

Deposition of Nicholas Jacobson taken 11/21/14

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA
3
4 File No. 13-CV-266
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6 -----
7 Forest Olivier et al.,
8 Plaintiffs,
9
10 vs.
11 Karl Willers et al.,
12 Defendants.
13 -----
14
15 DEPOSITION OF NICHOLAS JACOBSON, taken
16 pursuant to Notice of Taking Deposition and taken before
17 Debra J. Mokszycke, a Notary Public in and for the County
18 of Anoka, State of Minnesota at 222 South Ninth Street,
19 Suite 2200, Minneapolis, Minnesota, on the 21st day of
20 November, 2014, commencing at approximately 9:15 a.m.
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1 APPEARANCES:
2 NATHAN M. HANSEN, Attorney at Law, HANSEN LAW
3 OFFICE, 2440 North Charles Street, Suite 242, North St. Paul,
4 Minnesota, 55109, appeared representing the Plaintiffs.
5
6 ALAN C. MILSTEIN, Attorney at Law, SHERMAN,
7 SILVERSTEIN, KOHL, ROSE & PODOLSKY, P.A., 308 Harper Drive,
8 Suite 200, Moorestown, New Jersey, 08057, appeared representing
9 the Plaintiffs.
10
11 JOHN M. BAKER and JANINE WETZEL KIMBLE,
12 Attorneys at Law, GREENE ESPEL, PLLP, 222 South Ninth Street,
13 Suite 2200, Minneapolis, Minnesota, 55402-3362, appeared
14 representing Defendants Nicholas Jacobson and the Olmsted
15 County Sheriff's Office.
16
17 STEPHANIE A. ANGOLKAR and NATHAN C. MIDOLO,
18 Attorneys at Law, IVERSON, REUVERS, CONDON, 9321 Ensign Avenue
19 South, Bloomington, Minnesota, 55438, appeared representing
20 Defendants Karl Willers, the Hutchinson Police Department,
21 Kenneth Willers, the Nobles County Sheriff's Office, Daniel
22 Lewis, Steve Schulz, the Kanabec County Sheriff's Office,
23 Michael Hadland and the Fillmore County Sheriff's Office.
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4
1 HELEN R. BROSNAN, Assistant County Attorney,
2 DAKOTA COUNTY JUDICIAL CENTER, 1560 Highway 55, Hastings,
3 Minnesota, 55033-2392, appeared representing Defendant Bryce
4 Schuenke and Dakota County.
5
6 ANDREW T. JACKOLA, Assistant County Attorney,
7 GOVERNMENT CENTER, 2100 Third Avenue, Suite 720, Anoka,
8 Minnesota, 55303-5025, appeared representing Defendant Chris
9 McCall and the County of Anoka.
10
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13 WHEREUPON, the following proceedings were duly had:
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5

1 (Exhibit 17 marked.)
2
3 NICHOLAS JACOBSON,
4 After having been first duly sworn,
5 testified under oath as follows:
6
7 EXAMINATION
8 BY MR. MILSTEIN:
9 Q What's your rank, deputy?
10 A I'm a deputy sheriff.
11 Q Deputy Jacobson, my name is Alan Milstein. I represent the
12 plaintiffs in this case. I'm going to ask you some
13 questions. If at any time you don't understand the
14 question, just stop and I'll try to rephrase it.
15 A Okay.
16 Q Just make sure your answers are verbal, so the court
17 reporter can take those down. Okay?
18 So you are -- are you a police officer or a sheriff or
19 what do you call yourself?
20 A I'm a deputy sheriff.
21 Q A deputy sheriff. In Olmsted County?
22 A Correct.
23 Q Is there a police department in Olmsted County or is the
24 sheriff's department essentially the police department?
25 A Rochester is right in the center of Olmsted County and they

6

1 have their own police department.
2 Q And what's the jurisdiction, so to speak, of the sheriff's
3 department, vis-a-vis the police department?
4 A We have jurisdiction throughout the county, including
5 Rochester, but we only field calls for service in the
6 county, outside the city limits of Rochester.
7 Q Are you guys mainly traffic officers or do you get into
8 other crimes as well?
9 A We do a little bit of everything out there, I would say.
10 We respond to calls for service, emergency calls,
11 accidents. We serve arrest warrants, a wide variety of
12 things.
13 Q So do I understand that in Rochester, the county, the
14 police department essentially serves as the police
15 department and then outside the city you folks in the
16 sheriff's department are the ones running the show?
17 A Correct.
18 Q So at some point you decided to enroll in the DRE program;
19 is that right?
20 A Correct.
21 Q And how did you hear about it?
22 A I don't remember where I had first heard about the
23 program. I was aware of the program since I entered into
24 law enforcement in Minnesota, just through knowing how to
25 process different sorts of DWIs and learning about that

7

1 initially. So I don't know exactly where I was when I
2 first learned of the program.
3 Q So you and -- Michelle Ness was also in your sheriff's
4 department?
5 A Correct.
6 Q And you and she -- did you apply together? Did you know
7 she was applying as well or --
8 A I don't recall.
9 Q But you both applied for the same essential year of the
10 DRE; is that right?
11 A Yes.
12 Q Had anybody in the Olmsted Sheriff's Department applied and
13 completed the program before that?
14 A Yes.
15 Q People that you worked with?
16 A Yes.
17 Q And before you went down to -- is Rochester up or down from
18 here?
19 A Rochester is down, yeah.
20 Q Okay. I don't have my sense of geography. And how far
21 away is it? Is Rochester where Mayo is?
22 A Yes. It's about, I don't know, 80 miles roughly, something
23 like that.
24 Q Okay. So before you had -- did you come here with
25 Cynthia (sic)? Did you guys drive together or not?

8

1 A No, I drove myself.
2 Q You drove a squad car or a regular car?
3 A Squad car.
4 Q And she drove a squad car also?
5 MR. BAKER: Did you mean to say Cynthia or
6 Michelle?
7 BY MR. MILSTEIN:
8 Q Michelle. I'm sorry. I don't know why I said Cynthia.
9 Did you --
10 A We, as I recall, just drove our own separate squads. We're
11 actually assigned our own take-home squad cars that -- so
12 each deputy has their own car that they take home.
13 Q Before coming up here, did you talk with any of the prior
14 DRE graduates in your department?
15 A Yes, I talked with one.
16 Q And who was that?
17 A His name is Dave Clark.
18 Q And what did he tell you about the program?
19 A He said it was the hardest law enforcement course he had
20 ever gone to and that he thought it was very worthwhile.
21 Q Did he tell you anything about the field portion of the
22 program?
23 A Yes.
24 Q What did he say about that?
25 A He explained to me that you would go out and talk with

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1 people and try to identify people that might be under the
2 influence of drugs.
3 Q Did he say whether it was difficult to find 15 or 12 people
4 in order to complete the program?
5 A No.
6 Q Did he say anything to you about how he and his partner had
7 done it when they went through it?
8 A I don't recall.
9 Q So you would come up here the first week in April of 2012,
10 right?
11 A Correct.
12 Q And you attend the two-weeks classroom portion of the
13 program, right?
14 A That's right.
15 Q Five days a week, 8:00 to 5:00 or something like that,
16 right?
17 A That sounds about right.
18 Q And you were put up in a hotel somewhere in the Minneapolis
19 area?
20 A In the metro area we stayed in a hotel, uh-huh.
21 Q And then at the end of the two-week period you took the
22 test and presumably got the 80 percent that you needed to
23 move to the next phase, correct?
24 A I don't recall what the passing requirement was to pass the
25 test, but we did have a test and I did take it and I did

10

1 pass it.
2 Q And who was your partner to go out into the field?
3 A My partner that I was assigned is Trooper John Schmutzer.
4 Q I saw somewhere that you had done at least one evaluation
5 with Willers; is that right?
6 A That's correct.
7 Q So how did that happen?
8 A What would happen is if you were -- if there were
9 individuals that were brought in by officers into the
10 facility where we were doing our evaluations, and the
11 individual is willing to participate in either a second
12 evaluation or if there wasn't enough officers to do
13 evaluations on, the number of individuals that were present
14 that were willing to participate, then you would -- you
15 would grab another officer and then you guys would complete
16 an evaluation together.
17 Q And the way I understand it, if someone told you that
18 somebody had been arrested, you would go to the -- you
19 could go to the station and evaluate that person, correct?
20 A In that instance, what would happen is -- if there was a
21 legal arrest made for a DWI; is that what you're asking?
22 Q Yeah.
23 A Then that arrest -- if the officer effecting the arrest
24 wanted a DRE evaluation done, they would contact the
25 coordinator of the DRE school and he would assign a team to

11

1 respond to wherever that officer was, or wherever the
2 suspect was, and then -- so your team of two and an
3 instructor would all go there and you would perform an
4 evaluation on that person there.
5 Q But other than the people who had been arrested for some
6 kind of DUI, if there were just people on the street who
7 were going to be volunteers to be evaluated, those were all
8 done at either the DOT facility or at the precinct before
9 the DOT facility started being the place, correct?
10 A That's where -- that's how it was supposed to go, correct.
11 That's how we do it.
12 Q So tell me how it worked with you and -- what did you say
13 Schmutz --
14 A John Schmutzer.
15 Q Schmutzer or Schmutzer?
16 A It's Schmutzer.
17 Q Is it c-h or just an h-m?
18 A I think it's S-c-h, Schmutzer.
19 Q Okay. Schmutzer. There's a Yiddish word schmutz, but
20 that's probably not why he's named that.
21 When you went out with Schmutzer the first day, what
22 kind of training had you received as to how to go about
23 getting 15 people to admit to you that they were high on
24 drugs?
25 A We didn't receive any formal, what I would call, training.

12

1 Q Did they give you any kind of instructions at all on how to
2 find these people?
3 A I'm not familiar with the Cities as well as the people that
4 were instructing the class, so they just gave us some key
5 areas to go to and our instructions were to get out and
6 talk with people.
7 Q Now based on your experience as a police officer or in the
8 sheriff's department in Olmsted County, did you think that
9 if you approached people dressed in uniform, with firearms
10 and pepper spray and handcuffs, and asked them if they were
11 high, that you would get truthful answers?
12 A I didn't know.
13 Q Well, just common sense, did you get the feeling that the
14 average person would admit to a police officer that he was
15 high?
16 A I didn't know.
17 Q Now I know from your -- before we began, I handed you what
18 has been marked as Exhibit 17, which is your recorded
19 statement of May 22, 2012, where you were interviewed by
20 Dave Schafer and Tom Oliveto. And you had an opportunity
21 to read that, correct?
22 A Correct.
23 Q And did that refresh your recollection of what you were
24 asked about, or had you had a complete recollection of the
25 events?

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1 MR. BAKER: I'll object to the question as
 2 compound.
 3 BY MR. MILSTEIN:
 4 Q Was it helpful to read the interview or did you know that
 5 all this -- that what you had said was what had occurred?
 6 A The interview -- reading the interview helped me remember
 7 what questions were asked and what answers I provided.
 8 Q Now one of the things I asked you was -- or at least one of
 9 the things you said, was that about halfway through the
 10 field part of the class you were advised, and everybody in
 11 the class seemed to know, that this Occupy Minnesota was
 12 going on at Peavey Plaza, correct?
 13 A That's not correct.
 14 Q I'm looking on page -- Bates stamp 931. The question is,
 15 "Okay. At some point it became common --"
 16 MR. BAKER: Just to be clear, Counsel, near
 17 the bottom?
 18 MR. MILSTEIN: Two-thirds down.
 19 MR. BAKER: Okay. Thanks.
 20 BY MR. MILSTEIN:
 21 Q "At some point it became common knowledge amongst the class
 22 that there were some Occupy Wall Street stuff going on down
 23 at the Peavey Plaza." And you answered, "Yes."
 24 A That's what the report indicates, correct.
 25 Q But isn't that the truth?

14

1 A That is the truth. I think what -- the way that the
 2 question was asked -- when I was first provided the
 3 information specifically about people being gathered at
 4 Peavey Plaza, I don't recall whether they were indicated to
 5 me as being associated with Occupy Wall Street or what they
 6 were --
 7 I was given a location, which was Nicollet and 12th
 8 Street, and I don't recall whether someone indicated to me
 9 that they were specifically associated with Occupy Wall
 10 Street, or any other organization.
 11 Q But you would agree with me that two-and-a-quarter years
 12 ago you would have had a better recollection of what you
 13 had been told, right? I mean, May 22, 2012, is very close
 14 to the time when you actually did this, right?
 15 A It's close to the time.
 16 Q And you would have had a better recollection in May of 2012
 17 than you would today, right?
 18 A I don't know.
 19 Q But you certainly would agree with me that in May of 2012
 20 when you were asked, "It became common knowledge amongst
 21 the class that there were some Occupy Wall Street stuff
 22 going on down at the Peavey Plaza," that your answer was
 23 yes?
 24 A That is what this indicates, correct, that I'm reading.
 25 Q And then you were asked, "And there was a lot of potential,

15

1 a lot of possibility to get some, some people to complete
 2 these evaluations. Where in the timetable of the --"
 3 MR. BAKER: You meantime timeframe?
 4 Q (By Mr. Milstein, continuing.) " -- the timeframe of the
 5 second part of the class during the evaluation process did
 6 people start kind of focusing on Peavey Plaza? Was it more
 7 towards the beginning, then end or --"
 8 And then you say, "I would say that it was for me and
 9 my partner it was probably about the halfway point or so."
 10 Did I read that right?
 11 A That's what it indicates in my report, yeah.
 12 Q And is that the truth?
 13 A That was an approximation and I would still give you the
 14 same approximation, that it was somewhere near the halfway
 15 point.
 16 Q And somewhere near the halfway point, people started kind
 17 of focusing on Peavey Plaza?
 18 A To answer that specifically, I don't know when other teams
 19 focused on Peavey Plaza. I know that for me it was
 20 approximately halfway through the field training portion.
 21 Q Okay. And in fact, Munoz, who was the coordinator of the
 22 DRE, told you guys that Peavey Plaza was a good place to
 23 target individuals for your evaluations, right?
 24 A I don't recall that.
 25 Q If you look on the next page, about halfway down, a little

16

1 bit more than halfway, DS says, "Okay. And I understand
 2 that you can't say specifically when in a class but maybe
 3 earlier but this specifically in relation to a um the focus
 4 down on Peavey Plaza. Who ah Sergeant Munoz comments was
 5 that, could you say if that was before the focus on Peavey,
 6 Peavey Plaza?"
 7 And then you say, "I believe that it was before, now I
 8 don't know when the other teams were starting to go --
 9 started going to Peavey Plaza."
 10 Did I read that right?
 11 And then you say, "Like I said for us it was about the
 12 halfway point. And for me specifically it would have been
 13 shortly before we, my team started going to Peavey Plaza is
 14 when I had heard him say that."
 15 Did I read that right?
 16 A I'm still reviewing it here. I would say that you're
 17 reading it right, yes.
 18 Q Okay. By the way, when you gave the interview, did they
 19 put you under oath?
 20 A I don't recall.
 21 Q But because this was an official interview, that is, you
 22 were being interviewed -- do you know what SA stands for?
 23 A I believe it's special agent.
 24 Q Special agent of what?
 25 A The Bureau of Criminal Apprehension.

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1 Q Okay. So you certainly considered it a serious event to be
 2 interviewed by two special agents of the Bureau of Criminal
 3 Apprehension, correct?
 4 A Correct.
 5 Q And whether or not they put you under oath, you knew, like
 6 all citizens interviewed by law enforcement, you have to
 7 tell the truth and if you don't tell the truth, it's a
 8 crime, right?
 9 A I don't recall what I was thinking at the time.
 10 Q Well, you know, don't you, that if you lie to law
 11 enforcement, like Martha Stewart or anybody that --
 12 anybody, if you lie to law enforcement it's a crime,
 13 whether or not you're under oath or not, right?
 14 A I don't think that's necessarily true.
 15 Q No? Well, you would agree with me that you certainly, in
 16 being interviewed by two special agents of the Bureau,
 17 considered it important that you tell the truth?
 18 A Yes.
 19 Q So what do you recall Munoz saying about focusing on Peavey
 20 Plaza and Occupy Wall Street?
 21 A I don't recall any specific statements.
 22 Q You don't recall today?
 23 A Today I don't recall any -- specifically hearing Sergeant
 24 Munoz make any state -- exact statements about Peavey
 25 Plaza.

19

1 is it clear to you that you were asked whether Sergeant
 2 Munoz told you, at least, if not the class, to focus on
 3 Peavey Plaza?
 4 A In reading this out of the report, I'm just -- I'm having
 5 troubles deciphering what the statement that Sergeant Munoz
 6 made was.
 7 MR. BAKER: Do you want to direct him to
 8 that in the document, Counsel?
 9 MR. MILSTEIN: Yeah, sure.
 10 BY MR. MILSTEIN:
 11 Q It says, "And I understand that you can't say specifically
 12 when in a class but maybe earlier but this specifically in
 13 relation to a um the focus down on Peavey Plaza. Who ah
 14 Sergeant Munoz comments was that, could you say if that was
 15 before --"
 16 And then you say, "Hm?"
 17 And then the special deputy says, " -- the focus on
 18 Peavey Plaza?"
 19 And you say, "I believe it was before, now I don't
 20 know when the other teams started going to Peavey Plaza."
 21 And the special agent says, "Um-hm."
 22 And then you say, "Um like I said for us it was about
 23 the halfway point. And for me specifically it would have
 24 been shortly before we, my team started going to Peavey
 25 Plaza is when I had heard him say that."

18

1 Q Well, is it clear that when you read the interview, given
 2 that you were being interviewed by two special agents, that
 3 in May of 2012 you did recall Munoz saying that?
 4 MR. BAKER: I object to the form with regard
 5 to "that" being vague.
 6 BY MR. MILSTEIN:
 7 Q Well, you say, "Like I said for us it was about the halfway
 8 point. And for me specifically it would have been shortly
 9 before my team started going to Peavey Plaza is when I had
 10 heard him say that."
 11 And if you read a few sentences above, it's fairly
 12 clear, isn't it, that "that" means that there was an
 13 opportunity to focus on Peavey Plaza?
 14 MR. BAKER: Is that in the transcript,
 15 Counsel?
 16 MR. MILSTEIN: Yeah. Pretty much, yeah.
 17 MR. BAKER: Pretty much? I'll object to the
 18 form of the question.
 19 MR. MILSTEIN: You don't think it is?
 20 MR. BAKER: Not as you stated it.
 21 MR. MILSTEIN: Okay. Maybe it's just an
 22 east coast thing, but it sure looks like he's being
 23 asked --
 24 BY MR. MILSTEIN:
 25 Q Well, let me ask you this. When you read your interview,

20

1 MR. BAKER: And your question is what?
 2 BY MR. MILSTEIN:
 3 Q What do you -- I take it you don't recall what it is you
 4 were saying that Munoz had said?
 5 A Correct. I -- I don't recall.
 6 Q But when you read this, isn't it clear that in May of 2012
 7 you recalled that it was Munoz who told you to focus on
 8 Peavey Plaza?
 9 A That's sort of what it indicates here, I guess you would
 10 say. It's just that when it's transcribed here and I'm
 11 reading, I'm just having troubles putting the two together
 12 just because of how accurately it's actually indicated in
 13 the report. It's not as conversational, I don't think,
 14 as -- that would have made it clearer.
 15 Q But it's your testimony today, as you sit here today, that
 16 you can't recall what specifically Munoz said about
 17 focusing on Peavey Plaza?
 18 A That's correct.
 19 Q So when you did start to focus on Peavey Plaza about
 20 halfway through, is that where you went every day to get
 21 the rest of the volunteers?
 22 A I wouldn't say that we focused on Peavey Plaza
 23 specifically. We had a variety of places that we would
 24 go, that we had found that there would be individuals
 25 gathered that would be willing to talk to us.

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1 Q Now, did you give any drugs to any of the people that you
 2 evaluated?
 3 A No. Well, let me -- can I ask you to specify for me
 4 exactly what you mean by "give"?
 5 Q What do I mean by "give"? Give. You don't know what give
 6 means?
 7 MR. BAKER: You asked him at the very
 8 beginning of the deposition, Counsel, if there was --
 9 MR. MILSTEIN: I understand.
 10 MR. BAKER: -- something about the question
 11 that he didn't understand, you should let him -- he should
 12 let you know and you --
 13 MR. MILSTEIN: That's fine.
 14 MR. BAKER: -- would clarify. Are you going
 15 to clarify?
 16 MR. MILSTEIN: Yeah.
 17 BY MR. MILSTEIN:
 18 Q Give means to give. I have drugs, I'm giving you drugs. I
 19 mean, give seems to be a very basic concept, giving drugs
 20 or giving anything. If I give you my iPhone, I give you my
 21 iPhone. I gave you the interview transcript. So I had it,
 22 and now I gave it to you. That's what give means.
 23 A No.
 24 Q So you're saying that you did not give drugs to any of the
 25 people you evaluated?

22

1 A In the way you describe what you're saying is -- your
 2 interpretation of the word give, no, I did not.
 3 Q What -- how else could you interpret the word give that
 4 maybe you would answer differently?
 5 A I don't know.
 6 Q I don't understand why you're having such problems with
 7 that. I mean, obviously there's -- if I had asked it maybe
 8 in a little different way, your answer would have been
 9 yes? Is that what you're saying?
 10 A I don't know.
 11 Q Is there any definition of the word give that you would
 12 answer that question differently?
 13 A I don't know.
 14 Q Let me ask you this question. Did everybody that you
 15 evaluated, were they high when you first met them? Do you
 16 understand the question?
 17 A I would say -- I would answer that by saying no.
 18 Q So there were some people that didn't get high until after
 19 you met them?
 20 A Until after I first met them, correct.
 21 Q And did you see them get high?
 22 A I did not observe them getting high, no.
 23 Q Did you observe anybody getting high that you evaluated?
 24 A If by "getting high" you mean physically using drugs, no, I
 25 did not.

23

1 Q Did you see any other member of the class give any drugs to
 2 any of the people who were evaluated?
 3 A No.
 4 Q Did anybody in the class tell you that they saw anybody
 5 give any of the people who were evaluated drugs?
 6 A Did I hear of anybody saying that they had given people
 7 drugs, is that --
 8 Q Yes.
 9 A -- what you're asking? I don't recall.
 10 Q I mean, you must have read that there was this situation
 11 with Mullers (sic) where somebody said that he had given
 12 one of the people he evaluated marijuana, right? You heard
 13 about that, right?
 14 MR. BAKER: Did you mean to say Mullers?
 15 MR. HANSEN: Willers.
 16 MR. MILSTEIN: Willers. I'm sorry.
 17 MR. BAKER: Do you want to try again?
 18 BY MR. MILSTEIN:
 19 Q Go ahead. You must have heard that, right?
 20 A By now I have.
 21 Q Okay. How about back then?
 22 MR. BAKER: Object to the form.
 23 BY MR. MILSTEIN:
 24 Q During the time that you were in the class, did you hear
 25 that Willers had given anybody that he evaluated marijuana

24

1 or any other drug?
 2 MS. ANGOLKAR: I just want to make an
 3 objection on the record for the vague reference to
 4 Willers. There are two defendants named Willers.
 5 MR. MILSTEIN: You're right.
 6 MS. ANGOLKAR: Go ahead.
 7 BY MR. MILSTEIN:
 8 Q Any officer named Willers. Did you know there were two
 9 Willers?
 10 A I did, yes.
 11 Q Kurt and Kenneth, I believe, right?
 12 MR. HANSEN: No.
 13 MR. MILSTEIN: No? Kurt and --
 14 MR. HANSEN: Ken --
 15 MR. MILSTEIN: Ken and --
 16 MR. HANSEN: -- and Karl.
 17 MR. MILSTEIN: Ken and Karl.
 18 MR. HANSEN: It was Karl Willers with
 19 Hutchinson.
 20 MR. MILSTEIN: All right. Okay. Ken and
 21 Karl, two K's.
 22 THE WITNESS: Uh-huh.
 23 BY MR. MILSTEIN:
 24 Q Did you hear that either Ken or Karl, back at the time,
 25 sometime in April or May of 2012, that either Ken or Karl

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1 had given anybody that he evaluated marijuana?
 2 A I don't recall when it was that I learned or heard
 3 specifically that it was either of the Willers brothers
 4 that had provided any drugs to anyone.
 5 Q Was it -- when you did learn of it, was that just in the
 6 media or did you learn of it from fellow class members?
 7 A I don't recall.
 8 Q You don't recall whether you -- you didn't know anything
 9 about it until you heard it in the media? I mean, wouldn't
 10 that have -- if you had gone to the class, you had been one
 11 of the class members, you had been with the Willers
 12 brothers. If you didn't know anything about this until you
 13 read it in the paper, you would think you would remember
 14 that that's how you learned of it, as opposed to learning
 15 about it well before it was in the media.
 16 MR. BAKER: Counsel, do you have a question?
 17 MR. MILSTEIN: That is a question.
 18 MR. BAKER: I'll object to the form of the
 19 question.
 20 BY MR. MILSTEIN:
 21 Q You can answer.
 22 A I don't recall how I first found out about it. I -- I was
 23 aware that there were accusations being made, but I didn't
 24 know what -- with any regard to specifics, what the
 25 accusations were at the time.

26

1 Q When you say you were aware, you were aware during the
 2 class or the field period?
 3 A During the final couple of days, I would say, is when I
 4 became aware that there were accusations that were being
 5 made.
 6 Q And what do you recall the accusations being?
 7 A The best I could tell you is that I recall that the
 8 accusation was that drugs were being given to individuals,
 9 provided for individuals to get high and then submit to
 10 evaluations.
 11 Q And what kind of drugs were these? Was it just marijuana
 12 or was it drugs besides marijuana?
 13 MR. BAKER: Just to be clear, your question
 14 is about what he heard?
 15 MR. MILSTEIN: Yeah.
 16 THE WITNESS: I don't recall.
 17 BY MR. MILSTEIN:
 18 Q Did you hear where the drugs had come from?
 19 A No.
 20 Q Were you curious where the drugs had come from?
 21 MR. BAKER: Objection. Lack of foundation.
 22 Object to the form.
 23 BY MR. MILSTEIN:
 24 Q You can answer.
 25 A I think it's fair to say that I was curious.

27

1 Q Had you heard that there was an evidence bag with some kind
 2 of red tape around it?
 3 A No.
 4 Q Did you talk about it with Schmutz --
 5 A Schmutzer?
 6 Q Schmutzer.
 7 A Yes, I did.
 8 Q And what did you say to Schmutzer and what did he say to
 9 you, as best you can recall?
 10 A The best I can recall is that we discussed how -- we didn't
 11 understand how somebody would go to such a level to do
 12 something like that, if it in fact had happened.
 13 Q And why is that?
 14 A We didn't think it was ethical. If the -- if, in fact,
 15 what the accusations were speculating was true, we didn't
 16 believe that that was ethical or something that we would --
 17 was a way that we would conduct ourselves.
 18 Q And did you also hear that some officers in the class would
 19 find someone with drugs on them and say to that person, you
 20 have two choices, either take the drugs and let me evaluate
 21 you, or I'm going to arrest you?
 22 A I don't recall hearing a specific instance like that.
 23 Q How about a general instance like that?
 24 MR. BAKER: Object to the form and vague.
 25 THE WITNESS: I don't recall.

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1 BY MR. MILSTEIN:
 2 Q The people that you did evaluate, tell me how that
 3 happened, how it is you found somebody who admitted to you
 4 and your partner -- I think you were dressed fairly similar
 5 to how you're dressed now?
 6 A Correct.
 7 Q How you found somebody who admitted to you and your
 8 partner, dressed as you are now, that they had taken
 9 drugs.
 10 A Generally, it would just start with us going and talking
 11 with them and just being polite. Not everybody wanted to
 12 talk to us, of course, and we were okay with that.
 13 But we would just find people gathered in places or
 14 hanging out at places and we would just get out of our car
 15 and start a casual conversation with them.
 16 A large amount of the time, they would be the ones to
 17 ask us kind of what our angle was, as opposed to us even
 18 having to explain it to them, because they would -- they
 19 had noticed that you had a deputy from out of the area
 20 riding around with a state trooper in the metro, so
 21 sometimes it was them being curious and they would -- they
 22 would ask us what we were doing and we would explain it to
 23 them.
 24 Q So you and your partner had 15 evaluations?
 25 A No.

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1 Q How many did you have?
2 A I completed six and I was the recorder for six, I believe,
3 and -- I guess to be -- to answer you most specifically, I
4 would have to look at my -- at my log, but total we had --
5 I was given credit for 15 evaluations, whether I performed
6 them, witnessed them, or was a recorder for them.
7 Q And of the 15 evaluations that you were given credit for,
8 what drugs were identified as having been taken by these
9 volunteers?
10 A Well, as a DRE, we don't identify specific drugs. We
11 identify drug classes.
12 Q Okay. And what drug classes were there? I mean, one of
13 the drug classes is cannabis, right?
14 A Correct.
15 Q Cannabis is just marijuana. It's nothing else, is it?
16 A There's different forms of cannabis.
17 Q Different kinds of --
18 A Different forms --
19 Q -- marijuana?
20 A -- of marijuana, correct.
21 Q Right, different kinds of marijuana. Would hashish be
22 considered cannabis?
23 A It would be.
24 Q It would be?
25 A Uh-huh.

1 Q Okay. So was cannabis one of the drugs that the volunteers
2 you evaluated had taken?
3 A That's one of the drug classes that we identified during
4 the course of the evaluations.
5 Q Okay. And how many people had taken that?
6 A I would have to reference my report to answer that.
7 Q Just roughly. More than one?
8 MR. BAKER: Objection, lack of foundation.
9 THE WITNESS: I would say more than one.
10 MR. MILSTEIN: I think we have your
11 evaluations. Do we have his evaluations?
12 MR. HANSEN: Let me --
13 MR. MILSTEIN: Do you have a log?
14 MR. HANSEN: Off the record.
15 (Off the record discussion.)
16 (Exhibit 18 marked.)
17 BY MR. MILSTEIN:
18 Q Have you had a chance to look at the log?
19 A Yes, I have.
20 Q Did you ask them their names?
21 MR. BAKER: Object as vague.
22 BY MR. MILSTEIN:
23 Q Did you ask the volunteers their names?
24 A We would generally ask them what their first name was and
25 we wouldn't verify whether that was their actual first name

1 or not.
2 Q So you didn't ask for identification?
3 A Correct.
4 Q Did you suspect that some people had given fake names?
5 A I didn't know.
6 Q Did you suspect?
7 A It was entirely possible.
8 Q So there's 21 people on the log. Just tell me why there's
9 21 as opposed to 15?
10 A I don't know when this log was printed, but this log
11 actually includes some of my legal evaluations that I've
12 conducted since the class, and my current log would be
13 longer yet because I've done additional legal DWI
14 enforcement related evaluations. The class itself goes
15 through the 15th, 12-15-15.
16 Q That's what I thought. So if you look at the date and the
17 time, from 4-14 to 4-28, are those the ones you did in the
18 class?
19 A That's correct.
20 Q I thought that you had to do at least three classes. Most
21 of these are cannabis and then there is stimulants. What's
22 the third one that allowed you to meet the requirement?
23 A We also identified the drug class of narcotic analgesics.
24 We also identified the drug class of CNS depressants.
25 Q What would the analgesic be? What type -- what type of

1 drug is that?
2 A Things derived from --
3 Q Like Valium?
4 A -- morphine. Painkillers derived from morphine, heroin.
5 Q OxyContin?
6 A Yes.
7 Q What's CNS mean?
8 A Central nervous system.
9 Q Did SSRIs count, like Paxil and Effexor and Prozac?
10 A I don't know specifically how those would affect your body.
11 Q Neither do I. I can't imagine that anybody, let alone a
12 police officer, with no pharmaceutical training, could
13 identify somebody who had taken an antidepressant.
14 A Well, what we do as DREs is we identify what -- we form an
15 opinion based on our evaluation and our observations on
16 which of the drug classes we believe somebody would be
17 impaired by if we detect impairment. We don't specifically
18 determine whether it was caused by one pharmaceutical or
19 another. We do drug classes.
20 Q No, I understand that, but -- and I understand what a
21 depressant is and I can understand how a depressant would
22 be in a list or class of drugs that might impair drivers,
23 something like Valium or some strong tranquilizer, but one
24 of the previous officers that testified talked about
25 antidepressants, like Paxil or Prozac or Effexor. I just

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1 can't imagine how, as a class of drugs, that would be a
 2 class that you folks would have any interest in.
 3 MR. BAKER: Is there a question?
 4 MR. MILSTEIN: Yeah. That's the question.
 5 He knows the question.
 6 MR. BAKER: I'll object to the form.
 7 THE WITNESS: If it causes impairment and we
 8 identify impairment, then we will put the -- we will form
 9 an opinion based on our observations as to what drug class
 10 we believe that the impairment was caused by.
 11 BY MR. MILSTEIN:
 12 Q But did they tell in the classroom portion that someone who
 13 had taken Prozac or Paxil or Effexor or any of the
 14 antidepressants as part of their routine medical profile,
 15 that that classified as a drug that could impair their
 16 ability to drive or to function?
 17 A I don't recall if they stated that or not.
 18 Q When you say "we DREs," you're saying we drug recognition
 19 experts?
 20 A I think the DRE is referred to as drug recognition expert
 21 commonly. I would say that I consider myself to be a drug
 22 recognition evaluator and the reason for that is that we
 23 would have to be certified as experts by a court to testify
 24 as an expert. So it's common for a DRE to explain -- or to
 25 say that DRE stands for drug recognition evaluator.

1 Q Okay. You don't believe, do you, that as a result of being
 2 in the program, anybody could be convicted based on your
 3 conclusion that they were high on drugs, do you?
 4 MR. BAKER: Object on relevance and object
 5 to the extent that it calls for a legal conclusion. If you
 6 know, you can answer.
 7 THE WITNESS: I guess I would have to hear
 8 the question again.
 9 BY MR. MILSTEIN:
 10 Q You don't believe that based on your DRE training, that
 11 anybody could be convicted of being high on an illegal drug
 12 based on your evaluation, do you?
 13 MR. BAKER: Same objections. Go ahead.
 14 THE WITNESS: I believe that -- yes, I
 15 believe that based on -- not based on my evaluation alone.
 16 It would be a totality of everything the officer that made
 17 the first contact with the individual observed, all the way
 18 through the time where implied consent was invoked on the
 19 individual.
 20 There are instances where people refuse to submit to
 21 blood testing, in which case -- you know, or toxicology
 22 testing, in which case the observations made by the drug
 23 recognition evaluator become especially important.
 24 BY MR. MILSTEIN:
 25 Q When you would approach people, would you ask them what

1 drugs they were on or just whether they had taken drugs?
 2 A During the course of the conversation we would ordinarily
 3 ask what types of drugs that they used.
 4 Q That's what I don't understand. So you ask somebody
 5 whether they're high on marijuana, then you bring them to
 6 the DOT and you evaluate them and conclude they're high on
 7 marijuana, which is what they told you they were.
 8 I mean, did you conclude it because they told you they
 9 were or because they exhibited characteristics of being
 10 high on marijuana?
 11 A Our opinions on what drug class is causing the impairment
 12 was based on all of our observations.
 13 Q It seems pretty easy to me if you ask somebody what drug
 14 they're on and they tell you, and then you bring them to a
 15 place and you're evaluating them, to conclude they were on
 16 the drug they told you they were on. Doesn't that make
 17 sense?
 18 That's why I can't understand what the purpose of the
 19 evaluation was. Weren't you just in the end concluding
 20 that they were on the drug they told you they were on?
 21 MR. BAKER: Object to the form, compound.
 22 Which question of those would you like --
 23 MR. MILSTEIN: I think he can --
 24 MR. BAKER: -- him to answer?
 25 MR. MILSTEIN: I think he can answer the

1 question.
 2 MR. BAKER: Which one, Counsel?
 3 MR. MILSTEIN: The one he wants to answer.
 4 MR. BAKER: I object to the question. You
 5 can answer.
 6 THE WITNESS: To show the instructor that
 7 you know how to perform a proper evaluation and to get
 8 credit for a proper evaluation, you perform a full
 9 evaluation.
 10 BY MR. MILSTEIN:
 11 Q But did you ever conclude if someone -- if you had asked
 12 them before whether they were high on marijuana, did you
 13 ever conclude when you brought them in that they weren't
 14 high on marijuana, they were high on a depressant or a
 15 narcotic or a stimulant as opposed marijuana?
 16 A I would have to reference my reports to answer that
 17 question.
 18 Q In the log where it says Role, E or R, that's evaluator or
 19 recorder, is that right?
 20 A That's correct.
 21 Q So the first one, Jordan Martin Fox, was that somebody who
 22 had been arrested?
 23 A That individual was -- there was a deputy present with him
 24 and he was in the hospital. He was in the emergency room.
 25 The deputy was investigating an impaired driving related

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1 accident.
 2 Q So that wasn't somebody that you brought to the DOT or the
 3 precinct?
 4 A Correct.
 5 Q Were all the other people people that you brought to the
 6 DOT or the precinct?
 7 A No.
 8 Q Who else was not? And again, I'm just talking about the
 9 15, not the other --
 10 A Uh-huh.
 11 Q Not your other six.
 12 A Again, I would have to reference my reports to be sure when
 13 these individuals were contacted. There were several
 14 people that were brought in by other individuals, other
 15 officers, and we performed evaluations on them and we had
 16 never left the DOT building.
 17 Q I see. What's "MSP (certs)" mean? Minnesota State Police?
 18 A Minnesota State Patrol certification, training for
 19 certification, and that would have been the -- that would
 20 have been the first 15. I don't know why I didn't indicate
 21 that on the 12-15-15 because that also was one. But I
 22 indicated on 12-01-01, which was my first one, that it was
 23 a legal one so that I could track --
 24 Q Right. The way I read this is the ones that Schmutzer --
 25 well, it looks like under Arrest Department, the ones

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1 worked?
 2 A Yes.
 3 Q What were you given? What kind of -- did you have a
 4 laptop, an iPad?
 5 A When we were in the class what did we use?
 6 Q When you filled out these -- put the data in. Was it
 7 handwritten?
 8 A For the log specifically I used my computer from my squad
 9 car.
 10 Q That's a part of your squad car? I mean, it's hooked into
 11 your squad car?
 12 A Yes.
 13 Q Does this blank form come up and then you just type in the
 14 data? Is that how it works?
 15 A That's -- well, the history, I guess, on the form itself is
 16 I was given a thumb drive when I entered into the DRE
 17 program, when I first got to class. That thumb drive, if I
 18 recall, contained the blank form for the log of drug
 19 influence evaluations. And then when you completed one,
 20 it's assigned a control number and you would fill out the
 21 information.
 22 This particular template that you're looking at here
 23 is the one that the officer would keep for their own
 24 recollections. I keep this so that I can keep track of the
 25 order of my evaluations and case numbers and things like

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1 that have MSP (certs), or the ones under Miscellaneous
 2 (AC, arrest officer, etcetera), are identified with
 3 Schmutzer, and the ones that say Olmsted are your
 4 certifications. Am I reading that right?
 5 A I would have to look at each line, but it does -- it looks
 6 to me like where I put Olmsted County (certs), that would
 7 be when I performed the evaluation and then when it says
 8 MSP (certs), Trooper Schmutzer performed the evaluation and
 9 I was the recorder.
 10 Q It looks like it's just the opposite, though. Like at the
 11 bottom, Andrew Martin, that says Olmsted, and under arrest
 12 officer it says Deputy Jackson, but it's an R. And just
 13 above that, David Till, and it says MSP (certs), and over
 14 to the right it says Trooper Schmutzer, E.
 15 A I don't recall what prompted that to be put in there like
 16 that.
 17 Q Who filled out this log?
 18 A I don't know.
 19 Q How is it generated, do you know?
 20 A The format of it and --
 21 Q Yes.
 22 A -- the icons and such?
 23 Q I mean, did you have this on your computer screen --
 24 A I was given --
 25 Q -- and you would type in the data, or not? Is that how it

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1 that.
 2 Now there's actually a national website that all of
 3 these get logged into for statistical purposes and that
 4 will automatically generate a log and that's what we use
 5 now. It's one that's automatically generated.
 6 Q Okay. But I take it, even after you finished the class in
 7 the field, you continued to use the form because you added
 8 six people. I take it the six people you added were just
 9 in the course of your normal activities in the sheriff's
 10 department?
 11 A That's correct.
 12 Q Do you still use the form or the software?
 13 A Yes, I do.
 14 Q Did you ever learn whether the urine toxicology of the 15
 15 you evaluated matched the opinions of the DRE?
 16 A In the 15 people I evaluated, we collected urine samples
 17 from 13, and then the other sample was a blood sample
 18 collected by the deputy that was investigating the crash at
 19 the hospital that we were at.
 20 Q Right.
 21 A So it indicates on this rolling log the sample type, the
 22 first one being blood. That was the legal investigation.
 23 Down to 12-14-14 we got -- we collected a voluntary urine
 24 sample from the individual. And 12-15-15 was our last
 25 evaluation and that individual was unable to provide a

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1 sample. No sample was collected.
 2 Q He refused?
 3 A Yes.
 4 Q Did that count as your evaluation?
 5 A Yes, it did.
 6 Q Was that somebody you took to the DOT?
 7 A I did not bring that individual into the DOT. Someone else
 8 did.
 9 Q Officer Zajak?
 10 A That's what it says on my log.
 11 Q Was he in your class?
 12 A Yes, he was.
 13 Q How about Deputy Ness, was he in your class?
 14 MR. BAKER: Objection. Ness is Michelle
 15 Ness?
 16 MR. MILSTEIN: It's Michelle Ness, right.
 17 BY MR. MILSTEIN:
 18 Q She was in your class?
 19 A Yes, she was.
 20 Q And she does Dakota Turner?
 21 MR. BAKER: Objection, vague.
 22 BY MR. MILSTEIN:
 23 Q And you were the recorder; is that right? She evaluates
 24 Dakota Turner and you were the recorder?
 25 A Well, that's what it states on the log. Actually, what it

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1 states on the log, just to be clear, is that -- it just
 2 says her name under the arresting officer miscellaneous
 3 box.
 4 Unless I looked at my evaluations, I couldn't tell you
 5 who actually performed the evaluation, but it indicates
 6 here that I was the recorder for it.
 7 Q And Teresa Day, that was somebody that you evaluated?
 8 A I would have to look at my reports to recall whether I
 9 actually evaluated or recorded, but on my log it indicates
 10 that I evaluated.
 11 Q Well, each person -- each member of the class had their own
 12 log, right?
 13 A Correct.
 14 Q And under Role was supposed to be your role, correct?
 15 A Correct.
 16 Q You don't have any reason, do you, to believe that the log
 17 is incorrect?
 18 A I don't have any reason to believe that, no.
 19 Q I know I asked you this, but tell me again. CNS was
 20 controlled narcotic substance?
 21 A Central nervous system.
 22 Q Central nervous system. "Central nervous system
 23 depressant." And in that class were things like OxyContin,
 24 Vicodin, and the like?
 25 A OxyContin would be considered a substance like a painkiller

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1 that's derived from morphine, so that would be a narcotic
 2 analgesic.
 3 Q Okay. What would be a central nervous system depressant?
 4 A A lot of antidepressants are central nervous system
 5 depressants.
 6 Q Who told you that?
 7 A It's what I learned in the class.
 8 Q So give me an example of a CNS depressant.
 9 A It might take me a minute because I honestly don't keep up
 10 on the pharmaceuticals by name very well. Prozac, we'll
 11 say, would be an antidepressant.
 12 Q Prozac is an antidepressant?
 13 A Uh-huh.
 14 Q And it's your -- you say you learned in the class that
 15 Prozac is a central nervous system depressant, correct?
 16 A Correct.
 17 Q Was the person who taught the class a police officer or
 18 a --
 19 A It was --
 20 Q -- physician or a scientist or an attorney like myself
 21 who --
 22 MR. BAKER: Objection, vague. Any
 23 particular part of the class, Counsel?
 24 BY MR. MILSTEIN:
 25 Q I want to know who in the class told you that Prozac was a

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1 central nervous system depressant, what instructor? What
 2 was the profession of the instructor?
 3 A I don't recall. We had police officers, state troopers,
 4 deputy sheriffs instructing the class. We also had
 5 individuals from the BCA and other professions that did
 6 come in and teach. I don't remember specifically when we
 7 touched on that.
 8 Q What's ETOH?
 9 A Ethyl alcohol, like alcohol you drink, booze.
 10 Q Booze, okay. And PBT is a breathalyzer?
 11 A Preliminary breath test.
 12 MR. MILSTEIN: Let's mark this one as 19.
 13 (Exhibit 19 marked.)
 14 MR. BAKER: Is there a second page to this,
 15 Counsel?
 16 MR. HANSEN: No, it's Bates stamped from you
 17 guys.
 18 MR. BAKER: So you're showing him one of two
 19 pages of a document?
 20 MR. HANSEN: Yeah. It's just the cover
 21 sheet.
 22 MR. BAKER: And just for the record, that's
 23 971 Bates stamp, OC, right?
 24 MR. HANSEN: Correct.
 25 MS. KIMBLE: It's marked?

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1 MR. BAKER: Yeah, it's Bates stamped and
 2 it's marked as Exhibit 19.
 3 BY MR. MILSTEIN:
 4 Q Did you have a chance to look at it?
 5 A I have.
 6 Q So first tell me how this form is generated. Is it also
 7 something on your computer in your vehicle?
 8 A Correct.
 9 Q And is it completely blank before you put in the data? In
 10 other words, does it say Suspect/Arrested Name and then
 11 blank, and then all those things are blank? And then
 12 location and then a blank, Witnesses and then a blank?
 13 A Correct. It's just got the headers on there.
 14 Q It's just got the headers?
 15 A Uh-huh.
 16 Q So this was somebody who told you their name was Jonathan
 17 Cee, C-e-e?
 18 A That's what the report indicates.
 19 MR. BAKER: Counsel, I'm a little
 20 uncomfortable examining the witness on the substance of the
 21 document when you've withheld page two. If you want to
 22 take a minute, we can print out from our system the second
 23 page of this so that the witness is testifying about the
 24 complete document. Would that be acceptable?
 25 MR. MILSTEIN: That's fine.

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1 MR. HANSEN: That's fine.
 2 (Recess.)
 3 BY MR. MILSTEIN:
 4 Q So I think I had asked you whether this was a form also on
 5 your -- that you filled the data in on your computer in the
 6 car, right?
 7 A Correct.
 8 Q And all the headings were there, but everything else you
 9 had to type in?
 10 A Correct.
 11 Q So what do you have there in front of you, which person?
 12 A It says Jonathan Cee.
 13 Q Jonathan Cee, right. So the arresting officer really just
 14 means the person doing the evaluation, correct, on this
 15 form for Jonathan --
 16 A On this particular form, most likely I would just do it
 17 that way. Being that this was my partner, I would put him
 18 down as the arresting officer and I was the evaluator, for
 19 this particular one.
 20 Q But really nobody was arrested?
 21 A Correct.
 22 Q And I notice there's nothing on there, and I could be
 23 wrong, where you can put the time down, right?
 24 MR. BAKER: Objection, vague.
 25 THE WITNESS: Are you asking like what time

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1 the evaluation itself would have --
 2 BY MR. MILSTEIN:
 3 Q Either the evaluation or to put any data on.
 4 A On this particular portion of the report there is not -- I
 5 don't believe a time that it states the report -- or the
 6 evaluation started at.
 7 Q Although under vitals I think -- where it says 2355 hours,
 8 does that tell me that this was done at 12:55 at night?
 9 It's on the second page.
 10 A That looks to be correct, yeah. That looks to be correct,
 11 yeah. It looks like Cee's pulse was first measured at 2339
 12 hours, 11:39 p.m.
 13 Q And then the blood pressure at 2355, so 11:55 p.m.?
 14 A Correct.
 15 Q And then I guess eight minutes after 12:00 you had another
 16 blood pressure test, right?
 17 A I took three pulse measurements. We only take --
 18 Q Oh, pulse measurement. Okay.
 19 A Yep.
 20 Q So that 0008 is for the pulse measurement?
 21 A Correct.
 22 Q So we know that this person was at least with you from
 23 11:39 to 12:08, correct?
 24 A Correct.
 25 Q Typically how long were they with you at DOT?

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1 MR. BAKER: Objection, vague.
 2 BY MR. MILSTEIN:
 3 Q Did you answer?
 4 A Were you still waiting on an answer? I'm sorry. How long
 5 were they with me --
 6 Q Yeah --
 7 A -- at the DOT?
 8 Q -- typically.
 9 A I'm sorry. That's my mistake. Generally about an hour.
 10 Q Were they in a dark room at all? Were they put in a dark
 11 room by themselves?
 12 A Not by themselves.
 13 Q Were they put in a dark room?
 14 A Yes.
 15 Q What was the purpose of that?
 16 A We do -- we look at the eyes or the pupils under different
 17 conditions, different lighting conditions, and one of those
 18 conditions is near total darkness. So we try and let the
 19 eye or the pupil relax, the eyes adjust to those dark
 20 conditions, and then we take some measurements.
 21 Q I see. So it's with the evaluator. That's part of the
 22 evaluation, putting them in the dark room?
 23 A Correct.
 24 Q So this person tells you that he smoked a couple of pipe
 25 bowls, a gas mask full of marijuana, and a joint at 7:00

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1 p.m., and he smoked two blunts or cigars of marijuana at
2 11:00 p.m., right?
3 A That's what it indicates in the report.
4 MR. MILSTEIN: This should be the last
5 exhibit.
6 (Exhibit 20 marked.)
7 BY MR. MILSTEIN:
8 Q Let me show you Exhibit 20. So I take it there was a log
9 for -- you put the people in a -- the data in a log. You
10 had this drug influence evaluation. And then there was
11 also generated a document such as Exhibit 20, correct?
12 A That's correct. We would -- this particular sheet was a
13 sheet that was for the instructor to fill out for each
14 evaluation that was done in front of an instructor.
15 And then you would have a face sheet, which is what we
16 write our measurements down on while we're actually doing
17 the evaluation, and then you have a report similar to this
18 that would be typed with a -- that would be the whole
19 package. That would be one evaluation for training.
20 Q Okay. And so who was the instructor on Exhibit 20?
21 A Rochester Police Officer Lowney.
22 Q And who were the evaluator -- what was the team of the
23 class members?
24 A It looks like I was the evaluator and the recorder was Karl
25 Willers.

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1 STATE OF MINNESOTA)
2) ss.
3 COUNTY OF ANOKA)
4 Be it known that I took the deposition of NICHOLAS
5 JACOBSON on the 21st day of November, 2014, at Minneapolis,
6 Minnesota;
7 That I was then and there a Notary Public in and for
8 the County of Anoka, State of Minnesota, and that by virtue
9 thereof, I was duly authorized to administer an oath;
10 That the witness before testifying was by me first
11 duly sworn to testify the truth and nothing but the truth
12 relative to said cause;
13 That the testimony of said witness was recorded in
14 stenotype by myself and transcribed into typewriting by myself
15 and that the deposition is a true record of the testimony given
16 by the witness to the best of my ability;
17 That I am not related to any of the parties hereto nor
18 interested in the outcome of the action;
19 That the reading and signing of the deposition by the
20 witness was not waived.
21
22 WITNESS MY HAND AND SEAL THIS 9TH DAY OF DECEMBER, 2014.
23 (SEAL)
24
25 Debra J. Mokszycke, Notary Public

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1 Q Was that the only time that you teamed up with Karl
2 Willers?
3 A I would have to review my reports to be able to tell you
4 that.
5 Q To the best of your recollection?
6 A I don't recall off the top of my head.
7 Q Did you ever ask Karl Willers whether he had given any
8 drugs to any of the people? Did you have a conversation
9 with him about that?
10 A Not that I recall.
11 MR. MILSTEIN: Okay. That's all I have.
12 MS. BROSNAHAN: Does Exhibit 20 have a Bates
13 stamp number?
14 MR. BAKER: Yeah. It is 973.
15 MS. BROSNAHAN: Thank you.
16 MR. MILSTEIN: No other questions.
17 MR. BAKER: He'll read and sign.
18 (WHEREUPON, the deposition of NICHOLAS
19 JACOBSON concluded at approximately 12:20 p.m.)
20
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23
24
25

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1 Forest Olivier et al. vs. Karl Willers et al.
2
3 ADDITIONS, OMISSIONS AND CORRECTIONS
4 Page Line Addition, Omission or Correction Reason
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17 NICHOLAS JACOBSON
18
19 The above-named individual, before me, read said
20 deposition and made the additions, omissions and corrections as
21 indicated.
22
23 Notary Public
24
25 My Commission Expires (DJM)