

In The Matter Of:
STATE OF MISSOURI v.
JEFFREY R. WEINHAUS

PATRICK CUNNINGHAM
July 23, 2013
Franklin County, Missouri No. 12AB-CR02409-01

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1 IN THE CIRCUIT COURT FOR THE COUNTY OF FRANKLIN
2 20TH JUDICIAL CIRCUIT
3 STATE OF MISSOURI

3 STATE OF MISSOURI,)
4 Plaintiff,) Cause No. 12AB-CR02409-01
5 vs.)
6 JEFFREY R. WEINHAUS,)
7 Defendant.)

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13 DEPOSITION OF PATRICK CUNNINGHAM
14 Taken on Behalf of the Defendant
15 July 23, 2013

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Page 3

1 IN THE CIRCUIT COURT FOR THE COUNTY OF FRANKLIN
2 20TH JUDICIAL CIRCUIT
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3 STATE OF MISSOURI,)
4 Plaintiff,) Cause No. 12AB-CR02409-01
5 vs.)
6 JEFFREY R. WEINHAUS,)
7 Defendant.)

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10 DEPOSITION OF PATRICK CUNNINGHAM, taken on behalf of
11 the Defendant, on the 23rd day of July, 2013, between the
12 hours of eight o'clock in the forenoon and six o'clock in
13 the afternoon of that day, in the offices of the Franklin
14 County Prosecuting Attorney's office, 15 S. Church Street,
15 Union, Missouri, before Jane M. Rich, a Missouri Certified
16 Court Reporter, license number 411.

17 A P P E A R A N C E S
18 The Plaintiff was represented by Mr. Robert H.
19 Parks, II, Franklin County Prosecuting Attorney, 15 S.
20 Church, Room 204, Union, Missouri 63084.
21 The Defendant was represented by Mr. Hugh
22 Eastwood, Attorney at law, 7777 Bonhomme, Suite 1603,
23 Clayton, Missouri 63105.
24
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1 I N D E X
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2 PATRICK CUNNINGHAM,
3 of lawful age, having been first duly sworn to testify to
4 the truth, the whole truth, and nothing but the truth,
5 deposes and says on behalf of the Defendant as follows:
6 DIRECT EXAMINATION
7 QUESTIONS BY MR. EASTWOOD:
8 Q Sir, could you state your name, please, for
9 the record?
10 A It's Patrick Cunningham.
11 Q And who is your employer, sir?
12 A The FBI.
13 Q And what is your title or rank there?
14 A Special agent.
15 Q Okay. And how long have you been with the
16 FBI?
17 A Approximately 18 years.
18 Q Do you have a DSN number, or some equivalent
19 number like that?
20 A No.
21 Q Okay. And what's the highest level of
22 education you have?
23 A I have a Master's degree.
24 Q Okay. What's that in?
25 A MBA.

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1 Q Oh, okay. Have you served in the military?
2 A No.
3 Q Okay. Have you had any other employers in the
4 past 10 years?
5 A Ten years, no.
6 Q Okay. Have you ever been formally
7 disciplined?
8 A No.
9 Q Okay. Have you ever been reprimanded?
10 A No.
11 Q Okay. And I have to ask you this as well:
12 Have you ever been arrested?
13 A No.
14 Q Have you ever been convicted of a crime?
15 A No.
16 Q And have you ever been a party to civil
17 litigation?
18 A No.
19 Q And you are competent and of sound mind and
20 body to testify today?
21 A Yes.
22 Q Okay. Who did you talk to in order to prepare
23 for today?
24 A Talk to? I had a conversation with Prosecutor
25 Bob Parks.

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1 Q Okay.
2 A And as far as talking to, discussed it with my
3 partner on the way down, just the fact that we were
4 called to testify here today.
5 Q This is Special Agent Maruschak?
6 A Correct.
7 Q And I'm pronouncing that correct?
8 A Correct.
9 Q Okay. And what documents, if any, did you
10 review to prepare for today?
11 A I reviewed the written statement that I
12 prepared, and also, the typed written report that the
13 Highway Patrol prepared.
14 Q Okay. When you say -- I see you have a
15 document in front of you. Is that consistent with this
16 one that I have here that's a typed report, first of
17 all, prepared by a Corporal Ashby?
18 A Correct.
19 Q And then I also have -- We'll make that
20 Exhibit 1.
21 A Okay.
22 Q And just for the record, and I also have,
23 we'll make this Exhibit 2, this is your handwritten
24 statement.
25 A Right. Correct.

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1 [Mr. Eastwood marked Defendant's Exhibits 1 and
2 2].
3 Q All right. Thank you, sir. And did you
4 review any other documents to prepare for today?
5 A No.
6 Q Okay. And we're here, obviously, I represent
7 Jeff Weinhaus, who's the defendant in a State of
8 Missouri prosecution.
9 Were you called as backup by the Missouri
10 Highway Patrol to serve an arrest warrant on Mr. Weinhaus?
11 A Yes.
12 Q Okay. And that was on or around
13 September 11th, 2012?
14 A Correct.
15 Q Okay. Had you been involved in the previous
16 investigation of Mr. Weinhaus?
17 A No.
18 Q Had you seen a You Tube video, dated
19 August 16th that Mr. Weinhaus made?
20 A Yes.
21 Q Okay. And when did you see that?
22 A Some time in August, I believe, or September
23 of 2012.
24 Q And we spoke a little bit before we went on
25 the record today, there was no federal investigation --

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1 A No.
2 Q -- into that?
3 A No.
4 Q Okay. So you had -- Had you seen this in
5 connection with a complaint by Judge Kelly Parker about
6 the video?
7 A No. We were contacted by the sheriffs, the
8 sheriff of Crawford County just to make it for our
9 situational awareness.
10 Q Who did you speak with at the sheriff's
11 department?
12 A The sheriff, Randy Martin.
13 Q Okay. And at that time did you believe that
14 Mr. Weinhaus had committed a crime?
15 MR. PARKS: On the federal level, or on the
16 state level, or --
17 Q (By Mr. Eastwood) Either. You can just
18 testify to your belief.
19 A He made some statements on there that were
20 concerning, whether or not that's going to rise to the
21 level of a charge under the state level or the federal
22 level, I couldn't tell you.
23 Q Okay. And were you involved in a visit to
24 Mr. Weinhaus' house around August 17th?
25 A No.

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1 Q Okay. Do you know a Sergeant Folsom?
2 A Yes.
3 Q Was he your contact person with the State
4 Highway Patrol for this investigation?
5 A Yes.
6 Q Okay. And had you seen an August 27th You
7 Tube video that Mr. Weinhaus made about Sergeant Folsom?
8 A I viewed several different postings by Mr.
9 Weinhaus, I may have seen that one.
10 Q On the day of the incident, the September 11th
11 incident, did you have reason to believe that Mr.
12 Weinhaus had personally threatened Sergeant Folsom?
13 A I couldn't tell you.
14 Q Okay. Did you know whether Mr. Weinhaus had
15 made a Google Circles friend request of Sergeant Folsom?
16 A No idea.
17 Q Did you feel personally threatened by Jeff
18 Weinhaus before you came to the gas station on
19 September 11th?
20 A Jeffrey Weinhaus had no idea who I was. I had
21 no contact with him.
22 Q You never met him before in your life?
23 A No.
24 Q Did you have an objective or belief that he
25 was a dangerous person before he came to the service

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1 station on September 11th?
2 A I had no idea that he'd be dangerous, or not
3 dangerous. We were there for a supporting role to
4 assist on an arrest attempt.
5 Q Okay. Did you make any contact with Jeff to
6 meet him at the service station?
7 A No.
8 Q Did Sergeant Folsom make that, to the best of
9 your knowledge?
10 A Yes.
11 Q And who chose that location?
12 A I think Sergeant Folsom did.
13 Q Okay. Did you have concerns about that
14 location being a safe place to serve the arrest warrant?
15 A No.
16 Q Okay. Did you have questions at that time why
17 Sergeant Folsom hadn't chosen an alternate location,
18 such as Troop C, or Troop I, or a police station?
19 A No.
20 Q Were you there as backup?
21 A Correct.
22 Q Okay. Were you wearing a bullet resistant
23 vest?
24 A No. But I had one in the vehicle.
25 Q And did you have a fear at that time that Mr.

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1 Weinhaus would bring someone else who might also pose a
2 threat?
3 A We were told, and this conversation didn't
4 happen between me and Mr. Weinhaus, but we were told
5 through Sergeant Folsom that Mr. Weinhaus was
6 considering on bringing somebody else to that location
7 with him.
8 Q Okay.
9 A So whether he brought somebody, or not, up
10 until the fact that when he rolled, or when he drove
11 into the parking lot, I had no idea.
12 Q In your experience is it normal procedure for
13 a trooper who has been personally threatened by the
14 subject on an arrest warrant, to go and serve the arrest
15 warrant?
16 A I have no idea.
17 Q No opinion on that?
18 A No. I mean, it's up to the officer, up to the
19 department. Don't know.
20 Q Okay. Do you think that increases the level
21 of danger for the officers serving the warrant?
22 A It can. But at the same time law enforcement
23 has to do a job, and his job was to effect the arrest.
24 Q Did you have particular concern for Sergeant
25 Folsom's safety before Mr. Weinhaus arrived on the

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1 scene, because of the prior history between Sergeant
2 Folsom and Mr. Weinhaus?
3 A There's always a concern any time you make an
4 arrest, and -- But as long as you follow the proper
5 procedures, and you always have to be cautious,
6 everybody you come in contact with, so...
7 Q Okay. Do you know, and I don't want you to
8 speculate, but do you know if Jeff knew that he was
9 going to be arrested?
10 A I have no idea.
11 Q Okay. Did you have knowledge of Sergeant
12 Folsom creating a rouse of --
13 A I am aware of that. But as far as
14 Mr. Weinhaus' perspective, I didn't know if he knew he
15 was going to be arrested at the time.
16 Q So he might have believed in the rouse, might
17 not have, you have no idea?
18 A No idea.
19 Q Okay. Did you know at the time if Mr.
20 Weinhaus was recording the meeting at the gas station?
21 A No.
22 Q Okay. Do you know now?
23 A I learned that he was.
24 Q Have you reviewed that wrist-watch video?
25 A I have seen it.

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1 Q Okay. Tell me where, where about where you
2 and your colleague parked to serve as backup at the
3 service station?
4 A We were across the parking lot from the
5 position of Sergeant Folsom and Corporal Merten's
6 vehicle.
7 Q And about how far a distance was that? And
8 you can guesstimate if you want.
9 A My statement, I wrote 60 yards. It's
10 approximately that distance.
11 Q Was it an obstructed, or unobstructed view?
12 A Unobstructed view.
13 Q Obstructed?
14 A Unobstructed.
15 Q Okay. And on this service station side there
16 is a -- there's a building, is there not?
17 A Correct.
18 Q And did the building -- And there's a porch in
19 front of the building; isn't there?
20 A Correct.
21 Q And does the porch have columns, do you
22 remember?
23 A Supports, yeah.
24 Q Okay. And did the supports or the building
25 obstruct, in any way, your view of Sergeant Folsom or

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1 his colleague?
2 A Not where we were parked, no.
3 Q Okay. And were you parked -- You were waiting
4 in your car?
5 A Correct.
6 Q And were you parked with your car pointed
7 generally in the direction of where the troopers were?
8 A Yes.
9 Q Okay. Now, how long did you wait between your
10 arrival and Mr. Weinhaus' arrival?
11 A I couldn't tell you, I mean, the exact time.
12 Half an hour, 20 minutes, half an hour, approximately.
13 Q Were there other people at the site during
14 that intervening period?
15 A When we first got there, there was nobody
16 there. And then a vehicle arrived with two individuals
17 and they were working on a guttering system on that
18 overhang porch area, so they actually told us to move
19 the vehicle, our vehicle.
20 Q Okay. And why was that?
21 A We were blocking the area where they were
22 going to work at.
23 Q This is the porch overhang --
24 A Correct.
25 Q -- that we talked about?

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1 A So we basically just backed up and we had a
2 clear view of Sergeant Folsom and Corporal Mertens.
3 There may have been another vehicle arrive in the
4 parking lot.
5 Q Okay. And do you remember what type of
6 vehicle it was?
7 A I think maybe a small truck, I believe.
8 Q Did the gutter men or their vehicle, did that
9 obstruct your view in any way?
10 A No.
11 Q You said you backed up?
12 A Correct.
13 Q How much farther did you back up?
14 A Distance wise, I couldn't tell you, but to a
15 point where we had a clear view of Sergeant Folsom and
16 Corporal Mertens.
17 Q Okay. Were the gutter men and the truck then
18 in between you and these troopers?
19 A Off to the side. Off to the right side.
20 Basically, backed up and positioned ourselves away from
21 them, but having a clear view of their vehicle.
22 Q You said the gutter men asked you to move?
23 A Correct.
24 Q Did you have any other conversations with
25 them?

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1 A No.
2 Q Did you know at the time who they were?
3 A No.
4 Q Did you have any concerns as to your safety or
5 the troopers' safety from the gutter men?
6 A They appeared as if they were doing a job.
7 Q Did you have any concerns that Mr. Weinhaus
8 had friends or allies lurking in the background area
9 somewhere?
10 A Again, you always have to be concerned in
11 these situations, either as the arresting officer or
12 support.
13 We were told by Sergeant Folsom that Mr.
14 Weinhaus was apparently going to ask other individuals to
15 come with him, so we had no idea who, who were his friends
16 and who were not his friends, or who may or may not arrive
17 to the location with him.
18 Q Okay. But you didn't have a heightened level
19 of concern just based on these other civilians who were
20 at the gas station?
21 A The ones who were there in the parking lot,
22 no. They appeared as if they were doing their job.
23 Q What did you observe of Mr. Weinhaus' vehicle
24 when he pulled into the service station parking lot?
25 A He drove into the parking lot, made a large

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1 circle, and parked near Corporal Mertens' vehicle.
2 Q Okay. And from where he entered this parking
3 lot to where Corporal Mertens was, was that on an
4 incline, or level?
5 A Where he stopped his vehicle?
6 Q Correct.
7 A It may have a slight grade to it, you know.
8 Q Did the manner in which Mr. Weinhaus' vehicle
9 entered the parking lot and came to a stop cause you any
10 heightened concern?
11 A I can -- He came in at a relatively high rate
12 of speed. And again, it happened so fast, you know, he
13 came in at a high rate of speed, did a big circle,
14 turned, stopped his vehicle. Had no idea what his
15 intentions were.
16 Q Was there something objectively threatening to
17 you from the way he operated his vehicle?
18 A He just didn't -- He, just the speed he came
19 in. It was -- My initial concern was I thought he may
20 have even tried to ram the highway patrol vehicle.
21 Q Okay.
22 A But then he passed it, then he came to a stop,
23 so...
24 Q Did you have your weapons drawn at this time?
25 A No. We were still seated in the vehicle.

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1 Q And how good's your vision?
2 A Very good.
3 Q I notice you have glasses there. Are those
4 just for reading?
5 A Reading glasses.
6 Q So you don't need glasses to see a distance?
7 A No.
8 Q Were you using binoculars, or any type of
9 equipment?
10 A No. Again, we're 60 yards away, so...
11 Q Fair enough. And do you have any concerns
12 about how Mr. Weinhaus had parked his vehicle once he
13 came to a stop?
14 A No. Not the way he parked his vehicle.
15 Q In fact, if Mr. Weinhaus had thought he was
16 going to pick up computer equipment, that might have
17 been a reasonable way to park, do you think?
18 A You know, what his intentions on how he parked
19 the vehicle, I can't say. Just that he, he entered the
20 parking lot at a high rate of speed, and then he passed
21 the highway patrol vehicle and came to a stop, so...
22 Q Just so we're clear, the rear of his vehicle
23 is facing the troopers once he came to the stop?
24 A The rear of his vehicle was facing the
25 troopers, the front of their vehicle, yeah.

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1 Q So the rear of his vehicle was facing the --
2 A The troopers' front of the vehicle, yeah.
3 Q Were your windows up or down on the car?
4 A I think they were partially cracked.
5 Q Okay. When Jeff got out of car, could you
6 hear any conversation between him and the troopers?
7 A No, I could not.
8 Q Could you hear just noise, generally, of
9 conversation, but not the words?
10 A No. I could see that there's a conversation
11 taking place, though.
12 Q But you couldn't hear it?
13 A Correct.
14 Q You couldn't hear any yelling?
15 A No.
16 Q And you don't have any experience of whether
17 the speech was animated and excited, --
18 A No.
19 Q -- or slow and friendly banter like?
20 A No.
21 Q And when Jeff got out of the car, what did he
22 do? In the sense, did he get up and stand still, or did
23 he get up and move and walk?
24 A He got out of the vehicle, he walked towards
25 the direction of Sergeant Folsom.

Page 20

1 Q Okay. And what was the pace of his walk?
2 A I mean, he was walking fairly quick.
3 Q Okay. Did you view his walking towards
4 Sergeant Folsom as threatening, initially?
5 A No.
6 Q Okay. Did you observe a firearm on Jeff?
7 A No.
8 Q Did you observe a holster on Jeff?
9 A Correction. Afterwards I saw the holster, you
10 know, when it was taken off of Jeffrey, on the ground.
11 Q Afterwards, you say after the shooting?
12 A Correct. But when he came out of the vehicle
13 I did not see Jeffrey with, I did not see the front of
14 Jeffrey's waist. The only portion I saw was the way he
15 was standing towards me, he had his, his back to me, but
16 his right side was bladed, but I could not see in front
17 of his waist.
18 Q So you saw the back of him?
19 A The back, and then again, his right side was
20 bladed towards me, so I saw basically his right buttocks
21 cheek, you know, along that line like that.
22 [Indicating].
23 Q And you didn't observe -- I'm going to stand
24 up here and touch my right waist area. You didn't
25 observe a gun or a holster there?

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1 A No, I didn't. But again, when I say he was,
2 the right side was bladed towards me, it would be if you
3 had your hand, you move it back more so, more so, like
4 right there. That's the area that I saw. [Indicating].
5 Q So it's more the back right area?
6 A Correct.
7 Q More than the side right area?
8 A Correct.
9 Q And could you see the front right area by the
10 hip bone there?
11 A I could not see that at all.
12 Q Okay. And where were Jeff's hands when he
13 initially got out of the car?
14 A I don't recall.
15 Q Okay.
16 A They were not -- I mean, they were -- He was
17 walking, so whatever motion, you know, you're walking.
18 Q So he might have been sort of just swinging
19 them a little bit, --
20 A Yes.
21 Q -- what one does when one walks?
22 A Correct.
23 Q And did you see Sergeant Folsom at that time?
24 Did you have a clear view of Sergeant Folsom as Jeffrey
25 walked, approached him?

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1 A Yes.
2 Q Okay. Did you have a clear view of Corporal
3 Mertens?
4 A I do not recall Corporal Mertens.
5 Q Is it possible that he was partially concealed
6 by the vehicles, Corporal Mertens?
7 A He may have been. I distinctly remember Mr.
8 Weinhaus and then Sergeant Folsom.
9 Q Which individual were you focusing on out of
10 those two?
11 A Both of them, you know, they came together.
12 So I could see both of them.
13 Q And did Sergeant Folsom have his gun drawn?
14 A Initially, he did not, no.
15 Q He did not. Okay. And then how long between
16 when Jeff got out of the car and when sergeant, did --
17 How long a period was it between when Jeff got out of
18 the car and Sergeant Folsom drew his gun?
19 A It seemed like seconds. I mean, I saw that --
20 Q How many seconds, guess? Roughly. Just five,
21 10, or like 30, 40?
22 A It wasn't that long. So it was just seconds,
23 moments to make, you know. I didn't have a stopwatch on
24 timing nothing, but it seemed like it happened pretty
25 quick.

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1 But he gets out of the vehicle and he walks
2 towards Sergeant Folsom, and then Jeff, Jeffrey Weinhaus
3 had his hands in the front of his waistband.
4 [Indicating].
5 Q Wait. You said before -- Before you said he
6 had sort of moving them by his side, kind of in a normal
7 walking gesture.
8 A Well, he's walking from the vehicle as he's
9 approaching Sergeant Folsom walking normally. Then I
10 saw that he had his -- and then his hands went to the
11 front of him.
12 Q Okay. When his hands went to the front of
13 him, was this before, at the same time, or after
14 Sergeant Folsom drew his gun?
15 A Well, put this in perspective. He gets out of
16 his vehicle and he walks towards Sergeant Folsom, then
17 there's a conversation. His hands are in the front of
18 his waistband. The conversation's going on.
19 Q How long were his hands in front of his
20 waistband?
21 A I don't know. Again, it was, he walks from
22 his vehicle towards the Sergeant Folsom and he stops.
23 Q Okay. So he comes to a stop?
24 A Comes to a stop. And then there's a
25 conversation going on, but while they're having --

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1 Jeffrey Weinhaus has his hands in front of him.
2 Q Okay. So did he put his hands in front of him
3 at the same time that he stopped?
4 A I couldn't tell you.
5 Q Okay.
6 A I just remember him standing there with his
7 hands in front, and there's a conversation going on
8 between Sergeant Folsom and Jeffrey Weinhaus, and then
9 seconds later I see Sergeant Folsom, he puts up his
10 right hand, draws his weapon with his left hand, and
11 then steps back, and then there's shots fired.
12 Q You say sergeant, seconds later, was that
13 seconds after Jeff stopping?
14 A The time frame, I couldn't -- It happened
15 really quick. I couldn't tell you how many seconds.
16 When he stops there's a conversation taking
17 place, Jeffrey Weinhaus has his hands in front. Again,
18 the conversation takes place.
19 Q Sure.
20 A And that's when Sergeant Folsom raises his
21 right hand, draws his weapon, steps back to his left and
22 then shots fired.
23 Q And then what happened to Jeff after the shots
24 were fired?
25 A Jeff, he fell to the ground.

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1 Q How did he fall to the ground?
2 A **He just fell to --**
3 Q Did he turn and fall one way or the other?
4 A **I couldn't tell you.**
5 Q Couldn't tell me. Okay. Was he blown away,
6 did he just --
7 A **No.**
8 Q -- go flying through the air?
9 A **No. He just fell, fell to the side, fell to**
10 **his, I think his right side.**
11 Q And what happened to his, what happened to his
12 arms, his hands?
13 A **He was handcuffed.**
14 Q Okay. But after -- Between -- You said before
15 the shots were fired he had his hands in front of his
16 waist?
17 A **Uh-huh.**
18 Q Is that correct? Did you ever see a gun
19 before he -- before the shots rang out?
20 A **No, I didn't.**
21 Q Before the shots rang out, did you ever see a
22 holster?
23 A **No.**
24 Q Did you ever see any movement by the hands up
25 or down?

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1 A **I did not. I remember seeing the hands in**
2 **front.**
3 Q Okay. Do you recall any movement by the left
4 arm?
5 A **No.**
6 Q Do you recall any movement by the left arm up
7 in the air?
8 A **Hands were never in the air.**
9 Q Okay. Were they ever raised to shoulder
10 length?
11 A **No, they were not.**
12 Q Okay. And then the shots rang out?
13 A **Correct.**
14 Q And what did you do?
15 A **Got out of the vehicle.**
16 Q Okay. And did you approach Jeff Weinhaus?
17 A **Yes.**
18 Q Rapidly?
19 A **Yes.**
20 Q Okay. Did you withdraw your gun at that
21 point?
22 A **The gun was drawn.**
23 Q Did you have concern that there were other
24 persons in the area who could be a danger?
25 A **Yes.**

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1 Q Did you sweep the area visually?
2 A **Yes.**
3 Q Did you have your gun pointed at anyone, or
4 was it pointed towards the ground?
5 A **May have been pointed in the direction of some**
6 **individuals in the front of the store, just until we**
7 **identified who they were.**
8 Q The gutter men, for instance?
9 A **And then there were people inside that I don't**
10 **know when they arrived. There's another individual, two**
11 **individuals inside the store that came out. So I had no**
12 **idea who they were. Until we identified who they were**
13 **and they knew who we were, that's when we secured our**
14 **weapons.**
15 Q At the time did you know whether or not Jeff
16 was still an active threat?
17 A **No. He was handcuffed, so...**
18 Q Oh, he was?
19 A **Yeah.**
20 Q Did you observe who handcuffed him?
21 A **It was Sergeant Folsom.**
22 Q And then you said earlier that you observed
23 the gun, and/or the holster after the shooting?
24 A **I observed the holster, it's a green-colored**
25 **holster that Sergeant Folsom took off, took off of him**

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1 **and placed it some distance away from Mr. Weinhaus.**
2 Q Where on his body was it before Sergeant
3 Folsom took it off?
4 A **I just remember the gun being thrown on the**
5 **ground. I can assume that it came from his waistband,**
6 **front waistband. I didn't see that, though. I didn't**
7 **see that.**
8 Q You would assume because?
9 A **Because we were exiting the vehicle and**
10 **running towards Sergeant Folsom and Mr. Weinhaus, and**
11 **then I -- my job was to do a perimeter security, so I**
12 **turned my direction from Weinhaus and started focusing**
13 **my direction on these individuals by the front of the**
14 **store. And then while looking around I see this gun**
15 **being placed behind, or out of the immediate area of Mr.**
16 **Weinhaus, and again, that's when I -- or not gun, it was**
17 **a holster, a green-colored holster, so...**
18 Q And so you didn't observe Sergeant Folsom,
19 where on Jeff's body Sergeant Folsom removed the holster
20 from?
21 A **No, no. But again, I can assume that, you can**
22 **see around, when he's handcuffed, you can see around --**
23 **or whenever he -- his backside, I didn't see anything on**
24 **his backside when I was in the vehicle, didn't see**
25 **anything on the back right hip, so...**

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1 Q Are you familiar with the type of holster?
2 A **I just saw it on the ground. I don't know the**
3 **specifics about it.**
4 Q Okay. Have you inspected it since then?
5 A **No, I didn't even pick it up.**
6 Q Okay. Did you ever hear or see any commands
7 by Sergeant Folsom for Jeff to get down?
8 A **No. Again, I couldn't hear the conversation**
9 **taking place.**
10 Q Sure. And you were about 60 yards away at
11 this time?
12 A **Correct.**
13 Q So you think you were a little closer than 60
14 yards before the gutter men asked you to move your car?
15 A **Yeah. We backed up and kind of -- we backed**
16 **up and went to the left a little bit to get out of their**
17 **way, and then at the same time see a clear view of the**
18 **highway patrol vehicle.**
19 Q Okay. And then there was an investigation of
20 the shooting by the Missouri State Highway Patrol?
21 A **Correct.**
22 Q And Sergeant Perry Smith conducted that
23 investigation?
24 A **Yes.**
25 Q Did he talk to you?

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1 A **I talked to --**
2 Q Corporal Ashby?
3 A **Correct.**
4 Q Did you ever talk to Sergeant Smith?
5 A **Just in casual conversation when he arrived.**
6 Q Okay.
7 A **I don't remember, I don't think he ever**
8 **interviewed me, or --**
9 Q Did you ever talk to Lieutenant George
10 Knowles?
11 A **Just casual conversation when he arrived.**
12 Q Okay. But did you ever review any reports
13 that he wrote?
14 A **No.**
15 Q Okay. You've reviewed both the typewritten
16 statement and the handwritten document before today and
17 you got a chance to look at them here a little bit
18 today?
19 A **Yes.**
20 Q Is there anything you'd change in those
21 documents?
22 A **No.**
23 Q Do you feel they truthfully and accurately
24 represent your, your statement and experience of the
25 incident, both then, and as you recall it here today?

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1 A **Yes.**
2 Q Okay. I might have included another document
3 in there, or maybe I didn't.
4 I'm going to present you with two other
5 documents. I'll mark them 3-1 and 3-2. I'm defendant, so
6 maybe it would be C dash -- I don't know. However you
7 want to do it Jane.
8 These are drawings, I submit to you these are
9 drawings of the scene of the incident. Could you
10 please -- Well, first of all, does this generally
11 represent the scene of the incident as you recall it?
12 A **The scene of the incident, the Highway Patrol**
13 **vehicles were not there.**
14 [Mr. Eastwood marked Defendant's Exhibit 3].
15 Q Okay.
16 A **I take it this is going to be -- You know what**
17 **I'm saying?**
18 Q Well, perhaps, actually, I'm going to give you
19 a pen, and could you just mark the Corporal Merten's car
20 with an M.?
21 A **I believe it was here.**
22 Q Okay.
23 A [Indicating].
24 Q And could you draw an X, where, if you recall,
25 Corporal Mertens was standing at that time of the

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1 shooting?
2 A **Could not tell you.**
3 Q Could you draw an F. where Sergeant Folsom was
4 standing at the time of the shooting, approximately?
5 A **Approximately?**
6 Q Yeah.
7 A **What do you want me to draw again?**
8 Q An F.
9 A **Okay.**
10 Q For Folsom.
11 A **He's like right here somewhere. [Indicating].**
12 Q Okay. And where was Weinhaus? You can put a
13 W. for him.
14 A **So like right -- [Indicating].**
15 Q And which was your car?
16 A **Right here. The FBI car. [Indicating].**
17 **Actually, I think it was more like, because he walked**
18 **out of the vehicle and he walked towards him, so maybe**
19 **right there. [Indicating].**
20 Q Okay. All right. Thank you.
21 A **And that's just a guesstimate. Because I**
22 **remember --**
23 Q Did you, to your knowledge, did you shoot
24 anyone that day?
25 A **Did not shoot anyone that day.**

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1 Q Did you have any concerns at that time over
2 Sergeant Folsom's use of force?
3 A No.
4 Q Okay. Is there any other experience of that
5 day that you expect to testify to at trial?
6 A No.
7 MR. EASTWOOD: Okay. Thanks.
8 THE WITNESS: Okay.
9 MR. PARKS: Do you wish to waive signature,
10 Pat?
11 THE WITNESS: Sure.
12
13 [SIGNATURE OF THE WITNESS WAIVED BY AGREEMENT
14 OF COUNSEL AND CONSENT OF THE WITNESS].
15
16
17
18
19
20
21
22
23
24
25

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1 CERTIFICATE
2 I, JANE M. RICH, a Certified Court Reporter,
3 within and for the State of Missouri, license #411, do
4 hereby certify that pursuant to notice there came before
5 me in the offices of Mr. Robert H. Parks, II, Franklin
6 County Prosecuting Attorney, 15 S. Church, Room 204,
7 Union, Missouri,
8 PATRICK CUNNINGHAM,
9 who was first duly sworn to testify to the truth and
10 nothing but the truth of all knowledge touching and
11 concerning the matters in controversy in this cause; that
12 the witness was thereupon examined, and signature of the
13 witness waived by agreement of counsel and consent of the
14 witness, and that this deposition is a true and accurate
15 record of the testimony given by the witness.
16 I further certify that I am not of counsel, nor
17 attorney for either of the parties to said suit, nor
18 related, nor interested in any of the parties or their
19 attorneys.
20 IN WITNESS WHEREOF, I have hereunto set my hand
21 this 20th day of August, 2013.
22 _____
23 Jane M. Rich, CCR No. 411.
24
25

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1 IN THE CIRCUIT COURT FOR THE COUNTY OF FRANKLIN
2 20TH JUDICIAL CIRCUIT
3 STATE OF MISSOURI
4 STATE OF MISSOURI,)
5 Plaintiff,) Cause No. 12AB-CR02409-01
6 vs.)
7 JEFFREY R. WEINHAUS,)
8 Defendant.)
9
10 CERTIFICATE OF OFFICER AND STATEMENT
11 OF DEPOSITION CHARGES
12 (Rule 57.03(g)(2)(A) & Section 492.590 RSMO 1985)
13 DEPOSITION OF PATRICK CUNNINGHAM,
14 Taken on behalf of the Defendant
15 July 23, 2013
16 Name and address of person having custody of the original
17 transcript: Mr. Hugh Eastwood, 7777 Bonhomme, Clayton,
18 Missouri 63105
19 TAXED IN FAVOR OF: Defendant
20
21 35 pages original transcript.....\$131.25
22 Attendance of Reporter..... 40.00
23 TOTAL \$171.25
24
25 TAXED IN FAVOR OF: Plaintiff. Attorney for Plaintiff,
Mr. Robert H. Parks, II, Franklin County Prosecuting
Attorney, 15 S. Church, Room 204, Union, Missouri 63084.
35 pages copy of transcript.....\$61.25
Upon delivery of transcripts, the above charges had not
yet been paid. It is anticipated that all charges will be
paid in the normal course of business.
COURT REPORTING ASSOCIATES
P.O. BOX 440014
BRENTWOOD, MO 63144
(314) 961-6306
IN WITNESS WHEREOF, I have hereunto set my hand on this
20th day of August, 2013.

Jane M. Rich, CCR #411

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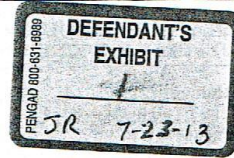
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MISSOURI STATE HIGHWAY PATROL
REPORT OF INVESTIGATION



STATE CONTROL NO.: 12 261 015 004
REPORTING OFFICER: CORPORAL J. S. ASHEY 0222
OCC TYPE: OFFICER INVOLVED SHOOTING
COUNTY: FRANKLIN
DATE/TIME: 09/11/2012
OFFENSE STATUS: INVESTIGATION CONTINUING
LOCATION: FRANKLIN COUNTY

REPORT DATE: 09/11/12
TROOP OF OCCURRENCE: C
SCENE PROCESSED: N
DDCC AT SCENE: N

DETAILS OF INVESTIGATION

INTERVIEW WITH PATRICK D. CUNNINGHAM

1. On Tuesday, September 11, 2012, I interviewed Agent Patrick D. Cunningham regarding the officer involved shooting that occurred at the Parkway Store located at 1535 Highway K, St. Clair, Missouri. Agent Cunningham was assigned rear security in an arrest attempt on Jeffrey R. Weinhaus who had felony warrants for his arrest.

2. Cunningham is described as Patrick D. Cunningham, white male, date of birth [REDACTED] address 1400 Independence Drive, Suite 1402, Rolla, Missouri, telephone number [REDACTED]. Cunningham is employed as a special agent for the Federal Bureau of Investigation (FBI).

3. Agent Cunningham advised me of the following events. He said Special Agent Michael Maruschak and he arrived at the MFA Store on Highway K, St. Clair, Missouri to assist Sergeant Folsom with an arrest attempt on Jeffrey Weinhaus. Agent Cunningham told me Weinhaus had active felony warrants. Agent Cunningham advised when they arrived, Special Agent Maruschak positioned their vehicle on the opposite end of the parking lot, which would be on the southeast portion of the parking lot. Agent Cunningham observed a green station wagon, later identified as a Subaru Forrester, enter the parking lot from the North entrance. Prior to entering the parking lot, the station wagon was traveling southbound on Highway K, from the direction of St. Clair, Missouri. As the vehicle entered the parking lot, Agents Cunningham and Maruschak observed one occupant in the vehicle, identified as Jeffrey Weinhaus. The vehicle made a circle around the parking lot and parked by Sergeant Folsom and Corporal Mertens' patrol vehicle. Agent Cunningham observed Weinhaus exit his vehicle from the driver's side and approach Sergeant Folsom. When Weinhaus stopped, he was standing in a bladed position with his right side exposed to Agent Cunningham's view. Agent Cunningham saw Weinhaus position his hands to his front waistband and at the same time observed Sergeant Folsom saying something to Weinhaus but he could not hear what Sergeant Folsom was saying. He then observed Sergeant Folsom raise his right hand in the air and drew his handgun with his left hand and stepped backwards. He then heard several gunshots and witnessed Weinhaus fall to the ground.

4. After the shots were fired, Agent Cunningham and Agent Maruschak exited their vehicle and ran to assist Sergeant Folsom. Upon their

arrival, Sergeant Folsom handcuffed Weinhaus behind his back as they provided cover. Agent Cunningham advised once Weinhaus was secured they provided perimeter security until other law enforcement personnel arrived.

5. Agent Cunningham provided a written statement to the events he witnessed. The statement was seized as evidence and later transported to Troop C Headquarters and released to the evidence custodian with property control number 02220911121340. A copy of Agent Cunningham's statement is attached to this report. The interview was concluded at 1436 hours.

6. This case is continuing.

J. Scott Ashby, Corporal
Division of Drug and Crime Control
Rural Crimes Unit

JSA:ejs



MISSOURI STATE HIGHWAY PATROL

DEFENDANT'S EXHIBIT 2
SR 7-23-19

P-70C 07/03

WRITTEN STATEMENT

foregoing statements are true and are made under oath or affirmation under penalty of making a false affidavit. False statements are punishable by law.

ALL CORRECTIONS SHOULD BE INITIALED BY THE PERSON GIVING THE STATEMENT. ATTACH AND NUMBER ADDITIONAL PAGES IF NECESSARY.

PAGE 1 OF 2

ON 9/11/2012, PRIOR TO 1:00PM, SPECIAL AGENT MICHAEL MANUSCHAK, FBI - ST. LOUIS DIVISION, AND I ARRIVED AT THE MFA OIL GAS STATION, LOCATED NEAR ST. CHAR MISSOURI, LOCATED ON HIGHWAY K IN A SUPPORTING ROLE TO ASS. ST. SGT. JAMES H. FOLSON AND CORPORAL SCOTT MERTENS, MISSOURI STATE HIGHWAY PATROL, DIVISION OF DRUG AND CRIME CONTROL, FOR AN ARREST ATTEMPT OF JEFFREY WEINHAUS. JEFFREY WEINHAUS HAD AN ACTIVE FELONY WARRANT. SA MANUSCHAK AND I POSITIONED OURSELVES IN SA MANUSCHAK'S FBI ISSUED VEHICLE ON THE OPPOSITE SIDE OF THE GAS STATION PARKING LOT AS SGT FOLSON AND CORPORAL MERTENS VEHICLE. I ESTIMATE THE DISTANCE BETWEEN SA MANUSCHAK'S VEHICLE AND THE MSHP VEHICLE TO BE APPROXIMATELY 60 YARDS. I OBSERVED A GREEN COLORED SMALL STATION WAGON TRAVELING SOUTHBOUND ON HIGHWAY K ENTER THE GAS STATION PARKING LOT. THE VEHICLE MADE A WIDE TURN AND STOPPED ALONGSIDE THE MSHP VEHICLE. JEFFREY WEINHAUS EXITED THE DRIVERS SIDE DOOR. I ONLY SAW ONE OCCUPANT IN THE GREEN STATION WAGON. SGT FOLSON EXITED HIS VEHICLE. WEINHAUS APPROACHED SGT FOLSON. WEINHAUS WAS STANDING IN A BLADED POSITION, WITH HIS RIGHT SIDE EXPOSED TO MY VIEW. I SAW WEINHAUS POSITION HIS HANDS TO HIS FRONT WAISTBAND.

I fully understand the contents of the entire statement made by me. I have made this freely without hope of benefit or reward, threat of punishment, or unlawful inducement. I realize false statements are punishable by law.

SIGNATURE OF PERSON GIVING STATEMENT TIME DATE LOCATION OF STATEMENT
PRINTED OR TYPED NAME OF PERSON GIVING STATEMENT DATE OF BIRTH RACE SEX
ADDRESS OF PERSON GIVING STATEMENT TELEPHONE NUMBER HOME & WORK
WITNESS' SIGNATURE DATE OFFICER'S SIGNATURE DATE



WRITTEN STATEMENT

The foregoing statements are true and are made under oath or affirmation under penalty of making a false affidavit. False statements are punishable by law.

ALL CORRECTIONS SHOULD BE INITIALED BY THE PERSON GIVING THE STATEMENT. ATTACH AND NUMBER ADDITIONAL PAGES IF NECESSARY.

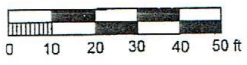
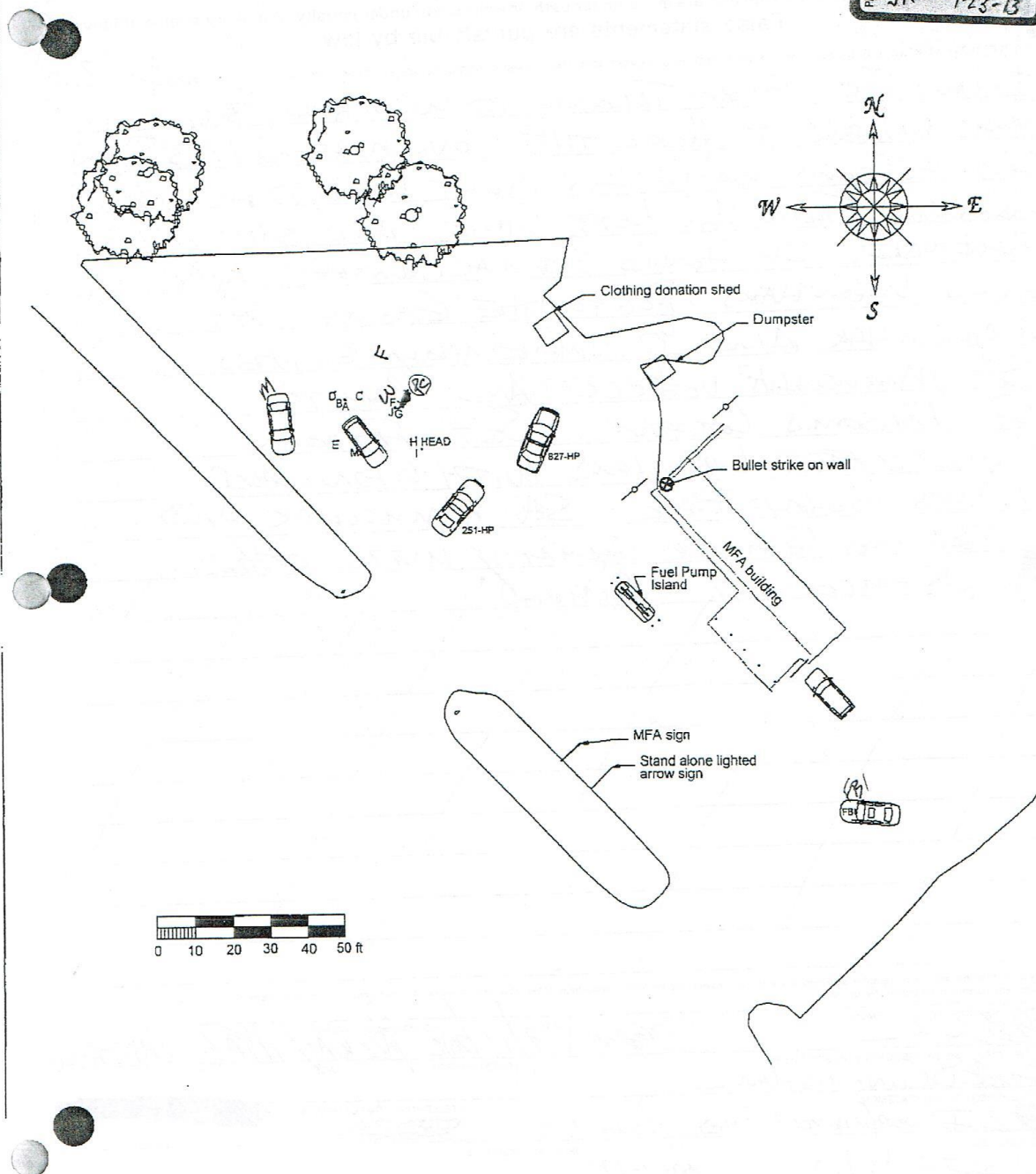
PAGE 2 OF 2

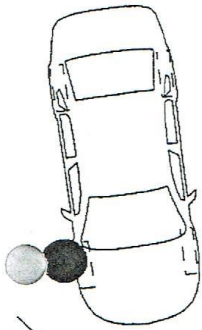
I SAW SGT. FOLSON TALKING TO WEINHARTS (BUT WAS UNABLE TO HEAR THE CONVERSATION) AND SAW SGT. FOLSON RAISE HIS RIGHT HAND, DRAW HIS HANDGUN FROM HIS LEFT SIDE, AND STEP BACKWARD. I HEARD SEVERAL GUNSHOTS AND SAW WEINHARTS FALL TO THE GROUND. SA MARUSCHAK AND I IMMEDIATELY EXITED SA MARUSCHAK'S VEHICLE AND RAN TO SGT. FOLSON'S LOCATION. SGT. FOLSON HANDCUFFED WEINHARTS WITH WEINHARTS HANDS BEHIND BACK. SA MARUSCHAK AND I PERMANENTLY SECURED THE AREA UNTIL OTHER LAW ENFORCEMENT ARRIVED.

I fully understand the contents of the entire statement made by me. I have made this freely without hope of benefit or reward, threat of punishment, or unlawful inducement. I realize false statements are punishable by law.

SIGNATURE OF PERSON GIVING STATEMENT <i>[Signature]</i>	TIME 2:36 AM	DATE 9/11/02	LOCATION OF STATEMENT PERRYVILLE / MAIN GAS STATION
PRINTED OR TYPED NAME OF PERSON GIVING STATEMENT TERRILL D CUNNINGHAM	DATE OF BIRTH	RACE	SEX
ADDRESS OF PERSON GIVING STATEMENT 107 INDEPENDENCE ROAD PERRYVILLE MO	TELEPHONE NUMBER HOME & WORK XXXXXXXXXX	OFFICER'S SIGNATURE <i>[Signature]</i>	DATE 09-11-02

DEFENDANT'S
EXHIBIT
3
JR 7-23-13



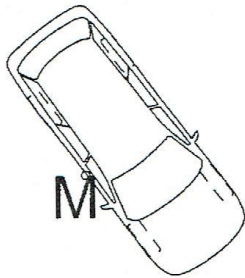


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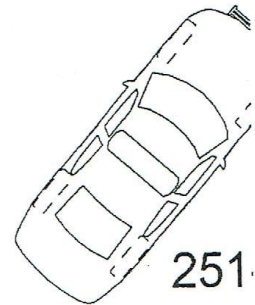
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