UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT JULIAN-BORCHAK
WILLIAMS,

    Plaintiff,

                                  No. 21-cv-10827
                                  Hon. Laurie J. Michelson

v.

CITY OF DETROIT, a municipal
corporation, DETROIT POLICE
CHIEF JAMES CRAIG, in his
Official Capacity, and
DETECTIVE DONALD BUSSA, in
his individual capacity,

    Defendants.

_____/

DEPOSITION DUCES TECUM OF JOHN FENNESSEY

       Taken by counsel for the Plaintiff, at the City

of Detroit law offices, located at 2 Woodward Avenue,

Suite 500, Detroit, Michigan 48226, on Thursday, April 6,

2023, commencing at 10:18 a.m.

APPEARANCES:

For the Plaintiff: JULIA KAHN
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                            City of Detroit Law Department
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Also Present: Nathan Wessler

Reported by: MEGAN PRICE, CER 9296

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2   Thursday, April 6, 2023 - 10:18 a.m.

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4   JOHN FENNESSEY,

5   HAVING BEEN CALLED BY THE DEFENDANT AND SWORN:

6   EXAMINATION

7 BY MS. KAHN:

8 Q   So, I'm deposing you today in connection with Mr. Williams

9   lawsuit against the city of Detroit for his wrongful

10   arrest. My name is Julia Kahn, representing Mr. Williams

11   in this case pursuant to local rule 83.21. And before we

12   begin, let me just say some introductory words and lay out

13   a few ground rules and then we get going. Does that sound

14   good?

15 **A   I'm sorry. Whose rules?**

16 Q   A few introductory words and lay out some few ground

17   rules. Does that sound good?

18 **A   Okay.**

19 Q   So I'd like to make sure we understand each other and that

20   the court reporter understands us both. So let's agree to

21   the following. We won't interrupt each other. Please wait

22   until I finish asking a question before you give an

23   answer, and I'll wait until you finish your answer before

24   asking my next question. Is that clear?

25 **A   Yes.**

1 Q   And then please only give verbal answers. Is that clear?

2 A   I understand.

3 Q   And then if you don't understand my questions, please ask

4   for clarification and I can rephrase my questions. Is that

5   clear?

6 A   Yes.

7 Q   Mr. Cunningham might object to some of my questions, but

8   unless he instructs you not to answer, you'll need to go

9   ahead and answer. Is that clear?

10 A   Yes.

11 Q   So there's some definitions that I just want to get out on

12   the table. So DPD or the department refers to the Detroit

13   Police Department Crime Intel or CIU means the DPD'S Crime

14   Intelligence Unit. MSP means the Michigan State Police.

15   The Shinola investigation refers to the investigation into

16   the October 2018 theft of five watches at Shinola that

17   ultimately led to Mr. Williams arrest.

18   FRT means Facial Recognition Technology. An FRT is a

19   computer program or algorithm that takes an input photo,

20   compares it against one or more stored images and attempts

21   to produce an output with one or more possible matches or

22   investigative leads. A probe image or probe photo is the

23   image or photo that is fed into facial recognition

24   technology. A probe image or a probe photo is the image or

25   photo that is fed into facial recognition technology in

1   order to be compared against one or more stored images in

2   a database. are these definitions clear to you and let me

3   know if --

4 A Okay. You said FRC stands for facial recognition

5   technology?

6 Q FRT.

7 A FRT.

8 Q Stands for Facial Recognition Technology. Apologies for

9   being a bit fast. And so you are free to take breaks. I

10   only ask that you please answer my question on the table

11   before taking a break. And is that okay with you?

12 A I'm sorry.

13 Q Is it okay that you answer my question before taking a

14   break?

15 A Yes.

16 Q This deposition is limited to two hours, so hopefully we

17   can get through everything fairly quickly without the need

18   for many breaks. Can you please identify yourself for the

19   record? What is your name and current position?

20 A My name is John Fennessey. I work for the City of Detroit,

21   department of Innovation Technology public safety, IT. I

22   work as a manager.

23 Q And have you ever had your deposition taken before?

24 A Yes.

25 Q And when have you had it taken?

 1 A   Multiple times.

 2 Q   In connection to what?

 3 A   **Lawsuits within the city lawsuits at my prior job.**

 4 Q   So some of those were for your position here at DPD?

 5 A   **Yes.**

 6 Q   Do you understand that you are under oath today as if you

 7   were in Courtroom?

 8 A   **Yes, I do.**

 9 Q   And is there anything that would prevent you from thinking

10   clearly and testifying truthfully today?

11 A   No.

12 Q   I'm deposing you today as a 30-B6 witness as should you

13   speak for the City of Detroit? Is that your understanding?

14   MR. CUNNINGHAM: I'm just going to place an

15   objection on the record there. Jack will be testifying

16   today in his capacity as a manager of the department of

17   innovation and technology with respect to his testimony.

18   MS. KAHN: So first I just want to introduce

19   exhibit Number 1.

20   (EX-1 marked for identification)

21   MS. KAHN: So you've been designated for topic

22   13. If you could flip to the third page.

23   And Pat, when you say in capacity, what do you

24   mean by that?

25   MR. CUNNINGHAM: I'm not being deposed.

1   MS. KAHN: Sure. So I guess, unless you mean to

2   inform us that Mr. Howell [sic] is not prepared to address

3   the topics on which he's been designated, I'll proceed as

4   if this is a normal 30-B6 deposition.

5   MR. CUNNINGHAM: I placed my objection on the

6   record. Mr. Fennessey will be testifying in his capacity

7   as a manager.

8   MS. KAHN: Sure. I'm also going to introduce

9   Exhibit Number 2.

10   (EX-2 marked for identification.)

11 BY MS. KAHN:

12 Q   So if you just want to take a look at that. This just kind

13   of describes what you've been designated as. Is that

14   correct?

15 **A   It's a copy of an email from William Ellis for Pat**

16   **Cunningham, and it says, I will answer technical**

17   **questions.**

18 Q   So do you understand that the answers you provide today

19   are binding on the city?

20 **A   I'm not sure what you -- I'm going to answer the**

21   **questions, but if there is someone else disagrees,**

22   **disagrees with me or there's documents that disagree. I, I**

23   **don't know, but yes, I'm going to answer your questions.**

24 Q   And you understand you're speaking on behalf of the city

25   of Detroit for your official position?

1 A   Yes, I understand. I'm testifying as a manager for public

2   safety, IT.

3 Q   Sure. So just turning back to the 30B6 notice, do you

4   recognize this document?

5 A   Yes, I have seen this before.

6 Q   And this is the notice of deposition for the City of

7   Detroit as a defendant in this lawsuit, correct?

8 A   Yes.

9 Q   And it lists the topics on which the plaintiff has

10   requested the city to produce 30B6 depositions, correct?

11 A   Well, I just looked at 13, but I'm sure it that's what's

12   in there.

13 Q   And you have been designated to testify on behalf --

14   MR. CUNNINGHAM: So, Jack's here to offer factual

15   testimony. You can ask him questions. You're making like a

16   legal argument here that we have a limited amount of time.

17   MS. KAHN: Sure. I just want to make clear that

18   he is a 30B6 deposition speaking on behalf of Detroit.

19 BY MS. KAHN:

20 Q   So what preparation did you do for this deposition?

21 A   I spoke to Mr. Cunningham that showed me this document, an

22   investigator's report. I think that was it.

23 Q   And which documents are they --

24 A   That I'm working here for 12 years, so yes, that kind of

25   helped to get ready for it.

 1 Q   I'm sure that would help. How much time did you spend

 2   reviewing the documents?

 3 A   **Like 15 minutes of that.**

 4 Q   Was that this morning?

 5 A   **No, that was yesterday.**

 6 Q   And did you bring any documents or notes with you this

 7   morning?

 8 A   **I did not.**

 9 Q   And did you speak with anyone besides Pat to prepare for

10   this deposition?

11 A   **Like my immediate supervisor and my boss know, like,**

12   **that's why I'm here.**

13 Q   And what did you discuss with Pat and anyone else you

14   talked to about this deposition?

15   MR. CUNNINGHAM: You don't have to answer that.

16 BY MS. KAHN:

17 Q   What did you discuss with your supervisor about this

18   deposition?

19 A   **That I'm going to be here this morning and that where I'm**

20   **-- I normally would be.**

21 Q   Thank you. so just to get some background, what's your

22   education background?

23 A   **I went to high school. I went to college. I went to law**

24   **school. I've taken a lot of technical classes. I don't**

25   **have like a technical degree. And then certifications and**

1   stuff like that.

2 Q What types of technical classes have you taken?

3 A **Networking, wireless networking server classes lots of**

4   **camera technology anything I can pick up.**

5 Q And then briefly, who were your previous employers before

6   DPD?

7 A **You mean like, like going way back or?**

8 Q Yes, maybe just briefly if you could list,

9   MR. CUNNINGHAM: Why don't you starting reverse

10   chronological order.

11   **THE WITNESS: Right now I work for public safety**

12   **IT in Department of Innovation Technology. I was hired by**

13   **the police department back then. Prior to that, I was a**

14   **principal attorney at the Wayne County Prosecutor's**

15   **office. I retired from there and started working for the**

16   **city.**

17   **Before that, I worked in a little law firm north**

18   **of the Lansing. But I really nice guy named Bill Jackson,**

19   **who's a lot of fun. I worked for Sullivan Ward, I worked**

20   **for John Damos (phonetic). These are like, John was when I**

21   **was in law school. Sullivan was in law school.**

22 Q That's probably good. Thank you. And lots of law

23   background it seems too?

24 A **Right. And then technically, I was in the military. And I**

25   **was worked in work paths for tech, computer technology at**

1   the time.

2 Q so you mentioned some technical background. Have you

3   received training in coding and scripting?

4 A **I have taken classes and I used to do a lot of coding and**

5   **scripting.**

6 Q And then do you have training in software development?

7 A **Not formal training. I have developed and sold software.**

8 Q And do you have training in AI or machine learning?

9 A **No, no.**

10 Q Training in facial recognition technology?

11 A **No training. I've read manuals for implementation, but no,**

12   **I have not had like, formal training.**

13 Q And then how long have you been with DPD?

14 A **I worked for, currently I worked for Department of**

15   **Innovation and Technology, which is a separate entity. So**

16   **I'm not in DPD'S chain of command. I worked for DPD for**

17   **like four years and they, then they, during bankruptcy,**

18   **they kind of restructured many things in the city and they**

19   **created do it.**

20 Q And when were the four years that you worked for DPD?

21 A **It would have been 2010 to 2014 at approximately. I'm not**

22   **sure exactly when it was created.**

23 Q And could you please walk me through the positions you've

24   held with DPD?

25 A **I was a contractor and then I got hired to my current**

 1   position.

 2 Q   And then what is your current position?

 3 A   **A manager in public safety. IT.**

 4 Q   What are your responsibilities within this?

 5 A   **Right now, it's like implementation of some different**

 6   **technology acquisition. We have some large systems that**

 7   **need to be replaced. So I'm working on RFPs, RFI's right**

 8   **now. And then once just kind of, I've been around a little**

 9   **bit so I know how things are put together, so I'm trying**

10   **to make, make things work.**

11 Q   And were you in this position at the time of the Shinola

12   investigation?

13 A   **I don't know when was the Shinola investigation?**

14 Q   That was in 2019.

15 A   **Yes.**

16 Q   And so when did you start your current position? Was that

17   2014?

18 A   **No, because that hiring process was very slow. So I didn't**

19   **get hired till like officially I was in the in the**

20   **position. But it was like 2016. Maybe I'd have to go back**

21   **and look at the documents to.**

22 Q   And what are your responsibilities in your position

23   regarding FRT?

24 A   **Now? None.**

25 Q   And in your prior position in DPD?

1 A   I was the like project manager implementer for the Data

2   works plus project.

3 Q   So in a moment we're going to talk about DPD'S own

4   operation of facial recognition technology, but before

5   that DPD began operating facial recognition technology in-

6   house. Before DPD began operating facial recognition

7   technology in-house DPD was sending FRT requests to the

8   Michigan State Police, correct?

9 A   Yes.

10 Q   And when did DPD begin using FRT searches through MSP?

11 A   I don't know.

12   (EX-3 marked for identification.)

13 BY MS. KAHN:

14 Q   Here's Exhibit number 3. So if you can turn to page seven

15   on this where it says DPD'S policy timeline, could you

16   just read the first sentence there?

17 A   The sub heading?

18 Q   Correct.

19 A   DPD began using facial wrecking technology in 2016 using

20   the state system.

21 Q   Thank you. And then I would just like to introduce Exhibit

22   number 4.

23   (EX-4 marked for identification.)

24 BY MS. KAHN:

25 Q   Have you seen this email before?

1 A   I have not. Or there's a series of emails here. I have not

2   seen them before.

3 Q   It is an email exchange between Andrew Rutebuka in the DPD

4   crime, Intel and Angela Jankowski at MSP Biometrics and

5   Identification Division. Correct?

6 A   That's from Andrew Rutebuka and Ms. Jankowski.

7 Q   And it is from July, 2019, correct?

8 A   Yes. They're all from, a number of emails are all from

9   July of 2019.

10 Q   And if you could turn to the end, there's an email

11   exchange between Andrew Rutebuka and the DPD. And the

12   first email in this exchange, Mr. Rutebuka writes, I'm

13   attempting to get an accurate count of how many facial

14   racks have been completed.

15   Is that correct?

16 A   I'm sorry, which one are you? Can you gimme the date of

17   the email? There's a bunch. From Andrew. There's one from

18   July 16th, 2019 from Andrew to Ms. Yankowski or to MSP

19   SNAP.

20 Q   Did I read that correctly?

21 A   She says, I am attempting to get an accurate count how

22   many facial recs have been completed. Also, out of those

23   completed, how many have come, how many have came back

24   with positive investigative leads?

25 Q   And could you now turn back to the first page and look at

1   the first sentence in the most recent email from Ms.

2   Jankowski, it says, From May 15th, 2014 through July 16th,

3   2019, MSP SNAP Unit facial recognition facial examiners

4   have processed 377 SNAP case management facial recognition

5   search request for the Detroit Police Department.

6   Did I read that accurately?

7   A   **You did.**

8   Q   And now please look at the first sentence from the third

9   paragraph. It begins from September 16th, 2014 to July

10   16th, 2019. The DPD has used the SNAP CM FR tool a total

11   of 4,078 times.

12   Did I read that correctly?

13 A   **You did.**

14 Q   And do you know why these date ranges start in 2014?

15 A   **I'm sorry. Do I know why they start?**

16 Q   Right?

17 A   **I do not.**

18 Q   Did DPD start requesting MSP to run FRT searches in 2014?

19 A   **I do not know.**

20 Q   Did it start requesting FRT searches before 2014?

21 A   **I don't know.**

22 Q   Does DPD have a contract with the company that provides

23   FRT software?

24 A   **Do they have a contract for facial recognition technology**

25   **or a contract with a company that offers facial**

1   recognition technology?

2   Q With a company that offers?

3   A They have contracts with companies that offer facial

4   recognition technology. They do not have a contract for

5   facial recognition technology.

6   Q And what companies?

7   A I think ID Networks provided may still provide, provided

8   they responded to the RFP. They have one with DataWorks

9   Plus but not for facial recognition technology.

10   Q What is it for?

11   A Mobile fingerprint readers. It actually, they may not even

12   have a contract. I'm not sure. Because the contracts kind

13   of expired and whatever, but they currently do not have

14   facial recognition technology in place.

15   Q Did they have a contract with DataWorks for facial

16   recognition technology --

17   A Yes.

18   Q -- with DataWorks. when was this?

19   A I can't remember. Cause I would say '16, '17, hold on, let

20   me think for a minute. Like '16, '17 time period.

21   Q Can you please describe what DataWorks does?

22   A DataWorks Plus. I may not know everything they do; they

23   offer their primary business; I believe is live scanning

24   the biometric identification of people mugshots. They

25   offer a variety of handheld and fixed locations like for

1   in processing people who are being detained. They have

2   facial recognition technology. And that's what -- I'm not

3   going to like I said, those are the pro things we've

4   looked at and they have mobile fingerprint meters that

5   that they like a two-finger identifier.

6   Q   And when installing DataWorks, are there changes to the

7   settings that DPD makes?

8   A   Well, we had to like get them to, they worked on the

9   network. We had to kind of get the data to flow properly,

10   if that makes sense. But the settings were done by

11   DataWorks that's one of the things we look for are turn

12   key solutions. Like they, they were the ones who

13   configured the system.

14 Q   Okay. So DataWorks determines the settings that DPD uses?

15 A   I'm not sure what you mean by settings. but for us it's

16   just for the users, it's just taking a probe photo,

17   putting in the system, which is, the system compares the

18   probe photo to existing templates and then returns the

19   ones that are closest matches. So there was not a like no

20   one from IT was in there changing anything and the police

21   lacked the access to change anything.

22 Q   Would it be correct to say that DataWorks is a platform

23   that integrates facial recognition algorithms from other

24   companies?

25 A   Yes.

1 Q   And what algorithms was DPD using when they first

2   contracted with DataWorks in 2017?

3 **A   I know it's in the contract. I recall NEC there could have**

4 **been another one, but NEC provides API SDK for the for the**

5 **companies to use for their facial recognition stuff.**

6   MS. KAHN: I just want to introduce Exhibit

7   number 5.

8   (EX-5 marked for identification.)

9 BY MS. KAHN:

10 Q   So if you could turn to page seven where it says proposed

11   solution at the top?

12 **A   Like physical pages or seven --**

13 Q   It says page seven at the bottom. And then under the first

14   circle to the right of that, could you just read where it

15   says we are proposing?

16 **A   It says, industry leading dual engine searching. We are**

17 **proposing the ROC and NEC facial matching engines for dual**

18 **engine searching, which increases system accuracy.**

19 Q   Great.

20   MS. KAHN: And then I just want to introduce

21   exhibit number 6 as well.

22   (EX-6 marked for identification.)

23 BY MS. KAHN:

24 Q   And here if you could just turn it's kind of in the middle

25   of the packet. I'm sorry, these don't have page numbers,

 1   but it says that the top exhibit B7 schedule.

 2   A **B as in Bravo. Thank you.**

 3   Q So this is the contract between DataWorks and the city of

 4   Detroit. Is that correct?

 5   A **Yes.**

 6   Q And then under facial recognition software, could you just

 7   read the second line that starts with 500,000?

 8   A **500,000 enrolled records. Dual engine NEC and ROC.**

 9   Q Great. Thank you. So these are the same algorithms used by

10   MSP through their DataWorks; is that correct?

11   A **I don't know.**

12   Q Do you know what version of those algorithms are used by

13   DPD?

14   A **DPD doesn't use them anymore.**

15   Q In 2017, do you know what version of those algorithms were

16   used?

17   A **No. Back then I did, but can't recall.**

18   Q In March of 2019, what algorithms was DPD using through

19   the DataWorks Plus platform?

20   A **My recollection is only NEC was up and running at the**

21   **time, but it could have -- it could have been both notes**

22   **in the backend.**

23   Q And what versions of that algorithm?

24   A **I can't recall.**

25   Q What FRT algorithms -- you said that DPD does not

1   currently use any FRT algorithms through DataWorks, is

2   that correct?

3 A **Well, we don't have any on-premises. they're using the**

4   **state police system, so they're using something through**

5   **that one.**

6 Q Why did DPD stop using DataWorks in-house?

7 A **I was not part of that decision making process.**

8 Q Just to go back quickly, so you said that in March of

9   2019, you think only NAC was used?

10 A **That's my recollection could be wrong.**

11 Q So at some point DPD was using ROC algorithm?

12 A **Like I said, I, I don't know. The platform was --**

13   **everything was managed by DataWorks Plus. Now I understand**

14   **what the contract has in it, but like, can I tell you for**

15   **sure. Like, I never looked in the back end and they said,**

16   **okay, here's how this algorithm plugs in, this is how this**

17   **one plugs in.**

18 Q So thank you. so just getting back to DPD currently uses

19   MSPs system for FRT or the send images to the state?

20 A **Correct.**

21 Q And why was there a change made?

22 A **I'm sorry?**

23 Q Why was there a change made from between 2019 versus now?

24 A **I don't know. I mean, it doesn't make sense to have the**

25   **same financially -- I know it doesn't make sense to have**

1   the same system running in two separate places.

2 Q   And do you know when that change was made?

3 A   **I don't know exactly when.**

4 Q   Approximately?

5 A   **Last year or two.**

6 Q   So 2022 or so?

7 A   **Yes, 21, 22. I mean, I don't know exact that it was a**

8   **contract in place, but like I said, I know financially it**

9   **doesn't make sense to have them both running.**

10 Q   And are there any other algorithms that DPD has used

11   through the DataWorks platform?

12 A   **Not that I'm aware of. You mean I; I would say no, but I**

13   **don't know.**

14 Q   Do these algorithms -- or the ones that were in use, did

15   they regularly receive updates?

16 A   **I know that we had maintenance done by DataWorks Plus.**

17 Q   And how did that happen?

18 A   **We have a way for companies to remote in securely, so**

19   **they're kind of we can kind of keep an eye on what's going**

20   **on and they would update the system.**

21 Q   Was that a manual update or automatic?

22 A   **One of DataWorks plus technician would be driving as we**

23   **said.**

24 Q   Right. And what was IT's role in these algorithm updates?

25 A   **Nothing. Just getting them providing remote access.**

1   Q   In March of 2019, were these algorithms being regularly

2   updated?

3   **A   We had a maintenance contract with them, so I like, I**

4   **don't know what you mean by regularly, but yes, they would**

5   **they, we had maintenance done by DataWorks Plus.**

6   Q   How often?

7   **A   Well, it wasn't that often every six months or yearly**

8   **maybe.**

9   Q   And was there a reason why these algorithms didn't get

10   updated more frequently?

11 **A   You'd have to ask DataWorks.**

12 Q   Was there a factor why DPD wasn't updating them more

13   frequently or requesting more frequent updates?

14 **A   Maintenance and support was part of the contract, so**

15   **that's driven by what DataWorks thought was necessary.**

16 Q   And just to clarify, was expense of updating them a factor

17   at all?

18 **A   No. Maintenance and support was part of the contract.**

19 Q   What do these algorithm updates generally affect?

20 **A   I don't know. I mean, I have some theoretical knowledge of**

21   **what how the algorithms work, but I know there's annual**

22   **improvements and testing by NIST, things like that.**

23 Q   And what version, oh, sorry. Does DPD have access to the

24   FBI's FRT algorithm?

25 **A   I don't know. Meaning like, one developed by the FBI or**

1   like an FBI --

2   Q   The one that the FBI uses?

3   A   I don't know. Cause I don't know if you mean the algorithm

4   or you mean like an FBI facial recognition system?

5   Q   Just a system that the FBI would use.

6   A   I'm not aware of anyone using that.

7   Q   And so you're not aware that if the FBI uses a DataWorks

8   platform algorithm?

9   A   I don't know. I don't know.

10 Q   DPD's version of DataWorks provides the ability to perform

11   an FRT search on a static probe image, correct?

12 A   Yes.

13 Q   And when DPD first contracted with DataWorks, DPD

14   purchased the ability to run facial recognition on live

15   video, correct?

16 A   Correct.

17 Q   Does DPD still have this technical capability?

18 A   No.

19 Q   Did they have this in 2019?

20 A   I know at some point we stopped doing streaming facial,

21   but I can't recall when in 2019 they would've had the

22   ability to use probe photos against the templates from

23   mugshots.

24 Q   And how often did DPD use this aspect of FRT?

25 A   I don't know.

1 Q   Did you ever see it used at DPD, the live video?

2 A   **Yes.**

3 Q   Did you see it used multiple times?

4 A   **Well, working or saw someone else using it?**

5 Q   Know of its use within DPD?

6 A   **I don't know if they ever started using it for anything. I**

7   **mean, it was they, they did not have a use case for it.**

8   **They bought it, but they did not have a use case. So**

9   **unless that, that would be like a question for the**

10   **Realtime crime center, what you're calling CIU.**

11 Q   And then just turning back to the exhibit that's right in

12   front of you, the one with the black cover sheet. Are you

13   familiar with this document? Exhibit 5?

14 A   **Looks a lot like the response to the RFP, but not**

15   **comparing it to what we got -- I can't tell you exactly,**

16   **but yes, it does look like they response. So they**

17 Q   And so what is it?

18 A   **There was an RFP was put out for facial recognition**

19   **technology for streaming and for probe photos of static as**

20   **you sometimes called. And we received three responses, and**

21   **this would've been DataWorks Plus response.**

22 Q   Does this accurately describe the scope of capabilities

23   and functions that DataWorks provides to DPD?

24 A   **I'd have to read the whole thing, but yes, we, we what we**

25   **are looking for is streaming and pro photos. So it this is**

1   a solicitation. I, I think we got everything that's in

2   there, but I'm not sure.

3 Q So can DPD personnel use DataWorks platform to manipulate

4   images prior to submitting them as probe images for a

5   search?

6 A Can or could?

7 Q Can they?

8 A No, because it's all shut down now.

9 Q Could they?

10 A 2019 there was a pose correction software.

11 Q And was that used?

12 A I don't know. I know we had it, and I'm pretty sure they

13   were trained in it, but I don't know if they ever used it.

14 Q So for example, in 2019, could they have changed the

15   brightness of an image?

16 A Through DataWorks Plus?

17 Q Yes.

18 A I don't know.

19 Q Could they have changed the angle of the face?

20 A Yes, they had pose correction, which yes, it's changing

21   the angle of the face. Yes. That's the term they used.

22 Q And then did that include the brightness or?

23 A I don't know.

24 Q What image database does DPD DataWorks platform perform

25   FRT searches against?

1 A   **DPD mugshots only. We did not have like a regional or**

2   **anything else.**

3 Q   So it was only arrest photos from arrest made by DPD?

4 A   **Correct.**

5 Q   And not other agencies in Michigan?

6 A   **Correct.**

7 Q   How many photos are in the database that DPD has access

8   to?

9 A   **I don't know.**

10 Q   Do you know how many photos were in the database in March

11   of 2019?

12 A   **I don't keep track of that number.**

13 Q   So if you could just turn to page 36. Exhibit 5. So could

14   you read the bolded, the last bolded bullet point where it

15   starts with the facial recognition software?

16 A   **Facial recognition software capable of performing facial**

17   **recognition searches on images obtained from physical and**

18   **digital data formats against the Detroit Police Department**

19   **repository of over 500,000 images.**

20 Q   Does that sound correct to you?

21 A   **Yes. I mean, like I said, I can't tell you how many were**

22   **in there. And how many are there now. I'm not going, I'm**

23   **sure we put that in the RFP. Like I know we did.**

24 Q   How many individuals are in the database that DPD has

25   access to?

1 A   I don't know.

2 Q   Do you know if there are ever multiple photos of the same

3   individual in the database that DPD has access to?

4 A   **Yes. If someone gets arrested multiple times, they're**

5   **going have multiple images of the person.**

6 Q   And we've talked a little bit about MSP, but just to be

7   clear, are you familiar with the state statewide Network

8   of Agency photos?

9 A   **I mean, I know it exists and I have some idea what's in**

10   **there**

11 Q   And if I refer to that as SNAP, you will understand what I

12   mean.

13 A   **Oh, yes.**

14 Q   What is SNAP?

15 A   **Statewide Network of Agency Photos. They get, we were**

16   **talking earlier about live scan mugshots everyone in the**

17   **state does a copy to that, gets sent up to the state.**

18 Q   Does DPD's DataWorks platform interface with SNAP?

19 A   **The old platform did not interface with SNAP that, that's**

20   **the state police system. They're not going to give us**

21   **access to it.**

22 Q   And SNAP is maintained by MSP, correct?

23 A   **Yes. And they're contractors, but yes.**

24 Q   And what SNAP images can DPD access?

25 A   **Now through like now?**

 1 Q   Yes. Yes.

 2 A   **They go through MICJIN portal. They can access I would**

 3   **assume everything that's in there. I mean, I don't know if**

 4   **they've got some stuff restricted or not, but it's just,**

 5   **they're just running against everything in the state**

 6   **database.**

 7 Q   And is this different than DPDs access in 2019? March of

 8   2019

 9 A   **DPDs access through the DPDs?**

10 Q   DPDs access to SNAP images.

11 A   **Because we had DataWorks Plus the DPD owned, which would**

12   **only access MD or access our photographs. Then we had**

13   **access or the state police or the DPD had access through**

14   **the MICIJN portal two SNAP. So there's two, there's like**

15   **two separate things going on here. And from far as I know**

16   **that that's the access to the MICJIN has been the same.**

17 Q   What SNAP images can DPD not access?

18 A   **I don't know.**

19 Q   Can MSP access the images that DPD cannot?

20 A   **I don't know what the state, I'm sure they may have**

21   **something, they may not. I don't know I've never heard of**

22   **anything being restricted, but it wouldn't surprise them.**

23 Q   And who determines which images DPD can or cannot access?

24 A   **MSP.**

25 Q   How do DPD's arrest photos make their way into SNAP?

1 A   When someone's live scanned and mugshots taken, that's put

2   them into something that we, I've always called it a NIST

3   package or packet. There may be some other term for it

4   that's transmitted to the state police who then ingested

5   into their systems. So you get fingerprints, mugshots,

6   textural data and it's all just kind of they, they analyze

7   with their algorithms for APIS and some other stuff.

8 Q   And when crime Intel runs an FRT search through DataWorks,

9   is it searching against arrest photos in SNAP or in a

10   database stored locally by DPD and by this, in 2019 when?

11   MR. CUNNINGHAM: Object compound question.

12 BY MS. KAHN:

13 Q   In 2019 when Crime Intel ran FRT searches through

14   DataWorks, was it searching against arrest photos in SNAP

15   or in a database stored locally by DPD?

16 A   I don't know.

17 Q   And, currently?

18 A   We don't have -- DataWorks Plus is shut down, so they

19   would, they would be going through MICIJN portal.

20 Q   And when Crime Intel in 2019, when they would run an FRT

21   search did it have access to any images that MSP does not

22   have access to? So when they would run a search, maybe in-

23   house --

24 A   If they use the City of Detroit's DataWorks Plus instance,

25   they would only be accessing mugshots, all of which

1   would've been transferred to MSP. So they would not, they

2   would have -- you like in DPD you had DPD mugshots at the

3   state, you had DPD Mugshots plus everybody else.

4 Q   Okay.

5 A   And other agencies in the state.

6 Q   So in 2019 when DPD still had their own DataWorks system,

7   did that system offer any functionality that MSP system

8   did not offer?

9 A   I never used the MSP system, so I can't compare them.

10 Q   Does running an FRT search through, or in 2019, did

11   running an FRT search through DPD'S DataWorks system have

12   any advantages over running an FRT search through MSP's

13   DataWorks system?

14 A   Not that I'm aware of. I mean, there could have been a

15   difference in the SDK, not SDK, but whatever they, whoever

16   was in place, but I don't know of one.

17 Q   What was in place?

18 A   You had NEC depending what version you had, like a newer,

19   they had a new MSP, could had a newer version, the DPD or

20   vice versa. But that's, you'd have to go back and get what

21   was, which, who was running what and when.

22 Q   So how is the SNAP database updated, if you know?

23 A   As far as, like I've had like presentation that the state

24   place is just done automatically. Data to get sent by all

25   the agencies and get so ingested.

1 Q   And is that only for adding new photos into the database?

2 A   I don't what MSP's doing?

3 Q   For SNAP?

4 A   Yes. I, you'd have to ask them.

5 Q   So you don't know if photos are ever deleted?

6 A   I don't know.

7 Q   You are aware that the SNAP database has both expired and

8   current driver's license photos in it, right?

9 A   No, that's in MIDIRS.

10 Q   Sorry,

11 A   MIDIRS.

12 Q   And what is that?

13 A   Michigan driver's license.

14 Q   So are you saying that SNAP Database does not have license

15   photos?

16 A   I don't think so.

17 Q   Can DPD delete photos from SNAP?

18 A   No. No. That's MSP.

19 Q   Is Robert Williams arrest photo currently in the SNAP

20   database?

21 A   I don't know. I don't have access to SNAP.

22 Q   Is Robert Williams arrest photo currently in DPDs arrest

23   photo database?

24 A   I don't know. I mean, if he was arrested in live scanned

25   by the Detroit Police Department, then that photograph

1   would be in there, but like I said, I don't know if he was

2   arrested. Or rest arrested by whom and, and booked and all

3   that other stuff. So it's kind of had to kind of speculate

4   the stuff, whether it's there or not. But I, I didn't

5   look, I can tell you that.

6   Q   So Crime Intel is the DPD unit that would run at searches

7   via DataWorks, is that correct?

8   A   **They do it and some of the other units within the**

9   **department do it also.**

10 Q   What units?

11 A   **Well, I know homicide Task force, violent Crimes Task**

12   **Force. Some of the other units may or may not. I'm not**

13   **sure who's got access to the MICIJN portal.**

14 Q   And then what is IT's role in this process,

15 A   **For SNAP?**

16 Q   For DataWorks searches --

17 A   **Currently since everything's up in the MICIJN portal, we**

18   **kind of manage usernames and access, but that's it. Then**

19   **the state determines what applications and functionality**

20   **the users can access in the MICIJN portal.**

21 Q   And back in 2019, when DataWorks was in-house, what was

22   IT's role in the process?

23 A   **We would determine who could access the, the system**

24   **through active directory. So they'd say we want these**

25   **people to have access. We put them in Active directory**

1   group, which would then have access to the application.

2   Q And how many people work in IT, or did in 2019?

3   A I have no idea. It's not tons, but like maybe like a

4   hundred. I mean, and there's public safety IT, there's

5   Central City IT, I still meet people who have been working

6   here longer than me and I never met them before.

7   Q So just moving on, image quality can affect the

8   reliability of results from an FRT search Correct?

9   A Probe photo or mug shots? The answer is both, but so yes.

10   Q And so what are the factors that bear on the accuracy of

11   the photo?

12   A Pitch/tilt. Rotate your head on three axes. Instant --

13   instantaneous field of view, which is what typically is

14   called pixels on target. It's a big one. and that pixels

15   on targets just how many pixels you have. Typically they

16   measure, I think between --it's been a while since I've

17   looked this. You want to have a, the face itself, you want

18   to have a certain number of pixels per foot and then

19   there's like an optimal level and there's suboptimal.

20   Q What is the optimal level?

21   A I want to say it's 110 per square foot, but that's, like I

22   said, it's been a long time since I looked at it. I'd have

23   to go back and look at my some of the material.

24   Q Okay. And just back to non-CIU personnel running FRT

25   searches. So people could run searches outside of CIU?

 1 A   That's my understanding.

 2 Q   So again, back to the factors that might affect

 3   reliability. do you agree that the following factors could

 4   affect the reliability of an FRT result? So dim lighting?

 5 A   Yes.

 6 Q   Shadows on the face,

 7 A   Yes.

 8 Q   Angle of photo?

 9 A   Yes, that's a pitch tilt. Yes.

10 Q   Okay. Yes. Occluded facial features by something like a

11   hat?

12 A   Yes.

13 Q   Pixel density?

14 A   Yes. Yes.

15 Q   Image brightness?

16 A   As opposed to lighting?

17 Q   Yes.

18 A   Yes.

19 Q   Skin tone.

20 A   Do you ever read about flash photography? It's like a big

21   factor in taking pictures. So yes, it can have an impact

22   on it.

23 Q   And then race?

24 A   That's an interesting question. So it depends on what the

25   system was trained in. It's like if you NIST provides like

1   training photos, like big packets of photos they run. And

2   if you don't have a enough diversity, they, my

3   understanding is that you not part of these experiments

4   that you can have some impact on the accuracy.

5   Q So you were talking about the pixels per foot. So for

6   things like 110 pixels per foot, were these standards

7   recorded anywhere?

8   A I recall saying I'm not sure that it's 110 pixels --

9   Q For example.

10 A Yes. So that's not, I'm not going to want that going down.

11   I'm saying that's the standard. I don't know if they're

12   standards, I mean, sometimes you gotta go with what you've

13   got. but there there's kind of like what's optimal.

14 Q So are there any other factors in the ones I just walked

15   through that you think can affect the reliability of FRT

16   results?

17 A No, I mean, I'm sure there's others. I mean, you know more

18   I learn about cameras, the more I understand, I don't know

19   anything about cameras, but there's, there's a lot that

20   goes into how things are processed.

21 Q So, a probe photo that has one of these features is likely

22   to result in a less reliable FRT result. Is that correct?

23   One of the factors I just walked through

24 A You always want to have the best photo that you can. but

25   it's, you're the, my understanding of how this is more,

1   it's going to do the best it can with what you've

2   provided.

3 Q And multiple factors together might have a greater effect

4   on reliability of the result. Correct?

5 A Yes.

6 Q So how does a crime intel examiner determine whether a

7   photo is of an adequate quality to submit to an FRT

8   search?

9 A You would have to ask them. I'm not sure what their

10   criteria is for.

11 Q So could DPD personnel have used Clearview without the

12   knowledge of department leadership?

13 A I don't know what Clearview is.

14 Q Oh, sorry, just to walk back a little bit. So you are not

15   familiar with the facial recognition technology company,

16   Clearview AI?

17 A I have not heard of that one.

18 Q And has DPD ever used Clearview AI?

19 A I Have not heard Clearview AI.

20 Q I'd just like to introduce exhibit number 7.

21   MS. KAHN: Is that correct?

22   COURT REPORTER: Correct.

23   (EX-7 marked for identification.)

24 BY MS. KAHN:

25 Q Have you seen this article before?

 1 A   No. But now that there, I think was an article in New York

 2   Times like yesterday about this?

 3 Q   There might have been.

 4 A   I've never heard about it through work, but now that I'm -

 5   -

 6 Q   So this is an article by Busby News presenting a list of

 7   law enforcement agencies that used Clearview AI's effort,

 8   RT system as of February, 2020. if you flip to the last

 9   page, do you see DPD listed there?

10 A   I see it says Detroit Police Department, Michigan search

11   count 11 to 50.

12 Q   So under the search count column, it gives the rank --

13   MR. CUNNINGHAM: Why don't you take a minute and

14   read this?

15   THE WITNESS: Yeah. I think I do -- if this is

16   what I'm thinking of. These are the ads you said you can

17   do this for free online and people are just doing them.

18 Q   So turning back to the last page. So you said that the

19   search count gives the number range 11 to 50. Is that

20   correct?

21 A   Yes. Buzzfeed said that after looking the article, article

22   that they had 11 to 50 people did a search and put --

23   somebody wrote Detroit Police Departments doing this

24   search.

25 Q   So meaning that someone at DPD or someone affiliated with

1   DPD conducted between 11 and 50 searches using Clear

2 A **Yes. Not to be lawyerly, but I'd say 11 to 50 people wrote**

3   **down that they're from the Detroit Police Department. And**

4   **did it. Cause if this is what, what I'm thinking of, they**

5   **just said you could, it was online. Like I could have**

6   **dialed in and said I was from the FBI doing searches and**

7   **they were taking the information, but I didn't use the**

8   **interface. But if it's one I'm thinking of, they were just**

9   **letting people run searches to see what they got. They**

10   **were going after public. This is like, they had all that**

11   **public backend. There's been a lot of these things. So I**

12   **do, I do look at them when I read about them, but --**

13 Q So do you have a reason to believe that this database is

14   incorrect?

15 A **The BuzzFeed? The media not tell the truth? I, I, I don't**

16   **know where Buzzfeed gather their information from.**

17 Q Did DPD ever have a contract with Clearview?

18 A **Not that I'm aware of.**

19 Q did DPD ever permit DPD personnel to use Clearview?

20 A **You'd have to ask DPD.**

21 Q And does DPDs IT department have a way to ensure that DPD

22   personnel are only using approved and vetted technology?

23 A **Say that again.**

24 Q Does DPDs IT department have a way to ensure that DPD

25   personnel are only using approved and vetted technology?

 1 A   Well, we have computer images, we restrict access. So

 2   people can't just like install stuff, but what they're --

 3   everyone has their own PC at home or their phone, they can

 4   do stuff. So cybersecurity's kind of like paramount for

 5   us. So we try to restrict what people can install. And,

 6   what websites they can go to.

 7 Q   So could DPD personnel have used Clearview without the

 8   knowledge of department leadership?

 9 A   Yes, because it was on the internet.

10 Q   Why would anyone have used Clearview AI as opposed to

11   DataWorks?

12 A   I don't know.

13 Q   If a DPD employee were to use Clearview AI, how would they

14   have access the technology?

15 A   Based on what I've seen in that article, they'd go on the

16   internet and upload a photo and there it is.

17 Q   So would that violate any of DPD's policies regarding use

18   of technology?

19 A   You would have to ask DPD about DPD policy.

20 Q   So earlier you said that DataWorks uses two algorithms.

21   Does DataWorks simultaneously search using both the

22   algorithms?

23 A   Yes. Now I, what I said earlier was my recollection is we

24   had NEC, the contracts says they had two. I don't know how

25   it was processed in the back end.

 1 Q   Does the system ever fail to return results?

 2 A   **No. It always it tries to -- it says these are the people**

 3   **who are the closest match to the photo.**

 4 Q   So it always returns results?

 5 A   **As far as I know.**

 6 Q   And how many results are returned?

 7 A   **I can't remember. I think it was like, I can I can't**

 8   **recall. I mean, I would give you like a number, but I, I**

 9   **don't know. I can't give you a count.**

10 Q   So does the system always return either zero or that set

11   number of results or does the number vary?

12 A   **I know I've seen it in action, but I couldn't tell you if**

13   **it's a number, what the count is. I know it always gives**

14   **you returns in a number of photographs. But I, for the**

15   **life of me, I can't recall how many there were.**

16 Q   Are you familiar with the term confidence threshold or

17   likelihood threshold?

18 A   **I know they had a term where they assigned it, but they**

19   **said it's not something, it's not like something you can**

20   **rely on, but yes, I'm familiar with it.**

21 Q   So, just to be clear, threshold means choosing a minimum

22   score below which the system will not return possible

23   matches. Does that sound correct to you?

24 A   **I'll take your word for it. That's that one of the - I**

25   **heard, heard that definition before, but I'm not going to**

```
 1       quibble.

 2   Q   is there a confidence threshold set in the DataWorks

 3       system?

 4   A   I don't recall. I mean, there may have been one.

 5   Q   So just to clarify, is there a threshold below which the

 6       system will not return results?

 7   A   I don't know.

 8   Q   So the system might always return the top, whatever number

 9       it is --

10   A   I guess.

11   Q   -- Number of results possible determined by the algorithm.

12       Okay.  So the results of a search could have very low

13       confidence scores, right?

14   A   Yes. Yes.

15   Q   And you don't know what the confidence threshold is set

16       to?

17   A   No.

18   Q   Do you know who determined what the threshold was?

19   A   I do not.

20   Q   Is it different from DataWork's default?

21   A   I don't know.

22   Q   Does DataWorks interface display confidence work for each

23       image that is returned as a possible match?

24   A   Yes, I think it does.

25   Q   Is that visible to the examiner?
```

 1 A   **Yes. We're going back a couple of years since I've looked**

 2   **at it, so I believe it does.**

 3 Q   Where is that confidential score?

 4 A   **I want to say it's somewhere top bottom of the image, but**

 5   **there may be look at the exhibit 5. There might be**

 6 Q   A few. Yes, I was --

 7 A   **About to get things in there.**

 8 Q   -- Pull up number. exhibit number 5 again. So if we turn

 9   to page number 12, so the photo at the bottom, is that an

10   accurate representation of what the gallery return looks

11   like?

12 A   **It would be something similar to that.**

13 Q   Okay.

14 A   **But looks, looks what it like, looks like what it did and**

15 Q   And are those numbers directly under each photo? The

16   confidence score?

17 A   **Yes.**

18 Q   Are the scores retained after a search is run?

19 A   **I mean, I guess if they save the search, yes.**

20 Q   And --

21 A   **Yes, I don't know if they're, like I said, I didn't spend**

22   **a lot of time doing after we made sure it was up and**

23   **running. I didn't spend a lot of time working with it.**

24 Q   Are the scores provided to the detective who request the

25   FRT search?

 1 A   I don't know.

 2 Q   Is the gallery of possible matches retained after a search

 3   is run? You said they save it. What does that look like?

 4 A   I know there was a way to save it. But I don't know what -

 5   - what CIU did.

 6 Q   And would ICU have to manually save the search?

 7 A   I don't know what they did.

 8   MS. KAHN: So introducing exhibit number 8.

 9   (EX-8 marked for identification.)

10 BY MS. KAHN:

11 Q   Do you recognize this document?

12 A   I don't recall seeing it before.

13 Q   So these are presentation slides from MSP, correct?

14 A   The title slides says it's from Michigan State Police.

15 Q   Does DPD's IT department receive training from MSP?

16 A   The IT department?

17 Q   Yes.

18 Q   We have people who maintain like the MICIJN portal. We

19   have like, the state police does our CJIS audits, stuff

20   like that. But not, there's not, I said not, not, it's not

21   like they're down here training side of to do stuff.

22 Q   And was that the same in 2019?

23 A   Yes, pretty much.

24 Q   Is IT aware of MSP's, FRT general practices?

25 A   Does it know what MSP's practices are? We kind of

1   generally know what they do, but not, I don't know what

2   they're, they do their thing up then Lansing and we're

3   here.

4 Q So in 2019, did DPDs IT department train crime intel about

5   how FRT and DataWorks works?

6 A No.

7 Q Okay. Do IT train detectives about how FRT or DataWorks

8   works?

9 A No.

10 Q Are examiners trained that they can still return an

11   investigative lead to detectives even if the photo they

12   identify as an investigative lead appears that only one of

13   the algorithm's results?

14 A I don't know. Because that's what CIU would've been doing

15   with the investigative units.

16   MS. KAHN: Why don't we take a little break?

17   (Off the record)

18   (Back on the record)

19 BY MS. KAHN:

20 Q So just kind of going back a little bit; are you aware of

21   research with differential accuracy rates that perform

22   worse on darker skin people?

23 A I have read articles about that.

24 Q Okay. And African American people?

25 A Yes.

 1 Q   And NIST provides training data. You mentioned that

 2   earlier. Is that being used in terms of is that being

 3   implemented by DataWorks before DPD is implementing it or

 4   back in 2019?

 5 A   I don't know. I believe it's NEC and other companies.

 6   That's the facial. The companies that developed the

 7   algorithms are the ones who use the training, the training

 8   images. So it's wouldn't be like Data Works. DataWorks is

 9   kind of using -- I'm using the term API Automatic

10   Programming Interface or software development kit. They

11   just kind of put hooks into the, and then whatever comes

12   out of it is what they use.

13 Q   Okay. So does DPD incorporate those trainings when they

14   install the training models?

15 A   No, that's all done by the algorithm developing companies.

16 Q   And back when DPD was running DataWorks, who could run an

17   FRT search? Just people inside Crime intel or people

18   outside?

19 A   It would've been anyone who was in the active directory

20   group that allowed them to run it. It was primarily, if

21   not exclusively people from the CIU.

22 Q   Okay. And who are the other people in that group that you

23   mentioned?

24 A   We would've had a couple of people from IT to like the

25   webpage is down. Can you pull the page up? I don't know.

 1   It's been a long time since I went at, I can't tell you

 2   who was in there.

 3   Q   Okay. And now when DPD runs DataWorks is that still or the

 4   Mi--?

 5   A   MICIJN.

 6   Q   MICIJN. Sorry about that. Is CIU are they the only ones

 7   running it or are there people outside CIU who are also

 8   running that?

 9   A   I think there's other people, but I, I don't know. You'd

10   have to ask someone from CIU, who's got them.

11   Q   And then just going back to one more thing, so you

12   mentioned that textual data is included when DPD sends

13   photos over to SNAP. What textual data is included?

14   A   Complete list can be found in the list standards, but it

15   would be like first name, last name, middle name date of

16   birth, state of birth, country of birth. There's like just

17   a lot of anything that goes into live scan. And there's

18   NCI has got a list too, but it's just, like it's just

19   demo. Some people say demographic information. I don't

20   know why. NIST, I think calls it textural data.

21   Q   Okay. And then one last thing is you talked about the

22   optimal number of pixels per foot. Is there a standard

23   written down anywhere that talked about?

24   A   You mean like within the police department?

25   Q   Yeah.

 1 A   Not that I'm aware of. There's stuff I've seen. we tend to

 2   use a lot of access cameras and access on their website.

 3   We'll have, like, if you want to do license plate

 4   recognition, you want this. If you want to do facial

 5   recognition, you want that. And like when we're putting up

 6   our own cameras, we try to optimize.

 7 Q   Okay. And is there a policy in place regarding optimizing?

 8 A   No. Optimizing the cameras. That's configuring a camera

 9   we're putting up to ensure that good images are captured.

10   Okay. depending on what your use case is, what your, what

11   your goal is when you put a camera up.

12 Q   So are there objective measures of probe photo quality

13   that can determine whether an image is suitable to submit

14   for an FIT search?

15 A   As what we're just talking like ones that are used by

16   crime intel?

17 Q   Yes.

18 A   I don't know if they use any, but there are tools.

19 Q   Okay. so what happens if a probe image with a low number

20   of pixels is submitted in DataWorks?

21 A   Well, it just goes through. I don't know if they, I never

22   heard of anything. It would stop it from being used.

23 Q   Okay. So DataWorks will still attempt to generate

24   candidate matches?

25 A   I believe so, yeah. I've never, never tried it, but,

 1 Q   And if DataWorks generates candidate matches, how can the

 2   crime Intel examiner assess whether a low pixel count

 3   image is actually a match to any of the candidate images?

 4 A   **They have their processes. I'm not sure what they do.**

 5 Q   Okay. And then is there any setting or configuration in

 6   DataWorks to enforce like the factors or measures they

 7   take into account in DataWorks?

 8 A   **I don't know.**

 9 Q   Okay. And do you know who configures DataWorks to do that?

10 A   **That DataWorks was the only person who could configure the**

11   **backend.**

12 Q   Okay. And if a photo is not suitable for an FRT search do

13   crime intel personnel ever process or alter the photo to

14   try to make it more suitable for an FRT search?

15 A   **You'd have to ask them.**

16 Q   Okay. Do you know what happens after the examiner has

17   decided that the probe image is adequate for an FRT

18   search? Do you know what happens next?

19 A   **No.**

20 Q   Okay. Sorry, I'm just going to pull another exhibit out.

21   Sorry, lots of folders.

22   MS. KAHN: So I would I want to introduce

23   Exhibit number 9 as well as Exhibit number 10.

24   (EX-9 & 10 marked for identification.)

25 BY MS. KAHN:

1   Q   So just looking at number 10, the second document I passed

2   you, have you seen this directive before?

3   A   **I would say no.**

4   Q   You can take a minute to look through it as well.

5   A   **Yeah, no, I don't think I've seen this one.**

6   Q   What data is logged automatically by DataWorks?

7   A   **Well, we're getting to the back end there. I mean, I**

8   **don't, I know you can pull up, I believe you could save a**

9   **search and pull it back up. I don't know what words in**

10   **their log files or what was saved. Yeah, that's, you'd**

11   **have to, if you get like a detailed answer for that**

12   **question, you'd have to ask DataWorks.**

13 Q   Okay. So just turning to subsection 7.8. So page seven

14   question number eight, that is. Apologies. Could you just

15   read that out loud?

16 A   **Paragraph eight?**

17 Q   Yes.

18 A   **Queries made to the department's facial recognition system**

19   **will be logged into the system, identifying the user,**

20   **initiating the query, all user access, including**

21   **participating agency access queries are subject to review**

22   **and audit.**

23 Q   Okay. So what data is stored about each query?

24 A   **The way I'm reading that is there's the facial recognition**

25   **system, and then there's another system that's recording**

1   searches. So DPD would have some spreadsheet or some

2   equivalent thereof to keep track of searches. I have to

3   read the whole thing to figure out which system they're

4   talking about.

5 Q So how is this data saved?

6 A I'm reading that they have two system. There's a facial

7   recognition system, and there's a system that they keep

8   track of things. So that's whomever would -- I'm sure you

9   got someone from CIU coming in. I'd ask them where they

10   kept track of it.

11 Q Okay. And then if you just look down to the next one,

12   number nine on that. So you can just read it for a second.

13 A Out loud?

14 Q You can just read it to yourself.

15 A Okay. Thank you.

16 Q So under section number nine it says that the direct, the

17   directive requires that this audit trail be kept open for

18   at least a year, correct?

19 A Yes.

20 Q So how long is the audit trail kept for?

21 A This auto-trail they're referring to here?

22 Q Yes.

23 A Yeah. You'd have to ask. Okay. Because they're, I know

24   they're using the term audit trail, which technically to

25   me means something that's automatically generated by a

1   computer. I think they're kind of referring to their

2   spreadsheet, whatever they're using to keep track of it

3   here.

4 Q   Okay. And then going back to the camera quality and the

5   pixels that we were just talking about before this how

6   would you know how to configure the camera in order to

7   ensure quality?

8 A   Like if I'm configuring a camera?

9 Q   Sure.

10 A   Many cameras have a built-in device where you can set make

11   a square or draw a square or rectangle and tell you how

12   many pixels are contained within that. And then it -- you

13   do your old ISO least triangle, so you make sure you got

14   the right angle and you figure out how much x number of

15   feet away. do tests with license plates or have someone

16   stand there. So to, if you're doing, you have someone

17   knows what they're doing with the camera, there's a

18   variety of things you can do.

19 Q   Is that what DPD does?

20 A   DPD doesn't put cameras up.

21 Q   Okay. So who is ensuring that the cameras that they're

22   using for their probe photos or --

23 A   Probe Photo are in the wild, that's just like that those

24   are like some, yeah, the image that I saw here for this

25   one was like from a bar or something. Not a bar. A store.

 1 Q Okay. okay. Thank you. And today when someone in DPD wants

 2   to run a search through MSP system, does the DPD person

 3   directly run the search and get the full gallery of

 4   potential matches?

 5 A **I would say I think so, but I, I have not used MICIJN for**

 6   **a long time.**

 7 Q Okay.

 8 A **10, 15 years --**

 9 Q Or is it that MSP runs the search and returns one

10   investigative lead to DPD?

11 A **Sorry.**

12 Q Oh, no worries.

13 A **I think they tell you -- what song that's from. Yeah. I'm**

14   **sorry, can you repeat the question?**

15 Q So when someone today at DPD is trying to run a search

16   through MSP system, does the DPD person directly run the

17   full search and get the full gallery of potential matches?

18 A **Yeah. I'm pretty sure they do.**

19 Q Okay. So it's not that MSP runs the search and returns

20   just one investigative lead to DPD?

21 A **Right.**

22 Q Okay. Excellent.

23   MS. KAHN: Can we take another break?

24   (Off the record)

25   (Back on the record)

1   EXAMINATION

2   BY MR. CUNNINGHAM:

3   Q   Okay. Mr. Fennessey, earlier we looked at Exhibit 10 and

4   we looked at section 307.5, subsection eight, and I think

5   you said that you were not familiar with this document. Is

6   that correct?

7   **A   Correct.**

8   Q   Okay. Do you have any personal knowledge about the systems

9   identified in subsection eight?

10 **A   Well, I the facial recognition system, yes. The other**

11 **   system I refer to, no.**

12 Q   Okay. Do you have any personal knowledge about the logs in

13   subsection eight?

14 **A   I do not.**

15 Q   Okay. And do you have any personal knowledge of the audit

16   trails referenced in subsection nine?

17 **A   I would say no because it's confusing as to which one --**

18 **   what they're talking about.**

19   MR. CUNNINGHAM: That's all I have.

20   MS. KAHN: Great. Well thank you so much for

21 your time. We really appreciate you coming in.

22   (At 11:55 a.m., deposition was concluded.)

23

24

25
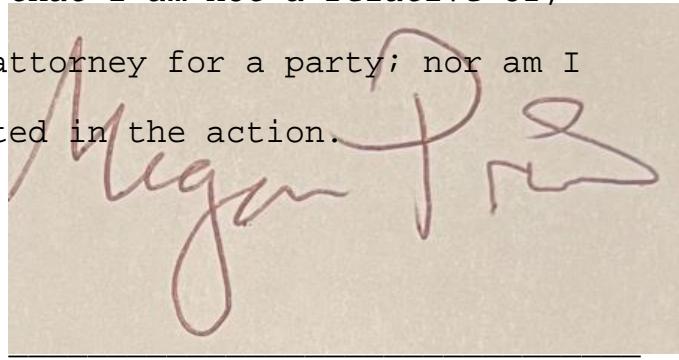
```
 1                    CERTIFICATION

 2   STATE OF MICHIGAN    )

 3   COUNTY OF OAKLAND    )

 4          I certify that this transcript, consisting of

 5   fifty-five (55) pages, is a complete, true, and

 6   correct record of the testimony of John Fennessey,

 7   taken in this case on Thursday, April 6, 2023.

 8          I also certify that prior to taking this

 9   deposition, John Fennessey was duly sworn to tell the

10   truth.

11          I also certify that I am not a relative of,

12   employee of, or an attorney for a party; nor am I

13   financially interested in the action.

14

15

16   _____

17                    Megan Price, CER 9296

18                    Notary Public

19                    Macomb County Michigan

20                    My Commission Expires: 03/29/2026

21

22

23

24

25
```

-

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