

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

GARY DEMERCURIO and JUSTIN WYNN, Plaintiff, v. DALLAS COUNTY, IOWA, and CHAD LEONARD Defendants	No. LACL153043 PLAINTIFFS' STATEMENT OF FACTS IN RESISTANCE TO MOTION FOR SUMMARY JUDGMENT¹
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COME NOW Plaintiffs and, for their Statement of Facts in Resistance to Defendants' Motion for Summary Judgment state:

Parties and Background

1. Defendant Dallas County, Iowa is a governmental entity and operates the Dallas County Sheriff's Department. (Answer to Fourth Amended Petition, App. 62, ¶3).
2. Defendant Chad Leonard (herein "Leonard") was at all times relevant an employee of Dallas County, employed as its Sheriff. (App. 62, ¶4).
3. At all times relevant, Gary DeMercurio ("Gary") and Justin Wynn ("Justin") were employees of Coalfire Labs ("Coalfire") a cybersecurity firm headquartered in Colorado. (Fourth Amended Petition (App. 62-63, ¶¶5-6)).

¹ All page numbers apply to the respective Appendix. Volume I begin at App. 1; Volume II begins at App. 1001.

4. In 2015, the Iowa Judicial Branch, through the State Court Administrator, retained Coalfire to perform a cybersecurity analysis of the Iowa Court system. (App. 63, ¶7; App. 75, ¶7).

5. The Iowa Judicial Branch and Coalfire entered into a Master Agreement in 2015. (App. 75, ¶8).

6. Thereafter, the Iowa Judicial Branch and Coalfire entered into a Service Order and Rules of Engagement in the Spring of 2015 for the performance of certain cybersecurity testing activities, including physical penetration. (App. 75, ¶9).

7. As part of the agreement, the Iowa Judicial Branch provided a “Letter of Authorization” to Coalfire and its employees, sometimes described as a “get out of jail free” letter. (App. 75, ¶10).

8. The “Letter of Authorization” is intended to protect Coalfire employees working on the project from being wrongfully arrested for performing those necessary contractual activities that could be misinterpreted as criminal acts. (App. 63, ¶11).

9. This engagement resulted in a report issued by Coalfire to the Iowa Judicial Branch in May 2015. (App. 63, ¶12).

10. In 2019, the Iowa Judicial Branch, through the State Court Administrator, again retained Coalfire to perform a cybersecurity analysis of the Iowa Court system. (App. 63, ¶13; App. 76, ¶13).

11. Again, a Service Order and Rules of Engagement were prepared and discussed between Coalfire employees and employees of the Iowa Judicial Branch. (App. 63, ¶14; App. 76, ¶14).

12. The Rules of Engagement provided that the plaintiffs would be the employees responsible for carrying out the activities requested by the Iowa Judicial Branch. (Rules of Engagement, App. 2; App. 76, ¶15; Affidavit of Dana Mortaro, App. 575).

13. The request by the Iowa Judicial Branch was for Coalfire employees to test the security of the Iowa Judicial Branch, including district court level facilities and determine what weaknesses existed in those facilities. (App. 64, ¶16; App. 76, ¶16).

14. The request by the Iowa Judicial Branch included testing the security of 3 out of 5 physical facilities, namely the Iowa Judicial Branch Building (with some limitations) in Des Moines, the Polk County Courthouse in Des Moines, the Juvenile Justice Center in Des Moines, the Criminal Court Area in Des Moines, and the Dallas County Courthouse in Adel, Iowa. (App. 13; App. 77, ¶17).

15. The Rules of Engagement included external, internal, and application testing. The Rules of Engagement also included social engineering activities that involved “physical attacks” as part of “physical security assessments.” A physical attack included “lockpicking.” (App. 5, 13; App. 575).

16. These “physical attacks” were limited to three specific locations, including the Dallas County Courthouse, and could be conducted “during the day and evening,” meaning between 6pm and 6am Mountain Time. (App. 5; App. 575).

17. The Rules of Engagement anticipated that plaintiffs would seek to breach judicial branch buildings so long as done without causing significant physical damage to the buildings, such as breaking windows. (App. 64, ¶21).

18. The Iowa Judicial Branch approved the surreptitious entry of judicial branch and courthouse buildings by the plaintiffs. This was approved both in writing and in oral communications with the plaintiffs. This included breaching the buildings so long as there was no physical damage to the building. (App. 64, ¶22; App. 77-78, ¶22; App. 575).

19. The security penetration efforts to be performed by the plaintiffs were to begin on September 8, 2019, and end on September 13, 2019. (App. 65, ¶23)

20. The Iowa Judicial Branch specifically did not want “local law enforcement or security persons to be notified” in advance about the penetration testing that was to be performed by the plaintiffs. (App. 65, ¶24).

21. To protect the plaintiffs, the Rules of Engagement included a Letter of Authorization signed by employees of the State Court Administrator’s Office of the Iowa Judicial Branch. (App. 65, ¶25; App. 78, ¶25; Defendants’ Exh. D).

22. The plaintiffs were to carry the letter with them and show the letter to any law enforcement or other individual to avoid arrest. (App. 65, ¶26).

23. The purpose of conducting this testing was to identify areas of weakness in the physical and cyber environment of the court system that could be used to prevent similar breaches by malicious actors. (Ap. 65, ¶27).

Penetration Testing

24. As contracted, the plaintiffs tested the security systems at the Polk County Courthouse and adjacent buildings, as well as at the Iowa Judicial Branch Building during the period of September 8-10, 2019. (App. 78-79, ¶28).

25. This testing included plaintiffs leaving a business card at the Judicial Building in Des Moines after breaching the security system there. (App. 65, ¶29; Email from Hoover to Wynn, App. 34).

26. On the morning of September 10, 2019, an employee of the Iowa Judicial Branch acknowledged and congratulated Plaintiffs for entering the Judicial Building without being detected. (App. 66, ¶30; App. 34).

27. “Plaintiffs went to the Dallas County Courthouse on the evening of September 10-11, 2019” to perform penetration testing. (App. 66, ¶31; App. 79, ¶31).

28. When plaintiffs arrived, they found one of the doors to the courthouse unlocked. To continue with their testing, the plaintiffs closed and locked that door and then began the process of trying to enter. (App. 66, ¶32; Deposition of Gary DeMercurio App. 484-85).

29. No physical damage was caused to the doors. (App. 66, ¶32).

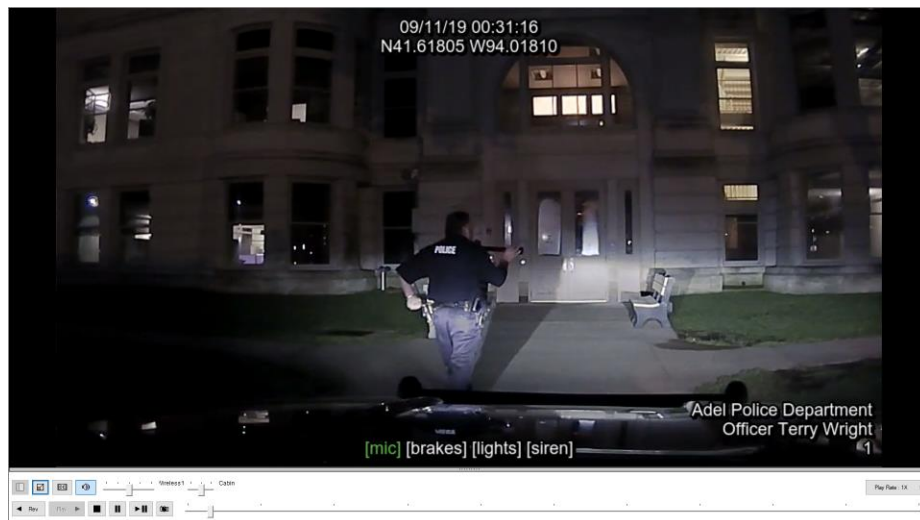
30. During their efforts, they intentionally tripped the alarm, recognized that the alarm had been tripped, and waited for law enforcement to arrive. (App. 66, ¶33; App. 79, ¶33; App. 485-87).

31. Setting off the alarm is an expected event as the purpose of the penetration testing is to determine if existing systems work. (App. 66, ¶34).

Law Enforcement Arrives at The Courthouse

32. At approximately 1231am, Officer Terry Wright of the Adel Police Department arrives at the North Doors of the Dallas County Courthouse (“Courthouse”). He has his body camera on. (VC #s #2-7, Ofc. Wright BC).²

This photo taken from Officer Wright’s Dash Cam is not contained in the video clips, but is provided to confirm his arrival time, as the times listed in the Call Dispatch Log do not necessarily match up with what is reflected on the video. (Deposition of Katie Swanson, App. 606-07).

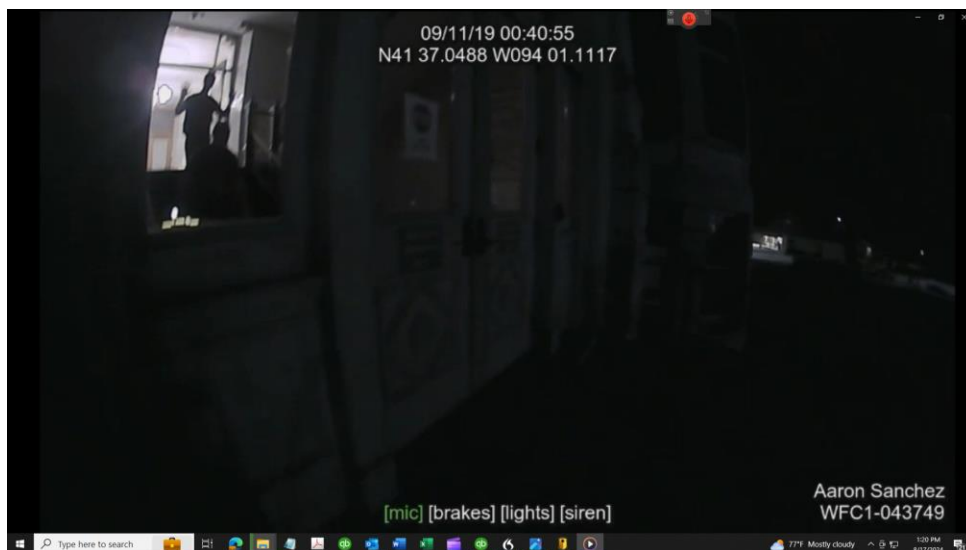


² Video Clips will be referred as follows: VC #. All Clips have audio except for Deputy Meyers’ Dash Cam (VC#s 15-17) which did not record audio.

33. Shortly after Ofc. Wright arrives, Dallas County Deputy Joe Marchant arrives on the North side of the courthouse, and parks behind Ofc. Wright's vehicle. (Deposition of Joey Marchant, App. 112). He has his body camera on. (VC #8-11).

34. At approximately 1238am on September 11, 2019, Deputy Aaron Sanchez of the Dallas County Sheriff's Office arrives and walks to the South Doors of the Courthouse. (Deposition of Aaron Sanchez, App. 122; VC #12). He has his body camera on. (VC #s12-14).

35. At 12:40:55am, the plaintiffs come down the interior stairs of the southside of the courthouse, with their hands raised, and meet with Deputy Sanchez. (App. 122; VC #12).



36. Immediately, Deputy Sanchez notifies Deputy Marchant that he is with the plaintiffs on the south side. Deputy Marchant and Ofc. Wright, taking different paths, walk to the southside of the courthouse. (VC #2, VC #8).

37. Shortly after Deputy Sanchez communicates his contact with the plaintiffs, Sgt. Vanderleest appears on the South side of the courthouse. Sgt. Vanderleest does not have his body camera on. (Deposition of Sgt. Vanderleest, App. 126-28).

38. At 1246am, Deputy Austin Myers arrives at the southside of the courthouse, parks his vehicle, and gets out. Deputy Myers has his body camera on. (VC #s15-21).

39. Deputy Taylor Hawk arrives with Deputy Myers. She does not have her body camera on. (Deposition of Sheriff Leonard, App. 352).

40. By 1247am, there are five Dallas County deputies, and one Adel police officer, present with the plaintiffs. (App. 67).

Contact With Gary and Justin

41. At 1241am, Plaintiffs identify themselves, provide their driver's licenses, and give the "Letter of Authorization" signed by the representative from the Iowa Judicial Branch to Deputy Sanchez. (App. 66, ¶36; App. 80, ¶36; VC #12).

42. Deputy Sanchez gives the letter to Sgt. Vanderleest. Deputy Sanchez then calls in the driver's license information to the dispatcher. (VC #12).

43. Deputies Marchant, Vanderleest, and Sanchez look at and discuss the "Letter of Authorization." Deputy Hawk is present as they review the letter. (VC #13).



44. As Deputy Myers walks toward the South side doors of the courthouse, his dashboard camera captures Sgt. Vanderleest on his phone, with the letter in his hand, walking away from the South side of the courthouse. Deputy Vanderleest then sits on the hood of Deputy Myers' vehicle while on the phone. (VC #15).



45. Between 1241am and 1254am, one or more deputies have calm conversations with the Plaintiffs. The topics of conversation include why they were there, what they had found when they arrived, their job duties as part of the project, and so-called war stories

regarding Plaintiffs' work. (App. 67, ¶39; App. 80-81, ¶39; Responses to Request for Admissions, App. 93, ¶s7 and 8; VC #2; VC #4; VC #8; VC #9).

46. During these conversations, beginning at 12:45:40am, Justin Wynn explains that, besides the letter of authorization, he has on his laptop in his backpack, the Rules of Engagement and Service Order and offers to let the deputies see them. Sgt. Vanderleest acknowledges this offer but does not request to see the laptop or look in the backpack. (VC #8; VC #13; App. 157 and 153).

In his deposition, Sheriff Leonard acknowledges that Gary and Justin offered to let them look in the backpack to locate other documents related to their work. He admitted that he never looked in the backpacks, whether at the scene or later. (Deposition of Chad Leonard, App. 310).

47. The questions asked by the Deputies include "how does one get a job like that?" and "what's the craziest story that you guys have of doing this?" (VC #2-3).

48. Shortly before the arrival of Sheriff Leonard, the communications between the plaintiffs and the various law enforcement officers are friendly, cooperative, and non-confrontational. (VC #2-4).

49. At no time before Sheriff Leonard arrives do the deputies ask to see the backpacks. (App. 152-53; App. 310-11).

"Good to Go"

50. After reviewing the letter, Sgt. Vanderleest contacts one of the individuals who signed the "Letter of Authorization," later identified as Andrew Shirley. (App. 130-32;

VC #15; Shirley Statement to Law Enforcement, App. 1007). Mr. Shirley, who works for the Iowa Judicial Branch, verifies that the plaintiffs are acting within the scope of the contract and that the Letter of Authorization “covered the situation” at the Dallas County Courthouse. (App. 130-32; VC #14; App. 1007; Affidavit of Andrew Shirley, App. 568). Sgt. Vanderleest confirms, in his deposition, that in his call with Mr. Shirley that it was communicated to him that the plaintiffs had a right to be at the Courthouse. (App. 141).

51. At 12:53am, Sgt. Vanderleest tells Deputy Aaron Sanchez, Deputy Marchant, Deputy Hawk, and another person identified as “Ray” that he has spoken with the chief security officer for the Iowa Courts, confirming that the plaintiffs were working under a contract with the Iowa Judicial Branch. In response, Deputy Marchant states: “I want a job like that.” Deputy Sanchez then asks Sgt. Vanderleest: “are they good to go?” and is told “yep, they’re good to go.” (VC #13; App. 81, ¶41; App. 93, ¶9). On the video, Sgt. Vanderleest is aware that Sheriff Leonard is on his way, but he doesn’t need to wait for him before letting the plaintiffs go. (VC #14).

52. In a written statement as part of the Sheriff’s subsequent investigation, Mr. Shirley describes the conversation with Sgt. Vanderleest and states: “I informed the officer about the Social Engineering Authorization sheet that Mark, John and I had signed, and said I thought it covered the situation.” (App. 1007; App. 568). Sgt. Vanderleest confirmed Mr. Shirley’s statement. (App. 161-164).

53. Immediately after being provided with confirmation that the Plaintiffs were working for the benefit of and with the consent of the court system, at 12:54:15am,

Deputy Sanchez tells the Plaintiffs that they are “good” to leave. Deputy Sanchez then shuts off his body camera. (VC #13; App. 81, ¶41; App. 93, ¶10; App. 123). Even though they’d been told that they could leave, the Plaintiffs stuck around and were happy to answer other questions that the deputies had. And if Sheriff Leonard would not have shown up, “they go their way, [Sgt. Vanderleest] goes [his] way.” (App. 143-44; App. 489).

54. None of the law enforcement personnel requested that the Sheriff come to the scene. Moreover, Sgt. Vanderleest agreed that “I didn’t feel that I needed to have his input.” (App. 145-46).

55. On the scene at the Dallas County Courthouse before Sheriff Leonard arrived were five (5) deputies from the Dallas County Sheriff’s Office and one Adel Police Officer. On the videos, none of these six law enforcement officers ever evidenced any interest in nor voiced any desire to arrest the Plaintiffs before Sheriff Leonard arrived. (VC #2-21; App. 67, ¶43; App. 94, ¶12).

56. And before Sheriff Leonard arrives, nowhere on the videos are Gary and Justin asked to provide their cell phone numbers, asked to stay in town, or told that they are still under investigation. In short, they are free to go. (VC #2-21; App. 94, ¶12).

Sheriff Leonard Arrives: The Arrest

57. Before Plaintiffs leave, Dallas County Sheriff Chad Leonard arrives at 1256am.³ When Leonard arrives, the situation changes. (App. 67, ¶44; App.81-82, ¶44).

58. At 12:56:41am, as Leonard is arriving at the Courthouse, Sgt. Vanderleest, while turning off his phone, tells Deputy Marchant that Sheriff Leonard is “not happy”, and that Leonard is claiming “it’s not the fucking court’s property, it’s the county’s property.” (VC #11). The photo below captures the moment when Sheriff Leonard arrives (bright lights) and shows Sgt. Vanderleest on his phone:



59. As Sheriff Leonard arrives in his vehicle at the Courthouse, Deputy Marchant states “this ought to be good.” (VC #11; App. 94, ¶13). And rather than continue to record, Deputy Marchant states: “I better shut my video tape off” and does exactly that. (VC #11).

³ Sheriff Leonard does not notify dispatch that he has arrived and is not logged in as arriving until 1:06am. (App. 600-604).

60. Marchant shutting off his camera is a violation of departmental policy. (App. 151; App. 352-53).

61. At approximately 12:57:29am Sheriff Leonard approaches the Plaintiffs on the southside stairs, folds his arms, and the following dialogue occurs:

Sheriff: “You realize this isn’t the Court’s property, it’s the County’s property, the County courthouse, you realize that?”

Gary: “No, sir. This is the address they gave us.”

Justin: “That’s Iowa Courts contracted us. This is the address, along with three of five others. This is one of them.”

Sheriff: “Is it your job to break-in?”

Justin: “Yes, sir. Test security and report back with our findings.”

Sheriff: “Well, maybe they (guy) will come and bond you out.”

(VC #7; App. 94, ¶14).

62. At 12:58:10am, less than 45 seconds after arriving at the southside stairs, Sheriff Leonard turns to Adel Ofc. Wright and says: “you got him or what?” Ofc. Wright responds “me?” Ofc. Wright begins to talk to other deputies that this is the County’s issue: “it’s your guys’ arrest; it’s county property, right?” (VC #7). This continues with Ofc. Wright continuing to state “it’s county property” and “don’t know why I’m taking them in.” (VC #7).

63. At 12:58:37am, Sheriff Leonard walks away from the stairs and can be heard in the background telling other deputies shortly after: “This is county property. This isn’t

the State of Iowa's property or anything like that. So, you're going to arrest them for tresp...for...they're going to jail." (VC #7).

64. At 01:00:58am, Ofc. Wright has the following conversation with Deputy Hawk and Deputy Sanchez:

Wright: "Well, you guys got enough people on the scene."

Hawk: "Ha, you just want to get out of here, so you don't have to deal with it."

Sanchez: "I hear he pulled the 'it's county property'."

At 1:01:23, Ofc. Wright gets a call from dispatch and uses it as an excuse to leave the scene. He then shuts off his body cam a little after 1:02am. (VC #7).

When he returns to his vehicle, Ofc. Wright can be heard on his dash cam stating in a whispered voice: "I'm not arresting them." (VC #1).

65. Leonard knew that the Plaintiffs were working for the benefit of the State of Iowa, had been authorized by the State of Iowa (Iowa Judicial Branch) to enter the building for the purpose of testing the court security system, and were simply doing their jobs. (App. 68, ¶48).

66. Leonard refused to recognize the authority of the Iowa Judicial Branch to permit Plaintiffs to perform testing at the Dallas County Courthouse. (App. 68, ¶49). Leonard ordered his deputies to arrest the Plaintiffs. (App. 82-83, ¶49; App. 96, ¶18).

Leonard's Angry with the State of Iowa: Takes it Out on Plaintiffs

67. At 1:03am, a conversation takes place between Deputy Marchant and Sheriff Leonard (who has his phone to his ear)⁴ about how the plaintiffs entered the building. In response, Sheriff says: "Yeah, they're going to jail. Arrest them, charge them. I'll call Chuck and let him know what we got. They're going... this is bullshit." (VC #22).

68. In response, Deputy Marchant says: "They've been pretty cooperative so we can just walk them over." To which Sheriff Leonard says "Cuff 'em." (VC #22).

69. At 1:04am, the Plaintiffs are arrested, "charged with burglary tonight." Deputy Marchant tells them that he appreciates them being cooperative. (VC #22).

70. The plaintiffs are then walked over to the jail and as they are walked over, the following conversation takes place:

Sgt. Vanderleest: "Yep, the Sheriff isn't very happy tonight."

Justin: "Yeah, fair enough; never good to wake up the Sheriff."

Sgt. Vanderleest: "Nope."

(VC #22).

71. After the arrest, at 1:06am, as Deputy Myers heads back to his vehicle he talks to Sheriff Leonard, who makes the following comments: "This belongs to the Court and County, this don't belong to the state. They're going to jail. I talked to Chuck and told him we're bringing them to jail. He said 'okay.' Burden of proof's on them.... This shit

⁴ Despite repeated requests that the Defendants produce phone records that corroborate Sheriff Leonard's claims that he spoke with certain people during his presence at the Courthouse, no such records have been produced.

just pisses me off. This is bullshit.” (VC #21). When one listens to the statement, the word attributed to Chuck Sinnard – “okay” -- is said in a resigned fashion. (VC #21).

72. In his deposition, Sheriff Leonard describes his emotions that evening as “frustrated” and “offended.” (App. 363, 378). That he took it “personal”, calling the Courthouse “my building.” (App. 363). He conceded that he was angry. (App. 217, 222, 226, 407).

Later, Sheriff Speaks with State Employee Andrew Shirley

73. The Sheriff concedes that he never spoke with a state employee before ordering the arrest of Gary and Justin. (App. 232). After he orders the arrest of Gary and Justin, Sheriff Leonard has two phone calls in the morning hours of September 11, 2019, with one of the state officials listed in the “Letter of Authorization”, a person identified as Andrew Shirley. (App. 183-84; App. 568). The first call is while Sheriff Leonard is at the jail and was initiated by him. This call takes place at 1:46am. (App. 568). The second call is when Sheriff Leonard is at home and Shirley calls him. The second call takes place at 3:38am. (App. 184, 233-34; App. 568).

74. In these calls, Sheriff Leonard testifies that Mr. Shirley is adamant that Gary and Justin are supposed to be at the Dallas County Courthouse and were doing their job. (App. 262).

75. In addition, Mr. Shirley questions the authority of the sheriff to arrest the Plaintiffs, telling him that “we office out of that building”, “we have offices in that

building.” Finally, Shirley tells the Sheriff that he would regret arresting the plaintiffs. (App. 97, ¶23; App. 232-238).

76. In a meeting later on September 11, 2019 with Chief Justice Cady and Molly Kottmeyer, Counsel to the Chief Justice, Sheriff Leonard complains about the manner in which Mr. Shirley had spoken to him. (Kottmeyer Email, App. 1006; App. 275). This resulted in an apology by the Chief Justice for being disrespected. (App. 1006).

The Criminal Charges

77. Plaintiffs are arrested, their property seized and are booked and held in the County Jail for approximately 20 hours. They were initially held on \$5,000 bonds, but at the initial appearance their bonds are increased to \$50,000 each. (App. 246-47).

78. Initially, the Plaintiffs are accused of the following crimes:

- a. Burglary in the 3rd Degree pursuant to Iowa Code §713.6A(1).
- b. Possession of Burglar Tools pursuant to Iowa Code §713.7.

(App. 84, ¶56).

79. On or about October 29, 2019, the charges are amended to Trespass under Iowa Code §716.7(2)(a) and §716.8(1). (App. 84, ¶57).

80. The criminal charges resulted in significant media coverage, which included Plaintiffs’ mugshots splashed across the front pages of local and national publications. (News media articles, App. 495 to 533).

Sheriff Leonard's Knowledge of His Wrongful Arrest and the Cover Up

81. The bond hearing was held at approximately 9:00am on September 11, 2019. (App. 245). Sheriff Leonard claims he went to the bond hearing with the County Attorney, Chuck Sinnard. (App. 286). He claims he went there because he was told by Andrew Shirley that Mr. Shirley would attend the bond hearing with his boss. (App. 233-35) Mr. Shirley denies making any such statement. (App. 568). Chuck Sinnard also was not expecting a state employee to show up. (Deposition of Chuck Sinnard, App. 442).

82. Before going to the hearing, Sheriff Leonard spoke with Chris Patterson, a District Court Administrator with whom he was familiar and whom he trusted. (App. 226-27, 240-44). He spoke with him between 7am and 8am. (App. 240-43). In those calls, Sheriff Leonard was finally convinced that Gary and Justin's story about working on behalf of the state was true.

Q. And what was it that got you to finally believe that it was true?

A. A phone call to Christopher Patterson. He was one of the district court administrators or something that -- in the morning. And he -- there was like three phone calls maybe, four phone calls -- you'll see it on the phone record -- that he finally called me back and said, "Hey, they -- they are state employees." He's like, "So I've been ordered to back out. I can't talk to you anymore."

Q. They kind of lawyered up, didn't they?

A. They kind of lawyered it up, yup, so -- but it wasn't till that point that I thought, uh-oh, these guys are actually -- well, these guys are state employees, you know, but I -- I didn't believe it till then.

Q. And you think that occurs sometime before 8 a.m. on the 11th?

A. Yes.

Q. Okay.

A. It did. Well, whenever these calls were.

Q. Okay.

A. Because he's the one that made me see the -- that these guys were actually state employees, so that -- one of his phone calls to me, the last one, was the one where he told me, "They do, in fact, work for the state," and he said "and we need to back out of this" and -- and so --

(App. 226-27, 243). He claims that the reference to "these guys" is to the three state employees identified in the Letter of Authorization: Mr. Shirley, Mr. Headlee, and Mr. Hoover. (App. 258-59).

83. Sheriff Leonard then claims that he called Chuck Sinnard before the bond hearing to let him know that he had talked to Mr. Patterson and had confirmed that the three people named in the Letter of Authorization were state employees. He claims that they then agreed to meet at the Courthouse before the bond hearing. (App. 244). However, Mr. Sinnard testified he was not given any additional information after a phone call with Sheriff Leonard between 1:30am and 3:00am. (App. 450-51).

84. So, before the bond hearing at 9am on September 11, 2019, Sheriff Leonard had confirmed that the person he spoke to at 1:46am (Mr. Shirley) was a state employee hired by the Iowa Judicial Branch and knew, based on the statements of Mr. Shirley, that Gary and Justin were authorized to be at the Dallas County Courthouse. (App. 240-44; App. 568; App. 1007). When confronted with these facts, Sheriff Leonard sought to soften his admission but conceded that "maybe this is true." (App. 245).

85. Despite knowing that Gary and Justin were authorized to be at the Courthouse, Sheriff Leonard went to the bond hearing and allowed the Magistrate to believe the opposite. As a result of this cover-up, the Magistrate increased the size of the bond from \$5,000 each to \$50,000 each. (App. 246-48; Affidavit of Andrea Flanagan, App. 621-23). When she later learned that Gary and Justin had been hired by the Iowa Judicial Branch to test the security at the Dallas County Courthouse, she was frustrated that she had not been alerted to this because it was “pertinent information for purposes of setting bond.” (App. 622). Had she been alerted to all the facts known by Sheriff Leonard she would have considered releasing Gary and Justin on their own recognizance. (App. 622-23).

86. The story that Sheriff Leonard tells regarding the bond hearing (initial appearance) is completely undermined by the testimony of Chuck Sinnard, the County Attorney, in the following ways:

Sheriff Leonard’s version	Chuck Sinnard’s version
I called Chuck to let him know what Chris Patterson had told me. (App. 244)	I was not given any additional information by Sheriff Leonard after 3:00am and before the initial appearance (App. 450-52)
Chuck and I agreed to meet up at the Courthouse and went to the initial appearance together. (App. 244)	I went by myself. (App. 449)
Chuck and I went there because we were expecting to meet a state employee, Mr. Shirley. Chuck was not there to argue for bond. (App. 236, 248)	I wasn’t expecting anyone from the State. I went there to request bond. (App. 442, 448-49, 453, 455-56)

After the bond hearing, Chuck and I approached the bench to talk to the magistrate. (App. 247-48)	I saw Sheriff Leonard in the back of the courtroom, and he never approached the bench. (App. 457)
Chuck and I “advised the judge that [Gary and Justin] might be telling the truth.” (Supp. Answer to Interrogatory #1, App. 104.)	I never told the court that they might be innocent. I was never given information by Sheriff Leonard that I was to share with the court. (App. 454, 457)

87. But those were not the only inconsistencies arising from the early morning phone call between Sheriff Leonard and County Attorney Sinnard on September 11, 2019. For example, Sheriff Leonard claimed that he had never been told by his deputies that they had released Gary and Justin before he arrived. (App. 348). Yet, Mr. Sinnard testified that Sheriff Leonard told him that fact during the early morning conversation. (App. 447-48).

88. Also, Mr. Sinnard was given the impression during the early morning phone call with Sheriff Leonard that the plaintiffs had not yet been arrested and that he was consulting with the County Attorney on whether to charge the plaintiffs. Mr. Sinnard was under the impression that Sheriff Leonard “didn’t act unilaterally.” (App. 440, 444). But Sheriff Leonard conceded in his deposition that he had already made the decision to arrest them before he contacted Mr. Sinnard. (App. 223-24).

Yet, Sheriff Leonard Continues to Call Plaintiffs Criminals

89. By 8am on September 11, 2019, Sheriff Leonard received verified information that the Plaintiffs' employer had a contract with the State of Iowa and that Plaintiffs were legitimately hired by the State to perform work at the Dallas County Courthouse. (App. 226-27, 240-44, 262). But this did not stop Sheriff Leonard from continuing the charade that the Plaintiffs were guilty of crimes. He began with *The PerryNews* in an article published after the bond hearing on September 11, 2019: "It's a strange case. We're still investigating this thing." (App. 495-96).

90. The following morning, September 12, 2019, at 10:44am, Sheriff Leonard sent an email intended for all sheriffs throughout the State of Iowa. (App. 1). He sent the email to Shawn Ireland, the Secretary of the Iowa Sheriffs and Deputies Association and asked him to distribute it to them, which he did. (App. 282-83). Despite claiming that he did not ask Deputy Ireland to share it with the media, it mysteriously found its way to the Des Moines Register by Wednesday, September 18, 2019, and was published in an article on September 19, 2019. (App. 283; App. 500).

91. On or about September 26, 2019, Sheriff Leonard was present at the meeting of the Central Committee of the Republican Party. (App. 98, ¶27). At that meeting, Sheriff Leonard, despite claiming that he never called the plaintiffs burglars (App. 296), continued to claim that the Plaintiffs were burglars and had committed a crime. He even exaggerated their presence by suggesting they were acting like terrorists: "they were

wearing ski masks, and he couldn't see their faces.” (Affidavits of Dan and Rose Applegate, App. 577-580).

92. In articles published in *The PerryNews* on October 30, 2019 and November 6, 2019, Sheriff Leonard was quoted: “I stand by the decision I made.” He also stated: “I do look forward to informing the public of everything. I would just encourage people to not make an opinion until they have all the facts, and I assure you that all the facts are not out there.” (App. 506 and 523; Affidavit of James Caulfield (App. 534).

93. On November 13, 2019, an article appeared in *Ars Technica*, a cybersecurity online website. Sheriff Leonard was interviewed by the author, Dan Goodin. (App. 510; Affidavit of Dan Goodman, App. 553). In that article, Sheriff Leonard sought to portray the Plaintiffs as would be terrorists: “They were crouched down like turkeys peeking over the balcony,”... Here we are at 12:30 in the morning confronted with this issue—on September 11, no less. We have two unknown people in our courthouse—in a government building—carrying backpacks that remind me and several other deputies of maybe the pressure cooker bombs.” (App. 510-11). These comments were similar to those made in front of the Applegates. (App. 577-80).

94. This statement was made even though no deputy, officer, or Sheriff Leonard asked to look at the backpacks before arresting the Plaintiffs. (VC #2-21; App. 152-53; App. 310-11).

95. On October 9, 2019, the Iowa Judicial Branch issued a report prepared by the law firm of Faegre, Baker, Daniels. (Faegre Report, App. 36). The report stated that the

“Dallas County Attorneys’ Offices did not provide [the law firm] with any information. Accordingly, this investigation did not include any information from law enforcement personnel or any law enforcement investigation.” (App. 38).

96. That report also concluded: “We did not find that the SCA or Coalfire acted with deception or ill-intent.” (App. 52).

97. Sheriff Leonard admitted during his interview with the author that he had never read the Faegre Report. (App. 520). When certain aspects of the report were pointed out to him by the author, Sheriff Leonard stated: “If that is true, if those guys had all that, I don’t want them to have this mark on their record. They were nice guys that night.” (App. 520-21).

98. The author then wrote:

“Still, he returned to the position that the State of Iowa had no legal authority to grant the pentesters permission to break into a County Courthouse. I pressed Leonard further and asked if, in light of the investigator’s findings, he believed the pen testers had any criminal intent. Leonard answered: “I don’t want these guys to have this mark on their record if they truly were supposed to be here.”

(App. 521). He made these statements despite knowing, since 8am on September 11, 2019, that plaintiffs had been legitimately hired to do this work. (App. 226-27, 240-44, and 262).

99. Sheriff Leonard admitted that he could have chosen not to comment to either the *PerryNews* or *Ars Technica*. (App. 313, 337-38). In fact, Sheriff Leonard was advised by County Attorney Sinnard not to make statements to the press. Mr. Sinnard reminded him to take the high road. (App. 464-66). But Mr. Sinnard noted that “Sheriff Leonard

understandably had a desire, he wanted to respond, get our side out there.” (App. 465).

Despite being provided with a letter from Mr. Sinnard, reminding him not to comment on the pending prosecution, Sheriff Leonard continued to state a desire to “tell our side of the story.” (App. 465-66).

100. Mr. Sinnard specifically recalls having a conversation with Sheriff Leonard about not making public comments around the time of an anticipated cybersecurity conference to be held in Adel, Iowa. Mr. Sinnard was under the impression that after he had this conversation with him that Sheriff Leonard did not make any comments to the press. (App. 464-66).

101. But, despite being told not to, seven days after the *Ars Technica* article was published, on November 20, 2019, Sheriff Leonard attended an “AwarenessCon” Conference put on by Black Hills Information Security (BHIA), a cybersecurity industry company, held at the Adel, Iowa Public Library. It is available at the following link:

<https://www.youtube.com/watch?v=b6LpEyoVVxA&list=PLqz80p7f6dFuuqMCqdhCKCmhCtg88BPz6&index=4>

During that meeting, Sheriff Leonard spoke for approximately 5 minutes and made the following claims intended to justify his arrest of the Plaintiffs:

- We “had 5 deputies running 140mph to get” to the Dallas County Courthouse.
- He would “never charge you [cybersecurity attendees] with a crime and let it continue... I can work with the County Attorney.”
- “We didn’t charge [them] because we wanted to, or we were trying to make a statement. There’s nothing political.”
- “I’ve never made a single statement period. Never done a press release, never done anything.”

- “Whole lot of things that went wrong that night.... We’re the only ones that did it right.”

(YouTube Link to Video of Sheriff Leonard Remarks, App. 567).

102. There is no dash cam video of any officer or deputy traveling at speeds in excess of 100 miles per hour to the Dallas County Courthouse. (VC #s 1-23).

103. His presence at the conference on November 20, 2019 sought to justify the continued prosecution of the plaintiffs, despite knowing full well that the plaintiffs were just doing their job and were not guilty of a crime. (Statement of Facts ¶s 82-88). His presence and comments were consistent with his stated desire to get his false version of the story out. (App. 465-66).

104. His statement at the conference that he had never made a single statement was patently false--- having issued an email that found its way to the Des Moines Register, having been quoted on two occasions by *The PerryNews*, and most recently interviewed by the author of a cybersecurity website---, and was intended to leave the attendees with the impression that he had no motive, political or otherwise, for the continued defamation and prosecution of the plaintiffs. (App. 1; App. 506-528).

Sheriff Leonard Claims to Minimize His Involvement: Another Lie

105. Sheriff Leonard testified that he had practically no contact with the County Attorney, Chuck Sinnard, after September 11, 2019: “Chuck and I never had meetings on this or anything like that. We just kind of waited, waited it out to see what -- I had nothing to do with it. You know, I guess that was Chuck’s thing. (App. 264).

106. But Mr. Sinnard testified that he kept Sheriff Leonard aware of the investigation and met or spoke between 6 to 8 times over the ensuing months about the status of the case. This included a conversation before Mr. Sinnard reduced the charges from burglary to trespass, during which Sheriff Leonard argued for his position. (App. 459, 461-62). Mr. Sinnard conceded that the relationship between the Sheriff's office and the County Attorney's office is a symbiotic relationship, in which each party to that relationship needs the other. For that reason, it is incumbent upon the county attorney to maintain that relationship of trust and to balance the desires of law enforcement with the responsibilities of his office. (App. 462-63).

107. Sheriff Leonard testified that shortly before the charges were dismissed, the County Attorney, CoalFire labs CEO, plaintiffs' criminal defense attorney, and he participated in a Zoom conference call. Sheriff Leonard indicated that he let Mr. Sinnard do all the talking. (App. 356-58). However, Mr. Sinnard testified that Sheriff Leonard was a willing participant and offered his position as to why charges had been sustained. (App. 460-61).

Sheriff Leonard's Failed Attempt to Revise History

108. Sheriff Leonard's testimony included making up facts. For example, his claim that Ofc. Wright approached him after he ordered the arrest of Gary and Justin and supported the arrest:

Q. Okay. On the camera you turn to Officer Wright and you ask him to -
- ask him if you're -- if he's going to take them in.

A. Oh, no --

Q. Why did you do that?

A. -- I don't believe that. I don't believe that was -- I don't believe I talked to Officer Wright about that.

Q. I -- I'll tell you that that's -- it's on camera that you --

A. Is that right?

Q. -- that you did that, that you turned.

A. Yeah.

Q. And I'm trying to figure out why -- if it's county property, why are you asking the Adel police officer to take them in?

A. I don't ever remember talking to him till after it was over.

Q. Okay.

A. And he came up to my -- he came up to me as I was either walking over to the courthouse or -- or something, and he -- and he specifically told me, "I'm glad you had these guys arrested. This doesn't -- this doesn't add up."

Q. So tell me, where were you when you had this conversation with him?

A. The --

Q. With Officer Wright.

A. That was when it was over. They were being walked over to the courthouse. And I'm not sure if I was walking over or if I actually got in my vehicle and drove it over. I'm not sure. But he approached me after it was over and -- and told me that he was glad I did it because something wasn't right.

Q. Okay. So did -- when you had this conversation with Officer Wright, you're telling me that this is at like the courthouse steps,

for example?

A. No, I think it was out in the yard. It was out in the yard. It was over, and he -- I - you know, it was -- it was over. *We were going over to the jail.*

(App. 218-220, emphasis added).

109. This is pure fiction because the video establishes that Ofc. Wright leaves the courthouse steps at 1:01:43am, walks to the west, shuts off his body camera at 1:02:07 and is captured on the dashcam in his vehicle parked on the northside shortly after 1:03am. (VC #7; VC #1). The conversation claimed by Sheriff Leonard with Officer Wright is not on Officer Wright's camera, nor could it be since he leaves the scene before Gary and Justin are handcuffed at 1:04:20am on the southside courthouse steps. (VC #17). Gary and Justin were taken to the jail via the eastside of the courthouse at 1:05:45am, the opposite direction that Ofc. Wright takes. (VC #17). In addition, Officer Wright testified that he never spoke with Sheriff Leonard outside of being asked to take Gary and Justin into custody and had nothing to do with regard to Gary or Justin after he got to his car. (App. 108-09). Sheriff Leonard made up a story in an effort to legitimize the arrest.

110. Further, Sheriff Leonard claimed that he had been briefed by Sgt. Vanderleest at his vehicle when he arrived:

Q. Now you arrive and park. Do you talk to anybody while you're parking your vehicle?

A. Neal -- Sergeant VanderLeest is the first one that approached me, and -- and that's -- you know, I remember him informing me sort of of what his conversation was with the guy on the social -- or whatever, social

networking or whatever that's called. Social engineering form. He told me that he had contacted a guy, and he said, "It sounds valid." And I – and I specifically asked him, "Do you know these people?" I said, "Do you know anybody, you know?" And he's like "No." So that's when I left Neal and -- or Deputy Vanderleest, and went up and talked to your clients.

Q. Okay. So are you telling me that this conversation with Sergeant Vanderleest occurs at your vehicle?

A. Pretty sure it did, yes, sir.

(App. 213-14).

But camera footage captures Sheriff Leonard arriving at the southside parking area at 12:56:41am, and then proceeding directly to the courthouse steps with only a passing comment exchanged with Deputy Hawk (who calls the plaintiffs “professional burglars”) before meeting with Gary and Justin at 12:57:22am. (VC #11). Deputy Marchant’s body camera shows that Sgt. Vanderleest never left the southside courthouse steps to meet Sheriff Leonard before Sheriff Leonard arrived at the southside courthouse steps. (VC #11 and SOF ¶58). Sheriff Leonard’s claimed conversation with Sgt. Vanderleest when he arrived never occurred.

111. When pressed on this point, Sheriff Leonard again creates another conversation that did not take place:

Q. ... Well, I'm a little confused now. Are you saying that the information that you've shared with us that you -- the conversation you had with Sergeant VanderLeest occurs on your way to the courthouse or only after you get to the courthouse?

A. Not only It was probably both, because he obviously made a phone call to me because he said he did. So he must have been filling me in **because at some point I slowed down and didn't continue at a high rate of speed** because it was pointless at that point, so –

(App. 215, emphasis added).

112. Again, this claim is not supported by Deputy Marchant's body camera footage, which shows Sgt. Vanderleest getting off his phone with Sheriff Leonard at 12:56:44 as Sheriff Leonard arrives and Deputy Marchant commenting "looks like he came in kinda fast." (VC #11). Sheriff Leonard's claim that he was briefed while on his way to the Courthouse and that he slowed down because it was "pointless" is belied by the body cam footage.

113. The only conversation Sheriff Leonard had with Sgt. Vanderleest was as he arrived at the Courthouse. This is captured on Deputy Marchant's body cam beginning at 12:56:44am. Deputy Marchant asks: "Who's that pulling up?", to which Sgt. Vanderleest responds "Chad, he's not happy", and adds that Leonard is claiming "it's not the fucking court's property, it's the county's property." (VC #11).

114. Sheriff Leonard's next effort at revising history is his claim that he sees the Letter of Authorization before he orders the arrest:

Q... So do I understand that you had been told about this document, but had you actually seen it?

A. I remember having it in my hand because I read it to Chuck Sinnard on the phone.

Q. Okay. So that would -- that would have occurred after you had already ordered their arrest; correct?

A. Yes, but I think I had read it. I had it in my hand when I think -- I think I left the steps, because they handed it to me on the steps and said, "Just call somebody on that list and you'll -- and you'll let us go" or something like that. I recall --

Q. Okay.

A. -- one of your clients telling me, "Just call somebody on the list" and -- you know, and we'll resolve it, or whatever they said, but -- so -- and then -- yeah, anyway.

Q. But I want to make sure I know what you knew before you talked to them. And I -- and what you're telling me about the document itself is you know you looked at it after you had ordered their arrest. You think you may have looked at it before. Am I -- am I understanding that correct?

A. Pretty sure I looked at it before, because I believe I probably told Chief Deputy Lande what was on it as well.

(App. 227-28). Later in his deposition, Sheriff Leonard confirmed that he had not seen the letter of authorization (Defense Exh. D) before meeting with Gary and Justin, continuing to claim that he first saw it when it was handed to him by the two security experts. (App. 231-32).

115. His claim that the letter of authorization was handed to him by Gary or Justin while he was on the courthouse steps, and that he had a chance to look at it before he ordered their arrest is not supported by the body cam footage. (VC #7; VC #19). Deputy Myers' body cam (as well as Officer Wright's body cam) captures Sheriff Leonard walking past all the deputies present at 12:57:22, to confront Gary and Justin on the courthouse steps, and after a conversation that lasts less than 45 seconds during which he tells Gary and Justin "well, maybe they (guy) will come and bond you out", he turns to Officer Wright and asks if he will take them into custody. (VC #7; VC #19).

Further, Deputy Myers' body cam captures Sheriff Leonard leaving the courthouse steps at 12:58:25 while reaching into his right pants pocket to grab his cell phone and the footage establishes that he did not have the letter in his hands. (VC #19). Finally, that same body cam captures Sheriff Leonard in the background beginning at 12:58:58 stating the following: "this is the county's property; this isn't the state's property or anything like that. **So, ...they're going to jail.**" (VC #19). Sheriff Leonard's statements are also captured in the background on Officer Wright's body camera beginning at 12:59:00 when Sheriff Leonard states "So you're going to arrest them for tres... for... **they're going to jail.**" (VC #7).

Sheriff Leonard's claim that he did not arrest the Plaintiffs until after he had reviewed the letter and spoken with Deputy Lande is not supported by the available body camera footage. (VC #7 and #19). And his claim that he did not order their arrest until later is also undermined by his actions and comments at 12:57:22 and shortly thereafter as captured by the available body cameras. (VC #7 and #19).

116. His last and most revealing revision is Sheriff Leonard's attempt, in his deposition, to change the *reason* that he arrested Gary and Justin--- from the State of Iowa's lack of authority to the contention that he did not believe Gary and Justin's claims that the State employees listed on the Letter of Authorization were state employees:

Q. But you al- --

A. So --

Q. -- you already had Mr. Shirley who was adamant that they were -- they were supposed to be there, they were doing their job, and he was

trying to talk you out of arresting them; correct?

A. Yeah.

Q. Okay.

A. But I didn't believe Mr. Shirley at the time of our conversation

Q. Okay. All right. And why didn't -- so why didn't -- why didn't you believe him?

A. Because he wouldn't come out to the jail.

(App. 262-63). However, Mr. Shirley denies that he was ever asked to come to jail. (App. 568).

117. Moreover, the videos establish that Sheriff Leonard had accepted Gary and Justin's claims as true but consistently contended that the State had no authority to authorize them to perform their contracted services at the Dallas County Courthouse. (See Statement of Facts, ¶s 58, 61, 63, and 71). Nowhere on video does he claim that he does not believe the Plaintiffs. And nowhere on video does he claim that he does not believe the State employees listed in the Letter of Authorization. (VC #1-23).

118. But if he wanted to learn whether the three names on the Letter of Authorization were truly state employees all he had to do was do a computer search to confirm that the three people listed were employees of the state. Yet, he chose not to look:

Q. Do you have an ability to -- you know, like, for example, the -- those -- the two of them provided IDs that night, right, and they did some kind of a search for who they were and what they did. Are you able to figure out things like where they worked? What about state employees? Do you have a database that you can go look to see if somebody's a state employee?

A. Oh.

Q. You don't?

A. I'm sure -- I'm sure it exists, yes.

Q. Okay. But you guys don't have that ability to do that?

A. Yeah, we do. We could have.

Q. You do.

A. *We could have got on the Interweb or whatever and looked it up, I suppose, but that didn't occur to us that -- you know, didn't occur to me that night. At one o'clock in the morning I didn't -- didn't feel like I had to.*

(App. 397-98, emphasis added).

As an example, anyone can look up to confirm a state employee through the following link: [Iowa Legislature - State Employee Salary Book](#).

119. Not only was his revised reasoning undermined by his own statements, it was undermined by the words and actions of the six law enforcement officials present, and also by the testimony of Sgt. Vanderleest, who conceded that the driving reason for the arrest of the plaintiffs was the contention that the State had no authority to authorize Gary and Justin to perform those services at the Dallas County Courthouse. (App. 153-54, 164).

Q. The whole essence of the argument that's made all night long by Sheriff Leonard is that the state doesn't have the authority to have these guys go through and into the courthouse; correct?

A. Correct.

(App. 164).

120. Sgt. Vanderleest admitted that Gary and Justin convinced him that they were legitimately there to perform services on behalf of the State of Iowa:

Q. So putting together the first section and the third section, did you get the impression that Gary and Justin were legitimately professional cybersecurity people?

A. Based on all the information I had at that point in time, I would say in my mind it was -- it was probably more likely than unlikely that, yes, that they were legitimately cybersecurity employees.

(App. 135-38).

He based this on the fact that they were cooperative and professional. (App. 138-39). No one voiced the concern that Gary and Justin were not who they claimed they were. (App. 139). And none of the other law enforcement personnel present disagreed with the decision to let them go:

Q. But you're going to -- but you make a decision in the course of this, do you not, that --

A. Yes.

Q. -- you're going to let them go; correct?

A. Yes.

Q. Okay. And that's based on sort of the totality of the -- totality of what you see there?

A. Correct.

Q. Okay. And you were -- you didn't get any pushback from anybody, did you?

A. No.

Q. In other words, Deputy Marchant didn't say, "I -- I'm wondering about these guys; I -- you know, we got to do more research on these guys" or anything? Nobody said anything like that?

A. No.

(App. 140).

Circling the Wagons

121. In addition to Sheriff Leonard's revisionist testimony, other deputies sought to circle the wagons in their deposition testimony. For example, Sgt. Vanderleest sought to portray Sheriff Leonard as "professional and calm", claiming that "[h]e wasn't yelling. He wasn't cussing. He wasn't acting inappropriately." (App. 158). But the videos undermine this testimony. (See Statement of Facts ¶s 58 and 71). Sgt. Vanderleest even forgets that Sheriff Leonard's involvement begins with a phone call in which the Sheriff states "it's not the fucking court's property, it's the county's property." (VC #11).

In addition, despite the lack of any such statement on the video, or any other act suggesting the case, Sgt. Vanderleest claimed in his deposition that he used his discretion not to arrest them and planned to do more "investigation." (App. 159-60). Yet, he never told the plaintiffs or had Deputy Sanchez tell the plaintiffs that they should not leave town and should provide contact information in case this so-called "investigation" led to a change in his decision. Rather, they were told they were free to go. (VC #14). Such a claim is further undermined by Sgt. Vanderleest's admission that "if Sheriff Leonard would not have shown up, they go their way, [Sgt. Vanderleest] goes [his] way." (App. 144).

122. Deputy Marchant gets in on the revision by claiming that his decision to shut off his body camera was not a violation of department policy. (App. 113-14). But he leaves the best for last, claiming that he was not aware that Sgt. Vanderleest had confirmed the Plaintiffs' story with Mr. Shirley. (App. 115-17). He was asked again to assure that he understood the questions, and he doubled down on his claim that Sgt. Vanderleest had not confirmed their story and that Gary and Justin had not been let go:

Q. Your testimony under oath is you were not aware that Sergeant VanderLeest had confirmed with the State of Iowa that these gentlemen had permission to be doing the work that they were doing at the courthouse?

A. I don't recall what he found out.

Q. How do you not recall that? Isn't that important? How do you not recall that you had let these guys go?

A. I didn't let them go.

Q. Sergeant VanderLeest let them go?

A. They hadn't left.

(App. 118-19). Deputy Marchant's denials are easily disproven on video as he is the one who states "I want a job like that" when Sgt. Vanderleest confirms his call with Andrew Shirley. (VC #13; See SOF, ¶51).

Is It Really Just the County's Building?

123. Sheriff Leonard claims that it's the county's building and the judiciary has no right to concern itself with its security. For example, he makes the following statements:

- "I wasn't happy because of what was going on, and I was a little offended... You know, felt like I am in charge of this building and you just

broke into *my building*... so I was offended by it.” (App. 216-17, emphasis added).

- “I was offended probably that they broke into *my building*.... or our building. It was no different than any other homeowner or business owner.... I take it personal because I am in charge of security, so I was offended by it.” (App. 363, emphasis added).

124. However, when pressed, Sheriff Leonard made some significant concessions about the use of the building.: “My understanding of how – – how it is to work is that the County is required to provide them space.... That we’re required to provide services for them, cleaning services and those type of things, and give them space to conduct business.” (App. 364-65). The building houses both county services and court services, including courtrooms, the clerk of court, and Juvenile Court services. There is also a conference room that is shared by everyone. (App. 365-67). Dallas county residents can file a lawsuit, pay child support, and can get divorced in the County courthouse where both county and state employees work. (App. 369-70). Even Sgt. Vanderleest conceded that he has been in “almost every single county and state office in the building.” (App. 147-48).

125. Even when he is asked to explain why he contends that it is County property, Sheriff Leonard concedes that securing the courthouse does not belong solely to the Dallas County Sheriff’s office. It is a shared responsibility as highlighted by the following admissions:

Q. So what makes you think that the building is purely County property?

A. Well, my meetings with the judges. Like when I first took over, I'm not sure if it was Judge Gamble or not was the court security representative for the courts; but we have a court security team...

Q. And is there an ongoing committee that deals with Courthouse security specific to Dallas County?

A. Yes. There should be.

Q. What's it called? Or what was it-- let's say 2019 what was it called?

A. It was just a court security meeting that usually the -- the judge, one of the judges or the -- actually the clerk of court would call the meeting when the judge was available.

Q. And these would be in person, I assume?

A. Yes.

Q. Held where?

A. Usually somewhere in the courthouse. Probably in that conference room.

Q. So a mixture of court and county personnel?

A. Correct.

(App. 370, 374-76). This was confirmed by Mr. Sinnard who described it as the "courthouse security committee", chaired by a judge, who is a state employee. To the extent that any minutes are kept, those are kept by the clerk of court, who is also a state employee. (App. 469-71).

126. Further, the Judge Gamble that Sheriff Leonard referenced signed an administrative order, on March 17, 2008, relating to the security of the County Courthouse. (Dallas County Administrative Order 2008-13, App. 30). The order issued by the Court makes the Dallas County Sheriff responsible for implementing the order, but the order governs anyone that enters the Dallas County Courthouse, including both state and county employees. (App. 30; App. 372-74). Deputy Dirksen testified that he began working at the Courthouse in April 2008 when the Courthouse reopened after a renovation, and the security machines were installed as part of that renovation. (Deposition of Ray Dirksen, App. 594-95). This administrative order dovetails with the reopening of the Courthouse.

127. In addition, the Iowa Supreme Court issued a supervisory order on June 19, 2017, relating to Courthouse security at all courthouses throughout the State. (Courthouse Security Order (App. 57). In relevant part, the order states as follows:

Today, Iowa's court facilities have grown to include many law enforcement and justice centers in partnership with county and city government, and together, these centers of justice make up the brick and mortar of the Iowa district court.

Courthouse security is inseparable from the concept of justice itself.

Under article V, section 4 of the Iowa Constitution, the Iowa Supreme Court is vested with the power to exercise supervisory and administrative control over Iowa's district courts. With all power comes responsibility. With the power to supervise and administer courts comes the responsibility to promote safety in courthouses and court facilities.

In the last several years, the supreme court has increased efforts to address courthouse security by working with county and city officials to take steps necessary to protect the safety of every courthouse visitor and employee in all county courthouses.

In 2015, the judicial branch and county officials developed joint guidelines for courthouse and public building security in Iowa. These guidelines reflect best practices for providing security in Iowa's courthouses and public buildings. One guideline calls for each county to establish a courthouse and public building security committee comprised of county and court officials to develop and implement security plans based on local needs and resources.

After considering all factors and competing interests, the court now concludes Iowa's unified court system requires a consistent, uniform, and statewide policy prohibiting all weapons from courtrooms, court-controlled spaces, and public areas of courthouses and other justice centers.

Accordingly, under our constitutional authority and responsibility to supervise and administer Iowa's district courts, the supreme court now orders that all weapons are prohibited from courtrooms, court-controlled spaces, and public areas of courthouses and other justice centers occupied by the court system.

(App. 57-60).

128. Finally, and most importantly, Sheriff Leonard admits that the judicial branch is a "rent-free tenant." (App. 372).

Sheriff Leonard and the Other Documentation

129. Sheriff Leonard testified that he looked at the other documentation (e.g. service order and rules of engagement) carried by Gary and Justin within the first few days after the arrest. (App. 429-28). He asked for the "contract" and recalled that he focused on the hours of operation as being 6:00am to 6:00pm Mountain time. (App. 427). But claimed that he also read within the first few days that there was a separate provision that permitted work during the "day and evening." (App. 427-28; See also App. 260-61).

130. However, during the interview with Dan Goodin from *Ars Technica*, Mr. Goodin wrote the following:

The sheriff also said the midnight assessment was a violation of a term spelled out in one section of the rules of engagement document. It said pentesting was to be conducted between 6AM and 6PM Mountain time. (Curiously, Iowa is in the Central time zone. *Another term of the same rules of engagement (pdf) said physical testing "Can be during the day and evening." Leonard wasn't aware of this last detail until I pointed it out in the interview.* The sheriff has declined to release video of the incident.)

(App. 559, emphasis added).

131. When this discrepancy was pointed out to Sheriff Leonard during his deposition, he couldn't testify to when he first saw the reference to Gary and Justin being able to work during the day and evening. (App. 428-30).

132. In addition, Defendants have admitted in their answer that "Plaintiffs went to the Dallas County Courthouse on the *evening* of September 10-11, 2019." (App. 79, ¶31, emphasis added).

Is Picking a Lock Permitted?

133. One of the other excuses made by Sheriff Leonard is that Gary and Justin violated the contract by using a cut card to open the courthouse door. In his opinion, using a cut card is similar to picking a lock in that it is the equivalent of forcing open a door, an act that is not permitted by the Letter of Authorization:

Q. You -- according to them, they -- you make a statement to the effect that they had broken in "by forcing one or more open," meaning doors, access doors. Where did you get the idea that they had forced-open door?

A. Well, at the scene they had told the deputies that they had used a tool to -- to get in.

Q. Okay.

A. So that's -- that's the initial one was at the scene, so I knew that they had used a tool to get in.

Q. And when you say "lock-picking," what are you talking about?

A. Well, it looked like they were using a tool to get in. I'm not saying -- they're using a lockpick or using some kind of device to get -- unlock the doors in the -- I don't know what they used.

Q. All right. Sort of similar to their using that little card, that little credit card- type thing that they were talking about getting in?

A. I seen somewhere where they said they saw them take it out of their pocket. You know, it was in one of the statements they took it out of their pocket and -- but there's videos of them at the doors, you know, or whatever -- or I didn't see the video, but I think I seen pictures of it that they submitted to one of the media outlets that -- of them standing at the doors or something along those lines, so --

Q. Did you find -- and did you find any damage done of any kind?

A. Not that I was ever told, no.

Q. Okay. *So when you use the term -- when you were saying "forcing one or more open," that's what you were talking about, the use of lock- --*

A. *Yes.*

Q. *-- lockpicks and the little card and that type of thing?*

A. *Well, yeah. They were using something to get into the rooms.*

(App. 272-75, emphasis added).

134. But as reflected in the Faegre Report, the Rules of Engagement that Sheriff Leonard claimed to have read permits Gary and Justin to pick locks. (App. 45-47; App. 13).

Sheriff Leonard Tells People that Plaintiffs were Uncooperative and Belligerent

135. All evidence reflects that the Plaintiffs were cooperative, friendly, and helpful in their contact with law enforcement. (See Statement of Facts, ¶s 45, 47-49, 68-69). Even Sheriff Leonard conceded in his deposition that the plaintiffs were “professional” (App. 249-50). And agreed that they were cooperative and not belligerent. (App. 250).

136. Yet, others claimed that, on September 11, 2019, Sheriff Leonard characterized the plaintiffs as “belligerent and uncooperative.” (App. 1002, 1004). According to Mr. Headlee, “Molly [Kottmeyer]...said the Sheriff said that two guys were being belligerent and uncooperative.” (App. 581-82; App. 1002; Deposition of Molly Kottmeyer, App. 614, 618) Further, Mr. Headlee, in a conversation with Sheriff Leonard later on September 11, 2019, noted that Sheriff Leonard “explained that when he responded and spoke with the (sic) them, they were not cooperative and kept showing the piece of paper to them, saying they had a right to be there doing what they did.” (App. 581-82; App. 1004). Even Chuck Sinnard testified that Sheriff Leonard told him that Gary and Justin had been uncooperative. (App. 467-69).

Did the Plaintiffs Subvert any Alarms?

137. In his deposition, Sheriff Leonard claimed that the plaintiffs had subverted the alarms at the Courthouse. (App. 327-28). However, when pressed to provide any evidence that the defendants had subverted any of the alarms, Sheriff Leonard was unable to point to anything. (App. 327-30). There were two reports issued by the deputies relating to viewing the video recording inside the courthouse that make no mention of the

plaintiffs going to any of the alarms to subvert them. (App. 328-330). In addition, Deputy Dirksen, who came to the scene because the deputies were not able to enter the Courthouse due to problems using their access cards, stayed after the arrest of the Plaintiffs and reviewed Courthouse video. He never prepared a report. (App. 588-93).

138. Yet, that didn't stop Sheriff Leonard from making that allegation in the *Ars Technica* article in November 2019: "Leonard also said the men attempted to turn off the alarm-something Coalfire officials vehemently deny." (App. 512; App. 327). When pressed as to where he got that information in November 2019, he was unable to point to any particular information. Rather, he argued that such an admission was made by the defendants in their deposition, years later. (App. 327). But Gary specifically rejected the allegation that they had subverted any of the alarms. (App. 487).

Respectfully submitted,

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