

APPEARANCES

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For the Plaintiff:

LAW OFFICES OF RACHEL M. BAIRD
379 Prospect Street
Torrington, Connecticut 06790-5238
BY: RACHEL M. BAIRD, ESQ.
(860) 626-9991

For Defendants Town of Wallingford, Chief Dortenzio,
Sergeant Colavolpe, Officer Garcia, Officer Flood:

HOWD & LUDORF
65 Wethersfield Avenue
Hartford, Connecticut 06114-1121
BY: KRISTAN MACCINI, ESQ.
(860) 249-1361

Also Present:

Richard Burgess

STIPULATIONS

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IT IS STIPULATED by counsel that formalities as to the proof of the authority of the Notary Public and sufficiency of Notice are waived.

IT IS STIPULATED and agreed between counsel that all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED and agreed that the deposition may be signed before a Notary Public.

1 DEVIN FLOOD,
2 Of Cheshire Police Department, 500 Highland
3 Avenue, Cheshire, Connecticut 06410, having first
4 been duly sworn, was examined and testified as
5 follows?

6

7 DIRECT EXAMINATION

8

9 BY MS. BAIRD:

10 Q Good afternoon, Officer Flood. How are you?

11 A I'm all right. Yourself?

12 Q Good. My name is Attorney Rachel Baird. I
13 represent Richard Burgess, who is to my left, who you may
14 have met a couple of years ago.

15 A Yes.

16 Q Do you recall --

17 A I do.

18 Q -- meeting Mr. Burgess?

19 How many depositions have you done before this
20 one?

21 A Zero.

22 Q If you have any questions, your attorney is right
23 there; you can ask her. If you need to take a break, just
24 let me know. If my questions are not clear to you, let me
25 know.

1 A Okay.

2 Q Certainly if you don't understand something, you
3 can't answer it.

4 A Yes.

5 Q And your attorney may object, but if she objects
6 and you can still answer, then still answer. Okay?

7 A Okay.

8 Q I mean, I'm not going to ask you anything about
9 discussions with your attorney or anything that's
10 privileged, and if it seems like I'm asking that, then
11 certainly I'm sure your attorney will object.

12 A Okay.

13 Q Are you employed by the Wallingford Police
14 Department?

15 A Currently?

16 Q Currently.

17 A No.

18 Q When did you leave the police department?

19 A November of 2010.

20 Q How long did you work for the Wallingford Police
21 Department?

22 A I was hired in August of 2007.

23 Q Was that your first job with a police department?

24 A Yes.

25 Q And you were there it sounds like three years.

1 A Correct.

2 Q Where did you go when you left Wallingford?

3 A The Cheshire Police Department.

4 Q Are you still with Cheshire?

5 A I am.

6 Q What rank were you when you left Wallingford?

7 A Patrolman.

8 Q And what rank are you currently?

9 A Patrolman.

10 Q And what was your reason for leaving Wallingford?

11 A I just didn't like it.

12 Q How do you like Cheshire?

13 A I like it.

14 Q And it looks like you've been in Cheshire for two

15 years?

16 A Yes.

17 Q What year did you graduate high school?

18 A 2002.

19 Q So between 2002 and 2007, did you attend college?

20 A Yes.

21 Q What college did you attend?

22 A Manhattan College.

23 Q Were you in a program of study or seeking a

24 particular degree?

25 A My major was communications.

1 Q And did you graduate?

2 A Yes, I did.

3 Q In what year?

4 A 2006.

5 Q Did you hold any jobs while you were in college
6 between 2002 and 2006?

7 A Yes. I worked for an old folks home across the
8 street -- I can't remember the name -- while I was in
9 college. And I was a landscaper for a short time when I
10 got -- during and when I got out of college.

11 Q Prior to Wallingford in August 2007, any law
12 enforcement-related careers --

13 A No.

14 Q -- or jobs?

15 A No.

16 Q After you graduated from college, what did you do
17 in terms of work for that, what, year, year and three
18 months?

19 A I landscaped for Shorehaven Landscape.

20 Q That's in Connecticut?

21 A Yeah. It's in Guilford.

22 Q After you became a police officer, after you were
23 hired by Wallingford, what training did you receive
24 related to that job?

25 A Attended the police academy from August to

1 roughly December.

2 Q And then did you receive on-the-job training?

3 A Yeah. Field training for I believe 12 weeks,
4 somewhere around there.

5 Q And you passed your probationary period.

6 A Correct.

7 Q Was your first assignment with a particular shift
8 at Wallingford?

9 A I don't remember, to be honest. It was days,
10 evenings, or midnights.

11 Q Did you have the same supervisor during your
12 three years in Wallingford?

13 A No.

14 Q What supervisors did you have?

15 A We would rotate shifts every 28 days, so we had a
16 number of them.

17 Q Was Sergeant Colavolpe one of them?

18 A Yes.

19 Q Before being hired by the Wallingford Police
20 Department, were you familiar with the Town of
21 Wallingford? Had you spent any time there or lived there?

22 A No.

23 Q What made you choose Wallingford?

24 A They were the first ones to offer me the job.

25 Q Did you ever receive any reprimands while you

1 were in Wallingford?

2 A No. The only thing that I recall is a -- I don't
3 know if they call it a written warning or what it was, but
4 it was for alleged abuse of sick time.

5 Q Did you grieve that --

6 A No.

7 Q -- through the union?

8 A I don't believe you can because it's -- if it --
9 it's not technically counted as anything, and if nothing
10 occurs within a year it goes away --

11 Q So it went away?

12 A -- is my understanding. Yeah.

13 Q Have you received any education, postgraduate
14 education after college? Towards a master's degree,
15 anything like that?

16 A No.

17 Q In May of 2010, I believe you testified that you
18 left the Wallingford Police Department. Well, what month
19 did you leave in 2010? December?

20 A November.

21 Q November 2010?

22 A Yeah. I think it was the end of November.

23 Q In May of 2010, had you already started looking
24 for employment in other departments?

25 A I don't remember.

1 Q Was it a long process to find another department?

2 A Little bit. Yeah.

3 Q Directing your attention then to May 16th, 2010,
4 do you recall meeting Mr. Burgess on that date at the Yale
5 Billiards club?

6 A I do.

7 Q Have you ever met Mr. Burgess -- had you ever met
8 Mr. Burgess prior to May 16th, 2010?

9 A No.

10 Q And other than his involvement with this case,
11 have you had any contact with Mr. Burgess?

12 A No.

13 Q But you do recall responding to the Yale
14 Billiards --

15 A Yeah.

16 Q -- hall on May 16, 2010?

17 A Yeah.

18 Q What were you assigned to do on that day?

19 A I --

20 Q Just in general. When you came on duty, what was
21 your assignment?

22 A Oh, we are assigned a certain zone in town and to
23 drive around that area and look for crime. And that's it.

24 Q Were you assigned the zone in which Yale
25 Billiards club was located?

1 A I don't -- I don't know.

2 Q Prior to May 16th, had you responded in your
3 official capacity to Yale Billiards club for any reason?

4 A I don't believe so.

5 Q Do you recall going there for personal reasons or
6 for --

7 A No.

8 Q -- entertainment?

9 A No. Never.

10 Q In the course of your response to the Yale
11 Billiards club on May 16th, 2010, did you run into anybody
12 that you knew at the club?

13 A No.

14 Q Okay. You didn't know the owner, Robert Hilton?

15 A No.

16 Q Did you know Mark Vanaman prior to May 16th?

17 A No.

18 Q I'm going to mark some exhibits that are either
19 reports prepared by you or have your name on them.

20 A Okay.

21 Q Basically just so if you need to refresh your
22 memory by looking at reports you have them in front of
23 you.

24 A Okay.

25 Q It's not a guessing game --

1 A Yeah.

2 Q -- of me asking you questions and you saying --

3 A Yeah; I'm not going to guess.

4 Q Right. It's not a test of your memory, I should

5 say.

6 A Yeah.

7 Q Okay.

8 (Plaintiff Exhibit N - Q marked for I.D.)

9 BY MS. BAIRD:

10 Q This has previously been marked as Defendants'

11 Exhibit 2 at a June 8, 2012 deposition. I'll hand that to

12 you.

13 How did you first become aware that there was a

14 response required at Yale Billiards on May 16th?

15 A From dispatch.

16 Q What was the nature of the dispatch?

17 A That there was a male with a -- openly carrying a

18 firearm. They gave a brief description of him.

19 Q Were you riding alone in your cruiser --

20 A Yes.

21 Q -- you were alone?

22 Were you directed -- you, Officer Flood, were

23 you directed to respond?

24 A I believe I volunteered to go to help.

25 Q Other than a male openly carrying a firearm, did

1 you have any information about where the firearm was
2 located on the male or how the male was carrying it?

3 A I don't remember. I'd have to refer to my
4 report.

5 Q Could you do that and tell me which exhibit it
6 is?

7 MS. MACCINI: Do you have his report marked
8 as an exhibit?

9 MS. BAIRD: N. No?

10 MS. MACCINI: That says "supplemental
11 narrative."

12 THE WITNESS: That's not the first one.

13 BY MS. BAIRD:

14 Q Okay. The question was did you have -- your
15 answer to my question was you don't recall if there was
16 any other information --

17 A I don't --

18 Q -- about how he was carrying it?

19 A I don't remember.

20 Q Okay.

21 MS. BAIRD: I'm just going to go on then.

22 MS. MACCINI: Okay.

23 BY MS. BAIRD:

24 Q When you arrived -- did you eventually arrive at
25 the scene of Yale Billiards?

1 A Yes.

2 Q Were any other officers there at the time?

3 A Yes.

4 Q Who was there already?

5 A I believe Officer Fraenza, and Officer Gonzalez,
6 and Officer Garcia.

7 Q And you knew these officers because you worked
8 with them?

9 A Yes. Correct.

10 Q Did they rotate the same 28 days as you?

11 A No. We stopped doing that a few months after --
12 after I had started to work there. And we had a set -- we
13 were four on. We had a set shift.

14 Q So did that result in the same officers
15 working -- the same patrol officers working with each
16 other? Was there overlaps?

17 A Yes. You would bid for your shift every three to
18 four months, but for the most part everyone kind of stayed
19 where they were.

20 Q What did you observe about what Officer Garcia
21 was doing in terms of his position at Yale Billiards when
22 you arrived?

23 A I remember him to my right side.

24 Q And did you park in the parking lot?

25 A Yes.

1 Q Did you park near the entryway to Yale Billiards?

2 A We were pretty far back from it, I remember.

3 Q And Officer Garcia was parked, as well?

4 A Yes.

5 Q And you said he was to your right side?

6 A Yes.

7 Q And what did you observe about -- and was Officer
8 Garcia in his car?

9 A I don't remember.

10 Q What did you observe about where Officer Gonzalez
11 was when you arrived?

12 A I don't remember.

13 Q And how about Fraenza?

14 A I don't remember.

15 Q Other than you, Garcia, Gonzalez, and Fraenza,
16 were any other police officers on scene?

17 A Not that I remember.

18 Q When you arrived, did you believe that other
19 officers would be responding?

20 A Yes.

21 Q Who did you believe would be responding?

22 A Sergeant Colavolpe.

23 Q And what made you think that Sergeant Colavolpe
24 would be responding?

25 A I believe he was dispatched.

1 Q When you arrived, did you have information about
2 where Mr. Burgess was located?

3 A Yes.

4 Q And what was the information you had when you
5 arrived about where Mr. Burgess was located?

6 A On a bench in front.

7 Q The bench in front of the billiards?

8 A Yes.

9 Q Could you see Mr. -- could you see an individual
10 that you believed was Mr. Burgess when you arrived?

11 A I don't remember because we were so far away.

12 Q Did you have any description of the individual?

13 A Yes. From the initial dispatch.

14 Q And when you arrived, was it a goal of yours to
15 determine where Mr. Burgess was?

16 A Yes.

17 Q For what reason?

18 A For the safety of everyone involved.

19 Q So what did you do to attempt to find out where
20 Mr. Burgess was located?

21 A We were going to wait for the sergeant to come
22 because he's usually in charge of the scene.

23 Q Okay. Did you talk to anybody while you were
24 waiting for the sergeant to come?

25 A Officer Garcia, I remember, and another male. I

1 don't remember his name.

2 Q About how long did it take Sergeant Colavolpe to
3 arrive after you got there?

4 A I don't remember.

5 Q Let me direct your attention to Exhibit P.

6 MS. MACCINI: Are you going to give him the
7 exhibit?

8 MS. BAIRD: I thought I did. Oh. No.

9 BY MS. BAIRD:

10 Q Here you go. Do you recognize this document?

11 A Yes.

12 Q What is it?

13 A The internal investigation.

14 Q And the first two pages -- the first three pages,
15 what was your impression of what you were supposed to do
16 when you received the first three pages of this document?

17 A Review the -- read these and make sure that I
18 understood them.

19 Q Okay. And did you answer them?

20 A I don't remember.

21 Q Look at page four. It's actually attached to it.
22 It's the fourth page in.

23 A Okay.

24 Q Dated 6/21/10. Do you recognize those as your
25 responses to the lieutenant?

1 A Yes.

2 Q And is that your signature that appears on the
3 last page?

4 A Yes, it is.

5 Q In looking at the fourth page of Exhibit P which
6 is actually page No. 1 of your responses to Lieutenant
7 Martino --

8 A Okay.

9 Q You're there. Okay. You indicate in paragraph
10 No. 1 -- and I'll kind of ask you questions based on this
11 to refresh your recall a little bit. Okay?

12 A Okay. Sure.

13 Q Under paragraph No. 1, it appears to me, and
14 correct me if I'm wrong, that you and Officer Fraenza and
15 Officer Gonzalez were dispatched at around the same time
16 to the scene at Yale Billiards. Is that correct?

17 A Yes.

18 Q Okay. And am I understanding from your response
19 that you and Fraenza and Gonzalez were all kind of driving
20 there at the same time?

21 A Yes.

22 Q Okay. And when you arrived there -- did you
23 arrive there at the same time at Yale Billiards?

24 A Yes.

25 Q Okay. And you've parked as you've already

1 described to me?

2 A Yes.

3 Q And on your way, what information did you have
4 about what the individual identified as openly carrying a
5 firearm was doing?

6 A That he was refusing to conceal it. And that he
7 was out front at that time.

8 Q Where did you get the information that you
9 include under paragraph one that the individual was pacing
10 in front of the billiards?

11 A I believe that came from dispatch.

12 Q When you arrived at Yale Billiards, did you look
13 to see if there was anyone pacing in front of Yale
14 Billiards?

15 A Yes.

16 Q Okay. And was there anyone pacing?

17 A No.

18 Q What did you see when you looked at Yale
19 Billiards to determine if anyone was pacing in front of
20 it?

21 A I saw a couple of people out front on a bench,
22 and that was it.

23 Q Okay. And when you say "a couple," do you mean
24 two?

25 A I don't remember the exact number. It was at

1 least two.

2 Q And were at least these two people sitting on a
3 bench? Sitting on the bench?

4 A I don't remember.

5 Q Did you observe anyone else in the area of the
6 bench?

7 A Not that I remember.

8 Q Did you observe anyone entering the pool hall?

9 A No.

10 Q Or exiting the pool hall?

11 A No.

12 Q Did you observe any cars in the parking lot of
13 the pool hall?

14 A Yeah. There was a lot of cars in the parking
15 lot.

16 Q Did you have to set up any traffic control?

17 A No.

18 Q Were there people attempting to leave the parking
19 lot?

20 A Not that I remember.

21 Q In paragraph two you indicate that you believed
22 you were en route to a very serious and potentially deadly
23 call?

24 A Yes.

25 Q Other than the two things noted in that paragraph

1 from the initial dispatch of refusing to conceal his
2 firearm, and pacing back and forth, did you have any other
3 information indicating to you that this was a very serious
4 and potentially deadly call?

5 A No.

6 Q Of the three of you there -- you, Fraenza, and
7 Gonzalez at this point -- who was in charge? Was there
8 anybody in charge?

9 A No.

10 Q Okay. So you didn't direct Fraenza or Gonzalez
11 to do anything?

12 A No.

13 Q And neither one of them directed you to do
14 anything?

15 A No.

16 Q Were all three of you together when Sergeant
17 Colavolpe arrived?

18 A I don't remember. I know that for certain I was
19 in front, as well as Officer Garcia. And I don't remember
20 where Fraenza and Gonzalez were exactly.

21 Q Okay. Directing your attention to paragraph
22 three on page two of your responses to Lieutenant Martino,
23 am I correct that from your statements in paragraph three,
24 am I understanding that statement correctly that you spoke
25 to an individual by the name of Mark Vanaman before

1 Sergeant Colavolpe arrived?

2 A (Reviewing.) Yes.

3 Q And did Officer Garcia speak with Mr. Vanaman
4 first?

5 A Yes.

6 Q What led you to go over and join in the
7 conversation with Officer Garcia and Mr. Vanaman?

8 A Just to have as much information as possible
9 about the situation.

10 Q Who turned out to be the arresting officer in
11 this case?

12 A Technically? I did. I was.

13 Q Right.

14 A Who placed him under arrest?

15 Q Right.

16 A Sergeant Colavolpe.

17 Q Okay. How was the determination made that you
18 would be the arresting officer technically?

19 A Because Officer Garcia had already accepted a job
20 at the Hamden Police Department and would be leaving the
21 department shortly.

22 Q And did Officer Garcia, in fact, leave before you
23 left the Wallingford Police Department?

24 A Yes.

25 Q Where were Officer Garcia and Mr. Vanaman

1 speaking when you approached them?

2 A They were speaking next to Officer Garcia's
3 patrol car.

4 Q Was the patrol car parked within the confines of
5 the parking lot --

6 A Yes.

7 Q -- of Yale Billiards?

8 A Yes.

9 Q Were you there with Mr. Vanaman and Officer
10 Garcia when, as you put it in paragraph three, Mr. Vanaman
11 was explaining to Officer Gabriel Garcia that the male
12 carrying the firearm was sitting on a bench directly in
13 front of Yale Billiards?

14 A What was the question?

15 Q Were you there when Mr. Vanaman was explaining
16 that to Officer Gabriel Garcia?

17 A What do you mean by "there"?

18 MS. MACCINI: Objection to form.

19 BY MS. BAIRD:

20 Q I'm trying to figure out if you heard Mr. Vanaman
21 say that or if Garcia told you Mr. Vanaman said that.

22 MS. MACCINI: Objection to form.

23 Do you understand her question? Or do you
24 want it repeated?

25 A If she could repeat it one more time.

1 BY MS. BAIRD:

2 Q Okay. So in paragraph three, it's -- the
3 sentence I'm going to read is eight lines down, and
4 there's a statement that you made to Lieutenant Martino
5 that Mr. Vanaman was explaining to Officer Gabriel Garcia
6 that the male carrying the firearm was sitting on a bench
7 directly in front of Yale Billiards and that he was
8 refusing to conceal his firearm.

9 Were you present with Mr. Vanaman and Officer
10 Garcia when that statement was made by Mr. Vanaman to
11 Officer Garcia?

12 A Yes.

13 Q And when Mr. Vanaman was explaining to Officer
14 Garcia that the male was sitting on a bench directly in
15 front of Yale Billiards, were you able to look over and
16 see the male that Mr. Vanaman was talking about?

17 A I don't remember because of the -- how far away
18 we were.

19 Q Were you keeping an eye on the male --

20 A We were keeping an eye on the front door and the
21 people in front, sitting there. Making sure that no one
22 came or left.

23 Q What did Sergeant Colavolpe -- well, when
24 Sergeant Colavolpe arrived, were you still standing with
25 Officer Garcia and Mr. Vanaman?

1 A Yes.

2 Q And did the sergeant have direction -- any
3 direction for you in terms of what to do when he arrived?

4 A Yes.

5 Q What did he tell you to do?

6 A He said that Officer Garcia and myself would
7 approach the front of the building to make contact with
8 the suspect.

9 Q And at that point did you say anything to
10 Sergeant Colavolpe about where the suspect was located?

11 A I don't remember.

12 Q Okay. Did you tell Sergeant Colavolpe that the
13 suspect was inside the pool hall?

14 A No.

15 MS. MACCINI: Objection to form.

16 BY MS. BAIRD:

17 Q Did you know that the suspect was outside the
18 pool hall?

19 A Yes.

20 Q Were you there when Sergeant Colavolpe told
21 Officer Gonzalez and Officer Fraenza to go to the rear of
22 Yale Billiards?

23 A Yes.

24 Q Did the sergeant indicate why he wanted the two
25 officers to go to the rear?

1 A Yes. Just to ensure that the suspect didn't exit
2 the rear door.

3 Q Okay. Wait. Could you see the rear door by your
4 vantage point?

5 A No.

6 Q You could see the front door by your vantage
7 point.

8 A Yeah. That's it.

9 Q Did you hear Officer Garcia provide Sergeant
10 Colavolpe any information when Sergeant Colavolpe arrived,
11 about where the suspect was located?

12 A I don't remember.

13 Q Did Sergeant Colavolpe indicate when he arrived
14 and before you started to approach the billiards hall,
15 that he believed the suspect was inside the billiards
16 hall?

17 A No. I believe that we were all in agreement that
18 he was out front.

19 Q When did you -- as you were approaching, when did
20 you first identify Mr. Burgess as the suspect?

21 A What do you mean by "when"?

22 Q Okay. For example, when you were talking to
23 Mr. Vanaman and Officer -- when you were present with
24 Officer Garcia and Mr. Vanaman, my understanding from your
25 testimony is that you hadn't really identified who at the

1 front of the billiards hall was the suspect. Correct?

2 A Yes.

3 Q When Sergeant Colavolpe told you and Garcia that
4 you were going to approach, at that time when you started
5 to approach had you yet identified who the suspect was?

6 A At some point during the walk up we did. I don't
7 recall exactly when. But yes. When we had a better view
8 when we were closer.

9 Q And when you first got that better view and
10 identified who you thought was the suspect, what was the
11 suspect doing?

12 A Sitting on a bench.

13 Q And as you got closer, were you able to determine
14 if there were other individuals in the area of the bench?

15 A Yes, there were.

16 Q And are you relying on Exhibit P to refresh your
17 memory about that?

18 A Yes.

19 Q And what paragraph are you at?

20 A Let's see. Paragraph five, line number -- lines
21 No. 1 and 2.

22 Q What were the people sitting on Mr. Burgess's
23 right and left doing?

24 A Exactly that. Just sitting there.

25 Q Did you say anything to Mr. Burgess on the

1 approach?

2 A No.

3 Q Did you assist the sergeant in removing the
4 firearm from Mr. Burgess's holster?

5 A No.

6 Q Well, what did you observe about the firearm when
7 you approached?

8 A That it was in a holster on his right side,
9 attached to his belt.

10 Q And how would you describe Mr. Burgess's demeanor
11 when you approached?

12 A Cooperative.

13 Q What did Sergeant Colavolpe first ask Mr. Burgess
14 to do?

15 A Just to keep his hands where we could see them.

16 Q And did Mr. Burgess do that?

17 A Yes.

18 Q Was there any discussion on this contact with
19 Mr. Burgess at the bench of whether Mr. Burgess possessed
20 a pistol permit?

21 A Can you repeat that?

22 Q Was there any discussion that either you engaged
23 in or you heard when first approaching Mr. Burgess at the
24 bench about whether he had a state permit or a pistol
25 permit?

1 A No.

2 Q Do you know if there was any check done after you
3 were dispatched or while you were being dispatched to the
4 scene about whether the individual, the suspect had a
5 state permit?

6 A No.

7 Q Did you participate at all in searching
8 Mr. Burgess after he was placed under arrest? Detained?

9 A (Reviewing.) I don't remember. Someone searched
10 him, but I don't remember if it was myself.

11 Q And did you observe Sergeant Colavolpe take the
12 magazines from Mr. Burgess's person?

13 A Yes.

14 Q Were you handed either Mr. Burgess's firearm or
15 his magazines to hold?

16 A I don't remember.

17 Q Was Mr. Burgess placed under arrest in that
18 initial contact at the bench?

19 A Yes.

20 Q What was he placed under arrest for?

21 A To my knowledge, disorderly conduct.

22 Q And why do you say that, that it was disorderly
23 conduct?

24 A That's what I remember the sergeant telling him.

25 Q Did you make any determination about the charge

1 that would be brought against Mr. Burgess at that point at
2 the bench?

3 A No.

4 Q Were you asked for any input about what charge
5 would be lodged against Mr. Burgess at the bench?

6 A No.

7 Q What did you see happen to Mr. Burgess after he
8 was placed under arrest?

9 A He was put in handcuffs behind his back, searched
10 for anything else, and then was placed into a back seat of
11 a police car.

12 Q Were you directed at that point to do anything
13 further to investigate the incident?

14 A I don't remember. I'd have to refer to my
15 report.

16 Q And specifically in paragraph seven you indicate
17 your on-scene investigation, so I was just trying to
18 figure out what that consisted of.

19 MS. MACCINI: Objection to form. He told
20 you he needs to take a look at his report. And
21 this is not his report.

22 BY MS. BAIRD:

23 Q You can't answer the question?

24 A I can't.

25 Q Okay. I'll go through it then.

1 In paragraph seven it indicates that: Robert
2 Hilton explained that when he approached Mr. Burgess,
3 Burgess told them that it was his right to openly carry
4 his firearm and that he was trying to make a point.

5 Is that something that you heard Robert Hilton
6 say?

7 A Again, I'd have to refer to my original report.
8 If it was, then it would be something that I would have
9 written down in my report.

10 Q Okay. We'll take a break and find the report.
11 Fair enough.

12 (A recess was taken at 1:34 p.m.)

13 (The proceedings resumed at 1:42 p.m.)

14 MS. BAIRD: Back on the record.

15 MS. MACCINI: It's your deposition. I
16 don't have a statement to make unless you're
17 going to indicate that you're going to depose
18 him for seven hours because you don't have his
19 police report. Which was never requested.

20 BY MS. BAIRD:

21 Q Well, what I'll do since we don't have the police
22 report is I'll try my best to go through what we have to
23 refresh your memory and we'll work with that. Okay?

24 MS. MACCINI: That sounds good.

25 MS. BAIRD: Okay. We'll get it done.

1 BY MS. BAIRD:

2 Q Directing your attention to Exhibit P, paragraph
3 seven again. Did you talk to Robert Hilton on May 16th,
4 2010?

5 A I don't remember if I talked to him that very
6 day.

7 Q Okay. Directing your attention to page two of
8 Exhibit P where Lieutenant Martino asked you in question
9 No. 7 -- in question No. 7 it indicates on page No. 2,
10 paragraph No. 3 of your arrest report, you state: Hilton
11 then asked Burgess to please conceal his weapon while
12 inside his establishment. Burgess then told him that he
13 was trying to make a point and that it is his right to
14 open-carry his gun.

15 Does that refresh your memory at all of whether
16 you talked to Mr. Hilton on May 16th, 2010?

17 A No, because I can't be for certain that that
18 information was from me or if it was from someone else
19 that talked to him.

20 Q Right. Exactly. So the information that you
21 have in responding to Lieutenant Martino, you don't know
22 if the information came from you or other people; is that
23 correct?

24 A Yes.

25 Q Okay. In going on then with question seven, the

1 second paragraph of Exhibit P, "Burgess told me" -- oh.
2 On page No. 2. It's question No. 7 on the second page of
3 Exhibit P where Lieutenant Martino is asking you a
4 question.

5 A In question seven, you're saying?

6 Q Yes.

7 A Okay.

8 Q On the third line down on page No. 2.

9 A Okay.

10 Q Paragraph No. 4. You state: Burgess told me as
11 well as Hilton that he was trying to make a point.

12 Do you recall talking to Mr. Burgess on
13 May 16th, 2010? At the scene.

14 A Not at the scene.

15 Q Do you know if you talked to Mr. Burgess at the
16 scene?

17 A No, I do not.

18 Q Do you recall using the phrase "trying to make a
19 point" with regard to Mr. Burgess's arrest or with regard
20 to Mr. Burgess?

21 A If I said that?

22 Q Yes.

23 A No.

24 Q Did you indicate at all at the scene that
25 Mr. Burgess was trying to make a point?

1 A No.

2 Q Did you indicate to anyone else either on
3 May 16th or after, that Mr. Burgess was trying to make a
4 point?

5 A No.

6 Q What was the information that you had on
7 May 16th, 2010 that Mr. Burgess had caused inconvenience,
8 annoyance or alarm at Yale Billiards?

9 A There was a complaint.

10 Q Okay. Do you know who that complaint was made
11 by?

12 A No.

13 Q And did you base your belief that Mr. Burgess had
14 caused inconvenience, annoyance, and alarm on the
15 complaint?

16 MS. MACCINI: Objection to form.

17 A Yeah; I don't understand what you're asking.

18 BY MS. BAIRD:

19 Q Well, I asked you what information you had that
20 Mr. Burgess had caused annoyance, inconvenience or alarm,
21 and you said based on a complaint?

22 A Correct.

23 Q So I'm asking you if that's what you based your
24 belief on, on that complaint?

25 MS. MACCINI: Objection to form.

1 A I'm still not clear exactly what you're asking
2 me.

3 BY MS. BAIRD:

4 Q Well, let me ask you this. What was the nature
5 of the complaint?

6 A The nature of the complaint was that there was a
7 man with an exposed firearm inside a pool hall, who was
8 asked to conceal it and he refused to do so. And he was
9 asked to conceal it because he was making people inside
10 nervous.

11 Q So at that time on May 16th, 2010, assuming that
12 the billiards hall did not prohibit firearms, and assuming
13 that someone had a valid permit, was it your belief that
14 there was something unlawful about openly carrying a
15 firearm in a billiards hall?

16 A No.

17 Q So you knew on May 16th, 2010, that openly
18 carrying a firearm, if it wasn't prohibited and someone
19 had a permit, was not prohibited.

20 MS. MACCINI: Objection to form.

21 A Yeah; can you ask that again?

22 BY MS. BAIRD:

23 Q Did you think that Mr. Burgess openly carrying
24 his firearm in Yale Billiards on May 16th, 2010 was
25 unlawful?

1 A The law doesn't state whether or not.

2 Q Okay. Well, do you enforce laws that aren't
3 stated?

4 MS. MACCINI: Objection to form. Let him
5 finish answering your question.

6 BY MS. BAIRD:

7 Q Okay. Go ahead.

8 MS. MACCINI: I don't think he was through.

9 A Yeah; the law doesn't state whether you have to
10 carry your firearm concealed or exposed. In this State of
11 Connecticut.

12 BY MS. BAIRD:

13 Q So is it your impression that carrying it -- that
14 someone could be arrested for carrying it concealed?

15 MS. MACCINI: Objection to form.

16 A If it's an illegal gun? Sure.

17 BY MS. BAIRD:

18 Q Well, let me ask you this. At the billiards hall
19 on May 16th, 2010, if someone was uncomfortable with
20 Mr. Burgess carrying a firearm concealed, if that annoyed
21 or alarmed people, the fact that he was carrying it
22 concealed --

23 A How would someone know?

24 Q They might have seen it, seen him put it -- they
25 might have seen him get out of his car, conceal it, and

1 walk into the billiards hall. That's how they would know.

2 A Okay.

3 Q Okay? If that made somebody uncomfortable, would
4 that have been probable cause for arrest?

5 MS. MACCINI: Objection to form.

6 You can answer.

7 A You would have to fully look into it. You can't
8 base an arrest on a dispatch. You get to the scene and
9 you interview and you see what's going on. If there's
10 probable cause to make an arrest, then you usually make
11 that arrest.

12 BY MS. BAIRD:

13 Q Okay. But it's your testimony on May 16th, 2010
14 as an officer with Wallingford, you knew that the law
15 didn't prohibit either concealed carry or open carry.

16 MS. MACCINI: Objection to form. That is a
17 mischaracterization of what he has testified to.

18 Go ahead and answer to the best of your
19 ability.

20 A Can you just ask it one more time?

21 BY MS. BAIRD:

22 Q Yes. If the law doesn't state open or concealed,
23 then as an officer in Wallingford in May 2010, you knew
24 that the law didn't prohibit open or concealed. Assuming
25 he had a valid permit or -- and assuming the permit --

1 MS. MACCINI: Objection to form. That is
2 not what he said.

3 BY MS. BAIRD:

4 Q Well, what is it -- let me ask you this. If the
5 law didn't prohibit openly carrying -- am I correct, back
6 in 2010?

7 MS. MACCINI: Objection to form.

8 BY MS. BAIRD:

9 Q Can you answer that?

10 A If the law didn't --

11 Q Right.

12 A Say it again because I'm --.

13 Q Was there anything about Mr. Burgess openly
14 carrying his firearm in Yale Billiards, just the mere fact
15 of openly carrying, that was unlawful in 2010?

16 MS. MACCINI: Objection to form.

17 A Ask that one more time, please.

18 BY MS. BAIRD:

19 Q On May 16, 2010, was the mere fact that
20 Mr. Burgess was openly carrying his firearm in the
21 billiards hall unlawful?

22 A No.

23 Q And did you know that at the time?

24 A Yes.

25 Q Had you ever received training as a police

1 officer indicating that there was such a thing as a
2 concealed carry permit?

3 MS. MACCINI: Objection to form.

4 A I don't remember.

5 BY MS. BAIRD:

6 Q Okay. Had you received training as a police
7 officer that in the State of Connecticut a person holding
8 a valid permit had to carry concealed?

9 A Ask that one more time. I'm sorry.

10 Q Had you ever received training as a police
11 officer that a person, validly, with a valid permit, had
12 to carry concealed?

13 A I don't remember.

14 Q Okay. Had you ever heard any fellow police
15 officers say that in Connecticut you have to carry
16 concealed?

17 A No.

18 Q Okay. So sitting here today, you don't recall
19 speaking to Robert Hilton on May 16th, 2010, at the scene?

20 A No.

21 Q Do you recall speaking to him at any other time?

22 A I would have to refer to a report.

23 Q Okay. This is Defendants' Exhibit 2 from
24 6/8/2012. I don't have the original because I think the
25 defendants would have that, it being their exhibit, but

1 maybe we can agree that that's accurate?

2 THE WITNESS: Do you need anything --

3 MS. MACCINI: No. Just that there is no
4 question pending, I don't think.

5 THE WITNESS: Okay.

6 MS. BAIRD: Well, before I proceed, I just
7 want to be in agreement that what's been
8 presented as Defendants' Exhibit 2 is the same
9 as the original.

10 MS. MACCINI: I am sure it is, yes.

11 MS. BAIRD: Okay. Because the defendants
12 would have the original in their possession
13 because it would be their exhibit, and I don't
14 have it so I can't --

15 MS. MACCINI: The Wallingford Police
16 Department would have the original, yes.

17 MS. BAIRD: Well, no, not the original. I
18 mean the original that was submitted into
19 evidence here.

20 MS. MACCINI: Oh. Yes, yes, yes.

21 MS. BAIRD: You guys would have that.

22 MS. MACCINI: Yes, yes, yes.

23 MS. BAIRD: Okay.

24 BY MS. BAIRD:

25 Q And I've re-marked it today. Okay. So Officer

1 Flood, I see your name on this statement taken.

2 A Okay.

3 Q Okay? Do you see it there?

4 A I do.

5 Q What does that mean that your name is on --

6 MS. MACCINI: For the record, are we going
7 to refer to it as Plaintiff's A or Defendants'
8 2?

9 MS. BAIRD: Well, today it's going to be --
10 I'm going to refer to it as Defendants'
11 Exhibit 2.

12 MS. MACCINI: Okay.

13 MS. BAIRD: Because that's the copy I have.

14 MS. MACCINI: Okay.

15 BY MS. BAIRD:

16 Q So what does it mean that your name is on
17 Defendants' Exhibit 2?

18 A That I took the statement.

19 Q Okay. And who is the statement taken from?

20 A Robert Hilton.

21 Q Is it fair to say that you must have spoken to
22 Robert Hilton on May 17th, 2010?

23 A Yes.

24 Q And is it also fair to say that on May 17th,
25 2010, that Mr. Burgess had already been placed under

1 arrest?

2 A Yes.

3 Q Do you recall there ever being a discussion in
4 your presence at the scene on May 16th, of Mr. Burgess
5 being placed under arrest for breach of peace?

6 A I don't remember.

7 Q Okay. And you were -- as you put it, you were
8 technically the arresting officer. Correct?

9 A Yes.

10 Q Okay. And you placed him under arrest for
11 disorderly conduct?

12 A I didn't place him under arrest at all.

13 Q Well, what does that -- when I say "placed under
14 arrest," when you say you didn't place him under arrest,
15 what do you mean? If you were technically the arresting
16 officer, what do you mean you didn't place him under
17 arrest?

18 A I didn't put the handcuffs on him and tell him
19 that he was under arrest.

20 Q Okay. And by technically being the arresting
21 officer, do you mean that you're the one that filled out
22 the report?

23 A Yes. Correct.

24 Q Were you uncomfortable with that?

25 MS. MACCINI: Objection to form.

1 A Was I uncomfortable with what?

2 BY MS. BAIRD:

3 Q Well, the way you say "technically the arresting
4 officer," were you uncomfortable with not being the one
5 that actually put the cuffs on him and decided the charge,
6 but being the one who wrote the report?

7 MS. MACCINI: Objection to form.

8 A No.

9 BY MS. BAIRD:

10 Q Is that usual?

11 A Yeah.

12 Q Okay. And it was done because Officer Garcia was
13 known to be leaving soon?

14 A Yes.

15 Q Where was the statement taken by Robert -- where
16 was the statement that you took of Robert Hilton on
17 May 17th that's written in Defendants' Exhibit 2?

18 A (Reviewing.) I don't remember.

19 Q There's a home address listed on there, but that
20 wouldn't have been where it was taken?

21 A Again, I don't remember.

22 Q And do you know for what reason you interviewed
23 Robert Hilton on May 17th, 2010?

24 A I was instructed to.

25 Q And who told you to?

1 A I believe the chief of police.

2 Q And what did the chief tell you to do?

3 A I'd have to refer to my report.

4 Q Well, the report was written -- when you say

5 the -- your arrest report?

6 A Yes.

7 Q Okay. My understanding is that you wrote the

8 arrest report on the day of the incident; is that correct?

9 A Yes.

10 Q Okay. So when did the chief direct you to go

11 talk to Mr. Hilton?

12 A Sometime after that day.

13 Q Okay. So any information about the chief

14 directing you to talk to Robert Hilton wouldn't be in your

15 arrest report that was written May 16th, 2010. Correct?

16 A No.

17 Q So is there another report besides the arrest

18 report you're referring to that would refresh your memory?

19 A The supplemental report, possibly?

20 Q And I think we may have marked that already.

21 Here it is.

22 A This doesn't have anything. It's talking about

23 the chief instructing me.

24 Q Is there anything in Exhibit P about the chief

25 instructing you to go talk to Mr. Hilton?

- 1 A (Reviewing.) No.
- 2 Q And what was your understanding of what you were
3 supposed to talk to Mr. Hilton about?
- 4 A The incident that occurred the day before.
- 5 Q How did you and the chief communicate when he
6 instructed you to go talk to Officer Flood? And by that I
7 mean what means: E-mail, letter, phone, directly in
8 person?
- 9 A Face-to-face.
- 10 Q Okay. And what time of the day did that
11 face-to-face conversation with the chief occur?
- 12 A I don't remember exactly.
- 13 Q And where did it occur?
- 14 A In his office.
- 15 Q Was anyone else present?
- 16 A I don't remember.
- 17 Q How long did this conversation with the chief
18 last in his office?
- 19 A I don't remember exactly.
- 20 Q Did the chief instruct you to do anything else
21 with regard to Mr. Burgess?
- 22 A No.
- 23 Q Or his arrest?
- 24 A No.
- 25 Q I'm showing you Plaintiff's Exhibit C. Was this

1 statement in Plaintiff's Exhibit C of Mr. Vanaman taken by
2 you?

3 A Yes.

4 Q How did you arrange with Mr. Vanaman to take this
5 statement?

6 A I don't remember.

7 Q Do you remember where the statement was made?

8 A No.

9 Q Do you know if you're the one that typed out the
10 statement?

11 A Yes.

12 Q So it would have occurred at the police station?
13 Maybe?

14 A It's possible, yes.

15 Q Or you could have typed the statement outside the
16 police station as well?

17 A I believe we had access to type in our patrol
18 cars.

19 Q And what was your purpose in taking the statement
20 from Mr. Vanaman on May 17th?

21 A Because I was instructed to do so.

22 Q And who instructed you?

23 A The chief of police.

24 Q And did you receive that instruction at the same
25 meeting that we've already talked about that was

1 face-to-face?

2 A Yes.

3 Q And did the chief indicate to you why he wanted
4 you to take a statement from Mr. Vanaman?

5 A No.

6 Q After you took the statements in Defendants'
7 Exhibit 2 and Plaintiff's C -- and by that I mean the
8 statements by Mr. Hilton and Mr. Vanaman -- what did you
9 do with the statements?

10 A They're printed and signed -- or if they're
11 written, then they're signed and then handed over to our
12 shift commander.

13 Q Okay. That was Lieutenant Martino at the time?

14 A It could have been. Him or Sergeant Colavolpe.

15 Q Did you become aware at some point that
16 Lieutenant Martino was conducting an investigation into a
17 complaint by Mr. Burgess about you?

18 A Yes.

19 Q And how did you become aware of that?

20 A We received a letter from the chief.

21 Q And was the letter directed to you?

22 A Yes.

23 Q Did the letter inform you that you were being
24 investigated?

25 A Yes.

1 Q Based on a complaint by Mr. Burgess?

2 A Yes.

3 Q And when did you receive that letter?

4 A I don't remember.

5 Q When you went to take this statement from
6 Mr. Hilton on May 17th, 2010, were you aware that you were
7 being investigated --

8 A No.

9 Q -- based on a complaint by Mr. Burgess?

10 A No.

11 Q Were you aware on May 17th, 2010 that Mr. Burgess
12 had asked that Mr. Vanaman be arrested for his conduct at
13 the billiards hall?

14 A No.

15 Q Before me just asking that question, had you been
16 made aware at any time that Mr. Burgess had requested
17 Mr. Vanaman be investigated for his conduct at the pool
18 hall?

19 A No.

20 Q In your time at the police department from 2007
21 through May of 2010, had the chief asked you in a
22 face-to-face conversation to go take statements from other
23 individuals?

24 A No.

25 Q Other than Mr. Hilton and Mr. Vanaman, did the

1 chief ask you to take statements from anyone else?

2 A No. He told me to take statements from anyone
3 involved that was willing to give statements.

4 Q Did you take a statement from the woman that was
5 with Mr. Burgess that evening, Anna Filipkowska?

6 A I don't remember.

7 Q Okay. In looking at Exhibit N -- do you have
8 that in front of you?

9 A Okay.

10 Q When was the supplemental narrative prepared?

11 A May 17th.

12 Q And did you decide on your own to prepare the
13 supplemental narrative that's Exhibit N?

14 A I don't remember.

15 Q Well, what was the purpose of a supplemental
16 narrative in general while you were a police officer with
17 Wallingford?

18 A To include further information that may not have
19 been included in the original report.

20 Q Did you go back to the billiards hall after the
21 date of the incident, May 16th?

22 A I don't remember.

23 Q Okay. In looking at Exhibit N, in the second
24 paragraph on the first page that begins with "On 5/17,
25 2010"?

1 A Okay.

2 Q Does that refresh your memory?

3 A Yes, it does.

4 Q And what do you recall about what Mr. Hilton was
5 doing when you returned to the billiards hall on May 17th,
6 2010?

7 A Attempting to download the surveillance from the
8 16th.

9 Q Had you contacted Mr. Hilton to ask him if there
10 was any surveillance that could be obtained of what
11 occurred on May 16th?

12 A I don't remember.

13 Q Do you recall if the chief had asked you in that
14 face-to-face meeting you had with him to determine if
15 there was any surveillance that was available?

16 A I don't remember.

17 Q And what exactly led you to believe that
18 Mr. Hilton was downloading video surveillance from the
19 May 16th incident?

20 A He was in a room on the side that had what
21 appeared to be a small TV that was capturing video from
22 inside the pool hall.

23 Q And what led you to believe that he was looking
24 for surveillance of the incident that occurred on May
25 16th?

1 A I don't remember exactly.

2 Q Was there anyone else with you? Any other
3 officer with you?

4 A I don't remember.

5 Q And what was your purpose in going to the Yale
6 Billiards on May 17th?

7 A To speak with Robert Hilton.

8 Q And did Mr. Hilton provide you with any video
9 surveillance?

10 A I don't remember.

11 Q Do you know if you asked for any video
12 surveillance?

13 A I don't remember.

14 Q Directing your attention to the last paragraph on
15 the first page of Exhibit N. Do you recall seeing
16 Mr. Burgess at the billiards hall on May 17th?

17 A I don't remember seeing him, no.

18 Q So in the last paragraph on page one of Exhibit
19 N, the first sentence, it says: While I was taking the
20 statement from Hilton, Burgess, the man with the gun from
21 5/16/10 arrived on scene.

22 That doesn't refresh your memory?

23 A (Reviewing.) Okay. Yes, it does.

24 Q But other than reading it there, do you remember
25 it independently?

1 A No.

2 MS. MACCINI: Do you need a bathroom break
3 or anything like that?

4 THE WITNESS: No, I'm okay.

5 BY MS. BAIRD:

6 Q On the second page of Exhibit N it talks about a
7 Dave Zaborowski?

8 A Okay.

9 Q Summary of Zaborowski statement. Do you recall
10 taking a statement from him?

11 A Independently, no, I do not.

12 Q Okay. And with regard to Sarah Dobensky, again
13 on page two of Exhibit N it talks about summary of
14 Dobensky statement. Do you recall taking a statement from
15 Ms. Dobensky?

16 A Yes.

17 Q Okay. And I think we have that marked as Q. Did
18 you speak with Ms. Dobensky on May 17th, 2010?

19 A Yes.

20 Q And that was by phone. Correct?

21 A Correct.

22 Q It was by phone at the police station, so there
23 was a recording made of it.

24 A Yes.

25 Q Did you have any input into making this

1 transcription of the telephone conversation between you
2 and Ms. Dobensky?

3 A No.

4 Q Okay. For what reason did you talk to
5 Ms. Dobensky on that day?

6 A She was someone that was on the scene and willing
7 to provide a statement.

8 Q Okay. So correct me if I'm wrong. On May 17th,
9 you spoke to Robert Hilton. Correct?

10 A Yes.

11 Q Okay. And you spoke to Mark Vanaman on May 17th?

12 A Yes.

13 Q And then in looking at Exhibit N on the second
14 page, you spoke to a Dave Zaborowski on May 17th?

15 A It doesn't say what day I spoke to him, and I
16 don't remember what day I spoke to him.

17 Q Okay. If you look at the top of the second page
18 of Exhibit N, it says: I then spoke to another patron of
19 Yale Billiards, Dave Zaborowski, who was present the night
20 during the incident. Zaborowski agreed to provide me with
21 a voluntary sworn statement.

22 A Okay.

23 Q And then right before that on the first page,
24 you're talking about a conversation: Hilton explained to
25 Burgess that he was busy, but he could wait if he wanted

1 to.

2 Does that refresh your memory about whether you
3 spoke to Dave Zaborowski while you were at Yale Billiards
4 on May 17th?

5 A It does not, but it would appear that way.

6 Q And then from Exhibit Q it appears that you also
7 spoke to Sarah Dobensky on May 17th, 2010; is that
8 correct?

9 A Yes. That's what it says.

10 Q Other than Mr. Hilton and Mr. Vanaman whom I
11 understand you were directed to speak to by the chief,
12 these other people, did you speak to them because you were
13 the arresting officer who wrote the report?

14 A Yes. Yes.

15 Q Okay. And you were doing a follow-up
16 investigation as the arresting officer?

17 A Yes.

18 Q Okay. And what was the purpose of the follow-up
19 investigation?

20 A I don't know. Because the chief told me to get
21 written statements from anyone involved who was willing to
22 give them.

23 Q Okay. Was there a concern expressed to you by
24 the chief that what you had done already the night before
25 wasn't enough to stand up in court?

1 MS. MACCINI: Objection to form.

2 A Can you repeat that?

3 BY MS. BAIRD:

4 Q Was there a concern expressed by the chief that
5 the information you had already gathered before the arrest
6 was not enough?

7 MS. MACCINI: Objection to form.

8 A No.

9 BY MS. BAIRD:

10 Q Okay. Were any of the statements that you took
11 on May 17th, 2010 related to the complaint made by
12 Mr. Burgess about you?

13 A I wasn't aware of the complaint by him.

14 Q Did the chief tell you or discuss with you at all
15 in that face-to-face meeting, that he had received a
16 complaint from Mr. Burgess about you?

17 MS. MACCINI: Objection to form. Asked and
18 answered.

19 BY MS. BAIRD:

20 Q I don't remember the answer. I have to ask you
21 again because I'm --

22 A Can you ask me again?

23 Q Yes. Did the chief tell you in that face-to-face
24 meeting on May 17th, 2010, whether -- or if there had been
25 a complaint against you lodged by Mr. Burgess?

1 A I don't remember.

2 Q Other than May 16th, 2010, May 17th, 2010, were
3 there any other occasions when you went back to Yale
4 Billiards? Regarding Mr. Burgess.

5 A I don't remember.

6 Q Okay. If you look at page three of Exhibit N,
7 the last paragraph.

8 A Yes.

9 Q Who is Detective Houlihan?

10 A A detective with the Wallingford Police
11 Department. Or was.

12 Q Where is he now?

13 A I don't know.

14 Q Do you know he's not with Wallingford anymore?

15 A No, I don't know if he's there or not.

16 Q Okay. Do you recall going with Detective
17 Houlihan to Yale Billiards on 5/18?

18 A If I read this, yes.

19 Q Had you worked with Detective Houlihan on cases
20 prior to May 18th, 2010?

21 A Yes.

22 Q What kind of cases had you worked on him with?

23 A Burglaries, mostly.

24 Q Are there certain cases that as a patrol officer
25 you begin to investigate that are referred to the

1 detective unit?

2 A Sometimes, yes.

3 Q And how was it that as a patrol officer you
4 investigated some burglaries with Detective Houlihan?

5 A If I thought I had something, I would often call
6 him; and if he was free, then he could come and help me
7 out.

8 Q And did you contact Detective Houlihan to go with
9 you to Yale Billiards on 5/18?

10 A I don't remember.

11 Q Do you know how it was that Detective Houlihan
12 became involved in this investigation?

13 A No, I don't remember.

14 Q Was it Detective Houlihan's idea to go retrieve
15 the surveillance video?

16 A I don't remember.

17 Q Was it your idea?

18 A I don't remember.

19 Q Did anyone tell you to do that?

20 A I don't remember.

21 Q And none of the answers to these questions about
22 what happened on May 18th or May 17th would be obtained in
23 your May 16th arrest report. Correct?

24 A Can you ask that one more time?

25 Q Information about what happened on May 18th

1 wouldn't be in your May 16th arrest report. Correct?

2 A Correct.

3 Q Okay. And information about what happened on the
4 17th wouldn't be in your May 16th arrest report. Correct?

5 A (No response.)

6 Q That would be in your supplemental.

7 A Yeah. But there could be some layover from the
8 first one into the next one.

9 Q Okay. What do you mean?

10 A You can give a paragraph stating something like
11 on the 16th we went here and did this, this, and this.
12 Then explaining then we also went back today and got
13 statements from so-and-so, so-and-so.

14 Q Okay. And those would be in reports that come
15 after the original May 16th report. Correct?

16 A Yes.

17 Q Did you handle or touch at all the video
18 equipment at Yale Billiards that Mr. Hilton used --

19 A No.

20 Q -- to conduct surveillance?

21 A No.

22 Q And did you testify that -- well, let me ask you
23 this. What kind of cases, if you can characterize it, did
24 Detective Houlihan work on while you were at the
25 Wallingford Police Department?

1 A I don't know.

2 Q I mean did you have some detectives that were --
3 you know, specialized in cases of sexual assault?

4 A We might have, but I didn't know who was assigned
5 to what.

6 Q Oh, okay. So you weren't aware of which
7 detectives work narcotic cases or sexual assault cases or
8 burglaries --

9 A I was aware of who worked narcotics, but that was
10 it.

11 Q Do you know if Detective Houlihan worked
12 narcotics?

13 A No.

14 Q And other than the burglary cases that you worked
15 with Detective Houlihan on, were there other kinds of
16 cases you worked with him on?

17 A Not that I remember.

18 Q Did you work with any other detectives on cases?

19 A Not that I remember.

20 Q Since leaving Wallingford in November 2010, have
21 you discussed this case with anybody? Employed by the
22 Wallingford Police Department.

23 A That is currently employed by the Wallingford
24 Police Department?

25 Q Okay, we'll start there. Yes.

1 A No.

2 Q Okay. And the main people I'm talking about,
3 since November 2010 have you talked to Chief Dortenzio
4 about this case?

5 A No.

6 Q Have you talked to Sergeant Colavolpe about this
7 case?

8 A No.

9 Q Have you talked to Lieutenant Martino about this
10 case?

11 A Yeah.

12 Q When did you talk to him about the case?

13 A Yesterday.

14 Q Okay. And what did you talk to him about?

15 A We just reviewed the actual case report.

16 Q Okay. Which case report did you review?

17 A What looks like what's here in front of me.

18 Q Okay. Did you review the May 16th, 2010 arrest
19 report?

20 A Yes.

21 Q Why did you review it?

22 A To refresh my memory.

23 Q That didn't help very much, did it?

24 A No.

25 Q How long did you spend reviewing the reports with

1 Lieutenant Martino?

2 A Maybe an hour.

3 Q And where did you review it?

4 A Wallingford Police Department.

5 MS. MACCINI: For the record, it was a
6 meeting not only with Mr. Martino, but also with
7 his attorney.

8 MS. BAIRD: Oh, okay.

9 A Yeah.

10 BY MS. BAIRD:

11 Q Well, you should tell me that.

12 A Oh, okay.

13 Q I didn't have that.

14 MS. MACCINI: I'm telling you now.

15 BY MS. BAIRD:

16 Q Okay. And I didn't ask anything that had been
17 said, just what documents you reviewed.

18 A Yeah.

19 Q Okay. Did you review any transcripts?

20 A Transcripts by?

21 Q Let me be clear. By that I mean transcripts of
22 other depositions that have taken place in this case.

23 A No.

24 Q So since leaving Wallingford in November 2010,
25 have you discussed this case with Officer Garcia?

1 A No.

2 Q Have you discussed the case with Officer Fraenza?

3 A No.

4 Q Officer Gonzalez?

5 A No.

6 Q Since November 2010 leaving the department, have
7 you discussed this case with any person who was working
8 for the Wallingford Police Department in May 2010?

9 A No.

10 Q So other than Lieutenant Martino, am I correct
11 that you haven't had any contact or conversation with any
12 officer who was employed by Wallingford in May 2010?

13 A Officer Balcastro. He currently works with me
14 and did work in Wallingford.

15 Q Was Officer Balcastro involved at all in
16 Mr. Burgess's arrest?

17 A No.

18 Q Do you know if he was involved in the internal
19 affairs complaint investigation?

20 A No.

21 Q And what did you discuss with Officer Balcastro?

22 A Just that I had to come here and do this.

23 Q Did you at any point become aware of what
24 happened when Mr. Burgess's case went to court?

25 A No.

1 Q On May 16, 2010, did you return to the police
2 department after Mr. Burgess was taken into custody and
3 transported?

4 A Yes.

5 Q For what reason?

6 A To process him.

7 Q Did you process him because you were the
8 arresting officer of record?

9 A Yes.

10 Q And what did processing involve?

11 A Fingerprinting, signing his fingerprint cards and
12 a picture, I believe.

13 Q And you did those things?

14 A Yes, I believe so.

15 Q Did you have any discussion with Sergeant
16 Colavolpe back at the police department about the arrest?

17 A I don't remember.

18 Q Any discussion with Lieutenant Martino about the
19 arrest?

20 A I don't remember.

21 Q Do you know if -- well, were you present for
22 Lieutenant Martino's review of the arrest?

23 MS. MACCINI: Objection to form.

24 BY MS. BAIRD:

25 Q Do you know what I mean by that?

1 A No. Present how?

2 Q Okay. In his physical presence. In Lieutenant
3 Martino's physical presence.

4 A During what?

5 Q Do you know if Lieutenant Martino reviewed the
6 arrest?

7 A I don't know who signed it, who reviewed it. It
8 will be on there, though.

9 Q What does that mean when a supervisor signs an
10 arrest report?

11 A That it's approved.

12 Q Okay. Do you have to swear to it or anything
13 like that?

14 A Yes.

15 Q And was the process such that you would take the
16 arrest report to a supervisor to be reviewed? Or signed?

17 A It electronically gets sent to them.

18 Q Did you have any input into Mr. Burgess's bond?

19 A No.

20 Q Did you have any input into the decision to
21 return his firearm to him that evening?

22 A No.

23 Q Did you go back on the road at any point that
24 night on May 16th?

25 A I don't remember.

1 Q Does anything stand out about the processing, in
2 your mind, of Mr. Burgess?

3 A No.

4 Q Did Mr. Burgess indicate to you during booking
5 that he wanted to make a complaint against Mr. Vanaman for
6 Mr. Vanaman's conduct?

7 A I don't remember.

8 Q Other than answering the questions that
9 Lieutenant Martino posed to you in Exhibit P, what other
10 involvement, if any, did you have in the internal affairs
11 investigation of the complaint made by Mr. Burgess against
12 you?

13 A None.

14 Q Did you have a sit-down meeting with Lieutenant
15 Martino at any time about the investigation? And by
16 "sit-down" I mean physical presence; you were in each
17 other's presence.

18 A I don't remember exactly, but we would have had
19 to be sitting down for him to hand this to me.

20 Q Okay. Have you ever seen the internal affairs
21 investigation final report?

22 A No. I've seen the binder. I never actually went
23 through it.

24 Q Okay. This is Exhibit G. Let me get the
25 original for you, though. Have you ever seen Exhibit G

1 before?

2 A No.

3 Q Did you receive any information about the results
4 of the internal investigation?

5 A Yes.

6 Q And how did you receive that information?

7 A The same way I received -- when it came out.

8 Q And "the same way" would be a letter?

9 A Letter. In my mailbox at work.

10 Q And that was from -- the letter was from who?

11 A I believe the chief.

12 Q This is Exhibit J. Have you seen Exhibit J
13 before?

14 A Yes.

15 Q Do you recall seeing that?

16 A Yes.

17 Q How do you recall first becoming aware of Exhibit
18 J?

19 A I received it in my mailbox at work.

20 Q As a patrol officer with Wallingford, had you
21 received other such letters in your mailbox at work from
22 the chief?

23 A I don't remember.

24 Q Was there any discussion about this letter
25 received from the chief, either at roll call or in any

1 formal meetings at the department?

2 A I believe we talked about it at roll call.

3 Q Okay. Did you say "we" talked about it or "he"
4 talked about it?

5 A We.

6 Q We. Okay. And what was the discussion about it
7 at roll call?

8 A Whether the law states that you can openly carry
9 a firearm or if it has to be concealed.

10 Q Was that an issue at roll call?

11 MS. MACCINI: Objection to form.

12 A Yes; what do you mean by "was that an issue"?

13 BY MS. BAIRD:

14 Q Well, did you wonder why it was being discussed
15 at roll call?

16 MS. MACCINI: Objection to form.

17 A No.

18 BY MS. BAIRD:

19 Q Okay. Was it helpful to you that it was
20 discussed at roll call?

21 A Yeah.

22 Q And what was the understanding that you had
23 following that roll call about the issue?

24 A That the law isn't clear.

25 Q That the law wasn't clear about what?

1 A About how you are to carry a firearm.

2 Q And other than that May 27, 2010 letter that you
3 have in front of you from the chief, Exhibit J, were there
4 any discussions at roll call -- well, other than the roll
5 call discussion that you've already talked about, were
6 there any other discussions at the department following
7 that, about this issue of open carry or how a pistol
8 should be carried?

9 A No.

10 Q Does your current department have any memos
11 regarding the issue of how a firearm is carried by a
12 permit holder?

13 A No.

14 Q Okay. That's Exhibit H. Have you seen that
15 document before?

16 A Yes.

17 Q When did you first see it?

18 A Yesterday.

19 Q Okay. I'm going to direct your attention to
20 about halfway down on Exhibit H. It's got the word
21 "however" and then "one must reason that" with a colon.
22 Do you see that?

23 A I do.

24 Q I'm going to read the next paragraph to you and
25 then I'm going to ask you if you agree or disagree. Okay?

1 A Okay.

2 Q Or neither. You know, however you respond.

3 A Yeah. Okay.

4 Q "If the open carry of a firearm by a valid permit
5 holder is legal; and another person or persons are
6 alarmed, annoyed or inconvenienced because they are
7 unaware that the permit holder is exercising his legal
8 right to carry his weapon unconcealed, this in itself
9 would not constitute a crime on the part of the permit
10 holder."

11 Do you have an opinion about -- well, let me ask
12 you this. Do you agree or disagree with that?

13 A I don't have an opinion either way.

14 MS. BAIRD: I'm going to meet my client for
15 about 10 minutes. We'll see how we're doing.

16 (A recess was taken at 2:44 p.m.)

17 (The proceedings resumed at 3:01 p.m.)

18 BY MS. BAIRD:

19 Q On Plaintiff's Exhibit Q, if I could direct your
20 attention to page seven, at the bottom. I wanted to ask
21 you about this statement that's attributed to you in the
22 transcript where it states: You know it, it was what it
23 was and you know, we're just following up with everyone
24 because he's sort of making a, a big, a big deal of it and
25 complaining to our chief that we, that we took his rights

1 away and all that, but we don't believe that, that we did
2 and.

3 Okay. So when you were speaking with Sarah
4 Dobensky on May 17th, 2010, who were you referring to
5 when you state "because he's sort of making a big deal"?
6 Who is "he"? Is that Mr. Burgess?

7 A I don't know.

8 Q Okay. What were you talking to Sarah Dobensky
9 about on May 17th, 2010?

10 A We were talking about the incident that occurred
11 on May 16th, 2010.

12 Q Okay. Well, I'm trying to refresh your
13 recollection. Back to page six then.

14 A Okay.

15 Q Okay. At the top, third line down, statement
16 attributed to you says: Essentially he came in and
17 caused, and caused a scene, so that's." Do you know who
18 the "he" is that you're referring to in that sentence?

19 A Mr. Burgess.

20 Q Okay. And then the next statement by you was,
21 "he was arrested." Do you know who the "he" is that
22 you're referring to in that sentence?

23 A Mr. Burgess.

24 Q The fourth line up from the bottom on page six --
25 I mean the fourth statement, really, where it says Officer

1 Flood says: Yeah, no, I understand what you're trying to
2 say -- and I'm not quoting this exactly.

3 A Okay.

4 Q The point of it all is like what I was trying to
5 tell you, what I was trying to ask you before was that if
6 this guy had never come in wearing his gun like this, the
7 scene would never have occurred -- or never would have
8 occurred.

9 Is the guy you're referring to Mr. Burgess?

10 A Yes.

11 Q Okay. Then moving on to page seven, in the first
12 statement at the top of page seven, the last -- in the
13 third line you refer to "this guy." You say: For his --
14 so it's like you, you know, it, it alarmed Mark enough
15 where Mark might have even felt threatened for, for his
16 life because, like you said, you didn't know this guy and
17 you didn't know what he was going to do with his gun.

18 Is the guy you're referring to in that sentence
19 Mr. Burgess?

20 A Yes.

21 Q Okay. And then moving down to the third
22 statement on page seven attributed to Officer Flood. In
23 the second sentence it's stated: You said you'd never
24 seen anyone carry a gun like that before in the pool hall
25 and you know, I mean but let me ask you why do you think,

1 I mean what did it, what did it look like this guy was
2 trying to do, to do by carrying his gun like that?

3 Is the guy referred to in that sentence
4 Mr. Burgess?

5 A Yes.

6 Q Okay. Then in your next statement which is the
7 fifth statement on page seven where you say: He wasn't
8 trying to hide it, yeah, okay.

9 Is that "he" you're referring to Mr. Burgess?

10 A Yes.

11 Q And then the statement attributed to you five
12 statements up from the bottom of page seven that begins
13 with "Officer Flood."

14 A Okay.

15 Q So, so, you know, I mean it, like you said, you
16 said he was trying to prove a point.

17 Is the "he" you're referring to in that
18 statement Mr. Burgess?

19 A Yes.

20 Q And then going down to the last statement on page
21 seven attributed to you where it says: You know, it, it
22 was what it was and, you know, we're just following up
23 with everyone because he's sort of making a, a big deal, a
24 big deal of it and, uh, complaining to our chief that we,
25 that we took his rights away and all that, but we don't

1 believe that, that we did.

2 Is the "he" you're referring to in that
3 statement Mr. Burgess?

4 A Yes.

5 Q And how did you know on May 17th of 2010 that
6 Mr. Burgess had been complaining to your chief?

7 A Someone must have told me.

8 Q Was it the chief that told you?

9 A I don't remember.

10 Q Could it have been the chief that told you?

11 MS. MACCINI: Objection to form.

12 A It could have been. It could have been anyone
13 that worked there.

14 BY MS. BAIRD:

15 Q And what did you mean by that Mr. Burgess was
16 making a big deal of it?

17 A By making a complaint.

18 Q So you did know that Mr. Burgess made a complaint
19 to the chief on May 17th at some point.

20 A Yeah, it appears that way. I wouldn't have
21 written that if I didn't know that.

22 Q And at the bottom of page eight it says: I mean
23 he, he, he's trying to tell us that, you know, he
24 shouldn't have been arrested and all that, but for we, you
25 know, unfortunately we have to prove our point.

1 Is the "he" you're referring to in that
2 paragraph Mr. Burgess?

3 A Yes.

4 Q And what was your understanding of the point that
5 you're referring to in that sentence?

6 A That he created annoyance and alarm inside the
7 pool hall.

8 Q On page five of Exhibit Q, six statements up that
9 begins with "Officer Flood," and then it's "um just
10 because?" Where the statement attributed to you is: Um
11 just because the law says that, that, that it's not, just
12 because the law doesn't say you know you can't, you can't
13 do this, doesn't mean you should.

14 Were you referring to any particular law in that
15 statement to Ms. Dobensky? Or just the law in general?

16 A I don't -- I don't even understand what I'm
17 saying, to be honest with you.

18 Q Okay.

19 MS. MACCINI: Maybe if you were to review
20 the entire page or the entire statement.

21 MS. BAIRD: What did you say?

22 MS. MACCINI: Maybe if he were permitted to
23 read the --

24 MS. BAIRD: Oh, he's definitely permitted.

25

1 BY MS. BAIRD:

2 Q Yes, take your time.

3 A Oh, okay. Yeah, I'm not sure where this is
4 coming from.

5 (Reviewing.) Okay. I mean, I understand what
6 I'm saying. What's your question again?

7 Q In that statement six up from the bottom on page
8 five, it begins "just because the law says," my question
9 was were you referring to any particular law or just the
10 law in general?

11 A I'm referring to the firearms law and how you're
12 supposed to carry your firearm.

13 MS. BAIRD: I don't have any further
14 questions.

15 MS. MACCINI: I don't have any questions.

16

17 (Whereupon, the witness was excused and the
18 proceedings were concluded at 3:13 p.m.)

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SIGNATURE PAGE

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I, DEVIN FLOOD, have read the foregoing transcript of the testimony given at the deposition held on JANUARY 3, 2013, and it is true and accurate to the best of my knowledge as originally transcribed or with the changes as noted on the attached Errata Sheet.

DEVIN FLOOD

STATE OF CONNECTICUT
COUNTY OF _____

Sworn and subscribed to before me this _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires: _____

CERTIFICATE

STATE OF CONNECTICUT)
) SS: West Hartland, Connecticut
COUNTY OF HARTFORD)

I, Patricia Tyszka, a Notary Public duly commissioned and qualified in and for the County of Hartford, State of Connecticut, do hereby certify that pursuant to notice there came before me on the 3rd day of January, 2013, at 12:51 p.m., the following named person, to wit: DEVIN FLOOD, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon carefully examined upon his oath and his testimony reduced to writing under my direction; that the deposition is a true record of the testimony given by the witness; that the deposition may be signed before a Notary Public.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2013.

Patricia Tyszka, LSR, RMR
Notary Public
License No. 46

My Commission Expires
May 31, 2015

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