

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOSEPH M. McADAM,

Plaintiff,

v

File No. 1:11-CV-00170

HON. JANET T. NEFF

OFFICER MATTHEW WARMUSKERKEN,  
DEPUTY DEREK WILSON, DEPUTY  
OSCAR DAVILA, CITY OF LUDINGTON  
and COUNTY OF MASON,

Defendants.

DEPOSITION OF OSCAR DAVILA

Taken by the Plaintiff on the 22nd day of September, 2011,  
at 302 North Delia, Ludington, Michigan, at 9:00 a.m.

APPEARANCES:

For the Plaintiff: MR. STEVEN J. VANDER ARK (P32471)  
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For the Defendants  
Wilson, Davila and  
County of Mason: MR. JASON D. KOLKEMA (P55936)  
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DEPOSITION OF:  
Oscar Davila



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1 **A If I may go back to when I turned the corner and observed**  
 2 **the stop, I turned the corner and was actually passing the**  
 3 **scene of the stop to get behind the vehicles to turn back**  
 4 **around. I observed --**  
 5 **Q Let me be sure I've got this. You were -- you were going --**  
 6 **you were going -- what? -- westbound on --**  
 7 **A Ludington.**  
 8 **Q -- Ludington toward the scene. You turned northbound on**  
 9 **Lakeshore, did a U-turn to come in around behind Officer**  
 10 **York's vehicle?**  
 11 **A That's correct.**  
 12 **Q Okay. Keep going. When you turned the corner coming on to**  
 13 **Lakeshore, tell me what you saw.**  
 14 **A I observed Officer Warmuskerken standing in front of a much**  
 15 **larger Joe McAdams (sic), and Mr. McAdams was holding**  
 16 **something black, dark, obviously with his hand directed at**  
 17 **Officer Warmuskerken.**  
 18 **Q Okay. Could you identify what he had in his hand?**  
 19 **A It appeared to be a cell phone or some type of camera,**  
 20 **something to that effect.**  
 21 **Q Okay. Can you tell me how close the cell phone or whatever**  
 22 **he had in his hand was to Officer Warmuskerken?**  
 23 **A It appeared to me, again driving by, it was less than a foot**  
 24 **away from him.**  
 25 **Q Was Joe McAdam holding it with two hands, one hand? What**

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1 did you see?  
 2 **A One hand.**  
 3 **Q Okay. So you saw that turning the corner. Then you did a**  
 4 **U-turn and came in behind. When you came in behind, tell me**  
 5 **what was going on at the scene when you got out of your**  
 6 **vehicle.**  
 7 **A As I jumped out of my vehicle and started walking towards**  
 8 **the scene, I noticed Joe McAdams and Officer Warmuskerken --**  
 9 **excuse me -- Officer Warmuskerken walking back and Joe**  
 10 **McAdams following him back to -- to the scene of the traffic**  
 11 **stop.**  
 12 **Q Okay. You and Deputy Wilson got out of your vehicles almost**  
 13 **simultaneously?**  
 14 **A I couldn't answer for him, but I know I was -- he was parked**  
 15 **behind me.**  
 16 **Q Okay. So you observed Officer Warmuskerken walking back**  
 17 **toward Officer York's vehicle and Joe McAdam following him?**  
 18 **A That's correct.**  
 19 **Q Okay. Tell me what happened next.**  
 20 **A As I approached, I heard Officer York say something to the**  
 21 **effect that, "This guy needs to get out of here." I then**  
 22 **made the -- mentioned that, "Okay. We'll take care of him.**  
 23 **Don't worry about it. Take care of your stop." And I saw**  
 24 **Mr. McAdams walking back. I then yelled at him that it was**  
 25 **his last opportunity to leave or he would be arrested.**

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1 **Q All right. We're going to take that as a stopping point for**  
 2 **just a moment. Let me ask you this: Did you recognize Joe**  
 3 **McAdam?**  
 4 **A No.**  
 5 **Q Did you know Joe McAdam prior to this?**  
 6 **A No.**  
 7 **Q Ever have any official contact with him?**  
 8 **A No.**  
 9 **Q Unofficial?**  
 10 **A Not that I recall.**  
 11 **Q Okay. Did you have any information at that point in time**  
 12 **that Joe had a history of aggression of any kind?**  
 13 **A I don't know him, so no.**  
 14 **Q Okay. Obviously, then, you don't know if he had, you know,**  
 15 **a history of assaultive behavior, used guns, weapons? You**  
 16 **had no information about who this gentleman was?**  
 17 **A That's correct.**  
 18 **Q Okay. All right. And getting up to your stating to Joe**  
 19 **McAdam words to the effect of "last chance, leave or you're**  
 20 **going to be arrested," other than your observing McAdam with**  
 21 **something in his hand close to Officer Warmuskerken's face,**  
 22 **you had no other information about what was said, had**  
 23 **transpired prior to your telling him "leave or be arrested"?**  
 24 **A Other than what Officer York had told us, that he needed to**  
 25 **leave.**

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1 **Q Needed to leave. All right. All right. When you made the**  
 2 **statement to Joe McAdam, "leave or be arrested," what did**  
 3 **Joe do?**  
 4 **A He turned around and walked back southbound towards**  
 5 **Ludington Avenue.**  
 6 **Q All right. When he turned and began walking southbound**  
 7 **toward Ludington Avenue, what did you do?**  
 8 **A I continued -- I'm sorry. What?**  
 9 **Q What did you do?**  
 10 **A I continued to follow.**  
 11 **Q Why?**  
 12 **A To make sure that he stayed away from the scene of the**  
 13 **traffic stop -- his interference with the traffic stop.**  
 14 **Q And Deputy Wilson did also, continued to follow with you?**  
 15 **A That's correct.**  
 16 **Q Officer Warmuskerken also?**  
 17 **A Yes.**  
 18 **Q All right. By the way, I think you said you followed to be**  
 19 **sure he left the scene and didn't continue to interfere.**  
 20 **Did you see any interference with Officer York, or are you**  
 21 **basing that upon Officer York's statement, "This guy needs**  
 22 **to get out of here"?**  
 23 **A Basing it on Officer York's statement.**  
 24 **Q Okay. All right. You began following. Joe was walking**  
 25 **southbound toward Ludington Avenue. Tell me what happened**

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