 and that's why you see it in the flow sheet that you
25 have. First with the lieutenant and then followed up

1 with a press release to everybody.

2 Q. But the fact that one was done was not
3 rare or --

4 A. It's -- it's explicitly required per
5 State Police policy.

6 Q. And the fact that a mugshot was attached
7 to it was not rare in and of itself either?

8 A. It's explicitly required.

9 Q. Thank you.

10 Do you generally allow people to move
11 their cars once they're in your custody?

12 A. No.

13 Q. Once the people are in your custody?

14 A. No.

15 Q. Are any of the actions you took against
16 Mr. Bombard on -- I don't know what actual day of the
17 week it was, but February 9th, 2018, in any way
18 retaliatory against him specifically?

19 A. No.

20 Q. Is there anything that you did with him
21 that you wouldn't, sitting here today, generally have
22 done had it been anybody else other than Mr. Bombard?

23 A. That would have been anybody else.

24 MR. MESSINA: Thank you. I don't have
25 any further questions.

1 MR. DIAZ: Just a couple, and we'll get
2 out of here.

3 FURTHER EXAMINATION

4 BY MR. DIAZ:

5 Q. Mr. Riggen, before your encounter with
6 Mr. Bombard had you ever heard his name before?

7 A. I don't know that I -- I probably had
8 heard it, and I don't think that I ever retained or
9 recorded it.

10 Q. Why do you think you would have heard it?

11 A. There was a complaint that had been made
12 about a couple of the troopers that worked at the
13 barracks, and so that had circulated that that
14 complaint had been made and an investigation had taken
15 place to determine if it was true or not. And I
16 didn't really care. And so perhaps I knew his name
17 for a moment, and then I just moved on.

18 Q. Are you saying that you learned his name
19 because of this complaint you referenced?

20 A. Yes.

21 Q. And then after -- okay.

22 You said to Mr. Messina that you called
23 the State's Attorney?

24 You call the State's Attorney sometimes
25 before submitting an affidavit of probable cause,

1 right?

2 A. Yes.

3 Q. And you said that -- I think you said you
4 do that when it's -- I think you were asked when you
5 would do that.

6 Can you explain to me when you would do
7 that?

8 A. When I would call the State's Attorney?

9 Q. Yeah.

10 A. In the context that these questions are
11 occurring it's when I have made a probable cause for
12 an arrest. I've made the arrest, and then upon
13 special circumstances or other things that are learned
14 after the arrest, I like to bring it to the State's
15 Attorney to make sure that the decision to continue
16 the arrest moving forward with a charge is prudent, or
17 if it's not then to discontinue the process.

18 Q. When you say "special circumstances" what
19 do you mean?

20 A. So in a case where a person is arrested
21 for disorderly conduct and is asking the State's
22 Attorney be contacted and let them know that the ACLU
23 is going to be involved. I said, all right, we should
24 probably involve the State's Attorney to make sure
25 that this is a real charge. Otherwise, that this

1 person will be released without a citation.

2 Q. You called the State's Attorney to make
3 sure that it was a real charge?

4 A. Well, I had probable cause for the
5 arrest, and that's what I made. But I wanted to make
6 sure that before I issued a citation the State's
7 Attorney was going to bring the charge. And if they
8 weren't going to bring the charge, then I wouldn't
9 have issued the citation.

10 MR. DIAZ: I think we're good.

11 MR. MESSINA: Okay.

12 MR. DIAZ: Close the deposition. Thank
13 you very much.

14 Can I say one thing quickly? I do want
15 to keep it open only pending the production of
16 the video, any video that exists related to what
17 happened inside the St. Albans barracks when
18 Mr. Bombard was there, which has not yet been
19 produced.

20 MR. MESSINA: Okay, and I did not know
21 that that was a request.

22 MR. DIAZ: Well, it's certainly relevant.

23 MR. MESSINA: I'm not arguing right now.
24 I wasn't made aware it was asked for.

25 MR. DIAZ: We've only been notified right

1 now, just pending if we need to have further
2 discussion about what is in those videos, so
3 keeping it open just as to that.

4 MR. MESSINA: Sure.

5 MR. DIAZ: Thank you.

6 (End of deposition of Jay Rigger at
7 5:16 p.m. and end of transcript.)
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This deposition has been read by me, and
the answers contained therein are true and accurate.

Jay Rikken

Subscribed and sworn to before this
_____ day of _____, 2023.

Notary Public

C E R T I F I C A T E

1
2
3
4 I, Sarah M. Bentley, RPR, do hereby
5 certify that I reported by stenographic means the
6 deposition of Jay Rigger, on October 5, 2023.

7 I further certify that the foregoing
8 testimony was taken by me stenographically and
9 thereafter reduced to typewriting, and the foregoing
10 291 pages are a transcript of the stenographic notes
11 taken by me of the evidence and the proceedings to the
12 best of my ability.

13 I further certify that I am not related
14 to any of the parties thereto or their counsel, and I
15 am in no way interested in the outcome of said cause.

16 Dated at Berkshire, Vermont, this 17th
17 day of October, 2023.

18
19
20 /s/ Sarah M. Bentley

21

Sarah M. Bentley, RPR

ERRATA SHEET

To: Jay Rikken
Re: Bombard v. Rikken and State of Vermont
Date of Depo: 10/5/23

Please read your deposition. Sign your deposition before a Notary Public and return the deposition to the attorney conducting the deposition.

DO NOT MARK ON THE TRANSCRIPT OR TAKE APART OR TAMPER WITH THE ORIGINAL TRANSCRIPT. Any typographical errors, corrections, or changes you think should be made must be listed on the correction sheet and returned with the deposition.

Page Line Correction

Table with 3 columns: Page, Line, Correction. Multiple empty rows for recording corrections.

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My Commission expires

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STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION

Gregory Bombard,)
)
Plaintiff,)
)
vs.)
)
Jay Rikken and State of)
Vermont,)
)
Defendants.)
-----)

Docket NO. 21-CV-176

DEPOSITION OF TARA THOMAS
held at St. Albans Police Department

August 30, 2023
12:50 p.m.

Sarah M. Bentley, CCR-B-1745
Registered Professional Reporter and Notary Public

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AGO-000814	12/9/19 correspondence between Jay Rikken and Tara Thomas regarding ACLU public records request	37

* * *

1 Q. Okay.

2 A. Administratively strong is what I would
3 say.

4 Q. Okay. I'm sure there's others I'm not
5 going to hold you to if you didn't get through all of
6 them. I understand.

7 What the discipline -- as a supervisor
8 would you be the person to discipline somebody, a
9 trooper who was being supervised by you?

10 A. Yes.

11 Q. Would you -- you may have said this, and
12 I apologize. Did you do reviews of their work?

13 A. Can you -- what do you mean, reviews of
14 their work?

15 Q. Okay. Did you as a supervisor do annual
16 reports on the troopers under you on how he or she
17 were doing?

18 A. Oh, an evaluation?

19 Q. I'm sorry, evaluations.

20 A. Yes.

21 Q. I'm sorry.

22 This case we're here about today, this
23 Greg Bombard case, when did you learn about it?

24 And I don't expect you to remember the
25 date exactly, but how long after the event?

1 A. I knew it had been years.

2 Q. Years after the event?

3 A. Yes.

4 Q. Okay. And I'm going to show you some
5 things so it's not a memory deal, but do you remember
6 how you learned about it?

7 A. I don't remember the specific person who
8 brought it to my attention.

9 Q. Okay. Would it have been Trooper Riggen,
10 or you just don't remember who, one way or the other,
11 who brought it to you?

12 A. I don't believe it was Trooper Riggen.

13 Q. And. Was it brought -- whoever brought
14 it to your attention -- was it brought to your
15 attention because you were Trooper Riggen's
16 supervisor?

17 A. Yes.

18 Q. And when it was brought to your attention
19 by whoever brought it to your attention were you told
20 about what had transpired?

21 What were you told?

22 A. The highlights that we just discussed,
23 yes.

24 Q. Okay. Just sort of on a global basis?

25 A. Yes.

1 A. (Brief pause.)

2 Q. You can do it by paragraph, however you
3 want to show me.

4 A. (The witness perused the document.)

5 Q. Tell me.

6 A. Paragraph Number 2.

7 Q. Okay. Tell me what's in Paragraph 2 that
8 did not make sense to you.

9 A. That the -- a motor vehicle infraction
10 for the basis of the stop --

11 Q. Okay.

12 A. -- was missing.

13 Q. Okay. And did you learn that there was
14 no other basis other than what is contained in here?

15 A. I learned there was no other basis --

16 Q. Okay.

17 A. -- than what was contained in here.

18 Q. Right. And you knew and you told Trooper
19 Rigger he was wrong, didn't you, to make that initial
20 stop?

21 A. I did not tell him that he was wrong for
22 making that initial stop.

23 Q. You believed he was?

24 Ms. Thomas, we're here. Come on, tell
25 the truth.

1 A. I wouldn't have done so.

2 Q. I know. And you -- all right. You told
3 Trooper Rikken you wouldn't have, didn't you?

4 A. No, I did not tell him that.

5 Q. Why not? You're a supervisor.

6 A. I did not tell him that I wouldn't have
7 done that.

8 Q. Okay. Who -- okay. All right.

9 Is there anything else in Exhibit 7 that
10 didn't make sense to you?

11 Take your time. I mean, take your time.

12 A. (The witness perused the document.) What
13 was your question?

14 Q. My question was now that you've had a
15 chance to study Exhibit 7, other than Paragraph 2
16 which didn't make sense to you, I was asking you is
17 there anything else in Exhibit 7 that didn't make
18 sense to you?

19 A. Well, the part that didn't make sense to
20 me was Paragraph 9. As Trooper Rikken was walking
21 back to his car, that the operator continued with the
22 behavior that initially got Trooper Rikken's
23 attention.

24 Q. I see. So when you say it didn't make
25 sense, you're talking about the behavior that's --

1 or not it was, in fact, an incident that was supposed
2 to come into this?

3 A. Yes.

4 Q. All right. So, okay, I'll go with the
5 "Yes". And are these, the Incident List Reports, it's
6 not necessarily a slap on the wrist or a gold star; is
7 that correct?

8 A. Correct.

9 Q. It's just a documentation of a
10 conversation to ensure that there's a record of
11 something when something had to be conveyed to a
12 particular officer; is that correct?

13 A. Yes.

14 Q. All right. Prior to the 2019 incident,
15 the arrest on February, 2019 and the ensuing
16 communications, had you ever heard of the name Gregory
17 Bombard before?

18 A. No.

19 Q. Were you ever familiar with him before?

20 A. No.

21 Q. All right. Last sort of set of
22 questions.

23 Attorney Sarachan asked you a couple of
24 questions about the initial stop that Trooper Riggen
25 performed on Mr. Bombard. Do you remember talking to

1 him about that?

2 A. Yes.

3 Q. All right. And if I recall correctly,
4 you said that you would not have necessarily made that
5 first stop; is that correct?

6 A. Correct.

7 Q. All right. Is it fair to say that police
8 officers on the ground, in the trenches have a certain
9 amount of discretion to act when they see something?

10 A. Yes.

11 Q. That subjective perspective is part of
12 what allows the discretion to act or not act; is that
13 correct?

14 A. Correct.

15 Q. So would it be fair to say that just
16 because you wouldn't necessarily do something doesn't
17 mean it's wrong for the other officer to have done the
18 same thing?

19 A. Yes, that's fair.

20 MR. MESSINA: All right. Thank you.

21 That's all.

22 FURTHER EXAMINATION

23 BY MR. SARACHAN:

24 Q. Why wouldn't you have done it? Why
25 wouldn't you have stopped him?

1 A. Because I would have wanted a motor
2 vehicle infraction.

3 Q. Thank you. And Mr. -- Jeff said to you
4 or asked you, and you answered that for this Incident
5 List Report, the reason or one of them that you put in
6 there that you wanted, and this is his words and you
7 said "Yes", to convey something to the particular
8 officer, right?

9 A. Right.

10 Q. What did you want to convey to Sergeant
11 Rikken?

12 A. That this incident was brought to our
13 attention and moving forward command prefers, although
14 he was in his legal scope, to have a motor vehicle
15 infraction linked to a traffic stop.

16 Q. You keep saying -- and I'm not -- within
17 his legal scope. That's what police officers do.
18 They have the legal right to enforce the law. Is that
19 what you mean by the "legal scope"?

20 A. That, and he had the legal right to do a
21 welfare check, which to Sergeant Rikken is what he was
22 doing.

23 Q. Right. In theory you have that right to
24 do that; that's all you're saying, right?

25 A. Yes.

C E R T I F I C A T E

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2
3
4 I, Sarah M. Bentley, RPR, do hereby
5 certify that I reported by stenographic means the
6 deposition of Tara Thomas, on August 30, 2023.

7 I further certify that the foregoing
8 testimony was taken by me stenographically and
9 thereafter reduced to typewriting, and the foregoing
10 103 pages are a transcript of the stenographic notes
11 taken by me of the evidence and the proceedings to the
12 best of my ability.

13 I further certify that I am not related
14 to any of the parties thereto or their counsel, and I
15 am in no way interested in the outcome of said cause.

16 Dated at Berkshire, Vermont, this 5th day
17 of September, 2023.

18
19
20 /s/ Sarah M. Bentley

21 Sarah M. Bentley, RPR
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EXHIBIT 5

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STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION

Gregory Bombard,)
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vs.)
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Jay Rikken and State of)
Vermont,)
)
Defendants.)
-----)

Docket NO. 21-CV-176

DEPOSITION OF MAURICE LAMOTHE, JR.
held at St. Albans Police Department

August 30, 2023
8:43 a.m.

Sarah M. Bentley, CCR-B-1745
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1 happen, yes.

2 Q. And did a person ever ask you for help
3 when they were driving in the opposite direction as
4 you?

5 A. I have had people yell to me from the
6 side of the road, yes.

7 Q. Okay, and so they were driving in one
8 direction, you were driving in the other?

9 A. I've had that happen, yes.

10 Q. And they've asked for help?

11 Oh, has anyone ever asked you for helped
12 by giving you the middle finger?

13 A. No.

14 Q. What does the middle finger mean to you?

15 A. It could mean a lot of different things.
16 Trying to get your attention. It could be derogatory.
17 It could be a friend giving a friend -- who knows. I
18 can't interpret that.

19 Q. How do you interpret the middle finger?

20 A. How do I interpret? It depends who it
21 was coming from.

22 Q. If it was coming from someone outside
23 your car while you're on patrol, what would that mean
24 to you?

25 A. I would probably wonder what the

1 reasoning was behind it, but I wouldn't think much of
2 it. I don't -- it's happened. I've heard it happen,
3 happening to people. I've seen it happen to me, but
4 what would it mean to me? It's another day.

5 Q. So the times that it did happen to you,
6 what did you believe that was being communicated?

7 MR. MESSINA: Objection, but you can
8 answer.

9 THE WITNESS: I don't know what people
10 are thinking. I never -- I've had it happen
11 multiple times, maybe a handful of times over my
12 career. I didn't think anything of it.

13 BY MS. RICH:

14 Q. Okay. And during your time on patrol did
15 you make traffic stops?

16 A. Several.

17 Q. How many, would you say? Several? An
18 estimate.

19 A. I mean, I wouldn't be able to put an
20 accurate number on it, but maybe a thousand.

21 Q. Okay. And there were several different
22 reasons that you would have made these stops, correct?

23 A. That's correct.

24 Q. So I'd like to show you what has
25 previously been marked as Exhibit 3.

C E R T I F I C A T E

1
2
3
4 I, Sarah M. Bentley, RPR, do hereby
5 certify that I reported by stenographic means the
6 deposition of Maurice Lamothe, Jr., on August 30,
7 2023.

8 I further certify that the foregoing
9 testimony was taken by me stenographically and
10 thereafter reduced to typewriting, and the foregoing
11 77 pages are a transcript of the stenographic notes
12 taken by me of the evidence and the proceedings to the
13 best of my ability.

14 I further certify that I am not related
15 to any of the parties thereto or their counsel, and I
16 am in no way interested in the outcome of said cause.

17 Dated at Berkshire, Vermont, this 5th day
18 of September, 2023.

19
20
21 /s/ Sarah M. Bentley

22 _____
Sarah M. Bentley, RPR

EXHIBIT 6

**VSP-DIR-403****Investigative Motor Vehicle Stop**

1.0 PURPOSE

- 1.1 To enhance our ability to detect criminal activity within the State of Vermont, through the development of professional patrol techniques.
- 1.2 To guide members when making contact with motorists and provide methods for making safe and effective motor vehicle stops.

2.0 POLICY

- 2.1 All motor vehicle stops shall be based upon probable cause that a statutory motor vehicle violation has occurred or upon a reasonable suspicion to believe that a crime has been or is being committed or upon a community care taking function.

3.0 PROCEDURE

- 3.1 Each member shall perform his/her duties in a courteous and expeditious manner while enforcing the law pertaining to the traffic stop.
- 3.2 When a motor vehicle stop is authorized under this directive the following procedures for stopping and approaching the operator of the vehicle is intended to provide maximum safety for members, the operator and other users of the highway. Members should consider conditions such as the engineering of the road, the urgency of the stop, the existing volume of traffic and availability of communications which may require adjusting or altering these procedures.

4.0 STOPPING A VEHICLE**4.1 Members in a marked cruiser shall:**

- (A) Communicate with dispatch the impending motor vehicle stop, identifying the plate number and location of the stop;
- (B) Activate the emergency lights and siren, as necessary;
- (C) Ensure that the violator and police vehicle have stopped in a safe location; and
- (D) Position the police vehicle behind the violator at a safe and reasonable distance or otherwise as circumstances dictate.
- (E) Activate remote microphone for MVR.

4.2 Members operating unmarked, semi-marked or specialty police vehicles should be aware that motorists may not recognize them as police officers and may refuse or be reluctant to stop. In such cases the motorist may drive to a safe area with increased population, illumination or to a police station before feeling safe enough to stop.

4.3 Members operating unmarked, semi-marked or specialty vehicles shall:

- (A) Communicate with dispatch the impending motor vehicle stop, identifying the plate number and location of the stop;
- (B) Activate emergency lights and siren;
- (C) Request assistance from a marked cruiser if the motorist does not comply;
- (D) Advise dispatch of the situation.

5.0 HIGH RISK FELONY STOPS**5.1 Members making high risk or felony stops shall conduct the stop in accordance with established training guidelines and shall:**

- (A) Contact dispatch and provide the location, direction of travel, description of the vehicle and occupant(s), if possible, and the reason for the stop;
- (B) Request radio priority for emergency radio traffic only;
- (C) Position the cruiser in a manner that provides protection and cover;
- (D) Make an effort to conduct the stop with back up support;
- (E) The member conducting the stop should give all verbal commands to the occupants of the vehicle unless circumstances do not permit this;
- (F) Assisting members should not give additional commands unless necessary for safety;

(G) Assisting members should remain in a position to cover the arresting member and follow training procedures.

6.0 APPROACHING A VEHICLE

6.1 When approaching a vehicle members should:

- (A) Ensure that his/her portable radio is in the "ON" position;
- (B) Approach quickly and safely; and
- (C) Remain alert for any sudden or suspicious movement within the vehicle.

7.0 OBSERVATION

7.1 The member shall remain vigilant and alert throughout the traffic stop and note any indication or evidence of possible criminal conduct within the stopped vehicle.

- (A) While conversing with the occupant(s), the member should note any discrepancies or evasive answers to normal and routine type questions. The member should observe the mannerisms of the vehicle's occupant(s) and be alert to excessive and/or abnormal nervousness, speech, sweating, eye contact, etc.
- (B) The member should visually inspect each stopped vehicle to identify any alterations, modifications or other physical characteristics that indicate that the vehicle may possibly be used for illegal purposes.

8.0 OFFICER SAFETY AND SAFETY PROTOCOL

8.1 The operator and occupants of the stopped vehicle should be instructed to remain in the vehicle, except when the member has specific articulable facts or reasonable suspicion such as:

- (A) A criminal violation;
- (B) Specialized enforcement functions;
- (C) When conducting an interview; and/or
- (D) Officer safety or public safety concerns.

8.2 If individuals refuse to remain in the vehicle, they should be directed to a position of safety off the roadway and away from the police vehicle but within view of the member or other law enforcement officer.

9.0 AUTOMOBILE SEARCHES

9.1 In all search and seizure matters, constitutional standards shall be followed.

9.2 The member shall conduct the search in a professional manner while protecting him/herself and ensuring the safety of all occupants of the vehicle. Reasonable requests made by the occupants should be accommodated whenever possible.

9.3 A motor vehicle may be searched upon issuance of a search warrant supported by probable cause.

9.4 Depending on the circumstances, there are three lawful ways in which a motor vehicle may be searched without a warrant during a traffic stop.

- (A) Warrantless automobile searches may be based on:
 - (1) exigent circumstances.
 - (2) consent - based on probable cause.
 - (3) consent - based on reasonable suspicion.

9.5 Whenever a member views contraband, wanted persons, stolen property, or evidence of a crime in plain view inside a motor vehicle, such evidence can be lawfully seized without a warrant.

10.0 EXIGENT CIRCUMSTANCES

10.1 If a member forms a reasonable belief that officer safety, safety of another or destruction of evidence is likely and imminent, he/she may conduct such a search and/or seizure as is reasonably necessary.

10.2 A search conducted under exigent circumstances shall be limited to that which is necessary to protect the officer or another and/or to prevent the destruction of evidence.

11.0 CONSENT SEARCHES BASED ON PROBABLE CAUSE

11.1 If a member has probable cause to believe that a crime has been or is about to be committed and that evidence of that crime or contraband will be found in the vehicle, the member shall:

- (A) Ask the operator for consent to search the vehicle. If the operator consents it is advisable, but not required that the consent be reduced to writing on DPS form 245B.
- (B) If the operator declines, the member shall again request consent, explaining to the operator that he/she has probable cause to believe that evidence of a crime or contraband will be found in the vehicle and that if consent is not obtained that he/she will "apply to a judge for a search warrant".
- (C) The member will explain this process in a non-confrontational manner and stress that the choice between consent and the member applying for a search warrant is the person's decision.
- (D) If consent is obtained under this scenario, the consent should be reduced to writing on [DPS Form 245B](#), on the side which indicates (When probable cause exists and you intend to apply for a warrant), or recorded by some other method.
- (E) If the person refuses to sign a consent form, the officer should consider applying for a search warrant in order to avoid potential court challenges on the issue of voluntariness.
- (F) If consent is denied the member should apply to a judge for a search warrant.

11.2 In certain situations, it will not be possible for a voluntary consent to be obtained (example, the person is combative, forcibly restrained, or is incoherent). If the member believes, based on the circumstances, that the person cannot voluntarily consent, the member may apply for a warrant without first attempting to obtain consent.

11.3 A person subject to a consent search may withdraw consent at any time. In a situation where probable cause exists and a consent search has commenced but the person has subsequently withdrawn the consent, the officer shall halt the search and apply for a warrant.

12.0 CONSENT SEARCHES BASED ON REASONABLE SUSPICION

12.1 A member may ask for consent to search a vehicle based upon the totality of observations during the stop. The member's observations, coupled with circumstances surrounding the stop must give rise to a reasonable suspicion that criminal activity is or has occurred.

12.2 Members must be able to articulate those facts upon which a request for a consent search was made. Examples of such facts include the occupant being evasive or untruthful in response to routine conversation; inconsistencies in facts offered by the occupant or his/her explanation of events; observing items in the vehicle that you know have been used in area burglaries such as a screwdriver, pillowcases, etc., the discovery of hidden compartments or other physical characteristics not common to the vehicle stopped.

12.3 The facts relied upon when asking for a consent search need not rise to the level of probable cause, but should be sufficient enough to alert a trained member to the fact that criminal activity may be present.

12.4 Consent searches are judgmental in nature. As a result, each member should assemble as many articulable facts as possible to justify his/her request to conduct a search.

12.5 Consent searches are reviewed with "the most careful scrutiny" by courts. In view of this, members will be mindful of the following identified areas of concern:

- (A) Show of force is a factor which weighs heavily in the issue of voluntariness. Show of force includes but is not limited to the number of members present, the tone and manner in which they conduct themselves, display of weapons and use of restraints. Any show of force may result in the consent being interpreted as coerced, therefore invalid.
- (B) Voluntariness is a critical aspect of valid consent. Trickery, deception or threats will render a consent search involuntary and therefore illegal.
- (C) A person subject to a consent search may withdraw consent at any time. If consent is withdrawn, the officer shall immediately terminate the search.

13.0 OFFICER SAFETY DURING MOTOR VEHICLE SEARCHES

13.1 The member shall promptly request a backup officer to respond to the scene for the search.

13.2 Every effort shall be made to provide the member with backup for the execution of a vehicle search. In the event that there is no backup officer available, the member shall request approval from a supervisor to conduct the search. Only a member with the rank of sergeant or above may approve a motor vehicle search without backup present.

13.3 The location, complete vehicle description, registration information, and occupant descriptions shall be radioed to and acknowledged by the dispatcher prior to the beginning of the search.

14.0 DOCUMENTATION OF SEARCHES

14.1 The use of a consent search form is not a constitutional requirement, but it will aid the member later in court when establishing that a voluntary consent was obtained.

14.2 Consent form [DPS Form #245B](#) is strongly recommended.

14.3 If consent to search is obtained, the member shall advise the dispatcher to add a call (start a law incident). Offense Code 0099 shall be used to document all consent searches. This will be a secondary code if the stop itself resulted in a law incident entry and the primary code if no other offense is generated.

14.4 All additional crimes that are discovered will be recorded in this case with the appropriate offense and circumstance codes being entered by the member when he/ she completes the report.

14.5 The member conducting the search shall complete the VIBRS report in CAD at his/her earliest convenience. The narrative section shall contain a brief description of the motor vehicle stop and the reasons why the request for consent was made. The results of the search shall also be briefly noted as well as any enforcement actions taken by the member.

Effective August 1, 1990
Revised March 1, 1997
Revised December 1, 1997
Revised January 1, 2001
Revised August 1, 2004
Revised October 15, 2007
Revised May 1, 2011

Revised November 10, 2014

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

EXHIBIT 7

Police Cruiser Video (Physical Exhibit Filed with the Court)

The file, with the Bates Number AGO - 000288 was produced in its native video format on June 10, 2022 as a supplemental production for Defendant Jay Rikken's Responses to Plaintiff's First Set of Requests to Produce.

EXHIBIT 8

Barracks Video (Physical Exhibit Filed with the Court)

To view the video, open the .exe file (on a computer running Windows operating system) then drag the .ps file into the open .exe file. While the recording starts at 12:21:59, audio begins at the 12:45:00 mark and Mr. Bombard is processed beginning at 12:52:00.

The files, with the Bates Numbers AGO - 000174 and AGO - 000175, were produced in their native video formats on February 28, 2022 with Defendant Jay Rikken's Responses to Plaintiff's First Set of Requests to Produce.

EXHIBIT 9

From: Riggen, Jay
Sent: Friday, February 9, 2018 3:08 PM
To: VSPMedia@Listserv.dps.state.vt.us
Subject: ST. ALBANS BARRACKS / Disorderly Conduct
Attachments: Bombard Mug Shot.JPG

STATE OF VERMONT

DEPARTMENT OF PUBLIC SAFETY

VERMONT STATE POLICE

PRESS RELEASE

CASE# 18A200787

RANK/TROOPER FULL NAME: Trooper Jay Riggen

STATION: St. Albans Barracks

CONTACT# (802) 524 5993

DATE / TIME: February 9, 2018, 1220 hours

INCIDENT LOCATION: North Main Street, St. Albans, VT

VIOLATION: Disorderly Conduct

ACCUSED: Gregory Bombard

AGE: 51

CITY, STATE OF RESIDENCE: St. Albans

SUMMARY OF INCIDENT:

On February 9, 2018 at approximately 12:20pm the Vermont State Police arrested 51 year-old Gregory Bombard of St. Albans, VT for Disorderly Conduct. While Troopers concluded a vehicle stop of which Bombard was the operator, Bombard became disorderly as he yelled profanities and made an exaggerated and continuous obscene hand gesture as he drove south on Main Street. These vulgarities were in the presence of a school bus and many members of the public during high traffic volume.

Bombard was ultimately taken into custody by Troopers for his tumultuous public behavior. He was transported to the St. Albans Barracks for processing. At the conclusion of the processing, Bombard was released with a citation to appear in Franklin County District Court on 03/05/2018 at 1:00pm to answer the charge of Disorderly Conduct.

COURT ACTION: Yes

COURT: Franklin County District Court

BAIL: None

MUG SHOT: Yes.



EXHIBIT 10

DEFENDANT: Gregory W Bombar,
DOB: 10/26/1966 AGE: 51
ADDRESS:
7 Ashton Dr
St. Albans, VT 05403

ARRAIGNMENT DATE: March 5, 2018
SA CASE ID.: 18-3495
ASSIGNED (D)SA: James Hughes Esq. ERN:
POLICE DEPT.: VSP-St. Albans
INVESTIGATING OFFICER: Jay Rikken
VICTIM ADVOCATE:
INCIDENT NO.: 18A200787

ENTERED

STATE OF VERMONT

FEB 28 2018

SUPERIOR COURT
FRANKLIN UNIT

Vermont Superior Court
Franklin Unit

STATE OF VERMONT

CRIMINAL DIVISION

v.

DOCKET NO. 241-2-18FRCR

GREGORY W BOMBARD

INFORMATION BY STATE'S ATTORNEY

By the authority of the State of Vermont, the State's Attorney for Franklin County, upon the oath of office charges:

COUNT 1 OF 1

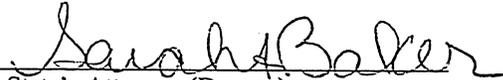
CHARGE CODE: 13V1026A1 | CODE ID: 158 | OFFENSE CLASS: M
CHARGE NAME: DISORDERLY CONDUCT- FIGHT ETC

Gregory W Bombard, in the County of Franklin, at St. Albans on or about February 9, 2018, with intent to cause annoyance, engaged in tumultuous behavior, in violation of 13 V.S.A. § 1026(a)(1).

Penalty: Imprisoned not more than 60 days or fined not more than \$500.00 or both.

Against the peace and dignity of the State.

DATED: February 26, 2018


State's Attorney (Deputy)

Referral(s) if applicable: -

Diversion Tamarack No Referral - Reason:

This information has been presented to me and I have found probable cause.

DATED:




Superior Court Judge



AGO - 000003

EXHIBIT 11

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CRIMINAL DIVISION
Docket Nos: 241-2-18 Frer

State of Vermont

ENTERED

v.

AUG 31 2018

Gregory Bombard

Vermont Superior Court
Franklin Unit

DECISION ON DEFENDANT’S SUPPRESS AND DISMISS

Following an encounter with law enforcement on February 9, 2018, Defendant Gregory W. Bombard was charged with one count of disorderly conduct, a violation of 13 V.S.A. § 1026(a)(1). *Information*. Specifically, the charge states that, “with intent to cause annoyance,” Defendant “engaged in tumultuous behavior...” *Id.*

On August 2, 2018, through counsel, Attorney Nicholas Hadden, Defendant moved to suppress and to dismiss the case against him. *Motion to Dismiss (Rule 12(d)) Motion to Suppress (Rule 41(f))*.¹ The State, through Franklin County State’s Attorney James Hughes, responded in opposition on August 10. *Response to Defendant’s Motion*. No evidentiary hearing has been held on this motion; rather, the parties stipulated to its resolution on the basis of the affidavit of Trooper Jay Riggen and footage from his cruiser camera.

BACKGROUND

Shortly after noon on February 9, 2018, Trooper Riggen of the Vermont State Police (“VSP”) was driving his fully-marked cruiser north on North Main Street in St. Albans. At the same time, Defendant was driving his car south on North Main Street. As the vehicles neared one another, Trooper Riggen observed Defendant to “look[] at me, lift[] his fist, and then extend[] and display[] his left middle finger over his steering wheel.” *Affidavit*.

Trooper Riggen was aware of the negative message generally conveyed by this hand gesture. Calling on his twelve years of experience in the VSP, Trooper Riggen “could not immediately recall” another occasion on which a member of the public had given him the middle finger. Trooper Riggen explained that, based on the “supremely unusual” nature of Defendant’s behavior in the context of his experiences as a law enforcement officer, he became “concerned” that Defendant was seeking his attention to address an outstanding need, such as a mental health

¹ Defendant purports to move for suppression pursuant to V.R.Cr.P. 41(f). Rule 41(f) allows for a motion to return unlawfully seized property. It is Rule 41(g) which provides for a motion to suppress. As there is no allegation that Defendant’s property was seized at any point during this encounter, the Court presumes that the reference to subsection (f) was a clerical error.

crisis. Accordingly, Trooper Riggen determined that he would execute a brief motor vehicle stop to ascertain the well-being of Defendant and any passengers which might be in the car.

Trooper Riggen turned around, caught up with Defendant as he sat in traffic at the intersection of North Main Street and Lower Newton Road, and executed a traffic stop. Defendant pulled over to the side of the road in an appropriate manner. The trooper then exited his cruiser and approached Defendant's driver's-side window.

Trooper Riggen began the interaction by asking Defendant "You need something?" twice. Defendant's responses are not entirely audible on the video. Trooper Riggen then said, "It looked like you, ah, flicked me off as you were going by there." In his affidavit, Trooper Riggen explains that he spoke with Defendant regarding his observations and Defendant denied making the gesture, "claim[ing] that he had been wiggling and stretching his fingers over his steering wheel and had not signaled to [Trooper Riggen] with his middle finger alone." *Affidavit.* Defendant then said Trooper Riggen must be "sensitive."

Trooper Riggen denied being "overly sensitive," explaining that he did not like that insinuation as this was the first time in twelve years he had stopped someone for making that gesture. He explained that the "unusual behavior" was the impetus for the stop, and that someone who was seeking the attention of a trooper would probably find it by making that type of negative signal. Following a somewhat circular exchange between the two men, the interaction concluded, with Trooper Riggen verbally conceding that Defendant may not have flipped him off. Trooper Riggen walked away.

In his affidavit, Trooper Riggen described subsequent events as follows:

As I arrived back at my cruiser I heard the operator yell "asshole!" I turned around and I could see him looking at me in his sideview mirror. His window was still lowered all the way down and I could clearly see his face as he stated loudly "Fuck you!" two times. I could clearly see his face as he loudly exclaimed the obscenities. I was aware at that moment that a school bus had slowed down and stopped behind traffic at the Lower Newton Road / North Main Street intersection. I was also aware that there were multiple vehicles that were traveling both north and south on Main Street passed [*sic*] the operator and I who were in plain view of his tumultuous declarations. I observed that several vehicles had stopped behind this traffic and were watching my cruiser and the operator's car. While I could see the operator from behind and in his side view mirror, I observed that there were members of the public who were directly across from him and in close proximity who were certainly at risk of observing his tumultuous profanity and behavior much more directly than I was. These members of the public included any students who may have been sitting at the rear of the aforementioned school bus. As I continued to watch the operator, he attempted to merge into southbound traffic but was so fixated on me that he did not appear to notice an oncoming southbound vehicle. Therefore, he

needed to stop short so he didn't cause a crash. I watched as the operator extended his hand *outside* of his window and, again, extended his middle finger as he entered successfully into southbound traffic and began driving south. The operator extended his middle finger outside of his window for no less than five seconds and as he drove for no less than 15 yards. The operator displayed this signal in the presence of a northbound car, a southbound truck (that he needed to stop short to avoid striking) a northbound truck, and a northbound car. Based on the yelling vulgarities through an open window (tumultuous, obscene, and vulgar) in close proximity traffic [*sic*] and in the presence of a school bus and multiple other vehicles in moderate-volume traffic (public place) in combination with the exaggerated and continuous display of his middle finger through his open window (obscene and vulgar), while being so fixated on his behavior toward me that he didn't recognizing approaching southbound traffic for which he needed to stop short to avoid a side-swipe crash, I recognized this as the criminal offense of Disorderly Conduct pursuant to Title 13 VSA 1026(a)(1)(3).

Affidavit.

In his Motion, Defendant "acknowledges that the officer's overall conduct was upsetting, prompting him to say something to the effect [*sic*]: 'if you really want the finger, here's the finger asshole.'" *Defendant's Motion.*

DISCUSSION

I. Motion to Dismiss

On a motion to dismiss under Rule 12(d), the Court views the evidence in the light most favorable to the State, excluding modifying evidence, to determine whether the State has "produced evidence fairly and reasonably tending to show the defendant guilty beyond a reasonable doubt." *State v. Dixon*, 169 Vt. 15, 17 (1999). Ultimately, the State bears the burden of demonstrating that it has "substantial, admissible evidence as to the elements of the offense challenged by the defendant's motion." *Id.* (quoting *State v. Fanger*, 164 Vt. 48, 51 (1995)).

Defendant was charged with a violation of 13 V.S.A. § 1026(a)(1), which provides that "[a] person is guilty of disorderly conduct if he or she, with intent to cause public inconvenience or annoyance, or recklessly creates a risk thereof ... engages in fighting or in violent, tumultuous, or threatening behavior" See also *State v. Pickett*, 137 Vt. 336, 339 (1979) (holding, with respect to disorderly conduct statute, that "[t]o support a finding of guilt, it is sufficient that the defendant have committed the act prohibited by the statute with the intent to cause public inconvenience or annoyance."). Specifically, the State alleges that Defendant engaged in tumultuous behavior with intent to cause annoyance. *Information*; see also *State v. Amsden*, 2013 VT 51, ¶ 15, 194 Vt. 128 (noting that "State bound when language in charging document and accompanying affidavits narrows and specifies conduct alleged.").

“Although [the Court] ha[s] not extensively addressed the meaning of ‘tumultuous’ behavior under the statute, we have indicated that it may include a ‘violent outburst’ or behavior that agitates a crowd.” *State v. Lebert*, no. 2015-120, slip op. at 2, 2015 WL 9275488 (Vt. Dec. 1, 2015) (mem.) (citing *In re Lund*, 144 Vt. 171, 179 (1984) (holding that attempting to bite and struggling with sheriff, yelling, and persistently using profanity constitutes “tumultuous” behavior), overruled on separate grounds by *State v. Begins*, 148 Vt. 186 (1987)). “Other conduct within the meaning of the term may include behavior marked by ‘commotion [or] agitation,’” as well as “behavior that is itself ‘agitated’ or turbulent in nature.” *Id.* at 2–3 (citing *State v. Amsden*, 2013 VT 51, ¶ 16, 194 Vt. 128).

“The United States Supreme Court has long recognized that persons may not be arrested for uttering constitutionally protected speech.” *Long v. L’Esperance*, 166 Vt. 566, 572 (1997). “The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *City of Houston v. Hill*, 482 U.S. 451, 462–63. Thus, a person doing so “could be arrested for expressing his views only if his manner of doing so removed his speech from the realm of constitutional protection.” *Long*, 166 Vt. at 572

Taking the facts in the light most favorable to the State, after the initial seizure had concluded, Defendant yelled “asshole!” in reference to Trooper Rikken and twice stated, “fuck you!” In his fixation on doing so while simultaneously attempting to merge into traffic, he narrowly avoided colliding with another vehicle. He also extended his middle finger out of his window for no less than five seconds, over a distance of 15 yards. All of this took place in public. However, Defendant contends that his conduct constituted protected speech under the First Amendment.

Defendant argues, and the Court agrees, that exhibiting the middle finger constitutes protected First Amendment speech. *Defendant’s Motion*. Therefore, he contends that, after *State v. Schenk*, 2018 VT 45, 2018 WL 2075484, and *State v. Tracy*, 2015 VT 11, 200 Vt. 216, the State cannot make out a prima facie case under “the disorderly conduct statute, which criminalizes conduct which is not speech.” *Schenk*, 2018 VT 45, ¶ 33 (internal citation omitted) (holding, in case involving distribution of KKK flyers, that “a method of delivery that is incidental to the speech alleged ... cannot meet the requirement for physical conduct.”). Of course, as Defendant recognizes, *Schenk* and *Tracy* did not involve the “tumultuous behavior” section of the disorderly conduct statute, but he argues that the same analysis must lie thereunder.

However, the Court need not decide that issue, because, viewing the facts in the light most favorable to the State, a factfinder could conclude that the physical act of driving with disregard for traffic and almost colliding with another car during an agitated display was tumultuous, and that Defendant had the intent to cause annoyance to the surrounding members of the public.

II. Motion to Suppress

Defendant also argues that Trooper Riggen did not have a lawful basis for the initial traffic stop, suggesting that Defendant's later conduct must be suppressed on this basis. *Defendant's Motion*. However, regardless of whether the initial seizure was justified based on reasonable suspicion of criminal activity, the emergency assistance doctrine, or the community caretaking doctrine, the fact remains that it was Defendant's voluntary actions after the seizure had ended that led to his arrest on a charge of disorderly conduct. *Affidavit*. Thus, as set forth below, even if the initial seizure was—as appears likely²—without a lawful basis, the remedy for the initial unlawful stop does not include suppression of the conduct that led to Defendant's arrest.

In *State v. Phillips*, the Vermont Supreme Court considered a case in which police may have converted an investigatory car stop into a de facto arrest without first developing the requisite probable cause.³ 140 Vt. 210, 216–17 (1981). However, following this initial detention, officers received additional information which rose to the level of probable cause to justify a search of the vehicle. *Id.* at 217. The Court noted that, “[w]ith probable cause existing at the time the search was actually made, we must determine whether such probable cause, arising from an independent source after a period of arguably illegal detention, can justify the subsequent search.” *Id.* at 218.

To answer this question, the Court looked to *Wong Sun v. United States*, 371 U.S. 471, 488 (1963), in which the Federal Supreme Court “recognized the now fundamental principle that the connection between an illegal arrest and the discovery of challenged evidence may become sufficiently ‘attenuated’ to make the evidence admissible when it results from investigation which can be considered as independent of the illegality.” *Id.* Under *Wong Sun*, the critical

² In *Swartz v. Insogna*, the Second Circuit was called to consider a seizure which occurred after an officer observed the passenger of a vehicle to gesture at him with his middle finger. 704 F.3d 105 (2d Cir. 2013). In that case, as here, the police officer stated, “somewhat inconsistently,” that he initiated the stop because he believed the passenger was attempting to get his attention for some reason, and because he was concerned for the wellbeing of others in the car. *Id.* at 110. The Second Circuit stated,

Perhaps there is a police officer somewhere who would interpret an automobile passenger's giving him the finger as a signal of distress, creating a suspicion that something occurring in the automobile warranted investigation. And perhaps that interpretation is what prompted [the officer] to act, as he claims. But the nearly universal recognition that this gesture is an insult deprives such an interpretation of reasonableness. This ancient gesture of insult is not the basis for a reasonable suspicion of a traffic violation or impending criminal activity. Surely no passenger planning some wrongful conduct toward another occupant of an automobile would call attention to himself by giving the finger to a police officer. And if there might be an automobile passenger somewhere who will give the finger to a police officer as an ill-advised signal for help, it is far more consistent with all citizens' protection against improper police apprehension to leave that highly unlikely signal without a response than to lend judicial approval to the stopping of every vehicle from which a passenger makes that gesture.

Id.

³ Because, as discussed *supra*, the officers later developed information sufficient to provide probable cause from an independent source, the Court declined to hold that the officers unlawfully converted the investigatory stop into a de facto arrest. *State v. Phillips*, 140 Vt. 210, 216 (1981) (“Arguably, the police actions in this case extend beyond the proper scope of an investigatory stop. We need not, and do not, determine this point because of our holding...”).

inquiry is “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Id.* (quoting *Wong Sun*, 371 U.S. at 488). An “intervening independent act of a free will” operates to “purge the primary taint of the unlawful invasion.” *Wong Sun*, 371 U.S. at 486.

Applying this test, the Court held that the evidence which provided probable cause for the search “arose independently, simply from the additional information...relayed to the scene,” noting that “[t]he only nexus between the first detention and the later search was defendant’s detention at the scene.” *Id.* To hold otherwise, they observed, “would be tantamount to adopting the ‘but for’ rule rejected by the Supreme Court in *Wong Sun*.” *Id.*; see also *Wong Sun*, 371 U.S. at 487–88 (“We need not hold that all evidence is ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police.”).

In so holding, the Court distinguished *Phillips* from that class of cases in which “probable cause for a second arrest ... is discovered from the defendant himself (as t[h]rough words or conduct directly resulting from illegal arrest).” *Id.* at 218–19. Indeed, this case is dissimilar to *Phillips* in that the conduct leading to Defendant’s arrest for disorderly conduct was “discovered from the defendant himself.” See *id.* However, a number of federal circuit courts “have held that if a defendant’s response to an illegal stop ‘is itself a new, distinct crime, then the police constitutionally may arrest the defendant for that crime.’” *United States v. Bellamy*, 592 F.Supp.2d 308, 321–22 (E.D.N.Y. 2009) (quoting *United States v. Bailey*, 691 F.2d 1009, 1017–18 (11th Cir. 1982) (concluding “that the police may legally arrest a defendant for a new, distinct crime, even if the new crime is in response to police misconduct and causally connected thereto.”)) (collecting cases); see also, e.g., *United States v. Sprinkle*, 106 F.3d 613, 619 (4th Cir. 1997); *United States v. Dawdy*, 46 F.3d 1427, 1430–31 (8th Cir. 1995); *United States v. Waupekenay*, 973 F.2d 1533, 1537 (10th Cir. 1992). The reason for this rule is that “[a]llowing a defendant who responds to an unconstitutional stop with an illegal act to benefit from the exclusionary rule would immunize that defendant from prosecution for all crimes he might commit that have a sufficient causal connection to the police misconduct.” *Id.* at 322; see also *United States v. Remington*, 208 F.2d 567, 570 (2d Cir. 1954) (recognizing that it would be “an unwarranted extension of the [fruit of the poisonous tree] doctrine to apply it ... to a new wrong committed by defendant.”). This principle was recognized by the Vermont Supreme Court in *State v. McDermott*, in which the Court noted, in dicta, that even if an officer’s temporary seizure of the defendants had been unlawful, defendants’ subsequent arrests for disorderly conduct were not the “fruits” of that stop under the exclusionary rule, because “it was the actions of the defendants during the inquiry which provided an independent basis for arrest.” *State v. McDermott*, 135 Vt. 47, 50 (1977).

Clearly, “but for” the traffic stop initiated by Trooper Rigger, the interaction between Defendant and the trooper on that day would have been limited to passing each other in separate vehicles, and Defendant would not have engaged in the conduct which gave rise to his arrest for

disorderly conduct. However, that is not the relevant inquiry. See *Bellamy*, 592 F.Supp.2d at 321 (“The poisonous tree doctrine does not extend as far as a ‘but for’ causation test might take it.”). Rather, the relevant question is whether Defendant’s actions were an “intervening independent act of a free will” sufficient to “purge the primary taint of the unlawful invasion.” *Wong Sun*, 371 U.S. at 486. Here, that is the case. After Trooper Riggen ended the seizure and walked away from Defendant, Defendant, of his own free will, decided to drive erratically while raising his middle finger again to Trooper Riggen and yelling at him. Assuming that the initial seizure was unlawful, Defendant’s actions purged the taint of that unlawfulness. Accordingly, there is no basis for suppression here.

ORDER

For the reasons set forth above, that Defendant’s Motion to Suppress and Dismiss is DENIED.

Dated at St. Albans, Vermont, this 31st day of August, 2018



Martin A. Maley
Superior Court Judge

EXHIBIT 12

DEFENDANT: Gregory W Bombard
DOB: 10/26/1966 AGE: 52
ADDRESS:
7 Ashton Dr
St. Albans, VT 05403

ARRAIGNMENT DATE: March 5, 2018
SA CASE ID.: 18-3495
ASSIGNED (D)SA: James Hughes Esq. ERN:
POLICE DEPT.: VSP-St. Albans
INVESTIGATING OFFICER: Jay Rigger
VICTIM ADVOCATE:
INCIDENT NO.: 18A200787

STATE OF VERMONT

ENTERED
NOV 21 2018
Vermont Superior Court
Franklin Unit

SUPERIOR COURT
FRANKLIN UNIT

STATE OF VERMONT

v.

GREGORY W BOMBARD

CRIMINAL DIVISION

DOCKET NO. 241-2-18FRCR

INFORMATION BY STATE'S ATTORNEY

By the authority of the State of Vermont, the State's Attorney for Franklin County, upon the oath of office charges:

COUNT 1 OF 2

CHARGE CODE: 13V1026A1 | CODE ID: 158 | OFFENSE CLASS: M
CHARGE NAME: DISORDERLY CONDUCT- FIGHT ETC

Gregory W Bombard, in the County of Franklin, at St. Albans on or about February 9, 2018, with intent to cause public annoyance, engaged in tumultuous behavior, in violation of 13 V.S.A. § 1026(a)(1).

Penalty: Imprisoned not more than 60 days or fined not more than \$500.00 or both.

COUNT 2 OF 2

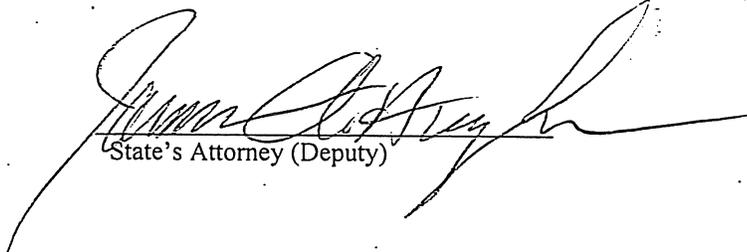
CHARGE CODE: 13V1026A5 | CODE ID: 166 | OFFENSE CLASS: M
CHARGE NAME: DISORDERLY CONDUCT- OBSTRUCTING VEHICLE OR PEDESTRIAN TRAFFIC

Gregory W Bombard, in the County of Franklin, at St. Albans on or about February 9, 2018, recklessly created a risk of public annoyance by obstructing vehicular traffic, in violation of 13 V.S.A. § 1026(a)(5).

Penalty: Imprisoned not more than 60 days or fined not more than \$500.00 or both.

Against the peace and dignity of the State.

DATED: November 21, 2018


State's Attorney (Deputy)

Referral(s) if applicable: -

Diversion Tamarack No Referral – Reason:

EXHIBIT 13

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CRIMINAL DIVISION
Docket No. 241-2-18 Frcr

<p>STATE OF VERMONT v. GREGORY BOMBARD Defendant.</p>	<p>ENTERED DEC 18 2018 Vermont Superior Court Franklin Unit</p>
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RULING ON MOTION TO DISMISS COUNT TWO

On February 28, 2018, the State charged the Defendant with one count of disorderly conduct, with intent to cause annoyance and otherwise engage in tumultuous behavior in violation of 13 V.S.A. § 1026(a)(1). On August 31, 2018, this Court issued a ruling denying the Defendant's Motion to Suppress and Dismiss Count I, familiarity with which is assumed.

In its August 31, 2018 ruling, the Court found, *inter alia*, that "viewing the facts in the light most favorable to the State, a factfinder could conclude that the physical act of driving with disregard for traffic and almost colliding with another car during an agitated display was tumultuous, and that Defendant had the intent to cause annoyance to the surrounding members of the public" in violation of 13 V.S.A. § 1026(a)(1). State v. Bombard, Decision on Defendant's Motion to Suppress and Dismiss, No. 241-2-18 Frcr, slip op. at 4 (Vt. Super. Ct. Aug. 31, 2018) (Maley, J.).

On November 21, 2018, the State filed an amended Information which included a second count of disorderly conduct by recklessly creating a risk of public annoyance by obstructing vehicular traffic in violation of 13 V.S.A. § 1026(a)(5). Arguing that the State cannot show that he disrupted or blocked traffic during the episode on February 9, 2018 which forms the basis of the State's allegations, he has moved to dismiss Count Two pursuant to V.R.Cr.P. 12. See Defendant's Motion to Dismiss Count Two (filed Nov. 26, 2018).

When reviewing a motion to dismiss for lack of prima facie case under Rule 12(d), the Court "look[s] to whether the evidence, taken in the light most favorable to the State, excluding modifying evidence, would fairly and reasonably tend to show defendant committed the offense, beyond a reasonable doubt." State v. Millette, 173 Vt. 596, 596, 795 A.2d 1182 (2002) (mem.)

Under 13 V.S.A. § 1026 (a)(5), “[a] person is guilty of disorderly conduct if he or she, with intent to cause public inconvenience or annoyance, or recklessly creates a risk thereof . . . obstructs vehicular or pedestrian traffic.” To interpret this statute in order to effectuate the intent of the Legislature, the court must “look first to the plain, ordinary meaning of the statutory language.” State v. Millette, 173 Vt. at 597. When construing § 1026(5), the predecessor of § 1026(a)(5), the Vermont Supreme Court noted the obstruction it criminalizes “must be a physical obstruction, a result of the body or objects and not of minds or words.” State v. Arbeitman, 131 Vt. 596, 602, 313 A.2d 17 (1973). One cannot be convicted of obstructing traffic by simply conveying offensive messages or ideas. See State v. Albarelli, 2011 VT 24, ¶ 22, 189 Vt. 293 (insufficient evidence of disorderly conduct where “Defendant’s conduct also lacked any significant physical component . . .”).

Applying this standard, Count Two of the Information fails to state a prima facie case that the Defendant violated 13 V.S.A. § 1026. The Affidavit by Trooper Rigger’s (dated February 21, 2018), submitted in support of the Information (filed February 28, 2018) setting forth Count One does not set forth any allegation that the defendant physically obstructed vehicular or pedestrian traffic. The closest relevant allegation is that the Defendant was “so fixated on his behavior toward [Trooper Rigger] that he didn’t recognize approaching southbound traffic for which he needed to stop short to avoid a side-swipe crash...” Rigger Affidavit at ¶ 11. This objectively falls short of the type of physical obstruction contemplated as violating § 1026 (a)(5).

On December 11, 2018, the State supplied the Court with DVD dash camera footage of the Defendant’s encounter with Trooper Rigger. That footage shows that Trooper Rigger stopped the Defendant twice, arrested him for disorderly conduct and transported him to the police barracks after his arrest. It shows the Defendant’s vehicle parked on the side of the road after each stop. After both stops, it further shows other automobiles driving by it. In short, upon review, the DVD video of the incident does not show any time when the Defendant or his vehicle physically obstructed traffic or pedestrians.

The Defendant’s Motion to Dismiss Count Two for failure to set forth a prima facie case is *granted*.

Dated at St. Albans, Vermont, this 17th day of December, 2018.



Hon. A. Gregory Rainville

Superior Court Judge

EXHIBIT 14

Vermont Superior Court

Franklin Criminal Division

Docket No. 241-2-18 Frcr	State vs. Bombard, Gregory W. 241-2-18 Frcr
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Prosecutor:	James A. Hughes	Defendant:	Gregory W. Bombard
Motions pdg:		DOB:	10/26/1966
Bail set:		POB:	
Incarcerated:	released	Atty:	Nicholas L. Hadden
Case Status:	Conditions:	Aliases:	
Disposed		Address:	7 Ashton Drive
Next Hearing:			St Albans VT 05478

Dspt	Docket No.	Ct. Statute	F/M/O
1	241-2-18 Frcr	1 13 1026(a)(1)	mis 01/18/19 Dismissed by state DISORDERLY CONDUCT-FIGHT ETC
2	241-2-18 Frcr	2 13 1026(a)(5)	mis 12/24/18 Dismissed by court DISORDERLY CONDUCT-OBSTRUCTING VEHICLE OR PEDESTRIAN TRAFFIC

02/28/18 Information and Affidavit filed on 1 dispute.
Dispute 1 for Docket No. 241-2-18 Frcr Count #1, DISORDERLY CONDUCT-FIGHT ETC, Misdemeanor, 13 V.S.A. 1026(a)(1). Alleged offense date: 02/09/18. Arrest/citation date: 02/09/18 VSP-St. Albans. Arraignment set for 03/05/18 at 01:00 PM.

03/02/18 Appearance entered by Nicholas L. Hadden.
Motion Challenging Probable Cause filed by Attorney Nicholas L. Hadden for Defendant Gregory W. Bombard on dispute 1. Motion Challenging Probable Cause given to judge.
Motion Challenging Probable Cause given to Judge Martin A. Maley.

03/05/18 Arraignment held by Martin A. Maley. (CDVIDEO) Baker/Hadden/def present.
Probable Cause found by Judge Martin A. Maley on dispute 1.
Copy of Affidavit and Information given to defendant. 24 hour rule waived.
Reading of Information waived. Defendant pleads not guilty on dispute 1. Pre-trial discovery order issued.
Defendant released on recognizance on dispute 1 per Martin A. Maley.

03/07/18 Jury Drawing set for 05/08/18 at 08:30 AM.
Pre Trial Conference set for 05/07/18 at 08:30 AM.

03/16/18 1 document filed by Attorney Nicholas L. Hadden for party 1: Motion for Discovery.

05/07/18 Pre Trial Conference held by Martin A. Maley. (CDVIDEO) Hughes/Hadden/Dft present DA would like to continue DA to file motion in two weeks.
Jury Drawing scheduled for 05/08/18 cancelled.

05/21/18 Motion to Extend Time to file Motion filed by Attorney Nicholas L. Hadden for Defendant Gregory W. Bombard on dispute 1. Motion to Extend Time to file Motion given to judge.
Motion to Extend Time to file Motion given to Judge Martin A. Maley.

05/24/18 Motion 2 (to Extend Time to file Motion) granted by Mary L. Morrissey.

06/11/18 Motion to Extend Time filed by Attorney Nicholas L. Hadden for Defendant Gregory W. Bombard on dispute 1. Motion to Extend Time given to judge.
Motion to Extend Time given to Judge Martin A. Maley.

06/13/18 Motion 3 (to Extend Time) granted by Martin A. Maley.

06/29/18 Motion Extend Time filed by Attorney Nicholas L. Hadden for Defendant Gregory W. Bombard on dispute 1. Motion Extend Time given to judge.
Motion Extend Time given to Judge Martin A. Maley.

07/05/18 Motion 4 (Extend Time) granted by Martin A. Maley.

08/06/18 Motion to Dismiss and Suppress filed by Attorney Nicholas L. Hadden

- for Defendant Gregory W. Bombard on dispute 1. Motion to Dismiss and Suppress given to judge.
 Motion to Dismiss and Suppress given to Judge Martin A. Maley.
- 08/08/18 A response was filed to Motion to Dismiss and Suppress filed by Attorney James A. Hughes for Plaintiff State. Motion 5: Under Advisement.
- 08/31/18 Motion 5 (to Dismiss and Suppress) denied by Martin A. Maley. See order in file.
 Pre Trial Conference set for 10/08/18 at 08:30 AM.
 Jury Drawing set for 10/09/18 at 08:30 AM.
- 10/08/18 Pre Trial Conference held by A. Gregory Rainville. (CDVIDEO) Hughes/Hadden/Dft present Motion to dismiss filed this am Set motion hearing.
 Jury Drawing scheduled for 10/09/18 cancelled.
- 10/24/18 Motion Hearing set for 11/21/18 at 08:30 AM.
- 11/21/18 Motion to Amend Information; Add Count 2 filed by Attorney James A. Hughes for Plaintiff State on dispute 1. Motion to Amend Information; Add Count 2 given to judge.
 Motion to Amend Information; Add Count 2 given to Judge A. Gregory Rainville.
 Motion 6 (to Amend Information; Add Count 2) granted by A. Gregory Rainville. Parties notified on the record.
 Probable Cause found by Judge A. Gregory Rainville on dispute 2.
 Copy of Affidavit and Information given to defendant. 24 hour rule waived.
 Reading of Information waived. Defendant pleads not guilty on dispute 2. Pre-trial discovery order issued.
 Motion Hearing held by A. Gregory Rainville. (CDVIDEO) Hughes/Hadden/Dft present Motion to dismiss charge 1 & 2 to be filed by Hadden. If not filed within 2 weeks - set ptr.
 Dispute 2 for Docket No. 241-2-18 Frcr Count #2, DISORDERLY CONDUCT-OBSTRUCTING VEHICLE OR PEDESTRIAN TRAFFIC, Misdemeanor, 13 V.S.A. 1026(a)(5). Alleged offense date: 02/09/18. Arrest/citation date: 02/09/18 St. Albans PD.
- 11/26/18 Motion to Dismiss count two filed by Attorney Nicholas L. Hadden for Defendant Gregory W. Bombard on disputes 1-2. Motion to Dismiss count two given to judge.
- 11/27/18 Motion to Dismiss count two given to Judge A. Gregory Rainville.
- 12/10/18 Entry Order: See entry order in file.
- 12/11/18 Note: Recieved Tpr Rigger's cruiser camera footage disc from the states atty this date.
- 12/18/18 Motion 7 (to Dismiss count two) granted by A. Gregory Rainville. See Ruling in file.
 Note: xmailed Ruling on Motion to Dismiss Count two to a parties this date/ht.
- 12/24/18 Dispute 2: Dismissed by court without prejudice. Judgment of No judgment entered by Judge A. Gregory Rainville on dispute 2.
 Pre Trial Conference set for 01/07/19 at 08:30 AM.
 Jury Drawing set for 01/08/19 at 08:30 AM.
- 01/07/19 Pre Trial Conference held by A. Gregory Rainville. (OFFREC) Case to be dismissed in about 10 days.
 Jury Drawing scheduled for 01/08/19 cancelled.
- 01/18/19 Dispute 1: Dismissed by state without prejudice. Judgment of No judgment entered by Judge A. Gregory Rainville on dispute 1.
 Case closed.
 Motion 1 (Challenging Probable Cause) rendered moot.
- 01/24/19 1 document filed by Attorney Nicholas L. Hadden for party 1: Letter regarding donation.