

ORIGINAL

CONFIDENTIAL

Interview of Scott R. Lewis

With Det. Todd Marhold and Det. Tom Johnston

f, ' CONFIDENTIAL INFORMATION .J-"

January 21, 2009 1235 Hours

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Transcribed by Kathy Hoffman

Depo International, L.L.C. 517 South Ninth
Street, Las Vegas, NV 89101 800-982-3299

1 DETECTIVE MARHOLD: What we're going to do
2 before we get started is I'm going to introduce all of
3 us, name, date, you know, this kind of stuff. And get
4 you to spell your full name and give me your P number
5 and stuff like that, you know.

6 Just so you know, this is not a 289 issue.

7 Are you familiar with 289? Peace officer's rights?

8 It's not a 289 issue. There is no Garrity. So actually
9 I think you're -- at your request, you know, and I'll
10 explain that more when we get into that. And there were
11 a litany of issues that are in play right now.

12 MR. LEWIS: Yeah.

13 (Telephonic interruption.)

14 MR. LEWIS: Let me turn this off.

15 (Inaudible conversation.)

16 DETECTIVE MARHOLD: There's a litany of
17 issues that are in play right now. We're not here to
18 address any of those other than two issues. One is
19 possible HIPAA violation, and the other is Fourth
20 Amendment - an allegation of Fourth Amendment search
21 and seizure. That's it. That's all we want to talk
22 about.

23 I know that there's several grievances that
24 are in place that you've initiated towards the agency.
25 That's going to be handled by the ENC. You know, that's

1 going down that path.

2 MR. LEWIS: They've already told me they're
3 not going to deal with it.

4 DETECTIVE MARHOLD: Okay. And that's still
5 -- you know, that's still your issue with your agency.
6 We're not going to address those issues. Any other
7 issues that may be in play as far as disciplinary or
8 whatever, that's between you and your agency. We're not
9 going to address those.

10 Maybe, actually, you can provide us some
11 information as to why we're here, you know, why an
12 outside agency has been called in to -- on a
13 fact-finding mission within this agency that doesn't
14 fall within the jurisdiction of the DPS. But we'll do
15 that when we go on the record, here, which we're going
16 to do right now.

17 Okay. The date is January 21st, 2009. The
18 time is approximately 1235 hours. This is Detective
19 Marhold with the Department of Public Safety,
20 investigations division. Also present is Detective Tom
21 Johnson, and an officer sent to us from the Taxicab
22 Authority.

23 Scott, could I get you to state your full
24 name and spell your last, please?

25 MR. LEWIS: Scott Lewis. The last is

1 L-e-w-i-s.

2 DETECTIVE MARHOLD: Okay. Do you have a P
3 number that's associated with your position here over at
4 the Taxi Authority?

5 MR. LEWIS: Yes, sir. It's 649.

6 DETECTIVE MARHOLD: Okay. As we stated, you
7 know, prior to this introduction, this is not a 289
8 issue. There is no Garrity. You only have a
9 responsibility to be here and sit for this interview as
10 a result of policy, your Department's policy, to
11 cooperate with the allied agency's investigation or any
12 agency investigation conducted by the TA. We have no
13 jurisdiction over you.

14 You know, if you wanted to get up and walk
15 out of here right now, you can, you know. But that
16 wouldn't serve your purpose or serve your cause, which
17 I'm sure that you -- hopefully you're going to
18 (inaudible) for us while we're here. We're just
19 (inaudible) our own specific to the issues of the -- the
20 Fourth Amendment allegation and the HIPAA violation.
21 We're going to be very frank and candid with
22 you and let you know what -- you're the last person to
23 be interviewed. So I'm going to let you know where you
24 stand with respect to those items and to the report that
25 I'm going to generate as a result of that, those

1 allegations.

2 So why are we here, Scott.

3 MR. LEWIS: I don't feel comfortable talking
4 in this room.

5 DETECTIVE MARHOLD: Well, this is the only
6 room we got. Your audio equipment, our audio equipment,
7 any other surreptitious recording that may be taking
8 place in this room with respect to your agency --
9 because we certainly don't have the resources to conduct
10 such -- would have to be consistent with your recording
11 and my recording. Otherwise it would be impeached in
12 any hearing or grievance or anything else. So I would
13 admonish you to speak freely. Because --

14 MR. LEWIS: I know of somebody that they
15 denied that that person ever came in here for an
16 interview (inaudible).

17 DETECTIVE MARHOLD: Well, you've got a
18 recording and I've got a recording. It doesn't get any
19 better than that, so.

20 MR. LEWIS: Is this relegated to 289.090?
21 Am I subject to any kind of criminal investigation?

22 DETECTIVE MARHOLD: No. We're here, it's
23 our understanding, because you've made a request or your
24 agency or your attorney has made a request through your
25 agency to have a neutral third -- a neutral third-party,

1 body, come in and address these allegations regarding
2 the wallet and the briefing. And your director knows my
3 director, and that's why we've been thrown under the
4 bus, and that's why we're here.

5 MR. LEWIS: Well, what -

6 DETECTIVE MARHOLD: So you're going to have
7 to -- you're going to have to fill in the blanks here
8 for us.

9 MR. LEWIS: I got notified, I guess, last
10 Friday that I was going to be coming to this meeting,
11 and they wouldn't give me anymore information about
12 that. And through my chain of command, I requested
13 whether or not my lawyer would be here. And they
14 wouldn't give me a definitive answer.

15 , DETECTIVE MARHOLD: We'll give you the
16 definitive answer. No, you don't have right to
17 representation during this meeting because it doesn't
18 fall under 289. You're not the target of anything.

19 MR. LEWIS: But I'm going to give you
20 confidential information.

21 DETECTIVE MARHOLD: That's fine. You can
22 give us confidential information which will remain
23 (inaudible) in the report that I generate and secured
24 within our facility up in Carson City because that's
25 where your headquarters is. Your director and your

1 administrator and your chief with all have access to
2 that report. Your attorney will have it upon subpoena.
3 So nobody has access to our report.
4 And as far as, like I said, the grievance or
5 any discipline, we don't even want to entertain that.
6 We don't even want to hear that. All we want to know is
7 the wallet and the HIPAA violation.

8 MR. LEWIS: Okay. Well, what would you like
9 to know?

10 DETECTIVE MARHOLD: Okay. Tell us about the
11 wallet issue. You've alleged that there's been a Fourth
12 Amendment violation of a search and seizure?

13 MR. LEWIS: Yes, sir.

14 DETECTIVE MARHOLD: Talk to me. Make a case
15 for it, because I got to tell you after all of our
16 interviews, I don't see a case for it. You don't have a
17 Fourth Amendment search and seizure violation. There
18 was no criminality behind the inventorying of the
19 wallet. It was not used to generate any criminal
20 purposes to attempt to charge you criminally. There was
21 no criminality. There's no fruit to the poisonous tree.
22 There's nothing. It was simply an inventory conducted
423 by a supervising investigator of this agency that is
24 consistent with your Department's policy with respect to
25 (inaudible) of found property. And their desire, their

1 being the agency's desire to return that wallet to you
2 in the pristine fashion that it was found by Sports
3 Authority or 24-Hour Fitness or wherever it was found,
4 that's how they retrieved it.

5 MR. LEWIS: Have you seen (inaudible) there
6 in the wallet?

7 DETECTIVE MARHOLD: No. I have a - I have
8 a CAD report that says that somebody called in and says
9 that they have your wallet. And then Scott (inaudible)
10 went out and picked it up and brought it back, and there
11 was an inventory, you know, on that wallet.

12 The only thing that concerns us --

13 MR. LEWIS: Have you seen the inventory?

14 DETECTIVE JOHNSTON: No.

15 DETECTIVE MARHOLD: The only thing that
16 really concerns us is this CTR card. And really,
17 honestly, there's no markings upon that CTR card that
18 would suggest that it's Taxi Authority or anybody
19 else's. However, you know, they still have a
20 responsibility to inventory that wallet because it's
21 found property. So there are no administrative charges
22 or any allegations or any -- any suspected violations of
23 policy with respect to that CTR card.

24 That's just a building safety issue, and
25 they wanted to retrieve their property. And certainly

1 you can understand it's their property and not yours.

2 MR. LEWIS: Well, at the time whenever I
3 lost my wallet, I was under the impression that I didn't
4 have anything (inaudible) identifiers in there
5 particular identifiers that would link me to the Taxi
6 Authority.

7 DETECTIVE MARHOLD: Uh-hm.

8 MR. LEWIS: And (inaudible) it has always
9 been that was (inaudible) property that they were
10 retrieving my property. And standard policy for the
11 search and seizure, first of all, it's not signed off or
12 reviewed or (inaudible). So there was nobody that could
13 verify what policy was being --

14 DETECTIVE MARHOLD: So where you going with
15 this? What do you want to do - what do you want to do
16 with it?

17 MR. LEWIS: As far as I'm concerned -

18 DETECTIVE MARHOLD: What do you want - you
19 know, we're here for you, so. Let us help you, you
20 know. What do you want to do?

21 MR. LEWIS: I'm really nervous because of
22 what (inaudible) said. The fact that I had lost my
23 wallet and was contacted by the gym and talked to them
24 and told them that I was en route from my house, which
25 is approximately two miles away. And then I (inaudible)

1 reporting of the Taxicab Authority calling me telling me
2 to go and pick up my wallet, there's no excuse for
3 telling me that they confiscated my wallet for safe
4 keeping. It is a -- it's a lie. Why would you
5 confiscate somebody's wallet whenever you know they're
6 en route to get it?

7 DETECTIVE MARHOLD: Okay. Well, they - I
8 still don't see where you're going with this.

9 MR. LEWIS: It's not abandoned property.

10 The wallet was found and turned into the gym. Not only
11 did the gym call me, but the TA called me, and they were
12 aware (inaudible) I was coming down to retrieve it. And
13 they beat feet and got it before I did, and then put me
14 under internal investigation immediately that day.

15 Okay? It wasn't -

16 DETECTIVE MARHOLD: I don't know about the
17 internal investigation, don't care about it.

18 MR. LEWIS: Well, that's pertinent.

19 DETECTIVE MARHOLD: Well, it - honestly,
20 it's not. It just -

21 MR. LEWIS: It put me (inaudible).

22 DETECTIVE MARHOLD: Okay. Okay. That's not
23 the reason why they put you on an internal
24 investigation, you know. And we're not going to play
25 games here and circumvent the actual reality behind, you

1 know, why you were placed on internal investigation.
2 You know, and I'm trying to respect you and not delve
3 into that arena because you've got a reasonable
4 expectation of privacy and confidentiality.

5 DETECTIVE JOHNSTON: Yes, you do.

6 DETECTIVE MARHOLD: With respect to that.

7 That's guaranteed to you by two -- by the Nevada
8 Administrative Code. Okay? So I don't even want to
9 talk about that. The bottom line is you've made an
10 allegation that there's been a Fourth Amendment search
11 and seizure violation because somebody inventoried --
12 from this agency inventoried the wallet. And maybe even
13 under the guise to retrieve any ID or to identify --
14 identification, you know, for the TA or the CTR card.
15 Regardless, you only get to claim a Fourth
16 Amendment violation if it's going to be used subsequent
17 to criminal investigation. This is not a criminal
18 investigation. That's either a fundamental flaw or a
19 misunderstanding of the Fourth Amendment on your part or
20 there's something else beyond the 1A's (inaudible)
21 grievances that you want to make us aware of.

22 What's the hidden agenda? I mean, you know,
23 the TA was called also by the gym so they went down and
24 retrieved the wallet as a favor to you.

25 MR. LEWIS: They didn't do any favors. They

1 seized my wallet.

2 DETECTIVE MARHOLD: There's no seizure if
3 they picked up a lost wallet. Now, the issue --

4 DETECTIVE JOHNSTON: They were (inaudible).
5 They didn't know it was your wallet.

6 DETECTIVE MARHOLD: Yeah, your issue, if you
7 have an issue, is with 24-Hour Fitness because they went
8 through and got your name, searched their data base and
9 found out that you work for the TA, and then they
10 contacted the TA.

11 Your issue with the TA isn't -- you don't
12 have an issue. You have an issue with 24-Hour Fitness
13 because they went in and accessed information regarding
14 your employment. Which I would suggest that you would
15 lose that battle as well because they're going to say
16 that we did it -- we meaning 24-Hour Fitness -- we did
17 that in good faith. We just tried to return the wallet
18 to its rightful owner, which we realized, we discovered,
19 happened to be a 24-Hour Fitness member, you know.

20 How do you want to go with this?

21 (Inaudible).

22 MR. LEWIS: They won't say that because they
23 called me and (inaudible) me and I talked to Andrea
24 Morris who is (inaudible) attendant who said, are you
25 Scott Lewis? Yes. Have you lost a wallet? And I said,

1 I don't know, let me take a look around. So I looked
2 around, and I said, I believe I did. She says, well, we
3 have your wallet down here. And I said, I will be right
4 there.

5 (Inaudible) 24-Hour Fitness (inaudible) and
6 the manager somebody spoke to, they said their
7 guidelines is not to release property that's found or
8 turned into them. They have their own guidelines. They
9 hold it for safekeeping themselves because of vicarious
10 liability. And Andrea Morris and the manager at the
11 time said, we gave it to the officer because he demanded
12 it.

13 DETECTIVE MARHOLD: Okay.

14 MR. LEWIS: And he came in in uniform, and
15 they weren't going to deny him that.

16 DETECTIVE MARHOLD: Right.

17 MR. LEWIS: They apologized to me, and now
18 they're like, is there something we can do for you or
19 whatever? Do you want to bring some family members in
20 or? Like, you know, they didn't want me to go that
21 route with them.

22 DETECTIVE JOHNSTON: Well, that impression
23 (inaudible).

24 MR. LEWIS: You can't go in with gun and
25 badge and IDs to a layman and say I'm going to take this

1 wallet.

2 DETECTIVE MARHOLD: No, no. You're -

3 MR. LEWIS: She didn't any -

4 DETECTIVE MARHOLD: I see what you're

5 saying, but --

6 MR. LEWIS: She didn't know any better. She

7 admitted to the fact that day.

8 DETECTIVE MARHOLD: Yeah. Your issue is

9 still with 24-Hour Fitness.

10 MR. LEWIS: Well, she -

11 DETECTIVE MARHOLD: (Inaudible) their own

12 policies then. You know? The agency has a right to

13 retrieve their property, specifically the necklaces, the

14 CTR card. They initially believed or at least we've

15 received information from your agency, which we're going

16 to accept as fact, that they didn't know whether it was,

17 you know, a wallet that contained a (inaudible) badge,

18 an identification.

19 And if that was the case -- or a regular

20 badge and identification. And if that was the case and

21 it was issued property, they were going to retrieve it.

22 End of story. That's the way it is. You don't have a

23 Fourth Amendment search and seizure violation. That's

24 where you're at.

25 MR. LEWIS: Nobody had my consent to

1 (inaudible) .

2 DETECTIVE MARHOLD: They don't need your
3 consent. They don't need your consent. All they need
4 to do is inventory it and return it to you in the same
5 fashion that they recovered it.

6 MR. LEWIS: Do I call you Detective or
7 Sergeant?

8 DETECTIVE MARHOLD: You can call me Todd.
9 You don't have to call me by title. Any -- the issue
10 that you have is with 24-Hour Fitness. I will suggest
11 to you that if you try and take any civil damages
12 against them, that -- you know, I'm sure they will lock
13 you up in litigation forever. And ultimately they will
14 say, hey, look, TA came, we surrendered it to a lawful
15 authority. End of story. You don't have an issue here.
16 I don't know how I -- I -- without spinning
17 in the discipline prospect for calling in sick that day,
18 if you want me to come out and say it, which I have been
19 -- you know, I'm privy to that information. We're privy
20 to that information because we're here at your request
21 or at your attorney's request.

22 MR. LEWIS: Why was my psychologist here?

23 DETECTIVE MARHOLD: Say again?

24 DETECTIVE JOHNSTON: What did you say?

25 MR. LEWIS: Why was my psychiatrist here?

1 DETECTIVE MARHOLD: When?

2 MR. LEWIS: Whenever I just got here.

3 DETECTIVE MARHOLD: I don't know.

4 MR. LEWIS: I saw him coming out of the TA
5 building.

6 DETECTIVE MARHOLD: Yeah, I don't know. I
7 don't know your psychologist.

8 Another issue I'm not going to -- I'm not
9 going to interview your psychologist. That's between
10 you and your psychologist. I know that there's a -- the
11 allegation of the HIPAA violation, which we're going to
12 get into as well.

13 MR. LEWIS: He just came out. He just came
14 out of the office.

15 DETECTIVE JOHNSTON: We didn't see him.

16 DETECTIVE MARHOLD: No, we (inaudible). Why
17 didn't you ask him? Why didn't you confront your
18 psychologist under a doctor/patient confidentiality?

19 MR. LEWIS: He's a psychiatrist.

20 DETECTIVE MARHOLD: Or psychiatrist, and
21 say, hey, dude, what are you doing here? Are you here
22 for me? He would have told you one way or the other.
23 How do I even know that your psychiatrist was here?

24 MR. LEWIS: Well, the sergeant -- whenever
25 we walked up he said, sergeant.

1 DETECTIVE MARHOLD: What sergeant?

2 MR. LEWIS: Sergeant Gene Kendricks. I said
3 that's funny. That's my psychiatrist.

4 DETECTIVE MARHOLD: Here in this building -

5 MR. LEWIS: He was walking out of this
6 building right now.

7 DETECTIVE MARHOLD: Go get the sergeant, if
8 you would right now, and bring him in here.

9 If I find out -- Tom, stay here for a
10 second. If I find out that you're misrepresenting this
11 event, we're going to conclude this interview
12 immediately. I'm going to take you before your chief,
13 and I'm going to recommend a formal internal affairs
14 investigation to be conducted upon you for dishonesty.
15 Dishonesty is defined by the Brady versus the United
16 States. It's subject to termination. Do you understand
17 that?

18 If he goes out and he finds out the sergeant
19 had no conversation with you and there was no
20 conversation about this doctor, we're done. You
21 understand where we're at?

22 MR. LEWIS: (Inaudible) I just said it on
23 reporting. I told the sergeant, there went my doctor.

24 DETECTIVE MARHOLD: Okay. Does your -- does
25 Sergeant Kendrick know who your doctor is? You can say

1 there goes my doctor, but so far you haven't satisfied
2 me as to why you didn't go up and ask the doctor why he
3 was here. If I find out you're being dishonest with me,
4 we're done. Do you understand it? Do you understand
5 where we're at?

6 MR. LEWIS: I understand -

7 DETECTIVE MARHOLD: This is not (inaudible).

8 MR. LEWIS: I understand it, and I'm either
9 going to start invoking my Fifth Amendment --

10 DETECTIVE MARHOLD: You don't have a Fifth
11 Amendment. Fifth Amendment falls into play if you're
12 being investigated for criminal activity. You don't
13 have a Fifth Amendment right. You don't have a 289
14 issue here. Do you understand that? There is no
15 Garrity. We're here for you, Scott.

16 MR. LEWIS: I'll just put it on the record.
17 That's what I told my sergeant. If you want to get him,
18 then do so.

19 ' DETECTIVE MARHOLD: Go get him. And if in
20 fact you didn't have this conversation?

21 (Inaudible conversation.)

22 MR. LEWIS: We had this conversation. And I
23 immediately made a phone call --

24 DETECTIVE MARHOLD: But was the psychiatrist
25 here?

1 MR. LEWIS: Yes.

2 DETECTIVE MARHOLD: What is his name?

3 MR. LEWIS: Dr. Adrian Dist.

4 DETECTIVE MARHOLD: Did you call him?

5 MR. LEWIS: No.

6 DETECTIVE MARHOLD: Spell his last name.

7 MR. LEWIS: D-i-s-t.

8 DETECTIVE MARHOLD: What's his phone number?

9 Just one second, Sergeant.

10 MR. LEWIS: 253-1173. That's his practice.

11 It's not his cell phone or anything.

12 DETECTIVE MARHOLD: Okay. Do I have your

13 permission to call him? I'm going to call him and see

14 if he was in this building today.

15 MR. LEWIS: Yes, sir.

16 DETECTIVE MARHOLD: Okay. It is possible

17 that he does business in this building outside of your

18 relationship with him?

19 MR. LEWIS: I wouldn't be able to accurately

20 answer that.

21 DETECTIVE MARHOLD: Did Officer Lewis make a

22 comment to you with regard to the fact that his

23 psychologist or his psychiatrist was leaving this

24 building (inaudible)?

25 SERGEANT KENDRICK: Yes, he did.

1 DETECTIVE MARHOLD: Did you see that
2 subject?
3 SERGEANT KENDRICK: Yes, I did.
4 DETECTIVE MARHOLD: So what did he look
5 like?
6 SERGEANT KENDRICK: Five feet six, 57, dark
7 hair (inaudible).
8 DETECTIVE MARHOLD: Okay.
9 SERGEANT KENDRICK: Five six, 57.
10 DETECTIVE MARHOLD: Five six, 57. Okay
11 white male?
12 SERGEANT KENDRICK: White male, about
13 150 pounds.
14 DETECTIVE JOHNSTON: Was there a
15 conversation?
16 SERGEANT KENDRICK: No conversation.
17 DETECTIVE MARHOLD: You didn't make contact
18 with him?
19 SERGEANT KENDRICK: No.
20 DETECTIVE MARHOLD: Do you have any idea why
21 his psychiatrist would be in this building?
22 SERGEANT KENDRICK: None whatsoever.
23 DETECTIVE MARHOLD: Okay. Thank you, Sarge.
24 SERGEANT KENDRICK: Okay.
25 DETECTIVE MARHOLD: I will recommend to you