

**EXHIBIT
C**

<p>COUNTY COURT LARIMER COUNTY, COLORADO</p> <p>201 La Porte Avenue Fort Collins, Colorado 80521</p>	<p>▲ COURT USE ONLY ▲</p>
<p>PEOPLE OF THE STATE OF COLORADO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>SEAN HARRISON SLATTON,</p> <p style="text-align: center;">Defendant.</p>	<p>Case Number:</p> <p style="text-align: center;">2016 M 3395</p> <p style="text-align: center;">Division 5D</p>
<p>For the People:</p> <p style="margin-left: 40px;">Michael Mangione, Esq. 8th Judicial District Attorney's Office 201 La Porte Avenue, Suite 200 Fort Collins, Colorado 80521 Telephone: 970-498-7200</p> <p>For the Defendant:</p> <p style="margin-left: 40px;">Denean Hill, Esq. CU Student Legal Services 206 UCB UMC 311 Boulder, Colorado 80309 Telephone: 303-492-6813</p>	
<p>The matter came on for hearing on April 28, 2017, before THE HONORABLE THOMAS LYNCH, JUDGE of the County Court, and the following FTR proceedings were had.</p>	

I N D E X

WITNESSES FOR THE PEOPLE:

NONE

WITNESSES FOR THE DEFENDANT:

NONE

EXHIBITS IDENTIFIED ADMITTED

For the People:

3 - Officer Hopkins POV Camera Video . 21..... 21

For the Defendant:

None

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Motions Hearing

April 28, 2017

THE COURT: At this time, the Court's going to call the People of the State of Colorado versus Sean Slatton. That's F -- 16 M 3395. This matter comes before the Court for a motions hearing. And we're working on some technical issues here, but I'll let you get that broken down.

MS. HILL: For the record, Your Honor, Denean Hill, attorney registration 34113, appearing on behalf of and soon to be with us, the Defendant.

THE COURT: All right. We understand that he's in the building. So not an issue. What do you -- what do you got going on here, Mr. Mangione?

MR. MANGIONE: This -- nothing. Sorry. That's just the TV doing its own thing. That's not me. I'm not connected at all right now.

THE COURT: Okay.

MR. MANGIONE: Is that distracting?

THE COURT: No. I'm fine.

MR. MANGIONE: Okay. All right.

THE COURT: Just hadn't seen it before. Just seeing what's going on.

MR. MANGIONE: Okay.

THE COURT: All right. So I think there -- I was

1 reviewing the matters before the Court, and I just want to
2 make sure that everybody's in agreement as to what we have to
3 address today. There's a motion for leave to file bad act, or
4 res gestae motion is out of time. That was really just
5 Defense ensuring regarding issues that might arise regarding
6 another matter that we need to address today, which is the
7 motion to reconsider order quashing subpoena. Assuring that
8 the Court would allow a filing of a request for bad act or
9 res gestae motion is out of time. So that one's not timely
10 just yet. It will be later on today.

11 There's a motion for disclosure regarding expert
12 witnesses that has already been ruled on.

13 MS. HILL: It was stated on the record last time by
14 the attorney who was filling in for (indiscernible) --

15 THE COURT: Ms. Barber.

16 MS. HILL: -- Ms. Barber said there would be no
17 experts.

18 THE COURT: Okay. So I --

19 MR. MANGIONE: Right. And that is correct. That's
20 still the People's position.

21 THE COURT: -- I don't think that's an issue. So
22 then we're down to the motion to suppress, and the motion to
23 reconsider order quashing subpoena are really, I think, the
24 meat of what we've got to address today. And I'm thinking,
25 just in the interest of officers, we should address the motion

1 to suppress first.

2 MR. MANGIONE: Okay.

3 THE COURT: So let me -- let me start in this
4 fashion. I mean, I -- I've, obviously, read the Defense
5 motion; I've read the People's response to Defendant's motion
6 to suppress, and included in the People's motion to suppress
7 is a copy of the police report from Officer Hopkins, and there
8 was also the Point of View video that was -- my understanding
9 is that that would not be Mr. Hopkins.

10 MR. MANGIONE: That's -- that's Officer Barnes --
11 Brandon Barnes, who is also here today. And I'm so glad that
12 we did that. I thought I had forgotten to attach that, and
13 the Court hasn't seen that video. So --

14 THE COURT: I've seen it --

15 MR. MANGIONE: Great.

16 THE COURT: -- multiple times recently.

17 MR. MANGIONE: Excellent.

18 THE COURT: I mean, if you guys feel it's necessary
19 or imperative to show it again --

20 MR. MANGIONE: Well, I'll --

21 THE COURT: -- I might consider that.

22 MR. MANGIONE: I'll wait 'til the Court's done, and
23 then I'll make my initial record.

24 THE COURT: Okay. So having reviewed these motions,
25 and I guess I'm going to narrow it down to this: I would like

1 to hear from Counsel -- and this is why I didn't rule on this
2 previously, but I would like to hear from Counsel as to why
3 this needs to be an evidentiary hearing.

4 MR. MANGIONE: And I will address that first if --
5 if the Court is fine with that and Ms. Hill is fine with that.
6 I don't think it needs to, Judge. I think the Court -- and --
7 and, again, understanding -- and I apologize -- understanding
8 the Court has seen Officer Barnes' POV video, which has --
9 shows largely the same information as Officer Hopkins but the
10 audio begins sooner, I think, with that and with
11 Officer Hopkins' report, coupled with our response, I believe
12 the Court can easily rule on this issue. I can make further
13 record about the issue, but I -- I don't think we need to have
14 the officers testify. I think their testimony would be
15 largely cumulative at this point.

16 We could watch the videos again. It sounds like the
17 Court -- the Court just stated it has seen them multiple times
18 recently -- the -- the POV video that I think would be
19 dispositive for this issue. And I'll just rest on the motion
20 that -- that states there is clearly probable cause regarding
21 the possible trespass that was ongoing -- that the officers
22 believed was ongoing, and they had probable cause to make an
23 arrest. I think there is no question there was probable
24 cause, and I'm going to ask the Court to deny the motion
25 without hearing evidence.

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1 THE COURT: Okay. All right.

2 Ms. Hill?

3 MS. HILL: Well, I think there are -- are some
4 things that we could -- some information we could adduce in an
5 evidentiary hearing. I'm looking at my argument now, and, I
6 mean, I suppose another way we could approach it is maybe
7 offer of proof to avoid the evidentiary hearing for the couple
8 of things that I have.

9 THE COURT: In what form? And -- and -- and, in
10 other words -- well --

11 MS. HILL: We --

12 THE COURT: -- first things first. I mean, we've
13 got a couple officers out the door, and, you know, if they
14 need to testify, that's why they're here. But on the other
15 hand --

16 MS. HILL: Let me look at my argument if I could --

17 THE COURT: Yeah.

18 MS. HILL: -- to see if there's -- I mean, because
19 there were things, obviously, that I wanted to adduce in
20 evidence that I was going to argue about. Let me run through
21 the argument in --

22 THE COURT: Sure.

23 MS. HILL: -- in terms of facts.

24 I -- I would also ask if we are going to proceed
25 without an evidentiary hearing that the other video also --

1 Officer Hopkins' video --

2 THE COURT: Okay.

3 MS. HILL: -- the first minute or so of it be placed
4 into evidence as well, because in terms of --

5 THE COURT: And I'm going to stop you, Ms. Hill,
6 just to make sure that I understand your position. There were
7 Point of View videos on both officers?

8 MR. MANGIONE: That's correct, Judge.

9 THE COURT: Okay. So I only got one.

10 MR. MANGIONE: And -- and that's correct. I -- I
11 didn't -- I think I only included Barnes. I -- I -- I guess I
12 only included Barnes. I -- I'm happy to show Hopkins' video
13 as well.

14 THE COURT: Okay.

15 MR. MANGIONE: Barnes --

16 THE COURT: And is that your request, Ms. Hill?

17 MS. HILL: That is my request.

18 THE COURT: Okay.

19 MR. MANGIONE: And to be -- and just to let the
20 Court know, I think we're talking about both -- and correct me
21 if I'm wrong; I'm sure Ms. Hill will correct me if I'm wrong
22 -- but I think we're talking about a couple minutes of video.

23 THE COURT: Yeah.

24 MR. MANGIONE: Not -- not a long video.

25 THE COURT: No, I -- I'm --

1 MR. MANGIONE: Okay.

2 THE COURT: -- I'm not worried about time. That's
3 not -- not an issue.

4 MS. HILL: The -- and I'll just put on the record,
5 the reason that I would want Officer Hopkins' video, because
6 he was the one who had contact with Mr. Slatton. At the point
7 in time that his video comes on and the -- the sound comes on,
8 you can see better. It's the -- it's --

9 THE COURT: Okay.

10 MS. HILL: Mr. Slatton is, you know, in the
11 forefront, whereas Officer Barnes is standing off to the side,
12 and sometimes you can see Mr. Slatton and sometimes you can't.
13 And I think that that other video would be very helpful to the
14 Court.

15 THE COURT: Okay. All right.

16 MS. HILL: Let me -- let me just look at my list of
17 things.

18 I think we can proceed --

19 THE COURT: Okay.

20 MS. HILL: -- with -- just on the videos alone.

21 THE COURT: Okay. Well then, why don't you -- we'll
22 release your officers at this point, and then -- with the
23 understanding that you're prepared to present
24 Officer Hopkins' --

25 MR. MANGIONE: Sure. Yep.

1 THE COURT: -- video.

2 MR. MANGIONE: Absolutely.

3 THE COURT: Point of View camera video.

4 MS. HILL: And I actually had prepared to introduce
5 them in evidence. I actually have a CD. It actually does
6 have all the video on it, but it -- I did mark which ones for
7 the interesting videos --

8 THE COURT: That's fine. But --

9 MS. HILL: -- if the Court wants that.

10 THE COURT: -- I don't have a convenient way to look
11 at that CD.

12 MR. MANGIONE: Right.

13 THE COURT: So we can just -- but as long as you're
14 in agreement that what's on the video is what's on the CD.

15 MS. HILL: This -- this is a duplicate of the
16 discovery -- the media discovery that he (indiscernible).

17 MR. MANGIONE: Okay. And I don't have a -- a disc
18 player on this computer, so -- I mean, I guess to the extent
19 that it is exactly the same, I guess, you can see that, and
20 then I have no problem admitting it. So --

21 THE COURT: Okay.

22 MS. HILL: If -- if you want to look at it, I'm
23 happy to put it in my computer. I'm more than happy to do
24 that.

25 MR. MANGIONE: No, I'll -- I'll trust you. Once we

1 watch this video, if you say it's the same, it's the same.

2 THE COURT: Well, and let's talk worst-case
3 scenario. What you have is the discovered version of the
4 video. It may contain some content before and after this
5 actual incident.

6 MS. HILL: It also contains all the other videos
7 that were discovered, although I have marked the two videos as
8 Exhibits A and B --

9 THE COURT: Okay.

10 MS. HILL: -- that I was interested in. It does
11 contain -- I got -- I just made a duplicate of the CD, so it
12 does contain all of the video. I -- I don't know if --

13 THE COURT: Does it contain all of the discovery?

14 MS. HILL: No. Just the media.

15 MR. MANGIONE: No. There -- there's several --
16 there's more than just the body cam videos, Judge. There's
17 surveillance video; there's several other officers' body cams;
18 things like that.

19 THE COURT: So let me be clear, Ms. Hill. As part
20 of your record, you would like both POV camera videos to be
21 included?

22 MS. HILL: POV camera videos for Officers Hopkins
23 and Barnes; in particular, the number 1 videos from each of
24 them. There are -- there's one from Officer Hopkins along
25 with a surveillance video, and there are four from Barnes --

1 THE COURT: Okay.

2 MS. HILL: -- and there's a whole bunch of other
3 ones.

4 THE COURT: Sure. What might be easier -- if this
5 is agreeable to the parties -- I'll watch that video today --

6 MS. HILL: Uh-huh.

7 THE COURT: -- give an -- give you an opportunity to
8 argue on that if you wish before ruling on the motion to
9 suppress, and then if the People could provide a copy of
10 Officer Hopkins' video 1 from his POV camera --

11 MS. HILL: Perfect.

12 THE COURT: -- that way, there wouldn't -- I
13 wouldn't have to be concerned about --

14 MS. HILL: Understood.

15 THE COURT: -- excess in the record, so to speak.
16 But that way, it'll make your record that I think you intend
17 to for any appellate purposes; is that --

18 MS. HILL: Yes.

19 THE COURT: -- correct, Ms. Hill? Okay.

20 MS. HILL: That's correct.

21 THE COURT: Does that work for the People?

22 MR. MANGIONE: Absolutely, Judge.

23 THE COURT: All right. Well, why don't we proceed
24 as follows: Let the officers go, come back, and if you'll
25 show me that video.

1 MR. MANGIONE: And does the -- sorry -- the Court
2 wants to go ahead and watch the other video -- is that
3 correct? -- at this time?

4 THE COURT: Yes.

5 Does that work, Ms. Hill?

6 MS. HILL: It's fine with me.

7 THE COURT: Okay. I can see fairly well from here.
8 If you guys think I need to get down and closer, I'm fine.

9 MR. MANGIONE: I will -- I will defer to the court
10 with --

11 THE COURT: Okay.

12 MS. HILL: Do you want me to tilt it a little bit,
13 Your Honor?

14 THE COURT: Maybe we'll -- we might hit the main
15 lights.

16 MR. MANGIONE: All right. I think --

17 THE COURT: Oh, yeah.

18 MR. MANGIONE: -- I think this is Hopkins. I'm sure
19 Ms. Hill will correct me if I'm wrong. Let's see if we can
20 pull this --

21 MS. HILL: Always happy to correct you if you're
22 wrong.

23 MR. MANGIONE: I'm -- do agree -- I --

24 MS. HILL: (Indiscernible).

25 MR. MANGIONE: -- I am confident this is how it

1 starts. Okay.

2 Judge, I don't know what the volume is going to be
3 like on this.

4 THE COURT: Okay. Yeah. Well, and it starts out
5 quiet, right?

6 MR. MANGIONE: Does that work?

7 THE COURT: Yeah.

8 MS. HILL: It does. The looped feed starts out with
9 no sound.

10 THE COURT: Yeah.

11 MR. MANGIONE: All right. And I guess I'll look to
12 the Court -- or when -- when are we hoping to stop this thing?

13 MS. HILL: I think it probably makes sense to some
14 extent to just watch it all the way through and then --

15 MR. MANGIONE: All right.

16 MS. HILL: -- to the extent either --

17 THE COURT: It's only a couple minutes long, right?

18 MR. MANGIONE: It's a four-minute-and-22-second
19 video is what I have.

20 THE COURT: We can do it.

21 MR. MANGIONE: All right.

22 THE COURT: All right.

23 MR. MANGIONE: Here we go.

24 MS. HILL: And I -- I don't even see any need for
25 the entire four minutes and 22 seconds if you don't.

1 MR. MANGIONE: I don't either, but I'll, I guess --

2 THE COURT: You guys stop when you think it's
3 appropriate.

4 MS. HILL: Okay.

5 MR. MANGIONE: Thank you, Judge.

6 THE COURT: And I'm good with that.

7 MR. MANGIONE: Thank you. Here we go.

8 (Video plays)

9 THE COURT: I'm going to have you pause.

10 MR. MANGIONE: Yes.

11 THE COURT: Contextually, has Officer Hopkins
12 already encountered --

13 MR. MANGIONE: Yes.

14 MS. HILL: Yes.

15 THE COURT: -- Mister -- okay -- Slatton at this
16 point? Okay. Because that's -- recognizing the other video,
17 that appears to be where we're at in the time frame, so I just
18 want to --

19 MS. HILL: The other video starts --

20 THE COURT: Earlier.

21 MS. HILL: -- first.

22 THE COURT: Yes.

23 MS. HILL: Starts earlier.

24 THE COURT: Okay.

25 MS. HILL: Correct.

1 THE COURT: Thank you.

2 MR. MANGIONE: And for context, the -- the -- the
3 doors the Court is about to see, those are the --

4 THE COURT: Exterior doors to the --

5 MS. HILL: The --

6 THE COURT: -- Lincoln Center.

7 MR. MANGIONE: That's correct.

8 MS. HILL: -- the -- I refer to them as -- as the
9 mall doors. It's like a mall entrance --

10 THE COURT: Uh-huh.

11 MS. HILL: -- with two glass doors. Two sets of
12 glass doors.

13 MR. MANGIONE: All right. Playing again.

14 THE COURT: Okay.

15 (Video plays)

16 MR. MANGIONE: (Indiscernible) stop (indiscernible)?

17 MS. HILL: What's that?

18 MR. MANGIONE: (Indiscernible) stop (indiscernible)?

19 MS. HILL: Yes.

20 MR. MANGIONE: And, Judge, we're going to pause it.

21 THE COURT: Sure.

22 MR. MANGIONE: So we're both satisfied at that
23 point.

24 THE COURT: Okay. That was much less than four
25 minutes.

1 MR. MANGIONE: Less.

2 THE COURT: Okay. All right. Thank you.

3 MR. MANGIONE: Does the Court need to see it again,
4 or are we good to go? I only ask because --

5 THE COURT: I think in -- I think in context of
6 having, you know, reviewed the other video a couple times --
7 and when I say "a couple," I -- I think I watched it two or
8 three times. There are -- certainly, there is a different
9 angle here, but I think the context is familiar enough from
10 seeing the other videos that I'm okay.

11 MR. MANGIONE: All right.

12 THE COURT: But --

13 MS. HILL: I also -- I actually spliced those two
14 videos together. I -- the reason I wasn't going to use them
15 today is because it cut off a little bit of the top and the
16 bottom. But it may help if the Court is interested and -- and
17 Mr. Mangione doesn't have an objection --

18 THE COURT: So --

19 MS. HILL: -- it actually splices -- it starts with
20 Barnes's video, and when the sound comes on in Hopkins' video,
21 it splices it together. I'm happy to show you what I did if
22 you want to look at it more.

23 MR. MANGIONE: I --

24 MS. HILL: I don't know if it would be helpful. I
25 just thought it might be.

1 MR. MANGIONE: I'll defer --

2 THE COURT: Well --

3 MR. MANGIONE: -- to the Court with regards to
4 whether or not that would be helpful.

5 THE COURT: -- you -- you did it.

6 MS. HILL: I did.

7 THE COURT: Or some --

8 MS. HILL: All by myself. I was very proud of that.

9 THE COURT: Okay. Well, so I assume what you did is
10 -- what -- when you say they're spliced, what we're talking
11 about is the two videos -- to the best of your ability -- you
12 put the timelines the same, and is like one above the other or
13 one beside the other or something like that?

14 MS. HILL: Not correct. It starts with
15 Officer Barnes' video.

16 THE COURT: Okay.

17 MS. HILL: He comes out the door, there's the
18 interaction with Mr. Slatton, and you -- you hear
19 Officer Hopkins say, "I'm detaining you for" -- that you --
20 you hear him start on Officer Barnes' video, and then it
21 switches to the -- to the other view, and --

22 MR. MANGIONE: Oh.

23 MS. HILL: -- it just goes from one video to the
24 next one as one movie.

25 MR. MANGIONE: I misunderstood. I thought also -- I

1 think the Court was saying it was more of a split-screen
2 situation with both of them going simultaneously. I -- I --

3 MS. HILL: I tried to do that.

4 MR. MANGIONE: -- I don't see a reason to include
5 that. I think the Court has made a record that it's watched
6 Barnes' video; it's now seen Hopkins' video, and I -- I think
7 the Court is prepared to make a ruling after argument. I
8 don't think we need to see any other videos.

9 MS. HILL: And I'm -- I'm fine with that. I just
10 thought it might be helpful. It was helpful to me when I was
11 working on the case, so --

12 THE COURT: Yeah. I'm -- yeah.

13 (Whereupon further discussion not related to this matter
14 was not transcribed)

15 I'm concerned -- and I'm not trying to imply
16 anything, Ms. Hill -- but I'm concerned about your editing.
17 If I was looking at both at the same time, then it seems that
18 that could not be in any way --

19 MS. HILL: Sure.

20 THE COURT: -- manipulated. But going from one
21 camera to the other --

22 MS. HILL: And -- and I'll -- I -- I'm quite proud
23 of this -- it -- what it's -- what it -- on Officer Barnes's
24 you can hear, "I'm de" -- and then it switches and says,
25 "taining you."

1 THE COURT: Yeah.

2 MS. HILL: hat's -- so that's how they're spliced
3 together right there. But it -- it's -- just -- I'll frame it
4 as a suggestion.

5 THE COURT: Sure. And -- and I don't want to get
6 too far afield or jump ahead here, but is this going to be a
7 Defense exhibit for the trial?

8 MS. HILL: I doubt it. I -- I -- I made it for my
9 own purposes.

10 THE COURT: Okay.

11 MS. HILL: It just made it easier from switching
12 from one video back to the other is all.

13 THE COURT: All right. I mean, I -- I think I would
14 be able to interpret what was what, but -- and, again, I'm not
15 accusing you of anything. I -- I'd just be a lot more
16 comfortable if there were two frames.

17 MS. HILL: I'm certainly not a movie producer or a
18 sound editor by any stretch of the imagination.

19 THE COURT: But it sounds like you enjoyed the
20 process maybe, so --

21 MS. HILL: I was just happy I was successful,
22 because, actually, what I tried to do was put the split -- or
23 the -- the two running at the same timeline.

24 THE COURT: Yeah.

25 MS. HILL: But I actually tried to do it with three

1 with the -- the video from the -- the Lincoln Center, and just
2 wasn't happening; at least, not with my skill set.

3 THE COURT: Okay. Well -- interesting. Well, we
4 have an unusual amount of evidence, in this case, obviously --
5 or kind of evidence. With regard to Officer Hopkins' Point of
6 View camera video, would that be People's Exhibit 3 for
7 purposes of the motions hearing?

8 MR. MANGIONE: Yes, Judge. Thank you.

9 THE COURT: Does that work?

10 MR. MANGIONE: That works.

11 THE COURT: Okay.

12 (Whereupon People's Exhibit 3 is admitted into evidence)

13 THE COURT: So if you could submit that --

14 MR. MANGIONE: I will.

15 THE COURT: -- on a CD and label it "Exhibit 3."

16 So at the moment, we're just addressing the motion
17 to suppress. With regard to the -- I mean, the evidence that
18 the Court has considered in -- up till this point has been the
19 motions themselves, the police report that was tendered by the
20 District Attorney's -- District Attorney's Office is People's
21 Exhibit Number 1, and then the Point of View video from
22 Officer Barnes that was tendered as People's Exhibit Number 2,
23 and then the Court has just watched Point-of -- a portion of
24 Point of View video marked as -- well, will be marked as
25 People's Exhibit Number 3. And, I guess just for the record

1 -- because it wouldn't be clear from the audio -- essentially,
2 we watched that portion of the video up to the point at which
3 Mr. Slatton ran from the officers. So -- and certainly after
4 the spray had been administered.

5 So, all right. With that, did you wish to make any
6 further argument in closing as to this motion, Mr. Mangione?

7 MR. MANGIONE: Yes, Judge. The -- the Court has
8 seen both the videos. The -- the Court has read
9 Officer Hopkins' report at this point. There was -- based on
10 the videos; there was absolutely probable cause to initiate an
11 arrest, to -- to detain Mr. Slatton.

12 Officer -- Officer Hopkins, if you'll recall from
13 Officer Barnes' video, says, "You need to leave the property."
14 He says it again, "You need to leave the property."
15 Mr. Slatton refuses to leave the property. He then says, "I
16 need to see your identification." Mr. Slatton refuses again
17 -- it's a second refusal of a command there -- saying he won't
18 give over his identification, or, at least, questioning why he
19 would need to do such a thing.

20 He is then told he's being detained for trespass.
21 He's then told he's being arrested, to which he responds, "No,
22 I'm not," and he turns away to -- to leave at that point.
23 Officer Hopkins strikes him with a baton and then moves to the
24 OC spray. Mr. Slatton again takes off down the street, as the
25 Court has seen a couple times.

1 Really, the -- the initial issue is whether or not,
2 I think -- with regards to Ms. Hills' motion -- Defendant's
3 motion -- is whether or not there was probable cause for the
4 trespass. And I would submit there was. At the time he is
5 told to leave the property and then told again and then said,
6 "What part of" -- something to the effect -- and -- and I
7 apologize -- something to the effect of, "What part of leave
8 the property don't you understand?" or "What part of the
9 property don't you understand?" with a clear intention that he
10 was not following the commands that he leave the property.

11 At that point, per our motion, there was an ongoing
12 trespass, and -- and the belief that a crime has occurred, is
13 occurring, or is about to occur is enough for probable cause.
14 This is something that is clearly within the officer's view,
15 clearly within his training and experience and understanding
16 of the totality of the circumstances. There was absolutely
17 probable cause to initiate that arrest, and he did so.

18 I think the probable cause for the obstructing and
19 resisting beyond that is self-evident in that he clearly says,
20 "No, I'm" -- "No, I'm not" in response to "You're under
21 arrest." He breaks free -- or he avoids -- attempts to avoid
22 or at least jumps away from the officer's baton strike, and
23 then when he's OC sprayed, he very clearly removes himself --
24 very quickly, I should add -- from the situation.

25 So to that end, Judge, there is very clearly

1 probable cause for this, so I'm going to ask the Court to deny
2 the motion.

3 THE COURT: Okay.

4 Ms. Hill?

5 MS. HILL: I'm going to move up here because I can't
6 stand up and read that far away.

7 THE COURT: That's fine.

8 MS. HILL: So --

9 THE COURT: Yeah.

10 MS. HILL: The first thing I would ask the Court is
11 that the Court rely on the videos themselves. With respect to
12 Officer Hopkins' report, if -- if the Court has compared them
13 at all, there are some inaccuracies in the report, and a fair
14 number of them. There are -- as -- in addition to
15 inaccuracies, there is, I believe, some mischaracterizations,
16 and the -- the videos more fairly and accurately represent
17 what actually occurred.

18 That being said, Mr. Mangione is correct; the main
19 issue here is whether or not there was probable cause that
20 Mr. Slatton committed third-degree trespass. The time of
21 detention in the videos is clear. It's when Officer Hopkins
22 demanded the ID from -- from Mr. Slatton. The evidence in the
23 videos shows that he demanded the ID, not for the purpose of
24 investigating whether Mr. Slatton had committed trespass, but
25 rather, to detain him for trespass. Asking for the ID was a

1 detention.

2 Under People v. Bland, that's a noncustodial arrest.
3 And, of course, under the U.S. and Colorado Constitutions,
4 that arrest is only valid if it's supported by probable cause
5 at that time. Probable cause is, of course, evaluated under a
6 totality of circumstances standard and the --

7 THE COURT: Let me stop you for a second.

8 MS. HILL: Sure.

9 THE COURT: You used the term "noncustodial arrest."
10 But -- okay -- are you also saying that he did not have the
11 authority to detain for purposes of determining his
12 identification at that point?

13 MS. HILL: He detains him -- the conversation on the
14 videos is, he says, "All" -- I believe the exact phrasing is
15 "All right, let me see your ID," or something to that effect.
16 And Mr. Slatton says, "For what purpose?" He says, "I'm
17 detaining you for trespass." The purpose of asking for the ID
18 is for a summons.

19 THE COURT: I see.

20 MS. HILL: To issue a summons, there must be
21 probable cause.

22 THE COURT: Your point is, he's not asking for the
23 ID for purposes of an investigatory stop?

24 MS. HILL: Correct.

25 THE COURT: Okay.

1 MS. HILL: Correct. He's -- he's not investigating
2 it. He's made his decision he's going to summons this
3 individual, and so he says on the video.

4 So back to the totality of the circumstances, the
5 specific and objective information available here is -- and I
6 will encourage the Court, unfortunately, to watch the videos a
7 few more times to get the timeline down -- what you see in the
8 video, initially, you see the officers turn around -- or
9 specifically, you see Officer Hopkins because Officer Barnes
10 is behind him and it's Officer Barnes' video -- he takes a few
11 steps, he talks to -- I know the person, and I know
12 Mr. Mangione knows the person is Ms. Davis, and the Court
13 would not know who she is at this time, but he speaks with
14 her. She indicates that the gentleman over there needs to be
15 taken out of the building.

16 Officer Hopkins and Officer Barnes behind him walk
17 towards Mr. Slatton. As Officer Hopkins does so, you see his
18 thumb go up in the air. You actually see that happen three
19 times. But the first time it happens is what I'm counting as
20 the zero point -- the zero mile marker, if you will -- because
21 that's where -- there's no sound on the video yet, but he's
22 just been given the information from the woman, he's walking
23 over, he's doing his thumb -- and -- and I'll -- for the
24 record, I'll say he's lifting his right thumb up and pointing
25 it towards the exit doors, and he's facing Mr. Slatton when he

1 does that.

2 That being the zero point, that's the first time
3 he's asked to leave. There's no evidence anywhere -- and, in
4 fact, there is evidence that Mr. Mangione and I know about
5 that that is, in fact, the first time that he's being asked to
6 leave.

7 Mr. Slatton starts moving five seconds after what I
8 will refer to as the "first thumbs up." He doesn't say, "You
9 can't make me leave." He doesn't say, "I'm not leaving."
10 Actually what he says -- and the Court may -- again, may have
11 to listen to it a few more times -- as he's walking out -- as
12 he begins his walk out, he says, "I'm going." He walks out at
13 a normal speed. He doesn't drag his feet in any way. He
14 doesn't stop on his way out of the building. He doesn't even
15 look back. He takes the nearest exit.

16 He -- I'm sorry -- after he exited the building, he
17 clears the entryway. You'll see on the video that he walks
18 some distance away from the doors, and that would be one of
19 the misrepresentations in Officer Hopkins' report. I believe
20 he says he stayed right outside the doors. He's actually
21 approximately 30 feet away standing in front of -- there's a
22 sculpture outside. So he clears the entryway, and he stops
23 briefly to use his phone to call himself a ride.

24 The two officers follow him out.

25 THE COURT: Well -- and let's be clear about that.

1 The officers have no idea why he stopped.

2 MS. HILL: Correct.

3 THE COURT: Fair enough?

4 MS. HILL: Fair enough.

5 THE COURT: And previous --

6 MS. HILL: And I take no issue with them following
7 him out.

8 THE COURT: -- and previously, Mr. Slatton was told
9 -- and you're going to know the wording on the video -- but he
10 was told to leave the property.

11 MS. HILL: He was.

12 THE COURT: He wasn't told to leave the building or
13 leave this room; he was instructed to leave the property.

14 MS. HILL: You'll hear it once on the video. I will
15 ask the Court to note the sound level in there. What you're
16 hearing is very clear on the video, and it's Officer Hopkins'
17 Point of View camera, and the microphone is right next to his
18 face.

19 THE COURT: Sure.

20 MS. HILL: But the --

21 THE COURT: But you can hear it in the other officer
22 -- in Officer Barnes' video as well.

23 MS. HILL: True. But Officer Barnes is also
24 standing next to him when that particular statement is made.
25 Mr. Slatton is several feet in front.

1 Further, he -- so he clears the building; he pauses
2 momentarily to call -- not call but use your -- use his app --
3 his application on his phone --

4 THE COURT: Okay.

5 MS. HILL: -- to get an Uber. In other words, he's
6 still continuing to leave. He has paused momentarily. He has
7 his phone out, but he's still in the process of leaving when
8 he is confronted again: "What about the property don't you
9 understand?" or something to that effect.

10 And the officers do follow him out of the building
11 immediately, which I don't necessarily take issue with, but
12 they don't really wait to see what he's doing or what he's
13 going to do. It's immediately -- or -- somewhat aggressive:
14 "What about the property didn't you understand?" when there's
15 nothing about what Mr. Slatton's doing that really -- other
16 than standing there on his phone. And, you know, they're not
17 waiting to see what he's doing, but he's not throwing things,
18 he's not yelling, he's not cursing, he's not, you know,
19 pounding his fist in anything. He's very calmly using his
20 phone to call a ride.

21 Miss -- sorry -- Officer Hopkins then reiterates
22 that Mr. Slatton needs to leave the property -- and this is
23 very important -- to which officers -- I'm sorry --
24 Mr. Slatton responds, "Okay, I will." And in the very same
25 second -- not even one full second passes -- and, again,

1 you'll see this on the video -- the officer demands
2 Mr. Slatton's ID. And that demand for ID occurred a whopping
3 38 seconds after that zero mile marker, the first thumbs up.

4 The argument here is that common sense alone
5 dictates that 38 seconds is just not an adequate amount of
6 time for anyone -- and -- and certainly not an officer who is
7 under the law, supposed to be acting in a reasonably cautious
8 manner -- to determine that facts like the ones that are here
9 amount to unlawfully remaining on the property of another. In
10 addition to that, there is some case law that supports what
11 common sense dictates, and I do have copies of those cases for
12 both the Court and Mr. Mangione. They are not criminal cases.
13 They are instead premises liability cases, and I can approach
14 -- if I may approach --

15 THE COURT: Sure.

16 MS. HILL: -- I can bring those up to the Court.

17 And while they're not criminal cases, they are --
18 both the cases are looking at, essentially, the same exact set
19 of facts -- or -- or the same exact standard, I should say:
20 Whether or not, you know, somebody or somebody's things may
21 remain on the -- how long, I should say -- how long they may
22 remain on the property of another without a -- trespass
23 occurring after consent to be present has been revoked. It's
24 exactly the same determination. I'll note for the Court that
25 the Martin v. Union Pacific Railroad case -- that's at the

1 186 P.3d 61 case -- that has been overruled on other grounds,
2 but the issue for which I'm citing it today is good law.

3 They're -- both of those cases cite favorably to the
4 -- restatement second of torts. And, in short, the relevant
5 holdings in each of those cases provide that once consent for
6 the presence of either a person and/or his things has been
7 revoked so long as the person leaves or removes -- and/or
8 removes his things in a reasonable manner and within a
9 reasonable time under the circumstances, there's no trespass.
10 And, here, the facts show that Mr. Slatton was in the process
11 of leaving as he had been directed to do. He was doing so in
12 a reasonable manner: He went to the nearest exit, he didn't
13 dilly-dally, he cleared the area before he stopped and, you
14 know, made the -- opened his -- or opened the app on his phone
15 -- or tried to -- to call a -- a ride. And he did everything
16 within a reasonable period of time -- before the arrest at
17 38 seconds occurred.

18 There just was simply no probable cause that
19 Mr. Slatton was committing trespass at the time he was
20 arrested, and, as such, the arrest was unconstitutional. And
21 pursuant to Castaneda, all the evidence must be suppressed.

22 As for the -- the obstructing and resisting charges,
23 there are problems with those as well.

24 THE COURT: Well, but we don't get there, do we?

25 MS. HILL: I don't think we get there. I really

1 don't.

2 THE COURT: Well, I mean, if they've got probable
3 cause to arrest him for trespassing, I mean, you can argue
4 that -- you can argue that there's not good -- well, let me
5 cut to the chase. Are you not trying to have a prelim on
6 misdemeanors?

7 MS. HILL: I'm sorry?

8 THE COURT: Are you not trying to have a preliminary
9 hearing on misdemeanors?

10 MS. HILL: I don't know that I would refer to it
11 that way.

12 THE COURT: Well, of course, you would not, because
13 you have no right to one. But, I mean, the purpose of a
14 probable -- purpose of a preliminary hearing is to determine
15 probable cause.

16 MS. HILL: Sure.

17 THE COURT: And I don't think we get to the issues
18 -- I mean -- and -- and, besides, it's your position that the
19 arrest or detention occurred prior to that, right? That's
20 really your issue?

21 MS. HILL: Prior to the actual custodial arrest.

22 THE COURT: Yes.

23 MS. HILL: Yes.

24 THE COURT: Right. So -- okay. All right.

25 Well, the matter before the Court is a motion to

1 suppress with regard to the issue of probable cause regarding
2 the arrest, and -- and, obviously, there's been a number of
3 details discussed from both Counsel here. The Court has
4 reviewed both the motion to suppress and the People's response
5 to the Defendant's motion to suppress.

6 There's been -- this is a unique case in the, I
7 guess, quality of evidence that is available to everyone,
8 which, I guess, is part of technology these days. But, in
9 this particular case, we've got not just one but two videos,
10 and there's -- these were Point of View camera videos that
11 were taken by the officers -- well, taken by the Point of View
12 camera worn by the officers during the time of this incident.
13 Now, there's some other things that clearly occurred, and the
14 only real record of that that we have is the officer's report,
15 and the only one that the Court has reviewed is
16 Officer Hopkins' report -- report.

17 But, essentially, the nature of the allegations are
18 that an individual associated with the Lincoln Center was
19 asserting that Mr. Slatton was behaving in a fashion that
20 required him to -- to leave the building and the property.
21 And the officers proceeded to instruct him so. That can be
22 seen in the video and heard in Officer Barnes' video. I don't
23 think we got any of that on Officer Hopkins' video.

24 My understanding regarding the way these videos work
25 -- and maybe Counsel can elaborate -- but my understanding is

1 that they press some button; basically, these things are
2 recording stuff all the time. They have some kind of buffer
3 in them. But they don't actually associate it with a file
4 until you press a button, and then it starts the video like 30
5 seconds before and audio some --

6 MS. HILL: If -- if I may?

7 MR. MANGIONE: That -- that's about my understanding
8 as well, Judge.

9 THE COURT: -- shortly after that.

10 MS. HILL: It -- it's looping all the time.

11 Whenever the -- the camera is activated --

12 THE COURT: Yeah.

13 MS. HILL: -- whatever is in the loop -- and the
14 loops can be set to different times depending on whatever.
15 Both of these particular cameras had loops of 30 seconds.

16 THE COURT: Okay. So -- so there -- and -- and the
17 audio doesn't start until they press the button?

18 MS. HILL: The audio starts when they -- the button
19 is pushed.

20 THE COURT: Yeah. Okay.

21 MS. HILL: But it picks up all the video for the
22 last 30 seconds.

23 THE COURT: Right.

24 So, in this particular case, I mean, the -- there's
25 -- there's -- obviously, the buttons were pressed at different

1 times. Officer Barnes pressed his button in the neighborhood
2 of ten to 15 seconds prior, and Officer Hopkins pressed his
3 what appeared to be as he was walking out the door -- or
4 roughly that amount of time -- after Mr. Slatton had left.

5 But the issue before the Court, I -- I guess, as I
6 kind of got to at the end here, there really is an issue as to
7 whether or not this is appropriate. There are a number of
8 different misdemeanors in which the issue of probable cause
9 might be raised for purposes of suppression. For example, in
10 the case of a DUI, when the officer advises them of express
11 consent, he's not to do that until he has probable cause. So
12 the point being that that is a statutory construct that
13 specifically gives the Defendant a right to a potential
14 suppression avenue when those facts exist.

15 Here, we don't have that. I mean, there's not been
16 any -- anything to suggest that statutorily or through some
17 kind of case construct that the Defendant is entitled to the
18 equivalent of a preliminary hearing, which is, in essence,
19 what's been requested here. Because, in essence, the -- the
20 motion to suppress is claiming that there's not probable
21 cause, which was the determination that was previously made by
22 a magistrate or another judicial officer as part of the
23 warrantless arrest. So to get another review of that probably
24 is giving the Defendant an extra bite at the apple, so to
25 speak.

1 Nonetheless, we have gone through this proceedings,
2 the Court has done the requisite review of the materials that
3 have been presented, and in light of that, the Court is going
4 to make a finding that the officer did have probable cause for
5 arrest as to the issue of trespass.

6 The Court would note a couple of significant things:
7 I notice in the Prosecution's argument that he indicated that
8 Defendant refused to leave. Technically, that's not required.
9 Refusal is not an element. It's simply required that he
10 remain. And then with regard to whether or not 38 seconds is
11 long enough, that's an issue to be determined by the jury.
12 The reality of it is, is that Mr. Slatton was clearly asked to
13 leave the property; Mr. Slatton positioned himself outside the
14 door; whatever he engaged in, the officers were not really
15 aware of. They were aware that he wasn't moving. And as the
16 officers confronted him again -- you know, whether or not his
17 posture, demeanor, expressions were confrontational in nature
18 is something that I guess will be determined by the jury.

19 But, certainly, under the totality of the
20 circumstances, the Court is going to find that the officers
21 did have probable cause for arrest regarding the offense of
22 trespass. And in light of that, the motion to suppress will
23 be denied.

24 So any questions about the Court's findings or
25 rulings regarding that motion?

1 MS. HILL: I'd just like to make a quick record if I
2 could.

3 THE COURT: No. You've already made your record.

4 MS. HILL: With regard to the preliminary hearing
5 statement of the Court.

6 THE COURT: Well, I mean, I think you've made your
7 record as to why you think it should be admissible pursuant to
8 other case law.

9 MS. HILL: True. I have.

10 THE COURT: Okay. I think you've made -- well, I'm
11 going to deny your request for additional record at this
12 point. Now, I will clarify my ruling if you have any specific
13 questions about that. But, other than that, I'm going to
14 limit it.

15 Anything else? Any questions about the Court's
16 findings or ruling by the People?

17 MR. MANGIONE: No, Your Honor.

18 THE COURT: Okay.

19 So the next matter that we have -- I think we're --
20 I think we're good with the disclosures of expert witnesses,
21 and the People aren't intending to endorse any --

22 MR. MANGIONE: That is -- I'm sorry -- I'm making a
23 hand gesture.

24 THE COURT: -- experts?

25 MR. MANGIONE: Yes, that is correct. The People do

1 not intend on calling any experts in this case.

2 THE COURT: And, I mean, just for clarification, you
3 don't intend to elicit any expert testimony from your
4 officers? I mean, this is not a --

5 MR. MANGIONE: I -- I can't, at this point, imagine
6 a scenario where I would need expert testimony. I -- I can't
7 imagine -- I -- I'm trying to think.

8 THE COURT: Let me bring up something and see if we
9 need --

10 MR. MANGIONE: Okay.

11 THE COURT: -- to flesh it out. For example, do you
12 think your officers intend to testify as to Mr. Slatton's
13 level of intoxication based on any training or experience
14 beyond what a lay observer would have?

15 MR. MANGIONE: No. No. Short answer. I think the
16 Court has asked all the specifics of that question. I can
17 say, "No."

18 THE COURT: Okay. All right.

19 So, I guess, Ms. Hill, do you think we've adequately
20 -- adequately addressed that motion?

21 MS. HILL: I do think so, yes.

22 THE COURT: Okay. All right.

23 All right. So I think the only thing we have left
24 is -- I'm going to call it the motion to reconsider the order
25 quashing subpoena. It probably merits orientation for the

1 record as to how we got to that particular motion. But there
2 was a subpoena duces tecum seeking any and all material and
3 information in the Fort Collins Police Services possession
4 concerning the officer -- this was Officer Todd Hopkins --
5 including, but not limited to, that contained in personnel,
6 internal affairs, and performance standards unit files related
7 to use of force and other acts of aggression or violence,
8 noncompliance with FCPD rules, regulations and policies of the
9 law, and untruthfulness or other acts indicative of
10 dishonesty; and then with respect to Officer Barnes, any and
11 all material and information in FCPD possession concerning the
12 officer including, but not limited to -- to that contained in
13 personnel, internal affairs, personal (sic) standards unit
14 files related to use of force and other acts of aggression.

15 The -- those subpoena duces tecums were served on
16 the chief of Fort Collins Police. There was an objection
17 filed by the City Attorney's Office, and the Court, based on
18 that objection, quashed the subpoenas. Then we got to
19 Defendant's response to the objection. And then there was a
20 City Attorney's reply to the Defendant's motions to
21 reconsider. Then there was the Defendant's surreply to the
22 Fort Collins City's Attorney's pleadings. And then the People
23 filed a response to Defense Counsel's previously quashed
24 subpoena duces tecum and subsequent responses and replies.

25 So that -- I think; still, the motion to be ruled on

1 is the motion to reconsider the order quashing the subpoena.

2 Is everybody in agreement?

3 MR. MANGIONE: I think that's correct, Judge.

4 THE COURT: Okay.

5 MS. HILL: I do think that's correct as well.

6 THE COURT: Okay. All right. So, obviously, I have
7 -- there was a great deal of authority cited; there was,
8 obviously -- I mean, you know, the record will be reflective
9 of this -- but what we're really talking about here is
10 somewhere in the neighborhood of, you know, 30 pages of
11 motions. And the Court has reviewed all of that, and so in
12 light of that, is there any further argument that either side
13 wishes to make?

14 MR. MANGIONE: No, and I -- and I had filed a -- a
15 response to that, but I think -- honestly, Judge, I think,
16 largely the -- the issue has been litigated in paper form. At
17 this point, I'll -- I'll rest. No further argument. But I
18 will say that if the Court's ruling -- I'm sorry -- I spoke
19 with the City Attorney today, whose last name escapes me at
20 the moment -- first name is Bronwyn -- and I'm sorry --

21 MS. HILL: Scurlock.

22 MR. MANGIONE: Thank you.

23 THE COURT: Scurlock.

24 MR. MANGIONE: Miss -- Ms. Scurlock. I spoke with
25 her. She did inform me that they obtained the files from the

1 Court after the court's order to do so at the last hearing and
2 that if the Court's inclined to rule that there is an in
3 camera review or some review of those files, they would get
4 them over as soon as possible. But I'm assuming that would
5 also include next week if that's the way the Court rules. So
6 just to put that out there: If the Court does an in camera
7 review, they will get the files back. They are not here
8 today. They were not aware of this motions hearing until
9 apparently late in the day.

10 THE COURT: Okay.

11 MR. MANGIONE: So...

12 THE COURT: And, I guess, Mr. Mangione, the
13 interaction is interesting, and here is what I mean by that:
14 Mr. Slatton is requesting this information and has alleged
15 excessive force, and those two words seem to have put the City
16 Attorney in a more defensive posture, and so, in -- in
17 essence, has said they were conceding in camera review in
18 light of those magic words being utilized. The People's
19 position is somewhat different. The People's position is that
20 you're not suggesting an in camera review; is that correct?

21 MR. MANGIONE: Judge, I object, but I don't want to
22 belabor the point. I -- I did object. I noted all my
23 objections in my motion -- in my response. But I'm not going
24 to make further argument on that. I -- when I spoke with the
25 City Attorney, frankly, the Court is right -- the Court said

1 that -- the Court sort of indicated these magic words
2 "excessive force." She indicated to me that typically when
3 that comes up, the Court typically rules to look at the file.
4 So in -- in her opinion, it was not necessarily a -- a -- a
5 hill worth dying on, so to speak. So to that end, I -- I
6 think that's -- that's what happened there. I did still file
7 an -- an objection, but I'm certainly ready to have the Court
8 rule on that.

9 THE COURT: Okay. All right.

10 Ms. Hill, did you want to make any further argument?

11 MS. HILL: I'm sure the Court will be quite -- quite
12 pleased to know that I do not.

13 THE COURT: I don't know about pleased. I -- that's
14 really irrelevant.

15 All right. Well, this is difficult, and the reason
16 it's difficult is that it -- it puts the Court in a really
17 kind of uncomfortable spot for the Court. And what I mean by
18 that is that there really are a number of different policy
19 issues to consider. And as I alluded to in my statements to
20 Mr. Mangione, there are these issues that, apparently, when
21 these words are used, it seems to create for the City a
22 posture of, I -- I guess, submission, and so they just readily
23 hand these things over. That doesn't change the Court's
24 responsibility with regard to its analysis just because the
25 City Attorney's Office is willing to hand them over.

1 In looking at the -- the particular circumstances, I
2 mean, obviously, the Court has considered a number of
3 different things here. But particularly in light of the --
4 the evidence that the Court has to consider in making this
5 ruling, I find it somewhat significant that with regard to
6 this issue of excessive force, the idea that simply because
7 it's alleged makes it incumbent upon a governmental agency to
8 disclose certain otherwise protected materials strikes the
9 Court as somewhat disingenuous. And I don't mean that the
10 Defendant is being disingenuous, but I mean, to interpret the
11 case law in that fashion.

12 In this particular case -- which is unique -- the
13 Court has had the opportunity from two different angles now to
14 see what happened. And by that, you know, I haven't seen the
15 bruises, if any, that were endured by Mr. Slatton, but what is
16 apparent was that -- well, the other thing I might add is that
17 I could not find a definition for "excessive force." Anybody
18 have a definition that -- that they were an authority for
19 excessive force they were able to find?

20 MS. HILL: I've -- I've not looked.

21 (Indiscernible) --

22 MR. MANGIONE: I haven't either, Judge.

23 THE COURT: I can tell you there's not a --

24 MS. HILL: -- the common defense definition.

25 THE COURT: -- there's not a statutory one, which I

1 thought might be available and -- and provide some guidance.
2 But to be clear, with regards to the Court's findings and
3 rulings, the -- the force in this particular case that could
4 be at issue occurred after Mr. Slatton was instructed to stop,
5 that he was under arrest; in fact, a foot pursuit had ensued.
6 And after multiple verbal commands and, clearly, it appeared
7 that Mr. Slatton was not going to be in compliance with that,
8 a baton strike was done. Now, exactly how it was done, where
9 it happened, that is not clear from the videos. What is clear
10 is that it didn't slow him down a lick. He just kept going
11 and turned around just briefly, but in terms of there was like
12 a plink, and then he kept moving away from the officer not in
13 any way suggesting compliance.

14 Now, with regard to this issue of whether or not
15 there was a -- a gesture or a confrontational sort of stance
16 when the OC happened, I mean, he clearly turned around, but
17 the idea that excessive force was used when the Defendant ran
18 -- ultimately, ran away the -- from the officer is such that
19 the Court is going to find that there was not excessive force
20 used in this case.

21 Now, keep in mind that finding is for the limited
22 purpose of evaluating this evidentiary request. It's not
23 anything that the Court finds is -- or -- or is suggesting is
24 going to be before the jury. It's not anything that is -- if
25 there's other types of administrative or civil actions -- I --

1 I just want to be clear that this finding is for the limited
2 purpose of reviewing this case for purposes of whether or not
3 there was excessive force and evaluating the merits for the
4 evidentiary request regarding the subpoena duces tecum.

5 So as I've indicated, having reviewed the video and
6 knowing that that's available to the -- the parties and the
7 jury, the Court is going to find that there was not excessive
8 force used for purposes of the determination of this evidence.
9 The Court would also add that that finding is not a bar to the
10 use of self-defense instruction or any of that either. I just
11 want to be clear that the Court simply made that determination
12 in its evaluation here.

13 Having made that determination, the issue of
14 relevance with regard to these records becomes paramount. And
15 what we're talking about here is three counts: We're talking
16 about resisting, obstructing, and criminal trespass. And the
17 specific records that are being sought here the Court finds
18 are not relevant for this proceeding and whether or not an
19 element of this defense was more or less likely to have
20 occurred.

21 I guess that, in itself, acts as a bar to ordering
22 the City to produce the records that were required, but -- and
23 I don't think we even really get to the Spykstra standard as a
24 result of that -- but there's also concerns that the Court had
25 looking at it from a Spykstra analysis as well, which is that

1 the -- the basis for believing that these officers had any of
2 this content was tenuous at best. That with regard to whether
3 or not this was done in good faith, I'm not -- I'm not making
4 a finding that it was in bad faith; however, the breadth and
5 scope by which the requests were made were what appeared to
6 the Court to be a general -- as we've -- the slang that we've
7 adopted -- a fishing expedition.

8 So in light of the Court's findings in that regard,
9 the Court is going to rule that the quashing of the subpoena
10 will not be -- quashing of the subpoenas will not be
11 reconsidered, and the request to do so will be denied.

12 So in light of the Court's findings or rulings in
13 that regard, Ms. Hill, I will allow you to make a further
14 record at this time if you wish.

15 MS. HILL: Two questions that are short for the
16 record.

17 THE COURT: Sure.

18 MS. HILL: The -- the Court, when talking about
19 excessive force, it was referring to the use of the baton and
20 the OC spray, but I thought I heard the Court say something on
21 the record about something that happened after? I don't think
22 that's what you meant. I think I either heard it wrong or --

23 THE COURT: Well, to be -- to clarify, clearly,
24 officers under certain circumstances are allowed to use force.

25 MS. HILL: Sure.

1 THE COURT: So the determination is whether or not
2 it's excessive. In this particular case, the use of force was
3 intended to slow down Mr. Slatton. It had little impact in
4 that regard, suggesting that it was not excessive for its
5 purpose. So that was --

6 MS. HILL: I -- I --

7 THE COURT: -- the Court's analysis.

8 MS. HILL: -- I understand all that. I just --

9 THE COURT: Okay.

10 MS. HILL: -- I think -- I'm -- we were only
11 referring to the baton and the OC spray, and I thought I heard
12 the Court mention something that happened later.

13 THE COURT: I -- I said it didn't slow him down a
14 lick. So that -- did that slang confuse you?

15 MR. MANGIONE: I think --

16 MS. HILL: No.

17 THE COURT: Okay.

18 MS. HILL: I'm from the South.

19 MR. MANGIONE: Can I -- can I jump -- jump in here?
20 I think -- I think I had a different interpretation. I -- I
21 understand what Ms. Hill, I believe, is referring to is the
22 Court said: "after a foot pursuit began."

23 MS. HILL: That's what it was.

24 MR. MANGIONE: I think the -- my understanding is
25 that the Court's interpretation of when the foot pursuit began

1 was the second Mr. Slatton started walking away, and thus the
2 baton came out -- that that was the outset of the foot
3 pursuit. That was my understanding of -- that was my
4 interpretation of the Court's understanding. But -- but the
5 Court did state that the baton, the OC spray, or the alleged
6 excessive force was used after the initiation of a foot
7 pursuit.

8 THE COURT: Yes. For purposes of the analysis and
9 my finding in that regard, the Court finds that it would be
10 evident to an officer that Mr. Slatton had determined he was
11 not going to be compliant with the officer's order to stop.
12 There was both the physical manifestation of that by walking
13 away and the verbal manifestation of, "No, I'm not," or
14 whatever it was, when the officer said, "You're under arrest."

15 MS. HILL: Then I think, all that being said, I --
16 we are on the same page now. I just --

17 THE COURT: Okay.

18 MS. HILL: That was exactly what I was talking
19 about.

20 THE COURT: Okay.

21 MS. HILL: So I just -- wondering what happened
22 later. So --

23 THE COURT: Clarifying the record's always good.

24 MS. HILL: Question Number 2: I not only requested
25 excessive force records but also records regarding

1 noncompliant with Fort Collins Police Services rules,
2 regulations, policies of the law based on some policies that
3 were clearly violated in this case. And also with respect to
4 -- that was --

5 THE COURT: Well --

6 MS. HILL: -- with respect to Officer Hopkins --

7 THE COURT: -- let me -- let me --

8 MS. HILL: -- and then also --

9 THE COURT: -- stop you on that. I mean, it's your
10 opinion that those were clearly violated. Fair enough? I
11 mean, there's not been any determination by anyone else that
12 that was, in fact, the case.

13 MS. HILL: My opinion is based on the plain reading,
14 but I -- I understand what the Court's saying.

15 THE COURT: Okay.

16 MS. HILL: There was also the untruthfulness or acts
17 of dishonesty that I had requested on Officer Hopkins. And
18 then there were -- according to the Fort Collins Police
19 Services manual, there should have been force records produced
20 on this particular case. And is the Court also saying that
21 those will not be produced as well?

22 THE COURT: So in that particular -- so you're
23 talking about a specific report that the officer -- well, it's
24 your position that that should have been prepared --

25 MS. HILL: It's according to the manual.

1 THE COURT: -- because the baton and the OC were
2 used?

3 MS. HILL: Correct.

4 THE COURT: Okay. And that -- yeah. I don't -- you
5 requested those, but those were not specifically on the SDT.
6 Well, wait a minute. There's the performance standards unit
7 files. Is that what you're talking about?

8 MS. HILL: It would have been encompassed in the
9 excessive force records.

10 THE COURT: Okay.

11 MS. HILL: And -- and as to both officers on that.

12 THE COURT: I feel like, at this point, we have a
13 compound question going on. So I want to make sure that we
14 address these things individually.

15 First of all, by -- by reading the specific request
16 of the SDT -- and I was clear about all of the things that
17 were being requested. With regard to the specific performance
18 standard units files, I don't think it had been made clear to
19 me -- or if it had, I did miss this -- that these are prepared
20 by the officers. So if this is something that is done, you
21 know, in the course of the business that's -- that's supposed
22 to be prepared by the officer when they use these particular
23 tools, then it stands -- well, it's reasonable for that to be
24 something that would be produced. In other words, if this was
25 a report that was done as part of this incident, then that is

1 something that should be provided. So I'm getting a little
2 more into a Rule 16 category as opposed to an SDT category,
3 just to be clear. But...

4 MS. HILL: The manual also states that the reports
5 would be protected personnel files so it wouldn't fall under
6 Rule 16. So, I mean, I'm happy to get it whichever way it
7 comes, but...

8 THE COURT: Well, here -- here's -- here's what I'm
9 concerned about that I think may be the nature of those
10 reports, and, honestly, I don't know how they're done, and
11 maybe that's why I was a little bit confused. Let's say, for
12 example, that there is a part of an HR report that's prepared
13 by their supervisor whenever they utilize these. I'm not
14 authorizing that. If, on the other hand, this is a report
15 that an officer prepares that says, Hey, Sergeant, this is
16 what I did today, I used these tools, and these were the
17 context by which I did them, then that is something that,
18 pursuant to Rule 16, should be provided regardless of how
19 Fort Collins PD wants to categorize it.

20 So my -- my distinction is, if it's a -- an
21 evaluation or some kind of assessment that's done by a
22 supervisor, then I'm finding that that's not relevant. If it
23 is something that is prepared by the officer as part of their
24 expanded reporting requirements due to using these tools, then
25 I'm going to ask the People to inquire as to whether or not

1 those reports were prepared; and if they were, then they're to
2 be provided. If they were not, then Ms. Hill is to be advised
3 that an inquiry was made in that regard, and you were told
4 that they did not do those reports. Because then she can do
5 with that what she wants.

6 MR. MANGIONE: What I'm -- I'm typing that email as
7 the Court is ordering it.

8 THE COURT: Okay.

9 MR. MANGIONE: I'm going to cc Ms. Hill on that
10 email to the City Attorney's Office.

11 THE COURT: I'm good with that.

12 MS. HILL: I'm good with that. And -- and my
13 understanding, Your Honor, is that it is, indeed, the latter.
14 Again, the way the manual is written --

15 THE COURT: That -- that the officer prepares it?

16 MS. HILL: -- it's that the officers are to prepare
17 -- if I -- if I'm remembering it correct. I haven't looked at
18 it in a while, but that is my --

19 THE COURT: Okay.

20 MS. HILL: -- distinct recollection.

21 THE COURT: Well, let's see what we get, and, you
22 know, if it becomes a problem, I know you have -- know how to
23 file motions and will not hesitate to do so, so that we can
24 clarify that.

25 MS. HILL: I'm sorry, what was that last part?

1 THE COURT: And won't hesitate to do so, so that we
2 can clarify that if it's a problem.

3 MS. HILL: Oh, I have refrained.

4 THE COURT: That was not meant to be at all
5 judgmental.

6 All right. Any questions about the Court's ruling
7 or findings or were -- or were you --

8 MS. HILL: With respect to that, no, but there is
9 still the question of untruthfulness or acts of dishonesty.
10 We do have, with respect to Officer Hopkins -- it was in the
11 subpoena -- with -- given that he is a -- he is a police
12 officer witness, there are no lay witnesses -- and I want to
13 say that's (indiscernible) -- it's -- it's in my -- my motion,
14 but I want to say it's the Blackman case, it says that
15 whenever officers are the only witnesses --

16 THE COURT: Right. But --

17 MS. HILL: And I didn't request it of
18 Officer Barnes; only of Officer Hopkins.

19 THE COURT: Actually, I don't think it is -- I don't
20 think it was Blackman, but I could be wrong.

21 MS. HILL: Lichtenstein.

22 THE COURT: Yeah. That's another one. But I'm
23 standing on my ruling, I guess would be my response to that at
24 this point.

25 MS. HILL: And then I did just want to address the

1 Court's concern about good faith in filing that.

2 THE COURT: No, no, no, no. I -- did I not make it
3 clear that I am not suggesting that it was filed in bad faith
4 or not in good faith? I did make a finding that it appeared
5 to be a fishing expedition, which is a different thing. So --
6 but given that, I'll not cut you off. Sorry.

7 MS. HILL: And I assume the Court's referring to the
8 one, I believe, sexual abuse report against Officer Hopkins.
9 My understanding is the way Spykstra is written is that you
10 have to -- you know, the first prong of Spykstra is you have
11 to basically show something is there.

12 THE COURT: Right.

13 MS. HILL: And that was the only purpose for that;
14 is something is there. If -- I, frankly, don't care about
15 that. It was simply a way to make the prong of Spykstra, and
16 I just wanted the Court to know that.

17 THE COURT: And that's how the Court interpreted
18 that in its analysis.

19 MS. HILL: Okay.

20 THE COURT: Anything else?

21 So with that ruling, I think that negates the
22 necessity for your bad act evidence. I mean, I -- here's the
23 -- here's the bottom line: The bottom line is I gave you
24 additional time for that. My understanding was that it was
25 for this purpose. Maybe the more appropriate question to ask

1 is: Do you need additional time to file your bad act or
2 res gestae motions?

3 MS. HILL: I have none at this point. If I have any
4 in the future, it would only be based on what may well be
5 coming.

6 THE COURT: Okay.

7 MS. HILL: Or not.

8 THE COURT: And in the event that occurs, the Court
9 would authorize the filing of those motions. Obviously,
10 sooner is better, but -- because if we need to litigate it --

11 MS. HILL: Understood.

12 THE COURT: -- I want to have time for that. Okay.

13 With that, I think we have addressed all the issues
14 before the Court. Am I missing anything?

15 MR. MANGIONE: Sorry. Judge, I don't think there is
16 anything else.

17 THE COURT: Okay.

18 Anything by the Defense?

19 MS. HILL: The Defense has nothing, Your Honor.

20 THE COURT: Okay.

21 So it seems like, Mr. Mangione, you've been tasked
22 with a couple things. Just to review: You'll provide
23 People's Exhibit Number 3 --

24 MR. MANGIONE: Yes.

25 THE COURT: -- which is the video we watched today.

1 And then you're going to check with FCPD or the City Attorney,
2 as the case may be, regarding those particular reports.

3 MR. MANGIONE: And I did send that email already to
4 the City Attorney folks. I've not -- and I -- I'll reach out
5 to Officer Hopkins and Barnes and see if that's something they
6 did as well. But I -- I assume the City would know that as
7 well.

8 THE COURT: Okay.

9 MR. MANGIONE: With regards to the Exhibit 3, I
10 imagine that will be something that comes next week. Is that
11 all right with --

12 THE COURT: I'm fine with when it comes. I don't
13 intend to ever look at it again. I think Ms. Hill --

14 MR. MANGIONE: Okay.

15 THE COURT: -- just wants it a part of the record.

16 MR. MANGIONE: As part of the record, yeah. Thank
17 you.

18 THE COURT: Is that correct?

19 MS. HILL: That's correct.

20 THE COURT: Okay.

21 All right. Then I think we're -- we're good.

22 (Whereupon further discussion not related to this matter
23 was not transcribed)

24 THE COURT: All right. So unless there's further
25 motions filed, I -- I think our next is going to be the

1 pretrial readiness, which is on June 6th?

2 MR. MANGIONE: I'm sorry, I don't have -- I just
3 shut my computer. I -- I'll --

4 MS. HILL: That sounds right.

5 THE COURT: Yep. Okay.

6 MR. MANGIONE: That seems about right.

7 THE COURT: And we'll get Mr. Slatton notice for
8 that before he leaves. And, otherwise, it -- we're good.

9 MR. MANGIONE: Thank you, Judge.

10 THE COURT: Thank you-all.

11 The Court will be in recess.

12 (Proceeding concluded at 4:29 p.m.)

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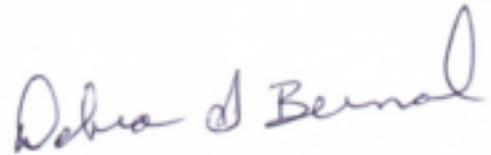
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CERTIFICATE

I, Debra S. Bernal, certify that I transcribed this record from the digital recording of the above-entitled matter, which was heard on April 28, 2017, before THE HONORABLE THOMAS LYNCH, in Division 5D of the Larimer County Court.

I further certify that the aforementioned transcript is a complete and accurate transcript of the proceedings based upon the audio facilities of these CDs and my ability to understand them. Indiscernibles are due to microphones not working properly, excessive noises or muffled voices.

Signed this 31st day of December, 2019, in Longmont, Colorado.



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