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IN THE SUPREME COURT OF THE STATE OF ALASKA

YONG H. YI,

Appellant,

vs.

HARRIS S. YANG, SHARON YANG,
MAX ARTHUR LAMOUREAU, Y & I
CORPORATION, OFFICER LAWRENCE
PEYTON MERIDETH and the CITY
OF FAIRBANKS,

Appellees.



Supreme Court Case No. S-13427

Superior Court Case No 4FA-04-2761 CI

APPELLANT'S EXCERPT OF RECORD
VOLUME 2 OF 2

APPEAL FROM THE DECEMBER 8, 2008 JUDGMENT OF THE
SUPERIOR COURT, FOURTH JUDICIAL DISTRICT AT FAIRBANKS
THE HONORABLE RANDY M. OLSEN, PRESIDING

LAW OFFICE OF ROBERT JOHN

By: 

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Filed in the Supreme Court of
The State of Alaska, this 4th
day of January, 2011

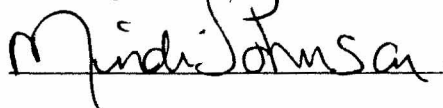
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MAR 03 2008

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

By _____ Deputy

YONG H. YI, et al,
Plaintiffs,

vs.

HARRIS S. YANG, et. al,
Defendants.

OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT
(Officer Meridith & City of Fairbanks)

Case No. 4FA-04-2761CI

INTRODUCTION

The Plaintiffs,¹ (hereinafter collectively referred to as the "Yi's") oppose the motion for summary judgment filed by Officer Merideth and the City of Fairbanks (i.e. hereinafter collectively referred to as "the City"). The complaint² in this matter alleges seventeen (17) counts, three (3) of which are directed against the City: i.e. Count XIV (§1983 False Arrest), Count XV (1983- Deprivation of Property Rights) and Count XVI (State law Tort- False Arrest). The motion does not specify which Counts are addressed by the movants, and it is assumed that the motion relates to all three (3) counts.

The City correctly points out that this action arises out of a civil dispute between the Yang's³ and the Yi's over Yong Yi's leasing of the Klondike Bar and

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¹ Yong Yi as to all three counts and and Kenny Yi as to Counts XIV and XVI. The undersigned also represents Hyong Yi, but it is not alleged that Hyong Yi has any claims against Officer Merideth and the City under Counts the three Counts.

² See Second Amended Complaint

³ Harris Yang, Sharon Yang, and Y & I Corporation.

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Restaurant from the Yang's, and the Yang's ouster/ eviction of the Yong Yi. The City became involved when Officer Merideth inappropriately arrested Yong and Kenny Yi, and cooperated with the Yang's wrongful conversion of property owned by Yong Yi.

In summary, the Court should deny the City's motion for summary judgment because there are genuine issues of fact in dispute that preclude the entry of summary judgment.

SUMMARY JUDGMENT STANDARD

Summary judgment is governed by Civ. R. 56(c). A movant is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." Alaska R. Civ. P. 56(c). Cited in *Hildebrandt v. City Of Fairbanks*, 863 P.2d 240, 244 n. 6 (Alaska 1993) As the Court has held in other §1983 cases, the test is whether there were genuine issues of material fact and whether the movant was entitled to judgment as a matter of law.⁴ "(A)ll reasonable inferences in favor of the non-moving party and against the movant.⁵ Once the movant has met the initial burden of establishing the absence of a genuine issue of material fact the non-movant is

⁴ *Hildebrandt v. City Of Fairbanks*, *id.*, citing *Lord v. Wilcox*, 813 P.2d 656, 658 (Alaska 1991).

⁵ *Hildebrandt v. City Of Fairbanks*, *id.*, citing *Lord v. Fogcutter Bar*, 813 P.2d 660, 662 (Alaska 1991).

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required to set forth "specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issue of fact[] exists."⁶

FACTUAL ISSUES IN DISPUTE.

- 1) Did Officer Merideth arrest Yong and Kenny Yi?
- 2) Did Officer Merideth actions comply with accepted police standards in the use of citizen arrest forms?
- 3) Was Officer Merideth's failure to arrest Lamoureaux consistent with accepted police standards?
- 4) Did the City Police Officers unlawfully prevent members of the Yi family and employees from entering the business?

FACTS

The City's recitation of the facts in its motion for summary judgment represents a very selective reading of the various transcripts, and wrongly suggests that Officer Merideth was only aware that two Koreans (Yong and Kenny Yi)

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⁶ Hildebrandt v. City Of Fairbanks, id., citing *Bauman v. State, Div. of Family & Youth Servs.*, 768 P.2d 1097, 1099 (Alaska 1989) (quoting *State, Dep't of Highways v. Green*, 586 P.2d 595, 606 n.32 (Alaska 1978)).

initiated an unprovoked attack on a white man (Max Lamoureaux), which led him to believe that certain misdemeanor's had been committed. The evidence is crystal clear that Merideth was fully aware of facts that would lead a reasonable officer to perceive probable cause to believe that Max Lamoureaux had committed three (3) felonies, and that the Yi's were engaged in privileged activity.⁷

In this case, the Court is greatly aided by the fact that we have tapes of the conversation between the Dispatcher and various callers. Additionally, Officer Welborn recorded his interviews with various persons at the scene, including the actual arrest. Interestingly, the City's exhibits only contain a selective portion of the transcripts from these tapes - particularly the tapes from the dispatchers. The Plaintiffs attach, as Exhibit 1, a full and complete copy of the tapes.⁸ Unfortunately, we do not have tapes of critical interviews by Officer Merideth. Officer Merideth did not record any conversations with anybody at the scene,⁹ including his critical conversations with Max Lamoureaux. Nonetheless, the evidence - in particular the evidence ignored by the City -- is sufficient to raise a triable issue of disputed fact.

By way of background, Jeff (Yong) Yi had leased the Klondike Bar and Restaurant from Harris Yang, and the two had an ongoing dispute about various

⁷ The legal analysis respecting the privileged nature of the Yi's actions is discussed in the Plaintiff's Opposition to Lamoureaux motion for partial summary judgment on this issue. The arguments presented in that memorandum are incorporated by reference.

⁸ Plt. Exhibit 1 (Tapes)

⁹ Plt. Exhibit 2 (Merideth Depo), 24: 16-22

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matters.¹⁰ On December 13, 2004, Yong Yi filed a *pro se* action against Harris and Sharon Yang to resolve these disputes, in a peaceable manner through the Courts.¹¹

In stark contrast, Harris Yang had engaged in a pattern of harassment, threats and assaults to resolve his disputes. Prior to the events of December 19, 2004, Harris Yang had verbally harassed and physically attacked Kenny Yi in an escalating pattern of violence, which the police choose to ignore. On December 15, 2004, four (4) days previous to the break-in of the Yi restaurant, Kenny Yi sought and received a twenty (20) day stalking protective order.¹² In his application for the protective order, Kenny Yi signed an affidavit¹³ claiming that

- in October 2004, Harris Yang came to the Klondike Bar and Restaurant, shut off the lights and screamed at the employees and customers to immediately leave the premises, so he could close the business, and when confronted by Kenny Yi, told Kenny to "shut up" and threatened to kick him.
- In November 2004, Harris Yang yelled at Kenny while Kenny was dining with friends at the Shanghai Restaurant, and

¹⁰ For more details about the underlying dispute between Yi and Yang, see Yi's Memorandum In Support Of Plaintiff's Motion For Partial Summary Judgment

¹¹ See Lamoureux Ex. A, (Attached to Lamoureux Mot. Sum. Judg.- Defense of Property) See also original complaint in this case.

¹² Plt. Exhibit 3 (Yi v Yang Protective Order Ct. File), at 5-7.

¹³ Plt. Exhibit 3 (Yi v Yang Protective Order Ct. File), at 2

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- On or about December 6, 2004, Harris Yang again came into the Klondike Bar and Restaurant, yelled and screamed at Kenny, and assaulted Kenny by grabbing Kenny by his shirt collar and threatened Kenny.

At the hearing on December 15, 2004, Kenny testified under oath and confirmed these facts.¹⁴ In addition, Kenny told the Court that he had heard rumors that Yang was "talking about guns", and that "he'll break into restaurant and change all the locks".¹⁵ Kenny stated in his affidavit, and in his testimony that the police had been called but that the police had stated that it was a civil matter, and that the police would not interfere.¹⁶ The Court issued an *ex parte* restraining order which prohibited Harris Yang from coming within 1000 feet of the Klondike Bar and Restaurant.¹⁷

These prior facts are important on a number of points. First, as subsequent events demonstrated, the rumors that Kenny heard respecting Harris' plan to break into the restaurant and change the locks were in fact correct. Second, Harris was unable to do the break-in himself because of the restraining order that was still in effect on December 19th. Third, the police were well aware that Yang had harassed, threatened and assaulted Kenny Yi previously, but refused to do anything to protect

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¹⁴ Id., at 8

¹⁵ Id., at 8 See 1:50:01-1:50:38

¹⁶ Id. at

¹⁷ Id., at 6

the Yi's because it was a "civil matter." Four, prior to the events of December 19th, the Yi's had attempted to use the police and the Courts to deal with Harris, to no particular avail. And finally, the events leading up to December 19th, and the actions of Harris' agents of that day clearly demonstrate that Harris' agents were the aggressors resorting to violence and burglary to drive the Yi's from the Klondike Bar and that the police ended up serving as "strong arm muscle" for Harris Yang in accomplishing those ends, either wittingly or unwittingly.

On the morning of December 19, 2004, the Fairbanks Police Department received a series of 911 calls about incidents at the Klondike Inn.

The first call in the morning was from Joe Hayes. The Hayes call was omitted from the city's partial transcript of the 911 calls.¹⁸ Mr. Hayes indicated that he represented the owner of the Klondike, but did not know Harris Yang's name.¹⁹ Mr. Hayes advised the police dispatcher that he was holding the title documents for the owner, and that the owner was changing the locks, and the owner wanted the police to come and "trespass the former "management group" out of the bar. The dispatcher asked Mr. Hayes whether the owner had obtained a writ of assistance. Mr. Hayes indicated that he thought the owner had one. It is now undisputed that the Yangs never obtained a writ of assistance, and never filed an FED action against

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¹⁸ The recording of the Hayes call is included on Plt. Exhibit 1.

¹⁹ See Exhibit 1. Mr. Hayes referred to Mr. Yang as "Mr. Wang," or "Mr. Chang".

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Mr. Yi prior to changing the locks. The dispatcher explained that this was a civil matter, and that the owner needed to bring down his paper work --- including his writ of assistance --- to the police department. Once the police received and verified the paperwork, then he could ask for a "civil standby", and "if we have an officer available, we will go ahead and do that for him." The dispatcher clearly stated that "he will have to bring down his writ of assistance before we will get involved in that". It is obvious that Mr. Yang engaged in self help to oust the Yangs rather than follow the dispatcher instructions to obtain a writ of assistance and to bring the paperwork down to the police station and arrange for a "civil standby".

The second call was from John Dockery, the front desk clerk at the motel. The Dockery call was omitted from the city's partial transcript of the 911 calls.²⁰ He advised the dispatcher that he had been told that there was a "thousand foot no trespassing order" against the Yi's. The dispatcher tape is interrupted, and it appears that the dispatcher went to the next call from Kenny Yi.

The next call is from Kenny Yi,²¹ who reported that someone was trying to break in the bar/restaurant.²² He reported that the person had broken the lock on the door. He reported that they had caught the person and that the person was

²⁰ The recording of the Hayes call is included on Plt. Exhibit 1.

²¹ This call is included in the City's transcript, See City Exhibit A. However, the transcript is somewhat incomplete because of a number of passages that identified as inaudible, but are discernable on the tape.

²² Id., at 42:9 however

there at that moment. Kenny indicated that he did not know the identity of the person because he had never seen him before. Kenny indicated that the person was right in front of "us". Kenny indicated that they were leasing the building. The dispatcher indicated that they would send police. Kenny indicated that they would be outside in a red Durango vehicle. The dispatcher directed Kenny to stay right there and that Kenny should not make any contact with him.

At this point, the dispatcher returned to the call with Dockery. The second half of this call is also omitted from the City transcript. The dispatcher expressed frustration with the idea that Dockery and Yi were claiming that the other was trying to break into the restaurant/bar. The dispatcher abruptly ended the phone call with Dockery by stating that she was going to send someone over to "talk to you guys."

At this point, the dispatcher called Officer Merideth. The recording of the dispatcher's call to Merideth was omitted from the city's partial transcript of the 911 calls.²³ She reminded Merideth that "the owner of the two places don't get along". Merideth responded "yeh". The dispatcher reported to Merideth that both persons were calling 911 claiming that the other was "breaking into each others stuff".

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²³ A recording of the call is included on Plt. Exhibit 1.
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Officer Meredith responded "Oh Jesus. They over at the restaurant?" The dispatcher replied, "They're at both".

After this, the Yi's bartender called 911 and reported a "robbery attempt". She reported that the perpetrator was heading down airport in a silver mini-van. During this conversation, the bartender put Yong Yi on the line, who reported "he just tried to run over my --- my brother and me."²⁴ The bartender reported "Somebody tried to run over this woman." The bartender later reported, "Somebody tried to run over this woman"²⁵ Later, Kenny came onto the phone. He reported that the other people "try to run over me and run over my brother with a truck."²⁶ The dispatcher advised Kenny that police were on the way. Kenny responded "Thank you"²⁷ At this point, the police arrived and Kenny asked if he could talk to the police. The dispatcher responded in the affirmative, and Kenny thanked the dispatcher.

The final call to the dispatcher was made by Max Lamoureaux, who reported in a very calm voice that he was locked in the hotel and that "these people are nuts"²⁸ Max claimed to be an employee of the Klondike Inn, and specifically

²⁴ City Exhibit A, at 46: 18-19

²⁵ Id., at 47:13

²⁶ City Exhibit A, at 48: 13-14

²⁷ Id., at 48:16-17

²⁸ Id., at 49: 1-2

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claimed to be a manager.²⁹ Max claimed that the Yi's attacked him without provocation³⁰.

At this point, the police began interviewing people. As pointed out in the City's memorandum, Officer Merideth contacted Lamoureaux and the other people in the Klondike, while officer Welborn interviewed the Yi's.³¹ Merideth's conversations were not taped;³² Welborn's were taped.³³ According to Merideth, Lamoureaux stated that they had tried to serve papers on the Yi's and that they were attacked by the Yi's.³⁴ This was essentially what Lamoureaux claimed in his written statement.³⁵

But there was another side to the story. The officers interviewed the Yi's and Luna Chinn. The Yi's informed the officers that they were leasing the bar/restaurant.³⁶ Indeed, the police were fully aware that the Yi's were leasing the bar/restaurant from Yang because of prior calls to the site.³⁷ The Yi's reported that when they arrived in the morning, they saw Lamoureaux at their restaurant and bar,

²⁹ Id., at 49:4-10

³⁰ City Exhibit A, at 48: 13-14

³¹ Plt. Exhibit 2 [Merideth's Depo.] at 23: 7-16

³² Id., at 24: 20-22

³³ Id., at 24:11-15

³⁴ Id., at 25: 16-20

³⁵ Plt. Exhibit 4 (Lamoureaux Statement)

³⁶ City Exhibit A, at 6:23

³⁷ Id., at 4: 16-25

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and that he ran away.³⁸ They discovered that the lock on the restaurant door had been broken.³⁹ The Yi's reported the matter to the police.⁴⁰ While they were waiting for the police, Lamoureaux came out of the motel office, got into a white truck, and attempted to "run away".⁴¹ At this point, one of the Yi's (i.e. Kenny) approached the truck and told Lamoureaux that he had called the police.⁴² Despite the fact that he had been told that police were coming, Lamoureaux continued to attempt to leave, and in the process tried to run over one of the Yi's.⁴³ At that point, one of the male Yi's (Kenny) jumped into the back of the truck "because he was trying to run away."⁴⁴ Kenny shouted a couple of times "Stop. Stop. Stop."⁴⁵ While her brother was in the back of the truck, Luna Chin attempted to stop the truck, but reported that Lamoureaux "just run me over. And as soon as I fall on the ground...." ⁴⁶ The policeman cut off Luna's statement. The Yi's confirmed that when they arrived in the morning that the lock on their business door was broken.⁴⁷ The Yi's repeatedly reported ---at least nine (9) times) --- that Lamoureaux had tried to run over more

³⁸ Id. at 8: 10-13

³⁹ Id., at 8:25-9:1

⁴⁰ Id., at 9: 11

⁴¹ Id., at 9: 12-16.

⁴² Id., at 9: 14

⁴³ Id., at 9;16

⁴⁴ Id., at 9: 16-24

⁴⁵ Id.

⁴⁶ Id., at 10: 10-12

⁴⁷ Id., at 14: 5

than one of them.⁴⁸ It is clear that the officer's fully understood that the Yi's reported that Lamoureaux tried to run one or more of them over in the truck.⁴⁹

The Yi's report that Lamoureaux attempted to run over Luna was confirmed by other witnesses. Merideth talked to Valerie Hopson,⁵⁰ who also provided a written statement.⁵¹ She stated that a lady in a red coat (i.e. Luna) was dragged by car driven by Lamoureaux while leaving the parking lot.⁵² The officer's also interviewed Rene Bullock, the Yi's bartender, who confirmed that the Lamoureaux almost ran over the "lady in the red coat"⁵³ Bullock's report of this fact is confirmed in the tape of her interview by Officer Welborn. In that tape, Bullock reports that 'They (Lamoureaux) went speeding at her (Chin)'⁵⁴ Bullock also reported that the Yi's jumped in the truck "to stop him (Lamoureaux), because.... He was trying to rob the place."⁵⁵ Both Kenny and Yong Yi freely admitted to breaking the windows in the truck in an effort to stop Lamoureaux from fleeing.⁵⁶

In sum, it is absolutely clear that the responding officer's understood that there was a civil dispute between the Yi (leassors of the bar/restaurant) and the

⁴⁸ Id., at 3: 11-13; 3: 20-25; 16:13; 17:12; 20:12; 20:25; 21:11; 24: 11; 24:15; 27:9; 28:13

⁴⁹ City Exhibit A, at 3: 11-12

⁵⁰ Plt. Exhibit 2 [Merideth's Depo.] at 26: 13

⁵¹ Plt. Exhibit 5 (Hopson Statement)

⁵² Id.

⁵³ Plt Exhibit 6 (Bullock Statement)

⁵⁴ City Exhibit A, at 26: 3

⁵⁵ Id., at 26:7-9

⁵⁶ Id., at 23

Yang's (Lessee's and owner of the Klondike. Furthermore, the police had no indications that the Yang's had sought and obtained an FED order evicting the Yi's from the premises. While it is clear that the dispatcher knew about court eviction orders, writs of assistance, etc, there is no evidence that the police ever made an inquiry of Lamoureaux requesting copies of such documents. It is also clear that the police were fully aware that the Yi's were complaining that Lamoureaux had

- broken the lock to their restaurant and possibly illegally entered the premises;
- either run over or attempted to run over one or more of the Yi's in the truck he was driving,
- that a pedestrian/truck accident of some kind had occurred and Lamoureaux fled the scene, and
- That the Yi's jumped in the back of the truck in an attempt to stop Lamoureaux from fleeing the scene of the breaking and entering and the scene of the accident.

Kenny and Yong Yi were arrested. The City claims that Lamoureaux performed a civilian arrest.⁵⁷ There are many problems with this version of the facts. Nobody told the Yi's that Lamoureaux was arresting them. Merideth never told the Yi's they were under arrest. In addressing another officer, Merideth merely

⁵⁷ See City Memo on Motion,
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stated "This guy and this guy, 10-80, 10-80 and we'll figure it out...." ⁵⁸ The officer than handcuffed the Yi's and it was this officer who was the first to tell them that they were under arrest.⁵⁹ The officer further told the Yi's that the other officer - Officer Merideth --- was the arresting officer.⁶⁰ At no time were the Yi's informed that they were arrested by anybody other than the police. The other officer called dispatch and indicates that he is returning to the station house.⁶¹ He notes that a citizen's report had been taken.⁶² He never mentioned that a citizen's arrest was made. In his recollection of the matter, Officer Merideth doe not recall ever advising the Yi's that they were arrested under a citizen's arrest.⁶³

Equally important is the fact that Lamoureaux claims that he did not know that he was arresting the Yi's. Specifically, Lamoureaux stated in his deposition "I didn't know I was actually making the arrest".⁶⁴ He further stated, 'I didn't know that I had the sole discretion in arresting them"⁶⁵ Lamoureaux stated that he

⁵⁸ City Exhibit A, at 35:20-21 The term 10-80 is a police code for arrest.- Plt. Ex. 2 (Merideth Depo), at 52

⁵⁹ City Exhibit A, at 39:1. The transcript indicates that the conversation before the term "under arrest" was inaudible. However, in listening to the tape, it is clear that Officer 2 (presumably Officer Wellborn) states "you are under arrest".

⁶⁰ Id., at 39.

⁶¹ Id., at 40:5-7

⁶² Id.

⁶³ Plt. Ex. 2 (Merideth Depo), at 55:6-23

⁶⁴ Plt. Ex. 7(Lamoureaux Depo.), at 126:6-7 The Plaintiff's fully accept that Lamoureaux's credibility is in substantial question, given that he has made a number of inconsistent statement. This issue is more substantively addressed in Plaintiffs opposition to Lamoureaux's motion for partial summary judgment. However, it is not for the court to weigh credibility of witnesses on a motion for summary judgment.

⁶⁵ Id., at 127:18-20

believed that the police were arresting the Yi's.⁶⁶ Lamoureaux believed that he was merely signing a statement as to what he saw happened.⁶⁷

Moreover, Merideth stated in his deposition that he does not recollect ever explaining civil arrest to Lamoureaux.⁶⁸ Merideth stated in his deposition that he does not remember explaining to the other officer that the arrest was a civil arrest by Lamoureaux.⁶⁹ While Merideth states that he felt that the arrest of the Yi's was appropriate, because, "there was a vehicle that was damaged, there was window getting knocked out, people were hysterical out there."⁷⁰ Merideth acknowledges that he could not arrest the Yi's, since the only charges that could be brought against them was a misdemeanor.⁷¹ Merideth was fully aware that he could not arrest the Yi's on misdemeanor charges unless the actions were committed in his presence.⁷² He was fully aware that if the Yi's were to be arrested, a witness to the events would have to do a "citizen's arrest".⁷³ In Merideth's words, it would have been illegal for him to arrest the Yi's on the misdemeanor charges.⁷⁴

⁶⁶ Id., at 126:21-23

⁶⁷ Id., at

⁶⁸ Plt. Ex. 2 (Merideth Depo), at 32:21- 33:10

⁶⁹ Id., at 85:5- 86:19

⁷⁰ Id., at 41:12-14

⁷¹ Id., at 33:20-34:8.

⁷² Id.

⁷³ Id.

⁷⁴ Id., at 84:15-20

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There is substantial evidence that Merideth did not use standard police procedures in this situation. The Plaintiff's expert witness, John Shover, reviewed the tapes and offered a different view. In his expert opinion, Mr. Shover explains that if a citizen's arrest form is utilized, the arrestor must have the form carefully explained. The form should then be read and signed. It is important that the arresting citizen understands that he or she is making the arrest and the police are merely the transporting authority.⁷⁵ Merideth admits that this is the standard procedure for using the citizen's arrest procedure.⁷⁶

Shover also opines⁷⁷ that there was probable cause to believe that two felonies had been committed: one the reckless striking of a woman by the white truck,⁷⁸ and the breaking and entering.⁷⁹ Additionally, Shover observes that the fact that the

⁷⁵ Plt. Ex. 8 (Shover Report) at 2

⁷⁶ Plt. Ex. 2 (Merideth Depo), at 33:7-25

⁷⁷ Plt. Ex. 8 (Shover Report) at 2

⁷⁸ AS 11.41.220. Assault in the Third Degree. The relevant portions of the statute read:

(a) A person commits the crime of assault in the third degree if that person

(1) recklessly

(A) places another person in fear of imminent serious physical injury by means of a dangerous instrument;

(B) causes physical injury to another person by means of a dangerous instrument; or

....

(d) Assault in the third degree is a class C felony.

⁷⁹ AS 11.46.310. Burglary in the Second Degree. *The relevant portions of the statute read:*

(a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony.

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vehicle was leaving the scene of an accident, could give rise to another felony charge.⁸⁰

Thus, Merideth was faced with the possibility of charging Lamoureaux with one to three felonies, which he did not have to have witnessed, or using a citizen's arrest of the Yi's, because he could not legally arrest on the misdemeanor charges.

Finally, the City admits that Merideth did not obtain any documentation that that an FED order had been obtained by the Yang's against the Yi.⁸¹ Merideth admits that he did not secure the Yi's property – i.e. the bar/restaurant and the contents contained therein.⁸² And Officer Welborn, working under the direction of Officer Merideth, told the Yi's bartender that she could not go into the bar to open or otherwise secure the premises.⁸³ The police advised all the Yi's to not return to the restaurant and bar.⁸⁴ The police justify this advice by noting that Sharon Yang obtained an *ex parte* restraining order against the Yong, Kenny and Hyong Yi.⁸⁵ The problem with this logic is that there was no restraining order against Luna Chin or any other employees of the Yong Yi. Nonetheless, Luna was advised that none of

⁸⁰ See AS 28.35.050(a) and AS 28.35.060(a).

⁸¹ Plt. Ex.9 (City's Answers to Requests for Admission) RFA No. 4

⁸² Plt. Ex. 2 (Merideth Depo), at 82:4-6

⁸³ City Exhibit A,, at 26:20-27:4

⁸⁴ Plt. Ex. 9 (City's Answers to Requests for Admission) RFA No. 5

⁸⁵ Id, RFA Nos. 4&5

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the Yi's, including her, could return to the restaurant/bar.⁸⁶ In essence, the police shut down the Yi's bar without any legal process.

Yong and Kenny Yi were ultimately charged with three misdemeanors.⁸⁷ The D.A. dismissed the charges against both Yong Yi and Kenny Yi.⁸⁸

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⁸⁶ Plt. Ex. 10 (L. Chinn Aff't, To be Supplemented); Plt. Ex. 11 (Y. Yi Aff't To be Supplemented)
⁸⁷ AS11.41.230(a)(3): Assault 4-Cause Fear Of Injury Degree of Offense Charge Dscr AS11.41.230(a)(3):
Assault 4-Cause Fear Of Injury Degree of Offense Class A Misdemeanor Charge Dscr
AS11.46.484(a)(1): Crim Mischief 4-Prop Dam \$50-\$499 Degree of Offense Class A Misdemeanor
⁸⁸ Plt. Ex. 12 (DA Dismissal Re Kenny Yi) See also State of Alaska vs. Yong Yi, 4FA-04-04406CR
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I. THERE ARE GENUINE ISSUES OF FACT IN DISPUTE RESPECTING WHETHER OFFICER MERIDETH AND OFFICERS ACTING UNDER HIS COMMAND ACTUALLY ARRESTED YONG AND KENNY YI.

a) The State law False Arrest Claims. Kenny and Yong were arrested on misdemeanor charges.⁸⁹ The parties agree that a peace officer may not arrest a person for a misdemeanor unless the crime is committed in his presence, and that a police officer may arrest a person for a felony even if the crime is not committed in his presence if he has a reasonable basis to believe that the person committed the felony.⁹⁰ As he testified at his deposition, Merideth was fully aware of this distinction, and believed that it would be "illegal" to arrest the Yi's, because he did not witness the Yi's actions and did not have a reasonable basis to believe that they committed a felony.⁹¹

⁸⁹ Of course there are two claims: a state law claim § for false arrest, and a 1983 claim for false arrest. The state law tort of false arrest and false imprisonment are not separate torts. A false arrest is one way to commit false imprisonment; since an arrest involves restraint, it always involves imprisonment. *City Of Nome, v. Ailak, 570 P.2d, at 168* citing Witkin, Summary of California Law § 214, at 2499 (8th Ed. 1974), citing *Moore v. San Francisco, 5 Cal.App.3d 728, 85 Cal.Rptr. 281 (1970)*. The elements of the false arrest-imprisonment tort are (1) a restraint upon the plaintiff's freedom, (2) without proper legal authority. *Hazen v. Municipality of Anchorage, 718 P.2d 456, 461 (Alaska 1986)*.

⁹⁰ See AS 12.25.030. Grounds For Arrest By Private Person or Peace Officer Without Warrant.

- (a) A private person or a peace officer without a warrant may arrest a person
- (1) for a crime committed or attempted in the presence of the person making the arrest;
 - (2) when the person has committed a felony, although not in the presence of the person making the arrest;
 - (3) when a felony has in fact been committed, and the person making the arrest has reasonable cause for believing the person to have committed it. (emphasis added)

⁹¹ *Supra.*

Generally, in determining whether an arrest has taken place for civil false arrest claims, Alaskan courts look to Alaska statutes--- particularly A.S. 12.25.050 and A.S. 12.25.060. *City Of Nome, v. Ailak*, 570 P.2d 162, 169 (Alaska, 1977); See also *Greenawalt, v. Municipality Of Anchorage* 692 P.2d 983, 985 (Alaska, 1985) citing *G.D. v. State*, 681 P.2d 366, 367 (Alaska App. 1984). The first statute provides:

An arrest is made by the actual restraint of a person or by his submission to the custody of the person making the arrest.⁹²

The second statute specifically addresses arrest without a warrant, and provides.

When making an arrest without a warrant, the peace officer shall inform the person to be arrested of the officer's authority and the cause of the arrest, unless the person to be arrested is then engaged in the commission of a crime, or is pursued immediately after its commission or after an escape. (emphasis added).⁹³

In applying these standards, the Alaska Supreme Court has determined that an objective standard is applied. *City Of Nome, v. Ailak*, 570 P.2d, at 169. In particular, the officer's belief, even if reasonable, is not determinative of whether an arrest has been made. Rather, the officer's belief must be supported by objective evidence. *Id.*, at 172. As the Court clarified,

The reasonableness of a police officer's conduct in conducting an investigation of a reported crime is to be "judged against an objective standard: would the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the action taken was appropriate?" The state of mind of the particular

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⁹² A.S. 12.25.050

⁹³ A.S. 12.25.060

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officer involved at the time of the incident was not relevant. What a reasonable officer would have believed was the proper inquiry. (emphasis added)

City Of Nome, v. Ailak, 570 P.2d, at 172

Plaintiff's have provided expert witness respecting what a reasonable officer would have believed. As Shover's report indicates, a reasonable officer would have investigated the felonies: i.e. the alleged break-in, the Assault Three, and leaving the scene of an accident. If Shover's opinion is to be given any credence, Merideth did not act in a manner consistent with the objective standard of a reasonable officer.

Moreover, applying these statutes to the facts, it is clear that Officer Welborn physically restrained the Yi's when he handcuffed the Yi's under the direct instructions of the officer in charge, Officer Merideth. Officer Welborn informed the Yi's that they were under arrest and that Officer Merideth was the arresting officer. Only two possibilities exist: the arrest was illegal because Officer Welborn falsely informed the Yi's who and why they were being arrested in violation of the statute, or Merideth illegally arrested the Yi for the misdemeanor.

While there is no question that Kenny and Yong Yi were arrested, evidence offered by the various Defendants is in conflict as to who actually arrested the Yi's. Lamoureaux clearly states that he did not intend to arrest them, and thought the

police were arresting them. Officer Welborn clearly thought that Merideth was the arresting officer, and the Yi's were clearly told by Officer Welborn that Merideth was the arresting officer. Merideth agrees with the Plaintiff's expert witness, Shover, that when an officer is using a civilian arrest, the officer should explain the process to the civilian and make sure that the civilian understands that they are making the arrest. It is also important that the person being arrested be told who is arresting them. Lamoureaux and Merideth agree that neither remembers Merideth explaining the civilian arrest procedure to Lamoureaux. Merideth and the Yi's agree that none remember Merideth telling the Yi's that Lamoureaux was arresting them. Consequently, the objective evidence clearly points to the conclusion that Merideth actions were inconsistent with the objective standards of a reasonable officer, which demand that the police officer

- inform the arresting person as to civilian arrest procedures
- affirmatively confirm that the arresting person knowingly is arresting the person, and
- arrested person knows who is arresting him.

While the Yi's believe that the evidence is sufficient to establish that Merideth --- not Lamoureaux--- arrested them because that is what Wellborn told them. The only evidence that Lamoureaux actually conducted a civilian arrest is his signature on the civilian arrest form. As a result, while the overwhelming evidence suggest

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that Officer Meredith illegally arrested the Yi's, there is a "scintilla" of evidence --- the signed civil arrest form --- supporting Meredith's contention that Lamoureaux conducted the arrest. Under the Alaska standard for summary judgment, such conflicting evidence presents a genuine question of disputed material fact, for which summary judgment may not be entered.

b) The § 1983 claims. A § 1983 analysis actually suggests that the Yi's are entitled to a determination as to liability as a matter of law, as explained in the recent case *Fisher v. City of San Jose*, 509 F.3d 952 (9th Cir., 2007) In that case, the Plaintiff was drinking beer and cleaning his guns when an apartment security guard stopped by his apartment in response to a noise complaint regarding plaintiff's upstairs neighbor. Plaintiff was generally unresponsive and held one of his guns while he talked to the guard. The police were called and a standoff ensued. During the standoff plaintiff threatened to shoot a police tactical negotiator. The stand off lasted 12 hours. During the time the police never sought an arrest warrant. The Ninth Circuit held that a warrant was necessary and found that the arrest was a violation of the Plaintiff's constitutional rights guaranteed under the Fourth Amendment, and a violation of §1983.

There are clear similarities to the present case. The Yi's had state and federal constitutional and statutory law protections that would prevent Merideth from

arresting them. As noted above, there are clearly, factual issues in dispute about whether Merideth was actually the person who arrested the Yi's. Under the evidence, it is clear that as a matter of law, the failure to follow state and federal law procedures in arresting the Yi's prevents the entry of summary judgment on the claim. Thus, the Court should not grant the motion as to the §1983 claim.⁹⁴

Notwithstanding that point, the claims that Officer Merideth possesses qualified immunity as to the §1983 claims because he possessed a subjective belief that he was arresting the Yi's pursuant to a valid civilian arrest. In support of this position, the City cites to *Samaniego v. City of Kodiak*, 2 P.3d 78 (Alaska 2000), which was an police excessive force claim. As the Court in that case held, the Courts have generally observed that the determination by a policeman as to the level of force required in a particular situation is near always a discretionary call entitled to qualified immunity. However, that is not the case here. None the less, the City is simply wrong in asserting that the subjective belief of the police officer is determinative of the question. Rather, the Court held that the officer's beliefs were

⁹⁴ In *Fisher*, as in this case, the majority of the evidence clearly demonstrates a violation of rights. The critical issue was whether the actions were excused because of exigent circumstances: i.e. the possibility that "there is a compelling reason for not obtaining a warrant -- for example, a "need to protect an officer or the public from danger, [a] need to avoid the imminent destruction of evidence, when entry in 'hot pursuit' is necessary to prevent a criminal suspect's escape, [or a need] to respond to fires or other emergencies." Id. The Court found, as a matter of law, that no such exigent circumstances exist. In this case, Merideth and the City have not claimed "exigent circumstances", and thus they are not addressed here.

to be measured by the objective standard and evidence. 2 P.3d, at 84. Specifically, the Court stated,

In other words, "whether an official may prevail in his qualified immunity defense depends upon the 'objective reasonableness of his conduct.'" Because objective reasonableness is required, officers do not enjoy immunity on account of their subjective good faith alone.

As noted above, the objective evidence suggests that Officer Merideth knew the proper procedures necessary to process a civilian arrest (i.e. explanation to the arresting person, confirmation of that person's intent, notice to the arrested person of the authority and person arresting), and that he did not comply with those standards of conduct. Moreover, there is a very substantial factual dispute as to whether standard police procedures would have required Officer Merideth to focus upon the Yi's alleged misdemeanors or the alleged Lamoureaux felonies. In this case, there is substantial evidence suggesting that Officer Merideth deviated from police standards by his election to not investigate the Felonies.

In other words, the City seeks to lull the Court into applying the wrong legal standard --- i.e. use of the officer's subjective state of mind as opposed to an objective standard as to what a reasonable police officer might have done. The City's motion simply fails to offer any evidence going to the objective standard, and rests upon the mere assertions of Merideth's subjective beliefs. Thus, it might be observed that the City has failed to make a prima facie case as to summary

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judgment, since it does not offer any evidence related to the objective standard. However, assuming that Merideth's assertion of his subjective beliefs might serve that purpose in some capacity, the difference of opinion presented by Mr. Shover presents a clear factual dispute that must go to a jury.

Indeed, *Samaniego v. City of Kodiak*, actually holds that summary judgment in this context would be error. After the Court clarified the proper standard (i.e. objective rather than subjective), the Court phrased the proper inquiry as follows:

we examine the propriety of the summary judgment in a different [**18] light than the trial court did. The relevant inquiry is whether -- resolving all factual disputes in Samaniego's favor -- it can be said as a matter of law that no reasonable jury would find the officers' use of force to be excessive. As discussed below, this cannot be said.

In particular, the Supreme Court noted that reliance on the officers subjective beliefs failed to properly employ the proper standard for summary judgment: i.e. viewing all facts in a light most favorable to the non-moving party.

Thus, as to the §1983 claim, the Court should also deny summary judgment.

II. THERE ARE GENUINE ISSUES OF FACT IN DISPUTE RESPECTING WHETHER OFFICER MERIDETH AND OFFICERS ACTING UNDER

HIS COMMAND UNLAWFULLY DENIED THE YI'S USE OF THEIR PROPERTY.

The City first claims that the deprivation of property⁹⁵ - i.e. the denial of access to the bar at the time of arrest to Yi's agents who were not arrested (i.e. the bartender and Ms. Chin) and the subsequent restriction of access to these people, who were not named in any domestic violence order, was not a deprivation of property. This is clearly not correct.

This case is not unlike *King v. Massarweh*, 782 F.2d 825 (9th Cir. 1986), in which a landlord called police officers who came to appellant tenants' apartments, entered, arrested appellants, and seized personal property. Additionally, the landlord removed the tenant's property. In that case, Court overturned a summary judgment in favor of the police were held to be liable under §1983. The conduct of the defendant police officers appeared to have been random and unauthorized, contrary to established state procedures, and in response to the landlord's call. In that case, the Court held that the Plaintiff's had made out a cognizable §1983 claim against the police requiring trial to resolve disputed facts. The case is very close to the present case, and would seem to suggest that there are clear factual disputes that would prevent summary judgment as to liability.

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⁹⁵ Of course, the bedrock guarantees of the Fifth and Fourteenth Amendment provide that a citizen shall be secure in the possession of his property absent due process of law. *Farmer v. State*, 788 P.2d 43 (Alaska, 1990)
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Again, the Court should be guided by *Samaniego v. City of Kodiak*. In particular, is the Court's holding on the issue of the possibility that the arrest was invalid. 2 P.3d, at 87. In particular, the Court noted that in that case, the officer had independent basis to arrest the Plaintiff, regardless of whether the initial basis for the arrest was valid, because she resisted arrest. That is not the case here. The Yi's did not resist arrest. However, the Court went on to note,

The only way that the illegality of the initial arrest could matter is if *Samaniego* could prove that it was pretextual and that this fact nullified the privilege *Marsh* would otherwise have had to use force to arrest her for the offense of resisting arrest. However, *Samaniego* has waived this argument. Thus, whatever the scope of the privilege, the officers did not forfeit it by illegally arresting *Samaniego*.

Indeed, that is part of the Yi's case. Merideth has clearly acknowledged that he knew that it was "illegal" for him to arrest the Yi's. Nonetheless, he proceeded with the arrest, and presented the *Lamoureux* as a pretextual post-hoc justification for the arrest. Thus, under *Samaniego* there is conflicting evidence as to whether Merideth's actions were "pre-textual", and summary judgment is not appropriate.

However, the City's notion is not a denial of deprivation of property. Rather, the city principle claim that Officer Merideth possesses qualified immunity. Summary judgment on the deprivation of property should be denied.

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Alternatively, the City claims that the Plaintiff's cannot point to any policy related to the alleged unconstitutional conduct.⁹⁶ However, the City acknowledges two (2) specific policies related to Meredith's actions. First, the City has a practice and policy of using civilian arrests.⁹⁷ Additionally, the City acknowledges that it provides civil standby's.⁹⁸

The use of pre-textual civil arrests --- in which the arresting person is not really conducting a knowing arrest - is a clear circumvention of state law relating to misdemeanor arrests. As Shover points out, that is not the proper use of civil arrest. Rather, an officer may use civil arrest when the arresting person has been properly counseled.

Secondly, the City has a policy --- as explained by the dispatcher - respecting the use of civil standby. Unfortunately, Officer Merideth, in his deposition, clearly expressed a lack of familiarity with the policy other than he was suppose to keep the

⁹⁶ City Memo at 19. In order to hold a party liable under section 1983 for the deprivation of property rights, a claimant must show: (1) that the actions of the public officials involved were taken under color of law; (2) that the conduct caused a deprivation of plaintiffs' rights, privileges or immunities secured by the Constitution or laws of the United States; and (3) that the conduct was the consequence of a government's "policy or custom. *Hammond, v. County of Madera*, 859 F.2d 797, 801 (9th Cir., 1988) citing *Parratt v. Taylor*, 451 U.S. 527, 535, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981), overruled in part on other grounds, *Daniels v. Williams*, 474 U.S. 327, 330-331, 88 L. Ed. 2d 662, 106 S. Ct. 662 (1986).

⁹⁷ Id. at 20

⁹⁸ Id.

peace.⁹⁹ In contrast, the Dispatcher was very clear as to what the policy was: need for Yang to produce a court order of eviction and writ of assistance, and the availability of a police officer to do a civil standby.

According to the City's filings, Merideth's actions were consistent with City policy. The problem is that the City policies, as described above, are not consistent with State law and standard police procedures. The fact that the City confirms and ratifies Merideth's actions resolves the requirement that the City has an approved policy implemented by Merideth.

In sum, the Plaintiffs have presented genuine issues of material fact in dispute relating to the City's liability under §1983 for the deprivation of Yong Yi's property rights, and the Court should deny summary judgment to the City.

CONCLUSION

For the reasons stated above, the Court should deny the City's motion for summary judgment because there are genuine issue of fact in dispute going to

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⁹⁹ Plt. Exhibit 2 (Merideth Depo), pp. 9-11
Yi v Yang, Case No. 4FA-04-2761CI
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Counts XIV (§1983 False Arrest), XV (1983- Deprivation of Property Rights) and XVI
(State law Tort- False Arrest).

Dated this 3rd day of March, 2008, at Fairbanks, Alaska.

LAW OFFICES OF MICHAEL J. WALLERI

By: Michael J. Walleri
MICHAEL J. WALLERI

Certificate of Service

I hereby certify that under penalty of perjury that a true and correct copy of the foregoing was sent to the following counsel of record on March 3, 2008 via U.S. Mail to:

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Yi v Yang, Case No. 4FA-04-2761CI
Op: City Mot. Sum Jud.

EXC 144

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

YONG H. YI, KENNY YI, LUNAR CHIN,
and HYON CHA YI,

Plaintiffs,

vs.

HARRIS S. YANG, SHARON YANG, MAX
ARTHUR LAMOUREAUX, JOHN C. PHARR,
and Y & I CORPORATION,

Defendants.

HARRIS S. YANG, SHARON YANG, and
Y & I CORPORATION,

Third-party plaintiffs,

vs.

KENNY YI, and LUNAR CHINN,

Third-party defendants.

Case No. 4FA-04-2761

TRANSCRIPT OF TAPE RECORDED INTERVIEWS
AND DISPATCH RECORDINGS

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PLAINTIFF
EXHIBIT NO. Y-1
ADMITTED
4FA-04-2761C1
(CASE NUMBER)

EXC 145

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VOICE LEGEND:

- UNIDENTIFIED VOICE 1 - Korean female
- UNIDENTIFIED VOICE 2 - Korean male
- UNIDENTIFIED VOICE 3 - Manager
- UNIDENTIFIED VOICE 4 - Second Korean male

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EXC 146

P R O C E E D I N G S

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Tape 1 of 3, side A

OFFICER 1: What -- what happened?

UNIDENTIFIED VOICE 1: (Inaudible) one of them.

OFFICER 1: Who did?

UNIDENTIFIED VOICE 2: That guy.

OFFICER 1: Okay. What did he look like?

UNIDENTIFIED VOICE 1: Right there.....

UNIDENTIFIED VOICE 2: (Inaudible - simultaneous

speech)

OFFICER 1: Okay. Hold on right here. This is the guy that tried to run you over in what, the van?

UNIDENTIFIED VOICE 2: No.

UNIDENTIFIED VOICE 1: (Inaudible)

OFFICER 1: What were you driving? Hold on, hold on, hold on, hold on. Apparently, he's over here -- he tried to run them over. He's over here. I'm trying to get a description of him.

UNIDENTIFIED VOICE 1: (Inaudible)

OFFICER 1: Hold on. Okay. Who tried to run you over?

UNIDENTIFIED VOICE 1: (Inaudible)

UNIDENTIFIED VOICE 2: (Inaudible)

OFFICER 1: He's in this white truck here?

UNIDENTIFIED VOICE 1: Yeah. And inside motel right now.

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Exc 147

1 OFFICER 1: He's inside the motel?
2 UNIDENTIFIED VOICE 1: Yeah.
3 OFFICER 1: What does he look like?
4 (Inaudible - simultaneous speech)
5 OFFICER 1: One at a time.
6 (Radio traffic)
7 UNIDENTIFIED VOICE 2: (Inaudible)
8 OFFICER 1: Just short hair?
9 UNIDENTIFIED VOICE 1: Yes.
10 UNIDENTIFIED VOICE 2: (Inaudible)
11 OFFICER 1: What's he wearing?
12 UNIDENTIFIED VOICE 1: Black pants and black top.
13 OFFICER 1: Okay. Okay. Guys, (inaudible) over here,
14 okay? 04-15, apparently, it's a white male, black clothing.
15 (Radio traffic)
16 OFFICER 1: They said he went into the hotel here.
17 McKilliken is going to go secure that van. This is an ongoing
18 problem between the owner -- the owner of the Klondike owns
19 both of these. Okay. And then -- but you got the people who
20 own the restaurant.....
21 (Inaudible - simultaneous speech)
22 OFFICER 1: I don't remember. But that's what the
23 problem is. It's this thing like they're always fighting each
24 other. The owners of Klondike -- and they own both of these,
25 but then the people who manage the restaurant.....

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EXC 148

1 DISPATCH: Officer 15, city.
2 OFFICER 1: 15.
3 DISPATCH: Are we looking for a white male with black
4 clothing?
5 OFFICER 1: Who knows. According to the victims here,
6 there -- it's a white male, black clothing, black jeans, black
7 top, short hair, balding on the top.
8 DISPATCH: 10-4. Do we know how he broke out the
9 window?
10 OFFICER 2: We don't know.
11 OFFICER 1: We don't have that information yet.
12 DISPATCH: 10-4.
13 OFFICER 1: Looks like him.
14 (Inaudible - simultaneous speech)
15 UNIDENTIFIED VOICE 3: (Inaudible) We went ahead and
16 took the building over earlier, put notices up on the door.
17 OFFICER 1: Okay. Are you the owner of the Klondike?
18 UNIDENTIFIED VOICE 3: Am I what?
19 OFFICER 1: Are you the owner of the Klondike?
20 UNIDENTIFIED VOICE 3: No, no, no. I'm just a manager.
21 Well.....
22 OFFICER 1: Okay.
23 UNIDENTIFIED VOICE 3: And had the place taken over;
24 nobody was there; didn't disturb no.....
25 OFFICER 1: City-15, 04 is in contact with that

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EXC 149

1 individual, now. I'm going to recontact the original
2 complainants.

3 DISPATCH: 10-4.

4 OFFICER 1: Okay. Guys, what happened. We're -- we've
5 got an officer over there talking to him right now. Okay.

6 UNIDENTIFIED VOICE 2: (Inaudible) few more minutes.

7 OFFICER 1: Okay.

8 UNIDENTIFIED VOICE 2: (Inaudible)

9 OFFICER 1: We have -- this van over here?

10 (Inaudible - simultaneous speech)

11 OFFICER 1: Okay.

12 UNIDENTIFIED VOICE 2: (Inaudible) going to break the
13 lock.

14 (Inaudible - simultaneous speech)

15 OFFICER 1: Okay. Hold on, hold on. Who are you guys?

16 UNIDENTIFIED VOICE 1: We own this.

17 OFFICER 1: You own the Klondike?

18 UNIDENTIFIED VOICE 1: Yeah, and we leave from there.

19 OFFICER 1: And he owns that building?

20 UNIDENTIFIED VOICE 1: (Inaudible) yeah.

21 OFFICER 1: Okay. You guy -- but he owns this
22 building, too. You just lease it?

23 UNIDENTIFIED VOICE 1: (Inaudible) we lease it.

24 UNIDENTIFIED VOICE 2: Yeah.

25 OFFICER 1: Okay. So he came over this morning to

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EXC 150

1 place closed for what, renovation?

2 UNIDENTIFIED VOICE 1: He -- no. He -- no.

3 (Inaudible) notice (inaudible)

4 OFFICER 1: Okay. Hold on, hold on. I'm going to ask
5 some questions first, because I need to make sure I understand
6 this.

7 UNIDENTIFIED VOICE 1: Okay.

8 OFFICER 1: So he comes over this morning. This place
9 is going to be renovated?

10 UNIDENTIFIED VOICE 1: No.

11 OFFICER 1: According to signs here, it says temporary
12 closed under renovation.

13 UNIDENTIFIED VOICE 1: That's what I mean. He just put
14 it.....

15 OFFICER 1: Okay. So tell me what happened?

16 UNIDENTIFIED VOICE 1: Okay. I saw -- no, I saw that
17 happen.

18 OFFICER 2: 13-04, where are you?

19 UNIDENTIFIED VOICE 1: I came to work 9:00 o'clock this
20 morning.

21 OFFICER 1: I'm out in front of the Klondike.

22 UNIDENTIFIED VOICE 2: 8:00 o'clock.

23 UNIDENTIFIED VOICE 1: No, it wasn't 8:00 o'clock. It
24 was 9:00 o'clock. (Inaudible)

25 OFFICER 1: Okay. You guys, hold on. Come back over

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1 here for a few minutes, okay. I'm not going to walk all around
2 the neighborhood. We're going to find out what happened first,
3 and then we'll go over there and take care of that. All right.
4 Tell me what happened today? No one has told me what happened.

5 UNIDENTIFIED VOICE 1: Okay. Today, I came work at
6 9:00 o'clock. I saw that white truck face to the door.

7 OFFICER 1: On the back?

8 UNIDENTIFIED VOICE 1: On the back.

9 OFFICER 1: Okay.

10 UNIDENTIFIED VOICE 1: And I saw him doing something.
11 And I didn't know what he was doing. (Inaudible) I give
12 (inaudible) and he just revved his car and run away. So I pull
13 in, because I didn't know.....

14 OFFICER 1: You're driving the van?

15 UNIDENTIFIED VOICE 1: No, no. I drive a.....

16 UNIDENTIFIED VOICE 2: She drove the (inaudible)

17 UNIDENTIFIED VOICE 1: The red truck.

18 OFFICER 2: Right. Who was driving the van?

19 OFFICER 1: Who was driving this van?

20 UNIDENTIFIED VOICE 2: My sister-in-law.

21 UNIDENTIFIED VOICE 1: My sister-in-law.

22 UNIDENTIFIED VOICE 4: My wife.

23 OFFICER 1: Okay. All right. Go on.

24 UNIDENTIFIED VOICE 1: I saw him run away, so I pull
25 in. And then that lock was broken. So I pull in right away

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1 (inaudible) somebody broke in the door. And he don't have
2 (inaudible) so we leave at Sophies. So I run to -- to get him
3 and I come back.

4 (Radio traffic)

5 UNIDENTIFIED VOICE 1: And I (inaudible) and the
6 white -- the car pull out of this driveway, go over there. So
7 I told him, oh, that's the car and that's him.

8 UNIDENTIFIED VOICE 2: So.....

9 UNIDENTIFIED VOICE 1: So he -- and then after.....

10 UNIDENTIFIED VOICE 2: So (inaudible) truck over there
11 and then I called the police and I report it and then
12 while -- as soon as I hang up the phone with the emergency
13 which is 911, and I saw him got into the car and then try to
14 run away. So I tell him I call the police, so why don't you
15 just stay (inaudible). And then he just tried to run away, so
16 I tried to stop him. And as he tried to run -- run me over,
17 so I jumped into the back of the truck and I then told him to
18 stop.

19 OFFICER 1: The back of his white truck?

20 UNIDENTIFIED VOICE 2: Yes. (Inaudible) I jump into
21 (inaudible) because he was trying to run away. And then
22 (inaudible) I shouted a couple times, stop, stop. And then
23 the -- in between the time, my brother was (inaudible) stop in
24 front of his truck and then he just run (inaudible) over him.

25 UNIDENTIFIED VOICE 4: He just run away.

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1 UNIDENTIFIED VOICE 1: Yeah.
2 UNIDENTIFIED VOICE 4: I told him (inaudible) stop,
3 police come; stop. Then she -- my wife was going to.....
4 (Inaudible - simultaneous speech)
5 UNIDENTIFIED VOICE 4: He going -- she trying to
6 (inaudible) my wife's car and if she run away from (inaudible)
7 the driver saw everything.
8 UNIDENTIFIED VOICE 1: Okay. And I told him -- because
9 I saw they were arguing or fighting (inaudible) I -- I sto -- I
10 stepped from over here like this I told them, please, the
11 police come, so (inaudible) stop. And he just run me over.
12 And as soon as I fall down on the ground.....
13 UNIDENTIFIED VOICE 2: These guy (inaudible)
14 UNIDENTIFIED VOICE 1: Yeah.
15 UNIDENTIFIED VOICE 2: (Inaudible)
16 OFFICER 1: Okay.
17 UNIDENTIFIED VOICE 1: As soon as I.....
18 OFFICER 1: Do you have your ID, ma'am?
19 UNIDENTIFIED VOICE 1: Yeah.
20 OFFICER 1: Do you guys have IDs on you?
21 UNIDENTIFIED VOICE 1: Yeah. Here. I seen (inaudible)
22 just run me over and (inaudible)
23 (Radio traffic)
24 OFFICER 1: Do you have your driver's license
25 (inaudible)

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EXC 154

1 UNIDENTIFIED VOICE 1: (Inaudible)
2 OFFICER 1: Sir, could I have yours, too?
3 (Radio traffic)
4 OFFICER 1: Okay. They need to stay over here. These
5 are your suspects. Ma'am, you need to come over here, okay? I
6 don't know why you're going over there.
7 UNIDENTIFIED VOICE 1: (Inaudible - away from
8 microphone)
9 OFFICER 1: Okay. That's okay. Come back over here.
10 I'll get that information from you, so you don't have to go
11 over there. Okay. If you guys want to wait right here, I'll
12 be back with you in just a minute. Okay.
13 UNIDENTIFIED VOICE 1: I can't even walk.
14 OFFICER 1: So when you showed up this morning, you saw
15 the truck out back.....
16 UNIDENTIFIED VOICE 1: Yeah.
17 OFFICER 1:trying to get in you thought?
18 UNIDENTIFIED VOICE 1: Yeah.
19 OFFICER 1: Okay. So you approached him. You tried to
20 approach him, you were driving.....
21 UNIDENTIFIED VOICE 1: Yeah, driving.
22 OFFICER 1: Which vehicle were you driving?
23 UNIDENTIFIED VOICE 1: The red car.
24 OFFICER 1: The red car over there?
25 UNIDENTIFIED VOICE 1: Yeah.

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1 UNIDENTIFIED VOICE 2: The red truck.
2 OFFICER 1: The red truck? Okay. So you drove
3 up -- how -- and he took off before you got up to him?
4 UNIDENTIFIED VOICE 2: (Inaudible)
5 UNIDENTIFIED VOICE 1: I stopped there, give the signal
6 for making left turn and I'm going.
7 OFFICER 1: Oh, you stopped here?
8 UNIDENTIFIED VOICE 1: Right.
9 OFFICER 1: Right here. Okay. Do you usually drive
10 around back in the morning?
11 UNIDENTIFIED VOICE 1: Yeah.
12 OFFICER 1: Okay.
13 UNIDENTIFIED VOICE 1: That's how -- that's the only
14 door we get in.
15 OFFICER 1: Okay. So you saw him as you were turning
16 in?
17 UNIDENTIFIED VOICE 1: Yeah. He saw me; he saw me and
18 he revved the car. I saw him doing it, but I didn't know what
19 he was doing. He saw us -- as soon as he see I guess the
20 signal, (inaudible)
21 UNIDENTIFIED VOICE 2: (Inaudible)
22 UNIDENTIFIED VOICE 1: He (inaudible)
23 OFFICER 1: Okay. So he got in his car and he left?
24 UNIDENTIFIED VOICE 1: He left, yeah.
25 OFFICER 1: He drove -- now, who was driving the gray

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1 van, the silver van?
2 UNIDENTIFIED VOICE 2: My sister.
3 UNIDENTIFIED VOICE 4: My wife.
4 OFFICER 1: Okay. And what happened -- how did the van
5 get stuck like that?
6 UNIDENTIFIED VOICE 2: Okay. Okay. Well.....
7 OFFICER 1: Hold on. I'm asking one person at a time.
8 UNIDENTIFIED VOICE 2: Okay. When I (inaudible)
9 UNIDENTIFIED VOICE 1: (Inaudible)
10 OFFICER 1: One person at a time.
11 UNIDENTIFIED VOICE 2: Okay. When I come in, my sister
12 not here. That's why I'm trying to calling -- I'm trying to
13 call back door (inaudible)
14 OFFICER 1: So you -- did you arrive about the same
15 time?
16 UNIDENTIFIED VOICE 2: No. Almost same time, because
17 she called me. That's why I came.
18 OFFICER 1: Okay. So where did you come from, down
19 this road?
20 UNIDENTIFIED VOICE 2: No. Down -- I came from
21 the.....
22 OFFICER 1: (Inaudible)
23 UNIDENTIFIED VOICE 2:downtown.
24 OFFICER 1: Okay.
25 UNIDENTIFIED VOICE 2: Yeah. When they changed

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1 the.....

2 OFFICER 1: So when you pulled in back here, what did
3 you see?

4 UNIDENTIFIED VOICE 2: Yeah. There -- I see that
5 the -- broke the lock.

6 OFFICER 1: Okay. Where was the white truck? Where
7 was your sister?

8 UNIDENTIFIED VOICE 2: (Inaudible) around here. White
9 truck came through this (inaudible) office and so I (inaudible)
10 back; they're parking in the back.

11 OFFICER 1: Uh-huh.

12 UNIDENTIFIED VOICE 2: That I -- I write down for
13 the -- the license plate number.

14 UNIDENTIFIED VOICE 1: Can I say something (inaudible)

15 OFFICER 1: Just a minute.

16 UNIDENTIFIED VOICE 2: Then when I (inaudible) he's
17 going to come out. He's trying to run away. That's why
18 I -- my sister kept -- no, no, no. That -- that's him.
19 (inaudible) stopping him.

20 OFFICER 1: Okay. When did you arrive?

21 UNIDENTIFIED VOICE 4: I arrive (inaudible)

22 OFFICER 1: You were with her?

23 UNIDENTIFIED VOICE 4: (Inaudible)

24 UNIDENTIFIED VOICE 1: No, no. First.....

25 (Inaudible - simultaneous speech)

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1 UNIDENTIFIED VOICE 1: And I give him a call.....
2 UNIDENTIFIED VOICE 4: (Inaudible) together
3 UNIDENTIFIED VOICE 1: As soon as we park.....
4 UNIDENTIFIED VOICE 4: (Inaudible) go to the front,
5 please? I'm freezing.
6 UNIDENTIFIED VOICE 1: No (inaudible) I called him up.
7 OFFICER 1: Okay. Guys, hold on for just a minute.
8 Okay. I'll be right back. Okay. Grimes, 15-29.
9 DISPATCH: Go ahead.
10 OFFICER 1: The first is Alaska OL [REDACTED] last name,
11 Ying. Break. The second one is by name only, Lima Uniform
12 November Alpha Romeo; last name, Charlie Hotel India November.
13 Date of birth is [REDACTED] of '59. Break. And third is Kenny, last
14 name, Yi, Yankee India, date of birth, [REDACTED] of '67. Okay.
15 OFFICER 2: Well, I think we're going to try to get
16 this move along as fast we can here. Okay.
17 OFFICER 1: Sir, you need.....
18 OFFICER 2: Sir.....
19 OFFICER 1: Sir, I need you to come back over here,
20 okay.
21 OFFICER 2: (Inaudible) stand over here. Okay.
22 OFFICER 1: Till we can get this straightened out,
23 okay?
24 UNIDENTIFIED VOICE 4: Okay.
25 OFFICER 1: You just be patient, try and cooperate as

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1 much as you can.

2 UNIDENTIFIED VOICE 4: (Inaudible) you're not going to
3 arrest him for.....

4 OFFICER 1: Well, we're talking to both sides.

5 OFFICER 2: We don't actually know what's going to
6 happen right now. Okay.

7 UNIDENTIFIED VOICE 4: (Inaudible) try to kill her.

8 OFFICER 1: Okay.

9 OFFICER 2: (Inaudible)

10 OFFICER 1: How did the windows get broken in the
11 truck?

12 UNIDENTIFIED VOICE 4: Like I say, I told him to stop
13 and he try to run me over, so I jumped into the back of the
14 truck.

15 OFFICER 1: But you were in the back of the truck, at
16 this point, right?

17 UNIDENTIFIED VOICE 4: (Inaudible) No.

18 UNIDENTIFIED VOICE 2: No, I did.

19 OFFICER 1: You jumped in the back of the truck first?

20 UNIDENTIFIED VOICE 2: Yes, I did.

21 OFFICER 1: Then you did?

22 UNIDENTIFIED VOICE 4: Yeah, I did, too.

23 OFFICER 1: You were both in it at the same time?

24 UNIDENTIFIED VOICE 4: No.

25 (Inaudible - simultaneous speech)

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