

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA

3

4 TERRENCE BRESSI,)
)
5 Plaintiff,)
)
6 vs.) No. 04-264 TUC-JMR
)
7 MICHAEL FORD, ERIC O'DELL,)
)
8 GEORGE TRAVIOLIA, RICHARD)
)
9 SAUNDERS, AND UNITED STATES OF)
)
10 AMERICA,)
)
)
11 Defendants.)
)
12 _____)

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13 THE DEPOSITION OF ERIC O'DELL

14

15 Tucson, Arizona
16 November 3, 2006
17 1:19 p.m.

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22 WENDY J. PULLIUM, RPR
23 Arizona Certified Reporter, No. 50247

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14

15 ALSO PRESENT: Terrence Bressi

16

17 * * * *

18 BE IT REMEMBERED that pursuant to Notice
19 for taking depositions in the above-styled cause, the
deposition of Eric O'Dell was taken upon oral
20 examination at Hotel Arizona, 181 West Broadway
Boulevard, in the City of Tucson, State of Arizona,
21 before WENDY J. PULLIUM, Certified Reporter #50247, on
the 3rd day of November 2006, commencing at the hour
of 1:19 p.m. in a certain cause now pending before the
22 United States District Court in the District of
Arizona.

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I N D E X

EXAMINATION	PAGE
By Mr. Harrision	4

E X H I B I T S

NUMBER	DESCRIPTION	IDENTIFIED
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(No Exhibits Were Marked For Identification.)

1 testimony that is the same as if it's made in court.
2 And what we really want to do is get as good a record
3 as possible, so the best thing is to speak clearly,
4 let's not overlap our conversations, please wait for
5 me to finish my question and try and communicate or do
6 communicate back to me in verbal medium rather than
7 nodding your head or facial gestures or body gestures;
8 let's make it transcribable.

9 If at any time you don't understand any of
10 my questions, please say so and I will repeat the
11 question or rephrase it.

12 Do you understand that rule?

13 A Yes.

14 Q Okay. If you do not know the answer to the
15 question, simply state that you do not know. I don't
16 want you to guess. I do -- I can ask you to estimate
17 something.

18 Do you know the difference between a guess
19 and an estimate?

20 A I do.

21 Q Like for instance, if you were to guess how
22 far away that door is, you know, it would be 24 miles;
23 but estimating, you'd use some frame of reference.

24 Do you understand?

25 A Yes.

1 MR. FRAZIER: Twenty-four miles?

2 MR. HARRISON: Well, it would be a good
3 guess.

4 BY MR. HARRISON:

5 Q We'll take a break every hour to give you
6 and the court reporter a chance to refresh. I don't
7 expect that we're going to take that long with this
8 deposition, but if at any time you want to take a
9 break for any reason, please say so and we will.

10 You understand that your testimony today is
11 being given under oath and that you've been sworn to
12 tell the truth and if you fail to do so, adverse
13 consequences could result.

14 Do you understand that?

15 A I do.

16 Q All right. Have you reviewed any documents
17 in preparation for this deposition?

18 A I have.

19 Q What documents have you reviewed in
20 preparation for this deposition?

21 A My affidavit, and I don't recall what the
22 name of the other form was that I signed; as well as
23 Mr. Bressi's affidavit, and I'm not even going to try
24 to pronounce, Mr. Traviolia?

25 Q Traviolia.

1 A Traviolia's affidavit.

2 MR. FRAZIER: The other form that he's
3 referring to is the Responses to Non-Uniform
4 Interrogatories.

5 BY MR. HARRISON:

6 Q As a preliminary matter -- well, let me
7 again ask, did you discuss your -- in preparing for
8 this deposition, did you have conversations with
9 anyone other than your representation?

10 A No.

11 Q I'm going to start off by going into some
12 background on you.

13 You are a police officer presently; is that
14 correct?

15 A That is correct.

16 Q And you live up in Oregon?

17 MR. FRAZIER: Tell him where you live now.

18 (Interruption by court reporter.)

19 MR. FRAZIER: We agreed we weren't going to
20 say where anybody lives and generally that's okay, but
21 I don't want you to go any further.

22 MR. HARRISON: I won't go any further.

23 BY MR. HARRISON:

24 Q You are a police officer in Oregon at this
25 point, correct?

1 A Correct.

2 Q All right. Prior to being a police officer
3 in Oregon, you worked for who?

4 A The Tohono O'Odham Police Department.

5 Q And for how long did you work for them?

6 A I started in 1999, so a little over six
7 years.

8 Q And when did you no longer work for them?

9 A September of 2005.

10 Q Let's talk about your education -- oh, prior
11 to 1999, what did you do for a living?

12 A I worked for the Arizona Department of
13 Corrections.

14 Q As what?

15 A A corrections officer.

16 Q Where?

17 A Arizona.

18 Q Where in Arizona?

19 A Florence, Arizona and Tucson, Arizona.

20 Q And prior to working for the State of
21 Arizona for the Department of Corrections, what did
22 you do?

23 A I worked for a company called Whitmark,
24 Incorporated.

25 Q What is that?

1 A A packaging supply company.

2 Q And prior to that?

3 A Worked at a car wash, I think was the job
4 before that.

5 Q When did you stop -- when did you start and
6 stop working for the Arizona Department of
7 Corrections?

8 A I started with Arizona Department of
9 Corrections in '93 and quit in '99 when I took the job
10 with Tohono O'Odham Police Department.

11 Q Okay. Your educational background, what's
12 your most highest level of formal education?

13 A Bachelor's.

14 Q Bachelor's of?

15 A Criminal justice administration.

16 Q From where?

17 A University of Phoenix.

18 Q And when did you get that?

19 A 2005.

20 Q What other formal education have you
21 received?

22 A As far as training in-service, college
23 credits? Is what you are asking?

24 Q Are you a high school graduate?

25 A I am.

1 Q And where did you graduate from high school?

2 A I got actually my GED from Arizona State
3 Education Board.

4 Q Okay. Are you certi -- are you -- let's
5 talk about your training as a police officer.

6 Could you start -- let's go chronologically
7 from the beginning, it's often easier, and tell me
8 your training that you have undergone as a police
9 officer.

10 A In 1999 I attended the Southern Arizona Law
11 Enforcement Training Center -- SALETC is the acronym
12 for that -- in Tucson, Arizona. After graduation from
13 that I've had K-9 training, FBI survival training,
14 U.S. special forces, desert survival training,
15 phlebotomy certification.

16 Q What is that?

17 A Blood draws for DUIs.

18 I have had commercial vehicle inspector
19 level one training, DIAP training, Desert Snow
20 training, firearms training, RADAR training, LIDAR
21 training, PIT training.

22 Q You sounds like you are a well-trained
23 individual.

24 A Yeah, I could go on.

25 Q All right. Let's stop and limit it to have

1 you been certified in this training to -- can, can --
2 have a degree or something that you would put on your
3 résumé?

4 A I have certificates from all that training.

5 Q Okay.

6 (Interruption by court reporter.)

7 THE WITNESS: From all that training, I
8 received certificates from it.

9 BY MR. HARRISON:

10 Q What was your most recent training?

11 A Firearms training.

12 Q When was your K-9 training?

13 A I can't give you an exact date.

14 Q I'm not, again not -- if you can't, if you
15 don't know an exact date, could you give me an
16 estimate, please?

17 A 2005.

18 Q 2005?

19 A Correct.

20 Q Can you tell me about your K-9 training?

21 A That's such a broad, there is so much in,
22 that entails K-9 training. As far as in-service
23 training, once a week we did that; K-9 conferences
24 every year, K-9 legal updates every year,
25 certification every year, and K-9 trials every year.

1 Q Okay. Are you specifically trained to be a
2 K-9 handler for purposes of finding drugs?

3 A No.

4 Q Are you specifically trained to be a K-9
5 handler for purposes of finding weapons or explosives?

6 A Yes.

7 Q Do you -- have you ever worked with a K-9
8 for the purposes of finding drugs?

9 A Are you asking have I ever handled a K-9 or
10 have I been around narcotic dogs?

11 Q Let's try handled first.

12 A I've never handled a narcotics detection
13 dog.

14 Q I see that you received your K-9 training in
15 2005. Did you ever handle a, a K-9 while working in
16 the State of Arizona?

17 A Yes. All my K-9 training was in Arizona.

18 Q In 2005?

19 A Yes.

20 Q Prior to 2005 have you -- did you handle a
21 K-9 for work?

22 A Yes.

23 Q And could you describe what you did?

24 A The exact same thing I have already
25 described for 2005. It had -- I was a handler from

1 about 2002 to about 2005.

2 Q When in 2002?

3 A I don't know the exact date as to when I was
4 promoted to that position of handler.

5 Q Was it before December of 2002?

6 A Yes.

7 Q So you received your training as a K-9
8 handler in 2005, but you've been handling K9s since
9 2002; is that correct?

10 A Roughly around 2002 is when I took over the
11 position as a K-9 handler, yes.

12 Q You took over the position as a K-9 handler
13 in 2002 working here in Arizona for the tribal police?

14 A Yes, right around 2002. I can't remember
15 the exact date as to when I was promoted to that
16 position.

17 Q Which is a good moment to -- a good point to
18 ask about your promotions and your, and your levels
19 working for the, the tribe here in Arizona.

20 What -- how did you start working for them,
21 in 1999? Is that right?

22 A Yes.

23 Q What was -- what was your initial job with
24 them?

25 A Patrol officer.

1 Q And how long were you a patrol officer?

2 A Roughly two, a little over two years.

3 Q And then what did you become?

4 A K-9 handler.

5 Q Okay. And could you describe your job
6 duties as a K-9 handler at this point in 2002 -- I
7 mean, you said roughly two years. I see you started
8 in 1999, and you started as a patrol officer and
9 roughly two years later you became a K-9 unit handler.

10 Could you describe your job then as a -- in
11 2001 as a K-9 unit handler?

12 MR. FRAZIER: 2002 he started, he said.

13 BY MR. EUCHNER:

14 Q All right.

15 A Yeah, roughly around there.

16 What was my rule as a handler, is that what
17 you're asking? Or what specifically was my duty?

18 Q I'd like you to describe your job.

19 A My job was to assist patrol at any time a
20 K-9 would be better utilized than an officer, for
21 officer safety reasons, in the realm of patrol work.

22 When it came to detection work, I was called
23 upon to assist other agencies as well as the nation to
24 help in dignitary security --

25 (Interruption by court reporter.)

1 THE WITNESS: Dignitary security.

2 And as well as call-outs for bomb detection.

3 BY MR. HARRISON:

4 Q So let me make sure I have this right. As a
5 K-9 handler you were there to provide security for
6 police officers with your dog; is that right?

7 A No. Dignitary security.

8 Q Okay, I understand. But you said initially
9 that you were there to provide safety.

10 A Yes. For when it became best for a dog to
11 handle the situation as opposed to an officer. We
12 would much rather lose a dog than an officer.

13 Q I'm sure you would rather lose neither.

14 A True.

15 Q But yes, I understand what you are saying.

16 Were you assigned a particular dog?

17 A I was.

18 Q Initially when you started this job?

19 A I was assigned a dog, yes, initially.

20 Q And what was the name of this dog?

21 A His name was --

22 MR. FRAZIER: Wait, wait, wait. I don't
23 know if, if that is a secret or not, but if it's not,
24 that's okay.

25 MR. HARRISON: Yeah, don't, please don't --

1 I don't mean to interrupt you, but please, don't tell
2 me anything that -- I just wanted to use -- I don't
3 care what the dog's name --

4 MR. FRAZIER: Is his name undercover?

5 BY MR. HARRISON:

6 Q I will call the dog "dog", your initial dog
7 I will call dog one.

8 Your dog one, did you have this dog one for
9 your entire time as a K-9 handler working for the
10 tribe?

11 A I handled two dogs during my career as a K-9
12 handler for the Tohono O'Odham Police Department.

13 Q Let us call it dog one and dog two.

14 A Okay.

15 Q What kind of dog is dog one?

16 A Dog one is a Dutch Shepherd.

17 Q And is dog one still alive?

18 A Dog one is still alive.

19 Q And is dog one still working for the tribe?

20 A No, dog one is no longer working for the
21 tribe.

22 Q Is dog one still a police dog?

23 A Dog one has since retired.

24 Q Retired. Good for dog one.

25 And how long did you work with dog one?

1 A Four years.

2 Q Four years. So you worked with dog one from
3 roughly 2002 to when?

4 A Two thousand -- until 2005.

5 Q Okay. And dog two, how long did you work
6 with dog two?

7 A Six months.

8 Q Okay. And when did you start working with
9 dog two?

10 A 2005.

11 Q Okay. Let's just contain our questions to
12 dog one then, because it's my understanding that at
13 the incident in question involving Mr. Bressi, you
14 were there with dog one; am I correct?

15 A You are correct.

16 Q All right. Let's talk about dog one
17 briefly. Could you tell me about the training that
18 dog one has received?

19 A Dog one was certified in patrol work and
20 explosive detection work through, at that time, our
21 in-house trainer; and then he received his state
22 certification, probably, it was probably that year
23 that he received his state certification through what
24 is called ALECA.

25 Q State certification for what?

1 A Arizona Law Enforcement K-9 Association.

2 Q Certifies dogs?

3 A They certify dogs.

4 Q And do they have gradations of
5 certifications?

6 A They do.

7 Q And how was this dog one certified?

8 A There is a series of tests for patrol work
9 that you are required, you and your partner, to
10 demonstrate proficiency in, and that is the same with
11 explosive detection work.

12 Q Was dog one ever trained in the detection of
13 items other than explosives?

14 A Never.

15 Q Did dog one ever find items other than
16 explosives during its service?

17 A He did.

18 Q For instance what did dog one find?

19 A People.

20 Q Okay. What else?

21 A People.

22 Q Anything other than people?

23 A Nothing other than people.

24 Q He's a people finder?

25 A Well, that is why he is a dual purpose.

1 Q He's a dual purpose. He's to search for
2 people as well as explosives?

3 A Correct.

4 Patrol work is totally separate from
5 explosive detection work.

6 Q So, let me get this right. This dog was
7 trained to find people?

8 A Yes.

9 Q So the dog is not just trained for
10 explosives finding, but for people finding?

11 A Correct.

12 Q Is this dog trained for anything other than
13 people finding and explosives finding?

14 A No.

15 Q Has this dog found anything -- let me
16 rephrase that. Has this dog ever found explosives?

17 A He has, yes.

18 Q Has this dog ever found anything other than
19 people and explosives?

20 A No.

21 Q Thank you.

22 You mentioned earlier or you said earlier
23 that you became a dog handler in 2002.

24 Was that your sole duty as a police officer
25 for the tribe from then until when you left?

1 A I'm not sure I'm understanding your
2 question. Sole duty?

3 Q I, I don't pretend to understand everyone's
4 categorization. So you tell me that you are a K-9
5 handler. In my mind that separates you from the rest
6 of the police force; is that correct?

7 A We are separated from the rest of the police
8 force in a sense. We still operate and conduct normal
9 police activities.

10 Q So you would be a patrol officer as well?

11 A We would work on patrol, correct, and we
12 would respond to calls. Yes.

13 Q Is there anything that you would do as a K-9
14 unit that a regular patrol officer would do?

15 A Is there anything different?

16 Q Is there anything -- let me rephrase that.

17 Is there anything that a regular patrol
18 officer would do that a K-9 unit would not be able to
19 do or would not do?

20 A Yes.

21 Q Like what?

22 A Transport prisoners.

23 Q Okay. Anything else?

24 A No.

25 Q All right. So you're generally a patrol

1 officer with a dog and able to do everything except
2 transport prisoners that a regular patrol officer
3 would do?

4 A Correct.

5 Q Except you have the added ability to find
6 drugs or people.

7 A No.

8 Q Your dog has the added ability to find drugs
9 and people?

10 A No. He finds explosives and people.

11 Q I'm sorry, you're right. I'm so used to
12 saying drugs, that I just say it.

13 Your dog had the -- you are the same as a
14 patrol officer except you have a dog that has the
15 added ability to find people and explosives?

16 A Correct.

17 Q Okay. Let's move to the situation, the day
18 in question of the incident for the reason for which
19 we are here, which was the arrest of Mr. Bressi.

20 Do you have a recollection -- and the date
21 of that was December 20th of 2002. Do you recollect
22 that -- there was a roadblock, as I understand it. Do
23 you recollect a roadblock on that date?

24 A I recall the checkpoint. As far as the
25 specific date, I don't exactly, can tell you off the

1 top of my head what the exact date was.

2 Q How many roadblocks do you normally do in a
3 year?

4 A How many have I done?

5 Q Yes. Okay. That's a good question.

6 A I don't even know how many I have done.

7 Q Estimate?

8 A Three.

9 Q Three roadblocks?

10 Do you know -- and one of those three
11 roadblocks was the incident involving Mr. Bressi?

12 A Correct.

13 Q Okay. And the other two roadblocks, could
14 you tell me when they were?

15 A No, I cannot.

16 Q Can you tell me where they were?

17 A They were on the Tohono O'Odham Reservation.

18 Q Were they at the same location as the
19 roadblock that involved Mr. Bressi?

20 A One wasn't.

21 Q And one was?

22 A And one was.

23 Q Do you know if these two roadblocks were
24 before or after the incident that involved Mr. Bressi?

25 A I don't remember.

1 MR. FRAZIER: Object to form.

2 BY MR. HARRISON:

3 Q You don't know?

4 A I don't recall.

5 Q Did you have your police dog with you at,
6 dog number one, at these other two roadblock
7 checkpoints?

8 MR. FRAZIER: Object to form.

9 You can still answer.

10 THE WITNESS: I was thinking.

11 I believe he was only at one, other one,
12 other than the date in question.

13 BY MR. HARRISON:

14 Q Okay. And was that the one that was at the
15 same location as the one in question?

16 A No.

17 Q It was at the other one?

18 A Correct.

19 Q Let's talk about the day in question. Do
20 you recall being assigned to that roadblock?

21 A No.

22 Q Do you recall who you worked with at that
23 roadblock?

24 A I only recall three officers that were at
25 the roadblock when I was there.

1 Q Please tell me the three officers you recall
2 at the roadblock.

3 A Lieutenant Michael Ford, Detective
4 Traviolia, and Detective Romero.

5 Q Do you remember what time this roadblock
6 commenced?

7 A I do not.

8 Q Do you recall going to work that day?

9 A I do.

10 Q Did you first go to -- first of all, let me
11 back up.

12 Does your -- does dog number one -- did dog
13 number one live with you?

14 A Dog number one did live with me.

15 Q So I assume you don't have to go pick up dog
16 number one to go to work; you just whistle and it gets
17 in the car?

18 A Dog number one is at my residence when I
19 leave for work.

20 Q Okay. Did you go from your residence to the
21 roadblock on the date in question?

22 A I did.

23 Q And what time of day was that?

24 A I don't recall.

25 Q Are these roadblocks, these three

1 roadblocks, were they all conducted during the day?

2 A No.

3 Q Were they all conducted during the night?

4 A I believe two of them were.

5 Q Okay. The one in question, do you know
6 whether that was conducted during the day or night?

7 A When I arrived, it was still daylight out.

8 Q Was it close to being dark?

9 A I don't recall.

10 Q Okay. Who did you receive orders from to
11 appear at this roadblock?

12 A Lieutenant Ford.

13 Q And when did you receive this order to
14 appear at this roadblock?

15 A On the day that the roadblock was
16 commencing.

17 Q So Lieutenant Ford called you?

18 A Correct.

19 Q On the telephone?

20 A Yes.

21 Q And told you to show up at a particular
22 place for a roadblock?

23 A Yes.

24 Q When you showed up at the roadblock, I
25 assume that you have some sort of organizational

1 meeting before you commence the roadblock; is that
2 correct?

3 A I didn't.

4 Q You didn't?

5 A No.

6 Q You didn't have a meeting, you just showed
7 up. And what happened?

8 A I showed up and immediately went to work.

9 Q Okay. And what job were you performing?

10 A K-9 handler.

11 Q And what were you doing with your K-9
12 handling?

13 A I was assigned as one of the units to stand
14 by on the highway and not be directly involved with
15 the operation at the mile post. My job was to watch
16 for any vehicles that were going to avoid the DUI
17 checkpoint.

18 Q It doesn't sound like you took much of an
19 active participation.

20 Is this where you started that night or was
21 this your job for the entire night?

22 A That was my job, that was my role for the
23 entire night after I arrived at the operation.

24 Q Did that job description change during the
25 night?

1 A No.

2 Q So for the entire night you were just
3 instructed to stand there and make sure no one ran
4 away; is that correct?

5 A Stand?

6 Q On the side of the road, as you said?

7 A My role was to park in an area and monitor
8 traffic that was approaching or leaving the operation.

9 Q And is that what you did that night?

10 MR. FRAZIER: Sorry, what?

11 BY MR. HARRISON:

12 Q And is that what you did that night?

13 A I did.

14 Q Did you do anything more than stand and
15 monitor that evening?

16 A I assisted with the arrest of Mr. Bressi
17 initially when I got there on scene.

18 Q Initially when you got there. So was that
19 the first thing that you did when you got there?

20 A I first showed up to check in to let the
21 supervisors know that I was out there.

22 Q Yes.

23 A And then that's when I encountered
24 Mr. Bressi.

25 Q Did you have your dog with you at the point

1 of first encounter?

2 A My dog was on scene, yes.

3 Q Do you have your dog on a leash?

4 MR. FRAZIER: Object to form and -- form.

5 BY MR. HARRISON:

6 Q You can answer it.

7 A He was in my patrol car.

8 Q Okay. Okay. When you showed up for work
9 and your dog was in your patrol car, you went to
10 report in, what happened?

11 A I was advised by another officer that
12 Officer Traviolia and Lieutenant Ford needed some
13 assistance with a vehicle that was blocking the
14 roadway.

15 Q And who was the officer who informed you?

16 A Officer Romero.

17 Q And what did you do with this information
18 that you received from Officer Romero, what did you
19 then do?

20 A Walked over to where Officer Traviolia and
21 Lieutenant Ford were at.

22 Q And then what happened?

23 A Then I heard Officer Traviolia giving clear
24 and concise instructions to Mr. Bressi to exit the
25 vehicle.

1 Q And what did you perceive? Did you see
2 things rather than just hear things? What were you
3 looking at?

4 A I was looking at Mr. Bressi.

5 Q And Mr. Bressi was in his car?

6 A Correct.

7 Q And he was stopped?

8 A He was.

9 Q And was there a line of cars? I'm trying to
10 get a mental image. How many cars were stopped at
11 that time?

12 A I don't know.

13 Q Were there more than two cars stopped at
14 that time?

15 A Yes.

16 Q So the roadblock was under -- they were in
17 operation with the roadblock when you showed up?

18 A Correct.

19 Q You heard them, the officers, instruct
20 Mr. Bressi to -- what did you say? Move the car to
21 the side or get out of the car? I'm sorry, what did
22 you say?

23 A I heard one officer instruct Mr. Bressi to
24 exit the vehicle.

25 Q Okay. And what happened after that?

1 A I instructed Mr. Bressi to exit the vehicle.

2 Q And how did you do that?

3 A I told him to exit the vehicle.

4 Q Those were your exact words?

5 A I don't know exactly what my exact words
6 were.

7 Q And were you standing by the side of the
8 vehicle telling him to exit the vehicle?

9 A I was.

10 Q Did you ever -- strike that.

11 Did you -- what was Mr. Bressi's response?

12 A He did not respond.

13 Q And then what did you do?

14 A Opened the driver's side door.

15 Q And then what did you do?

16 A I undid his seat belt.

17 Q And then what did you do?

18 A Assisted Mr. Bressi in exiting the vehicle.

19 Q Could you be more specific as to assisted?

20 Did you lift him out?

21 A I would say it was more of a pull.

22 Q Prior to pulling Mr. Bressi from his car and
23 after verbally telling him to exit the vehicle, and
24 him, you are saying, having not replied, did you say
25 anything else to him?

1 A I did not.

2 Q Did you instruct Mr. Bressi -- well, that
3 would be asked and answered. Strike that.

4 Did you remove Mr. Bressi from the vehicle
5 by yourself?

6 A No.

7 Q Did your K-9 unit help you remove Mr. Bressi
8 from the car?

9 A No.

10 Q Who helped you remove Mr. Bressi from the
11 car?

12 A Officer Traviolia.

13 Q How -- did Officer Traviolia also, as you
14 described how you did it, pull Mr. Bressi from the
15 car?

16 A I don't recall what his -- how he, how he --
17 what force he used to remove Mr. Bressi from the
18 vehicle.

19 Q Did he push and you pull?

20 A Like I said, I don't know what, what action
21 he took to remove him.

22 Q Did you both reach in to grab Mr. Bressi?

23 A We did.

24 Q Did you both reach in through the
25 passenger -- I mean, the driver's side door?

1 A We did.

2 Q And then what happened?

3 A He was placed on the ground and handcuffed.

4 Q Face down?

5 A Face down.

6 Q Handcuffed behind his back?

7 A Yes.

8 Q And arrested?

9 A Yes.

10 Q Was he then told that he was under arrest?

11 A Not by me.

12 Q Other than hearing the instruction and you
13 yourself instructing Mr. Bressi to exit his vehicle,
14 did you hear or did you -- I don't mean to be
15 compound, so did you hear Mr. Bressi being instructed
16 to do anything else?

17 A Not that I recall.

18 Q Did you hear him being asked to show his ID?

19 A No.

20 Q Did you hear him being asked to show his
21 registration or proof of insurance?

22 A No.

23 Q Why did you place Mr. Bressi under arrest?

24 MR. FRAZIER: Form.

25 THE WITNESS: Because he was failing to

1 comply with the orders that Officer Traviolia was
2 giving him.

3 Q And what was that order?

4 A To exit the vehicle.

5 Q And why was he ordered to exit the vehicle?

6 MR. FRAZIER: Foundation.

7 THE WITNESS: I don't know.

8 BY MR. HARRISON:

9 Q You placed Mr. Bressi under arrest; is that
10 correct?

11 MR. FRAZIER: Form.

12 THE WITNESS: I detained Mr. Bressi. I
13 didn't place him under arrest.

14 BY MR. HARRISON:

15 Q Did you handcuff Mr. Bressi?

16 A I don't recall if it was me that actually
17 placed the handcuffs on him.

18 Q You took part in Mr. Bressi's arrest; is
19 that correct?

20 A I took part in Mr. Bressi's detainment, yes.

21 Q Other than hearing someone instruct
22 Mr. Bressi to exit his car, get out of his car, you
23 heard no other instructions to Mr. Bressi, correct?

24 A Not that I recall.

25 Q And you arrested Mr. Bressi for failing to

1 get out of his car?

2 MR. FRAZIER: Form.

3 THE WITNESS: I assisted in detaining

4 Mr. Bressi.

5 BY MR. HARRISON:

6 Q Okay. Do you know why Mr. Bressi was
7 ordered to get out of his car?

8 A No.

9 Q Do you presently know why Mr. Bressi was
10 ordered to get out of his car?

11 A I do now.

12 Q When you arrest somebody, do you normally --
13 I don't mean to be insulting here, I really don't, but
14 do you make -- when you arrest somebody, do you make
15 sure that the person has broken some law?

16 MR. FRAZIER: Form.

17 THE WITNESS: If they are being placed under
18 arrest, then yes, they have broken the law.

19 BY MR. HARRISON:

20 Q That doesn't answer my question.

21 I'm asking you when you arrest somebody, do
22 you make sure that they have broken the law?

23 A Yes.

24 MR. FRAZIER: Form.

25 Go ahead.

1 BY MR. HARRISON:

2 Q And at this point did you believe that
3 Mr. Bressi had broken the law?

4 MR. FRAZIER: Form.

5 BY MR. HARRISON:

6 Q At the point of arresting Mr. Bressi, did
7 you believe that he had broken the law?

8 MR. FRAZIER: Let me just object to the
9 form. And the basis of my objection --

10 (Interruption by the court reporter.)

11 MR. FRAZIER: The basis of my objection is
12 that this witness I think has stated he wasn't the one
13 who placed him under arrest, he assisted in detaining,
14 is what I heard him say, or assisted Traviolia, but
15 that's why I keep objecting.

16 BY MR. HARRISON:

17 Q Yeah. My recollection in the record is that
18 he assisted in arresting Mr. Bressi; is that correct?

19 A I did not. I assisted in detaining
20 Mr. Bressi.

21 Q Do you make any differentiation between
22 detaining somebody and arresting somebody?

23 A I do.

24 Q And Mr. Bressi at this point was detained,
25 not arrested?

1 MR. FRAZIER: Form and foundation.

2 BY MR. HARRISON:

3 Q At this point of removing Mr. Bressi from
4 the car he was being detained, is that what you are
5 saying?

6 A At my, my observation and my perception of
7 that incident, he was being detained.

8 Q And what -- all right.

9 When you detain somebody, do you normally
10 handcuff them on the ground?

11 A Not normally.

12 Q Was Mr. Bressi arrested at this -- on this
13 date?

14 A He was subsequently arrested, yes.

15 Q When was Mr. Bressi arrested?

16 MR. FRAZIER: Foundation.

17 BY MR. HARRISON:

18 Q You can answer the question.

19 A I don't know when he was officially under
20 arrest.

21 Q When you detain a person, generally
22 speaking, for how long do you detain somebody?

23 A As long as necessary to figure out what is
24 going on with the situation.

25 Q And how long did it take you to figure out

1 what was going on with the situation in Mr. Bressi's
2 case?

3 A Once we got him to the side of the road.

4 Q I'm sorry, at this point I have Mr. Bressi
5 face down outside of his car. At some point was
6 Mr. Bressi transferred to the side of the road?

7 A He was.

8 Q Did Mr. Bressi -- was Mr. Bressi moved under
9 his own locomotion to the side of the road?

10 A Mr. Bressi was demonstrating
11 passive-resistant behavior.

12 Q Okay. So was Mr. Bressi carried to the side
13 of the road?

14 A He was.

15 Q Was Mr. Bressi dragged to the side of the
16 road?

17 A He was carried.

18 Q Who carried Mr. Bressi to the side of the
19 road?

20 A Officer Traviolia and myself.

21 Q How long after removing Mr. Bressi from his
22 vehicle was he transferred to the side of the road?

23 A Immediately.

24 Q So between the time that he was removed from
25 the car and placed on the ground and immediately

1 transferred to the side of the road, it transmuted --
2 it changed from a detention to an arrest; is that
3 correct?

4 A I don't know because I wasn't the arresting
5 officer.

6 MR. FRANK: I have to object to this. This
7 is all -- you are asking him to make some legal
8 conclusion about arrest. That's a technical, legal
9 term for the court to make based on what happened at
10 the scene.

11 Just ask him the question about what he did
12 and how he did it and how long it took. And if an
13 arrest determination has to be made, the court will
14 decide.

15 MR. HARRISON: That's fine, I can move on.
16 I'm just trying to understand the reason for the
17 arrest and the sequence of the arrest, and I have been
18 told that he was under arrest at some point, but
19 wasn't under arrest at another point. And one of the
20 major claims in this proceeding, generally speaking,
21 is wrongful arrest, correct?

22 MR. FRANK: Yeah.

23 MR. HARRISON: And therefore I am delving
24 into the arrest of Mr. Bressi.

25 MR. FRANK: Just ask him what he did.

1 MR. HARRISON: Fair enough.

2 BY MR. HARRISON:

3 Q Why don't I move through the rest of the
4 proceeding -- or the rest of the events quickly here
5 with you, and if I leave anything out, please feel
6 free to step in and fill in the gaps.

7 Mr. Bressi was then at the side of the road.

8 How long did Mr. Bressi stay on the side of
9 the road?

10 A I don't know.

11 Q What were your observations after Mr. Bressi
12 was moved to the side of the road?

13 A I didn't observe Mr. Bressi on the side of
14 the road. I immediately left.

15 Q You moved Mr. Bressi to the side of the road
16 and then immediately exited?

17 A Yes.

18 Q Where did you go?

19 A To make cell phone contact with his boss.

20 Q You called his boss?

21 A Yes.

22 Q And who was his boss?

23 A McMillan is his last name?

24 Q And --

25 MR. FRAZIER: And that was said with a

1 question mark, just so the record shows it.

2 BY MR. HARRISON:

3 Q And what did Mr. McMillan -- why did you
4 call Mr. McMillan?

5 A To inform him that his employee was being
6 arrested and that he could either come out and pick up
7 the truck that Mr. Bressi was driving or it was going
8 to be towed from the scene.

9 Q And what did Mr. McMillan say to you?

10 A He asked why he was under arrest.

11 Q What do you say to him?

12 A I didn't, I didn't tell him anything. That
13 was up to Mr. Bressi to let him know why he was being
14 charged, for whatever it was.

15 Q After making the cell phone call to
16 Mr. McMillan, then what did you do?

17 A I advised Lieutenant Ford that I had made
18 contact.

19 Q And then what did you do?

20 A Went down the road and parked.

21 Q You went down the road and parked?

22 A To my assigned position.

23 Q With dog number one?

24 A Correct.

25 Q And did you stay parked for the rest of the

1 evening there?

2 A No.

3 Q What else did you do that evening?

4 A Drove up and down the highway.

5 Q Anything else?

6 A Gave my dog a break.

7 Q Anything else?

8 A Drank some water.

9 Q Anything else?

10 A Nothing that I can recall.

11 Q You spent the entire evening in your car
12 driving up and down the highway and you gave your dog
13 a break and you drank water and nothing else?

14 MR. FRAZIER: Foundation.

15 THE WITNESS: No.

16 BY MR. HARRISON:

17 Q No?

18 A I am sure I exited my vehicle a time or two.
19 I probably took a break myself.

20 Q Did you take part in the roadblock?

21 A No.

22 Q You just sat in your car for the evening and
23 you took your dog for a walk and drank water; is that
24 correct?

25 MR. FRAZIER: Foundation.

1 THE WITNESS: For the most part.

2 BY MR. HARRISON:

3 Q When you walked your dog, where did you walk
4 your dog?

5 A In the desert.

6 Q Did you walk your dog down the road of
7 stopped cars?

8 A No.

9 Q Did you use your dog to search for people
10 that evening?

11 A No.

12 Q Do you yourself search any vehicles that
13 evening?

14 A No.

15 Q Did you create a status report of your
16 events of the evening?

17 A No.

18 Q Is there anything that took place at the
19 roadblock other than what you have told us?

20 MR. FRAZIER: Form and foundation.

21 BY MR. HARRISON:

22 Q That is relevant to Mr. Bressi.

23 MR. FRAZIER: Form and foundation.

24 THE WITNESS: Not that I observed.

25 ///

1 BY MR. EUCHNER:

2 Q Did you write up an arrest report for
3 Mr. Bressi?

4 A No.

5 Q Did you review an arrest report for
6 Mr. Bressi?

7 A No.

8 Q Have you ever reviewed an arrest report for
9 Mr. Bressi?

10 A No.

11 Q Other than the police officers for the
12 tribe, who else was present at this roadblock, police
13 officer-wise. Were there any other agencies there?

14 A I believe Border Patrol.

15 Q You believe Border Patrol or Border Patrol
16 was there?

17 A I believe Border Patrol was there.

18 Q Anyone else?

19 A Not that I recall.

20 Q Who from Border Patrol was there, do you
21 recall?

22 A Border Patrol agents.

23 Q Do you know the names of the agents?

24 A No.

25 Q Did you ever yell at Mr. Bressi?

1 A No.

2 Q Did you ever yell at him and say you have
3 had enough of his shit and to get out of the vehicle?

4 A No.

5 MR. FRAZIER: Form.

6 BY MR. HARRISON:

7 Q Did you ever place your hand on your gun
8 when instructing Mr. Bressi to get out of the vehicle?

9 A No.

10 Q Did you place your hand on your gun that
11 night?

12 A Yes.

13 Q Did it involve your contact with Mr. Bressi?

14 A Nope.

15 Q Did you ever threaten Mr. Bressi with deadly
16 force?

17 A No.

18 Q Do you ever ask to know what is in the glove
19 box of Mr. Bressi's vehicle?

20 A No.

21 Q Do you ever open the driver's side door of
22 Mr. Bressi's vehicle?

23 A The driver's side door?

24 Q The passenger's side door.

25 A No.

1 Q Did you ever call Mr. Bressi a green freak?

2 A I'm sorry, a what?

3 Q A green freak.

4 A No.

5 Q Did you ever berate Mr. Bressi for not being
6 cooperative?

7 MR. FRAZIER: Form.

8 THE WITNESS: No.

9 BY MR. HARRISON:

10 Q At these two other roadblocks that you had
11 talked about, one of which was at the same location,
12 did you use your K-9 unit to find people?

13 A I wasn't assigned to K-9 at that time.

14 Q So you didn't have a K-9 unit at the other
15 two roadblocks, you are saying?

16 A No, I did.

17 Q But you weren't assigned to K-9 at that
18 time?

19 A At that roadblock that you are asking about
20 right now, no.

21 Q I'm asking about the two roadblocks, the
22 ones that don't involve Mr. Bressi.

23 MR. FRAZIER: Form.

24 BY MR. HARRISON:

25 Q Do you want me to restate my question?

1 A Yes.

2 Q Sure, no problem.

3 The other two roadblocks, the ones not
4 having to do with Mr. Bressi, you said you had been
5 involved in a total of three roadblocks.

6 MR. FRAZIER: Object to form.

7 BY MR. HARRISON:

8 Q Were you there with your K-9 as a K-9 unit?

9 A At one of them.

10 Q And the other one you were not.

11 Did you use your K-9 unit at the one that
12 you were there with your K-9 for the purposes of
13 finding people?

14 A No.

15 Q Did you receive any written instructions as
16 to the operation of this roadblock? And again this
17 time I'm talking about the roadblock in question
18 involving Mr. Bressi.

19 A No.

20 Q Have you ever received written instructions
21 as to the operation of roadblocks?

22 A Yes.

23 Q And when do you receive written instructions
24 as to the operation of roadblocks?

25 A The very first one I ever worked.

1 Q And that was the one before Mr. Bressi, the
2 roadblock involving Mr. Bressi?

3 MR. FRAZIER: Form.

4 THE WITNESS: Repeat that, please.

5 BY MR. HARRISON:

6 Q You said that you had received written
7 instructions as to the operation of roadblocks, and I
8 asked you when, and you said the first one. And I
9 guess my question now is: Is the first roadblock that
10 you worked the one involving Mr. Bressi?

11 A No.

12 Q Was it before the one involving Mr. Bressi?

13 A Yes.

14 Q What kind of written instructions did you
15 receive?

16 A A guideline of questions to ask drivers as
17 they came through.

18 MR. HARRISON: Could we go off the record
19 for a second?

20 (Discussion off the record.)

21 MR. HARRISON: Back on the record.

22 BY MR. HARRISON:

23 Q Could we take a look at Exhibit 2 of Chief
24 Saunders' deposition, please.

25 I have asked you if you had previously seen

Calabro Reporting Services, LLC

1 written instructions for the operation of roadblocks,
2 and I'm looking at Exhibit 2 for the deposition of
3 Chief Saunders.

4 Is this what you are talking about as what
5 you have seen for the written instructions on how to
6 operate a roadblock?

7 MR. FRAZIER: Object to form.

8 THE WITNESS: This is the form.

9 BY MR. HARRISON:

10 Q That is the form?

11 Have you ever seen any other form other than
12 that form for the operations of roadblocks?

13 A Yes.

14 Q And what other forms have you seen?

15 A Operation plan.

16 Q Operation plan?

17 Is that a document that you saw today?

18 A Yes.

19 Q I'm taking a look at Exhibit 3 to Saunders'
20 deposition.

21 Is this what you are talking about as the
22 other or another written form for roadblock
23 operations?

24 A This is the form.

25 Q Other than Exhibit 2 to Chief Saunders and

1 Exhibit 3 to Chief Saunders, are there any other
2 written guidelines that you have seen with regards to
3 roadblocks?

4 A No.

5 Q Have -- did you see these written
6 instructions prior to today's deposition of Chief
7 Saunders?

8 A Yes.

9 Q Both of them?

10 A Yes.

11 Q In -- do either of these instructions have
12 anything to do with K-9 units to your knowledge?

13 MR. FRAZIER: If you need to read them to be
14 sure, please do.

15 MR. HARRISON: Yeah, you can review.

16 MR. FRAZIER: Maybe we can take a break.

17 MR. HARRISON: That will be fine, take a
18 break.

19 (A break was taken.)

20 MR. HARRISON: All right. Are we back on
21 the record?

22 BY MR. HARRISON:

23 Q I have -- we are back on the record and my
24 previous question to Officer O'Dell was whether or not
25 the written instructions that he had seen involving

1 roadblocks here for the tribe involved the -- any
2 mention of K-9 units. And do they?

3 A Yes.

4 Q And what do they say? First of all, where
5 are you referring to?

6 A We will start with Exhibit 2.

7 Q Okay.

8 A Second page, No. 3, towards the end of the
9 paragraph, "If the K-9 alerts on the vehicle have the
10 driver exit the vehicle and conduct a thorough search
11 of the vehicle."

12 Q Could you read the whole paragraph?

13 A The whole paragraph?

14 Q What is the reference to the paragraph? I
15 mean, is this a list of things we are talking about?

16 A This is Exhibit 2.

17 Q The paragraph you are talking about is, is
18 paragraph No. 3, and it refers to the above statement
19 that reads, "After contacting the driver the same
20 questions will be asked of every driver. They are:"
21 And No. 3 is what the deponent is referring to.

22 Go ahead.

23 A "If the K-9 alerts on the vehicle have the
24 driver exit the vehicle and conduct a thorough search
25 of the vehicle."

1 Q And other than that reference to K-9 unit,
2 is there any other reference to K-9 unit in these
3 documents?

4 A There is.

5 Q And where is another one?

6 A Exhibit 3. This operation will consist of
7 units from patrol, K-9, gangs, and C.I.

8 Q Okay. Is that it?

9 A No. Page 5.

10 Q Yes.

11 A K-0 units. Friday, October 3rd, 2003,
12 N. Koenneker, 127 San Xavier 2100 to 0400. Saturday,
13 October 4th, 2003, E. Perez, 1500-2200, San Pedro
14 Village."

15 Q You can stop there. Thank you very much.

16 Just for the record, you were, you were
17 giving a list of team assignments, and it referred to
18 assignment codes that you were reading from that had
19 to do with assignments in October 2003.

20 Other than that, anything else?

21 A Regarding?

22 Q K-9 units.

23 A No.

24 Q Were you the only K-9 unit that was involved
25 in the roadblock in question on December 20th, 2002?

1 A I was.

2 MR. FRAZIER: Foundation.

3 THE WITNESS: I was.

4 BY MR. HARRISON:

5 Q You were the only K-9 unit there?

6 A Yes.

7 MR. FRAZIER: Foundation.

8 BY MR. HARRISON:

9 Q Were you aware Mr. Bressi was transferred in
10 a K-9 van, a K-9 unit van --

11 MR. FRAZIER: Foundation.

12 BY MR. HARRISON:

13 Q -- from the place of arrest -- to where?

14 MR. FRAZIER: Objection.

15 MR. HARRISON: I don't know where.

16 I'll restate the question.

17 BY MR. HARRISON:

18 Q Are you aware that Mr. Bressi was removed
19 from the --

20 MR. FRAZIER: Counsel, if you want to talk
21 to Mr. Bressi, that's okay, but I don't want him
22 talking on this record.

23 MR. HARRISON: No, I don't need to. Thank
24 you.

25 ///

1 BY MR. HARRISON:

2 Q Were you aware that Mr. Bressi was removed
3 from his place of arrest by means of a K-9 unit
4 vehicle?

5 MR. FRAZIER: Foundation, form.

6 THE WITNESS: Then or now?

7 BY MR. HARRISON:

8 Q Are you aware now?

9 A I am now.

10 Q And was there another K-9 unit vehicle there
11 at the time that you knew of?

12 A I was the only one.

13 MR. FRAZIER: Form and foundation.

14 THE WITNESS: I was the only K-9 unit there.

15 BY MR. HARRISON:

16 Q So was there another K-9 unit there?

17 A I was the only K-9 unit there.

18 Q So was Mr. Bressi placed within your K-9
19 unit?

20 A No.

21 Q Is Mr. Bressi mistaken that he was placed in
22 a K-9 unit?

23 MR. FRAZIER: Form.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. HARRISON:

2 Q Was there a K-9 unit other than tribal
3 police --

4 MR. FRAZIER: Foundation.

5 BY MR. HARRISON:

6 Q -- there?

7 A I was the only K-9 unit there.

8 Q Is your K-9 unit vehicle a van?

9 A No.

10 Q Was it a truck?

11 A No.

12 Q Was it a squad car?

13 A Yes.

14 Q Was there a van that's used for K-9 units
15 present at the, at the roadblock?

16 A No.

17 (Discussion off the record.)

18 BY MR. HARRISON:

19 Q Did you place Mrs. Bressi in the K-9 unit?

20 A No.

21 MR. HARRISON: Thank you very much. I have
22 no further questions.

23 MR. FRAZIER: None.

24 MR. FRANK: None.

25 MR. FRAZIER: Thank you. We will read and

1 sign.

2 (Deposition concluded at 2:27 p.m.)

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