

25-1104-cv

United States Court of Appeals
for the
Second Circuit

KEITH MASSIMINO,

Plaintiff-Appellant,

— v. —

MATTHEW BENOIT and FRANK LAONE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT, NEW HAVEN

JOINT APPENDIX
Volume 1 of 2 (Pages JA-1 to JA-286)

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APPEAL,CLOSED,EFILE,FOLDER

**U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:21-cv-01132-RNC**

Massimino v. Benoit et al
Assigned to: Judge Robert N. Chatigny
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 08/24/2021
Date Terminated: 03/31/2025
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Keith Massimino

represented by **Dan Barrett**

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V.

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Defendant**Matthew Benoit**

represented by **Joseph A. Mengacci**
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 203-574-5731
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 Email: jmengacci@waterburyct.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Frank Laone**

represented by **Joseph A. Mengacci**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/24/2021	<u>1</u>	COMPLAINT against Matthew Benoit, Frank Laone (Filing fee \$402 receipt number ACTDC-6621232.), filed by Keith Massimino.(Barrett, Dan) (Entered: 08/24/2021)
08/24/2021	<u>2</u>	NOTICE of Appearance by Dan Barrett on behalf of Keith Massimino (Barrett, Dan) (Entered: 08/24/2021)
08/24/2021		Request for Clerk to issue summons as to Matthew Benoit, Frank Laone. (Barrett, Dan) (Entered: 08/24/2021)
08/24/2021	<u>3</u>	EXHIBIT <i>1 to complaint</i> by Keith Massimino re <u>1</u> Complaint. (Barrett, Dan) (Additional attachment(s) added on 8/24/2021: # <u>1</u> Notice of Manual Filing) (LaLone, L.). (Entered: 08/24/2021)
08/24/2021		Judge Robert N. Chatigny added. (Oliver, T.) (Entered: 08/24/2021)
08/24/2021	<u>4</u>	Order on Pretrial Deadlines: Amended Pleadings due by 10/23/2021, Discovery due by 2/23/2022, Dispositive Motions due by 3/30/2022. Signed by Clerk on 8/24/2021. (Agati, Kathryn) (Entered: 08/24/2021)
08/24/2021	<u>5</u>	ELECTRONIC FILING ORDER FOR COUNSEL - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER. Signed by Judge Robert N. Chatigny on 8/24/2021. (Agati, Kathryn) (Entered: 08/24/2021)
08/24/2021	<u>6</u>	STANDING PROTECTIVE ORDER. Signed by Judge Robert N. Chatigny on 8/24/2021. (Agati, Kathryn) (Entered: 08/24/2021)
08/24/2021	<u>7</u>	NOTICE TO COUNSEL/SELF-REPRESENTED PARTIES : Counsel or self-represented parties initiating or removing this action are responsible for serving all parties with attached documents and copies of <u>4</u> Order on Pretrial Deadlines, <u>1</u> Complaint filed by Keith Massimino, <u>5</u> Electronic Filing Order, <u>2</u> Notice of Appearance filed by Keith Massimino, <u>6</u> Standing Protective Order, <u>3</u> Exhibit filed by Keith Massimino. Signed by Clerk on 8/24/2021. (Agati, Kathryn) (Entered: 08/24/2021)
08/24/2021	<u>8</u>	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Matthew Benoit, Frank Laone* with answer to complaint due within *21* days. Attorney

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		Dan Barrett *American Civil Liberties Union - CT* *765 Asylum Ave., 1st Floor* *Hartford, CT 06105*. (Agati, Kathryn) (Entered: 08/24/2021)
08/31/2021	<u>9</u>	SUMMONS Returned Executed by Keith Massimino. Matthew Benoit served on 8/25/2021, answer due 9/15/2021; Frank Laone served on 8/25/2021, answer due 9/15/2021. (Barrett, Dan) (Entered: 08/31/2021)
09/20/2021	<u>10</u>	NOTICE of Appearance by Joseph A. Mengacci on behalf of Matthew Benoit, Frank Laone (Mengacci, Joseph) (Entered: 09/20/2021)
09/21/2021	<u>11</u>	MOTION for Extension of Time until October 1, 2021 file responsive pleading to Complaint by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 09/21/2021)
09/22/2021	<u>12</u>	ORDER granting <u>11</u> Consent Motion for Extension of Time to 10/1/2021 to file a responsive pleading addressing plaintiff's complaint. Signed by Judge Robert N. Chatigny on 9/21/2021. (Rickevicius, L.) (Entered: 09/22/2021)
09/22/2021		Answer deadline updated for All Defendants. (Rickevicius, L.) (Entered: 09/22/2021)
09/30/2021	<u>13</u>	MOTION for Extension of Time until October 7, 2021 to file responsive pleading <u>1</u> Complaint by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 09/30/2021)
09/30/2021	<u>14</u>	ORDER granting <u>13</u> Motion for Extension of Time to 10/7/2021 to file a responsive pleading. Counsel are reminded that if a dispositive motion is to be filed, a prefiling conference request must be made prior to the filing. The prefiling conference request requirements can be located at https://www.ctd.uscourts.gov/content/robert-n-chatigny-Forms-Scheduling-Order , Section 12. Signed by Judge Robert N. Chatigny on 9/30/2021. (Rickevicius, L.) (Entered: 09/30/2021)
09/30/2021		Answer deadline updated for All Defendants. (Rickevicius, L.) (Entered: 09/30/2021)
10/01/2021	<u>15</u>	MOTION for Pre-Filing Conference by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 10/01/2021)
10/01/2021	<u>16</u>	ORDER denying without prejudice <u>15</u> Motion for Prefiling Conference for failure to comply with the prefiling conference requirements as noted in ECF No.14. Signed by Judge Robert N. Chatigny on 10/1/2021. (Rickevicius, L.) (Entered: 10/01/2021)
10/05/2021	<u>17</u>	MOTION for Pre-filing for Motion to Dismiss Conference by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 10/05/2021)
10/05/2021	<u>18</u>	ORDER granting in part and denying in part <u>17</u> Motion for Prefiling Conference. The prefiling conference requirement is hereby waived. Defendants may file their motion to dismiss without a prefiling conference. So ordered. Signed by Judge Robert N. Chatigny on 10/5/2021. (Rickevicius, L.) (Entered: 10/05/2021)
10/07/2021	<u>19</u>	MOTION to Dismiss by Matthew Benoit, Frank Laone.Responses due by 10/28/2021 (Attachments: # <u>1</u> Memorandum in Support)(Mengacci, Joseph) (Entered: 10/07/2021)
10/26/2021	<u>20</u>	NOTICE of Appearance by Elana Spungen Bildner on behalf of Keith Massimino (Bildner, Elana) (Entered: 10/26/2021)
10/27/2021	<u>21</u>	Memorandum in Opposition re <u>19</u> MOTION to Dismiss filed by Keith Massimino. (Barrett, Dan) (Entered: 10/27/2021)
11/09/2021	<u>22</u>	Joint REPORT of Rule 26(f) Planning Meeting. (Barrett, Dan) (Entered: 11/09/2021)
11/10/2021	<u>23</u>	REPLY to Response to <u>19</u> MOTION to Dismiss filed by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 11/10/2021)

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02/09/2022	<u>24</u>	SCHEDULING ORDER: Please read full text of attached Order for details. Discovery due by 3/17/2022; Initial Status Report due by 3/9/2022; Prefiling Conference Request Re: Dispositive Motions due 3/15/2022; Settlement Conference 4/2022; Trial Ready Date 6/1/2022; Trial Brief due by 5/1/2022. Signed by Judge Robert N. Chatigny on 2/9/2022. (Rickevicius, L.) (Entered: 02/09/2022)
02/09/2022	<u>25</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephone Conference Re: <u>19</u> Motion to Dismiss and Status set for 4/14/2022 at 2:00 PM before Judge Robert N. Chatigny. Please use the following dial in information for the call. Dial 866-434-5269, Access Code 8189198#. (Rickevicius, L.) (Entered: 02/09/2022)
03/09/2022	<u>26</u>	MOTION for Extension of Time of current deadlines per Court's Scheduling Order re: Case Management Plan <u>24</u> Scheduling Order, by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 03/09/2022)
03/09/2022	<u>27</u>	Joint STATUS REPORT <i>of the parties</i> by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 03/09/2022)
03/10/2022	<u>28</u>	ORDER granting in part and denying in part <u>26</u> Motion for Extension of Time of current scheduling order deadlines. The deadlines are extended as follows: Discovery to be complete by 5/17/2022; Prefiling Conference Request Re: Dispositive motions due 4/21/2022; Dispositive motions due 6/17/2022; Settlement Conference 6/2022. Counsel may request an extension of these deadlines if necessary, after the April 14th telephone conference. So ordered. Signed by Judge Robert N. Chatigny on 3/10/2022. (Rickevicius, L.) (Entered: 03/10/2022)
03/10/2022		Set Deadlines: Discovery due by 5/17/2022; Dispositive Motions due by 6/17/2022. (Rickevicius, L.) (Entered: 03/10/2022)
04/14/2022	<u>32</u>	Minute Entry. Proceedings held before Judge Robert N. Chatigny: taking under advisement <u>19</u> Motion to Dismiss; Motion Hearing held on 4/14/2022 re <u>19</u> MOTION to Dismiss filed by Frank Laone, Matthew Benoit ; Telephone Status Conference held on 4/14/2022. 47 minutes(Court Reporter Cassie Zayas.) (LaLone, L.) (Entered: 04/21/2022)
04/18/2022	<u>29</u>	MOTION for pre-filing Conference by Keith Massimino. (Barrett, Dan) (Entered: 04/18/2022)
04/20/2022	<u>30</u>	MOTION for Pre-filing Conference by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 04/20/2022)
04/21/2022	<u>31</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Follow-up Telephone Conference Re: <u>19</u> Motion to Dismiss and Status set for 4/26/2022 at 3:30 PM before Judge Robert N. Chatigny. Please use the following dial in information for the call. Dial 866-434-5269, Access Code 8189198#. (Rickevicius, L.) (Entered: 04/21/2022)
04/26/2022	<u>33</u>	ORDER granting in part <u>29</u> Motion for Prefiling Conference. The prefiling conference requirement is hereby waived. Plaintiff may file his motion for summary judgment without a prefiling conference. So ordered. Signed by Judge Robert N. Chatigny on 4/26/2022. (Rickevicius, L.) (Entered: 04/26/2022)
04/26/2022	<u>34</u>	ORDER granting in part <u>30</u> Motion for Prefiling Conference. The prefiling conference requirement is hereby waived. Defendants may file their motion for summary judgment without a prefiling conference. So ordered. Signed by Judge Robert N. Chatigny on 4/26/2022. (Rickevicius, L.) (Entered: 04/26/2022)

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04/26/2022	<u>35</u>	ORDER denying <u>19</u> Motion to Dismiss. Accepting the allegations of the complaint as true, it is not apparent that the defendants are entitled to qualified immunity, and with discovery nearing completion, the issues raised by the complaint can be better addressed on cross-motions for summary judgment. Signed by Judge Robert N. Chatigny on April 26, 2022. (Hann, L.) (Entered: 04/26/2022)
04/26/2022	<u>36</u>	Minute Entry. Proceedings held before Judge Robert N. Chatigny: Motion Hearing held on 4/26/2022 re <u>19</u> MOTION to Dismiss filed by Frank Laone, Matthew Benoit, Telephone Status Conference held on 4/26/2022. 11 minutes(Court Reporter Cassie Zayas.) (LaLone, L.) (Entered: 04/27/2022)
05/20/2022	<u>37</u>	TRANSCRIPT of Proceedings: Type of Hearing: Telephonic Status Conference. Held on 4-26-22 before Judge Robert N. Chatigny. Court Reporter: Cassie Zayas. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov. Redaction Request due 6/10/2022. Redacted Transcript Deadline set for 6/20/2022. Release of Transcript Restriction set for 8/18/2022. (Zayas, Cassie) (Entered: 05/20/2022)
06/17/2022	<u>38</u>	MOTION for Summary Judgment by Keith Massimino.Responses due by 7/8/2022 (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9)(Barrett, Dan) (Entered: 06/17/2022)
06/17/2022	<u>39</u>	Statement of Material Facts re <u>38</u> MOTION for Summary Judgment filed by Keith Massimino. (Barrett, Dan) (Entered: 06/17/2022)
06/17/2022	<u>40</u>	MOTION for Summary Judgment by Matthew Benoit, Frank Laone.Responses due by 7/8/2022 (Attachments: # <u>1</u> Statement of Material Facts, # <u>2</u> Memorandum in Support, # <u>3</u> Exhibit Massimino Depo pages, # <u>4</u> Exhibit Complaint Exhibit 1-Video-ECF #3, # <u>5</u> Exhibit Benoit Affidavit, # <u>6</u> Exhibit Laone Affidavit, # <u>7</u> Exhibit 6-6-2019 Court Transcript)(Mengacci, Joseph) (Entered: 06/17/2022)
06/24/2022	<u>41</u>	Supplemental AFFIDAVIT to <i>defendants' Motion for Summary Judgment</i> Signed By Matthew Benoit filed by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 06/24/2022)
06/24/2022	<u>42</u>	Supplemental Statement of Material Facts re <u>40</u> MOTION for Summary Judgment of the <i>defendants</i> filed by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 06/24/2022)
07/08/2022	<u>43</u>	Memorandum in Opposition of <i>Plaintiff's Motion for Summary Judgment</i> re <u>38</u> MOTION for Summary Judgment filed by Matthew Benoit, Frank Laone. (Attachments: # <u>1</u> Statement of Material Facts)(Mengacci, Joseph) (Entered: 07/08/2022)
07/08/2022	<u>44</u>	Memorandum in Opposition re <u>40</u> MOTION for Summary Judgment filed by Keith Massimino. (Attachments: # <u>1</u> Statement of Material Facts in Opposition to Summary Judgment)(Bildner, Elana) (Entered: 07/08/2022)
07/22/2022	<u>45</u>	REPLY to Response to <u>38</u> MOTION for Summary Judgment filed by Keith Massimino. (Barrett, Dan) (Entered: 07/22/2022)

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07/22/2022	<u>46</u>	REPLY to Response to <u>40</u> MOTION for Summary Judgment filed by Matthew Benoit, Frank Laone. (Mengacci, Joseph) (Entered: 07/22/2022)
04/30/2023	<u>47</u>	MOTION for Leave to File <i>supplemental authority</i> by Keith Massimino. (Attachments: # <u>1</u> Exhibit 1: Friend v. Gasparino, 61 F.4th 77 (2d Cir. 2023))(Barrett, Dan) (Entered: 04/30/2023)
05/01/2023	<u>48</u>	ORDER granting <u>47</u> Motion for Leave to File. Signed by Judge Robert N. Chatigny on 5/1/2023. (Rickevicius, L.) (Entered: 05/01/2023)
11/06/2023	<u>49</u>	Consent MOTION for oral argument, or in the alternative, status conference re <u>38</u> MOTION for Summary Judgment , <u>40</u> MOTION for Summary Judgment by Keith Massimino.Responses due by 11/27/2023 (Barrett, Dan) (Entered: 11/06/2023)
11/07/2023	<u>50</u>	ORDER granting <u>49</u> Motion for oral argument, or in the alternative, status conference. A telephone conference will be scheduled Re: <u>38</u> Motion for Summary Judgment and <u>40</u> Motions for summary Judgment. Signed by Judge Robert N. Chatigny on 11/7/2023. (Rickevicius, L.) (Entered: 11/07/2023)
11/07/2023	<u>51</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephone Conference Re: <u>38</u> Motion for Summary Judgment and <u>40</u> Motion for Summary Judgment set for 2/20/2024 at 10:00 AM before Judge Robert N. Chatigny. Please use the following dial in information for the call. Dial 866-434-5269, Access Code 8189198#. (Rickevicius, L.) (Entered: 11/07/2023)
01/09/2024	<u>52</u>	NOTICE of Appearance by Sapana Anand on behalf of Keith Massimino (Anand, Sapana) (Entered: 01/09/2024)
02/20/2024	<u>53</u>	Minute Entry for proceedings held before Judge Robert N. Chatigny: motion hearing teleconference held on 2-20-2024 as to <u>38</u> MOTION for Summary Judgment and <u>40</u> MOTION for Summary Judgment. Total Time: 1 hour and 3 minutes. (Court Reporter C. Zayas.) (Shafer, J.) (Entered: 02/21/2024)
09/04/2024	<u>54</u>	MOTION for Sapana Anand to Withdraw as Attorney by Keith Massimino. (Anand, Sapana) (Entered: 09/04/2024)
09/04/2024	<u>55</u>	ORDER granting <u>54</u> Motion to Withdraw as Attorney. Attorney Sapana Anand terminated. Signed by Judge Robert N. Chatigny on 9/4/2024. (Rickevicius, L.) (Entered: 09/04/2024)
11/07/2024	<u>56</u>	NOTICE of Appearance by Jaclyn Marie Blickley on behalf of Keith Massimino (Blickley, Jaclyn) (Entered: 11/07/2024)
01/29/2025	<u>57</u>	MOTION for Decision on Cross-Mtns for Summ. J. re <u>38</u> MOTION for Summary Judgment , <u>40</u> MOTION for Summary Judgment by Keith Massimino.Responses due by 2/19/2025 (Barrett, Dan) (Entered: 01/29/2025)
03/31/2025	<u>58</u>	ORDER denying <u>38</u> Motion for Summary Judgment; granting <u>40</u> Motion for Summary Judgment. See attached Ruling and Order for details. Signed by Judge Robert N. Chatigny on 03/31/2025. (Bunnell, E) (Entered: 03/31/2025)
03/31/2025	<u>59</u>	ORDER denying as moot <u>57</u> Motion for Decision on Cross-Motions for Summary Judgment. Signed by Judge Robert N. Chatigny on 03/31/2025. (Bunnell, E) (Entered: 03/31/2025)
03/31/2025	<u>60</u>	JUDGMENT entered in favor of the Defendants. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Clerk on 3/31/2025.(Bozek, Michael) (Entered: 03/31/2025)

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03/31/2025		<p>JUDICIAL PROCEEDINGS SURVEY - FOR COUNSEL ONLY: The following link to the confidential survey requires you to log into CM/ECF for SECURITY purposes. Once in CM/ECF you will be prompted for the case number. Although you are receiving this survey through CM/ECF, it is hosted on an independent website called SurveyMonkey. Once in SurveyMonkey, the survey is located in a secure account. The survey is not docketed and it is not sent directly to the judge. To ensure anonymity, completed surveys are held up to 90 days before they are sent to the judge for review. We hope you will take this opportunity to participate, please click on this link:</p> <p>https://ecf.ctd.uscourts.gov/cgi-bin/Dispatch.pl?survey (Bozek, Michael) (Entered: 03/31/2025)</p>
04/28/2025	<u>61</u>	NOTICE OF APPEAL as to <u>58</u> Order on Motion for Summary Judgment, by Keith Massimino. Filing fee \$ 605, receipt number ACTDC-8149691. (Barrett, Dan) (Entered: 04/28/2025)
04/29/2025	<u>62</u>	CLERK'S CERTIFICATE RE: INDEX AND RECORD ON APPEAL re: <u>61</u> Notice of Appeal. The attached docket sheet is hereby certified as the entire Index/Record on Appeal in this matter and electronically sent to the Court of Appeals, with the exception of any manually filed documents as noted below. Dinah Milton Kinney, Clerk. Documents manually filed not included in this transmission: 1. (Mendez, D) (Entered: 04/29/2025)

PACER Service Center			
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07/24/2025 16:32:45			
PACER Login:	cpwashington16	Client Code:	
Description:	Docket Report	Search Criteria:	3:21-cv-01132-RNC
Billable Pages:	6	Cost:	0.60

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Case 3:21-cv-01132 Document 1 Filed 08/24/21 Page 1 of 8

**United States District Court
District of Connecticut**

Keith Massimino,
Plaintiff

No. 21-cv-1132

v.

August 24, 2021

Matthew Benoit and Frank Laone,
Defendants.

Complaint

Introduction

Keith Massimino was arrested, handcuffed, and prosecuted for nearly three years for an activity protected by the First Amendment: taking a videorecording of a government building that was in plain view for all to see from a busy street in downtown Waterbury, Connecticut. The defendant police employees were so incensed to see Mr. Massimino recording the exterior of the Waterbury police department from the sidewalk outside that they unlawfully detained him, demanded that he identify himself, and arrested him when he politely declined. In this action, Mr. Massimino seeks redress for the violation of his First and Fourth Amendment rights that the defendants caused.

Jurisdiction

1. The United States District Court has subject matter jurisdiction over this dispute because the plaintiff's claims arise under the law of the United States. 28 U.S.C. § 1331.
2. Venue is proper in the District of Connecticut because all of the events giving rise to the plaintiff's claims transpired within it. 28 U.S.C. § 1391(b)(2).

Parties

3. Plaintiff Keith Massimino is a resident of Wallingford, Connecticut.
4. Defendant Matthew Benoit was, at all relevant times, an employee of the Waterbury, Connecticut municipal police department.
5. Defendant Frank Laone was, at all relevant times, an employee of the Waterbury, Connecticut municipal police department.

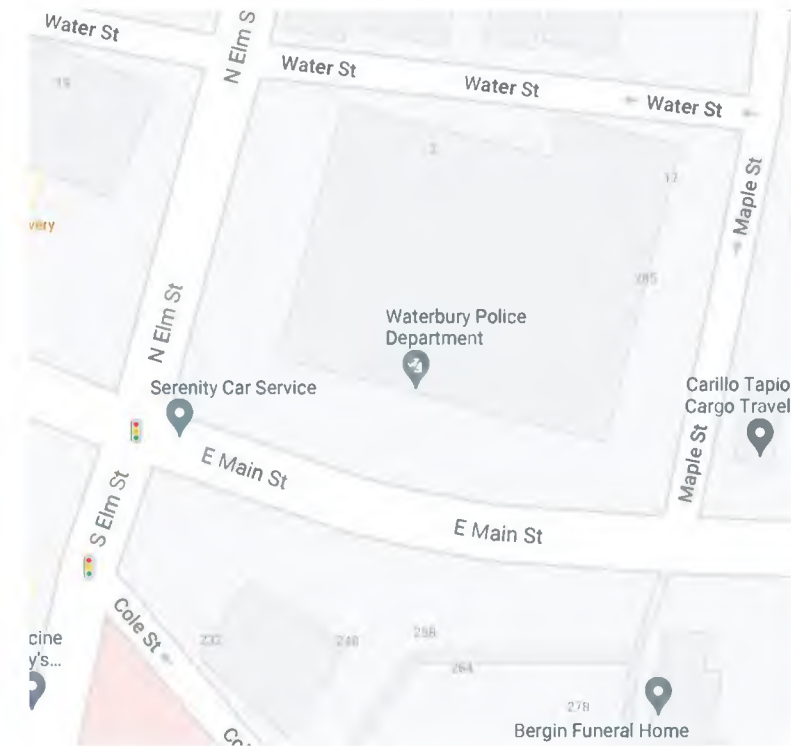
Facts

6. Mr. Massimino is a professional videographer and photojournalist primarily covering sports events. He has an interest in freedom of information and speech.
7. Mr. Massimino is married; during the relevant time he and his spouse had a toddler, and another child who was born in 2019.
8. On the evening of Tuesday, October 30, 2018, Mr. Massimino was driving through Waterbury on his way home from a job, and became stuck in traffic on Interstate 84.
9. Mr. Massimino decided to film the exterior of the Waterbury police department, located at 255 East Main Street.
10. The Waterbury police department building occupies an entire city block. The front entrance faces East Main Street. The sides of the building face North Elm Street and Maple Street, respectively. The back of the building faces Water Street.
11. All four city streets surrounding the Waterbury police department have sidewalks on them.

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12. There are no fences, shrubs, or any other obstruction interfering with a person's view of the building from any of the streets or sidewalks surrounding the Waterbury police department.
13. This map fairly and accurately depicts the Waterbury police department's location:



14. Mr. Massimino arrived at the Waterbury police department after 6 p.m. He stood on the public sidewalk alongside East Main Street, in front of the main entrance.
15. Using a Canon video camera and tripod, Mr. Massimino recorded the main entrance of the building for approximately one minute.
16. Still filming, Mr. Massimino walked down the sidewalk alongside East Main Street, toward North Elm Street.
17. After turning the corner onto North Elm Street, Mr. Massimino filmed the exterior of the building, including an entrance to the building's garage at North Elm Street and Water Street, for approximately one minute.

18. While he was filming, a police car driven by Defendant Benoit exited the garage.
19. Mr. Massimino then turned and walked back toward the corner of North Elm Street and East Main Street. Standing a few feet from the corner, he continued to record both the front and side of the building.
20. As he stood at the corner, Mr. Massimino also recorded Defendant Benoit driving by in a police car.
21. As he stood at the corner, city buses and other vehicular traffic passed behind him on East Main Street.
22. Any person passing by on East Main Street could see the Waterbury police department as clearly as Mr. Massimino could.
23. Approximately six and a half minutes into his filming, as he was standing on the sidewalk, Mr. Massimino was approached by the defendants.
24. When he got within a foot of Mr. Massimino, Defendant Laone demanded Mr. Massimino explain why he was filming.
25. Shortly thereafter, Defendant Benoit demanded that Mr. Massimino identify himself.
26. Mr. Massimino responded that he was not required to identify himself when he was on public property and was not performing any illegal activity.
27. Defendants, in turn, stated that it was a “security issue” because “you’re videotaping the police station.”
28. Mr. Massimino again responded that he did not need to identify himself for performing a legal activity on a public sidewalk—namely, filming a government building. He emphasized that he had no “ill will” and no intent to do anything other than film.

29. Defendant Laone responded that “this is not a public building.”
30. Defendant Benoit then stated, several times, that Mr. Massimino was “not allowed to videotape police stations.” Defendant Laone verbally agreed.
31. When Defendants continued to press him, Mr. Massimino asked, “Can you articulate a crime I’ve committed?”
32. Laone responded, “Reasonable suspicion.”
33. At this point, Mr. Massimino asked if he was being detained. Defendant Laone said yes. Mr. Massimino again requested that Defendants tell him why, and what crime he had committed.
34. Defendant Laone responded, “you’re filming a police station,” and, again, simply, “reasonable suspicion.”
35. The entirety of Mr. Massimino’s recording that evening, including his interaction with the defendants, is found in the video recording attached here as Exhibit 1.
36. Exhibit 1 to this complaint is a fair and accurate depiction of the parties’ interaction on the evening of October 30, 2018.

Mr. Massimino’s Arrest

37. Approximately two minutes into the conversation, Defendant Benoit again demanded that he identify himself, and Mr. Massimino declined.
38. Defendant Benoit placed Mr. Massimino under arrest, and Defendant Laone took Mr. Massimino’s camera.
39. Mr. Massimino cooperated with Defendants as he was handcuffed and searched.

40. Defendants confiscated all the property Mr. Massimino had on him, including his handheld camera (containing an SD card); a small black and silver tripod; his cellphone; and a small Swiss army pocket knife.
41. Once taken inside the station, Defendant Benoit charged Mr. Massimino with misdemeanor interference, Conn. Gen. Stat. § 53a-167a(a).
42. Shortly thereafter, Mr. Massimino was given conditions of release, including a promise that he appear at all upcoming court dates.
43. Defendants retained all of Mr. Massimino's belongings other than a pay stub that was in his pocket.

Court Proceedings

44. As a result of the criminal charge against him, Mr. Massimino was required to attend proceedings at the Connecticut Superior Court in Waterbury on multiple occasions following his November 18, 2018 arraignment.
45. Mr. Massimino hired criminal defense counsel to defend him against the criminal charge.
46. In March 2019, Defendants agreed to return Mr. Massimino's tripod, cell phone, and camera to him. However, they retained the SD memory card from his camera.
47. On May 21, 2021, the prosecution entered a *nolle prosequi*, and the superior court thereafter granted Mr. Massimino's oral motion for dismissal.
48. Thus, the criminal case against him ended in his favor.
49. The same day, Mr. Massimino requested, and received, his memory card.

50. During the two and a half years between his first court date on November 8, 2018, and the dismissal of the case on May 21, 2021, Mr. Massimino was required to go to court at least a dozen times.
51. Because he was required to attend court, Mr. Massimino missed work on a number of occasions and had to make the forty-five minute roundtrip drive from his home in Wallingford to the court in Waterbury.
52. Because Defendants confiscated his tripod, cellphone, and camera—which he did not get back for over four months—Mr. Massimino was forced to purchase replacements for the tripod and cellphone.

Causes of Action

Count 1: Violation of the First Amendment (Against Both Defendants)

53. By stopping Mr. Massimino from viewing and memorializing buildings and people that were in plain view from the sidewalk, the defendants contravened Mr. Massimino's First Amendment rights.

Count 2: Unreasonable Seizure in Violation of the Fourth Amendment (Against Both Defendants)

54. By detaining him to demand that he identify himself, and arresting him for declining to do so, the defendants violated Mr. Massimino's Fourth Amendment rights.

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**Count 3: Malicious Prosecution
in Violation of the Fourth Amendment
(Against Defendant Benoit)**

55. By initiating a criminal prosecution against Mr. Massimino absent probable cause to believe that he had committed a crime, Defendant Benoit violated Mr. Massimino's Fourth Amendment rights.

Request for Relief

56. Accordingly, Mr. Massimino is entitled to have this Court:
- a. award him damages for the violation of his rights,
 - b. order the defendants to repay his reasonable costs and fees in accordance with 42 U.S.C. § 1988, and
 - c. order any further relief as justice requires.
57. Mr. Massimino demands a jury trial on all disputes of material fact.

/s/ Dan Barrett
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Counsel for Mr. Massimino

**United States District Court
District of Connecticut**

Keith Massimino,
Plaintiff

No. 21-cv-1132

v.

June 17, 2021

Matthew Benoit and Frank Laone,
Defendants.

Plaintiff's Motion for Summary Judgment

On an October evening in 2018, plaintiff Keith Massimino carried a tripod and small digital video camera with him as he walked on the sidewalks surrounding the Waterbury police station. He videorecorded the building's exterior for about six minutes before Defendants Matthew Benoit and Frank Laone contravened the First and Fourth Amendments by seizing him, demanding that he identify himself, arresting him for declining to do so, and commencing a criminal prosecution against him for the same, all while proclaiming that it is 'illegal' to videorecord a police station. Massimino now seeks summary judgment on all counts in his complaint.

1. Facts

The scene of all the relevant action was 255 East Main Street in Waterbury, where the city's police station sits.¹ The large brick building occupies an entire block,² with the front entrance facing East Main Street,³ the two sides facing North Elm and Maple Streets,⁴ and the rear of the building facing Water Street.⁵

¹ Pl.'s undisputed material fact # 1.

² *Id.* # 2.

³ *Id.* # 3.

⁴ *Id.* # 4.

⁵ *Id.* # 5. All parties agree that the map at paragraph thirteen of Massimino's complaint [ECF # 1] fairly and accurately depicts its location. *Id.* # 6.

The police station is surrounded on all sides by sidewalks.⁶ On the evening at issue, there were no fences, shrubs, or any other obstructions interfering with a person's view of the building from any of the streets or sidewalks surrounding the police department.⁷ There were also no signs on the exterior of the police station saying that recording was prohibited.⁸

That night—October 30th—Keith Massimino was driving through Waterbury on his way home from his job as a videographer, and became stuck in traffic on Interstate 84.⁹ Massimino has an interest in First Amendment auditing, a genre of videography in which a person records in a place where it is lawful to do so in order to gauge the response, if any, of public officials. A 'successful' audit is one in which public officials do not react to, or restrict, the videography. He decided to wait out traffic and film the exterior of the Waterbury police department,¹⁰ so he parked his car about a half-mile away from the station and walked toward it.¹¹ He had two digital cameras and two tripods with him that day for work, and he selected the smaller camera and tripod to use while filming the police department.¹² Massimino left the larger video camera and tripod in his car, along with his wallet,¹³ and approached the police station on East Main Street.

From the time that he arrived outside the police station until he was arrested, Massimino confined his activity to the sidewalks surrounding it,¹⁴ and not once strayed

⁶ *Id.* # 7.

⁷ *Id.* # 8.

⁸ *Id.* # 9.

⁹ *Id.* # 10.

¹⁰ *Id.* # 11.

¹¹ *Id.* # 12.

¹² *Id.* # 13.

¹³ *Id.* # 14.

¹⁴ *Id.* # 15.

into the street or into property on which he was not allowed to tread. He first recorded the front of the police station while walking down the East Main Street sidewalk,¹⁵ reaching the corner of East Main and North Elm Streets after about a minute of recording.¹⁶ At least one surveillance camera was mounted on the exterior of the building at that corner and was visible from the sidewalk;¹⁷ Massimino videorecorded that camera in the course of gathering footage.¹⁸

Turning right and walking down the sidewalk on North Elm Street, Mr. Massimino continued filming the exterior of the building.¹⁹ Further down North Elm where it intersects Water Street, Massimino videorecorded the police station's garage,²⁰ including its combined entrance and exit on North Elm. The garage has minimal screening on its windows and a sort of gate on its entrance and exit, although the gate was open when Massimino was videorecording from the sidewalk²¹ and the interior of the garage was plainly visible. He never entered the garage.²²

On his way down the North Elm sidewalk and back, Massimino also videorecorded the entrance to the police department's youth division.²³ The door to the youth division of the police department is visible from North Elm Street,²⁴ and is marked by a sign reading "Waterbury Police Department Youth Division."²⁵ At the time of the recording, the interior of the youth division was dark and nobody came or went from it. After finishing recording on North Elm, Massimino walked back around the

¹⁵ *Id.* # 16.

¹⁶ *Id.* # 17.

¹⁷ *Id.* # 18.

¹⁸ *Id.* # 19.

¹⁹ *Id.* # 20.

²⁰ *Id.* # 21.

²¹ *Id.* # 22.

²² *Id.* # 23.

²³ *Id.* # 24.

²⁴ *Id.* # 25.

²⁵ *Id.* # 26.

corner to the front of the police station on East Main.²⁶ Every image that Massimino recorded on the evening of October 30, 2018—including the building’s front on East Main Street,²⁷ the entrance to the Youth Division on North Elm Street,²⁸ and the garage on North Elm Street²⁹—could be readily viewed by anyone passing by, and to this day remain available to the worldwide public on the Google Maps street view feature.

Unbeknownst to Massimino, Defendant Matthew Benoit saw Massimino recording on North Elm Street when Benoit happened to look outside from the police station.³⁰ Benoit told Defendant Frank Laone about Massimino,³¹ and then “drove around the building a couple of times” to see what Massimino was doing.³² Laone, meanwhile, used the surveillance cameras on the police station’s exterior to observe Massimino standing on the sidewalk and videorecording.³³

Even though Massimino was simply strolling the sidewalk and recording what was plainly visible to anyone else passing by, the defendants believed that Mr. Massimino’s videorecording of the police station’s garage, youth division exterior door, and exterior surveillance cameras was suspicious.³⁴ But they could not articulate *what* they suspected. Benoit could not put his finger on any specific criminal act; he guessed that Massimino could have been planning “anything from criminal mischief up [to] an assault or homicide.”³⁵ Laone had the same inability to articulate what illegality

²⁶ *Id.* # 27.

²⁷ Google Maps, *255 East Main St. Waterbury, Conn.*, <https://tinyurl.com/2s492z7z> (last accessed June 16, 2022).

²⁸ Google Maps, *7 North Elm St. Waterbury, Conn.*, <https://tinyurl.com/mvf26r4e> (last accessed June 16, 2022).

²⁹ Google Maps, *19 North Elm St. Waterbury, Conn.*, <https://tinyurl.com/5ettyhf4> (last accessed June 16, 2022).

³⁰ Pl.’s undisputed material fact # 28.

³¹ *Id.* # 29.

³² *Id.* # 30.

³³ *Id.* # 31.

³⁴ *Id.* # 32.

³⁵ *Id.* # 33.

Massimino was engaged in, speculating that “[i]t could have been a wide range of spectrum of crimes that he could have been committing.”³⁶

So, after Massimino had been videorecording for a grand total of six minutes and nine seconds,³⁷ the two defendants approached him on the East Main Street sidewalk.³⁸ They were both in uniform,³⁹ with Laone emerging from the police station and Benoit stepping out of his car. Before speaking with Massimino, the two defendants had just one basis for being suspicious of him, which was his videorecording.⁴⁰ When they approached him, they had no suspicion that Massimino had a weapon.⁴¹

The defendants stood close to Massimino, with one on either side of him.⁴² Defendant Laone spoke first, asking Massimino what he was “taping.”⁴³ Massimino responded truthfully that he was “getting footage” and “just getting content for a story.”⁴⁴ Laone asked “what kind of story,” and Massimino declined to reveal its contents, citing the fact that he was still working on it.⁴⁵

Benoit then Massimino that “we need ID,” and Laone immediately repeated “we need ID.”⁴⁶ The total time of the parties’ conversation before the defendants ordered Massimino to produce ID was twenty-two seconds.⁴⁷

Massimino asked why he would need to identify himself when he was engaged in First Amendment protected activity.⁴⁸ Benoit claimed that Massimino presented “a

³⁶ *Id.* # 34.

³⁷ *Id.* # 39.

³⁸ *Id.* # 35.

³⁹ *Id.* # 36.

⁴⁰ *Id.* # 37.

⁴¹ *Id.* # 38.

⁴² *Id.* # 41.

⁴³ *Id.* # 40.

⁴⁴ *Id.* # 42.

⁴⁵ *Id.* # 43.

⁴⁶ *Id.* # 44.

⁴⁷ *Id.* # 45.

⁴⁸ *Id.* # 46.

security issue,” because he was “videotaping a police station.”⁴⁹ Laone asked Massimino, “how do we know you’re not planning on blowing up the building?” but seemed not to even take his own suggestion seriously, as he chuckled while asking the question.⁵⁰ When Massimino assured the defendants that he had no ill will, Benoit doubled down on the defendants’ inside-out version of reasonable suspicion by telling Massimino that “we don’t know that,”⁵¹ although Benoit had no facts suggesting otherwise.

Laone told Massimino that the defendants’ earlier demand that he identify himself was “a lawful order.”⁵² The total time of the parties’ conversation before the defendants told Massimino that their identification demand was “a lawful order” was fifty-six seconds.⁵³

On the East Main Street sidewalk, Benoit told Massimino several times that he was “not allowed to videotape a police station,”⁵⁴ but did not identify any statute rendering it illegal to do so. Laone agreed with Benoit’s assertions that it was illegal to videorecord a police station.⁵⁵ When Massimino asked the pair to “articulate a crime I’ve committed,” the situation turned darkly farcical, with Laone announcing simply “reasonable suspicion,”⁵⁶ and claiming that Massimino was “videotaping secure areas of the police station” by videorecording what was in plain view from the sidewalk.⁵⁷

⁴⁹ *Id.* # 47.

⁵⁰ *Id.* # 48.

⁵¹ *Id.* # 49.

⁵² *Id.* # 50.

⁵³ *Id.* # 51.

⁵⁴ *Id.* # 52.

⁵⁵ *Id.* # 53.

⁵⁶ *Id.* # 54.

⁵⁷ *Id.* # 55.

Laone confirmed that Massimino was not free to leave,⁵⁸ and when asked again what crime Massimino had committed, once more named the offense as “reasonable suspicion.”⁵⁹

Then, Benoit again demanded that Massimino identify himself.⁶⁰ Massimino declined, and the defendants ordered him to put his hands behind his back for arrest.⁶¹ The total time of the parties’ interaction from its start to the defendants ordering Massimino to place his hands behind his back was two minutes and twenty seconds.⁶²

Once Massimino was inside the police station, the defendants charged him with violating Conn. Gen. Stat. § 53a-167a,⁶³ which prohibits interference with the police. They admit that they did not have probable cause for any other charge.⁶⁴

Massimino’s conditions of release—also referred to interchangeably as “bail” by state law⁶⁵—were set in the Waterbury police station twice. The first time, Laone set Massimino’s release as contingent upon payment of a \$10,000 financial condition.⁶⁶ Unable to produce \$10,000, Massimino was held until 10:00 p.m.,⁶⁷ when a state judicial employee known as a bail commissioner visited the police station.⁶⁸ The bail

⁵⁸ *Id.* # 56.

⁵⁹ *Id.* # 57.

⁶⁰ *Id.* # 58.

⁶¹ *Id.* # 59.

⁶² *Id.* # 60. The parties agree that the video comprising Exhibit 1 to the complaint [ECF # 1-1] is a fair and accurate depiction of the parties’ interactions, and is authentic for purposes of Fed. R. Evid. 901. *Id.* # 61.

⁶³ *Id.* # 62.

⁶⁴ *Id.* # 63.

⁶⁵ *See, e.g.*, Conn. R. Super. Ct. § 38-1(a) (intermixing the two terms). The concept encompasses measures to ensure presence at future court dates, including financial conditions like a deposit amount called “bond,” with or without the backing of a surety, *id.* §§ 38-3(3),(4), and non-financial conditions such as an arrestee’s promise to appear, *id.* § 38-3(1), or avoiding contact with an alleged victim. *Id.* § 38-3(b)(4). Although bail does not always involve financial conditions, Connecticut police and courts commonly use “bail,” “bond,” and “conditions of release” interchangeably.

⁶⁶ Pl.’s undisputed material fact # 64.

⁶⁷ Pl.’s undisputed material fact # 65.

⁶⁸ The Connecticut Superior Court closes at 5PM and does not conduct night or weekend arraignments. Bail commissioners are required to “promptly conduct an interview and . . . order release of” someone held overnight who cannot pay their bond, where such release is to be on the least-restrictive condition

commissioner did away with the \$10,000 condition and instead set Massimino's conditions of release as (1) appearance at all future court dates, and (2) not "commit[ting] a federal, state, or local crime" during the pendency of the case.⁶⁹

The interference charge laid against Massimino by the defendants resulted in a criminal case being initiated in the Connecticut Superior Court.⁷⁰ Massimino retained two criminal defense lawyers.⁷¹ Although the superior court possessed the authority to modify the bail commissioner-imposed conditions at his initial appearance or any time thereafter, Conn. R. Super. Ct. § 38-13, it did not,⁷² and so Massimino was bound by them until the criminal case ended. His obligation to attend court was backed both by the possibility of his release being revoked, *id.* § 38-20, and by the specter of a freestanding criminal charge for failure to appear. Conn. Gen. Stat. Ann. § 53a-173(a).

The superior court held at least eighteen hearings in the criminal case;⁷³ Massimino attended all but a few of them.⁷⁴ Almost three years later, on May 15, 2021, the superior court dismissed the lone charge against Massimino and his nightmare ended.⁷⁵

In August 2021, Massimino filed this pursuant to 42 U.S.C. § 1983. Massimino contends that the defendants violated the First Amendment by stopping him from viewing and memorializing things in plain view from the sidewalk (Count One); the Fourth Amendment right against unreasonable seizure by detaining him for

necessary to secure attendance at an initial court appearance, Conn. Gen. Stat. § 54-63d(a), within fourteen days. Conn. R. Super. Ct. § 38-6.

⁶⁹ Pl.'s undisputed material fact # 66.

⁷⁰ *Id.* # 67.

⁷¹ *Id.* # 69.

⁷² *Id.* # 68.

⁷³ *Id.* # 70.

⁷⁴ *Id.* # 71.

⁷⁵ *Id.* # 72.

identification, and arresting him for declining to do so (Count Two); and the Fourth Amendment right against unreasonable seizure again by commencing a criminal prosecution against him absent probable cause to believe that he had committed a crime (Count Three). Discovery proceeded apace, and the Court denied the defendants' motion to dismiss on April 26, 2022 [ECF # 26]. With discovery now complete, the record demonstrating that "there is no genuine dispute as to any material fact," and the well-settled law uniformly in his favor, Massimino moves for summary judgment on all counts. Fed. R. Civ. P. 56(a).

2. Benoit and Laone's decision to stop Massimino from videorecording violated his First Amendment right to gather information and compose expression.

The first right stamped on by the defendants on the sidewalk that evening was Massimino's First Amendment right to view and record what was plainly visible to anyone on the sidewalk. Decades of case law protected both Massimino's ability to use the media of his choice to record and his ability to gather information with which to compose expression. The defendants' decision to prevent him from recording the exterior of the police station was a content-based restriction triggering their burden to satisfy strict scrutiny.

2.1. The First Amendment protects the use of all media when collecting information, and treats information-gathering and composition the same as expression itself.

"As a general principle, the First Amendment bars the government from dictating what we see or read," *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245 (2002), as it has long been understood to protect a person's ability to receive or gather

information. *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943). The Amendment’s protections “go[] beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw,” because a ban on gathering information is tantamount to one on expressing opinions based on that information. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978). Thus, the “right to read or observe what [one] pleases” is fundamental, *Stanley v. Georgia*, 394 U.S. 557, 564-5, 568 (1969), and restrictions placed upon “those desiring to receive” information are as infirm as restrictions on publishers of it are. *Martin*, 319 U.S. at 149 (striking anti-solicitation ordinance on that basis). *See also, e.g., 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 503 (1996) (“The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good.”).

Moreover, the right to receive information does not depend upon the method used to access the information. “[T]he basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary when a new and different medium for communication appears.” *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 790 (2011) (internal quotation omitted). *Accord Superior Films v. Ohio Dep’t of Educ.*, 346 U.S. 587, 589 (1954) (Douglas, J., concurring) (“[T]he First Amendment draws no distinction between the various methods of communicating ideas . . . [t]he movie, like the public speech, radio, or television is transitory—here now and gone in an instant.”). *Citizens United v. FEC*, 558 U.S. 310, 353-54 (2010) (“The Framers may have been unaware of certain . . . forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types . . .

that provided the means of communicating political ideas when the Bill of Rights was adopted.”).

If Massimino had put down his camera and simply stared at the exterior of the Waterbury police building, it would be equally absurd for Benoit and Laone to claim that they could have commanded him to avert his eyes. If Massimino had whipped out a small notebook (or composed an electronic note to himself on his phone) to write down his impressions of the building, the defendants would unquestionably be in the wrong to snatch the notebook or phone. Had Massimino called a friend and described the building to them over the telephone, the same result would follow.

In addition to protecting expression itself, the First Amendment protects antecedent processes of expression—and to the same extent. The acts and tools used to formulate and disseminate expression are within the Amendment’s protections because a crafty censor could work out, for example, that a ban on musical composition—or even on composition software or paper—would have the same effect as a ban on disseminating the resulting music itself. *See Los Angeles Police Dep’t v. United Reporting Publ’g*, 528 U.S. 32, 42 (1999) (Scalia, J., concurring) (noting his view that “a restriction . . . den[ying] access to persons who wish to use the information for certain speech purposes, is in reality a restriction upon speech rather than upon access to government information.”). The Supreme Court has therefore treated speech formulation or dissemination barriers as if straightforwardly aimed at specific speech itself, and Defendants Benoit and Laone were responsible for knowing and abiding by that principle. *See, e.g., Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (striking statute barring sex offenders from accessing most websites and social media, for restricting “access to what for many are the principal sources for knowing current

events . . . and otherwise exploring the vast realms of human thought and knowledge,” which in turn “can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.”); *Minneapolis Star & Trib. v. Minn. Comm’r of Rev.*, 460 U.S. 575, 585 (1983) (striking tax on printing paper and ink that differentially applied to newspapers as operating to threaten critical commentary by the press); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 246, 250 (1936) (striking tax on advertising revenue as “a deliberate and calculated device in the guise of a tax to limit the circulation of information,” and surveying the pre-Independence struggles with what contemporary critics derided as “taxes on knowledge”).

Our circuit’s teachings provide an illustration of how expression is inseparable from the methods or materials used to formulate it. In *Tunick v. Scfir*, the court was presented with a First Amendment challenge to a permitting refusal. The plaintiff wished to stage an early morning photo shoot on a Manhattan street for the production of one photo involving clothed subjects and another with nude ones. 209 F.3d 67, 69 (2d Cir. 2000). The city denied him a street-closure permit for photographing nude subjects, but granted one for photographing the clothed subjects. *Id.* Tunick sued, was granted an injunction, and the parties thereupon devoted much energy to disputing the meaning of the state statute cited by New York City to deny permission for one of the photos. The salient feature of the speech analysis for this Court, however, is the Second Circuit’s treatment of *the photo shoot* as inseparable from whatever photos would result. The court of appeals made no effort to pull the two apart, but concluded that Tunick’s predicament comprised an irreparable denial of his right to free expression. *Id.* at 70. And in deciding whether to certify the state statutory question to New York’s high court, the Second Circuit concluded that the permit denial presented “serious constitutional

difficulties,” because the denial halted Tunick’s “artistic activity,” to wit, “his photography.” *Id.* at 80. The court’s analysis did not isolate the photo shoot from the photos Tunick sought to eventually create, and instead worked through the law of obscenity as applied to the as-yet-created photos, using them as a stand-in for both the expression-production process, and the expression itself. *Id.* That our Court of Appeals thought the two so obviously inseparable is testament to how consistent First Amendment decisions on point have been: restrictions on creating a message are the same as restrictions on the message itself.

2.2. The defendants violated the First Amendment when they forced Mr. Massimino to stop recording, because they had no compelling government interest in stopping anyone from viewing or recording the plainly visible exterior of the Waterbury police station.

Although they loudly proclaimed on the East Main Street sidewalk that recording a police station is “illegal,” both defendants admitted at deposition that they stopped Massimino’s videorecording because of what he was recording. They testified to knowing that videorecording, generally, is not prohibited by law, but that they interrupted his recording because of “what he was taping”⁷⁶; specifically, the garage, youth division street door, and surveillance camera. For First Amendment purposes, their decision to do so comprised a content-based restriction, that is, one applied because of the subject, “or the idea or message.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

To conform to the First Amendment, “content-based restrictions must be necessary to serve a compelling interest and must be narrowly drawn to achieve that

⁷⁶ Matthew Benoit Depo. Tr. [Ex. # 6] 20:19-22. *Accord* Frank Laone Depo. Tr. [Ex. # 6] 24:11-14.

end,” also known as strict scrutiny. *Lusk v. Vill. of Cold Spring*, 475 F.3d 480, 488 (2d Cir. 2007) (internal quotation omitted). Because content-based restrictions “are presumptively invalid,” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992), the burden of satisfying the strict scrutiny elements rests on the defender of the restriction, not the person challenging it. *E.g., Green Party of Conn. v. Garfield*, 616 F.3d 189, 208 (2d Cir. 2010). Laone and Benoit cannot meet either prong of the strict scrutiny analysis, and so are liable to Massimino on Count One of his complaint.

2.2.1. There is no compelling interest in forbidding the recording of a building’s unobscured exterior that is plainly visible from a sidewalk, because the government has taken no steps to hide it.

The defendants cannot prove that stopping Massimino’s recording was “necessary to serve a compelling interest,” *Lusk*, 475 F.3d at 488 (internal quotation omitted), because it is impossible to imagine what interest was served by preventing him from memorializing what was visible for all the world to see. Although the defendants took pains at deposition to emphasize that Massimino’s recording of the police garage, youth division street entrance, and corner surveillance camera was worthy of interruption, there is no dispute here that (1) each of those items was visible from the sidewalk, with nothing to block anyone’s view of them, and (2) Massimino never left the sidewalk, and so, never set foot on any restricted area of the police station such as the interior of the garage. It defies the imagination to conjure any interest—let alone a compelling one—that the police may have had in preventing passersby like Massimino from recording what the police knowingly exposed to view. The defendants’ belabored attempts to explain why the facades of the police department are somehow off-limits to Massimino are thoroughly debunked by the obvious: not only could (and can) anyone

walking by the building readily see everything that Massimino videotaped at any time, but anyone with internet access can instantly see the same in Google Maps. Put more bluntly, the Waterbury police department's decision not to hide the exterior features that the defendants complain were being videorecorded entirely negates any claimed governmental interest in hiding them.

Further support for this patent answer lies in decades of case law forbidding the government from punishing the revelation of information already in the public domain. In *Nebraska Press Ass'n v. Stewart*, for example, the Supreme Court vacated a state trial court order forbidding the dissemination of any testimony or evidence presented during a murder trial that was open to the public. 427 U.S. 539, 542 (1976). The court made plain that a government decision to expose information to the public negates its ability to restrict what may be done with that information. *Id.* at 568 (“[O]nce a public hearing has been held, what transpired there could not be subject to prior restraint.”). See also *Cox Broad. v. Cohn*, 420 U.S. 469, 495-6 (1975) (holding that states may not impose civil liability for publication of information found in court records, and noting that “[i]f there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information” in the first place); *The Florida Star v. B.J.F.*, 491 U.S. 524, 535 (1989) (“[W]here the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release.”).

2.2.2. Moreover, the narrowly tailored way to prevent anyone from recording the publicly visible features of the police station's exterior was to conceal them from view.

Although a failure to prove the existence of a compelling government interest in preventing Massimino from recording conclusively resolves Count One in Massimino's favor, the defendants fare no better if the Court examines the tailoring of the defendants' decision. Strict scrutiny's second element asks whether the challenged expressive restriction was "narrowly drawn to achieve" the end asserted by the speech-squelchers. *Lusk*, 475 F.3d at 488 (internal quotation omitted). The narrow tailoring inquiry asks whether government employees have restricted expression "only to the degree necessary to meet the particular problem at hand," *Green Party cf Conn.*, 616 F.3d at 209 (internal quotation omitted), or in other words, "the least restrictive means to achieve [their] ends." *Evergreen Ass'n v. City cf New York*, 740 F.3d 233, 246 (2d Cir. 2014). If a less-restrictive alternative was available to accomplish the government's goal, then the challenged restriction was *per se* unconstitutional. *E.g.*, *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 874 (1997); *Sable Commc'ns cf Cal. v. F.C.C.*, 492 U.S. 115, 126 (1989); *Landell v. Sorrell*, 382 F.3d 91, 126 (2d Cir. 2004), *rev'd on other grounds*, 548 U.S. 230, 236 (2006).

There was, of course, a drastically less restrictive measure available to the defendants which would have avoided any First Amendment restrictions: covering up the exterior features they objected to Massimino videorecording. If the police were concerned that the public should not see a particular exterior feature of the station, they should have put up an opaque fence, thrown a tarp over it, or planted a hedge. Doing so would have obviated any need to goaltend the public's vista from the sidewalk, and would have had the additional benefit to the defendants of being entirely consonant with

the First Amendment. *E.g.*, *Houchins*, 438 U.S. at 11 (explaining that the First Amendment does not “compel[] others—private persons or governments—to supply information” not already available). Because the defendants did not bother concealing the exterior features they claim were sensitive or private, they were not permitted to restrict Massimino’s right to record them from the sidewalk.

2.3. It is irrelevant whether the Court deems Mr. Massimino a journalist, since journalists do not enjoy greater First Amendment access to information than do non-journalists.

No matter whether the Court views Count One as posing the question of protecting digital media or of protecting speech-formulating acts, it need not resolve whether Massimino was a journalist. At deposition and oral argument on their motion to dismiss, the defendants interposed the question by suggesting that journalists would not have been prevented from recording the exterior of the police station, and that Massimino’s lack of a press pass may have been a deciding factor in interrupting his videorecording. According to Defendant Laone, he asked Massimino for “credentials,” because in his view journalists “usually show up in some sort of marked vehicle,” and if not, according to him, journalists “walk in the front desk, they have a shirt on, hey, I’m so and so with XYZ newspaper” and announce that they’re going to be filming, to which Laone typically responds “Okay. Have a good day,” rather than stopping them.⁷⁷ Benoit suggested the same, testifying that in his view, journalists “readily provide credentials, arrive in marked vehicles,” and “[c]learly make it known that they’re there as a member of the media.”⁷⁸ The distinction between journalists and non-journalists is immaterial

⁷⁷ Laone 34:17-23.

⁷⁸ Benoit 21:16-18.

here, because the appellate courts have for decades rejected the idea that journalists have a greater right to gather information than do non-journalists.

The First Amendment’s protection for information reception does not vary with the occupation of the person who is seeking the information. Since *Branzburg v. Hayes*, it has been clear that everyone may “to seek news from any source by means within the law” on equal footing, and that “[n]ewsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded.” 408 U.S. 665, 681-82, 684-5 (1972). Journalists and non-journalists alike may draw from information that is “open to the public generally,” *Houchins*, 438 U.S. at 10, like the exterior of the Waterbury police department, plainly visible from the street as it is.

There is no First Amendment compulsion that government “accord the press special access to information not shared by members of the public generally,” *Pell v. Procunier*, 417 U.S. 817, 834 (1974), for at least two good reasons. First, permitting the government to determine who is—and is not—a journalist invites unconstitutionally discretionary enforcement based on a public servant’s perception of the information-gatherer’s purpose. For example, Defendant Laone conceded at deposition that journalists include anyone “[who] reports news” or “stories,” which “[i]n today’s day and age” sweeps in “a large group of things” including “bloggers” and others,⁷⁹ yet he and his co-defendant found a reason to believe that Massimino was not one. Attempting to discriminate between journalists and non-journalists also invites First Amendment-prohibited arbitrariness due to laypeople’s misunderstanding of the different types of information-gathering. A colloquy from Massimino’s deposition encapsulates the danger:

⁷⁹ Laone 35:1-5.

Q: [Y]ou consider yourself both a professional videographer and a photojournalist?

A. Yes.

....

Q. You never said [to the defendants] “I’m a videographer and photojournalist,” correct?

A. No, I never said -- I mean, it’s one in the same. I wouldn’t – that’s like saying I’m a carpenter but I’m also a builder.⁸⁰

Second, splitting hairs amongst who is permitted to record the plainly visible exterior of the police station would only move the defendants out of the frying pan and into the fire. Restricting First Amendment expression on the basis of a person or entity’s identity comprises speaker-based discrimination. *Citizens United v. FEC*, 558 U.S. 310, 340-1, 352 (2010); *Minneapolis Star*, 460 U.S. at 592; *Buckley v. Valeo*, 424 U.S. 1, 19-20 (1976). With the exterior of the police department wide open to public view, all had equal access to view, record, and speak about what was visible that October evening.

3. Benoit and Laone violated the Fourth Amendment when they seized Massimino based upon his videorecording, which was entirely lawful and generates no reasonable suspicion of criminality.

In Count Two of his complaint, Keith Massimino contends that the defendants violated his Fourth Amendment right against seizure when they detained him on the sidewalk without reasonable articulable suspicion to do so. There is no criminal statute forbidding videorecording of a police station, and the record amply demonstrates that Massimino’s being “just on the corner filming”⁸¹ gives rise to no reasonable suspicion of crime being afoot.

⁸⁰ Keith Massimino Depo. Tr. [Ex. # 4] 69:13-70:1.

⁸¹ Laone 18:24.

3.1. As soon as the defendants surrounded him and demanded identification, Massimino was seized.

In relevant part, Keith Massimino had the right “to be secure in [his] person[] . . . against unreasonable . . . seizures” that evening as he stood on the sidewalk. U.S. Const. amend. 4. As happened here, where there was no physical contact between the parties until the defendants announced that Massimino was under arrest, a seizure at the hands of police employees occurs when the police “by means of . . . show of authority, ha[ve] in some way restrained the liberty of a citizen.” *Terry v. Ohio*, 392 U.S. 1, 20 n.16 (1968). To determine when a show of authority causes restraint, this Court asks whether, given the attendant circumstances of the situation, “a reasonable person would believe that he was not free to leave,” *Salmon v. Blessner*, 802 F.3d 249, 252 (2d Cir. 2015) (internal quotations omitted), given “the threatening presence of several [police] officers,” “language or tone indicating that compliance with the [police] officer was compulsory,” *United States v. Lee*, 916 F.2d 814, 819 (2d Cir. 1990), or a “command by a police officer to a pedestrian to stop and furnish identification.” *Ozga v. Elliot*, 150 F. Supp. 3d 178, 187 (D. Conn. 2015). *See generally Dancy v. McGinley*, 843 F.3d 93, 101 (2d Cir. 2016) (seizure began when police, standing within two feet of plaintiff, told him multiple times not to use his cellphone); *United States v. Gori*, 230 F.3d 44, 47, 49 (2d Cir. 2000) (same where police displayed their badges and announced “Everyone step out into the hallway!”); *United States v. Gomez*, 633 F.2d 999, 1002, 1004 (2d Cir. 1980) (same where police displayed their badges and yelled the word “police”).

The circumstances on the sidewalk outside of the Waterbury police station on that October night would all convince a reasonable person that they could not just “go

about [their] business.” *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (internal quotation omitted). Two armed police officers in uniform approached Massimino, stood on either side of him in close proximity, and began asking him questions. They insisted, one after the other, that “we need ID.” As any reasonable person would, Massimino understood himself not to be free to leave, and he stood on the spot where he was seized.

3.2. The defendants violated the Fourth Amendment by detaining Massimino to identify him without reasonable articulable suspicion of a crime.

The Fourth Amendment requirements that applied to Benoit and Laone that evening in Waterbury are familiar, as they have been in place since *Terry* was decided in 1968. In order to seize Massimino to identify him, the defendants must have possessed “a reasonable suspicion, based on objective facts, that [he] [wa]s involved in criminal activity.” *Brown v. Texas*, 443 U.S. 47, 51 (1979). That reasonable suspicion, in turn, must have comprised “specific and articulable facts which, taken together with rational inferences from those facts, provide . . . a particularized and objective basis for suspecting legal wrongdoing.” *United States v. Walker*, 965 F.3d 180, 186 (2d Cir. 2020) (internal citation omitted). This Court assesses the facts and inferences objectively, without deferring to Benoit or Laone’s judgment about whether facts existed or what inferences could be drawn from them. *Id.* And the defendants’ reasonable articulable suspicion must have existed at or before the seizure’s start: occurrences after that point “cannot contribute to the analysis of whether there was reasonable suspicion to warrant the stop in the first instance.” *United States v. Freeman*, 735 F.3d 92, 96 (2d Cir. 2013). Finally, a seizure cannot be based on a person’s declination to help the police or answer their questions; the police need *other* objective facts to support a seizure.

Bostick, 501 U.S. at 437 (“We have consistently held that a refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.”); accord *United States v. Jordan*, No. 16-cr-93, 2017 WL 9516819, at *11 (W.D.N.Y. July 14, 2017) (no reasonable suspicion for pat-down where defendant crossed his arms in response to questioning and gave no indication of being armed).

The facts prior to the seizure were as follows: Massimino was standing on the East Main Street sidewalk near the front entrance to the police building. He had spent the prior six minutes walking on the sidewalk next to it. Massimino carried with him only a hand-held camera with a small tripod attached to it. The defendants did not suspect that he was carrying any weapons. When they approached him, they spoke with him for less than thirty seconds before each announced that “we need ID.”

On those uncontested facts, Benoit and Laone face an unsurmountable burden of demonstrating that they possessed reasonable articulable suspicion to seize Massimino. First, the “crime” they claim to believe he was committing (illegal videotaping) does not exist, and second, their pretextual suspicions of Massimino being a bomber or shooter were unsupported by a single articulable fact leading to an objectively reasonable belief of such.

3.2.1. It was impossible for Laone and Benoit to have had reasonable articulable suspicion of Massimino committing a crime that does not exist in Connecticut law.

Reasonable articulable suspicion must support a belief that the seized person is “committing, or has committed, *a criminal offense*.” *United States v. Walker*, 965 F.3d 180, 183 (2d Cir. 2020) (emphasis added). When they seized Mr. Massimino, the defendants emphasized that it was “illegal” to videorecord a police

station, that he was videorecording “secure areas” of the exterior of the building, and that he had committed “reasonable suspicion.” None of these comprise a criminal offense, and so could never have given rise to reasonable articulable suspicion of lawbreaking.

As a foundational principle of Fourth Amendment law, Benoit and Laone could not have had any suspicion that Massimino was breaking the law by recording the outside of the building because—then and now—no part of Connecticut’s penal code forbids the activity. Detaining Massimino because the defendants thought, or wished, that recording the exterior of a building was “not allowed” in Connecticut, Compl. Ex. 1 at 08:10, or that the state’s criminal code forbade viewing the exterior street entrance to the youth department, is “a paradigmatic violation of the Fourth Amendment.” *Vasquez v. Maloney*, 990 F.3d 232, 235 (2d Cir. 2021) (reversing summary judgment where police detained plaintiff simply because they thought that there was an outstanding warrant for his arrest, but did not check for one before seizing him).

Tellingly, when Massimino asked the defendants that night what crime they were detaining him for, their only response was “reasonable suspicion,” period. But “reasonable suspicion” is not a crime. Police cannot detain someone on the basis of “reasonable suspicion,” end of story; instead, they must have “grounds for suspecting actual legal wrongdoing,” *Freeman*, 735 F.3d at 103. And an activity that is not forbidden does not provide reasonable articulable suspicion for a seizure. *See, e.g., Mgløj v. Gardner*, 974 F.3d 1151, 1163 (10th Cir. 2020) (denying qualified immunity to cop who arrested plaintiff for declining to produce a physical piece of identification during seizure, where no criminal statute forbade plaintiff from declining); *Santos v. Frederick Cnty. Bd. of Comm’rs*, 725 F.3d 451, 465 (4th Cir. 2013) (no reasonable

suspicion to detain a person suspected of not being in the country lawfully, because such an immigration violation is a civil infraction and not a crime); *Jones v. Clark*, 630 F.3d 677, 683 (7th Cir. 2011) (same where “[i]t is not a crime to take pictures on the street” and was not a crime for the plaintiff utility worker to be reading electrical meters on houses); *United States v. Williams*, 615 F.3d 657, 667 (6th Cir. 2010) (same where based on suspicion of loitering and “loitering is not a crime under state or local law”); *Gentry v. Sevier*, 597 F.3d 838, 846 (7th Cir. 2010) (same where based on habeas petitioner’s having been “pushing a wheelbarrow” on a sidewalk, “which is not a crime”); *United States v. Henderson*, 463 F.3d 27, 46-47 (1st Cir. 2006) (same where based on car passenger’s failure to wear seatbelt, and for car passengers in Massachusetts, “a seatbelt violation is not a crime.”); *United States v. Ubiles*, 224 F.3d 213, 217-18 (3d Cir. 2000) (same where based on tip of firearms possession and Virgin Islands law did not criminalize firearms possession); *United States v. Irizarry*, 509 F. Supp. 2d 198, 209 (E.D.N.Y. 2007) (same where police saw defendant carrying a box cutter, because carrying one “was not a crime” under New York law). For Benoit and Laone here, the complete absence of a statutory prohibition against recording or photographing the exterior of government buildings vitiates the possibility of their having had reasonable articulable suspicion to detain Massimino.

3.2.2. A person merely standing on a sidewalk filming a government building does not give rise to reasonable suspicion, and the defendants’ decision to seize first and search for facts later was unconstitutional.

The picture gets no better if—instead of asking whether it is “illegal” to videorecord a police station—the Court examines whether the defendants had specific and articulable facts which, “taken together with rational inferences from those facts,

provide . . . a particularized and objective basis” for thinking that Massimino was committing any crime at all. *Walker*, 965 F.3d at 186. On this score, the defendants again come up short.

First, at deposition—with four years’ hindsight—the defendants conceded that there is no crime in videorecording,⁸² but attempted to recast their suspicion as lying in *what* Mr. Massimino was recording: the garage, the youth division street entrance, and the surveillance camera mounted on the corner of the building.⁸³ But decisional law does not deem it reasonable for the owner of things plainly visible to the public to claim that their appearance is, in fact, private. “If an article is already in plain view, neither its observation nor its seizure would involve any invasion of privacy.” *Horton v. California*, 496 U.S. 128, 133 (1990). And as a corollary, it is not reasonable to suspect criminality from the act of gazing upon a street-facing building exterior in plain view, because the exposure of that exterior to the public creates the rational inference that there is no prohibition against looking at it. In fact, the Waterbury police failed to take such minimal steps such as closing the chain-link gate at the front of the garage, removing the foot-high lettering marking the youth division entrance, or disguising the surveillance camera prominently jutting from the building’s corner. Their decision against hiding those features from plain view vitiates the possibility that reasonable articulable suspicion could spring from a person’s gazing upon them from the sidewalk.⁸⁴

⁸² Benoit 20:13-14 (“Q: Isn’t it legal to film a police station? A: Yes.”); Laone 24:11-19 (“I would never arrest anybody for merely videotaping . . . [t]he First Amendment does protect the right to videotape.”).

⁸³ Benoit 20:13-16; Laone 25:5-11.

⁸⁴ A vagueness problem also lurks in the defendants’ formulation that looking at plain-view objects can give rise to reasonable suspicion: by simultaneously leaving the exterior features exposed to plain view *and* claiming that looking at those features creates reasonable suspicion, the defendants are reserving to themselves the discretion to selectively detain people for looking. *Cf. Papachristou v. City of Jacksonville*, 405 U.S. 156, 166 (1972) (explaining that infirm vagrancy ordinances typically avoid defining the offense, “to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense”). The identical First Amendment implications of the defendants’ everyone-can-see-it-but-no-one-may-look-at-it position also render it

Second, the most unmoored version of suspicion that the defendants suggested on the Waterbury sidewalk and in their depositions—that Massimino was planning some kind of attack, and had to convince them otherwise—was just unconstitutional guessing. On the East Main Street sidewalk that night, Laone asked Massimino “how . . . we know it’s legal” to be videorecording,⁸⁵ and then simply, “how do we know you’re not planning on blowing up the building?”⁸⁶

Both defendants expounded on the theory at their depositions. Benoit speculated that his videorecording suggested that Massimino could have been planning “anything from criminal mischief up [to] an assault or homicide.”⁸⁷ He asserted that, at the time they seized Massimino, Benoit thought Massimino could have been engaged in “anything,” while admitting that “I don’t know what he was up to. That was the point of stopping him.”⁸⁸ Laone repeated the how-do-we-know theory, testifying that “I don’t know if he was planning on killing somebody or trespassing. It could have been a wide range of spectrum of crimes that he could have been committing.”⁸⁹ When asked to connect the facts of Massimino’s videotaping to his speculation about the gruesome crimes he could imagine Massimino plotting, Laone conceded that “I didn’t know what an exact plan would be . . . it could have been anything from damaging cruisers to blowing up the gas pump to trespassing.”⁹⁰ And when examined about his sidewalk statement that Massimino needed to demonstrate that he wasn’t planning on blowing

untenable. *See Cox Broadcasting*, 420 U.S. at 496 (“We are reluctant to embark on a course that would make public records generally available . . . but forbid their publication if offensive to the sensibilities of the supposed reasonable man. Such a rule . . . would invite timidity and self-censorship.”).

⁸⁵ Compl. Ex. 1 at 07:18.

⁸⁶ Compl. Ex. 1 at 07:20.

⁸⁷ Benoit 19:15-21.

⁸⁸ Benoit 30:14-17.

⁸⁹ Laone 25:20-23.

⁹⁰ Laone 37:16-22.

up the building,⁹¹ Laone admitted that he had no reason to suspect that Massimino had a bomb “on his person at that time,” but pivoted to the endless possibilities in his imagination: “I don’t know if he was planning two, three, five, 20, 30, 50 minutes down the road.”⁹²

Nothing about the facts present at the point Massimino was seized, either alone or in combination, would cause an objective observer to suspect that Massimino was about to commit a crime. He was alone and unarmed on a public sidewalk, carrying nothing but a small camera and tripod, and pointing the camera at the exterior of a government building that faced the street openly, in daylight. Such a person—who even Defendant Laone described as “just on the corner filming”⁹³—generates only one reasonable conclusion: that he was taking pictures or video. The defendants’ backwards version of reasonable suspicion resulted in the seizure of Massimino based upon an “inchoate and unparticularized suspicion,” or “a conclusion derived from intuition in the absence of articulable, objective facts,” *United States v. Singletary*, 798 F.3d 55, 60 (2d Cir. 2015) (internal quotation omitted), better known as nothing more than a hunch.

Detaining Massimino because they had no idea “what he was up to,”⁹⁴ and could not articulate whether Massimino’s videorecording suggested anything between “killing somebody or trespassing”⁹⁵ falls below the most obvious Fourth Amendment minima. *See Vasquez*, 990 F.3d at 242 (detention based solely on unverified belief that there might have been a warrant for plaintiff’s arrest was based on “nothing more than guesswork”); *United States v. Hussain*, 835 F.3d 307, 315 (2d Cir. 2016) (no suspicion

⁹¹ Compl. Ex. 1 at 07:20.

⁹² Laone 36:1-8.

⁹³ Laone 18:24.

⁹⁴ Benoit 30:14-17.

⁹⁵ Laone 25:20-23.

for protective sweep based on series of unremarkable observations, and explaining that “we are hard pressed to see how a driver in a high crime area . . . moving . . . around the center console to retrieve a smartphone can reasonably suggest that danger lurks any more than a suburban father or mother reaching for a smartphone from the center console after a traffic stop to call a spouse or relative could be considered dangerous”); *United States v. Dorlette*, 706 F. Supp. 2d 290, 303 (D. Conn. 2010) (no reasonable suspicion where police stopped the defendant “for safety purposes” after purely speculating that he might be in the street looking to fight someone); *United States v. Antuna*, 186 F. Supp. 2d 138, 144 (D. Conn. 2002) (same where police did not see “any overtly illegal activity taking place,” saw “nothing in the hands” of the defendant, and thought they had once seen the defendant on a ‘wanted’ poster). The complete absence of “a specific series of events” generating the rational inference that crime was afoot, *L.fshitz*, 369 F.3d at 188, rendered the defendants’ seizure of Massimino unconstitutional. Judgment must enter for him on Count Two.

4. The defendants committed malicious prosecution when they commenced the interference prosecution against Massimino in contravention of *Brown v. Texas*.

The third and final count of Massimino’s complaint alleges that the defendants violated his Fourth Amendment right against malicious prosecution by charging him with interference, Conn. Gen. Stat. § 53a-167a, for declining to identify himself. Because the defendants had no reasonable articulable suspicion to detain him in the first place, the rule of *Brown v. Texas* governed: Massimino’s decision not to identify himself could never have generated the probable cause necessary to prosecute him for declining. 443 U.S. at 52.

The Fourth Amendment species of malicious prosecution contests a post-arraignment seizure effected pursuant to the criminal legal process, like being released on conditions or required to come to court for subsequent hearings. *Singer v. Fulton County Sheriff*, 63 F.3d 110, 117 (2d Cir. 1995). Judgment is appropriate for the plaintiff where he establishes a Fourth Amendment seizure plus the elements of a malicious prosecution claim under state law. *E.g.*, *Manganiello v. City of New York*, 612 F.3d 149, 161 (2d Cir. 2010). In Connecticut, there are four: the defendants (1) “initiated or procured the institution of criminal proceedings against the plaintiff” (2) terminating in the plaintiff’s favor (3) without probable cause and (4) with malice. *E.g.*, *Brooks v. Sweeney*, 9 A.3d 347, 357 (Conn. 2010). Connecticut law takes the lack of probable cause as conclusively establishing malice: “[i]f the evidence supports the former, we need not consider the latter, since it may be inferred.” *Zenik v. O’Brien*, 79 A.2d 769, 772 (Conn. 1951).

4.1. Massimino’s conditions of release were a seizure for Fourth Amendment purposes, and the defendants unquestionably commenced a criminal prosecution against him that ended in his favor.

Having been obligated by his conditions of release to attend court post-arraignment, Keith Massimino was seized for purposes of the Fourth Amendment. *E.g.*, *Swartz v. Insogna*, 704 F.3d 105, 112 (2d Cir. 2013) (“We have consistently held that a post-arraignment defendant who is obligated to appear in court in connection with criminal charges whenever his attendance is required suffers a Fourth Amendment deprivation of liberty.”) (internal quotation omitted). There is similarly no dispute that the defendants initiated or procured a criminal prosecution against Massimino by

charging him with interference in contravention of Conn. Gen. Stat. § 53a-167a,⁹⁶ and, that the prosecution forever ended in his favor when the superior court granted his motion to dismiss the case. *E.g., State v. Talton*, 547 A.2d 543, 548 (Conn. 1988) (“Such a dismissal is a final judgment . . . and precludes the state from initiating another prosecution for the same offense.”).

4.2. Lacking a lawful basis to have seized Massimino in the first place, the defendants necessarily lacked probable cause to charge him for not answering their questions.

The final element of Count Three is the lack of probable cause. The defendants concede that (1) the only criminal offense for which they assert they had probable cause was the interference charge they laid against Massimino, and (2) their purported probable cause for that offense was his declination to identify himself when asked. Those facts render the Court’s decision easy.

Absent reasonable articulable suspicion to seize someone, the police cannot punish the seized person for declining to identify themselves. *Brown*, 443 U.S. at 52. Instead, the Fourth Amendment guarantees that a person “approached by an officer who has no reasonable suspicion of wrongdoing may ignore the officer and go about his business,” *United States v. Muhammad*, 463 F.3d 115, 123 (2d Cir. 2006). The only way for the defendants to avoid judgment on Count Three is for the Court to hold that *Brown* is no longer good law, and permit police to bootstrap the declination to engage in conversation into probable cause for an interference charge. But were the Court to do

⁹⁶ As described to its legislature by the state’s unified prosecutorial arm, “[i]n Connecticut, unlike most jurisdictions, the police select charges after warrantless arrest and send these charges directly to the clerk’s office” of the superior court, which “automatically creates the court’s docket, listing the name of the accused and charges selected by the police officer.” Connecticut Div. of Crim. Justice, *The Early Screening and Intervention Program (ESI) – Report to the Joint Standing Committee on the Judiciary on PA 17-205* at 3, i (Feb. 1, 2019), available at <https://portal.ct.gov/-/media/DCJ/PA-17-205-DCJ-Final-Report.pdf>.

so, it would birth a “truly paradoxical class of individuals”: those who cannot be made to answer questions, “but who can be [charged] if they refuse” to answer questions.

Freeman, 735 F.3d at 102.

Worse for the defendants, Connecticut’s supreme court expressly limited application of the interference statute at issue here in accordance with *Brown*. Eleven years prior to the events in this case, the state high court narrowed Conn. Gen. Stat. § 53a-167a to declinations of identification only “in connection with a legitimate *Terry* stop.” *State v. Aloï*, 911 A.2d 1086, 1097 n.22 (Conn. 2007). Hence, as a matter of both federal and state law, Defendants Laone and Benoit could never have had probable cause to believe that Mr. Massimino’s decision to stay anonymous violated Conn. Gen. Stat. § 53a-176a: both our national and state supreme courts had instructed them to the contrary years earlier.

The rule of *Brown* controls here: where police officer demands for identification proceed “without any specific basis for” suspicion, “the guarantees of the Fourth Amendment do not allow it.” *Brown*, 443 U.S. at 52. There having been no “legitimate *Terry* stop” of Keith Massimino, there was necessarily no probable cause to arrest or prosecute him for declining to identify himself during that stop. *Aloï*, 911 A.2d at 1097 n.2. Judgment must enter for him on Count Three of his complaint.

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5. Conclusion

Because the defendants' interruption of Keith Massimino's videorecording fails strict scrutiny, because they had no reasonable suspicion of crime being afoot, and because his decision not to identify himself could never have created probable cause for a criminal charge, judgment must enter for him on all counts.

/s/ Dan Barrett
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Counsel for Mr. Massimino

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Exhibit 1

(Plaintiff's Requests to Admit)

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**United States District Court
District of Connecticut**

Keith Massimino,
Plaintiff

No. 21-cv-1132

v.

March 24, 2022

Matthew Benoit and Frank Laone,
Defendants.

Plaintiff's First Requests to Admit to the Defendants

1. The Waterbury police department is located at 255 East Main Street in that city.
2. The Waterbury police department building occupies an entire block.
3. The front entrance to the Waterbury police department faces East Main Street.
4. The sides of the building face North Elm Street and Maple Street.
5. The back of the building faces Water Street.
6. The map at paragraph thirteen of the complaint in this action [ECF # 1] fairly and accurately depicts the Waterbury police department's location.
7. All four sides of the Waterbury police department have sidewalks on them.
8. On October 30, 2018, there were no fences, shrubs, or any other obstructions interfering with a person's view of the building from any of the streets or sidewalks surrounding the Waterbury police department.
9. Exhibit 1 to the complaint in this action [ECF # 1] is a fair and accurate depiction of the parties' interaction on the evening of October 30, 2018.
10. Exhibit 1 to the complaint in this action [ECF # 1] is authentic for purposes of Fed. R. Evid. 901.

(signature follows next page)

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/s/ Dan Barrett
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Counsel for Mr. Massimino

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Exhibit 2

(Defendants' Response to Plaintiff's Request to Admit)

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CERTIFICATION

I hereby certify that a copy of the foregoing was mailed on the above date, postage prepaid and/or electronically to all counsel of record and pro se parties as follows:

Dan Barrett, Esquire
Attorney Elana Bildner
ACLU Foundation of Connecticut
765 Asylum Avenue
Hartford, Connecticut 06105
e-filings@acluct.org

BY: /s/ ct05394
Joseph A. Mengacci

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Exhibit 3

(Declaration of Keith Massimino)

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Case 3:21-cv-01132-RNC Document 38-3 Filed 06/17/22 Page 2 of 3

**United States District Court
District of Connecticut**

Keith Massimino,
Plaintiff

No. 21-cv-1132

v.

June 16, 2021

Matthew Benoit and Frank Laone,
Defendants.

Declaration of Keith Massimino

1. My name is Keith Massimino, I am the plaintiff in this suit, and am over the age of eighteen.
2. On October 30, 2018, I videorecorded the exterior of the Waterbury police station.
3. On that night, there were no signs on the exterior of the police station saying that videorecording was prohibited.
4. As a result of the defendants' charging me with interference, a criminal case against me started in the Connecticut Superior Court.
5. The superior court held more than twenty hearings in the case, including brief status conferences and occasions on which the hearing was postponed after being convened.
6. I traveled to Waterbury for all but a few of the hearings. For the hearings that I did not travel to Waterbury for, I understood that I would nonetheless have to be prepared to travel to Waterbury if the superior court changed its mind and demanded that I appear, which it did on one occasion.

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7. By my typed signature below, I certify under penalty of perjury that the foregoing is true and correct.

 /s/ Keith Massimino
Keith Massimino

Executed on June 16, 2022

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Exhibit 4

(Deposition of Keith Massimino)

JA-58

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

KEITH MASSIMINO, : NO: 21-cv-01132 (RNC)
Plaintiff :
V. :
MATTHEW BENOIT AND :
FRANK LAONE, :
Defendants :

Remote deposition of KEITH MASSIMINO,
appearing remotely from Hartford, Connecticut,
taken on behalf of the Defendants, through
counsel, pursuant to Fed. R. Civ. P. 30, before
DONNA OLIVER, Court Reporter and Notary Public
duly commissioned and qualified, in and for the
State of Connecticut, appearing remotely from
Waterbury, Connecticut, on April 28, 2022,
commencing at 9:58 a.m.

GERSON REPORTING SERVICE
Office (203) 754-2024
Fax (203) 528-3796

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1 REMOTE APPEARANCES:

2
3 For the Plaintiff:

4 ACLU Foundation of Connecticut

5 765 Asylum Avenue

6 Hartford, CT 06105

7 BY: DAN BARRETT, ESQ.

8 For the Defendants:

9 Office of Corporation Counsel

10 City of Waterbury

11 235 Grand Street, 3rd Floor

12 Waterbury, CT 06702

13 BY: JOSEPH A. MENGACCI, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties that all formalities in connection with the taking of the deposition, including time, place, sufficiency of notice, and the authority of the officer before whom it is being taken are hereby waived.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that all objections, except as to form, are reserved until the time of trial.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that the deposition may be signed before any Notary Public.

IT IS FURTHER STIPULATED AND AGREED by and among counsel for the respective parties that the reporting of the deposition and oath administered are being done remotely.

1 KEITH MASSIMINO,

2 called as a witness, being first duly
3 sworn/affirmed remotely by Attorney Barrett, duly
4 commissioned and qualified, was examined and
5 testified on his oath as follows:

6 MR. MENGACCI: Usual stipulations with
7 the exception that the witness will read and
8 sign the deposition transcript, correct,
9 Attorney Barrett?

10 MR. BARRETT: So long as those encompass
11 all objections being withheld except for
12 form. Remind me of the others, Mr.
13 Mengacci.

14 MR. MENGACCI: Well, we're obeying to the
15 authority of the court reporter, the
16 competency of the court reporter, any
17 deficiencies of notice. I believe that
18 those are what the usual stipulations are.

19 MR. BARRETT: Those sound good to me.

20 MR. MENGACCI: Okay, great.

21 DIRECT EXAMINATION

22 BY MR. MENGACCI:

23 Q. Mr. Massimino, I'm going to ask you some
24 questions today. If there's any question that I
25 ask you that is confusing in any way or you don't

1 understand it, please don't answer the question,
2 let me know whatever problem you're having with
3 the question and I will attempt to rephrase it,
4 okay?

5 A. Sounds good.

6 Q. Okay. And all questions have to be
7 answered audibly, so we don't want nods of the
8 head or uh-huhs or anything like that because we
9 want the court reporter to accurately take down
10 your responses, okay?

11 A. Understood.

12 Q. And I would ask you just give me the
13 courtesy of completing my question before you
14 answer it so the transcript is not confusing in
15 any way with two people speaking at the same time,
16 okay?

17 A. Sounds good.

18 Q. Have you ever had your deposition taken
19 before, Mr. Massimino?

20 A. One time, I believe.

21 Q. And can you tell me what type of matter
22 that was in connection with?

23 A. It was an automobile accident.

24 Q. And was it a claim being made by you or
25 a claim being made against you?

JA-63

1 A. By me.

2 Q. And was that as a result of injuries
3 that you received in that accident?

4 A. Yes.

5 Q. And do you remember approximately the
6 date of that accident?

7 A. I want to say 2013 or '14. It was a
8 long time ago.

9 Q. And do you know if that matter has since
10 been resolved or is it pending?

11 A. It's been resolved.

12 Q. And was it resolved by way of settlement
13 as opposed to a trial before judge or jury?

14 A. Settlement.

15 Q. And do you remember in what courthouse
16 that case was pending?

17 A. I don't recall.

18 Q. Were you represented by counsel?

19 A. Yes.

20 Q. Who was your attorney?

21 A. Carter Mario.

22 Q. And were you asserting claims in that
23 matter for personal injuries?

24 A. If I understand you correctly, yes, I
25 was injured in the accident, and that's what we

JA-64

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7

1 were having the deposition for.

2 Q. Okay. And with regard to those personal
3 injuries, what injuries did you receive in that
4 automobile accident that was the subject of that
5 lawsuit?

6 A. I injured my back.

7 Q. As a result of the injury to your back,
8 do you know whether you received what's called a
9 permanency rating or a permanent disability
10 rating?

11 A. I did receive a rating. I believe it
12 was 10 percent. I'm not a hundred percent on the
13 actual percentages.

14 Q. And the medical providers with whom you
15 treated, was it a chiropractor? An orthopedic
16 physician? Both?

17 A. Chiropractor. And it was Dr. Spitz in
18 Bristol, Connecticut.

19 Q. And is Dr. Spitz the chiropractor?

20 A. Correct.

21 Q. Okay. And other than the injury to your
22 back, were you making any other claims for any
23 other physical injuries?

24 A. I believe at the time I hurt my neck,
25 too, but it wasn't like anything as far as a

JA-65

1 rating goes. I got, you know, just injured with
2 whiplash.

3 Q. And do you know whether you made any
4 claims in that case for pain and discomfort or the
5 lasting effects of the injury?

6 A. I'm not understanding the question.

7 Q. You were given a 10 percent or some
8 percentage rating, at least, by Dr. Spitz,
9 correct?

10 A. Yes.

11 Q. All right. Do you still continue to
12 have some problems with your back as a result of
13 that accident?

14 A. Yes.

15 Q. What types of problems do you have?

16 A. Mainly just standing for too long,
17 bending down, anything that would exacerbate my
18 lower back.

19 Q. Other than that particular lawsuit in
20 which you did get the deposition, have you been a
21 party to any other lawsuit for any reason --

22 A. Yes.

23 Q. -- other than this case. I'm sorry?

24 A. Yes.

25 Q. Tell me what other lawsuits you've been

JA-66

1 involved in.

2 A. There's been other automobile accidents,
3 as well.

4 Q. Okay. And those matters -- that's
5 withdrawn.

6 Did those automobile accidents result in
7 you making any claims for personal injury?

8 A. Yes.

9 Q. And can you tell me approximately when
10 each of those other accidents occurred?

11 A. There was an automobile accident when I
12 was in high school.

13 Q. So that would have been approximately
14 what year, Mr. Massimino?

15 A. I want to say 2000 or 2001.

16 Q. Okay. Any others?

17 A. Yup. There was another automobile
18 accident just recently. It was October of this
19 year.

20 Q. Okay. When you say "of this year," you
21 mean October 2021?

22 A. Yes. I'm sorry. Yup.

23 Q. And first let's talk about the accident
24 -- well, let me finish this.

25 Are there any other motor vehicle

JA-67

1 accidents other than the three that you've now
2 mentioned?

3 A. I'm trying to think back to make sure.
4 Not that I recall.

5 Q. Okay. So let's talk about the one when
6 you were in high school. Did you retain the
7 services of an attorney?

8 A. No.

9 Q. Did you make any form of settlement with
10 the insurance company or the other operator?

11 A. Yes.

12 Q. So you settled it yourself?

13 A. Correct. I was a minor at the time, so
14 --

15 Q. Your parents?

16 A. Yes.

17 Q. And what injuries did you have in
18 connection with the accident when you were in high
19 school?

20 A. I broke my ribs.

21 Q. Right or left?

22 A. I'm going back 20 years. I believe it
23 was right?

24 Q. I guess the good news is if you had to
25 think about it, it's not bothering you anymore,

JA-68

1 right?

2 A. Correct.

3 Q. And in connection with the most recent
4 accident, have you made a claim as a result of
5 that accident?

6 A. Yes.

7 Q. And do you know whether the claim has
8 been put into a lawsuit or it's just a claim being
9 made against the other person?

10 A. I believe it's in a lawsuit right now.

11 Q. And who is your attorney?

12 A. Flood, Attorney Flood out of Middletown.

13 Q. Which Flood?

14 A. I'm not sure.

15 Q. So the Flood Law Firm?

16 A. Yes.

17 Q. Okay. And what injuries did you receive
18 in that accident, Mr. Massimino?

19 A. I had concussion, neck issues that I've
20 been treating for, as well as back issues.

21 Q. I'm sorry, I didn't get the last part.

22 A. Back. Back, neck, and concussion.

23 Q. Okay. Are you still treating for any or
24 all of those conditions?

25 A. I haven't treated in some time, but I am

JA-69

1 technically still treating, yes. I haven't been
2 to therapy in probably about a month.

3 Q. Okay. Now, with regard to the
4 concussion, have you -- first of all, with regard
5 to the concussion, did you lose consciousness at
6 all in that accident?

7 A. No.

8 Q. And has anyone diagnosed you with having
9 had a concussion as a result of that accident?

10 A. The emergency room I went to after the
11 accident diagnosed me with a concussion.

12 Q. And has any healthcare provider
13 diagnosed you with what's known as postconcussive
14 syndrome?

15 A. No.

16 Q. Are you having any problems since that
17 accident with headaches, memory loss,
18 concentration, anything like that?

19 A. Headaches.

20 Q. Headaches. And how often are you
21 getting headaches?

22 A. When it was closer to the accident, it
23 was more frequently. It's subsided since then. I
24 would say once a week, maybe, you know, twice a
25 week, somewhere in that order.

JA-70

1 Q. And what do you do to deal with the
2 situation when you have a headache?

3 A. I'll take over-the-counter medication or
4 put heat or ice on my neck.

5 Q. Okay. We talked about claims and
6 lawsuits involving motor vehicle accidents. Other
7 than this particular matter against the Waterbury
8 police officers, have you been involved in any
9 other lawsuits of any kind, either having brought
10 a lawsuit or having been sued by someone?

11 A. No.

12 Q. How old are you, Mr. Massimino?

13 A. Thirty-seven.

14 Q. And I understand that you're a married
15 individual?

16 A. I am.

17 Q. And what is your wife's name?

18 A. Eva. Same last name, Massimino.

19 Q. Same last name?

20 A. Yes.

21 Q. And what does Eva do? Does she work
22 outside the home?

23 A. She works outside the home, but she's
24 been working from home because of COVID. But
25 she's an attorney.

JA-71

1 Q. She's an attorney?

2 A. Yes.

3 Q. All right. And does Eva work in her own
4 firm or is she a member of a law firm?

5 A. She's a member of Bendett & McHugh.

6 Q. I'm sorry, what's the name of the firm?

7 A. Bendett and McHugh.

8 Q. Bendett?

9 A. And McHugh.

10 Q. And McHugh.

11 A. In Farmington.

12 Q. In Farmington. Okay. How do you spell
13 the first individual's name?

14 A. B-e-n-n-d -- no, B-e-n-n-e-d-t (sic), I
15 believe. I'm terrible with spelling.

16 Q. Okay, close enough. But they're in
17 Farmington. Does your wife practice law in a
18 particular area? In other words, does she have a
19 specialty?

20 A. Yes; she practices real estate law.

21 Q. Is your wife of similar age to you?

22 A. Yes.

23 Q. And I understand from the lawsuit that
24 you brought in this matter that you and Eva are
25 the parents of some minor children?

JA-72

1 A. Yes.

2 Q. And how many children do you and Eva
3 have?

4 A. Two. We have Lucas, who's seven, and
5 Alexander, who's two.

6 Q. And can you tell me a little bit about
7 your educational background, Mr. Massimino?

8 A. I graduated from Cheshire High School in
9 2003. I went on to get my associate's degree from
10 Naugatuck Valley Community College, and then I
11 graduated from Connecticut School of Broadcasting
12 in 2009.

13 Q. And post high school graduation, were
14 you employed in any capacity while you were
15 pursuing your associate's degree at Naugatuck
16 Valley Community College?

17 A. I was employed at a few different
18 places.

19 Q. And what type of employment did you
20 have?

21 A. I started at Pasta Plus, which was a
22 restaurant in Cheshire, and then I worked for
23 Palmieri and Son Trucking out of Hamden, and then
24 after that I worked for New Britain Rock Cats in
25 New Britain, and I also worked for a catering

JA-73

1 company for a short time in Bristol.

2 Q. Okay. This may be an obvious question,
3 but in any of those positions that you just
4 mentioned, those jobs that you had, did they
5 involve working in any form of media?

6 A. Yes.

7 Q. Okay. Which one?

8 A. New Britain Rock Cats.

9 Q. Okay. And what did you do there?

10 A. I was a camera operator and director.

11 Q. Camera operator?

12 A. Yup. And director.

13 Q. And for how long did you work for the
14 New Britain Rock Cats?

15 A. I believe it was from, I want to say,
16 '09 to '12.

17 Q. And was that considered a full-time or
18 part-time?

19 A. Part-time. Seasonal, actually.

20 Q. Seasonal, okay. And was I correct in
21 assuming that you were, at the time that you were
22 working in these various positions, also going to
23 Naugatuck Valley Community College to get your
24 associate's degree?

25 A. During the time of Naugatuck Valley I

1 worked at Palmieri and Son Trucking only, and then
2 after I graduated from Naugatuck Valley and while
3 I was attending Connecticut School of Broadcasting
4 I worked at Rock Cats.

5 Q. Okay. And the Pasta Plus was then
6 before you worked at -- I'm sorry, when you went
7 to Naugatuck Valley?

8 A. It was right around the same time. I
9 can't remember if I left prior to starting at
10 Naugatuck, but it's right around that same time.

11 Q. Okay. Just so I have the chronology
12 correct, you indicated that you worked at the New
13 Britain Rock Cats from 2009 to 2012, and you said
14 while you were going to the Connecticut School of
15 Broadcasting, and I think you indicated that you
16 graduated from the Connecticut School of
17 Broadcasting in 2009, is that right?

18 A. Yeah, it was around the same time. So
19 basically I was -- I worked at New Britain Rock
20 Cats around the same time as either I was
21 finishing classes or still taking classes.
22 Basically I got the position through the professor
23 who was teaching classes there.

24 Q. Okay. And between 2009 and 2012 when
25 you were working seasonally at the New Britain

JA-75

1 Rock Cats, did you have any other form of
2 employment during those years?

3 A. I worked for United States Census. I
4 can't remember which year it was, but it was
5 within that timeframe. When was the last census?
6 I'm trying to remember. I can't remember. It was
7 in that timeframe, though, U.S. Census during that
8 time, as well as Birds Eye Sports for production.

9 Q. I'm sorry, what was that called?

10 A. Birds Eye Sports.

11 Q. Birds Eye?

12 A. Yup.

13 Q. And that was in production?

14 A. Correct.

15 Q. Was that a part-time or full-time job?

16 A. Part-time. It wasn't full, but it also
17 was -- I'm a freelance camera operator, so there
18 was some times where I wouldn't have work for two
19 months, but then there were other times I would be
20 very busy for three weeks.

21 Q. Okay. And then let's go from 2012
22 forward. What type of employment did you have
23 after 2012?

24 A. I've been basically a freelance camera
25 operator since 2012, with my main company I work,

JA-76

1 which is Birds Eye Sports. I had a brief
2 employment with ESPN in 2015, I believe it was.

3 Q. For how long?

4 A. I think eight months. Six or eight
5 months. It was less than a year.

6 Q. And what position did you have during
7 that time at ESPN?

8 A. I was a camera operator in the studio.

9 Q. You said that from 2012 to the present
10 time you also worked as a freelance photographer,
11 but did you say mainly for Birds Eye Sports?

12 A. Correct. Most of my work is through
13 Birds Eye Sports. I'd say probably 80 percent of
14 my work is through Birds Eye and another 20 is
15 through other various companies.

16 Q. Are you considered an independent
17 contractor with regard to your work for Birds Eye?

18 A. Yes.

19 Q. And my understanding of your testimony
20 is that you have continuously been a freelance
21 photographer since 2012 through the present time,
22 correct?

23 A. Correct.

24 Q. And that was the same occupation and
25 form of employment that you held at the time of

JA-77

1 this incident in October of 2018; is that correct?

2 A. Correct.

3 Q. As a freelance photographer, do you do
4 both still as well as video recordings?

5 A. Mainly only video.

6 Q. And do you have a place of business or
7 do you work from your home?

8 A. I work from my home.

9 Q. And do you have some sort of setup at
10 your home that allows you to edit and do other
11 types of procedures with regard to videotaping
12 that you may do?

13 A. Yes. I have an editing suite in my
14 office.

15 Q. Does that suite contain equipment that
16 allows you to edit and ultimately produce a
17 finished product?

18 A. Yes. I edit on a Final Cut Pro 7, as
19 well as iSkysoft.

20 Q. As a professional photographer -- and am
21 I saying that correctly? Is that how we --

22 A. Videographer.

23 Q. Videographer, okay. As a professional
24 videographer and as a self-employed individual
25 doing that type of work, do you possess any type

JA-78

1 of press or media credentials?

2 A. I'm not really sure how to answer the
3 question because when I -- for some productions
4 there is no credentials needed and we don't have
5 any and aren't given, and some we are given.

6 Q. Okay. Give me examples of when you
7 would be in possession of press credentials in
8 performing your job.

9 A. Sure. So every year I do the New Jersey
10 state football championships out of MetLife
11 Stadium.

12 Q. I'm sorry, New Jersey state football
13 championships where?

14 A. MetLife Stadium. And for those, for
15 instance, we are given credentials from MetLife.
16 Instances where I do not receive credentials would
17 be local corporate events, local high school
18 events, any gigs I am picking up with Stringer to
19 cover local accidents, police activity, things of
20 that nature.

21 Q. I'm sorry, could you repeat that last
22 answer?

23 A. Stringer is another form -- it's an App
24 where local news stations ask for whether it be
25 car accidents, robberies, anything involving

1 medical personnel, things of that nature.

2 Q. Okay. Could you spell that for me,
3 please, the App?

4 A. S-t-r-i-n-g-e-r.

5 Q. And it's an App that you would download
6 to be able to subscribe to some service for
7 credentialing through that App?

8 A. They do not offer credentials. What
9 they do is, it's a platform where they can request
10 footage as needed or you can upload footage at
11 your discretion.

12 Q. Okay. How does that App work in
13 relationship at all to my question about
14 credentials?

15 A. I was just stating they do not provide
16 credentials for any event.

17 Q. Okay. So explain to me how that
18 Stringer App would be used by you, for example.

19 A. Let's say I was home. I would get a
20 ping on my phone asking for footage of a local
21 bank robbery, to which I would drive to the bank,
22 capture footage and upload it. If they wanted it
23 and the outlets would purchase it, I would get
24 paid after that.

25 Also if, let's say, I'm driving down the

JA-80

1 road and I was to see a motor vehicle accident and
2 I thought maybe they would purchase it, I could
3 pull over, film that, upload it and then, again,
4 if they decide to purchase it, I would get paid.

5 Q. Okay. So Stringer App, that's serves as
6 a clearing house between individuals looking for
7 certain video information and individuals who have
8 certain video information?

9 A. Correct.

10 Q. Did you upload to the Stringer App the
11 footage from this particular incident?

12 A. No.

13 Q. Did you upload or make available through
14 any social media platforms the footage from the
15 incident in October of 2018 with the Waterbury
16 police officers?

17 A. Yes. My YouTube page.

18 Q. And does your YouTube page have a name?

19 A. Northeast Auditor.

20 Q. Other than your YouTube page, do you
21 have any blogs?

22 A. No.

23 Q. Do you post anything on Facebook
24 concerning any auditing?

25 A. I don't believe I have, no.

JA-81

1 Q. Other than YouTube, do you or have you
2 used any other form of social media with regard to
3 issues relating to First Amendment audits?

4 A. No.

5 Q. Do you belong to any associations or
6 organizations whose purpose is First Amendment
7 audits?

8 A. No.

9 Q. Do you associate with or communicate
10 with in any form with other individuals who are
11 involved with First Amendment audits?

12 A. Yes.

13 Q. And how do you do that?

14 A. There's one Auditor that I'm familiar
15 with that I know through text message; we talked
16 in the past.

17 Q. It what is that individual's name?

18 A. Sean-Paul Reyes.

19 Q. Sean-Paul?

20 A. Reyes.

21 Q. Reyes, R-e-y-e-s?

22 A. I believe so.

23 Q. And your communication was Mr. Reyes,
24 are those telephonically, FaceTime, e-mails? How
25 do you communicate?

JA-82

1 A. Mainly telephone and e-mail.

2 Q. And other than Mr. Reyes, any other
3 individuals with whom you have any type of regular
4 communication regarding First Amendment issues?

5 A. No.

6 Q. As a result of this incident, you were
7 arrested and charged with interfering with a
8 police officer; is that correct?

9 A. Yes.

10 Q. And it's my understanding that you had
11 an attorney other than Attorney Barrett who
12 represented you in connection with those criminal
13 proceedings; is that correct?

14 A. Correct.

15 Q. And was that Attorney Joseph Sastre,
16 S-a-s-t-r-e?

17 A. Yes.

18 Q. And was there any other attorney that
19 either represented you or participated in the
20 defense of those charges on your behalf?

21 A. Yes. Attorney Kaloidis out of
22 Waterbury.

23 Q. All right. And so what I'm trying to
24 understand is, were they representing you jointly,
25 or how did that work?

JA-83

1 A. They were representing me jointly.

2 Q. Okay. And, for example, when you would
3 go to court for any court proceeding in connection
4 with your matter, would both Mr. Sastre and
5 Attorney Kaloidis appear with you?

6 A. There were times where it was both and
7 there were times where it was just one or the
8 other.

9 Q. Okay. And did you officially retain
10 both of these attorneys to represent you in
11 connection with this matter?

12 A. Yes.

13 Q. Why was it that you decided to have two
14 attorneys represent you rather than just one?

15 A. The case seemed to be dragging a little
16 bit in the start, and I wanted to talk to -- I
17 talked to JR, Attorney Sastre, at first, and I
18 wanted to talk to someone else who was familiar --
19 more familiar with Waterbury court, so we -- he
20 knew of Attorney Kaloidis, we spoke with him, and
21 he agreed to hop on as well.

22 Q. Okay. So your initial retention was
23 with Attorney Sastre, and then at some point
24 during the process you also retained the services
25 of Attorney Kaloidis?

JA-84

1 A. Correct.

2 Q. And did you receive bills for legal
3 services from both those attorneys?

4 A. I received -- my first retainer,
5 Attorney Sastre, he told me how much it was going
6 to be per visit, as well as a retainer. Attorney
7 Kaloidis, we did not discuss any type of money at
8 any point, other than we'll square it away and
9 talk about it later.

10 Q. Okay. Let's talk about fees to Attorney
11 Sastre. Do you know offhand how much you paid to
12 Attorney Sastre to represent you?

13 A. I originally, I believe, gave him \$500
14 to start.

15 Q. How much?

16 A. Five hundred start, I believe it was.

17 Q. Okay.

18 A. And then I can't remember if it was \$190
19 per visit or \$290 per visit, but I was paying that
20 to start, but then when it got to the point where
21 it was -- I couldn't keep up, he said "Don't worry
22 about it, we'll talk about this later," and the
23 bills basically grew.

24 Q. The bills basically what?

25 A. It just grew. I stopped paying it at

JA-85

1 some point in the three year span.

2 Q. Okay. And is there a balance that's
3 owed to Attorney Sastre?

4 A. Yes.

5 Q. Do you know how much that is?

6 A. I don't.

7 Q. Do you have records of the invoices and
8 the payments that you did make in connection with
9 that representation?

10 A. I have some, I don't have all.

11 Q. Have you ever on occasion given copies
12 of any of those to Attorney Barrett?

13 A. I have not.

14 Q. Okay. Would you provide those to
15 Attorney Barrett so that he can furnish me with a
16 copy?

17 A. Yes.

18 Q. And with regard to Attorney Kaloidis --

19 MR. MENGACCI: And Attorney Barrett, I
20 didn't want to step around you here. Is
21 that okay with you that he provides you with
22 the invoices on his damage claim?

23 MR. BARRETT: Yes. Mr. Mengacci, if you
24 propose those to me as a request to produce
25 and the items you're looking for, then of

1 course we will respond to that.

2 MR. MENGACCI: Well, I'm propelling you
3 right now. Are you making me go to the
4 effort of putting in writing in a formal
5 request for production?

6 MR. BARRETT: Yes.

7 MR. MENGACCI: Okay. All right.

8 BY MR. MENGACCI:

9 Q. And let's talk about Attorney Kaloidis.
10 Did you get any invoices or other communications
11 from him or his office with regard to what you owe
12 him?

13 A. No.

14 Q. In a disclosure made by Attorney
15 Barrett, it's called a 26(a) disclosure -- did you
16 ever see that document, by the way?

17 A. I don't believe -- I'm not sure, to be
18 honest with you.

19 Q. All right. It requires a disclosure of
20 a computation of your damages, and what Attorney
21 Barrett has indicated is that you're seeking
22 recompense for this job and mileage costs and many
23 trips to superior court and expenses you incurred
24 to replace your cell phone and video camera seized
25 by the defendants and held by them for an extended

1 period of time. Now, I'm going to break that down
2 and ask you about each of those elements here.

3 What documentation do you have
4 concerning jobs that were missed as a result of
5 this particular incident or your being required to
6 appear in court?

7 A. I have a work calendar that I work off
8 of, and there's dates in the beginning, at least,
9 that were crossed off by me as being not available
10 to pick up more work because obviously I didn't
11 know when I would be at court.

12 Q. And do you have any records or any way
13 of documenting that you weren't at specific jobs
14 on one of those specific dates, that you did not
15 get?

16 A. So a lot of the job is me reaching out
17 to clients to see if there's work available, as
18 well as some reaching out to me. There would be
19 many days where I just wouldn't reach out to
20 clients to see if work was available because I
21 knew I was not available those days. But yes,
22 there is some e-mails, I'm sure, that I can pull
23 up that -- you know, me saying that I can't come
24 in or I can't work or I'm not available this day
25 because of court.

JA-88

1 Q. Have you ever sat down and calculated
2 what you believe to be your financial losses as a
3 result of missed jobs?

4 A. I have not.

5 Q. Do you think you can do that?

6 A. Yes.

7 Q. Okay. Mileage costs for trips to
8 superior court, those would be mileage costs
9 between what point and what point?

10 A. I would assume my home to the
11 courthouse.

12 Q. And your home is in Wallingford?

13 A. Correct.

14 Q. So approximately how many miles is that?
15 Do you know?

16 A. I want to say 19, but I'm not sure.

17 Q. Okay. And do you know offhand how many
18 trips you had to make to the Waterbury Superior
19 Court before the case was nolle and dismissed?

20 A. It was over 20, but I don't have the
21 exact number in front of me.

22 Q. Does your calendar that you referred to
23 previously reflect the dates that you went to
24 court?

25 A. It should have most of them, yes.

1 Q. What expenses did you incur to replace
2 your cell phone and video camera?

3 A. I purchased a small phone at first
4 because they seized my phone, so something cheap
5 at the AT&T store just to use, and then I
6 purchased a permanent phone a short time later.

7 Q. And what did you do with the small phone
8 and the subsequent purchase of a permanent phone
9 when your phone was returned to you?

10 A. The small burner phone I just, I think,
11 threw in a drawer. The new permanent phone I
12 kept, and phone that was seized I gave to my son.

13 Q. And with regard to the video camera, did
14 you purchase or obtain another video camera?

15 A. Yes.

16 Q. And do you know how much you paid for
17 that?

18 A. It was around \$100.

19 Q. And was that camera substantially
20 similar to the video camera that was taken by the
21 police?

22 A. I believe it was the exact model or one
23 very similar.

24 Q. And when your video camera was returned
25 to you from the police, what did you do with the

JA-90

1 one that you had purchased in the interim?

2 A. I kept both.

3 Q. Do you continue to use both?

4 A. No. One was destroyed.

5 Q. Which one was destroyed?

6 A. I'm not sure. It was one or the other,
7 because like I said, the models are similar. I
8 don't know which one was destroyed. I was filming
9 my son on a water slide, and I dropped it in the
10 water, so...

11 Q. And you don't know as you sit here
12 whether the one that got dropped in the water was
13 the one that the police seized from you or whether
14 it was the one that you bought as a replacement;
15 is that correct?

16 A. Correct.

17 Q. Now, this lawsuit that you brought
18 against Officers Benoit and Laone, I want to ask
19 you some questions specifically about the date of
20 the incident, okay?

21 A. Okay.

22 Q. And by the way, I meant to tell you, I
23 don't think this is going to be very, very long,
24 but if at any point you think you need a break for
25 any reason, let us know, okay? I'll be happy to

JA-91

1 accommodate you.

2 A. Awesome. Thank you.

3 Q. Okay. So the lawsuit that was brought,
4 first question I have for you, have you ever read
5 the document entitled "Complaint" that was brought
6 on your behalf by Attorney Barrett to the U.S.
7 District Court?

8 A. When it was first filed in August I read
9 over it.

10 Q. Okay. And was there anything that you
11 saw in that complaint that was not 100 percent
12 accurate and truthful?

13 A. I'm not understanding the question, I
14 don't think.

15 Q. Okay. You read over the complaint filed
16 on your behalf by Attorney Barrett, correct?

17 A. Yes.

18 Q. I'm asking you whether when you read it,
19 at the time you read it, had it already been filed
20 or was it shown to you in preparation for filing?

21 A. I believe it was right before we filed
22 it.

23 Q. Okay. So you had an opportunity to
24 review it to make sure that everything that was in
25 it was truthful and accurate, correct?

JA-92

1 A. Yes.

2 Q. And do you recall whether or not you
3 asked for any changes, directions, whatever, in
4 the document you were shown before it got filed
5 with federal court?

6 MR. BARRETT: Objection. The question
7 calls for communications between the client
8 and his lawyer. I'll instruct him not to
9 answer.

10 MR. MENGACCI: I didn't ask him for the
11 actual communication, I just asked him if
12 there were any changes.

13 MR. BARRETT: You're asking for him to
14 confirm or deny that he made a particular
15 statement to his lawyer. I'm telling him
16 not to respond to that.

17 BY MR. MENGACCI:

18 Q. Do you know whether any changes were
19 made in the document from the time that you
20 reviewed it until the time it was filed?

21 A. I don't know.

22 Q. Okay. And when you read the document
23 before it was filed, that is the complaint, do you
24 recall seeing anything in that document that
25 wasn't 100 percent accurate and truthful?

JA-93

1 A. I don't recall.

2 Q. You don't know?

3 A. I don't recall. I don't remember if
4 there was anything -- there was nothing that
5 sticks out to me that I had to say "That's wrong."
6 So, no, there's nothing that sticks out to me that
7 I had to point to as a problem.

8 Q. Okay. And let me ask you the question
9 this way: If you read the document and there was
10 something in there that was wrong or was not
11 completely accurate or truthful, you would have
12 brought that to the attention of your attorney,
13 would you not?

14 A. Yes.

15 Q. Okay. In the complaint it says that
16 you're a professional videographer and photo
17 journalist primarily covering sporting events. Is
18 that true?

19 A. Yes.

20 Q. And that you also have an interest in
21 freedom of information and speech; is that
22 correct?

23 A. Yes.

24 Q. Can you tell me a little bit of how you
25 gained interest in the area of freedom of

1 information and speech?

2 A. About the time I started Stringer, I was
3 noticing that on certain calls where I would go
4 film, I would be stopped by law enforcement or
5 told I could not film or just hindered in filming,
6 which led me to do research and look into, you
7 know, what parameters you have to film.

8 Q. Okay. And that peaked your interest in
9 issues relating to free speech and freedom of
10 information?

11 A. Correct.

12 Q. And when did you first begin doing any
13 type of First Amendment audits?

14 A. I want to say it was -- it wasn't too
15 far before the incident in Waterbury, so I want to
16 say within that year.

17 Q. So earlier in 2018?

18 A. Yes.

19 Q. And after this incident in October of
20 2018, had you undertaken to perform any other
21 First Amendment audits?

22 A. I have not.

23 Q. Why is that?

24 A. At the time I had the criminal case
25 pending in Waterbury, and I wanted to get that

JA-95

1 sorted out before I went out and audited again.

2 Q. And when did that case terminate?

3 A. It was, I believe, May of last year, so
4 May of '21. May or June of '21.

5 Q. So from the time that your criminal
6 proceedings terminated, to and including the
7 present time, you have not undertaken to do any
8 other First Amendment audits?

9 A. Correct.

10 Q. Since your criminal case has not been
11 pending since last May or June, is there a reason
12 why you have not undertaken any other First
13 Amendment audits?

14 A. We filed the lawsuit in August, and as
15 such I didn't want to do any more audits until
16 this is sorted out, as well.

17 Q. And when you say "until this is sorted
18 out," is that because you're uncertain as to
19 whether you can or cannot do what you did in this
20 particular case?

21 A. No, I just didn't want to open up
22 another possible case or look into more audits
23 until this has ran its course.

24 Q. Okay. Now, according to the complaint
25 it says that "On the evening of Tuesday, October

JA-96

1 30, 2018, Mr. Massimino was driving through
2 Waterbury on his way home from a job." Is that
3 accurate?

4 A. Yes.

5 Q. And do you remember from where it was
6 you were coming from that job?

7 A. I was actually coming from MetLife
8 Stadium in New Jersey.

9 Q. And what route were you on as you were
10 passing through Waterbury?

11 A. 84.

12 Q. And it goes on to say that you became
13 stuck in traffic on Interstate 84. Was there some
14 sort of accident or was it just a backup of the
15 number of cars in that area of the highway?

16 A. I'm not sure. It was just heavy
17 traffic.

18 Q. It was just what?

19 A. Heavy traffic.

20 Q. And according to the complaint, you then
21 decided to film the exterior of the Waterbury
22 Police Department located at 255 East Main Street.
23 Is that correct?

24 A. Correct.

25 Q. Could you bring me through your thought

JA-97

1 process, Mr. Massimino, as to how you went from
2 coming -- well, withdrawn.

3 Was it your intent, had you not got
4 stuck in traffic, to continue on Route 84 through
5 Waterbury and eventually on to your home?

6 A. I'm not understanding the question.

7 Q. According to the way I'm reading the
8 complaint -- tell me if I'm wrong -- you point out
9 the fact that you got stuck in traffic and somehow
10 that motivated you to go ahead and film the
11 Waterbury Police Department, right? That's what
12 this says?

13 A. Yes. So I was in traffic, and I was
14 just waiting in traffic, and I said instead of
15 sitting here in traffic for, let's say, the next
16 half hour, I have my gear with me, I'll go get
17 some footage.

18 Q. Okay. So before you got stuck in
19 traffic, did you have any plan or intention to
20 stop in Waterbury and film the Waterbury Police
21 Department?

22 A. Not on that day, no.

23 Q. Okay. Had you had any thoughts prior to
24 that day about going to Waterbury and filming the
25 Waterbury Police Department?

JA-98

1 A. Yes.

2 Q. And what caused you to have those kinds
3 of thoughts or motivation?

4 A. Just in thinking of doing audits, I was
5 thinking about local government agencies that were
6 close to me.

7 Q. All right. You live in Wallingford,
8 right?

9 A. Correct.

10 Q. You could have photographed the
11 Wallingford Police Department, correct?

12 A. Correct.

13 Q. The Meriden Police Department, correct?

14 A. Correct.

15 Q. The New Britain Police Department,
16 correct?

17 A. Correct.

18 Q. All closer than Waterbury, correct?

19 A. I don't know if New Britain -- I think
20 Waterbury is actually closer than New Britain.

21 Q. But you would agree that Wallingford,
22 Cheshire, perhaps, is closer?

23 A. Correct.

24 Q. What other police departments would be
25 closer to your home in Wallingford other than the

JA-99

1 Waterbury Police Department?

2 A. I would say any of the surrounding
3 towns.

4 Q. So any town that's contiguous with
5 Wallingford would have a police department located
6 closer than the one in Waterbury?

7 A. Correct.

8 Q. And when you were thinking about doing
9 this First Amendment audit, what made you choose
10 Waterbury over any other police department?

11 A. There was nothing that stood out at me
12 that made me jump out at the idea of doing
13 Waterbury.

14 Q. When did you first have any idea that
15 you would do a First Amendment audit of any police
16 station? When did that first come to mind for
17 you?

18 A. Probably when I started in early --
19 earlier that year.

20 MR. BARRETT: I'm sorry, Mr. Massimino, I
21 wonder if I can just remind you to let Mr.
22 Mengacci finish his questions before you
23 begin your answer, please.

24 THE WITNESS: Sure.

25 Q. The question, so the record is clear,

JA-100

1 is, when did you first begin contemplating viewing
2 a First Amendment audit of any police station?

3 A. I first started around early 2018.

4 Q. Early 2018. Okay. So that would have
5 been anywhere from eight to nine, ten months
6 before this incident?

7 A. Correct.

8 Q. And what was it that caused you to think
9 about doing a First Amendment audit of a police
10 department?

11 A. Just from seeing YouTube videos and
12 learning about, you know, freedom of the press,
13 essentially.

14 Q. And the YouTube videos that you were
15 seeing, were they YouTube videos of individuals
16 who were, in fact, engaging in First Amendment
17 audits?

18 A. Yes.

19 Q. Would those YouTube videos included Mr.
20 Reyes's videos?

21 A. No.

22 Q. Okay. So the idea came to you from
23 watching some YouTube videos about the issues of
24 First Amendment audits and specifically
25 videotaping the exterior of governmental

JA-101

1 buildings, correct?

2 A. Correct.

3 Q. And so you decided that at some point
4 you were going to undertake to do such a First
5 Amendment audit somewhere?

6 A. Correct.

7 Q. So back to coming from MetLife Stadium
8 through Waterbury. When you left MetLife Stadium
9 and any time before you got stuck in traffic in
10 Waterbury, had you contemplated stopping in
11 Waterbury to do this First Amendment audit?

12 A. I don't recall.

13 Q. And you do recall you specifically state
14 in your complaint that once you were involved in
15 this traffic delay on 84, you did at that point
16 make the decision to get off the highway and go to
17 the Waterbury Police Department, correct?

18 A. Correct.

19 Q. And was your sole purpose in going to
20 the Waterbury Police Department that day to
21 videotape the exterior of the police department in
22 Waterbury?

23 A. Yes.

24 Q. Was there any other purpose that you had
25 in mind?

JA-102

1 A. No.

2 Q. Did you in any way anticipate that you
3 would be approached in any way by one or more
4 Waterbury police officers as you were videotaping
5 the police department?

6 A. I didn't anticipate it, but I was
7 assuming it could be a possibility considering I
8 was outside of a police station and that's where
9 police work.

10 Q. Let me ask you this: You mentioned
11 previously that one of the situations in which you
12 would have press or media credentials was when you
13 worked at MetLife stadium, correct?

14 A. Correct.

15 Q. Were you in possession of those
16 credentials when you were driving through
17 Waterbury?

18 A. I believe so.

19 Q. Were you in possession of your driver's
20 license when you were driving through Waterbury?

21 A. Yes.

22 Q. And when you were videotaping the
23 Waterbury Police Department, did you have on your
24 physical person at that time your driver's
25 license?

JA-103

1 A. I did not.

2 Q. And did you have on your physical person
3 at that time your credentials, your press
4 credentials from MetLife?

5 A. I did not.

6 Q. And where was your driver's license?

7 A. In my wallet.

8 Q. And where was your wallet?

9 A. In my car.

10 Q. And do you customarily leave your wallet
11 in your car or do you customarily have it in your
12 pants pocket, for example?

13 A. I customarily leave it in my vehicle.

14 Q. Okay. So when you were passing through
15 Waterbury and encountered the traffic, your wallet
16 was already somewhere in your vehicle other than
17 on your person?

18 A. Correct.

19 Q. And, therefore, your identification was
20 somewhere other than on your person?

21 A. Correct.

22 Q. So when you appeared at the Waterbury
23 Police Department, you did not have any form of
24 identification on your person; is that correct?

25 A. The only thing I had with my name was my

JA-104

1 pay stub in my pocket.

2 Q. And that would have been a pay stub from
3 where?

4 A. It was actually a check written out by
5 Birds Eye Sports to me.

6 Q. And was it a check or the stub? In
7 other words, did you have an actual check?

8 A. It was the actual check.

9 Q. Was it made out in your name?

10 A. Yes.

11 Q. Did it have any other form of
12 identification on it other than your name; for
13 example, Social Security number, employee number,
14 invoice number, anything like that?

15 A. No.

16 Q. So you're coming through Waterbury, and
17 you get stuck in traffic, and you decide to go
18 film the Waterbury Police Department, correct?

19 A. Correct.

20 Q. And the video camera that you had with
21 you, is that the same video camera that you had
22 used for your work at the MetLife Stadium?

23 A. No.

24 Q. Separate camera?

25 A. Yes.

JA-105

1 Q. So was there other photographic
2 equipment in your vehicle?

3 A. Yes.

4 Q. What else did you have from a
5 photographic equipment point of view that remained
6 in your vehicle when you were videotaping the
7 police department?

8 A. There was another camera and another
9 tripod.

10 Q. And is there a particular reason why you
11 chose the camera, the video camera that you did
12 choose to videotape the Waterbury Police
13 Department, over the other video camera that you
14 possessed?

15 A. No particular reason other than it's
16 more compact and not as heavy.

17 Q. And did you have a tripod with you, as
18 well?

19 A. Yes.

20 Q. Okay. But the tripod remained in the
21 car or did you take it with you when you were at
22 the police station?

23 A. I had two tripods. The larger one
24 stayed in the car with the larger camera, the
25 smaller tripod and the smaller camera came with

1 me.

2 Q. Okay. Now, I recall from the video, but
3 help me out here. It looked like you were moving
4 as you were filming the police station from
5 various angles; is that correct?

6 A. Correct.

7 Q. Was there any point in time that you
8 placed the video camera on a tripod to film some
9 or all of the police station?

10 A. It was mounted on the tripod the whole
11 time, I would just fold the legs and walk with it,
12 and then there was some times where I would spread
13 the legs and set it down.

14 Q. Okay.

15 A. In the video there's a shot where I zoom
16 in on Sergeant Benoit. At that point the legs are
17 spread and it's stable on, like, I think it was a
18 barrier at some point.

19 Q. So as we look at the video, we see you
20 moving from one point to another point. That
21 means that you collapsed the tripod legs and
22 you're basically moving along with just the
23 camera?

24 A. Yes. So I would fold the legs in, hold
25 the legs with the left hand and hold the camera

1 with the right.

2 Q. Got ya. And then there were times in
3 which you'd actually put the -- expand the tripod
4 legs and were shooting or videotaping from a fixed
5 position, correct?

6 A. Correct.

7 Q. And one of those instances you recall is
8 when you were having the conversation with
9 Sergeant Benoit?

10 A. No, it was prior to our conversation.
11 Sergeant Benoit went driving up the road, and I
12 filmed him in his cruiser.

13 Q. Okay. And so that shot of Sergeant
14 Benoit coming up -- driving up in his cruiser was
15 from a stationary position; that is that the
16 tripod was now open and on the sidewalk?

17 A. Correct.

18 Q. Okay. It says you were using this
19 Cannon video camera and the tripod, that you were
20 initially recording the -- I shouldn't say
21 initially -- that you were recording at some point
22 the main entrance of the building for
23 approximately one minute; is that correct?

24 A. I'm not sure how long I filmed the front
25 entrance, but yes, I did film the front entrance.

JA-108

1 Q. Okay. So let me ask you this: When you
2 first started to videotape the police department
3 building, is the first place you started
4 videotaping what you believe to be the main
5 entrance?

6 A. I haven't reviewed the video in some
7 time, especially the beginning. But, yes, that
8 would make sense, because I walked up right in
9 front of the front of the building. So, yes, I
10 believe that's the first area I filmed.

11 Q. And before the date of this incident,
12 Mr. Massimino, had you ever been to the Waterbury
13 Police Department or in that particular area of
14 Waterbury?

15 A. I had driven by it, yes.

16 Q. And when you say "driven by it," driven
17 along East Main Street past the front of the
18 building?

19 A. Yes.

20 Q. And that would be on other occasions
21 that you may have been in Waterbury for business
22 or non-business reasons?

23 A. Correct.

24 Q. Before this incident had you had any
25 involvement in any way with the Waterbury Police

JA-109

1 Department or any Waterbury police officer?

2 A. Never.

3 Q. Prior to the date of this incident, had
4 you had any issues or involvement with any
5 department or employee of the City of Waterbury?

6 A. Never.

7 Q. Okay. Mr. Massimino, I'd like you to
8 describe for me in your own words the incident of
9 October 30, 2018. In other words, what did you do
10 once you got out of your vehicle, through and
11 including the time that you were placed in a
12 police vehicle under arrest.

13 A. I walked out from my vehicle; I
14 approached the PD while filming; I filmed the
15 front from the sidewalk; I filmed the side of the
16 building from the sidewalk; I filmed, like I said,
17 Sergeant Benoit driving his cruiser, and then I
18 was approached by the two sergeants, we had a
19 discussion, and then I was placed in the vehicle.

20 Q. And do you recall from the video or --
21 well, withdrawn.

22 Do you recall saying to the officers
23 that you were a journalist?

24 A. Yes.

25 Q. And as an videographer and

JA-110

1 photojournalist, do you consider yourself to be a
2 journalist?

3 A. Yes.

4 Q. After you were placed under arrest, you
5 were brought into the police department and you
6 went through a bookings or processing process,
7 correct?

8 A. Yes.

9 Q. And am I correct that both at the time
10 that the officers asked you for identification
11 through and including the time that you went
12 through the bookings process, you continued to
13 refuse to give any form of identification?

14 A. No.

15 Q. When did you give identification?

16 A. When I was in the vehicle.

17 Q. When you were in the police vehicle?

18 A. Correct.

19 Q. Okay. And you were in the police
20 vehicle with an officer other than the defendants
21 in this case, Benoit and Laone, correct?

22 A. Correct.

23 Q. And how did it come about that you gave
24 identification to that individual?

25 A. When I was still on the sidewalk and

JA-111

1 right after I was told I was retained, Sergeant
2 Laone searched my pockets and pulled out my check
3 and he said "Do you have anything with your name
4 on it?" And I said "That will have my name on it,"
5 to which he told the officer in the car my name.

6 When I was in the back of the car, they
7 pulled up "Keith Massimino," but they pulled up my
8 father, to which I explained that's not me, that's
9 my father, here's my information, and I gave them
10 my name and date of birth.

11 Q. Okay. And do you know whether or not
12 that conversation took place in the police
13 vehicle?

14 A. It was half in the police vehicle and
15 half out.

16 Q. Okay. So when you disclosed that the
17 Keith Massimino that they pulled up was your
18 father and not you and told the officer who you
19 were and what your date of birth was, did that
20 occur while you were in the cruiser?

21 A. Yes.

22 Q. Okay. So when you got into the bookings
23 area, they would have then had all of the
24 information about your identification, correct?

25 A. Yes. Both sergeants, as well as the

JA-112

1 officer, knew my identification outside of the
2 building.

3 Q. So when you went into the police
4 department and were going through the bookings
5 process, did they at that point already know your
6 name and date of birth?

7 A. Yes.

8 Q. And did you then give them any further
9 information about your identification or to
10 substantiate that that information was correct?

11 A. I don't know what else I could have
12 given them, but they did not ask for anything and
13 I did not give them anything other than my name
14 and date of birth.

15 Q. And were you fingerprinted?

16 A. Yes.

17 Q. Was your -- a bookings photo taken?

18 A. Yes.

19 Q. Were you put into a holding cell?

20 A. Yes.

21 Q. And how long, approximately, did you
22 remain in the holding cell?

23 A. I was in the initial holding cell with
24 other prisoners, I want to say, for maybe over an
25 hour and a half, and then I was moved to my own

JA-113

1 private bookings cell for probably another hour.

2 Q. Okay. Did you make a telephone call to
3 your wife?

4 A. Yes.

5 Q. And did your wife come down to the
6 police station?

7 A. Yes.

8 Q. And initially was a bond placed on you?

9 A. Yes.

10 Q. And after your wife arrived, do you
11 recall that she gave information to the police
12 officers as to who you were?

13 A. I'm not understanding the question.

14 Q. When your wife arrived, do you recall
15 whether or not she submitted any proof to the
16 police officers of your identification?

17 A. She did not.

18 Q. She did not. Okay.

19 A. According to what she has told me. I
20 obviously was in a cell, so I wasn't there.

21 Q. Right. But you don't dispute that
22 initially a bond for your release was placed upon
23 you, correct?

24 A. Correct.

25 Q. But after your wife arrived, you were

JA-114

1 released on a promise to appear, correct?

2 A. I believe it was prior to my wife
3 arriving that the bonds commissioner lowered it to
4 a promise to appear.

5 Q. So your best recollection is that that
6 occurred before your wife arrived?

7 A. I -- the problem is, I was in a cell and
8 she was driving from Wallingford, so I don't know
9 what point she arrived and the bond commissioner
10 came in. But the bond commissioner did come in, I
11 want to say, substantially earlier than when Eva
12 was at the front desk.

13 Q. And do you recall any conversations with
14 your wife, whether she indicated that she
15 presented any form of identification to the police
16 on your behalf?

17 A. She did not present them. I asked her
18 after the last deposition if she presented them
19 with any identification.

20 Q. And she said she did not?

21 A. She did not. She couldn't have my ID
22 because my ID was locked in my vehicle, which she
23 doesn't have the key to, and she didn't even know
24 where my car was parked.

25 Q. Where were the keys to your vehicle?

JA-115

1 A. On me at the time when I was arrested,
2 so they were in my property.

3 Q. Okay. And she did not have a set of
4 keys, a duplicate set of keys, to get into your
5 car?

6 A. No.

7 Q. Would your wife have known that you
8 customarily left your wallet and driver's license
9 and other forms of identification in your car
10 rather than on your person?

11 A. Yes. It's very common for me to leave
12 my wallet in the vehicle.

13 Q. Okay. My question is, would your wife
14 have known of your common practice to do that?

15 A. Yes.

16 Q. Okay. So when your wife arrived at the
17 police station, from past experience she would
18 have known that your driver's license, for
19 example, was likely in your car and not part of
20 what was taken by the police on your person,
21 correct?

22 A. I don't know if she -- I can't speculate
23 on what she would have thought. It's reasonable
24 to assume she would have thought I did not have my
25 ID on me.

JA-116

1 Q. Let me ask you this, Mr. Massimino: You
2 indicated on the video to the officers that you
3 felt that it was not required of you to produce
4 any identification as you were conducting -- on or
5 after you were conducting videotaping of the
6 police department; is that correct?

7 A. Correct.

8 Q. And that's your position in this
9 lawsuit, correct?

10 A. Correct.

11 Q. Why was it then that you did give your
12 information to the police officer in the police
13 cruiser?

14 A. Well, at that point I was already
15 handcuffed and they already had my name on my
16 stub, so there was really no point in continuing
17 not to tell them who I was when they already knew
18 who I was. They just had the wrong person pulled
19 up on the computer.

20 Q. Okay. And when the information came up
21 about your father, would there have been anything
22 about your father that would have raised any
23 issues in the eyes of law enforcement?

24 A. No.

25 Q. Okay. So there wouldn't have been

JA-117

1 anything that would have come up in the NCIC check
2 or any issues concerning outstanding warrants or
3 anything like that?

4 A. No.

5 Q. What was it that you recall telling the
6 officers as to what it was you were doing as you
7 were videotaping?

8 A. I believe I told them that I was a
9 journalist getting content for a story.

10 Q. And can you tell me what story you were
11 contemplating on doing with that videotape?

12 A. The story of the First Amendment audit
13 of the Waterbury police station.

14 Q. And when had you decided that you were
15 going to do a story of the First Amendment audit
16 of the Waterbury Police Department that day?

17 A. When I got off the highway from the
18 traffic.

19 Q. And by the way, when you got off the
20 highway from the traffic, was the reason you got
21 off the highway to try to find an alternative
22 route around the traffic or was it specifically at
23 that point to go to the Waterbury Police
24 Department?

25 A. I'm not sure if it was the chicken or

1 the egg. I know for a fact I ended up thinking,
2 "Okay, I'll get off the highway and take back
3 roads," but I don't know if it was I got off the
4 highway and then decided to do the audit or if I
5 got off -- you know, or if I decided to do the
6 audit and got off the highway. But, yes, driving
7 the back roads was part of my decision to get off
8 the highway.

9 Q. And were the back roads from Waterbury
10 to Wallingford, that is your intended route, have
11 taken you by the police department on East Main
12 Street in Waterbury?

13 A. I don't believe so.

14 Q. Okay. Let me ask you this: Do you
15 remember where it was you got off Interstate 84?

16 A. I don't.

17 Q. You were coming on 84 traveling east,
18 correct?

19 A. Correct.

20 Q. And do you know whether you got off
21 before or after the Mixmaster? Do you know where
22 the Mixmaster is in Waterbury?

23 A. Yeah, where Route 8 meets, correct?

24 Q. Yeah. So do you remember whether you
25 got off of Interstate 84 before the Mixmaster,

JA-119

1 while you were on the Mixmaster, or beyond the
2 Mixmaster?

3 A. I honestly don't recall.

4 Q. Do you remember once you got off the
5 highway, where your route took you?

6 A. I parked behind the mall, so I would
7 assume I got off after the Mixmaster. But again,
8 I'm speculating. I'm not a hundred percent.

9 Q. Okay. And when you say you parked
10 behind the mall, is that where you parked before
11 you walked down to Waterbury Police Department?

12 A. Correct.

13 Q. And about how far away would you say
14 your car was parked from the Waterbury Police
15 Department?

16 A. It wasn't directly behind the mall, it
17 was like that giant plaza where the mall is, so I
18 want to say it was on the further end closest to
19 the PD, so I want to say maybe a half a mile.

20 Q. Is the portion of the mall parking lot
21 where McDonald's is located?

22 A. I believe so.

23 Q. Okay. So somewhere in that area you
24 parked your car, and then you get your video
25 camera and your tripod, and then you start walking

1 over to East Main Street and then eventually down
2 East Main Street toward the Waterbury Police
3 Department; is that correct?

4 A. Correct.

5 Q. And there's a point in your video where
6 you, in fact, are filming before you even get to
7 the police department, correct?

8 A. Correct. As I'm walking up.

9 Q. As you're walking. And you're
10 announcing that it's your intent to videotape the
11 Waterbury Police Department, correct?

12 A. Correct.

13 Q. The story that you intended to do on
14 First Amendment audit, had you obtained or
15 prepared any preliminary materials for that story
16 before you actually did the videotape?

17 A. No.

18 Q. So tell me what your plan would have
19 been with regard to this story had you not been
20 arrested.

21 A. I would have filmed, captured the
22 footage that I captured, and then left, and then
23 at some point if I had time, I would have injusted
24 (phonetic) it into my computer and then uploaded
25 it to YouTube.

JA-121

1 Q. And so what would the story have been
2 about if you weren't arrested?

3 A. A First Amendment audit.

4 Q. So simply you would be posting a story
5 that said "Here's a video that I took of the
6 Waterbury Police Department as part of a First
7 Amendment audit," and that's it?

8 A. Correct.

9 Q. Why would that be of any newsworthiness?

10 A. Well, because it's showing that the
11 First Amendment audit was a successful one.

12 Q. And what do you mean by that, it was
13 successful?

14 A. That the government agencies adhered to
15 the Constitution and did not impede any filming.

16 Q. So that would have been the complete
17 story?

18 A. Correct.

19 Q. So the story is that you, as a photo
20 journalist, go to the Waterbury Police Department,
21 you videotape areas of the building, all sides of
22 the building, correct?

23 A. Just two sides.

24 Q. Two sides. Okay. -- two sides of the
25 building, and you were you intending to videotape

1 all four sides if the police officers hadn't
2 interrupted you?

3 A. I don't think so. There was no
4 entrances and there was -- it was basically just
5 some walls, from what I understood, on the other
6 side, so it didn't seem relevant to walk around
7 the other sides.

8 Q. Did you think that you would have a
9 better story if the police actually came out and
10 challenged you?

11 A. Me, personally, no. I think the better
12 story is when there's no contact and it's just a
13 plain audit, for lack of a better word.

14 Q. And was it in any way your intent, in
15 whole or part, to bring about an arrest of
16 yourself?

17 A. No.

18 Q. So when you did this, you were hoping
19 that you would film the Waterbury Police
20 Department without incident, leave, and then post
21 a story on YouTube -- is that where you would have
22 posted it?

23 A. Correct.

24 Q. -- on YouTube and indicating that you
25 conducted this First Amendment audit with success,

JA-123

1 correct?

2 A. Correct.

3 Q. Would you have posted your video...
4 withdrawn.

5 You would have then posted your video on
6 YouTube, on your YouTube channel?

7 A. I think I just answered that question,
8 didn't I?

9 Q. No, you answered it that you did post
10 the video on -- the ultimate video, including your
11 encounter with the police, on your YouTube
12 channel, correct?

13 A. Yeah, I did. I have the footage of
14 that.

15 Q. My question is a little bit different,
16 Mr. Massimino, and I'm sorry if I made it
17 confusing. My question is, if you hadn't had
18 engagement with the police, you completed your
19 video and you left, you would have posted that as
20 a story of a successful First Amendment audit on
21 your YouTube channel, correct?

22 A. Yes.

23 Q. All right. Would you have also loaded
24 it up to the Stringer App?

25 A. No.

1 Q. So the only place that you were planning
2 on presenting this story was on your YouTube
3 channel?

4 A. Correct.

5 Q. And did you receive any comments on your
6 YouTube channel after it was posted?

7 A. Many.

8 Q. And did you reply to some or all of
9 those comments?

10 A. Some, yes.

11 Q. Is your YouTube channel available,
12 including the comments, to be viewed by the
13 general public?

14 A. Yes.

15 Q. What does it mean to you, sir, when
16 someone identifies themselves as a journalist?

17 A. I don't think I'm understanding the
18 question.

19 Q. Well, does it mean to you, for example,
20 that a journalist is someone that's associated
21 with some form of media?

22 A. When someone tells me they're a
23 journalist, there's such a broad range of
24 journalism, I look at it as someone's a news
25 gatherer, gathering of content to some capacity.

JA-125

1 Q. Okay. And would you agree with me that
2 in most cases a journalist is an individual who's
3 associated with some form of media outlet?

4 A. No, I would disagree.

5 Q. Okay. Would you agree with me that
6 someone who works for a newspaper, for example,
7 would be a journalist?

8 A. Yes.

9 Q. And someone who works for a TV or radio
10 station would be a journalist?

11 A. Yes.

12 Q. And you're familiar with the fact that
13 those individuals possess actual press
14 credentials, correct?

15 A. I don't think all of them do, no.

16 Q. Okay. So can you give me any instance
17 in which you're aware of a person that works for
18 some form of media outlet that doesn't possess
19 press credentials?

20 A. Myself.

21 Q. Okay. So other than you, anyone else?

22 A. A lot of my coworkers.

23 Q. I'm sorry?

24 A. A lot of people I work with.

25 Q. Okay. And the people that you work

JA-126

1 with, are they in the videophotography area or are
2 they in areas of writing of stories or reporting
3 on the news?

4 A. Videophotography. That's who I work
5 with.

6 Q. All right. So would you agree with me
7 that a videographer is not, in fact, a journalist?

8 A. No.

9 Q. You wouldn't agree with that? So in
10 your opinion, someone who is a professional
11 videographer is a journalist?

12 A. Yes.

13 Q. And you consider yourself both a
14 professional videographer and a photojournalist?

15 A. Yes.

16 Q. But when you spoke to the police
17 officers, you didn't make that distinction, did
18 you?

19 A. I don't understand the question.

20 Q. You just said "I'm a journalist"?

21 A. Yes.

22 Q. You never said "I'm a videographer and
23 photojournalist," correct?

24 A. No, I never said -- I mean, it's one in
25 the same. I wouldn't -- that's like saying I'm a

1 carpenter but I'm also a builder.

2 Q. I understand your position on that. I'm
3 just trying to get the record clear that when you
4 identified yourself to the police officers in
5 terms of what you were doing, you told them that
6 you were a journalist doing a story, correct?

7 A. Yes. But I did follow up, if you're
8 going in that capacity, I did follow-up with "I'm
9 filming," so I did clarify I'm filming video. I
10 did say that later on.

11 Q. Right. But you never used the term
12 "photojournalist," did you?

13 A. Well, no. I wouldn't consider myself a
14 photo journalist, I'm an videographer.

15 Q. And did you tell them you were a
16 professional videographer?

17 A. No.

18 Q. You simply said you were a journalist
19 getting material for a story?

20 A. Correct.

21 Q. And the story, as you said before, which
22 you didn't tell the police officers, is that it
23 was about First Amendment audit, correct?

24 A. Correct.

25 MR. MENGACCI: Just a couple more

1 minutes, Mr. Massimino, and I'm going to be
2 done.

3 THE WITNESS: Yeah, no worries. No rush.
4 I have all day. I apologize for the
5 coughing. I'm fighting a cold.

6 MR. MENGACCI: No problem. Mr.
7 Massimino, thank you. I have no further
8 questions. I don't know if Attorney Barrett
9 has any question.

10 MR. BARRETT: I may, Mr. Mengacci. I
11 would like to chat with co-counsel and my
12 client briefly. Can we take a five or seven
13 minute break and come right back?

14 MR. MENGACCI: Sure.

15 MR. BARRETT: Thank you very much.

16 (Break taken.)

17 MR. BARRETT: I just have a very short
18 list of questions following up on Mr.

19 Mengacci's questions.

20 CROSS-EXAMINATION

21 BY MR. BARRETT:

22 Q. Mr. Massimino, Mr. Mengacci asked you
23 some questions about your being processed after
24 you were arrested. Do you recall those?

25 A. I do.

JA-129

1 Q. When you were being processed, when was
2 the bond set on you?

3 A. I was told that the bond was right
4 before I made the phone call to my wife.

5 Q. Was that after you had been
6 fingerprinted?

7 A. I don't recall.

8 Q. Who told you what the bond was?

9 A. The bookings officer.

10 Q. Was the bookings officer one of the
11 defendants in this case?

12 A. No.

13 Q. Do you remember his name?

14 A. I don't.

15 Q. How long after the bond was set did the
16 bail commissioner come and speak with you?

17 A. I want to say about maybe an hour and a
18 half to two hours.

19 Q. When you did meet with the bail
20 commissioner, what did they tell you?

21 A. He indicated -- he asked me, "What did
22 you do to make them so upset?" We had a brief
23 discussion about what the bond was, and I
24 explained my position to him, and he said "Well,
25 I'm going to lower it to a promise to appear."

JA-130

1 Q. Was that conversation in the holding
2 cell that you described earlier?

3 A. It was in the secondary cell, when I was
4 moved to my single cell by myself.

5 Q. Okay. And after that discussion with
6 the bail commissioner, did you see him again?

7 A. I did not.

8 Q. Mr. Massimino, you testified earlier
9 about what a journalist is. Do you recall your
10 testimony on that subject?

11 A. Yes.

12 Q. In your view, can a freelancer be a
13 journalist?

14 A. Yes.

15 Q. And in your view, can a person be a
16 journalist without being paid for it?

17 A. Yes.

18 MR. BARRETT: Thank you, Mr. Mengacci.
19 Those are all the questions I have about
20 your questions.

21 MR. MENGACCI: Thank you. I just have
22 one follow-up area of questioning.

23 REDIRECT EXAMINATION

24 BY MR. MENGACCI:

25 Q. During the time that you were in the

JA-131

1 individual cell, which you've estimated to be
2 about an hour and a half to two hours before the
3 bail commissioner came, had your wife arrived yet,
4 to your knowledge?

5 A. I don't -- it's -- I don't know because
6 I was in the cell. From what she indicated when I
7 first walked out, she had not been there long, so
8 I would say no.

9 Q. So it's your best belief that when the
10 bail commissioner came into your cell to discuss
11 your bond, that your wife had not yet arrived?

12 A. Yes, to the best of my knowledge.

13 Q. And how long after your meeting with the
14 bail commissioner when he reduced your bond to a
15 promise to appear did you then become released
16 from the cell and free to go?

17 A. Less than 15 minutes I would estimate.

18 Q. And when you were released from your
19 cell, did you then return back to the bookings
20 area?

21 A. Yes, because they handed me my property.

22 Q. Okay. And at that point in time when
23 they handed you your property, was your wife
24 there?

25 A. I don't know.

JA-132

1 Q. Okay. Do you remember at any point in
2 time on the date of the incident your wife being
3 in your presence at the Waterbury Police
4 Department?

5 A. Yes. When they brought me up from the
6 cell, I walked out the door and she was in the
7 lobby.

8 Q. So when they brought you up from the
9 cell area, you were brought up into the main
10 lobby?

11 A. After I received my property, yes.

12 Q. Okay. And that was after you were
13 released on a promise to appear, correct?

14 A. Correct.

15 Q. And at that point your wife was waiting
16 for you in the waiting area, correct?

17 A. Correct.

18 Q. And you never received any information
19 from your wife that she furnished some form of
20 identification for you to the Waterbury Police
21 Department?

22 A. I asked her after the depositions of the
23 two sergeants if she did, because obviously I was
24 in the cell and did not know if she did, but it
25 was my understanding she did not. And she

JA-133

1 confirmed she did not.

2 Q. All right. So your understanding from
3 talking to your wife is that you had called her to
4 come and get you out, if you will, from the
5 Waterbury Police Department holding area or the
6 cell, correct?

7 A. Correct. At the time I still had a
8 \$10,000 bond, so I told her to bring \$1,000 down
9 and come down and get me out.

10 Q. And did she, in fact, come, to your
11 knowledge, with \$1,000 in cash?

12 A. She did.

13 Q. Okay. And in your conversations with
14 your wife, did she ever indicate to you that she
15 was in any other area of the Waterbury Police
16 Department other than the lobby?

17 A. I have not asked her, and she did not
18 indicate she was.

19 Q. Okay. So your best understanding is
20 that it was just kind of coincidence that your
21 wife arrived with the \$1,000 and was in the
22 waiting room -- or was in the lobby, excuse me --
23 and at or about the same time you were being
24 interviewed by the bail commissioner who reduced
25 you to a promise to appear?

JA-134

1 A. Correct.

2 Q. Do you remember your wife being at all
3 surprised when you came into the lobby area and
4 didn't require her to make the thousand dollar
5 payment?

6 A. We did not have a discussion about it,
7 and I don't remember her saying anything that she
8 was surprised that I was there, which now,
9 thinking, would indicate maybe someone told her it
10 was changed to a promise to appear.

11 Q. Okay. Do you recall any conversations
12 with your wife, whether she did, in fact, have any
13 discussion with any police officer or police
14 official that day concerning your release?

15 A. She did have a conversation, she told
16 me, with them at the front desk about my
17 interaction.

18 Q. And did she indicate that she was told
19 by anyone at the front desk that you were now
20 being released on a promise to appear?

21 A. I don't -- I would assume based on what
22 we're saying now, but I don't know for sure.

23 Q. All right. And do you know for sure
24 whether your wife did or did not present some
25 identification on your behalf to some police

JA-135

1 officer at the Waterbury Police Department?

2 A. She told me she did not when I asked her
3 last week, and I know for a fact she could not
4 have my ID because my ID was locked in my vehicle
5 and she, A, did not know where my vehicle was and,
6 B, did not have a key to the vehicle.

7 Q. Okay. Do you possess a passport?

8 A. I do.

9 Q. In terms of identification, would that
10 have been something your wife could have brought
11 from home, if necessary, to show who you were?

12 A. I don't know the legality of that, if
13 that's something you can produce for an identity.
14 I'm assuming it is but I don't know --

15 Q. I'm not asking about the legal question,
16 I'm asking whether it would have physically been
17 possible for your wife to bring your passport with
18 your passport photo to show that you are, in fact,
19 Keith Massimino, Junior.

20 A. Yes, that was definitely possible.

21 Q. I made an assumption there, and let me
22 make sure the record is clear. Are you Keith
23 Massimino Junior or did you just carry the same
24 first and last name as your dad?

25 A. I am Keith Massimino, II.

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79

1 Q. The Second?

2 A. My father is the First.

3 Q. So would you be referred to as a
4 "junior"?

5 A. No. He is Keith Paul Massimino, and I
6 am Keith Paul Massimino, II.

7 Q. So he's Keith Paul Massimino, and you're
8 Keith Paul Massimino, II?

9 A. Correct.

10 Q. Why not "junior"?

11 A. I don't think they wanted me to be
12 called J-R, so they did the "second" instead.

13 Q. Okay. So your official legal name is
14 Keith Paul Massimino, II?

15 A. Correct.

16 Q. Okay, good.

17 MR. MENGACCI: All right. Thank you, Mr.
18 Massimino. Nothing further.

19 MR. BARRETT: Thank you, Mr. Mengacci.

20 (Whereupon, the Witness was excused and
21 the above proceedings concluded at 11:48 a.m.)
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CERTIFICATE OF DEPONENT

I, KEITH MASSIMINO, having read the
 foregoing transcript of the testimony given at my
 deposition, which was taken on April 28, 2022, do
 hereby certify that the testimony contained
 therein is true and accurate to the best of my
 knowledge and belief as originally transcribed
 and/or with the changes, if any, as noted on the
 Errata Sheet.

DATE_____
KEITH MASSIMINO

Subscribed and sworn to before me this
 _____ day of _____, 2022.

NOTARY PUBLIC

My Commission expires: _____

JA-140**C E R T I F I C A T E**

I hereby certify that I am a Licensed Shorthand Reporter and Notary Public, in and for the State of Connecticut, duly commissioned and qualified to administer oaths.

I further certify that KEITH MASSIMINO was by me duly sworn/affirmed remotely, and thereupon testified as appears in the foregoing deposition; that said deposition was taken by me stenographically and reduced to writing under my direction by computer-aided transcription; that the foregoing is a true and accurate record of the testimony given on April 28, 2022, to the best of my ability.

I further certify that I am neither of counsel nor attorney to any of the parties to said suit, nor of any counsel in said suit, nor am I financially interested in the outcome of said cause.

Witness my hand and notarial seal this _____ day of _____, 2022.

Donna Oliver
Notary Public/Court Reporter

My Commission expires: April 30, 2023

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Exhibit 5

(Deposition of Frank Laone)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

* * * * *

KEITH MASSIMINO,

Plaintiff,

VS.

MATTHEW BENOIT and
FRANK LAONE,

Defendants.

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Docket No.

21-CV-1132

March 15, 2022

DEPOSITION OF: FRANK LAONE

Taken before Cheryl S. Damato, Court
Reporter, Notary Public in and for the State of
Connecticut, pursuant to Notice, taken on the Zoom
platform via the Internet, on March 15, 2022,
commencing at 1:03 p.m.

CASSIAN REPORTING SERVICE
CHERYL S. DAMATO, CERTIFIED COURT REPORTER
21 OAK STREET, SUITE 307
HARTFORD, CONNECTICUT 06106

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Frank Leone

APPEARANCES :

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BY: JOSEPH MENGACCI, ESQUIRE

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1 STIPULATIONS

2
3 IT IS STIPULATED by the attorneys for the
4 Plaintiff and the Defendant that each party reserves
5 the right to make specific objections in open court
6 to each and every question asked and the answers
7 given thereto by the witness, reserving the right to
8 move to strike out where applicable, except as to
9 such objections as are directed to the form of the
10 questions.

11 IT IS STIPULATED and agreed between
12 counsel for the parties that the proof of the
13 authority of the Notary Public before whom this
14 deposition is taken is waived.

15 IT IS FURTHER STIPULATED and agreed that
16 the reading and signing of this deposition are not
17 waived, and any defects in the notice are waived.
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1 THE COURT REPORTER: In the beginning
2 I need to identify the witness and a few
3 other things so, sir, can I have your
4 name, please?

5 THE WITNESS: Frank Laone.

6 THE COURT REPORTER: The next thing
7 is I need counsel to agree that I am
8 remote and that you agree that I can swear
9 the witness in remotely.

10 MR. BARRETT: I agree.

11 MR. MENGACCI: I agree.

12 THE COURT REPORTER: Stipulations?

13 MR. BARRETT: Read and sign,
14 objection reserved except as to form. We
15 agree to the notice and we agree to the
16 remote reporter, right, Joe?

17 MR. MENGACCI: Yes, we'll waive the
18 reading and signing.

19 MR. BARRETT: Okay. I'd like the
20 witness to read and sign.

21 MR. MENGACCI: You want him to read
22 and sign?

23 MR. BARRETT: Yes, please.

24 MR. MENGACCI: Okay.

25 THE COURT REPORTER: And Mr. Barrett,

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1 do you want a copy of this transcript?

2 MR. BARRETT: Yes, please, I'd like
3 an electronic copy.

4 THE COURT REPORTER: And Mr.
5 Mengacci.

6 MR. MENGACCI: Yes.

7 THE COURT REPORTER: Mr. Laone, is
8 there anyone else present in the room with
9 you today besides your attorney?

10 THE WITNESS: No, there is not. Just
11 me and my attorney.

12 THE COURT REPORTER: If you could
13 raise your right hand, sir, I'm going to
14 swear you in.

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1 F R A N K L A O N E ,
2 called as a witness by the Plaintiff, being
3 first duly sworn by the Notary, was
4 examined, and testified on his oath, as
5 follows:

7 DIRECT EXAMINATION

8 BY MR. BARRETT:

9 Q Good afternoon, Mr. Laone.

10 A Good afternoon.

11 Q So this afternoon I'm going to ask you a
12 series of questions and you're going to give me a
13 series of answers but because we're remote and
14 because this is being taken down by a court
15 reporter, I want to run a couple of guardrails by
16 you first.

17 The first has to do with hearing. If you
18 don't hear any of my questions or don't understand
19 my question, will you please ask me to repeat it?

20 A Yes, sir.

21 Q Great. And the second, because Ms. Damato
22 is here taking down what we're saying is that
23 every answer you give to me I need to be verbal
24 rather than, for example, a nodding of the head or
25 a shaking of the head. I may therefore if you do

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1 one of those things ask you to answer with words.
2 I'm not trying to be rude but I hope you'll
3 understand that.

4 A Yes, sir.

5 Q Great. And even if you hear one of my
6 questions if you are -- if you don't understand it
7 or if you're confused by it I'm going to assume
8 that you understand it unless you tell me to
9 rephrase or repeat. Does that sound fair?

10 A Yes.

11 Q Have you ever testified under oath before?

12 A Yes.

13 Q Great. So this is one of those occasions
14 you've just been placed under oath and our court
15 reporter, Ms. Damato, is taking down everything
16 that you say. The only other thing that I'll
17 mention with respect to the court reporter is that
18 we probably shouldn't talk over one another. So
19 I'll ask you to let me finish my question before
20 you start your answer. Does that sound okay?

21 A Yes.

22 Q Mr. Laone, do you wear hearing aids?

23 A No.

24 Q Do you wear glasses?

25 A Yes.

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1 Q Do you have your glasses with you?

2 A I do.

3 Q Do you wear them for reading or long
4 distance?

5 A Reading and distance.

6 Q If you need to put them on you're going to
7 put them on, right?

8 A Right.

9 Q Have you taken any drugs or alcohol within
10 the last eight hours that would impair your
11 ability to give us your best testimony today?

12 A No, sir.

13 Q Is there any other reason why you might
14 not be able to give us your best testimony today?

15 A No.

16 Q What did you do to get ready for today?

17 A I discussed the case with Attorney
18 Mengacci, Sergeant Benoit and some of my
19 supervisors.

20 Q Which one of your supervisors did you
21 discuss the case with?

22 A The chief.

23 Q Who is the chief?

24 A Frank Spagnolo.

25 Q Would you spell that for us?

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Frank Leone

1 A S-p-a-g-n-o-l-o.

2 Q And when did you discuss the case with
3 Mr. Benoit?

4 A Over the weekend.

5 Q How did you discuss it with him?

6 A We got together and reviewed the police
7 report and reviewed the YouTube video.

8 Q What about with the chief? When did you
9 discuss it with the chief?

10 A Very briefly after the incident.

11 Q When you say "very briefly after the
12 incident," what month and year was that?

13 A Oh, in 2018 when the arrest was made.

14 Q What did you talk about with the chief?

15 THE WITNESS: Do I have to answer
16 that?

17 MR. MENGACCI: Yes.

18 A That he felt that the arrest was justified
19 and that he backed us going forward.

20 BY MR. BARRETT:

21 Q Why did your chief feel the arrest was
22 justified?

23 A He felt we had probable cause to stop and
24 speak to your client.

25 Q Why did he think that?

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Frank Leone

1 A I'm not him.

2 Q I'm sorry, what?

3 A I'm not -- I can't freely speak for his
4 mindset but he said he supported us and the arrest
5 and I believe that we did the right thing.

6 Q But I take it he did not give you details
7 as to why he thought you had probable cause?

8 A That is correct.

9 Q Great. So with Mr. Benoit what did you
10 talk about?

11 A We reviewed the report and we reviewed the
12 YouTube video.

13 Q What was your purpose in reviewing the
14 YouTube video?

15 A Refresh our memories because this is
16 something that happened almost three and a half
17 years ago so just, you know, what, wherever he was
18 because he was in a car that day. I was working
19 inside just to jog our memory.

20 Q So we got Mr. Mengacci; we got Mr. Benoit
21 and we got the chief. Anyone else you discussed
22 this case with in preparation?

23 A No.

24 Q Sorry. Okay.

25 MR. MENGACCI: Let him complete his

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1 question before you give an answer because
2 it's difficult for the court reporter to
3 take two things at the same time.

4 MR. BARRETT: Thanks, Mr. Laone. I
5 know it's a little bit artificial but
6 we'll get through it.

7 BY MR. BARRETT:

8 Q Mr. Laone, how long have you been employed
9 at the Waterbury Police Department?

10 A Sixteen years. I start 17 years next
11 month.

12 Q Were you employed by the city prior to
13 coming to the Waterbury P.D.?

14 A I was not.

15 Q Other than this lawsuit have you ever been
16 sued before?

17 A No, sir.

18 Q Have you ever sued anyone?

19 A No, sir.

20 Q Have you ever been decertified?

21 A No, sir.

22 Q If the court rules against you in this
23 case and awards a judgment to Mr. Massimino, do
24 you understand yourself to have to pay that
25 judgment?

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Frank Leone

1 A Can you repeat that again?

2 Q Sure. If the court were to award money to
3 Mr. Massimino in this case, do you understand
4 yourself to have to pay that money?

5 A No.

6 Q Why not?

7 A This situation was before the qualified
8 immunity got stripped from the police.

9 Q And has your employer offered to pay the
10 judgment on your behalf?

11 A I have not had that discussion.

12 Q Has your employer given you any notice
13 about who's responsible for the judgment in this
14 case?

15 A They have not.

16 Q But the City of Waterbury has provided you
17 with a lawyer in this case, correct?

18 A They have.

19 Q And I almost got the wrong guy in the
20 chair you participated in the arrest of Keith
21 Massimino on October 30, 2018, correct?

22 A Correct.

23 Q Had you ever met Mr. Massimino before that
24 night?

25 A No.

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1 Q Have you encountered him since that night?

2 A No, not in person.

3 Q Where else have you encountered him if not
4 in person?

5 A YouTube.

6 Q And how did you do that?

7 A He has videos that he posts on YouTube.

8 Q Have you watched all of them?

9 A I doubt it.

10 Q How many have you watched?

11 A Mine and the one that he was outside of
12 the courthouse with the other gentleman from Long
13 Island.

14 Q And you've worked there for 16, almost 17
15 years so some of these questions will be a review
16 but where is the Waterbury police station?

17 A 255 East Main Street is the physical
18 address.

19 Q Are there any other Waterbury Police
20 Department stations within the City?

21 A No.

22 Q Does the Waterbury police station occupy
23 an entire block?

24 A Yes, for the most part.

25 Q When you say "for the most part," is there

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Frank Leone

1 anything else occupying the block other than the
2 police station?

3 A No. Yes, it does occupy the entire block.

4 Q And is it fair for me to call the side of
5 the station that faces East Main Street the front
6 of the building?

7 A Yes. East Main Street would be the front
8 of the building.

9 Q The police station is surrounded by in
10 addition to East Main Street North Elm, Maple and
11 Water, correct?

12 A Correct.

13 Q All four sides of the police station have
14 sidewalks on them, right?

15 A That is correct.

16 Q And all four of those sidewalks are open
17 to the public, correct?

18 A Correct.

19 Q On October 30 of 2018, was there any
20 fencing on any of the four sides of the police
21 station that would obstruct a person's view of the
22 police station from the sidewalk?

23 A No.

24 Q Were there any shrubs on any of the four
25 sides that would obstruct a person's view from the

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Frank Leone

1 sidewalk?

2 A No.

3 Q Other than fencing or shrubs are there any
4 other obstructions that would have gotten in the
5 way of seeing the police station from the
6 sidewalk?

7 A No.

8 Q So on that night, October 30, 2018, when
9 did you first become aware that Mr. Massimino was
10 present on the sidewalk?

11 A Downstairs by the locker room.

12 Q That's within the police station?

13 A Yes.

14 Q What were you doing downstairs by the
15 locker room?

16 A I just finished using the restroom.

17 Q And how did you become aware of
18 Mr. Massimino's presence?

19 A Sergeant Benoit was also downstairs and I
20 was the desk sergeant that day. He asked me to
21 take a look, see if I could find your client on
22 the cameras that we had at the desk because he was
23 acting very suspiciously, videotaping the
24 surveillance system and the gas pump area.

25 Q You said you were working as the desk

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1 sergeant that night?

2 A I was.

3 Q How long was your shift that evening?

4 A From two p.m. to ten p.m. I'm pretty sure
5 that night.

6 Q As the desk sergeant what did your job
7 duties entail?

8 A Security for the building, in charge of
9 the prisoners. I have three or four booking guys
10 that I'm in charge of and there's a telephone
11 response officer that I'm in charge of also.

12 Q That night were you the only desk sergeant
13 on duty?

14 A Yes.

15 Q You mentioned a minute ago the video
16 surveillance system. What did you mean by that?

17 A Can you repeat the question? Are you
18 referring to the Waterbury police video
19 surveillance or your client videotaping our
20 surveillance.

21 Q No, the Waterbury police surveillance
22 system that you mentioned. I think you said you
23 had it at your desk or something like that.

24 A Yeah, the old system. We had a couple of
25 cameras that check the building.

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Frank Leone

1 Q Those cameras check I take it the exterior
2 of the building facing the street?

3 A Correct.

4 Q Do they face all four sides of the
5 building?

6 A I don't recall specifically that system.
7 It was an older system. I believe that there were
8 two that you can move 360 and there were a couple
9 that were stationary if I remember correctly.

10 Q When you said it was an older system has
11 that system since October 30, 2018 been replaced?

12 A Yes.

13 Q Okay. So Mr. Benoit called you and told
14 you -- well, asked if you would take a look for
15 Mr. Massimino, is that right?

16 A Correct. I saw him in the locker room.

17 Q Great. So what did you do to locate
18 Mr. Massimino?

19 A I pulled up the camera on the North
20 Elm/East Main Street side is where I saw him
21 first.

22 Q What was he doing when you saw him?

23 A Videotaping.

24 Q And where was he located?

25 A Like I just said North Elm, kind of corner

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Frank Leone

1 of North Elm/East Main Street.

2 Q Was Mr. Massimino standing on the
3 sidewalk?

4 A He was.

5 Q Okay. So after you located him and you
6 saw him videotaping -- well, let me ask you this
7 first. When you saw him on the video surveillance
8 system was anyone with him?

9 A No.

10 Q Was he carrying anything?

11 A He had his hand-held camcorder and I can't
12 recall if he had anything else on him.

13 Q With that video surveillance system you
14 described for us were you able to zoom in on
15 Mr. Massimino?

16 A I honestly don't recall if that camera had
17 that capability.

18 Q Okay. So you located him on the sidewalk
19 and he had a camera. What else do you recall
20 about what he was doing when you saw him on the
21 surveillance system?

22 A When I saw on the surveillance system?

23 Q Yeah.

24 A He was just on the corner filming.

25 Q When he was filming was he moving around

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1 or was he stationary?

2 A For the majority of the time he was moving
3 around.

4 Q All right. After you spotted him on the
5 surveillance system what happened next?

6 A I went outside to have a conversation with
7 him.

8 Q And out of which of the four sides of the
9 police station did you go to speak with
10 Mr. Massimino?

11 A I came out of the main entrance, the 255
12 East Main Street entrance.

13 Q When you came out of that entrance how far
14 away was he from you?

15 A If I had to guess 20, 30 feet maybe.

16 Q As you exited that front side of the
17 building there towards Mr. Massimino, did you
18 approach him in any particular way?

19 A No.

20 Q Did you have your weapon drawn?

21 A No.

22 Q Why not?

23 A At that point he wouldn't raise to the
24 suspicion of using deadly force.

25 Q As you approached him were you able to

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Frank Leone

1 detect whether or not he had any weapons?

2 A No.

3 Q So you did not suspect him of having any
4 weapons at that point, correct?

5 A I did not know if he had any weapons.
6 They're very easily concealable and I did not pat
7 him down initially.

8 Q Okay. All right. So you walked up to
9 Mr. Massimino. What happened after that?

10 A I asked him -- I believe I asked him what
11 he was videoing or why he was videoing.

12 Q At the point that you spoke with him you
13 were both located on East Main Street, correct?

14 A Correct.

15 Q And when you had left the building and
16 walked up to Mr. Massimino, if you had suspected
17 that he had a weapon, what would you have done?

18 A I would have conducted a pat down.

19 Q I'm sorry, this is a basic question but
20 would you explain what a pat-down is?

21 A A Terry pat-down if you have reasonable
22 suspicion that somebody may have a firearm or
23 weapon then we can pat them down and check their
24 exterior.

25 Q Got it. Okay. Thank you. And were you

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Frank Leone

1 able to tell when you approached Mr. Massimino if
2 he was recording a video at that point?

3 A Yes.

4 Q How did you know that?

5 A Because he lifted it up and asked me my
6 name and badge number so I assumed he was
7 recording at that point.

8 Q Since that time you've come to learn that
9 there was a video recording made by him, correct?

10 A Correct.

11 Q And you testified earlier today you viewed
12 it at least once, right?

13 A Correct.

14 Q Other than when you viewed it with
15 Mr. Benoit, how many times have you looked at that
16 video?

17 A Probably three or four times.

18 Q Does that video accurately depict what
19 I've heard on the sidewalk with Mr. Massimino that
20 night?

21 A Define "accurately depict."

22 Q Well, you tell me. What do you understand
23 accurately depict to me?

24 A So it does accurately depict that he was
25 videotaping the gas pump area, the surveillance

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1 system and the youth squad.

2 Q And anything else?

3 A As far as?

4 Q Does it accurately depict your
5 conversation with him?

6 A It does accurately depict our
7 conversation.

8 Q Mr. Laone, is it illegal to video record a
9 police station?

10 A Every situation is different.

11 Q Are you aware of any law that renders it
12 illegal to record a police station?

13 A Again in recording a police station every
14 situation is different.

15 Q Let me be more direct. Can you identify
16 for me a section of the Connecticut General
17 Statutes that renders it illegal to videotape a
18 police station?

19 A Say that again.

20 Q Sure. Can you identify for me a section
21 of the Connecticut General Statutes that makes it
22 illegal to video record a police station?

23 A Not off the top of my head.

24 Q What would you do in order to answer that
25 question?

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Frank Leone

1 A Look it up.

2 Q Have you ever looked up a statute to see
3 if one exists that makes video recording a police
4 station illegal?

5 A So I looked up case laws throughout the
6 country and there doesn't seem to be actually a
7 definitive answer as to if it is legal or not
8 legal to film a police station.

9 Q When you say "legal," what do you mean?

10 A Legal as in if you could be arrested,
11 detained, stopped.

12 Q All right. What about here in Connecticut
13 leaving aside the rest of the country. Here in
14 Connecticut let's say, for example, you saw
15 someone videotaping the police station. You
16 decided you were going to arrest them and charge
17 them for that. What statute would you say they
18 violated?

19 A I would not arrest somebody for merely
20 videotaping --

21 THE COURT REPORTER: I'm sorry, sir,
22 I'm having difficulty understanding your
23 words. Can you repeat your answer?

24 MR. BARRETT: Let's go off the record
25 just for a second and see if we can get

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Frank Leone

1 this straightened out. How about that?

2 (A recess was taken at 1:25 p.m., and
3 the deposition resumed at 1:30 p.m.)

4 MR. MENGACCI: Can we have the last
5 question and answer because you were
6 having trouble hearing him and that's when
7 I moved the device so I don't know what
8 you recorded at that point.

9 (Referred-to question and answer were
10 read back by the Court Reporter.)

11 A So as I was saying I would never arrest
12 anybody for merely videotaping. It was the manner
13 in which your client was videotaping that raised
14 suspicion.

15 BY MR. BARRETT:

16 Q Let's first talk about merely videotaping.
17 What do you mean by "merely videotaping"?

18 A The First Amendment does protect the right
19 to videotape.

20 Q It sounds to me that you've drawn a
21 distinction between what Mr. Massimino was doing
22 and some other kind of videotaping. So let's talk
23 about that some other kind of videotaping. What
24 kind of videotaping would you think is as you say
25 protected by the First Amendment?

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Frank Leone

1 A The majority of it except the means in
2 which your client was doing.

3 Q All right. So what was Mr. Massimino
4 doing that made you think he was breaking the law?

5 A In this day and age of the hatred of
6 police, cops being killed and assassinated,
7 videotaping areas like the gas pump, underneath
8 where we have some of our undercover cars that are
9 undergoing maintenance, our security system and on
10 that side of the building is also the youth squad
11 was disconcerting.

12 Q And had Mr. Massimino recorded those
13 things you think that would have been illegal,
14 right?

15 A That would raise suspicion, correct.

16 Q And so what law would he have violated had
17 he recorded those things?

18 A Well to detain someone it's probable cause
19 that a crime was or about to be committed and
20 I don't know if he was planning on killing
21 somebody or trespassing. It could have been a
22 wide range of spectrum of crimes that he could
23 have been committing.

24 Q And what if it turned out that all he did
25 was make a video recording even of the areas

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Frank Leone

1 you've described. Would that be against the law?

2 A In the manner in which he was videotaping
3 it raised suspicion which I have a duty to
4 investigate and protect the civilian employees and
5 the sworn personnel inside the police station.

6 Q The video itself is my question so let's
7 say Mr. Massimino made a video recording in the
8 way that you described. Just the making of the
9 video recording, would that break the law?

10 A Not at that point but it does raise
11 reasonable suspicion to detain.

12 Q In the video you described or made mention
13 to secured areas of the Waterbury police station.
14 What did you mean by the phrase "secured areas"?

15 A The police station is not a public
16 building. The only place that's public is the
17 main lobby and you walk in and you have to check
18 in with whoever the desk sergeant is or whoever is
19 up front before you could go anyplace else and
20 besides the credit union and records, every other
21 door is locked to go anyplace else in the police
22 department and you need an escort.

23 Q So therefore the entirety of the police
24 station is a secure area other than that kind of
25 entranceway that you've described to me?

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Frank Leone

1 A That is accurate.

2 Q And you mentioned a second ago that the
3 phrase "public building." What's a public
4 building?

5 A I would say a public building would be
6 where I am now, city hall where you could walk in
7 and walk around freely.

8 Q Is that the distinction that makes it a
9 public building in your mind, the ability to walk
10 in and walk around freely?

11 A I think so.

12 Q Is there anything else that distinguishes
13 a police station from city hall?

14 A Can you repeat the question?

15 Q Sure. Is there anything else that
16 distinguishes the police station from city hall in
17 terms of one being a public building and one not?

18 A No, I think that was a pretty accurate
19 description.

20 Q Are the exterior areas of the Waterbury
21 police station secure areas?

22 A Secure as in all locked doors or?

23 Q Well, let's take for an example if I'm
24 standing on the sidewalk and looking at the front
25 entrance there on East Main, am I looking at a

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Frank Leone

1 secure area?

2 A If you're looking at the lobby I guess the
3 lobby is the only way that you can legally get in.
4 There's other entrances on each side that police
5 cruisers and personnel can come in. There's no
6 trespassing signs but there's no physical barriers
7 keeping people out.

8 Q Let's talk about the side of the building
9 there. I think you mentioned the gas pumps and
10 maybe a maintenance area for vehicles, is that
11 right?

12 A Yes.

13 Q So which side of the police station is
14 that on?

15 A If you're looking at the building it would
16 be on the west side of the North Elm side.

17 Q And where are -- so let's start with the
18 gas pump, where is that located?

19 A Right as you would enter past the no
20 trespassing sign on the left of that entrance down
21 there.

22 Q That's past a fence or a gate of some
23 kind?

24 A There is a gate on this day from the
25 video. It was open.

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Frank Leone

1 Q Is that gate normally closed?

2 A It's usually open. That's where we keep
3 our regular patrol cruisers and the damaged
4 undercover cars so there's a lot of people going
5 in and out.

6 Q Okay. And let's see. So you've got the
7 gas pump. You've got the area you store cars. On
8 that side of the building is there any other way
9 for cars to get in or out?

10 A No.

11 Q What about parking for the employees? Do
12 they park in that garage that you described for
13 me?

14 A Typically no. Some civilian employees do
15 but we recently at that point it was more
16 prevalent, I guess. They recently purchased a lot
17 across the street so the majority park across the
18 street.

19 Q Across which street?

20 A Across East Main Street, sorry.

21 Q Got it. Okay. Is that just an open
22 parking lot?

23 A Yeah, it's fenced in but it's an open
24 parking lot for civilians and officers to park.

25 Q Great. So in addition to the gas pump and

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Frank Leone

1 the garage area that you described, you said
2 something about the youth division, is that right?

3 A The division is also on that side of the
4 building.

5 Q What's the youth division?

6 A It's comprised of the school resource
7 officers, a few detectives that handle juvenile
8 matters, any arrests the juveniles come and go
9 from there usually, from that corner office.
10 That's why everything is all blacked out to at
11 least try to protect the identity of them.

12 Q If I were walking down that side of the
13 building looking for the youth division that
14 you've described for me, would I be able to locate
15 it from the street?

16 A From which street, East Main Street or
17 North Elm Street.

18 Q Thanks. North Elm.

19 A Yes, you would be able to look at it on
20 North Elm.

21 Q How would I know that it was the youth
22 division?

23 A Pretty sure unless it's fallen down it
24 says Waterbury youth division on the side.

25 Q And there's a door right there by the

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Frank Leone

1 sign?

2 A There's a door with a buzzer, correct.

3 Q Got it. Okay. All right. So when you
4 encounter Mr. Massimino on the sidewalk I think
5 you told me that you thought what he was doing
6 might have been suspicious. Is that right?

7 A Yes.

8 Q So what was he doing that was suspicious?

9 A Well, like I said the manner in which he
10 was videoing the gas pump area, the unmarked cars,
11 the video surveillance and the youth division over
12 there was disconcerting.

13 Q Let's start with the gas pump area. How
14 was he videoing the gas pump area?

15 A He was holding the video camera towards
16 the gas pump area.

17 Q Did he go past that gate into the gas pump
18 area?

19 A He did not.

20 Q In your entire interaction with him that
21 night did he ever leave the sidewalk?

22 A He did not.

23 Q What about the youth division? In what
24 way was his videotaping of that area suspicious?

25 A The identities of juveniles, first state

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Frank Leone

1 statute are to be confidential, especially victims
2 or arrestees so who knows what his mindset was or
3 why he would be -- why would he care so much about
4 the youth division.

5 Q Did you witness him video recording the
6 youth division door there?

7 A Sergeant Benoit when I talked to him
8 downstairs said he was videoing that side of the
9 building, the gas pump. He spotted the
10 surveillance.

11 Q Are there any signs on the youth division
12 saying that people are prohibited from videotaping
13 that door?

14 A I don't believe so.

15 Q During the time that Mr. Massimino
16 videotaped that side of the building, do you know
17 if any people involved with the youth division
18 entered or exited the building?

19 A I'm sorry, that broke up a little bit.
20 Can you repeat that?

21 Q Sure. During the time that Mr. Massimino
22 was video recording the youth division door, do
23 you know if anyone involved in the youth division
24 entered or exited that door?

25 A At the time of me stopping Mr. Massimino I

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Frank Leone

1 did not know. I later on obviously after watching
2 the video saw at least from this point that nobody
3 came out.

4 Q For those areas, the gas pump area that
5 the youth division was the fact that he videotaped
6 those areas suspicious?

7 A Yes.

8 Q What about the duration of his video
9 recording. Did you find that suspicious?

10 A I found the fact that he was video taping
11 those areas was suspicious.

12 Q So any of those areas at all would have
13 been suspicious to you?

14 A Yes.

15 Q Okay. What else about Mr. Massimino's
16 video recording gave you suspicion?

17 A What else besides what I've already
18 mentioned?

19 Q Yes.

20 A Are you referring to just filming the side
21 of the building or the entire interaction?

22 Q Well, you testified for me earlier that
23 you thought you had reasonable suspicion that
24 Mr. Massimino was up to something. Obviously I'm
25 paraphrasing but you thought you had reasonable

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Frank Leone

1 suspicion. You told me a couple of the reasons
2 why you think you had reasonable suspicion. I'm
3 asking what others if there are others?

4 A Okay. So prior to me approaching him or
5 the totality of the interaction.

6 Q Correct. Let's take it from prior to your
7 approaching him?

8 A So at that point prior to approaching him,
9 yes, that the videotaping of the surveillance
10 system, youth squad, undercover cars, gas pump was
11 my suspicion.

12 Q What about after you approached him?

13 A He claimed to be a journalist so I asked
14 him for I don't remember the exact verbiage,
15 identification meaning credentials. In 17 years
16 I've never met a journalist that shows up in the
17 manner that your client did. They usually show up
18 in some sort of marked vehicle and if they happen
19 to come in their personal cars they usually walk
20 in the front desk, they have a shirt on, hey, I'm
21 so and so with XYZ newspaper. I'm going to be
22 shooting something over on the corner. Okay.
23 Have a good day but when I asked for
24 identification, credentials, your client said he
25 didn't have any which to me is a problem.

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Frank Leone

1 Q Let's start with the journalist. What is
2 a journalist?

3 A Somebody that reports news, stories. In
4 today's day and age it's a large group of things
5 that it could be with bloggers and --

6 Q What kind of identification do you expect
7 journalists to carry?

8 A Something that would have a name and a
9 company that they work for. I've never in 17
10 years seen a journalist that had zero
11 identification at all, never mind simple
12 credentials of who you work for or a picture with
13 your name.

14 Q All right. So you thought Mr. Massimino
15 should identify himself as a journalist. What
16 other reasons if any did you have to suspect that
17 he was up to no good?

18 A Well, just the totality of the
19 circumstances. We went from point A to now he's
20 detained and he's saying that he's a journalist
21 and he has nothing to prove that he's a journalist
22 which would lead a normal person to think that
23 he's lying.

24 Q Anything else?

25 A No, sir.

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Frank Leone

1 Q As you were speaking with him there on the
2 sidewalk, did you suspect that he possessed a
3 bomb?

4 A A bomb on his person at that time?

5 Q Let's start there, yes.

6 A Not on his person at that time but I don't
7 know if he was planning two, three, five, 20, 30,
8 50 minutes down the road.

9 Q How would you determine what he might have
10 been planning down the road?

11 A Investigation. If I had his I.D., I could
12 check him through various NCIC, COLLECT, in-house.
13 Obviously for warrants, protective orders, see
14 past arrests and, you know, further the
15 investigation.

16 Q Other than checking information through
17 his I.D., what investigative steps would you have
18 taken to determine whether or not he either had or
19 was planning to plant a bomb?

20 A Repeat the -- actually repeat the whole
21 question. I just missed the end.

22 Q Sure. Other than gathering information
23 from his I.D., what investigative steps would you
24 have taken to determine whether or not he had or
25 was planning to plant a bomb?

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Frank Leone

1 A Like I said if he showed his credentials
2 there was numerous ways for me to look at his
3 background, his past history so that would be very
4 helpful in alleviating the situation.

5 Q Did you suspect that Mr. Massimino was
6 going to attack the police station?

7 A I did.

8 Q What made you suspect that?

9 A The totality of the circumstances. Like I
10 said from the gas pump area, the video
11 surveillance system, the youth squad and then he
12 has no identification on him at all, not in a
13 vehicle with any sort of insignia, being a
14 journalist, news company, news outlet, no
15 credentials on him. It's all not good.

16 Q Of those things you've listed for me, how
17 did they make you think that Mr. Massimino was
18 planning to attack the police station?

19 A I didn't know what an exact plan would be.
20 Like I said it could have been anything from
21 damaging cruisers to blowing up the gas pump to
22 trespassing. I wasn't in his mind. That's why we
23 conduct investigations.

24 Q Was there anything that you did not
25 suspect him of as you were standing there talking

1 with him on the sidewalk that day?

2 A Anything I did not suspect him of?

3 Q In other words, did you rule anything out?

4 A No. In any situation you have to keep an
5 open mind.

6 Q You've told me a little bit about
7 reasonable suspicion and the things that
8 Mr. Massimino did to give you reasonable
9 suspicion. What about probable cause? What's the
10 difference between reasonable suspicion and
11 probable cause?

12 A Probable cause is a higher degree than
13 reasonable suspicion.

14 Q At any time in your interaction with
15 Mr. Massimino, did you believe yourself that you
16 had probable cause that he committed a crime?

17 A Was, is about to, yes, in that he failed
18 to provide credentials or any identification. He
19 was under investigation and interfering with our
20 investigation.

21 Q All right. Can I refer to that as
22 interference? Does that make sense?

23 A Uh-huh. Yes, sir.

24 Q Great. So what about other than for
25 interference? Any other probable cause that you

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Frank Leone

1 believed yourself to have?

2 A No, that's all he was charged with,
3 correct.

4 Q After Mr. Massimino declined to identify
5 himself, he was placed under arrest, correct?

6 A After he would not provide credentials he
7 was placed under arrest for interfering with our
8 investigation.

9 Q How would you describe his demeanor once
10 he was placed under arrest?

11 A As far as being agitated or -- what are
12 you getting at, I guess.

13 Q Yeah, let's take that. Was he agitated?

14 A He wasn't happy but he was compliant.

15 Q He was compliant, okay.

16 A Yes.

17 Q Mr. Massimino did not fight you, correct?

18 A He did not. There was no force. He did
19 not fight. He was compliant.

20 Q So what happened after Mr. Massimino was
21 handcuffed?

22 A He was put in the I think there was a
23 cruiser up in front -- he was put in the back seat
24 of the cruiser and then driven around to the sally
25 port.

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Frank Leone

1 Q What happened after that?

2 A He got brought in to the booking area.

3 Q Uh-huh. And what happened after that?

4 A As far as.

5 Q Well, Mr. Massimino was inside the police
6 station. He was there for some time, right?

7 A Uh-huh.

8 Q And he started I take it in the booking
9 area. What happened in the booking area?

10 A He gets -- when it's his turn he gets
11 fingerprinted, photographed, asked him a bunch of
12 questions.

13 Q Did you do that?

14 A I did not.

15 Q Who did?

16 A I'd have to look back at the rosters. I
17 don't remember who was working at the desk that
18 day.

19 Q After Mr. Massimino underwent what you
20 just described, the fingerprinting, questions, et
21 cetera, what happened after that?

22 A After that he gets a bond placed on him
23 and he gets phone calls.

24 Q Who put the bond on Mr. Massimino?

25 A I put the bond on him.

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Frank Leone

1 Q And what bond did you set?

2 A I initially set a \$10,000 bond because he
3 had no identification on him.

4 Q And at any time after you handcuffed him
5 did Mr. Massimino identify himself?

6 A He obviously did to the booking personnel
7 or they would not have been able to book him. At
8 a later date his wife did bring down his
9 identification and he was given a promise to
10 appear at that point.

11 Q By the time that you had the chance to set
12 bond, was Mr. Massimino's identity known to the
13 police department?

14 A Without an I.D. there would be no at that
15 point way to prove that it's him. The old COLLECT
16 version at that time didn't show pictures. When
17 they ran them they would just show name, date of
18 birth and address but if I knew your name, date of
19 birth and address at that time, I could just I.D.
20 you.

21 Q After Mr. Massimino gave his
22 identification or identifying information to one
23 of your colleagues, did anyone attempt to verify
24 his identification?

25 A The only way to verify it would be with an

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Frank Leone

1 actual I.D.

2 Q When you were setting bond on
3 Mr. Massimino, did you doubt that the name and
4 birth date, et cetera he gave you were correct?

5 A I did. Without an I.D. there's no way to
6 know who somebody is.

7 Q All right. So you said you initially set
8 \$10,000 for Mr. Massimino. Was there ever a time
9 when you changed that number?

10 A Once he gave identification, I had a
11 discussion with the bail commissioner like we do
12 with any prisoner that the bail commissioner sees
13 and I said as long as he has identification, you
14 can absolutely PTA him because I don't think he
15 had a Connecticut record.

16 Q By PTA, do you mean a promise to appear?

17 A Correct.

18 Q And I think you said that someone brought
19 identification to the police station. Was that
20 Mr. Massimino's spouse?

21 A I believe it was his girlfriend, wife. It
22 was a female.

23 Q How long after you set bail did
24 Mr. Massimino's spouse show up with
25 identification?

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Frank Leone

1 A I honestly have no idea. I don't think it
2 was that long but I couldn't give an accurate
3 guess.

4 Q Now at some point Mr. Massimino was
5 charged with a crime, correct?

6 A Yes.

7 Q Did you participate in the decision to
8 charge him with a crime?

9 A I did.

10 Q Did anyone else assist you in reaching
11 that decision?

12 A No. It was just me and Sergeant Benoit.

13 Q Great. So did you and Sergeant Benoit
14 discuss what charges would be appropriate for
15 Mr. Massimino?

16 A I don't recall a specific conversation.
17 I'm sure it happened but it was very simple the
18 charge that we could charge him with we charged
19 him with.

20 Q Other than the interference did you and
21 Mr. Benoit consider any other crime to charge
22 Mr. Massimino with?

23 A No. Once we knew who he was and we were
24 able to run the proper checks that we -- that's
25 part of the promise to appear, but no.

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Frank Leone

1 Q How long did you discuss with Mr. Benoit
2 the interference charge for Mr. Massimino?

3 A Very briefly outside.

4 Q When you say "very briefly," can you give
5 me a sense of how many minutes that might have
6 been?

7 A If it was a minute, maybe a minute.

8 Q Did Mr. Benoit have a different view of
9 whether interference would be the only charge?

10 A I don't believe so.

11 Q After you were able to verify
12 Mr. Massimino's identity, did you conduct any
13 further investigation about whether he was
14 planning to attack the police station?

15 A Well, at that point we were able to check
16 social media and like I said before, COLLECT,
17 NCIC, Interpol, all the things that we've run and
18 no red flags came up so, again, that's why he was
19 given a promise to appear.

20 Q Let's talk about social media. You looked
21 at social media for information about
22 Mr. Massimino.

23 A I did a regular search of Google.

24 Q What did you type into Google to search
25 for Mr. Massimino's information?

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Frank Leone

1 A Just his name.

2 Q What did you find?

3 A I believe there was a little website with
4 a couple -- maybe it was basketball pictures.

5 Q And any other searches you did online or
6 on social media other than Google?

7 A No, I don't believe at that time, no.

8 Q Did the Google search results lead you to
9 think that Mr. Massimino was planning an attack on
10 the police station?

11 A At that point after all the searches and
12 everything, that's why he was released on a
13 promise to appear because we searched everything
14 we could and there were no red flags.

15 Q You mentioned COLLECT and NCIC and I think
16 Interpol, correct?

17 A Yes.

18 Q What were you looking for on those systems
19 with respect to Mr. Massimino?

20 A They show any protective orders, warrants,
21 out-of-state warrants. Actually a lot of it is
22 part of the booking process, any I think I said
23 out-of-state warrants. Pretty much any hits
24 nationwide or arrests nationwide.

25 Q None of that information suggested to you

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Frank Leone

1 that Mr. Massimino was planning an attack on the
2 police station?

3 A That is correct.

4 Q Okay. Other than those things that you've
5 listed for me, did you take any other
6 investigative steps to determine whether or not
7 Mr. Massimino was planning an attack on the
8 police?

9 A I don't believe so.

10 Q Did you write a report about your
11 interaction with Mr. Massimino that evening?

12 A Sergeant Benoit wrote the report.

13 Q Why did you not write a report?

14 A Only the arresting officer and any
15 situation unless it's use of force writes a
16 report.

17 Q Did you assist Mr. Benoit in writing his
18 report?

19 A Yeah. We were together for a little bit
20 afterwards.

21 Q When did he write that report?

22 A That night after the incident.

23 Q After you charged Mr. Massimino with
24 interference there was a criminal case, correct?

25 A Correct.

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Frank Laone

1 Q Did you prepare any documents for
2 prosecutors in that case?

3 A Me personally, no.

4 Q Are you aware of anyone else who prepared
5 documents for prosecutors in that case?

6 A If anybody did I'd have to go to our
7 records department.

8 Q Did you speak with prosecutors to help
9 them prepare for that case?

10 A No, I don't believe so. It never went to
11 trial. It was not even close to trial I don't
12 think.

13 MR. BARRETT: Mr. Laone, I want to
14 take a brief break if that's all right
15 with you. I wonder if we could take a
16 15-minute break. I'm just going to grab
17 some caffeine.

18 THE WITNESS: We're already now
19 behind.

20 MR. MENGACCI: Well, let me ask you
21 this. How much longer do you have after
22 the break?

23 MR. BARRETT: I don't think
24 particularly long.

25 MR. MENGACCI: All right. It's a

1 little after -- I have got 2:03. Can we
2 make it 2:15?

3 MR. BARRETT: We can do that.

4 MR. MENGACCI: Okay. Great. Thank
5 you.

6 MR. BARRETT: See you back then.

7 MR. MENGACCI: Okay.

8 (A recess was taken at 2:05 p.m., and
9 the deposition resumed at 2:15 p.m.)

10 MR. BARRETT: All right. Everybody
11 ready?

12 THE WITNESS: Yes, can you hear us.

13 MR. BARRETT: Thank you all for
14 allowing me to dash and get a diet Coke.

15 BY MR. BARRETT:

16 Q Mr. Laone, when Mr. Massimino was arrested
17 on the sidewalk, was he searched?

18 A Searched incident to arrest, yes, he was
19 searched.

20 Q What goes into a search incident to
21 arrest?

22 A Pockets, shirts, everything on your
23 person, what's in your jacket, your belongings,
24 pockets, socks.

25 Q Did you locate a pay stub in

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Frank Leone

1 Mr. Massimino's pocket as a result of that search?

2 A I did not search him.

3 Q Who searched him?

4 A I believe it was Sergeant Benoit and
5 whoever showed up in the cruiser in front of the
6 police station, because that's whose cruiser he
7 went in. It's common practice you don't put
8 somebody in your car without searching them.

9 Q If you arrested somebody directly in front
10 of the police station, why did you place him in a
11 cruiser?

12 A It's actually policy that they get driven
13 by a cruiser or patrol wagon.

14 Q The person driving the cruiser, was that
15 Mr. Polanco?

16 A I'd have to look back at the report but I
17 believe so.

18 Q When the person driving the cruiser pulled
19 up, what happened?

20 A At that point I believe Sergeant Benoit
21 walked him over to the cruiser. I took his
22 camcorder and ended up, looked in the camcorder
23 like right next to the bushes in front very
24 carefully.

25 Q Did you walk over to the cruiser?

1 A You'd have to watch the video from the
2 station. I think. I might have met Matt halfway.

3 Q But you don't remember one way or the
4 other?

5 A No.

6 Q You described for me earlier COLLECT and
7 NCIC. Is it fair for me to call those the
8 criminal history systems?

9 A Yes and no. You have to run different
10 searches for criminal history. COLLECT and NCIC
11 basically shows protective orders. Warrants if
12 you're a sex offender. If you're a gun owner a
13 gun registry and there's a separate to get your
14 whole rap sheet, per se.

15 Q When was the first time that night that
16 you became aware of Mr. Massimino's criminal
17 history or lack thereof?

18 A I'm pretty sure when I was back at the
19 desk after his wife brought in his I.D.

20 Q How long after the arrest did his wife
21 bring the I.D.?

22 A To be honest with you I don't know.
23 There's a lot of booking at the desk when people
24 come in and when people exit. I would have to
25 refer to that to give you an exact time frame.

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1 Q Would that visit by his wife have been
2 logged?

3 A No.

4 MR. BARRETT: All right. Well, I
5 think you have answered all the question I
6 need you to answer. So Mr. Mengacci may
7 have questions about my questions so over
8 to you, Mr. Mengacci.

9 MR. MENGACCI: Thank you very much.
10 I have no questions.

11 MR. BARRETT: Very good. Thank you
12 Mr. Laone. We're all done.

13 THE WITNESS: Okay. So we will be
14 back at 3:30 with Officer Benoit, right,
15 Sergeant Benoit.

16 MR. BARRETT: Perfect.

17 (The deposition concluded at 2:23
18 p.m.)

I, _____, do

PAGE	LINE	CORRECTION
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[illegible]

Deponent

Before me,
_____, Notary Public.

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CERTIFICATE OF DEPONENT

I, _____, do
hereby certify that the foregoing testimony taken
on _____, 2022, is true and accurate
to the best of my knowledge and belief.

Date

Deponent

At _____ in
said County of _____, this ____ day
of _____, 2022, personally appeared,<
_____, and made oath to the
truth of the foregoing answers as subscribed.

Before me, _____, Notary
Public.

My Commission expires:

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Frank Laone

CERTIFICATE OF REPORTER

I, Cheryl S. Damato, a Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to Notice, there came before me the following named person, to wit: FRANK LAONE, who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand this 22nd day of March, 2022.

Cheryl S. Damato
Notary Public
My commission expires:
December 31, 2023

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Exhibit 6

(Deposition of Matthew Benoit)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

* * * * *

KEITH MASSIMINO,

Plaintiff,

VS.

MATTHEW BENOIT and
FRANK LAONE,

Defendants.

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Docket No.

21-CV-1132

March 15, 2022

DEPOSITION OF: MATTHEW BENOIT

Taken before Cheryl S. Damato, Court
Reporter, Notary Public in and for the State of
Connecticut, pursuant to Notice, taken on the Zoom
platform via the Internet, on March 15, 2022,
commencing at 3:31 p.m.

CASSIAN REPORTING SERVICE
CHERYL S. DAMATO, CERTIFIED COURT REPORTER
21 OAK STREET, SUITE 307
HARTFORD, CONNECTICUT 06106

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Matthew Benoit

APPEARANCES :

ACLU FOUNDATION OF CONNECTICUT
Representing the Plaintiff
765 Asylum Avenue, 1st Floor
Hartford, Connecticut 06105
BY: DAN BARRETT, Esquire
ELANA BILDNER, Esq.

WATERBURY CORPORATION COUNSEL
Representing the Defendants
235 Grand Street
Waterbury, Connecticut 06702
BY: JOSEPH MENGACCI, ESQUIRE

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1 STIPULATIONS

2
3 IT IS STIPULATED by the attorneys for the
4 Plaintiff and the Defendant that each party reserves
5 the right to make specific objections in open court
6 to each and every question asked and the answers
7 given thereto by the witness, reserving the right to
8 move to strike out where applicable, except as to
9 such objections as are directed to the form of the
10 questions.

11 IT IS STIPULATED and agreed between
12 counsel for the parties that the proof of the
13 authority of the Notary Public before whom this
14 deposition is taken is waived.

15 IT IS FURTHER STIPULATED and agreed that
16 the reading and signing of this deposition are not
17 waived, and any defects in the notice are waived.
18
19
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25

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1 THE COURT REPORTER: Again,
2 gentlemen, I don't know if you want me to
3 read this blurb to you or waive it but it
4 basically allows me to take these
5 proceedings remotely.

6 MR. BARRETT: I have no objection.

7 MR. MENGACCI: I have no objection.

8 THE COURT REPORTER: The most
9 important thing is you have no objection
10 to me swearing the witness over the
11 internet.

12 MR. BARRETT: Correct, none from me.

13 MR. MENGACCI: None from us.

14 THE COURT REPORTER: Okay. And
15 stipulations again, usual with read and
16 sign?

17 MR. BARRETT: Yes, I would like the
18 witness to read and sign.

19 THE COURT REPORTER: Okay. And you
20 both want an electronic copy.

21 MR. BARRETT: Yes, please.

22 MR. MENGACCI: Yes, please.

23 THE COURT REPORTER: As for the
24 witness I would ask you to state your full
25 name, please?

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1 THE WITNESS: Sergeant Matthew
2 Benoit.

3 THE COURT REPORTER: And is there
4 anyone else present in the room with you
5 besides your attorney?

6 THE WITNESS: No.

7 THE COURT REPORTER: Okay. Sir, I'm
8 going to swear you in so if you could
9 raise your right hand, please?

10

11

12

13

14 M A T T H E W B E N O I T ,
15 called as a witness by the plaintiff, being
16 first duly sworn by the Notary, was examined,
17 and testified on his oath, as follows:

18

19

20 DIRECT EXAMINATION

21 BY MR. BARRETT:

22 Q Good afternoon, Mr. Benoit.

23 A Good afternoon.

24 Q Are you located in city hall?

25 A Yes.

1 Q So because of the magic of technology, I'm
2 going to run through some guardrails for this
3 afternoon's testimony that might help us get
4 through this quicker.

5 A Okay.

6 Q The first one is that I'm obviously going
7 to ask you a bunch of questions. If at any time
8 you don't understand my question, either you can't
9 hear it or you didn't understand what I meant, I'm
10 going to assume that you will pipe up and ask me
11 to repeat or rephrase. Is that fair?

12 A Yes.

13 Q Because Ms. Damato is here taking down
14 everything that you and I say, I'm also going to
15 ask that all of your answers be verbal. So
16 naturally sometimes we nod our heads or shake them
17 to indicate yes or no, if you do that again not
18 meaning to be rude, I'll ask you to answer using
19 words. I hope you will not take offense.

20 A Okay.

21 Q Have you ever given testimony under oath
22 before?

23 A Yes.

24 Q Great. How many times?

25 A Once, I believe. Do you refer to a civil

1 case or overall, court, civil case?

2 Q Any time you --

3 A General, at least a few times over my
4 career. Four or five times I would say probably,
5 approximately.

6 Q Great. So this will be pretty similar to
7 that. Ms. Damato is taking down everything that
8 we say. You're obligated to tell the truth. If
9 you can't remember the answer to a question tell
10 me you can't remember.

11 In order to make today go quickly and make
12 sure that we get the best testimony I just want to
13 check off a couple of boxes here and make sure
14 you're ready to go. Do you wear hearing aids,
15 Mr. Benoit?

16 A No.

17 Q Do you wear glasses?

18 A No.

19 Q Within the last eight hours have you taken
20 any drugs or alcohol that would impair your
21 ability to give us your best testimony today?

22 A No.

23 Q Is there any other reason why you could
24 not give us your best testimony today?

25 A No.

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1 Q What did you do to get ready for today?

2 A I discussed the case with Attorney
3 Mengacci here and my partner, Sergeant Laone.

4 Q When did you speak with Mr. Laone?

5 A This morning.

6 Q Was that in person?

7 A Yes.

8 Q Was it at the police station?

9 A No.

10 Q Where was it?

11 A I met up with him at his house.

12 Q And without telling me what you discussed
13 when did you meet with Mr. Mengacci?

14 A I met with Attorney Mengacci today.

15 Q At city hall?

16 A Yes.

17 Q Great. Besides yourself and Mr. Mengacci
18 was there anyone else present?

19 A No.

20 Q How long have you been employed by the
21 Waterbury police department?

22 A I have been a police officer here in the
23 City of Waterbury since November of 2008 so 13
24 years complete. I'm in my fourteenth.

25 Q Were you a police officer prior to

1 starting at the Waterbury police department?

2 A I was a police recruit, not a full-fledged
3 officer.

4 Q Got it. Other than this lawsuit have you
5 ever been sued?

6 A Yes.

7 Q How many times?

8 A To the best of my recollection three.
9 This would be the fourth.

10 Q Okay. Let's take those in chronological
11 order. When were the first time you were sued?

12 MR. MENGACCI: Let him finish his
13 question.

14 THE WITNESS: Sorry, Attorney, go
15 ahead.

16 MR. BARRETT: No, no, and thanks for
17 that reminder. So we have to space out
18 our conversation so we make sure we get it
19 on the record.

20 BY MR. BARRETT:

21 Q You told me about four lawsuits. When was
22 the first lawsuit?

23 A The first lawsuit I'm not sure of the
24 exact time frame but it was settled. It was
25 towards the beginning of my career.

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1 Q So closer to 2008 than today?

2 A Yes. Yes. Yes.

3 Q And what were the allegations against you
4 in that lawsuit?

5 A I believe that one was false arrest.

6 Q And what about the lawsuit after that?

7 A The next lawsuit after that was Cedric
8 Young case and that was excessive force and that
9 case was dismissed.

10 Q What year was that?

11 A That I don't recall. I believe it would
12 be 2018. Don't quote me on the exact year.

13 Q Okay.

14 A That case was dismissed.

15 Q All right. What about the third one?

16 A The third case was a recent case that was
17 withdrawn by the plaintiff. That was a case over
18 search and seizure.

19 Q All right. So those four. No other
20 cases?

21 A To the best of my recollection, no.

22 Q All right. Have you ever sued anybody?

23 A No.

24 Q Have you ever been decertified?

25 A No.

1 Q Am I correct that the City of Waterbury
2 has provided you with a lawyer in this case?

3 A Yes.

4 Q Has the City of Waterbury given you any
5 indication of whether or not you will be
6 financially responsible for the outcome of this
7 case?

8 A No.

9 Q If I've got the right guy in the chair you
10 participated in the arrest of Keith Massimino on
11 October 30, 2018, right?

12 A Yes.

13 Q Before that night, October 30, 2018, had
14 you ever met Mr. Massimino?

15 A No.

16 Q And what about after that night? Ever met
17 him after that night?

18 A No.

19 Q If I were to describe the Waterbury police
20 station as occupying an entire block would that be
21 accurate?

22 A Yes.

23 Q And the front of it would it be fair for
24 me to say that the front of the police station is
25 on East Main Street there?

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1 A Yes.

2 Q And I'm also correct that the other three
3 streets around it are North Elm, Maple and Water?

4 A Yes.

5 Q All of those four sides of the police
6 station have sidewalks around them, do they not?

7 A Yes.

8 Q All four of those you sidewalks are open
9 to the public, correct?

10 A Yes.

11 Q And none of those four sidewalks -- let me
12 start over. None of those four sides of the
13 police station have fencing or shrubbery or
14 anything that would obstruct the person's view of
15 the police station from the sidewalk, correct?

16 A Yes.

17 Q On that night, October 30, 2018, when had
18 you come onto work?

19 A 3:30 p.m.

20 Q When was your shift over?

21 A 11:30 p.m.

22 Q What were you doing that night?

23 A I was working as patrol supervisor.

24 Q What does the patrol supervisor do?

25 A Patrol supervisor helps the officers

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1 handle calls for service, approves reports and
2 generally supervises the officers and their duties
3 during the eight hours of their patrol shift.

4 Q At some point that night you became aware
5 that Keith Massimino was outside the police
6 station, correct?

7 A Yes.

8 Q When did you become aware of that?

9 A I observed Mr. Massimino videotaping gas
10 pump and the lower juvenile division, also the
11 surveillance cameras as I was exiting the lower
12 bathroom of the police department, the lower door
13 that goes out to the garage.

14 Q And what time was it that you first
15 observed him?

16 A I don't recall the exact time.

17 Q Was it dark out?

18 A That I don't recall.

19 Q All right. So you saw Mr. Massimino. Did
20 you see him with your own eyes or with --

21 A Yes, I saw him, yes.

22 MR. MENGACCI: Let him finish the
23 question.

24 THE WITNESS: Okay.

25 MR. MENGACCI: Can you repeat the

1 question, Dan. Thanks.

2 MR. BARRETT: Oh, sure. Sure.

3 BY MR. BARRETT:

4 Q So when you first saw Mr. Massimino did
5 you see him with your own eyes?

6 A Yes.

7 Q What did you do after seeing him?

8 A I alerted Sergeant Laone who was also in
9 the lower level of the police department.

10 Q When you first saw Mr. Massimino for how
11 long did you observe him?

12 A I observed him for several minutes with
13 his camcorder and then I continued my surveillance
14 after I alerted Sergeant Laone.

15 Q How did you continue your surveillance?

16 A I got into my marked police vehicle and
17 drove around the building a couple of times.

18 Q So after you got into your car and drove
19 around during that time what did you see
20 Mr. Massimino doing?

21 A I continued to observe as he videotaped
22 our gas pumps and the youth division, our
23 surveillance cameras, the entry and exit at points
24 of the police department.

25 Q What streets was Mr. Massimino on when you

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Matthew Denolt

1 observed him doing those things?

2 A He was on North Elm walking up towards
3 East Main Street.

4 Q And at the time you got into your car and
5 continued to observe him, what length of time are
6 we talking about in terms of duration?

7 A That I couldn't recall the exact duration.

8 Q All right. So he was on East Main and
9 North Elm and he's video recording. Was he alone
10 or with other people?

11 A He was alone.

12 Q Was he carrying anything?

13 A He had a camcorder in his hand.

14 Q Anything else?

15 A That I don't recall.

16 Q How did you know that he was video
17 recording?

18 A I observed him as he had his camcorder
19 clearly viewing up towards the surveillance
20 cameras, the youth division and the gas pumps. It
21 was very alarming to me.

22 Q What part of that was alarming to you?

23 A I felt that he was casing the police
24 department for a criminal act.

25 Q So you're in your car observing these

1 things. How long did you observe him from your
2 car?

3 A I continued to observe him until he made
4 his way onto East Main Street in front of the
5 police station and that's where Sergeant Laone and
6 I approached him.

7 A Okay. So at one point you got out of your
8 car, is that correct?

9 A At the end we approached Mr. Massimino,
10 yes.

11 Q Where did you park your car?

12 A To the best of my recollection right in
13 front of the P.D.

14 Q Right in front of police department?

15 A Yes.

16 Q Okay. All right. So during the time you
17 were observing him and you were in your car were
18 you in contact with Mr. Laone?

19 A No. When I alerted Sergeant Laone in the
20 lower level previously he went to do the
21 surveillance cameras at the front desk. Once he
22 viewed the cameras, he made his way to the front
23 and then I approached him getting out of my
24 cruiser.

25 Q When you got out of your cruiser where was

1 Mr. Massimino?

2 A He was in front of the police station
3 continuing with the video recording with his
4 camcorder.

5 Q He was on the sidewalk?

6 A Yes.

7 Q During your entire interaction with him
8 did he ever leave the sidewalk?

9 A No.

10 Q Did you at any time observe him off of the
11 sidewalk?

12 A No.

13 Q When you left your cruiser to approach
14 Mr. Massimino did you suspect that he had a
15 weapon?

16 A I did not know.

17 Q Did you take any steps to verify whether
18 or not he had a weapon?

19 A No.

20 Q Had you thought that he had a weapon what
21 would you have done?

22 A He would have been patted down for
23 weapons. I could see his hands. His hands were
24 around the camcorder. We continued to observe
25 suspicious activity he was committing so seeing

1 his hands, we mainly focused on what he was video
2 recording.

3 Q Was he holding the camcorder with both
4 hands?

5 A That I don't remember but I remember being
6 able to see both of his hands so his hands weren't
7 --

8 THE COURT REPORTER: I'm sorry, can
9 you repeat it.

10 A His hands weren't in his pocket is what
11 I'm saying.

12 MR. MENGACCI: And I think he said
13 they weren't in his pockets.

14 THE WITNESS: So his hands weren't
15 concealed.

16 BY MR. BARRETT:

17 Q So you and Mr. Laone walked up to
18 Mr. Massimino, is that right?

19 A Yes.

20 Q What happened next?

21 A We approached Mr. Massimino and Sergeant
22 Laone asked him what he was videotaping.

23 Q What did Mr. Massimino say?

24 A He was filming content for a story.

25 Q Uh-huh. What happened next?

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1 A At one point he identified himself as a
2 member of the media.

3 Q When you approached him did you understand
4 him to be recording at that time?

5 A Yes.

6 Q Why did you think that?

7 A Based on like I said previously he's
8 videotaping the surveillance cameras, the gas
9 pump, his motions I continued to observe. It was
10 clear to me that he was videotaping dangerous
11 locations, juveniles protected by state statute,
12 the gas pump, our entry and egress. Numerous
13 officers have been attacked in recent years
14 entering and exiting police cars, police stations.
15 The manner in which he was videotaping alarmed
16 our suspicions that he was casing the police
17 department for future criminal act leading from
18 anything from criminal mischief up until an
19 assault or homicide. Based on the way -- his
20 manner in which he was videotaping was very
21 alarming to us, very suspicious.

22 Q You came to find out that at some point he
23 did actually make a video recording that evening,
24 correct?

25 A Yes. After he was arrested, yes.

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1 Q And you've reviewed that video recording,
2 correct?

3 A Yes.

4 Q How many times?

5 A That I don't recall the exact number of
6 times.

7 Q More than once?

8 A Yes.

9 Q Does the video fairly and accurately
10 depict your interactions with Mr. Massimino that
11 evening?

12 A Yes.

13 Q Isn't it legal to film a police station?

14 A Yes. The issue here is the manner in
15 which he was videotaping and what he was
16 videotaping was very alarming to us.

17 Q Okay. So the manner in which he was
18 videotaping. How was he videotaping?

19 A He was videotaping again the gas pumps,
20 the juvenile division, our police vehicles, the
21 entrance and egress points, our daily operations,
22 the security cameras. That's very alarming to us.
23 We truly believed he was casing the place for
24 future criminal act.

25 Q You said the manner in which he was video

1 recording. Do you mean what he was video
2 recording?

3 A Yes, yes, what, again, the gas pumps, the
4 juvenile division, the entrance and egress points,
5 our daily operations, the surveillance cameras,
6 yes.

7 Q And what law was he breaking by
8 videotaping in that way?

9 A So the manner in which he was videotaping
10 became very suspicious to us. Again assaults on
11 police officers, that built our suspicion to
12 encounter him and, once again, he identified
13 himself as a member of the media, refused to
14 provide credentials. Again, that raises our
15 suspicion. We have a good relationship with the
16 media. They readily provide credentials, arrive
17 in marked vehicles. Clearly make it known that
18 they're there as a member of the media. When he
19 refused to give us his media credentials that and
20 the manner in which he was videotaping and what he
21 was videotaping raised our level of suspicion
22 where we feared he was casing the police
23 department for future criminal acts. Again
24 whether it's for criminal mischief up into a
25 homicide. As he continued to not provide us his

1 credentials, that's where we arrested him for
2 interfering and hindering our investigation,
3 obstructing our investigation into the suspicious
4 activity that he was conducting.

5 Q Is there any part of the exterior of the
6 police station that Mr. Massimino could have video
7 recorded without violating the law?

8 A Can you clarify that?

9 Q Sure. If I understand your testimony
10 you've told me that the areas that Mr. Massimino
11 was video recording made you suspect that he might
12 be violating the law. Is that fair?

13 A Yes, he was casing the place was our
14 belief at the time, yes.

15 Q So are there any areas of the police
16 station that Mr. Massimino could have videotaped
17 that would not have raised that suspicion?

18 A The lobby is the main public area in the
19 police department.

20 Q So of the outside of the building if
21 Mr. Massimino had been recording let's say the
22 front doors you would not have been suspicious?

23 A Again, yes, I would have been because
24 that's an entrance and egress point of the police
25 department itself.

1 Q Okay. So other than the lobby is there
2 any other part of the police station that he could
3 have been videotaping that would not have made you
4 suspicious?

5 A No.

6 Q Let's talk about you mentioned the gas
7 pump earlier. What is that?

8 A It's a gas pump that we fill the police
9 cars with.

10 Q Is that located inside of the garage there
11 on North Elm?

12 A Yes.

13 Q And that garage has an entrance, correct,
14 a wall or fence in front of it?

15 A Yes.

16 Q What else is behind that wall or fence
17 that marks the entrance to the garage?

18 A Can you rephrase that question? You said
19 there's the wall and there's the fence. What's is
20 your question.

21 Q Sure. So if you can depict for me with
22 words if you will this area that Mr. Massimino was
23 recording. I've termed it a garage first of all.
24 Is that a good way to describe it?

25 A Yes.

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1 Q And the garage has an entrance and exit,
2 correct?

3 A Yes.

4 Q Is that entrance or exit closed off by a
5 gate?

6 A Yes, the gate was open that night but the
7 gate does close.

8 Q Got it. All right. So the gas pump is
9 inside of that gate?

10 A Yes.

11 Q What else is inside of the gate?

12 A Marked police vehicles, unmarked police
13 vehicles and some of our officers' personal
14 vehicles.

15 Q Is the sally port inside of that gate as
16 well?

17 A No, the sally port is the upper level of
18 the police department so you'd have to -- that's
19 the upper tier of the P.D.

20 Q So that garage that we've been discussing
21 has multiple levels?

22 A Yeah, so there's that level and then the
23 second floor is where the salary port is.

24 Q Got it. All right. Is the gate that
25 you've described for me is that usually closed?

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1 A No. It usually remains open.

2 Q Is it sort of an automatic gate where
3 someone can swipe a card or put in a passcode?

4 A No, it has to be manually operated.

5 Q Got it. Now moving to you said something
6 about youth and, I'm sorry, I can't quite remember
7 exactly what words you used. There was something
8 else on North Elm that Mr. Massimino was recording
9 that you found suspicious.

10 A The youth division or the juvenile
11 division. Can you hear me, juvenile division is
12 what was very alarming to us.

13 Q Yeah, so what does that look like from the
14 outside?

15 A It's a couple of windows with an entry
16 door.

17 Q And there's a sign that says I think youth
18 division, right?

19 A Yes.

20 Q All right. During the time that you
21 observed Mr. Massimino on North Elm Street, did
22 anyone pass in or out of the youth division door?

23 A That I don't recall.

24 Q Is there any record or document that would
25 show whether or not anyone had passed in or out of

1 that door?

2 A That I don't know.

3 Q Who would I ask to get the answer to that
4 question?

5 A I'll have to get back to you on that one.
6 That I wouldn't know.

7 Q So you and Mr. Laone, you began speaking
8 with Mr. Massimino. You got into the discussion
9 about what he was doing, whether he was a
10 journalist and then at some point you asked him
11 for I.D., correct?

12 A Yes.

13 Q Why did you do that?

14 A Again we had reasonable suspicion to stop
15 him and based on the manner and what he was
16 videotaping, it was very suspicious to us and we
17 feared he was casing the police department for
18 future criminal act.

19 Q What would his I.D. have shown you in
20 terms of his intent to commit crime?

21 A We would have been able to I.D. him, know
22 who he was, document what he was doing.

23 Q How far away from Mr. Massimino were you
24 when you were engaging with this discussion with
25 him?

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1 A Approximately a few feet away.

2 Q During that time were you able to observe
3 whether or not he had any weapons with him?

4 A No.

5 Q All right. So other than asking for his
6 I.D., what steps, what investigative steps did you
7 undertake to determine whether or not he was
8 planning on committing a crime?

9 A Again a reasonable suspicion for stopping
10 Mr. Massimino was videotaping, the manner in which
11 he was videotaping, again, the gas pumps, entry
12 and egress, surveillance cameras, the youth
13 division, youth victims identity is protected by
14 state statutes. At that time numerous officers
15 have been killed walking out of P.D.'s, gassing up
16 vehicles. The totality of those circumstances
17 made us believe he was casing the department for a
18 potential criminal act. When he became elusive
19 and refused to provide his media credentials which
20 the media we deal with on a daily basis readily
21 does, that continued to make us very suspicious of
22 his actions and he obstructed our investigation
23 into the suspicious activity by refusing to
24 provide his credentials.

25 Q Right. So the investigation is suspicious

1 activity. You've told me that to conduct an
2 investigation you talked to Mr. Massimino on East
3 Main Street, right?

4 A Yes.

5 Q And you sought to get identification
6 through him, right?

7 A Yes.

8 Q What other steps did you take to
9 investigate the suspicious activity?

10 A Sergeant Laone had went to the front and
11 watched him on the cameras as I watched him in the
12 cruiser and we both approached him and continued
13 our investigation.

14 Q All right. So other than speaking with
15 him demanding identification from him, did you
16 take any other steps to dispel your suspicions
17 that he might be engaged in criminal activity?

18 A No.

19 Q You wrote a police report about the
20 incident, right?

21 A Yes.

22 Q And in that police report you explain that
23 you were under the impression that there had been
24 several acts of terrorism directed at government
25 buildings, correct?

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1 A Yes.

2 Q What were you referring to when you wrote
3 that?

4 A There's been numerous attacks in
5 government buildings in the past where bombs were
6 used. A Texas officer was shot gassing up his
7 vehicle. Numerous ambushes in police cars and the
8 manner in which Mr. Massimino was videotaping made
9 me feel he was casing the department to do an act
10 similar to that. Criminal act again ranging
11 anywhere from criminal mischief to an assault to a
12 homicide or murder of an officer. Again, it's how
13 he was videotaping and what he was videotaping and
14 the manner in which he was acting is the issue of
15 why we stopped him.

16 Q You've told me that you suspected he could
17 have been up to something from an assault all the
18 way up to a homicide.

19 A Yes.

20 Q Was there any criminal activity that your
21 investigation ruled out as a suspicion?

22 A No.

23 Q Why was that?

24 A We were -- at that time we weren't able to
25 access the video and pretty much our main reason

1 for making the arrest is he obstructed and ended
2 our investigation of the suspicious activity which
3 we had suspicion to stop him for by not providing
4 his media credentials. That rose to the probable
5 cause to make the arrest for interference.

6 Q When you wrote that there have been
7 several acts of terrorism directed at government
8 buildings, did you mean any in specific?

9 A No, there's been numerous attacks of
10 buildings over the year and again that was going
11 through our head at the time and the manner in
12 which is what I kept thinking about. He's casing
13 the department for an attack.

14 Q What kind of an attack did you suspect him
15 of conducting?

16 A Again anything. I don't know what he was
17 up to. That was the point of stopping him. Again
18 in my police experience, it's common play for
19 people to videotape the police affecting an arrest
20 conducting a motor vehicle stop. I've never seen
21 someone case the police department in the manner
22 in which Mr. Massimino was doing. Again, the
23 entrance, egress, video, our surveillance cameras,
24 the youth division, the gas pumps. All those acts
25 were very suspicious and alarming to us.

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1 Q You mentioned something about an incident
2 in Texas. Do you recall that?

3 A To the best of my recollection it was an
4 officer that was shot fueling up his vehicle.

5 Q When did that happen?

6 A I believe that was in 2015 and it was at a
7 private gas station and that was an incident that
8 I remember from the news and that's what I thought
9 of when I saw him videoing the pump.

10 Q Where in Texas did it happen?

11 A That I don't recall.

12 Q Where did you learn about it?

13 A I remember reading it online.

14 Q Did you learn anything about the -- well,
15 do you know if there was a suspect arrested in
16 that case?

17 A That I don't remember. I remember reading
18 it on the officer down on the memorial page.

19 Q Sorry, what is the officer down memorial
20 page?

21 A There's a website you can go on. It shows
22 the officer death line of duty which I
23 occasionally read.

24 Q All right. So after Mr. Massimino
25 declined to identify himself he was arrested,

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1 right?

2 A Yes.

3 Q So technically speaking were you the
4 officer who made the arrest?

5 A Yes.

6 Q Okay. So from the second you decided to
7 arrest him tell me what happened?

8 A He was placed under arrest and he took his
9 camera, placed it into the bushes there so it
10 wouldn't get damaged on the ground. He was put in
11 the back of a police car and he was driven around
12 into the sally port and then the camera was ceased
13 and turned in as evidence.

14 Q At some point the camera was turned off,
15 correct?

16 A That I don't recall. I believe Sergeant
17 Laone had turned the camera in as evidence.

18 Q All right. So am I right that it was a
19 third police officer who came to transport
20 Mr. Massimino to the sally port?

21 A Yes. A police cruiser drove him up East
22 Main and then around to the side of the sally
23 port, yes.

24 Q And that third person, that was
25 Mr. Polanco?

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1 A Yes. Let me just double-check the report.
2 Yes, it says right here he was transported by
3 Officer Polanco and Officer Guisto.

4 Q And Guisto is G-u-i-s-t-o, correct?

5 A Yes.

6 Q Okay. So when Officer Polanco arrived,
7 what, if anything, did he do?

8 A We placed -- nothing. Besides driving the
9 cruiser I believe we placed Mr. Massimino in the
10 back of Officer Polanco's cruiser and I think
11 Officer Polanco searched him to the best of my
12 recollection, drove him into the sally port.

13 Q Once Mr. Massimino was in the cruiser
14 where did you go?

15 A I went into the front door of the police
16 station and then they drove him into the sally
17 port.

18 Q Got it. Did you participate in
19 Mr. Massimino's booking?

20 A No.

21 Q But you participated in the decision to
22 charge him with a crime, correct?

23 A Yes.

24 Q What crime did you think he should be
25 charged with?

1 A I charged him with interfering with a
2 police officer.

3 Q Did you have probable cause to believe
4 that he committed any other crime?

5 A No.

6 Q Did you discuss the charge with anyone
7 else?

8 A I discussed it with Sergeant Laone.

9 Q Did Sergeant Laone suggest any charge
10 other than interference?

11 A No.

12 Q Did the two of you agree that interference
13 was appropriate?

14 A Yes, because Mr. Massimino hindered and
15 obstructed our investigation to suspicious
16 activity which we had suspicion to stop him for.

17 Q After you charged him with a crime a
18 criminal case occurred, right?

19 A Yes.

20 Q Did you prepare any documents for the
21 prosecutors in that case?

22 A We don't -- the way our police department
23 is set up, records supplies all the necessary
24 documents. I type the police report if that's
25 what you're getting at.

1 Q Yeah. No other document did you prepare
2 for them.

3 A No.

4 Q Did you ever speak with the prosecutors in
5 Mr. Massimino's criminal case?

6 A We met once with the prosecutor and that
7 was pretty much it.

8 Q When did you meet with the prosecutor?

9 A That I don't recall the exact date and
10 time.

11 Q You said that "we" met with the
12 prosecutor. Who is we?

13 A Sergeant Laone and I.

14 Q Did you meet in person?

15 A Yes.

16 Q Where did you meet?

17 A At the police department.

18 A And what was the name of the prosecutor.

19 A Cathy Bradley Austin I believe it was at
20 the time.

21 Q What did you speak about with her?

22 A She went over the case itself and then the
23 next step in the court process.

24 Q Did you ever learn about what happened to
25 Mr. Massimino's criminal case?

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1 A Yes.

2 Q What did you learn?

3 A The case was dismissed.

4 Q How did you learn that?

5 A I believe I was told -- I read it in the
6 newspaper actually now that I think about it.

7 MR. BARRETT: Mr. Benoit, I'm going
8 to take a brief break to chat with my
9 co-counsel, Ms. Bildner. If you would
10 give me about ten minutes, I'll be right
11 back.

12 THE WITNESS: Okay.

13 MR. BARRETT: All right. We're going
14 to go off the record.

15 (A recess was taken at 4:08 p.m., and
16 the deposition resumed at 4:16 p.m.)

17 MR. BARRETT: Everybody ready?

18 THE WITNESS: Yes.

19 MR. BARRETT: Thank you for allowing
20 me for a short break. We're back.

21 BY MR. BARRETT:

22 Q Mr. Benoit, you arrested Mr. Massimino
23 because he declined to identify himself but at
24 some point in the evening you learned his
25 identity, correct?

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1 MR. MENGACCI: Objection to the form.

2 MR. BARRETT: And you can answer.

3 A We identified him after he was placed
4 under arrest.

5 BY MR. BARRETT:

6 Q When did you identify him?

7 A I believe he was identified in booking.

8 Q How was he identified?

9 A That I don't recall. I was typing the
10 police report and I was told by Sergeant Laone his
11 name and date of birth. That I don't recall the
12 exact manner he was identified but it was after he
13 was placed under arrest.

14 Q You've described for me the exterior of
15 the Waterbury police department. On any part of
16 the exterior are there signs that forbid video
17 recording?

18 A No.

19 Q You described for me your basis for
20 reasonable suspicion to stop Mr. Massimino and you
21 described it as being based on his videotape. Is
22 that a fair way of describing it?

23 A The manner in which he was videotaping and
24 what he was videotaping. It's not a simple matter
25 of videotaping the police department. It's the

1 manner in which he was videotaping. He was casing
2 the place in my view which made me believe he was
3 about to commit a crime or going to commit a crime
4 in the future and, again, that crime in my mind
5 numerous officers being assaulted or killed coming
6 out of P.D.'s, the attacks in government
7 buildings. That all was going through my head at
8 the time, the manner in which he was videotaping.
9 Again, the gas pump, juvenile division, our
10 surveillance cameras, daily operations, we feared
11 he was casing the place for a criminal attack and
12 when he refused to provide his media credentials
13 like he claimed he was a member of the media,
14 again, that obstructed our investigation into the
15 suspicious activity.

16 Q Other than the videotaping, did anything
17 that he was doing prior to your discussion with
18 him give you suspicion that he was up to no good?

19 A No, it was the videotape. It was the
20 manner in which he was videotaping and what he was
21 videotaping is what alarmed us, the safety of the
22 police department.

23 MR. BARRETT: Thank you, Mr. Benoit.
24 That does it for me. Mr. Mengacci may
25 have questions for you so over to you,

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1 Mr. Mengacci.

2 MR. MENGACCI: Thank you very much,
3 Attorney Barrett. I have no questions.
4 Thank you.

5 MR. BARRETT: Very good. We're all
6 set. Thank you.

7 MR. MENGACCI: Okay. Thanks.

8 (The deposition concluded at 4:20
9 p.m.)

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CORRECTION SHEET

I, _____, do hereby certify that the following corrections and additions are true and accurate to the best of my knowledge and belief.

PAGE	LINE	CORRECTION
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[illegible]

Date

Deponent

At _____
in said County of _____, this
_____ day of _____, 2022,
personally appeared _____, and
made oath to the truth of the foregoing
corrections.

Before me,
_____, Notary Public.

My Commission Expires:

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CERTIFICATE OF DEPONENT

I, _____, do
hereby certify that the foregoing testimony taken
on _____, 2022, is true and accurate
to the best of my knowledge and belief.

Date

Deponent

At _____ in
said County of _____, this ____ day
of _____, 2022, personally appeared,
_____, and made oath to the
truth of the foregoing answers as subscribed.

Before me, _____, Notary
Public.

My Commission expires:

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CERTIFICATE OF REPORTER

I, Cheryl S. Damato, a Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to Notice, there came before me the following named person, to wit: MATTHEW BENOIT, who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon carefully examined upon his oath and his examination reduced to writing under my supervision; that this deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand this 22nd day of March, 2022.

Cheryl S. Damato
Notary Public
My commission expires:
December 31, 2023

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