

EXHIBIT 5

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1 For the Defendants: MR. JASON D. KOLKEMA (P55936)
 2 Wilson, Davila and Johnson Rosati LaBarge Aseltyne
 3 County of Mason & Field, P.C.
 303 S. Waverly Road, Suite 5
 4 Lansing, Michigan 48917
 (517) 886-3800

5 For the Defendants: MR. ALLAN C. VANDER LAAN (P33893)
 6 Warmuskerken and Cummings McClorey Davis & Acho, PLC
 7 City of Ludington 2851 Charlevoix Drive, S.E., Suite 327
 8 Grand Rapids, Michigan 49546
 (616) 975-7470

9 RECORDED BY: Ann M. Holmes, CER 2629
 10 Certified Electronic Recorder
 Network Reporting Corporation
 Firm Registration Number 8151
 1-800-632-2720

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1 Ludington, Michigan
 2 September 21, 2011 - 9:24 a.m.
 3 (Deposition Exhibits 1 through 14 marked)
 4 MR. VANDER ARK: This is the date, time and place
 5 scheduled for the deposition of Matthew Warmuskerken
 6 pursuant to Notice and for all purposes under Federal Rules
 7 of Civil Procedure. Officer Warmuskerken, have you ever
 8 given a deposition before?
 9 MR. WARMUSKERKEN: I have not.
 10 MR. VANDER ARK: You have not? Just a couple of
 11 things before we get into it. The court reporter is here
 12 and is going to be taking down everything that's said and so
 13 it's important that, if I ask a question, you answer it
 14 verbally instead of shakes of the head or nods. Those kind
 15 of things are hard to be recorded so -- the other thing is,
 16 if I ask you a question and you don't understand my
 17 question, I'd appreciate it if you would tell me you don't
 18 understand my question so that, if you answer my question, I
 19 can assume you understood what I was asking you. Okay?
 20 MR. WARMUSKERKEN: Okay.
 21 MR. VANDER ARK: All right. And by the way, if
 22 you want to take a break for any reason or no reason, just
 23 say, "I'd like to take a break" and we'll take a break.
 24 Okay?
 25 MR. WARMUSKERKEN: Okay.

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1 MR. VANDER ARK: All right.
 2 REPORTER: Do you solemnly swear or affirm that
 3 the testimony you are about to give will be the whole truth?
 4 MR. WARMUSKERKEN: I do.
 5 MATTHEW WARMUSKERKEN
 6 having been called by the Plaintiff and sworn:
 7 EXAMINATION
 8 BY MR. VANDER ARK:
 9 Q Did you review anything before in preparation for your
 10 deposition today?
 11 A I did.
 12 Q What did you review?
 13 A I reviewed my report, Officer York's report, Deputy Davila's
 14 report and the video of the incident.
 15 MR. VANDER LAAN: Could I interject also, I met
 16 with Officer Warmuskerken, but he may have forgotten. But
 17 we also reviewed the taser printout. I just want you to
 18 know that.
 19 THE WITNESS: We did.
 20 MR. VANDER ARK: All right.
 21 Q Other than speaking with your attorney, did you talk with
 22 anyone else in preparation for this deposition?
 23 A I did not.
 24 Q Okay; all right. I'm going to ask you a few questions about
 25 your background. Do you live in Mason County?

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1 **before on the day shift did not leave this sheet out. If**
 2 **the sheet was out, I would have wrote my information in.**
 3 MR. VANDER LAAN: Just so I'm clear, when you say
 4 it's your handwriting, do you mean the line that has your
 5 name on it --
 6 THE WITNESS: Correct.
 7 MR. VANDER LAAN: -- as opposed to the rest of the
 8 page?
 9 THE WITNESS: Correct.
 10 Q Okay. Let's see if I'm right. Page number one on July 19
 11 where it says "Beach Officer," is that your handwriting?
 12 A **It is not.**
 13 Q Okay. On July 20 your name by "Beach Officer," that is your
 14 handwriting; correct?
 15 A **Correct.**
 16 Q And you then referenced your -- is that a car number?
 17 A **Correct.**
 18 Q All right. The number for the radio and -- is that the last
 19 three digits of the taser number?
 20 A **Correct.**
 21 Q Do you know whether or not the taser you had on July 19 is
 22 the same taser you had on July 20?
 23 A **I do not recall.**
 24 Q All right. We're going to move now timewise to the early
 25 morning hours of July 20, 2009. What occurred, if anything,

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1 that led you to the scene of Officer York's stop of Susan
 2 McAdam?
 3 MR. VANDER LAAN: Can he refer to his report?
 4 MR. VANDER ARK: Sure.
 5 MR. VANDER LAAN: Okay.
 6 A **Can you repeat the question?**
 7 Q Sure. What, if anything, occurred that led you to the scene
 8 of Officer York's traffic stop of Susan McAdam?
 9 A **I heard Officer York ask for another officer. I don't know**
 10 **if it was that wordage, but he was asking for assistance so**
 11 **I responded.**
 12 Q Were you aware that Officer York was at least making a stop
 13 at Lakeshore and Ludington Avenue by radio traffic?
 14 A **Yes.**
 15 Q And you didn't head in Officer York's direction after you
 16 heard that he was making a stop? You waited for a call?
 17 A **No. I was already -- that's right next to the beach. I was**
 18 **near the area.**
 19 Q Well, that's -- so you -- he was there close to your area
 20 and he was making a stop and you decided to head that way in
 21 case?
 22 A **Correct.**
 23 Q Okay. So you were there before Officer York called out on
 24 his radio requesting assistance at that stop?
 25 A **I wasn't there at the scene, but I was nearby.**

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1 Q Well, all right. Again, I -- if you watched the video
 2 apparently -- in-car video, as I have. I saw your Tahoe, I
 3 believe, driving by before -- about the time he had Sue
 4 McAdam get out of the car. You didn't turn around and pull
 5 up immediately at that time?
 6 A **That wasn't my Tahoe.**
 7 Q It wasn't your Tahoe? Oh. Well, that's why we have
 8 depositions I guess.
 9 MR. VANDER LAAN: And that's why you're not a
 10 witness. Whenever is a good time, could -- can we take a
 11 break so I can use the restroom? Whenever is a good time.
 12 I don't want to --
 13 MR. VANDER ARK: Now is a good time.
 14 MR. VANDER LAAN: -- interfere with the smooth
 15 flow.
 16 (Off the record)
 17 Q All right. Officer, I think we left off -- you indicated
 18 that when you heard that Officer York had made a traffic
 19 stop at Lakeshore and the avenue, you started that way. You
 20 weren't requested to go over and assist him at that point?
 21 A **I was in the area, like I stated.**
 22 Q Well, did you go a little closer to the area from whatever
 23 you were doing?
 24 A **I was parked in a parking lot that I could visually see**
 25 **the -- see that he was on a traffic stop and see that he was**

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1 **speaking with the subject outside of his vehicle.**
 2 Q Okay. By the way, you said it wasn't your Tahoe. Do you
 3 know whose Tahoe that was in the video?
 4 A **It would have had to have been Officer Wietrzykowski.**
 5 MR. VANDER LAAN: Can you spell that?
 6 THE WITNESS: (Shaking head negatively) It's
 7 harder than mine.
 8 MR. VANDER LAAN: Okay.
 9 Q All right. You heard Officer York call for assistance?
 10 A **That is correct.**
 11 Q And what did you do?
 12 A **I got out of my vehicle and I walked to the location.**
 13 Q Where was your vehicle?
 14 A **It was behind the traffic stop. I don't know the distance**
 15 **though.**
 16 Q On Lakeshore?
 17 A **The traffic stop was on Lakeshore. I was in a parking lot**
 18 **that the business is on Lakeshore, but my vehicle was not on**
 19 **Lakeshore. My vehicle was in a parking lot.**
 20 Q Would that be the miniature golf course?
 21 A **Correct.**
 22 Q All right. And did you go to the miniature golf course from
 23 somewhere when you heard Officer York calling out, "I'm just
 24 making a traffic stop"?
 25 A **Not right at that time, but sometime during his stop I**

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<p>1 pulled over in there.</p> <p>2 Q All right. And so when the call came out that he needed</p> <p>3 assistance, you didn't pull in behind his patrol car? You</p> <p>4 just walked over to the patrol car?</p> <p>5 A Correct.</p> <p>6 Q All right. Can you give me a rough idea how far that is?</p> <p>7 A I do not know.</p> <p>8 Q When you walked up to the scene, tell me what you saw.</p> <p>9 A When I walked to the scene, I saw Officer York speaking with</p> <p>10 Mrs. McAdam and I saw Joe McAdam outside next to them.</p> <p>11 Q Okay. What did you do next?</p> <p>12 A I went up to -- I went up to where they were standing.</p> <p>13 Q Who is "they"?</p> <p>14 A Officer York, Sue and Joe McAdam.</p> <p>15 Q When you arrived and walked up to them, what did you see</p> <p>16 your role as being at that point in time? What were you</p> <p>17 there for?</p> <p>18 A An assisting officer to see -- to assist Officer York.</p> <p>19 Q All right. So you walked up where Officer York and Susan</p> <p>20 McAdam and Joe McAdam -- what did you do next?</p> <p>21 A Well, as I was approaching I heard Officer York tell Joe</p> <p>22 McAdam to get back away from him. And as to what I was</p> <p>23 doing, I advised Joe to get back into his car.</p> <p>24 Q All right. When Officer York advised Joe to get back away</p> <p>25 from him, did Joe move back away from him?</p>	<p>1 where there was an iPhone encounter/slap. All right?</p> <p>2 Before that iPhone encounter/slap, best as you can recall,</p> <p>3 take me through what Joe said to you and what you said to</p> <p>4 Joe --</p> <p>5 MR. VANDER LAAN: Well, let me just object --</p> <p>6 Q -- best as you can recall.</p> <p>7 MR. VANDER LAAN: Let me just object to the</p> <p>8 question. It assumes facts not in evidence. You refer to a</p> <p>9 "slap." And that will not be -- that assumes something that</p> <p>10 is not in evidence nor is it true.</p> <p>11 Q You can answer the question.</p> <p>12 A Can you restate the question?</p> <p>13 Q Sure. At some point in time there was -- you pushed an</p> <p>14 iPhone away from you that Joe was holding; correct?</p> <p>15 A I moved the cell phone.</p> <p>16 Q Okay. Moved? That's fine. I want to know if you could</p> <p>17 tell me as best as you can recall the conversation between</p> <p>18 you and Joe up to your moving that cell phone,</p> <p>19 conversations.</p> <p>20 A After, like, we -- we -- that was stated, when he said, "I</p> <p>21 don't have to listen to you, punk," I continued asking him</p> <p>22 to sit down or get back in his vehicle. He stated, "Why are</p> <p>23 you making a big deal out of this? We can make a big deal</p> <p>24 out of this." And as he did that, he clenched his fists and</p> <p>25 put them up probably about shoulder height on himself which</p>
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<p>1 A I don't recall. He must have not because I wouldn't have</p> <p>2 advised him to get into his car if he did.</p> <p>3 Q All right. Did Joe say anything to you before you told Joe</p> <p>4 to get back in his car?</p> <p>5 A I don't recall.</p> <p>6 Q What did Joe say to you when you told him to get back in his</p> <p>7 car?</p> <p>8 A He told me he doesn't have to listen to me, "punk."</p> <p>9 Q All right. When he said that, physically how close were the</p> <p>10 two of you?</p> <p>11 A A couple of feet, three feet, four feet. At that time we</p> <p>12 moved away from Officer York and Susan McAdam who were</p> <p>13 behind the vehicle -- of her vehicle. We were on the side</p> <p>14 of the vehicle near the sidewalk or on the sidewalk.</p> <p>15 Q All right. After Joe said in words to the effect, "I don't</p> <p>16 have to listen to you, punk," what did you -- how did you</p> <p>17 respond?</p> <p>18 A He said more after that. It was more of a continuous</p> <p>19 sentence. I'm sure I asked him to get back in the vehicle</p> <p>20 or sit down at that time.</p> <p>21 Q All right. Was Joe engaging in conversation with you? And</p> <p>22 I'll tell you what. Let's stay with, if we can -- I'm going</p> <p>23 to take this in pieces because it's just -- I think it would</p> <p>24 be easier for me and potentially you. At the time you first</p> <p>25 said a word to Joe -- we're going to get to a point in time</p>	<p>1 is about face height on me. And I still stated that he</p> <p>2 needs to sit down or get back in the vehicle and, "We're not</p> <p>3 making a big deal out of this." And it was at that point</p> <p>4 that Joseph took his cell phone out of his pocket and placed</p> <p>5 it about a foot in front of my face.</p> <p>6 Q All right. Let's stop there in the sequence with the cell</p> <p>7 phone put in front of your face. Let me ask you this:</p> <p>8 Prior to your encountering Joseph McAdam on the 20th, did</p> <p>9 you know Joe McAdam?</p> <p>10 A I knew of Joe McAdam.</p> <p>11 Q What did you know of Joe McAdam?</p> <p>12 A I knew he -- I knew he was a -- the owner or part owner of</p> <p>13 Michael's or worked at Michael's.</p> <p>14 Q Okay. Did you have any prior contact with Joe McAdam</p> <p>15 officially in any capacity?</p> <p>16 A No.</p> <p>17 Q Did you have any prior contact with Joe McAdam unofficially,</p> <p>18 meaning have you been in Michael's to say, "Hi, Joe," any</p> <p>19 contact, communication with him that you can recall?</p> <p>20 A Not that I can recall.</p> <p>21 Q All right. Did you know who Sue McAdam was?</p> <p>22 A As Joe, I knew of Sue McAdam.</p> <p>23 Q Prior to your encountering Joe on July 20, 2009, did you</p> <p>24 have any information of a history of Joe being violent?</p> <p>25 A Of being violent?</p>

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1 Q Violent.
 2 A No.
 3 Q Okay. Do you have any knowledge or information of any
 4 criminal record that Joe might have?
 5 A No.
 6 Q Do you have any information from any source of Joe being
 7 aggressive?
 8 A No.
 9 Q When you first encountered Joe McAdam, did you have a
 10 concern that he might be armed?
 11 A With a weapon?
 12 Q Yes.
 13 A There's always a concern that someone might be armed in our
 14 line of duty.
 15 Q Okay. Based on what Joe was wearing were you observing him
 16 to see if there either might be an indication he was armed
 17 in some fashion with a weapon?
 18 A Yes.
 19 Q Okay. Did you see any indication that led you to believe he
 20 might have a weapon?
 21 A Not that I recall.
 22 Q Okay; all right. You said Joe put his fists up and
 23 together. Did you do anything in response to him clutching
 24 his fists other than asking him again to sit down?
 25 A We are trained to de-escalate the situation. And Joe is a

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1 big guy, bigger than me, and there is always a potential
 2 that you -- when he has his fists up, there could be action
 3 with that. So with my training, I was trying to de-escalate
 4 the situation by talking him down and that's what I did.
 5 Q All right. Other than clenching his fists, he didn't throw
 6 a punch at you?
 7 A No.
 8 Q All right. He didn't swing at you?
 9 A No.
 10 Q He didn't threaten you with swinging or punching you,
 11 verbally?
 12 A Could you rephrase that?
 13 Q Did he verbally threaten you with, "I'm going to hit you,"
 14 do something physical to you?
 15 A No.
 16 Q Okay; all right. Do you recall Joe saying anything to you
 17 about his father's death?
 18 A I do not recall.
 19 Q Or his grandfather's death? I'm sorry. Grandfather's
 20 death.
 21 A I do not recall.
 22 Q Other than what you've indicated you don't recall any other
 23 comments or statements made by Joe other than the ones
 24 you've testified to?
 25 A I do not recall.

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1 Q Okay. Let's go to -- he took out his iPhone and he was
 2 holding it approximately one foot from your face. What was
 3 he saying to you and what were you saying to him at that
 4 point in time?
 5 MR. VANDER LAAN: I'm sorry. I just want to be
 6 thorough. Did you talk about that?
 7 THE WITNESS: "Why are you making a big deal out
 8 of this?"; yes.
 9 MR. VANDER LAAN: You did testify? I'm sorry.
 10 A Could you repeat your question?
 11 Q We're at the point -- now we're moving back and forward in
 12 time just a little bit. Joe has his cell phone out or his
 13 iPhone out and he's holding it approximately one foot in
 14 front of your face. What did he say to you at that point in
 15 time? What did you say back to him? Move forward and tell
 16 me what happened.
 17 A I advised Joseph to get his phone out of my face. Joseph
 18 said he didn't have to. He's filming this. I said that's
 19 fine that he's filming this, but he needed to get his cell
 20 phone out of my face.
 21 Q Do you have any problem with citizens filming you?
 22 A I do not.
 23 Q All right. What happened next?
 24 A At that time I heard Officer York state to get the phone out
 25 of my face. And so I -- after advising Joe to get the phone

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1 out of my face, I took my hand and moved his hand, which was
 2 containing the phone, out of my face. At that time Joe is
 3 saying that he was assaulted.
 4 Q By the way, Officer York, I believe, indicated words to the
 5 effect, "Matt, you can move" or slap or do something "that
 6 phone out of your face"?
 7 A I believe he said "slapped" out of my face which -- I know I
 8 moved it out of my face.
 9 Q All right. Did you consider Officer York to be your
 10 supervisor at this scene?
 11 A At the scene? Yes. He's a senior officer to me so I would
 12 state -- it was his -- I was there assisting him. It was
 13 his -- it was his case or his investigation at the time.
 14 Q All right. After you moved the phone from in front of your
 15 face what did Joe do?
 16 A As I stated, he was saying that he was assaulted. And then
 17 I recall he started walking south towards Ludington Avenue.
 18 Q All right. Let me ask you this: In your presence and up to
 19 this point in time had Joe committed any crime?
 20 A Can you --
 21 MR. VANDER LAAN: Well, --
 22 Q In your presence and up to the point in time when he started
 23 walking away toward Ludington Avenue had Joe committed any
 24 crime in your presence?
 25 A When he was walking towards --

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1 Q From the moment you first encountered Joe to when he started
2 walking south toward Ludington Avenue in your presence had
3 Joe committed a crime?
4 A What I understand, he was interfering with a police
5 investigation.
6 Q Whose investigation?
7 A Officer York's. And Joe was also -- I smelled an odor of
8 intoxicants from Joe and I could tell that Joe was
9 intoxicated. He tripped over his feet a couple of times and
10 he was aggressive. He very well could have been at that
11 time disorderly under the City statute or ordinance, but I
12 was just, as I said, assisting Officer York and so there
13 wasn't -- had to be an arrest, just asked Joe to sit down or
14 leave the scene and stop interfering with Officer York's
15 investigation.
16 Q Okay. The fact that he was intoxicated alone, is that
17 enough to be disorderly under the City ordinance?
18 MR. VANDER LAAN: Objection to the extent that it
19 calls for a legal conclusion. Go ahead and answer, if you
20 know.
21 A I don't know if just intoxicated --
22 Q I think you said "aggressive" and "intoxicated." You used
23 those words. Does that make him disorderly from your
24 training and ordinance experience?
25 A I don't recall the City ordinance verbatim. There's three

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1 or four disorderly --
2 Q What I hear you saying, when he started to walk away south
3 toward Ludington Avenue, you may have had enough basis to
4 arrest him right then and there, but you chose not to. Is
5 that what you're telling me?
6 A With a little more investigation, if -- you know, if Officer
7 York felt that he was interfering with a police
8 investigation, if a little more investigation on a
9 disorderly, there very well could -- but that wasn't my
10 intention at the time.
11 Q Before Joe started walking south toward Ludington Avenue did
12 you hear Officer York call dispatch and indicate, "We're
13 calming down here."
14 A I don't recall.
15 Q When Joe started to walk toward -- away from you and toward
16 Ludington Avenue, were there any other officers on the scene
17 besides Officer York?
18 A About that time when he started walking back, I believe
19 that's the time that Deputy Davila and Deputy Wilson arrived
20 on the scene.
21 Q Okay. Did they arrive at the same time?
22 A I don't recall. I believe they were -- they did.
23 Q But two separate patrol vehicles?
24 A Two separate vehicles.
25 Q When they arrived, did they pull in behind Officer York's

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1 vehicle?
2 A I don't recall.
3 Q Did they have lights activated -- exterior lights activated?
4 A I don't recall.
5 Q All right. In your encounter whereat Joe turned and started
6 walking south toward Ludington Avenue, what did you do when
7 he did this?
8 A When he started walking, I followed Joe.
9 Q Why?
10 A Just to -- just for my safety. You know, if I turned
11 around, walked back towards Officer York, it was just more
12 to -- more of an officer safety type thing just to make sure
13 he's -- he's walking away. That's what I wanted ideally,
14 for him to leave the scene.
15 Q All right. What happened next?
16 A At that time Deputy Davila -- like, I advise a -- arrived on
17 the scene. They started approaching McAdam and myself. I
18 believe it was at that time as he was walking away Officer
19 York advised, "If he's going to leave, just let him go," so
20 I started walking back. As I started walking back Joseph
21 McAdam started following me back. And then Deputy Davila
22 stated to him that he can either turn around and leave or
23 he's going to be under arrest.
24 Q All right. When he turned around and started -- as you have
25 phrased it -- following you back, was he saying anything?

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1 A He was yelling something, but I don't recall what it was.
2 Q Do you remember if it had to do with his dogs in the car?
3 A I don't recall.
4 Q All right. When Officer York indicated that, "if he's
5 leaving you can just let him go," you turned around. If Joe
6 had just continued to go, that was fine with you. You were
7 going to let him go. Everybody was just going to let him go
8 home?
9 MR. VANDER LAAN: Objection to the use of the
10 phrase "everybody" if you're confining it to this officer.
11 Q Well, you were going to let him go home at that point in
12 time?
13 A Correct.
14 Q Okay. Then he turned, walked back toward you, said
15 something you don't recall. Do you recall anything Officer
16 York said at that point in time to Deputies Davila, Wilson
17 or you?
18 A I don't recall.
19 Q All right. Do you recall whether it was Deputy Davila or
20 Wilson who said, "Leave or you're going to be arrested"?
21 Which one said that?
22 A Deputy Davila.
23 Q All right. After Deputy Davila said that, what did Joe do?
24 A He turned around, started walking southbound towards
25 Ludington Avenue. He stopped in the middle of Ludington

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12 (Pages 42 to 45)

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1 Avenue, pulled his phone out and started recording.
 2 Q All right. Deputy Davila says words to the effect, "Leave
 3 or you're going to be arrested." Joe turns and again starts
 4 walking south on Lakeshore?
 5 A Well, he was --
 6 MR. VANDER LAAN: Well, -- I'm sorry. Go ahead.
 7 A He was walking towards Ludington Avenue. He was on the
 8 sidewalk at the time. And then he went into Ludington
 9 Avenue and stopped in the middle of the roadway.
 10 Q All right. Where were you and where were Deputies Davila
 11 and Wilson when he stopped in the middle of Ludington Avenue
 12 in relation to Joe?
 13 A We were north of him. We were between him and Susan McAdam
 14 and Officer York. I don't know distance-wise.
 15 Q All right. When Joe turned and started walking toward
 16 Ludington Avenue after Deputy Davila said, "Leave or you're
 17 going to be arrested," did you follow him?
 18 A I don't recall.
 19 Q Did Deputy Davila and Wilson follow him?
 20 A I don't recall.
 21 Q All right. You recall Joe stopping. He's walking away from
 22 you. Tell me exactly what he did again or your best
 23 recollection. He stopped and did what?
 24 A He stopped and pulled his cell phone out and said that he
 25 was recording or he started recording. I don't -- don't

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1 recall if he stated he was recording, but he held his cell
 2 phone out as he did before as he was stating that he was
 3 recording.
 4 Q Can you give me an estimate how far -- again, as I visualize
 5 the scene, the McAdams' -- Sue McAdam's car was close to the
 6 intersection of Lakeshore and Ludington?
 7 A Correct.
 8 Q All right. And was Joe walking directly across Ludington
 9 Avenue on Lakeshore heading due north when he turned and was
 10 told to leave?
 11 A When he -- he turned due north? Is that what you stated?
 12 Q No. Was he walking due north? Was he walking on an angle
 13 across Ludington?
 14 A I don't recall. All I remember is that he stopped in the
 15 roadway.
 16 Q Did he stop in the roadway before he got to the north side
 17 of Ludington Avenue?
 18 A Before --
 19 Q Assuming Ludington Avenue is running east and west, --
 20 A Correct.
 21 Q -- did he stop before he got to the north side of Ludington
 22 Avenue? He started walking from the south side of Ludington
 23 Avenue?
 24 A No. He started walking from the north side of Ludington
 25 Avenue.

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1 Q Oh, you're right. All right. Did he stop and take out his
 2 cell phone before he got to the south side of Ludington
 3 Avenue?
 4 A Yes. As I stated, he was in the roadway.
 5 Q How long did he stop for?
 6 A I don't recall.
 7 Q Can you give me an estimate? Five seconds? Two seconds?
 8 Ten seconds?
 9 A I don't recall -- three, four.
 10 MR. VANDER LAAN: Is that a guess?
 11 THE WITNESS: That's a guess.
 12 MR. VANDER LAAN: Yeah.
 13 Q Okay; all right. You don't recall if he said anything when
 14 he stopped and took out his cell phone?
 15 A Correct. I don't recall.
 16 Q Okay. Was he facing you and -- well, was he facing you at
 17 that point in time?
 18 A He was facing my direction. I don't recall if he was facing
 19 me exactly.
 20 Q Okay. And you can't give me an estimate of how many feet
 21 away Joe was from you when he stopped and took out his cell
 22 phone?
 23 A I couldn't give you an exact estimate. I couldn't give -- I
 24 don't -- I don't recall the distance.
 25 Q All right. What happened next?

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1 A At that time Deputy Davila informed him to turn around and
 2 that he was under arrest. Joseph turned away and started
 3 walking away from Deputy Davila -- well, all three of us.
 4 Deputy Davila and Deputy Wilson were -- then started walking
 5 towards Joe McAdam, telling him to "stop," he's under
 6 arrest, but Joe kept walking away. At that time, towards
 7 the south end of Ludington Avenue, Deputy Wilson and Deputy
 8 Davila caught up with Joe and tried stopping him and
 9 eventually brought him to the ground, and Joe continued to
 10 resist the deputies' efforts.
 11 Q All right. Let's stop there and -- all right. Joe turned
 12 in Ludington Avenue, took out his cell phone, may have said
 13 something, and the next thing that occurred is Deputy Davila
 14 telling Joe he's under arrest?
 15 A Correct.
 16 Q What was he being arrested for?
 17 MR. VANDER LAAN: Objection; foundation.
 18 A That was Deputy Davila's arrest, not mine.
 19 Q After Joe was told he was under arrest by Deputy Davila, he
 20 turned and started to walk away again, heading back south?
 21 A Correct.
 22 Q Okay. And then all three of the officers approached Joe at
 23 that point in time?
 24 A Correct.
 25 Q Was Joe saying anything after he was told he was under

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13 (Pages 46 to 49)

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1 arrest?
 2 A I don't recall.
 3 Q Were you saying anything as you were approaching Joe when he
 4 was walking away after being told he was under arrest?
 5 A As he was walking away? I don't recall.
 6 Q After Joe stopped, had his iPhone out, told he was under
 7 arrest, did he continue to film with his iPhone as you
 8 approached him?
 9 MR. VANDER LAAN: Objection; foundation.
 10 MR. KOLKEMA: Join.
 11 Q Did he still have his iPhone out pointing toward -- in your
 12 direction?
 13 A As we were approaching?
 14 Q As you were approaching.
 15 A I don't recall.
 16 Q Before you first made physical contact with Joe had he
 17 started running away?
 18 A He was not running, of what I recall.
 19 Q Okay; all right. And before you made physical contact with
 20 Joe that night, other than what you've already testified to
 21 about possible crimes he committed -- I believe interfering;
 22 you'd said maybe disorderly -- had Joe done anything else
 23 which would lead you as an officer to believe that some
 24 additional crimes had been committed --
 25 MR. VANDER LAAN: Objection; calls for

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1 speculation.
 2 Q -- before you touched him?
 3 MR. VANDER LAAN: Again, same objection. It calls
 4 for speculation. Go ahead and answer, if you can.
 5 MR. KOLKEMA: Join.
 6 A At that time he was told he was under arrest.
 7 Q At the time he -- Davila told him he was under arrest. Had
 8 Joe done anything more in your presence that -- well, other
 9 than what you've testified to already that changed -- well,
 10 had he done anything more by way of criminal conduct?
 11 MR. VANDER LAAN: Same objection.
 12 MR. KOLKEMA: I'll add that it's also a little
 13 vague. I don't know what you're comparing it to exactly.
 14 MR. VANDER ARK: All right.
 15 Q When you first touched Joe -- okay? -- when you first
 16 touched him, the three of you finally reached Joe --
 17 MR. VANDER LAAN: Well, let me just place an
 18 objection to that. You haven't established who touched Joe
 19 first and it wasn't this officer according to his report so
 20 I object to the foundation.
 21 Q When Deputy Davila said, "You're under arrest," what did you
 22 consider your role at that point in time as a law
 23 enforcement officer?
 24 A An assisting officer.
 25 Q I guess I'm not sure I understand. What does an assisting

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1 officer do when arrests are being made by another officer?
 2 A I assist the officer in placing him under arrest.
 3 Q May I assume you still get to make decisions on your own?
 4 MR. VANDER LAAN: Objection; form, vague.
 5 A Could you rephrase that?
 6 Q Once he said -- Davila said he was under arrest could you
 7 have said, "This is wrong. I'm not going to participate in
 8 this"? Is that an option or you're just going to help
 9 whatever they're doing?
 10 A If I thought it was wrong, I could have not done it.
 11 Q Okay; all right. The three of you sort of at the same time
 12 arrived at Joe?
 13 MR. VANDER LAAN: Objection; foundation, assumes
 14 facts not in evidence.
 15 Q Tell me how it happened?
 16 MR. VANDER LAAN: There you go.
 17 Q Where were you?
 18 A Deputy Davila and Deputy Wilson both approached Joe first
 19 and grabbed -- of what I recall, grabbed an arm each. I was
 20 nearby -- or right next to them. And they tried or was
 21 telling Joe that he's under arrest, put his hands behind his
 22 back, but he aggressively had his hands rolled in front and
 23 wouldn't let them cuff him so they took him to the ground.
 24 Q Okay. Again, let me stop you here. Give me -- each had an
 25 arm?

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1 A Of what I recall.
 2 Q All right. Do you remember who was on the left arm and who
 3 was on the right arm?
 4 A I do not.
 5 Q Okay. Did you observe them getting a handcuff on him at
 6 that point in time --
 7 A When he --
 8 Q -- before he was taken to the ground?
 9 A Not that I recall.
 10 Q Okay. Before he was taken to the ground -- and we'll get to
 11 that in a minute -- had you grabbed Joe or done anything or
 12 touched Joe by way of assistance?
 13 A Not that I recall.
 14 Q Do you know from your observation, how was Joe taken to the
 15 ground?
 16 A From a leg sweep.
 17 Q Well, tell me what that is or what you saw.
 18 A I don't recall what I saw. They just -- he was brought to
 19 the ground with each deputy on each side of him.
 20 Q Well, you mentioned his arms while he was still standing up.
 21 I'm trying to picture a deputy on each side of him, one on
 22 the right-hand, one on left. And I thought you said his
 23 arms were in front of him?
 24 A I believe they were, like, curled. I don't recall exactly.
 25 I just know that they grabbed -- they were on each side of

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1 him and had ahold of him somehow.
 2 Q Okay. Did you observe other than Joe's arms in front of him
 3 before he was taken to the ground engaging in any direct
 4 assaultive conduct of Deputy Wilson or Deputy Davila?
 5 A Assaultive?
 6 Q Yes. Was he kicking, swinging, grabbing, pushing the deputy
 7 affirmatively and aggressively?
 8 A Nothing at the deputy, no -- deputies.
 9 Q All right. Do you know if Deputy Wilson or Deputy Davila
 10 did the leg sweep?
 11 A I do not.
 12 Q All right. Did you see Joe go to the ground?
 13 A I don't recall. I don't remember the incident of him going
 14 to the ground. I just know he went to the ground.
 15 Q All right. So you don't know if he caught himself with his
 16 arms, tried to catch himself? You don't recall --
 17 A I don't recall.
 18 Q -- witnessing him going to the ground?
 19 A I don't recall.
 20 Q All right. Once on the ground, tell me the positions of
 21 Deputy Davila and Wilson while Joe is on the ground.
 22 A I don't recall where -- who was where. I know at that time
 23 I -- as he was to the ground I went towards his left upper
 24 side and grabbed ahold of an arm that was above his head
 25 trying to push himself back -- Joe's head -- trying to push

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1 himself back up.
 2 Q All right. If you recall, was either Deputy Davila or
 3 Wilson -- did they -- were they using their knees on
 4 Joseph's back, neck, shoulders, anywhere on him on the
 5 ground?
 6 A I don't -- I don't recall.
 7 Q Did you use your knees on his back, shoulder or any part of
 8 his anatomy to further restrain and control him?
 9 A Not that I recall.
 10 Q Okay. So you went to upper left arm which you've said was
 11 above Joe's shoulder? He had it extended out?
 12 A I believe it was under his head curled up, trying to push
 13 himself up.
 14 Q Do you know where Joe's other arm was?
 15 A I believe it was in the same area on the other side, but I
 16 don't recall. I was on the left side.
 17 Q Okay. And you grabbed his arm. What did you do?
 18 A I grabbed his arm to try to put it behind his back, but Joe
 19 aggressively kept his arm stiff and was also at the same
 20 time trying to push himself up and telling Joe to stop
 21 resisting, that he's under arrest, several times.
 22 Q Okay. At some point, am I correct, somebody got a handcuff
 23 on while he was on the ground on one of his wrists; do you
 24 know?
 25 A I don't -- I don't recall. It's not in my report. I

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1 don't -- it wasn't me. I can tell you that.
 2 Q Okay. And Joe was face down on the ground?
 3 A Correct.
 4 Q He wouldn't -- you told him, "Stop resisting. You're under
 5 arrest"?
 6 A Correct.
 7 Q Okay. Were Davila and Wilson saying the same thing?
 8 A Correct.
 9 Q Was Joe saying anything?
 10 A I don't recall.
 11 Q All right. So you grabbed his left arm area and what you
 12 were trying to do was get it behind his back -- what? --
 13 A Yes, behind his back so he could be cuffed.
 14 Q Okay. And Joe was not allowing you to do that?
 15 A Correct.
 16 Q Okay. Was he swinging at you, kicking at you?
 17 A As I stated, he had his arm curled and at the same time was
 18 trying to pull himself -- push himself back up.
 19 Q All right. What happened next?
 20 A At that time Joe continued to resist. And I believe it was
 21 at that time Deputy Davila informed him to stop resisting or
 22 he would be tased. Joe continued to be ta- -- or continued
 23 to resist and I continued to try to pull his arm behind his
 24 back to cuff him. And it was at that time I pulled out my
 25 taser, took the cartridge off and applied a five-second

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1 drive stun to the left shoulder of Joe McAdam. And after
 2 the five-second -- and during it -- after Joe continued to
 3 resist and continued to try to pull -- push himself up off
 4 the ground.
 5 Q Okay. Davila says at some point in time, you recall, "Joe,
 6 stop resisting or you're going to be tased"?
 7 A Correct.
 8 Q All right. Did Davila have his taser out?
 9 A I don't recall.
 10 Q Did Wilson have his out?
 11 A I don't recall at that time.
 12 Q You took yours out?
 13 A Correct.
 14 Q Did you have to -- I assume -- did you have to let go of Joe
 15 completely to take the cartridge off and do something with
 16 it before you drive stunned him?
 17 A I assume. I don't recall.
 18 Q Okay. Were you the first officer to apply a drive stun?
 19 A Correct.
 20 Q That was your decision, not any other deputy's decision?
 21 A For me to do a drive -- to drive stun him?
 22 Q Yeah.
 23 A My actions were my actions. I drive stunned him.
 24 Q Okay. And I believe you said in a shoulder, left shoulder
 25 area?

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15 (Pages 54 to 57)

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- 1 A Yes.
- 2 Q Okay. Did Joe still have his T-shirt on? Was it through
- 3 the T-shirt?
- 4 A Correct.
- 5 Q Tell me how you did it. How do you -- tell me how you did
- 6 it. Did you pull the trigger and start the five seconds
- 7 before you hit his shoulder? How did you drive stun him?
- 8 A No. I --
- 9 MR. VANDER LAAN: Objection; asked and answered.
- 10 Go ahead, if you recall.
- 11 A Well, what I do recall, I applied the end of the taser to
- 12 his shoulder and pulled the trigger as I would do with any
- 13 drive stun.
- 14 Q Do you hold the trigger down or engaged for five seconds?
- 15 A When you pull the trigger, it automatically has a
- 16 five-second sequence of -- that it's on for five seconds so
- 17 I don't know if I held the trigger or lift up, but it went
- 18 for five seconds.
- 19 Q Well, since you've had the training and I haven't, as you
- 20 have the taser in drive stun mode, so to speak, applied to
- 21 Joe's shoulder, when you pull that trigger it is going to
- 22 spark or engage for five seconds whether you have it
- 23 touching his shoulder or pointing in the air?
- 24 A Correct.
- 25 Q Did you apply it to Joe's shoulder for five seconds?

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- 1 A To his shoulder area or shoulder blade, yes, for five
- 2 seconds.
- 3 Q All right. After you did this how did Joe respond to your
- 4 drive stunning?
- 5 A Joe continued to resist. He continued to keep his arm in a
- 6 curl, actively resisting. He also continued to try to push
- 7 himself up off the ground.
- 8 Q Well, let me -- when I -- drive stun -- during the five
- 9 seconds what was Joe doing? Anything?
- 10 A I don't recall. During that time we were stating, "Stop
- 11 resisting. Stop resisting." And after being tased, still
- 12 saying, "Stop resisting," and he still actively tried to
- 13 push himself up, curl his arm, wouldn't let me put his arm
- 14 behind his back.
- 15 Q Okay. Who drive stunned Joe next?
- 16 A I don't recall the order exactly off the top of my head. I
- 17 do know I drive stunned him first.
- 18 Q Okay. Do you know how long after your five-second drive
- 19 stun was completed Joe was drive stunned again?
- 20 A I do not.
- 21 Q But you do know that Deputy Wilson drive stunned Joe at some
- 22 point on the ground?
- 23 A Correct.
- 24 Q And Deputy Davila?
- 25 A Correct.

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- 1 Q Do you know if they drive stunned him, each of them -- do
- 2 you know if he was drive stunned more than once by each
- 3 Deputy Wilson and Deputy Davila?
- 4 A I know they drive stunned him each once.
- 5 Q How do you know that?
- 6 A Because I remember there was a -- there was a -- they both
- 7 activated their taser once each and drive stunned. That's
- 8 what I remember.
- 9 Q Okay. You can hear it; is that right?
- 10 A Correct. You can hear it.
- 11 Q All right. And assuming they have x26's, theirs were five
- 12 seconds also by the way the machine operates?
- 13 A Correct.
- 14 Q And, again, you can't give me an estimated time period
- 15 between your drive stun, the second drive stun and the third
- 16 drive stun?
- 17 A I can't.
- 18 Q All right. Three drive stuns. Is Joe saying anything
- 19 during this time period as you can recall? What? Well,
- 20 drive stun, drive stun, drive stun. Is he saying anything?
- 21 A Not that I recall.
- 22 Q Is he calling out?
- 23 A Not that I recall.
- 24 Q All right. After each drive stun did Joe do anything
- 25 different than what you've described?

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- 1 MR. VANDER LAAN: Objection; asked and answered.
- 2 Go ahead, if you know.
- 3 A Can you restate the question?
- 4 Q Sure. What was the result of each drive stun? You told me
- 5 what yours was. What happened with the second drive stun
- 6 whoever did it? What did Joe do?
- 7 A Joe continued to resist each time. After each drive stun he
- 8 continued to curl his arms, wouldn't let us put him safely
- 9 in custody with his hands behind his back, resulted to a
- 10 drive stun which the drive stuns seemed ineffective to Mr.
- 11 McAdam.
- 12 Q Ineffective to what? I don't know what you mean by
- 13 "ineffective."
- 14 MR. VANDER LAAN: Well, is that a question or are
- 15 you just --
- 16 MR. VANDER ARK: No. It's a question.
- 17 Q What do you mean by it was "ineffective"?
- 18 A Our results for the drive stun -- or our -- the action is
- 19 for him to quit resisting. Our -- we were telling him to
- 20 put his hands behind his back. He was under arrest; "Stop
- 21 resisting." In between each drive stun he continued to
- 22 resist, continued to curl his arms and to me it seemed the
- 23 drive stun was ineffective 'cause we didn't get our end
- 24 result that we were asking.
- 25 Q The end result you were looking for was for him to put his

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16 (Pages 58 to 61)

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1 hands behind his back and allow himself to be handcuffed?
 2 That was the goal here; right?
 3 A Correct.
 4 Q All right. You keep using the phrase "he continued to
 5 resist." At any time while he was being drive stunned three
 6 times did he engage in any direct assaultive or aggressive
 7 behavior toward you or any other officer on the scene?
 8 MR. VANDER LAAN: Objection; asked and answered.
 9 You can answer it again, if you know.
 10 A As -- you're stating "assaultive"?
 11 Q Yeah.
 12 A What are you referring to, "assaultive"?
 13 Q Did he try to kick you or did he try to kick anyone in your
 14 observation? Did he swing an arm? Did he grab, push, any
 15 kind of assaultive or aggressive behavior directed toward
 16 the officers?
 17 A Not that I recall.
 18 Q Okay; all right. After the three drive stuns, what happened
 19 next?
 20 A After our commands telling him to stop resisting and after
 21 the -- he was -- the three drive stuns he was -- continued
 22 to -- told to stop resisting and Deputy Davila informed him
 23 that he would be tased again. And he continued to resist.
 24 So Deputy Davila applied his cartridge to his taser, again
 25 told Joseph to stop resisting, which he didn't, and Deputy

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1 Davila shot the taser cartridge into -- I believe it was
 2 Joseph's back.
 3 Q What was Joe's response to the deployment taser?
 4 A I don't recall exactly what his response was. I know we
 5 were able to at least handcuff both hands, at least get them
 6 behind his back and then handcuff him securely at that
 7 point.
 8 Q As an officer on the scene did you believe Deputy Davila was
 9 justified in using a deployment of his taser on Joe at that
 10 time?
 11 MR. VANDER LAAN: Objection. It calls for a legal
 12 conclusion. You can answer, if you know.
 13 A I do believe it.
 14 Q I'm going to back up just a little bit here. I'm going to
 15 take the point where Joe is first put down on the ground.
 16 And I believe you indicated Deputy Davila and Wilson put him
 17 down to the ground; correct?
 18 A Correct.
 19 Q All right. Did you consider any options -- any other
 20 options before you decided to use your taser in drive stun
 21 mode to compel Joe to cooperate with being handcuffed?
 22 A Can you rephrase that question?
 23 Q Did you consider any other options, use of force options, to
 24 compel Joe in some fashion or -- to compel Joe in some
 25 fashion to cooperate with being handcuffed?

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1 MR. VANDER LAAN: Objection; vague. Do you mean
 2 after he was on the ground?
 3 MR. VANDER ARK: After he was on the ground.
 4 MR. KOLKEMA: I'm going to object also. It's a
 5 little vague.
 6 MR. VANDER LAAN: You mean, like, shoot him? I
 7 mean --
 8 Q Well, aren't there hard hand techniques and the -- and
 9 training you've had that you can use on subjects to inflict
 10 pain and promote compliance with your orders?
 11 A It was the totality of circumstances. Joe was actively
 12 resisting our commands. He was laying in the middle of a
 13 highway. And it was reasonable force for us to -- for me
 14 personally to feel that I needed -- a drive stun would help
 15 eliminate the current situation, the current threat, and
 16 safely handcuff him behind his back.
 17 Q For example, did you consider pepper spray or OC spray,
 18 whatever you were carrying?
 19 A No, because there's -- we're in a area right -- we'd have
 20 all been sprayed. And I've been sprayed and I don't want to
 21 be sprayed again.
 22 Q I believe you used the phrase "was engaged in" -- you called
 23 it "active resistance"?
 24 A He was actively resisting; correct.
 25 Q Was he engaged in aggressive resistance?

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1 MR. VANDER LAAN: Objection; vague unless you want
 2 to define it.
 3 MR. KOLKEMA: I'll join that.
 4 Q How about was he engaged in active aggression? Is that a
 5 phrase you're more familiar with?
 6 MR. KOLKEMA: For purposes of the use of force
 7 continuum are you speaking?
 8 MR. VANDER ARK: Yes.
 9 MR. KOLKEMA: Okay.
 10 MR. VANDER LAAN: If you're trying to define that,
 11 then you're going to have to lay a foundation.
 12 Q Well, let me ask then, does the phrase "active aggression"
 13 and the "use of force continuum" mean anything to you? Do
 14 you know what that means from your training?
 15 MR. VANDER LAAN: Again, objection. That's two
 16 questions.
 17 A I am trained with the use of force continuum.
 18 (Deposition Exhibit 15 marked)
 19 Q I'm going to hand you what I've had marked as Exhibit 15.
 20 (Counsel hands exhibit to witness)
 21 Q Have you seen this before?
 22 A Correct.
 23 Q Second page --
 24 MR. VANDER LAAN: You've seen a copy of it before;
 25 correct?

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17 (Pages 62 to 65)

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1 question.
2 MR. VANDER LAAN: I guess I do care.
3 Q Is photograph number 5 a fair and accurate representation of
4 the hospital bed you recall Joe sitting on or being placed
5 on?
6 A A fair representation, yes.
7 Q All right; all right. So Joe was asked to sit on the bed.
8 Tell me what occurred with regard to his being handcuffed
9 when you arrived -- on the bed.
10 A I don't recall who did it, but I know at the time Joseph --
11 at that time when he was at the hospital, he was
12 cooperative. He wasn't in the aggressive manner that he was
13 on the road so -- and to make it easier for medical staff, I
14 believe he was hand- -- just one hand was cuffed to the side
15 rail of the bed. I don't remember what hand it was.
16 Q Okay. Do you recall who did it?
17 A I do not.
18 Q Okay. There are handrails depicted in Exhibit 5. Do you
19 recall whether his left hand was handcuffed to the rail or
20 his right hand?
21 A I just stated I don't recall what hand.
22 Q Okay. Do you recall whether or not when he was handcuffed
23 to the rail whether or not the rail he was handcuffed to was
24 up in a position similarly depicted on Exhibit 5?
25 A I would have to say it would have been up if he was

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1 handcuffed.
2 Q Okay; all right. In your presence did staff come in to talk
3 to Joe, medical staff?
4 A Yes.
5 Q All right. Were you there, for example, when Joe was giving
6 medical history?
7 A I don't recall.
8 Q Okay. In his encounter with medical staff -- I believe you
9 indicated Joe was being cooperative at the hospital.
10 Throughout the initial encounter with the medical staff
11 would you describe Joe as being cooperative with medical
12 staff?
13 A Initially, yes.
14 Q Yeah. And was Joe initially cooperative with you and Deputy
15 Davila and Wilson?
16 A At the hospital?
17 Q At the hospital.
18 A Yes. That's why he was placed -- one hand was cuffed to the
19 bed.
20 Q All right. Well, initially there came a discussion, as I
21 understand it, about his iPhone. Would you tell me what
22 occurred in that regard?
23 A At the hospital Joe's iPhone was taken out of his pocket to
24 be placed in evidence for the video that was taken.
25 Q It was taken out of his pocket at the hospital?

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1 A I don't recall if it was at the hospital or if it was during
2 a pat down. I just knew we had his -- and that was given to
3 deputies for evidence for his -- for their investigation.
4 Q Okay. When you're in this room, the emergency room, with
5 Joe, do you have any idea where that iPhone was? Did you
6 know?
7 A Yeah, I knew the deputies had it; correct.
8 Q Yeah; okay. And why was it taken as evidence?
9 A Because of the videos that Joe took on the scene.
10 Q Okay; all right. Did Joe ask for his iPhone back?
11 A At the hospital, yes, he did.
12 Q When he asked for his iPhone back, can you tell me who was
13 in the room?
14 A Myself, Deputy Wilson and a nurse who was treating his cut
15 knee.
16 Q Deputy Davila was not?
17 A Not that I recall.
18 Q Okay. Do you know the name of the nurse treating his wound?
19 A I do not recall.
20 Q If I read off some names of personnel, would that refr- --
21 A That would not.
22 Q That would not? All right. You said a nurse was attending
23 to his knee. Could you describe the injury Joe had to his
24 knee?
25 A I cannot. I just remember it was either bruised, cut, from

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1 the incident. It was to an extent that either the nurse was
2 cleaning it up, bandaging. I don't recall.
3 Q All right; all right. Joe asked for his iPhone. Tell me
4 what occurred and what the conversation was.
5 A Joe realized that he didn't have his iPhone and that we had
6 it and we wouldn't give it back. And then from when he was
7 being cooperative he became uncooperative in more of an
8 aggressive manner. He put his -- his knee was resting on
9 the bed so the nurse could treat it. Well, he put his leg
10 down on the side of the bed and he was kind of straddling
11 the bed and then attempting to sit up on the bed.
12 Q All right. Well, let's go back and try to get the position
13 of Joe while the nurse was doing the treating. Was he
14 laying down on the bed?
15 A I believe the bed was -- the back was up somewhat so he was
16 laying down but kind of reclined.
17 Q Okay. Did he have both his legs on the bed?
18 A I believe both legs were on the bed at the time.
19 Q Okay. Well, you said he -- when he found out he wouldn't
20 get it back, tell me the conversations as best as you can
21 recall.
22 A All I can recall is that he got upset that we had his phone
23 and he couldn't get it back. I don't recall what words were
24 exchanged. I can't recall it verbatim.
25 Q Okay. And a nurse was at some point in addressing treatment

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20 (Pages 74 to 77)

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1 for his knee?
 2 A Correct.
 3 Q All right; all right. Well, you used the phrase, "Joe began
 4 to get aggressive." What do you mean by that?
 5 A Just he was raising his voice. I do recall that. And he
 6 was refusing treatment. He sat his leg up -- or he sat up,
 7 sat the leg down on the ground that the nurse was treating.
 8 And I believe he sat the other one down. I believe he was
 9 kind of straddling the bed. And it seemed like he was going
 10 to attempt to stand up.
 11 Q When you say "straddling," he's got a leg on each side of
 12 the bed?
 13 A If I recall correctly. The other leg could have been on the
 14 bed, but I just recall he was trying to stand up. He was
 15 trying to get up.
 16 Q Okay. Was he at the far end? Was his backside near the
 17 foot of the bed?
 18 A His backside?
 19 Q Yeah.
 20 A No. It was probably more towards the middle.
 21 Q All right. But he was still handcuffed to one of the rails?
 22 A One hand; correct.
 23 Q Okay. Well, you described as best you could the knee
 24 injury. Did you consider his knee injury to be life
 25 threatening?

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1 A No.
 2 Q All right. Did any medical staff indicate to you or to
 3 anyone in your presence that his wound was life threatening?
 4 A No.
 5 Q All right; all right. So we have Joe has now changed some
 6 position. He's put one or both legs down off the bed. Tell
 7 me what happened next.
 8 A Deputy Wilson advised him to lay down and put his leg back
 9 on the bed. Joe continued to sit up, try to get up. Deputy
 10 Wilson and I both said, "Put your leg on the bed and lay
 11 down," and Joe continued to refuse. Deputy Wilson then got
 12 his taser out and was going to drive stun Joe. I believe it
 13 was on his leg. I don't recall exactly where he was going
 14 to drive stun. As he attempted to drive stun for Joe to
 15 comply Joe pushed Deputy Wilson's taser away from his leg.
 16 As he did that I grabbed my taser and drive stunned Joe in
 17 the left -- I believe it was his left thigh for a full five
 18 seconds. And at that time we were able to handcuff his
 19 other hand that was free.
 20 Q Okay. Conversation-wise, in your presence Deputy Wilson
 21 told him to lay down and put his legs back on the bed;
 22 right?
 23 A Correct.
 24 Q You told him the same thing?
 25 A Yeah, to put his leg back on the bed.

1 Q Okay. Was the nurse still in the room?
 2 A I don't recall.
 3 Q All right. Was Joe saying anything in response to your
 4 command?
 5 A He was saying he didn't have to. Other than that, I don't
 6 recall exactly what he was saying -- and saying that he
 7 wanted his phone back. I do recall that.
 8 Q All right. You used the phrase at that point and before the
 9 drive stunning started Joe was refusing to, quote, "comply."
 10 What was he refusing to comply with?
 11 A To put his legs back on the bed and to sit down. Joe was
 12 attempting to get out of the bed, in my opinion and Deputy
 13 Wilson's opinion.
 14 Q Is it fair to say if he had gotten out of the bed, he wasn't
 15 going to get very far as he was handcuffed to a railing?
 16 A There's wheels on that bed.
 17 Q Okay; all right. Wilson first said, "Put your legs back up
 18 or you're going to be tased"?
 19 A Yes.
 20 Q All right. Did you give Joe a warning before you tased him?
 21 A I don't recall.
 22 Q Okay. Was Deputy Davila in the room at this time?
 23 A I don't believe he was.
 24 Q Okay. Looking at, again, Exhibit 5, assuming Joe's
 25 position -- you don't recall if his right hand or left hand

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1 was handcuffed. Which side of the bed were you on?
 2 A I was on the left side.
 3 Q As we're looking at Exhibit 5?
 4 A Oh. I'm sorry. Right side looking at Exhibit 5; correct.
 5 Q Okay. And Deputy Wilson was on the other side?
 6 A That is correct.
 7 Q Okay. Now, you observed Deputy Wilson apply a drive stun.
 8 You said Joe was pushing it away or tried to push it away?
 9 A He did push it away.
 10 Q He did push it away? From your observation, did Deputy
 11 Wilson achieve drive stun contact with his leg before he
 12 pushed it away?
 13 A I believe he did. I believe for him to pull the trigger on
 14 the -- because he did pull the trigger -- it would have
 15 been -- he would have had contact with his leg. I believe
 16 that it was -- it did have contact with his leg and Joe
 17 pushed the taser away.
 18 Q So, again, assuming as you described how x26's work, once
 19 Deputy Wilson pulled that trigger the taser was going to
 20 discharge for a full five seconds?
 21 A Unless Deputy Wilson shut the taser off.
 22 Q Okay. Well, let me ask you. You've indicated at the other
 23 scene that you knew drive stuns were used because you could
 24 hear the drive stun?
 25 A Correct.

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21 (Pages 78 to 81)

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1 Q Is there a different sound when someone's being drive
 2 stunned and it's in contact with the skin than when it's
 3 firing but not in contact with the skin?
 4 A I don't know that.
 5 Q All right. So you don't know as you're sitting here today
 6 whether Joe got a full five seconds of skin contact drive
 7 stun from Deputy Wilson or not?
 8 A I know he did not get a full five seconds.
 9 Q Did not? All right. Do you know how much he got?
 10 A It was less than five. I don't recall. It could have been
 11 three, but that's a guess.
 12 Q All right. And then you decided -- you took your taser out
 13 again. Did you have to take your cartridge off?
 14 A Yes.
 15 Q All right. And then you applied a drive stun to Joe's -- it
 16 would be his left leg?
 17 A That is correct; his thigh.
 18 Q All right. Did you get a full five-second contact?
 19 A Yes.
 20 Q All right. What did Joe do after your drive stun?
 21 A He put his other leg back up and he stopped resisting. I --
 22 myself or Deputy Wilson either handcuffed the other hand. I
 23 don't recall who -- what hand or who handcuffed at that
 24 time, but I know his other hand was handcuffed to the other
 25 side of the bed.

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1 Q Okay. By the way, they weren't your handcuffs from your
 2 belt, were they?
 3 A I don't recall.
 4 Q Okay. Officer, why did you decide to use force to compel
 5 Joe to get his knee treated?
 6 A To my opinion, and I can't speak for Deputy Wilson, Joe was
 7 showing that he was getting out of the bed. That's what I
 8 believe he was doing. And Joe is a big guy. He was showing
 9 aggression at that time and already -- you know, he already
 10 actively resisted us on the road, you know. It's officer
 11 safety, you know, between Deputy Wilson and I and the nurse
 12 staff or the medical staff. You don't know what Joe's going
 13 to do. So as he was doing that, telling him to lay back
 14 down and my -- and I wanted to handcuff his other hand or we
 15 wanted to handcuff his other hand. After he pushed Deputy
 16 Wilson's taser away showing active aggression I -- he had
 17 already showed that he pushed away -- I didn't know what
 18 else he would do. So I drive stunned his leg to gain
 19 compliance from him using pain compliance to handcuff his
 20 other hand to eliminate that threat.
 21 Q All right. He was refusing your command to lay down?
 22 A Correct; yes.
 23 Q He was refusing a command to put his leg on the bed?
 24 A Correct.
 25 Q All right. He was refusing medical treatment?

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1 A Yes.
 2 Q Does his refusal of medical treatment have anything to do
 3 with your decision to use a taser on Joe?
 4 A No.
 5 Q Prior to your use of a taser on Joe had Joe verbally
 6 threatened anyone in your presence?
 7 A No.
 8 Q Other than what you've described as it looked like he may be
 9 trying to stand up and/or leave, was he physically
 10 aggressive or assaultive toward anyone in your presence?
 11 A Before what time?
 12 Q Before you applied the taser.
 13 A Yes.
 14 MR. KOLKEMA: At the hospital; right?
 15 MR. VANDER ARK: At the hospital.
 16 Q All my discussions now are at the hospital. Okay? Yes.
 17 Who was he aggressive toward?
 18 A Deputy Wilson when he pushed Deputy Wilson's taser away
 19 showing active aggression.
 20 Q So based on your experience as a law enforcement officer, if
 21 you're being drive stunned, you'd better take it and not try
 22 to avoid it?
 23 MR. VANDER LAAN: Objection; foundation, form.
 24 MR. KOLKEMA: Yeah.
 25 Q You can answer it.

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1 A Rephrase it.
 2 Q Well, --
 3 A Or repeat it, that --
 4 Q In your opinion and based on your experience you consider an
 5 individual being drive stunned aggressive if he attempts to
 6 avoid the drive stun as opposed to resisting a drive stun?
 7 A He was drive stunned for a reason.
 8 Q Okay.
 9 A He was under arrest. He was in our custody. And he wasn't
 10 listening to our orders. And our thought of him trying to
 11 get out of the bed, that could -- and we are trying to --
 12 you know, that there's a threat there. Joe McAdam is a big
 13 guy. He's starting to be aggressive. He's intoxicated. He
 14 already resisted us on the road. We don't know where he was
 15 going to -- what he intended to do. So we were telling him
 16 to lay down, put his leg back on the bed, and he refused to
 17 do that. That's why he was drive stunned. And then when he
 18 pushed Deputy Wilson's drive stun away, that's when I drive
 19 stunned his other leg so we can gain compliance from him so
 20 we can cuff him to secure him to that bed.
 21 Q Did Joe ever say, "I don't want to be treated anymore"?
 22 A I don't recall.
 23 Q All right. Did you consider an option, saying, "Fine, Joe.
 24 You don't have to be treated. We're going to jail" before
 25 you drive stunned him and ordered him to lay down, put legs

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1 Q Okay. Do you dictate your reports or write them out
2 yourself?
3 A I type my own reports.
4 Q Okay. That's a report like Exhibit 9?
5 A Correct.
6 Q Okay. I mean, obviously your handwritten report is
7 handwritten, but --
8 A Right.
9 Q -- do you recall when you typed your report which is marked
10 as Exhibit 9?
11 A It was after the incident, af-- yeah. After leaving the
12 hospital I went to the department and typed reports. I
13 don't know what time it was, but it was in the early
14 morning.
15 Q Okay. Would it have been sometime before the end of your
16 shift or after?
17 A It was after my shift. My shift was already done, but I was
18 staying to type reports.
19 Q Okay. So it wasn't -- because you worked the next day which
20 was, I guess, the 20th which would carry over onto the 21st?
21 A Correct; correct.
22 Q Okay. So your report wasn't written on that shift though?
23 A Correct.
24 Q Okay. And by "that," I'm talking about the 20th carrying on
25 to the 21st.

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1 A Correct.
2 Q All right. And I just wanted to clarify. Your testimony
3 here today is that on the street you believe that you
4 deployed the first drive stun out of all of the officers?
5 A Correct.
6 Q Do you know if that was before or after Davila deployed the
7 cartridge?
8 A It was before.
9 Q Your report -- I don't know if -- just -- your report, is it
10 in the right sequencing or is it -- I don't -- I don't --
11 MR. VANDER LAAN: What he's trying to say is that
12 your report indicates a different sequence. Could you
13 please explain for Mr. Kolkema why that is?
14 MR. KOLKEMA: Sure.
15 THE WITNESS: Yeah; correct.
16 A At the time when I wrote the report, the sequence -- what I
17 wrote was incorrect. Later I then realized that -- looking
18 at the report and -- that my -- that I -- I did tase -- or
19 drive stunned Mr. McAdam first. I don't recall who drive
20 stunned him next, but I know I drive stunned him first.
21 MR. VANDER LAAN: And that was as the result of
22 seeing what that you realized?
23 THE WITNESS: Seeing Deputy Davila's report.
24 MR. VANDER LAAN: And when was that?
25 THE WITNESS: When I met with you.

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1 MR. VANDER LAAN: Thank you.
2 Q Okay. So there's some aspects of that -- and it wasn't
3 really clear to me -- you just mention in there that, "I
4 also drive stunned him," but you weren't really -- the way I
5 was reading it I didn't know when in relation to everything.
6 Now, out of the sequencing, though, do you know when this
7 injury would have occurred?
8 A I do not.
9 MR. KOLKEMA: That's all I have.
10 MR. VANDER LAAN: Officer, I which have a couple
11 of questions.
12 EXAMINATION
13 BY MR. VANDER LAAN:
14 Q Your Use of Force Report, it was reviewed by your supervisor
15 and also the chief of police, I mean, the signatures on
16 there?
17 A Yes; yes.
18 Q As a result of that, the use of force in this case, were you
19 disciplined internally by anyone at the Ludington Police
20 Department?
21 A I was not.
22 Q Okay. When you initially responded to Officer York's call
23 for assistance, in fact were you there just to assist him?
24 A Was I just there --
25 Q Yes. I mean, you were there for what? Assistance?

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1 A Assistance; correct.
2 Q Okay. And at some point you indicated that you were
3 assisting the deputies from the sheriff's department. Do
4 you know at what point you would have been in an assistance
5 mode as opposed to, "Hey, this is my incident"?
6 A Once Deputy Davila said, "You are under arrest."
7 Q Okay. In response to Plaintiff's counsel's questions you
8 indicated that -- or he asked you about whether or not you
9 had the same taser on the 19th as you did on the 20th. I
10 just want to make sure -- the taser that you checked out on
11 the 19th, is that the same taser you checked in on the 20th?
12 A That I checked -- that I checked in?
13 Q Did you switch tasers at any time between the 19th and the
14 20th during that shift?
15 A During the shift? No.
16 Q No? The same taser that you went out with is the one that
17 you came in with?
18 A Correct.
19 Q Okay. I just wanted to clear that up. You were shown --
20 and I forgot what exhibit it was, but this memo of June 15,
21 2009; correct? I'm showing it to you.
22 A Correct.
23 Q And I understand that you have not seen that memo before so
24 I won't ask you any questions regarding the substance of it,
25 but I'm wondering if -- after June 15 of 2009 what occurred

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28 (Pages 106 to 109)

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