

1 SUPREME COURT OF THE STATE OF NEW YORK  
 2 COUNTY OF KINGS: CRIMINAL TERM - PART 37  
 -----X  
 3 THE PEOPLE OF THE STATE OF NEW YORK :INDICTMENT NO.  
 4 - AGAINST - :6797-07  
 5 DEXTER BOSTIC, ROBERT ELLIS, & LEE WOODS :HUNTLEY/DUNAWAY  
 6 DEFENDANT (s) :HEARING  
 -----X  
 7 320 JAY STREET  
 8 BROOKLYN, NEW YORK 11201  
 9 JULY 8, 2008

9 B E F O R E: HONORABLE PLUMMER E. LOTT,  
 JUSTICE,  
 10 A P P E A R A N C E S:

11 OFFICE OF CHARLES J. HYNES, ESQ.  
 12 DISTRICT ATTORNEY KINGS COUNTY  
 ATTORNEY FOR THE PEOPLE

13 BY: ANNA-SIGGA NICOLAZZI, ESQ.  
 14 MARK HALE, ESQ.  
 ASSISTANT DISTRICT ATTORNEYS

15  
 16 BY: EDWARD WILFORD, ESQ., For Defendant Bostic  
 17 20 VESSEY STREET  
 NEW YORK, NEW YORK

18 NATALI TODD, ESQ.

19 BY: DANIELLE V. EADDY, ESQ., For Defendant Ellis  
 20 26 COURT STREET  
 BROOKLYN, NEW YORK

21  
 22 BY: SAMUEL KARLINER, ESQ., For Defendant Woods  
 23 26 COURT STREET  
 BROOKLYN, NEW YORK

24

25

SUSAN OLIVA, CSR  
 NORA LEE, RPR

SO

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1 THE CLERK: Come to order. Part 37 is  
2 now in session. Honorable Plummer Lott is presiding.

3 Calling on the calendar, People of the  
4 State of New York against Dexter Bostic, Robert Ellis  
5 and Lee Woods, Indictment No. 6797-07.

6 On for Dunaway/Mapp hearings.

7 All three defendants are incarcerated,  
8 produced and before the court.

9 Appearances, please.

10 MS. NICOLAZZI: For the record, Anna  
11 Sigga Nicolazzi for the People.

12 MR. HALE: Mark Hale for the People.

13 MS. EADDY: For the defendant, Ellis,  
14 Danielle Eaddy.

15 MR. WILFORD: Edward Wilford for the  
16 defendant, Bostic.

17 MR. KARLINER: Samuel Karliner for the  
18 defendant, Woods.

19 THE COURT: Good morning, everyone.

20 All right. Have we resolved discovery issues?

21 Can we proceed now today?

22 MS. NICOLAZZI: Yes, your Honor.

23 Just for the record, I turned over  
24 additional items, none of which are relevant for the  
25 hearing today. Again, there are additional

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1 worksheets for DNA and additional lab reports with  
2 one exception. There is a photocopy from the  
3 Pennsylvania State Police that relates to Mr. Bostic.  
4 I am going to hand over the additional coversheet of  
5 everything turned over to date.

6 THE COURT: Mr. Wilford, do you have an  
7 application?

8 MR. WILFORD: Yes, Judge. I have an  
9 application.

10 Mr. Bostic is present and before the  
11 court with shackles on his hands, as his hands are  
12 held together in addition to handcuffs.

13 I would respectfully request that he be  
14 uncuffed at this time. If the court wants to keep  
15 his legs shackled, that's okay. But I want him to  
16 participate in taking notes for this hearing. And he  
17 can't do that with the condition that he is in. He  
18 is not in any way responsible for any security  
19 concerns.

20 Also he was injured on the last court  
21 date, and that's why he was delayed in coming. The  
22 other delay had nothing to do with Mr. Bostic.

23 I understand that the court has  
24 security concerns, and I appreciate that. But at the  
25 same time, the court has to balance with respect to

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1 each defendant, the manner in which they will be  
2 allowed to participate in the trial, and I think at  
3 this point with his condition as it is now during  
4 this proceeding, impairing and impinging on his right  
5 to participate effectively in his trial. So I ask  
6 that you at this time uncuff him.

7 THE COURT: Is it possible for us to do  
8 that so that he can have his hands free to look at  
9 his documents?

10 COURT OFFICER: One second.

11 (Whereupon, a discussion was held off  
12 the record.)

13 THE COURT: I am advised that they  
14 came up with this from corrections. So, Captain,  
15 let's make it happen.

16 COURT OFFICER: Yes, your Honor.

17 MS. EADDY: I join in that application.

18 THE COURT: What I do for one defendant  
19 I will do for the other. We just have to get the  
20 keys from Corrections to uncuff the defendants.

21 MR. WILFORD: There is another issue  
22 that does not relate to the hearing.

23 It's an issue that Ms. Eaddy raised on  
24 the last court date. She requested several courses  
25 of discovery which the prosecution indicated did not

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1 relate to this particular hearing, and I understand  
2 that.

3 However, your Honor, and as the court  
4 is well aware in my motion, in my omnibus motion, I  
5 included a portion of the motion relating to  
6 Kyles v. Whitley, and that citation is  
7 514 US 419.

8 The prosecution is responsible for  
9 turning over to the defense all of the materials that  
10 the police have gathered. So if the defense can make  
11 an independent investigation for preparation for  
12 trial, not for the hearing but for trial.

13 THE COURT: Preparation for the  
14 trial --

15 MR. WILFORD: As the court is aware,  
16 Ms. Nicolazzi indicated that there were boxes upon  
17 boxes of materials relating to the canvassing that  
18 the police did in this matter to effectively  
19 participate in the representation of at least Mr.  
20 Bostic.

21 We need to be able to have access to  
22 those materials to begin our own investigation.

23 THE COURT: Mr. Wilford, please. Let's  
24 not engage in this now. You know on the last  
25 appearance, this court went through a box of

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1 materials.

2 I can assure you once it's completed,  
3 and before we start on the road for trial, you will  
4 have those materials.

5 MR. WILFORD: Your Honor, most  
6 respectfully, my point is and if I may, we need to  
7 begin our investigation as soon as possible to run  
8 down every lead and information that is contained in  
9 there because we may have a different perspective  
10 than the prosecution.

11 And in Kyles v. Whitley, we are  
12 entitled to that sooner rather than later.

13 THE COURT: Judge Lott said you will  
14 have them as soon as the hearing is over.

15 MR. WILFORD: That's fine.

16 MS. EADDY: Also, while we're waiting,  
17 your Honor, on the June 10 court date, I had  
18 indicated that after reviewing the first set of DNA  
19 reports, there was an item with respect to the  
20 chicken bone that was found.

21 THE COURT: You did.

22 MS. EADDY: And at the foot of the  
23 operator of the vehicle had been looked through, and  
24 with the DNA reports, it indicated that the item was  
25 sent to the lab but, whereas, every other item in the

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1 report indicated what the test results were or  
2 whether or not they were going to be retested or sent  
3 back to --

4 THE COURT: On the last adjournment  
5 date, Ms. Nicolazzi did mention the chicken bone, and  
6 whether or not it was tested or not. Has it been?

7 MS. NICOLAZZI: Your Honor, after the  
8 court date, I went through the report as told by Ms.  
9 Eaddy, and before we went on the record this morning  
10 that we found that exact item, and if she wishes to  
11 call me, we can go through it together. When I have  
12 it in front of me, that's fine.

13 In addition to that, at this point, not  
14 only does she have that report, they have two  
15 additional reports which all contain that exact item  
16 in there.

17 MS. EADDY: We just got a stack of the  
18 DNA reports today.

19 My concern is that when it was on and  
20 we discussed this, Ms. Nicolazzi indicated that she  
21 had contacted the office and spoke to them about the  
22 item that I had said was missing, and that they were  
23 going to get back to her.

24 I accept what she says, and I told her  
25 that I would contact her because I don't see it on

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1 the report. I just want to make that record.

2 The other issue was this. With respect  
3 to my client's audiotaped statement which was erased,  
4 we had a November court date where the D.A.'s office  
5 turned over to me videotape statements of my client  
6 at that time and asked the D.A., Ms. Nicolazzi, where  
7 was my client's audiotape statement.

8 At that time, she told this court and  
9 told me, I will get it to you in the next week.

10 I then received a letter the next week  
11 indicating that the tape had been erased, and I  
12 believe you were c.c.'d, Judge, on that letter.

13 On the last court date, I have received  
14 a packet of materials from the D.A.'s office which  
15 indicates that they knew in July that the tape was  
16 erased.

17 Not only did they know that it was sent  
18 to the FBI lab for them to try to retrieve that  
19 information, I just want to put that on the record.

20 THE COURT: Does that require a  
21 response?

22 MS. NICOLAZZI: I don't think so,  
23 Judge.

24 MS. EADDY: Also, I have one other  
25 application.



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1                   My client from the very first  
2 arraignment indicated that he has been injured.  
3 Since he has been in custody at several facilities,  
4 he has been trying to get an MRI for his shoulder,  
5 his right foot, his pinky, and his left knee.

6                   They will not give him an MRI unless  
7 the court orders it. This is what we have been told  
8 repeatedly.

9                   THE COURT: This is what you do. You  
10 prepare an order. We can serve it on Corrections  
11 later and we can litigate it.

12                   MS. EADDY: Okay.

13                   THE COURT: Mr. Karliner, is there  
14 anything you want to say?

15                   MR. KARLINER: I will try to be brief.

16                   THE COURT: I have been waiting on  
17 corrections for all of this time so take your time.

18                   MR. KARLINER: Judge, the last time we  
19 were here, my client expressed a concern regarding  
20 his safety and for his lack of medical attention.

21                   It was ordered that he receive medical  
22 attention for receiving the medication Dilantin and  
23 as of the date he went back, he started to receive  
24 the Dilantin.

25                   So that was successful.

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1                   However, on the 27th of June, that  
2                   Friday when we were in court, my investigator went  
3                   out, and I had an opportunity with Corrections and  
4                   Internal Affairs came down and spoke with him.

5                   And after that, correction officers  
6                   took him into a room and had beat him. He was cut on  
7                   his legs, his shoulders and his back as he was  
8                   bloodied from that. He didn't receive medical  
9                   attention when he was cut, and family members went  
10                  out there and I made phone calls.

11                  I believe others went out there and saw  
12                  his injuries. He was told when he comes back today,  
13                  he will be beaten again, and this is the same housing  
14                  area where he had an incident -- similar incident in  
15                  October of '07.

16                  I know your Honor has very little  
17                  control over what Corrections does. But it's my  
18                  request and my client's request that he be removed  
19                  out of Rikers Island and that be moved to someplace  
20                  like Westchester where he could be safer.

21                  THE COURT: I wish I could do that.  
22                  The best I can tell you is that you contact --

23                  MR. KARLINER: I have and I will again.  
24                  But they have not been receptive. He knows last time  
25                  that medication was medically prescribed within the

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1 Department of Corrections for his back and knee. He  
2 is in a lot of pain getting around and it aggravates  
3 his condition.

4 THE COURT: He does not have his  
5 glasses?

6 MR. KARLINER: They took his glasses  
7 but he has trouble reading. It may be a moot point.  
8 They give it to him only when he goes to court and  
9 when he is cuffed, it's impossible to look at his  
10 legal work.

11 Also, additionally, they took all of  
12 his clothing. His family have receipts for all of  
13 his clothing. But when he was in Corrections that's  
14 all he has been given, his socks, his underwear. So,  
15 it just seems to be a very poor situation at Rikers  
16 Island.

17 THE COURT: Maybe it has changed. See  
18 if you can work it out. What you're asking me to do,  
19 I can't do.

20 MR. KARLINER: I will contact them  
21 again.

22 THE COURT: But they gave him his  
23 medication at least?

24 MR. KARLINER: Not for his injuries but  
25 the Dilantin, yes.

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1 THE COURT: He has been beaten twice?

2 MR. KARLINER: Yes.

3 THE COURT: He was beaten another time?

4 I will find out if Corrections can conduct an  
5 investigation. Okay?

6 MR. KARLINER: Fine, Judge.

7 THE COURT: Okay. Are we ready to  
8 proceed now?

9 MS. EADDY: Yes.

10 MR. WILFORD: Yes.

11 THE COURT: People, call your next  
12 witness.

13 MS. NICOLAZZI: People call Corporal  
14 Lynn Courtright.

15 (Whereupon, the witness enters the  
16 courtroom and takes the stand.)

17 THE CLERK: Remain standing. Raise  
18 your right hand.

19 Do you solemnly swear that the  
20 testimony that you shall give will be the truth, the  
21 whole truth, and nothing but the truth so help you  
22 God?

23 THE WITNESS: I do.

24 C O R P O R A L L Y N N C O U R T R I G H T , called  
25 as a witness by the People, having been first duly sworn

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1 by the Clerk of the Court, took the witness stand and  
2 testified as follows:

3 THE CLERK: In a loud, clear voice  
4 please state your full name for the record.

5 THE WITNESS: My name Corporal Lynn  
6 Courtright, Pennsylvania State Police. My last name  
7 is spelled, C-O-U-R-T-R-I-G-H-T. My shield number is  
8 Badge No. 5030.

9 THE COURT: Can both sides hear the  
10 witness?

11 MS. EADDY: Yes.

12 MR. KARLINER: Yes.

13 THE COURT: Speak up loudly as if you  
14 are speaking to the clock in the back of the  
15 courtroom.

16 Ms. Nicolazzi, you may proceed.

17 DIRECT EXAMINATION

18 BY MS. NICOLAZZI:

19 Q. Good morning, Corporal.

20 A. Good morning.

21 Q. How long have you been employed by the  
22 Pennsylvania State Police?

23 A. A little over 23 years.

24 Q. What is your current rank within the  
25 Pennsylvania State Police?

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1 A. I am a corporal.

2 Q. How long have you held that rank?

3 A. Since 1993.

4 Q. What is your present assignment as a corporal?

5 A. I am a criminal investigation unit supervisor at  
6 Swiftwater Barracks.

7 Q. Is that in Swiftwater, Pennsylvania?

8 A. Yes.

9 Q. How long have you been assigned to Swiftwater?

10 A. Since 1985.

11 Q. I am going to direct your attention back to the  
12 date --

13 A. Excuse me. It's 1995. I'm sorry.

14 Q. I am going to direct your attention back to the  
15 date of July 11, 2007.

16 Did you work on that date?

17 A. Yes, I did.

18 Q. Did you come in contact with an individual by  
19 the name of Dexter Bostic on that date?

20 A. I did.

21 Q. Where did you come into contact with him?

22 A. At the Barracks at Swiftwater.

23 Q. Do you see him in the courtroom today?

24 A. I do.

25 Q. Can you indicate where that person is by an item

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1 of clothing that they are wearing?

2 A. The gentlemen who is seated behind the man with  
3 the light colored suit with, I believe, the purple or  
4 lavender shirt with a striped tie.

5 MS. NICOLAZZI: Indicating the  
6 defendant Bostic.

7 THE COURT: The record will so reflect.  
8 (Whereupon, the defendant Bostic is  
9 identified in open court by the  
10 witness.)

11 Q. At the time that you came into contact with the  
12 defendant Bostic, was he in custody?

13 A. Yes.

14 Q. And were you aware that he had been apprehended  
15 earlier that same day?

16 A. Yes.

17 Q. When you first saw him, where was he?

18 A. He was being brought into the state police  
19 station by two troopers.

20 Q. At some point after that, did you speak with  
21 him?

22 A. Yes.

23 Q. Where did that conversation take place?

24 A. It occurred in the interview room at the state  
25 police barracks.

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1 Q. At the time that you spoke with him, was he  
2 handcuffed?

3 A. Yes.

4 Q. Was there anyone else present other than  
5 yourself and defendant Bostic?

6 A. Detective Michael Heinrichs.

7 Q. From the New York City Police Department?

8 A. Yes.

9 Q. At the time that you spoke with defendant  
10 Bostic, were you aware from anyone at the New York City  
11 Precinct, that an attorney was contacted on his behalf  
12 stating that he was representing defendant Bostic?

13 A. No, I was not.

14 Q. What did you do when you first began your  
15 conversation with defendant Bostic?

16 A. I read him the Pennsylvania State police rights  
17 and warnings form.

18 Q. When you said you read those, was that a  
19 preprinted card or sheet?

20 A. Yes.

21 Q. I ask that this item be passed up and deemed  
22 marked as People's 1 for identification for purposes of  
23 the hearing?

24 THE COURT: Show it to Mr. Wilford and  
25 the other lawyers.

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1 MR. WILFORD: If we can have a copy.  
2 To save time, I have no objection.

3 THE COURT: I understand that. Let him  
4 look at it.

5 Q. Do you recognize that?

6 A. Yes.

7 Q. What is that?

8 A. It is the Pennsylvania State Police rights  
9 warning and waiver form.

10 Q. Is that an exact duplicate of the rights that  
11 you gave to the defendant Bostic back on July 11?

12 A. Yes.

13 MS. NICOLAZZI: I offer that into  
14 evidence as People's 1?

15 THE COURT: Any objection?

16 MR. WILFORD: Without objection.

17 THE COURT: Marked and received or  
18 deemed marked and received as People's 1 in evidence.

19 (Whereupon, People's Exhibit No. 1  
20 deemed marked in evidence for purposes  
21 of the hearing.)

22 COURT OFFICER: So marked.

23 Q. If you can tell the court what it was that you  
24 informed defendant Bostic when you sat down?

25 THE COURT: Using the same manner and

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1 tone that you did at the time.

2 A. I filled out the top part of the form which is  
3 the date, time, and place. I informed him I read the form  
4 verbatim to him.

5 Q. If you can please tell the court using People's  
6 1, if necessary, read it in the same tone that you gave  
7 him, what it was that you told him as far as his rights?

8 A. "My name is Carol Lynn Courtright of the  
9 Pennsylvania State Police. You have an absolute right to  
10 remain silent and anything you say, can and will be used  
11 against you in a court of law.

12 You also have the right to talk to an attorney  
13 before and have an attorney present with you during  
14 questioning.

15 If you cannot afford to hire an attorney, one  
16 will be appointed to represent you without charge before  
17 questioning, if you so desire. If you so decide to answer  
18 questions, you may stop at any time you wish and you  
19 cannot be forced to continue."

20 And I asked him if he understood that.

21 Q. How did he respond?

22 A. He said that he understood that.

23 Q. And then what?

24 A. I also read him the waiver part of the form.

25 "I fully understand the statement

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1 warning me of my rights, and I am willing to answer  
2 questions. I do not want an attorney, and I  
3 understand that I may stop answering questions any  
4 time during the questioning. No promises have been  
5 made to me, nor have I been threatened in any  
6 manner."

7 Q. How did he respond to that?

8 A. He said that he didn't want to sign the form but  
9 that he would answer or talk to us.

10 Q. What time was that approximately?

11 A. 8:25 p.m.

12 Q. What, if anything, did he say to you after that?

13 A. He went on to tell us that he moved from Far  
14 Rockaway to Springfield approximately six months prior.

15 THE COURT: Do you have something you  
16 want to refer to, you can do so. Just let us know  
17 what it is.

18 THE WITNESS: I didn't bring my file.

19 THE COURT: Do you need your paperwork?

20 THE WITNESS: I should be all right.

21 A. He indicated that he knew Robert, and he used to  
22 call him Roger but now calls him Robert.

23 He said that they rented an apartment together,  
24 a three-bedroom apartment together. They were in the  
25 process for looking for a third tenant but didn't get it

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1 done. He indicated that or stated that he knew Robert  
2 about five years through the theater. Robert used to  
3 produce music shows, and he talked about being off of  
4 parole.

5 Q. What did he tell you about that?

6 A. That he had been off of parole for four years,  
7 and that they violated him in November of 2005, and he was  
8 -- it had something to do -- I am not sure. He did not  
9 expound what it had to do with.

10 He indicated that he was a sex offender and was  
11 on the sex offenders' list. He then talked about working  
12 for a car company.

13 Q. Did he tell you anything about -- going back for  
14 a moment, about parole or anything about a curfew?

15 A. I'm sorry, yes. He indicated that he had  
16 restriction time, restriction where he had to be in from  
17 10:00 at night to 7:00 in the morning.

18 Q. Then you said he went on to talk about work?

19 A. Yes. He worked for a car company where I  
20 believe they sold BMW's. He had a little trouble at work  
21 because he gave a key of a BMW to a guy that he knew. The  
22 guy was interested in getting the car, but the guy took  
23 the key and didn't come back later with the key and later  
24 stole the car. The guy had the car for two days, and  
25 someone came in to buy the car. He called the guy to

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1 bring the car back, and the guy crashed the car on the way  
2 in. He had to go to his boss and explain the situation to  
3 him. He offered to pay his boss \$30,000 for the BMW so  
4 that he wouldn't get his friend in trouble. He also  
5 indicated that he makes \$300 a week plus commission.

6 Q. Did he tell you whether or not he spent time  
7 with the person you referred to as Robert?

8 A. He indicated that he didn't. It was just a  
9 financial arrangement for the apartment. That he didn't  
10 hang out with him or didn't -- he was a loner. He liked  
11 to -- referred to himself as going solo. And that he used  
12 to stay at his apartment with his girlfriend a lot.

13 Q. Did you have any conversation with him then  
14 about him being in Pennsylvania at that time?

15 A. I asked him what brought him to Pennsylvania.

16 Q. What did he say?

17 A. He said that he was not supposed to end up in  
18 Pennsylvania. That he was supposed to go to North  
19 Carolina and that he has relatives there. He said that  
20 the driver of the car heard he and Robert talking, and the  
21 driver stopped the car and said, "Get the 'F' out of my  
22 car. Get the 'F' out of my car now."

23 And he dropped him off in Pennsylvania, and they  
24 had been walking since Monday, and he had peanut butter,  
25 crackers and water and went in the store one time to buy

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1 something and that he didn't do anything.

2 Q. What happened after that?

3 A. We talked about his children, his family. He  
4 told me about his children and he started -- he said,  
5 "four years," and then started crying. That he wanted to  
6 talk to his attorney Scott Berkshider.

7 Q. What happened after that?

8 A. The interview was concluded.

9 Q. What time was that approximately?

10 A. Ten of nine.

11 Q. You said that he started crying after saying  
12 "four years." He hadn't indicated that prior to four  
13 years --

14 A. I took it to mean that he was --

15 MR. WILFORD: Objection.

16 THE COURT: Sustained.

17 Q. I am asking you, had he said anything to you  
18 about four years prior to that?

19 A. He said he was off parole four years or he had  
20 done four years.

21 Q. While you were speaking to defendant Bostic, did  
22 you take any notes of your conversation -- notes of your  
23 conversation with him?

24 A. Yes, I did.

25 Q. What did you do with those after you finished

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1 interviewing him or some point thereafter?

2 A. I completed a supplemental report and notes were  
3 destroyed.

4 Q. When you say the notes were destroyed, is that  
5 common practice and procedure in the State of  
6 Pennsylvania?

7 A. Yes.

8 Q. Is there any requirement in the State of  
9 Pennsylvania that you retain your notes after you transfer  
10 whatever information is on a typewritten report?

11 A. No.

12 Q. As far as the typed written report that you  
13 prepared with respect to this, is that the two-page report  
14 basically that is entitled Dexter Bostic?

15 A. Yes.

16 MS. NICOLAZZI: I will ask to have this  
17 deemed marked as People's 2.

18 (Whereupon, People's Exhibit No. 2  
19 deemed marked for identification for  
20 purposes of the hearing.)

21 Q. Do you recognize that?

22 A. Yes, I do.

23 Q. Is that the report that you referred to that you  
24 made up based on the notes that you had taken with your  
25 conversation with defendant Bostic?

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1 A. Yes, it is.

2 Q. Was there any information contained on your  
3 notes that was not transferred on to that typewritten  
4 report?

5 A. No.

6 Q. Did you have any contact with the defendant  
7 Bostic after the conversation you just testified about?

8 A. No.

9 Q. During the time that you were with him, was he  
10 given the opportunity to be or use the restroom at his  
11 request?

12 A. Yes.

13 Q. Do you know whether or not he ate or drink  
14 anything?

15 A. Yes.

16 Q. What did he have?

17 A. Soda. I believe two and he had potato chips.

18 MS. NICOLAZZI: I have nothing further  
19 at this time.

20 THE COURT: Any cross-examination, Mr.  
21 Wilford?

22 MR. WILFORD: Yes, I do.

23 THE COURT: You may proceed, counselor.

24 MR. WILFORD: Thank you.

25 /



Cross - Corporal L. Courtright - Wilford

1 CROSS-EXAMINATION

2 BY MR. WILFORD:

3 Q. Good afternoon, Corporal.

4 A. Good afternoon.

5 Q. How are you today?

6 A. Fine.

7 Q. Now, you said that you took notes of your  
8 interview of Mr. Bostic; is that correct?

9 A. Yes.

10 Q. And how many pages of notes did you take?

11 A. Possibly two.

12 Q. And what time did this interview commence?

13 A. At twenty-five after eight in the evening.

14 Q. What time did it complete?

15 A. Ten of nine.

16 Q. So you're talking for 45 minutes or so?

17 A. Yes.

18 Q. And during that 45 minutes, was this a give and  
19 take, or was Mr. Bostic just going on in a narrative? Do  
20 you understand the question? I will rephrase.

21 Were you asking him questions?

22 A. Yes.

23 Q. What questions did you ask him?

24 A. I asked him background questions.

25 Q. During the course of this --

SO

Cross - Corporal L. Courtright - Wilford

1 A. Where do you live.

2 Q. Okay. And after that, is it your testimony,  
3 then, Mr. Bostic just continued to talk? You didn't  
4 interrupt him and ask him questions?

5 A. I asked him questions to try to pin him down as  
6 far as times and as far as -- he was a little confused as  
7 far as, you know, when he rented the apartment.

8 Q. So, it would be fair to say you were, in fact,  
9 engaged in questioning of Mr. Bostic when you were  
10 conducting this interview; is that correct?

11 A. Yes.

12 Q. And you asked him questions about times; is that  
13 correct?

14 A. Dates, yes.

15 Q. Dates? And you also asked him questions about  
16 the information that he is giving you; isn't that correct?

17 A. To try to clarify it. Yes.

18 Q. You asked him questions, right?

19 A. Yes.

20 Q. About information that you received?

21 A. Yes.

22 Q. Now you said you were in the room -- withdrawn.

23 I want to go back to this for a moment. You  
24 said that you destroyed your notes immediately upon  
25 completion of your typed report; is that correct?

SO

Cross - Corporal L. Courtright - Wilford

1 A. Yes.

2 Q. When was your typewritten report produced?

3 A. July 28, 2007.

4 Q. What time?

5 A. That, I don't recall.

6 Q. Is there a time on that report? Look at it.

7 It's in front of you.

8 A. There was no time that I typed the report.

9 THE COURT: Looking at the document,  
10 does it refresh your recollection as to the time?

11 THE WITNESS: No.

12 THE COURT: Next question.

13 BY MR. WILFORD: (Cont'g.)

14 Q. You said that was on the 27th of July?

15 A. The 28th.

16 Q. So that was 16, 17 days later?

17 A. Yes.

18 Q. During those 17 days, did you refer to your  
19 handwritten notes?

20 A. Can you clarify that question?

21 Q. At any point from the date that you took these  
22 handwritten notes until the date that you prepared the  
23 report, did you refer to the notes themselves, handwritten  
24 notes?

25 A. I don't believe so. No.

SO

Cross - Corporal L. Courtright - Wilford

1 Q. When you were preparing that report, did you  
2 refer to your handwritten notes?

3 A. Yes.

4 Q. And did you sit down with the notes and type and  
5 look from the handwritten notes and start to type and go  
6 back; is that what you did?

7 A. Yes.

8 Q. When you completed the typewritten report, did  
9 you compare the handwritten notes to your report?

10 A. Yes.

11 Q. How long did that comparison take?

12 A. I don't recall.

13 Q. Now, that report is two pages; is that correct?

14 A. Yes.

15 Q. Single spaced, typed; isn't that correct?

16 A. Yes.

17 Q. It's your testimony that those two pages of the  
18 handwritten notes translate into two pages of a  
19 typewritten report?

20 A. Yes.

21 Q. Single spaced?

22 A. Yes.

23 Q. Do you happen to know the font used in that  
24 report?

25 A. I do not.

Cross - Corporal L. Courtright - Wilford

1 Q. Now, you said in response to the questions by  
2 Ms. Nicolazzi that regulations in Pennsylvania do not  
3 require the police to maintain handwritten notes?

4 Do you remember giving that answer?

5 A. Yes.

6 Q. What regulation is that?

7 A. Just past practice.

8 Q. It's not written anywhere?

9 A. Not that I am aware of. No.

10 Q. Is it your testimony that every police officer  
11 in Pennsylvania who takes handwritten notes takes the  
12 notes down, and if they do a typed report, they destroy  
13 the notes and it's okay?

14 THE COURT: That's a little broad.

15 MR. WILFORD: Okay. I will narrow it  
16 down.

17 THE COURT: She may not know what every  
18 police officer does.

19 MR. WILFORD: I would think that would  
20 be difficult. I will narrow it down for you.

21 Q. You're saying it's your past practice to destroy  
22 your notes; is that correct?

23 A. Yes.

24 Q. Is that policy written anywhere in your  
25 barracks?

Cross - Corporal L. Courtright - Wilford

1 A. Not to my knowledge, no.

2 Q. Do you know for a fact whether or not everybody  
3 in your barracks has the same practice?

4 A. I am not aware of that.

5 Q. This is really what you do, correct?

6 A. Yes.

7 Q. You decided that you would destroy your notes;  
8 right?

9 A. Yes.

10 Q. Now, you said that when you first observed Mr.  
11 Bostic, he was being brought into the barracks by some  
12 other officers; is that correct?

13 A. Yes.

14 Q. Did you speak with those officers before you  
15 spoke with Mr. Bostic?

16 A. No.

17 Q. So, you didn't try to ascertain where Mr. Bostic  
18 was apprehended?

19 A. Not at that moment, no.

20 Q. Did you speak to the precinct? Did you speak to  
21 them afterwards?

22 A. Briefly.

23 Q. Did you speak to the detective? What was his  
24 name?

25 A. Heinrichs.

Cross - Corporal L. Courtright - Wilford

1 Q. Michael Heinrichs?

2 A. Yes.

3 Q. He was in the room with you, correct?

4 A. Yes.

5 Q. Did you speak with Detective Heinrichs prior to  
6 commencing your interview of Mr. Bostic?

7 A. No, I don't believe I did so.

8 Q. So you knew that he was a New York City  
9 detective?

10 A. Yes.

11 Q. How was it that you were in the room to  
12 interview Mr. Bostic, and you had no conversation with  
13 him? Explain that?

14 A. Detective Heinrichs was in and out of the  
15 interview throughout the course of the time that I was  
16 speaking to Mr. Bostic. And there were many detectives at  
17 Swiftwater that evening. So I didn't have a conversation  
18 with everyone, no.

19 Q. But you did have conversation with some of the  
20 detectives there from New York; is that correct?

21 A. Yes.

22 Q. Let's just be clear about this. Mr. Bostic was  
23 in the custody of the Pennsylvania State Police?

24 A. Correct.

25 Q. Was there a warrant that you were aware of for

Cross - Corporal L. Courtright - Wilford

1 Mr. Bostic's arrest at that point?

2 A. He was wanted on a parole violation.

3 Q. Were you aware of an actual warrant in existence  
4 for Mr. Bostic's arrest?

5 A. I was aware of him entered in NCIC for being  
6 wanted on -- actually warranted out of New York. I don't  
7 believe I have the entry in front of me but it was entered  
8 as being wanted as a fugitive.

9 THE COURT: But you didn't see a  
10 warrant?

11 THE WITNESS: I did not.

12 Q. No one showed you a warrant?

13 A. No.

14 Q. All you had was information from the computer?

15 A. Correct.

16 Q. Which detective did you speak with who gave you  
17 information concerning Mr. Bostic before you began your  
18 interview?

19 THE COURT: If any? Did you speak to  
20 someone?

21 THE WITNESS: I believe I may have  
22 spoke to someone regarding what he was warranted on  
23 and to get a copy to proceed with the charges.

24 Q. This is before you conducted an interview with  
25 Mr. Bostic?



Cross - Corporal L. Courtright - Wilford

1 A. I believe so, yes.

2 Q. You can't recall who that person was?

3 A. No, I can't.

4 Q. Was it Detective Margraf?

5 MS. NICOLAZZI: Objection.

6 MR. WILFORD: I am attempting to  
7 refresh her recollection.

8 A. I don't recall.

9 Q. Did you, ma'am, at commencement of reading Mr.  
10 Bostic his rights, was that per your decision or your  
11 superior's decision?

12 A. My decision.

13 Q. Did you have any conversations with Detective  
14 Heinrichs at that point when you began to read Mr. Bostic  
15 his rights?

16 A. He was in the interview room with me. I didn't  
17 ask him any questions. I didn't ask Detective Heinrichs  
18 any questions.

19 Q. Is it your testimony that Detective Heinrichs  
20 didn't say anything to you at all regarding Mr. Bostic?

21 A. I don't recall, no.

22 Q. He didn't say anything to you at all about Mr.  
23 Bostic having representation? That he is represented by  
24 counsel at that point? He didn't say one word?

25 A. Not to my knowledge, no.

Cross - Corporal L. Courtright - Wilford

1 Q. What date was this?

2 A. July 11, 2007.

3 Q. Now, there came a time, you said, when Mr.  
4 Bostic was giving you answers to questions that you were  
5 asking about his relationship with someone known as Robert  
6 or Roger? Do you remember that?

7 A. Yes.

8 Q. Was Detective Heinrichs in the room at that  
9 point?

10 A. That, I don't recall.

11 Q. Was Detective Heinrichs there at any point when  
12 you were asking questions of Mr. Bostic?

13 A. Yes.

14 Q. He never said to you, "You know what? He is  
15 represented by counsel." He never said that?

16 A. Not to my knowledge, no.

17 Q. Is it your testimony that it was not until Mr.  
18 Bostic said he wanted to speak to a lawyer that you  
19 concluded the interview; is that correct?

20 A. Yes.

21 Q. That was after about 45 minutes of questioning,  
22 right? Give or take?

23 A. It was 25.

24 THE COURT: You mean questioning and  
25 answers?

Cross - Corporal L. Courtright - Wilford

1 MR. WILFORD: Yes.

2 A. It was 25 minutes.

3 THE COURT: Questions and answers?

4 MS. EADDY: Not just questions.

5 THE COURT: Let's make sure the record  
6 is clear.

7 Q. You were asking questions, and you were given  
8 answers?

9 A. Correct.

10 Q. Mr. Bostic, when he was brought into the  
11 Swiftwater Barracks, he was, in fact, handcuffed?

12 A. Yes.

13 Q. When he was in the Swiftwater Barracks with you  
14 and Detective Heinrichs and other detectives coming in and  
15 out of the room, he was not free to leave, was he?

16 A. Correct.

17 MR. WILFORD: I have nothing further of  
18 this witness. Thank you, very much.

19 THE COURT: Anything further, Ms.  
20 Nicolazzi?

21 MS. NICOLAZZI: No redirect, thank you.

22 THE COURT: This does not relate to  
23 Mr. Woods, correct? Do you have any questions?

24 MR. KARLINER: No, Judge.

25 MS. EADDY: I have no questions.

## Proceedings

1 THE COURT: You can give People's 2  
2 back to Ms. Nicolazzi.

3 People, who is your next witness?

4 MR. HALE: Next, we have Corporal Norm  
5 Cramer, your Honor.

6 THE COURT: Have the witness enter the  
7 courtroom.

8 COURT OFFICER: Witness entering.

9 (Whereupon, the witness enters the  
10 courtroom and takes the stand.)

11 THE CLERK: Remain standing. Raise  
12 your right hand.

13 Do you solemnly swear or affirm that  
14 the testimony that you shall give will be the truth,  
15 the whole truth, and nothing but the truth so help  
16 you God?

17 THE WITNESS: I do.

18 C O R P O R A L N O R M C R A M E R, called as a  
19 witness on behalf of the People, having been first duly  
20 sworn, testified as follows:

21 THE CLERK: In a loud, clear voice,  
22 please state your full name for the record.

23 THE WITNESS: My name is Corporal Norm  
24 J. Cramer, Pennsylvania State police. My shield  
25 number is 7111.

SO

Direct - Corporal N. Cramer - Hale

1 THE COURT: Sir, project your voice as  
2 if you are speaking to the clock in the back of the  
3 courtroom. Don't volunteer anything. If you don't  
4 understand any questions, just let us know.

5 DIRECT EXAMINATION

6 BY MR. HALE:

7 Q. Sir, by whom are you employed?

8 A. Pennsylvania State Police.

9 Q. How long have you been with them?

10 A. Fifteen years.

11 Q. What rank do you currently hold with them?

12 A. Corporal.

13 Q. And where is it that you work?

14 A. Trooper in Swiftwater, Pennsylvania in Poconos,  
15 Pennsylvania.

16 Q. When you say, the Poconos, what area is that?

17 A. Strouds, I-80.

18 Q. How long have you been assigned to that  
19 particular barracks?

20 A. I have been assigned there 11 years.

21 Q. In what capacity?

22 A. Patrol supervisor.

23 Q. Sir, I take it then that you were employed at  
24 the Swiftwater Barracks in July of last year, 2007?

25 A. I was.

SO

Direct - Corporal N. Cramer - Hale

1 Q. I am going to draw your attention to a specific  
2 date the morning of July 12, 2007. Do you remember that  
3 particular date?

4 A. I do.

5 Q. Sir, were you engaged in any particular activity  
6 on that date?

7 A. Assisting the New York City Police Department in  
8 trying to apprehend two fugitives.

9 Q. Do you recall where it was that you were engaged  
10 in this activity?

11 A. We were on I-80, in a wooded area between  
12 Interstate 80.

13 Q. When you say, "we were," do you recall how many  
14 people were and who was engaged in that activity?

15 A. It was a large number of people. Between  
16 several local police departments and troopers in the  
17 Hazelton area and some surrounding troopers and R.M.P.

18 Q. Did there come a time when at or around 8:00  
19 a.m., where you observed a person had been, in fact, taken  
20 into custody?

21 A. I did.

22 Q. Sir, just tell the court what the circumstances  
23 were after that?

24 A. Earlier that morning, I was assigned to escort a  
25 team coming through the woods against another team to try

Direct - Corporal N. Cramer - Hale

1 to locate the suspect which we did at approximately 8:00  
2 in the morning in a wooded area where he was underneath a  
3 tree -- hiding underneath a tree.

4 Q. Who was the individual apprehended?

5 A. Mr. Ellis.

6 Q. I am going to ask you to look around the  
7 courtroom and do you observe that individual in the  
8 courtroom now?

9 A. I do.

10 Q. Describe an article of clothing of what that  
11 person is wearing at this time?

12 A. A blue shirt with a grey tie.

13 MR. HALE: Indicating defendant Ellis?

14 THE COURT: The record will so reflect.

15 (Whereupon, Defendant Ellis is  
16 identified in open court by the  
17 witness.)

18 Q. Now, were you the first person who came upon  
19 him, or did someone come upon him before your arrival?

20 A. A police dog located him first and a DEA agent  
21 arrived at the same time I did.

22 Q. At the time he was located, sir, did you have --  
23 what, if anything, was done with him at the time that he  
24 was located either by yourself or which you observed in  
25 your presence?

SO

Direct - Corporal N. Cramer - Hale

1           A.    He was taken into custody, handcuffed, and  
2 escorted out of the wooded area down on to the highway  
3 where a car was waiting for him to transport him back to  
4 the barracks at that time. He was searched at the scene,  
5 and they took several items off him and placed him in the  
6 car and transported him back to the Swiftwater State  
7 police barracks.

8           Q.    Did you do the actual search of Mr. Ellis at the  
9 scene, or was that other officers who did that?

10          A.    Other officers did that.

11          Q.    Was that other officers who did an inventory of  
12 Mr. Ellis at that time?

13          A.    Yes.

14          Q.    Sir, are you able to say whether or not some  
15 items were removed from his person at that time?

16          A.    Yes.

17          Q.    Are you able to say what items those were, sir?

18          A.    Some items, they were a cell phone, money,  
19 condoms. I am not sure of the other items. It's in the  
20 report.

21          Q.    But that was conducted by another officer?

22          A.    Yes.

23          Q.    Now, sir, the ones that had concluded this were  
24 done with Mr. Ellis?

25          A.    Yes, he was placed in the rear of the police car



Direct - Corporal N. Cramer - Hale

1 and took back to Swiftwater Barracks.

2 Q. At what point are you talking about?

3 A. Approximately, four miles.

4 Q. When Mr. Ellis or when you arrived with him back  
5 at the Swiftwater barracks, what, if anything, was done  
6 with him at that time?

7 A. I escorted him inside of the police barracks at  
8 which time I searched him again once he was inside of the  
9 police barracks.

10 Q. In addition to items, sir, that was removed from  
11 Mr. Ellis at the scene by I-80, did you come upon anything  
12 upon his person that you took into custody?

13 A. I removed a receipt from a Popeyes chicken out  
14 of the right, front pocket.

15 Q. What, if anything, did you do with that receipt?

16 A. I showed it to the New York City Police  
17 Department, and we entered it into evidence at our  
18 station.

19 Q. Do you recall who the New York City detective  
20 was at that time?

21 A. I do not.

22 Q. Was there anything else that you found upon  
23 searching Mr. Ellis at that time?

24 A. No, sir.

25 Q. After Mr. Ellis had been searched, was he placed

Direct - Corporal N. Cramer - Hale

1 in any particular location within the Swiftwater barracks  
2 at that time?

3 A. He was placed in to the interview room.

4 Q. Now, sir, after he was placed in the interview  
5 room, who placed him in the interview room?

6 A. I escorted along with Corporal Courtright.

7 Q. At that time was he still handcuffed?

8 A. Yes.

9 Q. When you left him in the interview room, was he  
10 still handcuffed?

11 A. We removed the handcuffs and photographed him to  
12 make sure that he was not hurt or have injuries on him.  
13 When I left, he was not handcuffed.

14 Q. When you left, was he left alone in the room or  
15 with someone else?

16 A. Left with someone else.

17 Q. Who was that?

18 A. Corporal Courtright was in there at the time and  
19 several New York City detectives.

20 Q. Did you have any further contact with Mr. Ellis  
21 thereafter?

22 A. I did not.

23 MR. HALE: Thank you. I have no  
24 further questions.

25 /

Cross - Corporal N. Cramer - Eaddy

1 CROSS-EXAMINATION

2 BY MS. EADDY:

3 Q. Good morning, corporal.

4 A. Good morning.

5 Q. You testified that you came to be involved in  
6 this case in connection with an investigation into the  
7 shooting; is that correct?

8 A. Yes.

9 Q. And in connection with that case, you took part  
10 in the apprehension of Mr. Ellis?

11 A. I did.

12 Q. You stated that a number of law enforcement  
13 entities also took part in that apprehension?

14 A. Correct.

15 Q. Were U.S. marshals involved?

16 A. Yes, they were.

17 Q. And, approximately, how many U.S. marshals would  
18 you say there were? How many were involved in the search,  
19 if you know?

20 A. I do not know.

21 Q. Can you give us an approximate number?

22 A. I don't know.

23 Q. Was it more than one?

24 A. Could be.

25 Q. And you are a trooper, a Pennsylvania state

Cross - Corporal N. Cramer - Eaddy

1 trooper?

2 A. I am.

3 Q. How many state troopers were involved in the  
4 apprehension approximately?

5 A. In the apprehension or the search?

6 Q. In the search?

7 A. I would say approximately 40.

8 Q. And, approximately, how many New York City  
9 police officers or detectives were involved in the search?

10 A. I do not know.

11 Q. Is it fair to say it was more than four?

12 A. Yes.

13 Q. Was it more than ten?

14 A. I do not know.

15 Q. In total, approximately, how many individuals  
16 would you say were involved in the search for Mr. Bostic  
17 and Mr. Ellis?

18 A. I would say roughly between 50 and 60.

19 Q. Now, were you there when my client, Mr. Ellis,  
20 was actually found?

21 A. Yes, I was.

22 Q. And was a videotape made of his apprehension?

23 A. No, ma'am.

24 Q. And, approximately, how many officers in total  
25 apprehended or were present at the apprehension of

Cross - Corporal N. Cramer - Eaddy

1 Mr. Ellis?

2 A. When he was taken into custody, ma'am?

3 Q. When he was first found under the tree.

4 A. Approximately, seven or eight.

5 Q. Were any New York City police officers or

6 detectives involved in that apprehension?

7 A. Some people from New York City were involved,  
8 yes.

9 Q. Was Detective Margraf involved?

10 A. I would not know, ma'am.

11 Q. And were any Pennsylvania State troopers besides  
12 yourself involved in the apprehension? I'm sorry. Strike  
13 that.

14 Were any Pennsylvania state troopers besides  
15 yourself present when he was found underneath the tree?

16 A. No, ma'am.

17 Q. Just you?

18 A. I was one of the first ones on the scene when  
19 the dog located him, ma'am.

20 Q. Is it fair to say U.S. marshals were also  
21 present when my client was found?

22 A. I believe either U.S. marshals or DEA agents.

23 Q. In addition to U.S. marshals, New York City  
24 Police Department and state troopers and DEA agents?

25 A. I am not sure. U.S. marshals or DEA's.

SO

## Cross - Corporal N. Cramer - Eaddy

1 Q. When you found my client, is it fair to say he  
2 was just laying underneath the tree?

3 A. Yes.

4 Q. When you first found him, he did not resist  
5 being arrested; is that correct?

6 A. He would not show us his hands. He was curled  
7 up trying to hide underneath the tree.

8 Q. Did he in any way try to attack any officer?

9 A. When he was being taken into custody, he was  
10 flailing his arms and legs. But I don't know if he was  
11 trying to hit anyone or not.

12 Q. It's your testimony that when he was doing this  
13 was when he was pulled from underneath this tree. He was  
14 flailing his hands?

15 A. We cuffed him under the tree and stood him up  
16 and walked him out of the woods.

17 Q. Are you saying he was flailing his hands and his  
18 arms. What do you mean by that?

19 A. They were trying to pull his hands out from  
20 under his arms or body, and trying to pull away and cuff  
21 him up and took him into custody.

22 Q. Was he face down, or was his back on the ground?

23 A. I don't recall, ma'am.

24 Q. When you first found my client, he was on the  
25 ground, and he was cuffed while he was on the ground,

## Cross - Corporal N. Cramer - Eaddy

1 correct?

2 A. No, ma'am.

3 Q. When was he cuffed?

4 A. Once we found him, found out where he was and  
5 took him into custody, we cuffed him on the ground.

6 Q. That was my question. When he was actually  
7 cuffed was while he was still on the ground?

8 A. We cuffed him when he was on the ground.

9 Correct.

10 Q. Was his face to the ground or was his back? How  
11 did you find him?

12 A. He was on his -- he was hiding in the tree,  
13 laying on his side or belly when the dog got there.

14 Q. When he was cuffed, was his face to the ground,  
15 or was his back on the ground? How was he cuffed?

16 A. His belly was on the ground and his back was  
17 towards the sky.

18 Q. There was no videotape of this apprehension at  
19 this time?

20 A. Correct.

21 Q. You mentioned that there were dogs called to the  
22 scene.

23 A. There was a dog at the scene.

24 Q. Was the dog that located my client?

25 A. The dog was the one who located your client,

Cross - Corporal N. Cramer - Eaddy

1 yes.

2 Q. Isn't it a fact that after my client was  
3 apprehended, there were officers that wanted to try to  
4 sick the dog on him to attack him?

5 A. No, ma'am.

6 Q. Isn't it a fact that when my client was still on  
7 the ground, that he was kicked and beaten?

8 A. No, ma'am.

9 Q. At any time, did you ever see any officer kick  
10 or strike my client?

11 A. No, ma'am.

12 Q. Now you testified that there came a time when  
13 pictures were taken of my client, correct?

14 A. Yes, ma'am.

15 Q. Who took those?

16 A. I believe Corporal Courtright.

17 MS. EADDY: I am going to ask that the  
18 witness be shown what should be deemed as Defendant's  
19 Exhibit A as previously been shown to the People.

20 THE COURT: Defendant's A.

21 MR. WILFORD: Can we make that  
22 Defendant Ellis A, please? That should be marked as  
23 Defendant Ellis A.

24 THE COURT: Sure.

25 (Whereupon, Defendant's Exhibit A



Cross - Corporal N. Cramer - Eaddy

1 (Ellis) is deemed marked for  
2 identification.)

3 BY MS. EADDY: (Cont'g.)

4 Q. Do you recognize what is depicted in that  
5 photograph?

6 A. The defendant.

7 Q. Is that an accurate depiction of what he looked  
8 like on the date that he was apprehended?

9 A. It is.

10 Q. I ask what is deemed marked as Defendant's A be  
11 moved into evidence as Defendant's A.

12 THE COURT: Any objection?

13 MR. WILFORD: No objection.

14 MR. KARLINER: No objection.

15 THE COURT: Is this a facial  
16 photograph?

17 MS. EADDY: It is, sir.

18 (Whereupon, Defendant's A-Ellis is marked in evidence.)

19 Q. Now you previously indicated that you looked at  
20 my client, and you made observations of him with respect  
21 to whether or not he had injuries; is that correct?

22 A. Correct.

23 Q. And you testified that your observation is that  
24 he did not have injuries; is that correct?

25 A. Correct.

Cross - Corporal N. Cramer - Eaddy

1 Q. Looking at Defendant's A now in evidence, when  
2 you look under the left eye of my client, isn't it fair to  
3 say that he is injured underneath that eye?

4 MR. HALE: Objection.

5 THE COURT: He is asking his opinion.

6 MR. HALE: About the photograph?

7 THE COURT: Yes, sir.

8 MR. HALE: I still object.

9 THE COURT: Overruled.

10 A. No, ma'am.

11 Q. Looking at my client's forehead, is it fair to  
12 say that there is also an injury to my client's forehead  
13 on that photograph?

14 A. No, ma'am.

15 Q. It's your testimony that -- strike that.

16 Did you look underneath the shirt of my client  
17 at any time that he was in your custody?

18 A. I do know that his shirt was picked up in the  
19 photograph.

20 Q. Did you see his bare chest area?

21 A. I was not that close to him when it was done.

22 Q. Was there a time when his chest was bare?

23 A. Yes, ma'am.

24 Q. When was that?

25 A. When they were photographed in the interview for

Cross - Corporal N. Cramer - Eaddy

1 injuries.

2 Q. There were photographs taken of my client's bare  
3 chest?

4 A. I believe.

5 Q. Do you know who took those?

6 A. Corporal Courtright, I believe.

7 Q. Did they also remove my client's pants at any  
8 time?

9 THE COURT: Were you present for any of  
10 this?

11 THE WITNESS: No, sir. I was present  
12 for the photographs in the interview room with the  
13 chest and his face and stuff but there was nothing  
14 else done.

15 THE COURT: That's speculation as to  
16 what he knows about pants being removed.

17 Let's move on.

18 MS. EADDY: It's for clarification.

19 BY MS. EADDY: (Cont'g.)

20 Q. You were present when his shirt was off; isn't  
21 that correct?

22 A. He lifted his shirt up.

23 Q. You saw his bare chest?

24 A. Yes, ma'am, but I was not that close to him.

25 Q. But you were present in the room when pictures

SO

Cross - Corporal N. Cramer - Eaddy

1 were taken of his bare chest; isn't that correct?

2 A. Yes, ma'am.

3 Q. It's your testimony that you believe Corporal  
4 Courtright took those photographs?

5 A. I believe so, ma'am.

6 Q. Now, did there come a time when you met the case  
7 detective on this case, Detective Margraf?

8 A. Yes, ma'am.

9 Q. Was Detective Margraf one of the detectives who  
10 went back to the barracks with my client and you?

11 A. He was present at the barracks when we got him  
12 back.

13 Q. How was my client transported to the barracks?

14 A. In an unmarked state police car.

15 Q. It's fair to say that two New York City police  
16 officers, not Detective Margraf, were in that car; is that  
17 correct?

18 A. Correct.

19 Q. And was anyone else in the car besides the two  
20 New York City police officers?

21 A. Myself and Sergeant Balliet.

22 Q. Do you know the names of the two New York City  
23 police officers who were in the car?

24 A. I do not.

25 Q. And it's fair to say those two officers were in

Cross - Corporal N. Cramer - Eaddy

1 the back seat with my client?

2 A. They were, yes.

3 Q. It's fair to say during the course of the  
4 transportation, that my client was threatened by one of  
5 those officers?

6 A. No, ma'am.

7 Q. Did any conversations take place between my  
8 client and the two New York City police officers during  
9 the transportation?

10 A. No, ma'am.

11 Q. It's your testimony that during the  
12 transportation from I-80 where my client was apprehended  
13 to the barracks, you heard no conversation between my  
14 client and those two New York City police officers?

15 A. I do not recall your client saying anything in  
16 the car.

17 Q. That's not my question.

18 Did the two New York City police officers say  
19 anything to my client during that transportation?

20 A. I don't recall.

21 Q. So they may have?

22 MR. HALE: Objection.

23 THE COURT: Do you have a recollection?

24 THE WITNESS: I do not.

25 BY MS. EADDY: (Cont'g.)

SO

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1 Q. Did you say anything to my client during the  
2 transportation from I-80 where he was apprehended to the  
3 barracks?

4 A. I did not.

5 Q. Did the other trooper -- by the way, what was  
6 the name of the other Trooper?

7 A. Sergeant Balliet, ma'am.

8 Q. Did you hear Sergeant Balliet say anything?

9 A. No, ma'am.

10 Q. Did you ever see either one of the two New York  
11 City police officers strike my client when he was in the  
12 car?

13 A. No, ma'am.

14 Q. Did my client when he was in the car being  
15 transported -- strike that.

16 Was my client handcuffed when he was in the car?

17 A. Yes.

18 Q. Was he between the two officers?

19 A. Yes, sir.

20 Q. Now when you got to the barracks, you said my  
21 client was searched by you?

22 A. Yes, sir.

23 Q. First he was searched at the scene?

24 A. Yes, sir.

25 Q. And when he was searched by you, you found a

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1 receipt from Popeyes chicken?

2 A. Yes.

3 Q. Do you know what date that receipt was for?

4 A. I do not, ma'am.

5 Q. Where was it found on my client's person?

6 A. In his right, front pocket.

7 Q. What did you do with that receipt?

8 A. I showed it to New York City detectives and then  
9 it was placed into our evidence.

10 Q. Which was placed into your evidence?

11 A. Correct, ma'am.

12 Q. Do you know what happened to it?

13 A. It was turned over to the New York City Police  
14 Department.

15 Q. Do you know who turned it over to the New York  
16 City Police Department?

17 A. Corporal Courtright.

18 Q. Now, what room was my client brought to when he  
19 entered the barracks?

20 A. I believe it was into a patrol room.

21 Q. Is that a room where people are interviewed?

22 A. That is a room where we keep our people who have  
23 been arrested, and then we have a separate interview room.

24 Q. Is it fair to say that's where they are  
25 processed?

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1 A. We have another processing room. It's a smaller  
2 room.

3 Q. Did there come a time when my client was taken  
4 into a room to be interviewed?

5 A. Yes, ma'am.

6 Q. Is that a different room?

7 A. Yes, ma'am.

8 Q. Is it fair to say that has a window on that  
9 where you can look through it?

10 A. Yes, ma'am.

11 Q. Is it fair to say that that room was covered  
12 during that time?

13 A. I do not know, ma'am.

14 Q. You testified that two New York City police  
15 officers were in the back of your car when my client was  
16 being transported?

17 A. Correct, ma'am.

18 Q. Is it fair to say one of those police officers  
19 was in the interview room alone?

20 A. I do not know.

21 Q. Did you see any one of those two police officers  
22 from New York City go into the interview room with my  
23 client?

24 A. I do not know. I did not.

25 Q. You testified that there came a time when



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1 several police officers went into the interview room with  
2 my client; is that correct?

3 A. Yes, ma'am.

4 MS. EADDY: I have no further  
5 questions.

6 THE COURT: Redirect?

7 MR. HALE: No.

8 THE COURT: Mr. Wilford or Mr Karliner,  
9 any questions?

10 MR. KARLINER: No.

11 MR. WILFORD: No, your Honor.

12 THE COURT: You may step down.  
13 People, call your next witness.

14 MS. NICOLAZZI: People call Peter  
15 Margraf.

16 THE CLERK: Witness entering.

17 \* \* \*

18 (Whereupon, Senior Court Reporter Nora  
19 Lee replaces Senior Court Reporter,  
20 Susan Oliva.)

21

22

23

24

25

Det. Margraf - People - Direct/Nicolazzi

1 THE COURT: All right, counsels, what we're  
2 going to do is this. In all likelihood we'll deal  
3 with this witness's direct, and then we'll take a  
4 break at about lunchtime.

5 MR. WILFORD: That's fine, your Honor.

6 MR. KARLINER: Thank you, Judge.

7 P E T E R M A R G R A F , Detective, a witness called on  
8 behalf of the People, after having been first duly  
9 sworn by the clerk of the court, took the witness  
10 stand and testified as follows:

11 COURT CLERK: Please state your name, rank  
12 and shield and command, please.

13 THE WITNESS: My name is Detective Peter  
14 Margraf. It's M-A-R-G-R-A-F. My shield number is  
15 4530. I'm assigned to the 71st Precinct Detectives  
16 Squad.

17 THE COURT: Okay. All right, please keep  
18 your voice up. Project it as if you're speaking to  
19 the wall in the back.

20 You may inquire, Miss Nicolazzi.

21 MS. NICOLAZZI: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. NICOLAZZI:

24 Q Good afternoon, Detective Margraf.

25 A. Good afternoon.

Det. Margraf - People - Direct/Nicolazzi

1 Q How long have you been a member of the New York  
2 City Police Department?

3 A A little over 22 years.

4 Q How long have you been assigned to the  
5 71st Precinct?

6 A A little over ten years.

7 Q How long have you held the rank of detective?

8 A I've been a detective for about 15 years.

9 Q I'm going to direct your attention back to the  
10 date of July 9th of 2007 for a moment.

11 Did you become involved in the investigation at  
12 that time into the shooting of both Police Officers  
13 Russel Timeshenko and Herman Yan that occurred on that day  
14 at about 2:30 in the morning, in Kings County, at Leffers  
15 and Rogers Avenue?

16 A Yes, I was.

17 Q What was your assignment with respect to that  
18 investigation?

19 A I was the lead detective in that case.

20 Q I'm going to jump ahead now three days, to  
21 July 12th of 2007. That morning, where were you?

22 A I was in Pennsylvania.

23 Q What was your purpose in being there?

24 A We were looking for Dexter Bostic and  
25 Robert Ellis.

Det. Margraf - People - Direct/Nicolazzi

1 Q Did you come into contact with Robert Ellis that  
2 morning?

3 A. Yes, I did.

4 Q Where was he when you first saw him?

5 A. He was in the Pennsylvania state police  
6 Swiftwater Barracks.

7 Q And specifically where?

8 A. In the interview room in that location.

9 Q Do you see him in the courtroom today?

10 A. Yes, I do.

11 Q If you can indicate where he is both by pointing  
12 and describing an article of clothing that he's wearing.

13 A. He's sitting there wearing a dark suit with a  
14 white shirt, what appears to be a gray tie.

15 MS. NICOLAZZI: For the record, indicating  
16 Defendant Ellis.

17 THE COURT: The record will so reflect.

18 Q When you first observed the defendant, was there  
19 anyone in the room with him?

20 A. No, he was in the room by himself.

21 Q Was he handcuffed?

22 A. No, he was not.

23 Q Do you recall if the room that he was in, if it  
24 had any windows in it?

25 A. I don't recall windows being in the room, but I

Det. Margraf - People - Direct/Nicolazzi  
1 recall the door may have had a window at the door, when  
2 you walk in the door.

3 Q And when you went into that room, was there  
4 anyone else with you?

5 A. Yes, there was.

6 Q Who was with you?

7 A. Detective Habert from Brooklyn South Homicide.

8 Q And what happened when you went into the room?

9 A. We saw Mr. Ellis in the room, and I introduced  
10 myself to Mr. Ellis.

11 Q And what, if anything, did he say to you, if you  
12 recall?

13 A. He wanted to talk to us.

14 Q When you say he wanted to talk to you, was that  
15 based on something he said or did?

16 A. I walked in. I told him I'm investigating an  
17 incident -- an incident that happened in Brooklyn a few  
18 days ago, and I said that's the purpose of why I'm here.  
19 He said, "Well, I want to talk to you."

20 Q After he said that to you, what did you do at  
21 that time?

22 A. I called the Brooklyn D.A.'s office.

23 Q And who did you speak to?

24 A. I spoke to ADA Nicolazzi.

25 Q At the time that you saw Defendant Ellis that

Det. Margraf - People - Direct/Nicolazzi  
1 morning, were you aware that an attorney had contacted the  
2 precinct stating that he and another lawyer were  
3 representing both Bostic and Ellis?

4 A. Yes, I was.

5 Q Do you know who received that phone call?

6 A. A sergeant LaBella.

7 Q And do you know whether that phone conversation  
8 was then memorialized with the follow-up letter that went  
9 to the precinct?

10 A. Yes, it was.

11 Q I'm going to -- did you see that letter sometime  
12 before that morning?

13 A. Yes, I did.

14 Q Okay. I'm going to ask you to take a look at two  
15 sheets, the first being a faxed cover sheet and the second  
16 being an actual letter, that I request be deemed People's  
17 Number 3 for identification.

18 MR. WILFORD: That's the one, both copies,  
19 one exhibit?

20 MS. NICOLAZZI: Yes, two pages collectively  
21 as People's 3, the first page being a fax cover sheet.

22 MR. WILFORD: Okay.

23 (Witness reviewing document.)

24 Q Is that the communication that you were aware of  
25 had been received by an attorney stating that he and

Det. Margraf - People - Direct/Nicolazzi  
1 another attorney represented both Bostic and Ellis?

2 A. Yes, it is.

3 MS. NICOLAZZI: At this time, your Honor,  
4 for purposes of the hearing, I'm going to offer that  
5 into evidence as People's Number 3.

6 THE COURT: Any objection?

7 MR. WILFORD: Without objection.

8 MS. EADDY: No objection.

9 MR. KARLINER: No objection.

10 THE COURT: Okay, deemed People's 3.

11 (Whereupon, the two-page document previously  
12 deemed marked People's Exhibit 3 for identification  
13 was deemed marked and received in evidence as People's  
14 Exhibit 3.)

15 Q I'm just going to ask you, Detective Margraf, if  
16 you can read the body of that letter. You don't need to  
17 read the fax cover sheet, just the body of the letter to  
18 the Court.

19 THE COURT: Slowly, slowly.

20 A. All right. Okay, I'll start at "Dear Sergeant  
21 LaBella," okay.

22 Q Sure.

23 A. Dear Sergeant LaBella, I am writing to follow up  
24 on our conversation earlier today. I am hereby officially  
25 notifying the NYPD that myself and Anthony L. Ricco, Esq.,

Det. Margraf - People - Direct/Nicolazzi

1 have been retained by the family of Mr. Bostic and  
2 Mr. Ellis to represent them in all aspects of the current  
3 investigation. As I instructed you earlier at  
4 5 o'clock P.M. and 5:15 P.M., you are hereby directed that  
5 if and when Mr. Bostic or Mr. Ellis is apprehended, not to  
6 question either of them without counsel present.

7 Further, as I stated to you earlier, although we  
8 have no knowledge of their whereabouts, we will arrange a  
9 voluntary surrender as soon as we have the capability to  
10 do so.

11 And then the next paragraph: The contact  
12 information I've provided to you earlier remains intact.  
13 To wit --

14 Q You don't have to read the actual phone number.  
15 You can just go on.

16 A. Okay. He gives his own information. He gives  
17 Mr. Ricco's information. And then it says, I will be  
18 available through tomorrow morning should the need arise,  
19 and Mr. Ricco will be available tomorrow morning as well.  
20 Please contact us immediately should you arrest Mr. Bostic  
21 or Mr. Ellis. And I reiterate, you are directed not to  
22 question either individual without counsel being present.  
23 Thank you very much for your cooperation in this urgent  
24 matter. Should you have any questions or require  
25 additional information, please do not hesitate to contact.



Det. Margraf - People - Direct/Nicolazzi  
1 me. Yours, etcetera, Edward D. Wilford.

2 Q And what is the date of that letter on the top  
3 left?

4 A. July 10, 2007.

5 Q And you've already said you were aware of that  
6 communication at the point in time you went in to  
7 Mr. Ellis; he said he wanted to speak to you?

8 A. Yes.

9 Q You said that after that, you had a phone  
10 conversation with the district attorney's office back in  
11 Brooklyn?

12 A. Yes.

13 Q After you had that conversation, did you at some  
14 point later go back in to speak with Mr. Ellis?

15 A. Yes, I did.

16 Q And did you bring anything with you when you went  
17 back to speak with him?

18 A. Yes, I did.

19 Q What did you bring?

20 A. Piece of paper that had specific questions on it  
21 which were given to me by the district attorney's office.

22 Q And when you went back into the room now to speak  
23 with Defendant Ellis, what time was that approximately  
24 that you had these questions?

25 A. That was at approximately 9:20 -- 9:20 P.M.

Det. Margraf - People - Direct/Nicolazzi

1 9:20 A.M.; I'm sorry.

2 Q And when you went in there, who was with you?

3 A. I was with Detective Habert from Brooklyn South.

4 Q Was it still in the same room, the interview  
5 room?

6 A. Yes, it was.

7 Q I'm going to ask you to take a look at this  
8 document that I request be deemed People's Number 4 for  
9 identification.

10 (Whereupon, a document was deemed marked for  
11 identification as People's Exhibit 4.)

12 Q Is that the original document that you just  
13 referred to that had the specific questions that you were  
14 given by members of district attorney's office?

15 A. Yes, they are.

16 Q And are those the same questions that you then  
17 gave to Defendant Ellis?

18 A. Yes, they are.

19 Q And are there also responses memorialized on  
20 there?

21 A. Yes, there are.

22 Q And does that fairly and accurately reflect, or,  
23 excuse me, withdrawn.

24 Is that in substantially the same condition it  
25 was in when you both asked Mr. Ellis specific questions,

Det. Margraf - People - Direct/Nicolazzi  
1 and then those responses were memorialized?

2 A. Yes, they are.

3 MS. NICOLAZZI: I'd offer that into evidence  
4 as People's 4.

5 THE COURT: Any objection?

6 MS. EADDY: No.

7 MR. WILFORD: Judge, may I just have a brief  
8 voir dire?

9 THE COURT: Certainly, sir.

10 MS. NICOLAZZI: Actually, your Honor, my  
11 only objection is, it only has to do with Defendant  
12 Ellis.

13 THE COURT: I understand. He wants  
14 questions.

15 MR. WILFORD: Good afternoon, Detective.

16 THE WITNESS: Good afternoon.

17 MR. WILFORD: Did you show both sides of  
18 that document to -- never mind, I'll withdraw that  
19 question.

20 THE COURT: Okay. I thought so. All right,  
21 if you will, People's 4 in evidence.

22 (Whereupon, the document previously marked  
23 People's Exhibit 4 for identification was marked and  
24 received in evidence as People's Exhibit 4 in  
25 evidence.)

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1 Q Detective Margraf, in approximately the same tone  
2 and speed as you asked Mr. Ellis those specific questions,  
3 can you please tell the Court what you asked him, and also  
4 indicating any responses that he may have given you.

5 THE COURT: Just a moment, please.

6 (Pause in proceedings.)

7 THE COURT: I'm sorry, Miss Nicolazzi, if  
8 you now will repeat the question.

9 MS. NICOLAZZI: Sure.

10 Q Detective Margraf, if you would please tell the  
11 Court in approximately the same tone and speed as you used  
12 back on that day the specific questions that you asked of  
13 Defendant Ellis, also indicating any responses he may have  
14 given you.

15 A. Okay. If you are represented by an attorney, we  
16 can't question you. Do you understand that?

17 Q And what did he say?

18 A. He -- he wrote down in his own handwriting "yes,"  
19 and he put his initials, R.E.

20 Q Now, besides actually writing the word "yes" and  
21 his initials, did he orally say anything when you read  
22 that to him?

23 A. Yes, he did.

24 Q What did he say?

25 A. He says he does understand that, and "yes."

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1 Q And then what?

2 A. Do you know lawyers by the name of Edward Wilford  
3 or Anthony Ricco?

4 Q What did he say?

5 A. At first, he wrote -- it looks like --

6 Q First, let me ask you what he said first.

7 A. He said no, he does not.

8 Q And then did he write anything?

9 A. Yes, he did.

10 Q What did he write?

11 A. At first, he looks like he may have wrote a  
12 "yes," and then he scribbled that out and he wrote "no,"  
13 and he put -- once again, he put his initials, "R.E."

14 Q And then what?

15 A. Do either of them represent you in this matter?  
16 Do you understand that? And he wrote "no," and put  
17 "R.E.," his initials.

18 Q Did he verbally respond to you when you asked him  
19 that?

20 A. Yes, he did. He said "no."

21 Q What did he say?

22 A. He said "no."

23 Q And after you asked him those questions, he gave  
24 you those answers, did you both sign that document?

25 A. Yes, yes. He -- he signed it and then I signed

Det. Margraf - People - Direct/Nicolazzi

1 it, yes.

2 Q And did anybody else?

3 A. Detective Habert did also.

4 Q After Defendant Ellis answered those three  
5 questions with responses you just gave the Court, what did  
6 you do next?

7 A. I then read him the Miranda warnings.

8 Q When you gave Defendant Ellis the Miranda  
9 warnings, did you do that from memory or from some sort of  
10 preprinted card or sheet?

11 A. It's a preprinted sheet.

12 Q I'm going to ask you to take a look at what I  
13 request be marked or deemed People's Number 5 for  
14 identification.

15 (Whereupon, a Miranda warnings form was  
16 deemed marked for identification as People's Exhibit  
17 5.)

18 Q Do you recognize what's been given to you,  
19 People's Number 5?

20 A. Yes, I do.

21 Q What is that?

22 A. That's the Miranda warnings.

23 Q Is that the original copy of the Miranda warnings  
24 that you used when you gave Defendant Ellis his rights?

25 A. Yes, it is.

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1 Q It also indicates any responses that were  
2 memorialized?

3 A. Yes, it does.

4 Q And is it substantially in the same condition it  
5 was in when you both gave them to him and the responses  
6 were memorialized on that day?

7 A. Yes, it is.

8 MS. NICOLAZZI: I'd offer that into evidence  
9 as People's Number 5.

10 THE COURT: Any objection?

11 MS. EADDY: No objection, your Honor.

12 THE COURT: People's 5.

13 (Whereupon, the document previously marked  
14 People's Exhibit 5 for identification was marked and  
15 received in evidence as People's Exhibit 5.)

16 Q Now, do you have that in front of you?

17 A. Yes, I do.

18 Q I'm going to ask again, in approximately the same  
19 speed and tone you used when you gave the defendant his  
20 Miranda rights, can you tell the Court specifically each  
21 right as you gave it to defendant, indicating any  
22 responses that he gave to you.

23 A. Okay. Number one, you have the right to remain  
24 silent and refuse to answer any questions. Do you  
25 understand that?

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1 Q What did he say?

2 A. He said "yes."

3 Q Next.

4 A. And he wrote "yes."

5 Number two, anything you do say may be used  
6 against you in a court of law. Do you understand that?  
7 And he said "yes" and he wrote "yes."

8 The third question, you have the right to consult  
9 an attorney before speaking to the police and to have an  
10 attorney present during any questioning now or in the  
11 future. Do you understand that? He said "yes" and he  
12 wrote "yes."

13 And number four, if you cannot afford an  
14 attorney, one will be provided for you without cost. Do  
15 you understand that? He said "yes" and he wrote "yes."

16 Number five, if you do not have an attorney  
17 available, you have the right to remain silent until  
18 you've had the opportunity to consult with one. Do you  
19 understand that? He said "yes" and he wrote "yes."

20 Now that I have advised of your rights, are you  
21 willing to answer questions? He said "yes" and he wrote  
22 "yes."

23 Q What time did Defendant Ellis receive his Miranda  
24 warnings by you that morning?

25 A. He signed it 9:30 A.M.



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1 Q And then after he acknowledged those rights, did  
2 he sign it?

3 A. He wrote his name where it says -- he wrote his  
4 name in his own handwriting. He wrote his age. He put  
5 the date and he put the time, 9:30 A.M.

6 Q Did anyone else sign after that?

7 A. Yes. I signed -- I signed it underneath with my  
8 name and my shield number, and Detective Habert also  
9 signed it with his name and shield.

10 Q So other than the signatures of yourself and  
11 Detective Habert, the rest of that writing on that Miranda  
12 warnings sheet is actually of Defendant Ellis?

13 A. Yes, it is.

14 Q At the time that you gave the defendant his  
15 Miranda rights, did he appear to you to be under the  
16 influence of either drugs or alcohol?

17 A. No, he did not.

18 Q Did he appear to understand you as you spoke to  
19 him?

20 A. Yes, he did.

21 Q Did he ask you any follow-up questions or request  
22 for clarification on anything you had said to him?

23 A. No, he did not.

24 Q At that time or any time in your presence, were  
25 any threats or promises made to him in return for speaking

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1 to you?

2 A. No, there were not.

3 Q And after that, did you speak with him about the  
4 events of July 9th of 2007?

5 A. Yes, I did.

6 Q At the time that you spoke with Defendant Ellis,  
7 did he appear to you to be injured in any way?

8 A. No, he did not.

9 Q Did he complain of any injuries to you?

10 A. No, he did not.

11 Q Okay. Now, if you could tell the Court what it  
12 was that he said to you after he agreed to speak with you.

13 A. Can I just pull my notes out for a second?

14 THE COURT: Sure.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: Just make sure everybody's got a  
17 copy of it.

18 THE WITNESS: Okay. They do.

19 THE COURT: These are DD5s you're referring  
20 to?

21 THE WITNESS: Yes. I'm not going to read  
22 from it. Just in case I --

23 THE COURT: No, I just want to make sure  
24 they have the copies.

25 THE WITNESS: Yes, they do.

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1 THE COURT: Which DD-5, sir?

2 THE WITNESS: It's the interview of  
3 Robert Ellis in Pennsylvania. It's two pages.

4 THE COURT: Okay, all right. You can refer  
5 to it any time you need to.

6 THE WITNESS: Okay.

7 A. I'm going to start off at the point when he  
8 starts to tell me about the events that happened on  
9 July -- I think he starts on July 8th, actually, the day  
10 before. The night before. That's where I'll start,  
11 Miss Nicolazzi?

12 Q Well, sure. First, did he tell you where he  
13 lived or who he lived with?

14 A. He stated that he lives at 148-09 182nd Street,  
15 with Dexter Bostic.

16 Q And what did he tell you that -- I believe you  
17 said referring -- starting with the events from the night  
18 before.

19 A. Okay. He told me he went into Dexter's room,  
20 took keys from Dexter's dresser, and then got a ride from  
21 a friend to the Five Towns Mitsubishi car dealer in  
22 Queens.

23 He goes -- when he gets to the lot, he takes  
24 plates off -- he takes plates off a vehicle, which is a  
25 silver car at this lot. He then takes the keys. He hits

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1 the remote control. The remote control activates an alarm  
2 on the car. He then gets into a BMW X5. He drives the  
3 car off the lot, goes around the corner, and puts -- puts  
4 a plate on the back of the vehicle.

5 He then goes and picks up Dexter at a house in  
6 Queens. After picking up Dexter, he says he next goes and  
7 picks up a male he knows as Lee, also known as Flip. He  
8 says they went to Far Rockaway to pick up Lee or  
9 Lee Woods.

10 Now, when they get there, he picks up Lee Woods  
11 at this time. Lee Woods starts to drive the vehicle at  
12 that time. He gets into the backseat, and Dexter's in the  
13 passenger, sitting next to him in the passenger's seat.

14 After leaving -- after picking up Lee, they go to  
15 a house in Queens. Lee goes into the house first. Comes  
16 back out. Tells Dexter -- you know, Dexter goes in  
17 the house with him. They both go in the house together.  
18 They come out short time later with food in their hands, a  
19 plate of food. They get back into the car.

20 At that point, they drive back to Dexter's house.  
21 They go into the house. They give -- they give Tamika a  
22 phone. There's a girl named Tamika in the house. Robert  
23 gives her a phone, tells her to charge the phone, and they  
24 leave that house.

25 When they leave that house, once again, they

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1 drive to Brooklyn now. They drive to a building in  
2 Brooklyn. Lee and Dexter get out of the car and go up  
3 into the building. At this time, Robert's in the  
4 backseat. And he says when he's in the backseat of the  
5 vehicle, he lifts the jacket that's on the floor. When he  
6 lifts the jacket, he sees two guns in the floor -- on the  
7 floor. He says he picks up both guns, looks at them, puts  
8 them back down on the ground. You know, puts them back  
9 down on the floor, and proceeds to make a couple of cell  
10 phone calls.

11 A short time later, both Dexter and Lee come back  
12 downstairs. He says while he's waiting for them up in the  
13 building, he does get out of the car. He says he gets  
14 into the front seat, sits there and makes some phone calls  
15 on his cell phone. And then he says Dexter and Lee come  
16 back downstairs.

17 When they come down, he says he gets back into  
18 the backseat. Lee's driving. Dexter's in the front seat.  
19 They drive back to -- now they go to -- by the club area  
20 in Brooklyn, on Empire Boulevard. Specifically, it was  
21 the Caribbean City Club. They go there to hang out there  
22 for a while, supposedly talking to girls, trying to get  
23 numbers. And that's when they get hungry. They decide to  
24 go to Popeye's Fried Chicken, which is down the block from  
25 the Empire -- from Caribbean City, on Empire Boulevard.

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1           At this time, they -- they tell Roger to drive.  
2 Now Roger's driving to Popeye's Chicken. They go in.  
3 Supposedly Robert goes in. Lee goes in. They get -- they  
4 stop at Popeye's Chicken first. Then they go -- Robert  
5 says he goes next door to get Ginger Ale from Dunkin'  
6 Donuts. They get back in the car. He's behind the  
7 driver's -- behind the steering wheel. They're eating.  
8 Then they decide to leave:

9           When they leave, they decide to go ride around,  
10 and at this point they're looking to make some money,  
11 looking to rob somebody. He said they're driving down --  
12 he says they're driving down Empire Boulevard. They make  
13 a right turn. When he makes the right turn, he's going in  
14 the [middle of the block. He says he sees a police car  
15 behind him. He says he makes another right turn.

16           When he makes a right turn, he says the police  
17 car's pretty much in the middle of the block, like  
18 approaching -- you know, getting pretty close to where he  
19 is. Then he hears the police over the loudspeaker say,  
20 "pull over," to tell the driver of the car to pull over,  
21 over the loudspeaker.

22           He says he makes another right turn, and he says  
23 he thought about running for a second. He thought about  
24 running, but then Dexter told him to pull over. So he  
25 pulls -- he pulls to the curb. He says when he pulls to

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1 the curb, he says he has his hand on the steering wheel.  
2 His window's down. He says he's looking in the mirror.  
3 He sees a police officer approaching from the driver's  
4 side. And then he says he hears shots coming -- first  
5 couple of shots coming from the right side of him, which  
6 is from the front passenger's area. He hears shots coming  
7 from that area first. Then he hears a volley of shots  
8 coming from right behind him. Sounds like it's coming  
9 from inside the car also.

10 He says at that point, he says, then he starts to  
11 hear what appears to be a third round of shots coming, and  
12 they appear to be coming from behind him, possibly from  
13 the police shooting at the car. And that's when he puts  
14 his head down and drives off. He says he drives up to  
15 Empire Boulevard. As he's driving, he says police cars  
16 are passing him, like coming down the opposite way. He  
17 says he's driving. As he's driving down Empire Boulevard,  
18 he says Dexter keeps telling him, "Go right, go right."

19 He says he gets to a certain block, and he says,  
20 I made a right turn against traffic, and he parks in the  
21 middle -- he just stops the car in the middle of the  
22 block, and then Dexter gets out. Dexter gets out first.  
23 Dexter says, "I'm out, I'm out."

24 Dexter gets out, he gets out, and Lee gets out.  
25 As they're getting out, they're grabbing things out of the

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1 vehicle as they're getting ready to run. They run down  
2 the block. They go into an alleyway. All three guys go  
3 down the alleyway. He says that he sees Lee go to the  
4 front of the car which is parked in the garage and put a  
5 bag in the front of these cars. They then leave -- they  
6 all leave the alleyway. Shortly after they leave the  
7 alleyway, when they come down the alleyway, he's got a red  
8 shirt -- a red sweatshirt in his hands. He drops the red  
9 sweatshirt into a garbage can at the end of the alley.

10 Then he says he goes across the street to a park.  
11 There's a park on the opposite side of Leffers Avenue  
12 outside -- across where the alley is. He's walking down  
13 the street. Dexter and Lee are on the other side of the  
14 street. They're walking together. He separates from  
15 them, and he says he ends up going back to Queens.

16 When he gets to Queens, he goes back to Dexter's  
17 house. He meets up with the girl named Tamika. He wakes  
18 her up, tells her, "We got to go, we got to go. Get your  
19 stuff; we got to go." He says he looks around for  
20 anything that might get him in trouble. He says such as  
21 weed or other things that might get him in trouble. They  
22 end up leaving the house. And when they were leaving --  
23 they leave the house. They end up going, but prior to  
24 leaving the house, he leaves -- they're leaving the house.

25 They go to a McDonald's. They go to a



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1 McDonald's. Him and Tamika go to a McDonald's in Queens.  
2 They took a bus there. When they get there, they go into  
3 the McDonald's. They start watching the news, and they  
4 see the news accounts of the police shooting in Brooklyn.  
5 And that's when Robert Ellis says to Tamika, he says, "I  
6 had something to do with that." Tamika got a little  
7 upset. And basically as they're leaving, they go meet up  
8 with -- they met up with Nicole.

9 First, they met up with Nicole and Lee Woods  
10 together in Queens. They met up with them first. And  
11 then eventually, they hook up with Dexter. Shortly after,  
12 they hook up with Dexter. When they all got together,  
13 Dexter and Lee start talking. And him, Tamika -- Tamika,  
14 Roger, and Dexter get out of the car. Lee and Nicole went  
15 their way. And supposedly Dexter called a friend of his  
16 named Eduardo, who came, picked him up not too far from  
17 Dexter's house.

18 Q Picked up who?

19 A. Picked up Roger and -- and Dexter, and drove them  
20 to the Port Jefferson ferry. From there, they went to  
21 Connecticut. And he -- he says while they were in the  
22 car, he heard Dexter telling Eduardo, "We have to get out  
23 of New York. We have to get out of New York." And then  
24 Eduardo asked him why, and he says he believed that Dexter  
25 said what he believes was, "It's about those cops."

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1           And during the ride, he heard news accounts of  
2 the shooting in the backseat, and he said he was drifting  
3 in and out of sleep during the ride. That's pretty much  
4 what he said.

5           Q     During that conversation, did he tell you  
6 anything about another shirt?

7           A.    Yes, he did.

8           Q     What did he say?

9           A.    He told me when they were leaving the house in  
10 Queens, that they -- as they were leaving, he told Tamika  
11 that he had to get rid of this white T-shirt, and he had  
12 just thrown it in the sewer at the block in front of his  
13 house.

14          Q     And how long was it that that conversation went  
15 on for approximately?

16          A.    It could have been approximately about  
17 20 minutes, 25 minutes.

18          Q     And did you take notes while Defendant Ellis was  
19 speaking?

20          A.    Yes, I did.

21          Q     How did that conversation go? Was it just Ellis  
22 speaking, or was it question and answer?

23          A.    It was -- he was -- he would tell us parts of  
24 what happened. Then he'd go from one point to a totally  
25 different point. Like he wasn't going -- the order that I

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1 made the statement in, that's -- that's pretty much "A" to  
2 "2." He went from like point A to point C, with leaving B  
3 out, like leaving parts out, so I had to redirect him to  
4 certain areas. So the written statement I took from him  
5 pretty much has -- has different areas of when he got to  
6 one point, when he got to another point, when he got to  
7 another point. Maybe not in chronological order, the  
8 order of events the way they transpired.

9 Q Just so it's clear, when you took your notes  
10 during that interview, you took those notes in the same  
11 order that he was speaking to you in?

12 A. Yes.

13 Q But then when you transferred those notes onto  
14 your DD-5, then you put them in what you referred to as  
15 chronological order?

16 A. Yes, I did.

17 Q After you spoke with Defendant Ellis, did you ask  
18 him if he would be willing to do anything?

19 A. Yes, I did.

20 Q What did you ask him?

21 A. I asked if he was willing to speak to the  
22 district attorney about what happened.

23 Q And did you explain to him how that interview  
24 would be conducted?

25 A. I told him that the district attorney would

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1 videotape his interview.

2 Q How did he respond to that?

3 A. He said that he was -- he said he wanted to speak  
4 to the D.A.

5 Q And what did you do after he told you he would be  
6 willing to speak with someone from the D.A.'s office?

7 A. Well, I called -- I know I called ADA Nicolazzi,  
8 advised her of these facts.

9 Q And were arrangements made to bring members of  
10 the district attorney's office out to where you were in  
11 Swiftwater, Pennsylvania?

12 A. Yes.

13 Q Were you asked to do anything, or should I said,  
14 did you do anything during that time period while you were  
15 waiting for members of the district attorney's office to  
16 come with respect to Defendant Ellis?

17 A. Yes, I did.

18 Q What did you do?

19 A. First, I called -- I called my office just to  
20 have someone in my office check out the sewers by -- by  
21 Dexter Bostic's house looking for this white T-shirt.

22 Q Well, specifically, did you do anything with  
23 respect to any additional statements at that time?

24 A. Yes, I did.

25 Q What did you do?

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1 A. I was able to get a tape recorder from the  
2 Pennsylvania state police.

3 Q And did you then take an additional statement,  
4 this one being recorded on audiotape?

5 A. Yes, I did.

6 Q What time did that statement take place?

7 A. Can I look at my notes for a second?

8 THE COURT: Please do.

9 (Witness reviewing document.)

10 A. It was approximately 10 o'clock in the morning.

11 Q At the time that you spoke with Defendant Ellis  
12 on audiotape, was anyone else present?

13 A. Yes.

14 Q Who?

15 A. Detective Habert.

16 Q And approximately how long did that conversation  
17 or that recorded conversation go on for?

18 A. Could have been 15, 20-minute conversation.

19 Q When you initially turned the tape recorder on  
20 and started that conversation, what did you start with?

21 A. I went over the same -- the same questions  
22 pertaining to the law firm, and then Miranda.

23 Q So you asked him the same questions that you've  
24 already given the Court, first about the attorney and then  
25 about the Miranda?

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1 A. Yes, I did.

2 Q Were the defendant's responses the same to the  
3 ones he had given you earlier, or different?

4 A. They were the same.

5 Q And after he agreed to speak with you, did he  
6 then talk with you about the events of July 9th?

7 A. Yes, he did.

8 Q And what he told you at that point now on the  
9 recorded audiotape statement, was that substantially the  
10 same in substance of the oral statement that you've just  
11 related to the Court?

12 A. Yes, it was.

13 Q I'm going to ask you to take a look at a tape  
14 that's in a plastic envelope that I request be deemed  
15 People's Number 6 for identification.

16 MS. NICOLAZZI: Just for the record, your  
17 Honor, the tape itself with the clear plastic envelope  
18 will collectively be deemed 6. There's a report in  
19 there from the FBI that I request be marked People's  
20 Number 7.

21 THE COURT: All right.

22 (Whereupon, an audiotape was deemed marked  
23 for identification as People's Exhibit 6.)

24 (Whereupon, an FBI report contained with the  
25 audiotape was deemed marked for identification as

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1 People's Exhibit 7.)

2 Q Do you recognize that tape, Detective Margraf?

3 A. Yes, I do.

4 Q Is that the audiotape that you recorded the  
5 statement of Robert Ellis back in Swiftwater,  
6 Pennsylvania, in July of 2007?

7 A. Yes, it is.

8 MS. NICOLAZZI: I'm going to ask that  
9 People's 6 be moved into evidence.

10 THE COURT: All right, any objection?

11 MS. EADDY: No objection, your Honor.

12 THE COURT: All right.

13 (Whereupon, the item previously deemed  
14 marked People's Exhibit 6 for identification was  
15 marked and received in evidence as People's Exhibit  
16 6.)

17 Q I'm just going to jump ahead for a couple of  
18 moments, Detective Margraf.

19 Going ahead now to July 20th of 2007, did you  
20 take that audiocassette to the district attorney's office  
21 to be recorded on that day?

22 A. Yes, I did.

23 Q And were you informed after you had given that  
24 over to the D.A.'s office that something had happened to  
25 that audiocassette?

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1 A. Yes, I was.

2 Q What were you told?

3 A. I was told that it was inadvertently taped over  
4 by someone who was attempting to transcribe the tape --  
5 attempted to copy the tape.

6 Q What, if anything, did you do -- what efforts did  
7 you make with that actual cassette tape to then see if the  
8 contents could be retrieved of what had been recorded  
9 over?

10 A. I made a phone call to an FBI agent inquiring  
11 about his -- about how the FBI attempt to retrieve the  
12 statement that was on this audiotape.

13 Q And was that audiotape, People's 7, then sent  
14 down to Quantico to see if they could retrieve the  
15 contents of the original recording?

16 A. Yes, it was.

17 Q And were -- was the FBI able to do so?

18 A. They were unable to retrieve the data.

19 Q And did they send the original tape back to you  
20 with a report?

21 A. Yes, they did.

22 Q And is that the report that's been handed to you,  
23 People's 7?

24 A. Yes, it is.

25 MS. NICOLAZZI: For purposes of the hearing,



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1 I'm offering that into evidence, People's 7.

2 THE COURT: Of the report?

3 MS. NICOLAZZI: Of the report.

4 THE COURT: Okay. So the tape's --

5 MS. NICOLAZZI: The tape is 6.

6 THE COURT: Okay.

7 MS. NICOLAZZI: Report is 7.

8 THE COURT: All right. Any objection,

9 Miss Eaddy?

10 MS. EADDY: Just a brief voir dire, your

11 Honor?

12 THE COURT: Yes, ma'am.

13 MS. EADDY: Is that the original report  
14 that was sent back to you from the FBI?

15 THE WITNESS: Yes.

16 MS. EADDY: And have you looked it over --  
17 I'm sorry, where was that report? Was that with you  
18 prior to today?

19 THE WITNESS: It was in the -- it was in the  
20 envelope.

21 MS. EADDY: Was that envelope with you prior  
22 to today?

23 THE WITNESS: Not prior to today. It's been  
24 with the D.A.'s office for a short period of time.

25 MS. EADDY: Can I just see the FBI letter;

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1 I'm sorry.

2 (Pause in proceedings.)

3 MS. EADDY: So this was a fax copy that was  
4 faxed over to you or to the D.A.'s office?

5 THE WITNESS: Can I look one second?

6 (Witness reviewing document.)

7 THE WITNESS: This letter looks like  
8 something that was faxed back to the FBI -- the FBI  
9 agent I was dealing with. He was dealing with  
10 Quantico. I wasn't dealing with Quantico, the FBI  
11 agent was.

12 MS. EADDY: Okay. How did you come into  
13 possession of that?

14 THE WITNESS: Special Agent DeMartino handed  
15 me the envelope, the letter with the envelope, and he  
16 also handed me a property receipt.

17 MS. EADDY: Okay. And you put that into  
18 that envelope?

19 THE WITNESS: Yes, I put this into this  
20 envelope, yes.

21 MS. EADDY: Okay. No objection, your Honor.

22 THE COURT: Okay, People's 7.

23 (Whereupon, the item previously marked  
24 People's Exhibit 7 for identification was marked and  
25 received in evidence as People's Exhibit 7.)

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1 Q Going back now to the date of July 12th of 2007,  
2 at approximately 1 P.M., were you present in the  
3 Swiftwater barracks with Defendant Ellis when he was  
4 interviewed on the videotape by an assistant district  
5 attorney?

6 A. Yes, I was.

7 Q And who was it that interviewed Defendant Ellis  
8 at that time?

9 A. ADA Mark Hale.

10 Q And where was that interview conducted at?

11 A. In the Swiftwater police barracks in the same  
12 interview room.

13 MS. NICOLAZZI: Your Honor, with respect to  
14 time, I'll finish up with the questions I have, then  
15 we can play the video right after lunch?

16 THE COURT: That's fine.

17 Q So I'll come back to the video after lunch,  
18 Detective Margraf.

19 Moving ahead now, I'm going to direct your  
20 attention to the date of July, or moving backwards,  
21 actually, July 11th of 2007, were you present at central  
22 booking with a person by the name of Lee Woods on that  
23 date?

24 A. Yes, I was.

25 Q What was your purpose in being there with him

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1 then?

2 A. I was going to walk him through his initial  
3 arraignment.

4 Q And do you see him in the courtroom today?

5 A. Yes, I do.

6 Q Where is he?

7 A. Sitting at the defense table.

8 Q And what -- can you describe an item of clothing  
9 he's wearing?

10 A. He's wearing all black, black shirt.

11 MS. NICOLAZZI: For the record, indicating  
12 the defendant Woods.

13 THE COURT: The record will so reflect.

14 Q Did you yourself walk him into the courtroom for  
15 the arraignment?

16 A. Yes, I did.

17 Q Did he say anything to you while you did so?

18 A. Yes, he did.

19 Q What did he say?

20 A. He said, "Why you guys going to the media saying  
21 I'm snitching? That ain't right."

22 Q Was that in response to any questions by you or  
23 anyone else in your presence?

24 A. No, no questions asked at all.

25 Q Now, moving ahead to the date of July 15th of

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1 2007, were you present at Rikers Island on that day?

2 A. Yes, I was.

3 Q What was your purpose in being present at Rikers  
4 at that time?

5 A. I was there to -- the charges against all three  
6 defendants were upgraded to murder in the first degree  
7 after Officer Timeshenko was pronounced the day before.

8 Q So Police Officer Timeshenko had passed away on  
9 July 14th of 2007?

10 A. Yes, he did.

11 Q So you were at Rikers to upgrade the charges?

12 A. Yes, I was.

13 Q And did that include physically fingerprinting  
14 each defendant?

15 A. Yes, it did.

16 Q And about 12:30 that afternoon, who were you  
17 with?

18 A. I was with Dexter Bostic first.

19 Q And do you see him in the courtroom today?

20 A. Yes, I do.

21 Q And if you could indicate where he is, including  
22 an item of clothing that he's wearing.

23 A. He's the gentleman sitting -- he's got like a --  
24 looks like a lavender shirt on, with the glasses.

25 MS. NICOLAZZI: For the record, indicating

Det. Margraf - People - Direct/Nicolazzi  
1 Defendant Bostic.

2 THE COURT: The record will so reflect.

3 Q Did you say anything prior to printing him with  
4 respect to Defendant Bostic, to him?

5 A. Yes, I did.

6 Q What did you tell him?

7 A. I -- if I could just refer to my notes, I could  
8 tell you exactly what I said to him.

9 MS. NICOLAZZI: Sure, with the Court's  
10 permission.

11 (Witness reviewing documents.)

12 A. Okay. I advised Dexter that the police officer  
13 he shot had died, and that I was reprinting him, and he's  
14 now being charged with murder in the first degree and will  
15 spend the rest of his life in prison.

16 At this time, Dexter looked at me and said, "I  
17 don't know what you're talking about. People lie to me.  
18 I wasn't even there." He then put his head down. I then  
19 asked him about DNA that was found on the chicken bone in  
20 the car. And he said to me, he says he doesn't eat  
21 chicken. And at that point, the interview was ended and  
22 that's -- that's it.

23 Q You didn't have any additional conversation with  
24 him?

25 A. No additional conversation. I just printed him.

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1 Q A little while later at about 1 o'clock that  
2 afternoon, who were you with at Rikers Island?

3 A. I was now with Lee Woods.

4 Q And what, if anything, did you say to him when he  
5 came into contact with him?

6 A. If I could refer to my notes, I'll tell you  
7 exactly what I said to him, what he said to me.

8 THE COURT: Please do.

9 (Witness reviewing documents.)

10 A. I had advised Lee Woods that the police officer  
11 had died, and that he was now being reprinted and charged  
12 with murder in the first degree. And Woods got very  
13 agitated and stated, "I ain't going to jail for something  
14 I didn't do. I didn't shoot no cops. I was only driving.  
15 Fat Boy was in the passenger's seat, and that faggot Roger  
16 was behind me. I didn't shoot no cops. I'll tell the  
17 D.A., the judge, whoever I need to tell. I'm not going to  
18 jail for life. I didn't pull no trigger. I ain't going  
19 to jail for something I didn't do."

20 Q And was that in response to anything -- did you  
21 ask him any questions, or was it just the couple of  
22 sentences that you just related to the Court?

23 A. Just the sentence I told you about, the officer  
24 had died.

25 MS. NICOLAZZI: Your Honor, the only thing

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1 we have left is the actual video statement. That's  
2 about 25 minutes long.

3 THE COURT: All right, ladies and gentlemen,  
4 we're going to break for lunch. Please -- I'm hoping  
5 to start at 2:30, sergeant. I'm sorry, Captain  
6 Magliano.

7 CAPTAIN MAGLIANO: Yes, your Honor.

8 THE COURT: Can we have people present at  
9 2:30?

10 CAPTAIN MAGLIANO: Yes, your Honor.

11 THE COURT: I'm going to ask you to clear  
12 the room, please.

13 And enjoy your lunch, sir. They pay for it.  
14 Enjoy it in peace.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: Don't discuss your testimony.

17 THE WITNESS: Okay.

18 (Whereupon, a luncheon recess was taken.)

19 \* \* \* \* \*

20 A F T E R N O O N S E S S I O N

21 \* \* \* \* \*

22 (Whereupon, Detective Margraf resumed the  
23 witness stand and continued to testify, as follows:)

24 COURT CLERK: We're back on the record on  
25 Indictment 6797 of 2007, Dexter Bostic, Robert Ellis,



1 Det. Margraf - People - Direct/Nicolazzi  
and Lee Woods.

2 THE COURT: I just remind you, sir, you're  
3 still under oath.

4 THE WITNESS: Thank you, your Honor.

5 THE COURT: Miss Nicolazzi, you know where  
6 you were?

7 MS. NICOLAZZI: Yes, your Honor.

8 THE COURT: Okay.

9 MS. NICOLAZZI: Thank you.

10 DIRECT EXAMINATION (Continued)

11 BY MS. NICOLAZZI:

12 Q Detective Margraf, before the lunch break, you  
13 were asked some questions about whether you were present  
14 for a videotape interview that was conducted of -- by  
15 Mark Hale with Defendant Ellis, and you said that you  
16 were?

17 A. Yes, I was.

18 MS. NICOLAZZI: Your Honor, at this time I'm  
19 going to ask that the DVD that's in my hand be marked  
20 as People's Number 8.

21 THE COURT: If you'll be so kind as to show  
22 it to counsel, please.

23 (Whereupon, the above-mentioned item was  
24 marked for identification as People's Exhibit 8.)

25 MS. NICOLAZZI: Can I play it, your Honor?

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1 THE COURT: Both sides, you've seen this?

2 MR. WILFORD: Yes, your Honor.

3 MS. EADDY: Yes.

4 MR. KARLINER: Yes.

5 THE COURT: Okay, fine. Can we dim the  
6 lights.

7 (Whereupon, a DVD was played in open court.)

8 Q Detective Margraf, the recording that was just  
9 shown on the screen, does that fairly and accurately  
10 reflect the entirety of the conversation that took place  
11 between Assistant District Attorney Mark Hale and  
12 Defendant Ellis?

13 A. Yes, it did.

14 MS. NICOLAZZI: I offer that into evidence  
15 as People's 8.

16 THE COURT: Any objection?

17 MS. EADDY: No objection, your Honor.

18 THE COURT: People's 8 in evidence.

19 (Whereupon, the item previously marked  
20 People's Exhibit 8 for identification was marked and  
21 received in evidence as People's Exhibit 8.)

22 MS. NICOLAZZI: I have nothing further.

23 THE COURT: Cross-examination.

24 MR. WILFORD: Yes. Just one moment, Judge.

25 (Pause in proceedings.)

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1 CROSS-EXAMINATION

2 BY MR. WILFORD:

3 Q Good afternoon, Detective Margraf.

4 A. Good afternoon.

5 Q How are you, sir?

6 A. Good, thank you; how are you?

7 Q Very good.

8 Now, you've been a detective, you said, for  
9 15 years, correct?

10 A. Yes, I have.

11 Q And during those 15 years, have you ever attended  
12 any training sessions with respect to interrogation  
13 techniques?

14 A. Yes, I did.

15 Q And where were those?

16 MS. NICOLAZZI: Objection.

17 THE COURT: What relevance, counsel?

18 MR. WILFORD: Well, it has relevance, your  
19 Honor, with respect to the statement that was elicited  
20 from my client.

21 THE COURT: You mean whether or not he knows  
22 how to interrogate somebody?

23 MR. WILFORD: No, Judge, that's not the  
24 issue at all. The issue is whether or not he knows  
25 them and utilizes them in this particular instance. I

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1 would like to have a little bit of leeway if I might,  
2 just a little bit.

3 THE COURT: But that relates to whether he  
4 knows how to interrogate somebody?

5 MR. WILFORD: It relates to whether he knows  
6 how to interrogate somebody, whether or not he  
7 utilizes -- if I may, you don't want me to do it, you  
8 want to shut me down, shut me down, Judge. I think I  
9 should be allowed to ask those questions.

10 THE COURT: Fine, I'll let you ask them.  
11 I'm sure he knows how to interrogate someone.

12 MR. WILFORD: Might I inquire?

13 THE COURT: Yes, sir, go ahead.

14 Q You remember the question I asked you, sir?

15 A. Yes, I do.

16 Q Could you please tell us the answer to that  
17 question.

18 A. Yes, sir, I was trained in interrogation  
19 techniques.

20 Q Did you ever go to Quantico to be trained in  
21 interrogation techniques?

22 A. No, I did not.

23 Q Did you get any training from the FBI in  
24 interrogation techniques?

25 A. No, I did not.

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1 Q Just local NYPD classes?

2 A. Yes, New York City Police Department.

3 Q And interrogation techniques, would you agree  
4 with me, Detective, vary in that you can be aggressive in  
5 your interrogation?

6 THE COURT: I'm going to ask you, when you  
7 ask the questions, don't turn your back. Keep your  
8 voice up.

9 MR. WILFORD: I'm sorry, Judge.

10 THE COURT: I could hear you, but just don't  
11 turn your back.

12 MR. WILFORD: Okay, sure.

13 Q Sometimes you're aggressive, right?

14 A. Yes.

15 Q And sometimes you go in with a plan, right?

16 A. Yes.

17 Q And sometimes your plan is to get someone to make  
18 a statement in response to a statement that you made;  
19 would that be fair to say?

20 A. I know -- I know what you're saying. I  
21 understand the question. Yes, I will say some, to see  
22 what reaction you get from a person.

23 Q And is it your testimony that on July 15th, I  
24 think it was, you went to Rikers Island, right?

25 A. Yes, I did.

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1 Q And you went there, you said, to process  
2 Mr. Bostic, correct?

3 A. Yes, I did.

4 Q Because, unfortunately, Officer Timeshenko had  
5 deceased, and the charges had been upgraded by the Kings  
6 County district attorney, correct?

7 A. Yes.

8 Q And you were in fact arresting him, Mr. Bostic,  
9 that is, changing the charges up to murder one, right?

10 A. Yes, I was.

11 Q And when you went there, Mr. Bostic had already  
12 been arraigned; isn't that correct?

13 A. He was arraigned.

14 Q On the first complaint?

15 A. Yes.

16 Q On the first charges. He had already been  
17 arraigned, right?

18 A. Yes.

19 Q And he already had a lawyer, right?

20 A. Yes.

21 Q And you knew that, right?

22 A. He was arraigned, yes.

23 Q You knew that he had a lawyer, right?

24 A. Yes.

25 Q In fact, you knew that he had a lawyer even

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1 before you went to Pennsylvania; isn't that a fact?

2 A. There was a notification to Spark about a lawyer,  
3 yes.

4 Q And you knew about that?

5 A. Yes, I did.

6 Q Yet, when you went to process Mr. Bostic, you  
7 made a statement to Mr. Bostic, and could you tell the  
8 Court once again what that statement was?

9 A. I advised him that the police officer he had shot  
10 had died, and that the murder -- the charges were being  
11 upgraded to murder in the first degree, and he will  
12 probably spend the rest of your life in prison. Yes, I  
13 did say that.

14 Q And was that one of those statements that you  
15 made in an effort to get a response --

16 MS. NICOLAZZI: Objection.

17 Q -- from Mr. Bostic?

18 THE COURT: No, he's asking the statement.

19 A. I wanted to let him know how serious it was.  
20 What happened was a very serious thing, and that he was  
21 being arrested for murder in the first degree, yes.

22 Q So in answering my question, I understand that  
23 you want him to know it was serious, but my question to  
24 you was, was this an instance where you made a specific  
25 statement to Mr. Bostic in an effort to get a response

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1 from him?

2 A. If he responded, that was okay. If he didn't  
3 respond, it was just as okay. Didn't matter to me either  
4 way he responded. I just want to let him know why I was  
5 there.

6 Q Well, you said to him not that I'm here to arrest  
7 you for murder in the first degree, right?

8 A. Yes.

9 Q That's not all you said to him, right?

10 A. No, I told you exactly what I said to him.

11 Q Right. You told him he was going to spend  
12 probably the rest of his life in jail, correct?

13 A. Yes.

14 Q And you weren't there to tell him that he was  
15 going to spend the rest of his life in jail; you were  
16 there to arrest him, right?

17 A. Yes.

18 Q So telling him that he probably was going to  
19 spend the rest of his life in jail was a purposeful  
20 statement on your part to get a response from Mr. Bostic;  
21 isn't that right?

22 MS. NICOLAZZI: Objection, asked and  
23 answered.

24 THE COURT: Overruled.

25 A. If he responded, that was great. If he didn't



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1 respond, it was just as good.

2 Q And --

3 THE COURT: You let him know why you were  
4 there; is that correct?

5 THE WITNESS: Yes, yes, exactly.

6 Q And when you were speaking to Mr. Bostic, that  
7 was on Rikers Island, right?

8 A. Yes, it was.

9 Q And he was already remanded with respect to his  
10 bail conditions from the first complaint; is that correct?

11 A. Yes.

12 Q And when you made these statements to Mr. Bostic,  
13 was anybody else present?

14 A. There were maybe some court officers --  
15 corrections officers were there, but it was the Rikers  
16 Island trailer. It's like a trailer inside of Rikers  
17 Island. They bring people -- in this case, they brought  
18 them to the trailer separately.

19 Q So you went to a central location, and Mr. Bostic  
20 was brought to you?

21 A. Yes, he was.

22 Q And he was brought to you by correction officers?

23 A. Yes.

24 Q And those correction officers were in the room,  
25 in a trailer with you when you made these statements to

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1 Mr. Bostic; is that correct?

2 A. Yes. They were there -- they were still in the  
3 trailer. It's not like it was one trailer with one cell.  
4 It looks like a general -- it's a long trailer. It's  
5 probably got eight -- eight holding cells in it, eight  
6 pens and a little administrative area.

7 Q Was it district central, as they call it on  
8 Rikers Island, or you don't remember?

9 A. I heard it known as a gang trailer.

10 Q A gang trailer?

11 A. Yes.

12 Q Was Mr. Bostic inside of a cell when you had this  
13 conversation with him?

14 A. Yes, he was.

15 Q Was he handcuffed inside of that cell?

16 A. I don't -- I don't recall. I know he was sitting  
17 on a bench.

18 Q Now, when you arrested Mr. Bostic -- that's what  
19 you were there to do, right?

20 A. Yes.

21 Q Did you advise him of his rights against  
22 self-incrimination at that time?

23 A. No, I did not.

24 Q Did you advise him of his right to counsel at  
25 that time?

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1 A. No, I did not.

2 Q Now, you testified earlier that you were in  
3 Pennsylvania on July 12th, I believe it was, and you were  
4 involved with Mr. Ellis; is that correct?

5 A. Yes.

6 Q On July 11th, were you in Pennsylvania?

7 A. Yes, I was.

8 Q Were you involved at all in providing the  
9 Pennsylvania state police with any information regarding  
10 Dexter Bostic?

11 A. I came up in time to actually take -- take  
12 Dexter Bostic to arraignment that night.

13 Q Had you -- withdrawn.

14 Do you know who were the police officers who were  
15 there on July 11th, from New York?

16 A. They were all detectives. Detective Normile was  
17 there. May have been a Detective Hopkins.

18 Q Normile is N-O-R-M-I-L-E?

19 A. Not Hopkins, I'm sorry. Not Hopkins. It was  
20 Detective Heinrichs, I'm sorry.

21 Q Do you know how to spell his name?

22 A. H-E-I-N-R-I-C-H-S.

23 Q And they were from your squad?

24 A. They were from Brooklyn South Homicide.

25 Q Brooklyn South Homicide.

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1 But they were also aware, if you know, of the  
2 fact that Mr. Bostic was represented by counsel at that  
3 time?

4 THE COURT: No, that's calling for hearsay,  
5 counsel, unless there's an exception you can fit that  
6 under. If it's not, then clearly --

7 Q Did you know whether or not the police department  
8 had informed the detectives that were going to  
9 Pennsylvania that Mr. Bostic had been -- was represented  
10 by counsel and had notified the police department not to  
11 question him?

12 A. I can't be -- I can't be sure. I know for myself  
13 because I was case detective, I was notified that he has a  
14 lawyer. And there were numerous detectives doing numerous  
15 jobs at that point. And these detectives go to  
16 Pennsylvania in a car. Whether they were notified that  
17 Bostic has an attorney, I can't answer for them.

18 As far as I knew, he was in custody in  
19 Pennsylvania. He had already requested that he was -- as  
20 far as I was concerned, he had -- there's a letter from a  
21 lawyer in the precinct.

22 Q Had you, sir, been informed that Mr. Bostic had  
23 been questioned at the time of his arrest? As the case  
24 agent, were you informed of that? You're the case agent,  
25 right?

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1 MS. NICOLAZZI: Objection.

2 THE COURT: Wait, wait. Are you talking  
3 about the witness who testified earlier? You're  
4 talking about the witness who testified here earlier?

5 MR. WILFORD: No, Judge, I'm asking him when  
6 he was informed.

7 THE COURT: By whom, sir?

8 MR. WILFORD: That's what I want to know.  
9 Judge, I wasn't there. I don't know who informed.

10 THE COURT: Sir, what I'm saying is this.  
11 You can ask these questions, but the source is clearly  
12 hearsay. I mean, are you going to identify somebody?

13 MR. WILFORD: Well, your Honor, first of  
14 all, hearsay is admissible at the hearing, number one.

15 THE COURT: May be, may be, may be, but --

16 MR. WILFORD: Number two, your Honor, with  
17 respect to your point, there's been testimony by a  
18 prior witness that there were New York City  
19 detectives --

20 THE COURT: Then fine. That's what I'm  
21 saying.

22 MR. WILFORD: -- questioning of Mr. Bostic.

23 THE COURT: Sir, I'm saying, you know she  
24 testified. Then ask him whether or not that occurred  
25 and he was present. That makes more sense.

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1 MR. WILFORD: Well, Judge, I'm not asking if  
2 he was present. He said he didn't get there until the  
3 evening. I'm asking him whether or not he was  
4 informed that Mr. Bostic was questioned.

5 THE COURT: Okay, fine. I tell you what, if  
6 you want to ask him whether Cartwright asked him  
7 that -- Courtright, you can do so, sir, but beyond  
8 that, come on, please.

9 MR. WILFORD: I'm not asking him about  
10 Courtright, Judge. I'm asking him whether or not he  
11 was informed --

12 THE COURT: Then you're not asking him  
13 anything at all.

14 MR. WILFORD: Whether or not he was informed  
15 by the detectives who were present --

16 THE COURT: It's rank hearsay.

17 MR. WILFORD: Whether or not --

18 THE COURT: It's rank hearsay.

19 MR. WILFORD: Hearsay's admissible at the  
20 hearing.

21 THE COURT: This court disagrees. Rank  
22 hearsay is not admissible at a hearing. I'll allow  
23 some hearsay.

24 MR. WILFORD: Well, Judge, this is -- this  
25 is clearly --

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1 THE COURT: Sir, I do not expect to have an  
2 exercise in dialectics about this.

3 MR. WILFORD: I'm not trying to have one.

4 THE COURT: I made a ruling. If you can't  
5 accept it --

6 MR. WILFORD: I can accept any ruling the  
7 Court makes.

8 THE COURT: -- then continue on.

9 MR. WILFORD: That's exactly what I intend  
10 to do, Judge.

11 Q I'll ask you, sir, did you have a conversation  
12 with Detective Heinrichs about the conversation, the  
13 interrogation that occurred with Mr. Bostic on July 11th?

14 A. I know Detective -- Detective Heinrichs, I don't  
15 think, mentioned much about the apprehension of  
16 Dexter Bostic. I know I spoke to Detective Normile.

17 Q And Detective Normile had a conversation with you  
18 about that; isn't that correct?

19 A. He may have filled me in back -- you know, a long  
20 time ago, back in July, probably informed me that he had  
21 spoken to him but he had requested a lawyer.

22 Q I'm sorry, I didn't hear the last part.

23 A. I know -- I know when I got to Pennsylvania, I  
24 was already advised that -- I saw Dexter Bostic being, you  
25 know, in a room where he was cuffed to a wall, and he

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1 wasn't talking because he had -- he had said he wanted to  
2 speak to his -- to a male named Scott, who was his lawyer.

3 Q Had you spoken with Detective Normile about the  
4 questioning of Mr. Bostic on July 11th?

5 A. I do not recall.

6 Q Now, when you were -- on July 12th, what if  
7 anything did you say to Dexter Bostic, you?

8 A. On July 12th?

9 MS. NICOLAZZI: Objection. What's the  
10 relevance to the hearing at all?

11 THE COURT: People are not offering any  
12 statements made as far as July -- come on.

13 MR. WILFORD: Your Honor --

14 THE COURT: Please.

15 MR. WILFORD: If I may, your Honor, I'd like  
16 to make an offer of proof, if I may.

17 THE COURT: Okay. If you will, Detective,  
18 step outside, please.

19 THE WITNESS: No problem. Leave my notes?

20 THE COURT: Yes, they'll be safe.

21 THE WITNESS: Thanks.

22 (Whereupon, Detective Margraf exited the  
23 courtroom.)

24 THE COURT: The offer of proof, sir.

25 MR. WILFORD: Yes, your Honor.



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1           The defendant's position that in the Court's  
2           assessing the voluntariness of the statement  
3           attributed to Mr. Bostic, the Court has to look at the  
4           entirety of the circumstances surrounding that  
5           statement.

6           Part of that becomes relevant with respect  
7           to the mindset of Mr. Bostic and the conversations in  
8           play that occurred between Mr. Bostic and  
9           Detective Margraf prior to the appearance of  
10          Detective Margraf on July 15th, when he made those  
11          statements to Mr. Bostic which elicited the response  
12          that has been testified to.

13          I think that that entire mindset is  
14          important and relevant for the Court to make a true  
15          assessment of what was going on at the time, and  
16          that's why I asked those questions. I think I have a  
17          good-faith basis for asking them, and that's why I  
18          did, Judge.

19          MS. NICOLAZZI: Your Honor, the People's  
20          position is that anything on the 11th surrounding  
21          those statements, that's what we're offering. There's  
22          no statements between the 11th and the 15th. The  
23          Court has all the information. Obviously if there's  
24          anything about the mindset of the defendant that  
25          Mr. Wilford wants to bring out through his client, he

1 Det. Margraf - People - Cross/Wilford  
2 can, or through the detectives based on their  
3 observations, that's fine, from the 11th.

4 What their conversation was afterwards about  
5 those statements in no way impacts the statements that  
6 were taken prior to that, and the statement on the  
7 15th speaks for itself and whatever the Court  
8 determines.

9 THE COURT: The Court agrees.

10 MR. WILFORD: If I may, your Honor, to  
11 complete the record, just to complete the record,  
12 Judge.

13 THE COURT: Okay, fine.

14 MR. WILFORD: Thank you.

15 I think the prosecution's attempting to  
16 compartmentalize an ongoing process here. And it was  
17 an ongoing process of interrogation and interaction  
18 between my client and this detective. And what  
19 occurred on the 12th between Detective Margraf and  
20 Mr. Bostic does indeed become relevant on the 15th,  
21 because he had some interaction on the 12th, and I'm  
22 attempting to provide the Court with the basis to  
23 interpret what occurred between Mr. Bostic and Mr. --  
24 and Detective Margraf on the 12th in relation to what  
25 occurred on the 15th. It didn't just come out of the  
blue that Detective Margraf decided to make some

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1 certain statements to Mr. Bostic on the 15th.  
2 There's -- there's an interaction that occurred  
3 before, I think, is relevant to the overall  
4 determination that the Court has to make in this  
5 instance.

6 THE COURT: Are you talking about -- are you  
7 talking about the statement that he made relevant to  
8 the upgrade of the arrest? Is that what you're  
9 talking about?

10 MR. WILFORD: Yes, subsequent to --  
11 subsequent to the interaction that he had on the 12th,  
12 and as part of the --

13 THE COURT: You're talking about the  
14 upgrade, the statement of the upgrade? When he  
15 decided to upgrade based on the death of Timeshenko?

16 MR. WILFORD: On the basis of the death of  
17 Officer Timeshenko.

18 THE COURT: Yes, sir.

19 MR. WILFORD: Yes.

20 THE COURT: Okay. All right, I'll allow it  
21 on that basis.

22 MR. WILFORD: Thank you.

23 (Whereupon, Detective Peter Margraf resumed  
24 the witness stand.)

25 THE COURT: All right.

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1 MR. WILFORD: May I inquire, your Honor?

2 THE COURT: Please proceed.

3 CROSS-EXAMINATION (Continued)

4 BY MR. WILFORD:

5 Q Did you have -- withdrawn.

6 Did you testify earlier that on the 12th, you had  
7 some interaction with Mr. Bostic because you took him to  
8 arraignment; is that correct?

9 A. Yes.

10 Q Did you have any conversation with Mr. Bostic at  
11 that time?

12 A. I don't think I had a conversation except to say  
13 who I was and what I was investigating, that's it. I'm  
14 Detective Margraf from the 71st Squad. I'm here in  
15 regards to an incident that happened in Brooklyn. That's  
16 pretty much it.

17 At the point I got there, he already requested an  
18 attorney, and he was being arraigned by the Pennsylvania  
19 state police, so I just went with them to lodge him.

20 Q And did you accompany Mr. Bostic back to New  
21 York?

22 A. Yes, I did.

23 Q And who was in the vehicle with you?

24 A. It was me, Mr. Bostic, and two parole officers.

25 Q And how long a trip was it back to New York?

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1 A. Probably an hour and a half.

2 Q And during that trip, did you say anything at all  
3 to Mr. Bostic?

4 A. I remember conversation I had with the parole  
5 officers. I don't remember conversation with  
6 Dexter Bostic. We were listening to the radio. That's  
7 what we had, radio in the car. We were just coming back  
8 from Pennsylvania.

9 Q . And there was no conversation between you and the  
10 parole officers concerning the, as you phrased it, "the  
11 incident in Brooklyn"?

12 A. I've known the parole officer a long time, so we  
13 had general conversations with other cases. We worked  
14 cases, me and the parole officer. So the conversation we  
15 had may have been -- any conversation could have been  
16 about the case. It could have been just about the facts  
17 of the case.

18 But as far as me having conversation with  
19 Dexter Bostic, there was no conversation with Dexter. He  
20 sat in the car, didn't say nothing. He kept his head  
21 down. No conversation with Dexter.

22 Q Let's just back up for one moment.

23 A. Okay.

24 Q You were in the car with -- what's the name of  
25 the parole officer that you know so well?

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1 A. James Capiello.

2 Q Capiello?

3 A. Capiello.

4 Q Could you spell that, please.

5 A. C-A-P-I-E-L-L-O.

6 Q And you and Parole Officer Capiello have worked  
7 other cases before, you said, right?

8 A. Yes, we have.

9 Q And you said -- correct me if I'm wrong -- that  
10 perhaps you talked about the facts of this case with  
11 Parole Officer Capiello, correct?

12 A. We talked about a police officer getting shot and  
13 how bad he was, about the incident. I was in the backseat  
14 with Dexter. He was sitting right next to me. I may have  
15 had a conversation, but the conversation I had, if I had  
16 said something, it wasn't in-depth conversation about the  
17 case. We were pretty much listening to the radio and  
18 driving. Dexter had no conversation with me in the  
19 backseat of the car.

20 Q And during this -- withdrawn.

21 After you got back to New York, you were  
22 responsible for lodging Mr. Bostic for his arraignment  
23 here in New York; is that correct?

24 A. Yes, I was.

25 Q Now, by the way, as the case agent, was there an

Det. Margraf - People - Cross/Wilford  
1 arrest warrant for Mr. Bostic that you were aware of?

2 A. I knew there was a parole warrant for  
3 Dexter Bostic.

4 Q There was a parole warrant?

5 A. Yes.

6 Q That you had lodged and filed?

7 A. I don't know if it was lodged. He's on parole.  
8 He's -- he had a parole warrant. That's why the parole  
9 officers were there.

10 Q Well, you know who notified parole to come to  
11 Pennsylvania?

12 A. I'm not sure who notified them.

13 Q It wasn't you, though?

14 A. I don't recall. He was in custody. There was a  
15 lot of calls by a lot of different people.

16 Q And you say there was a -- but there was never an  
17 arrest warrant that you went before a judge and got for  
18 the arrest of Mr. Bostic; is that correct?

19 A. Not that I'm aware of, no.

20 Q Well, I'm asking you about what you know.

21 A. No, not by me, no.

22 Q And as case agent, you're not aware if anybody  
23 else did?

24 A. Yes.

25 Q Now, who made the decision that Detective Normile

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1 would go down and not you on the 11th?

2 A. We had information we were following up on. We  
3 were in Brooklyn. And there are other people -- there's a  
4 fugitive task force. There's a whole bunch of people had  
5 information from a male who had been known to the police  
6 department that took them to Pennsylvania. And me and my  
7 partners, some people stayed back in New York were  
8 doing -- processing other stuff, looking at other leads  
9 for these suspects. And when I was notified, we got a  
10 car; we drove to Pennsylvania.

11 Q Now, when you spoke with Mr. Bostic on the 15th,  
12 there was no recording of your conversation, is that  
13 correct? No audiotape, no videotape, just your  
14 conversation with him, right?

15 A. Yes.

16 Q Did you make any notes about Mr. Bostic's  
17 response on the 15th?

18 A. Yes, I did.

19 Q And when did you make those notes?

20 A. The notes, pretty much at the gang trailer.

21 Q May I see that?

22 A. Yes.

23 (Witness handing.)

24 THE COURT: Show it to Miss Nicolazzi first.

25 THE WITNESS: I got a copy of it.



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1 (Pause in proceedings.)

2 Q And when you were making your notes, did you  
3 indicate anywhere in the notes the whole conversation that  
4 you related about the DNA on the chicken bone, yes or no?

5 A. No, I did not.

6 Q But when you prepared your report as to what  
7 occurred, you did include that particular statement in  
8 your report; isn't that correct?

9 A. I don't remember. I don't -- let me -- can I  
10 look at my DD-5 that has the --

11 THE COURT: Please refer to it.

12 THE WITNESS: Okay.

13 (Witness reviewing document.)

14 A. Okay, I see that. I didn't -- that is not noted  
15 here, but if I can explain why I didn't note that there.

16 Q I'm not asking you --

17 A. Okay, it's not noted there, no.

18 Q But you did testify to that today, correct?

19 A. Yes, I did.

20 Q Now, by the way, you already had DNA testing back  
21 at that point?

22 A. We had preliminary. We had preliminary results.

23 Q Now, on July 15th, was that the last time that  
24 you had a conversation with Mr. Bostic?

25 A. Yes. Well, to my knowledge, yes.

Det. Margraf - People - Cross/Wilford

1 Q I'm sure you would remember if it happened since  
2 then, right?

3 A. Well, I know at the trailer. I don't know if he  
4 had an arraignment after the trailer, after he was  
5 reprinted for the murder-one charge. I'm not sure we had  
6 to bring him back for -- we had another court where we had  
7 to go, bring him in front of another judge again. I'm not  
8 sure.

9 Q Okay. So you don't know if you had more  
10 conversations with him?

11 A. If I had any other conversation, it would have  
12 been documented, but I know at one point I do recall being  
13 in court and actually have to swab -- I'm not sure when  
14 the swabbing was done of Dexter.

15 Q Well, the swabbing was done at the initial  
16 arraignment.

17 A. At the initial arraignment, okay. I don't  
18 recall.

19 MR. WILFORD: Maybe the People will concede  
20 that's exactly when it happened.

21 MS. NICOLAZZI: Yes.

22 A. I don't remember -- I don't remember any  
23 conversations or any contact with Dexter after the 15th.

24 Q That you remember with Mr. Bostic?

25 A. With Mr. Bostic.

Det. Margraf - People - Cross/Wilford

1 Q Now, on July 15th, did you take Mr. Bostic back  
2 to Rikers?

3 A. No.

4 Q In person. He was turned over to corrections?

5 A. They brought him to me, and then they took him  
6 back.

7 Q So corrections brought him back and forth?

8 A. Yes.

9 Q You just went out to process the arrest?

10 A. Yes, I did.

11 MR. WILFORD: Thank you. I have nothing  
12 further at this time. Thank you.

13 Thank you for allowing those questions,  
14 Judge; I appreciate it.

15 THE COURT: Miss Eaddy.

16 MS. EADDY: Thank you, your Honor.

17 THE COURT: Why don't we take a break at  
18 this time.

19 MS. NICOLAZZI: Judge, can we talk for a  
20 second about what we talked about earlier?

21 THE COURT: Fine.

22 (Sidebar discussion held off the record.)

23 THE COURT: All right, ladies and gentlemen,  
24 we're going to take a break. What's going to happen  
25 is, we're going to take a witness out of turn. We

## Proceedings

1 need your indulgence, all right. If the defendants  
2 need to refresh themselves, take them in, okay. About  
3 ten minutes, okay. Don't discuss your testimony.

4 THE WITNESS: Okay.

5 (Recess taken.)

6 THE COURT: Who's your next witness, ma'am?

7 MS. NICOLAZZI: Detective James Normile.

8 J A M E S N O R M I L E, Detective, a witness called on  
9 behalf of the People, after having been first duly  
10 sworn by the clerk of the court, took the witness  
11 stand and testified as follows:

12 COURT CLERK: Please state your name, rank,  
13 shield, and command.

14 THE WITNESS: Detective James Normile.

15 COURT CLERK: Spell your last name, sir.

16 THE WITNESS: N-O-R-M-I-L-E. My shield  
17 number is 5701, and I'm presently assigned to the  
18 Brooklyn South Homicide Squad.

19 THE COURT: Just have a seat.

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: Make sure you speak into the  
22 microphone, and project your voice as if you were  
23 speaking to the back wall.

24 THE WITNESS: Yes, sir.

25 THE COURT: You may inquire.

Det. Normile - People - Direct/Hale

1 MR. HALE: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. HALE:

4 Q Sir, you are a New York City police officer?

5 A. Yes, I am.

6 Q How long have you been a New York City police  
7 officer?

8 A. 19 years.

9 Q And how long have you held the rank of detective?

10 A. About ten years.

11 Q Your current assignment is where?

12 A. Brooklyn South Homicide Squad.

13 Q And how long have you been affiliated with the  
14 Brooklyn South Homicide Squad?

15 A. Since July of 2005.

16 Q Sir, I take it, then, you were employed as a  
17 detective/investigator in the Brooklyn South Homicide  
18 Squad in July of last year, 2007?

19 A. Yes, I was.

20 Q Sir, during the first week of July 2007,  
21 actually, the second week, did you become aware of a  
22 shooting of two police officers, Herman Yan and  
23 Russel Timeshenko, which occurred in the 71st Precinct on  
24 July the 9th of 2007?

25 A. Yes, I did.

Det. Normile - People - Direct/Hale

1 Q I'm going to draw your attention to a specific  
2 date, sir, and that date would be July the 11th of 2007.  
3 Do you remember that date?

4 A. Yes, I do.

5 Q Sir, were you doing anything in conjunction with  
6 the investigation of the shooting of those two officers on  
7 that particular day?

8 A. Yes.

9 Q What was it that you were doing?

10 A. Myself and Detective Heinrichs from the Brooklyn  
11 South Homicide Squad were directed to go to the Pocono  
12 mountain area of Pennsylvania to assist in looking for  
13 Dexter Bostic and Robert Ellis.

14 Q Now, sir, before going to Pennsylvania, did you  
15 have any information in your possession that would be  
16 useful in identifying one or both of those individuals?

17 A. Physical descriptions and photographs.

18 Q Sir, whose idea was it for you to go to the  
19 Poconos with Detective Heinrichs?

20 A. We were directed by our lieutenant,  
21 Lieutenant McCray, the previous evening to head out the  
22 following morning.

23 Q And you arrived at the Poconos about when?

24 A. We arrived up there, I'd say, around 7:00 in the  
25 morning.

Det. Normile - People - Direct/Hale

1 Q Now, sir, was there in fact at that time a search  
2 ongoing in that area for Mr. Bostic and Mr. Ellis?

3 A. Yes.

4 Q And what was the approximate location where that  
5 search was being conducted?

6 A. Of the Stroud area of the Poconos Mountains.

7 Q In relation to what highway or highways, sir?

8 A. It was in the vicinity of Interstate 80.

9 Q Sir, drawing your attention to about 6:15 P.M. on  
10 the 11th, at that time, sir, did you receive any sort of  
11 information concerning the whereabouts of one or both of  
12 the individuals that we were talking about, Bostic and  
13 Ellis?

14 A. We were informed by Sergeant Green from the  
15 Stroud regional police that they'd received a number of  
16 radio -- 911 calls concerning two males walking along the  
17 highway on Interstate 80.

18 Q And where was it when you -- where was it you  
19 were when you received that information?

20 A. We were in one of the towns in Stroud, in the  
21 Stroud area.

22 Q What did you do after receiving that information,  
23 sir?

24 A. Myself, Detective Heinrichs, and Captain Morrison  
25 from the Brooklyn South detectives started to follow

Det. Normile - People - Direct/Hale

1 Sergeant Green, who was with Trooper Diehl in  
2 Trooper Diehl's car. We were in our department car, and  
3 we started following him onto Interstate 80 heading  
4 westbound.

5 Q And, sir, did you observe anything while you were  
6 heading along Route 80 that indicated that you were  
7 nearing an area which might have interested you in terms  
8 of finding Mr. Bostic and Mr. Ellis?

9 A. Well, at one point Trooper Diehl activated the  
10 lights on the top of his car and greatly increased the  
11 speed. We sped up to keep up with him. And at some  
12 point, we hit a point on the highway there was a marked  
13 trooper car just parked on the left-hand side of the road  
14 by itself.

15 When we pulled up, we started to approach  
16 Trooper Diehl and Sergeant Green. And at that point, a  
17 second trooper car started coming down into Interstate 80  
18 the wrong way, also at a high rate of speed, and they also  
19 pulled over.

20 Q Now, sir, at that time, did you exit your  
21 vehicle?

22 A. Yes.

23 Q And what, if any, information did you gather at  
24 that time, sir?

25 A. Trooper Diehl informed us that one of the



Det. Normile - People - Direct/Hale

1 troopers had observed two males he believed to be  
2 Dexter Bostic and Robert Ellis on the side of the road.  
3 And when he pulled over to exit his vehicle, they ran into  
4 the woods, and he went into the woods in pursuit of them.  
5 And at that point, they had no radio communication with  
6 him.

7 Q At that time, sir, did you learn the identity of  
8 this particular trooper?

9 A. It became known to us that it was Trooper Scarlet  
10 from the Pennsylvania state police.

11 Q What did you do after receiving that information,  
12 sir?

13 A. All of us, myself included, we all ran into the  
14 medium of the highway, which is when we first entered the  
15 medium. It was a thick, grassy area, a lot of trees. We  
16 ended up going probably about a story high, like a  
17 60-degree incline, to get up into the woods. And after  
18 maybe about 30 seconds, we came upon Trooper Scarlet, who  
19 was standing in the woods.

20 Q Now, at that time, sir, was either Mr. Bostic or  
21 Mr. Ellis visible to you?

22 A. No.

23 Q Did you have a conversation with Trooper Scarlet  
24 at that time?

25 A. He stated that he observed both males. He chased

Det. Normile - People - Direct/Hale

1 them into the woods. He lost sight of them. And then  
2 shortly after losing sight of them, he stopped hearing  
3 their feet on the grass, so at that point he held his  
4 position and waited for back-up officers to arrive.

5 Q And that's where you met him?

6 A. And that's where we met him.

7 Q Now, sir, you've talked a little bit about what  
8 this area looked like. Can you describe it in terms of  
9 the terrain or -- or the physical characteristics of this  
10 area?

11 A. It was a lot of trees, thick underbrush.  
12 Probably about knee-high in some parts. And it was also  
13 wet from being -- it was raining all day so the ground was  
14 damp, tree stumps. It was like being out in the woods.

15 Q What did you do thereafter, sir?

16 A. At that point, we all split up to start searching  
17 for Mr. Bostic and Mr. Woods. I'm sorry, Mr. Ellis.

18 Q And in which direction did you go, sir?

19 A. We started making our way over towards the  
20 eastbound lanes of Interstate 80.

21 Q During that time, sir, did you receive any sort  
22 of communication?

23 A. Within a couple of seconds, I heard Trooper Diehl  
24 start shouting orders, "Don't move, don't move. Let me  
25 see your hands, let me see your hands."

Det. Normile - People - Direct/Hale

1 Q What did you do?

2 A. I ran to where I heard Trooper Diehl's voice.

3 Q And approximately how far was he from the point  
4 where you had initially heard him?

5 A. Probably couple of -- you know, 20 feet maybe.

6 Q How long had you been on the median in this woods  
7 area by that point in time, sir?

8 A. Just under five minutes.

9 Q And what, if anything, did you observe?

10 A. When I ran over to Trooper Diehl, I saw that he  
11 was pointing at a -- his gun at a subject on the floor.  
12 When I stepped over, the person was facedown with their  
13 arms outstretched, and I saw that it was Dexter Bostic.

14 Q And you recognized him from where?

15 A. From the photos we had.

16 Q Sir, did you direct any question at the  
17 individual you believed to be Dexter Bostic?

18 A. I asked him his name.

19 Q And did you receive a reply at that time?

20 A. Yes, I did.

21 Q What was the reply that you received?

22 A. He told me his name was Frederick,  
23 Frederick Bostic.

24 Q Did you make any further inquiry?

25 A. I asked him what his name was again, and he said

Det. Normile - People - Direct/Hale

1 his name was Dexter.

2 Q Sir, I want you to take a look around the  
3 courtroom now. Do you see anybody that you recognize from  
4 that particular date in the courtroom at this point in  
5 time?

6 A. Yes, I do.

7 Q Could you please point to the individual you  
8 recognize, and describe an article of clothing that he or  
9 she is wearing.

10 A. It would be the gentleman sitting at the end of  
11 the table, with the glasses on.

12 MR. HALE: Indicating Defendant Bostic.

13 THE COURT: The record will so reflect.

14 Q Sir, at that time, what if anything did you do  
15 with regard to Mr. Bostic?

16 A. At that point, Detective Heinrichs had arrived,  
17 Captain Morrison, and we assisted Trooper Diehl with  
18 handcuffing Mr. Bostic.

19 Q When he was handcuffed, was he placed on his feet  
20 or was he still on the ground?

21 A. He was still on the ground.

22 Q At that time while the handcuffing was going on,  
23 did you make any other inquiry of Mr. Bostic?

24 A. I asked him who he was with.

25 Q Did he reply to you?

Det. Normile - People - Direct/Hale

1 A. He said something that sounded like the name  
2 "Jessie."

3 Q Did you make any further inquiry?

4 A. I asked him again who he was with, and he said he  
5 was with Robert Ellis.

6 Q Did you ask him anything about Robert Ellis at  
7 that time?

8 A. I asked him where he went. At first he indicated  
9 the other side of Interstate 80, the other side of the  
10 eastbound lanes. And at that time two more trooper cars  
11 were coming down Interstate 80 eastbound, and I gained  
12 their attention. I started pointing into the woods on the  
13 other side of the highway.

14 Q Now, at that point in time, sir, after you had  
15 directed the other troopers toward the other side of the  
16 highway, what, if anything, did you do with regard to  
17 Mr. Bostic?

18 A. I asked him if Mr. Ellis had any weapons on him.

19 Q And did he say anything?

20 A. Yes. He said he had a razor. He may have had a  
21 razor.

22 Q At the time when you were making these inquiries,  
23 was Mr. Bostic still on the ground?

24 A. Yes.

25 Q Handcuffed?

Det. Normile - People - Direct/Hale

1 A. Yes.

2 Q Had you put your hands on him in any fashion up  
3 until that point in time, sir?

4 A. At that point, no, other than handcuffing him,  
5 no.

6 Q What occurred then?

7 A. He was again asked which way Mr. Ellis went, and  
8 then he indicated that he ran further westbound on the  
9 medium of the highway.

10 Q Same side you were on?

11 A. Same side we were on.

12 Q What did you do then?

13 A. At that point, we -- we stood him up and we  
14 brought him off to the side of the road. There was a  
15 trooper car there, and he was placed on the floor sitting  
16 up against the trooper car.

17 Q Now, sir, the area where Mr. Bostic had first  
18 been discovered, where you handcuffed him, was there any  
19 item or items at or around that area that drew your  
20 attention?

21 A. Yes.

22 Q What did you see?

23 A. There was a black-and-gold Timberland sweater,  
24 sweatshirt.

25 Q And what did you do with that, sir?

Det. Normile - People - Direct/Hale

1 A. When we picked it up, you could feel there was  
2 some weight to it. And when I checked the pockets, one  
3 pocket had a jar of peanut butter, and the other pocket  
4 had a bag of crackers.

5 Q What did you do with those items, sir, the  
6 jacket, the jar of peanut butter, and the crackers?

7 A. When we eventually returned back to the 71st  
8 Precinct, I vouchered them.

9 Q During the time that Mr. Bostic was being taken  
10 off the slope there in the median down to the car, was  
11 there any conversation between yourself and Mr. Bostic?

12 A. At that point, no.

13 Q Was there any conversation that you overheard  
14 between any of the other officers and Mr. Bostic?

15 A. No.

16 Q Which car was he placed in, sir?

17 A. He was placed in the Pennsylvania state police  
18 car.

19 Q When he was placed in the Pennsylvania state  
20 police car, sir, where did you go?

21 A. I rode in the back of the car with him.

22 Q And where did you go?

23 A. We went to, I believe, the Swiftwater trooper  
24 barracks.

25 Q Who drove you?

Det. Normile - People - Direct/Hale

1           A.    The driver of the RMP -- of the police car was a  
2 Trooper Dodson, and I don't know -- I don't recall the  
3 name of the passenger.

4           Q    Another Pennsylvania state trooper?

5           A.    Yes, another state trooper.

6           Q    And you had talked about Detective Heinrichs had  
7 been on the scene and Captain Morrison?

8           A.    Yes.

9           Q    Did they travel in the same vehicle as you, or  
10 did they take a different vehicle?

11          A.    They remained at the scene.

12          Q    Where did you go after you got in the trooper  
13 car?

14          A.    We went to the Swiftwater trooper barracks.

15          Q    And that's about how far away from the area where  
16 you took Mr. Bostic into custody?

17          A.    If I was to guess, I'd say about ten miles.  It's  
18 about a ten-minute ride there.

19          Q    When you arrived at that location, sir, what if  
20 anything did you do?

21          A.    Mr. Bostic was removed from the vehicle and  
22 brought into the trooper barracks.

23          Q    During the drive, now, you said you were in the  
24 backseat with Mr. Bostic, is that correct?

25          A.    Yes.



Det. Normile - People - Direct/Hale

1 Q During that drive -- you said about ten miles --  
2 was there any conversation between yourself and  
3 Mr. Bostic?

4 A. No.

5 Q What was Mr. Bostic doing at that time?

6 A. Sitting in the back of the car.

7 Q Not saying anything?

8 A. No.

9 Q And you didn't say anything to him?

10 A. No.

11 Q Either of the troopers say anything to him?

12 A. No.

13 Q Any conversation between you and the troopers?

14 A. No.

15 Q When you arrived back at the -- at the barracks,  
16 Swiftwater, what if anything did you do?

17 A. Mr. Bostic was brought into the barracks, and he  
18 was placed in -- I guess it's like a muster or squad-style  
19 room that was in the center of the barracks.

20 Q Can you describe this room?

21 A. Maybe about a quarter of the size of this room,  
22 couple of tables, chairs, the mailboxes for the troopers.  
23 Some -- you know, looks like their personal equipment was  
24 in the room as well.

25 Q Were there any other law-enforcement officers in

Det. Normile - People - Direct/Hale

1 that room at the time when you brought Mr. Bostic back  
2 there?

3 A. At that time, it was just myself and Trooper  
4 Courtright.

5 Q Now, sir, where did you go within that muster  
6 room?

7 A. Right by the doors.

8 Q And Mr. Bostic's still handcuffed at that time?

9 A. At that point, yes.

10 Q And standing? Sitting? What did you do with  
11 him?

12 A. Sit him down.

13 Q At the time you sat him down, sir, did you  
14 attempt to have any sort of conversation with him?

15 A. Yes.

16 Q Tell the Court what the nature of that  
17 conversation was.

18 A. At that point, Mr. Bostic was unhandcuffed. I  
19 asked him his name again. He told me his name.

20 Q What name did he tell you at that time?

21 A. He told me Dexter Bostic.

22 Q What else did you ask him?

23 A. I asked him where he was living. He told me he  
24 was living on 182nd Street in Queens, and he provided me  
25 with an address for the building. I asked him who he was

Det. Normile - People - Direct/Hale

1 living there with, and he told me he shared an apartment  
2 with Robert Ellis, and that they split the rent. It was  
3 about \$1,500 a month.

4 Q Anything else you asked him at that time?

5 A. I asked him if he was working. He told me he had  
6 a job at Five Towns Mitsubishi. I asked him if he worked  
7 anywhere else. He told me if it was slow, he would work  
8 at a Hyundai dealer in Bay Ridge. I asked him if he had  
9 any problems at work. He says none other than at one  
10 point, he took a friend or let a friend take a car for a  
11 test ride. The friend kept the keys. Came back when the  
12 dealership was closed. Took the car for a ride and had an  
13 accident with the car. Mr. Bostic said he told his --  
14 told the owner of the dealership what had happened, and he  
15 assumed responsibility for the car, and told me he was  
16 going to pay for the car.

17 I asked him if he had any family in Pennsylvania.  
18 He told me he didn't. I asked him if he had ever visited  
19 or traveled to Pennsylvania. He told me no. That he  
20 didn't know anyone up there. And I asked if Mr. Ellis had  
21 any family up there, and then he told me to ask Scott.

22 Q Did you inquire as to who Scott was?

23 A. I said, "Who's Scott?" He told me Scott and he  
24 said a last name, which I don't recall at the moment, but  
25 I said, "Well, who's that?" He said, "That's my

Det. Normile - People - Direct/Hale

1 attorney."

2 Q Did you continue to question him at that point in  
3 time?

4 A. At that point, no.

5 Q Now, sir, was anybody else participating in this  
6 questioning besides yourself?

7 A. No.

8 Q Was there anyone who was in the immediate  
9 vicinity of that questioning as you were doing it?

10 A. At points as I was sitting there speaking,  
11 Trooper Courtright was in and out of the room.

12 Q Now, you had not given him any sort of Miranda  
13 warnings prior to asking him any of these questions?

14 A. No, I didn't.

15 Q At that time, sir, before he mentioned about this  
16 person Scott, who he claimed to be his attorney, did you  
17 have any information as to whether he was represented by  
18 anybody?

19 A. I had none, no.

20 Q Before you went to Pennsylvania, did you have any  
21 sort of information that he had been represented by  
22 counsel, or that some counsel had communicated with the  
23 New York City Police Department?

24 A. No.

25 Q While you were in Pennsylvania, did you receive

Det. Normile - People - Direct/Hale

1 any sort of communication from your superiors or anybody  
2 back in New York that there had been any sort of  
3 notification of that nature?

4 A. No.

5 Q After he indicated that you should talk to Scott,  
6 who was his attorney, you indicated you did not question  
7 him further; is that correct?

8 A. I didn't, no.

9 Q What became of Mr. Bostic after that?

10 A. I believe he remained in the muster room.

11 Q In whose custody?

12 A. In custody of Pennsylvania state police.

13 Q Did you have any further contact with Mr. Bostic  
14 during that time?

15 A. I was present there. I didn't have any verbal  
16 contact with him, no.

17 Q Do you recall, sir, or did you observe whether  
18 Mr. Bostic was moved from that muster room into any other  
19 room in the barracks area of Swiftwater?

20 A. At some point, I believe Trooper Courtright  
21 placed him into an interview room and spoke to him.

22 Q Did you have anything to do with that  
23 conversation in that interview room?

24 A. No.

25 Q After that point in time, sir, did you have any

Det. Normile - People - Cross/Wilford

1 direct contact with Mr. Bostic, or were there other  
2 detectives, other investigators, who had contact with him?

3 A. At that point, there was other detectives and  
4 Pennsylvania state police present. They all had contact  
5 with him.

6 Q Did you have any further contact?

7 A. I didn't, no.

8 MR. HALE: Thank you, Detective Normile.  
9 Nothing further, your Honor.

10 THE WITNESS: You're welcome.

11 THE COURT: Cross-examination, Mr. Wilford.

12 MR. WILFORD: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. WILFORD:

15 Q Detective Normile, how are you today, sir?

16 A. Good afternoon, sir.

17 Q Now, you were -- you've been a detective, you  
18 said, ten years?

19 A. Yes.

20 Q And you've been assigned to Brooklyn South  
21 Homicide Squad for five -- three years now?

22 A. Yes.

23 Q And that's an assignment where you're assigned to  
24 help precincts solve murders, correct?

25 A. Yes.

Det. Normile - People - Cross/Wilford

1 Q And it's a task force, right?

2 A. Yes.

3 Q And you were designated by your lieutenant to go  
4 with Detective Heinrichs to Pennsylvania; is that correct?

5 A. Yes.

6 Q And you said that occurred on the 10th or the  
7 11th? When was that?

8 A. We were told on the evening of the 10th, I  
9 believe, that we were going the next morning to head up to  
10 Pennsylvania.

11 Q And would it be fair to say that you were  
12 working, along with most of the New York City Police  
13 Department, very vigorously on this case?

14 A. Yes.

15 Q Almost 24 hours a day; isn't that correct?

16 A. Yes.

17 Q And, sir, when you arrived -- withdrawn.

18 Did -- did your lieutenant tell you there was a  
19 warrant for Dexter Bostic?

20 A. No.

21 Q Do you know, sir, whether or not at any point  
22 prior to your placing Dexter Bostic under arrest, in  
23 handcuffs, on the side of Route 80, whether or not there  
24 was any warrant for his arrest?

25 A. I don't believe there was one, no.

Det. Normile - People - Cross/Wilford

1 Q Do you know, sir, whether or not -- withdrawn.

2 Did you have information regarding

3 Dexter Bostic's participation in the events which led to  
4 the death of Officer Timeshenko prior to your being told  
5 to go to Pennsylvania?

6 A. Yes.

7 Q And what information was that, sir?

8 A. That himself and Mr. Ellis were both involved in  
9 shooting Detective Timeshenko and Detective Yan.

10 Q And where did that information come from, sir?

11 MR. HALE: Objection.

12 THE COURT: Sustained.

13 MR. WILFORD: May I be heard on that point,  
14 Judge?

15 THE COURT: No, sir.

16 MR. WILFORD: I'm sorry?

17 THE COURT: No, sir.

18 MR. WILFORD: Your Honor, People  
19 versus Misius.

20 THE COURT: I'll tell you what. For the  
21 moment, we will -- we'll come to it later when we  
22 finish with this, okay.

23 MR. WILFORD: Okay, no problem.

24 Q Now, did you have forensic information connecting  
25 Mr. Bostic to the shooting?



Det. Normile - People - Cross/Wilford

1 A. Did I have, no.

2 Q You had a statement about someone, right?

3 A. I had information provided me by other  
4 detectives.

5 Q And you don't know the source of that  
6 information?

7 A. The detectives investigating the case.

8 Q And there were a lot of detectives investigating  
9 the case; isn't that correct?

10 A. Yes.

11 Q And were you receiving information from a variety  
12 of detectives?

13 A. My information, I received from my immediate  
14 superiors and Detective Margraf and Detective Yero.

15 Q So you had a conversation with Detective Margraf  
16 before you went to Pennsylvania?

17 A. At that point, yes.

18 Q And he was a case agent; is that correct?

19 A. He was one of the detectives, yes.

20 Q And it's your testimony, and correct me if I'm  
21 wrong, that you had no idea that the New York City Police  
22 Department had put on notice that Mr. Bostic was  
23 represented by counsel, and he was not to be questioned?

24 A. No.

25 Q No one informed you of that?

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1 A. No.

2 Q Not Detective Margraf, right? Correct?

3 A. No.

4 Q Not your lieutenant, who sent you down to  
5 Pennsylvania, right?

6 A. No.

7 Q Now, when you were sent to Pennsylvania, you were  
8 sent to do what specifically?

9 A. To assist in locating Mr. Bostic and Mr. Ellis.

10 Q And doing what?

11 A. I believe they had a location where they were  
12 dropped off by a third party.

13 Q And so you wanted to arrest Mr. Bostic at that  
14 point?

15 A. Yes.

16 Q That was your intention, right?

17 A. If we located him, yes.

18 Q Okay. And when you located him, you said that  
19 Detective Diehl had his gun out; is that correct?

20 A. Trooper Diehl, yes.

21 Q I'm sorry, Trooper Diehl. Forgive me, I didn't  
22 mean to --

23 A. That's okay.

24 Q So Trooper Diehl had his gun out, right?

25 A. Yes.

## Det. Normile - People - Cross/Wilford

1 Q Did you have your gun out?

2 A. Initially, yes.

3 Q And how many other police officers, be they  
4 troopers, agents, cops, detectives, whatever, how many  
5 other law-enforcement personnel that were present?

6 A. There was Detective Heinrichs, Captain Morrison,  
7 and maybe one or two more state troopers.

8 Q And everybody had their guns out, correct?

9 A. I can't say if they had their guns out. I wasn't  
10 focused on if they had a gun out.

11 Q Well, you saw Detective Diehl's gun, right?

12 A. I had to approach Trooper Diehl, and I saw he had  
13 a gun in his hand.

14 Q You saw Trooper Diehl's gun out?

15 A. Yes.

16 Q And you had your gun out?

17 A. I had mine out, yes.

18 Q And there were officers -- were law-enforcement  
19 personnel behind you?

20 A. Yes.

21 Q Or in front of you?

22 A. They were behind me.

23 Q So you beat everybody up the hill?

24 A. I was the first one to Trooper Diehl.

25 Q And as other detectives arrived, your gun was

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1 still out, right?

2 A. I can't say when they arrived. I did have my gun  
3 out, though.

4 Q And you received absolutely no resistance from  
5 Dexter Bostic; isn't that correct, sir?

6 A. No.

7 Q Yet, he was forced to remain on the ground at  
8 gunpoint during this time; is that correct, sir?

9 A. Once I arrived, I holstered my gun and we  
10 handcuffed him.

11 Q And what about Trooper Diehl's gun?

12 A. He had holstered his gun as well.

13 Q But he remained on the ground, right?

14 A. He was still on the ground, yes.

15 Q He was handcuffed, right?

16 A. Yes.

17 Q And he wasn't free to leave?

18 A. No.

19 Q And then you proceeded to question him, right?

20 A. Yes.

21 Q And you never at any point advised Mr. Bostic of  
22 his right against self-incrimination pursuant to Miranda  
23 versus Arizona, correct?

24 A. I asked him his name.

25 Q Sir, that's not the question I asked you.

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1 A. I was asking pedigree information. I didn't  
2 realize I had to ask the Miranda to get his name.

3 Q Sir, could you answer the question I asked you?

4 A. I never advised him of his rights, no.

5 Q Thank you, sir.

6 Now, did you advise him of his right to counsel?

7 A. No, I didn't.

8 Q And you asked him several other questions; isn't  
9 that correct?

10 A. Yes, I did.

11 Q And you elicited responses from him; isn't that  
12 correct?

13 A. Yes.

14 Q Now, you took Mr. Bostic -- withdrawn.

15 How long was Mr. Bostic laying on the ground when  
16 in the mud while you were questioning him with these other  
17 group of officers around?

18 THE COURT: Just a moment, just a moment. I  
19 beg to differ with you. He did say ground. I haven't  
20 heard anything about mud. I mean, if you want to ask  
21 him whether there was mud down there, that's fine.

22 Come on.

23 MR. WILFORD: Well, the reason I asked,  
24 Judge, is because he said it was raining tremendously  
25 the day before.

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1 THE COURT: Fine, then ask him whether there  
2 was mud present. If he says yes, then you can ask him  
3 that question.

4 Q There was mud down there, right?

5 A. The ground was wet. I wouldn't say it was muddy.

6 Q All right. No big thing.

7 But he was surrounded on the ground that was wet,  
8 but not muddy, by several law-enforcement personnel; is  
9 that correct?

10 A. Yes.

11 Q And during that time -- how long a period of time  
12 was that?

13 A. Maybe about five minutes.

14 Q So during that five-minute time period, you were  
15 the only person asking questions; isn't that correct, sir?

16 A. I asked him questions, yes.

17 Q Did anybody else ask him questions?

18 A. No.

19 Q So you were the only person asking questions,  
20 right?

21 A. It makes no sense having four or five people  
22 questioning one person.

23 Q That's not my question.

24 A. I asked him. No one else asked him questions,  
25 not to my knowledge.

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1 Q Thank you, sir.

2 Now, when you were removing Mr. Bostic from the  
3 ground and placing him in the vehicle, he was still  
4 handcuffed; isn't that correct?

5 A. Yes, he was.

6 Q You rode in the back with him; is that correct?

7 A. Yes, I did.

8 Q Did you have any conversation at all with  
9 Mr. Bostic at that point?

10 A. No.

11 Q Did you tell Mr. Bostic why you were looking for  
12 him?

13 A. No.

14 Q You never told him that?

15 A. No.

16 Q Never told him that while he was laying on the  
17 ground, right?

18 A. No.

19 Q Did you tell him back at the barracks?

20 A. No.

21 Q Now, when you got back to the barracks, you again  
22 began to question Mr. Bostic; isn't that correct?

23 A. Yes, I did.

24 Q Did you notify your lieutenant back in New York  
25 that Mr. Bostic had been seized in the woods along the

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1 radio?

2 A. I had advised my sergeant that he was in custody.

3 Q And when was that?

4 A. When we had placed him down by the trooper's car,  
5 probably about five, ten minutes after he was apprehended.

6 Q Around what time was that, sir, if you remember?

7 A. Sometime after around 6:30, I'd say.

8 Q And at that point when you advised your sergeant,  
9 your supervisor, back in New York, no one told you,  
10 correct, that Mr. Bostic's lawyers had already contacted  
11 the New York Police Department and directed them not to  
12 question Mr. Bostic; isn't that a fact, sir?

13 A. No one told me, no.

14 Q And then when you arrived at the barracks, is  
15 that the first time that you saw Trooper -- Corporal  
16 Trooper Courtright?

17 A. Yes.

18 Q And you said that she was in a room, that is,  
19 Corporal Courtright, and yourself with Mr. Bostic; is that  
20 correct?

21 A. Yes.

22 Q And you asked Mr. Bostic questions; is that  
23 correct?

24 A. Yes, I did.

25 Q And at that point, you never advised Mr. Bostic



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1 of his rights against self-incrimination; isn't that  
2 correct, sir?

3 A. No, I didn't.

4 Q And you never advised Mr. Bostic of his right to  
5 counsel; isn't that correct, sir?

6 A. No, I didn't.

7 Q And you asked him the same questions, did you  
8 not, sir, that you asked him when you had him on the  
9 ground, on the wet ground, alongside Route 80; isn't that  
10 correct, sir?

11 A. I asked him different questions.

12 Q Oh, you asked different questions?

13 A. Yes.

14 Q What questions did you ask, sir, at that point?

15 A. I asked him where he worked, where he lived, and  
16 if he had any family in Pennsylvania.

17 Q Did you ask him any of the same questions that  
18 you had asked him on the side of the highway?

19 A. I asked -- I didn't ask him the same questions.

20 Q Well, sir, did you --

21 A. Other than his name.

22 Q Okay, so you did ask him his name, and that was a  
23 question that you had asked him on the side of the  
24 highway; isn't that correct, sir?

25 A. Yes.

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1 Q Is there any other question that you asked  
2 Mr. Bostic that you can remember -- think about it for a  
3 moment -- that you asked him on the side of the highway  
4 that you also asked at the barracks?

5 A. No.

6 Q Now, how long did your questioning of Mr. Bostic  
7 take?

8 A. Five to ten minutes.

9 Q Did you notify your command back in New York that  
10 you had indeed spoken to Mr. Bostic at the trooper  
11 barracks?

12 A. I notified them after I spoke to him.

13 Q And did they at that point tell you that  
14 Mr. Bostic had forwarded to his counsel a letter of  
15 representation, and that he was not to be questioned? Did  
16 anybody relate that to you?

17 A. No.

18 Q And at that point, subsequent to that point, you  
19 said that there came a time when Pennsylvania State  
20 Trooper Courtright took Mr. Bostic into an interview room;  
21 is that correct?

22 A. Yes.

23 Q You didn't go into the room?

24 A. No.

25 Q At all?

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1 A. No.

2 Q Do you know whether other New York City  
3 detectives went into that room?

4 A. No.

5 Q Did you ever see Detective Heinrichs go into that  
6 room?

7 A. I didn't see him, no.

8 Q Did you have a conversation with Corporal  
9 Courtright before she went into the room?

10 MR. HALE: Objection.

11 THE COURT: Overruled.

12 A. No.

13 Q Did you have a conversation with her after she  
14 came out regarding her questioning of Mr. Bostic?

15 A. Yes.

16 Q Did she tell you what she asked him?

17 A. Not what she asked him, no.

18 Q What did she tell you?

19 MR. HALE: Objection, relevance.

20 THE COURT: Sustained, not relevant.

21 MR. WILFORD: I'll move on.

22 Q Now, when you were in the barracks and  
23 Corporal Courtright was in the room, did you see anybody  
24 else go into the room with her and Mr. Bostic?

25 A. I didn't see where -- initially where the room

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1 was to see who went into the room.

2 Q But you know you didn't go into the room?

3 A. I didn't go into the room.

4 Q And you didn't see Detective Heinrichs go into  
5 the room?

6 A. I didn't see him go into the room, no.

7 Q By the way, was he back at the barracks then?

8 A. He arrived probably around 7:30 that evening.

9 Q Okay. And your interview of Mr. Bostic concluded  
10 when?

11 A. I'd say around 7:30 as well.

12 Q So that's when you saw him -- you finished, and  
13 that's when you saw Detective Heinrichs?

14 A. Yes.

15 Q Now, the items that Mr. Hale asked you about that  
16 you found in the area where Mr. Bostic was located, did  
17 you pick those items up, sir?

18 A. Yes, I did.

19 Q And you vouchered them yourself personally?

20 A. Yes, I did.

21 Q What did you do with those items when you first  
22 picked them up?

23 A. I took them down to the trooper car.

24 Q Okay. And you searched the item. You said there  
25 was some sort of jacket?

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1 A. It was a sweatshirt, yes.

2 Q A sweatshirt. Was it a particular brand of  
3 sweatshirt?

4 A. I believe it was a -- might have been a  
5 Timberland.

6 Q But you don't remember, correct?

7 A. If I look at my notes, I could tell you.

8 Q Sure. Do you have it there?

9 A. Sure.

10 (Witness reviewing document.)

11 A. It was a Timberland, a black-and-gold Timberland.

12 Q Okay. And was it one of those hooded sweatshirts  
13 that you -- like the pockets, you stick your hands in  
14 them?

15 A. I'm not sure how the pockets were, to be honest  
16 with you.

17 Q And you said there was a jar of peanut butter in  
18 one pocket?

19 A. Yes.

20 Q Some crackers in the other?

21 A. Yes.

22 Q No weapon?

23 A. None.

24 Q No knife? Not even a knife to put the peanut  
25 butter on the cracker?

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1 A. No.

2 Q Now, when you took the jacket -- withdrawn, the  
3 sweatshirt and the peanut butter and the crackers, was  
4 Mr. Bostic already in the police car?

5 A. I picked him up as we were moving him down the  
6 hill.

7 Q And when you say they were found in an area where  
8 Mr. Bostic was, were they underneath Mr. Bostic when you  
9 first had him laying on the ground at gunpoint, or was it  
10 to the side of him, or could you tell us where it was?

11 A. They were right next to where he was laying.

12 Q Right next -- not under the area where he was  
13 laying?

14 A. No, it was right next to him.

15 Q Next to him?

16 A. Yes.

17 Q Within arm's length?

18 A. Closer. It was right next to him. It was  
19 shorter than an arm's reach.

20 Q Well, could you just like --

21 A. It's like laying right next to him. It wasn't  
22 like he had to reach out to grab it. It was immediately  
23 next to him.

24 Q Right where your holster is; you're saying that  
25 close?

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1 A. Yes.

2 Q I just only say that because you did that motion.

3 A. That's okay.

4 THE COURT: Let the record reflect the  
5 witness placed his hand at or near the right side of  
6 his hip.

7 Q Now, on July 11th, did you have a conversation  
8 with Detective Margraf?

9 A. Later that evening, yes.

10 Q Around what time?

11 A. After he had arrived in Pennsylvania.

12 Q And you, sir, never had a conversation with  
13 ADA Nicolazzi, right, concerning questioning Mr. Bostic;  
14 is that correct?

15 A. After I spoke to him, I contacted her, yes.

16 Q I'm talking about before, sir.

17 A. I don't recall having one before, no.

18 Q And you never contacted or spoke to Mr. Hale  
19 before, did you?

20 A. I didn't speak to Mr. Hale at all that evening.

21 Q So you didn't speak to anybody from the district  
22 attorney's office?

23 A. I spoke to ADA Nicolazzi after I spoke to  
24 Mr. Bostic.

25 Q After -- I'm talking about prior to.

Det. Normile- People - Cross/Eaddy

1 A. No.

2 MR. WILFORD: Thank you, sir. I have no  
3 further questions, appreciate it.

4 THE COURT: Any redirect?

5 MR. HALE: Not for me.

6 THE COURT: Any questions, Miss Eaddy?

7 MS. EADDY: Very briefly.

8 CROSS-EXAMINATION

9 BY MS. EADDY:

10 Q Good afternoon.

11 A. Good afternoon.

12 Q Did you take part in the apprehensions of  
13 Mr. Ellis at all?

14 A. No, I didn't.

15 MS. EADDY: No further questions.

16 THE COURT: Mr. Karliner, anything?

17 MR. KARLINER: No, thank you, Judge.

18 THE COURT: Thank you very much, sir.

19 THE WITNESS: Thank you.

20 THE COURT: Can we get Margraf.

21 (Whereupon, the following was recorded by  
22 Official Court Reporter Susan Oliva:)

23 \* \* \* \* \*

24

25



Cross - Det. P. Margraf - Eaddy

1 (Whereupon, Detective Pete Margraf  
2 enters the courtroom and resumes the  
3 witness stand.)

4 THE COURT: Detective Margraf, you are  
5 reminded to be still under oath.

6 THE WITNESS: Yes.

7 THE COURT: Counselor, proceed.

8 CROSS-EXAMINATION

9 BY MS. EADDY:

10 Q. Good afternoon, Detective Margraf.

11 A. Good afternoon.

12 Q. You were the lead detective on this case; is  
13 that correct?

14 A. Yes.

15 Q. And in connection with your assignment on this  
16 case, you were informed about the apprehension of my  
17 client, Mr. Ellis; is that correct?

18 A. I was.

19 Q. And you were informed about the circumstances  
20 under which he was apprehended?

21 A. Yes.

22 Q. Who were you told apprehended him?

23 A. I was -- I don't think anyone actually told me  
24 who apprehended him. I know I was called to Pennsylvania  
25 and told that Robert Ellis was arrested and brought back

Cross - Det. P. Margraf - Eaddy

1 to the Swiftwater Police Barracks.

2 Q. Were you in Pennsylvania at that time?

3 A. I was.

4 Q. Where were you?

5 MS. NICOLAZZI: Objection. Relevance.

6 THE COURT: I will allow latitude.

7 Let's proceed.

8 Q. Where were you in Pennsylvania?

9 A. In Swiftwater.

10 Q. At the barracks?

11 A. I was not at the barracks. I was in a lodge in  
12 Pennsylvania.

13 Q. Now, did you know -- were you told who  
14 transported Mr. Ellis to the barracks after he was  
15 apprehended?

16 A. No, I was not --

17 Q. What New York City police officers or detectives  
18 came to Pennsylvania to participate in the apprehension of  
19 Mr. Ellis?

20 MS. NICOLAZZI: Objection.

21 THE COURT: Yeah. I don't see the  
22 relevance of that, ma'am.

23 MS. EADDY: It goes to my claim that my  
24 client was assaulted, and I want to know who  
25 transported him.



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1 the witness is extending his left hand in a  
2 horizontal fashion.

3 Q. What New York City police officers or detectives  
4 were present when you got to the barracks to speak to him?

5 THE COURT: If you know.

6 A. I think Detective Manceri was there. There was  
7 one of my supervisors there also.

8 Q. What is his name, the supervisor's name?

9 A. I know -- I know Detective Manceri was there. I  
10 really can't -- if I said like I am not one hundred  
11 percent sure, then I am not sure if he was there so I  
12 really can't say.

13 Q. You were the lead detective in this case?

14 A. Yes.

15 Q. It's fair to say that a lot of resources were  
16 devoted to the apprehension of Mr. Ellis and Mr. Bostic;  
17 is that correct?

18 A. Yes.

19 Q. And there was a targeted team of New York City  
20 police officers that were sent down to Pennsylvania to  
21 apprehend these individuals, correct?

22 A. Yes.

23 Q. Were you consulted with the team that was sent  
24 down to Pennsylvania to apprehend these individuals?

25 A. I was working on something else when information

Cross - Det. P. Margraf - Eaddy

1 came to Pennsylvania, and there was a team already  
2 assembled, other people involved in this case, bigger,  
3 higher ups in this case that send numerous detectives to  
4 different areas to follow leads.

5 Q. What New York City detectives were there?

6 MS. NICOLAZZI: Objection.

7 THE COURT: If you know.

8 A. Not offhand.

9 Q. There was a sergeant, a name you don't know,  
10 correct?

11 A. I know the sergeant but I am trying to remember  
12 if he was actually there.

13 Q. Who was your sergeant?

14 A. Brosh.

15 Q. And Detective Manceri?

16 A. Yes.

17 Q. Was Heinrichs there? Detective Heinrichs?

18 A. I know Heinrichs was there at the apprehension  
19 of Mr. Bostic. I am not sure about Mr. Ellis.

20 Q. And as you sit here today, you can't remember  
21 any other New York City police officers there at the time  
22 that you arrived at the barracks?

23 A. I can't think off the top of my head. I just  
24 don't have -- if I had my whole case folder, I may know  
25 who was there. But I don't know who was there.

Cross - Det. P. Margraf - Eaddy

1 Q. When you arrived to the room where my client  
2 was, was he handcuffed?

3 A. No.

4 Q. Was he alone in the room unhandcuffed?

5 A. Yes, he was.

6 Q. When you arrived, did you enter the room with  
7 anyone?

8 A. I did.

9 Q. With whom?

10 A. Detective Habert.

11 Q. Detective Habert was also there?

12 A. Yes.

13 Q. That's a detective that you didn't mention being  
14 there before?

15 A. Okay. He was there. Yes.

16 Q. Detective Habert. Did any other police  
17 detectives go into the interview room with you?

18 A. No.

19 Q. Is Detective Habert relatively short in stature?

20 THE COURT: How tall are you?

21 THE WITNESS: 6'4"

22 THE COURT: How tall is Habert?

23 THE WITNESS: 5'10", 6 feet. In that  
24 area.

25 Q. When you arrived there, had my client already

SO

Cross - Det. P. Margraf - Eaddy

1 been photographed?

2 A. That's -- I have no knowledge of that.

3 When I got to the room, he was -- he appeared  
4 fine.

5 Q. When you came in the room, both you and  
6 Detective Habert had your guns?

7 A. No, we did not.

8 Q. You went into the room without handguns?

9 A. We did.

10 Q. You went into the room with a person that you  
11 believed shot at and killed a New York City police officer  
12 without handguns?

13 A. We did.

14 Q. He was uncuffed in that room?

15 A. Yes, he was.

16 Q. Now you testified that when you first walked in,  
17 you told him that you were there to investigate -- what  
18 did you say to him?

19 A. I walked in. He was sitting in the room. I  
20 introduced myself and told him, "I am Detective Margraf.  
21 We're here to investigate a shooting of two New York City  
22 police officers." And at that point, I said, "We're here  
23 to investigate that," and he said, "I want to talk to you  
24 guys."

25 Q. When you walked into the room, you knew that he

Cross - Det. P. Margraf - Eaddy

1 had been represented by counsel; is that correct?

2 A. Yes, I did.

3 Q. And you knew because Sergeant LaBella told you;  
4 is that correct?

5 A. It's not the way -- I have to look -- I was with  
6 LaBella. I was advised -- the squad was advised that the  
7 lawyer called the precinct.

8 Q. When were you advised of that?

9 A. July 10, late in the afternoon. July 10.

10 Q. Did you create a DD-5?

11 A. We had the letter from the law office that gave  
12 two different times with the law investigation,  
13 notification of a lawyer.

14 Q. By fax and by telephone; is that correct?

15 A. Yes, it is.

16 Q. You knew when you went to Pennsylvania.  
17 because -- you first saw my client on the 12<sup>th</sup> of July;  
18 is that correct?

19 A. Yes.

20 Q. So you knew when you went to Pennsylvania that  
21 my client had counsel; is that correct?

22 A. Yes.

23 Q. And you knew that you could not question him at  
24 that time; is that correct?

25 A. Yes, I did.



Cross - Det. P. Margraf - Eaddy

1 Q. Yet you walked into that room and said to my  
2 client, "I am here to investigate this case;" is that  
3 correct?

4 A. Yes.

5 Q. And when you found out on the 10th that my  
6 client was represented by counsel, you informed the D.A.'s  
7 office; is that correct?

8 A. Yes, I did.

9 Q. And did they tell you that you could not speak  
10 to my client about their case?

11 A. Yes, they did.

12 Q. And yet you chose to go into this room and tell  
13 him, we're here on this investigation of a police  
14 shooting, correct?

15 A. Yes.

16 Q. At the time you went in there, you had no  
17 fingerprint on any guns, did you -- I will rephrase the  
18 question.

19 THE COURT: Its argumentative but go  
20 ahead.

21 Q. On the 12<sup>th</sup> when you went to speak to my  
22 client, you had the results of whether or not fingerprints  
23 had been lifted from the guns that were used in this case;  
24 is that correct?

25 A. I am not one hundred percent sure what the basis

SO

Cross - Det. P. Margraf - Eaddy

1 of our -- whether or not there was a tentative -- there  
2 may have been a tentative identification of fingerprints.

3 Q. There were no fingerprints found on these guns?

4 A. There was DNA found on the guns. I don't know  
5 about fingerprints.

6 Q. Let's talk about fingerprints.

7 At the time you first spoke to my client, you  
8 knew that there were no fingerprints on any of these guns;  
9 is that correct?

10 MS. NICOLAZZI: Objection.

11 THE COURT: Sustained.

12 Q. Well, at the time that you went to speak to my  
13 client, you knew that you had no evidence against my  
14 client except that he was present; is that correct?

15 MS. NICOLAZZI: Objection.

16 THE COURT: Sustained.

17 Q. When you questioned my client, you said that you  
18 testified that you called after he told you that he wanted  
19 to speak to you, and you said, "I am here to investigate  
20 this, and he said, "I want to speak to you," correct?

21 A. Yes.

22 Q. You testified that you called Ms. Nicolazzi; is  
23 that correct?

24 A. Yes.

25 Q. And Ms. Nicolazzi gave you a series of questions

Cross - Det. P. Margraf - Eaddy

1 to ask; is that correct?

2 A. Yes, she did.

3 MS. EADDY: If I may see People's 4 and  
4 People's 5 in evidence.

5 THE COURT: People's 4 is the  
6 disclaimer and People's 5 is Miranda.

7 Q. Now, you testified on direct that you wrote down  
8 the questions that Ms. Nicolazzi told you to specifically  
9 ask my client; is that correct?

10 A. Yes.

11 Q. You showed him this paper, correct? People's 4  
12 in evidence? I will show the witness No. 4 in evidence.

13 A. I showed him -- I had the questions on the desk  
14 and basically had questions on it. That's the only piece  
15 of paper I had to write on.

16 Q. You also showed my client People's Exhibit No. 5  
17 with Miranda warnings because he had to write on it,  
18 correct?

19 A. Yes, it is.

20 Q. It's fair to say you did not show my client any  
21 other pieces of paper; is that correct?

22 A. Yes, it is.

23 Q. So those are the only two pieces of paper that  
24 you showed him, correct?

25 A. Yes.

SO

Cross - Det. P. Margraf - Eaddy

1 Q. You never showed him the letter that Mr.  
2 Wilford's firm had faxed to the police department; is that  
3 correct?

4 A. Yes, it is.

5 Q. In that letter, Mr. Wilford asked you, not once,  
6 but twice, not to speak to my client should he be  
7 apprehended; is that correct? Yes or no? If you want to  
8 take a look at it.

9 A. It says he notified the precinct.

10 THE COURT: Did you have the letter  
11 with you?

12 THE WITNESS: No, I didn't have it with  
13 me.

14 THE COURT: Let's establish it first.  
15 Please. Come on.

16 Q. So when Ms. Nicolazzi -- strike that.  
17 You created a DD-5 which memorialized the exact  
18 questions that you asked my client with respect to whether  
19 he wanted counsel or had counsel; is that correct?

20 A. Yes.

21 Q. And is it fair to say those questions  
22 memorialized all of the questions you asked about whether  
23 or not he had an attorney or wanted an attorney; is that  
24 correct?

25 A. Yes.

SO

Cross - Det. P. Margraf - Eaddy

1 Q. And it's fair to say at no time did you tell him  
2 that he was already represented by counsel? Yes or no?

3 THE COURT: Specifically used those  
4 terms?

5 Q. Yes. Did you ever specifically tell him that he  
6 was represented by counsel; yes or no?

7 THE COURT: No, no, no.

8 The exhibit in evidence, the first  
9 question -- I mean -- are you asking him whether or  
10 not he used those terms or did he, in fact,  
11 explain --

12 MS. EADDY: That exhibit does not ask  
13 that question so I am asking him, did you --

14 Q. The three questions that you asked him, the  
15 first question you asked my client is.

16 "If you are represented by an attorney, we can't  
17 question you.

18 Wasn't that the first question?

19 A. Yes.

20 Q. And the second question you asked him was.

21 "Do you know lawyers by the name of Edward  
22 Wilford or Anthony Ricco"?

23 A. Yes.

24 Q. And the third question is, do either of them  
25 represent you in this matter; is that correct?

Cross - Det. P. Margraf - Eaddy

1 A. Yes.

2 Q. So my question is, did you ever tell my client  
3 that he was already represented by either Mr. Wilford or  
4 Mr. Ricco?

5 A. I asked him if he had an attorney.

6 Q. That's not what I asked you. I asked you, did  
7 you ever inform him that he was already represented by  
8 Mr. Wilford or Mr. Ricco?

9 Yes or no?

10 A. No, I did not.

11 Q. If I can see People's Exhibit No. 5. When you  
12 read Miranda warnings to him, and you got to the question  
13 where it says, if you cannot afford an attorney, one will  
14 be provided for you without cost. You didn't happen to  
15 mention that he already had an attorney, did you? Yes or  
16 no?

17 A. Yes.

18 Q. You did not mention that?

19 A. No, I did not mention that. No.

20 Q. When you spoke to the D.A.'s office, did she  
21 tell you that you should tell my client that he had  
22 representation?

23 A. She had given me the three questions here that I  
24 wrote down.

25 Q. I am going to interrupt you. If you can answer

Cross - Det. P. Margraf - Eaddy

1 yes or no? When you spoke to Ms. Nicolazzi --

2 THE COURT: If you are able to answer  
3 it in a yes or no fashion.

4 Q. When you spoke to Ms. Nicolazzi, did she tell  
5 you to inform my client as to the fact that he was  
6 represented by counsel?

7 A. No.

8 Q. Now, when you spoke to him, when you began to  
9 speak to him, how did that conversation start?

10 A. How did the conversation start?

11 THE COURT: What are we talking about?

12 Q. The first conversation that took place at  
13 approximately 9:25?

14 A. 9:25. It started with the first. I told him  
15 before I speak to you, I have to ask you these questions,  
16 specific questions.

17 Q. After you went through that, how did the  
18 conversation start about events that occurred?

19 A. Okay. I asked him what happened on July 9th,  
20 2:30 in the morning. What happened? Okay, and that's  
21 pretty much where it started.

22 Q. Isn't it a fact that when you first saw him,  
23 that he would flinch when you would come near him?

24 Yes or no?

25 A. No.

Cross - Det. P. Margraf - Eaddy

1 Q. Isn't it a fact that he had a bruise or injury  
2 under his left eye when you spoke to him?

3 A. No.

4 Q. I am going to ask that the witness be shown  
5 Defendant Ellis A in evidence. Do you recognize what is  
6 depicted in that photograph?

7 A. Yes.

8 Q. What is that?

9 A. Mr. Ellis.

10 Q. Does that picture fairly and accurately depict  
11 what he looked like when you spoke to him?

12 A. Yes.

13 Q. And is it fair to say that he has a bruise or  
14 injury under his eye?

15 A. I can't tell that..

16 Q. You were at his arraignment, the first  
17 arraignment; is that correct?

18 A. Yes.

19 Q. And I was there also; is that correct?

20 A. Yes.

21 Q. And you heard me say on the record, my client  
22 had been injured.

23 MS. NICOLAZZI: Objection.

24 THE COURT: Sustained.

25 Q. Isn't it a fact that the day after his first



Cross - Det. P. Margraf - Eaddy

1 arraignment, that you told the press that he was injured  
2 when he was apprehended in the woods; yes or no?

3 A. No.

4 Q. So you never told the press that the reason that  
5 he had his injury was because of the apprehension in the  
6 woods; is that correct?

7 A. Yes, it is correct. I never made mention to any  
8 press.

9 Q. Did anyone, to your knowledge, from the New York  
10 City Police Department make that statement?

11 MS. NICOLAZZI: Objection.

12 THE COURT: Sustained.

13 Q. Do you remember making a statement that it was  
14 impossible to be able -- for causing an injury because the  
15 videotape was --

16 THE COURT: Did you make such a  
17 statement?

18 THE WITNESS: I never made a statement  
19 like that, no.

20 Q. Do you recall if you know if anyone from the New  
21 York City Police Department made a statement that --

22 THE COURT: Sustained as to that.

23 You can ask him, if he made a  
24 statement. There may be a good faith basis for  
25 asking him that.

SO

Cross - Det. P. Margraf - Eaddy

1 Q. Was the first statement that you took from my  
2 client at 9:20 a.m., was that videotaped?

3 A. That was when I read the first statements.

4 Q. No, that was not right. And when you took the  
5 second statement, was that videotaped?

6 A. No, it was not.

7 Q. The only videotaped statement was when Mr. Hale  
8 spoke to him, the one that we all saw in court, correct?

9 A. Yes.

10 Q. It's your testimony then that at the time you  
11 spoke to him, he didn't have any injuries at all?

12 A. That's true.

13 Q. Did he ever complain about any injuries?

14 A. No, he did not.

15 Q. Did he complain that one of the officers who  
16 transported him, assaulted him?

17 A. No.

18 Q. Did he complain that someone had raised racial  
19 epithets at him?

20 A. No, he did not.

21 Q. Did you have a conversation with him regarding  
22 extradition?

23 A. No, I did not.

24 Q. So during this first conversation, when you were  
25 speaking to him, it's your testimony that there was no

Cross - Det. P. Margraf - Eaddy

1 conversation with him about being extradited back to New  
2 York State?

3 A. I don't remember speaking about extraditions. I  
4 remember talking about the incident after he waived the  
5 lawyer, yes.

6 Q. Do you remember him saying that he didn't want  
7 to get hit anymore?

8 A. No, I do not remember him ever saying that. No.

9 Q. Do you remember you telling him that he had  
10 better waive extradition or else you will put him back in  
11 the car with the same officer who had hit him?

12 A. Never happened, no.

13 Q. Now you testified that you memorialized the  
14 substance of the first conversation with him at 9:20 in  
15 your DD-5; is that correct?

16 A. Yes.

17 Q. But you also testified that that DD-5 does not  
18 accurately reflect the order in which my client made a  
19 statement; is that correct?

20 A. Yes.

21 Q. That you on your own put in what you thought was  
22 in chronological order?

23 A. Yes.

24 Q. So that the DD-5 is not an accurate reflexion of  
25 what my client said?

SO

Cross - Det. P. Margraf - Eaddy

1 A. If you look at the handwritten notes, that's an  
2 accurate reflection.

3 Q. You were the one who put it in chronological  
4 order, not my client?

5 A. Yes.

6 Q. Based on what you thought was a chronological  
7 order?

8 A. Yes.

9 Q. So, it's your testimony that my client was  
10 pulled out of the woods and knows that two officers were  
11 shot. One is likely to die, and he just voluntarily makes  
12 this statement?

13 A. Yes.

14 Q. Now there came a time when you took an  
15 audiotaped statement?

16 A. Yes.

17 Q. You had to borrow an audiotape from a  
18 Pennsylvania state trooper; is that correct?

19 A. Yes.

20 Q. And did there come a time when you started this  
21 audiotape that he started to speak and it malfunctioned  
22 and had to start it again?

23 A. I don't recall that.

24 Q. Did there come a time when he started to give  
25 his version of events and cut off the recorder and said,

Cross - Det. P. Margraf - Eaddy

1 "Say it with feelings this time."

2 A. No, I did not. No, I did not.

3 Q. You did not memorialize the substance of that  
4 audiotaped statement?

5 A. The audiotape? Later on I did. I tape recorded  
6 running.

7 Q. The fact is there is no DD-5 that memorialized  
8 the substance of this audiotaped statement, correct?

9 A. That's correct.

10 Q. Do you have handwritten notes which memorialized  
11 the substance of that audiotaped statement?

12 A. I do.

13 Q. Are those notes dated with the time of that  
14 audiotaped statement?

15 A. They are not.

16 Q. You have handwritten notes which don't contain  
17 the date and time of the audiotaped statement; is that  
18 correct?

19 A. Yes.

20 Q. You don't have a DD-5 memorialized in that  
21 statement?

22 A. I don't. There was a DD-5 statement that at a  
23 certain time at the police barracks --

24 Q. You don't have a DD-5 that contains what was  
25 said in the audiotaped statement.

Cross - Det. P. Margraf - Eaddy

1 A. That's correct. That is correct.

2 Q. Now what happened in the time period between  
3 10:00 when you did an audiotaped statement and the  
4 audiotape was completed and the time that Mr. Hale came  
5 down and took the videotaped statement at approximately  
6 1:00 p.m. with respect to my client?

7 A. He was -- he was kept in the room. We got food  
8 for him, and I was in control of him the whole time from  
9 10:00 until I called the district attorney's office and to  
10 investigate the T-shirt in the sewer. I was back in the  
11 room and in control of him the entire time.

12 Q. Was there an arrest warrant for my client?

13 A. No, there was not.

14 Q. Was there any type of warrant?

15 A. Not to my knowledge.

16 Q. You stated that you believed that there was a  
17 window on the door of the interrogation room in  
18 Pennsylvania; is that correct?

19 A. I am not even -- to tell you the truth, I am not  
20 really that sure. When we were in that room, I didn't see  
21 any windows. There were no windows that I could see when  
22 I walked in there. When someone tried to get my  
23 attention, they could not waive to me. They had to stick  
24 a note under the door to get my attention.

25 Q. As far as you can tell, there was no light or

Cross - Det. P. Margraf - Eaddy

1 way to see in and out of that room?

2 A. That's correct.

3 Q. Now you testified that on July 20, 2007, you  
4 went to the district attorney's office to have a copy of  
5 the defendant's audiotaped made, correct?

6 A. Yes.

7 Q. Now, that was on July 20; is that correct?

8 A. Yes.

9 Q. And the audiotape was made July 12?

10 A. Yes.

11 Q. It's your testimony that there were no other  
12 copies made between that date?

13 A. No.

14 Q. The D.A. did not ask you to bring this tape to  
15 them to make a copy before then?

16 A. No. Exactly.

17 Q. In connection with your assignment to this case,  
18 did you bring an audio cassette of the 911 calls to the  
19 D.A.'s office?

20 A. They had -- I brought my cassette. There are  
21 other tapes that they had. I don't know if I brought the  
22 911 tape at the same time I brought the statement. I  
23 brought my cassette tape to them and handed it to the  
24 D.A.'s office.

25 Q. This is a 911?

Cross - Det. P. Margraf - Eaddy

1 A. I don't remember the 911. I don't remember  
2 that.

3 Q. That's what I am asking. The 911. You don't  
4 remember if you gave a 911 audio --

5 A. Exactly.

6 Q. Was it your testimony when you went to the  
7 D.A.'s office, and they told you that the tape had been  
8 destroyed, that they told you that someone was trying to  
9 transcribe the tape, and it was subsequently destroyed?

10 A. Is that what they said to me? They said it was  
11 taped over while it was being -- when they were  
12 duplicating it, it got taped over.

13 Q. I thought you said transcribed?

14 A. No, it was being tape recorded. They were  
15 making a duplicate tape copy.

16 Q. Did they tell you what the tape was taped over  
17 with?

18 A. Yes.

19 Q. What was that?

20 A. The 911 call.

21 Q. And did you have occasion once they informed you  
22 of that, the tape had been taped over, to listen to the  
23 tape yourself or try to listen to it again?

24 A. Yes.

25 Q. And were you able to hear any part of the



Cross - Det. P. Margraf - Eaddy

1 statement?

2 A. The only thing I hear is my voice. At one  
3 point, you hear my voice and you hear 911 tapes.

4 Q. You could not hear any version of what my client  
5 had to say?

6 A. Exactly.

7 Q. And is it your testimony that you then also in  
8 July sent this to the F.B.I.?

9 A. Yes. I made a phone call to see if it was  
10 possible to look into it for us, and they took custody for  
11 us and attempted to have it and sent to Quantico.

12 Q. The D.A.'s office knew that you were sending it  
13 to Quantico?

14 A. Yes.

15 Q. In July?

16 A. Yes.

17 MS. EADDY: If I can just have one  
18 second?

19 THE COURT: Sure.

20 (Whereupon, there was a momentary pause  
21 in the proceedings.)

22 MS. EADDY: I have no further  
23 questions.

24 THE COURT: Any questions,  
25 Mr. Karliner?

Cross - Det. P. Margraf - Karliner

1 MR. KARLINER: Briefly, Judge.

2 THE COURT: Please proceed then.

3 CROSS-EXAMINATION

4 BY MR. KARLINER:

5 Q. Good afternoon. How are you?

6 A. Good. How are you?

7 Q. Good. Thank you. On July 9, you became  
8 involved with this investigation, correct?

9 A. Yes.

10 Q. Somewhere, sometime that morning around 11:30 or  
11 12:00, you met Mr. Woods, correct?

12 A. Yes.

13 Q. And over the course of the day, you had the  
14 opportunity to speak to Mr. Woods, correct?

15 A. Yes.

16 Q. And be present for statements that he had given  
17 to other detectives and investigators involved in this  
18 case, correct?

19 A. Yes. Most of them, yes.

20 Q. So you knew what he had said, correct?

21 A. What he said regarding the incident itself?

22 Q. Correct.

23 A. Yes.

24 Q. You were obviously, aware that he was placed  
25 under arrest, correct?

Cross - Det. P. Margraf - Karliner

1 A. No. At what point was he placed under arrest?

2 Q. Later on on the 10th he was placed --

3 A. On the 10th, yes. Five or six o'clock in the  
4 morning.

5 Q. You were there?

6 A. Yes.

7 Q. You were aware of statements or news accounts  
8 that had been made in the press. Radio, television, or  
9 print, correct, on the 10th?

10 A. I was running around so much. I don't think I  
11 watched T.V.

12 Q. Did you see on the 11th, news accounts?

13 A. There was a little of that all over the place  
14 but I didn't pay attention to this stuff.

15 Q. You were walking through on the 11th?

16 A. Yes.

17 Q. He had the opportunity to meet with his lawyer,  
18 correct?

19 A. Yes.

20 Q. While you didn't hear what they were saying, you  
21 observed him meeting with his lawyers, correct?

22 A. I remember the lawyer coming in to speak to him.

23 Q. After his lawyer spoke to him, it was not to  
24 bring him out to the courtroom, correct?

25 A. Yes.

Cross - Det. P. Margraf - Karliner

1 Q. Was he escorted by yourself, correct?

2 A. Yes.

3 Q. What did you say to him when it was time to  
4 bring him out to the courtroom?

5 A. Nothing at all.

6 Q. As you were walking out to the courtroom, what  
7 did he say to you?

8 A. Can I look at my notes?

9 Q. By all means.

10 A. Okay. When he was walking just by the area,  
11 when you walk in, there was an area in the back. As you  
12 walk to the door, he said to me, "Why are you going to the  
13 media saying I'm snitching? That ain't right." That's  
14 what he said.

15 Q. Did you say anything to him?

16 A. I looked at him like, what you are talking  
17 about? I didn't go to the media or speak to anyone in  
18 this case. What do you mean, talk about? He had an  
19 attitude and didn't say anything at that point.

20 Q. You didn't respond to him?

21 A. No.

22 Q. You were not aware what was reported in the  
23 media?

24 A. Yes.

25 Q. You could not say whether or not it was accurate

Cross - Det. P. Margraf - Karliner

1 in terms of what you had heard during the interviews on  
2 the 9th, correct?

3 A. I didn't -- like I said, I was not paying  
4 attention to the news at that point.

5 Q. Jumping ahead to July 15<sup>th</sup>. When you went out  
6 to Rikers Island, you saw my client at one in the  
7 afternoon?

8 A. Yes.

9 Q. You were with other officers, correct?

10 A. No, I was -- there were correction officers  
11 there in the trailer. I was there. There was a few guys  
12 from my office, but I was assigned to go there pretty much  
13 to advise your client of what the charges were being  
14 upgraded to.

15 Q. When you first saw Mr. Woods, where was he?

16 A. In the cell.

17 Q. And you went up to that cell?

18 A. Yes.

19 Q. What did you say to him?

20 A. I told him, one, what my purpose was.

21 Q. What did he say?

22 A. If I can look at my notes this way I will say  
23 exactly what I said to him. Okay?

24 I advised Lee Woods that the police officer had  
25 died, and that he was now being reprinted and charged with

Cross - Det. P. Margraf - Karliner

1 Murder in the First Degree.

2 Q. You said that to him through the cell?

3 A. Yes.

4 Q. Was he cuffed?

5 A. Uncuffed.

6 Q. You said that to him through the cell? What  
7 happened?

8 A. He got agitated and stated -- I will say what he  
9 stated.

10 "I ain't going to jail for something I didn't  
11 do. I didn't shoot no cops. I was only driving. Fat Boy  
12 was in the passenger seat and that faggot Roger was behind  
13 me. I didn't shoot no cops. I will tell the D.A., the  
14 judge, whoever I need to tell. I'm not going to jail for  
15 life. I didn't pull no trigger. I ain't going to jail  
16 for something I didn't do."

17 That's exactly what he said.

18 Q. As soon as you told him that charges were being  
19 upgraded, you said he got agitated?

20 A. Yes.

21 Q. This is a spontaneous response immediately to  
22 what you had said, correct?

23 A. Yes.

24 Q. You didn't interrupt him?

25 A. No.

Cross - Det. P. Margraf - Karliner

1 Q. You didn't ask questions?

2 A. No.

3 Q. After he made his statement or said that, he was  
4 cooperative, correct?

5 A. Well, he got printed.

6 Q. There were no problems?

7 A. No.

8 Q. That was all of the contact that you had on the  
9 15<sup>th</sup>?

10 A. Yes.

11 MR. KARLINER: Thank you. I have  
12 nothing else.

13 MS. NICOLAZZI: I have no redirect.

14 THE COURT: Anything further?

15 MS. EADDY: No, your Honor.

16 THE COURT: Detective Margraf, thank  
17 you, very much.

18 You are excused, sir. You may step  
19 down.

20 (Whereupon, the witness steps down from  
21 the witness stand and exits the  
22 courtroom.)

23 THE COURT: Can counsel come up to the  
24 bench, please, to discuss scheduling?

25 (Whereupon, an off-the-record

## Proceedings

1 discussion was held at the bench  
2 between Court and counsel.)

3 THE COURT: After a conference at the  
4 bench, we will see you all tomorrow at 2:00 p.m.  
5 Folks, clear the courtroom. Tomorrow at 2:00 p.m.

6

7

\* \* \*

8

(Whereupon, the matter was concluded  
9 and adjourned to July 9, 2008 at 2:00  
10 p.m.)

11

12

13

14

The foregoing is hereby certified to be a  
true and accurate transcript of the proceedings as  
transcribed from my stenographic notes.

15

16

  
\_\_\_\_\_  
NORA LEE, RPR  
SENIOR COURT REPORTER

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\_\_\_\_\_  
SUSAN OLIVA, CSR.  
SENIOR COURT REPORTER

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22

23

24

25



1 SUPREME COURT OF THE STATE OF NEW YORK  
 2 COUNTY OF KINGS: CRIMINAL TERM - PART 37  
 -----X  
 3 THE PEOPLE OF THE STATE OF NEW YORK :INDICTMENT NO.  
 4 - AGAINST - :6797-07  
 5 DEXTER BOSTIC, ROBERT ELLIS, & LEE WOODS :HUNTLEY/DUNAWAY  
 6 DEFENDANT (s) :HEARING  
 -----X  
 7 320 JAY STREET  
 8 BROOKLYN, NEW YORK 11201  
 9 JULY 9, 2008

9 B E F O R E: HONORABLE PLUMMER E. LOTT,  
 JUSTICE,  
 10 A P P E A R A N C E S:

11 OFFICE OF CHARLES J. HYNES, ESQ.  
 12 DISTRICT ATTORNEY KINGS COUNTY  
 ATTORNEY FOR THE PEOPLE

13 BY: ANNA-SIGGA NICOLAZZI, ESQ.  
 14 MARK HALE, ESQ.  
 ASSISTANT DISTRICT ATTORNEYS

16 BY: EDWARD WILFORD, ESQ., For Defendant Bostic  
 17 20 VESEY STREET  
 NEW YORK, NEW YORK

18 NATALI TODD, ESQ.

19 BY: DANIELLE V. EADDY, ESQ., For Defendant Ellis  
 20 26 COURT STREET  
 BROOKLYN, NEW YORK

22 BY: SAMUEL KARLINER, ESQ., For Defendant Woods  
 23 26 COURT STREET  
 BROOKLYN, NEW YORK

24  
 25

SUSAN OLIVA, CSR  
 NORA LEE, RPR

SO

## Proceedings

1 COURT CLERK: Come to order. Back on the  
2 record with Indictment 6797 of 2007, Dexter Bostic,  
3 Robert Ellis, and Lee Woods.

4 Counsel, can I have your appearances.

5 MR. WILFORD: Appearing for Dexter Bostic,  
6 Edward D. Wilford and Natali Todd. Mr. Bostic is not  
7 yet with us but I'm sure he's produced.

8 THE COURT: Let's hope so.

9 MS. EADDY: For Mr. Ellis, Danielle Eaddy,  
10 26 Court Street, Brooklyn, New York. Good afternoon.

11 MR. KARLINER: Good afternoon, Judge.  
12 Samuel Karliner for Mr. Woods, who I understand is  
13 here right now.

14 MS. NICOLAZZI: Good afternoon. For the  
15 office of the district attorney, Anna-Sigga Nicolazzi.

16 MR. HALE: And also Mark Hale, for the  
17 office of the district attorney. Good afternoon, your  
18 Honor.

19 (Whereupon, Defendants Dexter Bostic,  
20 Robert Ellis, and Lee Woods were produced before the  
21 Court.)

22 THE COURT: Let the record reflect that all  
23 three defendants are present and they're unshackled.

24 We had a conference before the prisoners  
25 were brought up. Are we going to be able to finish

## Proceedings

1 this hearing on the 17th?

2 MS. NICOLAZZI: Yes, your Honor. There will  
3 be one witness left, which will be Detective Yero.

4 THE COURT: Okay, and he's definitely going  
5 to be here?

6 MS. NICOLAZZI: We believe, from speaking to  
7 him, he'll be back as of the 11th, so --

8 THE COURT: All right. Defense, will there  
9 be any witnesses called? Any possibility of defense  
10 witnesses?

11 MR. WILFORD: With respect to Mr. Bostic,  
12 no, your Honor.

13 MR. KARLINER: None for Mr. Woods, your  
14 Honor.

15 MS. EADDY: None, your Honor.

16 THE COURT: Okay, all right. All right,  
17 let's see if we can proceed today then. Who do you  
18 have, four witnesses?

19 MS. NICOLAZZI: Yes, your Honor.

20 And just for the record, there was testimony  
21 elicited from Corporal Courtright yesterday that she  
22 had taken some photographs of Defendant Ellis.

23 Although the defense was provided with that voucher --  
24 I think it's Number 60 or 61 on the People's discovery  
25 list -- I actually had the photographs taken out of

## Proceedings

1 the property clerk's office this morning, and I've  
2 provided a photocopy of that, two pages, six Polaroid  
3 photographs, to defense counsel.

4 THE COURT: You have those, Miss Eaddy?

5 MS. EADDY: Yes, I do. Just for the record,  
6 yes. I had not received these prior to -- although I  
7 did have the voucher, I had not received copies of  
8 these photographs prior to today.

9 THE COURT: Okay. All right, is it your  
10 wish, Ma'am, to introduce any of those photographs  
11 into evidence?

12 MS. EADDY: Yes, your Honor. There are two  
13 photographs on here I would like to introduce into  
14 evidence.

15 THE COURT: Okay. Miss Nicolazzi, is this  
16 any problem? I mean --

17 MS. NICOLAZZI: Absolutely not, Judge.

18 THE COURT: Okay. Why don't we mark  
19 those -- I think we have Defendant's Ellis A, right?

20 MS. EADDY: Yes, your Honor.

21 THE COURT: So this will be B.

22 MR. WILFORD: Yes.

23 MS. EADDY: Yes. Your Honor, I would just  
24 note that there's a photo on here which I'll admit as  
25 part of the same exhibit. There's three photos and

## Proceedings

1 I'm admitting two, so I'll just admit all three.

2 THE COURT: Okay.

3 MS. EADDY: Make it easier.

4 THE COURT: All right.

5 MR. WILFORD: A sheet with three  
6 photographs?

7 MS. EADDY: Yes.

8 (Whereupon, three photos on one page were  
9 marked and received in evidence as Defendant Ellis's  
10 Exhibit A.)

11 THE COURT: All right, are we ready to  
12 proceed then?

13 MS. NICOLAZZI: Yes. People call as our  
14 first witness today Andres Valencia from the Kings  
15 County D.A.'s office.

16 COURT OFFICER: Witness entering.

17 Follow me, please.

18 A N D R E S V A L E N C I A, a witness called on behalf  
19 of the People, having been first duly sworn by the  
20 Clerk of the Court, took the witness stand and  
21 testified as follows:

22 COURT CLERK: Please state your name and  
23 county of residence.

24 THE WITNESS: Andres Valencia; Bronx, New  
25 York.

Valencia - People - Direct

1 COURT CLERK: You can have a seat, sir.

2 THE WITNESS: Thank you.

3 THE COURT: All right, sir, please speak  
4 into the microphone. Don't volunteer anything. Wait  
5 till the question's asked. If you don't understand,  
6 ask the person to repeat it, okay.

7 THE WITNESS: Yes, sir.

8 THE COURT: You may inquire.

9 MS. NICOLAZZI: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MS. NICOLAZZI:

12 Q Good afternoon, Mr. Valencia.

13 A. Good afternoon.

14 Q How long have you been employed by the Kings  
15 County district attorney's office?

16 A. Roughly one year.

17 Q And what position do you hold in the D.A.'s  
18 office?

19 A. I'm a media technician.

20 Q And how long have you worked at the Kings County  
21 district attorney's office?

22 A. Roughly one year.

23 Q When did you begin, approximately?

24 A. Approximately early July of 2007.

25 Q I'm going to direct your attention back to that

## Valencia - People - Direct

1 time frame, July of 2007, specifically to the date of  
2 July 20th of 2007. Did you work on that day?

3 A. Yes, I did.

4 Q And were you assigned to the technical services  
5 division at that time?

6 A. Yes, I was.

7 Q That afternoon, did you receive a request that  
8 came in from the Homicide Bureau?

9 A. Yes, I did.

10 Q And what was that request for?

11 A. To duplicate three audiotapes.

12 Q And when that request came in, what did you do?

13 A. I took the three audiotapes and I put it in a  
14 designated area, to be duplicated at a later time.

15 Q Was there anyone else working with you physically  
16 present in the tech services office at that time?

17 A. No, at that time I was by myself.

18 Q What, if anything, happened approximately 20 or  
19 30 minutes later?

20 A. Somebody from the Homicide Bureau called and --  
21 well, first they came by, excuse me, and asked -- and they  
22 tried to retrieve the tapes, with the copies.

23 Q And do you remember who that was, if it was an  
24 assistant D.A. or --

25 A. It was an intern. His name is Josh Jeters.

## Valencia - People - Direct

1 Q And when Mr. Jeters came to try to retrieve the  
2 duplications along with the originals, what happened or  
3 what was he told?

4 A. I told him that it was not ready yet, and he then  
5 said that there were two detectives waiting, and so I told  
6 him that I will attempt to do it myself, make the copies.

7 Q And what did you do after that?

8 A. I took the three audiocassettes and I went to the  
9 area where they make the copies to the machine, and I  
10 attempted to make those copies of the tapes.

11 Q And what did you do specifically?

12 A. Specifically, I took the first two original  
13 tapes. I placed them in the first two slots, and then  
14 beside them, I put two blank tapes next to those slots,  
15 and then I pressed the copy button.

16 Q Now, the actual machine that you used that day,  
17 had you ever used that specific machine before?

18 A. No, I have not.

19 Q Had you used other machines that you believed to  
20 be similar in nature, as far as how they worked?

21 A. Yes, I have.

22 Q So when you attempted to make those duplications  
23 on that machine, were you doing it based on your prior  
24 experience with other duplicators?

25 A. Yes, I was.



## Valencia - People - Direct

1 Q What happened after that?

2 A. After -- after I finished copying the tapes, I  
3 put it back into the area, reserved area, where finished  
4 copies are placed.

5 Q And what happened then?

6 A. One of the people from the Homicide Bureau came  
7 by and picked the tapes up and left the office.

8 Q And did they come back to you after that?

9 A. Yes. Moments later, a few minutes later, they  
10 came back stating that one of the tapes did not have --  
11 one of the original tapes did not have the original  
12 content on it any longer. It had the content of some  
13 other statement.

14 Q And which tape was it that had been recorded  
15 over?

16 A. It was the Robert Ellis statement.

17 Q Now, Mr. Valencia, at the time that you made  
18 those copies, were you aware that two police officers had  
19 been shot at sometime in July?

20 A. Yes, I was.

21 Q Did you know either of those police officers?

22 A. Excuse me?

23 Q Did you know either of those police officers?

24 A. Did I know --

25 THE COURT: Personally.

## Valencia - People - Cross/Eaddy

1 Q Did you know those officers?

2 A. Personally, no, I did not.

3 Q Did you know any of the officers working on the  
4 case?

5 A. No, I did not.

6 Q Did you know any of the defendants at the time?

7 A. No, I did not.

8 Q At the time that you attempted to make those  
9 duplications, did you know specifically what case it was  
10 that you were working on?

11 A. No, I did not.

12 MS. NICOLAZZI: I have nothing further.

13 THE COURT: Any cross-examination,  
14 Miss Eaddy?

15 MS. EADDY: Yes.

16 CROSS-EXAMINATION

17 BY MS. EADDY:

18 Q Good afternoon, Mr. Valencia.

19 A. Good afternoon.

20 Q You testified that you started working in the  
21 D.A.'s office in July of 2007?

22 A. That is correct.

23 Q Approximately how long had you been working there  
24 when you attempted to duplicate these tapes on July 20th?

25 A. Approximately two to three weeks.

## Valencia - People - Cross/Eaddy

1 Q And prior to that date, had you ever been given  
2 the task to duplicate tapes in this fashion?

3 A. No.

4 Q And when you say -- you said -- you testified you  
5 were the only one in the office?

6 A. That is correct.

7 Q And what was your job?

8 A. My job?

9 Q What was your job in the -- this is the tech  
10 services department?

11 A. That is correct.

12 Q What was your job?

13 A. To record statements, to make copies of audio and  
14 video assignments. Also, place it in the data system as  
15 well.

16 Q So even though one of your stated duties was to  
17 record statements, up until that date, you had not made  
18 duplicates?

19 A. Not on that particular machine.

20 Q On a different type of machine?

21 A. That is correct.

22 Q Was there any reason why you attempted to make  
23 the duplicate on this particular machine?

24 A. Yes, because they seemed quite -- they seemed  
25 quite urgent. They -- the people from the Homicide Bureau

## Valencia - People - Cross/Eaddy

1 stated that they really needed it done, so I attempted to  
2 do it myself.

3 Q Is it that this machine records faster?

4 A. It is a fast --

5 Q At a faster speed?

6 A. Yes, it is a fast-speed duplication machine.

7 Q Is this a machine that requires some sort of  
8 training before it's used?

9 A. I would say that you would have to possibly read  
10 the manual or look at or use the machine or be told how to  
11 use it, if you will.

12 Q As part of your responsibilities and duties, were  
13 you told that before you completed an assignment that had  
14 been given to you by a supervisor?

15 A. I'm sorry?

16 Q Strike that.

17 Would a supervisor ordinarily be the one to  
18 assign a task to you?

19 A. At that point I was fairly new, so I would say  
20 yes.

21 Q And a supervisor did not assign this task to you?

22 A. No, they did not.

23 Q You did it because the officers were in a rush to  
24 get a copy of this tape?

25 A. That is correct.

## Valencia - People - Cross/Eaddy

1 Q Now, you said that you put it in a -- let me ask  
2 you, was this a machine where you could copy two tapes  
3 simultaneously?

4 A. No. It's a machine where it is a one by three,  
5 if you will. It's a one -- there's one slot for an  
6 original and three for a copy.

7 Q Maybe I misunderstood you on direct. Did you say  
8 you put the two Ellis tapes into the machine?

9 A. Two Ellis tapes? I put one tape of original  
10 content, which was, one of them was the Robert Ellis. And  
11 then there was another statement which I put right under  
12 it. There's four slots. And then next to them, I put two  
13 blank tapes, thinking I would be able to copy one and then  
14 the other simultaneously, but actually it's one and you're  
15 supposed to put three empty.

16 Q So if I understand, you can have -- you can do  
17 this for up to four tapes at a time, basically?

18 A. That's correct.

19 Q And you used two slots to make two sets of  
20 duplicates?

21 A. Yes.

22 Q Okay. Now, when you got this request, it was a  
23 request for a copy of three cassette tapes; is that  
24 correct?

25 A. Yes.

## Valencia - People - Cross/Eaddy

1 Q And one was for -- was it Diane Burowski's case?

2 THE WITNESS: May I refer --

3 THE COURT: Yes, sure.

4 THE WITNESS: Thank you.

5 THE COURT: Certainly.

6 (Witness reviewing document.)

7 A. That is correct.

8 Q And it says the other was for Robert Ellis. Was  
9 that two Robert Ellis tapes?

10 A. No, that was one, I believe. And then there was  
11 a third tape. I don't know what the name of that was.

12 Q But -- okay. So the request was for one copy  
13 each of three cassette tapes, but it didn't name the third  
14 tape?

15 A. That is correct.

16 Q Now, when you took the tape that was marked  
17 Robert Ellis -- strike that.

18 Is it fair to say that in the technical services  
19 department of the Kings County district attorney's office,  
20 you have a batch of blank tapes; is that correct?

21 A. That is correct.

22 Q And you would, if you were going to make a  
23 recording, take one of those blank tapes and put it in the  
24 part of the machine to be recorded; is that correct?

25 A. Yes.

## Valencia - People - Cross/Eaddy

1 Q So did you take a blank tape and put it in the  
2 machine?

3 A. At any point? Yes.

4 Q Well, with respect to this Robert Ellis tape --

5 A. Yes, I did.

6 Q What were you going to copy the original on?

7 A. Sorry?

8 I put the -- I put the Robert Ellis tape where a  
9 blank tape should have been.

10 Q Okay. So you -- okay, so you recorded the blank  
11 tape onto the Robert Ellis statement?

12 A. No.

13 Q Is that correct?

14 A. No. I recorded the Diane Burowski -- I'm sorry  
15 about the mispronunciation. I recorded that statement on  
16 the Robert Ellis tape.

17 Q Okay. I'm confused. So we're just talking about  
18 the line of equipment having to do with recording the  
19 Robert Ellis tape. Did you put a blank tape in the  
20 Robert Ellis section, or did you put the Diane Burowski  
21 tape where the blank tape should have been and recorded  
22 that onto the Robert Ellis tape?

23 A. I put two blank tapes. There's four slots. In  
24 the original slot, I put the Diane Burowski tape, which  
25 cannot be recorded over.

## Valencia - People - Cross/Eaddy

1 Q Okay.

2 A. The other three slots, I put one blank tape in  
3 one slot, another blank tape, and then I put the  
4 Robert Ellis in the third blank slot.

5 Q Now, was the Diane Burowski tape marked  
6 "Diane Burowski"?

7 A. Possibly, yes.

8 Q Well, is it fair to say it had to be indicated in  
9 some way since this request said, We need the  
10 Diane Burowski tape immediately?

11 A. That's fair to say.

12 Q So you were trying to make three copies of the  
13 Robert Ellis tape?

14 A. No, I was trying to make one copy of it at the  
15 time.

16 Q Okay. In the -- what did you put with respect to  
17 the -- trying to copy the Robert Ellis tape? What did you  
18 put in the slot?

19 A. A blank tape.

20 Q Was that the slot where the original was supposed  
21 to go?

22 A. No. Where the original was supposed to go, I put  
23 the Diane Burowski tape.

24 Q Thinking it was the Robert Ellis?

25 A. No.



## Valencia - People - Cross/Eaddy

1 Q Okay. You just put that there?

2 A. No. There's -- I was -- I was going to record  
3 two tapes simultaneously.

4 Q At the same time.

5 A. I put one -- I put the Diane tape in the original  
6 slot. Right under it, I thought it was another original  
7 slot when I put the Robert Ellis tape.

8 Q In fact, it was a slot for a copy?

9 A. Exactly.

10 Q Okay. Now, so is it fair to say that you did not  
11 record a 911 tape on top of the Robert Ellis statement?

12 A. Is it fair to say that I did not --

13 Q Right. Was the Diane Burowski tape a 911 call?

14 A. I do not recall the content.

15 Q Do you still have the Diane Burowski tape?

16 A. No, I do not.

17 Q Do you know what happened to the Diane Burowski  
18 tape?

19 A. I submitted everything to my supervisor.

20 Q When the officers came back and told you that the  
21 tape had been recorded over, was it your testimony that  
22 they said that one statement had been recorded over the  
23 Robert Ellis statement?

24 A. Well, I never spoke to any officers.

25 Q You spoke to someone from the district attorney's

## Valencia - People - Cross/Eaddy

1 office?

2 A. That's correct. I spoke to my supervisor,  
3 actually.

4 Q Okay.

5 A. And -- I spoke to my supervisor, and then they in  
6 turn spoke to others.

7 Q On direct, you testified that you were told that  
8 one statement had been recorded on top of the Robert Ellis  
9 statement; is that correct?

10 A. That's correct.

11 Q And you were told it was a statement that was  
12 recorded over the Robert Ellis statement, not a 911 call;  
13 is that correct?

14 A. I was not told particularly if it was a 911 call  
15 or not, so I cannot say if it was or not.

16 Q Well, they told you it was a statement; those  
17 were the words they used?

18 A. I cannot -- I do not recall if that was the exact  
19 word verbatim.

20 Q So when you -- when Miss Nicolazzi asked you the  
21 question and you answered, "I was told it was a  
22 statement," that was not an accurate answer?

23 A. No, I'm not saying -- it was some sort of  
24 statement, if you will, but did they say to me was it the  
25 exact statement -- was it a statement, I can't say that

## Valencia - People - Cross/Eaddy

1 they said the actual word "statement" verbatim, but it was  
2 a statement. I believe it was the Diane Burowski  
3 statement. That's what they -- my supervisor told me.

4 Q Okay. And in fact on this request, there's no  
5 request to copy 911 calls, right?

6 A. Is there a copy --

7 MS. NICOLAZZI: Your Honor, I'm going to  
8 object. What's the relevance of that?

9 MS. EADDY: The relevance is that the letter  
10 that the D.A. sent to me was that 911 calls were taped  
11 over my client's statement.

12 THE COURT: Ma'am, I really don't need a  
13 speaking objection. Sustained.

14 Q Did you listen to the tape after you taped over  
15 it?

16 A. Yes, I did.

17 Q And what did you hear?

18 A. I heard a female voice.

19 Q Did it sound like a -- strike that.

20 Was it one female voice or was it several voices?

21 A. I do not recall. I do not remember.

22 Q And did it appear to be a female voice making a  
23 statement?

24 MS. NICOLAZZI: Objection.

25 THE COURT: Sustained. We're talking about

## Valencia - People - Cross/Eaddy

1           what he did in terms of the proffer, not ultimately  
2           what he may have heard subsequent or what he may have  
3           learned subsequent but what he did at the time he  
4           tried to make this recording.

5           Q     How do you know that the recording -- other than  
6           someone from the district attorney's office telling you  
7           that the tape was recorded over, how do you know that the  
8           Ellis tape was recorded over? Because you listened to it;  
9           is that correct?

10          A.    I listened to it, a portion of it.

11          Q     And it did not contain the words of a male; is  
12          that correct?

13          A.    The voice of a male, no, not to my knowledge.

14          Q     And it contained a statement by a female; is that  
15          correct?

16          A.    That is correct.

17                   MS. EADDY: I have no further questions.

18                   THE COURT: Any redirect, counsel?

19                   MS. NICOLAZZI: No, your Honor.

20                   THE COURT: Sir, thank you very much. You  
21          may step down.

22                   THE WITNESS: Thank you.

23                   (Whereupon, Mr. Andres Valencia was excused  
24          from the witness stand.)

25                   THE COURT: We need -- all right, okay.

## Proceedings

1 Please, bear with me. We need a moment.

2 (Pause in proceedings.)

3 THE COURT: How long is the next witness; do  
4 you have any idea, your direct?

5 MS. NICOLAZZI: Ten minutes, Judge.

6 THE COURT: All right, we'll see. Next  
7 witness, please. Let me know if there's a problem.

8 MS. NICOLAZZI: People call Detective  
9 Michael Habert.

10 THE COURT: Habert?

11 MS. NICOLAZZI: Habert.

12 M I C H A E L H A B E R T , Detective, a witness called  
13 on behalf of the People, after having been first duly  
14 sworn by the clerk of the court, took the witness  
15 stand and testified as follows:

16 COURT CLERK: Please state your name, rank,  
17 shield, and command.

18 THE WITNESS: Detective Michael Habert,  
19 Shield 6725, Brooklyn South Homicide Squad.

20 COURT CLERK: Can you spell your last name.

21 THE WITNESS: H-A-B-E-R-T.

22 COURT CLERK: Thank you. You can have a  
23 seat, Detective.

24 THE WITNESS: Thank you.

25 THE COURT: If you will, sir, speak into the

1 Det. Habert - People - Direct/Nicolazzi  
microphone.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: And keep your voice up.

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Don't volunteer anything. Wait  
6 until the question's asked. If you don't understand  
7 the question, ask the person to repeat it for you.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: You may inquire.

10 MS. NICOLAZZI: Thank you.

11 DIRECT EXAMINATION

12 BY MS. NICOLAZZI:

13 Q Good afternoon, Detective Habert.

14 A. Good afternoon.

15 Q How long have you been employed by the New York  
16 City Police Department?

17 A. 16 years.

18 Q How long have you been a detective?

19 A. Nine years.

20 Q And how long have you been assigned to the  
21 Brooklyn South Homicide Division?

22 A. Just over four years.

23 Q I'm going to direct your attention back to the  
24 date of July 9th of 2007. On that date, did you become  
25 involved in the investigation of the shooting of two

Det. Habert - People - Direct/Nicolazzi  
1 police officers, Officers Timeshenko and Yan, that  
2 occurred earlier that morning in Brooklyn?

3 A. Yes, I did.

4 Q On that morning, did you travel to a Mitsubishi  
5 dealership out on Long Island?

6 A. Yes, I did.

7 Q What was the reason that you went there?

8 A. License plates that were found with a vehicle  
9 back in Brooklyn were traced back to being at that dealer.

10 Q And when you say license plates of a vehicle, was  
11 that a BMW that was located near the scene of where the  
12 officers were shot?

13 A. Yes.

14 Q When you went to that dealership that morning,  
15 did you speak with various employees or people at the  
16 dealership?

17 A. Yes, I did.

18 Q After you left there, were you given an  
19 assignment to go to various locations?

20 A. Yes.

21 Q And who were you looking for at that time?

22 A. I was looking to speak to Dexter Bostic.

23 Q And what was the reason that you were looking to  
24 speak to him at that point?

25 A. We were aware he was an employee at the car

Det. Habert - People - Direct/Nicolazzi

1 dealer. He was also on parole, and that some similar  
2 incidents in the past where cars missing from the lot.

3 Q At that point in time, did you have any specific  
4 information that was linking him back to the shooting of  
5 the officers that -- earlier that morning?

6 A. No.

7 Q And at about 10:15 that morning, were you making  
8 efforts to try to locate the person that you had the name  
9 of as Dexter Bostic?

10 A. Yes.

11 Q And at that time, specifically where did you go  
12 to?

13 A. 13 -- I'm sorry, 1430 Gateway Boulevard.

14 Q And where was that located?

15 A. Far Rockaway.

16 Q What was the reason that you went there?

17 A. Doing background checks on Mr. Bostic, that  
18 address had come up. I believe his sister lived there.

19 Q When you went there that morning about 10:15, who  
20 did you go with?

21 A. It was myself, Detective Hopkins, Detective Henn.  
22 We were in one car. There was other detectives there.  
23 Detectives from my office, Detective Chetum (ph.),  
24 Detective Morris, McMann, Detective Summer, and Carey.  
25 And there was a couple other detectives from Queens there.



*2nd grade → appartement*  
Det. Habert - People - Direct/Nicolazzi

1 I don't know their names.

2 Q Was this group together with you, were you given  
3 an assignment going to all the various locations that were  
4 coming up for Dexter Bostic, or was your assignment to go  
5 to this one?

6 MR. WILFORD: Objection, leading.

7 THE COURT: Overruled.

8 A. Our assignment was to go there.

9 Q And when you got there, what did you do?

10 A. When we got there, we went to Apartment 1L.

11 Q When you say we, who did you actually go to the  
12 apartment with, the apartment door?

13 A. Myself, Detective Henn, and Detective Hopkins.

14 Q When the three of you went to the door, what  
15 happened?

16 A. I went to the door. I knocked on the door. A  
17 male voice answered from behind the door and asked who it  
18 was. I told him it was the police. I asked him to open  
19 the door; we'd like to come in and speak to him.

20 Q What happened then?

21 A. The male opened the door. When he opened the  
22 door, he said to come in. There was two males in there.  
23 The younger of the two opened the door. The second male,  
24 I later learned to be Lee Woods.

25 Q Now, what happened when the one that you

Det. Habert - People - Direct/Nicolazzi

1 described as the younger male first opened the door?

2 A. He said to come in.

3 Q What did you do then?

4 A. I started entering the apartment.

5 Q Where were you in relation to the other two  
6 detectives that were with you?

7 A. They were behind me.

8 Q When you first entered the apartment when the  
9 door was opened, where was your gun?

10 A. It was in my holster.

11 Q And how about the other two detectives?

12 A. I believe they also had it holstered as well.

13 Q And what happened as you first then began  
14 entering the apartment?

15 A. As I entered there, the apartment, Mr. Woods was  
16 directly in front of me towards the living-room area..

17 Q When you say Mr. Woods, do you see the person in  
18 the courtroom today that you then observed directly in  
19 front of you?

20 A. Yes, I do.

21 Q Can you indicate where he is, also indicating an  
22 item of clothing that he's wearing.

23 A. He's over at that table over here. He has a  
24 black button-down shirt on.

25 MS. NICOLAZZI: For the, record indicating

Det. Habert - People - Direct/Nicolazzi

1 Defendant Woods. .

2 THE COURT: The record will so reflect.

3 Q And what happened when you first observed him  
4 inside?

5 A. As I entered the apartment, he turns from me and  
6 he reaches his hand towards his right side of his  
7 waistband.

8 Q When he turned away from you and reached his hand  
9 towards his waistband, what did you do then?

10 A. At that point, I ordered him several times to see  
11 his hands.

12 Q What did he do?

13 A. He didn't comply.

14 Q What happened then?

15 A. At that point, at gunpoint, I put him on the  
16 floor.

17 Q What happened next?

18 A. I frisked him and found him not to have a weapon  
19 on him. At that point, he got up and he sat on the couch.

20 Q When he got up, did you see anything in the area  
21 that he had been laying on the ground?

22 A. Yes. There was a cell phone on the floor.

23 Q After you searched Defendant Woods and didn't  
24 find anything, or actually, withdrawn.

25 What did you do with your gun after you put him

Det. Habert - People - Direct/Nicolazzi

1 on the ground?

2 A. I holstered it.

3 Q And what happened after you searched Mr. Woods  
4 and he sat on the couch?

5 A. He sat on the couch. I sat on a chair directly  
6 across from him. I let him know why we were there. We  
7 were looking to speak to Dexter Bostic.

8 Q And what, if anything, did he say in response to  
9 that?

10 A. He said he's not here. You can check around if  
11 you like.

12 Q What happened then?

13 A. Continued speaking with him. I asked him if he  
14 had seen Dexter since last night. He said that he had  
15 gone to sleep in that apartment about 10 o'clock the  
16 previous evening, and he hadn't seen Dexter since  
17 Saturday, at his job.

18 Q Now, at the point in time you were having this  
19 conversation with Lee Woods, did you know who he was?

20 A. No.

21 Q When I say know who he was, did you ever have any  
22 contact with him before?

23 A. No.

24 Q Had his name come up at all in respect to this  
25 investigation at that time?

Det. Habert - People - Direct/Nicolazzi

1 A. No.

2 Q After he told you he hadn't seen Dexter Bostic  
3 since, I believe it was Saturday, you said, what happened  
4 next in the exchange?

5 A. We realized that this was Nicole Bostic, Dexter's  
6 sister's apartment, and that Dexter didn't live there.

7 Q How would you describe Defendant Woods' demeanor  
8 during the time that you were speaking with him?

9 A. He was -- he was calm enough, seemed cooperative.

10 Q After you had that exchange with him, what  
11 happened next?

12 A. I asked him if he lived there, and he related he  
13 didn't live there. And he also informed me that he was --  
14 had worked as a confidential informant for the 101st  
15 Precinct, and that this must be serious for all these  
16 detectives to be there.

17 Q And where did the conversation lead from there?

18 A. I told him it was very serious, and I asked him  
19 if he would help us come back to Brooklyn and help us  
20 locate Dexter.

21 Q How did he respond to that?

22 A. He agreed to come back. He said he would come  
23 back, but he didn't want to leave the apartment. He  
24 requested he go in handcuffs because he didn't want to  
25 look like a snitch because he expressed that these people

Det. Habert - People - Direct/Nicolazzi

1 were dangerous, and he and his family would be killed.

2 Q So when he told you that he would be willing to  
3 go with you back to Brooklyn, that he didn't want to look  
4 like a snitch so he asked to go out in handcuffs, how did  
5 you respond to that?

6 A. I complied with him. I put him in the handcuffs.  
7 I walked him out to the unmarked car. Once he was in the  
8 backseat of the car, I uncuffed him.

9 Q And who actually transported Lee Woods back to  
10 the precinct or back to Brooklyn?

11 A. Detective Summer and Detective Morse.

12 Q And where did you take him to?

13 A. I believe I took him to the 67th Precinct.

14 Q Now, how about the second male, the one you  
15 described as the younger male, where was he after you left  
16 the apartment?

17 A. When I left the apartment, he was in the -- there  
18 was a bedroom off to the side. He was standing in the  
19 bedroom.

20 Q So he remained in the apartment?

21 A. Yes.

22 Q And where did you go when Lee Woods was  
23 transported back to the 67th Precinct?

24 A. I believe I ended up back at the car dealer after  
25 that.

Det. Habert - People - Cross/Karliner

1 Q Did you have any further --

2 A. Oh, I'm sorry. Before I went back to the car  
3 dealer, I went over to an address on Cornaga, which was  
4 Mr. Bostic's mother's address.

5 Q Did you have any further contact with Lee Woods  
6 that morning?

7 A. No.

8 MS. NICOLAZZI: I have nothing further.

9 THE COURT: Mr. Karliner, any cross?

10 CROSS-EXAMINATION

11 BY MR. KARLINER:

12 Q Good afternoon, Detective.

13 A. Good afternoon.

14 Q When you arrived at this address in Far Rockaway,  
15 was there about, what, ten detectives there?

16 A. Yes.

17 Q Certainly your mindset at the time is that this  
18 could be a dangerous situation you're walking into,  
19 correct?

20 A. Yes.

21 Q Everybody is in, is it fair to say, the highest  
22 state of alert, correct, as you approached that door?

23 A. The circumstances, yes.

24 Q You're prepared for the fact Dexter Bostic may be  
25 inside, correct?

Det. Habert - People - Cross/Karliner

1 A. Yes.

2 Q Based on what happened earlier that morning, very  
3 possibly armed, correct?

4 A. Yes.

5 Q Your gun was not drawn?

6 A. No, it was not.

7 Q What about the other detectives, if you saw them?

8 A. I didn't see anybody's gun drawn.

9 Q Were you the first one at the door?

10 A. Yes.

11 Q So the other detectives were really to the side  
12 of you and behind you?

13 A. Yes.

14 Q So you don't know whether or not they had their  
15 guns out?

16 A. Correct.

17 Q And you knock on the door, you bang on the door;  
18 what do you do?

19 A. I knocked on the door.

20 Q And when you say you knocked on the door, you  
21 just waited for a response?

22 A. I waited for a response.

23 Q And what was the response?

24 A. There was -- a person asked who was it.

25 Q What did you say?



Det. Habert - People - Cross/Karliner

1 A. I identified myself as the police. I said, "Can  
2 you open the door. I'd like to come in and speak with  
3 you."

4 Q Just in that tone of voice?

5 A. Yes.

6 Q Did you say why?

7 A. No, not through the door.

8 Q And the person complied?

9 A. Yes.

10 Q Who actually opens the door?

11 A. There was a younger male in the apartment..

12 Q Did you get a name?

13 A. I didn't get his name.

14 Q But this younger man opens the door, correct?

15 A. Yes.

16 Q Could you describe this person?

17 A. It was a male black. I did speak to him later  
18 on.

19 Q Did you get any information from him then?

20 A. He didn't wish to give his name. He just related  
21 that he was a relative of Dexter Bostic and his sister  
22 Nicole.

23 Q Did you ask him to come down to the precinct for  
24 further questioning?

25 A. No.

Det. Habert - People - Cross/Karliner

1 Q He says he doesn't want to give his name and  
2 you're okay with that?

3 A. He didn't want to give his name. He didn't want  
4 to be involved.

5 Q But you saw Lee Woods in the apartment, correct?

6 A. Right.

7 Q And you say your weapon's still unholstered -- I  
8 mean, still holstered, correct?

9 A. At which point?

10 Q When you were -- as you entered?

11 A. Yes.

12 Q You talk to the person. When is it you first see  
13 Lee Woods?

14 A. As I'm entering the apartment.

15 Q Where is he?

16 A. Standing in line where you are but closer.

17 Q Maybe 15 feet away?

18 A. If that far. Probably -- probably ten feet.

19 Q Ten feet away.

20 Not only have you identified yourself as a  
21 detective, it's obvious; you had your shield out, right?

22 A. Yes.

23 Q Other detectives have come into the apartment  
24 behind you?

25 A. I'm not sure they were in yet.

Det. Habert - People - Cross/Karliner

1 Q What do you see Lee Woods doing?

2 A He turns his body and puts his hands into his  
3 right side of his waistband.

4 Q Does he turn his back to you or just turns to the  
5 side?

6 A Almost probably like three-quarters of the way.

7 Q Do you see him reach towards his waist?

8 A Yes.

9 Q What do you do?

10 A I put my hand on my gun, start to draw my gun.  
11 Tell him I want to see his hands.

12 Q So you started to take your gun out?

13 A Yes.

14 Q And I would imagine you're yelling now, right?

15 A Yes.

16 Q What happens?

17 A I keep my gun on him, I approach him and put him  
18 onto the floor.

19 Q So he doesn't resist, correct?

20 A No.

21 Q Doesn't fight you when you go to put him on the  
22 floor, correct?

23 A No.

24 Q When you get him to the floor, you pat him down,  
25 right?

Det. Habert - People - Cross/Karliner

1 A. Yes.

2 Q No weapons?

3 A. None.

4 Q Doesn't give you any fight or any problems,  
5 correct?

6 A. No.

7 Q You sit him on the couch, right?

8 A. Once I'm done frisking him, there's no weapons,  
9 he gets up and gets on the couch.

10 Q You sit him in the chair, correct?

11 A. Yes.

12 Q And you have a conversation with him?

13 A. Yes.

14 Q He's cooperative during that conversation,  
15 correct?

16 A. Yes.

17 Q And do you tell him specifically why you're  
18 looking for Dexter Bostic?

19 A. No.

20 Q And he told you that he was willing to cooperate  
21 with you?

22 A. Yes.

23 Q You even cuff him so he didn't look like a  
24 snitch; you take him out to the car, correct?

25 A. Yes.

Det. Habert - People - Cross/Wilford

1 Q That's exactly what you did, correct?

2 A. Yes.

3 MR. KARLINER: One moment.

4 (Pause in proceedings.)

5 MR. KARLINER: I have nothing else, Judge.

6 THE COURT: Very well. Miss Nicolazzi?

7 MS. NICOLAZZI: No.

8 MR. WILFORD: I'm sorry, Judge.

9 THE COURT: Yes, sir.

10 MR. WILFORD: I have questions.

11 THE COURT: Approach, please.

12 (Sidebar discussion held off the record.)

13 MR. WILFORD: Thank you, Judge.

14 THE COURT: Mr. Wilford.

15 MR. WILFORD: Yes. Might I inquire?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. WILFORD:

19 Q Good afternoon, Detective.

20 A. Good afternoon.

21 Q How are you today?

22 A. Good; how about yourself?

23 Q Very well.

24 Now, you mentioned on direct examination that you  
25 had proceeded to this particular address in Far Rockaway

Det. Habert - People - Cross/Wilford

1 and had proceeded to Five Towns Mitsubishi trying to  
2 locate Dexter Bostic; is that correct?

3 A. Went to Five Towns Mitsubishi to inquire about  
4 the plates.

5 Q Did you ask anybody questions about Dexter Bostic  
6 at that point?

7 A. Yes.

8 Q Whom did you speak to at Five Towns?

9 MS. NICOLAZZI: Objection.

10 THE COURT: Sustained.

11 Q Did you speak to people in management at Five  
12 Towns?

13 MS. NICOLAZZI: Objection.

14 THE COURT: Well, again -- no, I'll allow  
15 that. Please proceed.

16 MR. WILFORD: Thank you.

17 A. Can you repeat the question.

18 Q Yes.

19 MR. WILFORD: Judge, are you allowing the  
20 first question or second?

21 THE COURT: Yes, the first.

22 Q Whom did you speak to at Five Towns?

23 THE COURT: If you have a --

24 THE WITNESS: I have a name.

25 THE COURT: Fine.

Det. Habert - People - Cross/Wilford

1 THE WITNESS: That's fine?

2 THE COURT: Fine.

3 A. The name was Mohammed Dakak.

4 Q Okay, we'll get the spelling some other time.

5 A. Thank you.

6 Q Do you know -- do you know what his position was?

7 A. He was a manager there.

8 Q And you went specifically to Five Towns for the  
9 purpose of tracking down the plates from the BMW and for  
10 Dexter Bostic?

11 A. We didn't go there for Dexter Bostic. The plates  
12 weren't from the BMW. The plates were from a separate car  
13 who, other detectives had interviewed the person who owned  
14 the car, who related to them that they had dropped the car  
15 off at Five Towns to be serviced.

16 Q So you brought up Dexter Bostic when you got to  
17 Five Towns?

18 A. I didn't bring up Dexter Bostic.

19 Q Somebody mentioned him to you?

20 A. Yes.

21 Q This person, this Mohammed Dakak?

22 A. Yes. I believe the spelling is D-A-K-A-K.

23 Q And at that time, I believe you also mentioned on  
24 direct examination that there was some parole issue with  
25 Mr. Bostic?

Det. Habert - People - Cross/Wilford

1 THE COURT: Are you asking him what he was  
2 told?

3 MR. WILFORD: I'm asking what he said on  
4 direct examination, just for clarification.

5 THE COURT: Yes, I understand. He related  
6 the substance of what he was told; is that what you're  
7 asking him?

8 MR. WILFORD: Yes.

9 THE COURT: Okay.

10 A. At some point while I was at the dealer, I was  
11 informed that, you know, Dexter Bostic was on parole.

12 Q Okay. And somebody called and told you that?

13 A. Yes.

14 Q You were in contact --

15 A. I don't know whether it was the radio or the cell  
16 phone, but I was informed that.

17 Q And who did you get that information from?

18 A. I believe it was Detective Yero.

19 Q And did Detective Yero give you the name of  
20 Dexter Bostic first?

21 A. No.

22 Q You gave him the name?

23 A. Yes.

24 Q Based on your conversation with Mohammed Dakak?

25 A. Yes.



Det. Habert - People - Cross/Wilford

1 Q Now, what date was this again, sir?

2 A. That was the 9th.

3 Q And you then proceeded to Mr. Bostic's sister's  
4 home and his mother's home; is that right?

5 A. Yes.

6 Q And Mr. Bostic wasn't in either place?

7 A. Excuse me?

8 Q Mr. Bostic wasn't in either place; is that  
9 correct?

10 A. No, he was not.

11 Q And you hadn't received any statement at all or  
12 weren't aware of any statement at all from anybody linking  
13 Mr. Bostic to anything that happened with respect to the  
14 shooting of Officer Timeshenko and Officer Yan?

15 A. No.

16 Q No, I'm wrong, or yes, I'm correct in the  
17 statement?

18 A. I can't hear you, sir.

19 Q Was that a true statement that I just made, or  
20 was that an incorrect statement?

21 THE COURT: Why don't you rephrase it,  
22 counsel.

23 MR. WILFORD: Certainly, Judge.

24 Q No one had made any statements to you in any way  
25 implicating Mr. Bostic in anything having to do with the

Det. Habert - Defense - Direct/Eaddy  
1 shooting of Officer Timeshenko and the shooting of  
2 Officer Yan at the time you went to Five Towns or to  
3 Mr. Bostic's home; isn't that correct?

4 A. Correct.

5 MR. WILFORD: Thank you. I have nothing  
6 further, Judge. Thank you very much.

7 THE COURT: Miss Nicolazzi, anything in  
8 response?

9 MS. NICOLAZZI: No, your Honor.

10 THE COURT: Miss Eaddy, you had some  
11 questions you want to ask?

12 MS. EADDY: Yes, your Honor.

13 THE COURT: Okay. This relates to something  
14 that was not raised on direct examination; is that  
15 correct?

16 MS. EADDY: That's correct.

17 THE COURT: All right. He becomes your  
18 witness then.

19 MS. EADDY: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MS. EADDY:

22 Q Good afternoon, Detective.

23 A. Good afternoon.

24 Q In connection with your work on this case, you  
25 went to Pennsylvania to participate in the apprehension of

Det. Habert - Defense - Direct/Eaddy

1 Mr. Ellis and Mr. Bostic; is that correct?

2 A. Yes.

3 Q And in connection with that assignment, you had  
4 occasion to participate in the taking of statements from  
5 my client, Mr. Ellis; is that correct?

6 A. Yes.

7 Q And the first statement that was taken by my --  
8 of my client was on July 12th; is that correct?

9 THE WITNESS: Your Honor, may I look at my  
10 notes?

11 THE COURT: Please just tell us what it is  
12 you're looking at.

13 THE WITNESS: I'm looking at a DD-5 that was  
14 prepared by Detective Margraf.

15 THE COURT: Okay, fine.

16 (Witness reviewing paperwork.)

17 A. Yes, that was the date.

18 Q And the first statement by my client was about  
19 9:20 in the morning; is that correct?

20 A. Yes.

21 Q Now, prior to that, did you participate in the  
22 apprehension of Mr. Ellis?

23 A. I was not there when he was apprehended.

24 Q So is it fair to say you first came into contact  
25 with Mr. Ellis when you got to the barracks?

Det. Habert - Defense - Direct/Eaddy

1 A. Yes.

2 Q Was he already there?

3 A. Yes.

4 Q And when you got there, where was he?

5 A. He was in a -- I guess it would be an interview  
6 room.

7 Q Okay. Was anyone in there with him?

8 A. I don't remember. I believe there might have  
9 been a troop -- a Pennsylvania state trooper with him, but  
10 I don't -- I don't remember.

11 Q Was he cuffed?

12 A. I don't remember that either.

13 Q And this room, did it have a window on the door,  
14 or something that you can look in and out of on the door?

15 A. I don't believe so.

16 Q So is it fair to say that as you sit here today,  
17 you could not see in and out of that room?

18 A. I don't recall looking in or out of that room, to  
19 be honest with you. I think it was a solid door, with no  
20 windows.

21 Q When you arrived at the barracks, were there  
22 other New York City police officers and detectives there?

23 A. Yes.

24 Q Who was there?

25 A. I don't specifically remember who. There was

Det. Habert - Defense - Direct/Eaddy

1 other people there.

2 Q Well, do you remember the officers who -- the New  
3 York City police officers and detectives who went to  
4 Pennsylvania in connection with this case who were there?

5 A. Specifically, I went with Detective Henn and  
6 Detective Hopkins. There was -- there was numerous  
7 officers there. Some I knew, some I didn't know.

8 Q Can you tell me the names of the ones you knew.

9 MS. NICOLAZZI: Objection, objection.

10 A. The ones in Pennsylvania?

11 THE COURT: If you know. If you know. Is  
12 there anything to refresh your recollection?

13 THE WITNESS: You know, at different  
14 points -- different points, I was there from the  
15 evening, one evening, all the way to the next  
16 afternoon.

17 Q I'm speaking about the 12th, when you arrived at  
18 the barracks.

19 A. Are you talking specifically at the barracks?

20 Q At the barracks when you first arrived, right  
21 before you spoke to my client.

22 A. I believe there were some guys from the 71st  
23 Squad there.

24 Q What were their names?

25 A. I -- I believe there was Peter Manceri (ph.),

Det. Habert - Defense - Direct/Eaddy

1 Liam -- I forget Liam's last name.

2 Q Okay. And where were they when you first arrived  
3 at the barracks?

4 A. I believe they were standing outside.

5 Q Outside the door?

6 A. Outside the door of actually by the driveway of  
7 the barracks.

8 Q Now, when you first -- did you walk into the room  
9 where my client was alone or with someone?

10 A. I went in with Detective Margraf.

11 Q Okay. And did you go in with your gun on your  
12 person?

13 A. No, I didn't have my gun on me.

14 Q Did you know if Detective Margraf did?

15 A. I don't believe so but I don't remember checking.

16 Q And when you went in and you spoke to him, did  
17 you cuff him then?

18 MS. NICOLAZZI: Your Honor, I'm just going  
19 to object to the leading.

20 THE COURT: Yes, you are doing that,  
21 Miss Eaddy. You can ask what, if anything, did he do  
22 or see, okay.

23 Q Was my client restrained in any way in the room?

24 MS. NICOLAZZI: Objection.

25 THE COURT: Calling for a conclusion. The

Det. Habert - Defense - Direct/Eaddy

1 objection's appropriate.

2 Q How was my client sitting in the chair?

3 THE COURT: How did he appear, if anything?

4 THE WITNESS: Just appeared to be sitting in  
5 a chair. I don't -- you ask me if I remembered he was  
6 handcuffed --

7 Q The answer's no, you don't remember?

8 A. I don't remember.

9 Q And when you were in the room with him, did he  
10 complain of having been assaulted prior to you coming in  
11 the room?

12 A. No.

13 Q Did you see any injuries on his person?

14 A. No.

15 MS. EADDY: I'm going to ask that the  
16 witness be shown Defendant's A and also Defendant's B.

17 (Defense Exhibits A and B shown to witness.)

18 Q Detective, if you can look at Defendant's A.

19 (Witness complies.)

20 Q Do you recognize what's depicted in that picture?

21 A. Yes.

22 Q What is that?

23 A. That's Robert Ellis.

24 Q And is that how he appeared on July 12th, when  
25 you spoke to him?

Det. Habert - Defense - Direct/Eaddy

1 A. Yes.

2 Q Do you notice under the left side of his eye  
3 that --

4 THE COURT: Sustained, sustained.

5 Q What, if anything, did Mr. Ellis -- how did his  
6 face appear to you when you saw him?

7 A. Normal.

8 Q Is it fair to say that his face appeared as it  
9 does in that photograph?

10 A. Yes.

11 Q Looking at Defendant's B, take a look at --

12 MS. EADDY: Your Honor, may I just approach  
13 the witness?

14 THE COURT: Defendant's B?

15 MS. EADDY: Yes.

16 THE COURT: He's looking at Defendant's B.

17 MS. EADDY: There's three pictures, your  
18 Honor.

19 THE COURT: Let him look at all three, then  
20 ask your question.

21 A. There's a picture of his face, his back, and his  
22 chest.

23 Q Looking at the top photograph, which is his face,  
24 is it fair to say that that is how Mr. Ellis appeared on  
25 July 12th to you?



Det. Habert - Defense - Direct/Eaddy

1 A. Yes.

2 Q And looking at the picture of his back -- first  
3 of all, did you get an opportunity to ever see his back?

4 A. I don't remember seeing his back.

5 MS. EADDY: Thank you. I have no further  
6 questions.

7 THE COURT: Miss Nicolazzi?

8 MS. NICOLAZZI: No cross.

9 MR. WILFORD: No cross, Judge.

10 THE COURT: Okay. Mr. Karliner?

11 MR. KARLINER: No, thank you.

12 THE COURT: Thank you very much, sir.

13 THE WITNESS: Thank you, your Honor.

14 (Whereupon, Detective Michael Habert was  
15 excused from the witness stand.)

16 THE COURT: Miss Nicolazzi. I'm sorry,  
17 Mr. Hale.

18 MR. HALE: Thank you, your Honor.

19 THE COURT: Oh, that's right. Forgive me.

20 All right, about five minutes -- ten minutes.

21 Ten-minute break. Ten-minute break.

22 (Whereupon, the following was recorded by  
23 Official Court Reporter Susan Oliva:)

24 \* \* \* \* \*

25

Direct - Det. M. Walker - Hale/People

1 (Whereupon, a short recess was taken.)

2 THE CLERK: Come to order, please.

3 Case on for hearings continued. All parties are  
4 present. Defendants are present.

5 THE COURT: Ms. Nicolazzi, who is your  
6 next witness?

7 MR. HALE: Detective Matthew Walker.

8 THE COURT: Bring in your witness.

9 COURT OFFICER: Witness entering.

10 (Whereupon, the witness enters the  
11 courtroom and takes the stand.)

12 THE CLERK: Remain standing. Raise  
13 your right hand.

14 Do you solemnly swear that the  
15 testimony that you shall give will be the truth, the  
16 whole truth and nothing but the truth so help you  
17 God?

18 THE WITNESS: I do.

19 D E T E C T I V E M A T T H E W W A L K E R, called  
20 as a witness by the People, having been first duly  
21 sworn by the Clerk of the Court, took the witness stand  
22 and testified as follows

23 THE CLERK: For the record, in a loud,  
24 clear voice, please state your full name, rank,  
25 shield number and command for the record.

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1 THE WITNESS: My name is Detective  
2 Matthew Walker. My rank is detective. Shield number  
3 1701, 67 Precinct.

4 THE COURT: Speak directly into the  
5 microphone. Speak to the back of the courtroom and  
6 don't volunteer anything. Wait until the questions  
7 are asked, and if you don't understand something,  
8 just let us know and we will repeat the question.

9 Mr. Hale.

10 MR. HALE: Thank you.

11 DIRECT EXAMINATION

12 BY MR. HALE:

13 Q. Sir, are you a New York City police officer?

14 A. Yes.

15 Q. For how long?

16 A. Seventeen-and-a-half years.

17 Q. Do you hold a rank of detective?

18 A. I do.

19 Q. For how long?

20 A. Approximately six years.

21 Q. And your current assignment is where?

22 A. 67 Precinct Detective Squad.

23 Q. How long have you been working there?

24 A. Approximately six-and-a-half years.

25 Q. And you were working there in July of last year,

Direct - Det. M. Walker - Hale/People

1 2007?

2 A. Yes, I was.

3 Q. I am going to draw your attention to a specific  
4 date, Detective, and that's July 9, 2007.

5 Do you recall that particular date?

6 A. I do.

7 Q. Were you working on that date?

8 A. Yes, I was working.

9 Q. Can you tell the court what time it was that you  
10 started working on that day?

11 A. I started work at four.

12 Q. And where did you respond to start work?

13 A. 67 Precinct Detective office.

14 Q. Sir, when you went to the 67 Detective Squad on  
15 July 9th at 4:00 p.m., did you observe or were you made  
16 aware of the presence of an individual by the name of Lee  
17 Woods in the 67 Precinct?

18 A. Yes, I was.

19 Q. How did you became aware of that?

20 A. I was informed by the supervisor that he was  
21 present at the 67 Precinct detective office.

22 Q. And were you informed in conjunction with what  
23 investigation he was at the 67 Precinct?

24 A. Yes, I was.

25 Q. What was it that you were told?

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1 A. For the homicide of Detective Russell  
2 Timoshenko.

3 Q. Now, sir, where was it that you observed  
4 Mr. Woods?

5 A. Mr. Woods was in the interview room.

6 Q. And can you give us an idea of the layout of the  
7 67?

8 A. When you went into the detective office, you  
9 walk through the front door, go straight back to the  
10 office and make a left. There are two interview rooms.  
11 One, on the right and one on the left.

12 Q. Now, when you say you observed him in the  
13 interview room, how was it that you be able to observe him  
14 in the interview room?

15 A. I walked back into the room where he was sitting  
16 in Interview Room No. 1.

17 Q. Does that have a door?

18 A. Yes.

19 Q. Does that door lock?

20 A. It does.

21 Q. When you first observed Mr. Woods, was the door  
22 opened, or was the door closed?

23 A. The door was open.

24 Q. I want you to look around the courtroom right  
25 now. And, Detective, if you could, do you observe

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1 Mr. Woods in the courtroom now?

2 A. I do.

3 Q. Can you point to him and describe an article of  
4 clothing that he is wearing right now?

5 A. A black shirt.

6 MR. HALE: Indicating the defendant,  
7 Woods, your Honor?

8 THE COURT: The record will so reflect.  
9 (Whereupon, Defendant Woods is  
10 identified in open court by the  
11 witness.)

12 Q. What was it that Mr. Woods was doing at that  
13 time?

14 A. He was present at the office as a witness in  
15 this investigation.

16 Q. That's what you were told?

17 A. Yes, that's what I was told.

18 Q. What was he doing physically when you first saw  
19 him?

20 A. He was sitting in the interview room.

21 Q. Was he handcuffed in any fashion?

22 A. No, he was not.

23 Q. What, if anything, did you do with regard to  
24 Mr. Woods during the course of that day?

25 A. During the course of that day, I fed him twice,

Direct - Det. M. Walker - Hale/People

1 took him to the bathroom, gave him cigarettes.

2 Q. Can you give us a run down about how it became  
3 about that you performed those services for Mr. Woods?

4 A. Well, the supervisor informed me that he was a  
5 witness and to assist him with anything that he needed  
6 throughout the day. When he needed to use the bathroom,  
7 he would ask for me, and I would go to take him to the  
8 bathroom, feed him, give him cigarettes, whatever he  
9 requested.

10 Q. And did you, in fact, feed him, sir?

11 A. I did.

12 Q. What did you feed him and approximately when?

13 A. I don't recall the exact time. The first thing  
14 we fed him was White Castle. And the second item was  
15 pizza.

16 Q. At any time was Mr. Woods informed by you, sir,  
17 that he was not free to leave?

18 A. No.

19 Q. Did you observe any other detective or police  
20 personnel indicating that he was not free to leave?

21 A. No, I did not.

22 Q. When he was taken from the interview room, sir,  
23 to go to the bathroom, as you said, at his request, was he  
24 restrained in any fashion?

25 A. No, he was not.

Direct - Det. M. Walker - Hale/People

1 Q. When he was smoking cigarettes, you provided  
2 those?

3 A. I did.

4 Q. And where was he smoking these cigarettes?

5 A. In the interview room.

6 Q. Was any restriction placed on him at all during  
7 that time?

8 A. No.

9 Q. How long was it that you observed Mr. Woods in  
10 performing these services for him?

11 A. From 4:00 p.m. to 2:00 in the morning.

12 Q. During that time period, sir, did you observe  
13 any occasions when there were other police personnel who  
14 were engaged in conversation with Mr. Woods?

15 A. Yes, they did.

16 Q. And who did you see talking to him?

17 A. Detective Margraf and Yero.

18 Q. And how many occasions did you see what  
19 occurred, sir?

20 A. They were in and out, two or three times during  
21 that amount of time.

22 Q. And, at any of those times before or after  
23 Detectives Margraf and Yero talked to Mr. Woods, did you  
24 see him restrained in any way?

25 A. No, I did not.



Cross - Det. M. Walker - Karliner

1 Q. The door, sir, did it remain open during the  
2 time that you were able to observe him?

3 A. Yes, it did.

4 Q. Detective, did you have anything to do with  
5 having a substantive conversation with Mr. Woods about the  
6 particulars about the Timoshenko shooting at all?

7 A. No, I did not.

8 MS. NICOLAZZI: Thank you. I have  
9 nothing further, your Honor.

10 THE COURT: Mr. Karliner, do you have  
11 any questions?

12 MR. KARLINER: I do. Thank you.

13 CROSS-EXAMINATION

14 BY MR. KARLINER:

15 Q. How are you?

16 A. Good afternoon.

17 Q. How are you?

18 A. Good, thank you.

19 Q. So you started at 3:30 in the afternoon?

20 A. 4:00.

21 Q. When you arrived there, Mr. Woods was already  
22 there?

23 A. Yes, that's correct.

24 Q. You saw him in the interview room?

25 A. Correct.

SO

Cross - Det. M. Walker - Karliner

1 Q. Was the door opened or closed?

2 A. Open.

3 Q. Your supervisor tells you that your job for the  
4 day is to guard him?

5 A. No. He informed me, he was an eyewitness in the  
6 investigation, and that if he needed anything throughout  
7 the day, to assist him with that.

8 Q. So are you supposed to watch him during the  
9 course of your tour? Or do you have other duties that you  
10 are going to perform as well?

11 A. I am going to do other duties as well.

12 Q. In or out of the precinct?

13 A. In the office.

14 Q. Were you told when Mr. Woods first came to the  
15 67 Precinct?

16 A. No, I was not.

17 Q. So you have no idea how long he had been there?

18 A. I do not.

19 Q. Were you relieving someone who had been  
20 performing similar tasks during the course of the day?

21 A. I was not informed of that, no.

22 Q. Do you have information whether or not Mr. Woods  
23 may or may not have said he wanted to leave to anyone in  
24 the police department?

25 A. No.

Cross - Det. M. Walker - Karliner

1 Q. You were informed what to do if Mr. Woods got up  
2 and walked out?

3 A. No, I was not.

4 Q. If Mr. Woods had gotten up and walked out, what  
5 would you have done?

6 MR. HALE: Objection.

7 THE COURT: What would you have done?

8 A. I would have allowed him to leave.

9 Q. Just let him walk out?

10 A. I would have let him walk out.

11 Q. Out of the precinct?

12 A. Yes.

13 Q. Just let him go?

14 A. Yes, sir, as long as we had had contact  
15 information.

16 Yes.

17 Q. Do you know if you had contact information?

18 A. If he wanted to leave and I walked him out, I  
19 would have gotten that information before he left.

20 Q. You don't know if it had already been taken?

21 A. I was not aware of that, no.

22 Q. You said that you went out and fed him a couple  
23 of times?

24 A. I did.

25 Q. Did you write a DD-5 as to that?

Cross - Det. M. Walker - Karliner

1 A. No, I did not.

2 Q. You gave him cigarette breaks?

3 A. I gave him cigarettes, correct.

4 Q. Let him go to the bathroom?

5 A. Yes.

6 Q. Was there a DD-5 as to when that occurred?

7 A. No.

8 Q. You said Detective Margraf and Yero were  
9 speaking to him throughout the course of the evening?

10 A. I said they were in and out throughout the  
11 evening.

12 Q. Did you hear what they were talking about?

13 A. No.

14 Q. Was the door opened or closed when they went in?

15 A. The door was opened.

16 Q. Did you ever see Mr. Woods handcuffed?

17 A. No, I did not.

18 Q. Did you ever talk to either detectives about  
19 what conversations that they were having, what information  
20 that they were getting?

21 A. No, I did not.

22 Q. During the course of your tour, People came down  
23 to visit Mr. Woods, correct?

24 A. That's correct.

25 Q. Do you know who these people were?

Cross - Det. M. Walker - Karliner

1 A. Detective Margraf and Detective Yero.

2 Q. Now how about civilians, non police personnel?

3 A. I was not aware of anyone visiting, non police  
4 personnel.

5 Q. No one came to you and said, they want to speak  
6 to Mr. Woods?

7 A. Not that I am aware of, no.

8 Q. You didn't have contact with any civilians with  
9 regard to Mr. Woods at all?

10 A. Not that I am aware of. No.

11 Q. Were you aware of any other people who were  
12 locked up at the 67 Precinct that day in connection with  
13 this investigation?

14 MR. HALE: Objection.

15 THE COURT: Sustained, not relevant.

16 Q. Who was your supervisor that day?

17 A. My supervisor was Lieutenant McCray.

18 Q. He was on duty until two in the morning when you  
19 got off?

20 A. I don't know what time he left.

21 Q. Who were you reporting to when you were there?

22 A. Lieutenant McCray.

23 Q. The entire time you were there?

24 A. That's correct.

25 Q. Did you ever go into the interview room to speak

Cross - Det. M. Walker - Karliner

1 to Mr. Woods?

2 A. Only when he needed to use the bathroom or  
3 wanted a cigarette, or when he informed me that he was  
4 hungry.

5 Q. How did he contact you?

6 A. I would go in or he would call out and I would  
7 go in.

8 Q. He didn't really have freedom to get up or walk  
9 over to you and say, "Detective Walker, I am hungry. Get  
10 me something to eat."

11 He didn't really have that ability?

12 THE COURT: Rephrase that, Mr.  
13 Karliner.

14 MR. KARLINER: Okay.

15 THE COURT: That requires him to read  
16 his state of mind.

17 Q. Mr. Woods was not free to get up and just walk  
18 out and go over to you in the precinct and say, "This is  
19 what I need," correct?

20 MR. HALE: Objection.

21 THE COURT: Whether or not he was free  
22 or not is really subjective.

23 Q. Mr. Woods never got up and left the interview  
24 room to get you, correct?

25 A. That's correct.

SO

Cross - Det. M. Walker - Karliner

1 Q. When he needed you, he had to somehow get your  
2 attention when you were outside the interview room?

3 A. That's correct.

4 Q. Or he had to wait for you to come in to ask him  
5 if he needed assistance, correct?

6 A. That's correct.

7 MR. KARLINER: I have nothing further.

8 THE COURT: Anything further?

9 MR. HALE: No, your Honor.

10 THE COURT: You may step down, sir.

11 (Whereupon, the witness steps down from  
12 the stand and exits the courtroom.)

13 THE COURT: People, call your next  
14 witness.

15 MR. HALE: People, call Detective Liam  
16 Morris.

17 COURT OFFICER: Witness entering.

18 (Whereupon, the witness enters the  
19 courtroom and takes the stand.)

20 THE CLERK: Remain standing. Raise  
21 your right hand.

22 Do you solemnly swear that the  
23 testimony that you shall give will be the truth, the  
24 whole truth, and nothing but the truth so help you  
25 God?

Direct - Det. L. Morris - People/Hale

1 THE WITNESS: I do.

2 D E T E C T I V E L I A M M O R R I S, called  
3 as a witness on behalf of the People, having been first  
4 duly sworn, testified as follows:

5 THE CLERK: In a loud, clear voice,  
6 please state your full name for the record.

7 THE WITNESS: My name is Detective Liam  
8 Morris. Shield No. 6779, 71 Detective Squad.

9 THE COURT: Detective speak directly  
10 into the microphone. Keep your voice up and don't  
11 volunteer anything. Wait until the questions are  
12 asked. And if you don't understand it, just let us  
13 know and we will repeat the question.

14 Mr. Hale.

15 MR. HALE: Thank you.

16 DIRECT EXAMINATION

17 BY MR. HALE:

18 Q. Sir, are you a New York City police officer?

19 A. Yes, sir.

20 Q. For how long?

21 A. Sixteen years.

22 Q. And you currently hold the rank of detective?

23 A. Yes, sir.

24 Q. How long have you had that rank?

25 A. Since 1999.

SO



Direct - Det. L. Morris - Hale/People

1 Q. Do you work at the 71 precinct?

2 A. Yes.

3 Q. How long have you worked there as a detective?

4 A. Three years.

5 Q. Sir, were you working as a detective in the 71  
6 Precinct in July, 2007?

7 A. Yes, I was.

8 Q. On or about July 9, 2007, did you became aware  
9 of a shooting of two police officers, Russel Timoshenko  
10 and Herman Yan within the confines of the 71 Precinct?

11 A. I did, yes.

12 Q. Drawing your attention, further, sir, to July  
13 11th, were you detailed to do anything in conjunction with  
14 the investigation of that shooting, sir?

15 A. Yes, I was.

16 Q. What was it that you were detailed to do?

17 A. I went to Pennsylvania.

18 Q. And how was it that you were -- you came about  
19 going to Pennsylvania? Was it your idea or were you  
20 ordered to do it?

21 A. I was instructed by Lieutenant Ferris at the 71  
22 Squad Command.

23 Q. And did you go to Pennsylvania by yourself or  
24 with other police officers?

25 A. There were others.

Direct - Det. L. Morris - Hale/People

1 Q. Who were the other police officers that you went  
2 to Pennsylvania with?

3 A. Sergeant Dukay and Detective Phil Thomas.

4 Q. What were your instructions for going to  
5 Pennsylvania? What were you instructed to do there?

6 A. We were attempting to apprehend people who had  
7 killed police officers.

8 Q. Who were they, sir?

9 A. Bostic and Ellis.

10 Q. What information were you given in New York as  
11 to the appearance or identity of those two individuals  
12 besides the names?

13 A. I had two photos, one of each.

14 Q. It was that you were initially detailed to look  
15 for one or both of these individuals?

16 A. Bostic was captured and mine was on the 12<sup>th</sup>.

17 Q. Did you participate, sir, in a search or trying  
18 to apprehend Bostic before he was, in fact, apprehended?

19 A. No.

20 Q. When were you specifically detailed to look for  
21 the second individual, Ellis, after you had been aware  
22 that Bostic had been captured?

23 A. Early in the morning, July 12, 2007.

24 Q. Where was that that you went to try to find  
25 Mr. Ellis?

Direct - Det. L. Morris - Hale/People

1 A. On Interstate 80.

2 Q. Now, what was the area that you were -- you  
3 arrived at, to look for Mr. Ellis on the morning of July  
4 12th?

5 A. I was near the mile marker of 293.8. I was  
6 right near that mile marker itself.

7 Q. What did that area look like, sir?

8 A. It was a highway, and on the part where I was,  
9 there were a few cops all sectioned off up and down the  
10 highway.

11 Q. The area itself, what was the terrain like? Was  
12 it flat or high?

13 A. No. On the side of the road was a hill, grass,  
14 large hill, straight up a mountain.

15 Q. Sir, did you arrive at that location by yourself  
16 or with any other officers?

17 A. No, there were others.

18 Q. Who were the others that you knew?

19 A. Detective Thomas was with me.

20 Q. Were there other officers or law enforcement  
21 personnel from other agencies besides the New York City  
22 Police Department?

23 A. Yes, there was.

24 Q. What sort of agencies, or how many of those  
25 individuals were there?

Direct - Det. L. Morris - Hale/People

1 A. There were numerous state troopers, New York  
2 City Police Department, numerous officers.

3 Q. Now, sir, what time, approximately, was it that  
4 you arrived at that location to look for Mr. Ellis?

5 A. I got there at about 6:00 that morning.

6 Q. And what did you do after arriving there at six  
7 in the morning?

8 A. My post was over near the mile marker where I  
9 was.

10 Q. Did there come a time, sir, during the course of  
11 that morning when you received any sort of information  
12 that lead you to believe that Mr. Ellis was at or near the  
13 vicinity you were detailed to?

14 A. Yes.

15 Q. Tell the court how that came about?

16 A. One of the troopers, Pennsylvania state police,  
17 he actually walked to the top of the mountain and seen  
18 someone move or something up there and he just started  
19 yelling.

20 Q. What did you do when you saw this person  
21 yelling?

22 A. I immediately started running up that mountain.

23 Q. Did you get to the point where that particular  
24 Pennsylvania Trooper was?

25 A. Yes.

Direct - Det. L. Morris - Hale/People

1 Q. The Pennsylvania state trooper who raised the  
2 alarm bringing you up there, what was he doing at the  
3 time?

4 A. He was standing up there. Once I got up there,  
5 my whole attention was drawn to Mr. Ellis.

6 Q. Sir, you were armed at the time?

7 A. I was.

8 Q. When you arrived where Mr. Ellis was, did you  
9 draw your weapon?

10 A. Yes, I did.

11 Q. Now, sir, how was it that you were able to  
12 observe Mr. Ellis? How were you able to tell that this  
13 was, in fact, the individual that you were looking for?

14 A. I had a photo of him on me.

15 Q. What, if anything, did you do with regard to  
16 Mr. Ellis when you saw him at that area?

17 A. I immediately approached him.

18 Q. Now, I think you indicated earlier you were  
19 unable to see his hands at first?

20 A. Yes.

21 Q. Did you give any commands or make any statements  
22 to Mr. Ellis at that point in time?

23 A. I immediately said, "Police, don't move." I had  
24 my gun drawn right at him. I said, "Let us see your  
25 hands. Let us see your hands."

Direct - Det. L. Morris - Hale/People

1 Q. And what did Mr. Ellis do in response to that,  
2 if anything?

3 A. He did not let me see his hands yet.

4 Q. What did you do?

5 A. Other officers were coming up the mountain  
6 behind us. I could hear him yelling. There was a large  
7 commotion. As I got to him from the top of the mountain  
8 to where he was, was a couple of feet. The closer I was  
9 able to get to him, that's where I was able to see him a  
10 little better.

11 Q. What were you able to see at that time?

12 A. He had his hands turned up against his chest.

13 Q. What did you do?

14 A. I holstered my gun, ran into the bush, and  
15 dragged him out.

16 Q. How?

17 A. I dragged part of his body. He actually was in  
18 a bush. I went into the bush also myself, and I pulled  
19 him out.

20 Q. By what part of his body?

21 A. By his chest area where I was able to grab him.

22 Q. What was he doing?

23 A. He was resisting.

24 Q. In what fashion?

25 A. His arms were swinging. He didn't want to be

Direct - Det. L. Morris - Hale/People

1 handcuffed, didn't want to come out of the bush or  
2 nothing.

3 Q. What did you do?

4 A. I pulled him out where I was able to grab one of  
5 his arms and placed it right behind his back.

6 Q. Did you have handcuffs at that point in time?

7 A. I had handcuffs on me. But I couldn't handcuff  
8 him. I put his arms behind his back.

9 Q. Was he, in fact, handcuffed in your presence?

10 A. Yes.

11 Q. Who handcuffed him, sir?

12 A. I am not actually sure who actually put the  
13 handcuffs on him.

14 Q. When the handcuffs were placed on Mr. Ellis,  
15 what happened then?

16 A. He was picked up, and I searched him. I patted  
17 him down for weapons.

18 Q. When you patted him down for weapons, this was  
19 an exterior pat down?

20 A. Yes.

21 Q. Were you able to find anything on the exterior  
22 pat down?

23 A. No.

24 Q. Did you conduct a further search of Mr. Ellis at  
25 that point in time?

Direct - Det. L. Morris - Hale/People

1 A. Yes, I did.

2 Q. What did you do?

3 A. I went through a thorough search of everything  
4 that he had on.

5 Q. Did you recover items that he had?

6 A. Yes, I did.

7 Q. What were the items and where did you recover  
8 them from.

9 . You are referring to something?

10 A. Yes, I am referring to a voucher from Corporal  
11 Courtright.

12 Q. Go ahead with the court's permission.

13 THE COURT: Yes.

14 A. A New York State benefit car, ID UD 15144K-King.

15 Q. Where was that at on his person?

16 A. In the right pocket, right front pant's pocket.

17 Q. What else?

18 A. A black Motorola cell phone with a holder.

19 Q. Where was that at?

20 A. Everything I took out of him was on his right  
21 side of the body in the front pocket.

22 Q. Tell us the other items.

23 A. Two photos, two pens, one pink lighter, one pack  
24 Metro trip papers, three Magnum condoms in gold wrappers,  
25 one yellow tube with a red lid, two one-dollar bills, one

SO



Direct - Det. L. Morris - Hale/People

1 foil lid to a peanut butter jar, and one key to a BMW  
2 vehicle.

3 Q. Sir, did Mr. Ellis have anything on him in the  
4 form of identification, official or otherwise?

5 A. I am not sure.

6 Q. Driver's license or anything of that nature?

7 A. Yes. One New York State Driver's License.

8 Q. That was in Mr. Ellis' name?

9 A. Yes.

10 Q. What did you do with the items?

11 A. When I went back to the state barracks, I handed  
12 them to Corporal Courtright.

13 Q. You kept them in your possession from that point  
14 when you recovered them until you got back to the  
15 barracks?

16 A. Yes.

17 Q. What became of Mr. Ellis after you searched him  
18 and recovered those items?

19 A. He was taken down the mountain and placed in a  
20 vehicle.

21 Q. Do you recall who took him down the slope of the  
22 mountain?

23 A. I was one of the detectives.

24 Q. Do you recall who else was?

25 A. Detective Manceri and Thomas was there.

Direct - Det. L. Morris - Hale/People

1 Q. You said he was placed in a vehicle?

2 A. Yes.

3 Q. What sort of vehicle is that?

4 A. I am not sure.

5 Q. Was it one of the New York police vehicles or  
6 from another law enforcement agency?

7 A. I don't think it was a New York City Police  
8 Department vehicle.

9 Q. Who else went in the vehicle with Mr. Ellis?

10 A. I am not sure.

11 Q. Did you go into the vehicle with him?

12 A. No, I did not.

13 Q. Was there someone from the N.Y.P.D. who went in  
14 the vehicle with Mr. Ellis?

15 A. I am not sure.

16 Q. Where did you again see Mr. Ellis after he was  
17 placed in the vehicle, sir?

18 A. The next time I seen him was at the barracks.

19 Q. Let me ask you, sir. During the point that you  
20 talked about pulling Mr. Ellis from the bush and cuffing  
21 and searching him, and then placing him in the vehicle,  
22 besides what you talked about, saying, "Let me see your  
23 hands. Let me see your hands."

24 Did you have any conversation with Mr. Ellis at  
25 that time?

Direct - Det. L. Morris - Hale/People

1 A. No.

2 Q. Did you observe whether or not there was any  
3 other law enforcement officers who had any conversation  
4 with Mr. Ellis at that time?

5 A. No, I did not.

6 Q. Did Mr. Ellis say anything irrespective of  
7 conversation? Did he say anything on his own during that  
8 point in time?

9 A. No, he did not.

10 Q. When you saw Mr. Ellis at the barracks, where  
11 did you see him there, sir?

12 A. He was in one of the rooms. I was not familiar  
13 with the barracks. It was the first time that I was  
14 there.

15 Q. Let me ask you this, sir. Besides what you  
16 already testified to, did you have any other contact with  
17 Mr. Ellis on the 12th of July, 2007?

18 A. No, I did not.

19 MR. HALE: I have no further  
20 questions.

21 THE COURT: Ms. Eaddy?

22 Do you have any questions?

23 MS. EADDY: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MS. EADDY.

SO

Cross - Det. L. Morris - Eaddy

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. You testified that you were dispatched from the  
4 71 Precinct to Pennsylvania in connection with attempting  
5 to apprehend Mr. Bostic and Mr. Ellis; is that correct?

6 A. Yes, ma'am.

7 Q. That was on July 11?

8 A. Yes, ma'am.

9 Q. And on July 12, there came a time when my  
10 client, Mr. Ellis, was found; is that correct?

11 A. Yes, ma'am.

12 Q. And it's your testimony that you first became  
13 aware that he was found when you heard a state trooper on  
14 top of the hill yelling?

15 A. Yes, ma'am.

16 Q. Do you know what he yelled? Do you remember?

17 A. He just started -- I couldn't hear at the time.  
18 I just heard him yell.

19 THE COURT: You could not make out what  
20 he was saying? You just heard a sound?

21 THE WITNESS: Yes, sir.

22 BY MS. EADDY: (Cont'g.)

23 Q. Is it fair to say, other than the state trooper,  
24 you were the first person up that hill?

25 A. I was one of them, yes.

Cross - Det. L. Morris - Eaddy

1 Q. Did anyone else go up that hill with you?

2 A. Detective Thomas was with me.

3 Q. Other than the state trooper at the top of the  
4 hill, is it fair to say, yourself and Detective Thomas  
5 were the first ones up that hill?

6 A. I believe so. Yes.

7 Q. When you got up that hill, where was the state  
8 trooper in relationship to where my client was?

9 A. He was off to my right. He was on my right  
10 side.

11 Q. When you say, off to my right, do you mean the  
12 trooper or my client?

13 A. The trooper.

14 Q. So the trooper was to your right; is that  
15 correct?

16 A. Yes.

17 Q. And where was my -- how far away was my client  
18 from the three of you?

19 A. When I got to the top of the hill, he was within  
20 a couple of feet -- five or ten feet.

21 Q. And did you say that he was hiding inside of a  
22 bush?

23 A. Yes.

24 Q. Was he on the ground?

25 A. He was on his knees.

Cross - Det. L. Morris - Eaddy

1 Q. Was he on his knees facing the ground, or was he  
2 looking up at you?

3 A. He was on his knees, turned to the side, turned  
4 to the side a little.

5 Q. So from your vantage point, is it fair to say,  
6 you could only see a side profile of him?

7 A. A little more than a side profile.

8 Q. What did you see?

9 A. Not straight front but not a full side.

10 Q. And when he was on his knees at that time when  
11 you first saw him, where was his hands?

12 A. His hands were tucked on to his body. I could  
13 not see them at all.

14 Q. Did he have on a jacket?

15 A. No, he did not.

16 Q. It's fair to say he had on a T-shirt?

17 A. Yes.

18 Q. Were his hands on top of the T-shirt or  
19 underneath?

20 A. They were not underneath. They were on the top  
21 of his body. They were on the top of his body.

22 Q. Can you show us what you mean when you say his  
23 hands were tucked on to his body?

24 A. He had his hands like this.

25 (Whereupon, the witness is indicating.)

Cross - Det. L. Morris - Eaddy

1 A. And was down on his knees.

2 MS. EADDY: Let the record reflect that  
3 the witness is indicating that Mr. Ellis had his fist  
4 in a ball.

5 THE WITNESS: He did.

6 Q. Up and across the mid section; is that fair to  
7 say?

8 A. A little lower I would say.

9 Q. Did you see any weapons in his hands?

10 A. No. I couldn't see what was in his hands yet.

11 Q. Okay. Was it light outside?

12 A. Yes, it was.

13 Q. And, at the time, were there any police dogs  
14 there when you got up the hill?

15 A. There was not.

16 Q. What was the first thing you said to him?

17 A. I identified myself. "Police, don't move. Let  
18 me see your hands. Let me see your hands."

19 Q. Understandably because you didn't know if he had  
20 a gun?

21 A. Yes.

22 Q. What did he do next?

23 A. It was only five to ten feet. As I did this, I  
24 went closer and closer to him. Each time closer, I was  
25 able to get to him. I was able to see his hands.

Cross - Det. L. Morris - Eaddy

1 Q. Is it fair to say, you were walking towards him  
2 with your guns drawn?

3 A. Yes.

4 Q. And is it fair to say, he didn't move at that  
5 time?

6 A. He did not move. No.

7 Q. By the time you were approaching him, how many  
8 officers were up at the hill with you?

9 A. I am not sure.

10 Q. Is it fair to say that there were more than ten  
11 officers up at that hill at that time?

12 A. I am not sure.

13 Q. Is it fair to say there were approximately a  
14 total from all agencies, 50 officers or better, looking  
15 for Robert Ellis at this time?

16 A. At which time you're talking about?

17 Q. The time he was found.

18 A. How many officers were in total looking for him?  
19 You mean just in Pennsylvania or in New York also?

20 Q. In Pennsylvania. Just on I-80.

21 THE COURT: That you were aware of.

22 A. I am not sure.

23 Q. Well, it's fair to say that there were more than  
24 ten officers up at the top of the hill at the time you  
25 were approaching my client with your gun?



Cross - Det. L. Morris - Eaddy

1 MR. HALE: Objection. Asked and  
2 answered.

3 THE COURT: Rephrase your question.

4 At the time you were on the hill, how  
5 many officers were there if you know?

6 THE WITNESS: When I got to the top of  
7 the hill, there was a state trooper, Detective  
8 Thomas, and myself. I don't know how many came up  
9 behind me -- how many there were. There were people  
10 that I didn't know from other law enforcement  
11 agencies.

12 Q. It's fair to say, subsequent to your first  
13 arriving at the hill, multiple officers then came to the  
14 location where you were?

15 A. Multiple officers came up the hill after I got  
16 up there. Yes.

17 Q. And as you approached my client, there were  
18 multiple officers standing there?

19 A. I am not sure.

20 Q. Did there come a time when you were standing  
21 face to face with my client?

22 A. Say that again.

23 Q. Did there come a time when you finally reached  
24 him as you were approaching him with your gun?

25 A. Yes.

Cross - Det. L. Morris - Eaddy

1 Q. And where were his hands at this time?

2 A. His hands were at his body, tucked into his body  
3 still when he was in the bush.

4 Q. In that same position?

5 A. Yes.

6 Q. Is it fair to say, he did not reach for anything  
7 at that time?

8 A. He did not.

9 Q. Is it fair to say he didn't move his hands at  
10 that time?

11 A. He did not.

12 Q. That's when you dragged him out of the bushes?

13 A. Yes.

14 Q. And as you dragged him out of the bushes, it's  
15 fair to say then you could see that there were multiple  
16 officers also standing there?

17 A. No.

18 Q. When you dragged him out of the bushes, how many  
19 officers were there?

20 A. I don't know. My main focus was on him. I  
21 wanted to get him handcuffed. I didn't know if he had a  
22 weapon on him.

23 Q. He had not reached for any weapon? He didn't  
24 attempt to reach because his hands were in that stale  
25 position, correct?

Cross - Det. L. Morris - Eaddy

1 A. When I took him out of the bush?

2 Q. You testified that when you approached him and  
3 found him, his hands as you were standing face-to-face,  
4 his hands remained in the same position; is that correct?

5 A. We were not face-to-face. He was down on his  
6 knees.

7 Q. When you reached him, his hands were in the same  
8 position?

9 A. Yes.

10 Q. He had not reached for any weapon?

11 A. No.

12 THE COURT: Your concern was your  
13 safety at that point?

14 THE WITNESS: That's correct, sir.

15 Q. You dragged him out of the bushes; is that  
16 correct?

17 A. Yes.

18 Q. And how did you drag him? By what part of his  
19 body?

20 A. I grabbed him by his chest area.

21 Q. At that point you were face-to-face with him?

22 A. Yes.

23 Q. Where were the hands at this time?

24 A. The minute I grabbed him, he started swinging  
25 his arms.

SO

Cross - Det. L. Morris - Eaddy

1 Q. At the very least, there were -- it's fair to  
2 say, when you first reached that hill, there was a state  
3 trooper and a detective? I believe you said Nelson -- a  
4 state trooper and other detective that you were with were  
5 at the hill at the very least?

6 A. Yes.

7 Q. And they had their guns drawn too?

8 A. I don't know.

9 Q. But they were there, right?

10 A. Yes.

11 Q. And there came a time when you looked behind you  
12 and saw that there were multiple officers there; is that  
13 correct?

14 A. After he was handcuffed? Or prior to him being  
15 handcuffed?

16 Q. After?

17 A. There were law enforcement up there, yes.

18 Q. It's fair to say, there were more than ten  
19 members up there at that time from law enforcement?

20 A. There could have been, yes.

21 Q. It's your testimony that after you dragged him  
22 out of the bushes with your guns drawn, he attempted to  
23 resist arrest?

24 A. I holstered my gun when I attempted to take him  
25 out of the bushes.

Cross - Det. L. Morris - Eaddy

1 Q. Prior to holstering your gun, you had your gun  
2 drawn on him; is that correct?

3 A. Yes.

4 Q. And still your testimony is that with those two  
5 other officers standing there, and you had been drawing  
6 your gun, but he resisted arrest?

7 THE COURT: Rephrase, ma'am. You are  
8 testifying rather than questioning him. Rephrase.

9 Q. Is it fair to say that it's your testimony that  
10 he resisted arrest, although there were at least two other  
11 officers standing there; is that correct?

12 A. There were -- there was a detective from the New  
13 York City Police Department and a state trooper.

14 Q. So the answer is yes?

15 A. Yes.

16 Q. Although you had pulled your gun on him, he  
17 resisted arrest; is that your testimony?

18 A. I holstered my gun when I went to him.

19 Q. But prior to that, you had your gun directly --

20 MR. HALE: Objection. Asked and  
21 answered.

22 THE COURT: Yes, ma'am.

23 MS. EADDY: I will move on.

24 Q. How did he specifically resist arrest?

25 A. When I attempted to pull him out of the bush, he

Cross - Det. L. Morris - Eaddy

1 didn't want to come and then he started swinging at us.

2 THE COURT: Demonstrate if you could,  
3 how he swung his arms.

4 THE WITNESS: Down on his knees. I  
5 reached into the bush, not able to see his hands, I  
6 started to pull him straight from his chest up  
7 towards me. He was swinging, trying to go back into  
8 the bush itself.

9 Q. So, it's your testimony --

10 THE COURT: The witness stood up and  
11 leaned forward, extended arms in front of him,  
12 brought it to him, and as he is standing up, he is  
13 swinging right and left with both arms.

14 (Whereupon, the witness is indicating.)

15 Q. So is it fair to say that while he was  
16 underneath the bush, he was not swinging his arms at you?

17 A. Yes.

18 Q. Meaning he did not swing his arms at you when he  
19 was under the bush?

20 A. Yes.

21 Q. It was after you dragged him out that he started  
22 swinging his hands; is that correct?

23 A. Yes.

24 Q. What did you do in response to him swinging his  
25 arms at you?

Cross - Det. L. Morris - Eaddy

1 A. I completely got my arms around him and pulled  
2 him right out of the bush.

3 Q. What part of your arms or what part of his body  
4 did you put your arms around?

5 A. His chest.

6 Q. And did you do anything else?

7 A. As we took him out of the bush, I turned him  
8 over, and I got one of his arms and put it right behind  
9 his back.

10 Q. As we took him out of the bush, was there  
11 another officer attempting to take him out of the bush  
12 with you?

13 A. Yes, Detective Thomas.

14 Q. So the two of you were trying to take him out of  
15 the bush; is that correct?

16 A. I was the first one. Then he came up and held  
17 me.

18 Q. What, if anything, did you see Detective Thomas  
19 do with respect to my client's person?

20 A. I don't understand the question.

21 Q. When Detective Thomas attempted to help you drag  
22 my client out of the bush, what did he do to -- did he  
23 attempt to restrain my client in any way?

24 A. I don't think so.

25 Q. So how did he help you? How did he assist?

Cross - Det. L. Morris - Eaddy

1           A. Mr. Ellis wanted to go back into the bush. I  
2 dragged him, pulled him out of the bush. Detective Thomas  
3 was standing right next to me. He assisted me, taking him  
4 out of the bush. I completely -- we laid him down on the  
5 ground, put one of his arms around his back.

6                   THE COURT: Did you see Detective  
7 Thomas put his hands on the defendant?

8                   THE WITNESS: Yes.

9           Q. What did he do?

10          A. He grabbed a part of his body.

11          Q. What part of his body?

12          A. I am not sure what part he grabbed.

13          Q. Did any other officers then join in an attempt  
14 to restrain my client at that point?

15          A. Other officers coming up there, yes.

16          Q. What did the other officers do to help you  
17 restrain my client?

18          A. Some came up and handcuffed him. I don't know  
19 who actually handcuffed him.

20          Q. So at this point, there were at least three  
21 officers on my client?

22                   MR. HALE: Objection.

23                   Mischaracterization.

24                   THE COURT: Sustained.

25          Q. Is it fair to say it took at least three



Cross - Det. L. Morris - Eaddy

1 individuals to restrain my client?

2 A. By restrained, you mean handcuffed?

3 Q. Yes.

4 A. Yes.

5 Q. Did it take more than three individuals?

6 A. I don't think so. No.

7 Q. It's fair to say at a certain point, three  
8 officers had touched the person or body of my client in  
9 their attempt to restrain him?

10 A. To handcuff him. Yes.

11 Q. Now, at any time, did you observe anyone kick  
12 him at any time during this point in time?

13 A. At which point in time?

14 Q. When you were --

15 THE COURT: Pulling him from the bush.

16 THE WITNESS: No, I did not.

17 Q. And after he was handcuffed, what happened next?

18 A. He stood up and I searched him.

19 Q. And you took the items off of his person at that  
20 time?

21 A. Yes.

22 Q. Did there come a time when the dogs were called  
23 in after that?

24 A. Excuse me.

25 Q. Were dogs, search dogs called to the scene where

Cross - Det. L. Morris - Eaddy

1 you were after that?

2 A. There were dogs there, yes.

3 Q. But you said there were not dogs at the top of  
4 the hill when you first arrived?

5 A. When I first seen him, no.

6 Q. At what point did you see the dogs?

7 A. There was a dog up there after he was  
8 handcuffed.

9 Q. After he was handcuffed; is that correct?

10 A. Yes.

11 Q. Because someone directed the dogs to be brought  
12 to the scene after he was handcuffed?

13 A. I don't know.

14 Q. Did you do that?

15 A. No.

16 Q. Now, did you have to take him down the hill?

17 A. Yes.

18 Q. How did he get down there? Did you walk him  
19 down the hill?

20 A. Yes.

21 Q. Did anyone else accompany you in walking him  
22 down the hill?

23 A. Yes.

24 Q. Who was that?

25 A. Detective Thomas did and Detective Manceri.

Cross - Det. L. Morris - Eaddy

1 Q. The three of you?

2 A. Yes.

3 Q. And it's your testimony that you did not get in  
4 the car to transport him to the barracks; is that correct?

5 A. Yes.

6 Q. You have no idea who did?

7 A. I am not sure who went in the car with him.

8 Q. Did you create a DD-5 with respect to these  
9 events?

10 A. No.

11 Q. Did you write scratch notes with respect to  
12 these events?

13 A. No.

14 Q. Did you write anywhere that he resisted arrest?

15 A. No.

16 Q. When you got to -- did there come a time that  
17 you went to the barracks and saw my client there; is that  
18 correct?

19 A. Yes.

20 Q. And you testified he was in the interrogation  
21 room there?

22 A. He was in a room. I don't know what room.

23 Q. Was anyone there with him?

24 A. I am not sure.

25 Q. Was Margraf already there?

Cross - Det. L. Morris - Eaddy

1 A. I am not sure.

2 THE COURT: Do you know Margraf?

3 THE WITNESS: Yes, sir. I work with  
4 him.

5 Q. Both in the 71 Precinct?

6 A. Yes.

7 Q. You're both in the 71 Precinct?

8 A. Yes.

9 Q. You testified that you recovered certain items  
10 from my client's person?

11 A. Yes, ma'am.

12 Q. And you did not write down the items that you  
13 recovered from my client; is that correct?

14 A. I did not, no. I did not.

15 Q. You're relying upon a document written by  
16 Corporal Courtright as to what was recovered from my  
17 client; is that correct?

18 A. Yes.

19 Q. Were you able to see inside of the room my  
20 client was inside of the barracks?

21 A. I don't know if there was a window or someone  
22 opened the door but I passed it.

23 Q. And was my client handcuffed when you passed it  
24 if you noticed?

25 A. I don't remember.

Cross - Det. L. Morris - Eaddy

1 Q. Do you know when you passed it, was Detective  
2 Margraf in there?

3 A. I do not know.

4 Q. Do you know if any other detectives were there?

5 A. I don't know at all.

6 MS. EADDY: Thank you.

7 THE COURT: Do you have anything?

8 MR. WILFORD: I have nothing.

9 MR. KARLINER: No questions.

10 MR. HALE: Nothing further.

11 THE COURT: You can step down.

12 (Whereupon, the witness steps down from  
13 the witness stand and exits the  
14 courtroom.)

15 THE COURT: That concludes the  
16 testimony for today?

17 MR. HALE: Yes.

18 THE COURT: Very well. This will be  
19 adjourned for the 17th. This case will be adjourned  
20 at 10:45, please 7-17-08.

21

22 (Continued next page.)

23


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(Whereupon, the matter was concluded  
and adjourned to July 17, 2008.)

The foregoing is hereby certified to be a  
true and accurate transcript of the proceedings  
as transcribed from my stenographic notes.



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NORA LEE, RPR.  
SENIOR COURT REPORTER



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SUSAN OLIVA, CSR.  
SENIOR COURT REPORTER

1 SUPREME COURT OF THE STATE OF NEW YORK  
 2 COUNTY OF KINGS: CRIMINAL TERM: Part 37

-----X

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

Ind. No.

5 DEXTER BOSTIC, ROBERT ELLIS and LEE 6797/2007

6 WOODS,

7 Defendants.

8 -----X

9 July 17th, 2008  
 10 Kings County Supreme Court  
 320 Jay Street  
 11 Brooklyn, New York 11201

12 B E F O R E:

13 THE HONORABLE PLUMMER E. LOTT,  
 Justice, Supreme Court

14  
 15 A P P E A R A N C E S:

16 (Same as previously noted.)

17 TANYA MILO-SMITH  
 Senior Court Reporter

18 \* \* \* \* \*

19 THE CLERK: Remain seated, come to order  
 20 please. Part 37, Kings County Supreme Court is now in  
 21 session. Honorable Plummer E. Lott presiding.

22 Calendar number one, 6797 of 2007, Dexter  
 23 Bostic, Robert Ellis, Lee Woods. Defendants  
 24 incarcerated produced before the Court.

25 MR. WILFORD: For Dexter Bostic, Edward D.

1 Wilford and Natali Todd.

2 MR. KARLINER: Samuel Karliner for Mr. Woods.

3 MS EADDY: Danielle Eaddy for Mr. Ellis.

4 MS NICOLAZZI: Ana-Sigga Nicolazzi.

5 MR. HALE: Mark Hale for the Office of the  
6 District Attorney.

7 THE COURT: Good morning. Before we proceed  
8 does either side wish to put anything on the record?

9 MS NICOLAZZI: One matter. Ms Eaddy had made  
10 some inquiry about specific pieces of chicken on DNA.  
11 We met with the criminalist this week and went over  
12 everything and I'm talking specifically about some  
13 chicken referred to in voucher ending 55. Inside as  
14 far as food inside the car was a biscuit, a piece of  
15 pie and chicken. The chicken inside the car along with  
16 the pie was not analyzed because it was determined to  
17 have not been eaten as opposed to, for example, the  
18 biscuit was analyzed because it appeared to have been  
19 eaten. Ms Eaddy specifically requested information as  
20 to that. I wanted to put that on the record what we  
21 were told.

22 MS EADDY: Your Honor, I don't know if we  
23 want to continue discussing it now but if you look at  
24 the crime scene photographs, there is very clearly where  
25 the driver -- the operator of the vehicle is there is



1 an eaten chicken bone in the picture and --

2 MS NICOLAZZI: The chicken bones were  
3 analyzed. I'm talking about pieces of chicken that  
4 appeared to have not been eaten. Everything that  
5 appeared to have been eaten was analyzed.

6 THE COURT: Do you have the results then?

7 MS NICOLAZZI: Yes. Ms Eaddy has that. They  
8 have the reports. I went back again to go through it  
9 because she said she didn't see certain things on the  
10 record.

11 MS EADDY: Your Honor, I will go back and  
12 look at the reports. The issue is this, on the DNA  
13 report that the D.A. turned over to me as far as I have  
14 been able to ascertain they only gave the results for  
15 the chicken that was in the box outside of the car  
16 whereas that chicken bone that was where the operator  
17 of the car was sitting was on voucher ending 555. The  
18 DNA report remained silent as to that analysis so while  
19 I appreciate what the D.A. is saying that they analyzed  
20 all of the chicken that appeared to be eaten there is a  
21 crime scene photograph that shows a single chicken bone  
22 at the foot of where the operator of the vehicle would  
23 have been sitting and that appears to have been eaten  
24 and that is not accounted for and that's what I was  
25 asking about.

1 THE COURT: Do you know whether --

2 MS NICOLAZZI: Again, Judge, I believe it is  
3 all accounted for. If Ms Eaddy wants to go back and  
4 discuss it further outside the presence of the Court  
5 and if we don't resolve it we can come back.

6 MS EADDY: I will do that.

7 THE COURT: Ready to proceed?

8 MR. WILFORD: Yes.

9 THE COURT: Mr. Hale.

10 MR. HALE: People call Detective Loius Yero.

11 D E T E C T I V E L O U I S Y E R O, called as a witness  
12 on behalf of the People, after being duly sworn  
13 testified as follows:

14 THE CLERK: Detective, for the record state  
15 your name.

16 THE WITNESS: Detective Loius Yero.

17 THE CLERK: Spell your last name.

18 THE WITNESS: Y-E-R-O.

19 THE CLERK: Shield number.

20 THE WITNESS: 5149.

21 THE CLERK: Command.

22 THE WITNESS: Brooklyn South Homicide Squad.

23 THE COURT: Detective, continue to speak into  
24 the microphone as soon as we get the system up. Don't  
25 volunteer anything. If a question is asked you don't

1 understand request to repeat the question, please.

2 THE WITNESS: Yes, sir.

3 THE CLERK: Would you be so kind as to touch  
4 on the microphone.

5 THE COURT: It's working. You may inquire.

6 DIRECT EXAMINATION

7 BY MR. HALE:

8 Q Sir, you are a New York City Police Officer?

9 A Yes.

10 Q How long have you been a New York City Police  
11 Officer?

12 A Eighteen years.

13 Q You currently hold what rank?

14 A Detective.

15 Q How long have you been a detective?

16 A Since December of 2001.

17 Q Sir, how long have you been working with the  
18 Brooklyn South Homicide Squad?

19 A Since June of 2005.

20 Q I take it, sir, that would include the months of  
21 July of 2007, one year ago?

22 A Yes.

23 Q Sir, I'm going to draw your attention to a  
24 specific date, that date would be July 9th of 2007, you  
25 recall that date?

1 A Yes.

2 Q Sir, on that date did you become aware of the  
3 shooting of two New York City Police Officers by the name of  
4 Russell Timeshenko and Herman Yan which occurred within the  
5 confines of the 71st Precinct?

6 A Yes.

7 Q And, sir, did you receive any particular  
8 assignment with regard to that shooting?

9 A I was given the lead in the Brooklyn South  
10 Homicide Office.

11 Q What does that mean?

12 A I was the lead detective in my office for this  
13 case.

14 Q And did you work in conjunction with any other  
15 police detectives at that time, sir?

16 A Detective Margraf.

17 Q He was assigned from where?

18 A The 71st Precinct.

19 Q Now, sir, during the course of the day of  
20 July 9th, 2007, were you pursuing various leads in  
21 investigating the shooting incident?

22 A Yes.

23 Q Sir, did there come a time on that day where you  
24 learned of the existence of an individual by the name of Lee  
25 Woods?

1 A Yes.

2 Q Can you tell the Court how it came about that you  
3 learned of the existence of this individual?

4 A At approximately 10:45 that was on the 9th, I  
5 received a phone call from Detective Habert.

6 Q Who is Detective Habert?

7 A He is a detective in the Brooklyn South Homicide  
8 office.

9 Q What was the nature of the phone call, sir?

10 A He informed me that an individual by the name of  
11 Lee Woods was on his way back to the 67th Precinct and that  
12 he was willing to help us find Dexter Bostic.

13 Q Now, sir, at that point in time -- point in time  
14 as far as the investigation was progressing, Dexter Bostic  
15 was already a person of interest, is that correct?

16 A Yes.

17 Q And what was your understanding about -- from that  
18 phone call what it was Lee Woods was going to do for you to  
19 aid in the investigation?

20 A He was going to try to help us find Dexter Bostic,  
21 phone numbers, address.

22 Q And did Detective Habert indicate to you where it  
23 was that Lee Woods had been located?

24 A Yes.

25 Q What did he tell you, sir?

1 A He was located at -- the address right here.

2 THE COURT: Just let us know what you're  
3 looking at.

4 THE WITNESS: I'm looking at DD-Fives. I  
5 believe it was 1430 Gateway Boulevard, apartment 1L.

6 Q What significance did that address have?

7 A That's Nicole Bostic's apartment.

8 Q Relationship to Dexter Bostic?

9 A Sister.

10 Q After you learned Mr. Woods had been taken to the  
11 67th Precinct, what did you do?

12 A Detective Margraf and myself went over to the 67th  
13 Precinct.

14 Q And approximately what time was it you arrived at  
15 the 67th Precinct?

16 A About 11:45 a.m.

17 Q And did you, in fact, see Mr. Woods at that  
18 location?

19 A Yes.

20 Q Where was it that you saw Mr. Woods?

21 A He was seated in the interview room.

22 Q I want you to take a look around the courtroom  
23 right now and ask you do you see Mr. Woods in the courtroom  
24 at this point in time?

25 A Yes, I do.

1 Q Can you describe what he is wearing now and  
2 general description of his appearance?

3 A Long hair, black --

4 MR. KARLINER: Indicating Mr. Woods.

5 THE COURT: The record will reflect he's  
6 identified Mr. Woods.

7 MR. HALE: Okay.

8 Q Now, sir, in that interview room when you first  
9 saw Mr. Woods, was he handcuffed in any fashion?

10 A No.

11 Q Was he attended by any police officers?

12 A No.

13 Q What was he doing when you first saw him?

14 A Sitting in a chair.

15 Q What, if anything, did you do with regard to Mr.  
16 Woods at that time?

17 A Began to speak to him.

18 Q Is that by yourself or with Detective Margraf?

19 A Detective Margraf was also present.

20 Q Can you tell the Court what was the general nature  
21 of the substance of the conversation you had with Mr. Woods  
22 at that point in time?

23 A Asked him when the last time he had seen Dexter  
24 Bostic was. He stated that the last time he had seen Dex  
25 was two days prior at Five Towns Mitsubishi and that he

1 believed that Dexter was going out of town or was out of  
2 town in North Carolina with a stripper friend of his. He  
3 didn't know the girl's name or her address. He stated that  
4 he believed that Dexter was driving a black Infiniti M45 or  
5 a 2007 Mercedes. He didn't know the plate number or if it  
6 was registered in New York.

7 I asked him if he had Dexter's phone number, if he  
8 knew Dexter's phone number. He stated he had it in his  
9 phone but it was back at the apartment on Gateway and that  
10 if someone would go get it he would gladly give us the  
11 number. I asked him if Dexter had been with anybody, lived  
12 with anyone. He said he believed Dexter lived with an  
13 individual named Roger but he didn't know much about Roger,  
14 didn't know anything about him. I asked him if he had -- if  
15 he would see Dexter's phone number if he could visibly see  
16 the number would he recognize it to be Dexter's number and  
17 he said yes. Which point I told him well give me your phone  
18 number and I'll run your phone number and get a subpoena and  
19 I'll show you the numbers and you can pick it out. He said  
20 he didn't know his own cell phone number by heart.

21 Q Now, sir, what was Mr. Woods' status at that point  
22 as far as you were concerned?

23 A He was trying to help us find Dexter Bostic.

24 Q Was there anything you had been informed about or  
25 anything Mr. Woods told you that point in time that would



1 make that surprising that he was trying to help you out?

2 A He informed us he was a confidential informant for  
3 the 101st Precinct in Queens. It seemed he just wanted to  
4 help.

5 Q Sir, did you continue to talk to Mr. Woods at that  
6 point or did you leave him?

7 A At that point we got called away. Detective  
8 Margraf and myself got called away.

9 Q Do you recall where it was you got called away to?

10 A We went back to the crime scene and then from the  
11 crime scene we went to the Seven One.

12 Q Now, before leaving Mr. Woods, did you say  
13 anything to him, give him any instructions. That is go  
14 home, stay here; what did you say to him?

15 A I told him I said we're going to make arrangements  
16 to try and get your phone at the apartment if you want and  
17 if you want to hang out, hang out and we'll be back later.

18 Q Where did you leave him?

19 A In the interview room.

20 Q Now, sir, during the time after you left Mr.  
21 Woods, did anything in the course of your investigation  
22 indicate that Mr. Woods, perhaps, knew more than he was  
23 telling you so far?

24 A Yes.

25 Q Can you tell the Court what that was?

1           A     I personally conducted one interview. Detective  
2 Margraf conducted another and we conferred on the interviews  
3 that led us to believe that Mr. Woods wasn't being  
4 forthcoming in his first statement.

5           Q     Now, who was it you talked to and what was it that  
6 you heard?

7           A     I spoke to Frederick Bostic.

8           Q     Frederick Bostic is what relation to Dexter  
9 Bostic?

10          A     Dexter's brother. Frederick told me that Hoodie  
11 Hood, which is the name he used for Lee Woods, was at his  
12 house the night before on the 8th with Dexter. That he was  
13 in the apartment and that Lee Woods had -- he specifically  
14 said he had a High Point 9-millimeter handgun in his  
15 waistband and Frederick had made a comment to Mr. Woods in  
16 regards to the gun being a piece of shit and if it were to  
17 fall on the floor the firing pin would fall out.. He stated  
18 Dexter brought him food and that he walked him downstairs  
19 and that they had left.

20          Q     Now, sir, after you received this information did  
21 you again seek to speak to Mr. Woods?

22          A     Yes.

23          Q     What time was it that you returned to the 67th  
24 Precinct for that purpose, sir?

25          A     Approximately 9:30 p.m.

1 Q When you got back to the 67th Precinct where was  
2 Mr. Woods?

3 A He was in the interview room.

4 Q And what was he doing?

5 A He was just sitting in the interview room.

6 Q Now, even after you got this information, sir, did  
7 you cause anything to be done to Mr. Woods in terms of  
8 confinement or restraint or anything at that point in time?

9 A No.

10 Q Was he, in fact, confined or under guard at that  
11 time you returned?

12 A No.

13 Q When you came back to the 67th Precinct, sir, did  
14 you, in fact, speak to Mr. Woods?

15 A Yes, I did.

16 Q That was in the same interview room?

17 A Yes.

18 Q Speak to him by yourself or Detective Margraf was  
19 with you?

20 A Detective Margraf was also present.

21 Q Can you tell us, the Court, now what was the  
22 nature of the conversation and the substance of that  
23 conversation?

24 A I said to him you know some information has come  
25 to us that makes us believe that maybe you know a little

1 more about what happened and that maybe you weren't being  
2 very truthful and he looked at us and basically he said all  
3 right listen I was there. I was in a different car but I  
4 was there, you know, when the shots rang off I drove off. I  
5 asked him you were there for the shooting and he said yes  
6 and I said hold on.

7 Q He said hold on. For what purpose were you  
8 holding on?

9 A I spoke to Detective Margraf and we determined it  
10 was time to read him Miranda.

11 Q Was, in fact, he read Miranda at that point in  
12 time?

13 A Yes.

14 Q Who was it that read him Miranda?

15 A Detective Margraf.

16 Q Did Detective Margraf read him Miranda from memory  
17 or from some sort of physical device?

18 A A piece of paper.

19 Q This piece of paper contain the Miranda questions,  
20 sir?

21 A Yes.

22 Q Did that piece of paper also contain spaces for  
23 the response of the subject who was being read Miranda?

24 A Yes.

25 Q And were those spaces utilized to record the

1 responses of Mr. Woods when he was read Miranda?

2 A Yes.

3 Q Do you know in whose hand those responses were  
4 recorded?

5 A Mr. Woods.

6 Q And was there a further acknowledgment or  
7 signatures made on that at the conclusion of the Miranda?

8 A Yes.

9 Q Do you recall who signed it?

10 A Mr. Woods and Detective Margraf.

11 Q That was done in your presence, sir?

12 A Yes.

13 MR. HALE: Your Honor, this is People's 9 for  
14 identification. If we can deem it at this point.

15 (So marked for identification.)

16 Q Detective, you're being shown People's Exhibit No.  
17 9 for identification. Take a look at that, please.

18 A Yes.

19 Q Do you recognize that item, sir?

20 A Yes.

21 Q What do you recognize it as?

22 A The Miranda sheet Detective Margraf read to Mr.  
23 Woods.

24 Q And, sir, is it in substantially the same  
25 condition as when it was utilized to read the rights to Mr.

1 Woods on the 9th of July, 2007?

2 A Yes.

3 Q Including in that, sir, is it substantially the  
4 same condition as when those spaces and the signatures were  
5 filled out as you've discussed before in the hand of Mr.  
6 Woods and Detective Margraf?

7 A Yes.

8 MR. HALE: I'll offer that as in evidence.

9 THE COURT: Any objection?

10 MR. KARLINER: No objection.

11 THE COURT: Marked and received as People's  
12 9, Mr. LaRose.

13 (So marked in evidence.)

14 Q Detective, if you could, there are a number of  
15 items that are there. Can you please read the items as they  
16 were read to Mr. Woods?

17 A Number one: "You have the right to remain silent  
18 and refuse to answer any questions, do you understand?"

19 Q Did Mr. Woods make a response to that?

20 A Yes.

21 Q What was that his response?

22 A "Yes."

23 Q Did he also write that response at that time?

24 A Yes, he did.

25 Q What was the next warning?

1           A     "Anything you do say may be used against you in a  
2 court of law, do you understand?"

3           Q     Mr. Woods make an answer to that?

4           A     Yes, he did.

5           Q     What was the answer?

6           A     "Yes."

7           Q     And, sir, did he also endorse that answer on the  
8 document?

9           A     Yes.

10          Q     What was the next warning?

11          A     Number three: "You have the right to consult an  
12 attorney before speaking to the police and have an attorney  
13 present during any questioning now or in the future, do you  
14 understand?"

15          Q     Did Mr. Woods give an audible response to that?

16          A     Yes.

17          Q     What was the response?

18          A     "Yes."

19          Q     Did he also endorse that response in writing on  
20 the document?

21          A     Yes.

22          Q     Is there anything after that, sir?

23          A     Number four: "If you can not afford an attorney  
24 one will be provided for you without cost."

25          Q     Now, sir, is there a do you understand also with

1 that?

2 A Yes, "Do you understand?"

3 Q Okay. And was he read that do you understand?

4 A Yes.

5 Q And did he make a response to it?

6 A Yes.

7 Q What was the response?

8 A "Yes."

9 Q Did he also endorse that same response on the  
10 document?

11 A Yes, he did.

12 Q Is there anything after that, detective?

13 A Number five: "If you do not have an attorney  
14 available you have the right to remain silent until you've  
15 had the opportunity to consult with one, do you understand?"

16 Q Did he give a response this that?

17 A Yes, he did.

18 Q What was the response?

19 A "Yes."

20 Q Again, did he endorse that in his own hand?

21 A Yes.

22 Q After that anything else, detective?

23 A Yes, number six: "Now that I have advised you of  
24 your rights are you willing to answer any questions?"

25 Q What did Mr. Woods say to that?



1 A Yes.

2 Q Did he write that response down?

3 A Yes.

4 Q The writing thereafter is what?

5 A It's signed by Mr. Woods. He put his age.

6 Detective Margraf put the date and time and he signed it  
7 with his shield number.

8 Q Detective, after you had read Mr. Woods his rights  
9 if, well -- withdrawn.

10 When Mr. Woods was read his rights, did he appear  
11 to you, sir, to be lucid, understanding, calm?

12 A Yes.

13 Q Did he have any questions about any of the rights?

14 A No.

15 Q Did he express any surprise or reluctance to  
16 answer any of those questions that had to do with the  
17 rights?

18 A No.

19 Q Did he express any reluctance or -- well any  
20 reluctance in signing the document or endorsing the answers  
21 on the document?

22 A No.

23 Q After he had done so, sir, did you proceed to have  
24 a further conversation with Mr. Woods?

25 A Yes.

1 Q In substance, sir, what was the nature of the  
2 conversation at that time -- that point in time?

3 A I asked him when it was that he actually met up  
4 with Dex. He stated that he had met up with Dex at Raheim's  
5 house. Raheim is Frederick Bostic, over on Pennsylvania  
6 Avenue and that they had brought Raheim --

7 Q Little louder.

8 A They had brought Raheim some food. Once up at the  
9 apartment, he noticed that Raheim had given Dexter one  
10 black, 9-millimeter and two .45 caliber handguns and that at  
11 this point he had a High Point 9-millimeter that he had  
12 picked up off a table at Raheim's house.

13 Q Who picked it up?

14 A Mr. Woods picked it up and Mr. Woods had made --  
15 he said that he told Raheim this gun is a piece of shit. If  
16 it falls on the floor the firing pin is going to fall out at  
17 which point he said that Raheim, Frederick, put two other  
18 guns in a paper bag and they -- the three of them, Dexter,  
19 Raheim and Mr. Woods began to walk down the stairs and that  
20 Raheim, Frederick, had sold those two guns to an individual  
21 that he knew as Black and an unidentified female.

22 At that point, Black had asked him where the  
23 bullets were and Frederick was upset because he had to go  
24 back upstairs to get the bullets. At this point Mr. Woods  
25 said he gets into his white Infiniti and that Dexter gets

1 into the BMW.

2 Q Now, did Mr. Woods say where it was he had  
3 acquired the white Infiniti?

4 A He said the white Infiniti belonged to a woman by  
5 the name of Watson and that she lived somewhere on Seagirt.

6 Q Did he say where it was that Dexter had acquired  
7 the BMW?

8 A Make a correction. The name of the female was Kim  
9 Watts not Watson. Repeat the question, please.

10 Q Sure. Did he indicate where it was Dexter  
11 acquired the BMW?

12 A No.

13 Q Did he indicate whether Dexter was alone in the  
14 BMW or accompanied by anybody else?

15 A I don't recall at this point if he mentioned  
16 anything about anyone else being with Dexter.

17 Q Go ahead, what else did he say?

18 A At that point he said him and Dexter decided to go  
19 to Carribbean City on Empire Boulevard. It's a club. Once  
20 there him, Dex and he mentioned Roger were there and they  
21 were trying to get phone numbers to do what they do. I  
22 asked him what that meant and he said, you know, pick up  
23 girls. They hung out a little while outside the club and  
24 decided they were hungry and all three of them went to  
25 Popeye's. Him and Roger went into Popeye's for food and

1 into Dunkin Donuts for drinks.

2 Q They're still traveling in separate cars?

3 A They're still traveling in separate cars. Mr.  
4 Woods states at this point he gets into the back seat of the  
5 BMW to eat with them and while he's back there eating he  
6 observes a 9-millimeter and a Tech Nine sitting on the floor  
7 of the back seat in a bag. He states he picks up both guns  
8 separately, looks at both guns separately and put them back  
9 down. He finishes eating and he gets back into his car and  
10 is now following the BMW. While he's following the BMW he  
11 observes the police flag -- which is the term we use. I  
12 asked what that meant. He said put their lights on to pull  
13 over. I said if he was following the BMW. I said -- he  
14 said the police got in between us. That he observed the BMW  
15 and police car make the right hand turn and that he had made  
16 the right hand turn also behind the police car and now  
17 passing the police car and passing the BMW he proceeded to  
18 the next corner where he began to make the U-turn, made the  
19 U-turn and drove back again past the BMW and the police car  
20 and sat at the opposite corner to watch what was going on.  
21 As he began to watch he heard a series of shots. He saw  
22 that the police were shooting at the BMW as it drove off at  
23 which point he put his head down and he drove in his car and  
24 that he hadn't seen or spoken to Dexter or Roger since that  
25 moment.

1 Q Now, sir, after Mr. Woods had recounted this  
2 version of events, was he free to leave?

3 A No.

4 Q Up until the point where he had recounted this  
5 version of events, specifically up to the point where he had  
6 read him Miranda, had he been free to leave?

7 A Yes.

8 Q Did you ask at this point in time if Mr. Woods  
9 would memorialize that statement in any fashion?

10 A Yes.

11 Q What did you ask of him?

12 A I asked if he would just write that down for us.

13 Q And what did he say?

14 A He said yes.

15 Q Did you, in fact, observe him writing something  
16 down with regard to the incident?

17 A Yes.

18 Q Did you, sir, remain with him until he had  
19 completed that writing?

20 A No.

21 Q Where was it that you went?

22 A I went back to the Seven One.

23 Q About what time is this, sir?

24 A I'd say about maybe 10:30, 11:00 o'clock.

25 Q And, sir, the purpose of your going back to the

1 Seven One was what?

2 A I wanted to see the video again. There was a  
3 video of the incident and there was other video present at  
4 the Seven One. I wanted to see that. I wanted to go over  
5 with Detective Margraf our interviews. My interview with  
6 Mr. Bostic. I wanted to --

7 Q Mr. Bostic?

8 A Mr. Frederick Bostic.

9 Q Okay.

10 A I wanted to go back to the location on Rogers and  
11 Lefferts just to make sure what he was telling me was  
12 actually possible.

13 Q Now, sir, was there anything about what he had  
14 told you that struck you at that time as improbable or  
15 impossible?

16 A When he stated he had made the U-turn and drove  
17 past the BMW and the police car. At the time I was -- I was  
18 99.9 percent sure Rogers Avenue was a one way street and he  
19 couldn't make a U-turn. I wanted to confirm that visually  
20 and make sure I was right.

21 Q What about looking at the videotape, what about  
22 that?

23 A There just wasn't any car behind the RMP, the  
24 police car. No car that passed them. There was no car that  
25 came back the opposite direction. There was nothing that

1 would -- that supported his statement on that videotape.

2 Q And did you, in fact, check that videotape again  
3 to confirm that in your own mind?

4 A Yes.

5 Q Sir, after you had completed those particular  
6 tests, did you return to the 67th Precinct?

7 A Yes.

8 Q When you returned to the 67th Precinct, where was  
9 Mr. Woods?

10 A He was in the interview room, still.

11 Q About what time is this?

12 A This is about 4:30, 4:45 in the morning.

13 Q When he came -- you came back, was he awake or  
14 sleep?

15 A He was asleep.

16 Q When you came back to the interview room, did you  
17 observe whether he had completed or had something in terms  
18 of the writing that you had requested before?

19 A Yes.

20 Q And where was that located when you went back?

21 A Sitting on the desk.

22 Q Did you, in fact, take possession of that, sir?

23 A Yes, I did.

24 MR. HALE: People's ten for identification,  
25 Your Honor.

1 (So marked for identification.)

2 Q Detective, you're being shown People's Exhibit No.  
3 10 for identification. I ask you do you recognize that?

4 A Yes.

5 Q What do you recognize that as?

6 A This is the piece of paper, the handwritten  
7 statement I took possession of at 4:30, 4:45 in the morning.

8 Q Is that the same document you observed Mr. Woods  
9 start before you left the precinct to go and check on the  
10 other items that you testified about?

11 A Yes.

12 Q And, sir, is that document in substantially the  
13 same condition as it was when you found it in the interview  
14 room upon returning at 4:30 a.m. this is on the 8th of  
15 July -- sorry the 10th of July?

16 A Tenth of July, yes.

17 MR. HALE: Offer that as ten in evidence.

18 THE COURT: Any objection?

19 MR. KARLINER: No objection.

20 THE COURT: Being marked and received as  
21 People's 10, Mr. LaRose.

22 Q Now, sir, this particular document you didn't ask  
23 Mr. Woods to do anything in terms of subscribing or signing  
24 this document?

25 A No.



1 Q Can you read the document.

2 A On the top it's dated 7-9-07. "We went to Raheim  
3 house and he gave his brother the guns which was a  
4 9-millimeter black and .45 Magnums, black. We went  
5 downstairs and he sold two guns to Black and the girl that  
6 was in the car. He got the rest of the money and they drove  
7 off. I got in my car and went to the store with him behind  
8 me. After that we went to the club, C City on Empire  
9 Boulevard. We chilled there for awhile and then we go to  
10 Popeye's for something to eat. Oh, at Raheim house he only  
11 sold two guns to Black and the girl which was the .45 Mags  
12 and that was it. When I got in the car it was -- it was two  
13 guns on the floor, a Nine and a Tech. I looked at them,  
14 picked them up and put them back on the floor in the bag. I  
15 called up -- I rolled up my weed in the car and got out,  
16 went to my car and we followed each other back to the club.  
17 We got out, smoked the weed and talked to a couple of girls.  
18 We pulled off and I followed him back past Popeye's on the  
19 way home to the parkway. At the red light they stopped and  
20 made a right and the police pulled behind them. Like a  
21 minute later the police pulled them over, got out and walked  
22 over to the car. Next thing that happened was shots going  
23 off and I saw the police shooting at the car and the car  
24 moving off." Next line says "I" and then stops.

25 Q Now detective when you got back observed that

1 document, saw Lee Woods sleeping there, what did you do with  
2 regard to Mr. Woods?

3 A I woke him up.

4 Q Now, again, you by yourself or with Detective  
5 Margraf?

6 A Me and Detective Margraf.

7 Q You woke him up, what did you ask him?

8 A I said to him I said listen, again, I'm telling  
9 you what you told me before that there was no second car.  
10 If you're playing games let me know you're playing games and  
11 he said, you're playing games because that cop looked right  
12 at me and you know I was driving that car, the BMW. He said  
13 yeah you know I was driving that car. I says all right if  
14 you want to come correct, you want to tell me what happened  
15 I'm listening.

16 Took a deep breath, he sighed. He said I don't  
17 want to be a snitch. I don't want to be a snitch. I was  
18 driving and we got flagged. We got pulled over. I wanted  
19 to pull over and Dex and Roger were telling me don't pull  
20 over. I was saying don't worry about it. I'll tell them  
21 I'm a C.I. Don't worry about it. I'll tell them I'm a  
22 confidential informant. I pull over and looked at the rear  
23 view mirror and saw the cop coming and I heard two shots and  
24 I heard another series of shots and Dexter and Roger were  
25 telling me go, go, go and Roger had the gun in his hand and

1 he was pointing the gun and he was saying go, go, go and the  
2 gun was raised up to my head and I took off, put my head  
3 down and took off. Dex was telling me make a right, right,  
4 right. I stopped and got out of the car. Dex and Roger  
5 stayed behind and took stuff out of the car and we saw a  
6 police car coming. They went into an alleyway with a garage  
7 and then we ran to the train station. That's the last I  
8 seen of them and the police came to my house at 6:00 o'clock  
9 in the morning.

10 Q Did you ask them anything further to elaborate on  
11 his statement about where anybody was in the car at that  
12 time or did you leave it at that?

13 A I left it at that.

14 Q Did you again ask him, sir, if he would  
15 memorialize that in any fashion?

16 A Yes.

17 Q You asked him if he would put that in writing?

18 A Yes.

19 Q What did he say?

20 A He said yes.

21 Q Did you observe him writing?

22 A Yes.

23 Q And did you observe him conclude writing?

24 A Yes.

25 Q When you observed him concluding writing, sir, did

1 you take a look at the document that he produced?

2 A Yes.

3 Q And did you have him do anything with regard to  
4 that document?

5 A He signed that document.

6 Q Anybody else sign it?

7 A I believe I signed it as well.

8 MR. HALE: This will be People's 11 for  
9 identification.

10 (So marked for identification.)

11 Q Detective, you're being shown People's Exhibit No.  
12 11 for identification. Take a look at that, please.

13 A Yes.

14 Q Do you recognize that item, sir?

15 A Yes.

16 Q What do you recognize that as?

17 A This is the statement that Mr. Woods wrote after  
18 he spoke the third time.

19 Q This is on the early morning hours of the tenth of  
20 July?

21 A Yes.

22 Q 2007?

23 A Yes.

24 Q Is it in substantially the same condition, sir, as  
25 it was when Mr. Woods completed it, signed it and you signed

1 it on that date, July 10th, 2007?

2 A Yes.

3 MR. HALE: Offer 11 in evidence for the  
4 hearing.

5 THE COURT: Any objection?

6 MR. KARLINER: No objection, Judge.

7 THE COURT: Marked and received,

8 Mr. LaRose -- deemed marked and received People's 11.

9 (So marked in evidence.)

10 Q Detective, again, if you could read the contents  
11 of the People's number 11.

12 A "I was driving and the police flagged the car. I  
13 pulled over but Roger said not to but I did it anyway. The  
14 police got out of the car and walked over to each window.  
15 As soon as they got there they started shooting at the cops.  
16 Roger had two guns and Dex had the other one. Roger grabbed  
17 me and said go, go, go with the gun pointed at me. I put my  
18 head down and started driving off. I drove off and stopped  
19 the car and ran while they was taking stuff out of the car.  
20 I met them at the train station and we went our way. I went  
21 to his sister's house and got home at like 6:00 a.m."

22 He initialed it L.W., signed it Lee Woods. I  
23 dated it 7/10/07, 5:30 hours and I signed it myself,  
24 Detective L. Yero.

25 Q Sir, at the conclusion of that written document

1 did you have any further conversation with Mr. Woods  
2 concerning this particular incident?

3 A No.

4 Q Sir, did there come a time where you received any  
5 information concerning somebody who had entered the case on  
6 behalf of Mr. Woods?

7 A There was a phone call from an attorney. Don't  
8 remember his name. That was I believe somewhere around  
9 7:30, 8:00 o'clock in the morning.

10 Q Couple hours after that was completed?

11 A Yes.

12 Q Now, detective, during the course of your talking  
13 to Mr. Woods he had informed you of a role of an individual  
14 by the name of Roger, is that correct?

15 A Yes.

16 Q In fact, in this last document he has Roger as a  
17 shooter along with Mr. Bostic, is that correct?

18 A Yes.

19 Q Now, sir, did you receive any information on that  
20 same date the 10th of July, 2007 indicating who this  
21 individual, Roger, may or was -- may have been or was?

22 A I received information on a print hit from the BMW  
23 and the print hit came back to a Robert Ellis with a NYSID  
24 number.

25 Q Now, sir, did you do anything else or did anybody

1 else in the investigation do anything to determine whether  
2 the Robert Ellis who came back on the print hit had any  
3 connection to any other name or identity?

4 A His name and NYSID were, I believe, thrown into  
5 the E Justice System and the E Justice System came up with  
6 arrests and aliases.

7 Q And among those aliases was what, sir?

8 A Roger Ellis.

9 Q Sir, at that point in time did you believe that  
10 the Roger who had been referred to by Mr. Woods in terms of  
11 the shooting of Officer Timeshenko and Yan was, in fact,  
12 Robert Ellis also known as Roger Ellis?

13 A Yes.

14 MR. HALE: I have no further questions, Your  
15 Honor.

16 THE COURT: Do we need a break before cross  
17 examination?

18 MR. KARLINER: No, Judge.

19 THE COURT: Mr. Karliner please proceed, sir.

20 MR. KARLINER: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. KARLINER:

23 Q Good morning, detective.

24 A Good morning.

25 Q The first time you heard the name Lee Woods was

1 the morning of the 9th?

2 A Yes.

3 Q About 10:45?

4 A Yes.

5 Q What, specifically, were you told?

6 A That he was at Nicole Bostic's apartment and he  
7 was on his way back to the 67th.

8 Q Will you explain how Lee Woods was found in Nicole  
9 Bostic's apartment; was that explained to you?

10 A No.

11 Q Did you ask?

12 A No.

13 Q You just knew he was being transferred to the 67th  
14 Precinct, correct?

15 A Yes.

16 Q Do you know who brought him to the 67th Precinct?

17 A I believe it was Detectives Summer and Carey.

18 Q Were they present at the Six Seven when you  
19 arrived?

20 A I don't believe so, no.

21 Q What time did you arrive at the Six Seven?

22 A Approximately 11:30, 11:45.

23 Q When you get there does someone direct you to Lee  
24 Woods?

25 A I walked in and just checked the interview rooms.



1 Q Was he the only person there?

2 A In the interview rooms?

3 Q Correct.

4 A Yes.

5 Q You assumed that was Lee Woods?

6 A Yes.

7 Q You speak with any other detectives, officers or  
8 anyone involved with the police department before you went  
9 to speak to Lee Woods?

10 A No.

11 Q You didn't have any conversations with anybody  
12 about how Lee Woods was brought down to the precinct?

13 A No.

14 Q You don't know what, if anything, he said before  
15 getting to the Six Seven?

16 A Explain.

17 Q Do you know if he made any statements at all other  
18 than what you were told over the phone before you got to the  
19 Six Seven?

20 A No, I wasn't aware of that.

21 Q But it was your understanding he was going to try  
22 to help the police department apprehend Dexter Bostic?

23 A Yes.

24 Q You go inside, what do you do?

25 A I introduce myself and Detective Margraf

1 introduces himself.

2 Q How does he respond?

3 A He introduced himself.

4 Q What happened?

5 A Began to ask him about Dexter.

6 Q What did he say?

7 A When was the last time you saw him.

8 Q Explain to him the situation that you're  
9 investigating?

10 A No.

11 Q You don't tell him what you know had happened the  
12 early morning hours of the 9th?

13 A No.

14 Q You just focus on what he knows about Dexter, how  
15 to find Dexter?

16 A Yes.

17 Q And what information is he given?

18 A He tells me that Dexter was last seen by him two  
19 days prior at Five Towns Mitsubishi and that he believed  
20 that Dexter was either leaving town or out of town, North  
21 Carolina, with a stripper friend of his.

22 Q How long did this conversation last that you had  
23 with him?

24 A About maybe 45 minutes, maybe an hour.

25 Q What was some of the other information that came

1 out during the course of that hour?

2 A I spoke to him in regards to what kind of car  
3 Dexter drives.

4 Q What did he tell you?

5 A He said he drove -- let me check my notes. Black  
6 Infiniti M45 or 2007 Mercedes Benz.

7 Q What else?

8 A He knew -- that he knew his phone number but it  
9 was in his phone.

10 Q Now when you arrived there you told us Lee Woods  
11 was free to leave?

12 A Yes.

13 Q He can actually get up and walk out if he wanted  
14 to?

15 A Yes.

16 Q He told you that Dexter Bostic's phone number was  
17 in his cell phone?

18 A Yes.

19 Q And told you if he had his phone he could show it  
20 to you, right?

21 A Yes.

22 Q So was a plan devised to get his phone?

23 A I believe Detective Habert went to see if he could  
24 get the phone.

25 Q Do you know if Habert ever found the phone?

1           A     I believe nobody was in the apartment so he  
2 couldn't get in.

3           Q     Did anyone ask Lee to go back to the apartment?

4           A     No.

5           Q     But you're telling us he could have just left to  
6 go back to the apartment to get the phone if he wanted to?

7           A     Yes.

8           Q     What else happened during this hour long  
9 conversation?

10          A     I went and I did some checking to see if there was  
11 any Mercedes Benz's or Infiniti's actually registered in the  
12 name Bostic or to that address that may have come back to  
13 Dexter Bostic.

14          Q     You told us Mr. Woods told you he was a  
15 confidential informant for the 101st Precinct?

16          A     Yes.

17          Q     When in the course of this conversation did he  
18 give you that information?

19          A     That's pretty much in the beginning he told us  
20 that.

21          Q     Did you attempt to verify that?

22          A     At that moment, no.

23          Q     Did you at all?

24          A     Yes.

25          Q     When?

1 A I'd say a few days after.

2 Q Days after?

3 A Yes, sir.

4 Q So in the course of that first hour conversation  
5 you did not?

6 A No.

7 Q And then around 11:45 or so you leave, correct?

8 A I leave about an hour after, 11:45, say --

9 Q I'm sorry?

10 A 12:45.

11 Q 12:45. What were the instructions again you gave  
12 him when you left?

13 A There was no instructions. I told him we're going  
14 to try to get your phone. If you want to hang out, hang  
15 out.

16 Q If you want to hang out, hang out. Did you assign  
17 an officer to him?

18 A No.

19 Q So you didn't say to any specific officer if Mr.  
20 Woods needs to use the bathroom take him?

21 A No.

22 Q Mr. Woods needs to -- he's hungry go get him  
23 something to eat?

24 A No.

25 Q You didn't hear Detective Margraf say that either?

1 A No.

2 Q So he was -- if he needed to use the bathroom he  
3 can get up and go use it?

4 A Yes.

5 Q If he wanted to go outside, get something to eat  
6 come back, he can do that?

7 A Yes.

8 Q He didn't need a police escort or police aid to  
9 move around the precinct?

10 A No -- well around the precinct -- obviously he's  
11 not going to be allowed to move around the precinct. If he  
12 needed to leave or go to the bathroom, yes.

13 Q Or get something to eat?

14 A Yes.

15 Q You said he wasn't handcuffed at all?

16 A No.

17 Q You go out and you're continuing your  
18 investigation, correct?

19 A Yes, sir.

20 Q And at that point in time when you left Mr. Woods  
21 at 12:45 did you feel that he was being truthful to you?

22 A Yes.

23 Q You conduct your investigation, you say you  
24 conducted a series of interviews, correct?

25 A Yes.

1 Q You conducted interviews with Frederick Bostic?

2 A Yes.

3 Q That gave you more information, correct?

4 A Yes.

5 Q And about what time was that interview?

6 A 1900 hours which is 7:00 o'clock.

7 Q 7:00 o'clock. And you said Detective Margraf  
8 conducted another interview also?

9 A Yes.

10 Q That gave you reason to believe you should go back  
11 to speak to Mr. Woods?

12 A Yes.

13 Q Who did he speak to?

14 A I believe he spoke to Levi Hutchinson (ph).

15 Q What was the contents of that interview?

16 A I don't recall offhand the contents of that  
17 interview.

18 Q Is there anything that would refresh your  
19 recollection?

20 A No, sir.

21 Q Did you discuss that interview with Detective  
22 Margraf?

23 A I spoke to him about Frederick Bostic's interview.

24 Q What about Detective Margraf's interview?

25 A He mentioned something in regards to that Mr.

1 Hutchinson spoke about Dexter's daughter that Dexter wanted  
2 to see his daughter and he would bring his daughter to  
3 Dexter prior to any of this happening.

4 Q Prior to any of this happening. I guess my  
5 question is anything in Detective Margraf's interview that  
6 gave you reason to believe we need to reinterview Mr. Woods?

7 A I don't recall about Detective Margraf's  
8 interview, no.

9 Q So about 7:00 o'clock that evening you feel you  
10 need to go back to speak to Mr. Woods?

11 A Yes.

12 Q Maybe he wasn't truthful with you, right?

13 A Yes.

14 Q You need him at the precinct, right?

15 A Yes.

16 Q Do you call the precinct to find out if he's still  
17 there?

18 A Yes.

19 Q What do they tell you?

20 A Yeah.

21 Q Do you tell them keep him there, don't let him go?

22 A I said we're on our way to talk to him, have him  
23 hang out.

24 Q Did you give him instructions if he chose to leave  
25 in the next two hours or so before you arrived, he needs to



1 stay there?

2 A No.

3 Q So he was still, in your mind, free to walk out of  
4 the precinct?

5 A I told them we're on our way back to speak to him,  
6 to, have him hang out.

7 Q If he wanted to get up they were instructed to  
8 make sure he hung out and not leave?

9 A Exactly.

10 Q While he's not handcuffed at any one's direction,  
11 he needed to remain at the precinct?

12 A Yes.

13 Q You arrived back at the precinct about what time,  
14 9:30?

15 A About 9:30.

16 Q You get up to the precinct and he's still in the  
17 interview room, correct?

18 A Yes.

19 Q Do you speak to any detectives or officers about  
20 what Mr. Woods has been doing over the course of the last  
21 ten hours?

22 A No.

23 Q You inquire if he's been fed, taken to the  
24 bathroom, if anything has gone on with him at all?

25 A No.

1 Q You go into the interview room, what did you say  
2 to him?

3 A I says to him that some information has come to  
4 light that makes me believe that he may have been with Dex  
5 last night or the night before.

6 Q What was your tone when you said it to him?

7 A Just like that.

8 Q Just like that. You didn't confront him that I  
9 know you're lying?

10 A No.

11 Q I've spoken to other people and you can be  
12 arrested for what happened unless you start telling me the  
13 truth?

14 A No.

15 Q So, what does he say to you?

16 A He says to me that he was there. He was in a  
17 different car when the shooting went down and I asked him  
18 you were there for the shooting and he says yes I saw it go  
19 down and I drove off.

20 Q You start asking him for details?

21 A At that point I looked at Detective Margraf and  
22 said read this guy Miranda.

23 Q So, where do you go get the Miranda form from?

24 A Where do we get the Miranda form from?

25 Q Correct.

- 1 A From the 67th Precinct.
- 2 Q It's accessible?
- 3 A Yes, in the squad.
- 4 Q Detective Margraf reads him the Miranda form?
- 5 A Yes.
- 6 Q And he says yes to all the questions, right?
- 7 A Yes.
- 8 Q Signs off on it, correct?
- 9 A Yes.
- 10 Q You're present for all of this?
- 11 A Yes.
- 12 Q Detective Margraf signs off on it?
- 13 A Yes.
- 14 Q And as you told us Mr. Woods was being cooperative  
15 with you?
- 16 A Yes.
- 17 Q That gets signed at about 10:00 o'clock at night,  
18 correct?
- 19 A Yes.
- 20 Q So, what you've told us was that the entire  
21 conversation that took place in that half hour?
- 22 A What I told you so far?
- 23 Q Yes.
- 24 A No.
- 25 Q What else happened in that hour when you first

1 walked in until the Miranda was signed?

2 A We had to find the Miranda sheet first of all.

3 Q They have a squad room?

4 A It's a squad room but as with any office sometimes  
5 you have to find things. They're not readily accessible.

6 Q Hour -- that didn't take more than three or four  
7 minutes?

8 A Took sometime.

9 Q Didn't take half an hour?

10 A Took sometime.

11 Q What's the extent of the rest of the conversation  
12 during the course of that half hour?

13 A Between myself and Mr. Woods?

14 Q Correct.

15 A None.

16 Q None?

17 A No, sir.

18 Q So the rest of the time was eaten up trying to  
19 find the Miranda sheet?

20 A Finding the Miranda sheet. I was speaking to  
21 Detective Margraf.

22 Q Speaking to Detective Margraf about what the  
23 strategy -- how you would approach Mr. Woods?

24 A Yes, sir.

25 Q Did Detective Margraf ask any questions to Mr.

1 Woods at all during this timeframe?

2 A No, he was with me.

3 Q What was the strategy that you had?

4 A Basically just try to find out what kind of car he  
5 was -- what kind of car Dex was in, who was driving the BMW  
6 who may have fired the shots.

7 Q There was no designation of roles, how you would  
8 ask questions or Detective Margraf would ask questions?

9 A No.

10 Q You go back in after this conference I guess you  
11 and Detective Margraf have, what did you say to Mr. Woods?

12 A I says okay so you were driving the car -- you  
13 were driving a different car and you saw the shooting. Tell  
14 me what happened.

15 Q What does he say?

16 A He asked where he wanted me to start. Where do I  
17 start.

18 Q Just like that, where do I start?

19 A Start from the beginning of the night.

20 Q What did he tell you?

21 A That he met up with Dexter at Raheim's house which  
22 is Fred, Fred Bostic, over on Pennsylvania Avenue. That  
23 Dexter had taken him food. They had gone upstairs. While  
24 upstairs he observed Raheim with a 9-millimeter and .45's.  
25 He himself handled a High Point 9-millimeter.

1 Q This conversation on direct examination you're  
2 repeating now was he giving it like that; was it a straight  
3 narrative?

4 A Yes. If I needed to ask him questions I would  
5 stop and ask him questions.

6 Q That's my question. When did you stop him? When  
7 were you asking for more detail?

8 A Went to Raheim, who is Raheim? Dexter's brother.  
9 With Frederick? Yes. Where does he live? Pennsylvania  
10 Avenue, and in that fashion.

11 Q Okay, so it was really a give and take the whole  
12 time?

13 A Pretty much.

14 Q You were stopping and asking for a lot of details?

15 A When I needed something to be specified, yes.

16 Q He gave you those details, right?

17 A Yes.

18 Q And how long did this give and take take?

19 A I can't approximate. It was definitely more than  
20 40 minutes just back and forth, just asking.

21 Q And then you ask him to memorialize the statement?

22 A Yes.

23 Q You give him a piece of paper?

24 A Aha.

25 Q You ask him to write it out?

1 A Yes.

2 Q Do you remain in the interview room while he  
3 writes it out?

4 A No.

5 Q Why?

6 A I wanted to see the video.

7 Q You wanted to go back and investigate what he told  
8 you to see if it was accurate?

9 A Yes.

10 Q Couldn't have taken more than five minutes to  
11 write out this statement, right?

12 A I don't know. I didn't see him write out the  
13 statement. I saw him begin it. I left while he was writing  
14 it.

15 Q Did you ask Margraf to stay and watch?

16 A No Margraf came with me.

17 Q Did you ask any other detectives in the Six Seven  
18 to stay and watch?

19 A No.

20 Q Call anyone from Brooklyn South to stay and watch?

21 A No.

22 Q You just leave?

23 A Yes.

24 Q And was Mr. Woods free to go?

25 A No.

1 Q Give anyone instructions to watch him?

2 A I believe his name is Detective Walker. I can't  
3 be a hundred percent of his name. That he's not free to go  
4 and I locked the interview room.

5 Q You locked him into the interview room?

6 A Yes.

7 Q Did you tell Mr. Woods what his status was as far  
8 as you were concerned?

9 A No.

10 Q Just remained silent on that?

11 A Yes.

12 Q You leave, you conduct your investigation and you  
13 come back somewhere about 4:30 in the morning, correct?

14 A Yes.

15 Q When you come back, what happens when you come  
16 back?

17 A I wake him up.

18 Q The door is still closed?

19 A Yes.

20 Q Locked?

21 A Yes.

22 Q You spoke to anybody to find out if anyone had any  
23 contact with Mr. Woods?

24 A No.

25 Q What happens, you go inside?



1 sighs and says I don't want to be a snitch. We got pulled  
2 over. Police car flagged us. Roger was saying don't pull  
3 over. Dex was saying don't pull over. I said don't worry  
4 about it. I'll tell them I'm a CI. I'll tell them I'm a  
5 CI. I pulled over.

6 Q Is this a narrative or more --

7 A No this is --

8 Q Back and forth?

9 A This is a narrative.

10 Q Then what happened, what does he say?

11 A I says to him, I says okay. What happened?

12 I look in the rear view mirror. I see the cop  
13 coming and as I'm looking I hear the shots and all of a  
14 sudden Dex and Roger are yelling go, go, go, go. Roger has  
15 the gun in his hand, go, go, go yelling. I put my head  
16 down. I take off.

17 Q How long does this statement take?

18 A I go over this one once or twice.

19 Q Let's break it down. The first narrative you're  
20 saying before you go over it, how long does it take to say?  
21 Was it as quickly as you said it to us?

22 A Pretty much.

23 Q What happened?

24 A We go over it a few more times just to make sure  
25 what he's saying -- I want to make sure what he's saying is

1 what he's saying.

2 Q Now you're kind of going word by word asking for  
3 more clarification, getting more detail?

4 A Yes.

5 Q Is it staying the same?

6 A Yes.

7 Q Are you getting really much more detail or more  
8 information, it is what it is?

9 A It is what it is. Stayed exactly the same.

10 Q You satisfied with that?

11 A Yes.

12 Q What did you do then?

13 A I asked him if he would write that down.

14 Q What did he say?

15 A He said give me a piece of paper.

16 Q You did?

17 A Yes.

18 Q Did you stay in the room for this --

19 A Yes.

20 Q -- statement to be written?

21 A Yes.

22 Q How long does it take him to write this statement?

23 A This one it's about I'd say maybe ten, 15 minutes.

24 Q As you look at the statement there are places

25 where there are words inserted maybe something is crossed

1 out. Who did that?

2 A He did that.

3 Q When he was done writing his statement before  
4 anyone signed it, did you read it?

5 A Yes.

6 Q Did you ask him to make any additons, any changes?

7 A No.

8 Q Did you say hey we talked about this you left it  
9 out, put that in?

10 A No.

11 Q What did you do?

12 A He signed it, I signed it.

13 Q Now that was about 5:30 in the morning?

14 A Yes.

15 Q This last conversation, this initial statement  
16 going back and forth took about an hour?

17 A Yes.

18 Q After he signs it, what do you say to him?

19 A I don't say anything. Detective Margraf and  
20 myself get out of the interview room and lock the door  
21 again.

22 Q Just leaving him there?

23 A Yes.

24 Q You didn't give him any further instructions?

25 A No.

1 Q Did you give any instructions to the people in the  
2 police department?

3 A We stayed in the Six Seven.

4 Q Earlier that morning let's just back up to the  
5 9th, earlier, all right. Somewhere in the morning hours,  
6 afternoon hours. In addition to your interview that you  
7 told us about in the field did you receive any other  
8 information regarding Mr. Woods and his involvement in this  
9 case?

10 A No.

11 Q Any phone calls, anonymous tips anything like  
12 that?

13 A No.

14 Q None at all.

15 MR. KARLINER: One moment, Judge.

16 THE COURT: Yes.

17 MR. KARLINER: I have nothing else, Your  
18 Honor.

19 THE COURT: Any redirect?

20 MR. HALE: Not in response to the cross  
21 examination.

22 THE COURT: Please proceed, Mr. Wilford.

23 MR. WILFORD: Thank, you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. WILFORD:

1 Q Good afternoon, detective.

2 A Good afternoon.

3 Q It is afternoon this time. How are you today,  
4 sir?

5 A Just fine. Yourself?

6 Q Now you were asked a question by Mr. Hale on  
7 direct examination regarding Mr. Bostic being a person of  
8 interest?

9 A Yes.

10 Q Can you explain what that means?

11 A Mr. Bostic his name was -- it came up while  
12 detectives were at Five Towns Mitsubishi.

13 Q There was no connection other than his name coming  
14 up to anything going on?

15 A To -- his name came up in regards to an individual  
16 who had taken cars in the past that's why he was a person of  
17 interest.

18 Q Do you know who conducted the interview at Five  
19 Towns?

20 A No.

21 Q But did you have a conversation, direct  
22 conversation with this person?

23 A Yes.

24 Q They told you that Mr. Bostic's name had come up  
25 with taking cars, vehicles from Five Towns in the past?

1 A Yes.

2 Q There was no indication Mr. Bostic took a vehicle  
3 on July 8th or 9th was there?

4 A No.

5 Q Now, that's all the information you had about Mr.  
6 Bostic at that point?

7 A Yes.

8 Q When you spoke with Mr. Woods at the Six Seven  
9 Precinct it was?

10 A Yes.

11 Q What time was that?

12 A Spoke to him at 11:45, at 9:30 and again at 4:45  
13 in the morning.

14 Q Initial time?

15 A 11:45 a.m.

16 Q A.m.?

17 A Yes.

18 Q At 11:45 a.m. you had no other information about  
19 Mr. Bostic at that point, is that correct?

20 A No sir, none.

21 Q Now when you were discussing with Mr. Woods --  
22 withdrawn.

23 Were you part of the team that went to Nicole  
24 Bostic's house?

25 A No.

1 Q Did you know a team was going to Nicole Bostic's  
2 house?

3 A No, sir.

4 Q You did go to Fred Bostic's house?

5 A No.

6 Q You spoke to Fred Bostic?

7 A Yes.

8 Q When did you speak to Mr. Frederick Bostic?

9 A Mr. Frederick Bostic was spoken to at the 71st  
10 Precinct.

11 Q He was brought into the 71st Precinct?

12 A Yes.

13 Q You spoke to him there?

14 A Yes.

15 Q What time was that?

16 A About 7:00 p.m.

17 Q 7:00 p.m.?

18 A Yes, sir.

19 Q That was after you left Mr. Woods in the Six  
20 Seven?

21 A Yes.

22 MR. WILFORD: Nothing further. Thank you  
23 very much.

24 THE COURT: Mr. Hale, anything?

25 MR. HALE: Nothing on that.

1 THE COURT: Please proceed, Ms Eaddy.

2 MS EADDY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS EADDY:

5 Q Good afternoon, detective.

6 A Good afternoon.

7 Q It's fair to say and I think you testified on  
8 direct that you worked hand in hand with Detective Margraf  
9 on this case?

10 A Yes.

11 Q You were involved in all aspects of the  
12 investigation leading to the arrest of the three  
13 individuals?

14 A We were kept appraised of the investigation. We  
15 were hand in hand as far as the beginning with Mr. Woods,  
16 the crime scene, the recovery of the weapons. We were given  
17 information in regards to the prints and the DNA eventually.

18 There was a lot going on and there was a lot of  
19 people, a lot of bosses, a lot of detectives speaking to us  
20 about all different types of things that was going on  
21 whether it was every aspect I can't say it was every aspect.

22 Q You remember testifying in the Grand Jury saying  
23 were you involved in all aspects of the investigation of  
24 this case?

25 MR. HALE: Objection.



1 THE COURT: You asking him what you mean  
2 all?

3 MS EADDY: Yes.

4 Q Do you remember testifying about being involved in  
5 all aspects of the investigation?

6 A Testified in the Grand Jury as to my role in the  
7 Homicide Squad, that is correct.

8 Q Yes?

9 A We are involved in all aspects.

10 Q And you testified as to your role as the lead  
11 homicide detective in this case?

12 A Yes.

13 Q Now, it's fair to say that the probable cause for  
14 the arrest of my client were the statements of Woods and the  
15 fingerprint that was found?

16 MR. HALE: Objection.

17 THE COURT: Sustained. That's ultimately the  
18 argument you're going to make here but the People have  
19 already established a basis, you know, and I suggest  
20 you challenge that basis if you can but the totality of  
21 all the information is really not at issue for the  
22 hearing. It may be a trial issue but not for the  
23 hearing.

24 Q You testified that you found -- that there was a  
25 print found on the car, the BMW belonging to my client, is

1 that correct?

2 A Yes.

3 Q And isn't it a fact that that print was found on  
4 the passenger's side, rear passenger's side of the vehicle?

5 THE WITNESS: Can I check?

6 THE COURT: Yes, please.

7 A Rear passenger door, triangle window, exterior  
8 BMW.

9 Q And it's also a fact there were other prints found  
10 in that car, is that correct?

11 A Yes.

12 Q And it's a fact that Dexter -- I'm sorry Lee  
13 Woods' print was found in the back -- operator door handle?

14 A Yes.

15 Q It is a fact that we know the shots that were  
16 fired at Officer Yan came out of the back window?

17 MR. HALE: Objection.

18 THE COURT: Sustained. Again that maybe a  
19 trial issue.

20 Q You testified that Mr. Woods made several  
21 statements, is that correct?

22 A Yes.

23 Q And several statements that you came to find to be  
24 incredible?

25 MR. HALE: Objection.

1 THE COURT: This is cross examination. I  
2 suggest you don't try to summarize the testimony. Just  
3 ask the questions. That's the basis of the objection.

4 Q Well the first statement that Mr. Woods gave to  
5 you was that he had seen Dexter Bostic a few days earlier,  
6 is that correct?

7 A Yes.

8 Q And that the last time he was with him was a few  
9 days earlier, is that correct?

10 A Same difference, yes.

11 Q And -- but you came to obtain information from  
12 Frederick Bostic that, in fact, Lee Woods was with Dexter  
13 Bostic the day before the shooting, is that correct?

14 A Yes.

15 Q And so you went back to him, is that correct?

16 A Yes.

17 Q And you told him that you didn't believe his first  
18 statement, is that correct?

19 A I told him that there was information that had  
20 come to light that led us to believe he may have been with  
21 Dexter.

22 Q So then he changed his statement?

23 A Yes.

24 Q And now he changed his statement to not having  
25 seen Mr. Bostic to having been with him the night before, is

1 that correct?

2 A Yes.

3 MR. WILFORD: Your Honor, I'm going to object  
4 at this point. I'd like to be heard on the record.

5 THE COURT: Okay if you will just for the  
6 moment, step outside.

7 THE WITNESS: Yes, sir.

8 (Whereupon the witness was excused and the  
9 following took place in open court.)

10 THE COURT: Yes Mr. Wilford.

11 MR. WILFORD: The questions being asked by Ms  
12 Eaddy with respect to Mr. Bostic stated by Mr. Woods I  
13 think to some extent compromise Mr. Woods and Mr.  
14 Bostic. I'm particularly with respect to Mr. Bostic I  
15 ask the Court to correct Ms Eaddy not to continue along  
16 this line of cross examination. If the Court is not  
17 inclined to, I move for severance immediately on behalf  
18 of Mr. Bostic.

19 MR. KARLINER: I move to join in that  
20 application.

21 THE COURT: Ms Eaddy.

22 MS EADDY: I think two weeks ago the People  
23 stood here. I asked for various Discovery materials  
24 and Rosario. They said the basis of the probable cause  
25 for the arrest of my client was the statement of Mr.

1 Woods and the single fingerprint. What I'm asking I'm  
2 challenging the detective and law enforcement's  
3 reliance upon the statement of Mr. Woods based upon  
4 what they knew prior to my client being arrested. I  
5 don't necessarily disagree with counsel that maybe  
6 there should be a severance as to this issue because --

7 THE COURT: It's a bit premature. I agree  
8 with you. You can proceed. People want to be heard?

9 MR. HALE: Not at all.

10 THE COURT: That's it.

11 (Whereupon the witness resumed the witness  
12 stand.)

13 You know where you were?

14 MS EADDY: Can I have the last question read  
15 back?

16 (Whereupon the last question and answer was  
17 read back by the court reporter.)

18 Q And in that second statement he gave to you he now  
19 says he was following behind in a white Infiniti, is that  
20 correct?

21 A Yes.

22 Q And he also said that he watched as the officers  
23 approached the car, is that correct?

24 A Yes.

25 Q And that there came a time when he made a U-turn

1 and left that location, is that correct?

2 A He made a U-turn to watch the car stop and then  
3 left the location after the shots, yes.

4 Q Now, you then decided to go back and look at the  
5 video?

6 A Again.

7 Q Is that correct?

8 A Yes.

9 Q And just to be clear you were looking at the video  
10 that showed the officers approach to the BMW, is that  
11 correct?

12 A The video of the police car being pulled over on  
13 Lefferts making the right hand turn onto Rogers.

14 Q And after looking at the video and based upon your  
15 belief that that was a one way street you came to believe he  
16 was being less than truthful at that time, is that correct?

17 A Yes.

18 Q And so then you went back to him, is that correct?

19 A Yes.

20 Q And then now the first thing he says to you is  
21 that you know stop playing games. You know that officer  
22 looked me in my eye, is that correct?

23 A He said you know that cop looked right at me, yes.

24 Q You viewed the video that we were just speaking  
25 about, is that correct?

1 A Yes.

2 Q And it's fair to say that Officer Yan never got an  
3 opportunity to get to see the video?

4 THE COURT: No, no, no. That indeed may be a  
5 trial issue ma'am at this point but what he may have  
6 done in terms of ultimately trying to ferret out  
7 information from this defendant is really the issue  
8 here.

9 Q You testified about various aspects of the  
10 statements Mr. Woods made that you found to be less than  
11 truthful, is that correct?

12 A Yes.

13 Q So when he told you that he looked the officer in  
14 the eye --

15 A I didn't say he looked the officer in the eye.

16 Q He said it -- what did he say?

17 A His statement was the cop looked right at me and  
18 you know that I was driving.

19 Q When Mr. Woods told you that that cop looked right  
20 at me, is it fair to say you knew he was being less than  
21 truthful?

22 MR. HALE: Objection.

23 THE COURT: You're asking him his state of  
24 mind at the time?

25 MS EADDY: Yes.

1 THE COURT: Okay.

2 THE WITNESS: I assumed he was talking about  
3 the rear view mirror.

4 MR. WILFORD: I didn't hear the response.

5 THE WITNESS: I assumed he was talking about  
6 the rear view mirror.

7 Q You assumed when Mr. Woods -- when the officer  
8 looked him in his eye --

9 A I didn't say looked him in his eye.

10 Q Tell me what he said.

11 A That cop looked right at me.

12 Q When Mr. Woods said the cop looked right at me he  
13 was talking about -- he was looking through the rear view  
14 mirror when the cop looked at him?

15 A Mr. Woods was looking at the rear view mirror --  
16 side view mirror, sorry.

17 Q That's how this officer looked him in the eye, is  
18 that your testimony?

19 MR. HALE: Objection.

20 THE COURT: That's argumentative, ma'am. If  
21 you're trying to be critical of the technique that's  
22 one thing.

23 MS EADDY: I'll move on, Your Honor.

24 THE COURT: Fine.

25 Q You also testified one of the things Mr. Woods



1 told you is that he had handled the High Point Tech M.  
2 gun?

3 A The High Point 9-millimeter.

4 Q Is that correct?

5 A Yes.

6 Q And it just so happens that is the gun that was  
7 used to shoot Officer Yan?

8 THE COURT: Sustained. Sustained. Trial  
9 issue, trial issue.

10 Q What gun was used to shoot Officer Yan?

11 THE COURT: Trial issue, sustained.

12 Q In his last statement Mr. Woods said to you that  
13 after the shooting that Mr. Bostic and my client, Mr. Ellis,  
14 took the items and gathered them up, is that correct?

15 A Yes.

16 Q Now, isn't it a fact that your investigation --  
17 prior to my client being arrested you knew that there was a  
18 palm print belonging to Mr. Woods in the alley where the  
19 guns were recovered?

20 MR. HALE: Objection.

21 THE COURT: Again --

22 MS EADDY: Judge, they're relying upon --

23 THE COURT: Just a moment. Step outside,  
24 please.

25 (Whereupon the witness was excused and the

1 following took place in open court.)

2 If you will Ms Eaddy, explain to me how that  
3 goes to the basis for the predicate here, ma'am?

4 MS EADDY: They spoke to Mr. Woods on the 9th  
5 and 10th of July.

6 THE COURT: Yes, ma'am.

7 MS EADDY: My client was arrested July 12th.  
8 They have said in open court the probable cause for the  
9 arrest of my client was the statements of Mr. Woods.  
10 What I'm trying to show is that every -- basically  
11 every forensic evidence that was available, every print  
12 evidence showed Mr. Woods was being untruthful when he  
13 said that he -- that my client and Mr. Bostic took the  
14 guns it was his palm print on the car that the person  
15 used to hide the guns on top of a building, Your Honor.

16 THE COURT: Just a moment. The witness on  
17 his direct testimony has indicated that in connection  
18 with trying to identify Roger or Robert a print was  
19 involved. We're not talking about a palm print. All  
20 I'm saying at this point is that you may have  
21 information ultimately in the totality of the scheme of  
22 things which go to the guilt or non-guilt of someone  
23 which really is a trial issue.

24 At this point the only issue the Court is  
25 concerned about is what was the basis for the

1 information to cause them to ultimately identify Mr.  
2 Bostic and Mr. Ellis as perpetrators aside from Mr.  
3 Woods. The bottom line is Mr. Woods and the print that  
4 this detective was able to use in identifying who  
5 Robert was.

6 What I'm saying, again, we're not talking  
7 about the totality -- we're not talking about the  
8 effect or totality of the information the People are  
9 relying on, Mr. Woods statement and the fingerprint.  
10 That's the basis for their probable cause with respect  
11 to your client.

12 Ultimately, what you're trying to do is  
13 you're trying to look for other things that might  
14 indicate, beyond a reasonable doubt, his guilt or not  
15 but that's a given.

16 MS EADDY: Your Honor, if I can say one more  
17 thing with the Court's permission. I understand why  
18 the Court may think what I'm trying to establish is  
19 that there was no reasonable basis to rely upon the  
20 statements of Woods to arrest my client. The print  
21 that was found was on the opposite side of the car from  
22 which Officer Yan was shot. It is an exterior print  
23 and they were unreasonable in their reliance upon the  
24 statements of Woods to arrest my client and a  
25 fingerprint on the outside of a car does not establish

1 that he participated in a shooting at all. That's what  
2 I'm trying to establish.

3 THE COURT: Let me just say this I've had --  
4 I thought about this and the bottom line is this, you  
5 can use the statements of someone who is implicated,  
6 okay. There is a thing of Declaration Against Penal  
7 Interest. They have to satisfy the Aguilar Spinelli  
8 test and there may be information that corroborates  
9 what they're saying which officers tried to offer. I'm  
10 satisfied where the issues are. What I'm suggesting  
11 you're doing now is you're trying your case. We're not  
12 going to try it.

13 MS EADDY: Yes, Your Honor.

14 (Whereupon the witness resumed the witness  
15 stand.)

16 Q Prior to the arrest of my client, Mr. Ellis, did  
17 you have the preliminary DNA results for the hand guns?

18 MR. HALE: Objection.

19 THE COURT: Sustained. Again it's a trial  
20 issue, ma'am. I'm not precluding you from examining  
21 with respect to what the People are alleging is the  
22 predicate but that question really goes ultimately to  
23 the trial issue in the Court's opinion.

24 Q The fingerprint that was found of my client on the  
25 BMW testified that it was on the rear exterior of the

1 passenger side of the door?

2 A Yes.

3 Q It's fair to say you did not find any fingerprints  
4 inside the car belonging to my client?

5 MR. HALE: Objection.

6 THE COURT: Again, sustained. That goes to  
7 the trial. Trial issue.

8 Q When -- during the second statement of Mr. Woods,  
9 is it correct, that he said that he went to a club with Mr.  
10 Bostic and Mr. Ellis to pick up women, is that correct?

11 A Yes.

12 Q And then after that they went to Popeye's and  
13 Dunkin Donuts, is that correct?

14 A Yes.

15 Q What point did he say that he got into the back  
16 seat of that car, the BMW?

17 A When they had purchased their food he got in the  
18 back seat of the BMW to eat.

19 Q And at that time he said he hand -- did he say he  
20 handled both guns or the 9-millimeter High Point?

21 A He said he picked up a 9-millimeter and a Tech,  
22 Tech Nine.

23 Q Did he say -- I'm sorry he went on to say he got  
24 out of the car, this is the second statement. He got out of  
25 the car and he went into the white Infiniti, is that

1 correct?

2 A Yes.

3 Q Did he say who was driving the car at that point?

4 A No.

5 Q Did you ask him?

6 A I don't recall if I did or not. I don't think I  
7 did.

8 Q Now, you knew at that time that the shots that  
9 were fired at Police Officer Yan came out of the rear window  
10 behind the operator, is that correct?

11 MR. HALE: Objection.

12 THE COURT: Sustained.

13 Q It's your testimony that when you made -- he made  
14 that second statement you never asked him who was driving?

15 A I don't recall if I did or not.

16 THE COURT: Why don't you just review and see  
17 whether the statements reflect anything in terms of him  
18 saying who was driving, if you will, please.

19 THE WITNESS: The second statement he doesn't  
20 make any information as to who was driving.

21 Q You never asked?

22 A I don't recall if I did or not.

23 MS EADDY: I have no further questions.

24 THE COURT: Any redirect?

25 MR. HALE: Not a thing. Thank you,

1           detective.

2           THE COURT: Detective, thank you very much.

3           THE WITNESS: Thank you very much.

4                   (Whereupon the witness was excused.)

5           THE COURT: Any further witnesses?

6           MR. HALE: That's it for the hearing.

7           THE COURT: Defense, any witnesses?

8           MR. WILFORD: Not for Mr. Bostic, Your Honor.

9           MR. KARLINER: None for Mr. Woods, Your  
10 Honor. Defense rests.

11           MS EADDY: Defense for Mr. Ellis rests.

12           THE COURT: Folks, I want to hear arguments  
13 in the following manner: I'm going to ask you to do  
14 certain things. We'll take about ten minutes then  
15 we'll resume.

16           MS EADDY: Can we approach, briefly?

17           THE COURT: Yes, ma'am.

18                   (Whereupon a bench conference was held. A  
19 brief recess was taken and the trial resumed.)

20           I've been advised by Mr. LaRose that both  
21 sides are willing to do the oral arguments. I  
22 appreciate your indulgence for the lunch hour.

23           Mr. Wilford, is it going to be you first?  
24 You're first on the indictment.

25           MR. WILFORD: Yes.

1 THE COURT: Okay..

2 MR. WILFORD: As the Court is aware the  
3 prosecution has notice with respect to Mr. Bostic's  
4 four statements to various police officers of New York  
5 State and Pennsylvania. Statements from July 11th and  
6 July 15th, 2007. As the Court is also aware the  
7 defendant's attorney, to wit, counsel, sent a written  
8 notice to the New York City Police Department  
9 specifically instructing them A, that Mr. Bostic had  
10 retained counsel. B, that Mr. Bostic should he be  
11 apprehended was not to be questioned at all by any  
12 members of the police department.

13 That notice was in the possession of the  
14 police department I believe from July 9th or 10th and  
15 Mr. Bostic was not -- I refer the Court to the  
16 particular exhibit which I believed was introduced as  
17 Ellis A and the New York City Police Department was,  
18 therefore, on notice Mr. Bostic was represented by  
19 counsel in this particular matter and should not have  
20 been questioned outside of the presence of counsel. He  
21 was not capable of waiving counsel outside the presence  
22 of counsel. Therefore, each and every one of the  
23 statements attributed to Mr. Bostic on July 11th should  
24 be suppressed including the alleged statement taken by  
25 Detective Nomyle (ph) as noticed in the People's



1 argument offered by the statement off of Interstate 80  
2 in Pennsylvania. That was noticed as being given at  
3 1815 to Detective Nomyle and Heinrich (ph). That  
4 particular statement, Your Honor, although there may be  
5 some attempt to categorize it as pedigree information  
6 was indeed a custodial interrogation of Mr. Bostic at  
7 the time the police department -- Mr. Bostic had  
8 counsel -- noticed that he had counsel.

9           There was no questions relating to anything  
10 at all other than his name. All the questions about  
11 Mr. Ellis and other questions asked of him at that  
12 time, the entire tenor of that particular inquiry or  
13 interrogation was such that the entire statement needs  
14 to be suppressed.

15           With respect to the statement taken by  
16 Detective Nomyle and Corporal Courtwright (ph) at the  
17 Pennsylvania State Barracks, those were clearly  
18 custodial and interrogation and in violation of the  
19 specific notification by counsel with respect to not  
20 questioning Mr. Bostic.

21           July 15th statement by detective -- taken by  
22 Detective Margraf at Rikers Island was clearly an  
23 attempt by Detective Margraf to elicit a statement from  
24 Bostic in response to the statements that he provided  
25 to him. At this point it was clear that Mr. Bostic was

1 represented by counsel. He had not only given notice  
2 of his representation but Mr. Bostic had been arraigned  
3 at that point on the initial complaint and he was there  
4 to arrest him on the upgraded charges from Murder Two  
5 to Murder One and other charges included in the  
6 eventual indictment.

7 For those reasons, Your Honor, I would submit  
8 that all of Mr. Bostic's statements should be  
9 suppressed. I will request permission to provide the  
10 Court with more detailed submission in writing,  
11 detailing specific case law and factual recitation that  
12 relates to the transcript if given an opportunity.

13 THE COURT: Principally what you're saying  
14 once they were advised of a representation, right to  
15 counsel attached and anything after that in the absence  
16 of counsel was ineffective because he could only waive  
17 counsel with counsel being present.

18 MR. WILFORD: Yes and that's with respect to  
19 the July 11th statement. July 15th statement is I  
20 think in a little different category. I explained the  
21 reasons for that. I would like the opportunity if the  
22 Court would afford us --

23 THE COURT: That's fine. You want to address  
24 the probable cause issues?

25 MR. WILFORD: Your Honor, I would simply rely

1 on the record and state the People have not satisfied  
2 their burden with respect to establishing probable  
3 cause.

4 THE COURT: Okay.

5 MR. WILFORD: There was a question of the  
6 sweatshirt that was found in close proximity to Mr.  
7 Bostic. Because they didn't have probable cause to  
8 arrest Mr. Bostic that any items seized therefrom were  
9 inappropriately -- would be inappropriately admitted to  
10 a jury at a trial in this matter and should also be  
11 suppressed.

12 THE COURT: All right.

13 MR. WILFORD: Thank you, Judge.

14 THE COURT: Who is next on the indictment?

15 THE CLERK: Mr. Ellis.

16 THE COURT: Ms Eaddy if you will, please.

17 MS EADDY: Thank you, Your Honor. Good  
18 afternoon, Your Honor.

19 THE COURT: Yes.

20 MS EADDY: Your Honor, I would reiterate  
21 what counsel Mr. Wilford said about the right to  
22 counsel attaching. As the Court knows and I don't  
23 believe there is any dispute the Law Office of Wilford  
24 and Ricco sent in a notification --

25 MR. WILFORD: I don't mean to interrupt.

1 There is no Law Office of Wilford and Ricco.

2 MS EADDY: Mr. Wilford on behalf of himself  
3 sent in a letter to the 71st Precinct indicating,  
4 memorializing a conversation that he had with the  
5 sergeant indicating that if and when my client was  
6 apprehended that the New York City Police Department  
7 and law enforcement were not to take any statements  
8 from him. I don't believe that's in dispute as the  
9 People put that letter into evidence and the clear  
10 testimony from the detectives was that they were in  
11 receipt of that letter prior to my client being  
12 apprehended.

13 It's clear that at that time the right to  
14 counsel attached. I believe that the --

15 THE COURT: We're talking about, make sure,  
16 that was the initial statement to Margraf about I'd  
17 like to talk with you and then --

18 MS EADDY: Right.

19 THE COURT: -- and then the video.

20 MS EADDY: Right I'm challenging all  
21 statements made by my client to Detective Margraf. The  
22 oral statement, I want to talk to you.

23 THE COURT: Yes, ma'am.

24 MS EADDY: The subsequent talk with my client  
25 that he memorialized on the DD-Five, the audiotaped

1 statement the videotaped statement, all statements made  
2 by my client.

3 THE COURT: All right.

4 MS EADDY: It's clear that the right to  
5 counsel attached and the Courts of this state have been  
6 equally clear that any waiver of the right to counsel  
7 once counsel has entered has to be knowing, intelligent  
8 and voluntary. Now in this case, Your Honor, it cannot  
9 be said in any way, shape or form that my client --

10 THE COURT: It has to be notice in the  
11 presence of counsel.

12 MS EADDY: In the presence of counsel.

13 THE COURT: If there is a waiver.

14 MS EADDY: That's correct, Your Honor. And  
15 as the Courts have held, the Court of Appeals has held  
16 in People versus Grice that we have consistently  
17 rejected attempts to undermine the right to counsel  
18 with mechanical requirements. "That the certainty of  
19 establishing the retention of counsel is critical  
20 because at that juncture law enforcement is obligated  
21 to determine whether that representation continues in  
22 situations where the scope of the attorney/client  
23 relationship exists."

24 In this case, this is what the People  
25 attempted to do. We had testimony from Detective

1 Margraf that he first goes to the barracks in  
2 Pennsylvania. Now if you remember the testimony from  
3 the Pennsylvania State Troopers, my client had already  
4 been detained and he had been processed. They had  
5 taken his pictures. They had processed him and still  
6 Detective Margraf walks into the room with my client  
7 and what he says to my client is as follows: He says  
8 to my client: "I told him I'm investigating an  
9 incident, an incident that happened in Brooklyn a few  
10 days ago and I said that's the purpose of why I'm  
11 here."

12 There was no legitimate purpose for Detective  
13 Margraf to walk into the room and say that except to  
14 attempt to elicit a statement from my client. He  
15 admitted he knew my client had counsel at the time.

16 Now, what he says he then does is very  
17 troubling. He calls the detective office and he tells  
18 them that my client says I want to talk to you and his  
19 testimony was that the District Attorney's Office  
20 dictated to him three questions to ask my client and  
21 looking at People's -- I'm sorry at People's 4 in  
22 evidence, the first question was, "If you are  
23 represented by an attorney, we can't question you." My  
24 client said -- and they said, "Do you understand?" And  
25 my client said yes.

1           The second question was, "Do you know lawyers  
2 by the name of Edward Wilford or Anthony Ricco?" And  
3 he said no. The third question is, "Do either of them  
4 represent you in this matter?" And he said no but,  
5 Your Honor, and I'm going to submit memorandum to the  
6 Court, the cases turn on this. They have to tell the  
7 defendant that he is represented by counsel. Only then  
8 can there be a valid waiver of his right to counsel.

9           THE COURT: I know I'm going to allow you to  
10 file a memorandum. Do you have any specific case in  
11 mind that requires them to do that?

12           MS EADDY: Yes, Your Honor.

13           THE COURT: Just give me the cite.

14           MS EADDY: Your Honor, when I say you yes I  
15 mean this, having looked at what I believe are most if  
16 not all of these cases, the only cases where the Courts  
17 have held and I'll give you two I think were primary  
18 cases where the Courts have held that the right to  
19 counsel no longer existed because there is a valid  
20 waiver in each of those cases, the police informed the  
21 defendant that he had counsel.

22           One particular case, the Lennon case, which  
23 is a Second Department case on this issue where the  
24 cops come in and they tell the defendant you have  
25 counsel. That defendant says I don't want counsel. I

1 had this person before. I don't want them.

2 The other case I believe on this issue would  
3 be the Taylor case which we know as the Wendy's case  
4 where there was an attorney who represented the  
5 defendant on another matter who comes into the case and  
6 says I represent him. Now what the Court held is that  
7 in this case, neither the defendant, his family or  
8 anyone on behalf of the defendant asked this attorney  
9 to come into the case but even if they did, the police  
10 officers told that defendant that this person came into  
11 the case and says she represents you and that defendant  
12 said I don't want her so if you look at the only cases  
13 where the Courts have held that the right to counsel  
14 had been waived have been when the police have told the  
15 defendant you are represented by counsel and after all  
16 how can a defendant make a knowing and intelligent  
17 waiver of his right to counsel if he does not know he  
18 has counsel?

19 THE COURT: Other than Taylor, other than  
20 Lennon and Cajales, any other case you have in mind;  
21 any other authority?

22 MS EADDY: Yes.

23 THE COURT: Is there another one, if you do  
24 let me know.

25 MS EADDY: There are a couple of cases.



1 THE COURT: Give me the cites.

2 MS EADDY: People versus Hobson, 39 NY 2d  
3 479; People versus Arthur -- I'm sorry, People versus  
4 Grice --

5 THE COURT: We're not talking about the  
6 method of communication. What you're saying is once  
7 they have notice and they seek from the defendant  
8 whether in fact there is representation and the person  
9 disavows representation you're saying they're obligated  
10 to tell them before they go to that step?

11 MS EADDY: Right.

12 THE COURT: That counsel -- I mean they have  
13 counsel.

14 MS EADDY: Exactly, Your Honor.

15 THE COURT: Hobson says that?

16 MS EADDY: Your Honor these cases speak to  
17 different situations where the police or law  
18 enforcement have tried to subvert a defendant's right  
19 to counsel where the Courts have held that you can't do  
20 that. There has to be a clear and knowing and  
21 intelligent waiver. The Taylor case and Lennon cases  
22 are cases -- in other words there is a limited amount  
23 of cases where the Courts have held that even though  
24 counsel entered a case that a defendant has validly --  
25 has waived that right to counsel and what I'm saying

1 each of those cases turn on the fact that the defendant  
2 knew he was represented by counsel. To ask a defendant  
3 who has just pulled out of the woods are you  
4 represented by Edward Wilford and Anthony Ricco you  
5 might as well have said are you represented by Jacobi  
6 and Meyers. This cannot suffice. The cases I will  
7 give to you -- I don't have to tell the Court I know  
8 you know the seriousness of someone's right to counsel.

9 The last thing I want to say on this  
10 particular issue is that on the stand I asked Detective  
11 Margraf clearly did he ever tell my client that he was  
12 represented by counsel, he said no and based upon this  
13 alone, I believe that those statements should be thrown  
14 out. There are other issues.

15 THE COURT: Here's what I'm saying, it's  
16 clear that Taylor, it's clear that Lennon and Cajales  
17 talks about the police being able to ascertain whether,  
18 in fact, there is a certain preexisting legal  
19 relationship with a lawyer to get around the right to  
20 counsel issue -- right to counsel attaching.

21 Do you have anything other than Taylor,  
22 Cajales or Lennon? Any other cases that speak to where  
23 in this instance as Margraf did quite exceptionally  
24 call the DA's office and say look give some guidance.  
25 They did the right thing. Do you have anything else?

1 MS EADDY: No, Your Honor. I submit these  
2 facts are unique. A detective -- there is an  
3 opportunity in any case in this state where a detective  
4 gets to call the D.A. and is given questions so, no,  
5 but other than those cases I can certainly get you  
6 other cases where they have ruled that a defendant has  
7 validly waived a right to counsel because I've read  
8 them and all I'm saying, again, it turns on him knowing  
9 he has counsel.

10 THE COURT: What I'm saying is it's  
11 commendable of Margraf. If I had been a detective  
12 that's what I would have done too. He did what he had  
13 to do. Other than Cajales and Taylor and Lennon,  
14 anything else where someone's right to counsel  
15 supposedly attaches because a lawyer entered the case  
16 and then the defendant disavows; any other case?

17 MS EADDY: No but I will include more in  
18 my --

19 THE COURT: No I'm saying --

20 MS EADDY: No, not at this time.

21 THE COURT: In terms of audiotape, are you  
22 saying one, the right to counsel and also the fact that  
23 they may have lost it somehow --

24 MS EADDY: Your Honor, I understand the case  
25 law on this case. It has to be bad faith if we're

1 going on the destruction of the audiotape I understand  
2 the case law. It has to be bad faith on the part of  
3 the DA's Office. I think it's clear I don't believe  
4 this technician did this in bad faith. I don't think  
5 it was the most prudent thing to do. The only thing I  
6 would ask the Court to take notice of is that the DA  
7 did send you and myself a letter with respect to the  
8 audiotape and she said that a 911 call was taped over  
9 my client's audiotape and if you look at that --  
10 specifically she said the audio -- the 911 call in this  
11 case was taped over that audiotaped statement.

12 The request that I believe is in evidence  
13 that the District Attorney's gave to the technician it  
14 only has one Ellis tape given to the technician and  
15 then the testimony from the technician was that it was  
16 a woman's voice he heard -- his first testimony is that  
17 he was told by the D.A. that the Ellis statement was  
18 taped over by another statement being the other  
19 statement was the statement by a female. I don't know  
20 if that was a defendant or a witness. Granted he  
21 testified that it was a woman's voice on the tape. We  
22 know it could be a female 911 operator, I don't know.  
23 That's the only thing I would ask the Court.

24 THE COURT: What's your request here? Are  
25 you saying -- there is nothing in substance, there is

1 nothing of substance in evidence about the substance of  
2 the audiotape so what is it would you like suppressed,  
3 the mention of the audiotape?

4 MS EADDY: I want the audiotape suppressed.

5 THE COURT: There is nothing in evidence  
6 about that. She has nothing. She's not offering  
7 anything.

8 MS EADDY: She put the audiotape in evidence.

9 THE COURT: There is nothing on the tape.

10 MS EADDY: The testimony I guess -- I'm  
11 sorry.

12 THE COURT: Testimony about --

13 MS EADDY: Exactly.

14 THE COURT: -- the audiotape.

15 MS EADDY: I elicited from Detective Margraf  
16 he never created a DD-Five with respect to the  
17 audiotape so there is no duplicative equivalent. This  
18 audiotape is important because this is before the D.A.  
19 comes in and files in to take a statement. We know  
20 that the initial statement he took from my client he  
21 wrote it as he saw it in chronological order not in the  
22 manner in which my client told him, Your Honor.

23 THE COURT: Right to counsel and in addition  
24 to the right to counsel and the audiotape the fact that  
25 they've destroyed it -- it's no longer in existence.

1 MS EADDY: Yes.

2 THE COURT: Any other reason you want a  
3 statement suppressed?

4 MS EADDY: Another issue I have to raise. As  
5 you know I put into evidence photographs of what -- the  
6 Court will decide what the photographs depict.

7 THE COURT: Of his body.

8 MS EADDY: His body and I say an injury to  
9 his forehead and to his body and I understand what the  
10 testimony was and I just, you know, and the Court will  
11 make his determination as to what that is but if the  
12 Court determines that those are injuries if I ask the  
13 Court to take that into account the condition my client  
14 was in at the time the statement was made because the  
15 Pennsylvania State Trooper said -- I'm sorry there was  
16 testimony those pictures were taken prior to my client  
17 being spoken to so if he was injured in that way prior  
18 to him being spoken to that may go to the voluntariness  
19 of the statement.

20 THE COURT: In essence if they beat him up  
21 and everything that followed after that should be  
22 suppressed.

23 MS EADDY: Yes.

24 THE COURT: I don't want to cut you short.

25 MS EADDY: Yes, Your Honor. So the last

1 issue, of course, is the probable cause issue.

2 THE COURT: Yes, ma'am.

3 MS EADDY: With respect to the probable cause  
4 issue the DA's Office I believe I haven't heard their  
5 arguments. I know what they said in court a couple of  
6 weeks ago. The basis for the probable cause of the  
7 arrest of my client is the statements of Mr. Woods and  
8 a fingerprint that was found on the opposite side of  
9 the car.

10 THE COURT: Passenger side.

11 MS EADDY: Passenger side, opposite side from  
12 the window in which Officer Yan was shot on the  
13 exterior. I submit that is not enough for probable  
14 cause. They're relying on the statements of Mr. Woods  
15 when we know -- he's testified that he told several  
16 statements that he found to be incredible. The fact  
17 that my client's print is on an exterior of a car has  
18 no bearing in whether or not he was a participant of a  
19 shooting at the time and place of this shooting  
20 incident.

21 It shows at some time he touched the outside  
22 of that car. Maybe he even went in. We don't know  
23 when that was. They have not submitted any other  
24 evidence to show that he was there during the shooting.  
25 All they have is a statement from someone who is a

1 known snitch apparently who has given not one, not two  
2 but three incredible statements.

3 THE COURT: Let me understand something,  
4 you're saying Mr. Woods would be less than an ordinary  
5 citizen who would be presumed to be reliable you're  
6 saying?

7 MS EADDY: Yes.

8 THE COURT: If he were presumed to be  
9 reliable, an ordinary citizen, does he have an argument  
10 here?

11 MS EADDY: It's not just a presumption it's  
12 my client was arrested two days after they had these  
13 statements and they had information -- they didn't even  
14 need that -- he knew from the statements he took that  
15 this guy was not reliable and it was to rely upon a  
16 statement of someone who has told multiple stories  
17 about what happened that does not bear out. He's  
18 testified just, you know, he's looking at the video.  
19 He knows he's telling a lie. You want to use that as a  
20 foundation to arrest my client and an exterior  
21 fingerprint?

22 THE COURT: Assuming, assuming for the moment  
23 he's not an ordinary citizen. Let's assume as he said  
24 in the statement that he was a criminal informant that  
25 would require that at least the police satisfied or the



1 People satisfied Aguilar Spinelli as I understand.

2 MS EADDY: Yes.

3 THE COURT: And is not a Declaration Against  
4 Penal Interest sufficient as to the first prong and in  
5 terms of his voracity the fact that they recovered a  
6 print relating to your client wouldn't that corroborate  
7 what he was saying? Ultimately it may not be proof  
8 beyond a reasonable doubt wouldn't that be enough of a  
9 piece to rely on?

10 MS EADDY: Of course the Court will make that  
11 determination. I don't believe it is enough.

12 THE COURT: I'm trying to address the issue  
13 as I see it.

14 MS EADDY: I don't believe that's enough.  
15 The point and I know the Court made a ruling but I  
16 think it would seem absolutely nothing corroborates his  
17 story but to say an exterior print on a car when there  
18 is no testimony as to when that print got there, to say  
19 that it corroborates Woods' statement in any way, shape  
20 or form I think it does not fly. It's not enough.

21 THE COURT: No probable cause.

22 MS EADDY: No probable cause and I would ask  
23 that I be allowed to submit a memorandum.

24 THE COURT: I intend to do that.

25 Mr. Karliner if you will, please, sir.

1 MR. KARLINER: Thank you, Judge.

2 THE COURT: You can talk about what you like  
3 and if you will one, whether there was probable cause  
4 and then go from there with regard to your client.

5 MR. KARLINER: Your Honor, I will submit  
6 papers. I will be brief.

7 Regarding probable cause, you're going to  
8 have, I believe, to really evaluate the credible issue  
9 of Detective Habert of how they actually entered the  
10 apartment. Truthfulness and voracity whether it was  
11 with a knock at the door or whether they went in with a  
12 little more force and how things were conducted inside,  
13 you use your common sense.

14 Mr. Woods was taken down at gunpoint whether  
15 or not he did or didn't have a weapon. It was decided  
16 he didn't have a weapon and how they take him into  
17 custody and what was said I think those statements  
18 should be suppressed. When he gets down to the  
19 precinct you need to evaluate the multiple statements  
20 that were said there. The pre and post-Miranda  
21 statements. I must -- one of the things I ask to look  
22 at in my papers is questions that were asked  
23 pre-Miranda and then exact same questions asked  
24 post-Miranda and any impact that might have in allowing  
25 those statements in I think when you come back to the

1 written statements more importantly that follow, you  
2 have --

3 THE COURT: Is it your position that once he  
4 was -- once he was -- once he left his house and taken  
5 to the precinct that how he was in custody at that  
6 point.

7 MR. KARLINER: Yes I will address that in a  
8 minute.

9 THE COURT: I'm sorry.

10 MR. KARLINER: I think there is a very real  
11 issue of attenuation that goes on once Miranda is read  
12 until the ten or so hours when Miranda is read again.  
13 Specifically at the precinct discussing custodial  
14 interrogation and was he in custody. As the day  
15 progresses, I think it's, again, a factual issue but we  
16 have two detectives who really gave different testimony  
17 about how Mr. Woods was directed to behave.

18 One said he had an officer watching him who  
19 was to take him to the bathroom and get him food and  
20 take care of all his needs and today we take testimony  
21 of Detective Yero that he was free not necessarily to  
22 move around the precinct. If he wanted to leave and do  
23 something, go home he could. Yet it doesn't make sense  
24 that when the cell phone issue came up he couldn't just  
25 leave to go get it. Maybe they were going to do it for

1 him.

2 I think the reality that you need to look at  
3 is to put yourself in his shoes and was he free to  
4 leave and I think the overwhelming answer was no. The  
5 detective come back 12 -- 10, 12 hours later and there  
6 he is still seated in the same room without having  
7 moved.

8 THE COURT: He's in custody but for Miranda  
9 it's custody plus interrogation. You saying there was  
10 interrogation?

11 MR. KARLINER: Yes I'm saying any questions  
12 at that point was interrogation after the totality  
13 leaving somebody for that long and then questioning  
14 them.

15 THE COURT: Any allegation he was in any way  
16 beaten?

17 MR. KARLINER: No, Your Honor. No, Your  
18 Honor. Regarding the statement on the 15th.

19 THE COURT: Yes.

20 MR. KARLINER: There was no logical reason  
21 nor any requirement for Detective Margraf to say  
22 anything to my client.

23 THE COURT: You mean when the enhancement  
24 occurred?

25 MR. KARLINER: When the enhancement occurred.

1 He needed to be printed. Anyone could have printed  
2 him. Anyone involved in this case. Anyone involved in  
3 the police department could have printed him to upgrade  
4 the charges. Nothing had to be said to him. Anything  
5 said to him at this point in time was designed to  
6 elicit a statement from him. Any statement made should  
7 be suppressed. Thank you, Judge.

8 THE COURT: Let me understand this, you're  
9 saying really we're talking about custody and  
10 interrogation with respect to the statements he made at  
11 the precinct?

12 MR. KARLINER: Correct.

13 THE COURT: The statement I guess at Rikers  
14 he already had counsel?

15 MR. KARLINER: Clearly.

16 THE COURT: And that was designed to elicit  
17 an incriminating response?

18 MR. KARLINER: That's correct.

19 THE COURT: All right. Ms Nicolazzi or Mr.  
20 Hale, who is it going to be?

21 MS NICOLAZZI: I can do it.

22 THE COURT: If you can do it separately.

23 MS NICOLAZZI: I'll do it separately as  
24 counsel addressed the Court. I'll start with Detective  
25 Bostic. First on the issue of probable cause it's

1 People's position that and I believe the law is or the  
2 law is statements of a co-defendant period is enough to  
3 trigger probable cause and here you have the statement  
4 of an accomplice, Lee Woods, that was made I believe  
5 one or two days before defendant Bostic's apprehension  
6 implicating him as a shooter in this case.

7 You also have although corroboration is not  
8 required when it comes to probable cause for the police  
9 to make an arrest you actually do have some  
10 corroboration here by the statements of defendants own  
11 brother, Frederick Bostic, placing him together with  
12 Lee Woods the night before. So the People rely and I  
13 state all we need is the statement of Woods for the  
14 probable cause but you do have more there. So --

15 THE COURT: Is there any case you have that  
16 you looked at that states that proposition?

17 MS NICOLAZZI: Not off the top of my head.  
18 I'll be happy to address that in my memorandum.

19 With respect to the property I think we're  
20 talking about a sweatshirt and jar of peanut butter  
21 that was seized incident to a lawful arrest.

22 Turning to the four statements of defendant  
23 Bostic. It's the People's position that all of those  
24 statements were voluntary and also with respect to all  
25 the witnesses produced by the People were credible and

1 we put the letter into evidence. A lawyer contacted  
2 Mr. Wilford, contacted the precinct and then followed  
3 up with a letter stating he had been retained on behalf  
4 of the family of Mr. Bostic. Going to go through the  
5 statements one by one.

6 First, the oral statement. People submit  
7 that is admissible on our direct case because it was  
8 pedigree. Those questions were asked. It's also  
9 safety exception and administrative, the few questions  
10 that were asked. That one should not be affected in  
11 any way by the -- any right to counsel.

12 Then we're coming to -- I'll address these  
13 next two together which is the statements to Detective  
14 Nomyle and Detective Courtwright and Heinrich that were  
15 in the barracks. The People concede that we should not  
16 be able to introduce those statements on our direct  
17 case whether those actual detectives knew themselves  
18 about the letter from Mr. Wilford thus impugned  
19 knowledge on behalf of the police department and the  
20 questions that were ultimately asked of Mr. Ellis were  
21 not asked of defendant Bostic and I believe at some  
22 point the end of his statement to Detective Nomyle on  
23 his own he invoked counsel Scott Brettschneider.

24 THE COURT: Not Mr. Wilford but he did.

25 MS NICOLAZZI: Correct. Since the questions

1 were not asked that the People believe needed to be  
2 asked if there could be any effective waiver that we're  
3 conceding those statements were not admissible on our  
4 direct case. However, those statements are all  
5 voluntary and should be admissible if the defendant  
6 takes the stand and certainly used for impeachment  
7 purposes.

8 Then moving to the last statement which is  
9 the one made on July 15th, that statement again,  
10 clearly right to counsel has attached not only the  
11 letter but now he's been arraigned, however, there is  
12 no taint or anything untoward by Detective Margraf  
13 notifying the defendant what it is he's there for which  
14 is the police officer has died and thus the charges are  
15 being upgraded to Murder in the First Degree. I think  
16 the only statement even as a question for the Court to  
17 consider when he went on with Mr. Bostic to say and  
18 you're going to spend the rest of your life in prison.  
19 Even with that though is the People's position that  
20 does not rise to the level of something that was said  
21 for the purpose of attempting to elicit any response or  
22 incriminating response. Thus Mr. Bostic saying people  
23 lied on me, I wasn't even there, People contend that  
24 that was a spontaneous statement that he made on his  
25 own accord and it should be admissible on our direct



1 case. Whatever the Court decides there, again, it's  
2 voluntary.

3 THE COURT: So Mr. Wilford looks like we have  
4 a concession here with respect to the statements made  
5 to Nomyle and the statement made to Courtwright. The  
6 People are conceding right to counsel attached and so  
7 you don't have to brief that issue.

8 MR. WILFORD: That's correct.

9 THE COURT: You with me?

10 MR. WILFORD: I'm straight ahead.

11 THE COURT: The only two things you have to  
12 address are the oral statements in terms of the  
13 pedigree and safety issue and the July 15th statement.  
14 Although she says right to counsel she's indicating  
15 here that it wasn't designed to elicit any response.

16 MR. WILFORD: I'll be glad to brief those  
17 issues. It saves me work. I'm very happy.

18 THE COURT: Fine. Saves the Court work too.  
19 Ms Nicolazzi.

20 MS NICOLAZZI: Moving on to defendant Ellis.  
21 People's position is our witnesses were credible.

22 First turning to the probable cause issue.  
23 The probable cause for the arrest of defendant Ellis,  
24 again, the statement of Woods alone is enough -- is a  
25 statement of a co-defendant. However, there is

1 additional evidence here which identifies who that  
2 person is, Roger, which is the fingerprint which  
3 ultimately comes back to Roger Robert Ellis. That's  
4 the basis for arresting this defendant, Robert Ellis.

5 Then moving to the various property that was  
6 recovered both I believe at the scene in Pennsylvania  
7 and then there is additional receipts recovered with  
8 subsequent search of the barracks. There was a  
9 Metrocard, BMW key all those were recovered lawfully  
10 pursuant -- incident to a lawful arrest.

11 Now going through the statements. People's  
12 position is very different when it comes to the  
13 statements of defendant Ellis.

14 THE COURT: Yes, ma'am.

15 MS NICOLAZZI: First of all the right to  
16 counsel does not attach because a family member retains  
17 an attorney or contacts an attorney. The right to  
18 counsel rests with the client, not with the family. I  
19 am not going to get into specific cases for that point.  
20 We do have them and they will be cited in our papers.

21 After that letter came to the precinct  
22 certain questions did need to be asked of Mr. Ellis if  
23 there could be any waiver of the right to counsel and  
24 it's our position that the three questions that were  
25 asked of defendant Ellis and his responses to them was

1 effective waiver to counsel. So there was no right to  
2 counsel attached. Those were, do you know either  
3 Edward Wilford or Anthony Ricco to which defendant  
4 Ellis said no. If you are represented by counsel we  
5 can not question you, do you understand. He said no  
6 and lastly do either Edward Wilford or Anthony Ricco  
7 represent you and I think that here really is the key  
8 to the People's position here too his answer was no.

9 THE COURT: So you had notice but no right  
10 indelibly attached?

11 MS NICOLAZZI: Correct.

12 THE COURT: Since there was no --

13 MS NICOLAZZI: The law I looked at it a few  
14 minutes ago. It specifically says we were retained by  
15 the families of, so I think the case -- this fits  
16 squarely in the cases that talks about right to  
17 counsel, not attaching indelibly based on that. The  
18 cases that both the Court talked about and Ms Eaddy  
19 talked about are the same cases that the People rely on  
20 because although in those cases they said something to  
21 the suspect about we were contacted by so and so, there  
22 is no requirement that that be done. The requirement  
23 that they be given an opportunity to invoke the right  
24 to counsel and I believe the questions that were asked  
25 of this defendant effectively gave the defendant the

1 opportunity to do that and to thus effectively waive  
2 that right. That is what the People rely on and we'll  
3 be citing the cases but they're basically the same  
4 cases the Court has talked about all right -- already.

5 Since the right to counsel did not attach the  
6 defendant was given his Miranda warnings. It was a  
7 knowing and intelligent waiver of them. All his  
8 subsequent statements were voluntary. You have the  
9 oral statements and then you have the audio which  
10 obviously the audio doesn't exist. That's also an oral  
11 conversation. There is nothing about the substance  
12 about that conversation that should be suppressed. I  
13 believe the People have proven that there was no bad  
14 faith or conduct on the part of certainly the police  
15 department or District Attorney's Office in the  
16 unfortunate erasure of that tape.

17 THE COURT: Let me ask you this, assuming the  
18 case has a life beyond the hearing, at trial are you  
19 saying that you still would like someone to indicate  
20 that an audiotaped statement was taken?

21 MS NICOLAZZI: Yes. For two reasons, first  
22 of all, the conversation itself is on oral  
23 conversation. It is an oral statement like any other.  
24 There is no reason based on the argument I've already  
25 made that that should be suppressed. It goes to the

1 continuity, explained what happened in the timeframe.  
2 Something Ms Eaddy said was incorrect. I believe she  
3 said there was no DD-Five prepared about that. That is  
4 correct but the detective did at the time he took  
5 handwritten notes there actually is a memorialized  
6 version of that although that's not required we do  
7 happen to have that here.

8 I think it's analogous to an oral argument  
9 the reason the tape goes to what the police did and  
10 completes the picture. Then we have a videotaped  
11 statement afterwards again he's Mirandized again,  
12 knowing, intelligent waiver and it was also voluntary.  
13 So all of those things should be admissible and I think  
14 also going back to the tape for a moment I think to  
15 leave out the fact that there -- certainly there is no  
16 prejudice by the fact that whether a statement is  
17 recorded or not but it just completes the picture if we  
18 start to parcel out what we're going to say and what  
19 we're not the jurors might say something doesn't seem  
20 right the way they're saying and could impugn something  
21 that is not right by speculation if we left that out.

22 With respect to the defendant's physical  
23 appearance Ms Eaddy talked about the photographs they  
24 put into evidence. Again point to the credibility of  
25 the witnesses that testified also the videotape that is

1 in evidence which I believe is the best evidence of  
2 what the defendant looked like because it really shows  
3 him up and down where the lighting appears better. As  
4 the Court will see there is no injury.

5 THE COURT: She's relying on the shirt.

6 MS NICOLAZZI: I believe there is pictures of  
7 the face. I'll lead the Court to the videotape as to  
8 the defendant's physical condition was fine.

9 THE COURT: As to Mr. Woods.

10 MS NICOLAZZI: As to Mr. Woods. I guess just  
11 going backwards a little bit or chronologically, he  
12 accompanied detectives to the precinct voluntarily.  
13 There is no reason for them to have taken him in if it  
14 wasn't voluntary. His name had not come up. They had  
15 no indication he was involved in this in any way. When  
16 they're going looking for Bostic if someone says sure  
17 I'll help you they have every right to then take his  
18 offer and bring him back to the precinct.

19 Also I think we can also look at when you  
20 talk about the credibility of the detective the  
21 defendant's own potential guilty state of mind he had  
22 every reason to try to appear cooperative or wanting to  
23 help to try to make sure they were guided away from him  
24 as opposed to towards him. If helping the police in  
25 Woods' mind makes him cooperative and just the witness

1 he wants to be if anything certainly I think it only  
2 enhances the credibility of the detectives as far as  
3 when their guns came out. I don't think that affects  
4 the voluntariness of them accompanying him. It was  
5 explained why they did that. I'll let the record speak  
6 for itself. As soon as they said it was a cell phone  
7 and not a weapon they began having a conversation.  
8 They talked about his demeanor being cooperative. He  
9 was never a problem with them. He went as far as to  
10 say I've helped you guys before. I'm an informant and  
11 take me out in cuffs so I don't appear to be a snitch.

12 If you look at all the time the defendant  
13 spent at the precinct I'll point out to the Court once  
14 he's there he has every reason to want to maintain a  
15 cooperative stance with the police department. He  
16 doesn't want to be turned in his mind into a suspect or  
17 defendant. First it's talking about how he knows  
18 Bostic, where he could potentially be when he starts to  
19 admit he's was with him. He has every reason to stay  
20 and be cooperative on trying to keep -- to make sure  
21 that they don't look in his direction for anything more  
22 than a witness.

23 Detective Walker testified that he was not  
24 assigned to watch Mr. Woods. That just happened  
25 because he happened to see him, asked him a couple of

1 questions. No person is going to walk freely about in  
2 a precinct. Meals were provided for him. He never  
3 once asked if he could leave or if he needed to stay.  
4 He was never informed he could not leave so there is  
5 nothing to indicate he was in custody or did not  
6 himself believe that he was free to go until that  
7 obviously changes later. He is the first one that  
8 brings up the fact that he was there but he was in a  
9 second car. That by itself does not implicate him  
10 enough to ultimately arrest him so they continue to  
11 talk to him. The conversation remains that,  
12 conversational. When it changes the detective stops  
13 him and says he is a going down a path to implicate  
14 himself. They Mirandize him and then it's fair to  
15 assume he's not free to leave. Since he was beginning  
16 Miranda all those subsequent statements should be  
17 admissible on our direct case. That would include the  
18 two oral and the written and then another oral and  
19 another written and three oral and two written on the  
20 date of July tenth.

21 THE COURT: What about the upgrade?

22 MS NICOLAZZI: The other two, the statements  
23 on July 11th at central booking is purely spontaneous  
24 statements. There was no question or statements even  
25 made when he talks about why are you guys saying I'm a



1 snitch. That's not right. That should be admissible.

2 The statements on July 15th should be  
3 admissible in its entirety. Yes the right to counsel  
4 has attached. At that point he was arraigned with  
5 respect to defendant Woods. He was informed that  
6 Officer Timeshenko had passed away thus the charges  
7 were being upgraded to Murder in the First Degree,  
8 that's it. So I don't think there can be an argument  
9 there was anything said more than administrative to  
10 which the defendant basically goes on a tirade about  
11 why he's not going to go down for something his buddies  
12 did because he wasn't a shooter. That then is a  
13 spontaneous statement and should not be suppressed.  
14 The People should be able to introduce it in our direct  
15 case.

16 So with respect to the Dunaway issue it's the  
17 defendant's own statements that evolve to give rise  
18 that he is not free to leave and in custody. That's  
19 it, Judge.

20 THE COURT: Okay counsels this is what I'd  
21 like, defense you'll have two weeks. I need something  
22 with the Court no later than August 1st and Ms Eaddy  
23 and Mr. Wilford you mentioned earlier about severance  
24 motion. Include it in any motion addressed to the  
25 hearing.

1 MR. WILFORD: Very well.

2 MS EADDY: I'm going to make a corroboration  
3 motion, lack of corroboration motion.

4 THE COURT: Whatever motions. At -- at this  
5 point I'd really like it to be done for August.  
6 People --

7 MS EADDY: Was that the 4th or first?

8 THE COURT: Sorry first of August.

9 MS EADDY: Your Honor, I'm going to be away.  
10 I would ask for a few more days after the first because  
11 I'm gone from the 25th of July to the first. If I can  
12 have three or four more days after that.

13 THE COURT: No later than August 8th. Mr.  
14 Wilford as well, August 8th. Mr. Karliner, August 8th.  
15 Is that a problem?

16 MR. KARLINER: No. I have one thing I will  
17 be making a severance motion also. There are things  
18 that arose today and other material that I believe  
19 exists that is relevant to the severance motion and I  
20 think we're going to need to address in order for the  
21 severance motion to be complete.

22 THE COURT: What I suggest you do then in  
23 your motion papers indicate that and we'll make that  
24 the subject of an oral argument.

25 MR. KARLINER: Very well.

1 THE COURT: Can I get two weeks.

2 MS NICOLAZZI: That's fine, Judge.

3 THE COURT: No later than August 25th.

4 That's seminar week for me. I'll be out. The 25th.

5 MS NICOLAZZI: Yes.

6 MR. WILFORD: May we have two days to reply?

7 MR. HALE: All the facts are in front of the  
8 Court. It's not really necessary.

9 MR. WILFORD: I'd like to have an opportunity  
10 to reply. If none is necessary based on the memos  
11 submitted then I won't reply.

12 THE COURT: Submit it if you will. All  
13 parties available September 24th.

14 MS EADDY: That's one of the weeks I spoke to  
15 you about earlier. I can do the week before or week  
16 after that. I previously told the Court I wasn't going  
17 to be here that week. I can be here the week before?

18 THE COURT: How about September 29th?

19 MR. WILFORD: The only reason I'm asking  
20 because I have a triple homicide scheduled  
21 September 4th in Bronx County. We're not working on  
22 Fridays because of my client's religious beliefs.

23 THE COURT: Friday is a better date for you.  
24 No client is alleging being Muslim?

25 MR. WILFORD: Mr. Woods. Pick the date and

1 I'll ask Judge Stockmeyer to be here that day.

2 THE COURT: September 29th.

3 MR. KARLINER: In the morning.

4 THE COURT: Yes please in the morning.

5 MR. HALE: Your Honor, just Mr. Karliner  
6 talked about there being other issues in terms of  
7 severance motion. There are other issues that we're  
8 going to have to discuss I would suggest before the  
9 29th, in other words, the Court is going to have all  
10 the papers and everything. Is it necessary that we go  
11 that deep into the month to decide this?

12 THE COURT: Come up, counsel, come up.

13 (Whereupon a bench conference was held.)

14 Finally we worked the schedule out as  
15 follows: September 8th hopefully we'll finalize  
16 Discovery and be in a position to know where we're  
17 going in terms of the trial schedule. You'll have a  
18 decision from the Court on the 29th of September.  
19 After the 29th we'll set up a trial date. Everybody  
20 clear?

21 MR. WILFORD: Yes.

22 MS NICOLAZZI: Yes.

23 MS EADDY: Yes.

24 MR. KARLINER: Yes.

25 THE COURT: The People have assured me in

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terms of canvassing where there is no protective order in effect the defense will have that before the end of July, if I can by the first week of August the latest.

MR. WILFORD: That's what we agreed to.

THE COURT: Is there anything further?

MS EADDY: No, Your Honor.

MR. WILFORD: Not on behalf of Mr. Bostic.

MR. KARLINER: Nor Mr. Woods.

MS EADDY: Nor Mr. Ellis.

THE COURT: With that, thank you. Next date September 8th.

\* \* \*

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.



TANYA MILO-SMITH  
SENIOR COURT REPORTER